LAWS AND RESOLUTIONS

OF THE STATE OF MONTANA

Enacted by the

FIFTY-SEVENTH LEGISLATURE IN REGULAR SESSION

Held at Helena, the Seat of Government
January 3, 2001, through April 21, 2001

and the

FIFTY-SIXTH LEGISLATURE IN SPECIAL SESSION

Held at Helena, the Seat of Government
May 8, 2000, through May 11, 2000

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Table of Contents

Volume I

Officers and Members of the Montana Senate
Officers and Members of the Montana House of Representatives
Title Contents of Bills and Resolutions
Chapters 1 - 250

Volume II

Chapters 251 - 500

Volume III

Chapters 501 - 594
Senate Joint Resolutions
Senate Resolutions
House Joint Resolutions
House Resolutions
Ballot Issues
Index to Appropriations
General Index
Tables
  Code Sections Affected
  Session Laws Affected
  Senate Bill to Chapter Number
  House Bill to Chapter Number
  Chapter Number to Bill Number
Effective Dates
  By Chapter Number
  By Date
Session Law to Code

May 2000 Special Session Material

Volume I

Officers and Members of the Montana Senate i
Officers and Members of the Montana House of Representatives iii
Title Contents of Bills and Resolutions
  Senate and House Bills v
  Senate Joint Resolutions cix
  Senate Resolutions cx
  House Joint Resolutions cxii
  House Resolutions cxv
Chapters 1 - 250 1

OFFICERS AND MEMBERS
OF THE MONTANA SENATE
2001

50 Members

31 Republicans 19 Democrats

OFFICERS

President . . . . Tom Beck
President Pro Tempore . . . . Walt McNutt
Majority Floor Leader . . . . Fred Thomas
Majority Whip . . . . Dale Berry
Minority Floor Leader . . . . Steve Doherty
Minority Whips. . . . . Linda Nelson, Jon Tester
Secretary of the Senate . . . . Rosana Skelton

MEMBERS

Name	Preferred Mailing Address	Dist. No.	Party
Beck, Tom	792 Yellowstone Trl, Deer Lodge MT 59722-8704	28	R
*Berry, Dale E.	852 Ponderosa Dr, Hamilton MT 59840-9121	30	R
Bishop, Al	3020 Leeann Blvd, Billings MT 59102-0442	09	R
Bohlinger, John	2233 Remington Sq, Billings MT 59102-2489	07	R
Butcher, Edward B. 'Ed'	PO Box 89, Winifred MT 59489-0089	47	R
Christiaens, B.F. 'Chris'	PO Box 2871, Great Falls MT 59403-2871	23	D
Cobb, John	PO Box 388 Augusta, MT 59410-0388	25	R
Cocchiarella, Vicki	535 Livingston Ave, Missoula MT 59801-8003	32	D
Cole, Mack	PO Box 286, Hysham MT 59038-0286	04	R
Crismore, William S. 'Bill'	237 Airfield Rd, Libby MT 59923-8600	41	R
DePratu, Bob	PO Box 1217, Whitefish MT 59937-1217	40	R
Doherty, Steve	1531 3rd Ave SW, Great Falls MT 59404-2715	24	D
Ekegren, E.P. 'Pete'	PO Box 862, Choteau MT 59422-0862	44	R
Ellingson, Jon	430 Ryman St, Missoula MT 59802-4249	33	D
Elliott, Jim	100 Trout Creek Rd, Trout Creek MT 59874-9609	36	D
Ellis Jr., Alvin A.	HC 50 Box 4840, Red Lodge MT 59068-9724	12	R
Franklin, Eve	2707 Dawn Dr, Great Falls MT 59404-3633	21	D
Glaser, Wm. E 'Bill'	1402 Indian Creek Rd, Huntley MT 59037	08	R
Grimes, Duane	4 Hole In The Wall, Clancy MT 59634-9516	20	R
Grosfield, Lorents	285 Grosfield Ln, Big Timber MT 59011-7724	13	R
Halligan, Mike	PO Box 9121, Missoula MT 59807-9121	34	D
Hargrove, Don	PO Box 1, Belgrade MT 59714-0001	16	R
Harrington, Dan W.	1201 N Excelsior Ave, Butte MT 59701-8505	19	D
Holden, Ric	164 Road 253, Glendive MT 59330-9438	01	R
Jergeson, Greg	PO Box 1568, Chinook MT 59523-1568	46	D
Johnson, Royal C.	2915 Illinois St, Billings MT 59102-0814	05	R
Keenan, Bob	PO Box 697, Bigfork MT 59911-0697	38	R
Kitzenberg, Sam	130 Bonnie St Apt 1, Glasgow MT 59230-2101	48	R
Mahlum, Dale	10955 US Highway 93 N, Missoula MT 59808-9227	35	R
McCarthy, Bea	1906 Ogden St, Anaconda MT 59711-1706	29	D
McNutt, Walter L.	110 12th Ave SW, Sidney MT 59270-3614	50	R
Miller, Ken	PO Box 186, Laurel MT 59044-0186	11	R
Mohl, Arnie A.	3303 US Highway 2 E, Kalispell MT 59901-6680	39	R
Nelson, Linda J.	469 Griffin Rd, Medicine Lake MT 59247-9708	49	D
O'Neil, Jerry	PO Box 2058, Kalispell MT 59903-2058	42	R
Pease, Gerald	PO Box 556, Lodge Grass MT 59050-0556	03	D

Roush, Glenn A.	PO Box 185, Cut Bank MT 59427-0185	43	D
Ryan, Don	2101 7th Ave S, Great Falls MT 59405-2821	22	D
Shea, Debbie	100 Moon Ln, Butte MT 59701-3975	18	D
Sprague, Mike	174 Erickson Ct S, Billings MT 59105-2347	06	R
Stapleton, Corey	3614 Crater Lake Ave, Billings MT 59102-7732	10	R
Stonington, Emily	15042 Kelly Canyon Rd, Bozeman MT 59715-9625	15	D
Tash, Bill	240 Vista Dr, Dillon MT 59725-3111	17	R
Taylor, Mike	PO Box 152, Proctor MT 59929-0152	37	R
Tester, Jon	709 Son Ln, Big Sandy MT 59520-8443	45	D
Thomas, Fred	3566 Holly Ln, Stevensville MT 59870-6634	31	R
Toole, Ken	PO Box 1462, Helena MT 59624-1462	27	D
Waterman, Mignon	530 Hazelgreen Ct, Helena MT 59601-5410	26	D
Wells, Jack	150 Coulee Dr, Bozeman MT 59715-7717	14	R
Zook, Tom	HC 40, Miles City MT 59301-9806	02	R

*Senator Dale Berry passed away May 17, 2001. His wife, Dorothy Berry, has been appointed to fill his seat.

OFFICERS AND MEMBERS
OF THE MONTANA HOUSE OF REPRESENTATIVES
2001

100 Members

58 Republicans

42 Democrats

OFFICERS

Speaker	Dan McGee
Speaker Pro Tempore	Doug Mood
Majority Floor Leader	Paul Sliter
Majority Whips	Roy Brown, Cindy Younkin
Minority Floor Leader	Kim Gillan
Minority Whip	George Golie
Chief Clerk of the House	Marilyn Miller

MEMBERS

Name	Preferred Mailing Address	Dist. No.	Party
Adams, Darrel	155 Eastland Crossroad, Columbia Falls MT 59912-9300	84	R
Andersen, Joan	RR 1 Box 1012, Fromberg MT 59029-9701	23	R
Bales, Keith	HC 39 Box 33, Otter MT 59062-9703	01	R
Balyeat, Joe	6909 Rising Eagle Rd, Bozeman MT 59715-8621	32	R
Barrett, Debby	17600 MT Highway 324, Dillon MT 59725-9657	34	R
Bitney, Rod	PO Box 10501, Kalispell MT 59904-0501	77	R
Bixby, Norma	PO Box 1165, Lame Deer MT 59043-1165	05	D
Bookout-Reinicke, Sylvia	PO Box 327, Alberton MT 59820-0327	71	R
Branae, Gary	415 Yellowstone Ave, Billings MT 59101-1730	17	D
Brown, Dee L.	PO Box 444, Hungry Horse MT 59919-0444	83	R
Brown, Roy	PO Box 22273, Billings MT 59104-2273	14	R
Brueggeman, John	321 Lakeview Dr, Polson MT 59860-9317	74	R
Buzzas, Rosalie 'Rosie'	233 University Ave, Missoula MT 59801-4351	65	D
Callahan, T.M. 'Tim'	3409 5th Ave S, Great Falls MT 59405-3543	43	D
Carney, Eileen	PO Box 1193, Libby MT 59923-1193	82	D
Clancy, Gilda	PO Box 6696, Helena MT 59604-6696	51	R
Clark, Edith J.	PO Box 34, Sweetgrass MT 59484-0034	88	R
Clark, Paul	20 Fox Ln, Trout Creek MT 59874-9510	72	D
Curtiss, Aubyn	PO Box 216, Fortine MT 59918-0216	81	R
Cyr, Larry	1260 W Aluminum St, Butte MT 59701-2102	37	D
Dale, Rick	5 Rocky Mountain Dr, Whitehall MT 59759-9626	39	R
Davies, Bob	PO Box 3634, Bozeman MT 59772-3634	27	R
Dell, Tom	212 S Santa Fe Dr, Billings MT 59102-5750	19	D
Devlin, Ronald R.	PO Box 186, Terry MT 59349-0186	03	R
Eggers, Bill	PO Box 1000, Crow Agency MT 59022-1000	06	D
Erickson, Ron	3250 Pattee Canyon Rd, Missoula MT 59803-1703	64	D
Esp, John	PO Box 1024, Big Timber MT 59011-1024	25	R
Facey, Tom	418 Plymouth St, Missoula MT 59801-4133	67	D
Fisher, Stanley M.	76 Golf Terrace Dr, Bigfork MT 59911-6252	75	R
Forrester, Gary L.	2527 Gardiner St, Billings MT 59101-6702	16	D
Fritz, Nancy Rice	1817 Daniel Dr, Missoula MT 59802-4926	69	D
Fuchs, Daniel C.	2031 Clubhouse Way Apt 3, Billings MT 59105-3428	15	R
Gallik, Dave	120 E Lyndale Ave, Helena MT 59601-2911	52	D
Gallus, Steve	2701 Phillips St, Butte MT 59701-4135	35	D
Galvin-Halcro, Kathleen	101 Riverview Dr E, Great Falls MT 59404-1547	48	D
Gillan, Kim	750 Judicial Ave, Billings MT 59105-2130	11	D

Golie, George	316 20th Ave S, Great Falls MT 59405-4131	44	D
Gutsche, Gail	1530 Cooper St, Missoula MT 59802-2220	66	D
Haines, Dick	5935 St Francis Dr, Missoula MT 59803-2945	63	R
Harris, Christopher	519 North Black Ave, Bozeman MT 59715-3612	30	D
Hedges, Donald L.	70 Singletree Rd, Antelope MT 59211	97	R
Himmelberger, Dennis	PO Box 22272, Billings MT 59104-2272	18	R
Holden, Linda L.	170 Dupuyer Cutoff, Valier MT 59486-5256	86	R
Hurdle, Joan	PO Box 1991, Billings MT 59103-1991	13	D
Jackson, Verdell	555 Wagner Ln, Kalispell MT 59901-8079	79	R
Jacobson, Hal	4813 US Highway 12 W, Helena MT 59601-9694	54	D
Jayne, Joey	299 Lumpry Rd, Arlee MT 59821-9747	73	D
Jent, Larry	506 E Babcock St, Bozeman MT 59715-4714	29	D
Juneau, Carol C.	128 9th Ave SE, Browning MT 59417	85	D
Kasten, Dave	HC 77 Box A-14, Brockway MT 59214-9701	99	R
Kaufmann, Christine	PO Box 1566, Helena MT 59624-1566	53	D
Keane, Jim	2131 Wall St, Butte MT 59701-5527	36	D
Laible, Rick	529 Moose Hollow Rd, Victor MT 59875-9303	59	R
Laslovich, Jesse	112 Mountain View St, Anaconda MT 59711-1616	57	D
Laszloffy, Jeff	3165 Highway 212 S, Laurel MT 59044-8911	22	R
Lawson, Bob	PO Box 686, Whitefish MT 59937-0686	80	R
Lee, Michelle	213 West Geyser St, Livingston MT 59047-3412	26	D
Lehman, Larry R.	PO Box 184, Power MT 59468-0184	87	R
Lenhart, Ralph L.	PO Box 1225, Glendive MT 59330-1225	02	D
Lewis, Dave	5871 Collins Rd, Helena MT 59602-9584	55	R
Lindeen, Monica J.	1626 Heath St, Huntley MT 59037-9137	07	D
Mangan, Jeff	PO Box 1196, Great Falls MT 59403-1196	45	D
Masolo, Gay Ann	20 Buck Dr, Townsend MT 59644-9651	40	R
Matthews, Gary	1708 Main St, Miles City MT 59301-3652	04	D
McCann, Matt	PO Box 1093, Harlem MT 59526-1093	92	D
McGee, Daniel W. 'Dan'	1925 Pinyon Dr, Laurel MT 59044-9381	21	R
McKenney, Joe	1140 18th Ave SW, Great Falls MT 59404-3426	49	R
Mood, Doug	PO Box 42, Seeley Lake MT 59868-0042	58	R
Musgrove, John L.	810 8th St, Havre MT 59501-4127	91	D
Newman, Brad	514 N Henry Ave, Butte MT 59701-8720	38	D
Noennig, Mark E.	3441 Powderhorn Cir, Billings MT 59102-0332	09	R
Olson, Alan	18 Halfbreed Creek Rd, Roundup MT 59072-6524	08	R
Pattison, Jeff	123 Cain Rd, Glasgow MT 59230	95	R
Peterson, Art	1008 Poly Dr Apt A2, Billings MT 59102-1851	10	R
Peterson, Ken	424 48th St W, Billings MT 59106-2306	20	R
Price, William R.	311 SW Maple St, Lewistown MT 59457-3230	94	R
Raser, Holly	4304 Spurgin Rd, Missoula MT 59804-4520	70	D
Rice, Diane	PO Box 216, Harrison MT 59735-0216	33	R
Ripley, Rick	8920 MT Highway 200, Wolf Creek MT 59648-8639	50	R
Rome, Allen	748 Dana Ln, Garrison MT 59731-9737	56	R
Schmidt, Trudi	4029 6th Ave S, Great Falls MT 59405-3746	42	D
Schrumpf, Clarice	1546 Hawthorne Ln, Billings MT 59105-1802	12	R
Shockley, Jim	PO Box 608, Victor MT 59875-0608	61	R
Sliter, Paul	PO Box 118, Somers MT 59932-0118	76	R
Smith, Frank J.	PO Box 729, Poplar MT 59255-0729	98	D
Somerville, Roger	PO Box 1104, Kalispell MT 59903-1104	78	R
Steinbeisser, Donald	RR 1 Box 3400, Sidney MT 59270-9620	100	R
Story Jr., Robert R.	133 Valley Creek Rd, Park City MT 59063-8040	24	R
Thomas, Bill	HC 81 Box 7, Hobson MT 59452-9701	93	R
Tramelli, Brett	204 Smelter Ave NW, Great Falls MT 59404-1852	46	D
Tropila, Joseph 'Joe'	209 2nd St NW, Great Falls MT 59404-1301	47	D
Vick, Steve	5875 Thorpe Rd, Belgrade MT 59714-8909	31	R
Waddill, Butch	700 Tie Chute Ln, Florence MT 59833-6545	62	R
Waitschies, Karl A.	PO Box A-18, Peerless MT 59253	96	R
Walters, Allan	416 Grantsdale Rd, Hamilton MT 59840-3335	60	R
Wanzenried, David E.	903 Sky Dr, Missoula MT 59804-3121	68	D
Whitaker, James G.	4020 5th Ave S, Great Falls MT 59405-3640	41	R
Witt, John E.	2555 Russell Rd, Carter MT 59420-8230	89	R
Wolery, Merlin	HC 75 Box 70, Rudyard MT 59540-9707	90	R
Younkin, Cindy	1115 N Spruce Dr, Bozeman MT 59715-5948	28	R

TITLE CONTENTS

SENATE AND HOUSE BILLS

Chapter Page

1 *(House Bill No. 1; Vick)* APPROPRIATING MONEY FOR THE OPERATION OF THE LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 3

2 *(House Bill No. 17; Haines)* APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FIRE SUPPRESSION COSTS FOR THE BIENNIUM ENDING JUNE 30, 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 3

3 *(House Bill No. 39; Fuchs)* REVISING CERTAIN STATUTES REGULATING FISHING BY YOUTHS AND PERSONS 62 YEARS OF AGE OR OLDER; INCREASING THE AGE FOR JUVENILES TO FISH IN CERTAIN DESIGNATED WATERS; ALLOWING RESIDENT YOUTHS UNDER 15 YEARS OF AGE AND RESIDENTS 62 YEARS OF AGE OR OLDER TO OBTAIN PADDLEFISH TAGS WITH A VALID WILDLIFE CONSERVATION LICENSE; AMENDING SECTIONS 87-1-304 AND 87-2-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 3

4 *(House Bill No. 52; Gallik)* AMENDING REFERENCES RELATING TO THE MILITARY; ADOPTING THE MOST RECENT VERSION OF FEDERAL LAWS, REGULATIONS, FORMS, PRECEDENTS, AND USAGES, INCLUDING THE FEDERAL UNIFORM CODE OF MILITARY JUSTICE, FOR USE BY STATE MILITARY FORCES; DELETING A REFERENCE TO FEDERAL STATUTE THAT HAS BEEN REPEALED THAT RELATED TO VETERANS' BENEFITS; AND AMENDING SECTIONS 10-1-104 AND 25-13-608, MCA 5

5 *(House Bill No. 98; Lewis)* GENERALLY REVISING LAWS RELATED TO THE MONTANA CHIROPRACTIC LEGAL PANEL; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 27-12-206, 27-12-306, 27-12-308, AND 27-12-502, MCA; AND PROVIDING AN EFFECTIVE DATE 6

6 *(Senate Bill No. 87; Waterman)* CLARIFYING THE ROLES OF CLERKS OF JUSTICES' COURTS AND CITY COURTS; AND AMENDING SECTIONS 3-10-103 AND 3-11-206, MCA 8

7 *(House Bill No. 25; Sliter)* GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 56TH LEGISLATURE; AMENDING SECTIONS 1-1-517, 2-7-501, 2-15-3316, 7-1-2111, 7-4-2503, 7-7-2101, 7-7-2203, 7-14-2524, 7-16-2327, 7-21-2303, 10-2-102, 13-2-301, 13-12-207, 13-15-401, 15-1-501, 15-1-708, 15-6-141, 15-23-101, 15-24-904, 15-31-132, 15-35-102, 16-2-109, 16-4-105, 16-4-111, 16-4-204, 16-4-301, 16-4-420, 17-5-709, 17-7-502, 18-4-132, 19-2-1001, 19-3-503, 19-9-1007, 19-20-404, 20-26-103, 33-17-211, 33-17-1203, 35-1-1312, 35-8-216, 35-12-703, 35-18-105, 35-18-106, 35-18-107,

35-18-206, 35-18-301, 35-18-313, 35-18-316, 39-3-213, 39-51-1307, 39-51-3207, 39-71-201, 39-71-2363, 39-72-711, 41-5-103, 41-5-206, 46-8-202, 50-51-103, 53-30-403, 60-3-201, 69-4-304, 69-4-501, 69-8-103, 69-8-502, 72-3-917, 75-10-103, 75-10-732, 76-3-601, 76-5-401, 77-2-102, 77-4-201, 77-4-210, 80-6-101, 80-7-816, 81-9-232, 81-23-303, 85-1-615, 85-9-104, 87-1-209, 87-1-221, 87-1-242, 87-1-246, AND 90-6-302, MCA; AND REPEALING SECTIONS 15-34-101, 15-34-102, 15-34-103, 15-34-104, 15-34-105, 15-34-110, 15-34-111, 15-34-112, 15-34-115, 15-34-116, AND 90-3-1004, MCA, AND SECTION 2, CHAPTER 64, LAWS OF 1995 9

8 *(House Bill No. 34; Gallik)* EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 83

9 *(House Bill No. 45; Witt)* REVISING THE WATER POLLUTION CONTROL STATE REVOLVING FUND ACT AND DRINKING WATER STATE REVOLVING FUND ACT TO AUTHORIZE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADVANCE FUNDS TO PROJECTS FUNDED, IN PART, BY THE FEDERAL GOVERNMENT WHEN FEDERAL FUNDING HAS BEEN APPROVED BUT NOT APPROPRIATED; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 83

10 *(House Bill No. 24; Erickson)* REVISING THE DEBT LIMIT PROVISIONS FOR PUBLIC SCHOOLS; ELIMINATING ADJUSTMENTS TO TAXABLE VALUE OCCURRING AS A RESULT OF PRIOR CHANGES TO THE TAXATION OF CERTAIN CLASSES OF PROPERTY; AMENDING SECTION 20-9-406, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 85

11 *(House Bill No. 36; Gallik)* PROVIDING THAT THE APPEAL PROCESS FOR CHALLENGING THE VALUE OF A CABIN SITE LOCATED ON STATE LAND MUST BEGIN WITH THE COUNTY TAX APPEAL BOARD, WHICH MAY, IF NECESSARY, BE FOLLOWED BY AN APPEAL TO THE STATE TAX APPEAL BOARD; AMENDING SECTION 77-1-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 87

12 *(House Bill No. 51; Facey)* MAKING PERMANENT THE PROVISION REGARDING PARTIAL PAYMENT OF BENEFITS; REPEALING SECTION 4, CHAPTER 400, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 88

13 *(House Bill No. 56; Lawson)* PROVIDING AN EXCEPTION TO THE INSURANCE CODE FOR LOCAL GOVERNMENT AMBULANCE SERVICES; AMENDING SECTIONS 7-34-103 AND 33-1-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 88

14 *(House Bill No. 26; Clark)* EXEMPTING FROM THE PROVISIONS OF THE WORKERS' COMPENSATION ACT TRAINERS, ASSISTANT TRAINERS, EXERCISE PERSONS, AND PONY PERSONS PERFORMING SERVICES UNDER A LICENSE ISSUED BY THE BOARD OF HORSERACING ON THE GROUNDS OF A LICENSED RACE MEET; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 90

15 *(House Bill No. 91; Golie)* COORDINATING SCHOOL ELECTION DATES BY REQUIRING A PERSON SEEKING TO BECOME A WRITE-IN CANDIDATE FOR A TRUSTEE POSITION ON A SCHOOL BOARD TO FILE A DECLARATION OF INTENT AT LEAST 26 DAYS BEFORE THE ELECTION; AMENDING SECTIONS 13-10-211, 13-10-302, 13-15-202, AND 20-3-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 94

16 *(House Bill No. 115; Shockley)* CLARIFYING THAT THE IMPOSITION OF AN ADDITIONAL SENTENCE FOR OFFENSES COMMITTED WITH A DANGEROUS WEAPON DOES NOT APPLY IF THE USE OF A WEAPON IS AN ELEMENT OF THE UNDERLYING OFFENSE; AND AMENDING SECTION 46-18-221, MCA 96

17 *(House Bill No. 117; Andersen)* INCREASING FROM 5 TO 10 YEARS THE MAXIMUM INCARCERATION TERM THAT MAY BE IMPOSED FOR NEGLIGENT VEHICULAR ASSAULT CAUSING SERIOUS BODILY INJURY; CLARIFYING THAT THE JUDGE MAY SUSPEND THE TERM OF INCARCERATION UPON THE CONDITION OF PAYMENT OF A FINE IMPOSED AND PAYMENT OF RESTITUTION FOR ALL CONVICTIONS OF NEGLIGENT VEHICULAR ASSAULT; AND AMENDING SECTION 45-5-205, MCA. 97

18 *(Senate Bill No. 40; Christiaens)* ADOPTING THE INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION, WHICH PROVIDES FOR THE SUPERVISION OF CRIMINALS ON PAROLE WHO LEAVE THE STATE; AND REPEALING SECTIONS 46-23-1101, 46-23-1102, 46-23-1103, 46-23-1104, 46-23-1105, AND 46-23-1106, MCA. 98

19 *(House Bill No. 22; Lindeen)* CLARIFYING THAT AN EASEMENT IS THE PREFERRED INTEREST TO BE TAKEN IN A CONDEMNATION PROCEEDING UNLESS THE PARTIES AGREE THAT A GREATER INTEREST SHOULD BE TAKEN OR THE CONDEMNOR SHOWS BY A PREPONDERANCE OF THE EVIDENCE THAT TAKING A GREATER INTEREST IS NECESSARY; PROVIDING AN EXEMPTION FOR STATE HIGHWAY PURPOSES; AND AMENDING SECTIONS 60-4-102, 70-30-104, AND 70-30-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 107

20 *(House Bill No. 93; Gillan)* ALLOWING THE CONDEMNEE AND CONDEMNOR IN A CONDEMNATION ACTION THE OPPORTUNITY TO PROVIDE A STATEMENT OF APPROPRIATE DAMAGE REDUCTION MEASURES; REQUIRING THAT THE CONDEMNATION COMMISSIONERS DETERMINE THE APPROPRIATE PAYMENT FOR DAMAGES AFTER EXAMINING THE PROPERTY; ALLOWING FOR THE INCLUSION OF APPROPRIATE PAYMENT FOR DAMAGES IN THE FINAL CONDEMNATION ORDER; AND AMENDING SECTIONS 70-30-110, 70-30-203, 70-30-301, AND 70-30-309, MCA 110

21 *(House Bill No. 99; Devlin)* REPEALING THE TERMINATION DATE OF THE LAW AUTHORIZING THE FISH, WILDLIFE, AND PARKS COMMISSION TO SEPARATE NONRESIDENT DEER LICENSES FROM THE NONRESIDENT BIG GAME COMBINATION LICENSES FOR PURPOSES OF DEER MANAGEMENT AND TO SET THE TERMS AND CONDITIONS OF THE LICENSES; REPEALING SECTION 6, CHAPTER 355, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 113

22 *(House Bill No. 194; Bookout-Reinicke)* REVISING THE LANGUAGE RELATING TO OVERTIME AND MINIMUM WAGE EXEMPTIONS FOR OUTSIDE SALES TO CONFORM WITH THE FEDERAL FAIR LABOR STANDARDS ACT; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 113

23 *(House Bill No. 50; Juneau)* CHANGING THE CERTIFICATION OF CHEMICAL DEPENDENCY COUNSELORS TO LICENSURE OF ADDICTION COUNSELORS; AMENDING SECTIONS 33-22-702, 33-22-705, 33-32-102, 37-23-201, 37-35-101, 37-35-102, 37-35-103, 37-35-201, 37-35-202, 37-35-203, 37-35-301, 37-35-304, 45-5-624,

45-9-208, 45-10-108, 53-24-301, AND 61-8-732, MCA; AND PROVIDING EFFECTIVE DATES 117

24 *(House Bill No. 180; Callahan)* PROVIDING THAT A MEDICAL EXAMINATION REQUIRED BEFORE A YOUTH MAY BE ADMITTED TO A FACILITY UNDER AN ORDER OF COMMITMENT TO THE DEPARTMENT OF CORRECTIONS MAY BE PERFORMED BY A LICENSED PHYSICIAN ASSISTANT-CERTIFIED OR AN ADVANCED PRACTICE REGISTERED NURSE; AND AMENDING SECTION 52-5-108, MCA 129

25 *(House Bill No. 220; Lawson)* GENERALLY REVISING PROVISIONS OF THE MONTANA CREDIT UNION ACT; PROVIDING THAT ELECTRONICALLY GENERATED AND STORED CREDIT UNION RECORDS ARE ADMISSIBLE AS EVIDENCE OF A TRANSACTION; CLARIFYING THAT A CREDIT UNION SUPERVISORY COMMITTEE NEED ONLY BE APPOINTED IF THE CREDIT UNION BYLAWS PROVIDE FOR A SUPERVISORY COMMITTEE; PROVIDING THAT DIVIDENDS MUST BE PAID ON ALL SHARES ACCORDING TO ANY METHOD OF CALCULATION ALLOWED BY LAW; REMOVING THE REQUIREMENT THAT THE PURPOSE OF THE LOAN BE STATED IN A LOAN APPLICATION; AMENDING SECTIONS 32-3-204, 32-3-301, 32-3-403, 32-3-502, AND 32-3-602, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 130

26 *(House Bill No. 37; Witt)* REVISING THE REQUIREMENTS FOR REPORTING CERTIFIED TAXABLE VALUE BY THE DEPARTMENT OF REVENUE TO LOCAL TAXING AUTHORITIES; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF REVENUE REPORT CERTIFIED MILLAGE RATES; ELIMINATING THE REQUIREMENT THAT LOCAL TAXING AUTHORITIES ADOPT A RESOLUTION TO INCREASE MILL LEVIES IN EXCESS OF THE CERTIFIED MILLAGE RATES; AMENDING SECTIONS 7-6-2522, 15-10-202, AND 15-10-206, MCA; REPEALING SECTIONS 15-10-204, 15-10-205, 15-10-207, AND 15-10-208, MCA; AND PROVIDING AN EFFECTIVE DATE 132

27 *(House Bill No. 235; Brown)* GENERALLY PROHIBITING THE USE OF BUSINESS NAME IDENTIFIERS OR OTHER LANGUAGE IN THE NAME, TITLE, OR ASSUMED NAME OF A BUSINESS ENTITY THAT WOULD STATE OR IMPLY THAT THE BUSINESS ENTITY IS A TYPE OF ENTITY OTHER THAN THE TYPE THAT IT IS; DEFINING "BUSINESS NAME IDENTIFIER"; AND AMENDING SECTIONS 30-13-201, 30-13-202, 35-1-308, 35-2-305, 35-4-206, 35-8-103, 35-10-703, AND 35-12-505, MCA. 133

28 *(House Bill No. 246; Bales)* CLARIFYING THAT A PERSON OWNING, CONTROLLING, OR IN POSSESSION OF LIVESTOCK OR A PERSON WHO OWNS PROPERTY DOES NOT HAVE A DUTY TO PREVENT LIVESTOCK FROM WANDERING ON HIGHWAYS; PROVIDING THAT A PERSON OWNING, CONTROLLING, OR IN POSSESSION OF LIVESTOCK OR A PERSON OWNING PROPERTY IS NOT SUBJECT TO LIABILITY FOR DAMAGES OR INJURY CAUSED BY AN ACCIDENT INVOLVING A MOTOR VEHICLE AND LIVESTOCK UNLESS THE OWNER OF THE LIVESTOCK OR PROPERTY WAS GROSSLY NEGLIGENT OR ENGAGED IN INTENTIONAL MISCONDUCT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 138

29 *(House Bill No. 23; Erickson)* GENERALLY REVISING THE LAWS IN WHICH TAXABLE VALUE OF A LOCAL GOVERNMENT UNIT IS USED FOR ESTABLISHING DEBT LIMITS AND FOR OTHER

PURPOSES; SUBSTITUTING ASSESSED VALUE FOR TAXABLE VALUE FOR THE ISSUANCE OF BONDS BY A POLITICAL SUBDIVISION FOR SELF-INSURANCE; SUBSTITUTING ASSESSED VALUE FOR TAXABLE VALUE FOR ESTABLISHING DEBT LIMITS FOR LOCAL GOVERNMENT UNITS; GENERALLY EXPANDING DEBT LIMITATIONS OF LOCAL GOVERNMENT UNITS; SUBSTITUTING ASSESSED VALUE FOR TAXABLE VALUE FOR THE PURPOSES OF SETTING A TAX LEVY FOR FIREFIGHTERS' DISABILITY AND PENSION FUNDS; SUBSTITUTING ASSESSED VALUE FOR TAXABLE VALUE FOR THE ISSUANCE OF BONDS FOR WORKERS' COMPENSATION INSURANCE; AMENDING SECTIONS 2-9-211, 7-3-1321, 7-6-2211, 7-6-4121, 7-7-107, 7-7-108, 7-7-2101, 7-7-2203, 7-7-2301, 7-7-4201, 7-7-4202, 7-13-237, 7-13-309, 7-13-4103, 7-14-236, 7-14-2524, 7-14-2525, 7-14-4402, 7-16-2327, 7-16-2433, 7-16-4104, 7-31-106, 7-31-107, 7-33-2109, 7-33-2404, 7-34-2131, 15-23-703, 15-36-324, 19-18-503, 19-18-504, 39-71-403, AND 85-9-406, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 139

30 *(House Bill No. 155; Noennig)* REVISING LAWS GOVERNING THE FINANCING OF AND PAYMENT FOR REAL PROPERTY PURCHASES; INCREASING THE TIME FOR GIVING A CERTIFICATE OF DISCHARGE FROM A MORTGAGE; INCREASING THE PENALTY FOR REFUSAL OR FAILURE TO GIVE THE CERTIFICATE ON TIME; INCREASING FROM 30 TO 40 ACRES THE MAXIMUM SIZE OF ACREAGE COVERED BY THE SMALL TRACT FINANCING ACT OF MONTANA; AMENDING SECTIONS 71-1-212, 71-1-302, 71-1-303, AND 71-1-304, MCA; AND REPEALING SECTION 70-32-221, MCA. 162

31 *(House Bill No. 113; Devlin)* REVISING THE GRAZING DISTRICT LAWS TO REMOVE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM STATE DISTRICT LAWS EXCEPT FOR ADMINISTRATIVE ATTACHMENT PURPOSES; CHANGING THE REQUIREMENT FOR WRITTEN NOTICE TO THE COMMISSION MEMBERS, WITH REGARD TO MEETINGS, FROM 14 DAYS TO 7 DAYS; CONFORMING USES TO DEFINED TERMS; AMENDING SECTIONS 76-16-102, 76-16-103, 76-16-104, 76-16-106, 76-16-107, 76-16-108, 76-16-109, 76-16-111, 76-16-112, 76-16-113, 76-16-201, 76-16-202, 76-16-203, 76-16-206, 76-16-208, 76-16-209, 76-16-211, 76-16-212, 76-16-213, 76-16-301, 76-16-302, 76-16-303, 76-16-307, 76-16-309, 76-16-310, 76-16-316, 76-16-317, 76-16-318, 76-16-320, 76-16-323, 76-16-325, 76-16-401, 76-16-402, 76-16-403, 76-16-404, 76-16-406, 76-16-407, 76-16-408, 76-16-409, 76-16-410, 76-16-411, 76-16-412, 76-16-413, AND 76-16-414, MCA; REPEALING SECTION 76-16-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 163

32 *(Senate Bill No. 61; Johnson)* PROVIDING FOR THE ALLOCATION OF PRIVATE ACTIVITY AND GOVERNMENTAL BONDS BY A PERCENTAGE OF THE STATE LIMITATION ON THE AMOUNT OF THOSE BONDS THAT MAY BE ISSUED; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ESTABLISH BY RULE THE STATE'S VOLUME CAP ON PRIVATE ACTIVITY AND GOVERNMENTAL BONDS; AMENDING SECTIONS 17-5-1302, 17-5-1311, 17-5-1312, 17-5-1315, 17-5-1316, 17-5-1318, AND 17-5-1323, MCA; AND PROVIDING EFFECTIVE DATES 177

33 *(Senate Bill No. 93; Halligan)* PROVIDING A PROCEDURE FOR ADDRESSING LOST, DESTROYED, OR STOLEN CASHIER'S

HeinOnline -- 2001 vol.I ix 2001

CHECKS, TELLER'S CHECKS, AND CERTIFIED CHECKS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 181

34 *(Senate Bill No. 133; Jergeson)* GENERALLY REVISING LAWS TO CONFORM FUND TYPE TERMINOLOGY TO THE MOST RECENT GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; AMENDING SECTIONS 15-30-195, 15-34-115, 15-35-108, 15-38-106, 15-38-202, 17-2-102, 17-2-103, 17-2-107, 17-6-203, 17-7-150, 17-8-101, 17-8-303, 20-9-601, 20-25-225, 22-1-225, 22-1-226, 22-3-113, 22-3-114, 39-3-213, 39-51-401, 41-3-705, 72-14-204, 72-14-205, 72-14-206, 72-14-207, 72-14-209, 72-14-210, 72-14-403, 77-1-108, 77-1-109, 77-1-602, 80-2-103, 87-1-601, 90-3-1001, 90-3-1002, 90-3-1003, AND 90-6-107, MCA; AND PROVIDING AN EFFECTIVE DATE. 183

35 *(Senate Bill No. 180; Beck)* REVISING AND CLARIFYING LAWS GOVERNING SPECIAL SESSIONS; PROVIDING THAT A STANDING COMMITTEE MAY MEET PRIOR TO A SPECIAL SESSION TO HEAR AND ACT UPON PREINTRODUCED LEGISLATION REFERRED TO THAT COMMITTEE; REQUIRING A 7-DAY NOTICE FOR A HEARING HELD PRIOR TO A SPECIAL SESSION; PROVIDING THAT LEGISLATORS ARE ENTITLED TO COMPENSATION AND EXPENSE PAYMENTS FOR THE DAY PRIOR TO A SPECIAL SESSION AND FOR PRESESSION BUSINESS; AMENDING SECTION 5-3-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 213

36 *(Senate Bill No. 189; McNutt)* ADDING FINANCIAL HOLDING COMPANIES TO THE DEFINITION OF "BANK HOLDING COMPANY"; ALLOWING A BANK TO REDEEM ITS OWN CAPITAL STOCK WITH APPROVAL OF THE DEPARTMENT OF COMMERCE; ELIMINATING DISTANCE LIMITATIONS ON THE PLACEMENT OF BRANCH BANKS; EXPANDING THE USES FOR WHICH A BANK MAY BORROW FUNDS FROM A FEDERAL HOME LOAN BANK; ALLOWING A BANK TO ACQUIRE FOR ITS OWN ACCOUNT SHARES OF STOCK OF A FEDERAL HOME LOAN BANK WITHOUT LIMITATION OF AMOUNT; AMENDING SECTIONS 32-1-109, 32-1-335, 32-1-362, 32-1-372, 32-1-382, 32-1-412, AND 32-1-422, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 214

37 *(Senate Bill No. 192; DePratu)* CLARIFYING, AS A RESULT OF THE REPEAL OF MONTANA'S INHERITANCE TAX, THE FILING REQUIREMENTS BY A PERSON WITH AN INTEREST IN NONPROBATE REAL PROPERTY OF A DECEDENT; AMENDING SECTIONS 7-4-2613 AND 72-16-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 219

38 *(Senate Bill No. 214; Tash)* REVISING CERTAIN PROVISIONS RELATED TO THE MONTANA UNIVERSITY SYSTEM; SUBSTITUTING "UNIVERSITY OF MONTANA-WESTERN" FOR "WESTERN MONTANA COLLEGE OF THE UNIVERSITY OF MONTANA"; REVISING THE AUTHORITY OF THE BOARD OF REGENTS REGARDING THE STUDENT LOAN PROGRAM TO CONFORM WITH FEDERAL LAW; AMENDING SECTIONS 5-6-102, 20-25-253, 20-25-254, 20-25-255, AND 20-26-1103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 221

39 *(House Bill No. 83; Matthews)* ABOLISHING OBSOLETE PROVISIONS REQUIRING CLERKS OF DISTRICT COURTS TO KEEP NATURALIZATION RECORDS AND TO COLLECT FEES FOR NATURALIZATION; AND REPEALING SECTIONS 3-5-514 AND 3-5-515, MCA 222

40 *(House Bill No. 111; Lawson)* REMOVING THE LIMITS ON LOCAL LAKESHORE PROTECTION FEES; AMENDING SECTION 75-7-210, MCA; AND PROVIDING AN EFFECTIVE DATE 223

41 *(Senate Bill No. 112; Nelson)* CLARIFYING THE FUNDING OF ADMINISTRATIVE COSTS FOR THE BASIC AND ENHANCED 9-1-1 EMERGENCY TELEPHONE SERVICE ACCOUNTS; PROVIDING FOR THE RETENTION OF INTEREST EARNINGS IN THE ACCOUNTS; AMENDING SECTION 10-4-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES. 223

42 *(Senate Bill No. 120; Tester)* REVISING THE TYPE OF FUND FOR THE DEPOSIT OF RECEIPTS FROM SURPLUS PROPERTY SALES IN THE STATE TREASURY; AMENDING SECTION 18-5-203, MCA; AND PROVIDING AN EFFECTIVE DATE. 225

43 *(House Bill No. 19; Lenhart)* EXPANDING THE EXEMPTION FROM COVERAGE UNDER THE WORKERS' COMPENSATION ACT TO INCLUDE EMPLOYMENT AS AN OFFICIAL AT ALL AMATEUR ATHLETIC EVENTS; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 226

44 *(House Bill No. 20; Shockley)* EXCLUDING ELECTION JUDGES FROM UNEMPLOYMENT INSURANCE COVERAGE; AND AMENDING SECTION 13-4-106, MCA 229

45 *(House Bill No. 97; Lewis)* GENERALLY REVISING LAWS RELATING TO THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING STATUTES GOVERNING THE SYSTEM, INCLUDING THOSE RELATING TO MEMBER ELIGIBILITY FOR BENEFITS, PURCHASING OF SERVICE, TAX DEFERRED CONTRIBUTIONS, AND ADMINISTRATIVE EXPENDITURES; REVISING PROVISIONS CONCERNING ASSETS HELD IN TRUST; PROVIDING FOR TRANSFER OF SERVICE; REVISING THE CALCULATION OF POSTRETIREMENT EARNINGS; CLARIFYING THE PROCEDURE FOR DESIGNATION OF BENEFICIARIES AND PAYMENT OF DEATH BENEFITS TO BENEFICIARIES; AMENDING SECTIONS 2-15-1010, 19-20-101, 19-20-201, 19-20-206, 19-20-302, 19-20-402, 19-20-403, 19-20-404, 19-20-408, 19-20-409, 19-20-410, 19-20-411, 19-20-414, 19-20-415, 19-20-417, 19-20-501, 19-20-502, 19-20-603, 19-20-705, 19-20-716, 19-20-804, AND 19-20-1001, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 230

46 *(House Bill No. 141; Somerville)* REVISING LAWS RELATED TO THE SALE OF MINT OIL; ELIMINATING REFERENCES TO ASSESSMENTS ON THE PLEDGE OR MORTGAGE OF MINT OIL; LIMITING THE ASSESSMENT ON MINT OIL TO SALES OF 1,000 POUNDS OR MORE IN A CALENDAR YEAR; REDUCING THE MINT OIL PURCHASER LICENSE FEE FROM $50 TO $20 AND INCREASING THE TERM OF LICENSE FROM 1 YEAR TO 10 YEARS; PROVIDING THAT A MINT OIL PURCHASER LICENSE IS NOT REQUIRED FOR A PERSON WHO PURCHASES LESS THAN 1,000 POUNDS OF MINT OIL IN A CALENDAR YEAR; REVISING DEFINITIONS; AMENDING SECTIONS 80-11-402, 80-11-412, 80-11-413, 80-11-414, AND 80-11-417, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 250

47 *(House Bill No. 145; Dale)* CLARIFYING THAT THE TERM "STATE BUILDING CODE" REFERS TO RULES ADOPTED BY THE DEPARTMENT OF COMMERCE UNDER TITLE 50, CHAPTER 60, PARTS 1 THROUGH 4, MCA; GENERALLY REVISING THE STATE

ELECTRICAL CODE; EXCEPTING ELECTRICAL SIGNAL AND COMMUNICATIONS EQUIPMENT OWNED BY A COUNTY OR THE STATE, LOW-VOLTAGE ELECTRICAL SIGNAL AND COMMUNICATIONS EQUIPMENT, OPTICAL FIBER CABLES, TRAFFIC SIGNALS, STREET LIGHTING, TRAFFIC CONTROL DEVICES, AND MINES AND MINE BUILDINGS FROM THE PROVISIONS OF THE ELECTRICAL CODE; CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF COMMERCE TO ADOPT NATIONALLY RECOGNIZED ELECTRICAL CODES; ABOLISHING THE REQUIREMENT THAT A POWER SUPPLIER DELIVER AN INSPECTION TAG TO THE DEPARTMENT OF COMMERCE AFTER ENERGIZING AN INSTALLATION; SUBSTITUTING THE TERM "ELECTRICAL PERMIT" FOR "INSPECTION TAG"; PROVIDING PENALTIES FOR VIOLATIONS OF THE ELECTRICAL CODE; AUTHORIZING INJUNCTIONS TO ENJOIN CERTAIN VIOLATIONS OF THE ELECTRICAL CODE; AMENDING SECTIONS 50-60-102, 50-60-602, 50-60-603, 50-60-605, AND 50-60-607, MCA; REPEALING SECTION 50-60-606, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 252

48 *(House Bill No. 176; Jent)* PROVIDING THAT CERTAIN INACTIVE VESTED JUDGES OR JUSTICES WHO LEAVE SERVICE VOLUNTARILY AND ARE NOT ELIGIBLE FOR A RETIREMENT BENEFIT BY REASON OF AGE MAY BE CALLED FOR DUTY; PROVIDING THAT RETIRED JUDGES OR JUSTICES MAY NOT BE CALLED FOR DUTY ON THE SUPREME COURT; PROVIDING THAT THE CALL FOR DUTY MAY BE MADE BY THE CHIEF JUSTICE; AMENDING SECTION 19-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 255

49 *(House Bill No. 185; Gallus)* CLARIFYING THAT A PERSON 17 YEARS OF AGE WHO LAWFULLY PURCHASES A YOUTH COMBINATION LICENSE BUT WHO REACHES 18 YEARS OF AGE DURING THE LICENSE YEAR MAY LEGALLY HUNT OR FISH WITH THE LICENSE; REMOVING THE TERMINATION DATE APPLICABLE TO THE YOUTH COMBINATION SPORTS LICENSE; AMENDING SECTION 87-2-805, MCA; REPEALING SECTION 4, CHAPTER 568, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 256

50 *(House Bill No. 192; Mood)* ALLOWING THE PAYMENT OF INDIVIDUAL INCOME TAXES, INCLUDING PENALTIES, INTEREST, AND FEES, BY CREDIT CARD OR OTHER COMMERCIAL MEANS; IMPOSING A FEE ON THE TAXPAYER FOR NONPAYMENT OF THE TAX; AND REQUIRING THE TAXPAYER TO PAY FEES CHARGED BY FINANCIAL INSTITUTIONS OR CREDIT CARD COMPANIES 258

51 *(House Bill No. 231; Lawson)* REVISING THE MONTHLY PENSION PAYABLE TO A VOLUNTEER FIREFIGHTER; AND AMENDING SECTION 19-18-602, MCA. 259

52 *(House Bill No. 234; Lawson)* ADOPTING THE UNIFORM ELECTRONIC TRANSACTIONS ACT; ALLOWING BUSINESS, COMMERCIAL, AND GOVERNMENTAL TRANSACTIONS TO OCCUR ELECTRONICALLY; PROVIDING RECOGNITION OF ELECTRONIC RECORDS, SIGNATURES, AND TRANSACTIONS; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 260

53 *(House Bill No. 258; Vick)* ELIMINATING THE SUNSET PROVISION APPLICABLE TO THE SHOOTING RANGE DEVELOPMENT GRANT

PROGRAM; REPEALING SECTION 9, CHAPTER 475, LAWS OF 1999; AND PROVIDING AN EFFECTIVE DATE 268

54 *(House Bill No 271; Jayne)* REVISING CERTAIN PROVISIONS OF THE STATE-TRIBAL COOPERATIVE AGREEMENTS ACT; EXTENDING THE TIME IN WHICH STATE-TRIBAL COOPERATIVE AGREEMENTS MUST BE FILED FROM 10 DAYS TO 60 DAYS; ELIMINATING OUTDATED PROVISIONS REGARDING VALIDITY OF EXISTING AGREEMENTS; AMENDING SECTION 18-11-107, MCA; REPEALING SECTION 18-11-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . 269

55 *(House Bill No. 325; Laible)* PROVIDING THAT A CANOE OR KAYAK THAT IS PROPELLED BY WIND IS NOT A SAILBOAT SUBJECT TO A FEE; AND AMENDING SECTIONS 23-2-502 AND 23-2-517, MCA . . 269

56 *(House Bill No. 369; Laslovich)* PROHIBITING THE MANUFACTURE OR SALE OF CIGARETTES IN A PACKAGE CONTAINING FEWER THAN 20 CIGARETTES OR ROLLING TOBACCO IN A PACKAGE HAVING A NET WEIGHT OF LESS THAN 0.6 OUNCES OF TOBACCO; DEFINING "ROLLING TOBACCO"; PROVIDING FOR CIVIL ENFORCEMENT; AND AMENDING SECTIONS 16-11-111, 16-11-307, AND 16-11-308, MCA. 273

57 *(Senate Bill No. 11; Shea)* REVISING THE LAWS RELATING TO THE PRESESSION CAUCUSES AND LEGISLATIVE ORIENTATION; CLARIFYING THE CALLING OF THE PRESESSION CAUCUSES; PROVIDING FOR PAYMENT OF COMPENSATION AND EXPENSES FOR MEMBERS OF THE LEGISLATURE ATTENDING LEGISLATIVE ORIENTATION AND TRAINING; AMENDING SECTIONS 5-2-201, 5-2-202, AND 5-2-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 276

58 *(Senate Bill No. 32; Shea)* AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO ISSUE A SAFETY RECOMMENDATION TO AN EMPLOYER WHO FAILS TO COMPLY WITH THE PROVISIONS OF THE MONTANA SAFETY CULTURE ACT OR WITH ADMINISTRATIVE RULES ADOPTED BY THE DEPARTMENT THAT IMPLEMENT THE ACT; AMENDING SECTION 39-71-1504, MCA; AND PROVIDING AN EFFECTIVE DATE 277

59 *(Senate Bill No. 45; Ellis)* REVISING THE PROVISIONS FOR OBTAINING A REFUND OF CERTAIN TAXES PAID ON MIGRATORY PROPERTY; CLARIFYING THAT REFUNDS ARE ONLY FOR PROPERTY TAXES PAID IN ANOTHER STATE; REQUIRING THAT AN APPLICATION FOR A REFUND BE FILED WITH THE BOARD OF COUNTY COMMISSIONERS; AMENDING SECTION 15-16-613, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 277

60 *(Senate Bill No. 54; Roush)* ALLOWING AN INDIVIDUAL WHO HAS RECEIVED OR MAY RECEIVE A MONTANA RESIDENT HUNTING, FISHING, OR TRAPPING LICENSE BY VIRTUE OF MEMBERSHIP IN THE REGULAR ARMED FORCES OF THE UNITED STATES TO POSSESS, APPLY FOR, OR RECEIVE THAT RESIDENT LICENSE NOTWITHSTANDING POSSESSION, APPLICATION FOR, OR RECEIPT OF RESIDENT HUNTING, FISHING, OR TRAPPING PRIVILEGES IN ANOTHER STATE ALSO BY VIRTUE OF MEMBERSHIP IN THE REGULAR ARMED FORCES OF THE UNITED STATES; AMENDING SECTION 87-2-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 278

HeinOnline -- 2001 vol.I xiii 2001

61 *(Senate Bill No. 172; Johnson)* CLARIFYING THAT THE DISTRIBUTION OF INCOME FROM THE COAL SEVERANCE TAX PERMANENT FUND, TREASURE STATE ENDOWMENT FUND, TREASURE STATE ENDOWMENT REGIONAL WATER FUND, CULTURAL AND AESTHETIC PROJECTS TRUST FUND, PARKS ACQUISITION AND MANAGEMENT TRUST FUND, AND RESOURCE INDEMNITY TRUST FUND DOES NOT INCLUDE UNREALIZED GAINS AND LOSSES; CLARIFYING THAT THE FUND BALANCE FOR THE RESOURCE AND INDEMNITY TRUST FUND EXCLUDES UNREALIZED GAINS AND LOSSES; AMENDING SECTIONS 15-35-108, 15-38-202, 17-5-703, AND 17-5-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 281

62 *(Senate Bill No. 235; Cocchiarella)* ELIMINATING A PROVISION IN THE PUBLIC EMPLOYEES', JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS THAT PREVENTS A MEMBER FROM CONTINUING TO RECEIVE A GUARANTEED ANNUAL BENEFIT ADJUSTMENT IF THE MEMBER BECOMES ACTIVE IN ONE OF THE OTHER PUBLIC RETIREMENT SYSTEMS; AMENDING SECTIONS 19-3-1605, 19-5-901, 19-6-710, 19-7-711, 19-8-1105, 19-9-1009, AND 19-13-1010, MCA; REPEALING SECTION 19-2-1101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 292

63 *(House Bill No. 80; Smith)* REQUIRING AN ELECTOR TO FURNISH THE ELECTOR'S RESIDENTIAL STREET OR RURAL ADDRESS OR OTHER RESIDENTIAL LOCATION INFORMATION TO THE ELECTION ADMINISTRATOR; AND PROHIBITING THE ELECTION ADMINISTRATOR FROM REGISTERING AN ELECTOR WHO DOES NOT PROVIDE THE REQUIRED ADDRESS OR OTHER INFORMATION 296

64 *(House Bill No. 191; Gallus)* GENERALLY REVISING MINOR IN POSSESSION LAWS; REVISING REQUIREMENTS REGARDING SUSPENSION OF DRIVER'S LICENSES IN RELATION TO MINOR IN POSSESSION VIOLATIONS; ELIMINATING THE REQUIREMENT THAT MINOR IN POSSESSION CONVICTIONS BE REPORTED TO THE DEPARTMENT OF JUSTICE OR SHOWN ON DRIVER RECORDS UNLESS THE CONVICTING COURT SPECIFICALLY ORDERS SUSPENSION OF THE DRIVER'S LICENSE OF A PERSON UNDER 18 YEARS OF AGE; REQUIRING THE DEPARTMENT OF JUSTICE TO REMOVE FROM ITS DRIVERS' RECORDS REFERENCES TO CONVICTIONS OF PERSONS UNDER 21 YEARS OF AGE FOR POSSESSION OF AN INTOXICATING SUBSTANCE; AMENDING SECTIONS 45-5-624 AND 61-2-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 297

65 *(Senate Bill No. 30; Mahlum)* REQUIRING A TRACTION LICENSE TO OPERATE A STEAM LOCOMOTIVE; AMENDING THE EXPERIENCE REQUIREMENTS FOR OBTAINING A TRACTION LICENSE; AMENDING CRANE AND HOIST MANUFACTURING RATINGS TO OBTAIN A TRACTION LICENSE TO 6 TONS OR MORE; AND AMENDING SECTIONS 50-74-306, 50-74-307, AND 50-76-103, MCA . 301

66 *(Senate Bill No. 37; Mahlum)* INCREASING THE NUMBER OF HOURS THAT A RETIREE MAY RETURN TO WORK IN A POSITION COVERED BY THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AMENDING SECTIONS 19-2-706, 19-3-908, AND 19-3-1106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 303

67 *(Senate Bill No. 75; Jergeson)* PROVIDING A UNIFORM METHOD FOR DETERMINING THE DATE OF DELIVERY OF DOCUMENTS AND PAYMENTS TO THE STATE FOR USES OF STATE LANDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 306

68 *(Senate Bill No. 156; Cocchiarella)* CLARIFYING THE ASSESSMENT FEE PAID BY A PRIVATE INSURER UNDER THE WORKERS' COMPENSATION ACT; AMENDING SECTION 39-71-2615, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 307

69 *(House Bill No. 21; Eggers)* EXTENDING THE DURATION OF THE STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION; REVISING THE MEMBERSHIP OF THE COMMISSION TO INCLUDE THE LITTLE SHELL BAND OF CHIPPEWA; AMENDING SECTIONS 90-1-131, 90-1-135, AND 90-11-102, MCA, AND SECTION 19, CHAPTER 512, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 307

70 *(House Bill No. 40; Witt)* RETAINING THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM FUND WITHIN THE COAL SEVERANCE TAX TRUST FUND FOR AN ADDITIONAL 3 YEARS; PROVIDING FOR THE CONTINUED DEPOSIT OF INTEREST ON THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM FUND INTO THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM STATE SPECIAL REVENUE ACCOUNT FOR AN ADDITIONAL 3 YEARS; AMENDING SECTION 6, CHAPTER 495, LAWS OF 1999; AND PROVIDING A DELAYED EFFECTIVE DATE 310

71 *(House Bill No. 71; Gallik)* CLARIFYING THE APPLICABILITY OF MONTANA'S MINIMUM WAGE AND OVERTIME LAWS; AMENDING SECTIONS 39-3-405, 39-3-406, AND 39-3-408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 311

72 *(House Bill No. 78; Clark)* CLARIFYING PROVISIONS RELATED TO SPECIAL AND PERSONALIZED MILITARY LICENSE PLATES FOR DISABLED VETERANS; AND AMENDING SECTIONS 61-3-332 AND 61-3-453, MCA 315

73 *(House Bill No. 103; Olson)* ALLOWING FOR MULTIYEAR ACCREDITATION OF SCHOOLS; REQUIRING COMPLIANCE WITH TEACHER CERTIFICATION LAWS IN ORDER TO RECEIVE MULTIYEAR ACCREDITATION; PROVIDING FOR ACCREDITATION OF 7TH AND 8TH GRADES FUNDED AT HIGH SCHOOL RATES; AND AMENDING SECTION 20-7-102, MCA 320

74 *(House Bill No. 104; Clark)* PROVIDING THAT A CONVICTED PERSON OR THE PROSECUTOR MAY REQUEST THAT THE SENTENCING COURT MODIFY A WRITTEN JUDGMENT TO CONFORM IT TO THE ORAL PRONOUNCEMENT OF SENTENCE OR OTHER DISPOSITION; PROVIDING THAT A CONVICTED PERSON OR PROSECUTOR WHO FAILS TO REQUEST MODIFICATION OF A WRITTEN JUDGMENT WITHIN 120 DAYS AFTER FILING OF THE WRITTEN JUDGMENT WAIVES THE RIGHT TO REQUEST A MODIFICATION OF THE WRITTEN JUDGMENT; PROVIDING THAT A FACTUALLY ERRONEOUS JUDGMENT MAY BE CORRECTED AT ANY TIME; AMENDING SECTION 46-18-116, MCA; REPEALING SECTION 46-18-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 321

75 *(House Bill No. 108; Noennig)* AUTHORIZING A SCHOOL DISTRICT TO ENTER INTO A COOPERATIVE PURCHASING CONTRACT WITH ONE OR MORE DISTRICTS FOR THE PROCUREMENT OF

SUPPLIES AND SERVICES; PROVIDING BIDDING AND ADVERTISEMENT REQUIREMENTS FOR A COOPERATIVE PURCHASING CONTRACT; PROVIDING FOR REJECTION OF ALL BIDS; AMENDING SECTION 20-9-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . 322

76 *(House Bill No. 110; Noennig)* AUTHORIZING A SCHOOL DISTRICT TO INVEST ENDOWMENTS ACCORDING TO THE PROVISIONS OF THE UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT; AMENDING SECTION 20-9-604, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 323

77 *(House Bill No. 112; Brueggeman)* GENERALLY REVISING LAWS CONCERNING DOCUMENTS TO INCLUDE ELECTRONIC MAIL; PROVIDING THAT ELECTRONIC MAIL USED FOR THE TRANSACTION OF OFFICIAL BUSINESS IS A PUBLIC RECORD; INCLUDING THE UNLAWFUL INTERCEPTION OF ELECTRONIC MAIL AS A VIOLATION OF THE LAW ON PRIVACY IN COMMUNICATIONS; AMENDING SECTIONS 2-3-301, 2-6-101, 2-6-102, 2-6-110, 2-6-202, 2-6-301, 2-6-401, AND 45-8-213, MCA; AND PROVIDING AN EFFECTIVE DATE. 325

78 *(House Bill No. 114; Story)* GENERALLY REVISING THE MONTANA WATER USE LAWS; DEFINING "DEVELOPED SPRING"; ELIMINATING THE REQUIREMENT TO MAKE WATER RIGHT APPLICATION FORMS, NOTICES OF COMPLETION FORMS, AND WELL LOG FORMS AVAILABLE AT THE OFFICES OF COUNTY CLERK AND RECORDERS; CLARIFYING THAT NOTIFICATION OF INTENT TO APPROPRIATE GROUND WATER FROM GROUND WATER DEVELOPMENT WORKS DOES NOT CREATE AN EASEMENT; AMENDING SECTIONS 85-2-102, 85-2-302, 85-2-306, AND 85-2-516, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 330

79 *(House Bill No. 126; Younkin)* GENERALLY REVISING THE PROCEDURAL PROVISIONS OF THE WATER TREATMENT PLANT OPERATORS CERTIFICATION LAWS, THE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT, THE SANITATION IN SUBDIVISIONS LAWS, THE STRIP AND UNDERGROUND MINE SITING ACT, THE COAL AND URANIUM MINE RECLAMATION LAWS, THE METAL MINE RECLAMATION LAWS, AND THE OPENCUT MINING ACT; PROVIDING FOR HEARINGS BEFORE THE BOARD OF ENVIRONMENTAL REVIEW RATHER THAN THE DEPARTMENT OF ENVIRONMENTAL QUALITY; CLARIFYING PERMIT DENIAL HEARING REQUIREMENTS UNDER THE METAL MINE RECLAMATION LAWS; REVISING THE TIME WITHIN WHICH A HEARING MUST BE HELD UNDER THE OPENCUT MINING ACT; TRANSFERRING THE RESPONSIBILITY FOR HOLDING A HEARING UNDER THE OPENCUT MINE ACT FROM THE DEPARTMENT TO THE BOARD; AMENDING SECTIONS 37-42-102, 37-42-321, 75-10-714, 76-4-108, 76-4-126, 82-4-112, 82-4-130, 82-4-205, 82-4-206, 82-4-254, 82-4-338, 82-4-353, 82-4-361, 82-4-362, 82-4-422, 82-4-427, AND 82-4-441, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 338

80 *(House Bill No. 130; Lawson)* REVISING THE LAWS RELATING TO LIBRARIES; ALLOWING LIBRARIES RATHER THAN LOCAL GOVERNMENTS TO FORM FEDERATIONS; ELIMINATING REFERENCES TO LIBRARY NETWORKS; ELIMINATING THE OPTION OF AN ELECTION FOR AN ENTITY TO WITHDRAW FROM A LIBRARY FEDERATION; ALLOWING A LIBRARY FEDERATION TO CONTRACT WITH OTHER FEDERATIONS, LIBRARIES, OR THE

HeinOnline -- 2001 vol.I xvi 2001

STATE LIBRARY; CLARIFYING PARTICIPATION IN A LIBRARY FEDERATION; ALLOWING A LIBRARY DIRECTOR'S DESIGNEE TO SERVE AS COORDINATOR OF A LIBRARY FEDERATION AND AS A NONVOTING MEMBER OF A FEDERATION ADVISORY BOARD OF TRUSTEES; REQUIRING A LIBRARY FEDERATION TO MAKE ANNUAL REPORTS TO THE STATE LIBRARY COMMISSION ON PROGRESS OF STATE-FUNDED PROJECTS; AND AMENDING SECTIONS 22-1-402, 22-1-403, 22-1-404, AND 22-1-413, MCA 351

81 *(House Bill No. 138; Mangan)* GENERALLY REVISING THE MONTANA DEFERRED DEPOSIT LOAN ACT TO PROVIDE FOR AND REGULATE PREAUTHORIZED LOAN PAYMENTS AND FEES ELECTRONICALLY DEDUCTED FROM A CONSUMER'S ACCOUNT; PROVIDING THAT THE MONTANA DEFERRED DEPOSIT LOAN ACT DOES NOT APPLY TO COLLECTION AGENCIES; CLARIFYING THAT A LICENSE TO MAKE DEFERRED DEPOSIT LOANS IS BASED ON THE CALENDAR YEAR; PROVIDING FOR A LICENSE RENEWAL FEE; AND AMENDING SECTIONS 31-1-703, 31-1-704, 31-1-705, 31-1-714, 31-1-715, 31-1-722, AND 31-1-723, MCA. 353

82 *(House Bill No. 147; Dale)* REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO COMPLETE AND PUBLISH A FINAL ENVIRONMENTAL IMPACT STATEMENT AT LEAST 15 DAYS PRIOR TO THE DATE OF ISSUANCE OF THE WRITTEN FINDINGS ON A PERMIT APPLICATION; AMENDING SECTION 82-4-231, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 358

83 *(House Bill No. 223; Schmidt)* REVISING THE LAWS RELATING TO SERVICE OF PROCESS IN CHILD ABUSE AND NEGLECT PROCEEDINGS; CLARIFYING PROVISIONS RELATING TO SERVICE OF PROCESS BY PUBLICATION IN CHILD ABUSE AND NEGLECT PROCEEDINGS; AMENDING SECTIONS 41-3-401, 41-3-403, AND 41-3-608, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 364

84 *(House Bill No. 272; Olson)* ALLOWING A SCHOOL DISTRICT TO DETERMINE THE AMOUNT OF TIME FOR WHICH A STUDENT MAY BE RELEASED FROM SCHOOL FOR RELIGIOUS INSTRUCTION; AND AMENDING SECTION 20-1-308, MCA. 370

85 *(House Bill No. 308; Younkin)* REDUCING FROM 5 YEARS TO 3 YEARS THE TIME PERIOD IN WHICH AN ALL-BEVERAGES LIQUOR LICENSE MAY NOT BE TRANSFERRED, MORTGAGED, OR PLEDGED AS SECURITY AFTER THE LICENSE WAS TRANSFERRED BETWEEN QUOTA AREAS; AMENDING SECTION 16-4-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 371

86 *(House Bill No. 309; Younkin)* EXTENDING THE HEALTH CARE PROVIDER LIEN LAWS TO AMBULATORY SURGICAL FACILITIES; AMENDING SECTIONS 71-3-1111, 71-3-1112, 71-3-1113, 71-3-1114, 71-3-1115, 71-3-1117, AND 71-3-1118, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 372

87 *(House Bill No. 411; Harris)* REVISING THE AUTHORITY OF THE MEDICAID FRAUD CONTROL UNIT; ALLOWING THE UNIT TO INVESTIGATE AND PROSECUTE ALL CASES OF PATIENT ABUSE, PATIENT NEGLECT, AND MISAPPROPRIATION OF PATIENT PROPERTY; PROVIDING FOR THE REFERRAL OF COMPLAINTS TO APPROPRIATE FEDERAL, STATE, OR LOCAL AGENCIES; AMENDING SECTION 53-6-157, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 375

88 *(Senate Bill No. 41; Roush)* REQUIRING CERTIFICATION OF PUBLIC SAFETY COMMUNICATIONS OFFICERS WITHIN 1 YEAR OF DATE OF HIRE; REQUIRING CERTIFICATION STANDARDS TO INCLUDE A BASIC COURSE REQUIREMENT; PROVIDING EXEMPTIONS FROM CERTIFICATION; PROVIDING FOR TERMINATION OF EMPLOYMENT OF NONCERTIFIED PUBLIC SAFETY COMMUNICATIONS OFFICERS; AMENDING SECTION 7-31-203, MCA; AND PROVIDING AN EFFECTIVE DATE 377

89 *(Senate Bill No. 59; Nelson)* CLARIFYING THAT A POST OF A NATIONALLY CHARTERED VETERANS' ORGANIZATION OR A LODGE OF A RECOGNIZED NATIONAL FRATERNAL ORGANIZATION IS ENTITLED TO A SPECIAL PERMIT TO SELL BEER AND TABLE WINE TO PATRONS OF AN EVENT EVEN IF THE POST OR LODGE IS OTHERWISE LICENSED UNDER THE PROVISIONS OF TITLE 16, MCA; LIMITING EVENTS TO THREE A YEAR; REQUIRING THAT NET PROCEEDS FROM AN EVENT GO TO THE POST OR LODGE ACQUIRING THE SPECIAL PERMIT; AMENDING SECTION 16-4-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 378

90 *(Senate Bill No. 142; Sprague)* PROVIDING A PROCEDURE FOR THE TRANSFER OF A LIQUOR LICENSE OWNED BY THE UNITED STATES; AND REQUIRING NOTICE BY THE UNITED STATES WHEN IT BECOMES OWNER OF A LIQUOR LICENSE. 379

91 *(Senate Bill No. 148; Tester)* GENERALLY REVISING THE LAWS GOVERNING ACCESS TO PUBLIC INFORMATION; SPECIFYING THE KIND OF INFORMATION COLLECTED ON A MARRIAGE LICENSE APPLICATION THAT MAY BE RELEASED TO THE PUBLIC WITHOUT RESTRICTION; DEFINING "AUTHORIZED REPRESENTATIVE"; PROVIDING THAT THE MARRIAGE LICENSE AND THE CERTIFICATE OF MARRIAGE ARE PUBLIC DOCUMENTS; AND AMENDING SECTIONS 40-1-107, 50-15-101, AND 50-15-122, MCA. 380

92 *(Senate Bill No. 149; Grosfield)* AUTHORIZING THE CREATION OF PUBLIC LIBRARY DISTRICTS; PROVIDING FOR AN ELECTED BOARD OF TRUSTEES TO ADMINISTER A DISTRICT; PROVIDING FOR CONSOLIDATION OF EXISTING PUBLIC LIBRARIES WITH PUBLIC LIBRARY DISTRICTS; PROVIDING FOR A PROPERTY TAX MILL LEVY FOR THE OPERATION OF A DISTRICT; PROVIDING THAT THE MAXIMUM DISTRICT MILL LEVY MUST BE APPROVED BY THE DISTRICT ELECTORATE; AND PROVIDING FOR THE DISSOLUTION OF A DISTRICT 384

93 *(House Bill No. 18; Somerville)* AUTHORIZING THE STATE TRANSPORTATION COMMISSION, UPON REQUEST BY A LOCAL AUTHORITY, TO SET TEMPORARY SPECIAL REDUCED OR INCREASED SPEED LIMITS BASED UPON A REVIEW BY THE DEPARTMENT OF TRANSPORTATION FOR ROUTES THAT HAVE AN ENGINEERING AND TRAFFIC INVESTIGATION PENDING FOR A CHANGE OF SPEED LIMIT; AMENDING SECTION 61-8-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 390

94 *(House Bill No. 44; Haines)* ELIMINATING LICENSING PROCEDURES FOR PORTABLE SAWMILLS ON FOREST LANDS; REPEALING SECTIONS 76-13-501, 76-13-502, 76-13-503, 76-13-504, 76-13-505, 76-13-506, AND 76-13-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 392

95 *(House Bill No. 132; Brueggeman)* REVISING CERTAIN STATUTES RELATED TO THE ALLOCATION AND DISPOSITION OF THE FEE

IN LIEU OF TAX ON MOTORBOATS AND RELATED TO THE BOATING ADVISORY COUNCIL; EXTENDING THE TERMINATION DATE APPLICABLE TO THE ALLOCATION AND DISPOSITION OF A PERCENTAGE OF THE FEE IN LIEU OF TAX ON MOTORBOATS FOR BOATING FACILITIES; EXTENDING THE TERMINATION DATE FOR THE BOATING ADVISORY COUNCIL; EXTENDING THE TERMINATION DATE APPLICABLE TO THE CHANGE IN THE PENALTY FOR FAILURE TO PAY THE BOAT FEE IN LIEU OF TAX; EXTENDING THE TERMINATION DATE APPLICABLE TO STATE-FUNDED AND STATE-CERTIFIED COUNTY BOATING SAFETY PROGRAMS; AUTHORIZING THE USE OF BOAT FEES TO BENEFIT PUBLIC BOATING FACILITIES; REMOVING A PROVISION THAT LIMITS DISBURSEMENT OF COLLECTED FEES TO THE REGION IN WHICH THE PAYOR'S BOATING ACTIVITIES OCCUR; AMENDING SECTION 23-2-533, MCA, SECTION 6, CHAPTER 511, LAWS OF 1993, AND SECTIONS 9 AND 10, CHAPTER 476, LAWS OF 1995; AND PROVIDING AN EFFECTIVE DATE . . . 392

96 *(House Bill No. 204; Bitney)* PROVIDING THAT AN ELECTOR'S VOTER REGISTRATION IS CANCELED IF THE ELECTOR FAILS TO VOTE IN TWO CONSECUTIVE FEDERAL GENERAL ELECTIONS; AND AMENDING SECTION 13-2-402, MCA. 394

97 *(House Bill No. 221; Witt)* GRANTING MORE FLEXIBILITY TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS IN LEASING THE MONTANA AGRICULTURAL CENTER AND MUSEUM OF THE NORTHERN GREAT PLAINS BY AUTHORIZING THE DEPARTMENT TO LEASE THE FACILITY TO A QUALIFIED LOCAL GOVERNMENT ENTITY OR NONPROFIT CORPORATION; AMENDING SECTION 23-1-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 395

98 *(House Bill No. 74; Clark)* INCREASING THE SERVICE RETIREMENT BENEFIT FORMULA FOR MEMBERS OF THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM; AND AMENDING SECTION 19-8-603, MCA 395

99 *(House Bill No. 152; Gallik)* GENERALLY REVISING PROVISIONS OF THE PUBLIC EMPLOYEES', JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', FIREFIGHTERS' UNIFIED, AND VOLUNTEER FIREFIGHTER'S COMPENSATION ACT RETIREMENT SYSTEMS; CLARIFYING DEFINITIONS AND TERMS; REVISING THE PUBLIC EMPLOYEES' RETIREMENT BOARD POWERS AND DUTIES PROVISIONS; REVISING INTERLOCAL AGREEMENTS; CLARIFYING SERVICE PURCHASE, PLAN MEMBERSHIP ELECTION, SURVIVORSHIP, FAMILY LAW ORDER, INCOME WITHHOLDING ORDER, ALTERNATE PAYEE, AND BENEFIT COMMENCEMENT PROVISIONS; CLARIFYING CERTAIN INTEREST PAYMENTS; REVISING CERTAIN SURVIVORSHIP BENEFITS; REVISING AND STANDARDIZING CERTAIN INTEREST, CONTRIBUTION, AND REPORTING PROVISIONS; CLARIFYING CATCHUP PROVISIONS AND NORMAL RETIREMENT AGE FOR THE DEFERRED COMPENSATION PROGRAM; REPEALING DUPLICATE SECTIONS; AMENDING SECTIONS 2-18-1101, 5-2-304, 7-11-105, 19-2-303, 19-2-403, 19-2-406, 19-2-505, 19-2-506, 19-2-602, 19-2-703, 19-2-704, 19-2-708, 19-2-801, 19-2-903, 19-2-907, 19-2-908, 19-2-909, 19-3-108, 19-3-403, 19-3-412, 19-3-503, 19-3-505, 19-3-509, 19-3-510, 19-3-511, 19-3-512, 19-3-513, 19-3-901, 19-3-904, 19-3-1002, 19-3-1005, 19-3-1007, 19-3-1008, 19-3-1015, 19-3-1103, 19-3-1105, 19-3-1106, 19-3-1203, 19-3-1204,

19-3-1501, 19-5-101, 19-5-409, 19-5-501, 19-5-502, 19-5-503, 19-5-601, 19-5-701, 19-5-801, 19-5-802, 19-6-101, 19-6-402, 19-6-403, 19-6-501, 19-6-502, 19-6-505, 19-6-601, 19-6-612, 19-6-709, 19-6-801, 19-6-802, 19-6-803, 19-6-804, 19-6-810, 19-6-901, 19-6-902, 19-6-903, 19-7-101, 19-7-301, 19-7-403, 19-7-501, 19-7-503, 19-7-601, 19-7-801, 19-7-802, 19-7-803, 19-7-804, 19-7-810, 19-7-901, 19-7-1001, 19-7-1101, 19-8-101, 19-8-302, 19-8-308, 19-8-502, 19-8-601, 19-8-603, 19-8-701, 19-8-712, 19-8-801, 19-8-901, 19-8-902, 19-8-903, 19-8-904, 19-8-1001, 19-9-104, 19-9-301, 19-9-403, 19-9-405, 19-9-411, 19-9-801, 19-9-1101, 19-9-1102, 19-13-301, 19-13-403, 19-13-404, 19-13-405, 19-13-604, 19-13-701, 19-13-902, 19-13-903, 19-17-102, 19-17-104, 19-17-106, 19-17-202, 19-17-401, 19-17-403, 19-17-404, 19-17-405, AND 19-17-407, MCA; REPEALING SECTIONS 19-2-1101 AND 19-2-1102, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE . . 397

100 *(House Bill No. 174; Jent)* PROVIDING THAT A PERSON CONVICTED OF A FIRST VIOLATION OF CRIMINAL POSSESSION OF DANGEROUS DRUGS OR POSSESSION OF DRUG PARAPHERNALIA IS PRESUMED TO BE ENTITLED TO A DEFERRED IMPOSITION OF ANY SENTENCE OF IMPRISONMENT; AND AMENDING SECTIONS 45-9-102 AND 45-10-103, MCA 471

101 *(House Bill No. 175; Jent)* ALLOWING DISCLOSURE OF CONFIDENTIAL HEALTH CARE INFORMATION WITHOUT A PATIENT'S AUTHORIZATION TO THE STATE MEDICAL EXAMINER OR COUNTY CORONER FOR THE PURPOSE OF DETERMINING A CAUSE OF DEATH; AND AMENDING SECTION 50-16-530, MCA. 473

102 *(House Bill No. 238; Thomas)* REQUIRING THAT VICTIMS OF JUVENILE FELONY OFFENSES BE NOTIFIED OF AN OFFENDER'S RELEASE PRIOR TO RELEASE; AND AMENDING SECTION 41-5-1416, MCA. 473

103 *(House Bill No. 268; Ripley)* INCREASING THE BIDDING REQUIREMENTS FOR A SCHOOL DISTRICT FROM $15,000 TO $25,000; AND AMENDING SECTION 20-9-204, MCA. 475

104 *(House Bill No. 286; Thomas)* ESTABLISHING THE RIGHT OF CRIME VICTIMS TO ATTEND CRIMINAL PROCEEDINGS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 476

105 *(House Bill No. 358; Bales)* REVISING THE PROCEDURES FOR OPENING OR REOPENING AN ELEMENTARY SCHOOL; ALLOWING PARENTS OF AT LEAST TWO PUPILS TO PETITION THE TRUSTEES; LOWERING THE REQUIRED ANB TO TWO; ALLOWING THE TRUSTEES TO OPEN OR REOPEN THE SCHOOL DURING THE CURRENT SCHOOL FISCAL YEAR; REQUIRING A SCHOOL TO BE CLASSIFIED AS ISOLATED BEFORE OPENING OR REOPENING DURING THE CURRENT SCHOOL FISCAL YEAR; AMENDING SECTIONS 20-6-502 AND 20-9-302, MCA; AND PROVIDING AN EFFECTIVE DATE. 477

106 *(House Bill No. 417; Price)* GENERALLY REVISING LAWS RELATING TO INSURANCE PRODUCERS; AUTHORIZING THE COMMISSIONER OF INSURANCE TO PARTICIPATE IN A NATIONAL CENTRALIZED PRODUCER LICENSE REGISTRY; PROVIDING ADDITIONAL DEFINITIONS; PROVIDING AN EXEMPTION FROM PRELICENSING EDUCATION AND EXAMINATION REQUIREMENTS FOR NONRESIDENT INSURANCE PRODUCERS UNDER CERTAIN CIRCUMSTANCES; ITEMIZING THE LINES OF AUTHORITY FOR WHICH AN INSURANCE PRODUCER MAY RECEIVE A LICENSE; AMENDING

HeinOnline -- 2001 vol.I xx 2001

SECTIONS 33-17-101, 33-17-102, 33-17-212, 33-17-214, 33-17-401, AND 33-17-1203, MCA; AND PROVIDING EFFECTIVE DATES. 479

107 *(House Bill No. 458; Barrett)* REQUIRING MANAGED CARE ORGANIZATIONS TO EMPLOY OR CONTRACT WITH A LICENSED PHYSICIAN TO SERVE AS A MEDICAL DIRECTOR 488

108 *(Senate Bill No. 44; Bishop)* PROVIDING FOR THE ACCRUAL OF PENALTIES THAT MAY BE ASSESSED AFTER A WARRANT FOR DISTRAINT HAS BEEN FILED; PROVIDING FOR UNIFORM PENALTY AND INTEREST FOR INDIVIDUAL INCOME TAXES, THE PUBLIC CONTRACTOR'S TAX, AND THE RETAIL TELECOMMUNICATIONS EXCISE TAX; AMENDING SECTIONS 15-1-701, 15-1-708, 15-30-209, 15-50-301, AND 15-53-147, MCA; AND PROVIDING AN EFFECTIVE DATE. 488

109 *(Senate Bill No. 122; Shea)* GENERALLY REVISING THE COOPERATIVE ASSOCIATION LAWS; ELIMINATING THE 40-YEAR LIMIT ON EXISTENCE FOR COOPERATIVE ASSOCIATIONS; CHANGING THE LIMIT ON THE NUMBER OF PERSONS WHO MAY FORM A COOPERATIVE ASSOCIATION; REMOVING THE MINIMUM REQUIREMENT FOR INITIALLY SUBSCRIBED STOCK; ELIMINATING PRICE LIMITS ON COOPERATIVE ASSOCIATION SHARES; AUTHORIZING THE SECRETARY OF STATE TO ESTABLISH FILING FEES COMMENSURATE WITH COSTS; AND AMENDING SECTIONS 35-15-103, 35-15-201, 35-15-203, 35-15-204, 35-15-205, AND 35-15-401, MCA 491

110 *(House Bill No. 148; Jacobson)* RELATING TO ELECTRONIC FILING FOR GASOLINE AND SPECIAL FUEL TAXES; EXTENDING THE DUE DATE FOR GASOLINE OR SPECIAL FUEL TAXES PAID BY ELECTRONIC FUNDS TRANSFER; ALLOWING A TAXPAYER TO FILE AN ELECTRONIC CLAIM FOR A REFUND ON FUEL TAXES PAID; AMENDING SECTIONS 15-70-113, 15-70-225, AND 15-70-364, MCA; AND PROVIDING AN EFFECTIVE DATE 494

111 *(House Bill No. 300; Wanzenried)* REVISING THE MANNER IN WHICH AN INDEPENDENT LIABILITY FUND MAY BE TERMINATED; PROVIDING THAT AN INDEPENDENT LIABILITY FUND MAY BE TERMINATED WITHIN 5 YEARS OR ANY LEGALLY REQUIRED PERIOD OF INSURANCE COVERAGE; PROVIDING THAT A BUSINESS WITH AN INDEPENDENT LIABILITY FUND MAY TERMINATE THE FUND BY SUBSTITUTING EQUIVALENT LIABILITY INSURANCE FOR A PERIOD OF 5 YEARS OR THE LEGALLY REQUIRED PERIOD FOR INSURANCE COVERAGE, WHICHEVER IS LONGER; AND AMENDING SECTIONS 15-30-107, 15-31-118, AND 33-27-119, MCA 496

112 *(House Bill No. 462; Witt)* ALLOWING A PETROLEUM STORAGE TANK OWNER OR OPERATOR WHO WOULD OTHERWISE LOSE ELIGIBILITY FOR REIMBURSEMENT FROM THE PETROLEUM TANK RELEASE CLEANUP FUND BY FAILING TO REMAIN IN COMPLIANCE WITH OPERATIONAL AND CLEANUP REQUIREMENTS TO POTENTIALLY RECEIVE SOME REIMBURSEMENT WHEN NONCOMPLIANCE ISSUES ARE CORRECTED; AMENDING SECTIONS 75-11-308 AND 75-11-318, MCA; AND PROVIDING EFFECTIVE DATES 497

113 *(Senate Bill No. 6; Cole)* LIMITING THE LIABILITY OF A PROPERTY OWNER WHOSE PROPERTY IS TAKEN BY EMINENT DOMAIN TO INSTANCES OF NEGLIGENCE OR INTENTIONAL CONDUCT; PROVIDING FOR INDEMNIFICATION FOR COSTS AND ATTORNEY FEES FOR A PROPERTY OWNER WHO IS MADE A PARTY TO AN

ACTION BUT IS NOT FOUND LIABLE FOR DAMAGES; AMENDING SECTION 75-10-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 500

114 *(Senate Bill No. 29; McNutt)* CORRECTING INCONSISTENCIES BETWEEN TITLE 41, CHAPTER 3, RELATING TO CHILD ABUSE AND NEGLECT, AND TITLE 41, CHAPTER 5, THE YOUTH COURT ACT, REGARDING JURISDICTION OF THE YOUTH COURT AND DISTRICT COURT; AMENDING SECTIONS 41-3-103, 41-5-103, 41-5-203, 41-5-204, 41-5-321, 41-5-1201, AND 41-5-1801, MCA; AND REPEALING SECTIONS 41-3-1114 AND 41-5-344, MCA. 505

115 *(Senate Bill No. 58; Halligan)* RELATING TO CIVIL AND CRIMINAL PENALTIES FOR VIOLATION OF THE PROVISIONS OF MOTOR FUELS LAWS; ALLOWING THE DEPARTMENT OF TRANSPORTATION TO IMPOSE CIVIL PENALTIES FOR VIOLATION OF GASOLINE AND SPECIAL FUEL LAWS; REDUCING THE MAXIMUM FINE FOR A CRIMINAL VIOLATION OF THE SPECIAL FUEL LAWS; AMENDING SECTIONS 15-70-330 AND 15-70-336, MCA; AND PROVIDING AN EFFECTIVE DATE. 512

116 *(Senate Bill No. 78; Hargrove)* ALLOWING THE LICENSING COORDINATION CENTER TO PASS UP TO ONE-HALF OF THE COST OF PROCESSING LICENSE APPLICATIONS TO THE PARTICIPATING AGENCIES AND THE REMAINING COST TO THE LICENSE APPLICANT; AMENDING SECTION 30-16-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 514

117 *(Senate Bill No. 103; Zook)* REQUIRING ALL REVENUE RECEIVED FROM THE IMPOSITION OF FINES AND CIVIL PENALTIES UNDER THE RECREATIONAL USE OF STATE LANDS STATUTES TO BE DEPOSITED IN THE STATE GENERAL FUND; AMENDING SECTION 77-1-808, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 515

118 *(Senate Bill No. 113; Nelson)* CLARIFYING THAT FUNDING FOR CRIME VICTIMS COMPENSATION AND ASSISTANCE IS DEPENDENT UPON GENERAL FUND APPROPRIATIONS; AMENDING SECTIONS 44-13-103, 46-18-236, 46-18-242, 46-18-248, 46-18-250, 46-18-251, 53-1-107, 53-9-104, AND 53-30-132, MCA; REPEALING SECTION 53-9-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 516

119 *(Senate Bill No. 150; Hargrove)* PROVIDING A CIVIL PENALTY FOR FAILURE TO MARK DYED DIESEL FUEL PUMPS WITH AN APPROPRIATE DECAL; AND AMENDING SECTION 15-70-371, MCA. 525

120 *(Senate Bill No. 153; O'Neil)* REVISING THE PENALTY AND INTEREST PROVISIONS ON LATE-FILED GASOLINE AND SPECIAL FUEL TAXES; AMENDING SECTIONS 15-70-210 AND 15-70-352, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 526

121 *(Senate Bill No. 157; Cocchiarella)* REVISING ELIGIBILITY FOR TEMPORARY TOTAL DISABILITY BENEFITS; AMENDING SECTIONS 39-71-701 AND 39-71-712, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 527

122 *(Senate Bill No. 205; Cobb)* GENERALLY REVISING THE LAWS GOVERNING ETHICS; REVISING AND CLARIFYING THE PROHIBITIONS ON POLITICAL ACTIVITY; CLARIFYING THE ENFORCEMENT AUTHORITY OF THE COMMISSIONER OF POLITICAL PRACTICES; CLARIFYING THE PROCEDURE FOR

HANDLING AN ETHICS COMPLAINT; PROVIDING FOR JUDICIAL REVIEW OF ETHICS DECISIONS; ELIMINATING THE ETHICS COMMISSION; PROVIDING A PROCEDURE FOR A COMPLAINT INVOLVING A COUNTY ATTORNEY; AMENDING SECTIONS 2-2-102, 2-2-103, 2-2-121, 2-2-136, AND 2-2-144, MCA; AND REPEALING SECTIONS 2-2-125, 2-2-137, 2-2-138, 2-2-139, 2-2-142, AND 2-2-143, MCA 529

123 *(Senate Bill No. 219; Waterman)* ALLOWING PERSONS NOT LICENSED OR CERTIFIED AS ACCOUNTANTS TO HAVE A MINORITY OWNERSHIP INTEREST IN ACCOUNTING PARTNERSHIPS OR CORPORATIONS; AMENDING SECTION 37-50-301, MCA; AND REPEALING SECTIONS 37-50-331, 37-50-332, 37-50-333, AND 37-50-334, MCA 535

124 *(Senate Bill No. 254; Halligan)* CREATING AN OFFICE OF VICTIMS SERVICES IN THE DEPARTMENT OF JUSTICE; TRANSFERRING THE DUTIES AND RESPONSIBILITIES FOR ADMINISTRATION OF THE CRIME VICTIMS COMPENSATION ACT OF MONTANA FROM THE DIVISION OF CRIME CONTROL OF THE DEPARTMENT OF JUSTICE TO THE OFFICE OF VICTIMS SERVICES; AMENDING SECTIONS 50-16-530, 53-9-103, 53-9-104, 53-9-105, 53-9-106, 53-9-107, 53-9-108, 53-9-109, 53-9-110, 53-9-121, 53-9-122, 53-9-123, 53-9-124, 53-9-125, 53-9-126, 53-9-127, 53-9-128, 53-9-130, 53-9-131, 53-9-132, AND 53-9-133, MCA; AND PROVIDING AN EFFECTIVE DATE . . . 538

125 *(Senate Bill No. 7; Cole)* REVISING THE LAWS RELATING TO EMINENT DOMAIN FOR THE SOLE PURPOSE OF MODERNIZING THE LANGUAGE, INCLUDING REFERENCES TO THE PROCEDURE TO BE FOLLOWED IN EMINENT DOMAIN ACTIONS, AND SPECIFICALLY ENUMERATING THE PUBLIC USES FOR WHICH THE POWER OF EMINENT DOMAIN MAY BE EXERCISED; AND AMENDING SECTIONS 7-1-4124, 7-5-4106, 7-7-4404, 7-13-2218, 7-13-4404, 7-13-4405, 7-13-4406, 7-14-101, 7-14-1625, 7-14-2101, 7-14-2108, 7-14-2123, 7-14-2621, 7-14-2803, 7-14-2829, 7-14-4501, 7-14-4622, 7-14-4626, 7-14-4801, 7-15-4204, 7-15-4258, 7-15-4259, 7-15-4460, 7-15-4462, 7-16-2105, 7-16-4106, 7-35-2201, 15-70-301, 15-70-701, 23-1-102, 35-18-106, 35-20-104, 53-2-201, 60-1-103, 60-5-104, 67-2-301, 67-5-202, 67-6-301, 67-10-102, 67-10-103, 67-10-201, 67-10-205, 67-10-221, 67-11-201, 67-11-204, 67-11-231, 67-11-401, 69-13-104, 69-14-513, 69-14-536, 69-14-552, 70-30-102, 70-30-103, 70-30-104, 70-30-105, 70-30-106, 70-30-107, 70-30-108, 70-30-109, 70-30-110, 70-30-111, 70-30-202, 70-30-203, 70-30-206, 70-30-207, 70-30-301, 70-30-302, 70-30-303, 70-30-304, 70-30-305, 70-30-306, 70-30-307, 70-30-308, 70-30-309, 70-30-310, 70-30-311, 70-30-312, 70-30-314, 70-30-315, 70-30-321, 70-30-322, 70-31-102, 70-31-104, 70-31-105, 70-31-301, 70-31-311, 70-32-216, 75-10-715, 75-10-720, 75-15-123, 75-15-223, 76-5-1108, 76-5-1111, 76-6-105, 76-12-108, 76-12-110, 82-2-221, 82-2-222, 82-2-224, 82-10-303, 82-10-304, 82-10-305, 85-1-204, 85-1-209, 85-7-1411, 85-7-1904, 85-7-1932, 85-9-410, AND 87-1-209, MCA. 547

126 *(Senate Bill No. 105; Mahlum)* ESTABLISHING AN ENTERPRISE FUND TO MANAGE STATE PARK VISITOR SERVICES REVENUE; AMENDING SECTIONS 23-1-105 AND 61-3-512, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 617

127 *(Senate Bill No. 115; Holden)* REMOVING THE TERMINATION PROVISION IN SECTION 7, CHAPTER 461, LAWS OF 1999, WITH REGARD TO THE AGRICULTURAL MOTOR FUEL TAX REFUND PROCESS; REPEALING SECTION 7, CHAPTER 461, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 618

128 *(Senate Bill No. 211; Shea)* ELIMINATING DUTIES OF THE DEPARTMENT OF COMMERCE RELATED TO ASBESTOS REGULATION IN BUILDING CONSTRUCTION AND DEMOLITION; REPEALING SECTIONS 50-64-101, 50-64-102, 50-64-103, 50-64-104, 50-64-105, 50-64-106, AND 50-64-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 618

129 *(Senate Bill No. 238; Tester)* INCREASING THE LICENSE FEE FOR A NONRESIDENT WHO WISHES TO HUNT MIGRATORY GAME BIRDS; AMENDING SECTION 87-2-411, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 619

130 *(Senate Bill No. 425; Glaser)* MAKING PERMANENT THE DESIGNATION OF THE BOARD OF REGENTS AS THE ELIGIBLE AGENCY FOR ADMINISTERING THE CARL D. PERKINS VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION ACT PROGRAMS IN MONTANA; REVISING THE PROVISIONS OF THE DEVELOPMENT OF THE STATE PLAN TO REQUIRE CREATION OF A STATE PLAN COMMITTEE; AMENDING SECTION 20-7-330, MCA; REPEALING SECTION 6, CHAPTER 460, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 619

131 *(House Bill No. 27; Musgrove)* ALLOWING THE GOVERNING BODY OF A COUNTY TO PASS AN ORDINANCE CREATING A CURFEW FOR MINORS THAT APPLIES COUNTYWIDE OR TO ANY PORTION OF A COUNTY EXCEPT THOSE AREAS WITHIN THE BOUNDARIES OF AN INCORPORATED CITY OR TOWN; PROVIDING FOR ABSOLUTE LIABILITY FOR A VIOLATION OF A CURFEW ORDINANCE; AND AMENDING SECTION 7-32-2302, MCA 620

132 *(House Bill No. 129; Bales)* EXEMPTING CERTAIN REPLACEMENT WELLS FROM CERTAIN PROCEDURES AND CRITERIA APPLICABLE TO CHANGES IN WATER RIGHTS; AMENDING SECTION 85-2-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 621

133 *(House Bill No. 134; Facey)* REVISING CERTAIN PROVISIONS RELATED TO K-12 VOCATIONAL EDUCATION; SUBSTITUTING "K-12 CAREER AND VOCATIONAL/TECHNICAL EDUCATION" FOR REFERENCES TO K-12 VOCATIONAL EDUCATION; REVISING THE DEFINITION OF "VOCATIONAL-TECHNICAL EDUCATION" TO INCLUDE A TRIBALLY CONTROLLED COMMUNITY COLLEGE; REVISING THE K-12 CAREER AND VOCATIONAL/TECHNICAL EDUCATION FUNDING FORMULA; ELIMINATING THE PROPRIETARY POSTSECONDARY EDUCATIONAL ADVISORY COUNCIL; AMENDING SECTIONS 20-1-101, 20-3-103, 20-3-104, 20-3-106, 20-3-324, 20-7-301, 20-7-302.1, 20-7-303, 20-7-305, 20-7-306, 20-7-329, 20-7-702, AND 41-2-109, MCA; REPEALING SECTION 2-15-1804, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 633

134 *(House Bill No. 241; Thomas)* CLARIFYING HOW INSTRUCTIONS ON PREPARING A BALLOT ARE PROVIDED TO VOTERS; REQUIRING THAT THE ELECTOR GET A NEW BALLOT IF THE INITIAL BALLOT IS SPOILED; AND AMENDING SECTION 13-13-117, MCA. 644

135 *(House Bill No. 351; Olson)* ALLOWING PROPERTY TAX BENEFITS FOR THE INCREASED TAXABLE VALUE RESULTING FROM REMODELING, RECONSTRUCTION, OR EXPANSION OF COMMERCIAL BUILDINGS AND STRUCTURES THAT HAVE NOT BEEN USED IN A BUSINESS FOR AT LEAST 6 MONTHS; AUTHORIZING A LOCAL GOVERNING BODY TO EXEMPT FROM PROPERTY TAXATION THE INCREASED TAXABLE VALUE FOR

THE CONSTRUCTION PERIOD AND FOR 5 YEARS FOLLOWING THE CONSTRUCTION PERIOD; AUTHORIZING A LOCAL GOVERNING BODY TO PARTIALLY EXEMPT FROM PROPERTY TAXATION THE INCREASED TAXABLE VALUE FOR AN ADDITIONAL 4 YEARS; AMENDING SECTION 15-6-134, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 645

136 *(Senate Bill No. 20; Halligan)* CODIFYING THE FAMILY LAW EXCEPTION TO THE APPEAL OF CONTEMPT JUDGMENTS OR ORDERS; ALLOWING THE APPEAL OF A CONTEMPT JUDGMENT OR ORDER IN A FAMILY LAW PROCEEDING ONLY WHEN THE JUDGMENT OR ORDER APPEALED FROM INCLUDES AN ANCILLARY ORDER THAT AFFECTS THE SUBSTANTIAL RIGHTS OF THE PARTIES INVOLVED; AND AMENDING SECTION 3-1-523, MCA 648

137 *(Senate Bill No. 34; Johnson)* CHANGING THE NAME OF THE MONTANA HEALTH FACILITY AUTHORITY TO THE MONTANA FACILITY FINANCE AUTHORITY; ALLOWING THE AUTHORITY TO MAKE GRANTS FROM ITS ENTERPRISE FUND TO INSTITUTIONS TO ASSIST IN DETERMINING ELIGIBILITY FOR OR COMPLIANCE WITH GOVERNMENT PROGRAMS; DELETING THE REQUIREMENT THAT AN APPRAISAL BE OBTAINED WHEN FINANCING AN ELIGIBLE FACILITY; REVISING THE REQUIREMENT FOR CERTAIN FINDINGS FOR THE ISSUANCE OF BONDS; AMENDING SECTIONS 2-15-1815, 17-5-1302, 17-5-1312, 17-6-308, 90-7-101, 90-7-102, 90-7-103, 90-7-104, 90-7-202, 90-7-211, 90-7-213, 90-7-214, 90-7-220, 90-7-301, 90-7-302, 90-7-303, AND 90-7-304, MCA; AND PROVIDING AN EFFECTIVE DATE 649

138 *(Senate Bill No. 97; Mahlum)* REQUIRING THAT AN INSURER, PURSUANT TO ADMINISTRATIVE RULES ADOPTED BY THE DEPARTMENT OF LABOR AND INDUSTRY, REIMBURSE A WORKER FOR REASONABLE TRAVEL, LODGING, MEALS, AND MISCELLANEOUS EXPENSES INCURRED IN TRAVEL TO A MEDICAL PROVIDER FOR TREATMENT OF AN INJURY; PROVIDING EXCEPTIONS FROM REIMBURSEMENT; EXEMPTING INSURERS FROM LIABILITY FOR INJURIES SUFFERED BY THE CLAIMANT RESULTING FROM AN ACCIDENT THAT OCCURS DURING TRAVEL OR TREATMENT; MAINTAINING INSURER LIABILITY FOR COMPENSABLE INJURIES FOR WHICH TRAVEL AND TREATMENT WAS REQUIRED; AMENDING SECTION 39-71-704, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 661

139 *(Senate Bill No. 102; Cole)* AUTHORIZING THE EXCHANGE OF STATE TRUST LANDS FOR STATE GOVERNMENT AND LOCAL GOVERNMENT LANDS; AMENDING SECTIONS 77-2-203 AND 77-2-205, MCA; REPEALING SECTION 77-2-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 664

140 *(Senate Bill No. 106; Sprague)* PROVIDING THAT AN ACTION MAY NOT BE BROUGHT AGAINST A REGULATED LENDER BASED ON A PROMISE OR COMMITMENT WITH RESPECT TO A COMMERCIAL LOAN IN EXCESS OF $100,000 UNLESS THE PROMISE OR COMMITMENT IS IN WRITING; AND AMENDING SECTION 31-1-111, MCA 665

141 *(Senate Bill No. 143; Ekegren)* INCREASING THE ANNUAL PESTICIDE REGISTRATION FEE TO $90; PROVIDING FOR AN ANNUAL FEE FOR AN EMERGENCY EXEMPTION REGISTRATION:

INCREASING THE FEE FOR A SPECIAL LOCAL NEED REGISTRATION OR FOR AN EXPERIMENTAL-USE PERMIT REGISTRATION TO $90 AND CHANGING THE FEE TO AN ANNUAL FEE INSTEAD OF A ONE-TIME FEE; REMOVING EXEMPTION OF A REGISTRATION FEE IF THE EXPERIMENTAL USE PERMIT IS FEDERALLY APPROVED; INCREASING THE SPECIAL AGRICULTURAL CHEMICAL GROUND WATER PROTECTION FEE TO $95; AND AMENDING SECTIONS 80-8-201 AND 80-15-302, MCA. 666

142 *(House Bill No. 127; Wanzenried)* REVISING THE ISSUANCE OF GASOLINE AND SPECIAL FUEL DISTRIBUTOR LICENSES; REQUIRING A MINIMUM SECURITY IN THE AMOUNT OF $25,000 FROM LICENSED DISTRIBUTORS WHO EXPORT OR IMPORT GASOLINE OR SPECIAL FUEL; PROVIDING FOR DENIAL OR REVOCATION OF A GASOLINE OR SPECIAL FUEL DISTRIBUTOR LICENSE; AMENDING SECTIONS 15-70-202 AND 15-70-341, MCA; AND PROVIDING AN EFFECTIVE DATE 669

143 *(House Bill No. 143; Somerville)* GENERALLY REVISING AND CLARIFYING THE REPORTING OF S. CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, AND OTHER PASS-THROUGH ENTITY INCOME; DEFINING MONTANA SOURCE INCOME FOR THE PURPOSES OF INDIVIDUAL INCOME TAXES; PROVIDING FOR COMPOSITE RETURNS AND BACKUP WITHHOLDING FOR NONRESIDENTS; PROVIDING A PENALTY FOR A PASS-THROUGH ENTITY'S FAILURE TO FILE INFORMATION RETURNS; PROVIDING A RESIDENT SHAREHOLDER CREDIT FOR CERTAIN STATE TAXES PAID BY AN S. CORPORATION; CLARIFYING THAT SHELL AND PASSIVE PASS-THROUGH ENTITIES DO NOT QUALIFY FOR THE QUALIFIED ENDOWMENT CREDIT; REQUIRING THE DEPARTMENT OF REVENUE TO REVIEW THE TAXATION OF PASS-THROUGH ENTITIES AND REPORT TO THE REVENUE AND TAXATION INTERIM COMMITTEE; AMENDING SECTIONS 13-37-218, 15-30-101, 15-30-105, 15-30-124, 15-30-133, 15-30-241, 15-31-101, 15-31-162, 15-31-201, AND 15-31-603, MCA; REPEALING SECTIONS 15-31-202 AND 15-31-209, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE 672

144 *(House Bill No. 157; Gallus)* INCREASING THE PENALTY FOR TRANSFER OF AN ILLEGAL ARTICLE, OTHER THAN A WEAPON OR DANGEROUS DRUG, TO A PERSON INCARCERATED IN A STATE PRISON; MAKING THE OFFENSE A FELONY; AMENDING SECTION 45-7-307, MCA; AND PROVIDING AN EFFECTIVE DATE 687

145 *(House Bill No. 160; Andersen)* REVISING THE SPECIAL EDUCATION FUNDING FORMULA TO ESTABLISH FIXED LIMITS FOR DISTRIBUTION OF THE STATE'S TOTAL SPECIAL EDUCATION ALLOCATION; LIMITING DISTRIBUTION OF THE TOTAL ALLOCATION TO 52.5 PERCENT FOR INSTRUCTIONAL BLOCK GRANTS, 25 PERCENT FOR REIMBURSEMENT OF DISTRICTS WHOSE SPECIAL EDUCATION COSTS EXCEED THE RELATED SERVICES BLOCK GRANT PLUS THE REQUIRED DISTRICT MATCH, 17.5 PERCENT TO RELATED SERVICES BLOCK GRANTS, AND 5 PERCENT FOR SPECIAL EDUCATION COOPERATIVE AND JOINT BOARD ADMINISTRATION AND TRAVEL; ELIMINATING THE REQUIREMENT TO DISTRIBUTE TO DISTRICTS PRO RATA SHARES OF AVAILABLE SPECIAL EDUCATION APPROPRIATIONS

WHEN TOTAL SPECIAL EDUCATION COSTS EXCEED LEGISLATIVE APPROPRIATIONS; AMENDING SECTIONS 20-7-431 AND 20-9-321, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 688

146 *(House Bill No. 164; Olson)* REVISING A SCHOOL DISTRICT'S GENERAL FUND BUDGET LIMITATIONS; ELIMINATING THE PROVISION PROHIBITING THE TRUSTEES OF A DISTRICT FROM ADOPTING A GENERAL FUND BUDGET THAT EXCEEDS THE GREATER OF 104 PERCENT OF THE PREVIOUS YEAR'S GENERAL FUND BUDGET OR 104 PERCENT OF THE PREVIOUS YEAR'S GENERAL FUND BUDGET PER-ANB MULTIPLIED BY THE CURRENT YEAR'S ANB FOR BUDGETING PURPOSES; AMENDING SECTION 20-9-308, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 692

147 *(House Bill No. 263; Jent)* REMOVING THE OPTION OF A PERSON WHOSE DRIVER'S LICENSE WAS SUSPENDED FOR REFUSAL TO SUBMIT TO AN ALCOHOL OR DRUG TEST TO CHALLENGE THE SUSPENSION IN THE COUNTY OF THE PERSON'S RESIDENCE; REQUIRING THE CHALLENGE TO BE MADE IN THE COUNTY IN WHICH THE ARREST OCCURRED; AMENDING SECTION 61-8-403, MCA; AND PROVIDING AN APPLICABILITY DATE 694

148 *(House Bill No. 267; Juneau)* AUTHORIZING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO DISTRIBUTE ADULT EDUCATION FUNDS FOR THE SUPPORT OF AN ADULT EDUCATION PROGRAM OPERATED BY AN ACCREDITED TRIBAL COLLEGE IN MONTANA; AMENDING SECTION 20-7-712, MCA; AND PROVIDING AN EFFECTIVE DATE. 695

149 *(House Bill No. 294; Lewis)* RELATING TO PUBLIC EMPLOYEE RETIREMENT SYSTEM BENEFITS; AMENDING DEFINITIONS; PROVIDING FOR A PURCHASING POWER ADJUSTMENT IN BENEFITS PAID BY THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; REQUIRING AN INCREASE IN THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT FOR MEMBERS OF CERTAIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS; PROVIDING AN ELECTION BETWEEN THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT AND OTHER ADJUSTMENTS IN RETIREMENT BENEFIT FOR MEMBERS OF CERTAIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS; INCREASING THE MINIMUM MONTHLY BENEFIT ALLOWANCE FOR RETIREES AND BENEFICIARIES OF THE TEACHERS' RETIREMENT SYSTEM; AUTHORIZING UPON CERTAIN CONDITIONS AN INCREASE IN THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT FOR THE TEACHERS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-2-303, 19-3-108, 19-3-1605, 19-5-901, 19-6-101, 19-6-710, 19-7-101, 19-7-711, 19-8-101, 19-8-1105, 19-9-1009, 19-9-1010, 19-13-1010, 19-20-622, AND 19-20-719, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 696

150 *(House Bill No. 298; Facey)* ALLOWING LOCAL GOVERNMENTS TO ADOPT STATE-APPROVED BUILDING CODES BY AN ORDINANCE AUTHORIZING THE ADOPTION BY AN ADMINISTRATIVE ACTION; AMENDING SECTION 50-60-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 716

151 *(House Bill No. 321; Brown)* PROVIDING A SECOND ALTERNATIVE METHOD OF ELECTING MEMBERS TO A HIGH SCHOOL DISTRICT BOARD OF TRUSTEES WHEN MORE THAN HALF OF THE ELECTORS OF THE HIGH SCHOOL DISTRICT RESIDE OUTSIDE OF THE TERRITORY OF THE ELEMENTARY SCHOOL DISTRICT IN

WHICH THE HIGH SCHOOL DISTRICT BUILDINGS ARE LOCATED; AND AMENDING SECTION 20-3-352, MCA. 717

152 *(House Bill No. 329; Somerville)* CLARIFYING THAT THE REGISTRATION REQUIREMENTS FOR SEXUAL OFFENDERS AND VIOLENT OFFENDERS APPLY TO OFFENDERS SENTENCED IN ANOTHER STATE AND TO OFFENDERS WHO ARE UNDER THE SUPERVISION OF AN ENTITY IN ANOTHER STATE WHEN THOSE OFFENDERS ARE IN MONTANA; AMENDING SECTION 18, CHAPTER 375, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES . 718

153 *(House Bill No. 336; Gutsche)* CLARIFYING THAT THERE IS NO COST ASSOCIATED WITH SERVICE OF ORDERS OF PROTECTION; AND AMENDING SECTION 40-15-204, MCA 719

154 *(House Bill No. 354; Lawson)* AMENDING THE COMPOSITION OF THE DEVELOPMENTAL DISABILITIES PLANNING AND ADVISORY COUNCIL; AMENDING SECTION 2-15-2204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 720

155 *(House Bill No. 365; Whitaker)* DESIGNATING THE MOURNING CLOAK AS THE OFFICIAL STATE BUTTERFLY 722

156 *(House Bill No. 383; Younkin)* REVISING THE KIND OF INFORMATION THAT A COUNTY CLERK MAY PROVIDE TO AN APPLICANT FROM THE CLERK'S RECORDS; ELIMINATING THE PROVISION THAT A COUNTY CLERK MAY BE PUNISHED FOR NEGLECTING OR REFUSING TO MAKE PROPERTY RECORD SEARCHES OR FOR PROVIDING INCOMPLETE INFORMATION FROM THOSE RECORDS; AND AMENDING SECTIONS 7-4-2621 AND 7-4-2623, MCA 723

157 *(House Bill No. 391; Cyr)* REQUIRING THAT A VEHICLE APPROACHING A STATIONARY EMERGENCY VEHICLE MOVE TO ANOTHER LANE OF THE HIGHWAY IF POSSIBLE AND SAFE; REQUIRING THAT THE OPERATOR OF A VEHICLE APPROACHING A STATIONARY EMERGENCY VEHICLE DRIVE AT A REDUCED SPEED; AND AMENDING SECTION 61-8-346, MCA. . 724

158 *(House Bill No. 392; Masolo)* INCREASING THE AMOUNT OF GASOLINE AND VEHICLE FUEL TAX PROCEEDS ALLOCATED TO THE LOCAL TECHNICAL ASSISTANCE TRANSPORTATION PROGRAM AND REDISTRIBUTING THE REMAINING AMOUNT TO COUNTIES AND CITIES; AMENDING SECTION 15-70-101, MCA; AND PROVIDING AN EFFECTIVE DATE 724

159 *(House Bill No. 393; Mangan)* ALLOWING A PROBABLE CAUSE HEARING FOR A YOUTH TAKEN INTO CUSTODY FOR QUESTIONING TO BE BY VIDEOCONFERENCE; AND AMENDING SECTION 41-5-332, MCA 727

160 *(House Bill No. 402; Mangan)* EXTENDING THE EXEMPTION FOR JUVENILE DETENTION OFFICERS WHO ARE EMPLOYED IN A JUVENILE DETENTION CENTER FROM BASIC DETENTION OFFICER TRAINING FOR 2 YEARS UNDER CERTAIN CONDITIONS; REQUIRING BASIC TRAINING OR TRAINING UNDER THE EXEMPTION; REQUIRING THE BOARD OF CRIME CONTROL TO CONDUCT A STUDY OF JUVENILE DETENTION TRAINING; AMENDING SECTION 44-4-303, MCA, AND SECTION 5, CHAPTER 469, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 727

161 *(House Bill No. 443; Clancy)* GENERALLY REVISING STATUTES APPLYING TO NOTARIES PUBLIC; CLARIFYING DURATIONAL

RESIDENCY REQUIREMENTS FOR NOTARIES PUBLIC; PROHIBITING A PERSON FROM HOLDING MORE THAN ONE COMMISSION AS A MONTANA NOTARY PUBLIC; REQUIRING A COUNTY ATTORNEY TO PROSECUTE VIOLATIONS OF LAWS APPLYING TO NOTARIES PUBLIC; REVISING THE STATUTE GOVERNING AN APPLICATION TO BECOME A NOTARY PUBLIC; ALLOWING THE SECRETARY OF STATE TO CHARGE FEES FOR CHANGES MADE BY THE SECRETARY OF STATE TO THE COMMISSIONS OF NOTARIES PUBLIC; REQUIRING CERTAIN INFORMATION TO BE FILED BY A NOTARY PUBLIC WITH THE SECRETARY OF STATE; CLARIFYING STATUTES REGARDING CHANGES TO A NOTARY PUBLIC'S COMMISSION; APPLYING CONDITIONS AND CLARIFYING ACTIONS PERTAINING TO CERTAIN NOTARIAL ACTS; PROHIBITING A NOTARY PUBLIC FROM ACTING IN CERTAIN CASES IN WHICH THE NOTARY MAY HAVE A CONFLICT OF INTEREST; CLARIFYING THE STATUTE GOVERNING FEES CHARGED BY NOTARIES PUBLIC; AUTHORIZING A NOTARY PUBLIC TO CHARGE FOR CERTAIN EXPENSES; PROVIDING A PENALTY; AND AMENDING SECTIONS 1-5-402, 1-5-403, 1-5-404, 1-5-405, 1-5-408, 1-5-409, 1-5-416, 1-5-417, 1-5-418, 1-5-603, 1-5-609, AND 1-5-610, MCA 730

162 *(House Bill No. 479; Gallus)* AUTHORIZING SPECIAL IMPROVEMENT DISTRICT BONDS AND RURAL SPECIAL IMPROVEMENT DISTRICT BONDS TO BEAR INTEREST AT A VARIABLE RATE; PROVIDING ADJUSTMENTS IN THE INTEREST RATES ON SPECIAL ASSESSMENTS SECURING VARIABLE RATE BONDS; PROVIDING THAT VARIABLE RATE BONDS MAY BE SOLD AT A PRIVATE NEGOTIATED SALE IF THE PRINCIPAL AMOUNT IS LESS THAN $500,000 AND THE BOARD OF COUNTY COMMISSIONERS OR THE GOVERNING BODY OF A MUNICIPALITY OBTAINS A MARKETABILITY OPINION; PROVIDING THAT THE BOARD OF INVESTMENTS REVIEW ITS PARTICIPATION IN VARIABLE RATE BONDS AND RECOMMEND ACTION TO THE 58TH LEGISLATURE; AMENDING SECTIONS 7-12-2171, 7-12-2176, 7-12-2183, 7-12-2184, 7-12-2193, 7-12-4189, 7-12-4194, 7-12-4203, 7-12-4223, AND 7-12-4224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 736

163 *(House Bill No. 493; Fritz)* PROVIDING FOR THE LICENSURE OF MONTANA WINERIES; AUTHORIZING SMALL MONTANA WINERIES TO SELL TO LICENSED RETAILERS; ALLOWING SHIPMENT OF SMALL WINERIES' WINE BY COMMON CARRIER TO LICENSED RETAILERS AND WINE DISTRIBUTORS; REQUIRING WINERIES TO MAINTAIN RECORDS; GOVERNING DOCK SALES BY DOMESTIC WINERIES TO A HOLDER OF CERTAIN RETAIL ALCOHOLIC BEVERAGE LICENSES; AMENDING SECTIONS 16-3-411, 16-3-418, 16-4-107, 16-4-406, 16-4-407, AND 16-4-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 745

164 *(House Bill No. 515; Lehman)* ALLOWING RETIRED VOLUNTEER FIREFIGHTERS TO RETURN TO ACTIVE SERVICE WITH A FIRE COMPANY UNDER CERTAIN CIRCUMSTANCES WITHOUT LOSS OF PENSION BENEFITS PAID UNDER THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; AMENDING SECTION 19-17-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 750

165 *(Senate Bill No. 207; Keenan)* REMOVING THE REQUIREMENT THAT THE FORMER FORENSIC UNIT AT WARM SPRINGS BE A STATE

CORRECTIONAL FACILITY; CLARIFYING THE PURPOSE FOR WHICH IT MAY BE USED; AMENDING SECTION 53-1-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 751

166 *(House Bill No. 582; Gutsche)* REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PROVIDE A FEASIBILITY REPORT TO THE LEGISLATURE ON THE DEVELOPMENT OF A CHRONIC DISEASE REGISTRY 752

167 *(Senate Bill No. 53; Roush)* ALLOWING A 100 PERCENT DISABLED VETERAN TO REGISTER FOR A FEE OF $5 ONE MOTOR VEHICLE THAT IS NOT USED FOR COMMERCIAL PURPOSES; AMENDING SECTIONS 61-3-332 AND 61-3-453, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . 753

168 *(Senate Bill No. 55; Cole)* DEFINING "BAILMENT" AND CLARIFYING THAT BAILMENT TRANSACTIONS ARE COMMODITY DEALER TRANSACTIONS FOR WHICH LICENSING AND BONDING ARE REQUIRED; AMENDING SECTIONS 80-4-402, 80-4-429, AND 80-4-526, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 759

169 *(Senate Bill No. 91; Tash)* ALLOWING THE FINANCING OF WATER-RELATED PROJECTS THAT IMPROVE WATER QUALITY, INCLUDING LIVESTOCK CONTAINMENT FACILITIES, FROM THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AMENDING SECTION 85-1-602, MCA; AND PROVIDING AN EFFECTIVE DATE 763

170 *(Senate Bill No. 161; Hargrove)* REVISING AND CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE BOARD OF ENVIRONMENTAL REVIEW TO ESTABLISH AND ASSESS FEES RELATED TO SOLID WASTE; AUTHORIZING THE DEPARTMENT TO ASSESS PENALTIES FOR LATE OR NONPAYMENT OF ALL SOLID WASTE MANAGEMENT FEES; REPEALING THE QUARTERLY SOLID WASTE MANAGEMENT FEE OF $5 PER TON ON THE IN-STATE DISPOSAL OR INCINERATION OF OUT-OF-STATE WASTE; REPEALING THE MORATORIUM ON CERTAIN INTERSTATE TRANSPORT OF SOLID WASTE; AMENDING SECTIONS 7-13-231, 75-10-104, 75-10-105, 75-10-106, 75-10-115, 75-10-116, 75-10-117, 75-10-204, 75-10-206, AND 75-10-221, MCA; REPEALING SECTIONS 75-10-118 AND 75-10-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 764

171 *(Senate Bill No. 165; Cole)* GENERALLY REVISING THE LAWS GOVERNING THE MONTANA GROWTH THROUGH AGRICULTURE ACT; CLARIFYING THE COMPENSATION FOR COUNCIL MEMBERS; CLARIFYING CONFLICT OF INTEREST PROVISIONS FOR COUNCIL MEMBERS; CLARIFYING THE USE OF INVESTMENTS FOR MARKETING AND BUSINESS DEVELOPMENT; PROVIDING PRIORITY FOR INVESTMENTS IN PROJECTS USING INNOVATIVE AGRICULTURAL TECHNOLOGY; PROVIDING FOR PARTNERSHIPS WITH CONVENTIONAL LENDING SOURCES; AMENDING SECTIONS 90-9-103, 90-9-201, 90-9-202, 90-9-203, 90-9-301, 90-9-303, 90-9-306, 90-9-311, 90-9-312, 90-9-313, AND 90-9-316, MCA; REPEALING SECTION 90-9-318, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 769

172 *(Senate Bill No. 209; Waterman)* CLARIFYING THAT THE CONSTITUTIONAL BALANCING TEST OF DETERMINING WHETHER A RIGHT OF INDIVIDUAL PRIVACY CLEARLY EXCEEDS THE MERITS OF PUBLIC DISCLOSURE APPLIES TO THE DISCLOSURE OF THE TERMS OF A COMPROMISE OR

HeinOnline -- 2001 vol.I xxx 2001

SETTLEMENT OF A CLAIM AGAINST THE STATE OR A POLITICAL SUBDIVISION; AMENDING SECTIONS 2-9-303 AND 2-9-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 776

173 *(Senate Bill No. 234; Tester)* PROVIDING FOR THE DUTIES OF TRUSTEES AND OFFICERS OF A RURAL COOPERATIVE UTILITY; ESTABLISHING WHEN A TRUSTEE OR OFFICER HAS A CONFLICT OF INTEREST; PROVIDING THAT RURAL COOPERATIVE UTILITIES MAY INDEMNIFY TRUSTEES AND OFFICERS; PROVIDING CERTAIN CONDITIONS UNDER WHICH TRUSTEES AND OFFICERS ARE NOT PERSONALLY LIABLE TO THE RURAL COOPERATIVE UTILITY; AMENDING SECTION 35-18-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 777

174 *(Senate Bill No. 252; Cocchiarella)* CLARIFYING THE CRITERIA REQUIRED BEFORE AN INSURER MAY CONVERT A CLAIMANT'S TEMPORARY TOTAL DISABILITY BENEFITS OR TEMPORARY PARTIAL DISABILITY BENEFITS TO PERMANENT PARTIAL DISABILITY BENEFITS; AMENDING SECTION 39-71-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 782

175 *(Senate Bill No. 269; McNutt)* REVISING CERTAIN DATES FOR TRANSITION TO CUSTOMER CHOICE FOR ELECTRICITY SUPPLY; AMENDING SECTION 69-8-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 783

176 *(Senate Bill No. 370; Halligan)* REVISING ELIGIBILITY FOR RETIREMENT BENEFITS IN THE JUDGES' RETIREMENT SYSTEM; AMENDING SECTION 19-5-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 784

177 *(Senate Bill No. 421; Thomas)* REQUIRING WHOLESALERS, MANUFACTURERS, OR DISTRIBUTORS THAT TERMINATE, CANCEL, DO NOT RENEW, OR REFUSE TO CONTINUE A DEALERSHIP CONTRACT TO REIMBURSE A RETAILER FOR, OR REPURCHASE FROM A RETAILER, SIGNS, SPECIAL EQUIPMENT, AND SPECIAL TOOLS ACQUIRED BY THE RETAILER AT THE RECOMMENDATION OR REQUIREMENT OF THE WHOLESALER, MANUFACTURER, OR DISTRIBUTOR; PROHIBITING THE UNREASONABLE WITHHOLDING OF CONSENT TO A DEALER'S SALE, TRANSFER, OR EXCHANGE OF THE DEALER'S FRANCHISE BY A MANUFACTURER OF NEW MOTOR VEHICLES, A FACTORY BRANCH, A DISTRIBUTOR, A DISTRIBUTOR BRANCH, AN IMPORTER, A FIELD REPRESENTATIVE, AN OFFICER, AN AGENT, OR ANY REPRESENTATIVE; REQUIRING A RESPONSE TO A DEALER'S REQUEST FOR CONSENT TO THE SALE, TRANSFER, OR EXCHANGE OF THE DEALER'S FRANCHISE WITHIN 60 DAYS OF RECEIPT OF THE REQUEST; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 784

178 *(House Bill No. 374; Eggers)* REVISING THE LAWS RELATING TO THE LEGISLATIVE POLICY AND DUTIES OF THE OFFICE OF STATE COORDINATOR OF INDIAN AFFAIRS; AMENDING SECTIONS 90-11-101 AND 90-11-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 786

179 *(Senate Bill No. 23; Halligan)* GENERALLY REVISING THE SECURED TRANSACTION CHAPTER OF THE UNIFORM COMMERCIAL CODE TO ADOPT ERRATA AND REVISIONS TO THE MOST RECENT VERSION OF THE SECURED TRANSACTION LAWS; AMENDING SECTIONS 30-1-105, 30-1-201, 30-9-122, 30-9-124, 30-9-129, 30-9-220, 30-9-331, 30-9-337, 30-9-343, 30-9-351, 30-9-356, 30-9-446, 30-9-447,

30-9-448, 30-9-449, 30-9-529, 30-9-533, 30-9-545, 30-9-608, 30-9-613, 30-9-615, AND 30-9-625, MCA, AND SECTION 164, CHAPTER 305, LAWS OF 1999; AND PROVIDING AN EFFECTIVE DATE 789

180 *(Senate Bill No. 74; McNutt)* REGULATING THE TERMINATION, CANCELLATION, NONRENEWAL, SUBSTANTIAL ALTERATION, OR TRANSFER OF CONSTRUCTION EQUIPMENT DEALERSHIP AGREEMENTS. 829

181 *(Senate Bill No. 90; Ekegren)* GENERALLY REVISING GOVERNMENT CONTRACTING LAWS; EXPANDING THE GENERAL APPLICATION OF THE PROCUREMENT LAWS; CLARIFYING EMPLOYEE AND FORMER EMPLOYEE CONTRACT INVOLVEMENT RESTRICTIONS; PROVIDING THAT MOTOR VEHICLE PURCHASE REQUISITIONS MAY BE SUBMITTED IN THE MANNER SPECIFIED BY THE DEPARTMENT OF ADMINISTRATION; ABOLISHING THE REQUIREMENT THAT POLITICAL SUBDIVISIONS APPLY A RESIDENT BIDDER PREFERENCE FOR THE PROCUREMENT OF GOODS; CLARIFYING THE INTEREST RATE ON OVERDUE PAYMENTS; MAKING THE RESIDENT BIDDER PREFERENCE FOR STATE GOVERNMENT PROCUREMENT OF GOODS RECIPROCAL; ABOLISHING THE MONTANA-MADE GOODS PREFERENCE; EXEMPTING CERTAIN PURCHASES FROM THE GENERAL REQUIREMENTS OF THE LAW; ALLOWING ALTERNATIVE PURCHASING METHODS; REVISING SOLE SOURCE PURCHASE CRITERIA; CLARIFYING THE DURATION OF CERTAIN CONTRACTS; AMENDING SECTIONS 2-2-201, 2-17-403, 7-5-2309, 7-14-2404, 7-14-2406, 7-14-2716, 17-8-244, 18-1-101, 18-1-102, 18-1-103, 18-1-111, 18-1-404, 18-2-306, 18-4-123, 18-4-132, 18-4-133, 18-4-141, 18-4-301, 18-4-302, 18-4-306, 18-4-313, 18-5-308, 18-7-107, AND 60-2-112, MCA; REPEALING SECTION 18-1-112, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE 832

182 *(House Bill No. 386; Fuchs)* ALLOWING THE SALE OF FIREWORKS FROM JUNE 24 THROUGH JULY 5 AND FROM DECEMBER 29 THROUGH DECEMBER 31; AMENDING SECTION 50-37-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 848

183 *(House Bill No. 440; Jacobson)* REVISING RESIDENCY REQUIREMENTS FOR ELECTION TO THE COUNTY COMMISSION TO MAKE THEM CONSISTENT WITH THE RESIDENCY REQUIREMENTS FOR FILLING COUNTY COMMISSION VACANCIES; AMENDING SECTION 7-4-2104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 849

184 *(House Bill No. 542; Musgrove)* TRANSFERRING THE COLLECTION OF THE STAMPING FEE FOR SURPLUS LINES TO THE COMMISSIONER OF INSURANCE IF THE SURPLUS LINES INSURANCE PRODUCER ORGANIZATION IS NOT PERFORMING ITS DESIGNATED FUNCTIONS; AND AMENDING SECTION 33-2-321, MCA 849

185 *(Senate Bill No. 8; Waterman)* ALLOWING ADMINISTRATIVE RULEMAKING AUTHORITY FOR LAWS NOT YET EFFECTIVE; AND PROVIDING THAT A RULE IS NOT EFFECTIVE UNTIL THE LAW IS EFFECTIVE 850

186 *(Senate Bill No. 33; McCarthy)* CLARIFYING EXISTING LAW TO REQUIRE THAT NEW ISSUES RELATING TO THE ADEQUACY OR CONTENT OF AN ENVIRONMENTAL REVIEW DOCUMENT NOT FIRST PRESENTED TO A STATE AGENCY IN AN ACTION CHALLENGING A DECISION UNDER THE MONTANA

ENVIRONMENTAL POLICY ACT MUST BE REMANDED BY THE DISTRICT COURT TO THE AGENCY FOR ITS CONSIDERATION; AND AMENDING SECTION 75-1-201, MCA. 851

187 *(Senate Bill No. 42; McCarthy)* CLARIFYING THE CONSUMPTIVE USE DATA IN THE UNITED STATES FISH AND WILDLIFE SERVICE, RED ROCK LAKES-MONTANA COMPACT; AMENDING SECTION 85-20-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 853

188 *(Senate Bill No. 56; McNutt)* CLARIFYING THAT UTILITIES AND LARGE CUSTOMERS MAY RECEIVE CREDIT FOR UNIVERSAL SYSTEM BENEFITS PROGRAMS THAT INCLUDE AMORTIZED OR NONAMORTIZED PORTIONS OF EXPENDITURES; AMENDING SECTION 69-8-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 868

189 *(Senate Bill No. 81; Hargrove)* TRANSFERRING THE ALLOCATION OF THE MONTANA AGRICULTURAL HERITAGE COMMISSION FOR ADMINISTRATIVE PURPOSES FROM THE DEPARTMENT OF AGRICULTURE TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTION 2-15-3313, MCA; AND PROVIDING AN EFFECTIVE DATE. 871

190 *(Senate Bill No. 166; Stonington)* GENERALLY REVISING TUBERCULOSIS CONTROL STATUTES; UPDATING THE DEFINITION OF TUBERCULOSIS; CLARIFYING WHAT A COMMITMENT ORDER MAY PROVIDE; ALLOWING COMMITMENT FOR TREATMENT AT A LOCATION OTHER THAN A HOSPITAL; AMENDING THE PROVISION GOVERNING RELEASE FROM A HOSPITAL OR TREATMENT LOCATION; AUTHORIZING DETAINMENT OF A PERSON FOR TUBERCULOSIS TESTING WHETHER OR NOT THE TUBERCULOSIS IS SUSPECTED TO BE COMMUNICABLE; AMENDING SECTIONS 50-17-102, 50-17-105, 50-17-107, 50-17-108, 50-17-109, 50-17-110, 50-17-111, 50-17-113, 50-17-114, AND 50-17-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 871

191 *(Senate Bill No. 175; Glaser)* GENERALLY REVISING LIGHT VEHICLE REGISTRATION FEES AND OTHER MOTOR VEHICLE LAWS; CLARIFYING CERTAIN PROVISIONS RELATED TO LIGHT VEHICLE REGISTRATION FEES APPROVED BY THE ELECTORATE ON NOVEMBER 7, 2000, AND TO OTHER MOTOR VEHICLE LEGISLATION ENACTED BY THE 56TH LEGISLATURE; CLARIFYING THAT THE MOTOR VEHICLE TAX APPEAL PROCEDURE FOR LIGHT VEHICLES APPLIES ONLY TO THE LOCAL OPTION VEHICLE TAX; CLARIFYING THE PAYMENT OF MOTOR VEHICLE REGISTRATION FEES TO THE HIGHWAY PATROL PENSION TRUST FUND; ALLOWING A LIGHT VEHICLE THAT IS REGISTERED FOR A 24-MONTH PERIOD OR THAT IS PERMANENTLY REGISTERED TO DISPLAY NUMBER PLATES IN EFFECT AT THE TIME OF REGISTRATION; PROVIDING THAT AN EX-PRISONER OF WAR OR SURVIVING SPOUSE IS EXEMPT FROM THE LIGHT VEHICLE REGISTRATION FEE; REMOVING LANGUAGE RELATED TO THE MOTOR VEHICLE SUSPENSE FUND; CLARIFYING THE DISTRIBUTION OF MOTOR VEHICLE FEES; CLARIFYING THE DISTRIBUTION OF THE LOCAL OPTION VEHICLE TAX OR FEE; AMENDING SECTIONS 15-10-420, 15-15-201, 15-16-202, 19-6-709, 20-9-141, 20-9-331, 20-9-333, 23-2-616, 61-3-321, 61-3-332, 61-3-457, 61-3-463, 61-3-501, 61-3-507, 61-3-509, 61-3-537, 61-3-560, 61-3-562, 61-3-736, 61-3-737, AND 61-3-738, MCA; AND

PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE. 875

192 *(Senate Bill No. 194; Nelson)* REQUIRING THE LICENSURE OF CRITICAL ACCESS HOSPITALS; PROVIDING DEFINITIONS; REQUIRING DESIGNATION OF CRITICAL ACCESS HOSPITALS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; REQUIRING THE ADOPTION OF RULES BY THE DEPARTMENT; AMENDING SECTIONS 7-34-2201, 33-36-103, 39-71-704, 50-5-101, AND 50-6-401, MCA; AND PROVIDING EFFECTIVE DATES 896

193 *(Senate Bill No. 228; Ekegren)* PROVIDING THAT ALL MEMBERS OF THE HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM ARE ELIGIBLE FOR A FULL SERVICE RETIREMENT AFTER 20 YEARS OF SERVICE REGARDLESS OF AGE; AMENDING SECTION 19-6-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 907

194 *(Senate Bill No. 257; Bohlinger)* PROVIDING FOR PROTECTION OF ABANDONED CHILDREN; SPECIFICALLY INCLUDING ABANDONMENT AS A BASIS FOR ABUSE OR NEGLECT PROCEEDINGS AND A DETERMINATION THAT A CHILD IS A YOUTH IN NEED OF CARE; AMENDING DEFINITIONS; PROVIDING THAT CERTAIN CARETAKERS OF A CHILD MAY PARTICIPATE AS PARTIES IN ABUSE AND NEGLECT PROCEEDINGS INVOLVING THAT CHILD; REQUIRING A COURT TO RECEIVE CERTAIN EVIDENCE AT A HEARING ON AN ABUSE OR NEGLECT PETITION; PROVIDING THAT EXTENDED FAMILY MEMBERS HAVE PRIORITY FOR PURPOSES OF TEMPORARY OR PERMANENT LEGAL CUSTODY OR GUARDIANSHIP OF AN ABANDONED CHILD; AMENDING SECTIONS 41-3-102, 41-3-401, 41-3-404, 41-3-406, AND 41-3-421, MCA; AND PROVIDING AN APPLICABILITY DATE 908

195 *(Senate Bill No. 268; Hargrove)* ALLOWING A NONPROFIT CONVENTION AND VISITORS BUREAU LOCATED IN A RESORT AREA OR RESORT AREA DISTRICT TO RECEIVE A PORTION OF LODGING FACILITY USE TAX FUNDS IN THE SAME MANNER THAT A NONPROFIT CONVENTION AND VISITORS BUREAU LOCATED IN A CITY OR CONSOLIDATED CITY-COUNTY MAY RECEIVE FUNDS; AMENDING SECTIONS 15-65-101, 15-65-121, AND 15-65-122, MCA; AND PROVIDING AN EFFECTIVE DATE 918

196 *(House Bill No. 292; Fuchs)* CREATING THE FISHING ACCESS ENHANCEMENT PROGRAM TO PROVIDE INCENTIVES TO LANDOWNERS WHO PROVIDE ACCESS TO OR ACROSS PRIVATE LAND FOR PUBLIC FISHING; INCLUDING FISHING ACCESS ENHANCEMENT WITHIN THE SCOPE OF ISSUES THAT MAY BE CONSIDERED BY THE GOVERNOR'S REVIEW COMMITTEE ON PRIVATE LANDS AND PUBLIC WILDLIFE; AMENDING SECTION 87-1-269, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE 921

197 *(House Bill No. 439; Jacobson)* REVISING THE APPOINTMENT PROCESS FOR HOUSING AUTHORITY COMMISSIONERS; REQUIRING THAT TWO COMMISSIONERS BE INDIVIDUALS WHO ARE DIRECTLY ASSISTED BY THE HOUSING AUTHORITY; ELIMINATING THE REQUIREMENT THAT HOUSING AUTHORITY COMMISSIONERS REPRESENT FAMILY TENANTS, ELDERLY TENANTS, AND TENANTS WITH DISABILITIES; ELIMINATING THE REQUIREMENT THAT NOMINEES TO THE COMMISSION PRESENT A PETITION SIGNED BY A CERTAIN NUMBER OF

TENANTS; REQUIRING THE STAFF OF THE HOUSING AUTHORITY TO NOTIFY HOUSEHOLDS ASSISTED BY THE AUTHORITY OF CERTAIN VACANCIES ON THE COMMISSION; AND AMENDING SECTIONS 7-15-4431, 7-15-4432, AND 7-15-4435, MCA. 924

198 *(House Bill No. 519; Forrester)* REVISING THE ELIGIBILITY FOR THE VIDEO GAMBLING MACHINE TAX CREDIT BY EXTENDING FOR 1 YEAR THE DEADLINE FOR A VIDEO GAMBLING MACHINE PERMIT AND THE DEADLINE FOR CONVERTING A VIDEO GAMBLING MACHINE TO THE DEPARTMENT OF JUSTICE'S AUTOMATED ACCOUNTING AND REPORTING SYSTEM; AMENDING SECTION 23-5-610, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 925

199 *(House Bill No. 548; Jayne)* REQUIRING THE DEPARTMENT OF REVENUE TO INCLUDE THE EFFECTIVE TAX RATES OF TAXABLE PROPERTY IN EACH CLASS OF PROPERTY IN ITS BIENNIAL REPORT TO THE GOVERNOR AND THE MONTANA LEGISLATURE; AND AMENDING SECTION 15-1-205, MCA. 929

200 *(House Bill No. 579; Juneau)* REVISING THE UNEMPLOYMENT INSURANCE LAWS TO CONFORM WITH FEDERAL REQUIREMENTS RELATED TO EMPLOYMENT BY AN EMPLOYER THAT IS AN INDIAN TRIBE; AMENDING SECTIONS 39-51-201, 39-51-204, 39-51-1103, 39-51-1124, AND 39-51-1126, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 930

201 *(House Bill No. 551; Forrester)* INCREASING THE BOND FROM $25,000 TO $35,000 FOR NEW MOTOR VEHICLE DEALERS, USED MOTOR VEHICLE DEALERS, NEW OR USED RECREATIONAL VEHICLE DEALERS, TRAILER DEALERS, AUTO AUCTION LICENSEES, AND WHOLESALERS OF USED MOTOR VEHICLES, USED RECREATIONAL VEHICLES, TRAILERS, MOTORCYCLES, QUADRICYCLES, OR SPECIAL MOBILE EQUIPMENT; AND AMENDING SECTIONS 61-4-101, 61-4-120, AND 61-4-125, MCA . . . 939

202 *(Senate Bill No. 52; Roush)* GRANTING IMMUNITY TO MORTUARIES AND VETERANS' SERVICE ORGANIZATIONS FOR SIMPLE NEGLIGENCE IN THE INTERMENT OF CERTAIN REMAINS OF MILITARY VETERANS; PROVIDING CONDITIONS; REQUIRING NOTICE; AND PROVIDING DEFINITIONS 946

203 *(Senate Bill No. 199; Taylor)* AUTHORIZING THE USE OF INMATE LABOR THROUGH A COUNTY JAIL WORK PROGRAM FOR MANAGEMENT OF NOXIOUS WEEDS AND FOR OTHER MAINTENANCE PROJECTS AUTHORIZED BY COUNTY COMMISSIONERS; ALLOWING A DISTRICT WEED BOARD TO ENTER INTO AGREEMENTS WITH A COUNTY SHERIFF FOR THE USE OF INMATE LABOR; AND AMENDING SECTIONS 7-22-2109 AND 7-32-2226, MCA. 948

204 *(Senate Bill No. 259; Tester)* ALLOWING A SECONDARY ROAD THAT PASSES THROUGH OPEN RANGE IN A COUNTY PARK TO REMAIN UNFENCED PROVIDED THAT CERTAIN CRITERIA ARE MET TO MITIGATE SAFETY HAZARDS PRESENTED BY LIVESTOCK; AND AMENDING SECTIONS 60-7-102, 60-7-103, AND 60-7-202, MCA . . . 950

205 *(Senate Bill No. 260; Mahlum)* AUTHORIZING TRUSTEES OF A SCHOOL DISTRICT TO ESTABLISH AND TEMPORARILY TRANSFER DISTRICT FUNDS INTO INDEPENDENT INVESTMENT ACCOUNTS TO INCREASE SCHOOL BOARD CONTROL OVER

INVESTMENTS; ESTABLISHING GUIDELINES FOR DISTRICT EXPENDITURES FOR INVESTMENT ACCOUNTS; AUTHORIZING A DISTRICT TO INVEST MONEY IN INVESTMENTS AUTHORIZED BY THE BOARD OF INVESTMENTS UNDER TITLE 17, CHAPTER 6, MCA; REQUIRING A DISTRICT TO COMPLY WITH THE REQUIREMENTS OF TITLE 17, CHAPTER 6, PART 1, FOR DEPOSITS IN EXCESS OF THE AMOUNT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR THE NATIONAL CREDIT UNION ADMINISTRATION; REQUIRING A DISTRICT TO PAY THE AUTOMATED CLEARINGHOUSE SYSTEM CHARGES FOR ALL TRANSFERS MADE BY THE OFFICE OF PUBLIC INSTRUCTION; AMENDING SECTIONS 20-9-213 AND 20-9-346, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 951

206 *(House Bill No. 131; Somerville)* ALLOWING THE DEPARTMENT OF TRANSPORTATION TO STOP AND INSPECT DIESEL-POWERED MOTOR VEHICLES FOR THE PRESENCE OF NONTAXED, DYED DIESEL FUEL IN THEIR SUPPLY TANKS; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO REPORT TO THE REVENUE AND TAXATION INTERIM COMMITTEE; AMENDING SECTION 61-10-141, MCA; AND PROVIDING A TERMINATION DATE 956

207 *(House Bill No. 363; Wanzenried)* REVISING THE LAWS RELATING TO MOTOR VEHICLES AND MOTOR CARRIER SAFETY; CONFORMING MOTOR CARRIER SAFETY STANDARDS TO FEDERAL REGULATIONS; CLARIFYING THE ENFORCEMENT AUTHORITY OF THE HIGHWAY PATROL REGARDING MOTOR CARRIER SAFETY; REQUIRING A COURT TO REPORT CONVICTIONS OF VIOLATIONS OF MOTOR CARRIER SAFETY STANDARDS TO THE DEPARTMENT OF JUSTICE; DEFINING "FOR-HIRE MOTOR CARRIER", "GROSS COMBINATION WEIGHT RATING", "GROSS VEHICLE WEIGHT RATING", AND "PRIVATE MOTOR CARRIER"; PROHIBITING THE DEPARTMENT OF JUSTICE FROM ISSUING A RESTRICTED PROBATIONARY LICENSE UNDER CERTAIN CIRCUMSTANCES; CLARIFYING THE LICENSE EXEMPTION FOR A NONRESIDENT COMMERCIAL MOTOR VEHICLE OPERATOR; CLARIFYING THE SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE; REQUIRING THE DEPARTMENT OF JUSTICE TO CONDUCT A FEDERAL RECORDS CHECK BEFORE EXAMINING AN APPLICANT FOR A DRIVER'S LICENSE; REQUIRING THE DEPARTMENT OF JUSTICE TO CONDUCT A FEDERAL RECORDS CHECK BEFORE RENEWING A DRIVER'S LICENSE; PROHIBITING THE DEPARTMENT OF JUSTICE FROM RENEWING A DRIVER'S LICENSE BY MAIL IF A FEDERAL RECORDS CHECK SHOWS AN INELIGIBLE LICENSE STATUS FOR THE APPLICANT; PROHIBITING A PERSON WITH A REVOKED OR SUSPENDED LICENSE FROM HAVING A LICENSE RESTORED BEFORE THE REVOCATION OR SUSPENSION PERIOD IS COMPLETED; AMENDING THE PER SE OFFENSE TO INCLUDE OPERATING A COMMERCIAL MOTOR VEHICLE WITH AN ALCOHOL CONCENTRATION OF 0.04 OR MORE; CONFORMING COMMERCIAL DRIVER LICENSING LAWS TO FEDERAL LAWS; SPECIFYING THE TIME PERIODS FOR WHICH A COMMERCIAL DRIVER'S LICENSE MUST BE SUSPENDED; SPECIFYING VIOLATIONS FOR WHICH A COMMERCIAL DRIVER'S LICENSE MUST BE SUSPENDED; EXPANDING THE DEFINITION OF "SERIOUS TRAFFIC VIOLATION" TO INCLUDE VIOLATIONS OF COMMERCIAL DRIVER'S LICENSE LAWS; REQUIRING A PERSON

HeinOnline -- 2001 vol.I xxxvi 2001

TO SURRENDER A COMMERCIAL DRIVER'S LICENSE AFTER CONVICTION FOR CERTAIN VIOLATIONS OF COMMERCIAL MOTOR VEHICLE SAFETY LAWS; CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF JUSTICE REGARDING SUSPENSION AND REVOCATION OF DRIVERS' LICENSES; AMENDING SECTIONS 44-1-1005, 61-1-134, 61-2-302, 61-5-104, 61-5-105, 61-5-110, 61-5-111, 61-5-208, 61-8-406, 61-8-801, 61-8-802, 61-8-803, 61-8-805, 61-8-811, AND 61-11-101, MCA; AND PROVIDING AN APPLICABILITY DATE 957

208 *(House Bill No. 378; Lee)* PROVIDING FUNDING FOR AN ENGINEERING AND OPERATING STUDY OF AN AMTRAK ROUTE ACROSS SOUTHERN MONTANA; CREATING A SOUTHERN AMTRAK ROUTE ACCOUNT; ALLOWING THE DEPARTMENT OF TRANSPORTATION TO ACCEPT GIFTS, GRANTS, OR DONATIONS FOR THE ACCOUNT; AND PROVIDING AN EFFECTIVE DATE . . 972

209 *(House Bill No. 523; Whitaker)* INCREASING THE BENEFIT PAYABLE TO A RETIRED VOLUNTEER FIREFIGHTER COVERED BY THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; AMENDING SECTION 19-17-404, MCA; AND PROVIDING AN EFFECTIVE DATE 973

210 *(Senate Bill No. 10; Stonington)* GENERALLY REVISING THE LAWS GOVERNING INTERIM COMMITTEES AND INTERIM COMMITTEE FUNCTIONS; PROVIDING FOR COMMITTEE REVIEW OF STATEMENTS OF REASONABLE NECESSITY FOR ADMINISTRATIVE RULES; CLARIFYING THE ADOPTION DATE FOR AN ADMINISTRATIVE RULE; CREATING THE STATE-TRIBAL RELATIONS COMMITTEE; ASSIGNING LOCAL GOVERNMENT LIAISON RESPONSIBILITY; ASSIGNING RESPONSIBILITY FOR REVIEWING DRAFT LEGISLATION; REVISING COMMITTEE NAMES; CLARIFYING THE PROCESS FOR ASSIGNING INTERIM STUDIES; REVISING THE METHOD OF REPORTING TO THE LEGISLATURE; AMENDING SECTIONS 2-4-110, 2-4-302, 2-4-305, 2-4-306, 5-5-202, 5-5-211, 5-5-215, 5-5-216, 5-5-217, 5-5-223, 5-5-224, 5-5-225, 5-5-226, 5-5-227, 5-5-228, 5-11-106, 5-11-210, AND 75-1-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 973

211 *(Senate Bill No. 38; Grimes)* GENERALLY REVISING THE MEDICAL SUPPORT REFORM ACT TO COMPLY WITH FEDERAL LAW REGARDING ISSUANCE OF A MEDICAL SUPPORT NOTICE; AND AMENDING SECTIONS 40-5-804, 40-5-806, AND 40-5-810, MCA . . . 986

212 *(Senate Bill No. 107; Franklin)* ALLOWING THE USE OF TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION IN MENTAL ILLNESS PROCEEDINGS AT THE DISCRETION OF THE COURT; PROVIDING FOR COSTS; AND AMENDING SECTION 53-21-132, MCA 991

213 *(Senate Bill No. 146; Keenan)* CLARIFYING REQUIREMENTS FOR WATER AND WASTEWATER OPERATOR CERTIFICATION; AMENDING SECTION 37-42-102, MCA; REPEALING SECTION 37-42-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 993

214 *(Senate Bill No. 164; McNutt)* REVISING CERTAIN PROVISIONS OF THE UNEMPLOYMENT INSURANCE LAW, THE WORKERS' COMPENSATION ACT, THE OCCUPATIONAL DISEASE ACT, AND SILICOSIS BENEFITS LAW; CLARIFYING THE BURDEN OF PROOF IN WORKERS' COMPENSATION INSURANCE COVERAGE DISPUTES WITH THE DEPARTMENT OF LABOR AND INDUSTRY; RESTORING THE EXEMPTION FROM ATTACHMENT OF

UNEMPLOYMENT INSURANCE, WORKERS' COMPENSATION, OCCUPATIONAL DISEASE, AND SILICOSIS BENEFITS; REQUIRING WORKERS' COMPENSATION CLAIMS TO BE ADJUSTED BY AN IN-STATE ADJUSTER; CLARIFYING WORKERS' COMPENSATION INSURANCE COVERAGE REQUIREMENTS FOR TRUCK DRIVERS; REVISING THE WORKERS' COMPENSATION ASSESSMENT METHODOLOGY; RESTORING DISTRICT COURT JURISDICTION IN CASES INVOLVING THE FAILURE OF AN EMPLOYER TO PRODUCE BOOKS AND RECORDS; REQUIRING INSURERS TO FILE REPORTS OF MISCELLANEOUS CLAIM EXPENSES; SPECIFYING THE APPEAL PROCEDURE FOR CASES APPEALED FROM THE INDEPENDENT CONTRACTOR CENTRAL UNIT AND PROVIDING AN APPEAL TIME; CLARIFYING THAT THE WORKERS' COMPENSATION ASSESSMENT IS COMPUTED WITHOUT CONSIDERATION OF A DEDUCTIBLE; CLARIFYING THAT AN APPEAL OF A DEPARTMENT ORDER TO PAY INTERIM BENEFITS IS A NEW PROCEEDING IN THE WORKERS' COMPENSATION COURT; IDENTIFYING THE CURRENT STANDARD FOR MEASURING OCCUPATIONAL DEAFNESS; CLARIFYING THE TIME FOR CERTIFYING A CURRENT EMPLOYEE AS BEING VOCATIONALLY DISABLED; REVISING THE SUBSEQUENT INJURY FUND ASSESSMENT METHODOLOGY; ALLOWING ADDITIONAL ORGANIZATIONS TO BE DESIGNATED AS AUTHORIZED TO REPORT NOTICE OF COVERAGE; REQUIRING THE STATE FUND TO PROVIDE NOTICE OF CANCELLATION TO THE DEPARTMENT 20 DAYS PRIOR TO CANCELLATION; PROVIDING AN ADJUSTMENT IN SILICOSIS BENEFITS THAT IS CONSISTENT WITH THE APPROPRIATION LEVEL; AMENDING SECTIONS 30-9-129, 39-71-107, 39-71-117, 39-71-201, 39-71-304, 39-71-306, 39-71-415, 39-71-435, 39-71-610, 39-71-805, 39-71-906, 39-71-915, 39-71-2204, 39-71-2205, 39-71-2337, 39-71-2339, 39-72-606, 39-72-608, 39-73-103, 39-73-107, AND 39-73-109, MCA; REPEALING SECTION 39-72-605, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 995

215 *(Senate Bill No. 184; Cobb)* EXPANDING THE MEMBERSHIP OF THE INTERAGENCY COORDINATING COUNCIL FOR STATE PREVENTION PROGRAMS; AND AMENDING SECTION 2-15-225, MCA. 1013

216 *(Senate Bill No. 285; McNutt)* MODIFYING FUNDING OF THE HUNTER MANAGEMENT AND HUNTING ACCESS ENHANCEMENT PROGRAMS BY CREATING RESIDENT AND NONRESIDENT WILDLIFE CONSERVATION HUNTING ACCESS ENHANCEMENT FEES, TO BE USED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ENCOURAGE ENHANCED HUNTING ACCESS TO PRIVATE AND PUBLIC LANDS THROUGH VOLUNTARY PROGRAMS; PROVIDING THAT THE HUNTING ACCESS ENHANCEMENT FEE IS CHARGEABLE ONLY ONCE EACH LICENSE YEAR; INCREASING FROM $8,000 TO $12,000 THE INCENTIVE AMOUNT THAT MAY BE PAID TO LANDOWNERS PARTICIPATING IN THE HUNTER MANAGEMENT PROGRAM OR HUNTING ACCESS ENHANCEMENT PROGRAM; AMENDING SECTIONS 87-1-265, 87-1-267, 87-1-270, 87-2-202, 87-2-505, 87-2-510, AND 87-2-711, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE 1014

217 *(Senate Bill No. 306; Cocchiarella)* INCREASING THE SERVICE AND DISABILITY RETIREMENT BENEFITS FOR MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM WHO HAVE AT LEAST 25 YEARS OF MEMBERSHIP SERVICE; AMENDING

SECTIONS 19-3-904, 19-3-1002, AND 19-3-1008, MCA; AND PROVIDING AN EFFECTIVE DATE. 1020

218 *(Senate Bill No. 334; Grosfield)* REQUIRING THE DEPARTMENT OF JUSTICE TO ESTABLISH BY ADMINISTRATIVE RULE A DRIVER REHABILITATION AND IMPROVEMENT PROGRAM; REQUIRING THAT THE RULES PROVIDE FOR THE DEPARTMENT TO CONTRACT WITH QUALIFIED PRIVATE ENTITIES FOR OPERATION OF THE PROGRAM COURSES; ALLOWING THE DEPARTMENT TO COLLECT FEES FROM PARTICIPANTS IN THE PROGRAM COURSES TO OFFSET EXPENSES INCURRED BY THE DEPARTMENT IN ADMINISTERING THE PROGRAM AND CONTRACTING WITH PRIVATE ENTITIES; ALLOWING THE DEPARTMENT TO SUSPEND THE DRIVER'S LICENSE OF A PERSON WHO FAILS TO COMPLY WITH CERTAIN DRIVER REHABILITATION AND IMPROVEMENT COURSE REQUIREMENTS; DEFINING "DRIVER IN NEED OF REHABILITATION AND IMPROVEMENT"; REQUIRING THE DEPARTMENT TO NOTIFY A PERSON WHO HAS BEEN DECLARED A DRIVER IN NEED OF REHABILITATION AND IMPROVEMENT; AMENDING SECTIONS 61-2-302, 61-5-206, 61-11-203, 61-11-204, AND 61-13-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1022

219 *(House Bill No. 281; Lindeen)* ADOPTING THE GOVERNMENTAL INTERNET INFORMATION PRIVACY ACT; REQUIRING GOVERNMENTAL ENTITIES THAT PROVIDE AN INTERNET WEBSITE TO PROVIDE NOTICE OF THE ENTITIES' INFORMATION PRACTICES; AND PROHIBITING THE COLLECTION OF PERSONALLY IDENTIFIABLE INFORMATION UNLESS THE WEBSITE OPERATOR COMPLIES WITH CERTAIN PROVISIONS. 1028

220 *(Senate Bill No. 117; Tester)* EXEMPTING ALL SCHOOL DISTRICT LEVIES FROM PROPERTY TAX MILL LEVY LIMITATIONS; INCREASING THE MILL LEVY LIMIT FOR ADULT EDUCATION; AMENDING SECTIONS 15-10-420, 20-3-205, 20-7-705, AND 20-10-147, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1029

221 *(House Bill No. 30; Matthews)* CLARIFYING THAT THE DEPARTMENT OF CORRECTIONS MUST DESIGNATE A PLACE WITHIN THE STATE TO RECEIVE CUSTODY OF A COMMITTED YOUTH; CLARIFYING THAT A COUNTY IS RESPONSIBLE FOR PAYING FOR THE TRANSPORTATION OF A COMMITTED YOUTH ONLY WITHIN THE STATE; AND AMENDING SECTION 52-5-109, MCA. 1034

222 *(House Bill No. 109; Mangan)* PROVIDING THAT THE DEPARTMENT OF JUSTICE SHALL DEVELOP A STATEWIDE COMMUNITY EDUCATION CURRICULUM REGARDING RELEASE OF SEXUAL OR VIOLENT OFFENDERS INTO A COMMUNITY; ENABLING STATE AND LOCAL LAW ENFORCEMENT AGENCIES TO PUBLISH SEXUAL AND VIOLENT OFFENDER REGISTRATION ON THE INTERNET; AMENDING SECTION 46-23-508, MCA; AND PROVIDING AN EFFECTIVE DATE. 1035

223 *(House Bill No. 213; Newman)* ADOPTING THE UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT; PROVIDING FOR THE ENFORCEMENT OF FOREIGN ORDERS OF PROTECTION INCLUDING CUSTODY AND VISITATION ORDERS; PROVIDING

FOR JUDICIAL AND NONJUDICIAL ENFORCEMENT OF ORDERS OF PROTECTION; PROVIDING FOR REGISTRATION OF FOREIGN ORDERS OF PROTECTION; PROVIDING IMMUNITY FOR GOVERNMENTAL ENTITIES AND EMPLOYEES ENFORCING FOREIGN ORDERS OF PROTECTION; AMENDING SECTIONS 40-4-125 AND 40-15-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1036

224 *(House Bill No. 219; McKenney)* PROVIDING FOR THE SUSPENSION OF THE LICENSE OF A DRIVER WHO STEALS FUEL FROM A RETAIL ESTABLISHMENT AT WHICH MOTOR VEHICLES ARE FUELED; AND AMENDING SECTIONS 61-5-205 AND 61-8-734, MCA. 1040

225 *(House Bill No. 346; Schrumpf)* ELIMINATING THE REQUIREMENT THAT A RETAIL EGG DEALER MUST HAVE A LICENSE TO SELL EGGS; AMENDING SECTION 81-20-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1042

226 *(House Bill No. 377; Somerville)* REVISING THE TAX CREDIT FOR CONTRIBUTIONS TO QUALIFIED ENDOWMENTS; ESTABLISHING LIMITATIONS FOR CERTAIN TECHNIQUES USED FOR PLANNED GIFTS TO QUALIFIED ENDOWMENTS; REDUCING THE AMOUNT OF THE CREDIT FOR PLANNED GIFTS AND FOR CHARITABLE GIFTS; EXTENDING THE TERMINATION DATE FOR 6 YEARS; AMENDING SECTIONS 15-30-165, 15-30-166, 15-31-161, AND 15-31-162, MCA, AND SECTION 9, CHAPTER 537, LAWS OF 1997; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE 1043

227 *(House Bill No. 504; Gallik)* GENERALLY REVISING THE INSURANCE LAWS; PROVIDING THAT PHARMACY, OPTICAL, AND DENTAL DISCOUNT CARDS MUST STATE THAT THE DISCOUNT IS NOT INSURANCE; PROVIDING THAT THE COMMISSIONER OF INSURANCE MAY REQUEST BIOGRAPHICAL INFORMATION FROM OFFICERS OF FARM MUTUAL ASSOCIATIONS, RECIPROCAL INSURERS, HEALTH SERVICE CORPORATIONS, AND HEALTH MAINTENANCE ORGANIZATIONS; REQUIRING HEALTH SERVICE ORGANIZATIONS TO FILE A COPY OF ARTICLES OF AMENDMENT WITH THE COMMISSIONER; PROVIDING FOR A STATUTORY TIME LIMIT FOR ACTING ON VIOLATIONS; PROHIBITING INSURANCE PRODUCERS CONNECTED TO LONG-TERM CARE FACILITIES FROM SELLING LIFE OR DISABILITY POLICIES TO RESIDENTS; EXEMPTING SERVICE CONTRACTS FROM THE INSURANCE CODE; PROVIDING THAT MECHANICAL BREAKDOWN INSURANCE, PREPAID LEGAL INSURANCE, INVOLUNTARY UNEMPLOYMENT INSURANCE, AND GAP INSURANCE ARE TYPES OF CASUALTY INSURANCE; REVISING THE PRIORITY OF THE DISTRIBUTION OF CLAIMS; INCREASING THE AMOUNT OF SURPLUS FUNDS PROVIDED FOR CERTAIN INSURERS; REQUIRING THE COMMISSIONER TO EXAMINE HEALTH MAINTENANCE ORGANIZATIONS OPERATED BY INSURERS OR HEALTH SERVICE CORPORATIONS AT LEAST ONCE EVERY 5 YEARS; AMENDING SECTIONS 17-2-121, 33-1-102, 33-1-206, 33-1-214, 33-1-215, 33-1-216, 33-1-217, 33-1-311, 33-1-313, 33-1-314, 33-1-315, 33-1-316, 33-1-601, 33-1-701, 33-1-711, 33-2-307, 33-2-313, 33-2-316, 33-2-708, 33-2-1363, 33-2-1371, 33-2-1388, 33-3-203, 33-3-302, 33-3-303, 33-4-101, 33-4-407, 33-5-401, 33-10-102, 33-12-103, 33-12-202, 33-12-203, 33-12-212, 33-14-202, 33-15-414, 33-16-102, 33-16-403, 33-17-502, 33-17-1001, 33-17-1103, 33-17-1204, 33-19-406, 33-20-1201, 33-20-1209, 33-20-1210, 33-20-1211, 33-20-1212, 33-22-508,

33-22-701, 33-22-702, 33-22-703, 33-22-704, 33-22-1002, 33-22-1003, 33-22-1810, 33-25-301, 33-30-102, 33-30-107, 33-30-108, 33-31-111, 33-31-211, 33-31-311, 33-31-401, 45-6-301, 61-12-310, AND 61-12-315, MCA; AND REPEALING SECTIONS 33-1-213, 33-1-702, 33-1-703, 33-1-704, 33-1-706, 33-2-706, 33-4-405, 33-11-106, 33-17-221, 33-17-404, 33-17-1107, 33-17-1111, 33-17-1112, 33-17-1113, 33-17-1114, AND 33-23-311, MCA. 1046

228 *(House Bill No. 537; Sliter)* ALLOWING A COUNTY MUTUAL INSURER TO CHANGE ITS STATUS TO THAT OF A STATE MUTUAL INSURER BY AMENDING ITS ARTICLES OF INCORPORATION; PROVIDING THAT A COUNTY MUTUAL INSURER THAT CHANGES ITS STATUS TO THAT OF A STATE MUTUAL INSURER IS SUBJECT TO THE REQUIREMENTS FOR STATE MUTUAL INSURERS PROVIDED IN TITLE 33, CHAPTER 4, MCA; INCREASING THE REQUIRED SURPLUS FUNDS; AMENDING SECTIONS 33-4-204, 33-4-206, 33-4-401, AND 33-4-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1093

229 *(Senate Bill No. 323; McNutt)* AMENDING THE EXCLUSIVE REMEDY PROVISION IN THE WORKERS' COMPENSATION ACT TO PROVIDE AN INJURED EMPLOYEE WITH A CAUSE OF ACTION FOR DAMAGES AGAINST AN EMPLOYER OR A FELLOW EMPLOYEE WHO CAUSES INTENTIONAL INJURY; DEFINING "INTENTIONAL INJURY"; AMENDING SECTION 39-71-413, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1095

230 *(Senate Bill No. 159; Grosfield)* AUTHORIZING THE BOARD OF LAND COMMISSIONERS TO GRANT EASEMENTS FOR SPECIFIC USES IN STATE LANDS; AMENDING SECTION 77-2-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1096

231 *(Senate Bill No. 94; Shea)* AMENDING THE DEFINITION OF "BASE AID" TO INCLUDE 40 PERCENT OF THE SPECIAL EDUCATION ALLOWABLE COST PAYMENT; AMENDING THE DEFINITION OF "BASE BUDGET" TO INCLUDE 140 PERCENT OF THE SPECIAL EDUCATIONAL ALLOWABLE COST PAYMENT; AMENDING THE DEFINITION OF "MAXIMUM GENERAL FUND BUDGET" TO INCREASE THE SPECIAL EDUCATION ALLOWABLE COST PAYMENT COMPONENT FROM 153 PERCENT TO 175 PERCENT FOR SCHOOL FISCAL YEAR 2002; AMENDING THE DEFINITION OF "MAXIMUM GENERAL FUND BUDGET" FOR SCHOOL FISCAL YEAR 2003 AND SUCCEEDING YEARS TO INCLUDE THE GREATER OF 175 PERCENT OF THE SPECIAL EDUCATION ALLOWABLE COST PAYMENT OR THE RATIO, NOT TO EXCEED 200 PERCENT, OF THE DISTRICT'S SPECIAL EDUCATION ALLOWABLE COST EXPENDITURES TO THE SPECIAL EDUCATION ALLOWABLE COST PAYMENT FOR THE FISCAL YEAR THAT IS 2 YEARS PREVIOUS; AMENDING SECTION 20-9-306, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE 1097

232 *(House Bill No. 7; McCann)* APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AMENDING SECTION 2, CHAPTER 419, LAWS OF 1999; AND PROVIDING AN EFFECTIVE DATE . . . 1101

233 *(House Bill No. 190; Witt)* ALLOWING UP TO 25 PERCENT OF THE LOCAL MATCHING FUNDS REQUIRED FOR THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM TO BE IN THE FORM OF DEBT THAT WAS INCURRED BY LOCAL GOVERNMENT ENTITIES INCLUDED IN THE REGIONAL WATER SYSTEM TO CONSTRUCT INDIVIDUAL DRINKING WATER SYSTEMS BEFORE THE INDIVIDUAL SYSTEMS WERE CONNECTED TO THE REGIONAL SYSTEM; LIMITING THE AMOUNT OF AN INDIVIDUAL ENTITY'S DEBT THAT MAY BE USED FOR MATCHING FUNDS; AMENDING SECTION 90-6-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1105

234 *(House Bill No. 599; Haines)* DEFINING "MINIMUM SLASH HAZARD"; PROVIDING AN EXEMPTION FROM THE FIRE HAZARD REDUCTION AGREEMENT AND BOND UNLESS THE PERSON CLAIMING TO HAVE CREATED A MINIMUM SLASH HAZARD FAILS TO COMPLY WITH THE PROVISIONS RELATING TO MINIMUM SLASH HAZARDS; AND AMENDING SECTIONS 76-13-401, 76-13-408, AND 76-13-410, MCA. 1106

235 *(Senate Bill No. 321; Mahlum)* ADDING PHYSICAL THERAPISTS TO THE HEALTH CARE PROVIDERS FOR WHICH FREEDOM OF CHOICE IN SELECTION MUST BE PROVIDED UNDER DISABILITY INSURANCE POLICIES OR CERTIFICATES; REQUIRING HEALTH SERVICE CORPORATIONS TO COVER SERVICES PROVIDED BY PHYSICAL THERAPISTS; AMENDING SECTION 33-22-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1109

236 *(Senate Bill No. 361; McNutt)* PROVIDING THAT A PHYSICIAN, NURSE, PHYSICAL THERAPIST, OCCUPATIONAL THERAPIST, CHIROPRACTOR, PERSON PRACTICING DENTISTRY, HOSPITAL, PSYCHOLOGIST, LICENSED SOCIAL WORKER, OR LICENSED PROFESSIONAL COUNSELOR CLAIMING A LIEN FOR SERVICES OR PRODUCTS PROVIDED TO A PERSON INJURED BY ANOTHER IS NOT LIABLE FOR ATTORNEY FEES AND COSTS INCURRED IN CONNECTION WITH OBTAINING PAYMENTS OR BENEFITS SUBJECT TO THE LIEN; AND AMENDING SECTION 71-3-1114, MCA. 1110

237 *(Senate Bill No. 390; Cobb)* REVISING THE SCHOOL FINANCE LAWS; ESTABLISHING A SCHOOL FLEXIBILITY PROGRAM FOR K-12 PUBLIC SCHOOLS; REQUIRING VOTER APPROVAL FOR A LEVY TO INCREASE A DISTRICT'S FUNDS TO SUPPORT THE FLEXIBILITY PROGRAM; CLARIFYING THE REQUIREMENT THAT A SCHOOL DISTRICT OPERATE FOR BOTH THE MINIMUM NUMBER OF PUPIL INSTRUCTION DAYS AND THE MINIMUM NUMBER OF HOURS; CLARIFYING THE DUTY OF THE COUNTY SUPERINTENDENT REGARDING THE APPORTIONMENT OF COUNTY EQUALIZATION MONEY; PROHIBITING A CHANGE IN SCHOOL DISTRICT BOUNDARIES UNTIL A DISTRICT'S MILL LEVIES HAVE BEEN SET; CLARIFYING THAT THE OPENING OR REOPENING OF AN ELEMENTARY SCHOOL IS EFFECTIVE AT THE START OF THE FOLLOWING SCHOOL YEAR; CLARIFYING THE TRANSMITTAL OF FEES INTO THE TRAFFIC EDUCATION ACCOUNT; ELIMINATING REFERENCES TO CONSOLIDATION BONUS PAYMENTS; REQUIRING PAYMENT FROM A DISTRICT'S TUITION FUND FOR THE EDUCATION OF STUDENTS IN A YOUTH DETENTION FACILITY; CLARIFYING THE DUTY OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION REGARDING A BUDGET AMENDMENT FOR AN ENROLLMENT INCREASE; EXEMPTING AN EMERGENCY BUDGET AMENDMENT TAX LEVY

FROM CERTAIN TAX RESTRICTIONS; AUTHORIZING A SCHOOL DISTRICT WHOSE CURRENT YEAR GENERAL FUND BUDGET EXCEEDS THE ENSUING YEAR'S MAXIMUM GENERAL FUND BUDGET TO ADOPT A GENERAL FUND BUDGET FOR THE ENSUING YEAR UP TO THE CURRENT YEAR'S GENERAL FUND BUDGET FOR A MAXIMUM OF 5 YEARS; REQUIRING THE TRUSTEES TO GRADUALLY REDUCE THE GENERAL FUND BUDGET BY THE END OF THE 5-YEAR PERIOD; CHANGING THE DEADLINE FOR AN APPLICATION FOR AN UNUSUAL ENROLLMENT INCREASE; REVISING THE DEFINITION OF "STATE EQUALIZATION AID"; REQUIRING VOTER APPROVAL FOR A LEVY TO FUND TRANSITION COSTS WHEN A SCHOOL DISTRICT OPENS OR CLOSES A SCHOOL OR REPLACES A SCHOOL BUILDING OR WHEN A SCHOOL DISTRICT CONSOLIDATES WITH OR ANNEXES ANOTHER SCHOOL DISTRICT; CLARIFYING THE MINIMUM STANDARDS FOR SCHOOL BUSES; CHANGING THE TYPE OF FUND USED FOR THE ADMINISTRATION OF THE FEDERAL SCHOOL FOOD SERVICES PROGRAM; AMENDING SECTIONS 20-1-301, 20-3-205, 20-6-202, 20-6-314, 20-6-502, 20-7-504, 20-9-104, 20-9-130, 20-9-163, 20-9-168, 20-9-308, 20-9-314, 20-9-343, 20-9-502, 20-10-111, AND 20-10-201, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE 1112

238 *(Senate Bill No. 482; Ekegren)* PROVIDING THE METHOD TO BE USED IN ESTABLISHING THE RATE FOR ELECTED WORKERS' COMPENSATION COVERAGE FOR SELF-EMPLOYED VOLUNTEER FIREFIGHTERS; AMENDING SECTIONS 39-71-118 AND 39-71-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1128

239 *(House Bill No. 10; Kasten)* APPROPRIATING OIL OVERCHARGE MONEY FOR PROGRAMS ADMINISTERED BY THE STATE OF MONTANA; AMENDING SECTION 4, CHAPTER 49, LAWS OF 1999; AND PROVIDING EFFECTIVE DATES 1133

240 *(House Bill No. 12; Haines)* AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE STATE BUILDING ENERGY CONSERVATION PROGRAM; APPROVING ENERGY CONSERVATION PROJECTS FOR FISCAL YEARS 2002 AND 2003; APPROPRIATING BOND PROCEEDS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PLEDGING THE CREDIT OF THE STATE OF MONTANA TO SECURE THE BONDS TO BE ISSUED; REAPPROPRIATING STRIPPER-WELL PAYMENTS CONTAINED IN THE FEDERAL SPECIAL REVENUE FUND; REVISING THE PROCEDURE FOR IDENTIFYING BUILDINGS THAT HAVE A POTENTIAL FOR ENERGY SAVINGS; AMENDING SECTIONS 90-4-605 AND 90-4-606, MCA; AND PROVIDING AN EFFECTIVE DATE 1137

241 *(House Bill No. 29; Noennig)* ELIMINATING CONFLICTS IN THE LAW AND CLARIFYING THE RIGHTS AND DUTIES OF A LANDLORD AND TENANT WITH REGARD TO THE RETURN OF THE SECURITY DEPOSIT OF A DEPARTING TENANT; AND AMENDING SECTIONS 70-25-202 AND 70-25-205, MCA. 1140

242 *(House Bill No. 38; Schmidt)* PROVIDING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY PURCHASE SURPLUS MOTOR VEHICLES FOR PURCHASE BY PARTICIPANTS IN STATE PROGRAMS FUNDED BY TEMPORARY ASSISTANCE FOR NEEDY FAMILIES; PROVIDING CRITERIA FOR THE PARTICIPANTS TO PURCHASE THE VEHICLES; AND PROVIDING AN EFFECTIVE DATE 1141

243 *(House Bill No. 195; Wolery)* ADDING CRIMINAL POSSESSION OF DANGEROUS DRUGS AND CRIMINAL POSSESSION WITH INTENT TO DISTRIBUTE TO THE LIST OF CRIMES THAT, IF COMMITTED BY A YOUTH 16 YEARS OF AGE OR OLDER, ARE TRANSFERABLE FROM YOUTH COURT TO DISTRICT COURT; CLARIFYING APPLICATION OF ATTEMPT OR ACCOUNTABILITY TO TRANSFERABLE CRIMES; AND AMENDING SECTION 41-5-206, MCA. 1142

244 *(House Bill No. 332; Dale)* REVISING THE INSPECTION PROVISIONS OF THE MONTANA UNDERGROUND STORAGE TANK ACT; AMENDING SECTION 75-11-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1144

245 *(House Bill No. 408; Schmidt)* CLARIFYING WHAT CONSTITUTES AN OBSTRUCTION THAT A BOARD OF COUNTY COMMISSIONERS IS REQUIRED TO REMOVE FROM A COUNTY ROAD; AMENDING SECTION 7-14-2133, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1145

246 *(House Bill No. 419; Shockley)* CREATING IN THE OFFICE OF THE ATTORNEY GENERAL A PROGRAM FOR THE INVESTIGATION AND PROSECUTION OF VIOLATIONS OF FISH, WILDLIFE, AND PARKS LAWS 1146

247 *(House Bill No. 444; Somerville)* APPROPRIATING MONEY FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT OF JUSTICE FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE ASSESSMENT AND LITIGATION IN THE CLARK FORK RIVER BASIN; REQUIRING REPAYMENT OF THE EXPENDED AMOUNTS FROM ANY RECOVERY IN THE LITIGATION; REQUIRING A THREE-FOURTHS VOTE; AND PROVIDING EFFECTIVE DATES 1146

248 *(House Bill No. 451; Golie)* REVISING THE REGULATION OF HUNTING BY A PERSON WITH A DISABILITY; CLARIFYING THAT TURKEYS ARE NOT A GAME BIRD SPECIES THAT MAY BE HUNTED BY A DISABLED HUNTER WITH ONLY A CONSERVATION LICENSE; PROVIDING THAT A PERSON WHO WAS GRANTED A PERMIT TO HUNT FROM A VEHICLE DURING THE 2000 LICENSE YEAR OR A SUBSEQUENT LICENSE YEAR IS CONSIDERED ELIGIBLE FOR THE PERMIT DURING SUBSEQUENT LICENSE YEARS UNLESS PERMIT CRITERIA CHANGE; CLARIFYING THE CRITERIA FOR WHICH A DISABLED PERSON MAY BE GRANTED A PERMIT TO HUNT FROM A VEHICLE; AMENDING SECTION 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1147

249 *(House Bill No. 461; Shockley)* ALLOWING AN ACTIVE MEMBER OF THE MILITARY TO PURCHASE VETERANS' LICENSE PLATES; AMENDING SECTION 61-3-332, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE 1149

250 *(House Bill No. 468; Galvin-Halcro)* PROVIDING FOR A UNIVERSAL NEWBORN HEARING SCREENING PROGRAM; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO IMPLEMENT AN EDUCATION AND REPORTING PROGRAM; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR A TASK FORCE ON HEARING LOSS IN NEWBORN INFANTS; REQUIRING HOSPITALS, HEALTH CARE FACILITIES, AND HEALTH CARE PROVIDERS THAT PROVIDE OBSTETRIC SERVICES TO PROVIDE

EDUCATION AND SUBMIT QUARTERLY REPORTS; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE . . 1155

251 *(House Bill No. 477; Kasten)* PROHIBITING THE USE OF AN APPLICANT'S PROPERTY OR ASSETS IN THE CALCULATION OF FEES ASSESSED FOR THE PRODUCTION OF AN ENVIRONMENTAL IMPACT STATEMENT; AMENDING SECTION 75-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1157

252 *(House Bill No. 488; Wolery)* ALLOWING SCHOOL DISTRICTS THAT CONSOLIDATE TO EACH RETAIN THEIR BASIC ENTITLEMENT FOR 6 YEARS; RETAINING 100 PERCENT OF THE ENTITLEMENT FOR THE FIRST 3 YEARS; REDUCING THE ENTITLEMENT OVER THE NEXT 3 YEARS BY 25 PERCENT EACH YEAR; AMENDING SECTION 20-9-311, MCA; AND PROVIDING AN EFFECTIVE DATE 1157

253 *(House Bill No. 505; Dell)* ALLOWING THE USE OF THE PRIOR 3-YEAR AVERAGE ENROLLMENT TO CALCULATE REVERSIONS FOR FUNDED RESIDENT ENROLLMENT GROWTH IN THE MONTANA UNIVERSITY SYSTEM 1159

254 *(House Bill No. 529; Pattison)* REVISING OVERWEIGHT VEHICLE TOLERANCE STANDARDS; INCREASING FROM 7 PERCENT TO 10 PERCENT THE AMOUNT BY WHICH CERTAIN VEHICLES MAY EXCEED WEIGHT LIMITS WITHOUT INCURRING PENALTIES; INCREASING FROM 50 MILES TO 100 MILES THE DISTANCE THAT AN OVERWEIGHT FARM VEHICLE MAY TRAVEL FROM THE HARVESTED FIELD WITHOUT INCURRING PENALTIES; ELIMINATING THE REQUIREMENT THAT AN OVERWEIGHT FARM VEHICLE MAY NOT EXCEED 40 MILES AN HOUR; AND AMENDING SECTION 61-10-144, MCA 1160

255 *(House Bill No. 533; Vick)* CLARIFYING THAT OPERATING BUDGETS AND FUND TRANSFERS MUST CONFORM TO CONDITIONS CONTAINED IN THE GENERAL APPROPRIATIONS ACT; CLARIFYING THAT THE LEGISLATURE MAY RESTRICT THE USE OF FUNDS APPROPRIATED FOR PERSONAL SERVICES TO ALLOW USE ONLY FOR THE PURPOSE OF THE APPROPRIATION; CLARIFYING THAT CHANGES MUST BE APPROVED IN WRITING; AMENDING SECTIONS 2-15-112, 17-7-138, AND 17-7-139, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1161

256 *(House Bill No. 626; McCann)* RATIFYING THE COMPACT ENTERED INTO BY THE STATE OF MONTANA AND THE FORT BELKNAP INDIAN COMMUNITY OF THE FORT BELKNAP RESERVATION; ESTABLISHING A MITIGATION TRUST ACCOUNT; ESTABLISHING THE MILK RIVER WATERSHED IMPROVEMENT TRUSTS FUND ACCOUNTS; PROVIDING A STRUCTURE FOR THE ISSUANCE OF GRANTS AND LOANS; ESTABLISHING THE PEOPLES CREEK MINIMUM FLOW ACCOUNT; PROVIDING FOR THE FACILITATION OF THE DEVELOPMENT OF AN ECONOMIC DEVELOPMENT PLAN; AND APPROPRIATING FUNDS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION 1164

257 *(Senate Bill No. 144; Nelson)* TRANSFERRING FROM THE DEPARTMENT OF ADMINISTRATION TO THE DEPARTMENT OF REVENUE CERTAIN FINANCIAL RESPONSIBILITIES; REQUIRING COUNTY TREASURERS TO REMIT MONEY BELONGING TO THE STATE THAT WAS COLLECTED BY COUNTY TREASURERS AND TO SUBMIT THE COUNTY COLLECTIONS REPORTS TO THE

DEPARTMENT OF REVENUE; REQUIRING THAT CERTAIN COURT FINES, FEES, FORFEITURES, LICENSE FEES, AND OTHER MONEY BELONGING TO THE STATE BE REMITTED TO THE DEPARTMENT OF REVENUE; AMENDING SECTIONS 3-1-317, 3-10-601, 7-6-2421, 10-2-501, 15-1-116, 15-1-504, 15-24-925, 15-36-324, 20-9-212, 20-9-331, 20-9-333, 20-9-334, 20-9-360, 20-25-1007, 23-2-507, 23-2-512, 23-2-615, 23-2-616, 23-2-644, 23-2-804, 23-2-807, 23-2-814, 45-9-130, 50-52-105, 61-3-321, 61-3-465, 61-3-467, 61-3-509, 61-3-511, 61-5-121, 61-10-126, 61-10-148, 61-10-225, 61-12-701, 67-1-303, 72-16-912, 72-16-920, 75-10-532, 76-13-114, 77-1-117, 80-2-230, 80-7-704, 81-7-118, 87-1-114, 87-1-601, AND 87-4-808, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1215

258 *(Senate Bill No. 290; Franklin)* ALLOWING CERTIFIED ADVANCED PRACTICE REGISTERED NURSES TO PROVIDE MEDICAL CERTIFICATION OF A CAUSE OF DEATH ON A DEATH CERTIFICATE; AND AMENDING SECTIONS 50-15-101, 50-15-403, 50-15-404, AND 50-15-405, MCA 1242

259 *(Senate Bill No. 354; Crismore)* PROHIBITING THE STATE BOARD OF LAND COMMISSIONERS AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM DESIGNATING, TREATING, OR DISPOSING OF ANY INTEREST IN STATE FOREST LANDS FOR PRESERVATION PURPOSES PRIOR TO OBTAINING THE FULL MARKET VALUE OF THE FOREGONE USES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1245

260 *(House Bill No. 261; Jent)* CREATING THE OFFENSE OF OPERATION OF AN UNLAWFUL CLANDESTINE LABORATORY FOR THE CRIMINAL PRODUCTION OR MANUFACTURE OF DANGEROUS DRUGS; PROVIDING PENALTIES; AND PROVIDING AN EFFECTIVE DATE 1246

261 *(House Bill No. 319; Galvin-Halcro)* REQUIRING A PERSON SELLING A VEHICLE OR TRADING A VEHICLE TO A DEALER TO DISCLOSE WHETHER TAXES OR FEES IN LIEU OF TAX ARE DUE OR PAST DUE AT THE TIME OF TRANSFER; REQUIRING THAT TAXES OR FEES IN LIEU OF TAXES DUE ON A VEHICLE SOLD OR TRADED TO A NEW OR USED CAR DEALER BE PAID BY THE SELLER OF THE VEHICLE UNLESS THE PERSON WHO PURCHASES THAT VEHICLE FROM THE DEALER AGREES IN WRITING TO ASSUME THE PAYMENT OF THOSE TAXES OR FEES; AMENDING SECTION 61-3-501, MCA; AND PROVIDING AN APPLICABILITY DATE 1248

262 *(Senate Bill No. 245; Holden)* CREATING THE MONTANA FARM AND RANCH RISK MANAGEMENT ACT; PROVIDING FOR THE CREATION OF FARM AND RANCH RISK MANAGEMENT ACCOUNTS BY ELIGIBLE INDIVIDUALS OR FAMILY FARM CORPORATIONS IN AN ELIGIBLE AGRICULTURAL BUSINESS; ALLOWING DEPOSITS NOT TO EXCEED, DURING A TAX YEAR, $20,000 OR 20% OF THE DEPOSITOR'S INCOME FROM AGRICULTURAL BUSINESS; PROVIDING AN EXCLUSION FROM TAXABLE INCOME FOR THE AMOUNT DEPOSITED INTO THE ACCOUNT; PROVIDING THAT A DEPOSIT MAY NOT REMAIN IN AN ACCOUNT MORE THAN 5 YEARS; PROVIDING THAT DISTRIBUTIONS FROM THE ACCOUNT ARE TAXABLE; PROVIDING FOR PENALTIES FOR DEPOSITS THAT ARE NOT DISTRIBUTED WITHIN 5 YEARS; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN APPLICABILITY DATE AND A CONTINGENT TERMINATION PROVISION. 1249

263 *(Senate Bill No. 253; Cocchiarella)* CREATING THE MONTANA RENTAL-PURCHASE AGREEMENT ACT; REQUIRING THE DISCLOSURE OF CERTAIN INFORMATION FOR EACH RENTAL-PURCHASE AGREEMENT; PROHIBITING CERTAIN PROVISIONS IN RENTAL-PURCHASE AGREEMENTS; PROVIDING THAT A RENTAL-PURCHASE AGREEMENT MAY BE REINSTATED; REQUIRING WRITTEN RECEIPTS WHEN PAYMENT IS MADE BY CASH OR MONEY ORDER; PROVIDING FOR THE RENEGOTIATION OR EXTENSION OF A RENTAL-PURCHASE AGREEMENT; REQUIRING THAT CERTAIN INFORMATION BE INCLUDED IN ANY ADVERTISING OF PROPERTY SUBJECT TO A RENTAL-PURCHASE AGREEMENT; PROVIDING ENFORCEMENT PROVISIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 1254

264 *(Senate Bill No. 286; Stonington)* ALLOWING CERTAIN MODIFICATIONS TO HEADWATERS STATE PARK IN ANTICIPATION OF THE LEWIS AND CLARK BICENTENNIAL; AMENDING SECTION 23-1-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. . . 1259

265 *(Senate Bill No. 405; Jergeson)* PROVIDING FOR THE DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT OF ADMINISTRATION WITH REGARD TO ELECTRONIC GOVERNMENT SERVICES; PROVIDING DEFINITIONS; AUTHORIZING CONVENIENCE FEES FOR ELECTRONIC GOVERNMENT SERVICES; AUTHORIZING THE DEPARTMENT TO ADOPT RULES; PROVIDING FOR AN ADVISORY COUNCIL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . 1261

266 *(House Bill No. 8; McCann)* APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 56TH LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN EFFECTIVE DATE. 1264

267 *(House Bill No. 459; Mood)* REVISING THE MONTANA ENVIRONMENTAL POLICY ACT; PROVIDING CRITERIA FOR THE ANALYSIS OF PROJECT ALTERNATIVES; PROVIDING DEFINITIONS; AND AMENDING SECTION 75-1-201, MCA 1268

268 *(House Bill No. 473; Younkin)* CLARIFYING THAT CERTAIN ACTIONS SUBJECT TO THE MONTANA ENVIRONMENTAL POLICY ACT MAY NOT BE CONDITIONED BEYOND STATUTORY OR REGULATORY REQUIREMENTS; PROVIDING DEFINITIONS; AMENDING SECTION 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1271

269 *(Senate Bill No. 3; Kitzenberg)* DIRECTING THE DEPARTMENT OF TRANSPORTATION TO CONSTRUCT A FOUR-LANE HIGHWAY GENERALLY ALONG THE PRESENT ROUTE OF U.S. HIGHWAY 2; NOTIFYING THE TRIBAL GOVERNMENTS ON THE FORT PECK, FORT BELKNAP, BLACKFEET, AND FLATHEAD INDIAN RESERVATIONS; AMENDING SECTION 60-2-110, MCA; AND PROVIDING AN EFFECTIVE DATE. 1274

270 *(Senate Bill No. 31; Berry)* GENERALLY REVISING THE LAWS GOVERNING STATE TRUST LAND; AUTHORIZING THE USE OF

HISTORIC RIGHT-OF-WAY EASEMENTS FOR EXISTING UTILITIES; EXTENDING THE DEADLINE FOR FILING AN APPLICATION FOR A HISTORIC RIGHT-OF-WAY DEED; CLARIFYING THAT FULL FAIR MARKET VALUE MUST BE OBTAINED FOR THE USE OF SCHOOL TRUST LANDS; EXTENDING THE EFFECTIVE PERIOD FOR HISTORIC RIGHT-OF-WAY DEEDS AND EASEMENTS; AMENDING SECTIONS 77-1-130, 77-1-208, 77-2-206, 77-2-325, AND 77-6-302, MCA, AND SECTION 5, CHAPTER 461, LAWS OF 1997; REPEALING SECTIONS 77-5-211, 77-6-304, AND 77-6-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1275

271 *(Senate Bill No. 50; Waterman)* REQUIRING THAT ALL STATE-OWNED AND STATE-OCCUPIED BUILDINGS AND ALL BUILDINGS LEASED AND OCCUPIED ONLY BY THE STATE BE SMOKE-FREE BY CERTAIN DATES; REQUIRING THAT IN BUILDINGS LEASED AND OCCUPIED PARTIALLY BY THE STATE, AGENCY HEADS MAKE THE PORTIONS OCCUPIED BY THE STATE SMOKE-FREE BY A CERTAIN DATE; ENCOURAGING THAT STATE AGENCIES WORK TO MAKE THE BUILDINGS SMOKE-FREE; PROVIDING STATE POLICY; REVISING DEFINITIONS; AMENDING SECTIONS 50-40-202 AND 50-40-203, MCA; REPEALING SECTIONS 50-40-204, 50-40-205, AND 50-40-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1279

272 *(Senate Bill No. 51; Hargrove)* REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ESTABLISH AN EMPLOYEE WELFARE BENEFIT PLAN CONSISTING OF INDIVIDUAL HEALTH CARE EXPENSE TRUST ACCOUNTS FOR PUBLIC EMPLOYEES; PROVIDING FOR PROGRAM ADMINISTRATION; PROVIDING THAT CONVERSION OF UNUSED SICK LEAVE TO EMPLOYER CONTRIBUTIONS TO THE PLAN MAY BE USED AS A FUNDING SOURCE; PROVIDING A TAX EXEMPTION FOR CONTRIBUTIONS, EARNINGS, AND PAYMENTS; PROVIDING DEATH BENEFITS; REQUIRING THAT THE BENEFIT PLAN BE SUBMITTED TO THE COMMISSIONER OF INTERNAL REVENUE FOR A LETTER OF DETERMINATION TO ENSURE THAT THE PLAN IS FEDERALLY TAX-QUALIFIED; AUTHORIZING A LOAN FROM THE BOARD OF INVESTMENTS; CREATING A STATE DEBT; AMENDING SECTIONS 2-18-618 AND 15-30-111, MCA; AND PROVIDING EFFECTIVE DATES. 1280

273 *(Senate Bill No. 60; McCarthy)* APPROVING THE COMPACT FOR EDUCATION ESTABLISHED BY THE EDUCATION COMMISSION OF THE STATES; PROVIDING FOR THE APPOINTMENT OF SEVEN COMMISSIONERS FOR MONTANA; AND PROVIDING AN EFFECTIVE DATE 1288

274 *(Senate Bill No. 96; Mahlum)* REDUCING THE WAITING PERIOD FOR RECEIVING TEMPORARY TOTAL DISABILITY BENEFITS FROM 6 DAYS TO 5 DAYS; AMENDING SECTION 39-71-736, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1294

275 *(Senate Bill No. 104; Sprague)* GENERALLY REVISING FISH AND WILDLIFE ENFORCEMENT STATUTES; CLARIFYING THE FORFEITURE OF PRIVILEGES PENALTY FOR WASTE OF GAME; CLARIFYING THE AUTHORITY OF A PEACE OFFICER, GAME WARDEN, OR OTHER AUTHORIZED PERSON TO DESTROY A DOG THAT CHASES, STALKS, OR PURSUES A HOOVED GAME ANIMAL AND PROVIDING AN OPTIONAL CRIMINAL PENALTY FOR THE DOG OWNER; CLARIFYING THE OFFENSE OF PROVIDING

SUPPLEMENTAL FEED ATTRACTANTS TO GAME ANIMALS AND ADDING AN OFFENSE OF FEEDING OR ALLOWING BEARS TO FEED; REVISING TRAP TAGGING REQUIREMENTS TO INCLUDE TRAPS USED FOR ANY ANIMAL AND ALLOWING USE OF THE TRAPPER'S WILDLIFE CONSERVATION LICENSE NUMBER ON TRAP TAGS; AMENDING SECTIONS 87-3-102, 87-3-124, 87-3-130, AND 87-3-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1294

276 *(Senate Bill No. 130; Thomas)* AUTHORIZING THE TRUSTEES OF A SCHOOL DISTRICT TO EXCHANGE CERTAIN DISTRICT PROPERTY WITH A PUBLIC OR PRIVATE ENTITY UPON RECEIPT OF A BINDING WRITTEN AGREEMENT THAT USE OF THE PROPERTY WILL BENEFIT THE SCHOOL DISTRICT AND UPON APPROVAL OF THE ELECTORATE; REQUIRING THE DEED FOR THE LAND EXCHANGE TO CONTAIN REVERSIONARY CLAUSES TO ALLOW FOR RETURN OF THE LAND TO SCHOOL DISTRICT OWNERSHIP IF THE WRITTEN AGREEMENT IS NOT COMPLIED WITH; AMENDING SECTION 20-6-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1297

277 *(Senate Bill No. 132; Halligan)* PROVIDING FOR A SAFE HAVEN FOR ABANDONED NEWBORNS; PROVIDING FOR SURRENDER OF A NEWBORN TO AN EMERGENCY SERVICES PROVIDER; DEFINING TERMS; PROVIDING FOR NOTIFICATION OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING THAT THE DEPARTMENT ASSUME CARE, CUSTODY, AND CONTROL OF A SURRENDERED NEWBORN; PROVIDING IMMUNITY TO THOSE TO WHOM A NEWBORN IS SURRENDERED; PROHIBITING CRIMINAL CHARGES OF ABANDONMENT IF A NEWBORN IS SURRENDERED WITHOUT INTENTIONALLY INFLICTED INJURY IN ACCORDANCE WITH THIS ACT; PROVIDING FOR A CUSTODY ACTION BY A BIOLOGICAL PARENT WITHIN 60 DAYS OF SURRENDER; REQUIRING THE DEPARTMENT TO ESTABLISH A SAFE DELIVERY PROGRAM; AMENDING SECTIONS 40-4-211 AND 41-3-102, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 1298

278 *(Senate Bill No. 138; Nelson)* GENERALLY REVISING THE LAWS RELATING TO LOCAL GOVERNMENT ACCOUNTING, BUDGETING, AND FINANCIAL MATTERS; AMENDING SECTIONS 2-7-501, 2-7-503, 2-7-504, 2-7-505, 2-7-513, 2-9-316, 2-9-804, 3-5-602, 3-5-901, 7-1-114, 7-3-4432, 7-6-204, 7-6-2111, 7-4-2514, 7-6-2113, 7-6-2202, 7-6-2521, 7-6-2524, 7-6-2601, 7-6-2602, 7-6-2607, 7-6-4302, 7-6-4501, 7-12-4181, 7-12-4183, 50-60-302, 53-2-322, AND 85-3-423, MCA; REPEALING SECTIONS 7-6-601, 7-6-603, 7-6-604, 7-6-2112, 7-6-2201, 7-6-2203, 7-6-2211, 7-6-2212, 7-6-2213, 7-6-2214, 7-6-2218, 7-6-2219, 7-6-2220, 7-8-2221, 7-6-2301, 7-6-2302, 7-6-2303, 7-6-2311, 7-6-2312, 7-6-2313, 7-6-2314, 7-6-2315, 7-6-2316, 7-6-2317, 7-6-2318, 7-6-2319, 7-6-2320, 7-6-2321, 7-6-2322, 7-6-2323, 7-6-2324, 7-6-2325, 7-6-2326, 7-6-2327, 7-6-2328, 7-6-2329, 7-6-2330, 7-6-2331, 7-6-2335, 7-6-2341, 7-6-2342, 7-6-2343, 7-6-2345, 7-6-2348, 7-6-2351, 7-6-2352, 7-6-2502, 7-6-2525, 7-6-2702, 7-6-4101, 7-6-4104, 7-6-4121, 7-6-4123, 7-6-4124, 7-6-4134, 7-6-4135, 7-6-4140, 7-6-4141, 7-6-4201, 7-6-4202, 7-6-4203, 7-6-4205, 7-6-4206, 7-6-4207, 7-6-4208, 7-6-4209, 7-6-4232, 7-6-4234, 7-6-4237, 7-6-4238, 7-6-4240, 7-6-4259, 7-6-4260, 7-6-4261, 7-6-4262, 7-6-4263, 7-6-4264, 7-6-4265, 7-6-4266, 7-6-4267, 7-6-4270, 7-6-4271, 7-6-4272, 7-6-4407, AND 7-6-4408, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1309

279 *(Senate Bill No. 152; Mahlum)* REVISING THE LAWS RELATING TO THE DISPOSITION OF EXCESS LANDS BY THE DEPARTMENT OF TRANSPORTATION; ELIMINATING THE PROVISION THAT AN ORIGINAL OWNER MAY REQUIRE THE DEPARTMENT TO SELL THE LAND INSTEAD OF EXCHANGING IT; REQUIRING THE DEPARTMENT TO OFFER TO SELL TO ADJACENT LANDOWNERS LAND PROPOSED FOR EXCHANGE; RAISING THE MINIMUM VALUE AT WHICH THE DEPARTMENT MUST OFFER THE LAND FOR SALE; ALLOWING THE DEPARTMENT TO SELL LAND TO ANOTHER GOVERNMENTAL ENTITY WITHOUT A PUBLIC AUCTION; RAISING THE MINIMUM VALUE AT WHICH A REAPPRAISAL MUST BE DONE TO DETERMINE FAIR MARKET VALUE; AND AMENDING SECTIONS 60-4-201, 60-4-202, AND 60-4-203, MCA 1333

280 *(Senate Bill No. 167; Stonington)* GENERALLY REVISING THE SANITATION IN SUBDIVISIONS LAWS; AUTHORIZING THE REVIEWING AUTHORITY TO REQUIRE EASEMENTS AND COVENANTS; REQUIRING PURCHASERS TO BE NOTIFIED OF CONDITIONS OF SUBDIVISION APPROVAL; REQUIRING AS-BUILT INSPECTIONS OF SEWAGE SYSTEMS; AUTHORIZING THE REVIEWING AUTHORITY TO REQUIRE EASEMENTS AND COVENANTS; DEFINING "ADEQUATE MUNICIPAL FACILITIES"; CONFORMING DEFINITIONS TO THOSE IN OTHER ACTS; REQUIRING THE DEPARTMENT TO ADOPT RULES REGARDING CRITERIA FOR GRANTING WAIVERS AND DEVIATIONS AND FOR EASEMENTS, COVENANTS, AGREEMENTS, AND MANAGEMENT ENTITIES; ALLOWING FOR REVIEW OF CERTAIN MAJOR AND MINOR SUBDIVISIONS BY LOCAL DEPARTMENTS AND BOARDS OF HEALTH; REQUIRING THE APPLICANT TO SUBMIT EVIDENCE THAT WATER SUPPLY SYSTEMS ARE IN COMPLIANCE WITH STATE AND LOCAL LAWS AND REGULATIONS; ELIMINATING THE MANDATORY SOIL PERCOLATION TESTING REQUIREMENT; ALLOWING FEES TO BE USED FOR INSPECTION AND ENFORCEMENT ACTIVITIES; CLARIFYING CERTIFICATION REQUIREMENTS FOR SUBDIVISIONS EXEMPT FROM REVIEW BECAUSE ADEQUATE MUNICIPAL FACILITIES AND STORM WATER DRAINAGE WILL BE PROVIDED; REQUIRING A DEVELOPER TO GIVE NOTICE TO A LOCAL BOARD OF HEALTH BEFORE FILING AN APPLICATION FOR CERTIFICATION OF SUBDIVISION APPROVAL; REPEALING CERTAIN PROVISIONS RELATED TO DELEGATION OF REVIEW TO LOCAL GOVERNMENT; REPEALING REDUNDANT PROVISIONS; CLARIFYING PROVISIONS GOVERNING SUBDIVISION ACTIVITIES AND REVIEW AND APPROVAL OF SUBDIVISIONS; AMENDING SECTIONS 76-4-102, 76-4-104, 76-4-105, 76-4-111, 76-4-121, 76-4-122, 76-4-125, 76-4-127, 76-4-130, 76-4-131, AND 76-4-132, MCA; REPEALING SECTIONS 76-4-123, 76-4-124, AND 76-4-128, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES 1334

281 *(Senate Bill No. 170; Halligan)* GENERALLY REVISING THE LAWS RELATED TO CHILD ABUSE AND NEGLECT PROCEEDINGS; ALLOWING SCHOOL DISTRICTS TO DISCLOSE CERTAIN INFORMATION TO THE COURT, THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, AND A CHILD'S LEGAL REPRESENTATIVES; REQUIRING APPOINTMENT OF COUNSEL FOR INDIGENT PARENTS WHEN THE STATE REQUESTS A DETERMINATION THAT PRESERVATION OR REUNIFICATION SERVICES NEED NOT BE PROVIDED; ALLOWING ALTERNATIVE

DISPUTE RESOLUTION IN CHILD ABUSE AND NEGLECT CASES; REQUIRING A SHOW CAUSE HEARING TO BE HELD WITHIN 10 DAYS, EXCLUDING WEEKENDS AND HOLIDAYS, OF AN INITIAL PETITION; REQUIRING AN ADJUDICATION TO BE MADE WITHIN 90 DAYS OF A SHOW CAUSE HEARING; REQUIRING A DISPOSITIONAL HEARING TO BE HELD WITHIN 20 DAYS AFTER AN ADJUDICATORY ORDER; AMENDING SECTIONS 41-3-101, 41-3-205, 41-3-301, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-412, 41-3-420, AND 41-3-421, MCA; AND REPEALING SECTIONS 41-3-413 AND 41-3-1014, MCA 1344

282 *(Senate Bill No. 197; Tester)* REQUIRING A PERSON WHO WILDCRAFTS TO OBTAIN WRITTEN PERMISSION OR A PERMIT PRIOR TO WILDCRAFTING; PROVIDING EXEMPTIONS TO THE REQUIREMENT OF WRITTEN PERMISSION OR A PERMIT; DESCRIBING THE REQUIREMENTS FOR A BUYER OF WILDCRAFTED PLANT MATERIAL; PROVIDING A RESTRICTION ON THE LIABILITY OF A LANDOWNER THAT ALLOWS WILDCRAFTING ON THE LANDOWNER'S PROPERTY; ESTABLISHING VIOLATIONS; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1367

283 *(Senate Bill No. 203; Cole)* REPLACING THE LIMIT ON THE NUMBER OF AXLES ALLOWED ON A COMMERCIAL MOTOR VEHICLE WITH THE FEDERAL GROSS VEHICLE WEIGHT LIMITS; AND AMENDING SECTION 61-10-107, MCA 1371

284 *(Senate Bill No. 204; Cobb)* CLARIFYING THAT A COURT SENTENCING A CRIMINAL OFFENDER MUST SPECIFY THE TOTAL AMOUNT OF RESTITUTION TO BE PAID TO THE VICTIM; PROVIDING THAT THE TOTAL AMOUNT ORDERED TO BE PAID MAY BE COLLECTED BY THE VICTIM AT ANY TIME, INCLUDING AFTER STATE SUPERVISION OF THE OFFENDER ENDS, USING ANY METHOD ALLOWED BY LAW FOR THE COLLECTION OF A CIVIL JUDGMENT; AMENDING SECTIONS 46-18-244 AND 46-18-249, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE 1372

285 *(Senate Bill No. 210; Waterman)* ALLOWING EMPLOYEES OF COUNTY HOSPITALS AND REST HOMES IN FIRST- AND SECOND-CLASS COUNTIES TO HAVE THE OPTION TO NOT JOIN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AND AMENDING SECTION 19-3-412, MCA. 1374

286 *(Senate Bill No. 221; Johnson)* ELIMINATING THE REQUIREMENT FOR A CERTIFICATE OF NEED FOR CERTAIN HEALTH CARE FACILITIES; AMENDING SECTION 50-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1375

287 *(Senate Bill No. 229; Cocchiarella)* PROVIDING THAT IT IS NOT MARITAL STATUS DISCRIMINATION FOR AN EMPLOYER TO EMPLOY OR OFFER TO EMPLOY A PERSON WHO IS QUALIFIED FOR THE POSITION AND TO ALSO EMPLOY OR OFFER TO EMPLOY THE PERSON'S SPOUSE; AND AMENDING SECTION 49-2-303, MCA 1377

288 *(Senate Bill No. 241; Wells)* CHANGING THE COMPOSITION OF THE PLANNING AND ZONING COMMISSION; AUTHORIZING COUNTIES TO ENFORCE THE REGULATIONS AND REQUIREMENTS ADOPTED FOR PLANNING AND ZONING DISTRICTS CREATED UPON CITIZEN PETITION; AND AMENDING SECTIONS 76-2-101 AND 76-2-102, MCA 1378

289 *(Senate Bill No. 279; McNutt)* AUTHORIZING A 4 PERCENT LOAN RATE FOR THE FIRST 5 YEARS FOR A LOAN TO A BUSINESS CREATING OR RETAINING 10 TO 14 JOBS UNDER THE VALUE-ADDED LOAN PROGRAM; ESTABLISHING THE BOARD OF INVESTMENTS' POSTED RATE AS THE RATE OF INTEREST FOR THE THIRD 5-YEAR PERIOD ON A LOAN; PROVIDING THAT THE RATE OF INTEREST ON A LOAN IS THE BOARD'S POSTED RATE UNTIL JOB CERTIFICATION REQUIREMENTS HAVE BEEN MET; PROVIDING A MATHEMATICAL NUMERICAL THRESHOLD FOR DETERMINING LOAN PROGRAM ELIGIBILITY; AMENDING SECTION 17-6-317, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1379

290 *(Senate Bill No. 289; Tester)* PROVIDING THAT ALL NEW NATIONAL GUARD FIREFIGHTERS MUST BE COVERED BY THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM; AMENDING SECTIONS 19-13-104, 19-13-210, 19-13-212, 19-13-605, 19-13-805, AND 19-13-1007, MCA; AND PROVIDING EFFECTIVE DATES. 1382

291 *(Senate Bill No. 300; Holden)* ALLOWING THE GOVERNOR TO ISSUE AN EXECUTIVE ORDER TO EXEMPT VEHICLES FROM SIZE AND WEIGHT LIMITS UNDER CERTAIN CIRCUMSTANCES 1385

292 *(Senate Bill No. 305; Cocchiarella)* PROVIDING THAT AN INJURED WORKER WITH PHYSICAL RESTRICTIONS WHO HAS NOT REACHED MAXIMUM HEALING MAY, UPON APPROVAL OF THE TREATING PHYSICIAN, RETURN TO AN ALTERNATIVE OR MODIFIED EMPLOYMENT POSITION WITH A DIFFERENT EMPLOYER IF AN ALTERNATIVE OR MODIFIED EMPLOYMENT POSITION IS NOT AVAILABLE WITH THE EMPLOYER THAT WAS THE INJURED WORKER'S EMPLOYER AT THE TIME OF INJURY; AMENDING SECTION 39-71-712, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1386

293 *(Senate Bill No. 319; Cole)* GENERALLY REVISING THE MONTANA MAJOR FACILITY SITING ACT; CLARIFYING THE POLICY OF THE MONTANA MAJOR FACILITY SITING ACT; ELIMINATING GENERATION FACILITIES, UNDERGROUND IN SITU GASIFICATION OF COAL, AND OTHER ENERGY-RELATED PROJECTS FROM THE DEFINITION OF "FACILITIES"; MODIFYING THE DEFINITION OF "FACILITIES" AS IT RELATES TO PIPELINES; REDUCING THE TIME REQUIRED FOR THE DEPARTMENT'S NOTIFICATION THAT AN APPLICATION IS OR IS NOT IN COMPLIANCE AND COMPLETE; EXPEDITING DEPARTMENTAL DECISIONS AND ACTIONS CONTAINED IN OTHER LAWS; REDUCING THE TIME REQUIRED FOR THE ISSUANCE OF A DEPARTMENTAL REPORT, THE ISSUANCE OF A CERTIFICATE UNDER EXPEDITED REVIEW, AND THE ISSUANCE OF A FINAL DECISION AND CERTIFICATION; GENERALLY REVISING THE DEPARTMENT'S AND BOARD'S ROLES AND AUTHORITIES; ELIMINATING THE PROVISIONS FOR CERTIFICATE RENEWALS RELATED TO GENERATION FACILITIES; AMENDING SECTIONS 75-20-102, 75-20-104, 75-20-207, 75-20-208, 75-20-211, 75-20-216, 75-20-219, 75-20-223, 75-20-231, 75-20-301, 75-20-303, 75-20-304, AND 75-20-406, MCA; REPEALING SECTIONS 75-20-225 AND 75-20-226, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . 1388

294 *(Senate Bill No. 340; Berry)* PROVIDING GUIDELINES FOR PERSONAL TRANSACTIONS BY REAL ESTATE SALESPERSONS; DEFINING "PERSONAL TRANSACTION"; REVISING REAL ESTATE LAW ON PLACING FUNDS IN A REGISTERED BROKER'S

TRUST ACCOUNT BY PROVIDING THAT A SALESPERSON IS NOT REQUIRED TO PLACE MONEY RECEIVED BY A PERSON WITH THE SALESPERSON'S SUPERVISING BROKER IF THE MONEY RECEIVED BY THE SALESPERSON IS PART OF THE SALESPERSON'S PERSONAL TRANSACTION; AMENDING SECTIONS 37-51-309 AND 37-51-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1400

295 *(Senate Bill No. 357; Ryan)* REQUIRING A VIATICAL DISCLOSURE FORM; DEFINING "VIATICAL SETTLEMENT PURCHASE AGREEMENT" AND "VIATICAL SETTLEMENT PURCHASER"; REQUIRING THAT CERTAIN INFORMATION MUST BE DISCLOSED TO A VIATICAL SETTLEMENT PURCHASER BY A VIATICAL SETTLEMENT PROVIDER; AMENDING SECTIONS 33-1-501, 33-20-1302, AND 33-20-1311, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1403

296 *(Senate Bill No. 358; DePratu)* PROVIDING FOR GENERAL PUBLIC ACCESS TO MOTOR VEHICLE ACCIDENT REPORTS AND SUPPLEMENTAL INFORMATION FOR THE PURPOSE OF RESEARCH INTO THE HISTORY OF VEHICLES; PROHIBITING ACCESS TO INFORMATION IDENTIFYING ANY PERSON OR INSURER NAMED IN THE RECORDS; AND AMENDING SECTION 61-7-114, MCA 1408

297 *(Senate Bill No. 360; Waterman)* GENERALLY REVISING THE LAWS GOVERNING TELECOMMUNICATIONS ACCESS FOR PERSONS WITH DISABILITIES; INCLUDING INDIVIDUALS WITH MOBILITY IMPAIRMENT IN THE PROGRAM; INCLUDING INFANT SCREENING EQUIPMENT IN THE PROGRAM; PROVIDING GUIDELINES FOR A MEANS TEST FOR INDIVIDUAL PARTICIPATION IN THE PROGRAM; PROVIDING FOR THE ADOPTION OF A SLIDING FEE SCALE FOR PROVIDING EQUIPMENT TO CERTAIN INDIVIDUALS; AMENDING SECTIONS 53-19-302, 53-19-306, 53-19-307, AND 53-19-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1409

298 *(Senate Bill No. 373; Halligan)* ALLOWING CAPTIVE INSURANCE COMPANIES TO TRANSACT BUSINESS IN THIS STATE; PROVIDING DEFINITIONS; PROVIDING FOR LICENSING; LIMITING THE USE OF NAMES BY CAPTIVE INSURANCE COMPANIES; PROVIDING MINIMUM CAPITAL AND SURPLUS REQUIREMENTS; PROVIDING FOR FORMATION OF CAPTIVE INSURANCE COMPANIES; ESTABLISHING REQUIREMENTS FOR PAYMENT OF DIVIDENDS; PROVIDING FOR REPORTS, EXAMINATIONS, AND INVESTIGATIONS; ESTABLISHING GROUNDS FOR LICENSE SUSPENSION AND REVOCATION; CREATING A TAX ON PREMIUMS COLLECTED TO BE PAID TO THE OFFICE OF THE STATE AUDITOR AND DEPOSITED IN THE GENERAL FUND; AUTHORIZING CERTAIN INVESTMENTS FOR CAPTIVE INSURANCE COMPANIES; PROVIDING FOR REINSURANCE; EXEMPTING CAPTIVE INSURANCE COMPANIES FROM JOINING RATING ORGANIZATIONS AND CERTAIN COMPULSORY ORGANIZATIONS; PROVIDING RULEMAKING AUTHORITY; ESTABLISHING APPLICABLE LAW; AMENDING SECTION 33-2-708, MCA; AND PROVIDING AN EFFECTIVE DATE 1411

299 *(Senate Bill No. 377; Grimes)* REVISING THE MONTANA ENVIRONMENTAL POLICY ACT; PROVIDING TIME LIMITS AND PROCEDURES FOR CONDUCTING ENVIRONMENTAL REVIEWS; PROVIDING DEFINITIONS; PROVIDING THAT LEGAL

CHALLENGES TO ACTIONS UNDER THE MONTANA ENVIRONMENTAL POLICY ACT MAY ONLY BE BROUGHT IN DISTRICT COURT OR FEDERAL COURT WITHIN 60 DAYS OF A FINAL AGENCY ACTION; PROVIDING AN EXCEPTION TO PERMITTING TIME LIMITS IF BOARD REVIEW OF CERTAIN AGENCY DECISIONS IS REQUESTED; AMENDING SECTIONS 75-1-201, 75-2-211, 75-2-218, 75-10-922, 75-20-216, 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, AND 82-4-432, MCA; AND PROVIDING AN APPLICABILITY DATE 1420

300 *(Senate Bill No. 408; McCarthy)* REQUIRING THAT AN AGENCY DETERMINATION OF ENVIRONMENTAL IMPACT SIGNIFICANCE OR RECOMMENDATION THAT A DETERMINATION OF SIGNIFICANCE BE MADE FOR A PROJECT SUBJECT TO THE MONTANA ENVIRONMENTAL POLICY ACT BE ENDORSED BY THE AGENCY DIRECTOR; AUTHORIZING THE PROJECT SPONSOR TO REQUEST A REVIEW OF THE SIGNIFICANCE DETERMINATION OR RECOMMENDATION BY THE APPROPRIATE BOARD; PROVIDING A DEFINITION; AMENDING SECTION 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1440

301 *(Senate Bill No. 431; Stonington)* TO CLARIFY THE LAW REGARDING THE REGULATION OF THE COMMERCIAL COLLECTION OF CERTAIN NONGAME WILDLIFE; DEFINING "COMMERCIAL PURPOSES"; PROVIDING THAT CERTAIN NONGAME WILDLIFE MAY NOT BE TAKEN FOR COMMERCIAL PURPOSES WITHOUT AUTHORIZATION BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; PROVIDING EXCEPTIONS; AND AMENDING SECTION 87-5-102, MCA 1443

302 *(Senate Bill No. 443; Butcher)* REQUIRING THAT LOCAL GOVERNMENT PUBLIC RECORDS BE OFFERED TO CERTAIN ENTITIES AND TO THE GENERAL PUBLIC BEFORE BEING DESTROYED; EXPANDING THE MEMBERSHIP OF THE LOCAL GOVERNMENT RECORDS COMMITTEE; AND AMENDING SECTION 2-6-402, MCA 1445

303 *(Senate Bill No. 459; Franklin)* PROVIDING THAT ADVANCED PRACTICE REGISTERED NURSES WITH A CLINICAL SPECIALTY IN PSYCHIATRIC MENTAL HEALTH NURSING ARE ALLOWED TO PERFORM EXAMINATIONS AND TO REPORT AND TESTIFY REGARDING A DEFENDANT'S FITNESS TO PROCEED OR MENTAL CONDITION; AMENDING SECTIONS 46-1-202, 46-14-202, 46-14-204, 46-14-205, 46-14-213, 46-14-302, AND 46-15-323, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1446

304 *(House Bill No. 447; Lewis)* APPROPRIATING UP TO $1 MILLION FROM THE FEDERAL SPECIAL REVENUE FUND TO PLAN FOR RECONSTRUCTING AND PAVING THE ROAD FROM STATE SECONDARY HIGHWAY 279 TO MARYSVILLE; AND PROVIDING AN EFFECTIVE DATE 1453

305 *(House Bill No. 608; Haines)* PROVIDING A PROCEDURE FOR RECORDING NONMONETARY SETTLEMENTS OF CONTESTED CASES; AMENDING SECTIONS 2-4-603 AND 17-2-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1454

306 *(House Bill No. 642; Story)* CLARIFYING THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES FOR THE PURPOSES OF THE RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAX AND FOR OTHER PURPOSES; AMENDING SECTIONS 15-1-501, 15-36-324, AND 82-11-135, MCA; AND

PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE 1457

307 *(House Bill No. 650; Mood)* PROVIDING FOR A CENTRALIZED FINANCIAL ASSISTANCE CENTER WITHIN THE DEPARTMENT OF COMMERCE; ESTABLISHING DUTIES RELATED TO INFORMATION EXCHANGE AND COORDINATION; REQUIRING THE DEPARTMENT OF COMMERCE TO REVIEW THE DEVELOPMENT AND ACTIVITIES OF THE FINANCIAL ASSISTANCE CENTER AND REPORT TO THE 58TH LEGISLATURE WITH RECOMMENDATIONS FOR EXPANDING OR MODIFYING THE PROGRAM; ELIMINATING CERTAIN UNFUNDED OR UNUSED LOAN AND GRANT PROGRAMS; AMENDING SECTIONS 17-6-305, 17-6-308, 20-25-1006, AND 90-6-305, MCA; REPEALING SECTIONS 17-6-501, 17-6-502, 17-6-503, 17-6-504, 17-6-505, 17-6-509, 17-6-510, 17-6-511, 17-6-512, 60-11-1101, 60-11-1102, 60-11-1103, 60-11-1104, 60-11-1105, 60-11-1106, 60-11-1107, 60-11-1108, 60-11-1109, 60-11-1110, 60-11-1111, 60-11-1112, 60-11-1113, 60-11-1201, 60-11-1202, 60-11-1203, 60-11-1204, 60-11-1205, 60-11-1206, 60-11-1207, 60-11-1208, 60-11-1209, 60-11-1210, 60-11-1211, 60-11-1212, 60-11-1213, AND 90-6-306, MCA; AND PROVIDING AN EFFECTIVE DATE 1467

308 *(Senate Bill No. 80; Mahlum)* CLARIFYING THE MANAGEMENT RESPONSIBILITIES OF THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION; ADDING THREE MEMBERS TO THE COMMISSION; ALLOWING FOR THE HIRING OF ADDITIONAL COMMISSION STAFF; ALLOWING THE COMMISSION TO CONDUCT BUILDING PRESERVATION, STABILIZATION, OR MAINTENANCE COSTING OVER $200,000 WITHOUT LEGISLATIVE CONSENT UNDER CERTAIN CIRCUMSTANCES; PROVIDING THAT INTEREST ON MONEY IN THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT ACCOUNT BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND TO THE CREDIT OF THE COMMISSION; AND AMENDING SECTIONS 22-3-1001, 22-3-1002, 22-3-1003, AND 22-3-1004, MCA . . 1472

309 *(Senate Bill No. 89; Waterman)* REDUCING THE WAITING PERIOD REQUIRED FOR ELIGIBILITY TO RECEIVE THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM DEFINED BENEFIT PLAN AND IN THE JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; AMENDING SECTIONS 19-3-1605, 19-5-901, 19-6-710, 19-7-711, 19-8-1105, 19-9-1009, 19-9-1010, AND 19-13-1010, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1475

310 *(Senate Bill No. 108; Franklin)* DEFINING "MENTAL HEALTH PROFESSIONAL" AND "PROFESSIONAL PERSON" TO INCLUDE ADVANCED PRACTICE REGISTERED NURSES WITH A CLINICAL SPECIALTY IN PSYCHIATRIC MENTAL HEALTH NURSING; PROVIDING THAT ADVANCED PRACTICE REGISTERED NURSES WITH A CLINICAL SPECIALTY IN PSYCHIATRIC MENTAL HEALTH NURSING HAVE RIGHTS REGARDING MEDICATION IN MENTAL HEALTH FACILITIES; AND AMENDING SECTIONS 27-1-1101, 53-21-102, 53-21-145, AND 53-21-165, MCA 1481

311 *(Senate Bill No. 116; Stonington)* GENERALLY REVISING THE LAWS RELATING TO CHILD ABUSE AND NEGLECT, YOUTH IN NEED OF CARE, ADOPTION, AND FOSTER CHILDREN; REVISING PROVISIONS RELATING TO PLACEMENT AND DISPOSITION OF ABUSED AND NEGLECTED YOUTH; PROVIDING DEFINITIONS;

ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ASSESS REPORTS OF ABUSE OR NEGLECT TO DETERMINE ACTION REQUIRED; PROVIDING THAT THE MONTANA RULES OF EVIDENCE APPLY TO PROCEEDINGS; PROVIDING FOR A BACKGROUND CHECK ON A PERSON SEEKING A YOUTH FOSTER HOME LICENSE; GRANTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES RULEMAKING AUTHORITY FOR PURPOSES OF LAWS RELATING TO ABUSED AND NEGLECTED YOUTH; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-106, 41-3-201, 41-3-202, 41-3-205, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-411, 41-3-412, 41-3-413, 41-3-420, 41-3-604, 41-3-1102, 41-3-1103, 41-3-1115, 41-3-1142, 42-3-202, 42-3-301, 42-4-112, 42-5-101, 42-5-103, 42-8-101, 42-8-103, 42-8-104, AND 42-8-107, MCA; AND REPEALING SECTIONS 41-3-1014, 41-3-1104, AND 41-3-1114, MCA 1484

312 *(Senate Bill No. 128; Bohlinger)* INCREASING THE CRIMINAL PENALTIES FOR PROSTITUTION, PROMOTING PROSTITUTION, AND AGGRAVATED PROMOTION OF PROSTITUTION; PROVIDING FOR A MANDATORY MINIMUM SENTENCE FOR AGGRAVATED PROMOTION OF PROSTITUTION; PROVIDING FOR THE POSSIBILITY OF A LIFE SENTENCE WITHOUT POSSIBILITY OF PAROLE FOR THIRD OFFENSE AGGRAVATED PROMOTION OF PROSTITUTION; REVISING THE DEFINITIONS OF "CORRECTIONAL INSTITUTION" AND "INMATE"; AND AMENDING SECTIONS 45-2-101, 45-5-601, 45-5-602, 45-5-603, 46-18-205, AND 46-18-219, MCA 1514

313 *(Senate Bill No. 131; Taylor)* GENERALLY REVISING THE LAWS GOVERNING INFORMATION TECHNOLOGY; PROVIDING FOR A CHIEF INFORMATION OFFICER; ESTABLISHING POLICIES FOR STATE INFORMATION TECHNOLOGY; ESTABLISHING DUTIES AND RESPONSIBILITIES CONCERNING INFORMATION TECHNOLOGY; AMENDING SECTIONS 2-3-301, 2-6-214, 2-15-102, 2-15-114, 2-15-404, 2-15-1514, 2-15-2212, 2-17-301, 2-17-303, 2-17-306, 2-17-322, 2-17-323, 2-17-503, 2-18-103, 5-11-402, 5-11-403, 5-12-205, 10-3-106, 17-7-111, 17-7-112, 17-7-123, 18-4-313, 61-3-345, AND 61-3-346, MCA; REPEALING SECTIONS 2-17-302, 2-17-304, 2-17-305, 2-17-321, 2-17-501, AND 2-17-502, MCA; AND PROVIDING AN EFFECTIVE DATE 1525

314 *(Senate Bill No. 145; Berry)* REVISING THE LAWS GOVERNING THE STATE COMPENSATION INSURANCE FUND; AUTHORIZING THE STATE FUND TO ESTABLISH, AFTER CONSULTATION WITH THE DEPARTMENT OF ADMINISTRATION, ONE OR MORE ALTERNATIVE PERSONAL LEAVE PLANS FOR STATE FUND EMPLOYEES; PROVIDING AN EXEMPTION FOR THE STATE FUND FROM STATE PRINTING LAWS FOR EXTERNAL MARKETING OR EDUCATIONAL MATERIALS; SUBSTITUTING AN EXPENSE CONSTANT FOR A POLICY CHARGE; AUTHORIZING THE STATE FUND TO EXPEND FUNDS FOR SCHOLARSHIP, EDUCATIONAL, OR CHARITABLE PURPOSES; AUTHORIZING THE STATE FUND TO PROVIDE EMPLOYERS COVERAGE UNDER THE FEDERAL LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT, THE FEDERAL MERCHANT MARINE ACT (JONES ACT), AND THE FEDERAL EMPLOYERS' LIABILITY ACT; CLARIFYING AND SUBSTITUTING MULTIPLE RATING TIERS FOR VARIABLE PRICING; ELIMINATING THE ADMINISTRATIVE EXPENDITURE RESTRICTION ON THE STATE COMPENSATION INSURANCE FUND BOARD; REQUIRING A REPORT TO AN INTERIM COMMITTEE OF THE LEGISLATURE PRIOR TO THE 2003

LEGISLATIVE SESSION ON THE ALTERNATIVE PERSONAL LEAVE PLAN; AMENDING SECTIONS 2-18-601, 2-18-701, 2-18-703, 2-18-711, 18-7-101, 39-71-2311, 39-71-2316, 39-71-2330, AND 39-71-2363, MCA; REPEALING SECTION 39-71-2341, MCA; AND PROVIDING EFFECTIVE DATES 1552

315 *(Senate Bill No. 147; Keenan)* GENERALLY REVISING THE PUBLIC WATER SUPPLIES, DISTRIBUTION, AND TREATMENT LAWS; CLARIFYING THE DEFINITIONS OF "PERSON", "PUBLIC SEWAGE SYSTEM", AND "PUBLIC WATER SUPPLY SYSTEM"; PROHIBITING THE CONTINUED CONSTRUCTION OR OPERATION OF PUBLIC WATER SUPPLY SYSTEMS OR PUBLIC SEWAGE SYSTEMS PRIOR TO DEPARTMENT APPROVAL; LIMITING OWNERSHIP OF PUBLIC WATER SUPPLY SYSTEMS AND PUBLIC SEWAGE SYSTEMS TO INDIVIDUALS, GOVERNMENTAL ENTITIES, AND CERTAIN TYPES OF BUSINESS ENTITIES; REQUIRING AN OWNER OF A PUBLIC WATER SUPPLY SYSTEM OR A PUBLIC SEWAGE SYSTEM TO SUBMIT INFORMATION TO THE DEPARTMENT ON OWNERSHIP STATUS; AMENDING SECTIONS 75-6-102 AND 75-6-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1559

316 *(Senate Bill No. 163; Grosfield)* REVISING STATUTES APPLICABLE TO THE MANAGEMENT OF CERTAIN ANIMAL SPECIES; RECLASSIFYING CERTAIN SPECIES TO INCREASE THE STATE'S ABILITY TO MAINTAIN OR REGAIN MANAGEMENT AUTHORITY RATHER THAN HAVING MANAGEMENT AUTHORITY EXERCISED BY THE FEDERAL GOVERNMENT; REVISING THE DEFINITION OF "PREDATORY ANIMAL"; ELIMINATING THE AUTHORITY OF THE DEPARTMENT OF LIVESTOCK TO EXTERMINATE PREDATORY ANIMALS; ALLOWING A PERSON TO PROTECT LIVESTOCK BY KILLING OR ATTEMPTING TO KILL A GRIZZLY BEAR THAT IS IN THE ACT OF ATTACKING OR KILLING LIVESTOCK; ALLOWING THE AMENDMENT OF REGULATIONS FOR A SPECIES IN NEED OF MANAGEMENT WITHOUT LEGISLATIVE APPROVAL; PROVIDING FOR MANAGEMENT OF THE GRAY WOLF IF IT IS REMOVED FROM THE FEDERAL AND STATE LISTS OF THREATENED OR ENDANGERED WILDLIFE; AMENDING SECTIONS 81-7-101, 81-7-102, 81-7-103, 81-7-104, 87-3-127, 87-3-130, AND 87-5-105, MCA; REPEALING SECTION 7, CHAPTER 244, LAWS OF 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1562

317 *(Senate Bill No. 168; Stonington)* INCREASING THE JUNK VEHICLE DISPOSAL FEES ON PASSENGER CARS AND TRUCKS UNDER 8,001 POUNDS; INCREASING THE ANNUAL LICENSE FEE FOR MOTOR VEHICLE WRECKING FACILITIES; PROVIDING SUPPLEMENTAL REVENUE TO THE STATE MOTOR VEHICLE RECYCLING AND DISPOSAL PROGRAM TO OFFSET REVENUE LOSSES; AMENDING SECTIONS 61-3-508, 75-10-511, AND 75-10-532, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1567

318 *(Senate Bill No. 182; Cobb)* EXPANDING THE INTERLOCAL COOPERATION ACT TO ALLOW SCHOOL DISTRICTS TO SHARE TEACHERS, SPECIALISTS, SUPERINTENDENTS, OR OTHER PROFESSIONAL PERSONS LICENSED UNDER TITLE 37; AMENDING SECTIONS 7-11-104, 7-11-105, 20-4-201, AND 20-4-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1568

319 *(Senate Bill No. 226; Wells)* REVISING THE RESTRICTION ON THE USE OF PUBLIC INFORMATION FOR MAILING LISTS; ALLOWING

A PUBLIC SCHOOL TO PROVIDE LISTS OF STUDENTS TO ARMED FORCES RECRUITERS; AND AMENDING SECTION 2-6-109, MCA . 1571

320 *(Senate Bill No. 256; Hargrove)* MAKING COMPLIANCE WITH THE FEDERAL MILITARY SELECTIVE SERVICE ACT A PREREQUISITE FOR STATE AGENCY OR MONTANA UNIVERSITY SYSTEM EMPLOYMENT, PAYMENT OF STATE STUDENT FINANCIAL ASSISTANCE, AND ENROLLMENT IN A POSTSECONDARY EDUCATIONAL INSTITUTION OF A STUDENT RECEIVING FINANCIAL ASSISTANCE PROVIDED BY STATE FUNDS; REQUIRING THE ADOPTION OF RULES BY THE DEPARTMENT OF ADMINISTRATION AND THE BOARD OF REGENTS; AND PROVIDING EFFECTIVE DATES 1572

321 *(Senate Bill No. 262; Wells)* ELIMINATING THE REQUIREMENT THAT A PERSON'S SOCIAL SECURITY NUMBER BE INCLUDED ON AN APPLICATION FOR A MONTANA HUNTING, FISHING, OR TRAPPING LICENSE OR A WILDLIFE CONSERVATION LICENSE IN CERTAIN CIRCUMSTANCES IF THE STATE RECEIVES AN EXEMPTION FROM THE REQUIREMENT; AMENDING SECTIONS 87-2-106 AND 87-2-202, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE. 1574

322 *(Senate Bill No. 330; Mahlum)* REVISING THE PROVISIONS RELATED TO MULTILEVEL DISTRIBUTION COMPANIES AND PYRAMID PROMOTIONAL SCHEMES; REMOVING THE REQUIREMENT THAT A MULTILEVEL DISTRIBUTION COMPANY FILE CONSENT TO SERVICE OF PROCESS ON AN ANNUAL BASIS; PROVIDING THAT THE SECURITIES COMMISSIONER MAY REQUEST ADDITIONAL INFORMATION FROM MULTILEVEL DISTRIBUTION COMPANIES; PROHIBITING A MULTILEVEL DISTRIBUTION COMPANY FROM REPRESENTING ITSELF AS LICENSED, REGISTERED, SANCTIONED, APPROVED, OR ENDORSED BY VIRTUE OF COMPLYING WITH STATE LAW; PROVIDING FOR A PENALTY; AND AMENDING SECTIONS 30-10-324 AND 30-10-326, MCA. 1578

323 *(Senate Bill No. 356; Hargrove)* REVISING THE LAWS GOVERNING THE BOARD OF REVIEW; CLARIFYING THE MEMBERSHIP OF THE BOARD OF REVIEW; PROVIDING THAT THE BOARD OF REVIEW IS ATTACHED TO THE DEPARTMENT OF REVENUE FOR ADMINISTRATIVE PURPOSES; AMENDING SECTION 30-16-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1580

324 *(Senate Bill No. 359; Halligan)* AUTHORIZING INCORPORATED CITIES AND TOWNS TO CREATE ANNEXATION DISTRICTS; PROVIDING THAT PROPERTY MAY BE INCLUDED IN AN ANNEXATION DISTRICT ONLY UPON AN AGREEMENT BETWEEN A PROPERTY OWNER AND THE CITY OR TOWN; PROVIDING FOR THE PROVISION OF SERVICES BY A CITY OR TOWN TO PROPERTY WITHIN AN ANNEXATION DISTRICT; AND PROVIDING FOR INCREMENTAL TAXES OR FEES FOR SERVICES PROVIDED TO PROPERTY IN AN ANNEXATION DISTRICT 1582

325 *(Senate Bill No. 375; Grimes)* REVISING THE PERMITTING AND RECLAMATION PLAN AMENDMENT PROCEDURES FOR THE OPENCUT MINING LAW; AND AMENDING SECTIONS 82-4-402, 82-4-422, 82-4-432, 82-4-434, AND 82-4-441, MCA. 1583

326 *(Senate Bill No. 378; Tash)* AMENDING THE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT TO SPECIFICALLY AUTHORIZE THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO COLLECT INTEREST ON

HeinOnline -- 2001 vol.I lviii 2001

PAST-DUE REMEDIAL ACTION COSTS AND TO DEPOSIT THOSE FUNDS INTO THE ENVIRONMENTAL QUALITY PROTECTION FUND; AMENDING SECTIONS 75-10-704 AND 75-10-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1589

327 *(Senate Bill No. 380; McNutt)* REVISING GROSS VEHICLE WEIGHT FEES AND LENGTH LIMITS ON TRIPLE TRAILER TRUCK CONFIGURATIONS; AMENDING SECTIONS 61-10-124 AND 61-10-201, MCA; AND REPEALING SECTION 61-10-203, MCA 1592

328 *(Senate Bill No. 387; Ellingson)* ALLOWING A CUSTOMER-GENERATOR TO DESIGNATE A CERTAIN BEGINNING DATE FOR A 12-MONTH BILLING PERIOD; AMENDING SECTION 69-8-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1596

329 *(Senate Bill No. 396; Grosfield)* SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE III, SECTION 7, AND ARTICLE XIV, SECTION 9, OF THE MONTANA CONSTITUTION TO CHANGE THE DISTRIBUTION OF ELECTORS WHO MUST PETITION TO HAVE A CONSTITUTIONAL AMENDMENT PLACED ON THE BALLOT FROM AT LEAST 10 PERCENT IN TWO-FIFTHS OF THE LEGISLATIVE DISTRICTS TO AT LEAST 10 PERCENT IN ONE-HALF OF THE COUNTIES AND TO CHANGE THE BASIS FOR DETERMINING THE NUMBER OF QUALIFIED ELECTORS FROM THOSE ELECTORS IN A LEGISLATIVE REPRESENTATIVE DISTRICT LAST VOTING FOR GOVERNOR TO THOSE ELECTORS IN A COUNTY LAST VOTING FOR GOVERNOR 1596

330 *(Senate Bill No. 397; Grosfield)* SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE III, SECTIONS 4 AND 7, OF THE MONTANA CONSTITUTION TO CHANGE THE DISTRIBUTION OF ELECTORS WHO MUST PETITION TO PLACE A STATUTORY INITIATIVE ON THE BALLOT FROM 5 PERCENT IN AT LEAST ONE-THIRD OF THE LEGISLATIVE REPRESENTATIVE DISTRICTS TO 5 PERCENT IN AT LEAST ONE-HALF OF THE COUNTIES AND TO CHANGE THE METHOD OF DETERMINING THE NUMBER OF QUALIFIED ELECTORS FROM THOSE IN A LEGISLATIVE REPRESENTATIVE DISTRICT LAST VOTING FOR GOVERNOR TO THOSE IN A COUNTY LAST VOTING FOR GOVERNOR 1597

331 *(Senate Bill No. 420; Waterman)* REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PROVIDE STANDARDIZED FORMS AND EDUCATIONAL MATERIALS TO PERSONAL-CARE FACILITIES AND TO HEALTH CARE PROFESSIONALS; REQUIRING THE DEPARTMENT TO REVIEW ADMINISTRATIVE RULES AND REPORT TO THE LEGISLATURE; AMENDING SECTION 50-5-226, MCA; AND PROVIDING A TERMINATION DATE 1598

332 *(Senate Bill No. 426; Halligan)* CLARIFYING THAT A COURT MAY AUTHORIZE A PRETRIAL SERVICES AGENCY TO ARREST A PERSON FOR FAILING TO COMPLY WITH A CONDITION OF RELEASE; DEFINING "PRETRIAL SERVICES AGENCY"; AMENDING SECTION 46-9-505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1601

333 *(Senate Bill No. 428; Harrington)* INCREASING THE UNEMPLOYMENT INSURANCE MAXIMUM WEEKLY BENEFIT AMOUNT FROM 60 PERCENT TO 63 PERCENT OF THE AVERAGE

WEEKLY WAGE; AMENDING SECTION 39-51-2201, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1601

334 *(Senate Bill No. 433; Elliott)* PROVIDING COUNTIES WITH THE PAYMENT OPTIONS CONTAINED IN FEDERAL LAW FOR RECEIVING THEIR PORTION OF FOREST RESERVE FUNDS; SPECIFYING HOW THE FUNDS MUST BE DISTRIBUTED, DEPENDING ON THE PAYMENT OPTIONS CHOSEN; AMENDING SECTIONS 17-3-211, 17-3-212, AND 17-3-213, MCA; AND PROVIDING AN EFFECTIVE DATE 1603

335 *(Senate Bill No. 438; Christiaens)* CREATING STANDARDS FOR PROPERTY AND CASUALTY INSURERS SEEKING UTILIZATION REVIEW OPINIONS RELATING TO COVERAGE FOR MEDICAL EXPENSES OR BODILY INJURY; CREATING STANDARDS FOR UTILIZATION REVIEW ORGANIZATIONS PROVIDING UTILIZATION REVIEW SERVICES; PROVIDING DEFINITIONS; AND PROVIDING RULEMAKING AUTHORITY 1604

336 *(Senate Bill No. 440; Christiaens)* REQUIRING FULL DISCLOSURE TO CONSUMERS OF HEALTH CARE SERVICE COST PARTICIPATION REQUIREMENTS BY INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS; REQUIRING THE INSURANCE COMMISSIONER TO REVIEW AND APPROVE OUTLINES OF COVERAGE; PROVIDING DISCLOSURE STANDARDS FOR OUTLINES OF COVERAGE FOR INDIVIDUAL AND GROUP DISABILITY INSURANCE POLICIES AND APPLYING THOSE REQUIREMENTS TO HEALTH MAINTENANCE ORGANIZATIONS; AMENDING SECTIONS 33-1-501, 33-22-244, 33-22-521, AND 33-31-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE 1606

337 *(Senate Bill No. 448; Christiaens)* PROVIDING FUNDING FOR TRANSPORTATION SERVICES FOR SENIOR CITIZENS AND PERSONS WITH DISABILITIES; AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO AWARD GRANTS; ESTABLISHING PRIORITIES FOR THE AWARDING OF GRANTS TO TRANSPORTATION PROVIDERS THAT PROVIDE TRANSPORTATION SERVICES FOR SENIOR CITIZENS AND PERSONS WITH DISABILITIES; ALLOWING THE DEPARTMENT OF TRANSPORTATION TO AWARD GRANTS FOR OTHER TRANSPORTATION SERVICES; ASSESSING A FEE ON REGISTRATION OR REREGISTRATION OF VEHICLES; PROVIDING FOR DEPOSIT OF FEE REVENUE IN AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND; AMENDING SECTIONS 61-3-321, 61-3-332, 61-3-426, 61-3-457, 61-3-510, AND 61-3-562, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1610

338 *(Senate Bill No. 449; Tester)* ELIMINATING THE HARD-ROCK MINING AND RECLAMATION ACCOUNT AND THE OPENCUT MINING AND RECLAMATION ACCOUNT IN THE STATE SPECIAL REVENUE FUND; ESTABLISHING AN ENVIRONMENTAL REHABILITATION AND RESPONSE ACCOUNT IN THE STATE SPECIAL REVENUE FUND; DEDICATING CERTAIN FINES AND PENALTIES TO THE ACCOUNT; DEDICATING CERTAIN UNCLAIMED OR EXCESS RECLAMATION BOND FUNDS TO THE ACCOUNT; PROVIDING THAT FUNDS IN THE ACCOUNT BE APPROPRIATED TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR CERTAIN PURPOSES; AMENDING SECTIONS

75-10-1223, 82-4-241, 82-4-311, 82-4-424, AND 82-4-426, MCA; AND PROVIDING AN EFFECTIVE DATE. 1620

339 *(Senate Bill No. 450; Grimes)* EXCLUDING SERVICES PERFORMED BY INSURANCE SALESPEOPLE WHO ARE PAID SOLELY BY COMMISSION AND HAVE NO GUARANTEE OF MINIMUM EARNINGS FROM THE DEFINITION OF "EMPLOYMENT" FOR PURPOSES OF UNEMPLOYMENT AND WORKERS' COMPENSATION INSURANCE LAWS; AMENDING SECTIONS 39-51-204 AND 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1623

340 *(Senate Bill No. 455; Doherty)* CLARIFYING THAT DOCUMENTS MAY BE RECORDED FOR THE SUBDIVISION AND TRANSFER OF LAND IN AREAS OVER WHICH THE STATE DOES NOT HAVE JURISDICTION; AMENDING SECTIONS 76-3-201, 76-3-301, 76-3-302, AND 76-4-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1630

341 *(Senate Bill No. 465; Franklin)* AMENDING THE INSURANCE INFORMATION AND PRIVACY PROTECTION ACT; PROVIDING FOR EXEMPTION FROM THE ACT FOR PERSONS COMPLYING WITH FEDERAL REGULATIONS THAT ARE INCONSISTENT WITH THE ACT AND NOT LESS PROTECTIVE OF PRIVACY THAN THE ACT; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ADOPT RULES; REVISING DEFINITIONS; REVISING REQUIREMENTS FOR NOTICE OF INSURANCE INFORMATION PRACTICES; REVISING STATUTES RELATING TO DISCLOSURE AUTHORIZATION FORMS; REVISING PROVISIONS RELATING TO EXCEPTIONS FROM PROHIBITED DISCLOSURES; PROVIDING RESTRICTIONS ON THE USE OF PERSONAL INFORMATION FOR MARKETING PURPOSES; REVISING CIVIL PENALTIES AND INDIVIDUAL REMEDIES APPLICABLE TO DISCLOSURE VIOLATIONS; AMENDING SECTIONS 33-19-102, 33-19-104, 33-19-202, 33-19-306, 33-19-405, AND 33-19-407, MCA; REPEALING SECTIONS 33-19-204, 33-19-402, 33-19-404, AND 33-19-406, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE 1632

342 *(Senate Bill No. 466; Waterman)* GENERALLY REVISING THE MENTAL HEALTH COMMITMENT STATUTES; ALLOWING THE COURT TO COMMIT A PERSON TO COMMUNITY TREATMENT FOR A PERIOD NOT TO EXCEED 6 MONTHS; PROVIDING FOR OPTIONAL TREATMENT PLANS, PROVIDER CHOICE, AND CONDITIONS FOR A COMMITMENT TO COMMUNITY TREATMENT; PROVIDING FOR WRITTEN REPORTS BY THE TREATING PROVIDER TO THE COURT; PROVIDING THAT A REFERRAL FOR APPROPRIATE MENTAL ILLNESS PROCEEDINGS IS AN APPROPRIATE CONDITION OF PRETRIAL DIVERSION; DEFINING "MENTAL HEALTH PROFESSIONAL"; ALLOWING FOR AN EXTENSION OF COMMUNITY TREATMENT AT THE REQUEST OF THE RESPONDENT; AND AMENDING SECTIONS 46-16-130, 53-21-102, 53-21-104, 53-21-121, 53-21-123, 53-21-124, 53-21-126, 53-21-127, 53-21-128, AND 53-21-181, MCA 1647

343 *(Senate Bill No. 469; DePratu)* COORDINATING CERTAIN WORKFORCE DEVELOPMENT PROGRAMS BETWEEN THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING THAT THE GOVERNOR MAY CONSOLIDATE AND TRANSFER OTHER STATE AGENCY WORKFORCE DEVELOPMENT

PROGRAMS INTO THE DEPARTMENT OF LABOR AND INDUSTRY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1658

344 *(Senate Bill No. 473; Waterman)* REVISING THE STATUTES RELATING TO THE MENTAL DISABILITIES BOARD OF VISITORS; PROVIDING DEFINITIONS; INCREASING THE MEMBERSHIP OF THE BOARD AND SPECIFYING REQUIREMENTS FOR MEMBERSHIP; STAGGERING TERMS OF BOARD MEMBERS; REQUIRING THE BOARD TO ADOPT FACILITY INSPECTION SCHEDULES; PROVIDING THAT BOARD INSPECTIONS MAY NOT BE PRECLUDED BY OTHER LICENSING OR ACCREDITATION PROCESSES; PROHIBITING ABUSE AND NEGLECT IN A MENTAL HEALTH FACILITY; PROVIDING FOR REPORTING AND INVESTIGATING ALLEGATIONS OF ABUSE AND NEGLECT IN A MENTAL HEALTH FACILITY; AND AMENDING SECTIONS 2-15-211, 53-21-102, AND 53-21-104, MCA 1659

345 *(Senate Bill No. 474; Grimes)* GENERALLY REVISING THE INSURANCE UNFAIR TRADE PRACTICES LAW WITH RESPECT TO AUTOMOBILE GLASS REPLACEMENT, AUTOMOBILE GLASS REPAIR, AUTOMOBILE GLASS PRODUCTS, AND AUTOMOBILE REPAIR; AMENDING SECTIONS 30-14-225, 33-18-221, 33-18-222, 33-18-223, 33-18-224, AND 33-18-1006, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1665

346 *(Senate Bill No. 476; Keenan)* CLARIFYING THE REQUIREMENTS FOR CERTIFICATION OF LONG-TERM CARE FACILITIES THAT PROVIDE INTERMEDIATE AND SKILLED NURSING CARE; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES TO DEFINE TERMS, AN INFORMAL DISPUTE RESOLUTION PROCESS, AND STANDARDS FOR QUESTIONING A PHYSICIAN'S ORDERS FOR DRUGS OR TREATMENTS; AND AMENDING SECTIONS 53-6-107 AND 53-6-108, MCA.................................. 1669

347 *(Senate Bill No. 477; Jergeson)* PROVIDING FOR USE OF SAFETY DEVICES IN LONG-TERM CARE FACILITIES UPON A REQUEST AND RECEIPT OF WRITTEN INFORMED CONSENT; DEFINING TERMS; PROVIDING FOR LONG-TERM CARE FACILITY PROCEDURES AND WRITTEN PHYSICIAN OR ADVANCED PRACTICE REGISTERED NURSE ORDERS; PROVIDING THAT A WRITTEN PHYSICIAN'S OR ADVANCED PRACTICE REGISTERED NURSE'S ORDER PROVIDES EVIDENCE OF MEDICAL NECESSITY FOR THE USE OF A SAFETY DEVICE; AND GRANTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES RULEMAKING AUTHORITY...................... 1671

348 *(Senate Bill No. 479; Hargrove)* AUTHORIZING LOCAL GOVERNMENTS TO ADOPT SUBDIVISION REGULATIONS THAT PROMOTE CLUSTER DEVELOPMENT AND PRESERVATION OF OPEN SPACE; ESTABLISHING ADDITIONAL PURPOSES FOR SUBDIVISION REGULATIONS; DEFINING "CLUSTER DEVELOPMENT"; AUTHORIZING LOCAL GOVERNMENTS TO AUTHORIZE CERTAIN EXEMPTIONS FROM SUBDIVISION REGULATIONS AND PROCEDURES FOR CLUSTER DEVELOPMENTS THAT PRESERVE OPEN SPACE; REQUIRING THE DEPARTMENT OF COMMERCE TO DEVELOP EXAMPLES OF SUBDIVISION REGULATIONS THAT PROMOTE CLUSTER DEVELOPMENT AND TO PROVIDE TECHNICAL ASSISTANCE WITH THE DEVELOPMENT OF CLUSTER DEVELOPMENT REGULATIONS; AMENDING SECTIONS 17-6-505, 76-3-102, 76-3-103,

76-3-503, 76-3-504, 76-3-608, 76-3-621, AND 90-1-103, MCA; AND PROVIDING EFFECTIVE DATES 1673

349 *(Senate Bill No. 480; Berry)* ESTABLISHING MONTANA AS A MEMBER OF THE PACIFIC NORTHWEST ECONOMIC REGION; PROVIDING FOR THE APPOINTMENT OF MEMBERS TO THE PACIFIC NORTHWEST ECONOMIC REGION AND ITS COMMITTEES; AMENDING SECTION 5-11-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1683

350 *(Senate Bill No. 491; Taylor)* PROHIBITING A SELLER OR TELEMARKETER REGISTERED UNDER THE MONTANA TELEMARKETING REGISTRATION AND FRAUD PREVENTION ACT FROM BLOCKING ACCESS TO THE SELLER'S OR TELEMARKETER'S PHONE NUMBER; AMENDING SECTION 30-14-1412, MCA; AND PROVIDING AN EFFECTIVE DATE 1687

351 *(Senate Bill No. 169; Franklin)* REQUIRING SCREENING OF PREGNANT WOMEN FOR HEPATITIS B; DEFINING "HEALTH CARE PROVIDER"; ALLOWING FOR A HEALTH CARE PROVIDER TO COLLECT PRENATAL TESTS; REQUIRING REPORTING OF POSITIVE TEST RESULTS FOR HEPATITIS B SURFACE ANTIGEN TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AND AMENDING SECTIONS 37-27-312, 50-19-101, 50-19-102, 50-19-103, 50-19-104, 50-19-105, AND 50-19-107, MCA . . . 1688

352 *(Senate Bill No. 171; Glaser)* IMPROVING THE EFFICIENCY AND EFFECTIVENESS OF THE CHILD SUPPORT ENFORCEMENT PROGRAM; ALLOWING GARNISHMENT OF SOCIAL SECURITY BENEFITS FOR SPOUSAL SUPPORT IN CONFORMITY WITH FEDERAL LAW; CORRECTING PROVISIONS OF THE UNIFORM INTERSTATE FAMILY SUPPORT ACT; ALLOWING WARRANTS FOR DISTRAINT TO BE SERVED BY ACKNOWLEDGMENT WHEN THE ENTITY SERVED ENTERS INTO AN AGREEMENT WITH THE DEPARTMENT; PROVIDING FOR EXPIRATION OF SUPPORT LIENS; ALLOWING AN EMPLOYER RECEIVING AN INCOME-WITHHOLDING ORDER FROM ANOTHER STATE TO REQUEST INFORMATION FROM AND FORWARD THE FUNDS TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING THAT SERVICE OF NOTICE OF REVIEW IS CONSIDERED EFFECTIVE IF A PERSON SUBJECT TO SERVICE REQUESTS A HEARING OR APPEARS AT THE REVIEW; DEFINING "PAYOR" TO INCLUDE AN EMPLOYER UNDER THE UNIFORM INTERSTATE FAMILY SUPPORT ACT; ALLOWING SERVICE OF AN INCOME-WITHHOLDING ORDER BY ELECTRONIC SERVICE; PROVIDING THAT DISBURSEMENTS BY THE DEPARTMENT IN TITLE IV-D CASES MUST COMPLY WITH DEPARTMENT RULES FOR DISTRIBUTION NOTWITHSTANDING A RESTRICTIVE ENDORSEMENT; CLARIFYING A PARENT'S RESPONSIBILITY FOR NECESSITIES AND FINANCIAL ASSISTANCE TO A CHILD; AMENDING SECTIONS 25-13-608, 40-5-103, 40-5-154, 40-5-157, 40-5-158, 40-5-161, 40-5-162, 40-5-164, 40-5-173, 40-5-247, 40-5-248, 40-5-273, 40-5-403, 40-5-415, 40-5-909, 40-5-910, AND 40-6-215, MCA; REPEALING SECTIONS 40-5-244 AND 40-6-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1690

353 *(Senate Bill No. 181; Cobb)* ALLOWING COUNTIES AND MUNICIPALITIES TO USE BOND PROCEEDS TO FUND FAMILY SERVICES PROVIDER FACILITIES AS AN INDUSTRIAL DEVELOPMENT PROJECT UNDER TITLE 90, CHAPTER 5, PART 1, MCA; ALLOWING BOND PROCEEDS TO BE USED TO DISCHARGE AN EXISTING INDEBTEDNESS SECURED BY A LIEN AGAINST A

FAMILY SERVICES PROVIDER FACILITY; AND AMENDING SECTIONS 90-5-101 AND 90-5-108, MCA 1709

354 *(Senate Bill No. 187; Cobb)* STANDARDIZING THE PUBLIC NOTICE PROVISIONS FOR LOCAL GOVERNMENT UNITS; REQUIRING A LOCAL GOVERNMENT UNIT TO PUBLISH TWO NOTICES PRIOR TO A PUBLIC HEARING; AMENDING SECTIONS 7-1-2121, 7-1-4121, 7-1-4127, 7-1-4149, 7-2-2209, 7-2-2505, 7-2-2602, 7-2-4312, 7-2-4708, 7-2-4805, 7-3-604, 7-5-2502, 7-5-4202, 7-5-4302, 7-6-2316, 7-6-2320, 7-8-101, 7-8-2217, 7-8-2302, 7-12-1112, 7-12-2132, 7-12-4141, 7-12-4177, 7-12-4254, 7-12-4303, 7-12-4329, 7-12-4406, 7-12-4426, 7-12-4502, 7-12-4603, 7-13-107, 7-13-114, 7-13-126, 7-13-127, 7-13-145, 7-13-208, 7-13-232, 7-13-3005, 7-13-3021, 7-13-3023, 7-13-3028, 7-13-3043, 7-13-4507, 7-14-208, 7-14-244, 7-14-1102, 7-14-2403, 7-14-2616, 7-14-2822, 7-14-2902, 7-14-4114, 7-14-4712, 7-14-4732, 7-15-4215, 7-15-4263, 7-15-4404, 7-16-2442, 7-21-3305, 7-22-2212, 7-22-2232, 7-22-2406, 7-22-2408, 7-22-2446, 7-33-2102, 7-33-2125, 7-34-2162, 7-35-2112, 15-10-203, AND 75-2-215, MCA; AND REPEALING SECTIONS 7-1-4128, 7-2-2256, 7-12-2106, AND 7-12-4107, MCA. . . . 1710

355 *(Senate Bill No. 190; Johnson)* SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII, SECTION 13, OF THE MONTANA CONSTITUTION PROVIDING FOR THE INVESTMENT OF THE ASSETS OF A LOCAL GOVERNMENT GROUP SELF-INSURANCE PROGRAM; AND PROVIDING AN EFFECTIVE DATE 1737

356 *(Senate Bill No. 218; Ryan)* AUTHORIZING THE TRUSTEES OF A SCHOOL DISTRICT, AFTER DETERMINING THAT THE DISTRICT'S TUITION FUND IS INACTIVE AND WILL NO LONGER BE USED, TO CLOSE THE FUND BY TRANSFERRING ANY CASH OR FUND BALANCE INTO THE DISTRICT'S MISCELLANEOUS PROGRAMS FUND; AMENDING SECTIONS 20-9-201 AND 20-9-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1739

357 *(Senate Bill No. 236; Grimes)* ALLOWING LEGISLATORS A WINDOW DURING WHICH THEY MAY BECOME MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AMENDING SECTION 19-3-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1740

358 *(Senate Bill No. 237; Cole)* REVISING THE MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT; EXPANDING THE PURPOSES OF THE AGREEMENT; DEFINING "COOPERATING COMMITTEE"; REQUIRING EACH PARTICIPATING JURISDICTION TO HAVE TWO DESIGNATED REPRESENTATIVES; MANDATING WHO SHALL SERVE AS MONTANA'S DESIGNATED REPRESENTATIVES; EXPANDING THE POWERS OF THE COOPERATING COMMITTEE; CLARIFYING THE VOTING PROCEDURES OF THE COOPERATING COMMITTEE; REVISING THE OBJECTIVES OF THE PARTICIPATING JURISDICTIONS; ELIMINATING OBSOLETE REFERENCES; AND AMENDING SECTION 61-10-1101, MCA 1742

359 *(Senate Bill No. 248; Grimes)* GENERALLY REVISING THE LAWS GOVERNING INFORMATION COLLECTED BY HEALTH CARE REVIEW COMMITTEES; EXTENDING INHOSPITAL REVIEW LAWS TO ALL HEALTH CARE FACILITIES; CLARIFYING THE TYPES OF COMMITTEES THAT HAVE ACCESS TO HEALTH CARE INFORMATION; EXTENDING THE CONFIDENTIALITY AND EVIDENTIARY PRIVILEGE TO COMMITTEE RECORDS AND PROCEEDINGS; CLARIFYING THAT ONLY THE DATA OF HEALTH

CARE REVIEW COMMITTEES IS PROTECTED FROM DISCLOSURE TO A PATIENT; AMENDING SECTIONS 50-16-201, 50-16-202, 50-16-203, 50-16-204, 50-16-205, AND 50-16-542, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1747

360 *(Senate Bill No. 261; Christiaens)* AUTHORIZING THE PRODUCTION OF INDUSTRIAL HEMP AS AN AGRICULTURAL CROP; REQUIRING THAT A LICENSE BE OBTAINED PRIOR TO GROWING INDUSTRIAL HEMP; REQUIRING THAT THE DEPARTMENT OF AGRICULTURE BE NOTIFIED WHEN GROWING OR SELLING INDUSTRIAL HEMP; PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF AGRICULTURE; PROVIDING FOR THE DISPOSITION OF FEES; PROVIDING AN AFFIRMATIVE DEFENSE FOR THE POSSESSION OR CULTIVATION OF MARIJUANA; PROVIDING AN EXEMPTION TO CRIMINAL POSSESSION OF DANGEROUS DRUGS AND CRIMINAL PRODUCTION OR MANUFACTURE OF DANGEROUS DRUGS FOR INDUSTRIAL HEMP PRODUCTION AS AN AGRICULTURAL CROP; REQUIRING THE DEPARTMENT OF AGRICULTURE TO REQUEST A CHANGE OR WAIVER IN FEDERAL LAW; AND AMENDING SECTION 45-9-108, MCA 1750

361 *(Senate Bill No. 265; Hargrove)* ALLOWING A LOCAL GOVERNMENTAL ENTITY TO IMPOSE LESS THAN THE MAXIMUM NUMBER OF MILLS AUTHORIZED AND TO CARRY FORWARD THE AUTHORITY TO IMPOSE THE MAXIMUM NUMBER OF MILLS IN A SUBSEQUENT TAX YEAR; AND AMENDING SECTIONS 7-6-2531, 7-6-4431, AND 15-10-420, MCA . . 1753

362 *(Senate Bill No. 288; Christiaens)* REQUIRING THE BOARD OF PHARMACY TO CREATE A PROGRAM FOR THE DONATION OF PRESCRIPTION DRUGS BY LONG-TERM CARE FACILITIES TO PROVISIONAL COMMUNITY PHARMACIES OFFERING DRUGS TO CERTAIN LOW-INCOME PERSONS; REQUIRING THE BOARD OF PHARMACY TO ADOPT RULES; PROVIDING DEFINITIONS; REQUIRING A LONG-TERM CARE FACILITY DONATING DRUGS TO DELETE PATIENT IDENTIFICATION INFORMATION FROM THE PRESCRIPTION DRUG CONTAINER; PROVIDING FOR IMMUNITY FROM SIMPLE NEGLIGENCE FOR LONG-TERM CARE FACILITIES AND PATIENTS DONATING PRESCRIPTION DRUGS; AND PROVIDING EFFECTIVE DATES 1755

363 *(Senate Bill No. 293; Doherty)* ESTABLISHING THE MONTANA DRIVER PRIVACY PROTECTION ACT MODELED AFTER THE FEDERAL ACT; PROHIBITING THE DISCLOSURE OF CERTAIN PERSONAL INFORMATION FROM MOTOR VEHICLE OR DRIVER RECORDS MAINTAINED BY THE DEPARTMENT OF JUSTICE; PROVIDING, IN ACCORDANCE WITH THE PRIVACY PROVISIONS OF THE MONTANA CONSTITUTION, MORE RESTRICTIONS ON THE RELEASE OF INFORMATION THAN EXIST IN THE FEDERAL ACT; ESTABLISHING CRITERIA FOR THE RELEASE OF CERTAIN INFORMATION; PROHIBITING THE SALE OR DISCLOSURE OF PERSONAL INFORMATION TO A THIRD PARTY EXCEPT FOR CERTAIN USES; ALLOWING THE DEPARTMENT OF JUSTICE TO ADOPT RULES TO IMPLEMENT THE ACT; INCLUDING MISREPRESENTATION TO OBTAIN PERSONAL INFORMATION FROM MOTOR VEHICLE AND DRIVER RECORDS IN THE OFFENSE OF TAMPERING WITH PUBLIC RECORDS OR INFORMATION; AMENDING SECTIONS 2-6-109, 45-7-208, 61-3-101, AND 61-11-105, MCA; REPEALING SECTION 13-38-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1757

364 *(Senate Bill No. 298; Glaser)* LIMITING THE AMOUNT OF RETAINAGE THAT MAY BE WITHHELD TO 10 PERCENT OF THE TOTAL AMOUNT TO BE PAID TO A CONSTRUCTION CONTRACTOR EXCEPT FOR A RESIDENTIAL PROJECT WITH A TOTAL COST OF LESS THAN $400,000; AMENDING SECTION 28-2-2107, MCA; AND PROVIDING AN APPLICABILITY DATE . . . 1764

365 *(Senate Bill No. 304; Nelson)* CLARIFYING THE SCOPE OF AND REVISING FUNDING CRITERIA FOR THE UPLAND GAME BIRD HABITAT ENHANCEMENT PROGRAM; REQUIRING THAT A PERCENTAGE OF AVAILABLE REVENUE BE SPENT ON THE UPLAND GAME BIRD RELEASE PROGRAM; CLARIFYING PROJECT ELIGIBILITY CRITERIA; AMENDING SECTIONS 87-1-247, 87-1-248, AND 87-1-249, MCA; AND PROVIDING AN EFFECTIVE DATE . . . 1765

366 *(Senate Bill No. 309; Halligan)* PROHIBITING A RECOVERY CARE BED IN AN OUTPATIENT CENTER FOR SURGICAL SERVICES FROM BEING USED FOR A PATIENT FOR 24 HOURS OR MORE; PROVIDING FOR A WAIVER BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AMENDING DEFINITIONS; AMENDING SECTION 50-5-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . 1767

367 *(Senate Bill No. 310; Waterman)* GENERALLY REVISING PROVISIONS REGARDING THE MONTANA COMPREHENSIVE HEALTH ASSOCIATION; APPLYING MANDATORY COVERAGE FOR SEVERE MENTAL ILLNESS TO THE ASSOCIATION; REVISING THE 1 PERCENT ASSESSMENT AMOUNT TO A CAP THAT THE ASSESSMENT MAY NOT EXCEED; REMOVING THE ABILITY TO ABATE AN EXCESS ASSESSMENT; ALLOWING THE ASSOCIATION TO CHARGE LATE PAYMENT PENALTIES, INTEREST, OR BOTH; PROVIDING RULEMAKING AUTHORITY REGARDING LATE PAYMENTS AND INTEREST CHARGES; RAISING THE AMOUNT TO $50 UNDER WHICH AN ASSESSMENT NEED NOT BE LEVIED; RAISING THE MAXIMUM PHARMACY BENEFIT TO $2,000; AMENDING SECTIONS 33-22-706, 33-22-1502, 33-22-1513, AND 33-22-1521, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1772

368 *(Senate Bill No. 311; Cocchiarella)* ELIMINATING FROM THE PROXIMATE CAUSATION STANDARD FOR OCCUPATIONAL DISEASES THE PROVISION REQUIRING THE DISEASE TO BE INCIDENTAL TO THE CHARACTER OF THE BUSINESS AND NOT INDEPENDENT OF THE RELATION OF EMPLOYER AND EMPLOYEE; REQUIRING THAT A TREATING PHYSICIAN, UPON MAKING A POSITIVE DETERMINATION REGARDING PROXIMATE CAUSE, INCLUDE A DETERMINATION BY PERCENTAGE OF THE AMOUNT OF THE OCCUPATIONAL DISEASE THAT WAS ATTRIBUTABLE TO WORK; AMENDING SECTION 39-72-408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1779

369 *(Senate Bill No. 318; Ekegren)* ELIMINATING THE SPEED LIMIT OF 40 MILES PER HOUR FOR AGRICULTURAL VEHICLES BEING OPERATED ON HIGHWAYS DURING HARVEST SEASON; INCREASING FROM 50 MILES TO 100 MILES THE DISTANCE THAT VEHICLES MAY TRAVEL FROM THE HARVESTED FIELD; INCREASING FROM 7 PERCENT TO 10 PERCENT THE AMOUNT BY WHICH CERTAIN VEHICLES MAY EXCEED WEIGHT LIMITS WITHOUT INCURRING PENALTIES; AMENDING SECTIONS 61-10-130 AND 61-10-144, MCA; AND PROVIDING AN EFFECTIVE DATE 1779

HeinOnline -- 2001 vol.I lxvi 2001

370 *(Senate Bill No. 324; Harrington)* PROVIDING THAT MEDICAL MALPRACTICE CLAIMS AGAINST LICENSED CHEMICAL DEPENDENCY FACILITIES ARE SUBJECT TO THE MONTANA MEDICAL LEGAL PANEL ACT; AND AMENDING SECTION 27-6-103, MCA 1782

371 *(Senate Bill No. 328; Wells)* TRANSFERRING FROM THE ATTORNEY GENERAL TO THE GOVERNOR RESPONSIBILITIES RELATING TO THE AUDITING AND PAYMENT OF EXPENSES FOR THE TRANSPORTATION AND EXTRADITION OF OFFENDERS; AND AMENDING SECTIONS 7-32-2144 AND 46-30-411, MCA 1784

372 *(Senate Bill No. 333; Beck)* REMOVING THE TERMINATION DATE FROM THE REQUIREMENT THAT THE STATE PRISON RANCH MAKE AN ANNUAL PAYMENT TO POWELL COUNTY COMPARABLE TO A PAYMENT IN LIEU OF TAX; AMENDING SECTION 53-1-208, MCA; REPEALING SECTION 6, CHAPTER 550, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1785

373 *(Senate Bill No. 355; Crismore)* REVISING THE REQUIREMENTS FOR SECURING LOGS ON POLE TRAILERS; AND AMENDING SECTION 61-9-414, MCA 1785

374 *(Senate Bill No. 429; Sprague)* EXTENDING THE TIME PERIOD WITHIN WHICH A PETITION REQUESTING A REFERENDUM ON AN ORDINANCE MAY BE FILED; AMENDING SECTION 7-5-132, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1786

375 *(Senate Bill No. 493; Thomas)* REQUIRING THAT ALL PUBLIC FUNDS BE INVESTED IN ACCORDANCE WITH PRUDENT EXPERT PRINCIPLES BY REMOVING THE RESTRICTION ON INVESTMENT IN PRIVATE CORPORATE CAPITAL STOCK; SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII, SECTION 13, OF THE MONTANA CONSTITUTION; AND PROVIDING AN EFFECTIVE DATE 1787

376 *(House Bill No. 249; Laslovich)* AUTHORIZING THE BOARD OF TRUSTEES OF A SCHOOL DISTRICT TO HOLD ITS FINAL BUDGET MEETING ON OR BEFORE AUGUST 15; EXTENDING THE TIME FOR PROVIDING NOTIFICATION OF THE FINAL BUDGET MEETING; AMENDING SECTIONS 20-9-115 AND 20-9-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1788

377 *(House Bill No. 265; Facey)* AUTHORIZING BOARDS OF TRUSTEES OF SCHOOL DISTRICTS TO ENTER INTO INTERLOCAL AGREEMENTS WITH POSTSECONDARY INSTITUTIONS TO ALLOW 11TH AND 12TH GRADE STUDENTS TO OBTAIN CREDITS THROUGH ATTENDING CLASSES AVAILABLE ONLY AT POSTSECONDARY INSTITUTIONS; PROVIDING ELIGIBILITY CRITERIA; REQUIRING PAYMENT OF FEES BY DISTRICTS OR STUDENTS; AMENDING SECTION 20-3-324, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1789

378 *(House Bill No. 331; Eggers)* CREATING THE CRIMINAL OFFENSE OF THEFT OF IDENTITY; AND PROVIDING PENALTIES. 1792

379 *(House Bill No. 349; Haines)* AUTHORIZING AN EMPLOYEE OF THE MONTANA UNIVERSITY SYSTEM OR AN INDIVIDUAL WORKING ON BEHALF OF THE UNIVERSITY SYSTEM TO SERVE ON THE BOARD OF DIRECTORS OR OTHER GOVERNING BOARD OF OR TO SERVE AS A DIRECTOR, OFFICER, OR EMPLOYEE OF A BUSINESS ENTITY THAT HAS AN AGREEMENT WITH THE UNIVERSITY SYSTEM OR ANY OTHER STATE AGENCY OR POLITICAL

SUBDIVISION OR THAT SHARES AN OWNERSHIP INTEREST IN INTELLECTUAL PROPERTY WITH THE UNIVERSITY SYSTEM RELATED TO INTELLECTUAL PROPERTY CREATED BY THE EMPLOYEE OR INDIVIDUAL; ALLOWING THE EMPLOYEE OR INDIVIDUAL TO HAVE EQUITY OWNERSHIP OR OTHER FINANCIAL INTEREST IN THE INTELLECTUAL PROPERTY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1793

380 *(House Bill No. 610; Kasten)* REDUCING THE AMOUNT OF COAL SEVERANCE TAX DEPOSITED IN THE TREASURE STATE ENDOWMENT FUND; AMENDING SECTION 17-5-703, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1794

381 *(House Bill No. 33; Younkin)* AUTHORIZING A SHORT-TERM LEASE OF A WATER RIGHT FOR ROAD CONSTRUCTION OR DUST ABATEMENT WITHOUT APPROVAL BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 85-2-122, 85-2-402, 85-2-407, AND 85-2-419, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1797

382 *(House Bill No. 46; Dale)* INCREASING THE LIMIT FOR CONSTRUCTION CONTRACTS WITHOUT FORMAL COMPETITIVE BIDS FOR STATE-OWNED WATER PROJECTS TO $50,000; EXEMPTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM SPECIFIC SOLICITATION AND SELECTION PROCEDURES FOR CONTRACTS UP TO $15,000 FOR GOODS, NONCONSTRUCTION SERVICES, OR PROFESSIONAL SERVICES RELATED TO STATE-OWNED WATER PROJECTS; AMENDING SECTION 85-1-219, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1809

383 *(House Bill No. 94; Gillan)* CLARIFYING THE REQUIREMENTS TO NOTIFY POTENTIALLY LIABLE PERSONS REGARDING THE INVESTIGATION AND REMEDIATION OF IMPACTS CAUSED BY THE RELEASE OF HAZARDOUS AND DELETERIOUS SUBSTANCES; STANDARDIZING THE POSTEMERGENCY ACTION NOTIFICATION DEADLINE; LIMITING THE LIABILITY DEFENSE TO ONLY THOSE DEPARTMENT COSTS INCURRED OR ENCUMBERED PRIOR TO THE DATE OF NOTICE; AMENDING SECTIONS 75-10-711, 75-10-712, 75-10-715, AND 75-10-745, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1810

384 *(House Bill No. 125; Younkin)* CLARIFYING THAT THE GOAL OF TEMPORARY WATER QUALITY STANDARDS IS TO IMPROVE WATER QUALITY TO THE POINT AT WHICH ALL THE BENEFICIAL USES DESIGNATED FOR THAT WATER BODY OR SEGMENT ARE SUPPORTED; REQUIRING THAT A SUPPORT DOCUMENT AND PRELIMINARY IMPLEMENTATION PLAN BE SUBMITTED TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY PRIOR TO REQUESTING TEMPORARY WATER QUALITY STANDARDS; REVISING THE INFORMATION REQUIRED IN THE SUPPORT DOCUMENT AND IMPLEMENTATION PLAN; REQUIRING THE SUBMISSION OF ANNUAL WORK PLANS THAT MUST BE APPROVED BY THE DIRECTOR OF THE DEPARTMENT; REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO REVIEW THE IMPLEMENTATION PLAN AT LEAST EVERY 3 YEARS AT A PUBLIC HEARING; AUTHORIZING THE DEPARTMENT TO MODIFY IMPLEMENTATION PLANS; AND AMENDING SECTION 75-5-312, MCA 1820

385 *(House Bill No. 156; Matthews)* GENERALLY REVISING THE LAWS RELATING TO MOTOR VEHICLE DEALERS; CLARIFYING

CURBSTONING PROHIBITIONS; ALLOWING ISSUANCE OF COURTESY LICENSE PLATES; CLARIFYING THAT SELLERS OF SMALL TRAILERS ARE NOT REQUIRED TO HAVE A DEALER'S LICENSE; AMENDING SECTIONS 61-1-314, 61-4-101, 61-4-105, 61-4-123, 61-4-124, AND 61-4-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1823

386 *(House Bill No. 166; Lee)* ALLOWING A WETLAND MITIGATION SITE TO BE CONVEYED BY THE DEPARTMENT OF TRANSPORTATION WITH A PERPETUAL CONSERVATION EASEMENT; RESTRICTING WHO MAY OWN THE CONSERVATION EASEMENT; PROVIDING SPECIAL RESTRICTIONS FOR WETLAND MITIGATION SITES; AND AMENDING SECTION 60-4-207, MCA. 1833

387 *(House Bill No. 210; Ripley)* ALLOWING THE BOARD OF COMMISSIONERS OF AN IRRIGATION DISTRICT TO SET THE DAILY COMPENSATION RATE OF THE COMMISSIONERS; AND AMENDING SECTION 85-7-1505, MCA 1834

388 *(House Bill No. 279; McKenney)* GENERALLY REVISING THE PRACTICE OF PHARMACY; CLARIFYING THE NUMBER OF TERMS A MEMBER OF THE BOARD OF PHARMACY MAY SERVE; PROVIDING THAT A BOARD MEMBER'S REFUSAL OR INABILITY TO PERFORM DUTIES IS GROUNDS FOR REMOVAL FROM THE BOARD; ADDING AND CLARIFYING DEFINITIONS; CLARIFYING THE DUTIES OF THE BOARD OF PHARMACY; PROVIDING FOR REGISTRATION TO PRACTICE TELEPHARMACY; PROVIDING FOR REGISTRATION FOR PHARMACY TECHNICIANS; PROVIDING FOR LICENSURE OF PHARMACY INTERNS; AND AMENDING SECTIONS 2-15-1843, 37-2-101, 37-7-101, 37-7-201, 37-7-301, 37-7-303, 37-7-321, 37-7-322, 37-7-323, 37-7-401, 37-7-406, 37-7-502, 37-7-505, 37-7-602, AND 50-32-101, MCA 1834

389 *(House Bill No. 317; Peterson)* PROVIDING THAT A PEACE OFFICER SIGNING A CRIMINAL CHARGE BY COMPLAINT NEED NOT SIGN UNDER OATH; PROVIDING THAT IF THE COMPLAINT IS SIGNED BY A PERSON WITH KNOWLEDGE OF THE FACTS THE PERSON MUST SIGN UNDER OATH; AMENDING SECTION 46-11-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1850

390 *(House Bill No. 434; Schrumpf)* PROVIDING THAT A COURT MAY, AS A CONDITION OF SENTENCE, IMPOSE RESIDENCY RESTRICTIONS ON A PERSON CONVICTED OF A SEXUAL OFFENSE AND DESIGNATED AS A LEVEL 3 OFFENDER; AMENDING SECTION 46-18-255, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . 1851

391 *(House Bill No. 491; Tropila)* INCREASING THE BENEFIT PAID TO CERTAIN BENEFIT RECIPIENTS IN THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM WHO ARE NOT COVERED BY THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT BY PROVIDING A ONE-TIME PERMANENT AD HOC PURCHASING POWER ADJUSTMENT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1851

392 *(House Bill No. 552; Shockley)* ELIMINATING THE STATUTORY CAP ON ADMINISTRATIVE CHARGES FOR IRRIGATION DISTRICTS; AMENDING SECTION 85-7-2103, MCA; AND PROVIDING AN EFFECTIVE DATE 1852

393 *(House Bill No. 569; Esp)* REVISING THE TIME PERIODS WITHIN WHICH A NEWLY LICENSED OUTFITTER, A NEWLY LICENSED OUTFITTER WHO PURCHASES AN EXISTING OUTFITTING BUSINESS, AND AN OUTFITTER WHO REQUESTS AN EXPANSION

OF NET CLIENT HUNTER USE HAVE TO ESTABLISH NET CLIENT HUNTER USE; AMENDING SECTION 37-47-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1853

394 *(House Bill No. 577; McCann)* INCREASING THE DEBT LIMITS FOR THE BOARD OF INVESTMENTS UNDER THE MUNICIPAL FINANCE CONSOLIDATION ACT; AUTHORIZING THE DEPARTMENT OF JUSTICE TO OBTAIN A LOAN FROM THE BOARD OF INVESTMENTS FOR THE PURPOSE OF FINANCING AN INFORMATION TECHNOLOGY SYSTEM FOR THE MOTOR VEHICLE DIVISION AND THE ACQUISITION OF VIDEO GAMBLING AUTOMATED ACCOUNTING AND REPORTING SYSTEM DATA COLLECTION UNITS FOR THE GAMBLING CONTROL DIVISION; INCREASING THE LIEN FILING FEE TO $8 TO FUND REPAYMENT OF THE MOTOR VEHICLE INFORMATION TECHNOLOGY LOAN; CREATING A MOTOR VEHICLE INFORMATION TECHNOLOGY SYSTEM ACCOUNT IN THE STATE SPECIAL REVENUE FUND; APPROPRIATING TO THE DEPARTMENT OF JUSTICE MONEY BORROWED FROM THE BOARD OF INVESTMENTS; AMENDING SECTIONS 17-5-1608, 17-5-2001, AND 61-3-103, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE 1854

395 *(House Bill No. 615; Lewis)* REDUCING THE REQUIRED MAINTENANCE OF EFFORT FOR PROGRAMS FUNDED WITH THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT FROM 77 PERCENT TO 75 PERCENT; AMENDING SECTION 53-4-211, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1860

396 *(House Bill No. 639; Barrett)* GENERALLY REVISING HOW FEES CHARGED BY THE SECRETARY OF STATE MAY BE SET; ELIMINATING THE REQUIREMENT THAT THE FEES MUST BE COMMENSURATE WITH COSTS ON A FEE-BY-FEE BASIS; PROVIDING THAT THE FEES MUST BE REASONABLY COMMENSURATE WITH OVERALL COSTS AND REASONABLY REFLECT PREVAILING RATES FOR SIMILAR SERVICES; PROVIDING THAT THE FEES BE DEPOSITED TO AN ACCOUNT IN THE ENTERPRISE FUND TYPE; AMENDING SECTIONS 1-5-408, 2-4-311, 2-4-312, 2-4-313, 2-6-103, 2-6-110, 7-13-2509, 13-2-115, 13-27-208, 27-18-411, 30-9-403, 30-9-407, 30-9-545, 30-13-217, 30-13-320, 35-1-1206, 35-1-1207, 35-2-1003, 35-5-205, 35-6-201, 35-8-211, 35-8-212, 35-12-521, 35-15-201, 35-15-205, 35-17-205, AND 35-18-502, MCA; AND PROVIDING AN EFFECTIVE DATE. 1861

397 *(Senate Bill No. 46; Bishop)* PROVIDING THAT A NOTICE OF LEVY WHEN ISSUED HAS THE SAME FORCE AND EFFECT AS A WRIT OF EXECUTION; PROVIDING THAT A LEVY UPON EARNINGS CONTINUES IN EFFECT FOR 120 DAYS; AMENDING SECTIONS 15-1-706 AND 39-51-1304, MCA; AND PROVIDING AN EFFECTIVE DATE 1877

398 *(Senate Bill No. 92; Halligan)* EXTENDING THE TERMINATION DATE FOR THE INCOME AND CORPORATE TAX CREDIT FOR RECYCLING OF MATERIAL AND THE INCOME AND CORPORATE TAX DEDUCTION FOR THE PURCHASE OF RECYCLED MATERIAL; REMOVING SOIL CONTAMINATED BY HAZARDOUS WASTES FROM THE DEFINITION OF "RECLAIMABLE MATERIAL"; DELETING THE RESTRICTION ON DEPRECIABLE PROPERTY THAT TREATS SOIL CONTAMINATED BY HAZARDOUS WASTES; AMENDING SECTIONS 15-32-601, 15-32-602 AND 15-32-603, MCA, SECTION 9, CHAPTER 712, LAWS OF 1991, SECTIONS 4 AND 5,

HeinOnline -- 2001 vol.I lxx 2001

CHAPTER 542, LAWS OF 1995, AND SECTION 1, CHAPTER 411, LAWS OF 1997; AND PROVIDING AN APPLICABILITY DATE. . . . 1879

399 *(Senate Bill No. 134; Miller)* PROVIDING THAT COAL PRODUCED FOR IN-STATE ELECTRICAL GENERATING FACILITIES THAT OFFER ELECTRICAL POWER AT A SPECIFIC PRICE FOR IN-STATE USE AND THAT ARE CONSTRUCTED AFTER DECEMBER 31, 2001, IS TAXED AT ONE-THIRD THE OTHERWISE APPLICABLE COAL SEVERANCE TAX RATE; AMENDING SECTIONS 15-35-101 AND 15-35-103, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE. 1882

400 *(Senate Bill No. 162; Grosfield)* PROVIDING CRITERIA FOR THE DEDICATION OF STATE REVENUE FOR LOCAL GOVERNMENTS; PROVIDING FOR THE REVIEW OF REVENUE DEDICATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1885

401 *(Senate Bill No. 185; Cobb)* GENERALLY REVISING THE LAWS GOVERNING ELECTIONS AND CAMPAIGN FINANCE; REVISING THE DUTIES OF THE COMMISSIONER OF POLITICAL PRACTICES; REMOVING REFERENCES TO THE COMMISSIONER OF POLITICAL PRACTICES' AUTHORITY TO REGULATE CONTESTS FOR NOMINATION TO PUBLIC OFFICE; REMOVING REFERENCES TO PRIMARY POLITICAL COMMITTEES; CLARIFYING REPORTING REQUIREMENTS FOR BALLOT ISSUES; REMOVING CRIMINAL PENALTIES FOR UNLAWFUL CONTRIBUTIONS; CLARIFYING THAT ISSUANCE OF AN ORDER OF NONCOMPLIANCE IS NOT A PREREQUISITE FOR OTHER ACTION; CONFORMING CONTRIBUTION REPORTING REQUIREMENTS TO CURRENT LIMITS; REVISING DISTANCE RESTRICTIONS ON EXIT POLLING; ELIMINATING THE POLITICAL CRIMINAL LIBEL LAW; AMENDING SECTIONS 13-1-101, 13-35-211, 13-35-226, 13-37-111, 13-37-112, 13-37-113, 13-37-114, 13-37-117, 13-37-118, 13-37-121, 13-37-124, 13-37-125, 13-37-126, 13-37-127, 13-37-128, 13-37-226, AND 13-37-228, MCA; AND REPEALING SECTION 13-35-234, MCA. 1887

402 *(Senate Bill No. 191; DePratu)* PROVIDING FOR THE ISSUANCE OF GENERIC SPECIALTY LICENSE PLATES; ALLOWING QUALIFIED ORGANIZATIONS TO SPONSOR GENERIC SPECIALTY LICENSE PLATES THAT INCLUDE THE SPONSOR'S NAME, IDENTIFYING PHRASE, AND GRAPHIC; REQUIRING THE DEPARTMENT OF JUSTICE TO ADMINISTER THE PROGRAM AND ADOPT RULES THAT DICTATE THE APPEARANCE OF THE PLATES; LISTING THE REQUIREMENTS FOR BECOMING A GENERIC SPECIALTY LICENSE PLATE SPONSOR; REQUIRING THE APPOINTMENT OF GENERIC SPECIALTY LICENSE PLATE LIAISONS; ESTABLISHING A FEE FOR PURCHASE OF THE PLATES AND SPECIFYING DISBURSEMENT OF THE REVENUE; PROVIDING AN APPROPRIATION OF $120,000 FROM THE GENERAL FUND TO THE DEPARTMENT OF CORRECTIONS FOR MANUFACTURE OF THE PLATES; PROVIDING AN APPROPRIATION OF $26,010 FROM THE GENERAL FUND TO THE DEPARTMENT OF JUSTICE FOR PROGRAMMING COSTS; AMENDING SECTIONS 61-3-332, 61-3-407, AND 61-3-446, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE . 1897

403 *(Senate Bill No. 240; McNutt)* ELIMINATING PROJECT DEVELOPMENT DEADLINES THAT ARE REQUIRED TO QUALIFY FOR REDUCED OIL PRODUCTION TAX RATES FOR CERTAIN OIL WELL ENHANCED RECOVERY PROJECTS; REVISING

DEFINITIONS; AMENDING SECTION 15-36-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1909

404 *(Senate Bill No. 280; McNutt)* REINSTATING THE 1-CENT-A-GALLON AVIATION FUEL TAX THAT WAS DEPOSITED IN THE AERONAUTICAL LOAN ACCOUNT THAT TERMINATED JANUARY 1, 2001, AFTER THE LOAN ACCOUNT REACHED A BALANCE OF $1 MILLION; PROVIDING THAT THE PROCEEDS OF THE REINSTATED 1-CENT TAX BE DEPOSITED IN THE AIRPORT GRANT ACCOUNT FOR MUNICIPALITIES; AMENDING SECTIONS 15-70-204, 15-70-205, 15-70-221, 67-1-301, AND 67-1-303, MCA; REPEALING SECTION 67-1-305, MCA; AND PROVIDING AN EFFECTIVE DATE 1912

405 *(Senate Bill No. 317; Ellis)* REVISING LAWS GOVERNING BREWERS OF BEER; REVISING THE TAXATION OF BEER TO A SLIDING SCALE BASED UPON THE NUMBER OF BARRELS OF BEER BREWED ANNUALLY BY THE BREWER; REVISING THE ANNUAL LICENSE RENEWAL FEE FOR CERTAIN BREWERS; AMENDING SECTIONS 16-1-406 AND 16-4-501, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1919

406 *(Senate Bill No. 325; Mahlum)* GENERALLY REVISING RURAL COOPERATIVE LAWS; CLARIFYING THE DESCRIPTION OF CLASS NINE PROPERTY AS IT RELATES TO RURAL ELECTRIC COOPERATIVES; REVISING THE DEFINITION OF "RURAL AREA"; REQUIRING THAT A COOPERATIVE'S ARTICLES OF INCORPORATION INCLUDE PROVISIONS FOR CLASSIFICATION OF MEMBERS; CLARIFYING COOPERATIVE MEMBERSHIP AND VOTING DISTRICT PROVISIONS; PROVIDING THAT POLE ATTACHMENT MATTERS ARE GOVERNED BY FEDERAL LAW IN CERTAIN MUNICIPAL AREAS; AMENDING SECTIONS 15-6-141, 35-18-102, 35-18-104, 35-18-203, 35-18-301, AND 35-18-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1922

407 *(Senate Bill No. 326; Taylor)* GENERALLY REVISING LAWS GOVERNING WEEDS; REQUIRING A WEED MANAGEMENT DISTRICT TO PROVIDE THE DEPARTMENT OF AGRICULTURE WITH A COMPREHENSIVE WEED MANAGEMENT PLAN BEFORE BECOMING ELIGIBLE TO RECEIVE STATE FUNDING; TRANSFERRING FUNDS ANNUALLY FROM THE HIGHWAY NONRESTRICTED ACCOUNT AND ONE TIME FROM THE RESOURCE INDEMNITY TRUST FUND INTO THE NOXIOUS WEED STATE SPECIAL REVENUE ACCOUNT; PROVIDING DIRECTION TO THE DEPARTMENT OF AGRICULTURE FOR THE DISBURSEMENT OF FUNDS TO WEED MANAGEMENT DISTRICTS; ALLOWING A DISTRICT WEED BOARD TO ENTER INTO COST-SHARE AGREEMENTS FOR NOXIOUS WEED MANAGEMENT; REVISING THE APPEAL PROCEDURE FOR A PERSON ADVERSELY AFFECTED BY ANY NOTICE, ACTION, OR ORDER OF THE DISTRICT WEED BOARD; CHANGING THE VIOLATION PENALTY FROM A MISDEMEANOR TO A CIVIL PENALTY; ALLOWING A DISTRICT WEED BOARD TO ENTER INTO AGREEMENTS WITH COMMERCIAL APPLICATORS FOR THE CONTROL AND DESTRUCTION OF WEEDS; ESTABLISHING STATUTORY AUTHORITY FOR COUNTY COMMISSIONERS TO IMPOSE A TAX FOR WEED CONTROL WITHIN A SPECIAL MANAGEMENT ZONE IF THE TAX IS APPROVED BY THE CITIZENS OF THE MANAGEMENT ZONE; REQUIRING THAT MUNICIPALITIES COMPLETE THEIR COOPERATIVE AGREEMENTS WITH THEIR RESPECTIVE DISTRICT WEED

BOARDS BY JANUARY 1, 2002; REQUIRING PRIOR NOTIFICATION TO THE DISTRICT WEED BOARD OF AN ACTIVITY THAT MAY REQUIRE REVEGETATION OF RIGHTS-OF-WAY AND AREAS THAT HAVE THE POTENTIAL FOR NOXIOUS WEED INFESTATION; REQUIRING A PERSON OWNING PROPERTY THAT IS OFFERED FOR SALE TO NOTIFY THE OWNER'S AGENT AND THE PURCHASER OF THE EXISTENCE OR POTENTIAL EXISTENCE OF NOXIOUS WEEDS ON THE PROPERTY; EXPANDING THE CONDITIONS THAT CONSTITUTE A NOXIOUS WEED EMERGENCY AND INCREASING THE AMOUNT OF FUNDS THAT CAN BE ALLOCATED TO ADDRESS NOXIOUS WEED EMERGENCIES; DIRECTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO SPEND A PERCENTAGE OF MONEY IN THE HUNTER MANAGEMENT PROGRAM AND THE HUNTING ACCESS ENHANCEMENT PROGRAM ON DEPARTMENTAL WEED CONTROL PROGRAMS; AMENDING SECTIONS 7-22-2101, 7-22-2109, 7-22-2110, 7-22-2111, 7-22-2116, 7-22-2117, 7-22-2123, 7-22-2124, 7-22-2130, 7-22-2142, 7-22-2146, 7-22-2150, 7-22-2151, 7-22-2152, 7-22-2153, 80-5-120, 80-7-105, 80-7-133, 80-7-801, 80-7-815, 80-7-816, AND 80-7-903, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 1926

408 *(Senate Bill No. 329; Roush)* PROVIDING FOR PROVISIONAL PRACTICE PERMITS FOR REGISTERED PROFESSIONAL AND LICENSED PRACTICAL NURSES FROM CANADA AND TEMPORARY PRACTICE PERMITS FOR NURSES FROM ANOTHER STATE WHILE APPLICANTS SEEK LICENSURE TO PRACTICE PROFESSIONAL OR PRACTICAL NURSING IN THE STATE OF MONTANA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 1941

409 *(Senate Bill No. 344; Cobb)* INCREASING THE BASE RATE FOR REIMBURSEMENT FOR AN INDIVIDUAL TRANSPORTATION CONTRACT FROM 21.25 CENTS TO 25 CENTS; INCREASING THE MAXIMUM REIMBURSEMENT FOR AN INDIVIDUAL TRANSPORTATION CONTRACT AND FOR ROOM AND BOARD FROM $8 TO $9.25 FOR THE FIRST STUDENT AND FROM $5 TO $6 FOR EACH ADDITIONAL STUDENT; AMENDING SECTIONS 20-5-323 AND 20-10-142, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 1943

410 *(Senate Bill No. 346; Cobb)* RELATING TO THE PAYMENT OF PROPERTY TAXES; ALLOWING PAYMENT OF PROPERTY TAXES UNDER LOW-INCOME PROPERTY TAX ASSISTANCE PROVISIONS WITHOUT PENALTY AND INTEREST IF THE PAYMENT IS MADE WITHIN 20 CALENDAR DAYS OF THE DATE THE PAYMENT IS DUE; AMENDING SECTION 15-16-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . 1946

411 *(Senate Bill No. 350; Ellingson)* CREATING A TAX CREDIT FOR DONATIONS TO THE AFFORDABLE HOUSING REVOLVING LOAN ACCOUNT BY INDIVIDUAL AND CORPORATE TAXPAYERS; PROVIDING THAT THE CREDIT IS A PERCENTAGE OF THE AMOUNT OF THE DONATION AND MAY NOT EXCEED $10,000; PROVIDING FOR THE ALLOCATION OF THE CREDIT FOR SMALL BUSINESS CORPORATIONS AND PARTNERSHIPS; PROVIDING THAT FOR THE PURPOSES OF THE QUALIFIED ENDOWMENT CREDIT UNDER STATE TAX LAW, THE AFFORDABLE HOUSING REVOLVING LOAN ACCOUNT IS A QUALIFIED ENDOWMENT; AMENDING SECTION 15-30-165, MCA; AND PROVIDING AN

IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE 1947

412 *(Senate Bill No. 368; Shea)* ALLOWING AN INSTRUMENT THAT IS TO BE RECORDED TO INCORPORATE INFORMATION BY REFERENCE FROM OTHER RECORDED INSTRUMENTS; AND AMENDING SECTIONS 7-4-2613 AND 72-16-503, MCA 1949

413 *(Senate Bill No. 379; Tash)* REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES GOVERNING AUTHORIZATION TO DISCHARGE UNDER A GENERAL PERMIT FOR STORM WATER DISCHARGE ASSOCIATED WITH CONSTRUCTION ACTIVITY; REQUIRING THAT THE RULES AUTHORIZE DISCHARGE UNDER THE GENERAL PERMIT UPON RECEIPT OF A NOTICE OF INTENT AND POLLUTION PREVENTION PLAN; AMENDING SECTION 75-5-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1951

414 *(Senate Bill No. 393; Thomas)* AUTHORIZING THE DESIGN, MANUFACTURE, AND ISSUANCE OF LEWIS AND CLARK BICENTENNIAL LICENSE PLATES; PROVIDING FOR DISPOSITION OF THE PROCEEDS FROM THE SALE OF THE PLATES; SPECIFYING THAT THE USE OF THE PROCEEDS MUST BE APPROVED BY THE LEWIS AND CLARK BICENTENNIAL COMMISSION; ALLOWING THE COMMISSION TO OBTAIN A LOAN FROM THE BOARD OF INVESTMENTS; STATUTORILY APPROPRIATING PROCEEDS TO THE COMMISSION; APPROPRIATING $480,000 FROM THE GENERAL FUND TO THE DEPARTMENT OF CORRECTIONS FOR MANUFACTURE OF THE LICENSE PLATES; AMENDING SECTIONS 2-15-150, 17-7-502, 61-3-332, AND 61-3-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE 1953

415 *(Senate Bill No. 451; Johnson)* ELIMINATING THE REQUIREMENT THAT AN OPERATOR OF A CERTAIN KIND OF BICYCLE MUST HAVE A DRIVER'S LICENSE; AND AMENDING SECTION 61-5-102, MCA. 1962

416 *(Senate Bill No. 454; Waterman)* CREATING A MULTIAGENCY CHILDREN'S SERVICES INITIATIVE FOR CHILDREN WITH SERIOUS EMOTIONAL DISTURBANCES TO IDENTIFY HIGH-COST CHILDREN WHO REQUIRE SERVICES FROM MULTIPLE AGENCIES TO HAVE NEW CARE AND TREATMENT PLANS AND SERVICES DEVELOPED TO TREAT THEM IN THE LEAST RESTRICTIVE ENVIRONMENT; SPECIFYING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AS THE LEAD AGENCY; ALLOWING PROVIDER NETWORKS TO PARTICIPATE IN THE INITIATIVE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 1963

417 *(Senate Bill No. 489; Grosfield)* REVISING THE PENALTIES FOR FOURTH OR SUBSEQUENT OFFENSE DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS AND DRIVING WITH EXCESSIVE ALCOHOL CONCENTRATION; ALLOWING AS A PENALTY FOR A FOURTH OR SUBSEQUENT OFFENSE THAT A PERSON ENTER AND COMPLETE A RESIDENTIAL ALCOHOL DEPENDENCY TREATMENT PROGRAM OPERATED OR APPROVED BY THE DEPARTMENT OF CORRECTIONS; ALLOWING THE DEPARTMENT OF CORRECTIONS TO OPERATE A RESIDENTIAL ALCOHOL TREATMENT PROGRAM AT THE FORENSIC UNIT AT WARM SPRINGS; AMENDING SECTIONS

53-1-202, 61-8-731, AND 61-8-732, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1965

418 *(Senate Bill No. 495; Thomas)* REVISING SCHOOL FUNDING THROUGH THE USE OF THE PUBLIC SCHOOL FUND; REVISING THE STRUCTURE OF THE PUBLIC SCHOOL FUND; AUTHORIZING THE BOARD OF INVESTMENTS TO PURCHASE THE MINERAL PRODUCTION RIGHTS HELD BY THE PUBLIC SCHOOL FUND; PROVIDING THAT A PORTION OF ROYALTY PAYMENTS ON THE PURCHASED MINERAL PRODUCTION RIGHTS MUST BE DEPOSITED IN THE GUARANTEE ACCOUNT; LOANING MONEY FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR THE PURCHASE OF THE MINERAL PRODUCTION RIGHTS; APPROPRIATING THE LOAN PROCEEDS; REQUIRING REPAYMENT OF THE EXPENDED AMOUNTS FROM MINERAL ROYALTY PROCEEDS; DELETING THE PROHIBITION ON PUBLIC FUND INVESTMENT IN CORPORATE STOCK CONTINGENT ON THE PASSAGE OF THE CONSTITUTIONAL AMENDMENT ALLOWING INVESTMENT IN CORPORATE STOCK; AMENDING SECTIONS 17-6-201, 77-2-303, AND 77-2-304, MCA; AND PROVIDING EFFECTIVE DATES. 1970

419 *(Senate Bill No. 501; Grosfield)* GENERALLY REVISING THE TAXATION OF PROPERTY; REVISING THE LIMIT ON PROPERTY TAXES; ALLOWING A GOVERNMENTAL ENTITY TO CARRY FORWARD MILL LEVY AUTHORITY; REQUIRING THE DEPARTMENT OF REVENUE TO PROVIDE CERTIFIED VALUES FOR NEWLY TAXABLE PROPERTY AND TOTAL TAXABLE VALUE, EXCLUSIVE OF NEWLY TAXABLE PROPERTY, OF CERTAIN CENTRALLY ASSESSED PROPERTY; REQUIRING THE DEPARTMENT OF REVENUE TO RECERTIFY THE TAXABLE VALUE OF CERTAIN CLASS THIRTEEN PROPERTY FOR TAX YEAR 2000; REQUIRING LOCAL GOVERNMENTS TO RECALCULATE PROPERTY TAXES THAT WOULD HAVE BEEN ACTUALLY ASSESSED BASED ON THE RECERTIFICATION OF CERTAIN CLASS THIRTEEN PROPERTY; REVISING THE REQUIREMENTS FOR REPORTING CERTIFIED TAXABLE VALUE BY THE DEPARTMENT OF REVENUE TO LOCAL TAXING AUTHORITIES; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF REVENUE REPORT CERTIFIED MILLAGE RATES TO LOCAL TAXING AUTHORITIES; ELIMINATING THE REQUIREMENT THAT LOCAL TAXING AUTHORITIES ADOPT A RESOLUTION TO INCREASE MILL LEVIES IN EXCESS OF THE CERTIFIED MILLAGE RATES; AMENDING SECTIONS 7-6-2522, 15-10-202, 15-10-206, AND 15-10-420, MCA; REPEALING SECTIONS 15-10-204, 15-10-205, 15-10-207, AND 15-10-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE 1975

420 *(Senate Bill No. 511; Thomas)* REVISING SCHOOL FUNDING THROUGH THE USE OF THE STATE UNIVERSITY FUND; REVISING THE ALLOCATION OF TIMBER PROCEEDS FOR MONTANA UNIVERSITY SYSTEM LANDS; PROVIDING THAT TIMBER PROCEEDS BECOME A PART OF THE INCOME STREAM RATHER THAN BEING DEPOSITED IN THE CORPUS; AMENDING SECTION 77-1-109, MCA; AND PROVIDING AN EFFECTIVE DATE 1978

421 *(Senate Bill No. 519; Roush)* REVISING THE TAXATION OF OIL FROM EXEMPT STRIPPER WELL PRODUCTION; IMPOSING THE

TAX IF THE AVERAGE PRICE FOR A BARREL OF OIL AS REPORTED IN THE WALL STREET JOURNAL FOR WEST TEXAS INTERMEDIATE CRUDE OIL DURING A CALENDAR QUARTER IS MORE THAN $38 A BARREL; AMENDING SECTIONS 15-36-303 AND 15-36-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1979

422 *(House Bill No. 57; Erickson)* TRANSFERRING MONEY FROM THE FEDERAL HOUSING AND URBAN DEVELOPMENT SECTION 8 ADMINISTRATIVE FEE RESERVE ACCOUNT TO THE AFFORDABLE HOUSING REVOLVING LOAN ACCOUNT; AND PROVIDING AN EFFECTIVE DATE. 1985

423 *(House Bill No. 63; Dell)* PROVIDING A DISABILITY BENEFIT FOR MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM IN THE DEFINED CONTRIBUTION RETIREMENT PLAN; PROVIDING FUNDING FROM CURRENT EMPLOYER CONTRIBUTIONS; REQUIRING THE PUBLIC EMPLOYEES' RETIREMENT BOARD TO DEVELOP A LONG-TERM DISABILITY PLAN AND A TRUST FUND THROUGH WHICH BENEFITS ARE PAID; AUTHORIZING THE PUBLIC EMPLOYEES' RETIREMENT BOARD TO RECEIVE A LOAN FROM THE BOARD OF INVESTMENTS TO PAY FOR STARTUP COSTS; CREATING A STATE DEBT; AMENDING SECTIONS 19-2-303, 19-2-406, 19-3-2117, 19-3-2121, 19-3-2123, 19-3-2124, AND 19-3-2126, MCA; AND PROVIDING EFFECTIVE DATES 1986

424 *(House Bill No. 87; Masolo)* CREATING A ONE-STOP DELIVERY SYSTEM FOR ADMINISTERING THE SEPARATE WORKFORCE INVESTMENT, EDUCATIONAL, AND OTHER HUMAN RESOURCE PROGRAMS; PROVIDING FOR STATE AND LOCAL WORKFORCE INVESTMENT BOARDS TO PLAN, OPERATE, AND OVERSEE THE ONE-STOP DELIVERY SYSTEM; UPDATING THE STATE'S UNEMPLOYMENT INSURANCE LAWS BY SUBSTITUTING "WORKFORCE INVESTMENT ACT OF 1998" FOR CURRENT REFERENCES TO THE JOB TRAINING PARTNERSHIP ACT; AMENDING SECTION 39-51-2602, MCA; REPEALING SECTIONS 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, AND 53-2-1110, MCA; AND PROVIDING AN EFFECTIVE DATE. 2000

425 *(House Bill No. 119; Vick)* CLARIFYING THE AUTHORITY OF THE BOARD OF PARDONS AND PAROLE TO HAVE INITIAL APPEARANCES AND HEARINGS BEFORE THE BOARD'S DESIGNEE; AMENDING SECTIONS 46-23-104 AND 46-23-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2003

426 *(House Bill No. 186; Holden)* APPROPRIATING $50,000 FROM THE GENERAL LICENSE FUND OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR THE USDA-APHIS WILDLIFE SERVICES PROGRAM TO ASSIST WITH PREDATOR CONTROL IN MONTANA; AND PROVIDING AN EFFECTIVE DATE 2005

427 *(House Bill No. 201; Davies)* CREATING THE OFFENSE OF THEFT BY EMBEZZLEMENT; PROVIDING A PENALTY; AND AMENDING SECTION 45-6-301, MCA 2005

428 *(House Bill No. 218; Facey)* REGULATING AND LICENSING WATER HAULERS AS FOOD ESTABLISHMENTS; DEFINING "WATER HAULER"; REQUIRING WATER HAULERS TO OBTAIN WATER FROM PUBLIC WATER SUPPLY SYSTEMS OR APPROVED SOURCES; AMENDING SECTION 50-50-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2007

HeinOnline -- 2001 vol.I lxxvi 2001

429 *(House Bill No. 239; Thomas)* PROVIDING FOR ACCESS TO INFORMATION TECHNOLOGY FOR INDIVIDUALS WHO ARE BLIND OR VISUALLY IMPAIRED THROUGH THE PURCHASE OF TECHNOLOGY IN ACCORDANCE WITH STANDARDS FOR EQUIVALENT ACCESS BY BOTH VISUAL AND NONVISUAL MEANS; AND PROVIDING AN EFFECTIVE DATE 2009

430 *(House Bill No. 564; Olson)* REVISING THE UNIVERSAL SERVICE TELECOMMUNICATIONS LAWS; REQUIRING THE PUBLIC SERVICE COMMISSION UPON PETITION OR ITS OWN MOTION TO INVESTIGATE THE NEED FOR A UNIVERSAL SERVICE FUND; PROVIDING THE COMMISSION WITH THE AUTHORITY TO ESTABLISH A UNIVERSAL SERVICE FUND; PROVIDING THE COMMISSION WITH THE AUTHORITY TO ADOPT RULES FOR THE ADMINISTRATION OF THE UNIVERSAL SERVICE FUND; PROVIDING FOR THE COLLECTION OF CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND ON A QUARTERLY RATHER THAN A MONTHLY BASIS; CLARIFYING THE METHODOLOGY FOR CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND; CLARIFYING THE PAYMENT PROCESS FROM THE UNIVERSAL SERVICE FUND; AMENDING SECTIONS 69-3-842, 69-3-843, 69-3-844, AND 69-3-845, MCA; REPEALING SECTION 41, CHAPTER 349, LAWS OF 1997, AND SECTION 6, CHAPTER 187, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2012

431 *(House Bill No. 368; Hedges)* CLARIFYING THAT THE RESEARCH AND COMMERCIALIZATION EXPENDABLE TRUST MAY BE USED FOR GRANTS FOR PRODUCTION AGRICULTURE RESEARCH AND COMMERCIALIZATION PROJECTS; AMENDING SECTIONS 90-3-1002 AND 90-3-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2017

432 *(House Bill No. 401; Lee)* CREATING THE RAILROAD VANDALISM PREVENTION ACT; ESTABLISHING THE OFFENSES OF STOWING AWAY ON RAILROAD PROPERTY, INTENTIONAL VANDALISM TO RAILROAD PROPERTY, THEFT OF RAILROAD FREIGHT, AND RECEIVING STOLEN RAILROAD FREIGHT; ESTABLISHING PENALTIES FOR THE OFFENSES; AND PROVIDING A TERMINATION DATE 2019

433 *(House Bill No. 455; Lewis)* AUTHORIZING A TEMPORARY CHANGE OF APPROPRIATION RIGHT FOR INSTREAM FLOW FOR UP TO 30 YEARS UNDER CERTAIN CONDITIONS; AMENDING SECTION 85-2-407, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 2022

434 *(House Bill No. 9; Kasten)* ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECT GRANT AWARDS; APPROPRIATING GENERAL FUND AND OTHER MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE 2023

435 *(House Bill No. 11; Kasten)* APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS UNDER THE TREASURE STATE ENDOWMENT PROGRAM AND TO REGIONAL WATER AUTHORITIES FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT SPECIAL REVENUE ACCOUNT AND FUNDS FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS

UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; AMENDING SECTION 90-6-715, MCA; AND PROVIDING EFFECTIVE DATES 2026

436 *(House Bill No. 375; Carney)* REQUIRING THAT A HEALTH CARE FACILITY BE DESIGNATED BY THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES AS A HEALTH PROFESSIONAL SHORTAGE AREA BEFORE AN EMPLOYEE OF THAT FACILITY WHOSE VEHICLE IS REGISTERED IN ANOTHER STATE OR COUNTRY MAY BE EXEMPT FROM FOREIGN VEHICLE REGISTRATION FEES; AND AMENDING SECTIONS 15-6-217 AND 61-3-707, MCA 2032

437 *(House Bill No. 353; Fritz)* PROVIDING STARTUP COSTS FOR SCHOOL DISTRICTS TO ESTABLISH SCHOOL BREAKFAST PROGRAMS; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 2033

438 *(House Bill No. 362; McKenney)* EXEMPTING FROM TAXATION ALL MANUFACTURING MACHINERY, FIXTURES, EQUIPMENT, AND TOOLS USED FOR THE PRODUCTION OF ETHANOL FROM GRAIN DURING THE COURSE OF THE CONSTRUCTION OF AN ETHANOL MANUFACTURING FACILITY AND FOR 10 YEARS AFTER INITIAL PRODUCTION OF ETHANOL FROM THE FACILITY; AMENDING SECTIONS 15-6-138 AND 15-6-201, MCA; AND PROVIDING AN APPLICABILITY DATE 2034

439 *(House Bill No. 437; Jacobson)* REQUIRING THAT ELEVATORS, ESCALATORS, DUMBWAITERS, MOVING WALKS, MATERIAL LIFTS, WHEELCHAIR LIFTS, AND STAIRWAY CHAIRLIFTS MUST BE INSPECTED BY THE DEPARTMENT OF COMMERCE, A CERTIFIED MAINTENANCE COMPANY REPRESENTATIVE, OR A CERTIFIED INSURANCE COMPANY REPRESENTATIVE; PROVIDING AN EXEMPTION FOR PRIVATE RESIDENCES, FARMS, AND RANCHES; AMENDING SECTIONS 50-60-701, 50-60-702, AND 50-60-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2047

440 *(House Bill No. 456; Gutsche)* PROVIDING ELIGIBILITY FOR MEDICAID FOR INDIVIDUALS WHO HAVE PARTICIPATED IN THE MONTANA BREAST AND CERVICAL HEALTH PROGRAM AND WHO REQUIRE TREATMENT FOR BREAST OR CERVICAL CANCER, OR BOTH; PROVIDING AN APPROPRIATION FROM THE GENERAL FUND AND REQUESTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CONSIDER THE INCLUSION OF FUNDING FOR THE 2005 BIENNIUM EXECUTIVE BUDGET REQUEST FROM THE INCOME ON THE TOBACCO SETTLEMENT TRUST FUND; AMENDING SECTION 53-6-131, MCA; AND PROVIDING AN EFFECTIVE DATE 2049

441 *(House Bill No. 387; Hedges)* CREATING THE CROP RESEARCH FACILITIES PROTECTION ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2052

442 *(House Bill No. 472; Rome)* REOPENING THE OPPORTUNITY FOR A STATE PEACE OFFICER TO TRANSFER MEMBERSHIP FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM TO THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM; AND AMENDING SECTION 19-8-302, MCA. 2054

443 *(House Bill No. 469; Rice)* ALLOWING RURAL FIRE DISTRICT TRUSTEES TO ACQUIRE REAL PROPERTY ALONG WITH EQUIPMENT, HOUSING, AND FACILITIES NECESSARY FOR FIRE

PROTECTION; AMENDING SECTIONS 7-33-2105, 7-33-2109, AND 7-33-2111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2055

444 *(House Bill No. 381; Noennig)* REVISING CERTAIN PROPERTY TAX LAWS AS THEY RELATE TO MULTIPLE, UNDIVIDED INTERESTS IN A PARCEL OF LAND; ALLOWING THE DEPARTMENT OF REVENUE TO SEND THE NOTICE OF CLASSIFICATION AND APPRAISAL TO A SINGLE OWNER OF A MULTIPLE, UNDIVIDED INTEREST IN A PARCEL OF LAND; REQUIRING THE DEPARTMENT OF REVENUE TO FURNISH THE NAMES OF THE OWNERS OF MULTIPLE, UNDIVIDED INTERESTS IN A PARCEL OF LAND TO THE COUNTY TREASURER; ESTABLISHING A LIEN FOR AN OWNER WHO REDEEMS A PROPERTY TAX LIEN FOR OTHER OWNERS OF A MULTIPLE, UNDIVIDED INTEREST IN A PARCEL OF LAND; AMENDING SECTIONS 15-7-102 AND 15-18-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2056

445 *(House Bill No. 390; Shockley)* PROVIDING IMMUNITY FROM CIVIL DAMAGES FOR INJURY TO A PERSON OR PROPERTY DAMAGE ARISING FROM AN ALLOWABLE USE OF FORCE 2059

446 *(House Bill No. 382; Whitaker)* PROHIBITING SELF-GOVERNING LOCAL GOVERNMENT UNITS FROM EXERCISING CERTAIN POWERS RELATED TO LANDLORDS AND TENANTS; AND AMENDING SECTION 7-1-111, MCA 2060

447 *(House Bill No. 397; Jackson)* ESTABLISHING THE CLARK FORK RIVER BASIN TASK FORCE; REQUIRING THE TASK FORCE TO DEVELOP A WATER MANAGEMENT PLAN FOR THE BASIN; REQUIRING THE TASK FORCE TO SUBMIT INTERIM REPORTS TO THE GOVERNOR AND THE LEGISLATURE; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO PROVIDE A WRITTEN NOTICE WHEN THE DEPARTMENT ISSUES WATER USE PERMITS IN THE CLARK FORK RIVER BASIN; SPECIFYING THE CONTENTS OF THE WRITTEN NOTICE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 2061

448 *(House Bill No. 399; McKenney)* GENERALLY REVISING LIQUOR LICENSING LAWS; PROVIDING FOR THE DEPOSIT OF LIQUOR LICENSE FEES AND PERMIT FEES INTO THE DEPARTMENT OF REVENUE'S LIQUOR ENTERPRISE FUND; CHANGING THE METHOD FOR DETERMINING WHEN THE DEPARTMENT OF REVENUE SHALL PUBLISH NOTICE OF APPLICATION FOR LIQUOR LICENSE TO WHEN THE APPLICATION IS COMPLETE RATHER THAN 30 DAYS AFTER AN INVESTIGATION IS REQUESTED; AMENDING SECTIONS 15-1-501, 16-2-108, 16-4-207, AND 16-4-401, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 2063

449 *(House Bill No. 405; Younkin)* ADDING TO THE REQUIREMENTS OF VICTIM NOTIFICATION TO INCLUDE VICTIMS OF THE CRIMES OF PARTNER OR FAMILY MEMBER ASSAULT AND VIOLATION OF AN ORDER OF PROTECTION; MODIFYING THE CONDITIONS FOR RELEASE ON BAIL TO INCLUDE PERSONS WHO VIOLATE AN ORDER OF PROTECTION; INCREASING FROM $10 TO $25 THE CHARGE THAT EACH CONVICTED CRIMINAL MUST PAY FOR VICTIM ADVOCATE PROGRAMS OPERATED OR USED BY COUNTIES, CITIES, AND TOWNS; CLARIFYING THE DISTRIBUTION OF THE VICTIM ADVOCATE CHARGE; AMENDING

SECTIONS 3-10-601, 46-9-108, 46-9-302, AND 46-18-236, MCA; AND PROVIDING AN EFFECTIVE DATE. 2069

450 *(House Bill No. 406; Gillan)* REQUIRING INSURANCE COVERAGE FOR OUTPATIENT SELF-MANAGEMENT TRAINING AND EDUCATION FOR THE TREATMENT OF DIABETES AND A LIMITED BENEFIT FOR CERTAIN DIABETIC EQUIPMENT AND SUPPLIES; REQUIRING THAT MANDATORY COVERAGE APPLY TO COVERAGE BY HEALTH MAINTENANCE ORGANIZATIONS; PROVIDING THAT STATE AND LOCAL GOVERNMENT EMPLOYEE PLANS ARE NOT INCLUDED IF THE PLANS PROVIDE EQUIVALENT OR GREATER COVERAGE; AMENDING SECTIONS 2-18-704, 33-31-102, AND 33-31-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE. . . 2073

451 *(House Bill No. 412; Wolery)* INCREASING THE HOMESTEAD EXEMPTION FROM $60,000 TO $100,000; AMENDING SECTION 70-32-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 2081

452 *(House Bill No. 430; Clancy)* PROVIDING FOR GRANTS TO CERTAIN MONTANA MUNICIPALITIES FOR COURTESY CARS; SETTING TERMS AND CONDITIONS OF THE COURTESY CAR PROGRAM; AND PROVIDING AN EFFECTIVE DATE 2082

453 *(House Bill No. 498; Branae)* PROVIDING THAT SOLID WASTE MANAGEMENT DISTRICT SERVICE CHARGES MAY BE BASED ON A COMBINATION OF WASTE MANAGEMENT FACTORS; ELIMINATING VEHICLE SIZE AS A FACTOR ON WHICH SERVICE CHARGES MAY BE BASED; AMENDING SECTION 7-13-232, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2083

454 *(House Bill No. 510; Lawson)* PROVIDING THAT THE PROVISION OF NUTRITION, INCLUSIVE OF SUPPLEMENTS AND PRESCRIBED MEDICATIONS, THROUGH A GASTROSTOMY OR JEJUNOSTOMY TUBE BY CERTAIN PERSONS IS NOT WITHIN THE SCOPE OF THE PRACTICE OF NURSING; AMENDING SECTION 37-8-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2085

455 *(House Bill No. 539; Mangan)* CREATING A MONTANA TITLE LOAN ACT TO BE ADMINISTERED BY THE DEPARTMENT OF COMMERCE; PROVIDING FOR LICENSURE, LICENSE AND EXAMINATION FEES, DISCLOSURE REQUIREMENTS, COMPLAINT PROCEDURES, CONTRACT PROVISIONS, LOAN AMOUNT LIMITS, RULEMAKING AUTHORITY, CIVIL REMEDIES, AND CRIMINAL PENALTIES; AMENDING SECTIONS 31-1-106 AND 32-5-103, MCA; AND PROVIDING AN APPLICABILITY DATE 2086

456 *(House Bill No. 559; Noennig)* GENERALLY REVISING THE NOTICE PERIODS FOR LANDLORDS NOTIFYING TENANTS OF INTENDED TERMINATION OF THE RENTAL AGREEMENT FOR NONCOMPLIANCE OR VIOLATION OF THE RENTAL AGREEMENT OR OTHER PROVISIONS OF THE MONTANA RESIDENTIAL LANDLORD AND TENANT ACT OF 1977; AMENDING SECTIONS 70-24-422, 70-24-436, AND 70-24-441, MCA; AND PROVIDING AN APPLICABILITY PROVISION 2097

457 *(House Bill No. 570; Shockley)* REVISING WATER LAWS; AUTHORIZING A COUNTY ATTORNEY TO BRING AN INDEPENDENT ACTION FOR THE ENFORCEMENT OF WATER USE LAWS; CHANGING THE ALLOWABLE TIME FOR ATTEMPTING TO OBTAIN VOLUNTARY COMPLIANCE; PROVIDING FOR THE DEPOSIT OF PENALTIES COLLECTED PURSUANT TO AN INDEPENDENT ACTION; AMENDING

SECTIONS 85-2-114, 85-2-122, AND 85-2-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2101

458 *(House Bill No. 596; Bitney)* AUTHORIZING PRIVATE GOLF COURSES AS WELL AS PUBLIC GOLF COURSES TO QUALIFY FOR A GOLF COURSE BEER AND WINE LICENSE; REQUIRING THAT A PRIVATE GOLF COURSE MEET CERTAIN ELIGIBILITY CRITERIA; PROVIDING THAT BEER AND WINE SALES ON THE PREMISES OF A PRIVATE GOLF COURSE MAY TAKE PLACE ONLY WHEN THE GOLF COURSE IS OPEN FOR BUSINESS; PROVIDING THAT SALES MUST STOP AT DARKNESS; PROHIBITING GAMBLING ON THE PREMISES; ALLOWING CERTAIN GOVERNMENT ENTITIES THAT OWN A GOLF COURSE TO LEASE THE GOLF COURSE BEER AND WINE LICENSE TO INDIVIDUALS OR ENTITIES APPROVED BY THE DEPARTMENT OF REVENUE; AMENDING SECTION 16-4-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2102

459 *(House Bill No. 609; Story)* ALLOWING THE AGRICULTURAL LANDS ADVISORY COMMITTEE MORE DISCRETION IN DETERMINING THE UNDERLYING BASIS FOR ITS RECOMMENDATIONS FOR AGRICULTURAL PRODUCTIVE LAND VALUES FOR PROPERTY TAX PURPOSES; AND AMENDING SECTION 15-7-201, MCA 2104

460 *(Senate Bill No. 484; Beck)* CREATING A HARD-ROCK MINING RECLAMATION DEBT SERVICE FUND; AUTHORIZING THE BOARD OF EXAMINERS TO ISSUE AND SELL HARD-ROCK MINING RECLAMATION GENERAL OBLIGATION BONDS IN AN AMOUNT NOT EXCEEDING $8 MILLION UPON THE REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; CREATING THE HARD-ROCK MINING RECLAMATION SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 15-37-117 AND 75-10-743, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 2106

461 *(Senate Bill No. 514; Grosfield)* REVISING TAX LAWS BY REQUIRING THAT INFORMATION AGENTS REPORT PROCEEDS FROM REAL ESTATE TRANSACTIONS THAT UNDER RULES OR REGULATIONS OF THE INTERNAL REVENUE SERVICE ARE REQUIRED TO BE REPORTED; ALLOWING THE DEPARTMENT OF REVENUE TO PROVIDE MORE METHODS OF REPORTING BY INFORMATION AGENTS; PROVIDING A PENALTY; REQUIRING A REPORT TO THE REVENUE AND TAXATION INTERIM COMMITTEE; AMENDING SECTION 15-30-301, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 2111

462 *(Senate Bill No. 394; Shea)* AUTHORIZING THE TRUSTEES OF A SCHOOL DISTRICT TO ENTER INTO AN INTERLOCAL COOPERATIVE AGREEMENT WITH AN ACCREDITED MONTANA JOB CORPS PROGRAM TO PROVIDE EDUCATIONAL OR VOCATIONAL SERVICES TO SUPPLEMENT THE DISTRICT'S EDUCATIONAL PROGRAM; REQUIRING THAT CLASSES BE APPROVED BY THE SCHOOL DISTRICT AND MEET GRADUATION REQUIREMENTS AND THAT CREDITS RECEIVED MUST BE REPORTED TO THE DISTRICT OF RESIDENCE AND COUNTED TOWARD GRADUATION REQUIREMENTS; PROVIDING THAT THE DISTRICT OF RESIDENCE IS NOT RESPONSIBLE FOR TRANSPORTATION COSTS; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE 2112

463 *(Senate Bill No. 303; Hargrove)* REVISING THE MANNER OF DETERMINING PROPERTY TAXES IMPOSED ON AGRICULTURAL PROPERTY AND FOREST LAND FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST ON BONDS ISSUED BY A PUBLIC

BODY FOR THE PRESERVATION OF OPEN SPACE; AMENDING SECTION 76-6-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2113

464 *(Senate Bill No. 65; Ellis)* REVISING THE OUT-OF-DISTRICT TUITION LAWS; ELIMINATING MANDATORY TUITION APPROVAL IF THE RESIDENT DISTRICT PROVIDES TRANSPORTATION BUT IS NOT IN THE SAME COUNTY AS THE DISTRICT OF CHOICE; ALLOWING A SCHOOL DISTRICT TO WAIVE TUITION FOR A SPECIFIC GROUP REQUIRED TO PAY TUITION WHILE CHARGING TUITION TO OTHER GROUPS REQUIRED TO PAY; REQUIRING THE COUNTY TRANSPORTATION COMMITTEE TO DETERMINE WHEN GEOGRAPHIC CONDITIONS MAKE IT IMPRACTICAL FOR A CHILD TO ATTEND SCHOOL IN THE DISTRICT OF RESIDENCE; PLACING TUITION PAYMENTS INTO THE OVER-BASE BUDGET OF A SCHOOL DISTRICT; SETTING THE RATE OF TUITION BY STATUTE; AMENDING SECTIONS 20-5-320, 20-5-321, 20-5-323, 20-5-324, 20-9-141, 20-9-212, 20-9-335, AND 20-10-132, MCA; REPEALING SECTION 20-9-334, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES 2114

465 *(Senate Bill No. 77; Hargrove)* GENERALLY REVISING THE LAWS GOVERNING PUBLIC ASSISTANCE; DEFINING FINANCIAL ASSISTANCE AND NONFINANCIAL ASSISTANCE TO COMPORT WITH FEDERAL LAW; REMOVING AUTHORITY FOR ONE-TIME-ONLY INCOME EXCLUSIONS FOR SPECIAL EMPLOYMENT-RELATED NEEDS; AUTHORIZING THE ADOPTION OF RULES GOVERNING THE DURATION OF BENEFITS AND ELIGIBILITY FOR NONFINANCIAL ASSISTANCE; CLARIFYING SANCTIONS FOR FAILURE OR REFUSAL TO COMPLY WITH FAMILY INVESTMENT AGREEMENTS; REMOVING REFERENCES TO PATHWAYS AND THE COMMUNITY SERVICES PROGRAM; REMOVING THE DESIGNATED COMPONENTS OF THE FAIM PROGRAM; AMENDING SECTIONS 23-1-303, 39-7-303, 39-71-118, 39-71-123, 40-4-215, 40-5-242, 40-5-248, 53-2-201, 53-2-211, 53-2-606, 53-2-610, 53-2-613, 53-2-901, 53-2-902, 53-2-903, 53-2-904, 53-2-1103, 53-4-201, 53-4-202, 53-4-212, 53-4-214, 53-4-231, 53-4-233, 53-4-241, 53-4-246, 53-4-602, 53-4-606, 53-4-611, 53-4-612, 53-4-613, 53-4-702, 53-4-704, 53-4-705, 53-4-706, 53-4-717, 53-6-101, 53-6-113, 53-6-131, 53-6-132, 53-6-134, AND 53-24-106, MCA; REPEALING SECTIONS 53-4-247, 53-4-603, 53-4-607, 53-4-608, AND 53-4-701, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2126

466 *(Senate Bill No. 82; Keenan)* REVISING THE LAWS RELATING TO THE PUBLIC MENTAL HEALTH SYSTEM AND MANAGED CARE; CONSOLIDATING MANAGED HEALTH CARE ENTITY FINANCIAL SOLVENCY PROVISIONS UNDER THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; REDEFINING "MANAGED CARE COMMUNITY NETWORK"; REORGANIZING CERTAIN MENTAL HEALTH MANAGED CARE LAWS AND PUBLIC MENTAL HEALTH SYSTEM LAWS; PROVIDING A REQUIREMENT FOR A SYSTEM OF TRACKING CHILDREN WHO NEED MENTAL HEALTH SERVICES; REORGANIZING ELIGIBILITY FOR PUBLIC MENTAL HEALTH SERVICES; AMENDING SECTIONS 33-31-115, 53-6-116, 53-6-131, 53-6-701, 53-6-702, 53-6-703, 53-21-701, AND 53-21-702, MCA; AND REPEALING SECTION 53-21-704, MCA. 2159

467 *(Senate Bill No. 129; Berry)* IMPLEMENTING THE TOBACCO SETTLEMENT TRUST FUND AUTHORIZED BY ARTICLE XII,

HeinOnline -- 2001 vol.I lxxxii 2001

SECTION 4, OF THE MONTANA CONSTITUTION; PROVIDING CRITERIA TO GOVERN THE PURPOSES FOR WHICH THE INTEREST, INCOME, AND PRINCIPAL OF THE TRUST FUND MAY BE APPROPRIATED; PROVIDING FOR THE MANAGEMENT OF THE TRUST FUND; AMENDING SECTION 17-6-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2168

468 *(Senate Bill No. 258; Bohlinger)* GENERALLY REVISING THE LAWS GOVERNING FAMILY EDUCATION SAVINGS ACCOUNTS; EXCLUDING FROM INCOME THOSE EARNINGS ON ACCOUNTS THAT ARE WITHDRAWN FOR QUALIFIED EXPENSES; IMPOSING A TAX ON CERTAIN WITHDRAWALS FROM ACCOUNTS INSTEAD OF RECAPTURING THE WITHDRAWALS AS INCOME; REQUIRING THAT ACCOUNTS BE OPEN FOR 3 YEARS TO QUALIFY FOR THE BENEFIT OF DEDUCTION OF THE CONTRIBUTION; CLARIFYING ACCESS TO CERTAIN RECORDS CONCERNING ACCOUNTS; REVISING DEFINITIONS TO CONFORM TO FEDERAL LAW; CLARIFYING THE INCOME TAX DEDUCTION FOR CONTRIBUTIONS TO AN ACCOUNT; AUTHORIZING THE USE OF MULTIPLE FINANCIAL INSTITUTIONS OR MULTIPLE INVESTMENT INSTRUMENTS; AMENDING SECTIONS 15-30-111, 15-62-103, 15-62-201, AND 15-62-603, MCA; REPEALING SECTION 15-62-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2170

469 *(Senate Bill No. 263; Mahlum)* CONTINUING THE FUNDING OF THE HERITAGE PRESERVATION AND DEVELOPMENT PROGRAM FROM THE LODGING FACILITY USE TAX; AMENDING SECTION 15-65-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 2181

470 *(Senate Bill No. 264; Waterman)* ALLOWING ALCOHOL TAXES TO BE USED TO FUND PRIVATE, FOR-PROFIT CHEMICAL DEPENDENCY TREATMENT PROGRAMS AND FOR MEDICAID MATCHING FUNDS FOR ALCOHOLISM AND CHEMICAL DEPENDENCY PROGRAMS; AMENDING SECTIONS 16-1-404, 16-1-406, 16-1-411, 53-24-108, AND 53-24-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. 2183

471 *(Senate Bill No. 274; Keenan)* REQUIRING AN INSURANCE INSTITUTION OR INSURANCE-SUPPORT ORGANIZATION TO DISCLOSE SPECIFIC UNDERWRITING INFORMATION TO CERTAIN ENTITIES THAT HAVE OBTAINED OR THAT ADMINISTER GROUP HEALTH PLANS PROVIDED BY THEM; PROVIDING THAT THE INFORMATION DISCLOSED MAY NOT INCLUDE ANY PERSONAL INFORMATION PERTAINING TO AN INDIVIDUAL COVERED BY AN ENTITY'S GROUP PLAN; AND PROVIDING THAT THE INFORMATION MAY BE REQUESTED ONCE PER YEAR 2188

472 *(Senate Bill No. 281; Mahlum)* REVISING LAWS GOVERNING PROPERTY TAX PAYMENT; PROVIDING THAT A PERSON TO WHOM PROPERTY TAXES ARE ASSESSED WILL RECEIVE NOTICE IF THE PROPERTY IS SUBJECT TO A TAX SALE; PROVIDING THAT A PERSON TO WHOM PROPERTY TAXES ARE ASSESSED WILL RECEIVE A COPY OF A TAX SALE CERTIFICATE OR ASSIGNMENT CERTIFICATE IF ONE IS ISSUED ON THE PROPERTY; PROVIDING THAT THE NOTICE IS TO BE MAILED TO THE ADDRESS OF RECORD OF THE PERSON TO WHOM PROPERTY TAXES ARE ASSESSED; REQUIRING PROOF OF CERTIFIED MAIL NOTICE TO THE ASSESSED OWNER BEFORE ISSUANCE OF A TAX SALE

CERTIFICATE OR ASSIGNMENT OF RIGHTS; AND AMENDING SECTIONS 15-16-101, 15-17-212, AND 15-17-323, MCA 2189

473 *(Senate Bill No. 282; Crismore)* CREATING THE ASBESTOS CLAIMS COURT; PROVIDING FOR THE APPOINTMENT OF THE ASBESTOS CLAIMS JUDGE; PROVIDING FOR THE PROCEDURES TO BE USED FOR TRYING AN ASBESTOS-RELATED CLAIM; AMENDING SECTIONS 3-5-113, 3-5-115, 3-15-104, 3-15-204, AND 3-15-205, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE 2192

474 *(Senate Bill No. 313; Thomas)* AUTHORIZING A DISTRICT TO DEPRECIATE TECHNOLOGICAL EQUIPMENT AS AN AUTHORIZED USE OF THE TECHNOLOGY ACQUISITION AND DEPRECIATION FUND; REQUIRING VOTER APPROVAL FOR A LEVY TO INCREASE THE DISTRICT'S FUNDS TO SUPPORT TECHNOLOGY; AMENDING SECTIONS 20-9-375 AND 20-9-533, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2196

475 *(Senate Bill No. 315; Franklin)* ALLOWING THE MONTANA COMPREHENSIVE HEALTH ASSOCIATION TO ADOPT A SLIDING SCALE OF PREMIUM RATES FOR PARTICIPATION OF LOW-INCOME PERSONS IN THE ASSOCIATION PLANS; AMENDING SECTIONS 33-22-1512 AND 33-22-1513, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2198

476 *(Senate Bill No. 338; Berry)* REVISING THE ELIGIBILITY CAP FOR THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM TO 150 PERCENT OF THE FEDERAL POVERTY LEVEL; PROVIDING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES WITH THE ABILITY TO LIMIT THE AMOUNT, SCOPE, OR DURATION OF SERVICES; ALLOWING THE DEPARTMENT TO MAKE DIRECT PAYMENTS TO HEALTH CARE PROVIDERS AND CONTRACT ON A FEE-FOR-SERVICE BASIS; AMENDING SECTIONS 53-4-1002, 53-4-1004, 53-4-1005, 53-4-1007, AND 53-4-1009, MCA; AND PROVIDING AN EFFECTIVE DATE. 2201

477 *(Senate Bill No. 348; Elliott)* CLARIFYING THE REQUIREMENT THAT LOCOMOTIVES SOUND THEIR HORNS AT PUBLIC ROAD AND HIGHWAY CROSSINGS; ELIMINATING OBSOLETE OR ARCHAIC REQUIREMENTS FOR RAILROADS AND THOSE REQUIREMENTS THAT ARE FEDERALLY PREEMPTED; AND AMENDING SECTION 69-14-562, MCA 2203

478 *(Senate Bill No. 376; DePratu)* EXEMPTING CERTAIN ACTIONS OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE BOARD OF LAND COMMISSIONERS FROM ENVIRONMENTAL REVIEW REQUIREMENTS; AMENDING SECTION 77-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 2204

479 *(Senate Bill No. 427; Johnson)* AUTHORIZING A COUNTY TO ISSUE LIMITED GENERAL OBLIGATION BONDS WITHIN THE COUNTY BUT OUTSIDE OF AN INCORPORATED CITY OR TOWN TO FINANCE ROAD CONSTRUCTION AND MAINTENANCE; AMENDING SECTIONS 7-14-2521 AND 7-14-2522, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2205

480 *(Senate Bill No. 436; Ellis)* REVISING SCHOOL DISTRICT OPERATING EXPENSE AND PURCHASING LAWS BY ALLOWING A DISTRICT TO MAKE TRANSFERS BETWEEN DIFFERENT FUNDS OR BETWEEN THE FINAL BUDGET AND A BUDGET AMENDMENT; PROHIBITING TRANSFERS FROM OR TO THE GENERAL FUND; AND AMENDING SECTIONS 20-9-133, 20-9-201,

HeinOnline -- 2001 vol.I lxxxiv 2001

20-9-208, AND 20-9-443, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 2207

481 *(Senate Bill No. 441; Christiaens)* PROVIDING FOR A STUDY OF THE FUNDING MECHANISM FOR THE COMPREHENSIVE HEALTH ASSOCIATION PLAN AND ASSOCIATION PORTABILITY PLAN . . 2209

482 *(Senate Bill No. 442; Cobb)* CREATING A REVOLVING FUND FOR LOANS FOR LOW-INCOME FAMILIES, USING TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT FUNDS . . . 2210

483 *(Senate Bill No. 445; Taylor)* GENERALLY REVISING THE LAWS GOVERNING THE DEPARTMENT OF COMMERCE; REASSIGNING CERTAIN FUNCTIONS OF THE DEPARTMENT TO OTHER ENTITIES; TRANSFERRING CERTAIN ECONOMIC DEVELOPMENT FUNCTIONS TO THE GOVERNOR'S OFFICE; CREATING THE GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT; TRANSFERRING FUNDING FROM THE DEPARTMENT OF COMMERCE TO THE GOVERNOR'S OFFICE TO REFLECT THE FUNCTION TRANSFER; ALLOWING THE DIRECTOR OF THE DEPARTMENT OF COMMERCE TO BE INTERESTED IN OR TO BORROW MONEY FROM ANY STATE BANK; ASSIGNING MOST PROFESSIONAL AND OCCUPATIONAL LICENSING FUNCTIONS, BUILDING CODE FUNCTIONS, AND WEIGHTS AND MEASURES FUNCTIONS TO THE DEPARTMENT OF LABOR AND INDUSTRY; ASSIGNING THE LOTTERY, FINANCIAL INSTITUTIONS, BOARD OF COUNTY PRINTING, AND LOCAL GOVERNMENT AUDIT AND ASSISTANCE FUNCTIONS TO THE DEPARTMENT OF ADMINISTRATION; ASSIGNING THE BOARD OF HORSERACING TO THE DEPARTMENT OF LIVESTOCK; ASSIGNING CONSUMER AFFAIRS FUNCTIONS TO THE DEPARTMENT OF ADMINISTRATION; ELIMINATING THE PROPRIETARY POSTSECONDARY EDUCATIONAL ADVISORY COUNCIL; AMENDING SECTIONS 2-6-402, 2-6-403, 2-7-501, 2-7-518, 2-15-1803, 2-15-1811, 2-15-1852, 2-15-1859, 2-15-1860, 2-15-1872, 2-15-1882, 2-15-1883, 2-18-103, 5-5-223, 7-1-4145, 7-1-4147, 7-1-4148, 7-2-4906, 7-2-4911, 7-2-4912, 7-3-146, 7-3-153, 7-3-187, 7-6-603, 7-6-604, 7-6-2114, 7-6-2141, 7-6-2203, 7-6-2302, 7-6-2311, 7-6-2314, 7-6-2322, 7-6-4140, 7-6-4205, 7-6-4260, 15-35-108, 17-2-304, 17-5-1529, 17-5-1651, 17-6-321, 18-1-106, 19-18-205, 19-18-206, 19-18-403, 20-6-621, 20-6-622, 20-9-203, 20-25-901, 22-3-804, 23-3-301, 23-4-101, 23-7-201, 23-7-210, 23-7-301, 25-1-1104, 27-12-206, 30-11-515, 30-11-801, 30-12-101, 30-12-105, 30-14-102, 30-14-202, 30-14-1403, 30-16-302, 31-1-202, 31-1-703, 31-3-125, 31-3-152, 31-3-203, 32-1-109, 32-1-201, 32-1-212, 32-1-382, 32-1-901, 32-1-1005, 32-1-1007, 32-2-101, 32-3-104, 32-3-201, 32-3-203, 32-3-205, 32-3-301, 32-3-302, 32-3-303, 32-3-307, 32-3-321, 32-3-322, 32-3-323, 32-3-404, 32-3-611, 32-3-703, 32-3-705, 32-4-201, 32-4-306, 32-5-102, 32-6-103, 32-7-101, 32-7-102, 32-8-103, 33-22-705, 37-1-101, 37-1-121, 37-1-130, 37-1-137, 37-1-302, 37-1-401, 37-3-102, 37-4-101, 37-5-101, 37-6-101, 37-7-101, 37-8-102, 37-9-101, 37-10-101, 37-11-101, 37-12-101, 37-14-102, 37-14-322, 37-15-102, 37-16-102, 37-17-102, 37-18-101, 37-19-101, 37-22-102, 37-23-201, 37-24-103, 37-26-103, 37-27-205, 37-29-102, 37-30-101, 37-30-412, 37-31-101, 37-32-102, 37-34-103, 37-35-102, 37-40-101, 37-47-101, 37-50-101, 37-51-102, 37-51-209, 37-54-102, 37-60-101, 37-65-102, 37-66-103, 37-67-101, 37-68-102, 37-69-101, 37-69-310, 37-72-101, 46-18-111, 50-3-103, 50-6-202, 50-32-101, 50-37-104, 50-39-101, 50-39-102, 50-39-103, 50-39-106, 50-39-107, 50-39-108, 50-53-103, 50-60-101, 50-60-504, 50-60-505, 50-60-507, 50-60-508, 50-60-509, 50-60-510, 50-60-511, 50-60-512, 50-60-513, 50-60-514, 50-60-603, 50-60-604, 50-60-605, 50-60-606, 50-60-607, 50-60-803, 50-64-102. 50-74-101.

50-74-312, 50-76-102, 50-76-103, 50-76-104, 50-76-105, 50-76-110, 50-76-111, 52-3-813, 61-2-208, 61-4-507, 61-4-511, 61-4-512, 61-4-515, 61-4-516, 61-4-517, 61-4-518, 61-4-519, 61-4-520, 61-4-526, 61-4-532, 75-10-913, 75-10-918, 75-20-211, 75-20-216, 75-20-226, 76-3-403, 80-8-204, 82-15-101, 85-7-1616, 85-7-1913, AND 90-3-1001, MCA; REPEALING SECTION 2-15-1804, MCA; AND PROVIDING AN EFFECTIVE DATE 2212

484 *(Senate Bill No. 494; Cobb)* REVISING THE LAWS RELATED TO THE RETAIL TELECOMMUNICATIONS EXCISE TAX TO MAKE IT REVENUE-NEUTRAL AS COMPARED TO THE TELEPHONE LICENSE TAX AND PROPERTY TAX PROVISIONS THAT IT SUPPLANTED; SUSPENDING THE ADVANCED TELECOMMUNICATIONS INFRASTRUCTURE TAX CREDIT; AMENDING SECTIONS 15-53-129 AND 15-53-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE. 2337

485 *(Senate Bill No. 510; Stapleton)* ENCOURAGING THE LEASING OF PROPERTY FOR COAL MINING THAT IS RECEIVED FROM THE UNITED STATES GOVERNMENT AS PART OF THE CROWN BUTTE LAND EXCHANGE; PROVIDING THAT PROCEEDS FROM THE LEASES BE USED FOR EDUCATION PURPOSES IF PERMITTED; AMENDING SECTION 77-3-303, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE 2339

486 *(House Bill No. 14; McCann)* AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2003; PROVIDING FOR MATTERS RELATING TO APPROPRIATIONS; AMENDING SECTION 2, CHAPTER 518, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . 2340

487 *(House Bill No. 47; Price)* GENERALLY REVISING THE LAWS GOVERNING STATE INVESTMENTS; REMOVING THE REQUIREMENT THAT STATE BANK EXAMINERS EXAMINE LOANS AND INVESTMENTS; INCREASING THE MAXIMUM LOAN FOR IN-STATE INVESTMENTS; REQUIRING COMMERCIAL LENDER PARTICIPATION FOR CERTAIN INVESTMENTS; ELIMINATING RESTRICTIONS ON MAXIMUM LOAN SIZES FOR PURPOSES OF JOB CREDIT INTEREST RATE REDUCTIONS; AMENDING SECTIONS 17-5-1529, 17-6-311, 17-6-312, 17-6-318, AND 17-6-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2344

488 *(House Bill No. 69; McCann)* REVISING THE DEFINITIONS, APPLICABLE FEES, AND MINE PERFORMANCE BONDING AND APPEAL PROCEDURES OF THE METAL MINE RECLAMATION LAWS; ALLOCATING INTEREST FROM THE HARD-ROCK MINING AND RECLAMATION ACCOUNT AND THE OPENCUT MINING AND RECLAMATION ACCOUNT TO THOSE ACCOUNTS; AMENDING SECTIONS 82-4-303, 82-4-311, 82-4-331, 82-4-332, 82-4-335, 82-4-338, 82-4-339, 82-4-341, 82-4-360, AND 82-4-424, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2347

489 *(House Bill No. 73; Brown)* REQUIRING CERTAIN DIVISIONS, BUREAUS, UNITS, AND PROGRAMS TO DEVELOP AND IMPLEMENT A FULL COST ACCOUNTING PILOT PROGRAM; AMENDING SECTION 5-5-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. . . 2360

490 *(House Bill No. 116; Mood)* GENERALLY REVISING THE DEFINED CONTRIBUTION PLAN PROVISIONS UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; COMPLYING WITH INTERNAL REVENUE CODE REQUIREMENTS; LIMITING LIABILITY; REVISING THE ALLOCATION OF CURRENT CONTRIBUTIONS TO AN EDUCATION FUND; REVISING HOW FAMILY LAW ORDERS AND EXECUTION OF WITHHOLDING AND SUPPORT OBLIGATION ORDERS MAY BE APPLIED; REVISING THE USE OF FORFEITURES; MAKING CONTRACTED SERVICES DISCRETIONARY; CLARIFYING PLAN CHOICE PROVISIONS FOR UNIVERSITY EMPLOYEES; ELIMINATING A PROHIBITION ON REJOINING THE DEFINED BENEFIT PLAN UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; REVISING THE INTEREST CREDITED ON AMOUNTS TRANSFERRED TO THE DEFINED CONTRIBUTION PLAN; CLARIFYING TRANSFER AND ROLLOVER PROVISIONS; REVISING MINIMUM ACCOUNT BALANCE PROVISIONS; REVISING CERTAIN PROVISIONS OF THE OPTIONAL RETIREMENT PROGRAM; AMENDING SECTIONS 19-2-303, 19-2-401, 19-2-907, 19-2-909, 19-2-1001, 19-2-1002, 19-2-1003, 19-2-1004, 19-2-1005, 19-2-1006, 19-2-1007, 19-3-2101, 19-3-2102, 19-3-2111 19-3-2112, 19-3-2113, 19-3-2114, 19-3-2115, 19-3-2116, 19-3-2117, 19-3-2121, 19-3-2122, 19-3-2123, 19-3-2124, 19-3-2125, 19-3-2126, 19-3-2133, 19-21-101, 19-21-103, 19-21-201, 19-21-202, AND 19-21-203, MCA, AND SECTIONS 79 AND 81, CHAPTER 471, LAWS OF 1999; AND PROVIDING EFFECTIVE DATES. 2364

491 *(House Bill No. 118; Clancy)* REVISING THE CLEAN AIR ACT OF MONTANA; ALLOWING THE SMALL BUSINESS STATIONARY SOURCE REPRESENTATIVE TO BE LOCATED WITHIN A NONREGULATORY PROGRAM OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; LIMITING THE PURPOSES FOR WHICH THE DEPARTMENT MAY USE INFORMATION OBTAINED BY THE SMALL BUSINESS STATIONARY SOURCE REPRESENTATIVE; REMOVING A REQUIREMENT THAT THE DEPARTMENT ACT ON OPERATING PERMIT APPLICATIONS BY NOVEMBER 15, 1997; AMENDING SECTIONS 75-2-109 AND 75-2-218, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2395

492 *(House Bill No. 120; McKenney)* GENERALLY REVISING PROFESSIONAL LICENSING LAWS; ELIMINATING THE TWO CONSECUTIVE TERM LIMIT FOR ALTERNATIVE HEALTH CARE BOARD MEMBERS; ALLOCATING THE BOARD OF PSYCHOLOGISTS TO THE DEPARTMENT OF COMMERCE FOR ADMINISTRATIVE PURPOSES; REQUIRING SCREENING PANELS TO PUT CERTAIN FINDINGS IN WRITING; CLARIFYING WHEN BOARD MEMBERS MAY FILE COMPLAINTS WITH THEIR BOARD; REQUIRING THAT NOTICES FOR HEARINGS BE BASED ON WRITTEN FINDINGS OF POSSIBLE VIOLATIONS; INCREASING THE NUMBER OF MEMBERS ON THE BOARD OF REAL ESTATE APPRAISERS AND CLARIFYING REQUIREMENTS FOR SCREENING PANELS; ELIMINATING CERTAIN REQUIREMENTS FOR CERTAIN MEMBERS OF THE BOARD OF REAL ESTATE APPRAISERS; CLARIFYING REQUIREMENTS FOR MEMBERS OF THE BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS; REPEALING THE LICENSE FEE EXEMPTION FOR PERSONS IN MILITARY SERVICE; PROVIDING A GENERAL DEFINITION OF "QUORUM" FOR BOARDS AND ELIMINATING INDIVIDUAL BOARD DEFINITIONS OF "QUORUM"; PROVIDING THAT MENTAL INTENT IS NOT A PREREQUISITE TO UNPROFESSIONAL CONDUCT; ELIMINATING

HeinOnline -- 2001 vol.I lxxxvii 2001

AN EXEMPTION FROM LICENSING REQUIREMENTS FOR COMMISSIONED MEDICAL OFFICERS OF THE ARMED FORCES; CLARIFYING SUPERVISION REQUIREMENTS FOR DENTAL AUXILIARY PERSONNEL; ELIMINATING THE REQUIREMENT THAT THE BOARD OF NURSING ACT JOINTLY WITH THE BOARD OF MEDICAL EXAMINERS IN ADOPTING RULES; ELIMINATING CERTAIN QUALIFICATIONS FOR THE EXECUTIVE DIRECTOR OF THE BOARD OF NURSING; CLARIFYING ISSUING AND RENEWAL PERIODS FOR NURSES' LICENSES; CHANGING THE MEDICAL EVALUATION REQUIREMENTS REGARDING THE DISPENSING OF HEARING AIDS; REVISING THE CALCULATION OF LATE FEES FOR PSYCHOLOGISTS' LICENSE RENEWALS; ELIMINATING SINGEING FROM THE DEFINITION OF "PRACTICE OF BARBERING"; ELIMINATING CERTAIN QUALIFICATIONS FOR THE EXECUTIVE DIRECTOR OF THE BOARD OF OUTFITTERS; ELIMINATING CERTAIN QUALIFICATIONS FOR THE EXECUTIVE SECRETARY OF THE BOARD OF REALTY REGULATION; ELIMINATING BROKER ASSOCIATE AND BROKER OWNER DESIGNATIONS FOR REAL ESTATE; PROVIDING FOR TEMPORARY LICENSURE OF OUT-OF-STATE APPRAISERS; GENERALLY REVISING STATUTES PERTAINING TO ARCHITECTURE AND PROVIDING FOR LICENSE VERIFICATION; CHANGING REQUIREMENTS FOR LANDSCAPE ARCHITECTS; GENERALLY REVISING STATUTES PERTAINING TO PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS AND SUBSTITUTING LICENSURE FOR REGISTRATION; AMENDING SECTIONS 2-15-1840, 2-15-1851, 2-15-1868, 2-15-1873, 23-3-401, 37-1-131, 37-1-307, 37-1-308, 37-1-309, 37-3-103, 37-3-204, 37-3-211, 37-4-202, 37-4-408, 37-8-202, 37-8-204, 37-8-431, 37-12-201, 37-14-201, 37-15-201, 37-16-201, 37-16-303, 37-17-201, 37-17-306, 37-18-201, 37-19-202. 37-24-201, 37-26-202, 37-28-103, 37-30-101, 37-47-202, 37-50-201, 37-51-102, 37-51-209, 37-51-302, 37-51-309, 37-51-315, 37-60-201, 37-65-201, 37-65-303, 37-65-304, 37-65-308, 37-66-301, 37-66-304, 37-67-101, 37-67-102, 37-67-103, 37-67-201, 37-67-204, 37-67-301, 37-67-303, 37-67-304, 37-67-305, 37-67-306, 37-67-308, 37-67-309, 37-67-310, 37-67-311, 37-67-312, 37-67-314, 37-67-315, 37-67-316, 37-67-318, 37-67-320, 37-67-321, 37-67-331, 37-67-332, 37-68-201, 37-69-201, AND 70-22-103, MCA; REPEALING SECTIONS 10-1-605, 37-2-111, AND 37-66-305, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE 2398

493 *(House Bill No. 151; Newman)* CLARIFYING THAT THE DEPARTMENT OF CORRECTIONS ONLY SUPERVISES PROBATIONERS WHO ARE FELONY OFFENDERS; CLARIFYING THAT THE DISTRICT COURT MAY ADD CONDITIONS TO OR MODIFY CONDITIONS OF PROBATION; PROVIDING A PROCEDURE FOR ADDING OR MODIFYING CONDITIONS OF PROBATION; CLARIFYING PROVISIONS RELATING TO PROBATION REVOCATION HEARINGS; PROVIDING FOR AN INFORMAL PROBATION VIOLATION INTERVENTION HEARING; AMENDING SECTIONS 46-18-111, 46-18-203, 46-23-1004, 46-23-1011, AND 46-23-1012, MCA; REPEALING SECTION 46-23-1013, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2434

494 *(House Bill No. 154; McGee)* REVISING THE ACCURACY REQUIREMENTS FOR RECORDING STATE PLANE COORDINATES OF LAND BOUNDARIES IN THE PUBLIC RECORD; AND AMENDING SECTION 70-22-206. MCA 2440

495 *(House Bill No. 179; Dell)* PROVIDING A PROCEDURE FOR A MILL LEVY ELECTION; PROVIDING FOR THE CONTENT OF A RESOLUTION PROPOSING A MILL LEVY ELECTION; REQUIRING THE RESOLUTION AND THE BALLOT FORM TO INCLUDE A STATEMENT OF THE IMPACT OF THE ELECTION ON HOMES VALUED AT $100,000 AND $200,000 IN THE DISTRICT IN TERMS OF ACTUAL DOLLARS IN ADDITIONAL PROPERTY TAXES THAT WOULD BE IMPOSED ON RESIDENCES WITH THOSE VALUES IF THE MILL LEVY WERE TO PASS; AMENDING SECTIONS 7-6-2314, 7-6-2328, 7-6-2512, 7-6-2531, 7-6-2534, 7-6-2536, 7-6-2537, 7-6-2541, 7-6-4238, 7-6-4272, 7-6-4431, 7-14-1134, 7-14-1633, 7-14-2504, 7-14-4404, 7-16-2102, 7-16-2109, 7-16-2411, 7-16-2412, 7-16-2432, 7-22-2142, 7-32-235, 7-34-102, 7-34-2135, 19-18-504, 20-9-353, 20-9-502, 20-15-241, 20-15-311, 22-1-304, 76-15-531, AND 90-5-112, MCA; AND REPEALING SECTION 7-6-2532, MCA 2440

496 *(House Bill No. 208; Harris)* CLARIFYING CONTEMPT OF COURT PROCEDURE; CLARIFYING THE MEANING OF CIVIL AND CRIMINAL CONTEMPT; PROVIDING FOR DUE PROCESS IN CONTEMPT PROCEEDINGS AS REQUIRED BY MONTANA SUPREME COURT OPINIONS; AMENDING SECTIONS 3-1-501, 3-1-511, 3-1-513, 3-1-518, 3-1-520, 3-10-402, AND 3-11-303, MCA; AND REPEALING SECTIONS 3-1-519, 3-10-403, AND 3-10-404, MCA . . . 2458

497 *(House Bill No. 214; Shockley)* PROVIDING FOR AN ADDITIONAL DISTRICT COURT JUDGE FOR THE 8TH JUDICIAL DISTRICT AND THE 21ST JUDICIAL DISTRICT TO BE ELECTED AT THE NOVEMBER 2002 GENERAL ELECTION; AMENDING SECTION 3-5-102, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. . 2461

498 *(House Bill No. 216; Himmelberger)* REVISING THE LAWS RELATING TO THE PURCHASE OF RESTRICTED SUBSTANCES BY MINORS; INCREASING CERTAIN PENALTIES FOR UNLAWFUL ATTEMPT TO PURCHASE AN INTOXICATING SUBSTANCE BY A PERSON UNDER 21 YEARS OF AGE; MAKING IT UNLAWFUL FOR A PERSON UNDER 18 YEARS OF AGE TO ATTEMPT TO PURCHASE TOBACCO PRODUCTS AND CREATING PENALTIES FOR THE UNLAWFUL ATTEMPT TO PURCHASE TOBACCO PRODUCTS; EXEMPTING FROM LIABILITY MINORS ASSISTING IN ENFORCEMENT OF THE YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT; AND AMENDING SECTIONS 16-3-301, 16-11-310, 45-5-624, AND 45-5-637, MCA. 2461

499 *(House Bill No. 230; Price)* REVISING BOILER INSPECTION REQUIREMENTS; AND AMENDING SECTIONS 50-74-209 AND 50-74-219, MCA. 2465

500 *(House Bill No. 247; Lewis)* REDUCING THE FEE IN LIEU OF TAX ON HEAVY VEHICLES BY 50 PERCENT OVER A DESIGNATED PERIOD; PROVIDING A REIMBURSEMENT TO LOCAL GOVERNMENTS FOR LOSS OF REVENUE; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 61-3-529, MCA; AND PROVIDING EFFECTIVE DATES AND TERMINATION DATES. . . 2466

501 *(House Bill No. 266; Clancy)* REVISING THE GOVERNMENT ACCOUNTABILITY ACT TO PROVIDE THAT A GOVERNMENT ACT MAY NOT BE TAKEN UNTIL A STATEMENT OF GOVERNMENT AUTHORITY HAS BEEN PROVIDED TO THE REQUESTOR; AMENDING SECTION 2-11-104, MCA; AND PROVIDING AN EFFECTIVE DATE 2473

502 *(House Bill No. 273; Erickson)* TRANSFERRING $3,415,928 OF THE TANF BLOCK GRANT TO THE AFFORDABLE HOUSING

REVOLVING LOAN ACCOUNT; CLARIFYING THE USE OF THE TRANSFERRED FUNDS; AMENDING SECTION 90-6-133, MCA; AND PROVIDING AN EFFECTIVE DATE. 2473

503 *(House Bill No. 313; Masolo)* GENERALLY REVISING LAWS RELATING TO DOMESTIC VIOLENCE; PROVIDING FOR INTERVENTION COUNSELING REFERRALS FOR PERSONS CONVICTED OF AN ASSAULT ON A PARTNER OR FAMILY MEMBER; PROVIDING FOR OFFENDER INTERVENTION ASSESSMENTS AND COUNSELING; AUTHORIZING PROTECTIVE ORDERS FOR A PARTNER OR FAMILY MEMBER OF A VICTIM OF DELIBERATE HOMICIDE OR MITIGATED DELIBERATE HOMICIDE; CREATING ENHANCED PENALTIES FOR AN ASSAULT ON A PARTNER OR FAMILY MEMBER THAT IS COMMITTED WITHIN THE VISION OR HEARING OF A MINOR; PROVIDING THAT A SENTENCE FOR AN ASSAULT ON A PARTNER OR FAMILY MEMBER REQUIRES THE OFFENDER TO COMPLETE ALL RECOMMENDATIONS FOR COUNSELING, REFERRALS, ATTENDANCE AT PSYCHOEDUCATIONAL GROUPS, AND TREATMENT, INCLUDING ANY INDICATED CHEMICAL DEPENDENCY TREATMENT; PROVIDING FOR REPORTS TO THE SENTENCING COURT AND PROBATION OFFICER; AND AMENDING SECTIONS 40-15-102 AND 45-5-206, MCA 2474

504 *(House Bill No. 320; Laible)* CLARIFYING THAT A CIVIL ACTION AGAINST THE BOARD OF LAND COMMISSIONERS OR THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION CONCERNING THE USE OR DISPOSITION OF STATE LANDS REQUIRES A WRITTEN UNDERTAKING; AMENDING SECTION 77-1-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2479

505 *(House Bill No. 324; Mangan)* ALLOWING THE LICENSURE AS DAY-CARE CENTERS OF CERTAIN DAY-CARE FACILITIES PROVIDING DAY CARE ON A REGULAR OR IRREGULAR BASIS TO 13 OR MORE CHILDREN, BUT EXCLUDING DAY CARE PROVIDED ON AN IRREGULAR BASIS IF A PARENT OF A CHILD REMAINS ON THE PREMISES; AMENDING DEFINITIONS; AMENDING SECTIONS 52-2-703, 52-2-704, AND 52-2-721, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE . 3480

506 *(House Bill No. 334; Lenhart)* REVISING THE TYPE OF PROJECTS THAT ARE ELIGIBLE FOR FUNDING UNDER THE WATER POLLUTION CONTROL STATE REVOLVING FUND ACT; INCLUDING SOLID WASTE MANAGEMENT SYSTEMS AS PROJECTS; AMENDING SECTION 75-5-1102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2483

507 *(House Bill No. 345; Mangan)* PROVIDING COUNTIES WITH THE AUTHORITY TO ESTABLISH SALARIES FOR COUNTY OFFICERS; INCLUDING A JUSTICE OF THE PEACE AS A COUNTY OFFICER; REVISING THE BASE SALARY FOR COUNTY ATTORNEYS; ESTABLISHING A COUNTY COMPENSATION BOARD TO MAKE RECOMMENDATIONS TO THE COUNTY COMMISSIONERS FOR ANNUAL SALARY ADJUSTMENTS; PROVIDING FACTORS TO BE CONSIDERED IN MAKING A RECOMMENDATION; PROVIDING THAT A COUNTY OFFICER'S SALARY MAY NOT BE REDUCED BY A RECOMMENDATION; CLARIFYING THAT THE DEPARTMENT OF JUSTICE IS NOT OBLIGATED TO PROVIDE MORE THAN THE AMOUNT APPROPRIATED TO IT FOR THE STATE'S SHARE OF COUNTY ATTORNEY SALARIES; AMENDING SECTIONS 3-10-207, 7-4-2107, 7-4-2503, 7-4-2504, 7-4-2706, 7-14-2126, 41-5-1704, AND

41-5-1705, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2484

508 *(House Bill No. 348; Shockley)* REVISING THE LAWS GOVERNING STATE AGENCY LIQUOR STORES; INCREASING COMMISSION RATES FOR STATE AGENCY LIQUOR STORES BASED UPON THE ANNUAL SALES VOLUMES OF STORES; PROVIDING FOR RENEWALS AT TERMINATION OF THE 10-YEAR PERIOD OF FRANCHISE AGREEMENTS; AMENDING SECTION 16-2-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2493

509 *(House Bill No. 360; Clark)* REVISING THE DEFINITION OF "CRIME OF VIOLENCE" FOR PURPOSES OF CERTAIN CRIMINAL SENTENCING LAWS TO INCLUDE CERTAIN FELONY SEXUAL OFFENSES; AND AMENDING SECTION 46-18-104, MCA 2497

510 *(House Bill No. 395; Thomas)* APPROPRIATING MONEY TO THE BOARD OF REGENTS TO ESTABLISH A DENTAL HYGIENE EDUCATION PROGRAM AT THE MONTANA STATE UNIVERSITY-GREAT FALLS COLLEGE OF TECHNOLOGY; AND PROVIDING AN EFFECTIVE DATE. 2498

511 *(House Bill No. 409; Peterson)* EXEMPTING INCREASES IN A LOCAL GOVERNMENT'S PROPERTY TAX LEVY FOR THE EMPLOYER'S PREMIUM CONTRIBUTIONS FOR GROUP HEALTH INSURANCE BENEFITS FROM THE MILL LEVY CALCULATION LIMITATION; REQUIRING THAT A PUBLIC HEARING BE HELD PRIOR TO IMPLEMENTING A LEVY; AMENDING SECTIONS 2-9-212, 2-18-703, AND 15-10-420, MCA; AND PROVIDING AN EFFECTIVE DATE. . . 2499

512 *(House Bill No. 418; Younkin)* DESCRIBING THE DUTY TO BUILD AND MAINTAIN FENCES WITH REGARD TO A HERD DISTRICT AND A HORSE HERD DISTRICT; REQUIRING THAT WHEN OWNERS OR POSSESSORS OF LAND THAT IS CONTIGUOUS TO A HERD DISTRICT PETITION TO HAVE THEIR PROPERTY ANNEXED TO THAT DISTRICT, THE OWNERS OR POSSESSORS OF AT LEAST 55 PERCENT OF THE LAND SIGN THE PETITION; AMENDING SECTION 81-4-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . 2501

513 *(House Bill No. 442; Jayne)* CLARIFYING THE PROHIBITION AGAINST LITTERING ON HIGHWAYS; ADDING PLASTIC TO THE LIST OF SUBSTANCES THAT MAY NOT BE THROWN OR DEPOSITED ON A HIGHWAY; INCREASING THE PENALTIES FOR LITTERING; ADDING THE OFFENSE OF THROWING CONTAINERS OF URINE OR FECES UPON A HIGHWAY AND PROVIDING A PENALTY; AND AMENDING SECTIONS 61-8-365 AND 61-8-372, MCA 2502

514 *(House Bill No. 452; Whitaker)* ESTABLISHING A DEFERRED RETIREMENT OPTION PLAN IN THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; SPECIFYING ELIGIBILITY AND PARTICIPATION CRITERIA; SPECIFYING CONTRIBUTIONS AND THE INTEREST RATE TO BE CREDITED; PROVIDING FOR SURVIVORSHIP BENEFITS AND DISTRIBUTION OPTIONS; AND PROVIDING EFFECTIVE DATES 2503

515 *(House Bill No. 496; Jent)* GENERALLY REVISING THE LAWS RELATING TO PROCEDURES IN CIVIL CASES; CLARIFYING THE LAWS RELATING TO COLLECTIONS IN CIVIL AND CRIMINAL CASES; REVISING PROCEDURES RELATING TO COLLECTION AND JUDGMENT LIENS; ALLOWING A PARTY TO APPEAR IN PRETRIAL CONFERENCES AND HEARINGS BY TELEPHONE

CONFERENCE IN MUNICIPAL COURTS, JUSTICES' COURTS, AND SMALL CLAIMS COURTS; ALLOWING JUSTICES' COURTS TO ASSIGN THE COLLECTION OF FINES TO PRIVATE PERSONS OR ENTITIES; EXTENDING THE LIEN CREATED ON REAL PROPERTY BY DOCKETING A JUDGMENT FROM 6 TO 10 YEARS; EXTENDING THE STATUTE OF LIMITATIONS FOR COMMENCING AN ACTION ON A JUDGMENT RENDERED IN A COURT NOT OF RECORD FROM 6 TO 10 YEARS; EXTENDING THE TIME PERIOD IN WHICH A WRIT FOR EXECUTION OF JUDGMENT CAN BE ISSUED FROM 6 TO 10 YEARS; AMENDING THE CONTENT OF THE LEVY NOTICE ON A WRIT OF EXECUTION; MAKING CIVIL PENALTIES FOR ISSUING A BAD CHECK OR STOPPING PAYMENT APPLICABLE TO A CHECK PRESENTED ELECTRONICALLY; REQUIRING FINANCIAL INSTITUTIONS AND OTHER THIRD PARTIES HOLDING ASSETS OF A JUDGMENT DEBTOR TO RESPOND TO THE NOTICE OF LEVY IN A TIMELY MANNER; AMENDING SECTIONS 3-10-222, 3-10-304, 3-10-601, 15-1-704, 25-9-301, 25-13-101, 25-13-301, 25-13-402, 25-30-102, 25-31-914, 27-1-717, 27-2-201, 39-51-1304, 46-17-303, 46-17-402, AND 61-6-123, MCA; AND REPEALING SECTIONS 25-13-102 AND 25-31-407, MCA. 2506

516 *(House Bill No. 499; Facey)* ALLOWING A CREDIT AGAINST CERTAIN PERMITTING FEES FOR CERTAIN USES OF POSTCONSUMER GLASS; ESTABLISHING ELIGIBILITY CRITERIA FOR USE OF THE CREDIT; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES TO IMPLEMENT THE CREDIT; PRECLUDING THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE BOARD OF ENVIRONMENTAL REVIEW FROM INCREASING FEE ASSESSMENTS BEYOND LEGISLATIVE APPROPRIATION LEVELS TO OFFSET THE COST OF THE CREDIT; AMENDING SECTION 75-2-220, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. . . 2514

517 *(House Bill No. 500; Wanzenried)* REVISING CERTAIN PROVISIONS OF THE LITTLE DAVIS-BACON LAWS; CHANGING THE PREVAILING WAGE FROM ONE COMPUTED BASED ON A WEIGHTED AVERAGE TO ONE COMPUTED BASED ON WORK PERFORMED; REQUIRING POSTING OF PREVAILING WAGE AND FRINGE BENEFIT RATES; REQUIRING NOTICE TO A PUBLIC WORKS CONTRACTOR OR EMPLOYER OF THE REQUIREMENT TO POST PREVAILING WAGE AND BENEFIT RATES AND THE REQUIREMENT TO KEEP PAYROLL RECORDS FOR 3 YEARS AFTER COMPLETION OF WORK ON A PROJECT; REQUIRING SURVEYS OF CONTRACTORS AND EMPLOYERS; AMENDING SECTIONS 18-2-401, 18-2-406, AND 18-2-422, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 2518

518 *(House Bill No. 502; Story)* EXEMPTING HAY GRINDERS AND THEIR TOWING UNITS FROM CERTAIN WEIGHT STANDARDS; AND AMENDING SECTION 61-10-128, MCA 2521

519 *(House Bill No. 454; Clark)* ENCOURAGING ADDITIONAL FREE PUBLIC HUNTING ON PRIVATE LAND BY ALLOWING THE ISSUANCE OF AN EITHER-SEX OR ANTLERLESS ELK PERMIT TO THE PUBLIC AND TO CERTAIN LANDOWNERS WHO MAKE THEIR PRIVATE PROPERTY AVAILABLE TO THE PUBLIC FOR FREE PUBLIC ELK HUNTING THROUGHOUT THE HUNTING SEASON; SETTING THE TERMS AND CONDITIONS OF THE LANDOWNER EITHER-SEX OR ANTLERLESS ELK PERMIT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. . . 2522

520 *(House Bill No. 463; Lee)* ALLOWING AN INDIVIDUAL WHO LEAVES WORK OR IS DISCHARGED BECAUSE OF CIRCUMSTANCES RESULTING FROM DOMESTIC VIOLENCE TO RECEIVE UNEMPLOYMENT BENEFITS TO WHICH THE INDIVIDUAL IS OTHERWISE ENTITLED; PROVIDING THAT THE UNEMPLOYMENT BENEFITS MAY NOT BE CHARGED TO THE EMPLOYER'S ACCOUNT; CAPPING THE BENEFITS AT A MAXIMUM OF 10 WEEKS PER CALENDAR YEAR; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO REPORT TO THE LEGISLATURE ON UNEMPLOYMENT BENEFITS APPLIED FOR AND GRANTED IN RELATION TO DOMESTIC VIOLENCE CLAIMS; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE 2524

521 *(House Bill No. 492; Clark)* CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO MANAGE THE PRAIRIE DOG AS A SPECIES IN NEED OF MANAGEMENT; AMENDING SECTION 87-5-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. . . 2525

522 *(House Bill No. 495; Olson)* PROVIDING FOR THE TRANSFER OF REVOKED COAL MINE OPERATING PERMITS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, APPLICABILITY DATES, AND A TERMINATION DATE 2527

523 *(House Bill No. 517; Mangan)* CLARIFYING THAT THE SMALL BUSINESS INVESTMENT INCENTIVE ACT IS INTENDED TO ATTRACT PRIVATE RISK CAPITAL TO TECHNOLOGY, TECHNOLOGY INFRASTRUCTURE, AND POWER GENERATION COMPANIES AS WELL AS MANUFACTURING, AGRICULTURE, AND TIMBER PRODUCT PROCESSING COMPANIES; AND AMENDING SECTION 15-33-102, MCA 2529

524 *(House Bill No. 521; Newman)* PROVIDING THAT BEFORE AN ENHANCED INCARCERATION PENALTY MAY BE IMPOSED, THE ENHANCING ACT, OMISSION, OR FACT MUST BE STATED IN THE CHARGING DOCUMENT, SUBMITTED TO A JURY FOR DETERMINATION IF THERE IS A JURY TRIAL, AND FOUND BY THE TRIER OF FACT TO HAVE EXISTED BEYOND A REASONABLE DOUBT; DEFINING ENHANCING ACT, OMISSION, OR FACT; AMENDING SECTIONS 45-5-222, 46-18-115, 46-18-220, 46-18-221, AND 46-18-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2529

525 *(House Bill No. 526; Branae)* CREATING THE MONTANA SUMMER YOUTH EMPLOYMENT PROGRAM; ESTABLISHING ELIGIBILITY CRITERIA; PROVIDING FOR PARTICIPANT ASSESSMENT; PROVIDING FOR ADMINISTRATION BY THE DEPARTMENT OF LABOR AND INDUSTRY THROUGH THE LOCAL WORKFORCE INVESTMENT BOARDS; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 2533

526 *(House Bill No. 531; Waitschies)* REQUIRING THAT SPECIAL MOBILE EQUIPMENT THAT IS A MOTOR VEHICLE OR A TRAILER DESIGNED AND USED TO APPLY FERTILIZER TO AGRICULTURAL LAND AND THAT IS BROUGHT INTO MONTANA FOR DEMONSTRATION PURPOSES CONSPICUOUSLY DISPLAY A SPECIAL DEMONSTRATION PERMIT; REMOVING THE REQUIREMENT THAT PROPERTY TAXES BE PAID ON SPECIAL MOBILE EQUIPMENT THAT IS A MOTOR VEHICLE OR A TRAILER DESIGNED AND USED TO APPLY FERTILIZER TO AGRICULTURAL LAND AND THAT IS BROUGHT INTO THE STATE

FOR DEMONSTRATION PURPOSES UNLESS THE EQUIPMENT REMAINS IN MONTANA PAST THE EXPIRATION DATE OF THE PERMIT OR IS LEASED OR SOLD; AMENDING SECTION 61-3-431, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2536

527 *(House Bill No. 543; Brown)* REVISING THE LAWS RELATED TO REVIEW OF SUBDIVISIONS FOR CONFORMANCE TO LOCAL GROWTH POLICIES; ELIMINATING LOCAL GOVERNMENT AUTHORITY TO REQUIRE SUBDIVISION PLATS TO CONFORM TO GROWTH POLICIES BY ADOPTION OF AN ORDINANCE OR RESOLUTION; REQUIRING THAT SUBDIVISION REGULATIONS BE IN ACCORDANCE WITH THE GROWTH POLICY WHEN A GROWTH POLICY HAS BEEN ADOPTED; AMENDING SECTIONS 76-1-605, 76-1-606, 76-3-504, AND 76-3-604, MCA; AND PROVIDING AN APPLICABILITY DATE. 2537

528 *(House Bill No. 554; Sliter)* INCREASING CERTAIN NONRESIDENT HUNTING AND FISHING FEES; REQUIRING THAT A NONRESIDENT POSSESS A WILDLIFE CONSERVATION LICENSE, RATHER THAN A CLASS B-1 UPLAND GAME BIRD LICENSE, AS A PREREQUISITE TO THE PURCHASE OF A WILD TURKEY TAG; AMENDING SECTIONS 87-2-202, 87-2-302, 87-2-304, 87-2-403, 87-2-504, 87-2-505, 87-2-510, AND 87-2-701, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 2540

529 *(House Bill No. 560; Noennig)* ENCOURAGING THE SETTLEMENT OF LAWSUITS BY PROVIDING FOR OFFERS OF SETTLEMENT IN CERTAIN CIVIL CASES; PROVIDING FOR ENTRY OF JUDGMENT ON AN ACCEPTED SETTLEMENT OFFER; LIMITING THE ADMISSIBILITY OF A REJECTED SETTLEMENT OFFER; AND PROVIDING FOR THE AWARD OF COSTS. 2546

530 *(House Bill No. 563; Clark)* INCREASING THE TIME DURING WHICH A PERSON MAY BE CHARGED FOR CERTAIN SEXUAL OFFENSES; AND AMENDING SECTION 45-1-205, MCA. 2547

531 *(House Bill No. 572; Bales)* CREATING A COAL BED METHANE PROTECTION ACCOUNT; CLARIFYING THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES; DEPOSITING A PORTION OF THE OIL AND NATURAL GAS PRODUCTION TAX IN THE COAL BED METHANE PROTECTION ACCOUNT; RESTRICTING EXPENDITURES FROM THE ACCOUNT UNTIL AFTER JUNE 30, 2005, FOR EMERGENCIES AND UNTIL AFTER JUNE 30, 2011, FOR ALL OTHER PURPOSES; CREATING A COAL BED METHANE PROTECTION PROGRAM TO COMPENSATE LANDOWNERS AND WATER RIGHT HOLDERS FOR DAMAGE CAUSED BY THE DEVELOPMENT OF COAL BED METHANE; AUTHORIZING CONSERVATION DISTRICTS THAT HAVE COAL BED METHANE WITHIN THE DISTRICT TO ADMINISTER THE COAL BED METHANE PROTECTION PROGRAM; REQUIRING CONSERVATION DISTRICTS TO ADOPT PROCEDURES FOR EVALUATING CLAIMS FOR COMPENSATION; LIMITING THE AMOUNT OF COMPENSATION; RESTRICTING THE AWARD OF COMPENSATION UNTIL AFTER JUNE 30, 2005, FOR EMERGENCIES AND UNTIL AFTER JUNE 30, 2011, FOR ALL OTHER PURPOSES; AMENDING SECTION 15-36-324, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE AND A TERMINATION DATE 2548

532 *(House Bill No. 578; Callahan)* EXTENDING THE TAX INCENTIVE OF 30 CENTS A GALLON FOR PRODUCTION OF ALCOHOL; REVISING

THE TIME PERIOD FOR SUBMITTING A WRITTEN PLAN TO THE DEPARTMENT OF TRANSPORTATION; AMENDING SECTION 15-70-522, MCA. 2556

533 *(House Bill No. 583; Esp)* PROVIDING FOR A MENTAL HEALTH ADVANCE DIRECTIVE; PROVIDING FOR THE CONTENT OF THE ADVANCE DIRECTIVE; PROVIDING THAT THE DIRECTIVE IS BINDING UPON AN INPATIENT FACILITY FROM THE TIME THE FACILITY IS FURNISHED A COPY OF THE DIRECTIVE; CREATING A CAUSE OF ACTION AGAINST AN INPATIENT FACILITY THAT FAILS TO COMPLY WITH THE DIRECTIVE; PROVIDING DEFINITIONS; AND PROVIDING AN APPLICABILITY DATE. . . . 2557

534 *(House Bill No. 589; Facey)* REVISING THE EXEMPTIONS FROM THE SUBDIVISION AND PLATTING ACT FOR CONDOMINIUMS; AND AMENDING SECTION 76-3-203, MCA. 2559

535 *(House Bill No. 603; Shockley)* EXPANDING THE REQUIREMENTS FOR NOTICE TO THE ATTORNEY GENERAL WHEN A STATE AGENCY IS A PARTY TO A PROCEEDING FOR WHICH JUDICIAL REVIEW IS SOUGHT; AMENDING SECTION 25-1-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2559

536 *(House Bill No. 605; Mood)* REVISING LAWS GOVERNING LOCAL AND STATE AIR QUALITY REGULATION; PROHIBITING THE BOARD OF ENVIRONMENTAL REVIEW OR A LOCAL AIR POLLUTION CONTROL PROGRAM FROM APPROVING OR ADOPTING RULES, ORDINANCES, OR LOCAL LAWS THAT ARE MORE STRINGENT THAN THOSE IMPOSED BY THE STATE OR THE FEDERAL GOVERNMENT UNLESS CERTAIN REQUIREMENTS ARE MET; PROVIDING FOR REVIEW OF RULES, ORDINANCES, OR LOCAL LAWS ADOPTED IN THE LAST 5 YEARS THAT MAY BE MORE STRINGENT THAN FEDERAL OR STATE REQUIREMENTS; REQUIRING LOCAL AIR POLLUTION CONTROL PROGRAMS TO ESTABLISH PROCEDURES FOR PUBLIC NOTICE, PUBLIC COMMENT, PUBLIC HEARING, AND APPEAL; CONFORMING EXISTING LAW PROHIBITING THE STATE FROM ADOPTING REGULATIONS MORE STRINGENT THAN FEDERAL LAW TO THE REVISED PROVISIONS AFFECTING LOCAL PROGRAMS; AMENDING SECTIONS 75-2-207 AND 75-2-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2560

537 *(House Bill No. 612; Brown)* GENERALLY REVISING LAWS RELATING TO ELECTIONS; CLARIFYING WHEN A PRIMARY BALLOT NEED NOT BE PRINTED FOR A POLITICAL PARTY; CLARIFYING THE TIME BY WHICH VACANCY APPOINTMENTS MUST BE MADE; REVISING WHO DETERMINES THE NUMBER OF SIGNATURES REQUIRED FOR A PETITION OF NOMINATION; CHANGING THE TIME BY WHICH PETITIONS FOR NOMINATION OF CERTAIN MINOR PARTY CANDIDATES MUST BE FILED; CLARIFYING THE TIME BY WHICH THE NAMES OF CERTAIN PRESIDENTIAL ELECTORS MUST BE CERTIFIED TO THE SECRETARY OF STATE; REVISING WHEN THE SECRETARY OF STATE MUST SEND WRITTEN NOTICE TO PERSONS SUBMITTING BALLOT MEASURE PETITION SHEETS OF THE FINAL APPROVAL OF THOSE SHEETS; REQUIRING THAT A RESIDENCE ADDRESS, POST-OFFICE ADDRESS, OR TELEPHONE NUMBER BE SPECIFIED ON BALLOT MEASURE PETITION SHEETS FOR THE PURPOSE OF SIGNATURE VERIFICATION AND PROVIDING THAT AN ADDRESS GIVEN ON A PETITION MAY NOT BE USED AS THE

ONLY MEANS TO DISQUALIFY A SIGNATURE; CLARIFYING WHEN THE SECRETARY OF STATE SENDS WRITTEN NOTICE OF FINAL APPROVAL OF A BALLOT MEASURE PETITION SHEET; REVISING THE DATE BY WHICH A PROPONENT OF A BALLOT MEASURE MAY CHALLENGE A DETERMINATION OF LEGAL DEFICIENCY; AND AMENDING SECTIONS 13-10-209, 13-10-327, 13-10-502, 13-10-504, 13-25-101, 13-27-202, 13-27-204, 13-27-205, 13-27-206, 13-27-207, 13-27-208, 13-27-302, 13-27-304, AND 13-27-316, MCA . . . 2565

538 *(House Bill No. 619; Harris)* ALLOWING A TAX CREDIT FOR THE PRESERVATION OF HISTORICALLY SIGNIFICANT PROPERTY, INCLUDING BUILDINGS AND STRUCTURES; ALLOWING FOR TAX CREDITS RESULTING FROM THE IMPOSITION OF CONSERVATION EASEMENTS ON HISTORICALLY SIGNIFICANT PROPERTY, INCLUDING BUILDINGS AND STRUCTURES; ALLOWING CREDIT CARRYOVERS; AMENDING SECTION 15-30-180, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE 2575

539 *(House Bill No. 620; Devlin)* EXEMPTING VETERANS FROM VEHICLE REGISTRATION FEES WHO HAVE BEEN AWARDED THE PURPLE HEART AND HAVE A DEGREE OF DISABILITY; IMPOSING A $5 FEE FOR ORIGINAL OR RENEWAL VEHICLE REGISTRATION FOR A VETERAN WHO HAS BEEN AWARDED THE PURPLE HEART; ALLOWING A SURVIVING SPOUSE TO RETAIN SPECIAL LICENSE PLATES ISSUED TO A VETERAN WHO HAS BEEN AWARDED THE PURPLE HEART UPON PAYMENT OF THE REQUIRED TAXES AND FEES IN LIEU OF TAX; ALLOWING THE ISSUANCE OF ONLY ONE SET OF SPECIAL LICENSE PLATES TO A VETERAN WHO HAS BEEN AWARDED THE PURPLE HEART; ALLOWING A VETERAN WHO HAS BEEN AWARDED THE PURPLE HEART AND HAS A DEGREE OF DISABILITY TO REGISTER FOR A FEE OF $5 ONE MOTOR VEHICLE THAT IS NOT USED FOR COMMERCIAL PURPOSES; PROVIDING FOR THE ISSUANCE OF PERSONALIZED SPECIAL LICENSE PLATES TO A VETERAN WHO HAS BEEN AWARDED THE PURPLE HEART; AMENDING SECTIONS 49-4-302, 61-3-332, 61-3-452, 61-3-453, 61-3-454, AND 61-3-560, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 2577

540 *(House Bill No. 623; Mangan)* PROVIDING TAX CREDITS FOR AMOUNTS PAID OR INCURRED BY THE EMPLOYER FOR DEPENDENT CARE ASSISTANCE; ALLOWING A CREDIT AGAINST MONTANA INCOME TAXES FOR AMOUNTS PAID OR INCURRED BY THE EMPLOYER TO ACQUIRE A DAY-CARE FACILITY FOR THE BENEFIT OF THE EMPLOYER'S EMPLOYEES; PROVIDING LIMITATIONS TO THE CREDIT; INCREASING THE TAX CREDIT FOR DEPENDENT CARE ASSISTANCE; EXPANDING THE TAX CREDIT FOR DEPENDENT CARE ASSISTANCE TO INCLUDE AMOUNTS PAID OR INCURRED BY AN EMPLOYER FOR INFORMATION AND REFERRAL SERVICES TO ASSIST EMPLOYEES IN OBTAINING DEPENDENT CARE; AMENDING SECTIONS 15-30-186 AND 15-31-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2584

541 *(House Bill No. 643; Juneau)* REVISING LAWS RELATED TO ELECTRIC ENERGY; CLARIFYING THE DEFINITION OF "PROJECT" UNDER THE ECONOMIC DEVELOPMENT BOND LAWS TO ALLOW ELECTRIC GENERATION FACILITIES AND TRANSMISSION LINES TO BE FINANCED UNDER THE LAWS; MODIFYING THE CREDIT LIMITATION AND CARRYOVER

PROVISIONS FOR WIND-GENERATED ELECTRICITY ON MONTANA RESERVATION LANDS; EXEMPTING ELECTRICITY GENERATED ON MONTANA RESERVATION LANDS FROM THE WHOLESALE ENERGY TAX FOR OUT-OF-STATE DISTRIBUTION; AMENDING SECTIONS 15-32-403, 15-32-404, 15-72-104, AND 90-5-101, MCA; AND PROVIDING EFFECTIVE DATES 2589

542 *(Senate Bill No. 28; Halligan)* REVISING THE PROCEDURE FOR MODIFICATION OF CHILD SUPPORT ORDERS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AMENDING SECTIONS 40-4-204, 40-5-226, 40-5-272, 40-5-273, AND 40-6-116, MCA; AND PROVIDING AN EFFECTIVE DATE 2593

543 *(Senate Bill No. 48; Sprague)* CLARIFYING THAT ALL ALCOHOLIC BEVERAGES TO BE SOLD TO CONSUMERS IN MONTANA MUST BE DISTRIBUTED ACCORDING TO THE MONTANA ALCOHOLIC BEVERAGE CODE; CLARIFYING THAT OUT-OF-STATE SHIPPERS OF ALCOHOLIC BEVERAGES MAY NOT SHIP DIRECTLY TO MONTANA RESIDENTS WHO DO NOT POSSESS A CONNOISSEUR'S LICENSE; CLARIFYING THE MANNER IN WHICH BREWERIES PROVIDE BEER TO THE PUBLIC; ESTABLISHING A CONNOISSEUR'S LICENSE; ALLOWING LIMITED DIRECT SHIPMENT OF BEER AND WINE FROM OUT-OF-STATE BREWERIES AND WINERIES TO CONNOISSEUR'S LICENSE HOLDERS; PROVIDING THAT OUT-OF-STATE BREWERIES AND WINERIES REGISTER WITH THE DEPARTMENT OF REVENUE; LIMITING THE AMOUNT OF BEER OR WINE THAT OUT-OF-STATE BREWERIES AND WINERIES MAY SHIP INTO THE STATE TO CONNOISSEUR'S LICENSE HOLDERS; ESTABLISHING AN OFFENSE OF ILLEGAL IMPORTATION OR DISTRIBUTION OF ALCOHOLIC BEVERAGES; ESTABLISHING PENALTIES FOR ILLEGAL SHIPMENTS; AMENDING SECTIONS 16-1-101, 16-1-104, 16-3-101, 16-3-214, 16-6-301, AND 16-6-302, MCA; AND PROVIDING EFFECTIVE DATES. 2610

544 *(Senate Bill No. 135; Waterman)* GENERALLY REVISING THE STATUTES REGARDING THE MENTAL HEALTH MANAGED CARE OMBUDSMAN; EXPANDING WHOSE INTERESTS THE OMBUDSMAN MAY REPRESENT; PROVIDING CONFIDENTIALITY FOR NAMES AND MATERIAL FROM AN INVESTIGATION; ALLOWING THE OMBUDSMAN TO RECEIVE CONFIDENTIAL MENTAL HEALTH RECORDS; AND AMENDING SECTIONS 2-15-210 AND 53-21-166, MCA. 2615

545 *(Senate Bill No. 151; Mahlum)* PROHIBITING UNIVERSITY FITNESS CENTERS, EXCEPT A FITNESS CENTER AT A UNIT OF THE UNIVERSITY SYSTEM WITH LESS THAN 3,500 STUDENTS, FROM SELLING SERVICES TO INDIVIDUAL MEMBERS OF THE GENERAL PUBLIC WHEN THERE IS A FOR-PROFIT FITNESS CENTER OPERATING IN THE COMMUNITY; PROVIDING AN EXCEPTION FOR UNIVERSITIES THAT SELL MEMBERSHIPS TO STUDENTS, EMPLOYEES, AND THEIR IMMEDIATE FAMILIES; ALLOWING THE SALE OF MEMBERSHIPS TO A LIMITED NUMBER OF ALUMNI UNDER CERTAIN CIRCUMSTANCES; ALLOWING THE SALE OF DAY PASSES TO RELATIVES OF STUDENTS AND EMPLOYEES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2617

546 *(Senate Bill No. 242; O'Neil)* LIMITING THE MUNICIPAL JURISDICTIONAL AREA FOR A MUNICIPAL BUILDING CODE TO THE AREA WITHIN THE LIMITS OF AN INCORPORATED CITY OR TOWN; PROVIDING THAT THE COUNTY JURISDICTIONAL AREA

FOR A COUNTY BUILDING CODE MAY BE AN AREA LESS THAN THE ENTIRE COUNTY; ESTABLISHING PROCEDURES FOR ADOPTION OF A JURISDICTIONAL AREA FOR A COUNTY BUILDING CODE; PROVIDING FOR A COUNTY APPEAL PROCEDURE; SUPERSEDING THE UNFUNDED MANDATE LAWS; AMENDING SECTIONS 13-19-106, 50-60-101, AND 50-60-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2618

547 *(Senate Bill No. 327; Doherty)* RESTRICTING AGENCY AND POLITICAL SUBDIVISION COMPETITION WITH PRIVATE INTERNET SERVICES PROVIDERS; PROVIDING THAT AN AGENCY OR POLITICAL SUBDIVISION MAY PROVIDE INTERNET SERVICES IF NO PRIVATE INTERNET SERVICES PROVIDER IS AVAILABLE, THE AGENCY OR POLITICAL SUBDIVISION ALREADY PROVIDES SERVICES, OR THE AGENCY OR POLITICAL SUBDIVISION OFFERS ADVANCED SERVICES THAT ARE UNAVAILABLE FROM A PRIVATE PROVIDER; REQUIRING THAT PRIVATE INTERNET SERVICES PROVIDERS INFORM AN AGENCY OR POLITICAL SUBDIVISION OF THE INTENT TO OFFER INTERNET SERVICES; ENCOURAGING AGENCIES AND POLITICAL SUBDIVISIONS TO PUBLICLY ANNOUNCE THE NEED FOR INTERNET SERVICES; AND PROVIDING AN EFFECTIVE DATE 2624

548 *(Senate Bill No. 423; Ellis)* REQUIRING THE BOARD OF TRUSTEES OF A SCHOOL DISTRICT, UPON RECEIPT OF A PETITION SIGNED BY 10 PERCENT OR MORE OF THE QUALIFIED ELECTORS OF A DISTRICT REQUESTING THE CREATION OF A SINGLE-MEMBER TRUSTEE DISTRICT, TO SUBMIT THE PROPOSAL TO THE QUALIFIED ELECTORS OF THE DISTRICT; PROVIDING CRITERIA FOR SUBMISSION OF A PETITION TO THE BOARD; AMENDING SECTIONS 20-3-336 AND 20-3-337, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2626

549 *(Senate Bill No. 457; Ryan)* AUTHORIZING A SCHOOL DISTRICT TO USE UP TO 25 PERCENT OF ITS IMPACT AID FUNDS FOR REPAYMENT OF BONDS; AMENDING SECTIONS 20-9-437, 20-9-439, AND 20-9-443, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2629

550 *(House Bill No. 3; Fisher)* APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2630

551 *(House Bill No. 4; Witt)* APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2001; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEAR 2002; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2632

552 *(House Bill No. 6; McCann)* APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING EFFECTIVE DATES. 2638

553 *(House Bill No. 13; Lewis)* PROVIDING FOR PAY AND BENEFITS FOR STATE EMPLOYEES IN THE STATEWIDE, TEACHERS', AND BLUE-COLLAR PAY PLANS; REVISING THE DEPARTMENT'S AUTHORITY TO DEVELOP ALTERNATIVE PAY PLANS:

INCREASING THE STATE CONTRIBUTION TO THE EMPLOYEE GROUP BENEFITS PROGRAM; REVISING THE LEGISLATOR DAILY EXPENSE DETERMINATION; APPROPRIATING FUNDS TO IMPLEMENT PAY AND BENEFIT REVISIONS; AMENDING SECTIONS 2-18-301, 2-18-303, 2-18-312, 2-18-313, 2-18-315, 2-18-703, AND 5-2-301, MCA; AND PROVIDING AN EFFECTIVE DATE 2643

554 *(House Bill No. 41; Witt)* GENERALLY REVISING THE LAWS GOVERNING DEDICATED REVENUE AND STATUTORY APPROPRIATIONS; PROVIDING FOR THE DEPOSIT OF STATE SCHOOL FUND REVENUE INTO A SUBFUND OF THE STATE GENERAL FUND; PROVIDING FOR THE DEPOSIT IN THE STATE GENERAL FUND OF PROCEEDS FROM THE SALE OF PROPERTY USED IN THE THEFT OR TRANSPORTATION OF STOLEN LIVESTOCK; PROVIDING FOR THE DEPOSIT OF TIMBER HARVEST FUNDS IN THE STATE SPECIAL REVENUE FUND; STATUTORILY APPROPRIATING TIMBER HARVEST FUNDS TO SCHOOLS FOR TECHNOLOGY ACQUISITION; ELIMINATING THE REQUIREMENTS FOR REVIEWS OF DEDICATED REVENUE PROVISIONS AND STATUTORY APPROPRIATIONS BY THE LEGISLATIVE FINANCE COMMITTEE; AMENDING SECTIONS 17-1-505, 17-1-508, 17-7-502, 20-9-342, 20-9-343, 20-9-534, 81-5-110, AND 81-5-111, MCA; AND PROVIDING AN EFFECTIVE DATE . . . 2661

555 *(House Bill No. 42; Masolo)* RECOGNIZING EXCELLENCE IN TEACHING BY PROVIDING ONE-TIME PROFESSIONAL STIPENDS TO TEACHERS WHO OBTAIN CERTIFICATION FROM THE NATIONAL BOARD FOR PROFESSIONAL TEACHING STANDARDS; AND PROVIDING AN EFFECTIVE DATE 2666

556 *(House Bill No. 121; Mood)* INCREASING THE TOTAL PER-ANB AND BASIC ENTITLEMENTS FOR PUBLIC SCHOOLS FOR SCHOOL FISCAL YEARS BEGINNING ON OR AFTER JULY 1, 2001; INCREASING THE BASIC ENTITLEMENT FOR AN ELEMENTARY SCHOOL DISTRICT OR A K-12 SCHOOL DISTRICT ELEMENTARY PROGRAM TO $18,889, THE BASIC ENTITLEMENT FOR A HIGH SCHOOL DISTRICT TO $209,873, THE TOTAL PER-ANB ENTITLEMENT FOR AN ELEMENTARY SCHOOL DISTRICT OR A K-12 DISTRICT ELEMENTARY PROGRAM TO $3,834, AND THE TOTAL PER-ANB ENTITLEMENT FOR A HIGH SCHOOL DISTRICT OR A K-12 DISTRICT HIGH SCHOOL PROGRAM TO $5,109; FOR SCHOOL FISCAL YEARS BEGINNING ON OR AFTER JULY 1, 2002, CONTINGENTLY INCREASING THE BASIC ENTITLEMENT FOR AN ELEMENTARY SCHOOL DISTRICT OR A K-12 SCHOOL DISTRICT ELEMENTARY PROGRAM TO $19,244, THE BASIC ENTITLEMENT FOR A HIGH SCHOOL DISTRICT TO $213,819, THE TOTAL PER-ANB ENTITLEMENT FOR AN ELEMENTARY SCHOOL DISTRICT OR A K-12 DISTRICT ELEMENTARY PROGRAM TO $3,906, AND THE TOTAL PER-ANB ENTITLEMENT FOR A HIGH SCHOOL DISTRICT OR A K-12 DISTRICT HIGH SCHOOL PROGRAM TO $5,205; PROVIDING FOR A CONTINGENCY BASING INCREASES FOR SCHOOL FISCAL YEARS BEGINNING ON OR AFTER JULY 1, 2002, ON PASSAGE AND APPROVAL OF SENATE BILL NO. 495 AND SENATE BILL NO. 390; AMENDING SECTION 20-9-306, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES. 2667

557 *(House Bill No. 144; Noennig)* ESTABLISHING A STATE GOVERNMENT BROADCASTING SERVICE TO PROVIDE GAVEL-TO-GAVEL COVERAGE OF LEGISLATIVE AND ADMINISTRATIVE PROCEEDINGS; CREATING A STATE GOVERNMENT BROADCASTING ACCOUNT; INCREASING THE

LOBBYIST LICENSE FEE AND USING THE FEE INCREASE TO SUPPORT THE BROADCASTING SERVICE; AUTHORIZING A GENERAL FUND LOAN; PROVIDING AN APPROPRIATION TO THE LEGISLATIVE SERVICES DIVISION; AMENDING SECTIONS 5-7-103 AND 5-11-112, MCA; AND PROVIDING AN EFFECTIVE DATE . . . 2674

558 *(House Bill No. 165; Gutsche)* ESTABLISHING THE MONTANA REPATRIATION ACT; PROVIDING A MECHANISM FOR THE RETURN OF HUMAN SKELETAL REMAINS OR FUNERARY OBJECTS TAKEN FROM BURIAL SITES PRIOR TO JULY 1, 1991, TO A TRIBAL GROUP, NEXT OF KIN, OR DESCENDANT ABLE TO ESTABLISH CULTURAL AFFILIATION; EXEMPTING LITHIC MATERIAL AND OTHER ARTIFACTS OF NONHUMAN DERIVATION REMOVED FROM THE ANZICK SITE ON OR BEFORE JULY 1, 1991, FROM THE PROVISIONS OF THIS ACT; REQUIRING A HEARING PURSUANT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; PROVIDING FOR AN APPEAL OF ANY BURIAL PRESERVATION BOARD DECISION TO DISTRICT COURT; STAYING A BOARD DECISION REGARDING REPATRIATION OR STUDY DURING AN APPEAL; PROVIDING FOR PAYMENT OF TESTING AND REIMBURSEMENT OF COURT COSTS AND REASONABLE ATTORNEY FEES; PROVIDING PROCEDURAL RULEMAKING AUTHORITY TO THE BOARD; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2678

559 *(House Bill No. 172; Holden)* EXEMPTING EMPLOYEES OF COUNTY HOSPITALS AND COUNTY REST HOMES IN CERTAIN CLASSES OF COUNTIES AND EMPLOYEES OF HOSPITAL DISTRICTS FROM MANDATED LEAVE PROVISIONS; REQUIRING AN INCREASE IN COMPENSATION OR BENEFITS TO OFFSET ANY REDUCTION IN LEAVE BENEFITS; ALLOWING THE GOVERNING BODY OF CERTAIN CLASSES OF COUNTIES AND THE BOARD OF TRUSTEES OF HOSPITAL DISTRICTS TO EXEMPT EMPLOYEES OF COUNTY HOSPITALS, COUNTY REST HOMES, AND HOSPITAL DISTRICTS FROM PARTICIPATION IN SPECIFIED GROUP INSURANCE CONTRACTS OR PLANS; AND AMENDING SECTION 2-18-702, MCA. 2685

560 *(House Bill No. 254; Davies)* PROVIDING THAT A WRIT OF EXECUTION FOR THE GARNISHMENT OF WAGES REMAINS IN EFFECT FOR 120 DAYS OR UNTIL THE JUDGMENT FOR WHICH THE WRIT WAS ISSUED IS PAID; AMENDING SECTIONS 25-13-402 AND 25-13-404, MCA; AND PROVIDING AN EFFECTIVE DATE. . . 2686

561 *(House Bill No. 256; Younkin)* INCREASING THE PENALTY FOR THE OFFENSE OF CARELESS OR RECKLESS DRIVING RESULTING IN THE DEATH OR SERIOUS BODILY INJURY OF ANOTHER PERSON; AND AMENDING SECTIONS 61-8-301, 61-8-302, 61-8-715, AND 61-8-716, MCA 2688

562 *(House Bill No. 290; Waddill)* INCLUDING DECEPTION, COERCION, AND SURPRISE IN THE DEFINITION OF "WITHOUT CONSENT" IN THE CONTEXT OF SEXUAL INTERCOURSE WITHOUT CONSENT; AND AMENDING SECTION 45-5-501, MCA. 2689

563 *(House Bill No. 295; Jent)* GENERALLY REVISING LAWS GOVERNING DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; CLARIFYING THE DEFINITION OF "VEHICLE"; MODIFYING THE DEFINITION OF "UNDER THE INFLUENCE"; EXTENDING THE PERIOD FOR WHICH A SENTENCE MAY BE SUSPENDED PENDING CHEMICAL DEPENDENCY TREATMENT; ALLOWING A SENTENCING JUDGE TO RETAIN JURISDICTION

OVER A PERSON ORDERED TO COMPLETE CHEMICAL DEPENDENCY TREATMENT FOR 1 YEAR; AND AMENDING SECTIONS 45-5-205, 61-1-103, 61-5-205, 61-8-401, 61-8-714, AND 61-8-732, MCA 2690

564 *(House Bill No. 340; Younkin)* REVISING THE PROVISIONS GOVERNING THE CONTENTS OF LOCAL SUBDIVISION REGULATIONS; REQUIRING THE SUBDIVIDER TO RESERVE WATER RIGHTS OR ESTABLISH A LANDOWNER'S WATER USE AGREEMENT FOR CERTAIN SUBDIVISIONS; ESTABLISHING MINIMUM WIDTH REQUIREMENTS FOR DITCH EASEMENTS IN SUBDIVISIONS; PROHIBITING PLACEMENT OF STRUCTURES OR PLANTING OF VEGETATION WITHIN DITCH EASEMENTS WITHOUT PERMISSION; REQUIRING THE SUBDIVIDER TO SHOW UTILITY EASEMENTS OF SUFFICIENT WIDTH TO PROVIDE UTILITY SERVICES ON THE FINAL PLAT; AND AMENDING SECTION 76-3-504, MCA 2694

565 *(House Bill No. 359; Clark)* EXPANDING THE COLLECTION OF DNA EVIDENCE TO CERTAIN ADULT FELONY OFFENSES; DEFINING "FELONY OFFENSE"; AND AMENDING SECTIONS 44-6-101, 44-6-102, 44-6-103, AND 44-6-107, MCA 2696

566 *(House Bill No. 516; Jent)* APPROPRIATING FUNDS TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO HIRE TWO HALF-TIME EMPLOYEES, INCLUDING ONE STUDENT FROM THE UNIVERSITY OF MONTANA AND ONE STUDENT FROM MONTANA STATE UNIVERSITY, TO PARTICIPATE IN THE GAME WARDEN TRAINEE PROGRAM; AND PROVIDING AN EFFECTIVE DATE . . 2698

567 *(House Bill No. 628; Wolery)* REQUIRING ALTERNATIVE DISPUTE RESOLUTION IN AGRICULTURAL SEED CONTRACT DISPUTES BEFORE INSTITUTING LEGAL ACTION; EXEMPTING SEED POTATOES FROM THE ALTERNATIVE DISPUTE RESOLUTION REQUIREMENT; PROVIDING FOR A NOTICE OF ALTERNATIVE DISPUTE RESOLUTION REQUIREMENT; PROVIDING FOR AN ALTERNATIVE DISPUTE RESOLUTION COUNCIL; ESTABLISHING THE AUTHORITY OF THE ALTERNATIVE DISPUTE RESOLUTION COUNCIL; PROVIDING THE PROCEDURE FOR ALTERNATIVE DISPUTE RESOLUTION IN AGRICULTURAL SEED CONTRACT DISPUTES; DESCRIBING WHAT MUST BE INCLUDED IN THE ALTERNATIVE DISPUTE RESOLUTION FINDINGS; PROVIDING FOR THE ASSESSMENT OF THE COSTS OF ALTERNATIVE DISPUTE RESOLUTION; OUTLINING PROGRAM ADMINISTRATION FOR THE AGRICULTURAL SEED CONTRACT ALTERNATIVE DISPUTE RESOLUTION PROGRAM; PROVIDING FOR A STATUTORY APPROPRIATION; AND AMENDING SECTIONS 17-7-502 AND 80-5-123, MCA 2699

568 *(House Bill No. 644; Pattison)* ENCOURAGING ECONOMIC DEVELOPMENT BY CREATING AN ENERGY MARKET DEMAND IN MONTANA FOR AGRICULTURAL-BASED BIOFUELS; TAXING GASOHOL AND BIODIESEL AT A PERCENTAGE OF THE RATE FOR GASOLINE OR SPECIAL FUELS; DEFINING "GASOHOL" AND "BIODIESEL"; PROVIDING THAT BIOFUEL PUMPS BE LABELED WITH A STATEMENT OF THE TAX ADVANTAGE OF THE FUEL; AMENDING SECTIONS 15-70-201, 15-70-202, 15-70-204, 15-70-301, 15-70-304, 15-70-321, 15-70-326, AND 15-70-341, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE AND A CONTINGENT TERMINATION DATE 2704

569 *(Senate Bill No. 179; Zook)* GENERALLY REVISING LAWS GOVERNING BUDGETING AND APPROPRIATIONS; CLARIFYING THE MAXIMUM EXPENDITURE FOR AN EMERGENCY OR DISASTER; REVISING THE LAW GOVERNING ACCRUALS; PROVIDING THAT AGENCY PROGRAM BUDGET REDUCTION PLANS APPLY TO THE BASE BUDGET FOR THE GENERAL APPROPRIATIONS ACT AND THE STATE PAY PLAN; PROVIDING THAT AGENCY GOALS AND OBJECTIVES MAY BE MADE AVAILABLE ELECTRONICALLY; CLARIFYING THE RECORDING OF UNIVERSITY FUNDS UNDER AN OPERATING BUDGET; ALLOWING THE RETRANSFER OF MONEY TRANSFERRED FOR SPRING FIRE COSTS; CLARIFYING THE LAWS GOVERNING THE REVERSION OF FUNDS; CLARIFYING THE PROCEDURE FOR A PROPOSED SUPPLEMENTAL APPROPRIATION TO TRANSFER FUNDS BETWEEN FISCAL YEARS; EXTENDING THE DURATION OF A BUDGET AMENDMENT FOR FEDERAL FUNDS TO THE END OF THE FEDERAL FISCAL YEAR; PROVIDING THAT CHARGES FOR SERVICES AND SUPPLIES BETWEEN AGENCIES ARE VALID CLAIMS; AMENDING SECTIONS 10-3-312, 17-1-102, 17-7-111, 17-7-123, 17-7-138, 17-7-139, 17-7-304, 17-7-311, 17-7-402, AND 17-8-101, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 2718

570 *(Senate Bill No. 283; Waterman)* REVISING THE LOCAL CITIZEN REVIEW BOARD PILOT PROGRAM ACT; AMENDING SECTIONS 41-3-205, 41-3-1001, 41-3-1003, 41-3-1004, 41-3-1005, 41-3-1006, 41-3-1007, 41-3-1008, 41-3-1010, 41-3-1011, 41-3-1012, 41-3-1013, AND 41-3-1115, MCA; REPEALING SECTIONS 41-3-1002, 41-3-1009, AND 41-3-1014, MCA; AND PROVIDING AN EFFECTIVE DATE 2729

571 *(Senate Bill No. 339; Berry)* GENERALLY REVISING THE LAW GOVERNING FUNDING FOR PUBLIC ASSISTANCE, FOSTER CARE, AND PROTECTIVE SERVICES; PROVIDING A UNIFORM METHOD FOR COUNTIES TO PARTICIPATE IN THE FUNDING; PROVIDING FOR THE PAYMENT OF AN ANNUAL ADMINISTRATIVE FEE TO THE STATE FOR PARTIAL REIMBURSEMENT FOR THE COSTS OF ADMINISTERING AND PROVIDING PUBLIC ASSISTANCE, FOSTER CARE, AND PROTECTIVE SERVICES IN THE COUNTY; PROVIDING FOR THE CALCULATION OF THE ADMINISTRATIVE FEE; CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADMINISTER PUBLIC ASSISTANCE; REPLACING COUNTY WELFARE OFFICES WITH LOCAL OFFICES OF PUBLIC ASSISTANCE; PROVIDING FOR THE STAFFING AND SUPERVISION OF LOCAL OFFICES; AMENDING SECTIONS 7-6-2512, 7-6-2523, 7-7-2201, 7-34-2204, 7-34-2303, 15-1-112, 15-10-420, 15-16-117, 41-3-1122, 52-1-103, 52-1-110, 53-2-201, 53-2-203, 53-2-207, 53-2-301, 53-2-304, 53-2-305, 53-2-322, 53-2-602, 53-2-603, 53-2-606, 53-2-609, 53-2-612, 53-2-613, 53-2-801, 53-2-802, 53-2-811, 53-3-111, 53-3-115, 53-3-116, 53-4-213, 53-4-214, 53-4-233, 53-4-244, 53-6-112, 53-6-114, 53-6-121, 53-6-132, 53-6-133, 53-6-155, 53-6-157, AND 53-21-113, MCA; REPEALING SECTIONS 53-2-610, 53-2-813, 53-4-246, AND 53-4-247, MCA; AND PROVIDING AN EFFECTIVE DATE 2740

572 *(House Bill No. 2; Vick)* AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 2003; AND PROVIDING AN EFFECTIVE DATE 2770

573 *(House Bill No. 5; McCann)* APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2003; PROVIDING FOR OTHER MATTERS RELATING TO THE

HeinOnline -- 2001 vol.I cii 2001

APPROPRIATIONS; AMENDING SECTION 4, CHAPTER 469, LAWS OF 1997, AND SECTION 2, CHAPTER 557, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2837

574 *(House Bill No. 124; Story)* GENERALLY REVISING THE LAWS GOVERNING LOCAL GOVERNMENT AND STATE REVENUE COLLECTION AND ALLOCATION; CLARIFYING STATE MANDATES THAT MAY NOT BE IMPOSED ON LOCAL GOVERNMENTS WITHOUT FUNDING; ELIMINATING SPECIFIC STATUTORY MILL LEVY RESTRICTIONS; REVISING THE LIMIT ON PROPERTY TAXES; PROVIDING FOR A UNIFORM ELECTION PROCEDURE TO EXCEED THE MILL LEVY LIMIT; PROVIDING FOR LOCAL GOVERNMENT ENTITLEMENTS TO REPLACE REIMBURSEMENTS AND TO ACCOUNT FOR REVENUE ALLOCATIONS; CALCULATING ENTITLEMENTS BY DEDUCTING DISTRICT COURT COSTS AND PUBLIC ASSISTANCE COSTS; PROVIDING A STATUTORY APPROPRIATION FOR ENTITLEMENT PAYMENTS; PROVIDING FOR FUND TRANSFERS FROM THE GENERAL FUND TO STATE AGENCIES TO ACCOUNT FOR REVISED REVENUE ALLOCATIONS; INCLUDING STATE PAYMENTS IN LIEU OF TAXES FOR STATE LAND IN THE ENTITLEMENT SHARE CALCULATION; PROVIDING FOR CERTAIN UNIFORM VEHICLE FEES; RETAINING VEHICLE FEES, ALCOHOL TAXES, AND GAMBLING TAXES AT THE STATE LEVEL; REVISING THE FUNDING METHOD FOR PROVIDING PUBLIC ASSISTANCE; CONVERTING CERTAIN SPECIAL LEVIES INTO FEES; PROVIDING FOR BLOCK GRANTS FOR SCHOOL DISTRICTS; PROVIDING FOR BLOCK GRANTS TO COUNTIES FOR DISTRIBUTION TO SCHOOL DISTRICTS FOR PURPOSES OF COUNTYWIDE SCHOOL TRANSPORTATION AND COUNTYWIDE SCHOOL RETIREMENT; APPROPRIATING MONEY FOR SCHOOL DISTRICT BLOCK GRANTS, COUNTYWIDE SCHOOL TRANSPORTATION BLOCK GRANTS, COUNTYWIDE SCHOOL RETIREMENT BLOCK GRANTS, AND DISTRICT COURT EXPENSES; AMENDING SECTIONS 1-2-112, 2-9-316, 3-2-714, 3-5-901,7-2-2730, 7-2-2746, 7-2-4111, 7-2-4918, 7-3-1310, 7-3-1311, 7-3-1313, 7-3-4312, 7-6-502, 7-6-2301, 7-6-2314, 7-6-2319, 7-6-2328, 7-6-2329, 7-6-2345, 7-6-2501, 7-6-2511, 7-6-2512, 7-6-2522, 7-6-2523, 7-6-2541, 7-6-4134, 7-6-4238, 7-6-4261, 7-6-4272, 7-6-4431, 7-6-4451, 7-6-4453, 7-6-4455, 7-7-2202, 7-7-2206, 7-7-2303, 7-14-111, 7-14-232, 7-14-1131, 7-14-1134, 7-14-1632, 7-14-1633, 7-14-2501, 7-14-2502, 7-14-2503, 7-14-2504, 7-14-2523, 7-14-2807, 7-14-4106, 7-14-4404, 7-14-4644, 7-14-4734, 7-15-4293, 7-16-101, 7-16-2102, 7-16-2108, 7-16-2109, 7-16-2205, 7-16-2411, 7-16-2412, 7-16-2431, 7-16-2443, 7-16-4105, 7-16-4113, 7-16-4114, 7-21-3203, 7-21-3433, 7-21-3457, 7-22-2142, 7-22-2222, 7-22-2306, 7-22-2432, 7-22-2512, 7-32-235, 7-32-4117, 7-33-2209, 7-33-4111, 7-33-4130, 7-34-102, 7-34-2131, 7-34-2133, 7-34-2204, 7-34-2303, 7-34-2417, 7-35-2122, 10-2-501, 10-2-603, 13-13-230, 15-1-402, 15-1-501, 15-10-420, 15-16-117, 15-24-303, 15-24-902, 15-24-904, 15-24-921, 15-24-922, 15-24-925, 15-30-121, 15-31-114, 16-1-404, 16-1-406, 16-1-411, 17-7-502, 19-6-709, 19-7-404, 19-9-209, 19-13-214, 19-18-503, 19-18-504, 19-19-301, 20-7-705, 20-7-714, 20-9-141, 20-9-168, 20-9-331, 20-9-333, 20-9-501, 20-10-144, 20-10-146, 20-15-305, 20-15-311, 20-15-326, 20-25-1002, 22-1-304, 23-2-508, 23-2-510, 23-2-512, 23-2-518, 23-2-611, 23-2-612, 23-2-615, 23-2-616, 23-2-803, 23-2-804, 23-2-811, 23-2-812, 23-2-814, 23-2-818, 23-5-610, 25-1-201, 39-71-403, 40-4-215, 40-4-226, 41-3-1122, 42-2-105, 50-2-111, 50-2-114, 52-6-105, 53-2-207, 53-2-301, 53-2-304, 53-2-612, 53-3-115, 53-3-116, 53-20-208, 53-21-204, 61-1-102, 61-3-203, 61-3-321, 61-3-325, 61-3-332, 61-3-406, 61-3-411, 61-3-412, 61-3-426, 61-3-431, 61-3-457.

61-3-465, 61-3-509, 61-3-524, 61-3-527, 61-3-707, 61-3-738, 61-9-312, 61-10-130, 61-10-148, 61-10-225, 67-3-205, 67-10-402, 67-11-301, 67-11-303, 72-16-909, 72-16-912, 75-10-533, 76-1-111, 76-1-403, 76-1-404, 76-1-406, 76-2-102, 76-6-109, 76-13-201, 76-15-505, 76-15-516, 76-15-531, 76-15-623, 77-1-502, 77-1-503, 77-1-504, 80-2-201, 80-2-203, 80-2-204, 80-2-205, 80-2-206, 80-2-207, 80-2-209, 80-2-221, 80-2-222, 80-2-224, 80-2-225, 80-2-226, 80-2-228, 80-2-229, 80-2-230, 80-2-231, 80-2-232, 80-2-244, 80-7-814, 80-7-815, 80-7-816, 80-7-822, 81-6-101, 81-6-104, 81-6-106, 81-6-204, 81-6-205, 81-6-209, 81-6-210, 81-7-104, 81-7-113, 81-7-114, 81-7-118, 81-7-201, 81-7-202, 81-8-503, 81-8-504, 85-3-412, 85-3-422, 85-3-423, AND 90-5-112, MCA, AND SECTION 5, CHAPTER 95, LAWS OF 2001; REPEALING SECTIONS 7-6-2531, 7-6-2532, 7-6-2533, 7-6-2534, 7-6-2535, 7-6-2536, 7-6-2537, 7-6-4432, 7-6-4434, 7-6-4436, 7-6-4437, 7-6-4439, 7-6-4452, 7-16-2432, 7-34-2134, 7-34-2135, 7-34-2136, 15-7-122, 15-31-701, 15-31-702, 17-3-214, 20-25-1007, 52-1-110, 53-2-302, 53-2-306, 53-2-322, 53-2-610, 53-2-801, 53-2-802, 53-2-803, 53-2-811, 53-2-812, 53-2-813, 53-4-246, 53-4-247, 61-3-508, 61-3-510, 61-3-511, 61-3-512, 76-1-405, 76-1-407, 77-1-505, 77-1-506, 77-1-507, 80-2-223, AND 80-7-810, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE 2845

575 *(House Bill No. 142; Somerville)* GRANTING THE FISH, WILDLIFE, AND PARKS COMMISSION AUTHORITY TO ADOPT RULES RESTRICTING NONRESIDENT MOUNTAIN LION HUNTERS IN DESIGNATED HUNTING DISTRICTS IN ADMINISTRATIVE REGION 1; AMENDING SECTION 87-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 3005

576 *(House Bill No. 146; Shockley)* REVISING THE YOUTH COURT ACT TO GENERALLY REVISE LAWS RELATING TO THE DETENTION AND PLACEMENT OF YOUTH; AMENDING SECTIONS 41-5-103, 41-5-203, 41-5-206, AND 52-5-129, MCA; AND PROVIDING AN EFFECTIVE DATE 3008

577 *(House Bill No. 474; Sliter)* REVISING LAWS RELATING TO ELECTRICAL ENERGY; ALLOWING CUSTOMERS WHO ELECTED AN ALTERNATIVE ELECTRICAL ENERGY SUPPLIER AN OPPORTUNITY TO RECEIVE ELECTRICAL ENERGY FROM THE DEFAULT SUPPLIER; PROVIDING THAT ELECTRICAL ENERGY PURCHASED FROM THE DEFAULT SUPPLIER BY A DEFAULT CUSTOMER MUST BE USED FOR A CONSUMPTIVE PURPOSE AND MAY NOT BE REMARKETED; AUTHORIZING THE BOARD OF INVESTMENTS TO INVEST IN NEW GENERATION PROJECTS THAT MEET CERTAIN CRITERIA; PROVIDING ELIGIBILITY CRITERIA FOR THE PROJECTS, INCLUDING LONG-TERM CONTRACTS WITH THE DEFAULT SUPPLIER OR A MONTANA INDUSTRY FOR THE PURCHASE OF THE ELECTRICAL ENERGY GENERATED BY THE PROJECTS; REQUIRING A PLEDGE OF THE CONTRACT PROCEEDS AS A REPAYMENT OPTION FOR THE INVESTMENTS; MAKING THE STATE A PARTY TO THE CONTRACT IN THE EVENT OF DEFAULT IN PAYMENT BY DEFAULT SUPPLIER; EXTENDING THE DURATION OF THE UNIVERSAL SYSTEM BENEFITS CHARGE; MODIFYING THE DEFAULT SUPPLIER LICENSING RULES; CREATING A CONSUMER ELECTRICITY SUPPORT PROGRAM; PROVIDING THAT AN ELECTRICITY BUYING COOPERATIVE MAY SERVE AS A SUPPLIER OR PROMOTER OF ALTERNATIVE ENERGY AND CONSERVATION PROGRAMS; DEFINING "ELECTRICITY SUPPLY COSTS"; CLARIFYING THE DEFINITION OF "UNIVERSAL SYSTEM

BENEFITS PROGRAMS" TO INCLUDE IRRIGATED AGRICULTURE; PROVIDING FOR PROCEDURES FOR A TRANSITION TO CUSTOMER CHOICE; PROVIDING FOR THE DEFAULT SUPPLIER'S RECOVERY OF ELECTRICITY SUPPLY COSTS; REVISING THE UNIVERSAL SYSTEM BENEFITS PROGRAMS FUNDING LEVEL TO INCLUDE IRRIGATED AGRICULTURE; ESTABLISHING A MONTANA POWER AUTHORITY; ALLOWING THE AUTHORITY TO PURCHASE, CONSTRUCT, AND OPERATE ELECTRICAL GENERATION FACILITIES OR ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEMS AND TO ENTER INTO JOINT VENTURES FOR THESE PURPOSES; AUTHORIZING THE BOARD OF EXAMINERS TO ISSUE REVENUE BONDS FOR THE MONTANA POWER AUTHORITY TO ACQUIRE ELECTRICAL GENERATION FACILITIES AND TO BUILD ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEMS; PROVIDING THAT THE PRINCIPAL AND INTEREST ON THE BONDS IS PAYABLE FROM THE SALE OF ELECTRICAL ENERGY FROM THE FACILITIES AND FROM ELECTRICAL ENERGY TRANSMISSION AND DISTRIBUTION CHARGES; AMENDING SECTIONS 17-7-502, 35-19-104, 69-8-103, 69-8-104, 69-8-201, 69-8-203, 69-8-210, 69-8-211, 69-8-402, 69-8-403, 69-8-412, AND 69-8-414, MCA; REPEALING SECTIONS 35-19-103, 69-8-416, AND 69-8-417, MCA; AND PROVIDING EFFECTIVE DATES 3017

578 *(House Bill No. 573; Bales)* AUTHORIZING THE BOARD OF OIL AND GAS CONSERVATION TO PERMIT CERTAIN COAL BED METHANE GAS WELLS; PROVIDING REQUIREMENTS FOR COAL BED METHANE WELLS THAT INVOLVE PRODUCTION OF GROUND WATER; PROVIDING THAT CERTAIN MANAGEMENT PRACTICES FOR GROUND WATER PRODUCED IN ASSOCIATION WITH A COAL BED METHANE WELL MAY NOT BE CONSTRUED AS WASTE; AMENDING SECTION 85-2-505, MCA; AND PROVIDING EFFECTIVE DATES 3040

579 *(House Bill No. 600; Bookout-Reinicke)* EXEMPTING CERTAIN NONCOMMERCIAL ELECTRICAL GENERATION MACHINERY AND EQUIPMENT FROM PROPERTY TAXATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE 3043

580 *(House Bill No. 625; Musgrove)* REQUIRING THE GOVERNOR AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO CONDUCT A STUDY OF K-12 PUBLIC SCHOOL FUNDING AND RELATED ISSUES; REQUIRING THE GOVERNOR TO PREPARE AND SUBMIT A PRELIMINARY AND FINAL STUDY REPORT TO THE EDUCATION INTERIM COMMITTEE AND, IF APPROPRIATE, PROPOSE LEGISLATION FOR THE 2003 LEGISLATURE; AUTHORIZING RECEIPT OF DONATIONS; PROVIDING APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 3044

581 *(House Bill No. 637; Kaufmann)* PROVIDING FOR AN OFFICE OF RESTORATIVE JUSTICE IN THE DEPARTMENT OF JUSTICE TO PROMOTE THE USE OF RESTORATIVE JUSTICE AND TO PROVIDE TECHNICAL ASSISTANCE AND GRANTS FOR RESTORATIVE JUSTICE PROGRAMS; PROVIDING FOR RESTORATIVE JUSTICE PRINCIPLES IN THE CORRECTIONAL AND SENTENCING POLICY; CREATING A FUND IN THE STATE SPECIAL REVENUE ACCOUNT; AUTHORIZING THE BOARD OF CRIME CONTROL TO MAKE GRANTS FROM THE FUND;

PROVIDING AN APPROPRIATION; AMENDING SECTION 46-18-101, MCA; AND PROVIDING AN EFFECTIVE DATE 3046

582 *(House Bill No. 645; Mangan)* IMPLEMENTING AN ELECTRICAL ENERGY POOL; AUTHORIZING THE PUBLIC SERVICE COMMISSION TO REQUIRE A DEFAULT SUPPLIER, A DISTRIBUTION SERVICES PROVIDER, AND A PUBLIC UTILITY SERVING MONTANA CUSTOMERS TO PARTICIPATE IN THE ELECTRICAL ENERGY POOL; PROVIDING EXCEPTIONS; REQUIRING THE DEFAULT SUPPLIER, THE DISTRIBUTION SERVICES PROVIDER, AND THE PUBLIC UTILITY TO ALLOW CUSTOMERS TO PARTICIPATE IN THE ELECTRICAL ENERGY POOL; AUTHORIZING THE ELECTRICAL ENERGY POOL TO MARKET THE ELECTRICAL ENERGY MADE AVAILABLE BY THE CUSTOMERS PARTICIPATING IN THE POOL TO OTHER MONTANA CUSTOMERS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. 3049

583 *(Senate Bill No. 4; Grimes)* CLARIFYING THAT DURING A PROBATIONARY PERIOD, EMPLOYMENT MAY BE TERMINATED FOR ANY REASON OR FOR NO REASON; CREATING A PRESUMPTIVE PROBATIONARY PERIOD; CLARIFYING THAT THE TERMINATION OF NONPROBATIONARY EMPLOYMENT MUST BE FOR CAUSE; AMENDING SECTIONS 39-2-902, 39-2-904, AND 39-2-905, MCA; AND REPEALING SECTION 39-2-503, MCA . . 3051

584 *(Senate Bill No. 19; Halligan)* REVISING THE LAWS GOVERNING CUSTOMER CHOICE IN ELECTRIC ENERGY SUPPLY; EXTENDING THE TRANSITION PERIOD; EXTENDING THE DATES REQUIRING RESIDENTIAL AND SMALL COMMERCIAL CUSTOMER PARTICIPATION IN THE SELECTION OF AN ELECTRICITY SUPPLIER; EXTENDING PILOT PROGRAM REPORT DATE REQUIREMENTS; EXTENDING TRANSITION PLAN DATE REQUIREMENTS; EXTENDING THE TERMINATION DATE OF THE TRANSITION ADVISORY COMMITTEE; AMENDING SECTIONS 69-8-103, 69-8-104, 69-8-201, 69-8-211, 69-8-301, AND 69-8-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 3052

585 *(Senate Bill No. 176; McNutt)* PROVIDING FOR STATE ASSUMPTION OF THE COSTS OF FUNDING DISTRICT COURTS; EXCLUDING COUNTY ATTORNEYS, PUBLIC DEFENDERS, AND CLERKS OF DISTRICT COURT FROM STATE ASSUMPTION; PROVIDING FOR THE ADOPTION BY THE SUPREME COURT OF A JUDICIAL BRANCH PERSONNEL PLAN; PROVIDING FOR A DISTRICT COURT COUNCIL; ELIMINATING THE PROVISION ALLOWING THE DISTRICT COURT TO DIRECT THE COUNTY SHERIFF TO PROVIDE COURT FACILITIES AT COUNTY EXPENSE; PROVIDING THAT COURT REPORTERS MAY BE STATE EMPLOYEES OR INDEPENDENT CONTRACTORS; PROVIDING THAT NONELECTED EMPLOYEES OF THE DISTRICT COURT BE STATE EMPLOYEES, INCLUDING CERTAIN COURT REPORTERS, PUBLIC DEFENDERS, AND JUVENILE PROBATION OFFICERS AND ASSESSMENT OFFICERS; PROVIDING FOR TRANSFER OF DISTRICT COURT EMPLOYEES FROM COUNTY EMPLOYMENT TO STATE EMPLOYMENT WITH FULL BENEFITS AND PROTECTIONS; DELINEATING THE USES FOR THE COUNTY LEVY FOR COURT EXPENSES; REQUIRING THAT MOST FEES COLLECTED BY THE CLERK OF DISTRICT COURT BE FORWARDED TO THE STATE TREASURER FOR DEPOSIT IN THE STATE GENERAL FUND; REPEALING STATUTORY SALARY AMOUNTS FOR COURT REPORTERS AND JUVENILE PROBATION

OFFICERS; REQUIRING THE DISTRICT COURT COUNCIL TO PROVIDE A RECOMMENDATION REGARDING ENUMERATING AS DISTRICT COURT EXPENSES SPECIFIC EXPENSES REGARDING PROCEEDINGS FOR INVOLUNTARY COMMITMENTS AND YOUTH COURT; AMENDING SECTIONS 3-1-702, 3-2-501, 3-2-714, 3-5-511, 3-5-515, 3-5-601, 3-5-602, 3-5-604, 3-5-901, 3-5-902, 3-15-204, 3-15-205, 7-6-2324, 7-6-2426, 7-6-2511, 17-7-502, 22-1-504, 25-1-201, 25-1-202, 25-1-1103, 25-9-506, 25-9-804, 27-9-103, 40-4-215, 40-4-226, 41-5-1701, 41-5-1702, 41-5-1706, 41-5-1707, 42-2-105, 46-8-114, 46-8-201, 46-8-202, 46-11-319, 46-14-202, 46-14-221, 46-15-116, 46-18-235, 46-18-603, 52-6-105, 53-9-104, AND 61-3-509, MCA; REPEALING SECTIONS 3-5-404, 3-5-903, 7-6-2352, 7-6-2427, 7-6-2428, 25-2-205, 41-5-1704, AND 41-5-1705, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE. 3063

586 *(Senate Bill No. 322; Shea)* CREATING THE NATURAL RESOURCE WORKERS' EDUCATION PROGRAM; PROVIDING TUITION SCHOLARSHIPS FOR NATURAL RESOURCE WORKERS UNEMPLOYED DUE TO A CLOSURE OR A PERMANENT REDUCTION IN FORCE ON OR AFTER JANUARY 1, 1998, TO OBTAIN AN EDUCATIONAL DEVELOPMENT EQUIVALENCY DIPLOMA OR TO RECEIVE EDUCATION OR RETRAINING IN A TRAINING, CERTIFICATE, OR DEGREE PROGRAM FOR A MAXIMUM OF TWO YEARS AT A COMMUNITY COLLEGE, TRIBAL COLLEGE, OR UNIT OF THE MONTANA UNIVERSITY SYSTEM; PROVIDING FOR ELIGIBILITY CRITERIA FOR A TUITION SCHOLARSHIP; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO ACCEPT PRIVATE DONATIONS AND GRANTS FOR SUPPORT OF THE PROGRAM; DEPOSITING A PORTION OF THE RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAXES IN THE NATURAL RESOURCE WORKERS' TUITION SCHOLARSHIP ACCOUNT; REQUIRING EXPENDITURE OF PRIVATE DONATIONS AND GRANTS PRIOR TO USE OF RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAXES; AMENDING SECTION15-38-106, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. 3090

587 *(Senate Bill No. 386; Waterman)* MAKING THE INTERVENTION IN DELINQUENCY PILOT PROGRAM PERMANENT; MAKING PARTICIPATION BY JUDICIAL DISTRICTS IN THE PROGRAM DISCRETIONARY; CHANGING THE MEMBERSHIP OF YOUTH PLACEMENT COMMITTEES; REQUIRING THE DEPARTMENT OF CORRECTIONS TO CREATE ACCOUNTS FOR JUDICIAL DISTRICTS; AMENDING SECTIONS 41-5-103, 41-5-121, 41-5-122, 41-5-123, 41-5-124, 41-5-205, 41-5-1503, 41-5-1512, 41-5-1513, AND 52-5-109, MCA; AND PROVIDING AN EFFECTIVE DATE 3097

588 *(Senate Bill No. 398; Miller)* PROVIDING FOR OPERATION OF TEMPORARY POWER GENERATION UNITS UNDER THE AIR QUALITY PERMITTING LAWS; AMENDING SECTION 75-2-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE 3112

589 *(Senate Bill No. 432; Taylor)* REVISING AND CLARIFYING THE PURPOSE FOR WHICH GENERAL OBLIGATION BONDS MAY BE ISSUED FOR FINANCING INFRASTRUCTURE IMPROVEMENTS AND EQUIPMENT FOR AEROSPACE TRANSPORTATION AND TECHNOLOGY PROJECTS; AMENDING SECTION 5, CHAPTER 269, LAWS OF 1999, AND SECTION 1, CHAPTER 6, SPECIAL LAWS OF MAY 2000; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . 3115

590 *(Senate Bill No. 437; Cole)* PROVIDING FOR THE ISSUANCE OF SUPPLEMENTAL GAME DAMAGE HUNTING LICENSES IF NECESSARY FOR GAME MANAGEMENT PURPOSES; SETTING THE TERMS AND CONDITIONS OF SUPPLEMENTAL GAME DAMAGE HUNTING LICENSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. 3117

591 *(Senate Bill No. 506; Cobb)* AMENDING THE LAWS RELATING TO ALTERNATIVE ENERGY AND OTHER ENERGY SYSTEMS; PROVIDING A REVOLVING LOAN FUND TO FINANCE ALTERNATIVE ENERGY SYSTEMS; PROVIDING THAT AIR QUALITY NONCOMPLIANCE PENALTY FEES BE DEPOSITED IN THE REVOLVING FUND; ELIMINATING BUSINESS PROPERTY TAXES ON CERTAIN GENERATING EQUIPMENT; PROVIDING A 5-YEAR ABATEMENT OF BUSINESS PROPERTY TAXES ON SMALL GENERATING EQUIPMENT; AMENDING VARIOUS TAX AND BONDING INCENTIVE LAWS TO ENCOURAGE PRODUCTION OF ENERGY BY USING ALTERNATIVE RENEWABLE ENERGY SOURCES; ALLOWING A CONDITIONAL TAX CREDIT FOR WIND ENERGY PRODUCED ON STATE LAND; ALLOWING AN ELECTRICITY BUYING COOPERATIVE TO SUPPLY OR PROMOTE ALTERNATIVE ENERGY; AMENDING SECTIONS 7-12-4102, 15-6-156, 15-24-1401, 15-31-124, 15-32-102, 15-32-109, 15-32-115, 15-32-201, 15-32-401, 15-32-402, 15-32-403, 15-72-104, 17-6-403, 17-6-503, 30-16-103, 35-19-104, 75-2-401, 75-2-413, 80-12-201, 90-4-102, 90-5-101, AND 90-8-104, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE. 3118

592 *(Senate Bill No. 508; Cole)* REVISING PROPERTY TAX LAWS RELATED TO ELECTRICAL GENERATION FACILITIES; EXEMPTING AN ELECTRICAL GENERATION FACILITY AND RELATED DELIVERY FACILITIES THAT OFFER 50 PERCENT OF THEIR NET GENERATING OUTPUT AT A COST-BASED RATE FROM PROPERTY TAXATION FOR A SPECIFIC PERIOD OF TIME; AUTHORIZING A LOCAL GOVERNMENTAL UNIT TO ASSESS AN IMPACT FEE FOR LOCAL GOVERNMENTAL UNITS AND SCHOOL DISTRICTS THAT ARE IMPACTED BY A FACILITY EXEMPTED FROM PROPERTY TAXATION; PROVIDING FOR INTERLOCAL IMPACT AGREEMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 3138

593 *(Senate Bill No. 521; Doherty)* GENERALLY REVISING THE EMERGENCY POWERS OF THE GOVERNOR; REVISING THE DEFINITION OF "ENERGY EMERGENCY"; CLARIFYING THE ENERGY EMERGENCY POWERS OF THE GOVERNOR; EXTENDING THE DURATION OF AN ENERGY EMERGENCY; CLARIFYING THAT PROCEEDINGS UNDERTAKEN DURING AN ENERGY EMERGENCY MAY BE COMPLETED; AMENDING SECTIONS 90-4-302, 90-4-310, AND 90-4-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 3141

594 *(House Bill No. 226; Bales)* PROVIDING FOR THE ALLOCATION OF A PORTION OF FEDERAL MINERAL ROYALTY INCOME TO COUNTIES WHERE THE DEVELOPMENT OF THE FEDERALLY OWNED MINERALS HAS OCCURRED; PROVIDING FOR THE ALLOCATION OF A PORTION OF FEDERAL MINERAL ROYALTY INCOME TO A MINERAL IMPACT ACCOUNT TO BE USED FOR COUNTIES; PROVIDING A STATUTORY APPROPRIATION FOR THE PAYMENT OF ALLOCATIONS OF FEDERAL MINERAL ROYALTY INCOME TO COUNTIES; AMENDING SECTION 17-7-502.

MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE 3144

SENATE JOINT RESOLUTIONS

SJR Page

1 *(Thomas)* REVISING AND ADOPTING THE JOINT LEGISLATIVE RULES 3149

2 *(Waterman)* REQUESTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND THE DEPARTMENT OF CORRECTIONS TO COORDINATE AND COLLABORATE WITH STATE AGENCIES, LOCAL GOVERNMENTS, AND THE JUDICIARY REGARDING TRAINING AND EDUCATION PROGRAMS ON ISSUES SURROUNDING PERSONS WITH MENTAL ILLNESS AND THE CRIMINAL JUSTICE AND CORRECTIONS SYSTEMS 3165

4 *(Taylor)* URGING THE FEDERAL GOVERNMENT TO CONTINUE TO ENTER INTO AGREEMENTS WITH LOCAL GROUPS AND AGENCIES TO PROMOTE THE CONTROL OF NOXIOUS WEEDS IN A MANNER THAT ADDRESSES LOCALLY IDENTIFIED PRIORITIES, TO CONTINUE TO PROVIDE FUNDING FOR LOCAL WEED CONTROL PROGRAMS ON AN ANNUAL AND CONTINUING BASIS, AND TO PROVIDE ASSISTANCE IN HELPING LOCAL GROUPS AND AGENCIES ACCESS FEDERAL WEED CONTROL PROGRAMS AND PROCURE AVAILABLE FEDERAL WEED CONTROL FUNDS. 3167

5 *(Roush)* REQUESTING A LEGISLATIVE STUDY OF CERTAIN VETERANS' ISSUES; URGING THE APPROPRIATE INTERIM COMMITTEE TO INCLUDE VETERANS' ORGANIZATIONS IN THE STUDY PROCESS; REQUESTING STAFF SUPPORT; AND REQUESTING A REPORT OF FINDINGS AND RECOMMENDATIONS 3168

6 *(Mohl)* THAT AN INTERIM COMMITTEE BE ASSIGNED OR SUFFICIENT STAFF RESOURCES BE DIRECTED TO STUDY AND REVISE TRAFFIC CODES TO PROVIDE CLARITY AND UNIFORMITY; AND REQUESTING THAT A BILL BE PREPARED CONTAINING THE PROPOSED REVISIONS TO PRESENT TO THE 58TH LEGISLATURE 3170

8 *(Christiaens)* REQUESTING A LEGISLATIVE INTERIM STUDY OF THE PRIVATIZATION OF FOSTER CARE AND ADOPTION SERVICES 3171

9 *(Cocchiarella)* COMMEMORATING THE 20TH ANNIVERSARY OF THE SISTER STATE RELATIONSHIP BETWEEN MONTANA AND THE JAPANESE PREFECTURE OF KUMAMOTO ON JULY 22, 2002 3172

10 *(Kitzenberg)* URGING THE BOARD OF REGENTS AND THE CHANCELLOR OF MONTANA TECH OF THE UNIVERSITY OF MONTANA TO DIRECT THE SCHOOL OF MINES AND ENGINEERING TO STUDY AN ECONOMICAL PROCESS FOR MINING GOLD AND SILVER THAT DOES NOT REQUIRE THE USE OF CYANIDE HEAP LEACHING AND TO ENCOURAGE STUDENTS ATTENDING THE SCHOOL OF MINES AND ENGINEERING IN THE

FIELDS OF GEOLOGICAL ENGINEERING, METALLURGICAL AND MATERIALS ENGINEERING, AND MINING ENGINEERING AT MONTANA TECH OF THE UNIVERSITY OF MONTANA TO PARTICIPATE IN AN INTERNSHIP PROGRAM AT A MONTANA GOLD OR SILVER MINE OPERATION 3174

11 *(Tester)* OPPOSING THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION'S PROPOSED HOURS OF SERVICE REGULATIONS 3175

12 *(Beck)* AUTHORIZING THE PERMANENT PLACEMENT OF CERTAIN BUSTS, STATUES, MEMORIALS, MONUMENTS, AND ART DISPLAYS IN THE CAPITOL. 3176

13 *(Crismore)* URGING RECIPROCITY BETWEEN IDAHO AND MONTANA ON BIDDING PROCEDURES FOR STATE TIMBER SALES. 3178

16 *(Holden)* URGING THE FEDERAL GOVERNMENT TO SUPPORT THE EFFORTS OF THE LOWER YELLOWSTONE CONSERVATION DISTRICT DEVELOPMENT COMMITTEE TO OBTAIN THE PROMISED BENEFITS OF THE PICK-SLOAN MISSOURI RIVER PLAN AND RETAIN LOW-COST ENERGY FOR NEW AND EXISTING IRRIGATION AND TO ASSIST THE CONSERVATION DISTRICT IN DRAFTING AND PASSING FEDERAL LEGISLATION OUTLINING BENEFITS NEEDED TO SUSTAIN EXISTING IRRIGATION AND DEVELOP NEW IRRIGATION IN MONTANA'S YELLOWSTONE AND MISSOURI RIVER BASINS 3178

18 *(Taylor)* URGING MONTANA'S CONGRESSIONAL DELEGATION TO SUPPORT AND WORK TO PASS PRESIDENT BUSH'S TAX RELIEF PLAN 3180

21 *(Grosfield)* REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR DIRECT SUFFICIENT STAFF RESOURCES TO STUDY THE PROPERTY TAXATION OF AGRICULTURAL LAND AND NONAGRICULTURAL LAND IN MONTANA; AND REQUIRING A REPORT TO THE 58TH LEGISLATURE 3180

22 *(Christiaens)* REQUESTING THAT AN APPROPRIATE INTERIM COMMITTEE OR SUFFICIENT STAFF RESOURCES BE DIRECTED TO STUDY HEALTH CARE AND THE INCREASING COST OF HEALTH INSURANCE 3182

SENATE RESOLUTIONS

SR Page

1 *(Thomas)* REVISING AND ADOPTING THE SENATE RULES 3185

2 *(Butcher)* OPPOSING ANY NEW DESIGNATION FOR THE MISSOURI RIVER OR THE MISSOURI RIVER BREAKS 3200

3 *(Bohlinger)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2001, TO THE SENATE. 3201

4 *(Hargrove)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR

AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2001, TO THE SENATE 3202

6 *(Butcher)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2001, TO THE SENATE 3202

7 *(Franklin)* CONCURRING IN, CONFIRMING, AND CONSENTING TO SOME OF THE NOMINATIONS OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 4, 2001, TO THE SENATE 3203

8 *(Toole)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2001, TO THE SENATE 3203

10 *(Hargrove)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2001, TO THE SENATE 3204

16 *(Franklin)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 4, 2001, TO THE SENATE 3204

17 *(Elliott)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2001, TO THE SENATE 3205

18 *(Miller)* URGING THE SENATE IN THE 58TH LEGISLATURE TO ABOLISH THE SENATE BILLS AND JOURNAL COMMITTEE . . . 3205

19 *(Hargrove)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 4, 2001, TO THE SENATE 3206

20 *(Thomas)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE OF HONORABLE JAMES A. RICE AS JUSTICE OF THE MONTANA SUPREME COURT 3214

21 *(Bishop)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE OF HONORABLE GREGORY R. TODD AS DISTRICT JUDGE OF THE THIRTEENTH JUDICIAL DISTRICT, BILLINGS, MONTANA 3215

22 *(Hargrove)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 6, 2001, TO THE SENATE. 3215

23 *(Hargrove)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 4, 2001, TO THE SENATE. 3219

24 *(Hargrove)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 12, 2001, TO THE SENATE 3221

25 *(Franklin)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 4, 2001, TO THE SENATE 3221

HOUSE JOINT RESOLUTIONS

HJR Page

1 *(McCann)* PROVIDING FOR A MENTAL HEALTH SERVICES OVERSIGHT SUBCOMMITTEE OF THE LEGISLATIVE FINANCE COMMITTEE FOR THE 2001-02 INTERIM 3223

2 *(Somerville)* ESTABLISHING AN OFFICIAL ESTIMATE OF THE STATE'S ANTICIPATED GENERAL FUND REVENUE FOR EACH YEAR OF THE 2002-03 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED GENERAL FUND BUDGET AS MANDATED BY ARTICLE VIII, SECTION 9, OF THE MONTANA CONSTITUTION; ACCEPTING A JUNE 30, 2000, UNRESERVED GENERAL FUND BALANCE THAT WAS ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; ESTABLISHING OFFICIAL ESTIMATES OF CERTAIN NONGENERAL FUND REVENUE; AND REQUESTING THAT THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING USE THE REVENUE ESTIMATES CONTAINED IN THIS RESOLUTION AS OFFICIAL REVENUE ESTIMATES FOR FISCAL YEARS 2001, 2002, AND 2003. 3225

3 *(Lee)* URGING SUPPORT FOR AN AMTRAK ROUTE FROM DENVER TO SPOKANE THAT PASSES THROUGH SOUTHERN AND WESTERN MONTANA 3236

4 *(Fuchs)* URGING THE UNITED STATES CONGRESS TO REQUIRE STANDARDIZED POLLING HOURS TO SELECT PRESIDENTIAL ELECTORS WHEN A PRESIDENTIAL GENERAL ELECTION IS HELD 3237

7 *(McGee)* STRONGLY URGING THE MONTANA DEPARTMENT OF LABOR AND INDUSTRY TO REVIEW STATE LAWS AND ADMINISTRATIVE RULES REGARDING PAYMENT OF EMPLOYEE TRAVEL TIME AND TO MEET AND JOINTLY WORK WITH REPRESENTATIVES OF THE UNITED STATES DEPARTMENT OF LABOR FOR THE PURPOSE OF CLARIFYING AND SIMPLIFYING STATE AND FEDERAL LAWS REGARDING COMPENSABILITY OF EMPLOYEE TRAVEL TIME 3237

8 *(Jacobson)* REQUESTING THAT THE LEGISLATIVE COUNCIL DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR ASSIGN SUFFICIENT STAFF RESOURCES TO STUDY MONTANA'S VOTING SYSTEMS AND PROCEDURES AND TO MAKE RECOMMENDATIONS TO THE 58TH LEGISLATURE 3238

9 *(Lindeen)* URGING CONGRESS TO BRING EQUITABLE FUNDING OF HEALTH CARE SERVICES AND BENEFITS TO ALL MEDICARE RECIPIENTS, REGARDLESS OF WHERE THEY LIVE 3240

10 *(Vick)* URGING THE NATIONAL PARK SERVICE TO WITHDRAW ITS DECISION TO IMPLEMENT A WINTER USE PLAN THAT WOULD ELIMINATE SNOWMOBILE USE IN YELLOWSTONE NATIONAL

PARK AND TO SUBSTITUTE A PLAN THAT ENSURES THE OPPORTUNITY FOR FUTURE SELF-DIRECTED SNOWMOBILE ACCESS TO YELLOWSTONE NATIONAL PARK; AND URGING CONGRESS TO PROVIDE ADEQUATE FUNDING TO THE NATIONAL PARK SERVICE TO PROVIDE ADEQUATE PERSONNEL TO ENSURE HEALTH AND SAFETY 3241

11 *(Tropila)* URGING THE UNITED STATES DEPARTMENT OF THE INTERIOR TO GRANT FINAL RECOGNITION TO THE LITTLE SHELL TRIBE OF CHIPPEWA INDIANS OF MONTANA 3242

13 *(Wolery)* URGING THE ENVIRONMENTAL PROTECTION AGENCY AND THE CONGRESS OF THE UNITED STATES TO INCREASE RESOURCES FOR AND SUPPORT THE EFFORTS OF THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) TECHNICAL WORKING GROUP ON PESTICIDES TO HARMONIZE PESTICIDE REGULATIONS BETWEEN CANADA AND THE UNITED STATES, TO COMMIT MORE RESOURCES FOR AND SUPPORT EFFORTS TOWARD ESTABLISHING TOLERANCES FOR PESTICIDES REGISTERED FOR USE IN CANADA BUT NOT IN THE UNITED STATES, AND TO ACCEPT REGISTRATION DATA CURRENTLY ACCEPTED BY CANADIAN OFFICIALS IN SUPPORT OF CANADIAN PESTICIDE REGISTRATIONS 3243

14 *(Curtiss)* URGING A STATE ROLE IN MANAGING THE COLUMBIA RIVER BASIN; AND CALLING FOR A PUBLIC FORUM TO DEVELOP A CONSENSUS-BASED APPROACH TO MANAGEMENT 3245

15 *(Lawson)* REQUESTING AN INTERIM STUDY OF THE LAWS GOVERNING COMMUNITY COLLEGES; REQUESTING THE ASSISTANCE OF STATE AND LOCAL GOVERNMENT AGENCIES; AND REQUIRING A REPORT ON THE STUDY'S FINDINGS AND RECOMMENDATIONS TO THE 58TH LEGISLATURE 3246

16 *(Haines)* REQUESTING THAT THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS, IN COOPERATION WITH THE DEPARTMENTS OF AGRICULTURE, LIVESTOCK, AND PUBLIC HEALTH AND HUMAN SERVICES, CONDUCT A STUDY ON THE IMPORTATION AND POSSESSION OF EXOTIC WILDLIFE AND REPORT THE RESULTS OF THE STUDY AND RECOMMENDATIONS TO THE GOVERNOR AND THE 58TH LEGISLATURE. 3247

18 *(Lewis)* RECOGNIZING THE 200TH ANNIVERSARY OF THE LEWIS AND CLARK EXPEDITION AND URGING NATIONAL RECOGNITION AND SUPPORT BY CONGRESS AND THE PRESIDENT 3248

19 *(Curtiss)* SUPPORTING THE MULTIPLE USE OF NATIONAL FORESTS AND PUBLIC LANDS AND URGING CONGRESS AND THE PRESIDENT TO OVERTURN THE FEDERAL ROADLESS INITIATIVE 3249

21 *(Laible)* REQUESTING A COLLABORATIVE PROCESS STUDY TO ADDRESS ISSUES REGARDING THE NEED TO BALANCE THE NECESSARY MANAGEMENT OF FOREST FUELS WITH THE AIR QUALITY CONCERNS RESULTING FROM PRESCRIBED WILDLAND OPEN BURNING AND TO PROVIDE SOLUTIONS TO THE 58TH LEGISLATURE 3250

22 *(Curtiss)* URGING THE REDUCTION OF AN OVERABUNDANCE OF FOREST FUELS 3252

23 *(Wanzenried)* EXPRESSING THE LEGISLATURE'S SUPPORT FOR THE DEVELOPMENT OF A MOTOR CARRIER SAFETY PROGRAM

AND FOR THE SUBMISSION OF A GRANT PROPOSAL TO THE UNITED STATES DEPARTMENT OF TRANSPORTATION TO STUDY PROGRAM IMPLEMENTATION 3254

24 *(Wanzenried)* REQUESTING A STUDY OF ANNEXATION TO DEVELOP A GUIDING POLICY ON ANNEXATION AND TO GENERATE RECOMMENDATIONS BASED ON THE STUDY'S FINDINGS 3255

25 *(Haines)* URGING THE DEVELOPMENT OF A TIMBER SALVAGE AND FOREST RESTORATION PROGRAM 3256

27 *(Bales)* REQUESTING THAT THE ENVIRONMENTAL QUALITY COUNCIL PROVIDE OVERSIGHT FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT REGARDING THE PROPOSED DEVELOPMENT OF COAL-BED NATURAL GAS RESOURCES IN MONTANA AND PROVIDE FINDINGS TO THE LEGISLATURE. 3257

29 *(Carney)* REQUESTING THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY ESTABLISH A TASK FORCE TO DEVELOP AN ASSAY METHOD FOR THE MEASUREMENT OF ASBESTOS TO ASSIST IN THE ESTABLISHMENT OF AN AMBIENT AIR STANDARD BASED ON HUMAN HEALTH RISKS FROM CHRONIC EXPOSURE TO ASBESTOS 3258

30 *(Story)* ENCOURAGING THE DEPARTMENT OF TRANSPORTATION TO WORK WITH THE LEGISLATURE, THE GOVERNOR'S OFFICE, AND OTHER STATE AGENCIES IN INCORPORATING ECONOMIC DEVELOPMENT CRITERIA INTO THE TRANSPORTATION PLAN UPDATE 3259

31 *(Schmidt)* ENCOURAGING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO WORK WITH OTHER AGENCIES IN EXAMINING THE PROBLEM OF TEEN USE OF ALCOHOL AND DRUGS BOTH IN GENERAL AND WHILE THE TEENAGER IS DRIVING OR RIDING IN A MOTOR VEHICLE; AND ENCOURAGING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO REPORT ANY FINDINGS OR RECOMMENDATIONS TO THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE. 3260

32 *(Bixby)* REQUESTING A PERFORMANCE AUDIT OF THE CHILD PROTECTIVE SERVICES SYSTEM BY THE LEGISLATIVE AUDIT DIVISION. 3262

33 *(Gillan)* RECOGNIZING THE IMPORTANCE OF THE SUGAR INDUSTRY TO MONTANA'S ECONOMY; URGING THE MONTANA BOARD OF INVESTMENTS, THE DEPARTMENT OF COMMERCE, AND OTHER AGENCIES TO UTILIZE RESOURCES AND PROGRAMS TO ASSIST MONTANA'S SUGAR INDUSTRY; AND STATING THAT THE MONTANA LEGISLATURE IS COMMITTED TO HELPING SUGAR BEET PRODUCERS MAINTAIN A STRONG MONTANA PRESENCE. 3263

34 *(Haines)* DIRECTING THE DEPARTMENT OF ADMINISTRATION TO CONDUCT AN ANALYSIS AND PROPOSE METHODS OF FUNDING THE UNFUNDED LEAVE LIABILITY OF STATE EMPLOYEES; AND DIRECTING THE DEPARTMENT TO SUBMIT ITS PROPOSALS TO THE LEGISLATIVE AUDIT COMMITTEE BY JULY 1, 2002 3264

35 *(Harris)* REQUESTING AN INTERIM STUDY OF THE FEASIBILITY OF ESTABLISHING A TUITION PREPAYMENT PROGRAM WITHIN THE MONTANA UNIVERSITY SYSTEM 3265

37 *(Pattison)* REQUESTING THAT THE LEGISLATIVE COUNCIL DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR ASSIGN SUFFICIENT STAFF RESOURCES TO STUDY, IN THE CONTEXT OF PROVIDING FOR BICYCLE TRAFFIC SAFETY, THE PLANNING, DESIGN, AND CONSTRUCTION OF MONTANA HIGHWAYS AND ANY PROGRAMS OR REQUIREMENTS FOR DRIVER EDUCATION, TRAINING, OR LICENSING OR FOR CYCLIST SAFETY EQUIPMENT OR CLOTHING. 3266

38 *(Waddill)* SUPPORTING THE ERECTION OF A MONTANA PURPLE HEART MEMORIAL. 3267

39 *(Shockley)* REQUESTING A LEGISLATIVE INTERIM STUDY OF CRIMINAL OFFENSES, OFFENSE SENTENCING AND RELEASE, AND RELATED ISSUES. 3268

40 *(Bixby)* REQUESTING THAT THE BOARD OF PUBLIC EDUCATION STUDY THE USE OF THE PRE-PROFESSIONAL SKILLS TEST AS AN ENTRY TEST FOR ADMISSION INTO THE TEACHER EDUCATION PROGRAMS IN MONTANA AND MAKE RECOMMENDATIONS TO THE 58TH LEGISLATURE 3270

41 *(Andersen)* REQUESTING THAT THE LEGISLATIVE COUNCIL DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR ASSIGN SUFFICIENT STAFF RESOURCES TO STUDY THE LAWS GOVERNING SCHOOL BOUNDARY TRANSFERS AND TO MAKE RECOMMENDATIONS TO THE 58TH LEGISLATURE 3271

42 *(Kaufmann)* REQUESTING THAT THE LEGISLATIVE COUNCIL DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR DIRECT SUFFICIENT STAFF RESOURCES TO STUDY ALTERNATIVES FOR FUNDING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S OVERALL FIRE MANAGEMENT PROGRAM, INCLUDING THE COSTS RELATED TO WILDFIRE SUPPRESSION 3272

44 *(Curtiss)* REQUESTING FEDERAL INTERVENTION TO STABILIZE WHOLESALE ELECTRICITY PRICES IN THE WEST. 3273

HOUSE RESOLUTIONS

HR Page

1 *(Sliter)* REVISING AND ADOPTING THE HOUSE RULES 3275

2 *(Witt)* OPPOSING ANY NEW DESIGNATION FOR THE MISSOURI RIVER OR THE MISSOURI RIVER BREAKS 3298

SESSION LAWS

Enacted by the

FIFTY-SEVENTH LEGISLATURE IN REGULAR SESSION

Held at Helena, the Seat of Government
January 3, 2001, through April 21, 2001

Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

CHAPTER NO. 1

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations. The following amounts are appropriated from the general fund for fiscal years 2001, 2002, and 2003 for the operation of the 57th legislature and costs of preparing for the 58th legislature:

LEGISLATIVE BRANCH (1104)

1. Senate (25)	$2,355,658
2. House of Representatives (26)	3,701,192
3. Legislative Services Division Feed Bill (22)	643,554

Section 2. Effective date. [This act] is effective on passage and approval.

Approved January 18, 2001

CHAPTER NO. 2

[HB 17]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FIRE SUPPRESSION COSTS FOR THE BIENNIUM ENDING JUNE 30, 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation — time limits. (1) Subject to subsection (2), up to $6,048,986 is appropriated from the general fund to the department of natural resources and conservation forestry program.

(2) The appropriation in subsection (1) is intended to provide for the necessary expenditures for the supplemental fiscal year 2000 fund transfer for fire costs and for fire costs in the fiscal year ending June 30, 2001. The unspent balance of the appropriation must revert to the general fund.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved January 30, 2001

CHAPTER NO. 3

[HB 39]

AN ACT REVISING CERTAIN STATUTES REGULATING FISHING BY YOUTHS AND PERSONS 62 YEARS OF AGE OR OLDER; INCREASING THE AGE FOR JUVENILES TO FISH IN CERTAIN DESIGNATED WATERS; ALLOWING RESIDENT YOUTHS UNDER 15 YEARS OF AGE AND

RESIDENTS 62 YEARS OF AGE OR OLDER TO OBTAIN PADDLEFISH TAGS WITH A VALID WILDLIFE CONSERVATION LICENSE; AMENDING SECTIONS 87-1-304 AND 87-2-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-304, MCA, is amended to read:

"87-1-304. Fixing of seasons and bag and possession limits. (1) *(a)* The commission may*:*

(i) fix seasons, bag limits, possession limits, and season limits;

(ii) open or close or shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animal as defined by 87-2-101; and

(iii) declare areas open to the hunting of deer, antelope, elk, moose, sheep, and goat by bow and arrow ~~permit holders~~ *permitholders* and designate times when only bows and arrows may be used to hunt deer, antelope, elk, moose, sheep, and goat in those areas.

(b) The commission may restrict areas and species to hunting with only specified hunting arms, including bow and arrow, for the reasons of safety or of providing diverse hunting opportunities and experiences.

(c) ~~It~~ *The commission* may declare areas open to special license holders only and issue special licenses in a limited number when ~~it~~ *the commission* determines, after proper investigation, that ~~such~~ a *special* season is necessary to ~~assure~~ *ensure* the maintenance of an adequate supply of game birds, fish, or animals or fur-bearing animals. ~~It~~ *The commission* may declare a special season and issue special licenses when game birds, ~~or~~ animals, or fur-bearing animals are causing damage to private property or when a written complaint of damage has been filed with the commission by the owner of that property. In determining to whom ~~those~~ *special* licenses must be issued, ~~it~~ *the commission* may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system must be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles by archers during special archery seasons.

(3) ~~It~~ *The commission* may divide the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout the state. ~~It~~ *The commission* may declare *a* closed season for hunting, fishing, or trapping in any of those districts and later may open those districts to hunting, fishing, or trapping.

(4) ~~It~~ *The commission* may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. ~~It~~ *The commission* may close any area or district of any stream, public lake, or public water or portions thereof to hunting, trapping, or fishing for limited periods of time~~,~~ when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations or to prevent the undue depletion of fish, game, ~~and~~ fur-bearing animals, ~~and~~ game *birds,* and nongame birds. ~~It~~ *The commission* ~~later~~ may open the area or district upon consent of a majority of the property owners affected.

(5) The commission may authorize the director to open or close any special season upon 12 hours' notice to the public.

(6) ~~It~~ *The commission* may declare certain fishing waters closed to fishing except by persons under ~~13~~ *15* years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under ~~13~~ *15* years of age, at times and in areas the commission in its discretion considers advisable and consistent with its policies relating to fishing."

Section 2. Section 87-2-306, MCA, is amended to read:

"**87-2-306. Paddlefish tags.** *(1)* The department may issue paddlefish tags to ~~holders of valid Class A, Class B, and Class B-4 fishing licenses~~ *persons listed in subsection (2)* for a fee of ~~$4 beginning March 1, 1992, and~~ $5 ~~beginning March 1, 1994,~~ for residents and $15 for nonresidents. Each tag authorizes the holder to fish with hook and line for paddlefish as prescribed by rules of the department.

(2) The following persons may obtain paddlefish tags pursuant to this section:

(a) holders of valid Class A, Class B, and Class B-4 fishing licenses;

(b) residents under 15 years of age with a valid wildlife conservation license; and

(c) residents 62 years of age or older with a valid wildlife conservation license."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 7, 2001

CHAPTER NO. 4

[HB 52]

AN ACT AMENDING REFERENCES RELATING TO THE MILITARY; ADOPTING THE MOST RECENT VERSION OF FEDERAL LAWS, REGULATIONS, FORMS, PRECEDENTS, AND USAGES, INCLUDING THE FEDERAL UNIFORM CODE OF MILITARY JUSTICE, FOR USE BY STATE MILITARY FORCES; DELETING A REFERENCE TO FEDERAL STATUTE THAT HAS BEEN REPEALED THAT RELATED TO VETERANS' BENEFITS; AND AMENDING SECTIONS 10-1-104 AND 25-13-608, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-104, MCA, is amended to read:

"**10-1-104. Federal regulations to govern.** (1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the national guard, as in effect on October 1, ~~1999~~ *2001*, insofar as they are applicable and not inconsistent with the constitution of this state, apply to and govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code.

(2) The Uniform Code of Military Justice, as in effect on October 1, ~~1999~~ *2001*, including the regulations, manuals, forms, precedents and usages implementing, interpreting, and complementing the code, is adopted for use by the national guard of this state and applies, insofar as the code is not otherwise inconsistent with the constitution of this state and except as otherwise provided by this title or by rule adopted by the department, to the greatest extent practicable to govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United

States Code when the members are serving other than in a federal capacity under Title 10 of the United States Code."

Section 2. Section 25-13-608, MCA, is amended to read:

"**25-13-608. Property exempt without limitation — exceptions.** (1) A judgment debtor is entitled to exemption from execution of the following:

(a) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;

(b) benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation, except as provided in subsection (2);

(c) veterans' benefits, except as provided in subsection (2);

(d) disability or illness benefits, except as provided in subsection (2);

(e) except as provided in subsection (2), individual retirement accounts, as defined in 26 U.S.C. 408(a), to the extent of deductible contributions made before the suit resulting in judgment was filed and the earnings on those contributions, and Roth individual retirement accounts, as defined in 26 U.S.C. 408A, to the extent of qualified contributions made before the suit resulting in judgment was filed and the earnings on those contributions;

(f) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;

(g) maintenance and child support; and

(h) a burial plot for the judgment debtor and the debtor's family.

(2) Veterans' and social security legislation benefits based upon remuneration for employment, ~~as defined in 42 U.S.C. 662(f),~~ disability benefits, and assets of individual retirement accounts are not exempt from execution if the debt for which execution is levied is for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse if the spouse or former spouse is the custodial parent of a child for whom child support is owed or owing and the judgment debtor is the parent of the child."

Approved February 7, 2001

CHAPTER NO. 5

[HB 98]

AN ACT GENERALLY REVISING LAWS RELATED TO THE MONTANA CHIROPRACTIC LEGAL PANEL; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 27-12-206, 27-12-306, 27-12-308, AND 27-12-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-12-206, MCA, is amended to read:

"**27-12-206. Funding.** (1) ~~There is an account in the state special revenue fund.~~ *There is a pretrial review fund to be administered by the director for the* *purposes stated in this chapter. The fund and any income from it must be held in trust, deposited in an account, and invested and reinvested by the director. The fund may not become part of or revert to the general fund of this state but is subject to auditing by the legislative auditor.* Money from the assessments levied under this section must be deposited in the ~~account~~ *fund.*

(2) For each fiscal year, beginning July 1, an annual assessment is levied on all chiropractic physicians. The amount of the assessment must be annually set by the director and equally assessed against all chiropractic physicians. A fund surplus at the end of a fiscal year~~,~~ *that is* not required for the administration of this chapter~~,~~ must be retained ~~in the account~~ *by the director* and used to finance the administration of this chapter during the next fiscal year, in which event the director shall reduce the next annual assessment to an amount estimated to be necessary for the proper administration of this chapter during that fiscal year.

(3) The annual assessment must be paid on or before the date the chiropractic physician's annual renewal fee under 37-12-307 is due. An unpaid assessment bears a late charge fee of $25. The late charge fee is part of the annual assessment. The director has the same powers and duties in connection with the collection of and failure to pay the annual assessment as the department of commerce has under 37-12-307 with regard to a chiropractic physician's annual license fee."

Section 2. Section 27-12-306, MCA, is amended to read:

"**27-12-306. Chiropractic physician's appearance and answer — waiver of confidentiality of records.** (1) If a chiropractic physician whose alleged malpractice caused the application to be filed chooses to retain legal counsel, ~~his~~ *the chiropractic physician's* attorney ~~must~~ *shall* informally enter an appearance with the director.

(2) The chiropractic physician shall answer the application and submit a statement authorizing the panel to inspect all medical, *chiropractic,* and hospital records and information pertaining to the application and, for the purposes of ~~such~~ *panel* inspection only, waiving any privilege as to the content of those records. Nothing in the statement waives any privilege for any other purpose."

Section 3. Section 27-12-308, MCA, is amended to read:

"**27-12-308. Director to furnish panel members with documents.** At least 10 days prior to the hearing, the director shall give each panel member copies of all claims, *all* briefs, *all chiropractic,* medical, or hospital records, and *all* other documents *that* the director considers necessary."

Section 4. Section 27-12-502, MCA, is amended to read:

"**27-12-502. Conduct of hearing.** (1) At the time set for hearing, the claimant must be present and give a brief statement of ~~his~~ *the claimant's* case, including the facts constituting the alleged professional malpractice that ~~he~~ *the claimant* is prepared to prove. The chiropractic physician against whom the claim is brought and ~~his~~ *the chiropractic physician's* attorney may be present and may make an introductory statement of ~~his~~ *the chiropractic physician's* case.

(2) A party may call witnesses to testify before the panel. Witnesses must be sworn. Medical *and chiropractic* texts, journals, studies, and other documentary evidence relied upon by a party may be offered and admitted if relevant. Written statements of facts by treating chiropractic physicians may be reviewed.

(3) The hearing is informal, and an official transcript ~~must~~ *may* not be made."

Section 5. Appropriation. If on June 30, 2001, a balance remains in the account of the state special revenue fund for the administration of Title 27, chapter 12, the balance is appropriated, in an amount not to exceed $50,000, to the Montana chiropractic legal panel provided for in 27-12-104.

Section 6. Effective date. [This act] is effective July 1, 2001.

Approved February 7, 2001

CHAPTER NO. 6

[SB 87]

AN ACT CLARIFYING THE ROLES OF CLERKS OF JUSTICES' COURTS AND CITY COURTS; AND AMENDING SECTIONS 3-10-103 AND 3-11-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-103, MCA, is amended to read:

"**3-10-103. County to provide facilities.** The board of county commissioners of the county in which the justice of the peace has been elected or appointed*:*

(1) shall provide for the ~~justice of the peace~~ *justice's court*:

~~(1)~~*(a)* the office, courtroom, and clerical assistance necessary to enable ~~him~~ *the justice of the peace and the clerk of justice's court, if any,* to ~~perform his duties~~ *conduct business* in dignified surroundings;

~~(2)~~*(b)* the books, records, forms, papers, stationery, postage, office equipment, and supplies necessary in the proper keeping of the records and files of the ~~judicial office~~ *court* and the transaction of the business; *and*

~~(3)~~*(c)* the latest edition of the Montana Code Annotated and all official supplements ~~thereto~~*; and*

(2) may provide a clerk of justice's court."

Section 2. Section 3-11-206, MCA, is amended to read:

"**3-11-206. City to provide facilities — conduct of court business — electronic filing and storage of court records.** (1) The governing body of the city in which the judge has been elected or appointed*:*

(a) shall provide for the ~~judge~~ *city court*:

~~(a)~~*(i)* the office space, courtroom, and clerical assistance necessary to enable the ~~judge~~ *judge and the clerk of city court, if any,* to ~~perform the judge's duties~~ *conduct business* in dignified surroundings;

~~(b)~~*(ii)* the books, records, forms, papers, stationery, postage, office equipment, and supplies necessary for the proper keeping of the records and files of the ~~judicial office~~ *court* and the transaction of business; *and*

~~(c)~~*(iii)* one copy of the latest edition of the Montana Code Annotated and all official supplements or immediate access to the code and supplements*; and*

(b) may provide a clerk of city court.

(2) ~~(a) Except as provided in subsection (2)(b), the~~ *The* provisions of ~~3-6-301 through~~ *3-6-302(1) and* 3-6-303 concerning conduct of municipal court business apply to the city court.

~~(b) If the governing body of a city establishes by ordinance the position of clerk of city court, 3-6-301 does not apply to the city court.~~

(3) The records of the court may be kept by means of electronic filing or storage, or both, as provided in 3-1-114 and 3-1-115, in lieu of or in addition to paper records."

Approved February 7, 2001

CHAPTER NO. 7

[HB 25]

AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 56TH LEGISLATURE; AMENDING SECTIONS 1-1-517, 2-7-501, 2-15-3316, 7-1-2111, 7-4-2503, 7-7-2101, 7-7-2203, 7-14-2524, 7-16-2327, 7-21-2303, 10-2-102, 13-2-301, 13-12-207, 13-15-401, 15-1-501, 15-1-708, 15-6-141, 15-23-101, 15-24-904, 15-31-132, 15-35-102, 16-2-109, 16-4-105, 16-4-111, 16-4-204, 16-4-301, 16-4-420, 17-5-709, 17-7-502, 18-4-132, 19-2-1001, 19-3-503, 19-9-1007, 19-20-404, 20-26-103, 33-17-211, 33-17-1203, 35-1-1312, 35-8-216, 35-12-703, 35-18-105, 35-18-106, 35-18-107, 35-18-206, 35-18-301, 35-18-313, 35-18-316, 39-3-213, 39-51-1307, 39-51-3207, 39-71-201, 39-71-2363, 39-72-711, 41-5-103, 41-5-206, 46-8-202, 50-51-103, 53-30-403, 60-3-201, 69-4-304, 69-4-501, 69-8-103, 69-8-502, 72-3-917, 75-10-103, 75-10-732, 76-3-601, 76-5-401, 77-2-102, 77-4-201, 77-4-210, 80-6-101, 80-7-816, 81-9-232, 81-23-303, 85-1-615, 85-9-104, 87-1-209, 87-1-221, 87-1-242, 87-1-246, AND 90-6-302, MCA; AND REPEALING SECTIONS 15-34-101, 15-34-102, 15-34-103, 15-34-104, 15-34-105, 15-34-110, 15-34-111, 15-34-112, 15-34-115, 15-34-116, AND 90-3-1004, MCA, AND SECTION 2, CHAPTER 64, LAWS OF 1995.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-1-517, MCA, is amended to read:

"**1-1-517. State Korean war veterans' memorial — Missoula.** (1) The Missoula memorial rose garden, located in Missoula, Montana, is officially designated as a state Korean ~~conflict [war]~~ *war* veterans' memorial.

(2) The department of commerce and the department of transportation shall identify the Missoula memorial rose garden on official state maps as a state Korean ~~conflict [war]~~ *war* veterans' memorial."

Section 2. Section 2-7-501, MCA, is amended to read:

"**2-7-501. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Audit" means a financial audit and includes financial statement and financial-related audits as defined by government auditing standards as established by the U.S. comptroller general.

(2) "Board" means the Montana board of public accountants provided for in 2-15-1866.

(3) "Department" means the department of commerce.

(4) (a) "Financial assistance" means assistance provided by a federal, state, or local government entity to a local government entity or subrecipient to carry out a program. Financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance. Financial assistance includes awards received directly from federal and state agencies or indirectly when subrecipients receive funds identified as federal or state funds by recipients. The granting agency is responsible for identifying the source of funds awarded to recipients. The recipient is responsible for identifying the source of funds awarded to subrecipients.

(b) Financial assistance does not include direct federal, state, or local government cash assistance to individuals.

(5) "Financial report" means a presentation of schedules that reflect a current financial position and the operating results for the 1-year reporting period.

(6) "Independent auditor" means:

(a) a federal, state, or local government auditor who meets the standards specified in the government auditing standards; or

(b) a licensed accountant who meets the standards in subsection (6)(a).

(7) (a) "Local government entity" means a county, city, district, or public corporation that:

(i) has the power to raise revenue for the purpose of serving the general public;

(ii) is governed by a board, commission, or individual elected or appointed by the public or representatives of the public; and

(iii) receives local, state, or federal financial assistance.

(b) Local government entities include but are not limited to:

(i) airport authority districts;

(ii) cemetery districts;

(iii) counties;

(iv) county housing authorities;

(v) county road improvement districts;

(vi) county sewer districts;

(vii) county water districts;

(viii) county weed control districts;

(ix) drainage districts;

(x) fire department relief associations;

(xi) fire districts;

(xii) hospital districts;

(xiii) incorporated cities or towns;

(xiv) irrigation districts;

(xv) mosquito districts;

(xvi) municipal housing authority districts;

(xvii) port authorities;

(xviii) ~~refuse disposal~~ *solid waste management* districts;

(xix) rural improvement districts;

(xx) school districts including a district's extracurricular funds;

(xxi) soil conservation districts;

(xxii) special education or other cooperatives;

(xxiii) television districts;

(xxiv) urban transportation districts;

(xxv) volunteer fire departments; and

(xxvi) water conservancy districts.

(8) "Revenues" means all receipts of a local government entity from any source excluding the proceeds from bond issuances."

Section 3. Section 2-15-3316, MCA, is amended to read:

"**2-15-3316. (Temporary) Executive director — administration — powers — decisions.** (1) The executive director must be hired by a joint, mutual decision of the presiding officer of the commission and the director of the department. The department shall provide additional staff as necessary.

(2) The commission may expend funds to acquire agricultural easements under 2-15-3312 through 2-15-3322, without the approval of the ~~state land~~ board *of land commissioners*, on behalf of the state.

(3) An affirmative vote of at least nine members is required for approval of an agricultural easement acquisition. However, if three members vote against an acquisition, the acquisition may not be approved.

(4) For each agricultural easement acquisition approved, the commission shall use the acquisition criteria provided in 2-15-3317.

(5) The terms of an agricultural easement acquired under this section must be designed to conserve the core values set forth in 2-15-3315 and must specify the manner in which the agricultural easement will conserve the values. (Terminates July 1, 2003—sec. 15, Ch. 456, L. 1999.)"

Section 4. Section 7-1-2111, MCA, is amended to read:

"**7-1-2111. Classification of counties.** (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upon which the tax levy is made as follows:

(a) first class—all counties having a taxable valuation of $50 million or more;

(b) second class—all counties having a taxable valuation of $30 million or more and less than $50 million;

(c) third class—all counties having a taxable valuation of $20 million or more and less than $30 million;

(d) fourth class—all counties having a taxable valuation of $15 million or more and less than $20 million;

(e) fifth class—all counties having a taxable valuation of $10 million or more and less than $15 million;

(f) sixth class—all counties having a taxable valuation of $5 million or more and less than $10 million;

(g) seventh class—all counties having a taxable valuation of less than $5 million.

(2) As used in this section, "taxable valuation" means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a manufacturer's rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) that portion of the taxable value of the county on December 31, 1997, attributable to buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors;

(d) that portion of the taxable value of the county on December 31, 1997, attributable to trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds;

(e) the value provided by the department of revenue under 15-36-324~~(13)~~*(14)*;

(f) 50% of the taxable value of the county on December 31, 1999, attributable to telecommunications property under 15-6-141;

(g) 50% of the taxable value in the county on December 31, 1999, attributable to electrical generation property under 15-6-141; and

(h) 6% of the taxable value of the county on January 1 of each tax year."

Section 5. Section 7-4-2503, MCA, is amended to read:

"7-4-2503. (Temporary) Salary schedule for certain county officers. (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, and county auditor in all counties where the office is authorized must be established by the county governing body at no less than 80% of the annual base salary of:

(i) $25,000 for counties of the first through fifth class added to the population increment of $10 for each 100 persons or major fraction of 100 persons included in the county's population as determined by the ~~1990~~ *latest* federal decennial census; or

(ii) $18,000 for counties of the sixth and seventh class added to the population increment of $10 for each 100 persons or major fraction of 100 persons in the county's population as determined by the ~~1990~~ *latest* federal decennial census.

(b) The annual base established by the county governing body in subsection (1) must be uniform for all county officers referred to in subsection (1).

(2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of $400 a year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 a year.

(b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of $2,000 a year.

(c) The county sheriff must receive a longevity payment amounting to 1% of the base salary set forth in subsection (1) for each year of service with the sheriff's department, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the base salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(3) (a) In each county with a population in excess of 30,000, the county attorney must be a full-time official under 7-4-2704, and the base salary is $50,000 a year. In counties with a population less than 30,000, the county attorney who is a part-time official for a county of the first, second, or third class is entitled to receive an annual base salary equal to 60% of the annual salary of a full-time county attorney. A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual base salary equal to 50% of the annual base salary of a full-time county attorney.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the base salary of the county attorney is the same as the base salary established for full-time county attorneys in subsection (3)(a).

(c) On August 1 of each year, each county attorney is entitled to an increase in salary calculated by adding to the annual salary a percentage of up to 100% of the previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana-Missoula may in the future recognize as the successor to that index. However, the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set the salary at the prior fiscal year level if that level is lower than the level required by this subsection (3)(c). The cost-of-living increment for each fiscal year must be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. Unless restored pursuant to 7-4-2504(2), a cost-of-living increment that would have been received for the fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of employment as a deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of service thereafter up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) A county with a full-time county attorney may pay its full-time county attorney the same longevity increase that is provided for under subsection (3)(d)(i) for deputy county attorneys.

(iii) Unless longevity increases are restored pursuant to 7-4-2504(2), the years of service during a year in which the salary was set at the level of the salary of the prior fiscal year may not be included in a calculation of longevity increases.

(4) The latest federal decennial census statistics are the basis for computation of population increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year is based on the most current calendar year's estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana-Missoula bureau of business and economic research and the U.S. bureau of the census or other estimate that the bureau of business and economic research may certify. (Terminates July 1, 2001—sec. 4, Ch. 411, L. 1999.)

7-4-2503. (Effective July 1, 2001) Salary schedule for certain county officers. (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, and county auditor in all counties where the office is authorized must be established by the county governing body at no less than 80% of the annual base salary of:

(i) $25,000 for counties of the first through fifth class added to the population increment of $10 for each 100 persons or major fraction of 100 persons included in the county's population as determined by the ~~1990~~ *latest* federal decennial census; or

(ii) $18,000 for counties of the sixth and seventh class added to the population increment of $10 ~~per~~ *for each* 100 persons or major fraction of 100 persons in the county's population as determined by the ~~1990~~ *latest* federal decennial census.

(b) The annual base established by the county governing body in subsection (1) must be uniform for all county officers referred to in subsection (1).

(2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of $400 ~~per~~ *a* year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 ~~per~~ *a* year.

(b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of $2,000 ~~per~~ *a* year.

(c) The county sheriff must receive a longevity payment amounting to 1% of the base salary set forth in subsection (1) for each year of service with the sheriff's department, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the base salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(3) (a) In each county with a population in excess of 30,000, the county attorney must be a full-time official under 7-4-2704, and the salary is $50,000 ~~per~~ *a* year. In counties with a population less than 30,000, the county attorney who is a part-time official for a county of the first, second, or third class is entitled to receive an annual salary equal to 60% of the annual salary of a full-time county attorney. A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney is the same as that established for full-time county attorneys in subsection (3)(a).

(c) On August 1 of each year, each county attorney is entitled to an increase in salary calculated by adding to the annual salary a percentage of up to 100% of the previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana-Missoula may in the future recognize as the successor to that index. However, the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set the salary at the prior fiscal year level if that level is lower than the level required by this subsection (3)(c). The cost-of-living increment for each fiscal year must be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. Unless restored pursuant to 7-4-2504(2), a cost-of-living increment that would have been received for the fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of service thereafter up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase, but, unless longevity increases are restored pursuant to 7-4-2504(2), the years of service during a year in which the salary was set at the level of the salary of the prior fiscal year may not be included in a calculation of longevity increases.

(4) The latest federal decennial census statistics are the basis for computation of population increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year is based on the most current calendar year's estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana-Missoula bureau of business and economic research and the U.S.

bureau of the census or other estimate that the bureau of business and economic research may certify."

Section 6. Section 7-7-2101, MCA, is amended to read:

"7-7-2101. Limitation on amount of county indebtedness. (1) A county may not become indebted in any manner or for any purpose in an amount, including existing indebtedness, in the aggregate exceeding 23% of the total of the taxable value of the property in the county subject to taxation plus:

(a) (i) the value provided by the department of revenue in 15-36-324~~(13)~~*(14)*, as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness;

(ii) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the county for tax year 1999, multiplied by 23%, and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by 23%;

(b) for indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, multiplied by 23%;

(c) for indebtedness to be incurred during fiscal year 2001, an additional 25% of the taxable value of class six property within the county for tax year 1999, multiplied by 23%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 23%;

(d) for indebtedness to be incurred during fiscal year 2002, an additional 50% of the taxable value of class six property within the county for tax year 1999, multiplied by 23%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 23%;

(e) for indebtedness to be incurred during fiscal year 2003, an additional 75% of the taxable value of class six property within the county for tax year 1999, multiplied by 23%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 23%;

(f) for indebtedness to be incurred during fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the county for tax year 1999, in each case of class six property, multiplied by 23%, and an additional 77% of the taxable value of class eight property within the county for tax year 1999, multiplied by 23%;

(g) for indebtedness to be incurred during fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 23%; and

(h) for indebtedness to be incurred during the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 23%.

(2) A county may not incur indebtedness or liability for any single purpose to an amount exceeding $500,000 without the approval of a majority of the electors of the county voting at an election to be provided by law, except as provided in 7-7-2402, 7-21-3413, and 7-21-3414.

(3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6."

Section 7. Section 7-7-2203, MCA, is amended to read:

"7-7-2203. Limitation on amount of bonded indebtedness. (1) Except as provided in subsections (2) and (3), a county may not issue general obligation bonds for any purpose that, with all outstanding bonds and warrants except emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county plus:

(a) (i) the value provided by the department of revenue under 15-36-324~~(13)~~*(14)*, to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds;

(ii) for general obligation bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, multiplied by 11.25%; and

(iii) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the county for tax year 1999, multiplied by 11.25%, and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by 11.25%;

(b) for general obligation bonds to be issued during fiscal year 2001, an additional 25% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(c) for general obligation bonds to be issued during fiscal year 2002, an additional 50% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(d) for general obligation bonds to be issued during fiscal year 2003, an additional 75% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(e) for general obligation bonds to be issued during fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the county for tax year 1999, in each case of class six property, multiplied by 11.25%, and an additional 77% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(f) for general obligation bonds to be issued during fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 11.25%; and

(g) for general obligation bonds to be issued during the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 11.25%.

(2) In addition to the bonds allowed by subsection (1), a county may issue bonds for the construction or improvement of a detention center that will not exceed 12.5% of the taxable value of the property in the county subject to taxation, plus the adjustments permitted by subsection (1).

(3) The limitation in subsection (1) does not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932, or to bonds issued for the repayment of tax protests lost by the county."

Section 8. Section 7-14-2524, MCA, is amended to read:

"**7-14-2524. Limitation on amount of bonds issued — excess void.** (1) Except as otherwise provided in 7-7-2203, 7-7-2204, and this section, a county may not issue bonds that, with all outstanding bonds and warrants except emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county plus:

(a) (i) the value provided by the department of revenue under 15-36-324~~(13)~~*(14)*. The taxable property and the amount of taxes levied on new production, production from horizontally completed wells, and incremental production must be ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(ii) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the county for tax year 1999, multiplied by 11.25%, and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by 11.25%;

(b) for fiscal year 2001, an additional 25% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(c) for fiscal year 2002, an additional 50% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(d) for fiscal year 2003, an additional 75% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(e) for fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the county for tax year 1999, in each case of class six property, multiplied by 11.25%, and an additional 77% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(f) for fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 11.25%; and

(g) for the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 11.25%.

(2) A county may issue bonds that, with all outstanding bonds and warrants, exceeds 11.25% but does not exceed 22.5% of the total of the taxable value of the property, as adjusted in subsection (1), plus an additional 50% of the taxable value of telecommunications property under 15-6-141 within the county for tax year

1999, multiplied by the amount that exceeds 11.25% but does not exceed 22.5% and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by the amount that exceeds 11.25% but does not exceed 22.5%, when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways that have been destroyed or damaged by an act of God or by a disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county may not exceed 22.5% of the total of the taxable value of the property within the county, as adjusted in this section."

Section 9. Section 7-16-2327, MCA, is amended to read:

"**7-16-2327. Indebtedness for park purposes.** (1) Subject to the provisions of subsection (2), a county park board, in addition to powers and duties given under law, may contract an indebtedness ~~in~~ *on* behalf of a county, upon the credit of the county, in order to carry out its powers and duties.

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 13% of the total of the taxable value of the taxable property in the county, as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness, plus:

(i) the value provided by the department of revenue under 15-36-324~~(13)~~*(14)*;

(ii) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the city or town for tax year 1999, multiplied by 13%, and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by 13%;

(iii) for fiscal year 2001, an additional 25% of the taxable value of class six property within the county for tax year 1999, multiplied by 13%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 13%;

(iv) for fiscal year 2002, an additional 50% of the taxable value of class six property within the county for tax year 1999, multiplied by 13%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 13%;

(v) for fiscal year 2003, an additional 75% of the taxable value of class six property within the county for tax year 1999, multiplied by 13%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 13%;

(vi) for fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the county for tax year 1999, in each case of class six property, multiplied by 13%, and an additional 77% of the taxable value of class eight property within the county for tax year 1999, multiplied by 13%;

(vii) for fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 13%; and

(viii) for the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 13%.

(b) Money may not be borrowed on bonds issued for the purchase of lands and improving the land for any purpose until the proposition has been submitted to the vote of those qualified under the provisions of the state constitution to vote at the election in the affected county and a majority vote is cast in favor of the bonds."

Section 10. Section 7-21-2303, MCA, is amended to read:

"**7-21-2303. License required to do business as itinerant vendor — fee.** For the purpose of defraying the expenses of regulation under this part, every itinerant vendor desiring to do business in any county of this state ~~must~~ *shall*, before commencing ~~such~~ business, pay to the county treasurer of ~~such~~ *the* county the sum of $15 for a license to conduct ~~such~~ *the itinerant* business for a period of ~~1 year~~ *90 days* from the date ~~such~~ *the* license is issued."

Section 11. Section 10-2-102, MCA, is amended to read:

"**10-2-102. Duty of board — employee qualifications.** (1) The board shall establish a statewide service for discharged veterans and their families, actively cooperate with state and federal agencies having to do with the affairs of veterans and their families, and promote the general welfare of all veterans and their families.

(2) Employees of the board must be residents of this state. Whenever possible, all employees of the board ~~shall~~ *must* have served in the military forces of the United States during World War I, World War II, ~~or~~ the Korean *war,* or the Vietnam ~~conflicts~~ *conflict* and ~~shall~~ *must* have been honorably discharged ~~therefrom~~. Preference for employment ~~shall~~ *must* be given to disabled veterans."

Section 12. Section 13-2-301, MCA, is amended to read:

"**13-2-301. Close of registration — procedure.** (1) The election administrator shall:

(a) close registrations for 30 days before any election~~, except as provided in 13-2-212(3)~~; and

(b) publish a notice specifying the day registrations will close on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the county at least once a week for 3 weeks before the close of registration.

(2) Information to be included in the notice ~~shall~~ *must* be prescribed by the secretary of state.

(3) An individual who submits a completed registration form to the election administrator before the deadline provided in subsection (1)(a) is allowed to correct a mistake on the completed registration form until 5 p.m. on the 10th day following the close of registration, and ~~thereafter~~ the qualified elector is *then* eligible to vote in the next election."

Section 13. Section 13-12-207, MCA, is amended to read:

"**13-12-207. Order of placement.** (1) The order on the ballot for state and national offices ~~shall~~ *must* be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a heavy black line ~~shall~~ *must* be the names and spaces for voting for candidates for president and vice president. The names of candidates for president and vice president for each political party ~~shall~~ *must* be grouped together.

(b) United States senator;

(c) United States representative;

(d) ~~Governor~~ *governor* and lieutenant governor;

(e) ~~Secretary~~ *secretary* of state;

(f) ~~Attorney~~ *attorney* general;

(g) ~~State~~ *state* auditor;

(h) ~~Public~~ *public* service commissioners;

(i) ~~State~~ *state* superintendent of public instruction;

(j) ~~Clerk~~ *clerk* of the supreme court;

(k) ~~Chief~~ *chief* justice of the supreme court;

(l) ~~Justices~~ *justices* of the supreme court;

(m) ~~District~~ *district* court judges;

(n) ~~State~~ *state* senators;

(o) ~~Members~~ *members* of the house of representatives.

(2) The following order of placement ~~shall~~ *must* be observed for county offices:

(a) clerk of the district court;

(b) county commissioner;

(c) county clerk and recorder;

(d) sheriff;

(e) coroner;

(f) county attorney;

(g) county superintendent of schools;

(h) county auditor;

(i) public administrator;

(j) county assessor;

(k) county treasurer;

(l) surveyor;

(m) justice of the peace.

(3) The secretary of state shall designate the order for placement on the ballot of any offices not on the above lists, except that the election administrator shall designate the order of placement for municipal, charter, *or* consolidated~~, or confederated~~ local government offices and district offices when the district is part of only one county.

(4) Constitutional amendments ~~shall~~ *must* be placed before statewide referendum and initiative measures. Ballot issues for a county, municipality, school district, or other political subdivision ~~shall~~ *must* follow statewide measures in the order designated by the election administrator.

(5) If any offices are not to be elected they ~~shall~~ *may* not be listed, but the order of the offices to be filled ~~shall~~ *must* be maintained.

(6) If there is a short-term and a long-term election for the same office, the long-term office ~~shall~~ *must* precede the short-term."

Section 14. Section 13-15-401, MCA, is amended to read:

"13-15-401. Governing body as board of county canvassers. (1) The governing body of a county~~,~~ *or* consolidated~~, or confederated~~ local government is ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual place of meeting of the governing body within 3 days after each election, at a time determined by the board, to canvass the returns.

(2) If one or more of the members of the governing body cannot attend the meeting, the member's place must be filled by one or more county officers chosen by the remaining members of the governing body so that the board of county canvassers' membership equals the membership of the governing body.

(3) The governing body of any political subdivision in the county that participated in the election may join with the governing body of the county~~,~~ *or* consolidated~~, or confederated~~ local government in canvassing the votes cast at the election.

(4) The election administrator is secretary of the board of county canvassers and shall keep minutes of the meeting of the board and file them in the official records of the administrator's office."

Section 15. Section 15-1-501, MCA, is amended to read:

"15-1-501. Disposition of money from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

(a) income taxes, interest, and penalties collected under chapter 30;

(b) except as provided in 15-31-702, all taxes, interest, and penalties collected under chapter 31;

(c) oil and natural gas production taxes allocated under 15-36-324(8)(a) and (10)(a);

(d) electrical energy producer's license taxes under chapter 51;

(e) ~~[an amount equal to 25% of]~~ the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;

(f) liquor license taxes under Title 16;

(g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(h) estate taxes under Title 72, chapter 16; and

(i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.

(2) The department shall also deposit to the credit of the state general fund all money received from the collection of license taxes and fees and all net revenue and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded."

Section 16. Section 15-1-708, MCA, is amended to read:

"**15-1-708. Release of lien.** (1) Upon payment in full of the unpaid tax plus penalty, if any, and accumulated interest, the department shall release the lien acquired by filing the warrant for distraint.

(2) Upon partial payment or whenever the department determines that a release or partial release of the lien will facilitate the collection of the unpaid tax, penalty, and interest, the department may release or may partially release the lien acquired by filing the warrant for distraint. The department may release the lien if it determines that the lien is unenforceable.

(3) (a) After making all reasonable efforts to collect unpaid taxes, penalties, and interest on the taxes and penalties, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may ~~transfer the debt to the department of administration for collection~~ *proceed* as provided in 17-4-104.

(b) ~~Subject to approval by the department, reasonable~~ *Reasonable* fees or costs of collection incurred by the department ~~of administration~~ may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be ~~returned to the department to be~~ applied to the debt, except that all fees or costs collected must be retained by the department ~~of administration~~. If less than the full amount of the debt is collected, the department ~~of administration~~ shall retain only a proportionate share of the collection fees or costs."

Section 17. Section 15-6-141, MCA, is amended to read:

"**15-6-141. Class nine property — description — taxable percentage.** (1) Class nine property includes:

(a) centrally assessed allocations of an electric power company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by the congress to transmit or distribute ~~electric~~ *electrical* energy produced at privately owned generating facilities, not including rural electric cooperatives. However, rural electric cooperatives' property used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property is included. For purposes of this subsection (1)(a), "property used for the sole purpose" does not include a headquarters, office, shop, or other similar facility.

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electrical generation ~~facility property~~ *facilities* included in class thirteen;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five;

(iii) property owned by organizations providing telephone communications to rural areas and classified in class five;

(iv) railroad transportation property included in class twelve;

(v) airline transportation property included in class twelve; and

(vi) telecommunications property included in class thirteen.

(2) Class nine property is taxed at 12% of market value."

Section 18. Section 15-23-101, MCA, is amended to read:

"**15-23-101. Properties centrally assessed.** The department shall centrally assess each year:

(1) the railroad transportation property of railroads and railroad car companies operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state, including but not limited to telegraph, telephone, microwave, and electric power or transmission lines; natural gas or oil pipelines; canals, ditches, flumes, or like properties and including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public agency created by congress to transmit or distribute ~~electric~~ *electrical* energy produced at privately owned generating facilities, not including rural electric cooperatives;

(3) all property of scheduled airlines;

(4) the net proceeds of mines;

(5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) that is subject to the provisions of Title 15, chapter 24, part 12."

Section 19. Section 15-24-904, MCA, is amended to read:

"**15-24-904. (Temporary) Penalty for violation of law.** If any person, company, or corporation who is the owner or is in charge of any livestock within this state fails to make the statement or statements as provided in 15-24-903, the department shall, after 10 days' notice to the person who failed to file the report, assess the penalty provided in 15-8-309.

15-24-904. (Effective January 1, 2003) Penalty for violation of law. If a person, company, or corporation who is the owner or is in charge of livestock within this state fails to make the statement or statements as provided in 15-24-903, the department shall, after 10 days' notice to the person who failed to file the report, access the penalty provided in 15-8-309 {~~on the~~} *on the* per capita levy, as provided in 15-24-921."

Section 20. Section 15-31-132, MCA, is amended to read:

"**15-31-132. Tax credit for providing disability insurance for employees.** An employer is entitled to a credit against taxes otherwise due under this chapter for the amount of premiums for disability insurance {~~issued under Title 33, chapter 22, part 12, and~~} paid by the employer for ~~his~~ *the employer's* employees, subject to the following requirements:

(1) The tax credit is available only to employers who:

(a) have been in business in Montana for at least 12 months; and

(b) employ 20 or fewer employees working at least 20 hours ~~per~~ *a* week.

(2) At least 50% of each employee's insurance premium is paid by the employer.

(3) Subject to the provisions of subsection (4), an employer is entitled to a tax credit for a maximum of 10 employees, computed as follows:

(a) a credit of $25 a month for each employee if the employer pays 100% of the employee's premium; or

(b) a credit equal to $25 a month multiplied by the percentage of the employee's premium paid by the employer for each employee if the employer pays less than 100% of the employee's premium.

(4) The credit may not exceed 50% of the premium cost for each employee and may not be claimed for a period of more than 36 consecutive months. A tax credit may not be granted to an employer or ~~its~~ *the employer's* successor within 10 years of the last consecutive credit claimed.

(5) The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the employer has no tax liability."

Section 21. Section 15-35-102, MCA, is amended to read:

"**15-35-102. (Temporary) Definitions.** As used in this chapter, the following definitions apply:

(1) "Agreement" means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.

(2) (a) "Base consumption level" for a purchaser, except as provided in subsection (2)(b), applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the volume of coal purchased during calendar year 1986 from all Montana coal mine operators; or

(ii) the greater of:

(A) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators; or

(B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

(b) If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(ii).

(3) (a) Except as provided in subsection (3)(b), "base production level" for a coal mine operator applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984; or

(ii) the volume of coal produced in Montana and sold to a purchaser in 1986.

(b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i).

(4) "Broker" means any person who resells Montana coal.

(5) "Btu" means British thermal unit and is the amount of heat required to raise 1 pound of water 1 degree Fahrenheit.

(6) "Coal enhancement facility" means a processing facility located at the site of the mine that produces a solid, liquid, or gaseous fuel from coal as its primary product and thermally or chemically alters the characteristics of coal by:

(a) improving the Btu value per pound of the coal by at least 25%; or

(b) reducing the sulfur content of the coal by at least 25% when based on pounds per million Btu.

(7) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how the royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes only 15 cents per ton.

(8) "Department" means the department of revenue.

(9) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, ~~electric~~ *electrical* energy, or any other form of energy.

(10) "Feedstock" means raw coal processed by a coal enhancement facility.

(11) "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the

extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.

(12) "Produced" means severed from the earth.

(13) "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

(14) "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed the purchaser's base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.

(15) "Strip mining" is defined in 82-4-203 and includes "surface mining".

(16) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

(17) "Ton" means 2,000 pounds.

(18) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203. (Terminates December 31, 2005—sec. 5, Ch. 318, L. 1995.)

15-35-102. (Effective January 1, 2006) Definitions. As used in this chapter, the following definitions apply:

(1) "Agreement" means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.

(2) (a) "Base consumption level" for a purchaser, except as provided in subsection (2)(b), applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the volume of coal purchased during calendar year 1986 from all Montana coal mine operators; or

(ii) the greater of:

(A) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators; or

(B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

(b) If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(ii).

(3) (a) Except as provided in subsection (3)(b), "base production level" for a coal mine operator applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984; or

(ii) the volume of coal produced in Montana and sold to a purchaser in 1986.

(b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i).

(4) "Broker" means any person who resells Montana coal.

(5) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how ~~such~~ *the* royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes only:

(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of the difference between 15 cents per ton and the amount of ~~such~~ federal, state, and tribal government royalties actually paid;

(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of the difference between 15 cents per ton and the amount of ~~such~~ federal, state, and tribal government royalties actually paid;

(c) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of the difference between 15 cents per ton and the amount of ~~such~~ federal, state, and tribal government royalties actually paid; and

(d) for quarterly periods ending on and after September 30, 1987, 15 cents per ton.

(6) "Department" means the department of revenue.

(7) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, ~~electric~~ *electrical* energy, or any other form of energy.

(8) "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.

(9) "Produced" means severed from the earth.

(10) "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

(11) "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed ~~his~~ *the purchaser's* base consumption level. A purchaser of Montana coal who enters into a coal agreement with another

purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.

(12) "Strip mining" is defined in 82-4-203 and includes "surface mining".

(13) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

(14) "Ton" means 2,000 pounds.

(15) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203."

Section 22. Section 16-2-109, MCA, is amended to read:

"**16-2-109. Number and location of agency liquor stores.** (1) (a) In a community with a population of 12,000 or less, there may be one agency liquor store. In communities with populations greater than 12,000, there may be one agency liquor store for the first 12,000 inhabitants and one additional agency liquor store within increments of population of 40,000 inhabitants above 12,000 inhabitants. In determining population, the department shall use the same methods used for determining increases in the retail license quota system as provided in ~~16-4-501~~ *16-4-201.*

(b) In communities that are eligible for more than one agency liquor store, an agency liquor store established after April 25, 1995, may not be located within a 1-mile radius of any other agency liquor store in the community.

(2) An agency liquor store established after April 25, 1995, may not be located in a community that is closer than 35 miles to another community in which an agency liquor store is presently located, except in the circumstance when the most recent population estimates show a 25% growth in population or a growth of 1,000 inhabitants within a 2-year period, whichever is greater, and when this population increase is reasonably expected to continue for at least 5 years."

Section 23. Section 16-4-105, MCA, is amended to read:

"**16-4-105. Limit on retail beer licenses — wine license amendments — limitation on use of license — exceptions.** (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation that is approved by the department as a person, firm, or corporation qualified to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of the cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of the towns, not more than one retail beer license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities or towns, one retail beer license for every 500 inhabitants;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for every additional 2,000 inhabitants;

(b) the number of the inhabitants in incorporated cities and incorporated towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns, governs the number of retail beer licenses that may be issued for use within the cities and towns and within a distance of 5 miles from the corporate limits of the cities and towns. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use in both the incorporated municipalities and within a distance of 5 miles from their respective corporate limits must be determined on the basis of the combined populations of both municipalities and may not exceed the limitations in this section. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

(c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in violation of the limitations;

(d) the limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949;

(e) the number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits or for use at premises situated within any unincorporated area must be determined by the department in its discretion, except that a retail beer license may not be issued for any premises so situated unless the department determines that the issuance of the license is required by public convenience and necessity pursuant to 16-4-203. Subsection (3) does not apply to licenses issued under this subsection (1)(e). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The ~~division~~ *department* may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. Except for beer and wine licenses issued pursuant to 16-4-420, a person holding a beer and wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine amendment license.

(3) (a) Except as provided in subsections (1)(e) and (3)(b), a license issued pursuant to this section after October 1, 1997, must have a conspicuous notice that the license may not be used for premises where gambling is conducted.

(b) Subsection (3)(a) does not apply to licenses issued under this section if the department received the application before October 1, 1997. For the purposes of this subsection (3)(b), the application is received by the department before October 1, 1997, if the application's mail cover is postmarked by the United States postal service before October 1, 1997, or if the application was consigned to a private courier service for delivery to the department before October 1, 1997. An applicant who consigns an application to a private courier shall provide to the department, upon demand, documentary evidence satisfactory to the department that the application was consigned to a private courier before October 1, 1997."

Section 24. Section 16-4-111, MCA, is amended to read:

"16-4-111. Catering endorsement for beer and wine licensees. (1) (a) A person who is engaged primarily in the business of providing meals with table service and who is licensed to sell beer at retail or beer and wine at retail for on-premises consumption may, upon the approval of the ~~liquor division~~ *department*, be granted a catering endorsement to the license to allow the catering and sale of beer or beer and wine to persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and wine for on-premises consumption. The beer or wine must be consumed on the premises where the event is held.

(b) A person who is licensed pursuant to 16-4-420 to sell beer at retail or beer and wine at retail for on-premises consumption may, upon the approval of the ~~liquor division~~ *department*, be granted a catering endorsement to the license to allow the catering and sale of beer and wine to persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and wine, along with food equal in cost to 65% of the total gross revenue from the catering contract, for on-premises consumption. The beer or wine must be consumed on the premises where the event is held.

(2) A written application for a catering endorsement and an annual fee of $200 must be submitted to the department for its approval.

(3) A licensee who holds a catering endorsement may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(4) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises that the catered event is to be held. A fee of $35 must accompany the notice.

(5) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(6) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises sale of beer or beer and wine on premises where the event is to be held.

(7) A catering endorsement issued for the purpose of selling and serving beer or beer and wine at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer or

beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises."

Section 25. Section 16-4-204, MCA, is amended to read:

"**16-4-204. Transfer — catering endorsement.** (1) (a) Except as provided in subsection (1)(b), a license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred, exclusive of those issued under 16-4-209(1)(a) and (1)(b), did not exceed that area's quota in the most recent census prescribed in 16-4-502:

(A) by more than 33%; or

(B) in an incorporated city of more than 10,000 inhabitants and within a distance of 5 miles from its corporate limits by more than 43%; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license within an incorporated quota area may be transferred to a new ownership and to a new unincorporated location within the same county on application to and with consent of the department when the quota of the all-beverages licenses in the original quota area, exclusive of those issued under 16-4-209(1)(a) and (1)(b), exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(c) For 5 years after the transfer of a license between quota areas under subsection (1)(a), the license may not be mortgaged or pledged as security and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee.

(d) Once a license is transferred to a new quota area under subsection (1)(a), it may not be transferred to another quota area or back to the original quota area.

(e) A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

(2) (a) Any all-beverages licensee is, upon the approval and in the discretion of the ~~liquor division~~ *department*, entitled to a catering endorsement to the licensee's all-beverages license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages for ~~on-premise~~ *on-premises* consumption. The alcoholic beverages must be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of $250 must be submitted to the department for its approval.

(c) An all-beverages licensee who holds an endorsement granted under this subsection (2) may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(d) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises where the catered event is to be held. A fee of $35 must accompany the notice.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(g) A catering endorsement issued for the purpose of selling and serving beer at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises."

Section 26. Section 16-4-301, MCA, is amended to read:

"**16-4-301. Special permits to sell all alcoholic beverages, beer, and table wine — application and issuance.** (1) (a) Any association or corporation conducting a picnic, convention, fair, civic or community enterprise, or sporting event ~~shall~~ *is,* in the discretion of the ~~liquor division be~~ *department,* entitled to a special permit to sell beer and table wine to the patrons of ~~such~~ *that* event to be consumed within the enclosure ~~wherein~~ *in which* the event is held, except as provided in subsection (1)(d).

(b) The application of ~~any such~~ *the* association or corporation ~~shall~~ *must* be presented 3 days in advance and ~~shall~~ *must* describe the location of ~~such~~ *the* enclosure where ~~such~~ *the* event is to be held, the nature of the event, and the period ~~when~~ *during which* it is contemplated that the event will be held. The application ~~shall~~ *must* be accompanied by the amount of the permit fee and a written statement of approval of the premises where the event is to be held issued by the local law enforcement agency that has jurisdiction over the premises where the event is to be held.

(c) The permit issued to ~~such~~ *the* association or corporation is a special permit but ~~shall~~ *does* not authorize the sale of beer and table wine except starting 1 day in advance of the regular period when events are being held upon ~~such~~ *the* grounds and during the period described in the application and for 1 day thereafter.

(d) A special permit issued under this subsection (1) for the purpose of selling and serving beer at an event conducted on the premises of a county fairground or public sports arena authorizes the permitholder to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

(2) (a) A post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization not otherwise licensed under this code ~~shall~~ *is,* in the discretion of the department, without notice or hearing as provided in 16-4-207, ~~be~~ entitled to a special permit to sell beer and table wine or a special permit to sell all alcoholic beverages at ~~such~~ *the* post or lodge to members and their guests only, to be consumed within the hall or building of ~~such~~ *the* post or lodge.

(b) The application of ~~such~~ *a* nationally chartered veterans' organization or lodge of a recognized national fraternal organization ~~shall~~ *must* describe the location of the hall or building where the special permit will be used and the date it will be used.

(c) The special permit ~~issued shall~~ *may* be *issued* for a 24-hour period only, ending at 2 a.m., and the department may not issue more than 12 ~~such~~ permits to any ~~such~~ post or lodge during a calendar year."

Section 27. Section 16-4-420, MCA, is amended to read:

"**16-4-420. Restaurant beer and wine license.** (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:

(a) in the case of an individual applicant:

(i) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(ii) the applicant is not under 19 years of age;

(b) in the case of a corporate applicant:

(i) in the case of a corporation listed on a national stock exchange, the corporate officers and the board of directors ~~shall~~ *must* meet the requirements of subsection (1)(a);

(ii) in the case of a corporation not listed on a national stock exchange, each owner of 10% or more of the outstanding stock ~~shall~~ *must* meet the requirements for an individual listed in subsection (1)(a); and

(iii) the corporation is authorized to do business in Montana;

(c) in the case of any other business entity, including but not limited to partnerships, including limited liability partnerships, limited partnerships, and limited liability companies, but not including any form of a trust:

(i) if the applicant consists of more than one individual, all individuals ~~shall~~ *must* meet the requirements of subsection (1)(a); and

(ii) if the applicant consists of more than one corporation, all corporations listed on a national stock exchange ~~shall~~ *must* meet the requirements of subsection (1)(b)(i) and corporations not listed on a national stock exchange ~~shall~~ *must* meet the requirements of subsection (1)(b)(ii);

(d) the applicant operates a restaurant at the location where the restaurant beer and wine license will be used or satisfies the department *that:*

(i) ~~that~~ the applicant intends to open a restaurant that will meet the requirements of subsection (6) and intends to operate the restaurant so that at least 65% of the restaurant's gross income during its first year of operation is expected to be the result of the sale of food;

(ii) ~~that~~ the restaurant beer and wine license will be used in conjunction with that restaurant, that the restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be stated on the food bill; and

(iii) ~~that~~ the restaurant will serve beer and wine from a service bar, as service bar is defined by the department by rule;

(e) the applicant understands and acknowledges in writing on the application that this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine license will be used, the activity must be discontinued or the machines must be removed before the restaurant beer and wine license takes effect; and

(f) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current seating capacity if the restaurant is operating.

(2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic beverage may not be considered for a restaurant beer and wine license at the same location.

(b) A restaurant that sells its existing retail license may not apply for a license under this section for a period of 1 year from the date that license is transferred to a new purchaser.

(3) (a) A completed application for a license under this section and the appropriate application fee, as provided in subsection (11), must be submitted to the department. The department shall request that the department of justice make an investigation of all the items relating to the application as described in subsections (3)(a)(i) through (3)(a)(iv). Based on the results of the investigation or in exercising its sound discretion, the department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) the applicant's premises are suitable for the carrying on of the business;

(iii) the requirements of this code and the rules promulgated by the department are met and complied with; and

(iv) the seating capacity as stated on the application is correct.

(b) The department may retain 20% of the application fee collected under subsection (11) to defray the costs of the department and department of justice associated with investigating and processing applications.

(4) An application for a beer and wine license submitted under this section is subject to the provisions of 16-4-203, 16-4-207, and 16-4-405.

(5) If a premises proposed for licensing under this section is a new or remodeled structure, then the department may issue a conditional license prior to completion of the premises based on reasonable evidence, including a statement from the applicant's architect or contractor confirming that the seating capacity stated on the application is correct, that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in subsection (6).

(6) For purposes of this section, "restaurant" means a public eating place where individually priced meals are prepared and served for on-premises consumption. At least 65% of the restaurant's annual gross income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file with the department a statement, in a form approved by the department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from the sale of food. The restaurant must have a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for

use as a full-service restaurant. A full-service restaurant is a restaurant that provides an evening dinner meal.

(7) (a) (i) Subject to the conditions of subsection (7)(a)(ii), a restaurant beer and wine license may be transferred, upon approval by the department, from the original applicant to a new owner of the restaurant if there is no change of location, and the original owner may transfer location after the license is issued by the department to a new location, upon approval by the department.

(ii) A new owner may not transfer the license to a new location for a period of 1 year following the transfer of the license to the new owner.

(b) A license issued under this section may be jointly owned, and the license may pass to the surviving joint tenant upon the death of the other tenant. However, the license may not be transferred to any other person or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property upon the death of the owner in this state or in another state.

(c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of the department, transfer a restaurant beer and wine license to a new owner.

(8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

(i) for a restaurant located in a quota area with a population of 20,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(ii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 50% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iii) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 40% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and

(iv) for a restaurant located in a quota area that is also a resort community, as the resort community is designated by the department of commerce under 7-6-1501(5), if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than 100% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.

(b) In determining the number of restaurant beer and wine licenses that may be issued under this subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(iii), the department shall round to the nearer whole number.

(c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota area under subsections (8)(a)(i) through (8)(a)(iii), there must be a one-time adjustment of one additional license for that quota area.

(d) If there are more applicants than licenses available in a quota area, then the license must be awarded by lottery as provided in subsection (9).

(9) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in the quota area, the nonrenewal of a restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department shall advertise the availability of the license in the quota area for which it is available. If there are more applicants than number of licenses available, the license must be awarded to an applicant by a lottery.

(b) Any applicant who operates a restaurant that meets the qualifications of subsection (6) for at least 12 months prior to the filing of an application must be given a preference, and any unsuccessful lottery applicants from previous selections must also be given a preference. An applicant with both preferences must be awarded a license before any applicant with only one preference.

(c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will be required to submit a completed application and a one-time required fee. An applicant's ranking may not be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the intended license advertised by the department or to the number of licenses determined under subsection (8) when there are more applicants than licenses available. The applicant's qualifications for any other restaurant beer and wine license awarded by lottery must be determined at the time of the lottery.

(10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises consumption.

(11) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20% of the initial licensing fee. If the department does not make a decision either granting or denying the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate ~~set in 16-1-409(4)~~ *of 1% a month* until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies issuing a license to an applicant, the application fee, plus any interest, less a $100 processing fee, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

(a) $5,000 for restaurants with a stated seating capacity of 60 persons or less;

(b) $10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

(c) $20,000 for restaurants with a stated seating capacity of 101 persons or more.

(12) The annual fee for a restaurant beer and wine license is $400.

(13) If a restaurant licensed under this part increases the stated seating capacity of the licensed restaurant or if the department determines that a licensee has increased the stated seating capacity of the licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the time of filing the original application and issuance of a license and the applicable fees for the additional seating.

(14) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the total licenses issued.

(15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license."

Section 28. Section 17-5-709, MCA, is amended to read:

"**17-5-709. Continued tax deposit limit on additional bonds.** (1) ~~(a)~~ The legislature shall provide for the continued assessment, levy, collection, and deposit into the coal severance tax bond fund of the coal severance tax that, together with other revenue, assets, and money that may be deposited to one or more special bond funds pledged for the benefit of coal severance tax bonds, will be sufficient to produce an amount that is at least the amount necessary to pay, when due, the annual debt service charges on all outstanding coal severance tax bonds.

~~(b) The legislature shall provide for the continued assessment, levy, collection, and deposit into the coal producer's license tax bond account established in 90-3-1004 of the coal producer's license taxes that, together with other revenue, assets, and money that may be deposited to one or more special bond funds pledged for the benefit of coal severance tax bonds, will be sufficient to produce an amount that when combined with the deposits in subsection (1)(a) is at least the amount necessary to pay, when due, the annual debt service charges on all outstanding coal severance tax bonds.~~

(2) The board of examiners may issue no coal severance tax bonds unless the aggregate amount of coal severance tax bonds outstanding, including the proposed issue and any other coal severance tax bonds authorized but not yet issued, can be serviced with no more than two-thirds of the annual deposits into the coal severance tax bond fund ~~and coal producer's license tax bond account established in 90-3-1004~~, as determined by the average of the deposits during the preceding 3 fiscal years, together with the average of the aggregate amount of revenue, assets, or money deposited in one or more special bond funds used to pay debt service on outstanding coal severance tax bonds during the preceding 3 fiscal years.

(3) The provisions of this section may not be modified so as to reduce the security for any coal severance tax bonds while the bonds are outstanding."

Section 29. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-31-702; ~~15-34-115;~~ 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-222; 80-4-416; 80-11-518; 81-5-111; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; and pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005.)"

Section 30. Section 18-4-132, MCA, is amended to read:

"18-4-132. Application. (1) This chapter applies to expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body, as defined in 18-4-123, under any contract. This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(2) This chapter does not apply to construction contracts.

(3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

(4) This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than $250,000.

(5) This chapter does not apply to contracts entered into by the state compensation insurance fund to procure insurance-related services.

(6) This chapter does not apply to employment of:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(d) consulting actuaries;

(e) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(f) a private consultant employed by the Montana state lottery;

(g) a private investigator licensed by any jurisdiction; or

(h) a claims adjuster.

(7) (a) This chapter does not apply to ~~electric~~ *electrical* energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201.

(b) Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure."

Section 31. Section 19-2-1001, MCA, is amended to read:

"**19-2-1001. Maximum contribution and benefit limitations.** (1) Employee contributions paid to and retirement benefits paid from the retirement systems may not exceed the annual limits on contributions and benefits ~~in~~, respectively, allowed by section 415 of the Internal Revenue Code.

(2) A member may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in section 415(b) of the Internal Revenue Code.

(3) Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to a retirement system if the amount of the contribution would exceed the limits provided in section 415 of the Internal Revenue Code, by using the following methods:

(a) If the retirement system's law requires a lump-sum payment for the purchase of service credit, the board may establish a periodic payment plan for the member in order to avoid a contribution in excess of the limits under section 415(c) or 415(n) of the Internal Revenue Code.

(b) If payment pursuant to subsection (3)(a) will not avoid a contribution in excess of the limits imposed by section 415(c) of the Internal Revenue Code, the board shall either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.

(4) The limitation year for purposes of section 415 of the Internal Revenue Code is the calendar year beginning each January 1 and ending December 31.

(5) "Salary" or any other similar term used for the purposes of determining compliance with section 415 of the Internal Revenue Code includes the amount of an elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any other contribution that is contributed or deferred by the employer at the

election of the member and that is not includable in the gross income of the member because of sections 125, 403(b), or 457 of the Internal Revenue Code."

Section 32. Section 19-3-503, MCA, is amended to read:

"19-3-503. (Temporary) Election to qualify military service. (1) (a) Except as provided in subsection (2), a member with 10 years or more of service credits may, at any time prior to retirement, make a written election with the board to purchase service credits for all or any portion of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to 19-2-707 or is ineligible under subsection (2).

(b) Except as provided in subsection (3), to qualify this service, the member shall contribute to the pension trust fund the actuarial cost of the service credit based on the most recent actuarial valuation of the system.

(2) If a member has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit, the member may not qualify the member's military service under subsection (1) or (3).

(3) (a) A member may, prior to retirement, receive up to 4 years of creditable service for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Korean ~~conflict~~ *war* between June 1, 1950, and January 31, 1955, and the Vietnam conflict between December 22, 1961, and May 7, 1975, dates inclusive, if the member has at least 10 years of membership service in the retirement system and is not otherwise ineligible under subsection (2).

(b) To qualify this service, a member shall:

(i) submit to the board a completed application form and proper certification of the member's military service; and

(ii) contribute to the pension trust fund the amount determined by the board to be due based on the member's compensation and regular contribution rate as of the member's 11th year and based on as many succeeding years as are required to qualify this service, with regular interest from the date on which the member becomes eligible for this benefit to the date on which the member makes the required contribution.

(c) Service qualified pursuant to this subsection (3) is in addition to the service that may be qualified under subsection (1), except that a member may not receive duplicate credit for the same years of military service. (Terminates July 1, 2001—sec. 4, Ch. 494, L. 1999.)

19-3-503. (Effective July 1, 2001) Election to qualify military service. (1) (a) Except as provided in subsection (2), a member with 10 years or more of service credits may, at any time prior to retirement, make a written election with the board to purchase service credits for all or any portion of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to 19-2-707 or is ineligible under subsection (2).

(b) To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of the service credit based on the most recent actuarial valuation of the system.

(2) If a member has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit, the member may not qualify the member's military service under subsection (1)."

Section 33. Section 19-9-1007, MCA, is amended to read:

"**19-9-1007. Minimum benefit adjustment.** (1) The benefits that are paid in each fiscal year to a retired member or the member's survivors and that are not covered by 19-9-1009 may not be less than one-half of the compensation that will be paid to newly confirmed police officers in the current fiscal year in the city or town from which the member retired.

(2) If the compensation of a newly confirmed police officer has not been set for the current fiscal year in time to make minimum benefit adjustments effective July 1, the ~~division~~ *board* shall make any retroactive adjustments necessary to individual minimum benefits after the current compensation has been determined.

(3) If more than one dependent child is entitled to benefits under this section by virtue of the death of a common parent, the minimum benefit paid to the dependent children under this section must be determined as if there were one dependent child and the benefits must be paid to the dependent children collectively."

Section 34. Section 19-20-404, MCA, is amended to read:

"**19-20-404. Creditable service for active service in military, red cross, or merchant marine.** (1) A member may receive up to 4 years of creditable service without cost for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Korean ~~conflict~~ *war* between June 1, 1950, and January 31, 1955, and the Vietnam conflict between December 22, 1961, and May 7, 1975, dates inclusive, if the member has 5 years or more of creditable service in the retirement system. To qualify this service, a member shall submit to the board a written application form and proper certification of the member's military service.

(2) If a member is ineligible for service credit under subsection (1), the member may apply under the provisions of this subsection for creditable service in the retirement system for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or merchant marine. The person must be awarded creditable service, conditional upon the person's completing 5 years of active membership in Montana, for the number of years, not exceeding 2, that the retirement board determines to be creditable service, if the person contributes to the retirement system an amount equal to the combined employer and employee contributions for the person's first full year's teaching salary earned in Montana following the active service in the armed forces of the United States, the

American red cross, or the merchant marine for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in the person's account upon completion of 5 years of membership service in Montana. The contribution rate is that rate in effect at the time the person is eligible for the service.

(3) The contribution required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the person and the retirement board."

Section 35. Section 20-26-103, MCA, is amended to read:

"20-26-103. Definitions. As used in parts 1 and 2, the following definitions apply:

(1) "Postsecondary institution" includes the units of the university system and any *private* postsecondary institution ~~accredited or licensed under chapter 30 of this title~~.

(2) "Program advisory council" means the student loan advisory council created by 2-15-1520.

(3) "Resident student" means a person who was a resident of Montana prior to enrolling and who is attending a qualified postsecondary institution within Montana."

Section 36. Section 33-17-211, MCA, is amended to read:

"33-17-211. General qualifications — application for license. (1) An individual applying for a license shall apply on a form specified by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation as set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each kind of insurance for which the individual has applied within 12 months of application;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state. Licenses issued based upon Montana state residency terminate if the licensee relocates to another state~~;~~.

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which the applicant applies to be licensed and is reasonably familiar with the provisions of this code ~~which~~ *that* govern the applicant's operations as an insurance producer; and

(h) if applying for a license as to life or disability insurance:

(i) is not a funeral director, undertaker, or mortician operating in this or any other state:

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state.

(2) A person acting as an insurance producer shall obtain a license. A person shall apply for a license on a form specified by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer responsible for compliance by the person with the insurance laws and rules of this state;

(d) each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation who is acting as an insurance producer in this state has obtained a license;

(e) (i) if the person is a partnership or corporation, the transaction of insurance business is within the purposes stated in the partnership agreement or the articles of incorporation; and

(ii) if the person is a corporation, the secretary of state has issued a certificate of existence or ~~authorization~~ *authority* under 35-1-1312 or filed articles of incorporation under 35-1-220.

(3) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance. The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement. The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in its name alone. The fee for the license is the same as that required by 33-2-708(1)(a). The commissioner may, after a hearing with notice to the association, revoke the license if the commissioner finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(4) An insurance producer using an assumed business name shall register the name with the commissioner before using it."

Section 37. Section 33-17-1203, MCA, is amended to read:

"33-17-1203. Continuing education — basic requirements — exceptions. (1) Unless exempt under subsection (4):

(a) a person licensed to act as an insurance producer for property, casualty, surety, or title insurance or as a consultant for general insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education:

(b) a person licensed to act as an insurance producer for life or disability insurance or as a consultant for life insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;

(c) a person holding multiple licenses shall, during each calendar year, complete at least 15 credit hours of approved continuing education;

(d) a person licensed to act as an insurance producer only for credit life and disability insurance shall, during each calendar year, complete 2 1/2 credit hours of approved continuing education in the areas of insurance law, ethics, or credit life and disability insurance;

(e) a person licensed as an insurance producer or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.

(2) If a person licensed as an insurance producer or consultant completes more credit hours of approved continuing education in a year than the minimum required in subsection (1), the excess credit hours may be carried forward and applied to the continuing education requirements of the next year.

(3) The commissioner may, for good cause, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.

(4) The minimum continuing education requirements do not apply to:

(a) a person licensed to sell any kind of insurance for which an examination is not required under 33-17-212~~(7)(d) through (7)(k)~~*(6)(d) through (6)(j)*;

(b) a person holding a temporary license issued under 33-17-216;

(c) a nonresident licensee who must meet continuing education requirements in the licensee's state of residence if that state grants substantially similar privileges to and has similar requirements for residents of this state;

(d) a newly licensed insurance producer or consultant during the calendar year in which the licensee first received a license;

(e) a person who only executes surety bail bonds; or

(f) an insurance producer or consultant otherwise exempted by the commissioner."

Section 38. Section 35-1-1312, MCA, is amended to read:

"**35-1-1312. Certificate of existence or ~~authorization~~ *authority*.** (1) Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of ~~authorization~~ *authority* for a foreign corporation.

(2) A certificate of existence or ~~authorization~~ *authority* must set forth:

(a) the domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(b) (i) that the domestic corporation is incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual; or

(ii) that the foreign corporation is authorized to transact business in this state:

(c) that all fees, taxes, and penalties owed to this state have been paid, if:

(i) payment is reflected in the records of the secretary of state and the department of revenue; and

(ii) nonpayment affects the existence or ~~authorization~~ *authority* of the domestic or foreign corporation;

(d) that its most recent annual report required by 35-1-1104 has been delivered to the secretary of state;

(e) that articles of dissolution have not been filed; and

(f) other facts of record in the office of the secretary of state that may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate of existence or ~~authorization~~ *authority* issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state."

Section 39. Section 35-8-216, MCA, is amended to read:

"35-8-216. Certificate of existence or ~~authorization~~ *authority*. (1) A person may request the secretary of state to furnish a certificate of existence for a limited liability company or a certificate of ~~authorization~~ *authority* for a foreign limited liability company.

(2) A certificate of existence for a limited liability company must set forth:

(a) the company's name;

(b) that it is organized under the laws of this state, the date of organization, whether its duration is at-will or for a specified term, and, if for a specified term, the period specified;

(c) if payment is reflected in the records of the secretary of state and if nonpayment affects the existence of the company, that all fees, taxes, and penalties owed to this state have been paid;

(d) whether its most recent annual report required by 35-8-208 has been filed with the secretary of state;

(e) that articles of termination have not been filed; and

(f) other facts of record in the office of the secretary of state if requested by the applicant.

(3) A certificate of ~~authorization~~ *authority* for a foreign limited liability company must set forth:

(a) the company's name used in this state;

(b) that it is authorized to transact business in this state;

(c) whether its most recent annual report required by 35-8-208 has been filed with the secretary of state;

(d) that a certificate of cancellation has not been filed; and

(e) other facts of record in the office of the secretary of state if requested by the applicant.

(4) Subject to any qualification stated in the certificate, a certificate of existence or ~~authorization~~ *authority* issued by the secretary of state may be relied

upon as conclusive evidence as of the date of the certificate that the domestic or foreign limited liability company is in existence or is authorized to transact business in this state."

Section 40. Section 35-12-703, MCA, is amended to read:

"35-12-703. Liability to third parties. (1) Except as provided in subsection (4), a limited partner is not liable for the obligations of a limited partnership unless, in addition to the exercise of the rights and powers as a limited partner, the limited partner participates in the control of the business. However, if the limited partner participates in the control of the business, the limited partner is liable only to persons who transact business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.

(2) A limited partner does not participate in the control of the business within the meaning of subsection (1) solely by doing one or more of the following:

(a) being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director, or shareholder of a general partner that is a corporation;

(b) consulting with and advising a general partner with respect to the business of the limited partnership;

(c) acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;

(d) taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;

(e) requesting or attending a meeting of partners;

(f) proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:

(i) the dissolution and winding up of the limited partnership;

(ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership;

(iii) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) a change in the nature of the business;

(v) the admission or removal of a general partner;

(vi) the admission or removal of a limited partner;

(vii) a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;

(viii) an amendment to the partnership agreement or certificates of limited partnership; or

(ix) matters related to the business of the limited partnership not otherwise enumerated in this subsection (2)(f) that the partnership states in writing may be subject to the approval or disapproval of limited partners;

(g) winding up the limited partnership pursuant to 35-12-1203; or

(h) exercise any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection (2).

(3) The enumeration in subsection (2) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by the limited partner in the business of the limited partnership.

(4) A limited partner who knowingly permits the limited partner's name to be used in the name of the limited partnership, except under circumstances permitted by 35-12-505~~(2)(a) and (2)(b)~~*(1)(b)(i) and (1)(b)(ii)*, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner."

Section 41. Section 35-18-105, MCA, is amended to read:

"**35-18-105. Permissible purposes for incorporation.** Cooperative nonprofit membership corporations may be organized under this chapter:

(1) for the purpose of supplying ~~electric~~ *electrical* energy and promoting and extending the use of ~~electric~~ *electrical* energy in rural areas, as provided in this chapter;

(2) for the purposes of making generally available adequate telephone service, cable television service, or broadband facilities through the improvement and expansion of existing telephone, cable television, or broadband facilities and the construction and operation of additional facilities as are required to ~~assure~~ *ensure* the availability of service to the widest practicable number of users of telephone service, cable television service, or broadband facilities; and

(3) for purposes allowable under federal authorization, including rural economic development activities."

Section 42. Section 35-18-106, MCA, is amended to read:

"**35-18-106. Powers of cooperatives.** A cooperative has power to:

(1) sue and be sued in its corporate name;

(2) have perpetual existence;

(3) adopt a corporate seal and alter the same at pleasure;

(4) become a member in one or more other cooperatives or corporations or to own stock in other cooperatives or corporations;

(5) construct, purchase, take, receive, lease as lessee, or otherwise acquire and ~~to~~ own, hold, use, equip, maintain, and operate and sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, telephone lines, facilities, or systems (but not telegraph or radio broadcasting services or facilities) as defined by law, lands, buildings, structures, dams, plants and equipment, and all kinds or classes of real or personal property, which may be considered necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;

(6) purchase or otherwise acquire and own, hold, use, and exercise and sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights-of-way, and easements;

(7) borrow money and otherwise contract indebtedness and issue notes, bonds, and other evidences of indebtedness and secure the payment of indebtedness by mortgage, pledge, deed of trust, or any other encumbrance upon

all of its ~~then-owned~~ *then-owned* or after-acquired real or personal property, assets, franchises, ~~revenues~~ *revenue*, or income;

(8) construct, maintain, and operate electric transmission and distribution lines or telephone, cable television, or broadband lines, facilities, or systems along, upon, under, and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges, and causeways and upon, under, and across all publicly owned lands, subject, however, to the same requirements in respect of the use of the thoroughfares and lands as are imposed by the respective authorities having jurisdiction of them upon corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(9) exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(10) conduct its business and exercise all of its powers within or without this state;

(11) adopt, amend, and repeal bylaws;

(12) in the case of corporations organized under the provisions of 35-18-105(1):

(a) generate, manufacture, purchase, acquire, accumulate, and transmit ~~electric~~ *electrical* energy and distribute, sell, supply, and dispose of ~~electric~~ *electrical* energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10% of the number of its members;

(b) make loans to persons to whom ~~electric~~ *electrical* energy is or will be supplied by the cooperative for the purpose of and otherwise to assist those persons in wiring their premises and installing in their premises electrical and plumbing fixtures, appliances, apparatus, and equipment of all kinds and character and, in connection with electrical and plumbing fixtures, purchase, acquire, lease, sell, distribute, install, and repair the electrical and plumbing fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and all types of security for electrical and plumbing fixtures;

(c) make loans to persons to whom ~~electric~~ *electrical* energy is or will be supplied by the cooperatives for the purpose of and otherwise to assist those persons in constructing, maintaining, and operating electric refrigeration plants;

(13) in the case of corporations organized under the provisions of 35-18-105(2):

(a) improve and expand existing telephone lines, facilities, and systems and construct, acquire, operate, and furnish additional telephone lines, facilities, and systems as are required to ~~assure~~ *ensure* the availability of adequate telephone service to the widest practicable number of users of telephone service;

(b) make loans to persons to whom telephone service is or will be supplied by the cooperative for the purpose of and otherwise to assist those persons in wiring their premises for telephone service and installing in their premises telephone fixtures, appliances, apparatus, and equipment of all kinds and character and, in connection with telephone fixtures, purchase, acquire, lease, sell, distribute, install, and repair the telephone fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and all types of security for telephone fixtures;

(14) ~~do and~~ perform all other acts ~~and things~~ and ~~have and~~ exercise all other powers that may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized or authorized under federal law."

Section 43. Section 35-18-107, MCA, is amended to read:

"35-18-107. Foreign corporations. (1) Any corporation organized under the laws of a state adjacent to this state on a nonprofit or a cooperative basis for the purpose of supplying ~~electric~~ *electrical* energy in rural areas and owning and operating electric transmission or distribution lines in ~~such~~ *that* state ~~shall be~~ *is* permitted to extend its lines into and transact business in this state without complying with any statute of this state pertaining to the qualification of foreign corporations for the transaction of business in this state.

(2) ~~Any such~~ *The* foreign corporation, as a prerequisite to the extension of its lines into and the transaction of business in this state, shall, by an instrument executed and acknowledged in its behalf by its president or ~~vice-president~~ *vice president* under its corporate seal attested by its secretary, designate the secretary of state its agent to accept service of process in its behalf. In the event *that* any process ~~shall be~~ *is* served upon the secretary of state, ~~he~~ *the secretary of state* shall ~~forthwith~~ *as soon as possible* forward the ~~same~~ *process* by ~~registered or~~ certified mail to ~~such~~ *the* corporation at the address ~~thereof~~ *of the corporation* specified in ~~such~~ *the* instrument.

(3) ~~Any such~~ *The* corporation may sue and be sued in the courts of this state to the same extent that a cooperative may sue or be sued in ~~such~~ *the* courts.

(4) ~~Any such foreign~~ *The* corporation may secure its notes, bonds, or other evidences of indebtedness by mortgage, pledge, deed of trust, or other encumbrance upon any or all of its then-owned or after-acquired real or personal property, assets, or franchises located or to be located in this state and also upon the ~~revenues~~ *revenue* and income to be derived ~~therefrom~~ *from them*."

Section 44. Section 35-18-206, MCA, is amended to read:

"35-18-206. Existing corporations — reorganization under ~~this~~ chapter — articles of conversion. Any corporation organized under the laws of this state for the purpose, among others, of supplying ~~electric~~ *electrical* energy in rural areas or telephone service may become subject to this chapter with the same effect as if originally organized under this chapter by complying with the following requirements:

(1) The proposition for the conversion of ~~such~~ *the* corporation into a cooperative under this chapter and proposed articles of conversion to give effect ~~thereto shall~~ *to the conversion must* be first approved by the board of trustees or the board of directors, as the case may be, of ~~such~~ *the* corporation. The proposed articles of conversion ~~shall~~ *must* recite in the caption that they are executed pursuant to this chapter and ~~shall~~ *must* state:

(a) the name of the corporation prior to its conversion into a cooperative under this chapter;

(b) the address of the principal office of ~~such~~ *the* corporation;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state;

(d) the statute or statutes under which ~~such~~ *the* corporation was organized;

(e) the name assumed by ~~such~~ *the* corporation;

(f) a statement that ~~such~~ *the* corporation elects to become a cooperative, nonprofit, membership corporation subject to this chapter;

(g) the manner and basis of converting either memberships in or shares of stock of ~~such~~ *the* corporation into memberships ~~therein~~ *in the corporation* after completion of the conversion; and

(h) any provisions not inconsistent with this chapter ~~deemed~~ *considered* necessary or advisable for the conduct of its business and affairs.

(2) The proposition for the conversion of ~~such~~ *the* corporation into a cooperative under this chapter and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of ~~such~~ *the* corporation ~~shall~~ *must* then be submitted to a vote of the members or stockholders, as the case may be, of ~~such~~ *the* corporation at any duly held annual or special meeting ~~thereof~~ *of the corporation*, the notice of which ~~shall~~ *must* set forth full particulars concerning the proposed conversion. The proposition for the conversion of ~~such~~ *the* corporation into a cooperative under this chapter and the proposed articles of conversion, with ~~such~~ *any* amendments ~~thereto as~~ *to the articles of conversion that* the members or stockholders of ~~such~~ *the* corporation ~~shall~~ choose to make ~~therein, shall be deemed~~ *is considered* to be approved upon the affirmative vote of not less than two-thirds of those members of ~~such~~ *the* corporation voting ~~thereon~~ *on the articles of conversion* at ~~such~~ *the* meeting or, if ~~such~~ *the* corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of ~~such~~ *the* corporation represented at ~~such~~ *the* meeting.

(3) Upon ~~such~~ approval by the members or stockholders of ~~such~~ *the* corporation, articles of conversion in the form approved by ~~such~~ *the* members or stockholders of ~~such~~ *the* corporation ~~shall~~ *must* be executed on behalf of ~~such~~ *the* corporation by its president or ~~vice-president~~ *vice president* and its corporate seal ~~shall~~ *must* be affixed ~~thereto~~ *to the articles of conversion* and attested by its secretary or assistant secretary. The president or ~~vice-president~~ *vice president* executing ~~such~~ *the* articles of conversion on behalf of ~~such~~ *the* corporation shall also make and annex ~~thereto~~ *to the articles of conversion* an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders of the proposition for the conversion of ~~such~~ *the* corporation into a cooperative under this chapter and ~~such~~ *the* articles of conversion were ~~duly~~ complied with.

(4) ~~Such~~ *The* articles of conversion and affidavit ~~shall~~ *must* be submitted to the secretary of state for filing as provided in this chapter.

(5) The term "articles of incorporation" as used in this chapter ~~shall be deemed to include~~ *includes* the articles of conversion of a converted corporation."

Section 45. Section 35-18-301, MCA, is amended to read:

"**35-18-301. Members.** (1) ~~No~~ *A* person who is not an incorporator ~~shall~~ *may not* become a member of a cooperative unless ~~such~~ *the* person ~~shall agree~~ *agrees* to use ~~electric~~ *electrical* energy or telephone service furnished by the cooperative when ~~such electric~~ *the electrical* energy or telephone service ~~shall be~~ *is* available through its facilities. The bylaws may provide that any person, including an incorporator, ~~shall cease~~ *ceases* to be a member of a cooperative if ~~he shall fail or refuse~~ *the person fails or refuses* to use ~~electric~~ *electrical* energy or telephone service made available by the cooperative or if ~~electric~~ *electrical* energy or telephone service ~~shall not be~~ *is not* made available to ~~such~~ *the* person by the cooperative within a specified time after ~~such~~ *the* person ~~shall have~~ *has* become a member ~~thereof~~ *of the cooperative.*

(2) Membership in the cooperative ~~shall not be~~ *is not* transferable, except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations in respect to membership."

Section 46. Section 35-18-313, MCA, is amended to read:

"**35-18-313. Voting districts.** (1) Notwithstanding any other provisions of this chapter, the bylaws may provide that the territory in which a cooperative supplies ~~electric~~ *electrical* energy or telephone service to its members ~~shall be~~ *is* divided into two or more voting districts and that in respect to each ~~such~~ voting district:

(a) a designated number of trustees ~~shall~~ *must* be elected by the members residing ~~therein~~ *in the district*;

(b) a designated number of delegates ~~shall~~ *must* be elected by the members residing ~~therein~~ *in the district*; or

(c) both ~~such~~ *the* trustees and delegates ~~shall~~ *must* be elected by ~~such~~ members *residing in the district.*

(2) ~~In any such case the~~ *The* bylaws ~~shall~~ *must* prescribe the manner in which ~~such~~ *the* voting districts and the members ~~thereof~~ *of the voting districts* and the delegates and trustees, if any, elected ~~therefrom shall~~ *from the voting districts are to* function and the powers of the delegates, which may include the power to elect trustees.

(3) ~~No~~ *A* member at any voting district meeting and ~~no~~ *a* delegate at any meeting ~~shall~~ *may not* vote by proxy or by mail."

Section 47. Section 35-18-316, MCA, is amended to read:

"**35-18-316. Refunds to members — retention of unclaimed refunds.** (1) Revenue of a cooperative for any fiscal year must, unless otherwise determined by a vote of the members, be distributed by the cooperative to its members as patronage refunds prorated in accordance with the patronage of the cooperative by the respective members paid for during the fiscal year, whenever the revenue exceeds the amount necessary to:

(a) defray expenses of the cooperative and of the operation and maintenance of its facilities during the fiscal year;

(b) pay interest and principal obligations of the cooperative coming due in the fiscal year;

(c) finance or provide a reserve for the financing of the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;

(d) provide a reasonable reserve for working capital;

(e) provide a reserve for the payment of indebtedness of the cooperative maturing more than 1 year after the date of the incurrence of the indebtedness in an amount not less than the total of the interest and principal payments required to be made during the next fiscal year; and

(f) provide a fund, which may be not less than 2% or more than 5% of the balance remaining, for education in cooperation and for the dissemination of information concerning the effective use of ~~electric~~ *electrical* energy and other services made available by the cooperative.

(2) Nothing contained in this section may be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the payment becomes due.

(3) A cooperative shall, upon the action of the board of trustees, retain patronage refunds allocated to its members that remain unclaimed for a period of 5 years after the end of the year in which the refunds are given. Refunds retained by the cooperative must be used for educational purposes."

Section 48. Section 39-3-213, MCA, is amended to read:

"**39-3-213. Disposition of wages.** (1) The commissioner of labor shall deposit wages collected under parts 2 and 4 of this chapter into the expendable trust fund and shall attempt to make payment of wages to the entitled person. Wages deposited into the expendable trust fund do not bear interest. The payment of wages collected may be made by means of state warrants.

(2) Warrants issued pursuant to subsection (1) that remain unclaimed for more than ~~1 year~~ *6 months* from the date of issuance must be returned to the state treasurer for cancellation in accordance with 17-8-303."

Section 49. Section 39-51-1307, MCA, is amended to read:

"**39-51-1307. Collection of unpaid taxes, penalties, and interest by offset.** (1) To collect delinquent taxes, penalties, and interest, the department may direct the offset of any funds due the debtor from the state, except wages subject to the provisions of 25-13-614 and retirement benefits. The department, through the ~~state auditor's office~~ *department of revenue*, shall provide the debtor with notice of the right to request a hearing on the offset action. A request for hearing must be made within 30 days of the date of the notice.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the ~~state auditor~~ *department of revenue* may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the ~~state auditor~~ *department of revenue*. If less than the full amount of the debt is collected, the ~~state auditor~~ *department of revenue* shall retain only a proportionate share of the collection fees or costs.

(3) The department may file a claim for state funds on behalf of the employer if a claim is required before funds are available for offset.

(4) The debt need not be determined to be uncollectible as provided for in 39-51-3207 before being transferred for offset."

Section 50. Section 39-51-3207, MCA, is amended to read:

"**39-51-3207. Authority to determine uncollectibility of debts — transfer of debts for collection — liability for payment of fees and costs of collection.** (1) After making all reasonable efforts to collect unpaid contributions, assessments under 39-51-404(4), and penalties and interest, or overpaid benefits under 39-51-3206 and interest, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may transfer the debt to the department of ~~administration~~ *revenue* for collection as provided in 17-4-104.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the department of ~~administration~~ *revenue* may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the department of ~~administration~~ *revenue*. If less than the full amount of the debt is collected, the ~~state auditor~~ *department of revenue* shall retain only a proportionate share of the collection fees or costs."

Section 51. Section 39-71-201, MCA, is amended to read:

"39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts the department is required to administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation ~~administrative~~ *administration* fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be 3% of the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act and the Occupational Disease Act without regard to the application of any deductible whether the employer or the insurer pays the losses:

(i) total compensation benefits paid; and

(ii) except for medical benefits in excess of $200,000 per occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 1 in the form and containing the information required by the department a report of paid losses pursuant to subsection (1)(b).

(3) An assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than $500. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to an initial assessment equal to the minimum assessment against plan No. 1 employers and plan No. 2 insurers.

(4) Payment of the assessment required by this section must be submitted by the employer or insurer under plan No. 1, plan No. 2, or plan No. 3 in:

(a) one installment made on or before July 1; or

(b) two equal installments made on or before July 1 and December 31 of each year. If an employer or insurer fails to pay the assessment required under this section, the department may impose a fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%.

(5) (a) Beginning July 1, 2000, each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from the insurer's policyholders an amount equal to the insurer's assessment through a surcharge based on premium. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers.

(b) The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". Each assessment surcharge must be shown as a percentage of the total workers' compensation policyholder premium.

(c) The portion of the plan No. 2 assessment identified as a premium surcharge for an individual plan No. 2 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 2 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 2 insured employers during the preceding calendar year.

(d) The portion of the plan No. 3 assessment identified as a premium surcharge for an individual plan No. 3 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 3 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 3 insured employers during the preceding fiscal year.

(e) On or before March 31, 2000, and each March 31 thereafter, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the insurer assessment identified as the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(f) The assessment provided for in subsection (1)(b), which will be identified as a premium surcharge, must be collected at the same time and in the same manner that the premium for the coverage is collected. This premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

(6) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501

through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

(7) Disbursements from the administration money must be made after being approved by the department upon claim for disbursement."

Section 52. Section 39-71-2363, MCA, is amended to read:

"39-71-2363. Agency law — submission of budget — annual report. (1) The state fund is subject to state laws applying to state agencies, except as otherwise provided by law, and it is exempt from the provisions of The Legislative Finance Act in Title 5, chapter 12, and the provisions of Title 17, chapter 7, parts 1 through 4. The state fund may use the debt collection procedures provided in Title 17, chapter 4, part 1.

(2) (a) Except as provided in 2-15-2015, the executive director shall annually submit to the board for its approval an estimated budget of the entire expense of administering the state fund for the succeeding fiscal year, with due regard to the business interests and contract obligations of the state fund. ~~The~~ *Subject to the provisions of subsection (2)(b), the* administrative expenditures approved by the board may not exceed 15% of the earned annual premium of the prior fiscal year A copy of the approved budget must be delivered to the governor and the legislature.

(b) The board may approve administrative expenditures in excess of 15% of the earned annual premium of the prior fiscal year, but the excess amount approved may not exceed one-half of the investment income earned in the prior fiscal year.

(c) Upon approval of the estimated budget for the succeeding fiscal year, the state fund shall, no later than October 1 of each year, submit the approved annual budget for review to the legislative finance committee established under 5-12-201.

(d) Dividends may not be included as administrative expenditures as provided in subsection (2)(a), but are a disbursement of excess surplus pursuant to 39-71-2323 after a determination by the state fund of income from operations.

(3) The board shall submit an annual financial report to the governor and to the legislature as provided in 5-11-210, indicating the business done by the state fund during the previous year and containing a statement of the estimated liabilities of the state fund as determined by an independent actuary."

Section 53. Section 39-72-711, MCA, is amended to read:

"39-72-711. Lump-sum and compromise settlements. (1) ~~No~~ *A* final and binding award made upon any claim pursuant to this chapter may *not* be converted into a lump-sum payment, in whole or in part, except as provided in ~~this section or~~ 39-72-712 *or this section.*

(2) Whenever there are contested issues as to an insurer's liability for a claim under this chapter, including a claim based on 39-72-405~~(2)~~, a claimant and an insurer may enter into a full and final compromise settlement of the claim. However, ~~no~~ such settlements are *not* binding on the parties until approved by the department. After the department approves a full and final compromise settlement, the claim is closed and the insurer's liability for a settled claim is forever released."

Section 54. Section 41-5-103, MCA, is amended to read:

"**41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

(4) "Commit" means to transfer to legal custody.

(5) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.

(6) "Court", when used without further qualification, means the youth court of the district court.

(7) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to 41-5-206.

(8) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(9) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who has been placed on probation as a delinquent youth or a youth in need of intervention and who has violated any condition of probation.

(10) "Department" means the department of corrections provided for in 2-15-2301.

(11) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed to the department under 41-5-1512(3) or 41-5-1513(1)(b) ~~or (1)(c)~~ or who are under parole supervision. Department records do not include information provided by the department to the department of public health and human services' management information system.

(12) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of a youth parole agreement.

(13) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(14) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

(15) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

(16) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

(17) "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

(18) "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.

(19) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

(20) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest but does not include a collocated juvenile detention facility that complies with 28 CFR, part 31.

(21) "Judge", when used without further qualification, means the judge of the youth court.

(22) "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

(23) "Law enforcement records" means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

(24) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

(25) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

(26) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

(27) "Probable cause hearing" means the hearing provided for in 41-5-332.

(28) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(29) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

(30) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

(31) "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(32) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(33) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(34) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-344.

(35) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

(36) "State youth correctional facility" means a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills youth correctional facility in Miles City.

(37) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

(38) "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection (38)(a), if the victim is a minor: and

(c) an adult relative of a homicide victim.

(39) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(40) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1201.

(41) "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

(42) "Youth care facility" has the meaning provided in 41-3-1102.

(43) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of intervention, or a youth in need of care and includes the youth court judge, probation officers, and assessment officers.

(44) "Youth court records" means information or data, either in written or electronic form, maintained by the youth court pertaining to a youth under jurisdiction of the youth court and includes reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, youth assessment materials, predispositional studies, and supervision records of probationers. Youth court records do not include information provided by the youth court to the department of public health and human services' management information system.

(45) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a) (i) operated, administered, and staffed separately and independently of a jail; or

(ii) a collocated secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

(46) "Youth in need of care" has the meaning provided for in 41-3-102.

(47) "Youth in need of intervention" means a youth who is adjudicated as a youth and who commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding alcoholic beverages;

(b) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention."

Section 55. Section 41-5-206, MCA, is amended to read:

"**41-5-206. Filing in district court prior to formal proceedings in youth court.** (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103;

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) assault with a weapon as defined in 45-5-213;

(v) robbery as defined in 45-5-401;

(vi) burglary or aggravated burglary as defined in 45-6-204;

(vii) aggravated kidnapping as defined in 45-5-303;

(viii) possession of explosives as defined in 45-8-335;

(ix) criminal distribution of dangerous drugs as defined in 45-9-101;

(x) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

~~(xi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(iii) and (1)(b)(v) through (1)(b)(xii);~~

~~(xii)~~*(xi)* use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership, as defined in 45-8-403;

~~(xiii)~~*(xii)* escape as defined in 45-7-306*;*

(xiii) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(iii) and (1)(b)(v) through (1)(b)(xii).

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense.

Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court if the district court finds, by a preponderance of the evidence, that a youth court proceeding and disposition will not serve the interests of community protection and the best interests of the youth, and that, considering the seriousness of the offense, the case should remain in the district court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) A youth whose case is filed in the district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of the youth's case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical separation as well as sight and sound separation from adults accused or convicted of criminal offenses."

Section 56. Section 46-8-202, MCA, is amended to read:

"46-8-202. Public defender's office. Any county through its board of county commissioners may provide for the creation of a public defender's office and the appointment of a salaried public defender and ~~such~~ *any* assistant public defenders ~~as~~ *that* may be necessary to satisfy the legal requirements in providing counsel for defendants unable to employ counsel. The costs of ~~such~~ *the* office ~~shall be at~~ *must be paid by the* state ~~expense payable~~ according to procedures established under 3-5-902(1) and, to the extent *that* those costs are not paid by the state, ~~at~~ *must be paid by the* county ~~expense~~ in accordance with 3-5-901~~(3)~~*(4)* and 3-5-902(1)."

Section 57. Section 50-51-103, MCA, is amended to read:

"50-51-103. Department authorized to adopt rules. (1) The department may adopt rules governing the operation of bed and breakfasts, hotels, motels, roominghouses, boardinghouses, and tourist homes to protect the public health and safety.

(2) Rules applicable to a *bed and breakfast,* hotel, motel, roominghouse, boardinghouse, or tourist home may relate to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage and sewage disposal systems, refuse collection and disposal, registration and supervision, ~~and~~ fire and life safety, food service, ~~rules for bed and breakfast establishments,~~ staggered license expiration dates, and reimbursement of local governments for inspections and enforcement.

(3) The department shall adopt rules governing guest ranches and outfitting and guide facilities. The rules must take into consideration the size, type, location, and seasonal operations of an establishment and may include only rules to:

(a) ensure that the establishment has safe drinking water and an adequate water supply;

(b) ensure an adequate and sanitary sewage system and *ensure adequate and sanitary* refuse *collection and* disposal ~~system~~;

(c) address food safety concerns, such as adequate storage, refrigeration, and food handling; and

(d) establish staggered license expiration dates by implementing an initial licensing period determined by the department.

(4) Rules adopted to implement subsection (3) must be adopted through negotiated rulemaking pursuant to the Montana Negotiated Rulemaking Act.

(5) The department shall develop guidelines for county sanitarians to ensure the uniform application of rules statewide. The guidelines must be relative to each type of establishment.

(6) Upon receiving an application for licensure, the department shall timely provide the applicant with a copy of the rules appropriate for the applicant's type of establishment."

Section 58. Section 53-30-403, MCA, is amended to read:

"53-30-403. Boot camp incarceration program — eligibility — rulemaking. (1) The department shall establish a boot camp incarceration program for offenders incarcerated in a correctional institution.

(2) In order to be eligible for participation in the boot camp incarceration program, an inmate ~~must~~:

(a) *must* be serving a sentence of at least 1 year in a Montana correctional institution for a felony offense other than a felony punishable by death, except as provided in 46-18-201~~(1)(a)(xiv)~~*(4)(o)*;

(b) *shall* obtain the concurrence of the sentencing court; and

(c) *shall* pass a physical examination to ensure sufficient health for participation.

(3) The boot camp incarceration program must include:

(a) as a major component, a strong emphasis on work, physical activity, physical conditioning, and good health practices;

(b) a strong emphasis on intensive counseling and treatment programming designed to correct criminal and other maladaptive thought processes and behavior patterns and to instill self-discipline and self-motivation;

(c) a detailed, clearly written explanation of program goals, objectives, rules, and criteria that must be provided to, read by, and signed by all prospective enrollees; and

(d) a maximum enrollment period of 120 days.

(4) (a) Inmate participation in the boot camp incarceration program must be voluntary. The admission of an inmate to the program is discretionary with the department. Enrollment may be revoked only:

(i) at the participant's request; or

(ii) upon written departmental documentation of a participant's failure or refusal to comply with program requirements.

(b) A revocation of program enrollment is not subject to appeal. An inmate may not be admitted to the boot camp incarceration program more than twice.

(5) The department may adopt rules for the establishment and administration of the boot camp incarceration program."

Section 59. Section 60-3-201, MCA, is amended to read:

"60-3-201. Distribution and use of proceeds of gasoline dealers' license tax. (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of transportation's suspense account for gasoline tax refund, must be used and expended as provided in this section. The portion of that money on hand at any time that is needed to pay highway bonds and interest on highway bonds when due and to accumulate and maintain a reserve for payment of highway bonds and interest, as provided in laws and in resolutions of the state board of examiners authorizing the bonds, must be deposited in the highway bond account in the debt service fund established by 17-2-102. After deductions for amounts paid out of the suspense account for gasoline tax refunds, the remainder is allocated as follows:

(a) 9/10 of 1% to the state park account;

(b) 15/28 of 1% to a snowmobile account in the state special revenue fund;

(c) 1/8 of 1% to an off-highway vehicle account in the state special revenue fund; and

(d) 1/25 of 1% to the aeronautics revenue fund of the department of transportation under the provisions of 67-1-301.

(e) The remainder of the money must be used:

(i) by the department of transportation on the highways in this state selected and designated by the commission;

(ii) for collection of the license taxes; and

(iii) for the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.

(2) The department shall, in expending this money, carry forward construction from year to year, using the money expended in accordance with this title. Nothing in this title conflicts with Title 23, U.S.C., and the rules by which it is administered.

(3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(4) Money credited to the state park account in the state special revenue fund may be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed. The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) (a) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost, to promote snowmobile safety, for enforcement purposes, and for the control of noxious weeds.

(b) Of the amounts deposited in the snowmobile account:

(i) 13% of the amount deposited must be used by the department of fish, wildlife, and parks to promote snowmobile safety and education and to enforce snowmobile laws. Two-thirds of the 13% deposited must be used to promote snowmobile safety and education and one-third of the 13% deposited must be used for the enforcement of snowmobile laws.

(ii) 1% of the amount deposited must be credited to the ~~Montana~~ noxious weed ~~control~~ *management* trust fund *provided for in 80-7-811*.

(c) The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 15/28 of 1% is used for propelling registered snowmobiles in this state.

(6) (a) Money credited to the off-highway vehicle account under subsection (1)(c) may be used only to develop and maintain facilities open to the general public at no admission cost, to repair areas that are damaged by off-highway vehicles, and to promote off-highway vehicle safety. Ten percent of the money deposited in the off-highway vehicle account must be used to promote off-highway vehicle safety. Up to 10% of the money deposited in the off-highway vehicle account may be used to repair areas that are damaged by off-highway vehicles.

(b) The legislature finds that of all fuel sold in this state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 1/8 of 1% is used for propelling off-highway vehicles in this state.

(7) Money credited to the aeronautics account of the department of transportation may be used only to develop, improve, and maintain facilities open to the public at no admission cost and to promote aviation safety. The legislature finds that of all the fuel sold in this state for consumption in internal combustion

engines, except fuel for which refunds have been made, not less than 1/25 of 1% is used for propelling aircraft in this state."

Section 60. Section 69-4-304, MCA, is amended to read:

"69-4-304. Exclusion for ~~high-voltage~~ *high-voltage* transmission lines. Electric facilities ~~shall~~ *do* not include any facilities used or intended to be used for the transmission of ~~electric~~ *electrical* energy at nominal voltages in excess of 25,000 volts."

Section 61. Section 69-4-501, MCA, is amended to read:

"69-4-501. Definitions. The following definitions apply to this part:

(1) "Business day" means any day other than Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(2) "Emergency excavation" means an excavation in response to an emergency locate that is necessary to:

(a) alleviate a condition that constitutes a clear and present danger to life or property; or

(b) repair a customer outage involving a previously installed utility-owned facility.

(3) "Emergency locate" means a locate and mark that is requested for:

(a) a condition that constitutes a clear and present danger to life or property; or

(b) a customer outage for which repairs on a previously installed utility-owned facility are required.

(4) "Excavation" means an operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means or use of any tools, equipment, or explosives. The term includes but is not limited to grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing and driving. Excavation does not include surface road grading maintenance or road or ditch maintenance that does not change the original road or ditch grade or flow line.

(5) "Excavator" means a person conducting the excavation activities defined in subsection (4).

(6) "Identified but unlocatable underground facility" means an underground facility that has been identified but cannot be located with reasonable accuracy.

(7) "Locatable underground facility" means an underground facility that can be field-located and field-marked with reasonable accuracy.

(8) "Locate" means to use specialized equipment to identify the location of underground facilities or the actual location of underground facilities identified by the use of specialized equipment.

(9) "Mark" means the use of stakes, paint, or other clearly identifiable material to show the field location or absence of underground facilities, in accordance with the current color code standard of the American public works association. Marking must include identification letters indicating the specific type of underground facility and the width of the facility if it is greater than 6 inches.

(10) "One-call notification center" means a service through which a person may request a locating and marking of underground facilities.

(11) "Person" means an individual, partnership, firm, joint venture, corporation, association, municipality, governmental unit, department, or agency~~,~~ and includes a trustee, receiver, assignee, or personal representative of the listed entities.

(12) "Reasonably accurate" means location within 18 inches of the outside lateral dimensions of both sides of an underground facility.

(13) "Underground facility" means a facility buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, fiber optics, ~~electric~~ *electrical* energy, oil, gas, or other substances. The term includes but is not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to the listed items."

Section 62. Section 69-8-103, MCA, is amended to read:

"69-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers, purchases ~~electric~~ *electrical* energy, and takes title to ~~electric~~ *electrical* energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of ~~electric~~ *electrical* energy but that does not take title to ~~electric~~ *electrical* energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Customer-generator" means a user of a net metering system.

(8) "Default supplier" means a distribution services provider or a person that has received a default supplier license from the commission.

(9) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(10) "Distribution services provider" means a utility owning distribution facilities for distribution of electricity to the public.

(11) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

(12) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

(13) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and of acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

(14) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

(15) "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-201, the commission, or a utility.

(16) "Large customer" means, for universal system benefits programs purposes, a customer with an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that individual load.

(17) "Local governing body" means a local board of trustees of a rural electric cooperative.

(18) "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

(19) "Net metering" means measuring the difference between the electricity distributed to and the electricity generated by a customer-generator that is fed back to the distribution system during the applicable billing period.

(20) "Net metering system" means a facility for the production of ~~electric~~ *electrical* energy that:

(a) uses as its fuel solar, wind, or hydropower;

(b) has a generating capacity of not more than 50 kilowatts;

(c) is located on the customer-generator's premises;

(d) operates in parallel with the distribution services provider's distribution facilities; and

(e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(21) "Nonbypassable rates or charges" means rates or charges that are approved by the commission and imposed on a customer to pay the customer's share of transition costs or universal system benefits programs costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

(22) "Pilot program" means a program using a representative sample of residential and small commercial customers to assist in developing and offering customer choice of electricity supply for all residential and commercial customers.

(23) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

(24) "Qualifying load" means, for payments and credits associated with universal system benefits programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in which the customer qualifies as a large customer.

(25) "Small customer" means a residential customer or a small commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts of a public utility distribution services provider that has opened access on its distribution system pursuant to Title 35, chapter 19, or this chapter.

(26) "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents, and other entities acting for the benefit of that holder.

(27) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

(28) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

(29) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

(30) "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring retail open access or customer choice:

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(31) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002, unless otherwise extended pursuant to this chapter, during which utilities may phase in customer choice of electricity supplier.

(32) "Transition property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order, including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

(33) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

~~(35)~~*(34)* "Transmission services provider" means a person controlling or operating transmission facilities.

(35) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits programs costs.

(36) "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) renewable resource projects and applications, including those that capture unique social and energy system benefits or that provide transmission and distribution system benefits;

(d) research and development programs related to energy conservation and renewables;

(e) market transformation designed to encourage competitive markets for public purpose programs; and

(f) low-income energy assistance.

(37) "Utility" means any public utility or cooperative utility."

Section 63. Section 69-8-502, MCA, is amended to read:

"**69-8-502. Tax revenue analysis.** ~~(1)~~ The revenue and taxation interim committee, as provided for in 5-5-227, shall analyze the amount of state and local tax revenue derived from previously regulated electricity suppliers that will enter the competitive market and report to the legislature annually on how revenue to the state or local government is changed by restructuring and competition.

~~(2) On or before November 30, 1998, the [former] revenue oversight committee shall recommend legislative changes, if any, to address the establishment of comparable state and local taxation burdens on all market participants in the supply of electricity. Any legislation recommended by the [former] revenue oversight committee should place comparable state and local taxation burdens upon all market participants.~~"

Section 64. Section 72-3-917, MCA, is amended to read:

"**72-3-917. Distribution to person under disability.** (1) A personal representative may discharge ~~his~~ *the personal representative's* obligation to distribute to any person under legal disability by distributing in a manner expressly provided in the will.

(2) Unless contrary to an express provision in the will, the personal representative may discharge ~~his~~ *the personal representative's* obligation to distribute to a minor or person under other disability as authorized by *72-5-104,* 72-5-501, or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.

(3) (a) If the heir or devisee is under disability other than minority, the personal representative is authorized to distribute to:

(i) an attorney-in-fact who has authority under a power of attorney to receive property for that person; or

(ii) the spouse, parent, or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding $10,000 a year or property not exceeding $10,000 in value, unless the court authorizes a larger amount or greater value.

(b) Any person receiving money or property for the disabled person is obligated to apply the money or property to the support of ~~that~~ *the disabled* person, but *the receiving person* may not *accept any* pay ~~himself~~ except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person. Excess sums must be preserved for future support of the disabled person. The personal representative is not responsible for the proper application of money or property distributed pursuant to this subsection (3)."

Section 65. Section 75-10-103, MCA, is amended to read:

"75-10-103. Definitions. Unless the context clearly requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Container site" means a solid waste management facility that:

(a) is generally open to the public for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards; or

(b) receives waste from waste collection vehicles and:

(i) receives no more than 3,000 tons of waste each year;

(ii) has control measures in place, including onsite staffing, to adequately contain solid wastes and blowing litter on the site and to minimize spills and leakage of liquid wastes; and

(iii) is a site at which a local government unit requires commercial waste haulers to deposit wastes at the site only during hours that the site is staffed.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Front-end implementation funds" means the money granted to local governments for purchase of capital equipment to be used for a solid waste management system.

(5) "Front-end organizational funds" means the money to be loaned to local governments for initial operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets, and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations.

(6) "Front-end planning funds" means the money granted to local governments for contract negotiations between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts.

(7) "Local government" means a county, incorporated city or town, or ~~refuse disposal~~ *solid waste management* district organized under the laws of this state.

(8) "Person" means any individual, firm, partnership, company, association, corporation, city, town, or local governmental entity or any other state, federal, or private entity, whether organized for profit or not.

(9) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(10) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage

treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.

(b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable byproducts.

(11) "Solid waste management system" means any system that controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site is not a component of a solid waste management system.

(12) "State solid waste plan" means the statewide plan formulated by the department as authorized by this part."

Section 66. Section 75-10-732, MCA, is amended to read:

"75-10-732. Eligibility. (1) A facility where there has been a release or threatened release of a hazardous or deleterious substance that may present an imminent and substantial endangerment to the public health, safety, or welfare or the environment may be eligible for voluntary cleanup procedures under this part, except for facilities that meet one of the following criteria at the time of application for a voluntary cleanup plan:

(a) a facility that is listed or proposed for listing on the national priorities list pursuant to 42 U.S.C. 9601, et seq.;

(b) a facility for which an order has been issued or consent decree has been entered into pursuant to this part;

(c) a facility that is the subject of an agency order or an action filed in district court by any state agency that addresses the release or threatened release of a hazardous or deleterious substance; or

(d) a facility where the release or threatened release of a hazardous or deleterious substance is regulated by the Montana Hazardous Waste ~~and Underground Storage Tank~~ Act and regulations under that act; or

(e) a facility that is the subject of pending action under this part because the facility has been issued a notice commencing a specified period of negotiations on an administrative order on consent.

(2) Notwithstanding the provisions of subsections (1)(b) through (1)(e), the department may agree to accept and may approve an application for a voluntary cleanup plan for a facility.

(3) The department may determine that a facility that is potentially eligible for voluntary cleanup exhibits complexities regarding protection of public health, safety, and welfare and the environment and that the complexities should be addressed under an administrative order or consent decree pursuant to this part. This determination may be made only after consultation with any person desiring to conduct a voluntary cleanup at the facility.

(4) If an applicant who submits an application for a voluntary cleanup plan disagrees with the department's decision to reject the filing of the application under subsection (1) or (3) or disagrees with the department's decision to

disapprove the voluntary cleanup plan submitted pursuant to 75-10-736, the applicant may, within 30 days of receipt of the department's written decision pursuant to 75-10-736, submit a written request for a hearing before the board of environmental review. In reviewing a department decision to reject an application under subsection (1) or (3) or to disapprove a voluntary cleanup plan submitted pursuant to 75-10-736, the board shall apply the standards of review specified in 2-4-704. The hearing must be held within 2 months at the regular meeting of the board or at the time mutually agreed to by the board, the department, and the applicant. The hearing and any appeals must be conducted in accordance with the contested case proceedings pursuant to Title 2, chapter 4, parts 6 and 7. A hearing before the board may not be requested regarding a decision of the department made pursuant to subsection (2)."

Section 67. Section 76-3-601, MCA, is amended to read:

"76-3-601. Submission of preliminary plat for review. (1) Except when a plat is eligible for ~~expedited~~ *summary* review pursuant to 76-3-505, the subdivider shall present to the governing body or to the agent or agency designated by the governing body the preliminary plat of the proposed subdivision for local review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat must be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town, within 2 miles of a second-class city, or within 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in 20-9-615, the county governing body shall provide an informational copy of the preliminary plat to school district trustees.

(c) If the proposed subdivision lies partly within an incorporated city or town, the proposed plat must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) The provisions of 76-3-604, 76-3-605, 76-3-608 through 76-3-610, and this section do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444."

Section 68. Section 76-5-401, MCA, is amended to read:

"76-5-401. Permissible open-space uses. The following open-space uses ~~shall be~~ *are* permitted within the designated floodway to the extent that they are not prohibited by any other ordinance or statute and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment:

(1) agricultural uses;

(2) industrial-commercial uses such as loading areas, parking areas, or emergency landing strips;

(3) private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, ~~game farms~~ *alternative livestock ranches*, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, or hiking and horseback riding trails;

(4) forestry, including processing of forest products with portable equipment;

(5) residential uses such as lawns, gardens, parking areas, and play areas;

(6) excavations subject to the issuance of a permit under 76-5-405 and 76-5-406."

Section 69. Section 77-2-102, MCA, is amended to read:

"**77-2-102. Application for easement.** (1) Application for an easement on state land must be made to the department. Except as provided in subsections (3) and (4), the application must describe the proposed right-of-way according to survey, show the necessity for the proposed highway or street or other easement, and give any additional information that the department requires.

(2) This application must be accompanied by two exact copies of the official plat of the proposed highway, street, or other easement, verified by the affidavit of the engineer or surveyor who prepared the application. These plats must show the quantity of land taken by the proposed highway or street or other easement for each 40-acre tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of that 40-acre tract or government lot. When considered necessary by the department, these plats must show all these facts for smaller subdivisions as the circumstances may render desirable for the state.

(3) The application must include the affidavit of a licensed engineer or professional surveyor stating that the methodology used is known to be accurate to within 5 meters. The survey must be tied to an established section corner or 1/4 corner monument. The department may request greater accuracy if the department determines that the information is needed to adequately describe the easement.

(4) If the purpose of the right-of-way applied for is the transmission or distribution of ~~electric~~ *electrical* energy or the construction and operation of pipelines or telephone, telegraph, or radio systems, the plats and measurements need not be given. An exact geographical survey is not required, but the application must include the description of the location of the center line of the right-of-way that refers to an established monument within a filed corner recordation form, certificate of survey, or subdivision plat. The accuracy requirements of subsection (3) must be met. The entire right-of-way may be applied for in one application with only one plat of the entire right-of-way required. An archaeological survey is not required if, in the opinion of the department, heritage property would not be impacted."

Section 70. Section 77-4-201, MCA, is amended to read:

"**77-4-201. Lease or license of power sites.** It ~~shall be~~ *is* unlawful to sell or advertise for sale state lands constituting power sites or part of power sites capable of developing hydroelectric energy in commercial quantities~~; but~~. *However,* the board ~~is hereby granted power and authority to~~ *may* issue *a* lease or license to any person, corporation, or municipality for the development of ~~such~~ power sites and the distribution, use, and disposition of the ~~electric~~ *electrical* energy generated ~~thereon,~~ *on the sites* as ~~herein more~~ specifically provided *in this chapter*."

Section 71. Section 77-4-210, MCA, is amended to read:

"**77-4-210. Joint development with ~~the~~ United States.** (1) If the state land constituting ~~such~~ *a* power site is part of a larger power site owned or controlled by the government of the United States, then the board may grant a joint lease or license with the United States for the development of the power site and the distribution, use, and disposition of the ~~electric~~ *electrical* energy generated at ~~such~~ *the* power site under the laws of the United States and regulations issued pursuant ~~thereto~~ *to those laws*.

(2) ~~Such~~ *The* lease or license may be granted for a term not exceeding 50 years.

(3) The share or percentage of ownership of the state in ~~such~~ *the* joint power site ~~shall~~ *must* be in proportion to the total contribution that the lands of the state make to the value of the entire power site. Before the share of the state in ~~such~~ *the* power site is advertised for lease or license, the percentage of the state's share in the entire power site must be calculated and agreed upon between the state and the United States.

(4) The fee or compensation ~~from time to time~~ to be paid to the state under ~~such~~ *the* lease or license ~~shall~~ *must* be calculated on the basis of the state's share of ownership in the entire power site as calculated and agreed to~~; provided, however, that it shall~~. *However, the fee or compensation may* not be less than the full market value of the estate or interest disposed of in ~~such~~ *the* lands through the granting of the lease or license to be carefully ascertained from all available sources.

(5) Before ~~such~~ *the* lease or license is issued, notice ~~thereof~~ *of the lease or license* must be given in the same manner as ~~herein~~ required *in this chapter* for the issuance of a separate lease or license by the state."

Section 72. Section 80-6-101, MCA, is amended to read:

"**80-6-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Apiary" means a place where one or more colonies of bees are kept or one or more hives containing honeycombs or bee combs are kept.

(2) "Bee diseases" means a disease or abnormal condition of egg, larval, pupal, or adult stages of bees. Specific bee diseases that are subject to regulation under parts 1 through 3 of this chapter must be designated by department rule.

(3) "Bees" means any stage of the bees in the genus Apis.

(4) "Colony" means the hive and all equipment used in connection with the hive.

(5) "Department" means the department of agriculture, provided for in 2-15-3001.

(6) "Equipment" means hives, supers, frames, veils, gloves, or any apparatus, tools, machines, or other devices used in the handling and manipulation of bees, honey, wax, and hives and includes containers of honey and wax used in an apiary or in transporting bees and their products and apiary supplies.

(7) "Family unit" means two or more persons living together or residing in the same dwelling, house, or other place of residence.

(8) "General apiary" means an apiary other than a pollination apiary, landowner apiary, or hobbyist apiary.

(9) "Hive" means a frame hive, box hive, box, barrel, log gum, skep, or other receptacle or container or a part of a container, natural or artificial, used as a domicile for bees.

(10) "Hobbyist apiary" means an apiary owned by a hobbyist beekeeper.

(11) "Hobbyist beekeeper" means a person who owns a total of no more than five hives.

(12) "Landowner" means the person who has the use and exclusive possession of the land upon which a landowner apiary is to be registered. However, a person leasing or renting land for the primary purpose of locating or establishing an apiary is not considered a landowner.

(13) "Landowner apiary" means an apiary owned by a landowner as defined in this section.

(14) "Persons" means individuals, associations, partnerships, or corporations.

(15) "Pest" means the African honeybee (Apis mellifera scutellata) and those honeybees Africanized by interbreeding with the African honeybee, as identified by rule of the department.

(16) "Pollination apiary" means an apiary operated for pollination of a commercial seed, fruit, or other commercial agricultural product as provided in 80-6-112.

~~(17) "Queen apiary" means an apiary or premises in which queen bees are reared or kept for sale or gift.~~"

Section 73. Section 80-7-816, MCA, is amended to read:

"80-7-816. Account — deposit — investment. (1) There is an account in the state special revenue fund established in 17-2-102. The interest from the noxious weed *management* trust fund and the fee imposed in 61-3-510 must be deposited in the account and must be expended as provided in 80-7-814.

(2) The department may direct the board of investments to invest the funds collected under subsection (1) pursuant to the provisions of 17-6-201. The income from the investments must be credited to the account in the state special revenue fund."

Section 74. Section 81-9-232, MCA, is amended to read:

"81-9-232. Regulation of equine, ~~game-farm~~ *alternative livestock ranch* animal, or rabbit carcasses or products. (1) Equines, ~~game-farm~~ *alternative livestock ranch* animals, and rabbits and their carcasses, parts ~~thereof~~ *of carcasses*, and meat food products must be slaughtered and prepared in establishments separate from the establishments where cattle, buffalo, sheep, swine, or goats are slaughtered or their carcasses, parts ~~thereof~~ *of carcasses*, or meat food products are prepared.

(2) The board may by rule otherwise limit the entry of equine, ~~game-farm~~ *alternative livestock ranch* animal, or rabbit carcasses, parts of carcasses, meat

food products, and other materials into any establishment where inspection under 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 is maintained, under conditions as it may prescribe to ~~assure~~ *ensure* that allowing the entry of the articles into inspected establishments will be consistent with the purposes of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236."

Section 75. Section 81-23-303, MCA, is amended to read:

"**81-23-303. Rules of fair trade practices.** The department may adopt reasonable rules governing fair trade practices as they pertain to the transaction of business among licensees under this chapter and among licensees and the general public. Except for provisions regarding the requirement for first call on Montana milk supplies, as provided in 81-23-302(10), and rules adopted pursuant to 81-23-302~~(10)~~*(11)*, fair trade practice rules must contain but are not limited to provisions prohibiting the following methods of doing business that are unfair, unlawful, and not in the public interest:

(1) the payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by a person, whether in the form of money or otherwise;

(2) the giving of milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of a customer;

(3) the extension to certain customers of special prices or services not available to all customers who purchase milk of like quantity under like terms and conditions;

(4) the payment of a price lower than the applicable producer price, established by the board, by a distributor to a producer for milk that is distributed to any person, including agencies of the federal, state, or local government."

Section 76. Section 85-1-615, MCA, is amended to read:

"**85-1-615. Security interests — purchase, operation, and resale of encumbered property.** (1) The state has a lien upon a project constructed with money from the renewable resource grant and loan state special revenue account or the renewable resource loan proceeds account for the amount of the loan and interest due the state. This lien may attach to any project facilities, equipment, easements, real property, shares of stock in a water users' association, revenue of a water users' association, accounts receivable of a water users' association, water purchase agreements, and property of any kind or nature owned by the debtor, including all water rights. The department shall file with the county clerk and recorder of each county in which a part of the project is located either a financing statement or a real estate mortgage covering the loan, its amount, terms, and a description of the security. The county clerk and recorder shall record and index the lien as other liens are required by law to be recorded and indexed. The lien is valid until paid in full or otherwise discharged. The lien must be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens.

(2) From the funds available under 85-1-604~~(3)(d)~~ or 85-1-617, the state may:

(a) purchase a lien that is prior to the state's lien if:

(i) the director of the department determines that the loan is in default and the prospects for collecting the loan may be materially increased by purchasing the prior lien; and

(ii) the amount to be paid for the prior lien does not exceed the appraised value of the property;

(b) operate property that is subject to the state's lien if the director of the department determines that the loan is in default and that the prospects for collecting the loan may be materially increased by operating the property that is subject to the state's lien; or

(c) purchase a prior lien as provided in subsection (2)(a) and operate property as provided in subsection (2)(b).

(3) Any property acquired under the provisions of this section must be resold as expeditiously as possible to recover funds used under this section and funds loaned to the borrower."

Section 77. Section 85-9-104, MCA, is amended to read:

"**85-9-104. Limitations.** (1) This chapter may not be construed to grant to the district the power to generate, distribute, or sell ~~electric~~ *electrical* energy.

(2) The provisions of this chapter do not abrogate or limit in any manner the rights, powers, duties, and functions of the department, conservation districts, the department of environmental quality, or the department of fish, wildlife, and parks, but are supplementary to and in aid of those rights, powers, duties, and functions."

Section 78. Section 87-1-209, MCA, is amended to read:

"**87-1-209. Acquisition and sale of lands or waters.** (1) The department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or $100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries, nursery ponds, or ~~game farms~~ *alternative livestock ranches*;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the commission, may acquire by condemnation lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) The department, with the consent of the commission, may dispose of lands and waters acquired by it on those terms after public notice as required by subsection (3)(b), without regard to other laws that provide for sale or disposal of state lands and with or without reservation, as it considers necessary and

advisable. The department, with the consent of the commission, may convey department lands and waters for full market value to other governmental entities without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than $20,000. When the department conveys land or water to another governmental entity pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Notice of sale describing the lands or waters to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or waters at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) The department shall convey lands and waters without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(5) The department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(6) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land."

Section 79. Section 87-1-221, MCA, is amended to read:

"**87-1-221. Acquisition, importation, and propagation of fish and game — waterfowl food.** The department may:

(1) acquire by gift, purchase, capture, or otherwise any fish, game, game birds, or animals for propagation, experimental, or scientific purposes;

(2) provide for the importation of game birds and game and fur-bearing animals and for the protection, propagation, and distribution of imported or native birds and animals;

(3) use fish and game funds necessary for the construction, maintenance, operation, upkeep, and repair of fish hatcheries, ~~game farms~~ *alternative livestock ranches*, or other property or means and appliances for the protection and propagation of fish, game and fur-bearing animals, or game or nongame birds;

(4) appropriate ~~moneys~~ *money* from the funds at its disposal for the extermination or eradication of predatory animals that destroy fish, game~~,~~ or fur-bearing animals, or game or nongame birds;

(5) spend fish and game funds necessary to introduce and propagate wild waterfowl food and for that purpose may secure expert advice as to what kinds of waterfowl foods are adapted to the climate, soil, and waters of this state."

Section 80. Section 87-1-242, MCA, is amended to read:

"87-1-242. (Temporary) Funding for wildlife habitat. (1) The amount of money specified in this subsection from the sale of each hunting license or permit listed must be used exclusively by the commission to secure, develop, and maintain wildlife habitat, subject to appropriation by the legislature.

(a) Class B-10, nonresident combination, $77;

(b) Nonresident antelope, $20;

(c) Nonresident moose, $20;

(d) Nonresident mountain goat, $20;

(e) Nonresident mountain sheep, $20;

(f) Class D-1, nonresident mountain lion, $20;

(g) Nonresident black bear, $20;

(h) Nonresident wild turkey, $10;

(i) Class AAA, ~~sportsman's~~ *combination sports*, $7;

(j) Class B-11 nonresident deer combination, $200.

(2) Twenty percent of any increase in the fee for the Class B-7 license or any license or permit listed in subsection (1), except outfitter-sponsored Class B-10 and Class B-11 licenses subject to variable pricing under 87-1-268, must be allocated for use as provided in subsection (1).

(3) Eighty percent of the money allocated by this section, together with the interest and income from the money, must be used to secure wildlife habitat pursuant to 87-1-209.

(4) Twenty percent of the money allocated by this section must be used as follows:

(a) up to 50% a year may be used for development and maintenance of real property used for wildlife habitat; and

(b) the remainder and any money not allocated for development and maintenance under subsection (4)(a) by the end of each odd-numbered fiscal year must be credited to the account created by 87-1-601(5) for use in the manner prescribed for the development and maintenance of real property used for wildlife habitat. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993; sec. 6, Ch. 544, L. 1999.)"

Section 81. Section 87-1-246, MCA, is amended to read:

"**87-1-246. Funding of upland game bird enhancement program.** The amount of money specified in this section from the sale of each hunting license listed must be used exclusively by the department to preserve and enhance upland game bird populations in Montana in accordance with 87-1-246 through 87-1-249, subject to appropriation by the legislature:

(1) Class A-1, resident upland game bird, $2;

(2) Class B-1, nonresident upland game bird, $23;

(3) Class AAA, ~~sportsman's~~ *combination sports*, $2; and

(4) Class B-10, nonresident big game combination, $23."

Section 82. Section 90-6-302, MCA, is amended to read:

"**90-6-302. Definitions.** In this part, the following definitions apply:

(1) "Board" means the hard-rock mining impact board established in 2-15-1822.

(2) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific ~~revenues~~ *revenue*, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(3) "Facility" means a facility that is owned, operated, or maintained by a local government unit and that, under the impact plan submitted under the provisions of 90-6-307, can be expected to have increased capital and operating costs as a result of the large-scale mineral development.

(4) "Large-scale mineral development" means the construction or operation of a hard-rock mine and the associated milling facility for which a permit is applied for under 82-4-335, and for which the average number of persons on the payroll of the mineral developer and of contractors at the mineral development exceeds or is projected to exceed 75 for any consecutive 6-month period. A mining operation that would qualify as a large-scale mineral development under this subsection is not a large-scale mineral development if the mine owner and operator are small miners as defined in 82-4-303.

(5) "Local government unit" means a county, city, town, school district, or any of the following independent special districts:

(a) rural fire district;

(b) public hospital district;

(c) ~~refuse-disposal~~ *solid waste management* district;

(d) county water and sewer district;

(e) county water district;

(f) county sewer district; or

(g) park district.

(6) (a) "Property tax prepayment" means a potentially reimbursable impact payment made by the developer of a large-scale mineral development to the impact fund of an affected unit of local government pursuant to an approved impact plan to be expended for the purpose or purposes identified in the plan.

(b) The term does not mean a payment or prepayment of property taxes for general distribution among funds or accounts."

Section 83. Code commissioner instruction. The code commissioner shall renumber 19-20-622 as an integral part of Title 19, chapter 20, part 7.

Section 84. Repealer. (1) Sections 15-34-101, 15-34-102, 15-34-103, 15-34-104, 15-34-105, 15-34-110, 15-34-111, 15-34-112, 15-34-115, 15-34-116, and 90-3-1004, MCA, are repealed.

(2) Section 2, Chapter 64, Laws of 1995, is repealed.

Approved February 9, 2001

CHAPTER NO. 8

[HB 34]

AN ACT EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-205, MCA, is amended to read:

"**17-5-205. Application.** The application of the Bond Validating Act, Title 17, chapter 5, part 2, is extended to bonds issued and proceedings taken prior to ~~February 12, 1999~~ *[the effective date of this act]*."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 9, 2001

CHAPTER NO. 9

[HB 45]

AN ACT REVISING THE WATER POLLUTION CONTROL STATE REVOLVING FUND ACT AND DRINKING WATER STATE REVOLVING FUND ACT TO AUTHORIZE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADVANCE FUNDS TO PROJECTS FUNDED, IN PART, BY THE FEDERAL GOVERNMENT WHEN FEDERAL FUNDING HAS BEEN APPROVED BUT NOT APPROPRIATED; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Projects funded by federal government appropriations. For projects that are funded in part by appropriations from the federal government over a term of years, that have been approved by the department and the department of natural resources and conservation under 75-5-1112, and that are considered to be in compliance with 75-5-1113, the department of natural resources and conservation may advance money to a municipality in anticipation of the receipt of federal funds by the municipality on the following conditions:

(1) congress has authorized the project and has committed to fund the project at a specified dollar amount over a period of years;

(2) other funding agencies will not authorize construction of the project to begin until there is evidence that construction money will be available to the municipality to pay all of the construction costs;

(3) the department and the department of natural resources and conservation determine that it is in the best interest of the state and the state's objectives under the program that the project begin construction prior to the receipt of all federal appropriations; and

(4) the advance of the money will be in the form of a note that is issued pursuant to 7-7-109 in anticipation of a federal grant for which the municipality promises to pay and pledges to the department of natural resources and conservation the proceeds of the grant when received.

Section 2. Projects funded by federal government appropriations. For projects that are funded in part by appropriations from the federal government over a term of years, that have been approved by the department and the department of natural resources and conservation under 75-6-222, and that are considered to be in compliance with 75-6-224, the department of natural resources and conservation may advance money to a public water system in anticipation of the receipt of federal funds by the public water system on the following conditions:

(1) congress has authorized the project and has committed to fund the project at a specified dollar amount over a period of years;

(2) other funding agencies will not authorize construction of the project to begin until there is evidence that construction money will be available to the public water system to pay all of the construction costs;

(3) the department and the department of natural resources and conservation determine that it is in the best interest of the state and the state's objectives under the program that the project begin construction prior to the receipt of all federal appropriations; and

(4) the advance of the money will be in the form of a note that is issued pursuant to 7-7-109 in anticipation of a federal grant for which the public water system promises to pay and pledges to the department of natural resources and conservation the proceeds of the grant when received.

Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 75, chapter 5, part 11, and the provisions of Title 75, chapter 5, part 11, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 75, chapter 6, part 2, and the provisions of Title 75, chapter 6, part 2, apply to [section 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved February 9, 2001

CHAPTER NO. 10

[HB 24]

AN ACT REVISING THE DEBT LIMIT PROVISIONS FOR PUBLIC SCHOOLS; ELIMINATING ADJUSTMENTS TO TAXABLE VALUE OCCURRING AS A RESULT OF PRIOR CHANGES TO THE TAXATION OF CERTAIN CLASSES OF PROPERTY; AMENDING SECTION 20-9-406, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-406, MCA, is amended to read:

"**20-9-406. Limitations on amount of bond issue.** (1) (a) Except as provided in subsection (1)(d), the maximum amount for which an elementary district or a high school district may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the taxable value of the property subject to taxation, ~~to be~~ *as* ascertained by the ~~last completed~~ *last* assessment for state, county, and school taxes previous to the incurring of the indebtedness~~, plus:~~

~~(i) (A) for bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the district for tax year 1995, multiplied by 45%; and~~

~~(B) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the district for tax year 1999, multiplied by 45%, and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the district for tax year 1999, multiplied by 45%;~~

~~(ii) for bonds to be issued during fiscal year 2001, an additional 25% of the taxable value of class six property within the district for tax year 1999, multiplied by 45%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 45%;~~

~~(iii) for bonds to be issued during fiscal year 2002, an additional 50% of the taxable value of class six property within the district for tax year 1999, multiplied by 45%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 45%;~~

~~(iv) for bonds to be issued during fiscal year 2003, an additional 75% of the taxable value of class six property within the district for tax year 1999, multiplied by 45%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 45%;~~

~~(v) for bonds to be issued during fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the district for tax year 1999, in each case of class six property, multiplied by 45%, and an additional 77% of the taxable value of class eight property within the district for tax year 1999, multiplied by 45%;~~

~~(vi) for bonds to be issued during fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the district for tax year 1999, in each case of former class eight property, multiplied by 45%; and~~

~~(vii) for bonds to be issued during the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former~~

~~class eight property within the district for tax year 1999, in each case of former class eight property, multiplied by 45%~~.

(b) Except as provided in subsection (1)(d), the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is up to 90% of the taxable value of the property subject to taxation, ~~to be~~ *as* ascertained by the ~~last-completed~~ *last* assessment for state, county, and school taxes previous to the incurring of the indebtedness~~, plus:~~

~~(i) (A) for bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the district for tax year 1995, multiplied by 90%; and~~

~~(B) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the district for tax year 1999, multiplied by 90%, and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the district for tax year 1999, multiplied by 90%;~~

~~(ii) for bonds to be issued during fiscal year 2001, an additional 25% of the taxable value of class six property within the district for tax year 1999, multiplied by 90%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 90%;~~

~~(iii) for bonds to be issued during fiscal year 2002, an additional 50% of the taxable value of class six property within the district for tax year 1999, multiplied by 90%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 90%;~~

~~(iv) for bonds to be issued during fiscal year 2003, an additional 75% of the taxable value of class six property within the district for tax year 1999, multiplied by 90%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 90%;~~

~~(v) for bonds to be issued during fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the district for tax year 1999, in each case of class six property, multiplied by 90%, and an additional 77% of the taxable value of class eight property within the district for tax year 1999, multiplied by 90%;~~

~~(vi) for bonds to be issued during fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the district for tax year 1999, in each case of former class eight property, multiplied by 90%; and~~

~~(vii) for bonds to be issued during the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the district for tax year 1999, in each case of former class eight property, multiplied by 90%~~.

(c) The total indebtedness of the high school district with an attached elementary district ~~must be~~ *is* limited to the sum of 45% of the taxable value of the property for elementary school program purposes and 45% of the taxable value of the property for high school program purposes~~, adjusted as provided in this section~~.

(d) (i) The maximum amount for which an elementary district or a high school district with a district mill value per elementary ANB or per high school ANB that is less than the corresponding statewide mill value per elementary ANB or per high school ANB may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the corresponding statewide mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, the maximum amount for which the district may become indebted is 45% of the sum of the statewide mill value per elementary ANB times 1,000 times the elementary ANB of the district and the statewide mill value per high school ANB times 1,000 times the high school ANB of the district.

(ii) If mutually agreed upon by the affected districts, for the purpose of calculating its maximum bonded indebtedness under this subsection (1)(d), a district may include the ANB of the district plus the number of students residing within the district for which the district or county pays tuition for attendance at a school in an adjacent district. The receiving district may not use out-of-district ANB for the purpose of calculating its maximum indebtedness if the out-of-district ANB has been included in the ANB of the sending district pursuant to the mutual agreement.

(2) The maximum amounts determined in subsection (1), however, may not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to bonds issued for the repayment of tax protests lost by the district. All bonds issued in excess of the amount are void, except as provided in this section.

(3) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(4) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly."

Section 2. Effective date. [This act] is effective July 1, 2001.

Section 3. Applicability. [This act] applies to the authorization and issuance of bonds occurring on or after July 1, 2001.

Approved February 14, 2001

CHAPTER NO. 11

[HB 36]

AN ACT PROVIDING THAT THE APPEAL PROCESS FOR CHALLENGING THE VALUE OF A CABIN SITE LOCATED ON STATE LAND MUST BEGIN WITH THE COUNTY TAX APPEAL BOARD, WHICH MAY, IF NECESSARY, BE FOLLOWED BY AN APPEAL TO THE STATE TAX APPEAL BOARD; AMENDING SECTION 77-1-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-1-208, MCA, is amended to read:

"77-1-208. Cabin site licenses and leases — method of establishing value. (1) The board shall set the annual fee based on full market value for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. The fee must attain full market value based on appraisal of the cabin site value as determined by the department of revenue. The licensee or lessee has the option to pay the entire fee on March 1 or to divide the fee into two equal payments due March 1 and September 1. The value may be increased or decreased as a result of the statewide periodic revaluation of property pursuant to 15-7-111 without any adjustments as a result of phasing in values. An appeal of a cabin site value determined by the department of revenue must be conducted pursuant to Title 15, chapter ~~2~~ *15*.

(2) The board shall set the fee of each initial cabin site license or lease or each current cabin site license or lease of a person who does not choose to retain the license or lease. The initial fee must be based upon a system of competitive bidding. The fee for a person who wishes to retain that license or lease must be determined under the method provided for in subsection (1).

(3) The board shall follow the procedures set forth in 77-6-302 through 77-6-306 for the disposal or valuation of any fixtures or improvements placed upon the property by the then-current licensee or lessee and shall require the subsequent licensee or lessee whose bid is accepted by the board to purchase those fixtures or improvements in the manner required by the board."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 14, 2001

CHAPTER NO. 12

[HB 51]

AN ACT MAKING PERMANENT THE PROVISION REGARDING PARTIAL PAYMENT OF BENEFITS; REPEALING SECTION 4, CHAPTER 400, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 4, Chapter 400, Laws of 1999, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 14, 2001

CHAPTER NO. 13

[HB 56]

AN ACT PROVIDING AN EXCEPTION TO THE INSURANCE CODE FOR LOCAL GOVERNMENT AMBULANCE SERVICES; AMENDING SECTIONS 7-34-103 AND 33-1-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-34-103, MCA, is amended to read:

"**7-34-103. Manner of providing ambulance service.** *(1)* If a county, city, or town establishes or maintains ~~such~~ ambulance service it may, acting through its governing board:

~~(1)~~*(a)* operate the *ambulance* service itself or contract for ~~such~~ *ambulance* service;

~~(2)~~*(b)* buy, rent, lease, or otherwise contract for vehicles, equipment, facilities, operators, or attendants;

(c) sell ambulance service insurance or contract with a third-party entity to sell ambulance service insurance to persons who use the ambulance service that covers the cost of the ambulance service that is not otherwise covered;

~~(3)~~*(d)* adopt rules and establish fees or charges for the furnishing of ~~such~~ *an* ambulance service.

(2) A county, city, or town that directly sells ambulance service insurance or that remains liable for the financial risk pursuant to insurance sold by a third party under contract with the county, city, or town is exempt from Title 33, except for the provisions provided in 33-18-201 and 33-18-242."

Section 2. Section 33-1-102, MCA, is amended to read:

"**33-1-102. Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs.** (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations or to managed care community networks, as defined in 53-6-702, to the extent that the existence and operations of those organizations are governed by chapter 31 or to the extent that the existence and operations of those networks are governed by Title 53, chapter 6, part 7. The department of public health and human services is responsible to protect the interests of consumers by providing complaint, appeal, and grievance procedures relating to managed care community networks and health maintenance organizations under contract to provide services under Title 53, chapter 6.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department

of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(10) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for the financial risk under the contract with the third party as provided in 7-34-103.

(b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or town, the entity is subject to the provisions of this code."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 14, 2001

CHAPTER NO. 14

[HB 26]

AN ACT EXEMPTING FROM THE PROVISIONS OF THE WORKERS' COMPENSATION ACT TRAINERS, ASSISTANT TRAINERS, EXERCISE PERSONS, AND PONY PERSONS PERFORMING SERVICES UNDER A LICENSE ISSUED BY THE BOARD OF HORSERACING ON THE GROUNDS OF A LICENSED RACE MEET; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a broker or salesperson performing under a license issued by the board of realty regulation;

(f) employment as a direct seller as defined by 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

~~(o)~~*(p)* employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

~~(p)~~*(q)* a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

~~(q)~~*(r)* an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection ~~(2)(q)(iv)~~ *(2)(r)(iv)* total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection ~~(2)(q)(iii)(A)~~ *(2)(r)(iii)(A)* or ~~(2)(q)(iii)(B)~~ *(2)(r)(iii)(B).*

~~(r)~~*(s)* a person who is an officer or a manager of a ditch company as defined in 27-1-731;

~~(s)~~*(t)* service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order.

(3) (a) A sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. There is a $25 fee for the initial application. Any subsequent application renewal must be accompanied by a $25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) The exemption, if approved, remains in effect for 3 years following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall every 3 years submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved on or after July 1, 1995. The renewal application and the $25 renewal application fee must be received by the department at least 30 days before the anniversary date of the previously approved exemption.

(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of $1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the department denies the application for exemption, the applicant may, after mediation pursuant to department rules, contest the denial by petitioning the workers' compensation court.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 14, 2001

CHAPTER NO. 15

[HB 91]

AN ACT COORDINATING SCHOOL ELECTION DATES BY REQUIRING A PERSON SEEKING TO BECOME A WRITE-IN CANDIDATE FOR A TRUSTEE POSITION ON A SCHOOL BOARD TO FILE A DECLARATION OF INTENT AT LEAST 26 DAYS BEFORE THE ELECTION; AMENDING SECTIONS 13-10-211, 13-10-302, 13-15-202, AND 20-3-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-10-211, MCA, is amended to read:

"**13-10-211. Declaration of intent for write-in candidates.** (1) Except as provided in subsection ~~(4)~~ *(5)*, a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. Except as provided in ~~subsection (2)~~ *subsections (2) and (3)*, the declaration must be filed no later than 5 p.m. on the 15th day before the election and must contain:

(a) (i) the candidate's first and last names;

(ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;

(iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and

(iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;

(b) the candidate's mailing address;

(c) a statement declaring the candidate's intention to be a write-in candidate;

(d) the title of the office sought;

(e) the date of the election;

(f) the date of the declaration; and

(g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, ~~less than 15 days before the election~~ *after the deadline prescribed in subsection (1)*, a candidate for the office that the write-in candidate is seeking:

(a) dies;

(b) withdraws from the election; or

(c) is charged with a felony offense.

(3) A person seeking to become a write-in candidate for a trustee position on a school board shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

~~(3)~~*(4)* The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

~~(4)~~*(5)* The requirements in subsection (1) do not apply to a write-in candidate seeking election to an office for which a candidate has not filed a declaration or petition for nomination or a declaration of intent.

~~(5)~~*(6)* A declaration of intent may be sent by facsimile transmission, if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state."

Section 2. Section 13-10-302, MCA, is amended to read:

"**13-10-302. Write-in votes for previously nominated candidates.** If an elector writes the name of an individual upon a primary party ballot when the individual's name appears as a candidate for the same office on another party ballot, the vote shall count for the individual only as a candidate of the party upon whose ballot the individual's name is written and the votes cast on the separate party ballots may not be added together. Except as provided in 13-10-211~~(4)~~*(5)*, a write-in vote may be counted only if the vote identifies the individual by any of the designations filed pursuant to 13-10-211(1)(a)(i) through (1)(a)(iv)."

Section 3. Section 13-15-202, MCA, is amended to read:

"**13-15-202. Counting votes cast -- pollbook.** (1) (a) When the procedures required by 13-15-201 are completed, the election judges shall count and determine the votes cast for each individual, except as provided in subsection (1)(b).

(b) The judges may not count or record write-in votes for candidates who have not filed a declaration of intent as provided in 13-10-211, except for write-in votes cast:

(i) for an office for which a candidate has not filed a declaration or petition for nomination or a declaration of intent; or

(ii) on a federal write-in absentee ballot as provided in 13-13-273.

(2) In counting, the ballots must be opened singly by one of the election judges and the contents read aloud to the other judges.

(3) A ballot or part of a ballot is void and may not be counted if the elector's choice cannot be determined. If part of a ballot is sufficiently plain to determine the elector's intention, the election judges shall count that part. Except as provided in 13-10-211~~(4)~~*(5)*, a write-in vote may be counted only if the write-in vote identifies an individual by any of the designations filed pursuant to 13-10-211(1)(a).

(4) As the ballots are read, two judges shall write on a tally sheet the name of every individual and the office voted for and keep tallies of the number of votes for each individual, except as provided in subsection (1)(b).

(5) The tally sheets must be compared and their correctness ascertained, and the judges shall immediately write in the pollbook:

(a) the names of all individuals who received votes;

(b) the offices for which they received votes;

(c) the total votes received by each individual as shown by the tally sheets.

(6) In making the count in precincts where voting machines are used, the votes cast by absentee ballot must be added to the votes cast on the voting machines.

(7) A ballot or vote rejected by the election judges may not be included in the count."

Section 4. Section 20-3-313, MCA, is amended to read:

"**20-3-313. Election by acclamation — notice.** (1) If the number of candidates filing for a position or filing a declaration of intent to be a write-in candidate under 13-10-211 is equal to the number of positions to be elected and there is no other reason for the election, the trustees may give notice that an election will not be held. Notice must be given no later than ~~14~~ *25* days before the election.

(2) If an election is not held, the trustees shall declare elected by acclamation the candidate who filed for the position or who filed a declaration of intent to be a write-in candidate and issue a certificate of election to the candidate."

Section 5. Effective date. [This act] is effective on passage and approval.

Approved February 14, 2001

CHAPTER NO. 16

[HB 115]

AN ACT CLARIFYING THAT THE IMPOSITION OF AN ADDITIONAL SENTENCE FOR OFFENSES COMMITTED WITH A DANGEROUS WEAPON DOES NOT APPLY IF THE USE OF A WEAPON IS AN ELEMENT OF THE UNDERLYING OFFENSE; AND AMENDING SECTION 46-18-221, MCA.

WHEREAS, in State v. Guillaume, 1999 MT 29, 293 Mont. 224, 975 P.2d 312 (1999), the Montana Supreme Court held that as applied to offenses in which the use of a weapon is an element of the offense, the additional sentence for an offense committed with a dangerous weapon violates the double jeopardy provision of Article II, section 25, of the Montana Constitution.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-221, MCA, is amended to read:

"**46-18-221. Additional sentence for offenses committed with a dangerous weapon.** (1) A person who has been found guilty of any offense, *other than an offense in which the use of a weapon is an element of the offense,* and who, while engaged in the commission of the offense, knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon shall, in addition to the punishment provided for the commission of ~~such~~ *the underlying* offense, be sentenced to a term of imprisonment in the state prison of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) A person convicted of a second or subsequent offense under this section shall, in addition to the punishment provided for the commission of the present offense, be sentenced to a term of imprisonment in the state prison of not less than 4 years or more than 20 years, except as provided in 46-18-222. For the purposes of this subsection, the following persons ~~shall~~ *must* be considered to have been convicted of a previous offense under this section:

(a) a person who has previously been convicted of an offense, committed on a different occasion than the present offense, under 18 U.S.C. 924(c); and

(b) a person who has previously been convicted of an offense in this or another state, committed on a different occasion than the present offense, during the commission of which ~~he~~ *the person* knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon.

(3) The imposition or execution of the minimum sentences prescribed by this section may not be deferred or suspended, except as provided in 46-18-222.

(4) An additional sentence prescribed by this section ~~shall~~ *must* run consecutively to the sentence provided for the offense."

Approved February 14, 2001

CHAPTER NO. 17

[HB 117]

AN ACT INCREASING FROM 5 TO 10 YEARS THE MAXIMUM INCARCERATION TERM THAT MAY BE IMPOSED FOR NEGLIGENT VEHICULAR ASSAULT CAUSING SERIOUS BODILY INJURY; CLARIFYING THAT THE JUDGE MAY SUSPEND THE TERM OF INCARCERATION UPON THE CONDITION OF PAYMENT OF A FINE IMPOSED AND PAYMENT OF RESTITUTION FOR ALL CONVICTIONS OF NEGLIGENT VEHICULAR ASSAULT; AND AMENDING SECTION 45-5-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-205, MCA, is amended to read:

"**45-5-205. Negligent vehicular assault — penalty.** (1) A person who negligently operates a motor vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided for in 61-8-401(1), and who causes bodily injury to another commits the offense of negligent vehicular assault.

(2) Subject to subsection (3), a person convicted of the offense of negligent vehicular assault shall be fined an amount not to exceed $1,000 or ~~shall be imprisoned~~ *incarcerated* in ~~the~~ *a* county jail for a term not to exceed 1 year, or both, and shall be ordered to pay restitution as provided in 46-18-241.

(3) ~~(a)~~ A person convicted of the offense of negligent vehicular assault who caused serious bodily injury to another shall be fined an amount not to exceed $10,000 or ~~shall be~~ incarcerated for a term not to exceed ~~5~~ *10* years, or both, and shall be ordered to pay restitution as provided in 46-18-241.

~~(b)~~*(4)* If a term of incarceration is imposed *under subsection (2) or (3)*, the judge may suspend the term of incarceration upon the condition of payment of any fine imposed and of restitution. If the person does not pay the fine or restitution, the term of incarceration may be imposed."

Approved February 14, 2001

CHAPTER NO. 18

[SB 40]

AN ACT ADOPTING THE INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION, WHICH PROVIDES FOR THE SUPERVISION OF CRIMINALS ON PAROLE WHO LEAVE THE STATE; AND REPEALING SECTIONS 46-23-1101, 46-23-1102, 46-23-1103, 46-23-1104, 46-23-1105, AND 46-23-1106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Interstate Compact for Adult Offender Supervision — enactment and text — short title. (1) The Interstate Compact for Adult Offender Supervision is enacted into law as contained in this section and is entered into with any other states legally joining in the compact in substantially the same form as contained in this section.

(2) This section may be cited as the "Interstate Compact for Adult Offender Supervision".

Article I. Purpose

(1) The states entering into this compact recognize that they are responsible for the supervision of offenders who are authorized pursuant to this compact to travel across state lines to and from the compacting states and that the compacting states are responsible for tracking the location of offenders, transferring supervision authority in an orderly and efficient manner, and when necessary, returning an offender to the originating jurisdiction. The compacting states also recognize that Congress has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(2) It is the purpose of this compact and the commission to provide the framework for the promotion of public safety, to protect the rights of victims

through the control and regulation of the interstate movement of offenders, to provide for the effective tracking, supervision, and rehabilitation of offenders by the sending and receiving states, and to equitably distribute the costs, benefits, and obligations of the compact among the compacting states.

(3) This compact creates a commission that will:

(a) establish uniform procedures to manage the movement between states of offenders placed under and released under the jurisdiction of courts, parole officers, correctional institutions, and other criminal justice agencies;

(b) ensure an opportunity for input and timely notice to victims and to jurisdictions where offenders are authorized to travel or to relocate across state lines;

(c) establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils and to state executive, judicial, and legislative branches and criminal justice administrators;

(d) monitor compliance with rules governing the interstate movement of offenders and initiate interventions to address and correct noncompliance; and

(e) coordinate training and education regarding the regulation of interstate movement of offenders for officials involved in that activity.

(4) The compacting states recognize that an offender does not have a right to live in another state and that accredited officers of a sending state may at any time enter a receiving state and apprehend an offender under supervision, subject to the provisions of state laws, this compact, and rules promulgated under this compact. It is the policy of the compacting states that the activities conducted by the commission are the formation of public policies and are therefore public business.

Article II. Definitions

As used in this compact, unless the context clearly requires a different construction, the following definitions apply:

(1) "Adult" means a person legally classified as an adult and a minor treated as an adult by court order or by a statute or other operation of law.

(2) "Commission" means the interstate commission for adult offender supervision.

(3) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article IV of this compact.

(4) "Compact" means the Interstate Compact for Adult Offender Supervision.

(5) "Compact administrator" means the individual in each compacting state, appointed pursuant to Article IV of this compact, who is responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact and rules adopted under this compact.

(6) "Compacting state" means a state that has enacted this compact.

(7) "Department" means the department of corrections.

(8) "Member" means the commissioner of a compacting state or the commissioner's designee, who must be an individual officially connected with the commissioner.

(9) "Noncompacting state" means a state that has not enacted this compact.

(10) "Offender" means an adult subject to supervision as the result of the commission of a criminal offense and released under the jurisdiction of a court, parole officer, correctional institution, or other criminal justice agency.

(11) "State" means a state of the United States, the District of Columbia, or a territorial possession of the United States.

(12) "State council" means the state council for interstate adult offender supervision created pursuant to Article IV of this compact.

Article III. The Compact Commission

(1) There is an interstate commission for adult offender supervision. The commission is a joint agency of the compacting states. The commission has the powers and duties set forth in this compact and any additional powers conferred upon it by subsequent action of the legislatures of the compacting states in accordance with the terms of this compact.

(2) The commission consists of commissioners appointed by resident members of the state councils for the compacting states. The commission also includes individuals appointed by the commission who are not commissioners and who are members of interested organizations. The noncommissioner members must include one member each of national organizations of governors, legislators, state chief justices, attorneys general, and crime victims. Noncommissioner members are ex officio nonvoting members. The commission may provide by rule for additional, ex officio nonvoting members as it considers necessary.

(3) Each compacting state represented at a meeting of the commission is entitled to one vote. A majority of the compacting states constitutes a quorum for the transaction of business, unless a larger quorum is required by a commission rule.

(4) The commission shall establish an executive committee, which must include commission officers, members, and others as determined by commission rule. The executive committee may act on behalf of the commission when the commission is not in session, except that the executive committee may not adopt commission rules. The executive committee shall conduct the daily activities of the commission, administer enforcement of and compliance with the compact and commission rules, and perform other duties assigned by the commission or set forth in commission rules.

Article IV. The State Council

(1) There is a state council. The state council is composed of:

(a) a house member appointed by the speaker of the house;

(b) a senate member appointed by the president of the senate;

(c) a judge appointed by the chief justice;

(d) the compact administrator; and

(e) a parole officer, a law enforcement officer, and a member of a victim's rights group, each appointed by the director of the department.

(2) State council members serve at the pleasure of the appointing authority.

(3) The state council is attached to the department for administrative purposes only as provided in 2-15-121.

(4) The governor shall appoint an individual who is knowledgeable concerning the interstate supervision of offenders as the compact administrator. The compact administrator is the compact commissioner and presiding officer of the council.

(5) The state council shall develop policies concerning the operation of the compact within this state. The state council may adopt rules, including rules proposed by the commission for adoption by this state, to implement the compact.

Article V. Powers and Duties of the Commission

The commission may:

(1) adopt a seal and suitable rules governing the management and operation of the commission;

(2) propose rules for adoption by the compacting states;

(3) oversee, supervise, and coordinate the interstate movement of offenders subject to the terms of this compact and applicable rules;

(4) enforce compliance with compact provisions and applicable commission rules, using all necessary and proper means, including but not limited to the use of judicial process;

(5) establish and maintain offices;

(6) purchase and maintain insurance and bonds;

(7) borrow, accept, or contract for services of personnel, agents, and consultants;

(8) appoint officers and committees;

(9) establish personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

(10) accept donations and grants of money or services or equipment, supplies, materials, or other personal property;

(11) lease, purchase, accept contributions or donations of, or otherwise own, hold, improve, or use real or personal property;

(12) sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of real and personal property;

(13) establish a budget, make expenditures, and levy dues as provided in Article X of this compact;

(14) sue and be sued;

(15) provide by rule for resolution of disputes among compacting states;

(16) report annually to the legislatures, governors, judiciaries, and state councils of the compacting states concerning the activities of the commission, including any recommendations of the commission;

(17) coordinate education, training, and public awareness regarding the interstate movement of offenders for officials involved in that activity;

(18) establish uniform standards for reporting, collecting, and exchanging data; and

(19) perform other functions that may be necessary or appropriate to achieve the purposes of this compact.

Article VI. Organization and the Operation of the Commission

(1) The commission shall, by a majority vote of the members, adopt rules to govern its conduct and necessary or appropriate to carry out the purposes of the compact, including but not limited to rules:

(a) establishing the fiscal year of the commission;

(b) establishing an executive committee and other necessary committees, providing reasonable standards and procedures for the committees, and governing general and specific delegations of authority or functions to the committees;

(c) providing reasonable procedures for calling and conducting meetings of the commission;

(d) establishing the titles and responsibilities of the officers of the commission;

(e) establishing personnel policies for commission staff;

(f) providing a mechanism for concluding the operations of the commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and other obligations;

(g) providing transition rules for initial administration of the compact;

(h) establishing standards and procedures for compliance and technical assistance in carrying out the compact;

(i) providing for notice to offenders' victims and an opportunity for the victims to be heard;

(j) relating to offender registration and compliance;

(k) relating to violations by and return of offenders;

(l) establishing offender transfer procedures and forms;

(m) providing standards for offender eligibility for transfer;

(n) providing for the collection of restitution and fees from offenders;

(o) providing for data collection and reporting;

(p) establishing the level of offender supervision to be provided by a receiving state;

(q) providing for mediation, arbitration, and other methods of dispute resolution; and

(r) establishing conditions and procedures under which commission records are available to the public for inspection or copying. The rules may exempt records from disclosure that would adversely affect personal privacy rights or proprietary interests. The rules may make available to law enforcement agencies records and information otherwise exempt from disclosure, and the commission may enter into agreements with law enforcement agencies to exchange records and information otherwise exempt from disclosure.

(2) The commission's initial rules must be adopted within 12 months of the commission's first meeting.

(3) (a) The commission shall, by a majority vote of the members, elect from among its members a presiding officer and a vice presiding officer, each of whom has the powers and duties specified in commission rules. The presiding officer or the vice presiding officer in the event of the presiding officer's absence or disability shall preside at all meetings of the commission. The presiding officer and vice presiding officer shall serve without compensation or remuneration from the commission other than, subject to the availability of budgeted funds, reimbursement for actual and necessary costs and expenses incurred in the performance of their duties.

(b) The commission shall, through its executive committee, appoint an executive director for a term and upon conditions and for compensation that the commission considers appropriate. The executive director shall serve as secretary to the commission and shall hire and supervise staff as authorized by the commission. A member may not be appointed as executive director.

(4) The commission shall maintain its books and records in accordance with commission rules.

(5) (a) Except for a claim arising from intentional conduct or gross negligence, the members, officers, executive director, and employees of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for personal injury or property damage arising out of an act, error, or omission that occurred within the course and scope of commission employment or duties.

(b) The commission shall defend an individual referred to in subsection (5)(a) in any civil action for which the individual is granted immunity under subsection (5)(a).

(c) The commission shall indemnify an individual referred to in subsection (5)(a) in the amount of any settlement obtained against the individual arising out of a civil action for which the individual is granted immunity under subsection (5)(a).

Article VII. Activities of the Commission

(1) The commission may take actions that are consistent with the provisions of this compact.

(2) Except as otherwise provided in this compact and unless a greater percentage is required by commission rule, the commission may act at a commission meeting by an affirmative vote of a majority of the members present.

(3) Each member of the commission may cast a vote and participate in the business and affairs of the commission. A member shall vote in person on behalf of the member's state and may not delegate a vote to another member, except that a state council may appoint another individual, in the absence of the member from that state, to cast a vote on behalf of the member at a specified meeting. The commission's rules may provide for members' participation in meetings by

telephone or other means of telecommunication or electronic communication. Voting conducted by telephone or other means of telecommunication or electronic communication is subject to the quorum and majority vote requirements of meetings at which members are present in person.

(4) The commission shall meet at least once during each calendar year. The presiding officer may call additional meetings at any time and shall call a meeting upon the request of a majority of the members.

(5) Except as otherwise provided in this compact or commission rule, public notice must be given of all meetings and all meetings are open to the public. Commission rules closing meetings must be consistent with the principles contained in 5 U.S.C. 552(b). The commission or any committee may close a meeting if it determines by a two-thirds vote that an open meeting would be likely to:

(a) relate solely to the commission's internal personnel practices and procedures;

(b) disclose matters specifically exempted from disclosure by statute;

(c) disclose trade secrets or commercial or financial information that is privileged or confidential;

(d) involve accusing an individual of a crime or formally censuring an individual or disclose information of a personal nature that would constitute a clearly unwarranted invasion of personal privacy;

(e) disclose investigatory records compiled for law enforcement purposes;

(f) disclose information contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the commission with respect to a regulated entity for the purpose of regulation or supervision of the entity;

(g) disclose information that would significantly endanger the life of an individual or the stability of a regulated entity; or

(h) specifically relate to the commission's issuance of a subpoena or participation in a civil proceeding.

(6) If a meeting is closed under this section, the commission's chief legal officer shall publicly certify that in the officer's opinion, the meeting was properly closed to the public, stating the grounds under subsection (5) for closure of the meeting.

(7) The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting, actions taken, and the reasons for each action, including a description of each of the views expressed on any item and the roll call or other vote on each action. Any document considered in connection with any action must be included in the minutes or identified in the minutes in a manner reasonably allowing a person to obtain a copy of the document.

(8) The commission shall collect standardized data, as provided in its rules, concerning the interstate movement of offenders. The rules must specify the data to be collected, the means of collection, and data exchange and reporting requirements.

Article VIII. Rulemaking Functions of the Commission

(1) Commission rulemaking must conform to rulemaking criteria contained in this compact and commission rules and must substantially conform to the principles of the federal Administrative Procedure Act and the Federal Advisory Committee Act.

(2) A rule proposed or adopted by the commission is not binding on this state unless adopted by the department.

(3) Upon determination by the commission that an emergency exists, it may promulgate an emergency rule that becomes effective immediately upon adoption. The rule does not bind this state unless the department adopts it as an emergency rule of this state. The commission's emergency rule is effective for 90 days, but the commission may adopt the same rule using the principles referred to in subsection (1).

Article IX. Judicial and Administrative Proceedings Affecting Compact

The courts and executive agencies in each compacting state may enforce this compact and take any action allowed by this compact or other law and necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact that may affect the powers, responsibilities, or actions of the commission, the commission must be given a copy of any process served within the time for service on the party or parties served and may intervene in the proceeding.

Article X. Finance

(1) The commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The commission shall levy an annual assessment on each compacting state to cover the cost of the internal operations and activities of the commission and its staff. The total aggregate annual assessment on the compact states combined must be allocated among those states based upon a formula contained in a commission rule, taking into consideration the population of each state and the volume of interstate movement of offenders in each state. Each state council shall present its state's annual assessment to its legislature for an appropriation funding that amount.

(3) The commission may not incur a financial obligation prior to securing funds adequate to meet the obligation.

(4) The commission shall keep accurate accounts of all receipts and disbursements. A commission rule must provide for an annual audit of the receipts and disbursements by a certified or licensed public accountant, and the audit report must be included in the commission's annual report.

Article XI. Effective Date of Compact and Amendments

(1) This compact is effective and binding upon the later of July 1, 2001, or the enactment of the compact into law by 35 states. After that date, the compact is effective as to and binding upon a state upon enactment of the compact into law by that state.

(2) Amendments to the compact may be proposed by the commission for enactment by the compacting states. An amendment is effective upon enactment into law by unanimous consent of the compacting states.

Article XII. Withdrawal, Default, Termination, and Judicial Enforcement

(1) (a) A compacting state may withdraw from the compact by enacting a statute specifically repealing the statute that enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repeal.

(c) A compact administrator shall immediately notify the presiding officer of the commission in writing upon the introduction of legislation for the repeal of this compact. The commission shall notify the other compacting states of the intent to withdraw within 60 days of the commission's receipt of the notice.

(d) A withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including obligations the performance of which extends beyond the effective date of withdrawal.

(2) (a) If the commission determines that a compacting state has defaulted in the performance of its obligations or responsibilities under this compact, the commission may, as provided in commission rules, impose one or more of the following penalties:

(i) reasonable fines, fees, and costs;

(ii) remedial training and technical assistance as directed by the commission;

(iii) suspension or termination of participation in the compact. Suspension or termination may be imposed only after all other reasonable means of securing compliance have been exhausted. The commission shall give immediate notice of suspension or termination to the governor, the chief justice, the majority and minority leaders of each house of the legislature, and the state council.

(b) The commission shall immediately notify the defaulting state in writing of any other penalty imposed by the commission. The commission shall stipulate the conditions and the time period for the state to cure its default. If the state fails to cure the default under the conditions or within the time period specified by the commission and the penalty imposed was not suspension or termination of participation in the compact, the commission may suspend or terminate participation in the compact.

(c) A defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of a suspension or termination of participation, including obligations the performance of which extends beyond the effective date of the suspension or termination.

(d) The commission may not assume any assessments, obligations, or liabilities of a defaulting state except as agreed upon between the commission and the defaulting state. Reinstatement following a suspension or termination of participation in the compact must be by commission approval as provided in the commission's rules.

(3) The commission may, by a majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the commission, in the federal district where the commission has its offices against a compacting state in default to enforce compliance with the

provisions of the compact or applicable rules. The prevailing party is entitled to all costs of litigation, including reasonable attorney fees.

(4) (a) The compact is dissolved effective upon the date that membership in the compact is reduced to one state because of withdrawals and terminations of participation.

(b) Upon dissolution of the compact, the compact is null and of no further force or effect, except that the business and affairs of the commission must be settled and any surplus funds must be distributed in accordance with applicable rules.

Article XIII. Severability and Construction

(1) The provisions of this compact are severable, and if a provision is invalid, the remaining provisions remain valid.

(2) This compact must be liberally constructed to effectuate its purposes.

Article XIV. Advisory Opinions

Upon the request of a party to a conflict over the meaning or interpretation of a commission action and upon a majority vote of the compacting states, the commission may issue an advisory opinion regarding the meaning or interpretation.

Section 2. Repealer. Sections 46-23-1101, 46-23-1102, 46-23-1103, 46-23-1104, 46-23-1105, and 46-23-1106, MCA, are repealed.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 23, part 11, and the provisions of Title 46 apply to [section 1].

Section 4. Two-thirds vote required. Because Article VI (5)(a) of [section 1] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Approved February 14, 2001

CHAPTER NO. 19

[HB 22]

AN ACT CLARIFYING THAT AN EASEMENT IS THE PREFERRED INTEREST TO BE TAKEN IN A CONDEMNATION PROCEEDING UNLESS THE PARTIES AGREE THAT A GREATER INTEREST SHOULD BE TAKEN OR THE CONDEMNOR SHOWS BY A PREPONDERANCE OF THE EVIDENCE THAT TAKING A GREATER INTEREST IS NECESSARY; PROVIDING AN EXEMPTION FOR STATE HIGHWAY PURPOSES; AND AMENDING SECTIONS 60-4-102, 70-30-104, AND 70-30-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-4-102, MCA, is amended to read:

"60-4-102. General power of department to acquire interests in property. Notwithstanding any other provision of law, the department of transportation may acquire by purchase or other lawful manner lands or other real property, excluding oil, gas, and mineral rights, ~~which~~ *that* it considers reasonably necessary for present or future highway purposes. The department may acquire a fee simple or lesser estate or interest. *The provisions of 70-30-104(2) do not apply to the acquisition of a fee simple interest under this section.*"

Section 2. Section 70-30-104, MCA, is amended to read:

"**70-30-104. What estates and rights in land may be taken.** *(1)* The following is a classification of the estates and rights in ~~lands~~ *land* subject to ~~be taken~~ *taking* for ~~the~~ public use:

~~(1)~~*(a)* ~~such estate~~ *subject to subsection (2), estates* or rights ~~as may be~~ *that are* necessary, up to and including a fee simple *interest,* when taken for*:*

(i) public buildings or grounds*;* ~~or for~~

(ii) permanent buildings*;* ~~or for~~

(iii) an outlet for a flow or a place for the deposit of debris or tailings of a mine*;* ~~or for~~

(iv) the mining and extracting of ores, metals, or minerals when the ~~same~~ *ores, metals, or minerals* are owned by the ~~plaintiff~~ *condemnor* but *are* located beneath or upon the surface of property ~~where~~ *for which* the title to ~~said~~ *the* surface vests in others*;* or

(v) ~~for~~ the underground storage of natural gas by a natural gas public utility as defined in 82-10-301. When the ~~appropriation~~ *taking* is for the underground storage of natural gas, all of the right, title, interest, and estate in the real property and in the subsand stratum, formation, or reservoir ~~so appropriated shall~~ *taken must* be determinable and for all purposes ~~terminate~~ *terminates* upon abandonment or upon cessation for the period of 1 year of the use for which the ~~same~~ *property* was ~~appropriated,~~ *taken.* ~~and thereupon~~ *Upon the abandonment or cessation,* the ownership of the residue of natural gas ~~therein~~ remaining ~~shall likewise vest~~ *in the reservoir vests* in the ~~then~~ *current* owners of ~~such~~ *the surface property over the* reservoir space.

~~(2)~~*(b)* ~~such~~ *the* estate or rights in the surface ~~as~~ *property that* are necessary for a reservoir or dam and for the permanent flooding that results *from the reservoir or dam*, up to the edge of the maximum pool of the reservoir;

~~(3)~~*(c)* an easement, leasehold, or other interest, for ~~so~~ *as* long as the interest is necessary for the purpose described in the complaint, or fee simple *interest* when taken for any other use;

~~(4)~~*(d)* the right of entry upon and occupation of land and the right to take ~~therefrom such~~ *from the land any* earth, gravel, stones, trees, and timber ~~as~~ *that* may be necessary for some public use.

(2) Subject to 60-4-102, an easement is presumed to be sufficient for a project for a public use unless the parties agree that a greater interest should be taken or the condemnor shows by a preponderance of the evidence that a greater interest is necessary."

Section 3. Section 70-30-206, MCA, is amended to read:

"**70-30-206. Powers of court — preliminary condemnation order.** (1) ~~The~~ *In a condemnation proceeding, the* court ~~has power to~~ *may*:

(a) regulate and determine the place and manner of*:*

(i) making the connections and crossings and enjoying the common uses mentioned in 70-30-103(1)(e)*;* and

(ii) ~~of the~~ occupying ~~of~~ canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States; or

(b) *subject to 70-30-104(2),* limit the interest in real property sought to be ~~appropriated~~ *taken* if in the opinion of the court the interest sought is not necessary.

(2) If the court finds and concludes from the evidence presented that the public interest requires the taking of ~~such~~ *an* interest in real property and that the ~~plaintiff~~ *condemnor* has met ~~his~~ *the* burden of proof under 70-30-111, ~~it must forthwith make and~~ *the court shall* enter a preliminary condemnation order *providing* that the condemnation of the interest in real property may proceed in accordance with the provisions of this chapter.

(3) *(a)* If the property sought to be ~~appropriated~~ *taken* is a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of ~~it~~ *the property* for ~~such~~ *that* use has been proved by ~~plaintiff~~ *the condemnor based* upon substantial evidence, the order of the court ~~shall~~ *must* direct the *condemnation* commissioners to ~~ascertain and~~ determine the amount to be paid by the ~~plaintiff~~ *condemnor* to each person for ~~his~~ *each person's* interest in the property sought to be ~~appropriated~~ *taken* for use as ~~such~~ *an* underground natural gas storage reservoir ~~and/or as~~.

(b) In addition to or in lieu of the amount paid under subsection (3)(a), the court may direct the commissioners to determine the annual rental for*:*

(i) the use of ~~such~~ *the* underground *natural* gas storage reservoir*;*

(ii) ~~and for~~ the use of so much of the surface as is required in the operation of the ~~underground gas storage~~ reservoir and for the use in connection with the creation, operation, and maintenance ~~thereof~~ *of the reservoir;* and

(iii) ~~for~~ all the native gas contained in ~~said~~ *the* reservoir ~~as compensation and damages by reason of the appropriation of such property~~. However, the amount to be paid for ~~such~~ *the* native gas ~~and all thereof shall be no~~ *may not be* less than the market value of ~~such~~ *the* gas.

(4) The court shall appoint three persons, qualified *and recommended* as experts ~~and recommended as such~~ by the board of oil and gas conservation, to assist and advise the commissioners in determining the compensation and damages to be paid by ~~plaintiff~~ *the condemnor* to each person for ~~his~~ *each person's* interest in the property sought to be ~~appropriated,~~ *taken.* ~~and the~~ *The* fees and expenses of ~~such persons shall be~~ *the experts are* chargeable as costs of the proceedings to be paid by the ~~plaintiff~~ *condemnor.*

~~(4)~~*(5)* After a complaint as described in 70-30-203 is filed and prior to the issuance of the preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without prejudicing any party's position, with all aspects of the preliminary condemnation proceeding, including discovery and trial. The court shall give ~~such~~ *the* proceedings expeditious and priority consideration. The preliminary condemnation proceeding ~~shall~~ *must* be tried by the court sitting without a jury."

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved February 19, 2001

CHAPTER NO. 20

[HB 93]

AN ACT ALLOWING THE CONDEMNEE AND CONDEMNOR IN A CONDEMNATION ACTION THE OPPORTUNITY TO PROVIDE A STATEMENT OF APPROPRIATE DAMAGE REDUCTION MEASURES; REQUIRING THAT THE CONDEMNATION COMMISSIONERS DETERMINE THE APPROPRIATE PAYMENT FOR DAMAGES AFTER EXAMINING THE PROPERTY; ALLOWING FOR THE INCLUSION OF APPROPRIATE PAYMENT FOR DAMAGES IN THE FINAL CONDEMNATION ORDER; AND AMENDING SECTIONS 70-30-110, 70-30-203, 70-30-301, AND 70-30-309, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-30-110, MCA, is amended to read:

"70-30-110. Survey and location of property to be taken — greatest public good — least private injury. *(1)* In all cases ~~where~~ *in which* land is required for public use, the state or its agents in charge of ~~such~~ *the public* use may survey and locate the ~~same,~~ *land to be used.* ~~but it~~ *The use* must be located in the manner ~~which~~ *that* will be most compatible with the greatest public good and the least private injury, and *the location is* subject to the provisions of 70-30-206. The state or its agents in charge of ~~such~~ *the* public use may, after giving 30 days' written notice to the owners and persons in possession of the land, enter upon the land and make examination, surveys, and maps ~~thereof,~~ *of the land.* ~~and such~~ *The* entry ~~shall~~ *does not* constitute ~~no~~ *a* cause of action in favor of the owners of the land except from injuries resulting from negligence~~, wantonness,~~ or ~~malice~~ *intentional acts.* Upon written request of the state or its agents, the owner shall provide the names and addresses of all persons who are in possession of ~~his~~ *the owner's* land within 14 days from receipt of the written notice. The state or its agents shall within 14 days from receipt of ~~such~~ *that* information furnish written notice to ~~such~~ *the listed* persons.

(2) Prior to or at the time of rejection of the final written offer as referred to in 70-30-111(4), the condemnee may provide to the condemnor the condemnee's claim of appropriate measures that the condemnee considers necessary to minimize damages to the property directly affected by the project as well as to minimize damages incurred to the remaining parcel of property."

Section 2. Section 70-30-203, MCA, is amended to read:

"70-30-203. Contents of complaint. *(1)* The complaint *for condemnation* must ~~allege~~ *contain*:

~~(1)~~*(a)* the name of the corporation, association, commission, or person in charge of the public use for which the property is sought *to be taken*, who ~~must be styled~~ *is the* plaintiff;

~~(2)~~*(b)* the names of all owners, purchasers under contracts for deed, mortgagees, and lienholders of record and any other claimants ~~of the property~~ of record *of the property sought to be taken*, if known, or a statement that they are unknown, who ~~must be styled~~ *are the* defendants;

~~(3)~~*(c)* a statement of the right of *the* plaintiff *to take the property for public use*;

~~(4)~~*(d)* statements of each of the facts necessary to be found in 70-30-111;

(e) a description of each interest in real property sought to be taken, a statement of whether the property sought to be taken includes the whole or only a part of the entire parcel or tract, and a statement that the interest sought is the minimum necessary interest. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.

(f) a statement of the condemnor's claim of appropriate payment for damages to the property proposed to be taken as well as to any remaining parcel of property.

~~(5)~~*(2)* ~~if~~ *If* a right-of-way is sought, *in addition to the items listed in subsection (1),* the complaint must show the location, general route, and termini and must be accompanied with a map ~~thereof~~ *of the route*, so far as the ~~same~~ *route* is involved in the action or proceeding~~;~~.

~~(6) a description of each interest in real property sought to be taken and whether the same includes the whole or only a part of the entire parcel or tract and a statement that the interest sought is the minimum necessary interest. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.~~

~~(7)~~*(3) (a)* ~~if~~ *If* a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir is sought to be ~~appropriated~~ *taken, in addition to the items listed in subsection (1), the complaint must include* a description ~~thereof~~ *of the reservoir* and of the land in which ~~it~~ *the reservoir* is alleged to be contained and a description of all other property and rights sought to be ~~appropriated~~ *taken* for use in connection with the ~~appropriation of the~~ right to store natural gas in and withdraw natural gas from ~~such~~ *the* reservoir.

(b) In addition, the complaint ~~shall~~ *must* state facts showing that*:*

(i) the ~~underground~~ reservoir is ~~one~~ subject to ~~appropriation~~ *being taken* by *the* plaintiff;

(ii) ~~also stating that~~ the underground storage of natural gas in the land sought to be ~~appropriated~~ *taken* is in the public interest;

(iii) ~~that~~ the ~~underground~~ reservoir is suitable and practicable for natural gas storage;

(iv) ~~that~~ the plaintiff in good faith has been unable to acquire the rights sought to be ~~appropriated hereunder~~ *taken;* and

(v) a statement that the rights and property sought to be ~~appropriated~~ *taken* are not prohibited by law~~;~~ *from being taken.*

(c) ~~and in addition, the~~ *The* complaint must be accompanied by a certificate from the board of oil and gas conservation as ~~set forth~~ *provided* in 82-10-304."

Section 3. Section 70-30-301, MCA, is amended to read:

"70-30-301. Hearing — judge to preside — determinations by *condemnation* commissioners. (1) ~~Immediately upon nomination and appointment of commissioners under 70-30-207, the same shall proceed to~~ *The condemnation commissioners shall* meet at the time and place stated in the order appointing them~~,~~. ~~which~~ *The meeting* time ~~shall~~ *may* not be more than 10 days after the order of ~~appointing~~ *appointment*~~,~~. ~~and proceed to~~ *The commissioners shall* examine the lands sought to be ~~appropriated~~ *taken*. At a time appointed by the judge and within ~~said~~ *the* 10-day period, ~~they~~ *the commissioners* shall hear the allegations and evidence of all persons interested in each ~~of the several parcels~~ *parcel* of land.

(2) ~~Such~~ *The* hearing ~~shall~~ *must* be attended by and presided over by the presiding judge, who shall make all necessary rulings upon procedure and the admissibility of evidence.

(3) *(a)* At the conclusion of the ~~aforesaid~~ hearing, the ~~court or~~ judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to determine, *based* solely upon ~~the basis of said~~ *their* examination of lands, the evidence produced at the hearing or hearings, and the instructions of the court, the ~~following:~~ *appropriate findings provided for in subsections (3)(b) through (3)(d).*

~~(a)~~*(b) The commissioners shall determine* the current fair market value of the *real* property sought to be ~~appropriated~~ *taken* and all improvements ~~thereon~~ pertaining to the ~~realty~~ *real property* and of each ~~and every~~ separate estate and interest ~~therein~~ *in the real property and improvements*. If ~~it~~ *the real property* consists of different parcels, the current fair market value of each parcel and each estate or interest ~~therein~~ *in the real property* must be separately assessed.

~~(b)~~*(c) (i)* ~~if~~ *If* the property sought to be ~~appropriated~~ *taken* constitutes only a part of a larger parcel, *the commissioners shall determine* the depreciation in current fair market value ~~which~~ *that* will accrue to the ~~portion not sought to be condemned~~ *remaining parcel* by reason of ~~its severance from the portion sought to be condemned~~ *the condemnation* and the construction of the improvements in the manner proposed by the ~~plaintiff;~~ *condemnor.*

~~(c)~~*(ii)* ~~separately;~~ *The commissioners shall also determine* how much the ~~portion not sought to be condemned~~ *remaining parcel* and each estate or interest ~~therein~~ *in the remaining parcel* will be benefited, if at all, by the construction of the improvements proposed by the ~~plaintiff;~~ *condemnor.* ~~and if~~ *If* the benefit ~~shall be~~ *is* equal to the amount assessed under subsection ~~(3)(b)~~ *(3)(c)(i)*, the ~~owner of the parcel shall be allowed no compensation except~~ *compensation to the condemnee is limited to* the value of the portion taken~~;~~. ~~but~~ *However,* if the ~~benefits shall be~~ *benefit is* less than the amount assessed under subsection ~~(3)(b)~~ *(3)(c)(i)*, the ~~former shall~~ *benefit to the condemnee must* be deducted from the ~~latter,~~ *amount assessed under subsection (3)(c)(i)* and the remainder ~~shall be~~ *is* the only amount allowed in addition to the current fair market value~~;~~.

(d) ~~if~~ *If* the property sought to be ~~condemned be~~ *taken is* for a railroad, *the commissioners shall also determine* the cost of good and sufficient fences along the line of ~~such~~ *the* railroad and the cost of cattle guards where fences may cross the line of ~~such~~ *the* railroad.

(e) Through examination of the property, the commissioners shall determine the appropriate payment for damages to the property taken, as well as to any

remaining parcel of property that may be adversely impacted by the project, to assist the court in making a final determination pursuant to 70-30-309.

(4) ~~Where~~ *When* there are two or more estates or divided interests in property sought to be ~~condemned~~ *taken*, the ~~plaintiff~~ *condemnor* is entitled to have the amount of the award for ~~said~~ *the* property first determined~~, as hereinbefore stated,~~ as between ~~plaintiff~~ *the condemnor* and all ~~defendants~~ *condemnees* claiming any ~~interests therein~~ *interest in the property*. ~~Thereafter in~~ *In* the same proceeding, the respective rights of each of ~~such defendants~~ *the condemnees* in and to the *total* award ~~shall~~ *must* be determined by the commissioners, under supervision and instruction of the court, and the award *must be* apportioned accordingly."

Section 4. Section 70-30-309, MCA, is amended to read:

"**70-30-309. Final order of condemnation — contents — vesting upon filing.** (1) When payments have been made and the bond, *if appropriate, has been* given~~,~~ ~~if the plaintiff elects to give one,~~ as required by 70-30-307 and 70-30-308, the court ~~must~~ *shall* make a final order of condemnation~~,~~. ~~which~~ *The order* must describe the property condemned, ~~and~~ the purposes of ~~such~~ *the* condemnation~~.~~, *and any appropriate payment for damages to the property actually taken as well as to any remaining parcel of property that may be adversely affected by the taking.*

(2) A copy of the order must be filed in the office of the county clerk and recorder, and ~~thereupon~~ *upon filing,* the property described ~~therein shall~~ ~~vest~~ *in the order vests* in the ~~plaintiff~~ *condemnor* for the purposes ~~therein~~ specified *in the order.*"

Approved February 19, 2001

CHAPTER NO. 21

[HB 99]

AN ACT REPEALING THE TERMINATION DATE OF THE LAW AUTHORIZING THE FISH, WILDLIFE, AND PARKS COMMISSION TO SEPARATE NONRESIDENT DEER LICENSES FROM THE NONRESIDENT BIG GAME COMBINATION LICENSES FOR PURPOSES OF DEER MANAGEMENT AND TO SET THE TERMS AND CONDITIONS OF THE LICENSES; REPEALING SECTION 6, CHAPTER 355, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 6, Chapter 355, Laws of 1997, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 19, 2001

CHAPTER NO. 22

[HB 194]

AN ACT REVISING THE LANGUAGE RELATING TO OVERTIME AND MINIMUM WAGE EXEMPTIONS FOR OUTSIDE SALES TO CONFORM

WITH THE FEDERAL FAIR LABOR STANDARDS ACT; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-406, MCA, is amended to read:

"39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, ~~or~~ *or* professional *capacity, as these terms are defined by regulations of the commissioner, or in an outside sales* capacity ~~as these terms are defined by regulations of the commissioner~~, *as defined in 29 CFR 541.5*;

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility;

~~(m) an outside salesperson or marketing representative paid on a commission, contract, or salary basis who is primarily employed in selling or marketing products or services in the food distribution industry for a food broker, wholesaler, or association;~~

~~(n)~~*(m)* a direct seller as defined in 26 U.S.C. 3508;

~~(o)~~*(n)* a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

~~(p)~~*(o)* a person serving as a foster parent, licensed as a foster care provider in accordance with 41-3-1141, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

~~(q)~~*(p)* an employee employed in domestic service employment to provide live-in companionship services, as defined in 29 CFR 552.6, for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act ~~(~~,29 U.S.C. 213~~)~~.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

~~(d) an outside salesperson paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;~~

~~(e)~~*(d)* a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, *or* farm implements~~, or replacement parts~~ if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles~~,~~ *or* implements~~, or replacement parts~~ to ~~wholesalers or~~ ultimate purchasers;

~~(f)~~*(e)* a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

~~(g) an outside salesperson paid on a commission or contract basis who is primarily employed in selling office supplies, computers, or other office equipment for an office equipment dealer;~~

~~(h)~~*(f)* a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

~~(i)~~*(g)* an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

~~(j)~~*(h)* an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

~~(k)~~*(i)* an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

~~(l)~~*(j)* an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

~~(m)~~*(k)* a driver employed by an employer engaged in the business of operating taxicabs;

~~(n)~~*(l)* an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

~~(o)~~*(m)* an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

~~(p)~~*(n)* an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

~~(q)~~*(o)* an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

~~(r)~~*(p)* an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

~~(s)~~*(q)* a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

~~(t)~~*(r)* an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

~~(u)~~*(s)* an employee of a department of public safety working under a work period established pursuant to 7-32-115;

~~(v)~~*(t)* an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 ~~(~~*,*29 U.S.C. 206~~)~~, and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

~~(w)~~*(u)* a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

~~(x)~~*(v)* an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

~~(y)~~*(w)* an employee of the consolidated legislative branch as provided in 5-2-503."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 19, 2001

CHAPTER NO. 23

[HB 50]

AN ACT CHANGING THE CERTIFICATION OF CHEMICAL DEPENDENCY COUNSELORS TO LICENSURE OF ADDICTION COUNSELORS; AMENDING SECTIONS 33-22-702, 33-22-705, 33-32-102, 37-23-201, 37-35-101, 37-35-102, 37-35-103, 37-35-201, 37-35-202, 37-35-203, 37-35-301, 37-35-304, 45-5-624, 45-9-208, 45-10-108, 53-24-301, AND 61-8-732, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-702, MCA, is amended to read:

"**33-22-702. Definitions.** For purposes of this part, the following definitions apply:

(1) "Chemical dependency treatment center" means a treatment facility that:

(a) provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment plan approved and monitored by a physician or ~~chemical dependency~~ *addiction* counselor ~~certified~~ *licensed* by the state; and

(b) is licensed or approved as a treatment center by the department of public health and human services under 53-24-208.

(2) "Inpatient benefits" are as set forth in 33-22-705.

(3) "Mental health treatment center" means a treatment facility organized to provide care and treatment for mental illness through multiple modalities or techniques pursuant to a written treatment plan approved and monitored by an interdisciplinary team, including a licensed physician, psychiatric social worker, and psychologist, and a treatment facility that is:

(a) licensed as a mental health treatment center by the state;

(b) funded or eligible for funding under federal or state law; or

(c) affiliated with a hospital under a contractual agreement with an established system for patient referral.

(4) (a) "Mental illness" means a clinically significant behavioral or psychological syndrome or pattern that occurs in a person and that is associated with:

(i) present distress or a painful symptom;

(ii) a disability or impairment in one or more areas of functioning; or

(iii) a significantly increased risk of suffering death, pain, disability, or an important loss of freedom.

(b) Mental illness must be considered as a manifestation of a behavioral, psychological, or biological dysfunction in a person.

(c) Mental illness does not include:

(i) a developmental disorder;

(ii) a speech disorder;

(iii) a psychoactive substance use disorder;

(iv) an eating disorder, except for bulimia and anorexia nervosa;

(v) an impulse control disorder, except for intermittent explosive disorder and trichotillomania; or

(vi) a severe mental illness as provided in 33-22-706.

(5) "Outpatient benefits" are as set forth in 33-22-705."

Section 2. Section 33-22-705, MCA, is amended to read:

"33-22-705. Inpatient and outpatient benefits. (1) "Inpatient benefits" are benefits payable for charges made by a hospital or freestanding inpatient facility for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient and, with respect to major medical policies or contracts, also includes those benefits payable for charges made by a physician for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient. Care and treatment of alcoholism or drug addiction in a freestanding inpatient facility must be in a chemical dependency treatment center that is approved by the department of public health and human services under 53-24-208. Inpatient benefits include payment for medically monitored and medically managed intensive inpatient services and clinically managed high-intensity residential services.

(2) "Outpatient benefits" are benefits payable for:

(a) reasonable charges made by a hospital for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as an inpatient;

(b) reasonable charges for services rendered or prescribed by a physician for the necessary care and treatment for mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as an inpatient;

(c) reasonable charges made by a mental health or chemical dependency treatment center for the necessary care and treatment of a covered person provided in the treatment center. The chemical dependency treatment center must be approved by the department of public health and human services under 53-24-208.

(d) reasonable charges for services rendered by a licensed psychiatrist, psychologist, licensed professional counselor, licensed social worker, or ~~chemical dependency~~ *addiction* counselor ~~certified~~ *licensed* by the department of commerce under Title 37, chapter 35."

Section 3. Section 33-32-102, MCA, is amended to read:

"**33-32-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Commissioner" means the commissioner of insurance provided for in 2-15-1903.

(2) "Health care provider" means a person, corporation, facility, or institution licensed by the state to provide or otherwise lawfully providing health care services, including but not limited to:

(a) a physician, health care facility as defined in 50-5-101, osteopath, dentist, nurse, optometrist, chiropractor, podiatrist, physical therapist, psychologist, licensed social worker, speech pathologist, audiologist, ~~certified chemical dependency~~ *licensed addiction* counselor, or licensed professional counselor; and

(b) an officer, employee, or agent of a person described in subsection (2)(a) acting in the course and scope of employment.

(3) "Health care services" means the health care and services provided by health care providers, including drugs, medicines, ambulance services, and other therapeutic and rehabilitative services and supplies.

(4) *(a)* "Utilization review" means a system for review of health care services for a patient to determine the necessity or appropriateness of services, whether that review is prospective, concurrent, or retrospective, when the review will be ~~utilized~~ *used* directly or indirectly in order to determine whether the health care services will be paid, covered, or provided.

(b) Utilization review does not include routine claim administration or determination that does not include determinations of medical necessity or appropriateness."

Section 4. Section 37-23-201, MCA, is amended to read:

"**37-23-201. Representation or practice as licensed clinical professional counselor — license required.** (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed clinical professional counselor" or "professional counselor".

(2) Except as provided in subsection (3), a person may not represent that the person is a licensed professional counselor or licensed clinical professional counselor by adding the letters "LPC" or "LCPC" after the person's name or by any other means, engage in the practice of professional counseling, or represent that the person is engaged in the practice of professional counseling, unless licensed under this chapter.

(3) Individuals licensed in accordance with this chapter before October 1, 1993, who use the title "licensed professional counselor" or "LPC" may use the title "licensed clinical professional counselor" or "LCPC".

(4) Subsection (2) does not prohibit:

(a) a qualified member of another profession, such as a physician, lawyer, pastoral counselor, probation officer, court employee, nurse, school counselor, educator, chemical dependency counselor accredited by a federal agency, or ~~chemical dependency~~ *addiction* counselor ~~certified~~ *licensed* pursuant to Title 37, chapter 35, from performing duties and services consistent with the person's licensure or certification and the code of ethics of the person's profession or, in the case of a qualified member of another profession who is not licensed or certified or for whom there is no applicable code of ethics, from performing duties and services consistent with the person's training, as long as the person does not represent by title that the person is engaging in the practice of professional counseling;

(b) an activity or service or use of an official title by a person employed by or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution that is a part of the duties of the office or position;

(c) an activity or service of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) an activity or service of a student, intern, or resident in mental health counseling pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activity or service constitutes a part of the supervised course of study;

(e) an activity or service of a person who is not a resident of this state, which activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year, if the person is authorized under the law of the state or country of residence to perform the activity or service. However, the person shall report to the department of commerce the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(f) pending disposition of the application for a license, the activity or service by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform the activity or service in the state of the person's former residence;

(g) an activity or service of a person who is working to satisfactorily complete the 3,000 hours of counseling practice required for licensure by 37-23-202(1)(b) if the person has already completed a planned graduate program, as required by 37-23-202(1)(a), or is working to complete the 3,000 hours of social work experience as required by 37-22-301; or

(h) an activity or service performed by a licensed social worker, licensed psychiatrist, or licensed psychologist when performing the activity or service in a manner consistent with the person's license and the code of ethics of the person's profession."

Section 5. Section 37-35-101, MCA, is amended to read:

"**37-35-101. Purpose.** The legislature finds and declares that because the profession of ~~chemical dependency~~ *addiction* counseling profoundly affects the lives of people of this state, it is the purpose of this chapter to provide for the common good by ensuring the ethical, qualified, and professional practice of ~~chemical dependency~~ *addiction* counseling. This chapter and the rules promulgated under 37-35-103 set standards of qualification, education, training, and experience and establish professional ethics for those who seek to engage in the practice of ~~chemical dependency~~ *addiction* counseling as ~~certified chemical dependency~~ *licensed addiction* counselors."

Section 6. Section 37-35-102, MCA, is amended to read:

"37-35-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by a regional accrediting association for institutions of higher learning.

(2) ~~"Certified chemical dependency counselor" means a person who has the knowledge and skill necessary to provide the therapeutic process of chemical dependency counseling and who is certified under the provisions of this chapter.~~

~~(3) "Chemical dependency" means the use of any chemical substance, legal or illegal, that creates behavior or health problems, or both, resulting in operational impairment.~~ *"Addiction" means the condition or state in which an individual is physiologically or psychologically dependent upon alcohol or other drugs.* ~~This~~ *The* term includes ~~alcoholism, drug dependency, or both, that endanger the health, interpersonal relationships, or economic functions of an individual or the public health, safety, or welfare~~ *chemical dependency as defined in 53-24-103.*

~~(4)~~*(3)* "Department" means the department of commerce provided for in 2-15-1801.

(4) "Licensed addiction counselor" means a person who has the knowledge and skill necessary to provide the therapeutic process of addiction counseling and who is licensed under the provisions of this chapter."

Section 7. Section 37-35-103, MCA, is amended to read:

"37-35-103. Department powers and duties. (1) The department shall:

(a) examine, ~~certify~~ *license*, and renew the ~~certificates~~ *licenses* of qualified applicants;

(b) adopt rules:

(i) for eligibility requirements and competency standards;

(ii) prescribing the time, place, content, and passing requirements of the ~~certification~~ *licensure* and competency examinations and passing scores for ~~certification~~ *licensure* under 37-35-202;

(iii) for application forms and fees for ~~certification~~ *licensure* and for renewal and ~~certification~~ *licensure* expiration dates; and

(iv) defining any unprofessional conduct that is not included in 37-1-316; and

(c) adopt and implement rules for training programs, internships, and continuing education requirements to ensure the quality of ~~chemical dependency~~ *addiction* counseling.

(2) The department may:

(a) adopt rules necessary to implement the provisions of this chapter;

(b) adopt rules specifying the scope of ~~chemical dependency~~ *addiction* counseling that are consistent with the education required by 37-35-202; and

(c) establish ~~recertification~~ *licensure* requirements and procedures that the department considers appropriate."

Section 8. Section 37-35-201, MCA, is amended to read:

"37-35-201. ~~Certificate~~ *License* required — exceptions. (1) Except as otherwise provided in this chapter, a person may not practice ~~chemical dependency~~ *addiction* counseling or represent to the public that the person is a ~~certified chemical dependency~~ *licensed addiction* counselor unless the person is ~~certified~~ *licensed* under the provisions of this chapter.

(2) This chapter does not prohibit an activity or service:

(a) performed by a qualified member of a profession, such as a physician, lawyer, licensed professional counselor, licensed social worker, licensed psychiatrist, licensed psychologist, nurse, probation officer, court employee, pastoral counselor, or school counselor, consistent with the person's licensure or certification and the code of ethics of the person's profession, as long as the person does not represent by title that the person is a ~~certified chemical dependency~~ *licensed addiction* counselor. If a person is a qualified member of a profession that is not licensed or certified or for which there is no applicable code of ethics, this section does not prohibit an activity or service of the profession as long as the person does not represent by title that the person is a ~~certified chemical dependency~~ *licensed addiction* counselor.

(b) of, or use of an official title by, a person employed or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution if that activity or service or use of that title is a part of the duties of the office or position;

(c) of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) of a student, intern, or resident in ~~chemical dependency~~ *addiction* counseling who is pursuing a course of study at an accredited college or university or who is working in a generally recognized training center if the activity or service constitutes part of the course of study;

(e) of a person who is not a resident of this state if the activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year and if the person is authorized under the laws of the state or country of residence to perform the activity or service. However, the person shall report to the department the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(f) of a person who is working to satisfactorily complete supervised ~~chemical dependency~~ *addiction* counseling experience required for ~~certification~~ *licensure.*

(3) This chapter is not intended to limit, preclude, or interfere with the practice of other persons and health care providers licensed by the appropriate agencies of the state of Montana."

Section 9. Section 37-35-202, MCA, is amended to read:

"37-35-202. ~~Certification~~ *Licensure* requirements — examination — fees. (1) To be eligible for ~~certification~~ *licensure* as a ~~chemical dependency~~ *licensed addiction* counselor, the applicant shall submit an application fee in an amount established by the department by rule and a written application on a form provided by the department that demonstrates that the applicant has completed the eligibility requirements and competency standards as defined by department rule.

(2) A person may apply for ~~certification~~ *licensure* as a ~~certified chemical dependency~~ *licensed addiction* counselor if the person has:

(a) received a baccalaureate degree in alcohol and drug studies, psychology, sociology, social work, counseling, or a related field from an accredited college or university;

(b) received an associate of arts degree in alcohol and drug studies, ~~chemical dependency~~ *addiction*, or substance abuse from an accredited institution; or

(c) successfully completed at least 1 year of formalized training in ~~chemical dependency~~ *addiction* counseling in a program approved by the department or recognized under the laws of another state.

(3) Prior to becoming eligible to begin the examination process, each person shall complete supervised work experience in ~~a chemical dependency~~ *an addiction* treatment program as defined by the department, in an internship approved by the department, or in a similar program recognized under the laws of another state.

(4) Each applicant shall successfully complete a competency examination process as defined by rules adopted by the department.

(5) A person holding a ~~certificate~~ *license* to practice as a ~~certified chemical dependency~~ *licensed addiction* counselor in this state may use the title ~~"certified chemical dependency~~ *"licensed addiction* counselor"."

Section 10. Section 37-35-202, MCA, is amended to read:

"37-35-202. ~~Certification~~ *Licensure* requirements — examination — fees. (1) To be eligible for ~~certification~~ *licensure* as a ~~chemical dependency~~ *licensed addiction* counselor, the applicant shall submit an application fee in an amount established by the department by rule and a written application on a form provided by the department that demonstrates that the applicant has completed the eligibility requirements and competency standards as defined by department rule.

(2) A person may apply for ~~certification~~ *licensure* as a ~~certified chemical dependency~~ *licensed addiction* counselor if the person has:

(a) received a baccalaureate degree in alcohol and drug studies, psychology, sociology, social work, counseling, or a related field from an accredited college or university; *or*

(b) received an associate of arts degree in alcohol and drug studies, ~~chemical dependency~~ *addiction*, or substance abuse from an accredited institution~~; or~~

~~(c) successfully completed at least 1 year of formalized training in chemical dependency counseling in a program approved by the department or recognized under the laws of another state~~.

(3) Prior to becoming eligible to begin the examination process, each person shall complete supervised work experience in ~~a chemical dependency~~ *an addiction* treatment program as defined by the department, in an internship

approved by the department, or in a similar program recognized under the laws of another state.

(4) Each applicant shall successfully complete a competency examination process as defined by rules adopted by the department.

(5) A person holding a ~~certificate~~ *license* to practice as a ~~certified chemical dependency~~ *licensed addiction* counselor in this state may use the title ~~"certified chemical dependency~~ *"licensed addiction* counselor"."

Section 11. Section 37-35-203, MCA, is amended to read:

"37-35-203. Renewal of ~~certificate~~ *license* — application and fee. (1) A ~~certificate~~ *license* expires biennially on the date set by department rule.

(2) A ~~certificate~~ *license* holder may renew a ~~certificate~~ *license* by:

(a) filing an application on a form prescribed by the department; and

(b) paying a renewal fee in an amount established by the department.

(3) A default in the payment of a renewal fee after the date it is due may increase the fee, as prescribed by the department by rule.

(4) It is unlawful for a person who refuses or fails to pay the renewal fee to practice as a ~~certified chemical dependency~~ *licensed addiction* counselor in this state.

(5) A ~~certificate~~ *license* not renewed within 1 year following its expiration date terminates automatically."

Section 12. Section 37-35-301, MCA, is amended to read:

"37-35-301. Unprofessional conduct complaint — sanctions. (1) A formal complaint alleging unprofessional conduct by a ~~certified chemical dependency~~ *licensed addiction* counselor may be directed to the department. The charges must be made by an affidavit, subscribed and sworn to by the person making it, and filed with the department.

(2) The complaint may allege any unprofessional conduct contained in 37-1-316 or as further defined by department rule that constitutes a threat to the public health, safety, or welfare and that is inappropriate to the practice of a ~~certified chemical dependency~~ *licensed addiction* counselor.

(3) The director of the department shall appoint a review panel to investigate a complaint of unprofessional conduct directed to the department. The panel must consist of:

(a) two ~~certified chemical dependency~~ *licensed addiction* counselors;

(b) one employee of the department; and

(c) two members of the public.

(4) The panel shall recommend to the department either that the person be cleared of any charges or that a sanction or combination of sanctions contained in 37-1-312 be imposed.

(5) For the purposes of this section, the department is vested with a board's authority for the purposes of the procedures in 37-1-307 through 37-1-318 regarding unprofessional conduct, and 37-1-301 through 37-1-318 apply to any proceeding under this section."

Section 13. Section 37-35-304, MCA, is amended to read:

"**37-35-304. Transition — transfer of ~~certificates~~ *license*.** The department shall grant a ~~certificate~~ *license to practice as a licensed addiction counselor* without the need for further application or other requirements to those persons holding a current, unrestricted certificate as a certified chemical dependency counselor as of ~~July 1, 1997~~ *October 1, 2001*, that was issued by the ~~department of public health and human services~~ *state*."

Section 14. Section 45-5-624, MCA, is amended to read:

"**45-5-624. Unlawful attempt to purchase or possession of intoxicating substance — interference with sentence or court order.** (1) A person under 21 years of age commits the offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating substance. A person does not commit the offense if the person consumes or gains possession of the beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages.

(2) In addition to any disposition by the youth court under 41-5-1512, a person under 18 years of age who is convicted of the offense of possession of an intoxicating substance:

(a) for the first offense, shall be fined an amount not to exceed $100 and:

(i) must have the person's driver's license confiscated by the court for not less than 30 days and not more than 90 days and shall be ordered not to drive during that period if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred;

(ii) shall be ordered to perform community service if a community service program is available; and

(iii) shall be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available;

(b) for a second offense, shall be fined an amount not to exceed $200 and:

(i) must have the person's driver's license suspended for not less than 60 days and not more than 120 days;

(ii) shall be ordered to perform community service if a community service program is available; and

(iii) shall be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available;

(c) for a third or subsequent offense, shall be fined an amount not less than $300 or more than $500 and:

(i) must have the person's driver's license suspended for not less than 120 days and not more than 1 year, except that if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred, must have the person's driver's license revoked for 1 year or until the person reaches the age of 18, whichever occurs last;

(ii) shall be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available, which may include alcohol or drug treatment, or both, approved by the department of public health and human services, if determined by the court to be appropriate.

(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance:

(a) for a first offense, shall be fined an amount not to exceed $50 and be ordered to perform community service if a community service program is available;

(b) for a second offense, shall be fined an amount not to exceed $100 and:

(i) shall be ordered to perform community service if a community service program is available; and

(ii) must have the person's driver's license suspended for not more than 60 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(c) for a third or subsequent offense, shall be fined an amount not to exceed $200 and:

(i) shall be ordered to perform community service if a community service program is available;

(ii) must have the person's driver's license suspended for not more than 120 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(iii) shall be ordered to complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which may, in the sentencing court's discretion and upon recommendation of a ~~certified chemical dependency~~ *licensed addiction* counselor, include alcohol or drug treatment, or both; and

(iv) in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed 6 months.

(4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed $50 if the person was 18 years of age or older at the time that the offense was committed or $100 if the person was under 18 years of age at the time that the offense was committed.

(5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need of intervention as defined in 41-5-103. The youth court may enter its judgment under 41-5-1512.

(6) A person commits the offense of interference with a sentence or court order if the person purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a

youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both.

(7) A conviction or youth court adjudication under this section must be reported by the court to the department of justice under 61-11-101 for the purpose of keeping a record of the number of offenses committed but may not be considered part of the person's driving record for insurance purposes unless a second or subsequent conviction or adjudication under this section occurs. (See compiler's comments for contingent termination of certain text.)"

Section 15. Section 45-9-208, MCA, is amended to read:

"**45-9-208. Mandatory dangerous drug information course.** A person who is convicted of an offense under this chapter and given a sentence that makes the offense a misdemeanor, as defined in 45-2-101, shall, in addition to any other sentence imposed, be sentenced to complete a dangerous drug information course offered by a chemical dependency facility approved by the department of public health and human services under 53-24-208. The sentencing judge may include in the sentencing order a condition that the person shall undergo chemical dependency treatment if a ~~certified chemical dependency~~ *licensed addiction* counselor working with the person recommends treatment."

Section 16. Section 45-10-108, MCA, is amended to read:

"**45-10-108. Mandatory dangerous drug information course.** A person who is convicted of an offense under this chapter and given a sentence that makes the offense a misdemeanor, as defined in 45-2-101, shall, in addition to any other sentence imposed, be sentenced to complete a dangerous drug information course offered by a chemical dependency facility approved by the department of public health and human services under 53-24-208. The sentencing judge may include in the sentencing order a condition that the person shall undergo chemical dependency treatment if a ~~certified chemical dependency~~ *licensed addiction* counselor working with the person recommends treatment."

Section 17. Section 53-24-301, MCA, is amended to read:

"**53-24-301. Treatment of the chemically dependent.** (1) An applicant for voluntary admission or court-referred admission to an approved public treatment facility shall obtain confirmation from a ~~certified chemical dependency~~ *licensed addiction* counselor that the applicant is chemically dependent and appropriate for inpatient, freestanding care as described in the administrative rules. The department shall adopt rules to establish policies and procedures governing assessment, patient placement, confirmation, and admission to an approved public treatment facility. If the proposed patient is a minor or an incompetent person, the proposed patient, a parent, legal guardian, or other legal representative may make the application.

(2) Subject to rules adopted by the department, the administrator of an approved public treatment facility may determine who is admitted for treatment. If a person is refused admission to an approved public treatment facility, the administrator, subject to departmental rules, shall refer the person to an approved private treatment facility for treatment if possible and appropriate.

(3) If a patient receiving inpatient care leaves an approved public treatment facility, the patient must be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator of the treatment facility that the patient is chemically dependent and requires help, the

department shall arrange for assistance in obtaining supportive services and residential facilities.

(4) If a patient leaves an approved public treatment facility, with or against the advice of the administrator of the facility, the department shall make reasonable provisions for the patient's transportation to another facility or to the patient's home. If the patient has no home, the patient must be assisted in obtaining shelter. If the patient is a minor or an incompetent person, the request for discharge from an inpatient facility must be made by a parent, legal guardian, or other legal representative or by the minor or incompetent, if the minor or incompetent person was the original applicant."

Section 18. Section 61-8-732, MCA, is amended to read:

"**61-8-732. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — assessment, education, and treatment required.** (1) In addition to the punishments provided in 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation of 61-8-401 or 61-8-406 shall complete:

(a) a chemical dependency assessment;

(b) a chemical dependency education course; and

(c) on a second or subsequent conviction for a violation of 61-8-401 or 61-8-406 or as required by subsection (8) of this section, chemical dependency treatment.

(2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

(3) The chemical dependency assessment and the chemical dependency education course must be completed at a treatment program approved by the department of public health and human services and must be conducted by a ~~certified chemical dependency~~ *licensed addiction* counselor. The defendant may attend a treatment program of the defendant's choice as long as the treatment services are provided by a ~~certified chemical dependency~~ *licensed addiction* counselor. The defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment.

(4) The assessment must describe the defendant's level of addiction, if any, and contain a recommendation as to education, treatment, or both. A defendant who disagrees with the initial assessment may, at the defendant's cost, obtain a second assessment provided by a ~~certified chemical dependency~~ *licensed addiction* counselor or a program approved by the department of public health and human services.

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a ~~certified chemical dependency~~ *licensed addiction* counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(6) Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or treatment program. If the defendant fails to attend the education course or treatment program, the counselor shall notify the court of the failure.

(7) A court or counselor may not require attendance at a self-help program other than at an "open meeting", as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

(8) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a ~~certified chemical dependency~~ *licensed addiction* counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

(b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional 6 months."

Section 19. Effective dates. (1) [Sections 1 through 9 and 11 through 18 and this section] are effective January 1, 2002.

(2) [Section 10] is effective January 1, 2004.

Approved February 21, 2001

CHAPTER NO. 24

[HB 180]

AN ACT PROVIDING THAT A MEDICAL EXAMINATION REQUIRED BEFORE A YOUTH MAY BE ADMITTED TO A FACILITY UNDER AN ORDER OF COMMITMENT TO THE DEPARTMENT OF CORRECTIONS MAY BE PERFORMED BY A LICENSED PHYSICIAN ASSISTANT-CERTIFIED OR AN ADVANCED PRACTICE REGISTERED NURSE; AND AMENDING SECTION 52-5-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-5-108, MCA, is amended to read:

"**52-5-108. Medical examination before admission — records required to accompany youth committed.** (1) Before a youth is admitted for any purpose or for any length of time to the Pine Hills youth correctional facility or another facility under an order of commitment to the department of corrections, the youth must be examined by *a licensed physician assistant-certified, by an advanced practice registered nurse, or by* a licensed physician. A youth committed to the Pine Hills youth correctional facility or the department must be accompanied by the order of commitment, a medical examination report, an adequate social history, and any school records.

(2) The medical examination required under this section must be a current, complete physical examination of the youth."

Approved February 21, 2001

CHAPTER NO. 25

[HB 220]

AN ACT GENERALLY REVISING PROVISIONS OF THE MONTANA CREDIT UNION ACT; PROVIDING THAT ELECTRONICALLY GENERATED AND STORED CREDIT UNION RECORDS ARE ADMISSIBLE AS EVIDENCE OF A TRANSACTION; CLARIFYING THAT A CREDIT UNION SUPERVISORY COMMITTEE NEED ONLY BE APPOINTED IF THE CREDIT UNION BYLAWS PROVIDE FOR A SUPERVISORY COMMITTEE; PROVIDING THAT DIVIDENDS MUST BE PAID ON ALL SHARES ACCORDING TO ANY METHOD OF CALCULATION ALLOWED BY LAW; REMOVING THE REQUIREMENT THAT THE PURPOSE OF THE LOAN BE STATED IN A LOAN APPLICATION; AMENDING SECTIONS 32-3-204, 32-3-301, 32-3-403, 32-3-502, AND 32-3-602, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-3-204, MCA, is amended to read:

"**32-3-204. Records.** (1) A credit union shall maintain all books, records, accounting systems, and procedures in accordance with ~~such~~ rules ~~as~~ *that* the director ~~from time to time~~ *of the department of commerce* prescribes. In prescribing ~~such~~ rules, the director shall consider the relative size of a credit union and its reasonable capability of compliance.

(2) A credit union is not liable for destroying records after the expiration of the record retention time prescribed by the director.

(3) A photostatic or photographic *copy or* reproduction of any *kind, including electronic or computer-generated data that has been electronically stored and is capable of being converted into written form, of any* credit union records ~~shall~~ *must* be admissible as evidence of transactions with the credit union."

Section 2. Section 32-3-301, MCA, is amended to read:

"**32-3-301. Organization procedure.** (1) Any seven or more residents of this state~~,~~ *who are* of legal age~~,~~ *and* who have a common bond, ~~defined~~ *as described* in 32-3-304, may organize a credit union and become charter members ~~thereof~~ *of the credit union* by complying with this section.

(2) The subscribers shall execute, in duplicate, articles of incorporation~~,~~ ~~which~~ *that* conform to the applicable Montana corporation law~~,~~ and *shall* agree to the terms ~~thereof, which~~ *of the articles. The* articles ~~shall~~ *must* state:

(a) the name, which ~~shall~~ *must* include the words "credit union" and which ~~shall~~ *may* not be the same as that of any other existing credit union in this state, and the location where the proposed credit union is to have its principal place of business;

(b) that the existence of the credit union is perpetual;

(c) the par value of the shares of the credit union, which ~~shall~~ *must* be in $5 multiples of not less than $5 or more than $25;

(d) that the credit union ~~shall be~~ *is* organized under this chapter for the purposes set forth ~~therein~~ *in the articles*;

(e) the names and addresses of the subscribers to the articles of incorporation and the value of shares subscribed to by each, which ~~shall~~ *may* be not less than $5; and

(f) that the credit union may exercise ~~such~~ incidental powers ~~as~~ *that* are necessary or requisite to enable it to carry on effectively the business for which it is incorporated and those powers ~~which~~ *that* are inherent in the credit union as a legal entity.

(3) The subscribers shall prepare and adopt bylaws for the general government of the credit union, consistent with this chapter, and execute the ~~same~~ *bylaws* in duplicate.

(4) The subscribers shall select at least five qualified persons who agree to serve on the board of directors and at least three qualified persons who agree to serve on the supervisory committee *if the bylaws provide for a supervisory committee.* A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, ~~shall~~ *must* be executed by ~~those~~ *persons* who ~~so~~ agree *to serve*. This agreement ~~shall~~ *must* be submitted to the director of the department of commerce.

(5) The subscribers shall forward the articles of incorporation and the bylaws to the director of the department of commerce. The director may issue a certificate of approval if the articles and the bylaws are in conformity with this chapter and ~~he~~ *if the director* is satisfied that the proposed field of operation is favorable to the success of ~~such~~ *the* credit union and that the standing of the proposed organizers ~~is such as to give~~ *gives* assurance that ~~its~~ *the credit union's* affairs will be properly administered. ~~He~~ *The director* shall return a copy of the bylaws and the articles to the applicants or their representatives, which ~~shall~~ *must* be preserved in the permanent files of the credit union. The application ~~shall~~ *must* be acted upon within 30 days. The articles of incorporation ~~shall~~ *must* then be filed with the secretary of state who, upon payment of the ~~filing~~ fees ~~therefor~~ *for filing the articles*, shall issue a certificate of incorporation.

(6) The subscribers for a credit union charter ~~shall~~ *may* not transact any business until formal approval of the charter has been received."

Section 3. Section 32-3-403, MCA, is amended to read:

"**32-3-403. Election or appointment of officials.** (1) The credit union ~~shall~~ *must* be directed by a board, consisting of an odd number of *at least five* directors~~, at least five in number~~, to be elected at the annual membership meeting by and from the members. All members of the board shall hold office for ~~such~~ terms ~~as~~ *that* the bylaws provide.

(2) The board of directors shall appoint a supervisory committee of not less than three members at the organization meeting and within 30 days following each annual meeting of the members for ~~such~~ terms ~~as~~ *that* the bylaws provide. However, the bylaws of the credit union may provide that the supervisory committee members are elected for ~~such~~ terms ~~as~~ *that* the bylaws provide by the members of the credit union at the annual meeting of the members or *may* provide that the credit union may not have a supervisory committee. If the bylaws

provide that the credit union may not have a supervisory committee, the duties and powers of the supervisory committee, as described in 32-3-417 *and 32-3-418(1)*, are the responsibility of the board of directors.

(3) The board of directors shall appoint a credit committee, consisting of an odd number~~, not less than~~ *of at least* three *members*, for ~~such~~ terms ~~as~~ *that* the bylaws provide or, in lieu of a credit committee, *shall appoint* a credit manager."

Section 4. Section 32-3-502, MCA, is amended to read:

"32-3-502. Dividends. At the intervals and for the periods that the board of directors authorizes and after providing for the required reserves, the board of directors may declare dividends to be paid from the undivided earnings at the rates and upon the classes of shares that the board determines. ~~The dividends must be paid on all shares outstanding at the close of the period for which the dividend is declared.~~ *The dividends must be paid on all shares according to any method of calculation allowed by law.*"

Section 5. Section 32-3-602, MCA, is amended to read:

"32-3-602. Loan application. Every application for a loan ~~shall~~ *must* be made in ~~writing upon~~ a form ~~which~~ *that* the credit committee, credit manager, or loan officer prescribes. The application ~~shall~~ *must* state ~~the purpose for which the loan is desired and~~ the security, if any, offered. Each loan ~~shall~~ *must* be evidenced by a written document *or electronic data capable of being converted into written form.*"

Section 6. Effective date. [This act] is effective on passage and approval.

Approved February 21, 2001

CHAPTER NO. 26

[HB 37]

AN ACT REVISING THE REQUIREMENTS FOR REPORTING CERTIFIED TAXABLE VALUE BY THE DEPARTMENT OF REVENUE TO LOCAL TAXING AUTHORITIES; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF REVENUE REPORT CERTIFIED MILLAGE RATES; ELIMINATING THE REQUIREMENT THAT LOCAL TAXING AUTHORITIES ADOPT A RESOLUTION TO INCREASE MILL LEVIES IN EXCESS OF THE CERTIFIED MILLAGE RATES; AMENDING SECTIONS 7-6-2522, 15-10-202, AND 15-10-206, MCA; REPEALING SECTIONS 15-10-204, 15-10-205, 15-10-207, AND 15-10-208, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2522, MCA, is amended to read:

"7-6-2522. All-purpose levy — maximum. (1) The all-purpose levy is an annual levy upon the taxable value of all property in the county subject to taxation for county purposes in lieu of the levies specified in 7-6-2523. Subject to 15-10-420, the all-purpose levy may not exceed the lesser of:

(a) 55 mills on the dollar; or

(b) the total number of mills levied in the prior year pursuant to the levies set forth in 7-6-2523 ~~as certified by the department of revenue under 15-10-202~~.

(2) If the county governing body determines that the interests of the county would be served by an all-purpose levy, it shall specify its intent to impose the all-purpose levy in the resolution approving and adopting the annual budget."

Section 2. Section 15-10-202, MCA, is amended to read:

"**15-10-202. Certification of taxable values ~~and millage rates~~.** By the second Monday in July, the department shall certify to each taxing authority the *total* taxable value within the jurisdiction of the taxing authority. The department shall also send to each taxing authority a written statement of its best estimate of the total ~~assessed~~ *taxable* value of ~~all new construction and improvements not included on the previous property tax record and the value of deletions from the previous property tax record. Exclusive of new construction, improvements, and deletions, the department shall certify to each taxing authority a millage rate that will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the department shall use 95% of the taxable value appearing on the property tax record, exclusive of properties appearing for the first time in the property tax record~~ *newly taxable property, as described in 15-10-420(3).*"

Section 3. Section 15-10-206, MCA, is amended to read:

"**15-10-206. ~~Exceptions for~~ *Notification of* decisions of tax appeal boards.** The department shall notify each taxing authority of any change in the property tax record that results from actions by the state or county tax appeal boards. ~~An increase in the taxing authority's millage above the millage certified by the department or adopted by resolution or ordinance of the governing body of the taxing authority that is required solely by a reduction of the property tax record by the state or county tax appeal board may be adopted without further notice.~~"

Section 4. Repealer. Sections 15-10-204, 15-10-205, 15-10-207, and 15-10-208, MCA, are repealed.

Section 5. Effective date. [This act] is effective July 1, 2001.

Approved March 1, 2001

CHAPTER NO. 27

[HB 235]

AN ACT GENERALLY PROHIBITING THE USE OF BUSINESS NAME IDENTIFIERS OR OTHER LANGUAGE IN THE NAME, TITLE, OR ASSUMED NAME OF A BUSINESS ENTITY THAT WOULD STATE OR IMPLY THAT THE BUSINESS ENTITY IS A TYPE OF ENTITY OTHER THAN THE TYPE THAT IT IS; DEFINING "BUSINESS NAME IDENTIFIER"; AND AMENDING SECTIONS 30-13-201, 30-13-202, 35-1-308, 35-2-305, 35-4-206, 35-8-103, 35-10-703, AND 35-12-505, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-13-201, MCA, is amended to read:

"**30-13-201. Definitions.** As used in this part, the following definitions apply:

(1) "Assumed business name" means~~:~~

~~(a)~~ any business name other than the full, true, and correct name of a person~~; or~~

~~(b) the full, true, and correct name of a limited liability partnership~~.

(2) "Business name identifier" means a word or words used by a business entity in its name or title that describes the type or form of its business. Business name identifiers include but are not limited to corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, and abbreviations of those terms.

~~(2)~~*(3)* "Person" means any individual, partnership, corporation, *limited partnership, limited liability company, limited liability partnership,* or other association."

Section 2. Section 30-13-202, MCA, is amended to read:

"30-13-202. Registration of assumed business name — when prohibited. (1) When an application for registration or amendment to the registration of an assumed business name contains an assumed business name ~~which~~ *that* is the same as or not distinguishable on the record from an assumed business name already registered or from any corporate name, limited partnership name, limited liability company name, limited liability partnership name, trademark, or service mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) ~~When the applicant is other than a corporation, limited partnership, limited liability company, or limited liability partnership, the secretary of state may not register the assumed business name for which application is made if the name applied for contains or there is added at the end of the name the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of the words.~~ *An applicant for an assumed business name may not use a business name identifier that incorrectly states the type of entity that it is or incorrectly implies that it is a type of entity other than the type of entity that it is."*

Section 3. Section 35-1-308, MCA, is amended to read:

"35-1-308. Corporate name. (1) A corporate name:

(a) must contain the word "corporation", "incorporated", "company", or "limited"; the abbreviation "corp.", "inc.", "co.", or "ltd."; or words or abbreviations of similar meaning in another language; ~~and~~

(b) may not contain business name identifiers, as defined in 30-13-201, or language that states or implies that the corporation is a business other than a corporation; and

~~(b)~~*(c)* may not contain language that states or implies that the corporation is organized for a purpose or purposes other than those permitted by 35-1-114 and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of another corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under 35-1-309 or 35-1-311;

(c) the fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(d) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) the corporate name of a domestic corporation that has dissolved, but only distinguishable for a period of 120 days after the effective date of its dissolution; and

(f) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in the state.

(4) A corporation, limited liability company, or limited partnership may use the name, including the fictitious name, of another domestic or foreign corporation, limited liability company, or limited partnership that is used in this state if the other corporation, limited liability company, or limited partnership is incorporated or authorized to transact business in this state and the proposed user corporation, limited liability company, or limited partnership:

(a) has merged with the other corporation, limited liability company, or limited partnership;

(b) has been formed by reorganization of the other corporation, limited liability company, or limited partnership;

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation, limited liability company, or limited partnership; or

(d) has obtained written permission from the other corporation, limited liability company, or limited partnership for use of the name and has filed a copy of the grant of permission with the secretary of state.

(5) This chapter does not control the use of fictitious names."

Section 4. Section 35-2-305, MCA, is amended to read:

"**35-2-305. Corporate name.** (1) *(a)* A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by 35-2-117 and its articles of incorporation.

(b) A corporate name may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the corporation is an entity other than a nonprofit corporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(b) a corporate name reserved or registered under Title 35, chapter 1, 35-2-306, or 35-2-307;

(c) the fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable;

(d) the corporate name of a domestic business or nonprofit corporation that has been dissolved, but only distinguishable for a period of 120 days after the effective date of the dissolution; or

(e) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to do business in this state and the proposed user corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) This chapter does not control the use of fictitious names."

Section 5. Section 35-4-206, MCA, is amended to read:

"**35-4-206. Corporate name.** The name of a domestic or foreign professional corporation:

(1) (a) *(i)* except as provided in subsection (1)(b), must contain the words "professional corporation" or the abbreviation "P.C."; *and*

(ii) may not contain any other words to indicate the type of business that it is other than "professional corporation" or "P.C."; unless

(b) the name of a foreign corporation contains the words "professional services" or "P.S.":

(2) may not contain any word or phrase that indicates or implies that the corporation is organized for any purpose other than the purposes contained in its articles of incorporation;

(3) may not be the same as or deceptively similar to any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact business in this state, a name the exclusive right to which is reserved in the manner provided in the Montana Business Corporation Act, or the name of a corporation that has in effect a registration of its corporate name as provided in the Montana Business Corporation Act. This subsection does not apply if:

(a) the similarity results from the use in the corporate name of personal names of shareholders or former shareholders or of natural persons who were associated with a predecessor entity; or

(b) the corporation files with the secretary of state either the written consent of ~~such~~ *the* other corporation or holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make ~~such~~ *the* name distinguishable from ~~such~~ *the* other name or a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this state.

(4) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of the corporation."

Section 6. Section 35-8-103, MCA, is amended to read:

"**35-8-103. Name.** (1) *(a)* The name of each limited liability company as set forth in its articles of organization must contain the words "limited liability company" or "limited company" or the abbreviations "l.l.c.", "l.c.", "llc", or "lc". The word "limited" may be abbreviated as "ltd.", and the word "company" may be abbreviated as "co.".

(b) The name of a limited liability company as set forth in its articles of organization may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited liability company is a business other than a limited liability company.

(2) A limited liability company name must be distinguishable on the records of the secretary of state from:

(a) the name of any business corporation, nonprofit corporation, limited partnership, or limited liability company organized or reserved under the laws of this state;

(b) the name of any foreign business corporation, foreign nonprofit corporation, foreign limited partnership, or foreign limited liability company registered or qualified to do business in this state;

(c) any assumed business name, limited partnership name, trademark, service mark, or other name registered or reserved with the secretary of state; and

(d) the corporate name of a domestic corporation that has dissolved but only for a period of 120 days after the effective date of its dissolution.

(3) The use of the name of a limited liability company by another limited liability company or limited partnership is governed by 35-1-308.

(4) Contests over names registered under this section are governed by 35-1-310."

Section 7. Section 35-10-703, MCA, is amended to read:

"**35-10-703. Name of limited liability partnerships.** *(1)* The name of a limited liability partnership must contain the words "limited liability partnership", the abbreviation "l.l.p." or "llp", or other words or abbreviations that may be required or authorized by the laws of the state in which the partnership is formed, including without limitation "professional limited liability partnership" or the abbreviation "p.l.l.p." or "pllp".

(2) The name of a limited liability partnership may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited liability partnership is other than a limited liability partnership."

Section 8. Section 35-12-505, MCA, is amended to read:

"**35-12-505. Name.** (1) The name of each limited partnership as set forth in its certificate of limited partnership:

(a) must contain the words "limited partnership", the abbreviation "l.p.", or the designation "lp";

(b) may not contain the name of a limited partner unless:

(i) it is also the name of a general partner; or

(ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(c) may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited partnership is other than a limited partnership; and

~~(c)~~*(d)* must be distinguishable on the record from the name of any corporation, limited partnership, or limited liability company organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership in this state.

(2) The use of a limited partnership's name by another corporation, limited partnership, or limited liability company is governed by 35-1-308."

Approved March 1, 2001

CHAPTER NO. 28

[HB 246]

AN ACT CLARIFYING THAT A PERSON OWNING, CONTROLLING, OR IN POSSESSION OF LIVESTOCK OR A PERSON WHO OWNS PROPERTY DOES NOT HAVE A DUTY TO PREVENT LIVESTOCK FROM WANDERING ON HIGHWAYS; PROVIDING THAT A PERSON OWNING, CONTROLLING, OR IN POSSESSION OF LIVESTOCK OR A PERSON OWNING PROPERTY IS NOT SUBJECT TO LIABILITY FOR DAMAGES OR INJURY CAUSED BY AN ACCIDENT INVOLVING A MOTOR VEHICLE AND LIVESTOCK UNLESS THE OWNER OF THE LIVESTOCK OR PROPERTY WAS GROSSLY

NEGLIGENT OR ENGAGED IN INTENTIONAL MISCONDUCT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Limits on liability of livestock owner or property owner in accidents involving motor vehicles and livestock. (1) Except as provided in Title 60, chapter 7, part 2, for the highways referred to in 60-7-201, a person owning, controlling, or in possession of livestock or a person owning property has no duty to keep livestock from wandering on highways and is not subject to liability for damages to any property or for injury to a person caused by an accident involving a motor vehicle and livestock unless the owner of the livestock or property was grossly negligent or engaged in intentional misconduct.

(2) As used in this section, the following definitions apply:

(a) "Highway" has the meaning provided in 60-1-103(19);

(b) "Livestock" has the meaning provided in 15-1-101; and

(c) "Person" means an individual, partnership, corporation, limited liability company, limited liability partnership, or association.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27, chapter 1, part 7, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to accidents involving livestock and motor vehicles on or after [the effective date of this act].

Approved March 1, 2001

CHAPTER NO. 29

[HB 23]

AN ACT GENERALLY REVISING THE LAWS IN WHICH TAXABLE VALUE OF A LOCAL GOVERNMENT UNIT IS USED FOR ESTABLISHING DEBT LIMITS AND FOR OTHER PURPOSES; SUBSTITUTING ASSESSED VALUE FOR TAXABLE VALUE FOR THE ISSUANCE OF BONDS BY A POLITICAL SUBDIVISION FOR SELF-INSURANCE; SUBSTITUTING ASSESSED VALUE FOR TAXABLE VALUE FOR ESTABLISHING DEBT LIMITS FOR LOCAL GOVERNMENT UNITS; GENERALLY EXPANDING DEBT LIMITATIONS OF LOCAL GOVERNMENT UNITS; SUBSTITUTING ASSESSED VALUE FOR TAXABLE VALUE FOR THE PURPOSES OF SETTING A TAX LEVY FOR FIREFIGHTERS' DISABILITY AND PENSION FUNDS; SUBSTITUTING ASSESSED VALUE FOR TAXABLE VALUE FOR THE ISSUANCE OF BONDS FOR WORKERS' COMPENSATION INSURANCE; AMENDING SECTIONS 2-9-211, 7-3-1321, 7-6-2211, 7-6-4121, 7-7-107, 7-7-108, 7-7-2101, 7-7-2203, 7-7-2301, 7-7-4201, 7-7-4202, 7-13-237, 7-13-309, 7-13-4103, 7-14-236, 7-14-2524, 7-14-2525, 7-14-4402, 7-16-2327, 7-16-2433, 7-16-4104, 7-31-106, 7-31-107, 7-33-2109, 7-33-2404, 7-34-2131, 15-23-703, 15-36-324, 19-18-503, 19-18-504, 39-71-403, AND 85-9-406, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-211, MCA, is amended to read:

"**2-9-211. Political subdivision insurance.** (1) All political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part. Political subdivisions that elect to procure insurance jointly (pooled fund) under this section may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302(2) through (4). Political subdivisions that are not in a pooled fund may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302(2) through (4) only if the insurer carries an A rating or better by a nationally recognized rating company or is a Lloyds of London underwriter.

(2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve separately or jointly with other subdivisions.

(3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund, separately or jointly with other subdivisions, sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose or from the proceeds of bonds or notes authorized by subsection (5). Proceeds of the fund may be used only to pay claims under parts 1 through 3 of this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures must be invested, and all proceeds of the investment must be credited to the fund.

(5) A political subdivision may issue and sell its bonds or notes for purposes of funding a self-insurance or deductible reserve fund and costs incident to the reserve fund in an amount not exceeding ~~3%~~ *0.18%* of the ~~taxable~~ *total assessed* value of *taxable property, determined as provided in 15-8-111, within* the political subdivision as of the date of issuance. The bonds or notes must be authorized by resolution of the governing body, are payable from the taxes authorized by 2-9-212, may be sold at public or private sale, do not constitute debt within the meaning of any statutory debt limitation, and may contain other terms and provisions as the governing body determines. Two or more political subdivisions may agree pursuant to an interlocal agreement to exercise their respective borrowing powers under this section jointly and may authorize a joint board created pursuant to the agreement to exercise powers on their behalf."

Section 2. Section 7-3-1321, MCA, is amended to read:

"**7-3-1321. Authorization to incur indebtedness — limitation.** (1) The consolidated municipality may borrow money or issue bonds for any municipal purpose to the extent and in the manner provided by the constitution and laws of Montana for the borrowing of money or issuing of bonds by counties and cities and towns.

(2) The municipality may not become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate ~~exceeding 28%~~ *that exceeds 1.51%* of the ~~taxable~~ *total assessed* value of ~~the~~ taxable property, *determined as provided in 15-8-111,* ~~therein~~ *within the municipality*, as ascertained by the last assessment for state and county taxes prior to incurring

~~such~~ indebtedness. All warrants, bonds, or obligations in excess of ~~such~~ *the* amount given by or on behalf of the municipality ~~shall be~~ *are* void."

Section 3. Section 7-6-2211, MCA, is amended to read:

"7-6-2211. Authorization to conduct county business on a cash basis. (1) If the total indebtedness of a county, lawful when incurred, exceeds the limit ~~of 23%~~ established in 7-7-2101 by reason of great diminution of ~~taxable~~ *assessed* value, the county may conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of the county out of the cash in the county treasury derived from its current revenue and under the restrictions and regulations that may be imposed by the board of county commissioners of the county by a resolution ~~duly~~ adopted and included in the minutes of the board.

(2) This section does not restrict the right of the board to make the necessary tax levies for interest and sinking fund purposes, and this section does not affect the right of ~~any~~ *a* creditor of the county to pursue any remedy now given by law to obtain payment of a claim.

(3) Subsection (1) does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 4. Section 7-6-4121, MCA, is amended to read:

"7-6-4121. Authorization to conduct municipal business on a cash basis. (1) If the total indebtedness of a city or town has reached ~~17%~~ *0.92%* of the total ~~taxable~~ *assessed* value of ~~the~~ *taxable* property, *determined as provided in 15-8-111,* ~~of~~ *within* the city or town ~~subject to taxation~~, as ascertained by the last assessment for state and county taxes, the city or town may conduct its affairs and business on a cash basis as provided by subsection (2).

(2) (a) Whenever a city or town is conducting its business affairs on a cash basis, the reasonable and necessary current expenses of the city or town may be paid out of the cash in the city or town treasury and derived from its current revenue, under any restrictions and regulations as the city or town governing body may by ordinance prescribe.

(b) In the event that payment is made in advance, the city or town may require a cash deposit as collateral security and indemnity, equal in amount to the payment, and may hold the deposit as a special deposit with the city treasurer or town clerk, in package form, as a pledge for the fulfillment and performance of the contract or obligation for which the advance is made.

(c) Before the payment of the current expenses described in subsection (2)(a), the city or town council shall first set apart sufficient money to pay the interest upon its legal, valid, and outstanding bonded indebtedness and any sinking funds provided for and is authorized to pay all valid claims against funds raised by tax especially authorized by law for the purpose of paying the claims.

(3) This section does not apply to a city or town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 5. Section 7-7-107, MCA, is amended to read:

"7-7-107. Limitation on amount of bonds for city-county consolidated units. (1) Except as provided in 7-7-108, a city-county consolidated local government may not issue bonds for any purpose *in an amount* that, with all outstanding indebtedness, exceeds~~:~~

~~(a) (i) 39%~~ *2.5%* of the ~~taxable~~ *total assessed* value of ~~the~~ *taxable* property, *determined as provided in 15-8-111*, ~~of~~ *within* the ~~local~~ *consolidated* government ~~subject to taxation~~, as ascertained by the last assessment for state and county taxes~~; plus~~

~~(ii) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the local government for tax year 1999, multiplied by 39%, and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the local government for tax year 1999, multiplied by 39%; plus~~

~~(b) for bonds to be issued during fiscal year 2001, an additional 25% of the taxable value of class six property within the local government for tax year 1999, multiplied by 39%, and an additional 60% of the taxable value of class eight property within the local government for tax year 1999, multiplied by 39%;~~

~~(c) for bonds to be issued during fiscal year 2002, an additional 50% of the taxable value of class six property within the local government for tax year 1999, multiplied by 39%, and an additional 60% of the taxable value of class eight property within the local government for tax year 1999, multiplied by 39%;~~

~~(d) for bonds to be issued during fiscal year 2003, an additional 75% of the taxable value of class six property within the local government for tax year 1999, multiplied by 39%, and an additional 60% of the taxable value of class eight property within the local government for tax year 1999, multiplied by 39%;~~

~~(e) for bonds to be issued during fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the local government for tax year 1999, in each case of class six property, multiplied by 39%, and an additional 77% of the taxable value of class eight property within the local government for tax year 1999, multiplied by 39%;~~

~~(f) for bonds to be issued during fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the local government for tax year 1999, in each case of former class eight property, multiplied by 39%; and~~

~~(g) for bonds to be issued during the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of class eight property within the local government for tax year 1999, in each case of former class eight property, multiplied by 39%~~.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness."

Section 6. Section 7-7-108, MCA, is amended to read:

"**7-7-108. Authorization for additional indebtedness for water or sewer systems.** (1) For the purpose of constructing a sewer system or procuring a water supply or constructing or acquiring a water system for a city-county consolidated government that owns and controls the water supply and water system and devotes the revenue from the supply and system to the payment of the debt, a city-county consolidated government may incur an additional indebtedness by borrowing money or issuing bonds.

(2) The additional indebtedness that may be incurred by borrowing money or issuing bonds for the construction of a sewer system or for the procurement of a water supply or for both purposes may not in the aggregate exceed 10% ~~of~~ *over*

and above the debt limitation~~, as adjusted,~~ referred to in 7-7-107 ~~of the taxable value of the property of the consolidated government subject to taxation as ascertained by the last assessment for state and county taxes~~."

Section 7. Section 7-7-2101, MCA, is amended to read:

"**7-7-2101. Limitation on amount of county indebtedness.** (1) A county may not ~~become indebted in any manner or~~ *issue bonds or incur other indebtedness* for any purpose in an amount, including existing indebtedness, *that* in the aggregate ~~exceeding 23%~~ *exceeds 1.4%* of the total ~~of the taxable~~ *assessed* value of ~~the~~ *taxable* property, *determined as provided in 15-8-111,* ~~in~~ *within* the county, ~~subject to taxation~~ *as ascertained by the last assessment for state and county taxes.* ~~plus:~~

~~(a) (i) the value provided by the department of revenue in 15-36-324(13), as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness;~~

~~(ii) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the county for tax year 1999, multiplied by 23%, and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by 23%;~~

~~(b) for indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, multiplied by 23%;~~

~~(c) for indebtedness to be incurred during fiscal year 2001, an additional 25% of the taxable value of class six property within the county for tax year 1999, multiplied by 23%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 23%;~~

~~(d) for indebtedness to be incurred during fiscal year 2002, an additional 50% of the taxable value of class six property within the county for tax year 1999, multiplied by 23%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 23%;~~

~~(e) for indebtedness to be incurred during fiscal year 2003, an additional 75% of the taxable value of class six property within the county for tax year 1999, multiplied by 23%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 23%;~~

~~(f) for indebtedness to be incurred during fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the county for tax year 1999, in each case of class six property, multiplied by 23%, and an additional 77% of the taxable value of class eight property within the county for tax year 1999, multiplied by 23%;~~

~~(g) for indebtedness to be incurred during fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 23%; and~~

~~(h) for indebtedness to be incurred during the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 23%.~~

(2) ~~A~~ *Except as provided in 7-7-2402, 7-21-3413, and 7-21-3414, a* county may not incur indebtedness or liability for any single purpose to an amount exceeding $500,000 without the approval of a majority of the electors of the county voting at an election ~~to be~~ *as* provided by law~~, except as provided in 7-7-2402, 7-21-3413, and 7-21-3414~~.

(3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6."

Section 8. Section 7-7-2203, MCA, is amended to read:

"**7-7-2203. Limitation on amount of bonded indebtedness.** (1) Except as provided in ~~subsections~~ *subsection* (2) ~~and (3)~~, a county may not issue general obligation bonds for any purpose *in an amount* that, with all outstanding bonds and warrants except emergency bonds, ~~will exceed~~ *exceeds the debt limitation referred to in 7-7-2101* ~~11.25% of the total of the taxable value of the property in the county plus:~~

~~(a) (i) the value provided by the department of revenue under 15-36-324(13), to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds;~~

~~(ii) for general obligation bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, multiplied by 11.25%; and~~

~~(iii) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the county for tax year 1999, multiplied by 11.25%, and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by 11.25%;~~

~~(b) for general obligation bonds to be issued during fiscal year 2001, an additional 25% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;~~

~~(c) for general obligation bonds to be issued during fiscal year 2002, an additional 50% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;~~

~~(d) for general obligation bonds to be issued during fiscal year 2003, an additional 75% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;~~

~~(e) for general obligation bonds to be issued during fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the county for tax year 1999, in each case of class six property, multiplied by 11.25%, and an additional 77% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;~~

~~(f) for general obligation bonds to be issued during fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 11.25%; and~~

~~(g) for general obligation bonds to be issued during the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the~~

~~taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 11.25%.~~

~~(2) In addition to the bonds allowed by subsection (1), a county may issue bonds for the construction or improvement of a detention center that will not exceed 12.5% of the taxable value of the property in the county subject to taxation, plus the adjustments permitted by subsection (1)~~.

~~(3)~~*(2)* The limitation in subsection (1) does not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932, or to bonds issued for the repayment of tax protests lost by the county."

Section 9. Section 7-7-2301, MCA, is amended to read:

"**7-7-2301. Authority to issue refunding general obligation bonds.** (1) The board of county commissioners of ~~each~~ *a* county ~~of the state~~ may issue, negotiate, and sell coupon bonds on the credit of the county, as provided in part 22 and this part, for the purpose of refunding, paying, and redeeming optional, redeemable, or maturing bonds when:

(a) there are not sufficient funds available to pay the bonds or there is a reduction in debt service as a result of issuing refunding bonds pursuant to 7-7-2304; and

(b) it is considered in the best interests of the county to refund the bonds.

(2) (a) The board has the authority to negotiate with the holders of the bonds of the county for an agreement or agreements whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest on the bonds as full payment and satisfaction of the bonds, to enter into the agreement or agreements, and to issue refunding bonds for the amount agreed upon whenever:

(i) the total indebtedness of a county exceeds ~~5%~~ *0.3%* of the *total assessed* value of ~~the~~ taxable property, *determined as provided in 15-8-111,* ~~in~~ *within* the county, *as ascertained by the last assessment for state and county taxes*; and

(ii) the board of county commissioners of the county determines that the county is unable to pay and discharge the indebtedness in full.

(b) These bonds may be issued in more than one series if the circumstances require, and each series may be either amortization bonds or serial bonds. The plan agreed upon between the board and the bondholders must be embodied in full in the resolution providing for the issue of the bonds."

Section 10. Section 7-7-4201, MCA, is amended to read:

"**7-7-4201. Limitation on amount of bonded indebtedness.** (1) Except as ~~otherwise~~ provided *in 7-7-4202*, a city or town may not issue bonds or incur other indebtedness for any purpose in an amount that with all outstanding and unpaid indebtedness ~~will exceed 28%~~ *exceeds 1.51%* of the ~~taxable~~ *total assessed* value of ~~the~~ *taxable* property, *determined as provided in 15-8-111,* ~~in~~ *within* the city or town ~~subject to taxation~~, ~~to be~~ *as* ascertained by the last assessment for state and county taxes~~, plus:~~

~~(a) for bonds to be issued or other indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the city or town for tax year 1995, multiplied by 28%; and~~

~~(b) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the city or town for tax year 1999, multiplied by 28%, and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the city or town for tax year 1999, multiplied by 28%.~~

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

(3) The limitation in subsection (1) does not apply to bonds issued for the repayment of tax protests lost by the city or town."

Section 11. Section 7-7-4202, MCA, is amended to read:

"7-7-4202. Special provisions relating to water and sewer systems. (1) ~~Notwithstanding the provisions of~~ *A city or town may incur an additional indebtedness by borrowing money or issuing bonds beyond the amount authorized in* 7-7-4201~~,~~ for the purpose of constructing a sewer system, procuring a water supply, or constructing or acquiring a water system for a city or town that owns and controls the water supply and water system and devotes the revenue from the water supply and water system to the payment of the debt~~, a city or town may incur an additional indebtedness by borrowing money or issuing bonds~~.

(2) The additional total indebtedness that may be incurred by borrowing money or issuing bonds for the construction of a sewer system, for the procurement of a water supply, or for both of the purposes, including all indebtedness that is contracted and that is unpaid or outstanding, may not in the aggregate exceed 55% ~~of~~ *over and above* the debt limitation referred to in 7-7-4201 ~~of the taxable value of the property in the city or town subject to taxation, to be ascertained by the last assessment for state and county taxes, plus:~~

~~(a) for indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the city or town for tax year 1995, multiplied by 55%; and~~

~~(b) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the city or town for tax year 1999, multiplied by 55%, and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the city or town for tax year 1999, multiplied by 55%.~~"

Section 12. Section 7-13-237, MCA, is amended to read:

"7-13-237. Solid waste management district bonds authorized. (1) With the approval of the board of county commissioners, a solid waste management district may borrow money by the issuance of its bonds to:

(a) provide funds for payment of part or all of the cost of acquisition of property, construction of improvements, and purchase of equipment;

(b) provide an adequate working capital; and

(c) pay costs related to the planning, designing, and financing of a solid waste management system.

(2) The amount of bonds issued for the purposes provided ~~for~~ in subsection (1) and outstanding at any time may not exceed ~~22.5%~~ *1.4%* of the ~~taxable~~ *total assessed* value of ~~the~~ *taxable* property, *determined as provided in 15-8-111,* ~~in~~

within the district, as ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(3) Each year at the time of levying county taxes, the board of county commissioners shall fix and levy a tax upon all property within the district *that is* sufficient to raise the amount necessary for the payment of bonded indebtedness.

(4) The bonds must be authorized, sold, and issued and provisions must be made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of school districts in Title 20, chapter 9, part 4."

Section 13. Section 7-13-309, MCA, is amended to read:

"**7-13-309. Joint district bonds authorized.** (1) Upon approval of the board of directors of the joint district, a joint district may borrow money by the issuance of its bonds to:

(a) provide funds for payment of part or all of the cost of acquisition of property, construction of improvements, and purchase of equipment;

(b) provide an adequate working capital; and

(c) pay costs related to the planning, designing, and financing of a solid waste management system.

(2) The amount of bonds issued for the purposes provided in subsection (1) and outstanding at any time may not exceed ~~22.5%~~ *1.4%* of the ~~taxable~~ *total assessed* value of ~~the~~ *taxable* property, *determined as provided in 15-8-111,* ~~in~~ *within* the joint district, as ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(3) Each year at the time of levying county taxes, the board of county commissioners of each county in the joint district shall fix and levy a tax upon all property in the county within the joint district that is sufficient to raise the amount certified by the board of directors of the joint district for *the* payment of bonded indebtedness of the district.

(4) The bonds must be authorized, sold, and issued and provisions must be made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of school districts in Title 20, chapter 9, part 4. The issuance of the bonds must be approved in each county by the joint district electorate voting on the question."

Section 14. Section 7-13-4103, MCA, is amended to read:

"**7-13-4103. Limitation on indebtedness for acquisition of natural gas system.** The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, ~~must~~ *may* not at any time exceed ~~17%~~ *0.92%* of the total ~~taxable~~ *assessed* value of ~~the~~ *taxable* property, *determined as provided in 15-8-111,* ~~of~~ *within* the city or town ~~subject to taxation~~, as ascertained by the last assessment for state and county taxes."

Section 15. Section 7-14-236, MCA, is amended to read:

"**7-14-236. Limitation on bonded indebtedness.** The amount of bonds issued to provide funds for the district and outstanding at any time ~~shall~~ *may* not exceed ~~28%~~ *1.51%* of the ~~taxable~~ *total assessed* value of taxable property, *determined as provided in 15-8-111,* ~~therein~~ *within the district,* as ascertained by the last assessment for state and county taxes ~~previous~~ *prior* to the issuance of ~~such~~ *the* bonds."

Section 16. Section 7-14-2524, MCA, is amended to read:

"**7-14-2524. Limitation on amount of bonds issued ~~— excess void~~.** (1) Except as otherwise provided in 7-7-2203, 7-7-2204, and this section, a county may not issue bonds *in an amount* that, with all outstanding bonds and warrants except emergency bonds, ~~will exceed 11.25%~~ *exceeds 0.68%* of the total ~~of the taxable~~ *assessed* value of ~~the~~ *taxable* property, *determined as provided in 15-8-111,* ~~in~~ *within* the county, *as ascertained by the last assessment for state and county taxes.* ~~plus:~~

~~(a) (i) the value provided by the department of revenue under 15-36-324(13). The taxable property and the amount of taxes levied on new production, production from horizontally completed wells, and incremental production must be ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.~~

~~(ii) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the county for tax year 1999, multiplied by 11.25%, and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by 11.25%;~~

~~(b) for fiscal year 2001, an additional 25% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;~~

~~(c) for fiscal year 2002, an additional 50% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;~~

~~(d) for fiscal year 2003, an additional 75% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;~~

~~(e) for fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the county for tax year 1999, in each case of class six property, multiplied by 11.25%, and an additional 77% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;~~

~~(f) for fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 11.25%; and~~

~~(g) for the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 11.25%.~~

(2) A county may issue bonds *in an amount* that, with all outstanding bonds and warrants, exceeds ~~11.25%~~ *0.68%* but does not exceed ~~22.5%~~ *1.4%* of the total ~~of the taxable~~ *assessed* value of ~~the~~ *taxable* property~~, as adjusted in subsection (1), plus an additional 50% of the taxable value of telecommunications property under 15-6-141 within the county for tax year 1999, multiplied by the amount that exceeds 11.25% but does not exceed 22.5% and an additional 50% of the~~

~~taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by the amount that exceeds 11.25% but does not exceed 22.5%~~, *determined as provided in 15-8-111,* when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways that have been destroyed or damaged by an act of God or by a disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county may not exceed ~~22.5%~~ *1.4%* of the total ~~of the~~ ~~taxable~~ *assessed* value of ~~the~~ *taxable* property, *determined as provided in 15-8-111,* within the county~~, as adjusted in this section~~, *as ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.*"

Section 17. Section 7-14-2525, MCA, is amended to read:

"**7-14-2525. Refunding agreements and refunding bonds authorized.** (1) Whenever the total indebtedness of a county exceeds ~~22.5%~~ *1.4%* of the total ~~of the taxable~~ *assessed* value of ~~the~~ *taxable* property, *determined as provided in 15-8-111,* ~~in~~ *within* the county~~, as adjusted in 7-14-2524,~~ and the board determines that the county is unable to pay the indebtedness in full, the board may:

(a) negotiate with the bondholders for an agreement under which the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest in satisfaction of the bonds;

(b) enter into the agreement;

(c) issue refunding bonds for the amount agreed upon.

(2) These bonds may be issued in more than one series, and each series may be either amortization or serial bonds.

(3) The plan agreed upon between the board and the bondholders must be embodied in full in the resolution providing for the issuance of the bonds."

Section 18. Section 7-14-4402, MCA, is amended to read:

"**7-14-4402. Limit on indebtedness to provide bus service.** The total amount of indebtedness authorized under 7-14-4401(1) to be contracted in any form, including ~~the then-existing~~ *existing* indebtedness, may not at any time exceed ~~28%~~ ~~of~~ the ~~total taxable value of the property of the city or town subject to taxation as ascertained by the last assessment for state and county taxes~~ *debt limitation established in 7-7-4201.* ~~No money~~ *Money* may *not* be borrowed or bonds issued for the purposes specified in 7-14-4401(1) until the proposition has been submitted to the vote of the taxpayers of the city or town and ~~the~~ *a* majority vote *is* cast in its favor."

Section 19. Section 7-16-2327, MCA, is amended to read:

"**7-16-2327. Indebtedness for park purposes.** (1) Subject to the provisions of subsection (2), a county park board, in addition to powers and duties given under law, may contract an indebtedness ~~in~~ *on* behalf of a county, upon the credit of the county, in order to carry out its powers and duties.

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including ~~the then-existing~~ *existing* indebtedness, may not at any time exceed ~~13%~~ *0.79%* of the total ~~of the taxable~~ *assessed* value of ~~the~~ taxable property, *determined as provided in 15-8-111,* ~~in~~ *within* the county, as

ascertained by the last assessment for state and county taxes ~~previous~~*prior* to the incurring of the indebtedness~~; plus:~~

~~(i) the value provided by the department of revenue under 15-36-324(13);~~

~~(ii) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the city or town for tax year 1999, multiplied by 13%, and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by 13%;~~

~~(iii) for fiscal year 2001, an additional 25% of the taxable value of class six property within the county for tax year 1999, multiplied by 13%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 13%;~~

~~(iv) for fiscal year 2002, an additional 50% of the taxable value of class six property within the county for tax year 1999, multiplied by 13%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 13%;~~

~~(v) for fiscal year 2003, an additional 75% of the taxable value of class six property within the county for tax year 1999, multiplied by 13%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 13%;~~

~~(vi) for fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the county for tax year 1999, in each case of class six property, multiplied by 13%, and an additional 77% of the taxable value of class eight property within the county for tax year 1999, multiplied by 13%;~~

~~(vii) for fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 13%; and~~

~~(viii) for the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 13%~~.

(b) Money may not be borrowed on bonds issued for the purchase of lands and improving the land for any purpose until the proposition has been submitted to the vote of those qualified under the provisions of the state constitution to vote at the election in the affected county and a majority vote is cast in favor of the bonds."

Section 20. Section 7-16-2433, MCA, is amended to read:

"**7-16-2433. Park district bonds authorized.** (1) A county park district may borrow money by the issuance of its bonds to provide funds for payment of all or part of the cost of construction, acquisition, furnishing, equipping, extension, and betterment of park facilities and to provide an adequate working capital for ~~such~~ *park* facilities.

(2) The amount of bonds issued for ~~such purchase~~ *the purposes provided in subsection (1)* and outstanding at any time may not exceed ~~20%~~ *1.22%* of the ~~taxable~~ *total assessed* value of ~~the~~ *taxable* property, *determined as provided in*

15-8-111, within the district, as ascertained by the last assessment for state and county taxes ~~previous~~ *prior* to the issuance of ~~such~~ *the* bonds.

(3) ~~Such~~ *The* bonds must be authorized, sold, and issued and provisions made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of school districts by Title 20, chapter 9, part 4."

Section 21. Section 7-16-4104, MCA, is amended to read:

"7-16-4104. Authorization for municipal indebtedness for various cultural, social, and recreational purposes. (1) A city or town council or commission may contract an indebtedness on behalf of the city or town, upon the credit of the city or town, by borrowing money or issuing bonds:

(a) for the purpose of purchasing and improving lands for public parks and grounds;

(b) for procuring by purchase, construction, or otherwise a swimming pool facility, athletic field, skating rink, playground, museum, golf course, site and building for a civic center, youth center, or any combination of these facilities; and

(c) for furnishing, equipping, repairing, or rehabilitating a swimming pool facility, athletic field, skating rink, playground, museum, golf course, civic center, or youth center.

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including the ~~then-existing~~ *existing* indebtedness, may not at any time exceed ~~16.5%~~ *0.9%* of the ~~taxable~~ *total assessed* value of ~~the~~ taxable property, *determined as provided in 15-8-111,* ~~of~~ *within* the city or town, as ascertained by the last assessment for state and county taxes ~~previous~~ *prior* to the incurring of the indebtedness~~, plus:~~

~~(i) for general obligation bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995 and, for general obligation bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the city for tax year 1995, in each case of class eight property, multiplied by 16.5%;~~

~~(ii) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the city or town for tax year 1999, multiplied by 16.5%, and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the city or town for tax year 1999, multiplied by 16.5%~~.

(b) Money may not be borrowed for any purpose on bonds issued for the purchase of lands and improving the land until the proposition has been submitted to the vote of the qualified electors of the city or town and a majority vote is cast in favor of the proposition."

Section 22. Section 7-31-106, MCA, is amended to read:

"7-31-106. Authorization for county to issue bonds — election required. (1) If the petition is presented to the board of county commissioners, the board shall, for the purpose of raising money to meet the payments under the terms and conditions of the contract and other necessary and proper expenses for the contract and for the approval or disapproval of the petition:

(a) ascertain, within 30 days after submission of the petition, the existing indebtedness of the county in the aggregate; and

(b) submit, after ascertaining the aggregate indebtedness, to the electors of the county the proposition to approve or disapprove the contract and the issuance of bonds necessary to carry out the contract. The election must be held in conjunction with a regular or primary election.

(2) The amount of the bonds authorized by this section may not exceed ~~22.5% of the taxable value of the taxable property in the county, inclusive of the existing indebtedness of the county, to be ascertained by the last assessment for state and county taxes previous~~ *the debt limitation established in 7-7-2203 prior* to the issuance of the bonds ~~and incurring of the indebtedness~~."

Section 23. Section 7-31-107, MCA, is amended to read:

"7-31-107. Authorization for municipality to issue bonds — election required. (1) If the petition is presented to the council of any incorporated city or town, the council, for the purpose of raising money to meet the payments under the terms and conditions of the contract and other necessary and proper expenses for the contract and for the approval or disapproval of the petition, shall:

(a) ascertain, within 30 days after submission of the petition, the aggregate indebtedness of the city or town; and

(b) submit, after ascertaining the aggregate indebtedness, to the electors of the city or town the proposition to approve or disapprove the contract and the issuance of bonds necessary to carry out the contract. The election must be held in conjunction with a regular or primary election.

(2) The amount of the bonds authorized by this section may not exceed ~~16.5%~~ *0.9%* of the ~~taxable~~ *total assessed* value of ~~the~~ taxable property, *determined as provided in 15-8-111,* ~~in~~ *within* the city or town, inclusive of the existing indebtedness of the city or town, ~~to be~~ *as* ascertained in the manner provided in this part."

Section 24. Section 7-33-2109, MCA, is amended to read:

"7-33-2109. Tax levy, debt incurrence, and bonds authorized. (1) At the time of the annual levy of taxes, the board of county commissioners may, subject to 15-10-420, levy a special tax upon all property within a rural fire district for the purpose of buying or maintaining fire protection facilities and apparatus, including emergency response apparatus, for the district or for the purpose of paying to a city, town, or private fire service the consideration provided for in any contract with the council of the city, town, or private fire service for the purpose of furnishing fire protection service to property within the district. The tax must be collected as are other taxes.

(2) The board of county commissioners or the trustees, if the district is governed by trustees, may pledge the income of the district, subject to the requirements and limitations of 7-33-2105(3), to secure financing necessary to procure equipment and buildings to house the equipment.

(3) In addition to the levy authorized in subsection (1), a district may borrow money by the issuance of bonds to provide funds for the payment of all or part of the cost of buying or maintaining fire protection facilities and apparatus, including emergency response apparatus, for the district.

(4) The amount of debt incurred pursuant to subsection (2) and the amount of bonds issued pursuant to subsection (3) and outstanding at any time may not exceed ~~18%~~ *1.1%* of the ~~taxable~~ *total assessed* value of ~~the~~ *taxable* property, *determined as provided in 15-8-111,* ~~in~~ *within* the district, as ascertained by the most recent assessment for state and county taxes prior to the incurrence of debt or the issuance of the bonds.

(5) The bonds must be authorized, sold, and issued and provisions must be made for their payment in the manner and subject to the conditions and limitations prescribed for the issuance of bonds by counties under Title 7, chapter 7, part 22."

Section 25. Section 7-33-2404, MCA, is amended to read:

"7-33-2404. Financing of fire service area — fee on structures. (1) In the resolution creating the fire service area and by resolution as necessary after creation of the fire service area, the board of county commissioners shall establish a schedule of rates to be charged owners of structures that are benefited by the services offered by the fire service area.

(2) The rates must be applied on a fair and equal basis to all classes of structures benefited by the fire service area.

(3) The board of county commissioners shall collect the funds necessary to operate the fire service area by charging the area rate as a special assessment on the owners of structures and shall collect the assessments with the general taxes of the county. The assessments are a lien on the assessed property.

(4) The board of county commissioners or the trustees, if the fire service area is governed by trustees under 7-33-2403, may pledge the income of the fire service area to secure financing necessary to procure equipment and buildings to house the equipment. The outstanding amount of the indebtedness may not exceed ~~18%~~ *1.1%* of the ~~taxable valuation~~ *total assessed value* of *taxable property, determined as provided in 15-8-111, within* the area, *as ascertained by the last assessment for state and county taxes prior to the incurring of the indebtedness.*"

Section 26. Section 7-34-2131, MCA, is amended to read:

"7-34-2131. Hospital district bonds and notes authorized. (1) (a) A hospital district may borrow money by the issuance of its bonds to provide funds for payment of part or all of the cost of acquisition, furnishing, equipment, improvement, extension, and betterment of hospital facilities and to provide an adequate working capital for a new hospital.

(b) The amount of bonds issued for ~~such purpose~~ *the purposes referred to in subsection (1)(a)* and outstanding at any time may not exceed ~~22.5%~~ *1.4%* of the ~~taxable~~ *total assessed* value of ~~the~~ *taxable* property, *determined as provided in 15-8-111,* ~~therein~~ *within the district,* as ascertained by the last assessment for state and county taxes ~~previous~~ *prior* to the issuance of ~~such~~ *the* bonds.

(c) ~~Such~~ *The* bonds ~~shall~~ *must* be authorized, sold, and issued and provisions made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of school districts by Title 20, chapter 9, part 4.

(2) (a) A hospital district may borrow money by the issuance of notes to provide funds to finance the costs described in subsection (1) and to finance the working capital requirements of the district. The notes must be authorized and in a form and terms prescribed by a resolution adopted by the board of trustees. The notes must mature over a term not to exceed 15 years.

(b) The principal and interest on the notes must be paid from the taxes levied pursuant to 7-34-2133 and 7-34-2134, exclusive of the taxes levied to pay bonds issued in accordance with subsection (1), and all other revenue of the district. The annual amount of principal and interest payable on notes in any fiscal year must be included in the district's budget for that year.

(c) The notes may be secured by a mortgage of or a security interest in all or part of the district's assets and by a pledge of the taxes and revenue of the district, or either of them.

(d) Notes may not be issued unless the projected annual revenue of the district, including the taxes levied pursuant to 7-34-2133 and 7-34-2134 but exclusive of the taxes levied to pay bonds, is at least equal to the sum of the cost of operating and maintaining the hospital district plus the maximum amount of principal and interest due in any future fiscal year on the notes proposed to be issued and all notes outstanding upon the issuance of the proposed notes.

(3) ~~Nothing herein shall~~ *This section may not* be construed to preclude the provisions of Title 50, chapter 6, part 1, allowing the state to apply for and accept federal funds."

Section 27. Section 15-23-703, MCA, is amended to read:

"**15-23-703. Taxation of gross proceeds — taxable value for ~~bonding~~ *county classification* and guaranteed tax base aid to schools.** (1) The department shall compute from the reported gross proceeds from coal a tax roll that must be transmitted to the county treasurer on or before September 15 each year. The department may not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against the value of the reported gross proceeds as provided in 15-23-701(1)(d). The county treasurer shall proceed to give full notice, as provided in 15-16-101, to each coal producer of the taxes due and shall collect the taxes.

(2) For ~~bonding,~~ county classification~~,~~ and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102.

(3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the state, county, and eligible school districts in the county the amount of the coal gross proceeds tax, determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated, and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

(4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount determined under subsection (3) and the amounts received under 15-23-706:

(a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and

(b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988 production or used nontax revenue, such as impact aid money, as provided in 20 U.S.C. 7701, et seq., in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in the 1990 school fiscal year in the school district.

(5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each year, send the excess revenue, excluding any protested coal gross proceeds tax revenue, to the department for redistribution as provided in 15-23-706.

(b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection (4)(a), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(8) The county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year."

Section 28. Section 15-36-324, MCA, is amended to read:

"**15-36-324. Distribution of taxes — rules.** (1) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) Except as provided in subsections (3) through (5), oil production taxes must be distributed as follows:

(a) The amount equal to 39.3% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (9).

(b) The remaining 60.7% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on qualifying production occurring during the first 12 months of production must be distributed as provided in subsection (10).

(4) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(b) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (9).

(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the first 10 barrels of stripper oil production wells must be distributed as provided in subsection (10).

(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper well exemption production from pre-1985 wells and post-1985 wells must be distributed as provided in subsection (10).

(6) Except as provided in subsections (7) and (8), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (11).

(b) The remaining 86% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (6)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(7) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from wells occurring during the first 12 months of production must be distributed as provided in subsection (10).

(8) The amount equal to 100% of natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(9) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil production taxes specified in subsections (2)(a) and (4)(b), including late payment interest and penalty collected, as follows:

(a) 86.21% to the state general fund;

(b) 5.17% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 8.62% to be distributed as provided in 15-38-106(2).

(10) The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3), (4)(a), (5)(a), (5)(c), (7), and (8), including late payment interest and penalty collected, as follows:

(a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(b) 62.5% to be distributed as provided in 15-38-106(2).

(11) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:

(a) 76.8% to the state general fund;

(b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 14.5% to be distributed as provided in 15-38-106(2).

(12) (a) By the dates referred to in subsection (13), the department shall, except as provided in subsection (12)(b), calculate and distribute oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) to each eligible county in proportion to the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) that are attributable to production in that county.

(b) The department shall distribute 5% of the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) from pre-1999 wells to eligible counties in proportion to the underfunding that would have occurred from the tax liability distribution of pre-1985 oil and natural gas production taxes for production in calendar year 1997.

(c) Except as provided in subsection (12)(d), the county treasurer shall distribute the money received under subsection (12)(b) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(d) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (12)(c), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (12)(d)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(e) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (12)(e)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(f) The county treasurer shall distribute oil and natural gas production taxes received under subsection (12)(a) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The allocation to the county in subsection (12)(f) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(h) The money distributed in subsection (12)(f) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(i) The oil and natural gas production taxes distributed under subsection (12)(c) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the state treasurer.

(j) The oil and natural gas production taxes distributed under subsection (12)(f) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the state treasurer.

(k) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (12)(i) and (12)(j) is for the exclusive use and benefit of the county and school taxing units.

(13) The department shall remit the amounts to be distributed in subsection (12) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(14) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes ~~and for county bonding purposes~~.

(15) (a) In the event that the board ~~of oil and gas conservation~~ revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board ~~of oil and gas conservation~~ for ~~the~~ *its* expenses ~~of the board~~.

(b) Before the department adopts a rule pursuant to subsection (15)(a), it shall present the proposed rule to the appropriate administrative rule review committee.

(16) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502."

Section 29. Section 19-18-503, MCA, is amended to read:

"**19-18-503. Special tax levy for fund required.** (1) The purpose of this section is to provide a means by which each disability and pension fund may be maintained at a level equal to at least ~~4%~~ *0.21%* but no more than ~~10%~~ *0.52%* of the ~~taxable valuation~~ *total assessed value* of ~~all~~ taxable property, *determined as provided in 15-8-111*, within the limits of the city or town.

(2) Whenever the fund contains less than ~~4%~~ *0.21%* of the ~~taxable valuation~~ *total assessed value* of all taxable property within the limits of the city or town, the governing body of the city or town shall, at the time of the levy of the annual tax, levy a special tax as provided in 19-18-504. The special tax must be collected as other taxes are collected and, when collected, must be paid into the disability and pension fund.

(3) If a special tax for the disability and pension fund is levied by a third-class city or town using the all-purpose mill levy, the special tax levy must be made in addition to the all-purpose levy."

Section 30. Section 19-18-504, MCA, is amended to read:

"**19-18-504. Amount of special tax levy.** Whenever the fund contains an amount that is less than ~~4%~~ *0.21%* of the ~~taxable valuation~~ *total assessed value* of ~~all~~ taxable property, *determined as provided in 15-8-111*, ~~in~~ *within* the city or town, the city or town council shall, *subject to 15-10-420*, levy an annual special tax of not less than 1 mill and not more than 4 mills on each dollar of taxable valuation of all taxable property within the city or town. When the fund contains an amount that is less than ~~10%~~ *0.52%* but more than ~~4%~~ *0.21%* of the ~~taxable valuation~~ *total assessed value* of all taxable property ~~in~~ *within* the city or town, the city or town council may, if authorized by the voters, levy an annual special tax of not less than 1 mill and not more than 4 mills on each dollar of taxable valuation."

Section 31. Section 39-71-403, MCA, is amended to read:

"**39-71-403. Plan three exclusive for state agencies — election of plan by public corporations — financing of self-insurance fund — exemption for university system — definition.** (1) Except as provided in subsection (5), if a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, are exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by a state agency are considered to be ordinary and necessary expenses of the agency. The agency shall make appropriation of and pay the sums into the state fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate the ordinary and necessary expense in a budget, estimate of expenses, appropriations, ordinances, or otherwise.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, plan No. 2, or plan No. 3, separately or jointly with any other public corporation, other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance or issue bonds or notes pursuant to subsection (3)(b). A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) (a) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in ~~this chapter and~~ chapter 72 *and this chapter* and to discharge all liabilities that are reasonably incurred during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by ~~this chapter and~~ chapter 72 *and this chapter* and for actual and necessary expenses required for the efficient administration of the fund, including debt service on any bonds and notes issued pursuant to subsection (3)(b).

(b) (i) A public corporation, other than a state agency, separately or jointly with another public corporation, other than a state agency, may issue and sell its bonds and notes for the purpose of establishing, in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a) and to pay the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an amount not exceeding ~~3%~~ *0.18%* of the ~~taxable valuation~~ *total assessed value of taxable property, determined as provided in 15-8-111,* of the public corporation as of the date of issue. The bonds and notes must be authorized by resolution of the governing body of the public corporation and are payable from an annual property tax levied in the amount necessary to pay principal and interest on the bonds or notes. This authority to levy an annual property tax exists despite any provision of law or maximum levy limitation to the contrary. The revenue derived from the sale of the bonds and notes may not be used for any other purpose.

(ii) The bonds and notes:

(A) may be sold at public or private sale;

(B) do not constitute debt within the meaning of any statutory debt limitation; and

(C) may contain other terms and provisions ~~as~~ *that* the governing body determines.

(iii) Two or more public corporations, other than state agencies, may agree to exercise their respective borrowing powers jointly under this subsection (3)(b) or may authorize a joint board to exercise the powers on their behalf.

(iv) The fund established from the proceeds of bonds and notes issued and sold under this subsection (3)(b) may, if sufficient, be used in lieu of a surety bond, reinsurance, specific and aggregate excess insurance, or any other form of additional security necessary to demonstrate the public corporation's ability to discharge all liabilities as provided in subsection (3)(a). Subject to the ~~3% of taxable valuation~~ *total assessed value* limitation in subsection (3)(b)(i), a public corporation may issue bonds and notes to establish a fund sufficient to discharge liabilities for periods greater than 1 year.

(4) All money in the fund established under subsection (3)(a) not needed to meet immediate expenditures must be invested by the governing body of the public corporation or the joint board created by two or more public corporations as provided in subsection (3)(b)(iii), and all proceeds of the investment must be credited to the fund.

(5) The provisions of subsection (1) do not apply to the Montana university system.

(6) As used in subsections (2) through (4), "public corporation" includes the Montana university system."

Section 32. Section 85-9-406, MCA, is amended to read:

"85-9-406. Directors' powers over finance. On behalf of the district, the directors may:

(1) borrow money and incur indebtedness and issue bonds to finance works as provided by this chapter;

(2) in addition to all voted indebtedness, borrow money as necessary, but the amount ~~shall~~ *may* not at any one time exceed ~~5%~~ *0.23%* of the ~~taxable valuation~~ *total assessed value* of *taxable* real property, *determined as provided in 15-8-111,* ~~in~~ *within* the district, *as ascertained by the last assessment for state and county taxes prior to the issuance of the bonds*;

(3) mortgage property owned by the district if the terms of the mortgage are not inconsistent with the provisions of a resolution authorizing the sale of bonds;

(4) use any surplus funds to purchase outstanding bonds;

(5) refund bonded indebtedness incurred by the district as provided by this chapter;

(6) after a hearing held in accordance with 85-9-602, make assessments sufficient to meet the budgetary requirements for the coming year."

Section 33. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 34. Effective date. [This act] is effective July 1, 2001.

Section 35. Applicability. (1) [This act] applies to the authorization and issuance of bonds occurring on or after July 1, 2001.

(2) Debt limits established under [this act] do not apply to bonds authorized before July 1, 2001, regardless of when the bonds are issued.

Approved March 2, 2001

CHAPTER NO. 30

[HB 155]

AN ACT REVISING LAWS GOVERNING THE FINANCING OF AND PAYMENT FOR REAL PROPERTY PURCHASES; INCREASING THE TIME FOR GIVING A CERTIFICATE OF DISCHARGE FROM A MORTGAGE; INCREASING THE PENALTY FOR REFUSAL OR FAILURE TO GIVE THE CERTIFICATE ON TIME; INCREASING FROM 30 TO 40 ACRES THE MAXIMUM SIZE OF ACREAGE COVERED BY THE SMALL TRACT FINANCING ACT OF MONTANA; AMENDING SECTIONS 71-1-212, 71-1-302, 71-1-303, AND 71-1-304, MCA; AND REPEALING SECTION 70-32-221, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-1-212, MCA, is amended to read:

"**71-1-212. Penalties for failure to give certificate of discharge or release after full performance.** ~~Any mortgagee or his personal representative or assignee, as the case may be, after~~ *After* the full performance of the conditions of ~~the~~ *a* mortgage~~,~~ *and* whether before or after a breach ~~thereof~~ *of the mortgage, a mortgagee or the personal representative or assignee of the mortgagee* who ~~shall for the space of 30 days after being requested refuse or neglect~~ *refuses or neglects* to execute, acknowledge, and deliver to the mortgagor a certificate of discharge or release ~~thereof shall be~~ *of the mortgage within 90 days after a request for one is* liable to the mortgagor~~, his~~ *or the mortgagor's* heirs~~,~~ or assigns ~~in~~ the sum of ~~$100~~ *$500* and ~~also for~~ all actual damages ~~occasioned by such~~ *resulting from the* neglect or refusal."

Section 2. Section 71-1-302, MCA, is amended to read:

"**71-1-302. Policy.** Because the financing of homes and business expansion is essential to the development of the state of Montana and because financing of homes and business expansion, usually involving areas of real estate of not more than ~~30~~ *40* acres, has been restricted by the laws relating to mortgages of real property and because more financing of homes and business expansion is available if the parties can use security instruments and procedures not subject to all the provisions of the mortgage laws, it is ~~hereby declared to be~~ the public policy of the state of Montana to permit the use of trust indentures for estates in real property of not more than ~~30~~ *40* acres as provided in this part."

Section 3. Section 71-1-303, MCA, is amended to read:

"**71-1-303. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given or ~~his~~ *the person's* successor in interest, ~~and~~ who ~~shall~~ *may* not be the trustee.

(2) "Grantor" means the person conveying real property by a trust indenture as security for the performance of an obligation.

(3) ~~"Thirty acres" means 30 acres of land.~~

~~(4)~~ "Trust indenture" means an indenture executed in conformity with this part and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.

~~(5)~~*(4)* "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture or ~~his~~ *the person's* successor in interest."

Section 4. Section 71-1-304, MCA, is amended to read:

"71-1-304. Trust indentures authorized — power of sale for breach in trustee. (1) ~~Transfers~~ *A transfer* in trust of ~~any~~ *an* interest in real property of an area not exceeding ~~30~~ *40* acres may be made to secure the performance of an obligation of a grantor or any other person named in the indenture to a beneficiary ~~provided that it is unlawful to substitute~~. *However,* a trust indenture *may not be substituted* for ~~any~~ *a* mortgage *that was* in existence on March 5, 1963.

(2) ~~Where any~~ *When a* transfer in trust of ~~any~~ *an* interest in real property is made to secure the performance of the obligation referred to in subsection (1), a power of sale is conferred upon the trustee to be exercised after a breach of the obligation for which the transfer is security.

(3) A trust indenture executed in conformity with this part may be foreclosed by advertisement and sale in the manner provided in this part or, at the option of the beneficiary, by judicial procedure as provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision in the trust indenture.

(4) ~~Where the~~ *If a* trust indenture states that the real property involved does not exceed ~~30~~ *40* acres, the statement is binding upon all parties and conclusive as to compliance with the provisions of this part relative to the power to make a transfer, trust, and power of sale."

Section 5. Repealer. Section 70-32-221, MCA, is repealed.

Approved March 2, 2001

CHAPTER NO. 31

[HB 113]

AN ACT REVISING THE GRAZING DISTRICT LAWS TO REMOVE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM STATE DISTRICT LAWS EXCEPT FOR ADMINISTRATIVE ATTACHMENT PURPOSES; CHANGING THE REQUIREMENT FOR WRITTEN NOTICE TO THE COMMISSION MEMBERS, WITH REGARD TO MEETINGS, FROM 14 DAYS TO 7 DAYS; CONFORMING USES TO DEFINED TERMS; AMENDING SECTIONS 76-16-102, 76-16-103, 76-16-104, 76-16-106, 76-16-107, 76-16-108, 76-16-109, 76-16-111, 76-16-112, 76-16-113, 76-16-201, 76-16-202, 76-16-203, 76-16-206, 76-16-208, 76-16-209, 76-16-211, 76-16-212, 76-16-213, 76-16-301, 76-16-302, 76-16-303, 76-16-307, 76-16-309, 76-16-310, 76-16-316, 76-16-317, 76-16-318, 76-16-320, 76-16-323, 76-16-325, 76-16-401, 76-16-402, 76-16-403, 76-16-404, 76-16-406, 76-16-407, 76-16-408, 76-16-409, 76-16-410, 76-16-411, 76-16-412, 76-16-413, AND 76-16-414, MCA; REPEALING SECTION 76-16-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-16-102, MCA, is amended to read:

"76-16-102. Purpose. The purpose of this chapter is to provide for the conservation, protection, restoration, and proper utilization of grass, forage, and range resources of the state of Montana, to provide for the incorporation of cooperative nonprofit ~~grazing~~ *state* districts, to provide a means of cooperation with the secretary of the interior as provided in the federal act known as the Taylor Grazing Act and any other governmental agency or department having jurisdiction over lands belonging to the United States or other state or federal agency as well as agencies having jurisdiction over federal lands, to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing lands within the state where the ownership is diverse and the lands intermingled, and to provide for the stabilization of the livestock industry and the protection of dependent commensurate ~~ranch~~ properties ~~as defined herein~~."

Section 2. Section 76-16-103, MCA, is amended to read:

"76-16-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Animal unit" means one cow, one horse, or five sheep, 6 months of age or older.

(2) "Animal unit month" or "AUM" means one cow/calf pair, one horse, or five sheep, grazed individually for 1 month, or an equivalency as determined by a local ~~grazing~~ *state* district.

(3) "Assessment" means a special levy imposed on permittee members by the state district to raise funds for specific purposes as provided in 76-16-323(1). The term does not include fees.

(4) "Commensurate property" means land that is privately owned or controlled and that is not range.

(5) "Commission" means the Montana grass conservation commission provided for in 76-16-112.

(6) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(7) "Dependent commensurate property" is commensurate property that:

(a) requires the use of range in connection with it to maintain its proper use;

(b) produces or whose owner furnishes as part of the owner's past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range; and

(c) has been used in connection with the range ~~for a period of any 3 years or for any 2 consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of districts organized after March 15, 1945,~~ for a 5-year period immediately preceding the date of organization of the *state district* ~~districts~~.

(8) "Directors" means the board of directors of a state district provided for in 76-16-301.

~~(8)~~*(9)* "Grazing preference" is a right to obtain a grazing permit from a state district, expressed in animal unit months. Grazing preferences, expressed in AUMs, must be the basis for determining a member's proportionate interest in ~~grazing~~ *state* district assets.

~~(9)~~*(10)* "Permits" are evidence of grazing privileges granted by state districts.

~~(10)~~*(11)* "Person" means a natural person or persons, unincorporated associations, partnerships, corporations, and governmental departments or agencies.

~~(11)~~*(12)* "Range" is the land within a ~~grazing~~ *state* district upon which grazing permits are granted to maintain livestock through the established grazing period.

~~(12)~~*(13)* "Secretary" means the secretary of the Montana grass conservation commission.

~~(13)~~*(14)* "State district" means a nonprofit cooperative organization incorporated under this chapter and its board of directors. The term includes all lands owned or controlled by the state district or its members."

Section 3. Section 76-16-104, MCA, is amended to read:

"76-16-104. Role of the *commission* ~~department~~. (1) The *commission* ~~department~~ shall assist in carrying out the purposes of this chapter, act in an advisory capacity with the boards of county commissioners, and supervise and coordinate the formation and operation of *state* districts that may be incorporated under this chapter.

(2) The *commission* ~~department~~ may act in an advisory capacity to the boards of county commissioners for the purpose of working out uniform plans for the use of lands lying within or outside of the boundaries of state districts in conformity with recognized conservation and stabilization policies."

Section 4. Section 76-16-106, MCA, is amended to read:

"76-16-106. Commission fees. (1) The commission may impose fees against the state ~~grazing~~ districts ~~of the state~~ in an amount not in excess of 10 cents per animal unit month of *grazing* preference, based upon the number of animal unit months per year for which the *state* district grants permits, to defray expenses incurred by the commission in carrying out its powers and duties under this chapter.

(2) These fees must be held in the state special revenue fund to be expended by order and direction of the commission for the operation and administration of the commission under this chapter.

(3) If a state district fails or refuses to pay the fee on or before October 1 of each year and after the *state* district is provided with a full report from the department of all money collected and expended by it for its fiscal year preceding that date, the commission may compel and levy collection and payment by writ of mandate or other appropriate remedy against the state district."

Section 5. Section 76-16-107, MCA, is amended to read:

"76-16-107. Range for wild game animals. In each state district a sufficient carrying capacity of range must be reserved for the maintenance of a reasonable number of wild game animals to use the range in common with livestock grazing in the *state* district. The commission may act in an advisory capacity to the department of fish, wildlife, and parks in the protection of wildlife within the boundaries of all state districts."

Section 6. Section 76-16-108, MCA, is amended to read:

"**76-16-108. Nature of rights.** (1) ~~Preferences~~ *Grazing preferences* or rights under this chapter through the creation of the *state* district or the issuance of permits based on AUMs of *grazing* preference are statutory and do not create any vested right, title, interest, or estate in or to the lands owned or controlled by the *state* district except as provided in this chapter.

(2) A person who chooses to become a member of a state district is bound by all the provisions of this chapter and is limited to the statutory remedies contained in this chapter, and a court has no jurisdiction to consider any right claimed under this chapter except by judicial review from the final decision of the commission as provided in this chapter."

Section 7. Section 76-16-109, MCA, is amended to read:

"**76-16-109. Appeal procedure.** (1) Notice of a decision of a state district must be given in writing by the secretary of the state district to the interested parties or their attorneys by certified mail at the address as shown on the records of the *state* district.

(2) A person affected by the decision of a state district may appeal to the commission, and the commission shall hear and decide all those appeals. An appeal from the decision of the *state* district to the commission may be taken by filing written notice of the appeal with the commission, by filing a copy of the notice of appeal with the secretary of the *state* district, and by serving a copy of the notice of appeal by certified mail upon any interested parties who have appeared or upon their attorneys within 60 days after receiving written notice of the decision of the *state* district. The appellant shall also file with the commission proof by affidavit of the filing and service of the notice of appeal. The appeal to the commission must be taken and review of the appeal must be upon the record of any hearing conducted and considered by the state district. However, the commission may, ~~at its discretion and~~ for good cause shown, permit additional testimony to be submitted."

Section 8. Section 76-16-111, MCA, is amended to read:

"**76-16-111. What constitutes receipt of notice.** In all cases where notices are given *to* permittees under this chapter by ~~registered or~~ certified mail and addressed to the post-office address of the permittee as shown by the records of the state district, the notices must be considered received by the permittee when deposited in the United States post office by the *state* district or by the commission."

Section 9. Section 76-16-112, MCA, is amended to read:

"**76-16-112. Creation of Montana grass conservation commission — membership — meetings — compensation.** (1) There is a Montana grass conservation commission. The commission ~~must be~~ *is* composed of five members appointed by the governor to serve staggered 3-year terms. ~~Beginning on January 1, 2000, one member shall serve a 1-year term and two members shall serve 2-year terms, with assignment of terms based on a random drawing.~~

(2) (a) The governor, after giving full consideration to representation by both large and small operators, shall appoint:

(i) two members who are either officers of or who serve on the board of directors of a state ~~grazing~~ district;

(ii) two members who hold active *grazing* preference rights within a state ~~grazing~~ district; and

(iii) one member of the public who possesses a general understanding of the livestock industry and the proper use of rangelands within state ~~grazing~~ districts for the purpose of livestock production.

(b) Ex officio members may be appointed by the commission as needed.

(3) Members may not be appointed for more than three consecutive terms. The commission shall annually elect from among its members a presiding officer and a vice presiding officer. The presiding officer shall preside over all meetings of the commission, except that the vice presiding officer shall assume the duties of the presiding officer in the absence of the presiding officer.

(4) The commission shall meet annually at the main offices of the department in Helena. The commission may hold other meetings at times and places as necessary upon the call of the presiding officer or the request of a majority of commission members and upon at least ~~14~~ *7* days' written notice to the commission members of the time and place of the meeting. A majority of commission members constitutes a quorum for the transaction of business. The commission shall keep accurate records of all business that is considered, and the presiding officer shall sign all orders, minutes, and other documents of the commission.

(5) Commission members may receive no compensation for their services, but members are entitled to compensation for actual expenses incurred in carrying out their duties, including travel and per diem.

(6) The commission is allocated to the department for administrative purposes only as provided in 2-15-121. The commission shall, if it determines that personnel services are required, hire its own personnel, and 2-15-121(2)(d) does not apply. The secretary must be employed at the discretion of the commission."

Section 10. Section 76-16-113, MCA, is amended to read:

"76-16-113. Powers of commission. The commission has all the powers enumerated in this chapter and any other powers necessary or incidental to carrying out the full purpose and intent of this chapter, including but not limited to:

(1) conducting hearings on issues brought before the commission and conducting investigations into matters affecting the commission or the operation of state ~~grazing~~ districts, including appeals of decisions made by the board of directors of an individual state ~~grazing~~ district or other actions taken in accordance with this chapter;

(2) administratively promoting and fostering an atmosphere of cooperation and mutual trust between the federal bureau of land management, the United States forest service, the department, and ~~cooperative~~ state ~~grazing~~ districts and upholding the terms and conditions of any memorandum of understanding between those entities with regard to provisions noted in the Federal Land Policy

and Management Act, the Public Rangelands Improvement Act, the Taylor Grazing Act, and this chapter; ~~and~~

(3) prescribing methodologies to be used for the reallocation of grazing preference within cooperative state ~~grazing~~ districts that, for whatever reason, no longer have access to historical *grazing* preference records*;*

(4) preparing and standardizing various forms to be used by the state districts and supervising or regulating the organization and operation of state districts;

(5) issuing citations directed to any person requiring the person's attendance before the commission and subpoenaing witnesses and paying expenses that would be allowed in a court action;

(6) requiring an officer or director of a state district to submit records of the state district to the commission for the purpose of aiding an investigation conducted by the commission;

(7) requiring state districts to annually furnish itemized financial reports; and

(8) cooperating and entering into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency in order to promote the purposes of this chapter."

Section 11. Section 76-16-201, MCA, is amended to read:

"**76-16-201. Procedure to incorporate state district.** (1) If three or more persons who own or control commensurate property and are livestock operators within the area proposed to be created into a state district decide to incorporate a state district, they shall submit a statement in writing to the commission together with a plat showing the proposed boundaries of the area.

(2) The statement ~~shall~~ *must* set forth the name of the proposed state district, the county or counties in which the proposed state district is located, and the names and addresses of all operators of land and livestock units within the area. The commission may require any additional information it considers necessary.

(3) On receipt of the statement and plat and any additional information, the commission shall fix a time and place of a hearing for approval within the *state* district or county, which may not be less than 30 days or more than 60 days after receipt of the statement."

Section 12. Section 76-16-202, MCA, is amended to read:

"**76-16-202. Notice and hearing on question of incorporation.** (1) The persons deciding to incorporate the state ~~grazing~~ district shall cause notice of the hearing to be given by publishing a notice prescribed by the commission once a week for 2 consecutive weeks~~, the~~ *in a newspaper of general circulation in the area. The* first publication ~~to~~ *must* be at least 30 days prior to the date of hearing~~, in a newspaper of general circulation in the area~~.

(2) The commission shall hear evidence offered in support of or in opposition to the creation of the state district and shall make a full inquiry into the advisability of its creation."

Section 13. Section 76-16-203, MCA, is amended to read:

"**76-16-203. Certificate of approval.** If the creation of the state district appears feasible, beneficial, and desirable to those who own or control more than

50% of the lands to be included in the *state* district, the commission may issue a certificate of approval."

Section 14. Section 76-16-206, MCA, is amended to read:

"**76-16-206. Amending articles of incorporation.** (1) A state district may amend its articles of incorporation by a two-thirds vote of all members present at any regular or special meeting of its members and the approval of the commission. The only notice of the meeting that is necessary is the notice of meetings of members as required by the bylaws of the *state* district. The amended articles of incorporation and bylaws must be submitted to the commission for approval. Upon approval, the commission shall issue a certificate of approval. The amended articles of incorporation must be filed by the secretary of state without charge, but may not be filed unless accompanied by the certificate of approval. If the articles of incorporation are amended, the amendment must be filed with the county clerk or clerks.

(2) Upon the filing of the amended articles with the secretary of state and the proper county clerk or clerks, the *state* district possesses the same powers and is subject to the same obligations as if incorporated under this chapter."

Section 15. Section 76-16-208, MCA, is amended to read:

"**76-16-208. Adoption of bylaws and periodic review — annual report.** (1) A state district incorporated under this chapter shall within 60 days after its incorporation adopt bylaws approved by the commission. The bylaws may be amended or revised with the approval of the commission. Each incorporated *state* district shall review and update its bylaws to ensure compliance with this chapter and the general laws of this state. ~~The first review and update must be completed no later than January 1, 2001. Subsequent~~ *A* review and update must be completed at reasonable intervals, not to exceed 5 years.

(2) Each state district incorporated under this chapter shall report annually to the commission any changes to the allocation of grazing preferences, redefinitions of grazing allotment boundaries, or dispositions of base properties within the *state* district. The annual reports must include an updated plat depicting current allocation of *grazing* preferences, grazing allotment boundaries, and a list of all members running in common allotments where more than one member may have grazing preferences."

Section 16. Section 76-16-209, MCA, is amended to read:

"**76-16-209. Alteration of *state* district.** (1) A state district may change the boundaries of the *state* district, merge with another state district organized under this chapter, or subdivide.

(2) A merger may not be made unless consented to by a majority of the members of each merging state district and approved by the commission after a hearing.

(3) A subdivision may not be made unless consented to by a majority of the members in the affected area and approved by the commission after a hearing."

Section 17. Section 76-16-211, MCA, is amended to read:

"**76-16-211. Dissolution of *state* district.** (1) If a state district ceases to function in accordance with its bylaws and this chapter and it appears to the commission that the reinstatement and future operation of the *state* district is no longer feasible, beneficial, and desirable to the majority of members of the *state* district, the commission, after a hearing and upon 30 days' notice in writing, published for 2 consecutive weeks in a newspaper of general circulation in or nearest to the *state* district, may dissolve the *state* district.

(2) A notice of the dissolution must be filed by the commission with the secretary of state and the clerk and recorder of the county or counties in which the *state* district is located."

Section 18. Section 76-16-212, MCA, is amended to read:

"**76-16-212. Distribution of *state* district assets.** (1) When a hearing on the request for dissolution has been held before the commission and the ~~board's~~ consent *of the board of directors* has been given, the directors shall distribute the assets of the state district, either in items of property or in cash or ~~in~~ both. Distribution must first be made with the approval of the commission to creditors up to the amount of their claims. Distribution must then be made with the approval of the commission to permittee members upon the basis of their proportionate interest in the assets.

(2) If assets must be liquidated, the directors shall offer them for sale at public auction or through another competitive bidding procedure after publication of a notice of the sale once a week for 2 successive weeks in a newspaper of general circulation within the state district. *State district* ~~District~~ members holding grazing preference directly proportional to and associated with the assets being liquidated must be offered an opportunity to meet the highest bid submitted through the bidding process."

Section 19. Section 76-16-213, MCA, is amended to read:

"**76-16-213. Final report on dissolution proceedings.** A final report of all dissolution proceedings must be made to the ~~department~~ *commission* by the directors. Upon the approval of the report, the ~~department~~ *commission* shall order the state district dissolved."

Section 20. Section 76-16-301, MCA, is amended to read:

"**76-16-301. Powers and duties of directors.** The directors of the state district shall manage and exercise the powers of the state district subject to its bylaws and to the regulation of the *commission* ~~department~~ as provided in this chapter."

Section 21. Section 76-16-302, MCA, is amended to read:

"**76-16-302. Membership in *state* district.** (1) Membership in ~~the~~ *a state* district is limited to persons engaged in the livestock business who own or lease forage-producing lands within or near the *state* district, except that the agent of a person entitled to membership in the *state* district may become a member in place of the agent's principal.

(2) If an agent becomes a member, the agent's qualifications for membership and the agent's obligations to and the privileges in the *state* district must be measured by those that the agent's principal would have had if the principal had elected to become a member. An agent and the agent's principal may not both be members of the *state* district unless the agent has individual qualifications for membership that are separable from and independent of those of the principal.

(3) Livestock producers owning or controlling base property within the designated boundaries of the *state* district and who held *grazing* preference

during the preceding grazing season or at the time of voting must be designated as permittee members."

Section 22. Section 76-16-303, MCA, is amended to read:

"**76-16-303. Voting rights.** Only permittee members in good standing as set forth in the *state* district bylaws are entitled to vote on all issues submitted to a vote of the members. Individuals or livestock producers who operate on temporary permits may not vote. A permittee member has only one vote. Voting by proxy may not be permitted unless clearly outlined procedures for proxy voting are incorporated into the *state* district bylaws."

Section 23. Section 76-16-307, MCA, is amended to read:

"**76-16-307. Leasing of state lands.** State land that is situated within the boundaries of a ~~grazing~~ *state* district created under this chapter may be leased by one or more members of a ~~grazing~~ *state* district if the lease is in accordance with existing laws and regulations of the department. The board of directors of a ~~cooperative~~ state district may assist members of a ~~grazing~~ *state* district in acquiring and administering a state grazing lease. The commission shall require that all state districts comply with this section."

Section 24. Section 76-16-309, MCA, is amended to read:

"**76-16-309. Knowledge of *state* district boundaries responsibility of livestock owner.** A person herding or in control of livestock in the approximate vicinity of a state district shall ascertain the boundary lines of the *state* district."

Section 25. Section 76-16-310, MCA, is amended to read:

"**76-16-310. Permit required to run livestock in *state* district.** (1) ~~No~~ *An* owner or person in control of livestock ~~shall~~ *may not* permit ~~the same~~ *livestock* to run at large or under herd within the exterior boundaries of ~~any~~ *a* state district unless the owner or person in control of ~~such~~ *the* livestock ~~shall~~ first *obtains* ~~obtain~~ a grazing permit ~~for same~~ from *the* ~~such~~ state district.

(2) The owner or person in control of ~~such~~ livestock running at large or under herd within a state district without a permit from the *state* district or in excess of ~~such~~ *the* permit ~~shall be~~ *is* liable for all damages sustained ~~thereby~~ by any member, permittee, or state district *that are a result of the person's unpermitted use of the state district.* If ~~any such~~ livestock wrongfully ~~enters~~ *enter a state* ~~upon premises within such~~ district, the owner or person in control of ~~such~~ *the* trespassing livestock, who willfully or negligently permits ~~same~~ *livestock* to run at large within the *state* district without first obtaining a permit ~~therefor~~ from the *state* district, ~~shall be~~ *is* guilty of a misdemeanor and, upon conviction ~~thereof~~, shall be punished by a fine *in an amount* not less than $10 or more than $500. ~~and, in~~ *In* addition to *a fine, the owner or person is* ~~said punishment, shall be~~ liable for all damages *that are caused by the trespassing livestock* ~~sustained thereby to the party entitled thereto~~.

(3) This provision ~~shall~~ *does* not require any person to obtain a grazing permit to graze livestock ~~upon~~ *on* land *that the person owns or controls* ~~owned or controlled by him~~ within *a* ~~such~~ state district if the stock ~~so~~ *being* grazed ~~is~~ *are* restrained from running at large within ~~such~~ *the* state district and from grazing ~~upon~~ *on* any other lands within the state district."

Section 26. Section 76-16-316, MCA, is amended to read:

"76-16-316. Sale of trespassing livestock. (1) Upon receipt of the statement referred to in 76-16-315, the sheriff shall proceed to advertise and sell at public auction the livestock taken up.

(2) The livestock must be sold on 5 days' notice posted at the courthouse of each county in which any portion of the *state* district lies and in a newspaper of general circulation in the county. The sheriff may require from the state district a sufficient bond, conditioned *upon the following*:

(a) that the state district has used reasonable diligence to discover the owner of the stock and to notify the owner in the premises;

(b) that all requirements of law on the part of the state district to be performed in the premises have been performed; and

(c) that the sheriff is indemnified against all liability for the sale of the livestock except as to the sheriff's own failure to perform the things required by law."

Section 27. Section 76-16-317, MCA, is amended to read:

"76-16-317. Disposition of sale proceeds. (1) The proceeds of the sale ~~shall~~ *must* be applied by the sheriff, after first deducting ~~his~~ *the sheriff's* costs and expenses, to the discharge of the claims and the costs of the proceedings in selling the property and to the payment of the damages, claims, and costs of the party taking up ~~such~~ *the* livestock.~~, and the~~ *The* remainder *of the proceeds*, if any, may be paid over to the owner of ~~such~~ *the* livestock, if known.~~, and if~~ *If* the owner is not known, then ~~such~~ *the* remainder ~~shall~~ *must* be deposited with the county treasurer, who shall keep the ~~same~~ *remainder of the proceeds* in a public fund to be designated state ~~grazing~~ district fund (giving the name of the *state* district). A separate fund, styled as above, ~~shall~~ *must* be kept by the county treasurer for each *state district* ~~of said districts~~ within ~~his~~ *that* county. The county treasurer shall ~~make a~~ record ~~of~~ the number, ~~and~~ type, *and brands, if any*, of animals sold ~~and the brands on same, if any~~, the amount received for *the animals* ~~same~~, and the amount of deductions. The record ~~shall~~ *must* be open to public inspection.

(2) ~~Any~~ *A* person *claiming* ~~making claim of~~ ownership of *the* ~~such~~ livestock *and submitting proof of ownership* to the board of county commissioners ~~at any time~~ within 1 year from date of sale ~~and submitting proof of ownership to such board with such claim to the satisfaction of such board shall be~~ *is* entitled to receive *any* ~~such~~ excess received from the sale of *the* ~~such~~ livestock, *provided the claim is to the satisfaction of the board*.

(3) Any money received from the sale of *the* ~~any such~~ livestock ~~which shall~~ *that is* not ~~be so~~ claimed within 1 year after *the* ~~such~~ sale *must* ~~shall~~ be transferred to the general fund of the county ~~at the expiration of said period~~."

Section 28. Section 76-16-318, MCA, is amended to read:

"76-16-318. Unlawful recovery of trespassing livestock. Any person taking or rescuing from the possession of a state ~~grazing~~ district or an agent *of a state district* ~~thereof~~ any animal taken up and impounded pursuant to 76-16-310 through 76-16-317 *is* ~~shall be~~ guilty of a misdemeanor and upon conviction ~~thereof~~ shall be punishable by a fine not exceeding $200."

Section 29. Section 76-16-320, MCA, is amended to read:

"76-16-320. Maintenance of fences. (1) ~~Regarding fences within the external boundaries of state districts, the~~ *The* cost of construction and maintenance of fence enclosing lands controlled by any member, nonmember, or state district within the external boundaries of *the* ~~such~~ state district *must* ~~shall~~ be borne by *the* ~~such~~ member, nonmember, or state district, unless otherwise provided for in the duly approved bylaws of *the* ~~such~~ state district.

(2) In the event of the adoption of provisions to the bylaws of a state district whereby the cost of construction and maintenance of fence is to be distributed proportionately among the parties affected by *the* ~~such~~ cost of construction and maintenance of fence, the state district's proportionate share of *the* ~~such~~ costs and maintenance *must* ~~shall~~ be financed only by assessments levied by the state district against the permittee members of the *state* district *and* upon consent ~~thereto~~ by 55% of *the* ~~such~~ permittee members."

Section 30. Section 76-16-323, MCA, is amended to read:

"**76-16-323. ~~District~~ *State district* finances.** A state district may:

(1) fix and determine the amount of grazing fees to be imposed on members or nonmembers for the purpose of paying leases and operating expenses and fix and determine the amount of assessments to be made on members on a grazing preference basis for the purpose of acquiring lands by purchase or for the purpose of constructing improvements in the state district;

(2) set up and maintain a reasonable reserve fund;

(3) borrow money and if necessary mortgage the physical assets of a state district to provide for operation and development, provided that at least 80% of the permittee members of the state district consent in writing to the borrowing and the borrowing has been approved by the commission. This subsection does not confer power upon a state district to mortgage the property of the individual members of the *state* district."

Section 31. Section 76-16-325, MCA, is amended to read:

"**76-16-325. Compliance with commission orders required.** (1) If a state district or the directors of a state district fail to comply with an order of the commission, the commission may order a hearing on the order within the *state* district or county and cite the directors of the *state* district to appear before the commission.

(2) If upon the hearing it appears that the directors refuse to perform the duties of their office as provided in this part and as set forth in the articles of incorporation and the bylaws of the association or refuse to comply with a lawful order of the commission, the directors may be summarily removed from office by the commission, and the *state* district shall elect new officers. During the period until the election, the commission may operate and manage the affairs of the state district.

(3) The expense of operating and managing the affairs of a noncomplying state district must be paid by the noncomplying state district before it may be reinstated."

Section 32. Section 76-16-401, MCA, is amended to read:

"**76-16-401. Distribution of grazing preferences.** When a state district is organized, grazing preferences ~~shall~~ *must* be distributed in the following manner:

(1) Any member of a state district owning or controlling dependent commensurate property ~~as heretofore defined~~ may be given a grazing preference.

(2) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property, members owning or controlling commensurate property shall have the *grazing* preference.

(3) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property or commensurate property, temporary grazing permits may be issued to nonmembers or members, ~~preferring those that have used the range for any 3 years or any 2 consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of districts organized after March 15, 1945,~~ preferring those that have used the range 5 years immediately preceding the organization of *the state district* ~~such districts~~."

Section 33. Section 76-16-402, MCA, is amended to read:

"**76-16-402. Conversion of temporary permittee lands to dependent commensurate property.** (1) When *a* ~~such~~ temporary permit is utilized by a permittee in connection with forage-producing lands owned or controlled by *the* ~~such~~ permittee within or near the *state* district for a period of any combination of 4 years out of 5, then the forage-producing lands owned or controlled by *the* ~~such~~ permittee may be considered dependent commensurate property and, upon application, the *state* district may accordingly grant such permittee membership and *grazing* preference in the *state* district providing an application had been made for temporary rights for each of the 5 years.

(2) However, ~~such~~ temporary permits ~~shall at all times be merely~~ *are* privileges granted from year to year, and their possession *does not* ~~shall in no event~~ establish a *grazing* preference right unless ~~such~~ *a grazing* preference right ~~be~~ *is* expressly granted by the *state* district and in the manner ~~herein~~ provided *in this part.*"

Section 34. Section 76-16-403, MCA, is amended to read:

"**76-16-403. Procedure if reduction in grazing privileges necessary.** (1) If a reduction in grazing privileges becomes necessary, operators with temporary permits will be reduced on a proportionate basis prior to any reduction to any holder of grazing preference.

(2) Reductions of grazing preference for individual members that result from actions beyond the control of the state district or the board of directors of a ~~cooperative~~ state district or as a result of actions or of the failure to take appropriate actions by the holder of the *grazing* preference in question do not require a general reduction in grazing preference, and the state district may not be compelled to require proportionate reductions in grazing preference, by the membership of the state district."

Section 35. Section 76-16-404, MCA, is amended to read:

"**76-16-404. Application for grazing preferences.** Any person entitled to grazing preferences within any state ~~grazing~~ district based on dependent commensurate property or commensurate property ~~must~~ *shall* make application within 1 year after ~~said~~ *the state* district *is* ~~shall have been~~ organized to qualify for ~~said~~ *grazing* preferences~~; provided, however~~ *However*, all permittees ~~shall~~ *must* be entitled to benefits accruing under 76-16-401 through 76-16-403."

Section 36. Section 76-16-406, MCA, is amended to read:

"76-16-406. Transfer of *grazing* preferences. (1) Upon application by a permittee, the state district with the approval of the commission may allow a *grazing* preference based on ownership or control of dependent commensurate or commensurate property to be transferred to other property of sufficient commensurability. However, in any transfer of *grazing* preference from dependent commensurate or commensurate property controlled but not owned by the applicant, the applicant must have had control and use of the dependent commensurate or commensurate property and the *grazing* preference appurtenant to the property for 5 consecutive years and must have established and maintained the livestock operation upon which the dependency was established by use or priority immediately prior to the application for transfer.

(2) In addition, the transfer may not interfere with the stability of livestock operations or with proper range management and may not affect adversely the established local economy. A transfer may not be allowed without the written consent of the owner or owners of the dependent commensurate or commensurate property from which the transfer is to be made and the owner or owners of any encumbrances on the property. A transfer is not effective until approved by the commission.

(3) All expenses involved under the application must be borne by the applicant."

Section 37. Section 76-16-407, MCA, is amended to read:

"76-16-407. Processing of application for transfer. (1) When an application for transfer is presented to the board of directors of a state district, the secretary *of the state district* upon the direction of that board shall give notice ~~thereof~~, setting forth in general the application and the time and place of a hearing ~~thereon~~ *on the application* as fixed by the board. A copy of the notice ~~shall~~ *must* be given or mailed to the applicant and ~~shall~~ *must* be published at least once a week for 2 successive weeks prior to the hearing in a newspaper published or generally circulated within the *state* district.~~, and the~~ *The* notice ~~shall~~ *must* also be posted for at least 2 full weeks prior to the hearing in three public places within the *state* district.

(2) The date of *the* hearing must be at least 15 days from the first publication of the notice. At the hearing the directors shall fully hear and determine the application and any objections *to the application* ~~thereto~~."

Section 38. Section 76-16-408, MCA, is amended to read:

"76-16-408. Effect of transfer of *grazing* preference. Upon the allowance of a transfer under 76-16-405 through 76-16-407, the property from which the transfer is made loses its grazing preference to the extent of the *grazing* preference transferred."

Section 39. Section 76-16-409, MCA, is amended to read:

"76-16-409. Transfer of underlying property. (1) When the land to which a *grazing* preference is attached changes its control or ownership, the *grazing* preference changes with the land and the person to which the control or ownership changes shall secure a nonuse permit or shall pay the usual grazing fees.

(2) If the person fails to secure a nonuse permit or refuses to pay the grazing fees, the *grazing* preferences may be revoked by the state district."

Section 40. Section 76-16-410, MCA, is amended to read:

"**76-16-410. Compensation to *state* district for range improvements.** Subsequent lessees or owners of land shall compensate a state district for the value of range improvements constructed with the consent of the owner upon lands leased by the state district. The value ~~shall~~ *must* be the value at the expiration date of the lease. If the owner and the state district cannot agree as to the value, the state district may either remove or abandon the improvement. If the subsequent lessee and the state district cannot agree as to the value, it ~~shall~~ *must* be fixed by the *commission* ~~department~~."

Section 41. Section 76-16-411, MCA, is amended to read:

"**76-16-411. Grazing permits to owners of land not controlled by *state* district.** (1) When any land is situated within the boundaries of a state district and is not leased or controlled by ~~said~~ *the state* district and not surrounded by a legal fence, any person owning or controlling ~~such~~ *these* lands ~~shall have~~ *has* the right to obtain a grazing permit from the state district, the size of which ~~shall~~ *must* be determined by the carrying capacity of ~~such~~ *the* land, full consideration being given for location of necessary stock water. The use of ~~such~~ *the* permit ~~shall be~~ *is* subject to all regulations by the state district.

(2) If the person owning or controlling ~~such~~ *the* land declines to secure ~~such~~ *a* permit or fails to lease ~~such~~ *the* land to the state district at a fair lease rental and fails to fence ~~such~~ *the* land at ~~his own~~ *the person's* expense, ~~he~~ *the person* ~~shall~~ *is* not ~~be~~ entitled to recover damages for trespass by stock grazing under permit, but the state district ~~shall~~ *may* not issue a permit to use the carrying capacity of ~~such~~ *the* land."

Section 42. Section 76-16-412, MCA, is amended to read:

"**76-16-412. Revocation of *grazing* preferences upon failure to obtain permits, pay fees, or obey rules.** (1) If a person controls but does not own land and does not secure a nonuse permit and refuses to pay grazing fees, the state district shall notify the owner of the land by ~~registered or~~ certified mail that the *grazing* preference attached to the land will be revoked unless the owner pays the usual grazing fees to the state district within 60 days from the time of receipt of the notice. The state district may revoke the *grazing* preference if the owner or mortgagor does not pay the fees or secure a nonuse permit.

(2) If a permittee fails to pay grazing fees or assessments levied by the state district or fails to obtain a nonuse permit or violates any of the rules of the state district, the state district may notify the permittee and owner of the land by ~~registered or~~ certified mail that the *grazing* preference attached to the land will be revoked unless the grazing fees or assessments are paid or the permittee ceases to violate the rules laid down by the *state* district within 60 days from the time of receipt of the notice. The state district may revoke the *grazing* preference if the permittee or owner fails to pay the charges or comply."

Section 43. Section 76-16-413, MCA, is amended to read:

"**76-16-413. Effect of revocation.** (1) When a *grazing* preference is revoked, it is detached from the dependent commensurate or commensurate property to which it was formerly appurtenant and it immediately shifts to the state district. A revocation includes all rights, privileges, and authorities associated with a *grazing* preference.

(2) The state district may then allocate it to either dependent commensurate or commensurate property in the manner provided by its bylaws."

Section 44. Section 76-16-414, MCA, is amended to read:

"76-16-414. Equalization of *state* district assets. (1) Whenever a state district possesses reserves, the values of which are greater than its liabilities, and the state district determines that a part of the reserves is in excess of its reasonable needs to operate the *state* district, the state district may refund to the permittee members their proportionate share of the reserves as determined at the last annual accounting.

(2) Whenever a state district possesses reserves and physical assets, the values of which are greater than its liabilities, and a permittee member loses a grazing preference or any portion of a grazing preference, the permittee member is entitled to receive a proportionate share of the value of the excess from the state district, as determined by the annual accounting of the state district. Valuation must be as prescribed by the bylaws of the state district. The state district may set off the amount of any claim it may have against a former member.

(3) Whenever a new member receives a grazing preference, the new member shall, as a condition of receiving the *grazing* preference, pay to the state district the value of the equitable interest in the physical assets and reserve fund that accrues to the new member by virtue of membership. The value must be determined at the time of receiving a *grazing* preference, as prescribed by the bylaws of the state district, and upon the basis of the determination of value of physical assets and reserves made at the last annual accounting."

Section 45. Repealer. Section 76-16-105, MCA, is repealed.

Section 46. Effective date. [This act] is effective upon passage and approval.

Approved March 13, 2001

CHAPTER NO. 32

[SB 61]

AN ACT PROVIDING FOR THE ALLOCATION OF PRIVATE ACTIVITY AND GOVERNMENTAL BONDS BY A PERCENTAGE OF THE STATE LIMITATION ON THE AMOUNT OF THOSE BONDS THAT MAY BE ISSUED; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ESTABLISH BY RULE THE STATE'S VOLUME CAP ON PRIVATE ACTIVITY AND GOVERNMENTAL BONDS; AMENDING SECTIONS 17-5-1302, 17-5-1311, 17-5-1312, 17-5-1315, 17-5-1316, 17-5-1318, AND 17-5-1323, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-1302, MCA, is amended to read:

"17-5-1302. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Allocation" means an allocation of a part of the *state's* volume cap to an issuer pursuant to this part.

(2) "Board" means the board of examiners.

(3) "Bonds" means bonds, notes, or other interest-bearing obligations of an issuer.

(4) "Cap bonds" means those private activity bonds and that portion of governmental bonds for which a part of the volume cap is required to be allocated pursuant to the tax act.

(5) "Department" means the department of administration.

(6) "Governmental bonds" means bonds other than private activity bonds.

(7) "Issuer" means a state issuer or local issuer.

(8) "Local issuer" means a city, town, county, or other political subdivision of the state authorized to issue private activity bonds or governmental bonds.

(9) "Local portion" means that portion of the *state's* volume cap reserved for local issuers.

(10) "Montana board of housing" (MBH) means the board created in 2-15-1814.

(11) "Montana board of investments" (MBI) means the board provided for in 2-15-1808.

(12) "Montana health facility authority" (MHFA) means the authority provided for in 2-15-1815.

(13) "Montana higher education student assistance corporation" (MHESAC) means the nonprofit corporation established *to provide student loan capital to the student loan program established by the board of regents of higher education* under Title 20, chapter 26, part 11.

(14) "Private activity bonds" (PABs) has the meaning prescribed under section ~~1301 of the tax act~~ *141 of the Internal Revenue Code.*

(15) "State issuer" means the state and any agency thereof authorized to issue private activity bonds. For this part only, the Montana higher education student assistance corporation is considered an agency of the state.

(16) "State portion" means that portion of the *state's* volume cap reserved for state issuers.

(17) "State's volume cap" means that amount of the volume cap specified by the department pursuant to 17-5-1311(2).

~~(17)~~*(18)* "Tax act" means the ~~Tax Reform Act of 1986~~ *lowest limitation* enacted by the United States congress *on the amount of cap bonds that may be issued by a state or local issuer.*

~~(18)~~*(19)* "Volume cap" means, with respect to each calendar year, the principal amount of cap bonds that may be issued in the state in a calendar year as determined under the provisions of the tax act."

Section 2. Section 17-5-1311, MCA, is amended to read:

"17-5-1311. ~~Volume~~ *State's volume* cap and reservations — *department to adopt rule.* *(1)* For each calendar year, the state's volume cap is ~~$150 million~~ *the amount specified by the department pursuant to subsection (2).* In each calendar year, subject to the provisions established by 17-5-1312 and 17-5-1313, ~~$105 million~~ *70%* of the *state's* volume cap is the state portion and ~~$45 million~~ *30%* is the local portion.

(2) The department shall adopt a rule for the state's volume cap specifying the maximum dollar value of cap bonds that may be issued in a calendar year. The rule adopted by the department must consider the volume cap."

Section 3. Section 17-5-1312, MCA, is amended to read:

"**17-5-1312. Allocation to state issuers.** (1) Except as provided in subsection (5), the state portion must be allocated to state issuers pursuant to 17-5-1316.

(2) As a condition of receiving an allocation, each state issuer, upon issuance of the bonds, shall pay 30 cents per thousand of bonds to be deposited in the state general fund for the purpose of funding a portion of the comprehensive annual financial report audit.

(3) The following ~~set-asides~~ *set-aside percentages of the state's volume cap* must be made in each calendar year for the following state issuers:

State Issuer	Percentage	~~Allocation Amount~~
Board	4	~~$4,200,000~~
MBH	41	~~43,050,000~~
MBI	25	~~26,250,000~~
MHESAC	26	~~27,300,000~~
MHFA	4	~~4,200,000~~
Total	100%	~~$105,000,000~~

(4) Each set-aside expires on the first Monday in September.

(5) Prior to the set-aside expiration date, allocations may be made by the department to each state issuer only from its respective set-aside pursuant to 17-5-1316 and ~~no~~ *a* state issuer is *not* entitled to an allocation except from its set-aside unless otherwise provided by the governor.

(6) After the expiration date, the amount of the set-aside remaining unallocated is available for allocation by the department to issuers pursuant to 17-5-1316 without preference or priority."

Section 4. Section 17-5-1315, MCA, is amended to read:

"**17-5-1315. Carryforward elections.** (1) Between the first Monday in December and the second Wednesday in December, each issuer shall file with the department an application for a carryforward election with respect to any unallocated portion of the *state's* volume cap for the calendar year.

(2) Applications for carryforward elections may be filed only with respect to carryforward purposes authorized by the tax act. Each application for a carryforward election must contain the information required of an application for allocation under 17-5-1316 and any additional information required by either the tax act or the department.

(3) If, as of the second Wednesday in December, the aggregate amount of applications for carryforward elections does not exceed the amount of the unallocated and unused *state's* volume cap, each application constitutes a valid carryforward election within the meaning of the tax act.

(4) If, as of the second Wednesday in December, the aggregate amount of applications for carryforward elections exceeds the unallocated and unused *state's* volume cap, the department shall determine which applications constitute a valid carryforward election within the meaning of the tax act.

(5) After receipt of an application, the department shall notify the applicant in writing of either the approval of the carryforward election or the reason for disapproval."

Section 5. Section 17-5-1316, MCA, is amended to read:

"**17-5-1316. Allocations by the department.** (1) The department shall administer the allocation of *state's volume* cap bonds to issuers in accordance with this section and 17-5-1312. Applications for an allocation for each issue of bonds must be made to the department in an acceptable form and, if applicable, must contain the following:

(a) the name of the issuer;

(b) a description of the purpose or purposes for which the proceeds of the *state's volume* cap bonds will be used, including, if appropriate, a description of the project or projects to be financed;

(c) the location of the project or projects;

(d) the name and address of each project owner and user;

(e) a certified copy of the inducement resolution adopted or official action taken by the issuer, pursuant to the tax act, approving the project or the purpose and granting preliminary authorization for the issuance of the *state's volume* cap bonds;

(f) the preliminary opinion of a qualified bond counsel stating that the proposed purpose for which the *state's volume* cap bonds are to be issued qualifies under applicable state law and the tax act and that the interest on the bonds is not taxable as gross income for purposes of federal income taxation;

(g) evidence that all public hearing requirements concerning the proposed purpose and project have been met;

(h) a copy of a letter from an underwriter, bank, or other financial institution certifying that in its opinion the proposed financing is feasible, that the *state's volume* cap bonds may be successfully sold under current market conditions, and that it has reviewed all of the information necessary to form its opinion;

(i) the amount of allocation requested; and

(j) such other information as the department considers necessary.

(2) The department shall issue allocations in chronological order of the receipt of completed applications. Completed applications received by the department on the same day must be ranked according to the earliest inducement resolution or official action date."

Section 6. Section 17-5-1318, MCA, is amended to read:

"**17-5-1318. Terms of allocations.** (1) Unless terminated earlier by the issuer, an allocation is valid for 90 days from the date the department mails the notice of approval. Prior to the expiration of the 90-day period, the department may extend the period of validity for an additional 30 days upon presentation of evidence that an agreement to purchase the *state's volume* cap bonds for which the allocation was given has been obtained from an entity legally authorized to purchase them.

(2) If the *state's volume* cap bonds are not issued within the period of validity as determined under subsection (1), the allocation automatically expires.

(3) All allocations expire on December 31 of the year in which they were made. However, this subsection does not limit the term of an allocation for which a valid carryforward election has been made."

Section 7. Section 17-5-1323, MCA, is amended to read:

"**17-5-1323. Recordkeeping.** The department shall maintain complete records of all applications for allocations to ~~assure~~ *ensure* that the requirements of the tax act, with respect to the volume cap, *and the requirements of the state's volume cap* are observed."

Section 8. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on October 1, 2001.

(2) [Section 2(2) and this section] are effective on passage and approval.

Approved March 13, 2001

CHAPTER NO. 33

[SB 93]

AN ACT PROVIDING A PROCEDURE FOR ADDRESSING LOST, DESTROYED, OR STOLEN CASHIER'S CHECKS, TELLER'S CHECKS, AND CERTIFIED CHECKS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Lost, destroyed, or stolen cashier's check, teller's check, or certified check. (1) In this section, the following definitions apply:

(a) "Check" means a cashier's check, teller's check, or certified check.

(b) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

(c) "Declaration of loss" means a written statement, made under penalty of perjury, to the effect that:

(i) the declarer lost possession of a check;

(ii) the declarer is the drawer or payee of the check in the case of a certified check or the remitter or payee of the check in the case of a cashier's check or teller's check;

(iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure; and

(iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(d) "Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

(2) (a) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check if:

(i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check;

(ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check;

(iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid; and

(iv) the claimant provides reasonable identification if requested by the obligated bank.

(b) Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection (2), the following rules apply:

(i) The claim becomes enforceable at the later of:

(A) the time the claim is asserted; or

(B) the 90th day following the date of the check in the case of a cashier's check or teller's check or the 90th day following the date of the acceptance in the case of a certified check.

(ii) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(iii) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(iv) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to 30-4-302(1)(a), payment to the claimant discharges all liability of the obligated bank with respect to the check.

(3) If the obligated bank pays the amount of a check to a claimant under subsection (2)(b)(iv) and the check is presented for payment by a person having the rights of a holder in due course, the claimant is obliged to:

(a) refund the payment to the obligated bank if the check is paid; or

(b) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(4) If a claimant has the right to assert a claim under subsection (2) and is also a person entitled to enforce a cashier's check, teller's check, or certified check that is lost, destroyed, or stolen, the claimant may assert rights with respect to the check under either 30-3-309 or this section.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 30, chapter 3, part 3, and the provisions of Title 30, chapter 3, part 3, apply to [section 1].

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 13, 2001

CHAPTER NO. 34

[SB 133]

AN ACT GENERALLY REVISING LAWS TO CONFORM FUND TYPE TERMINOLOGY TO THE MOST RECENT GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; AMENDING SECTIONS 15-30-195, 15-34-115, 15-35-108, 15-38-106, 15-38-202, 17-2-102, 17-2-103, 17-2-107, 17-6-203, 17-7-150, 17-8-101, 17-8-303, 20-9-601, 20-25-225, 22-1-225, 22-1-226, 22-3-113, 22-3-114, 39-3-213, 39-51-401, 41-3-705, 72-14-204, 72-14-205, 72-14-206, 72-14-207, 72-14-209, 72-14-210, 72-14-403, 77-1-108, 77-1-109, 77-1-602, 80-2-103, 87-1-601, 90-3-1001, 90-3-1002, 90-3-1003, AND 90-6-107, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-195, MCA, is amended to read:

"15-30-195. (Temporary) Excess tax refund agreement (EXTRA) — process — requirements — limitations. (1) This section may be referred to as the "Excess Tax Refund Agreement" or "EXTRA".

(2) On or before October 15, 1995, the department of administration shall determine and certify to the governor the combined total of the unreserved ending fund balances in the general fund, described in ~~17-2-102(1)(a)(i)~~ *17-2-102(1)(a)*, and the school equalization aid account, described in 20-9-343, for the fiscal year ending June 30, 1995.

(3) If the amount of the unreserved ending fund balances described in subsection (2) exceeds $24.4 million, the amount in excess of $24.4 million, subject to the limitation provided in subsection (9), is the amount available for refund under this section.

(4) The amount determined under subsection (3) to be available for refund must be refunded on a pro rata basis to each taxpayer who filed a state income tax return, pursuant to 15-30-103, for tax year 1994.

(5) For the purposes of this section:

(a) the term "taxpayer" does not include a fiduciary or a beneficiary of an estate or trust who was required to file an income tax return pursuant to 15-30-135 unless a 1994 return was filed on behalf of a decedent;

(b) a return filed using the filing status married filing jointly is considered to have been filed by a single taxpayer; and

(c) the 1994 tax year is the 12-month period beginning January 1, 1994, and ending December 31, 1994, except that for fiscal year taxpayers, the 1994 tax year is a 12-month period ending between January 1, 1994, and December 31, 1994.

(6) (a) The pro rata distribution of the amount available for refund must be calculated by the department by dividing the amount available for refund described in subsection (3) by the total individual income tax liability as determined by the department from all 1994 tax year returns that were filed by October 15, 1995.

(b) The percentage determined in subsection (6)(a), adjusted to take into account the limitations contained in subsection (8), must be used as the adjusted percentage multiplier described in subsection (6)(c) to determine the amount of each taxpayer's refund. The department may not alter or change the adjusted percentage multiplier.

(c) The department shall calculate the amount of each taxpayer's refund by multiplying the amount of tax shown on the taxpayer's return on line 40 of the 1994 Montana Individual Income Tax Return, Form 2, or line 27 of the 1994 Montana Individual Income Tax Return, Short Form 2S, depending on the form used by the taxpayer for tax year 1994, by the adjusted percentage multiplier determined in subsection (6)(b).

(7) (a) The department shall calculate the amount of each taxpayer's refund based on the taxpayer's 1994 tax year return on file with the department by October 15, 1995. A taxpayer filing a delinquent return for the 1994 tax year after October 15, 1995, is not eligible for a refund under this section.

(b) (i) If a taxpayer files an amended return or if the department reviews a taxpayer's return and recalculates the tax due to the state, the department shall recalculate the refund due to the taxpayer under this section.

(ii) If the department's recalculation determines that the taxpayer has an increased tax liability for tax year 1994 and should receive an additional refund under this section as a result of increased 1994 liability, the department shall credit the additional amount of refund under this section to the amount of additional tax due from the taxpayer.

(iii) If the amount of the recalculated refund due to the taxpayer exceeds the amount of additional tax due from the taxpayer, the department shall pay the excess amount to the taxpayer, but only if the amount of the refund exceeds $10.

(iv) If, as the result of the taxpayer filing an amended return or of a review by the department, a taxpayer's original 1994 tax liability is decreased, any overpayment of the refund calculated by the department based on the original tax liability must be credited against any refund due to the taxpayer.

(8) A refund paid to a taxpayer pursuant to this section may not exceed $1,000. The department may not issue a refund under this section if the amount of the refund is $10 or less.

(9) Refunds may not be made under this section if the total amount available for refund as determined in subsection (3) is less than $10 million.

(10) Beginning in November 1995, the department shall calculate and issue refunds due to taxpayers under this section.

(11) (a) Notwithstanding the provisions of 15-1-211, any objection concerning the determination of the amount of refund or any other issue relating to the refunds provided in this section must be raised by the taxpayer with the department no later than 30 days after the refund is mailed to the taxpayer.

(b) A district court has no jurisdiction to entertain or consider any issue relating to the determination or payment of a refund made under this section unless the issue was first presented to the department and the taxpayer exhausted all administrative remedies. (Terminates July 1, 2001—sec. 7, Ch. 29, L. 1995.)"

Section 2. Section 15-34-115, MCA, is amended to read:

"**15-34-115. Coal producer's license tax allocation.** Coal producer's license taxes collected pursuant to 15-34-101 must be deposited in the coal producer's license tax bond account established in 90-3-1004 to pay debt service on outstanding bonds issued pursuant to Title 17, chapter 5, part 7. The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on outstanding coal severance tax bonds and on outstanding coal severance tax school bond contingency loan bonds. If coal severance tax receipts retained in the coal severance tax bond fund and in the coal severance tax school bond contingency loan fund are insufficient to meet all principal and interest payments in that year, then the amount that is deficient must be retained in the coal producer's license tax bond account. At no time may the total amount retained in the coal severance tax bond fund, the coal severance tax school bond contingency loan fund, and the coal producer's license tax bond account exceed the amount necessary to make annual debt service payments for coal severance tax bonds and coal severance tax school bond contingency loan bonds. All coal producer's license tax revenue in excess of the amount retained for payment of annual debt service on outstanding coal severance tax bonds and coal severance tax school contingency loan bonds must be allocated as follows:

(1) for the fiscal year beginning July 1, 1999, and until June 30, 2001, $2.3 million each fiscal year is allocated to the treasure state endowment special revenue account provided for in 17-5-703(4)(b), and beginning July 1, 2001, $600,000 is allocated to that account each fiscal year;

(2) $2.5 million is allocated to the agriculture seed capital account, provided for in 90-9-301, to be used for purposes of Title 90, chapter 1, part 1, and Title 90, chapter 9, part 2;

(3) beginning July 1, 2001, $1.7 million each year is allocated to the treasure state endowment regional water system special revenue account provided for in 90-6-715;

(4) for fiscal year 2000 and future years, ~~there is~~ $600,000 *is* allocated to the department of administration for tax increment financing industrial districts; and

(5) the amount remaining after the allocation in subsections (1) through (3) is allocated as follows:

(a) 33.33% is allocated to the research and commercialization ~~expendable trust fund~~ *special revenue account* established in 90-3-1002;

(b) 16.99% is allocated to the long-range building program account established in 17-7-205;

(c) 11.15% is allocated to the account in the state special revenue fund provided for in 15-35-108(3) to be used as provided in that subsection;

(d) 1.70% is allocated to the ~~nonexpendable trust~~ *permanent fund* for parks acquisition or management to be used as provided in Title 23, chapter 1, part 1;

(e) 1.27% is allocated to the debt service fund type to the credit of the renewable resource loan debt service fund;

(f) 0.86% is allocated to the cultural and aesthetic trust fund provided for in 15-35-108(6);

(g) beginning July 1, 1999, and ending June 30, 2007, 1.74% is allocated to the long-range building program fund in the debt service fund type to fund the bonds issued for the purchase of Virginia City and Nevada City property; and

(h) the remainder is allocated to the state general fund."

Section 3. Section 15-35-108, MCA, is amended to read:

"15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a ~~nonexpendable trust~~ *permanent* fund *account* for the purpose of parks acquisition or management. Income from this ~~trust~~ *permanent* fund *account* must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) (a) Subject to subsection (7)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, for the biennium ending June 30, 2001, as follows:

(i) $65,000 to the cooperative development center;

(ii) $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) to the department of commerce:

(A) $350,000 for business recruitment;

(B) $125,000 for a small business development center;

(C) $50,000 for a small business innovative research program;

(D) $425,000 for certified communities;

(E) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(F) $300,000 for export trade enhancement; and

(iv) $600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in 7-15-4299. Reimbursement must be made to qualified districts on a proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district. (Terminates June 30, 2001—sec. 10(1), Ch. 10, Sp. L. May 2000.)

15-35-108. (Effective July 1, 2001) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a ~~nonexpendable trust~~ *permanent* fund *account* for the purpose of parks acquisition or management. Income from this ~~trust~~ *permanent* fund *account* must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) (a) Subject to subsections (7)(b) and (7)(c), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) to the department of commerce:

(A) $350,000 for business recruitment;

(B) $125,000 for a small business development center;

(C) $50,000 for a small business innovative research program;

(D) $425,000 for certified communities;

(E) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(F) $300,000 for export trade enhancement; and

(iv) $600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in 7-15-4299. Reimbursement must be made to qualified districts on a proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district.

(c) Beginning July 1, 2001, there is transferred annually from the interest income referred to in subsection (7)(b) $4.85 million to the research and commercialization expendable trust fund created in 90-3-1002. (Terminates June 30, 2005—sec. 10(2), Ch. 10, Sp. L. May 2000.)

15-35-108. (Effective July 1, 2005) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, county land

planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a ~~nonexpendable trust~~ *permanent* fund *account* for the purpose of parks acquisition or management. Income from this ~~trust~~ *permanent* fund *account* must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) Beginning July 1, 1997, and ending June 30, 1999, the amount of 0.87% must be allocated to an account in the state special revenue fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Beginning July 1, 1999, the amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

Section 4. Section 15-38-106, MCA, is amended to read:

"15-38-106. (Temporary) Payment of tax — records — collection of taxes — refunds. (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit in the following order:

(a) 50% of the proceeds of the tax in the resource indemnity trust fund of the ~~nonexpendable trust~~ *permanent* fund type;

(b) $300,000 of the remaining proceeds in the ground water assessment account established by 85-2-905;

(c) 50% of the remaining proceeds in the reclamation and development grants account established by 90-2-1104; and

(d) all remaining proceeds in the orphan share account established in 75-10-743.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater

than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer.

15-38-106. (Effective on occurrence of contingency) Payment of tax — records — collection of taxes — refunds. (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit in the following order:

(a) $366,000 of the proceeds in the ground water assessment account established by 85-2-905;

(b) 50% of the remaining proceeds in the orphan share account established in 75-10-743; and

(c) all remaining proceeds in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

Section 5. Section 15-38-202, MCA, is amended to read:

"15-38-202. (Temporary) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. Only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts may be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, to be deposited into the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs. Any amount of the appropriation in this subsection (2)(a)(i) that is not pledged to repay bonds issued prior to January 1, 1999, may be deposited in a ~~nonexpendable trust~~ *permanent fund* account, the income from which may be used for the purposes provided in this subsection.

(ii) $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(iii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants; and

(iv) $300,000 to be deposited into the ground water assessment account created by 85-2-905.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session.

15-38-202. (Effective July 1, 2001) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. Only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts may be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, to be deposited into the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs. Any amount of the appropriation in this subsection (2)(a)(i) that is not pledged to repay bonds issued prior to January 1, 1999, may be deposited in a ~~nonexpendable trust~~ *permanent fund* account, the income from which may be used for the purposes provided in this subsection.

(ii) $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(iii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants;

(iv) $300,000 to be deposited into the ground water assessment account created by 85-2-905; and

(v) $500,000 to the department of fish, wildlife, and parks for the purposes of 87-1-283. The future fisheries review panel shall approve and fund qualified mineral reclamation projects before other types of qualified projects.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session. (Terminates July 1, 2009—sec. 9, Ch. 529, L. 1999.)

15-38-202. (Effective July 1, 2009) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. Only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts may be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, to be deposited into the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs. Any amount of the appropriation in this subsection (2)(a)(i) that is not pledged to repay bonds issued prior to January 1, 1999, may be deposited in a ~~nonexpendable trust~~ *permanent fund* account, the income from which may be used for the purposes provided in this subsection.

(ii) $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(iii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants; and

(iv) $300,000 to be deposited into the ground water assessment account created by 85-2-905.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session. (Terminates June 30, 2014—sec. 5, Ch. 497, L. 1999.)

15-38-202. (Effective July 1, 2014) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. Only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts may be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(ii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants; and

(iii) $300,000 to be deposited into the ground water assessment account created by 85-2-905.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

Section 6. Section 17-2-102, MCA, is amended to read:

"**17-2-102. Fund structure.** ~~(1)~~ For the purpose of ensuring strict accountability for all revenue received and spent, there are in the state treasury only the following fund categories and types:

~~(a)~~*(1)* the governmental fund category, which includes:

~~(i)~~*(a)* the general fund, which accounts for all financial resources except those required to be accounted for in another fund;

~~(ii)~~*(b)* the special revenue fund type, which accounts for the proceeds of specific revenue sources (other than ~~expendable~~ *private purpose* trusts or major capital projects) that are legally restricted to expenditure for specified purposes. The financial activities of the special revenue fund type are subdivided, for operational purposes, into the following funds to serve the purpose indicated:

~~(A)~~*(i)* The state special revenue fund consists of money from state and other nonfederal sources deposited in the state treasury that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government and money from other nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation.

~~(B)~~*(ii)* The federal special revenue fund consists of money deposited in the treasury from federal sources, including trust income, that is used for the operation of state government.

~~(iii)~~*(c)* the capital projects fund type, which accounts for financial resources to be used for the acquisition or construction of major capital facilities, other than those financed by proprietary funds or trust funds; ~~and~~

~~(iv)~~*(d)* the debt service fund type, which accounts for the accumulation of resources for and the payment of general long-term debt principal and interest; *and*

(e) the permanent fund type, which accounts for financial resources that are legally restricted to the extent that only earnings, but not principal, may be used;

~~(b)~~*(2)* the proprietary fund category, which includes:

~~(i)~~*(a)* the enterprise fund type, which accounts for operations:

~~(A)~~*(i)* that are financed and operated in a manner similar to private business enterprises whenever the intent of the legislature is that costs (i.e., expenses, including depreciation) of providing goods or services to the general public on a continuing basis are to be financed or recovered primarily through user charges; or

~~(B)~~*(ii)* whenever the legislature has decided that periodic determination of revenue earned, expenses incurred, or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes; and

~~(ii)~~*(b)* the internal service fund type, which accounts for the financing of goods or services provided by one department or agency to other departments or agencies of state government or to other governmental entities on a cost-reimbursed basis;

~~(c)~~*(3)* the fiduciary fund category, which includes trust and agency fund types used to account for assets held by state government in a trustee capacity or as an agent for individuals, private organizations, other governmental entities, or other funds. These include the:

~~(i)~~*(a)* ~~expendable~~ *private purpose* trust fund type;

~~(ii) nonexpendable trust fund type;~~

~~(iii)~~*(b)* investment trust fund type;

~~(iv)~~*(c)* pension *and other employee benefit* trust fund type; and

~~(v)~~*(d)* agency fund type.

~~(d)~~*(4)* the higher education funds, which include:

~~(i)~~*(a)* the current fund, which accounts for money deposited in the state treasury that is used to pay current operating costs relating to instruction, research, public service, and allied support operations and programs conducted within the Montana university system. The financial activities of the current fund are subdivided, for operational purposes, into the four following subfunds to serve the purpose indicated:

~~(A)~~*(i)* The unrestricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations and is free of externally imposed restrictions, except those imposed by the legislature.

~~(B)~~*(ii)* The restricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations but only for purposes imposed by sources external to the board of regents and the legislature.

~~(C)~~*(iii)* The designated subfund segregates that portion of the current fund's financial resources that is associated with general operations but is separately classified in order to accumulate costs that are to be recharged as allocated to other funds or subfunds, identifies financial activities related to special organized activities of educational departments in which the activity is fully supported by supplemental assessments, and identifies special supply and facility fees that are approved for collections beyond normal course fees and their disposition.

~~(D)~~*(iv)* The auxiliary subfund segregates that portion of the current fund's financial resources that is devoted to providing essential on-campus services primarily to students, faculty, or staff ~~wherein~~ *in which* a fee~~, which~~ *that* is directly related to but does not necessarily equal the cost of the service provided~~,~~ is charged to the consumer.

~~(ii)~~*(b)* the student loan fund, which accounts for money deposited in the state treasury that may be loaned to students, faculty, or staff for purposes related to education, organized research, or public services by the Montana university system;

~~(iii)~~*(c)* the endowment fund, which accounts for money deposited in the state treasury by the Montana university system ~~wherein~~ *in which* the principal portion of the amount received is nonexpendable but is available for investment~~, thus producing consumable income~~. Expendable earnings on endowment funds are to be transferred to appropriate operating funds pursuant to prevailing administrative requirements.

~~(iv)~~*(d)* the annuity and life income fund, which accounts for money deposited in the state treasury by the Montana university system under an agreement ~~whereby~~ *by which* the money is made available on *the* condition that the receiving unit of the Montana university system binds itself to pay stipulated amounts periodically to the donor or others designated by the donor over a specified period of time;

~~(v)~~*(e)* the plant fund, which accounts for those financial resources allocated to or received by the Montana university system for capital outlay purposes or to retire long-term debts associated with construction or acquisition of fixed assets and the net accumulative results of these activities; and

~~(vi)~~*(f)* the agency fund, which accounts for money deposited in the state treasury ~~wherein~~ *for which* the Montana university system acts in the capacity of a custodian or fiscal agent for individual students, faculty, staff, and qualified organizations.

~~(2) In addition to the funds provided for in subsection (1), there are in the state treasury the following account groups:~~

~~(a) the fixed assets account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's general fixed assets, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v); and~~

~~(b) the long-term debt account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's unmatured general long-term liabilities, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v).~~"

Section 7. Section 17-2-103, MCA, is amended to read:

"**17-2-103. Previous definitions of funds — identification or segregation of money and funds.** (1) It is the intent of the legislature that the definitions in 17-2-102 supersede all previous definitions of public funds that are inconsistent with the definitions found in this part.

(2) Any laws enacted ~~in the future~~ or any contracts entered into ~~in the future~~ in pursuance of law that require the segregation of money in the state treasury by means of a separate treasury fund must be interpreted as permitting the segregation of the money by means of a subfund or account within one of the funds created by 17-2-102.

(3) Each federal grant or other federal money within any subfund or account of one of the funds created by 17-2-102(1)~~(a)~~ through ~~(1)(e)~~ *(3)* must be identifiable as a separate accounting entity, reporting center, responsibility center, or revenue identification code, and an account must be made of each ~~such~~ grant or other money by income and expenditure for each federal grant year or fiscal year as may be applicable.

(4) Unless otherwise specifically provided in the statutes pertaining to the tax, the portion of taxes collected by the state that, pursuant to a statute, are to be allocated or distributed to units of local government, school districts, authorities, or other local governmental entities must be accounted for in a state special revenue fund, established in 17-2-102, as prescribed by the department in accordance with generally accepted accounting principles."

Section 8. Section 17-2-107, MCA, is amended to read:

"17-2-107. Accurate accounting records and interentity loans. (1) The department shall record receipts and disbursements for treasury funds and for accounting entities within treasury funds and shall maintain records in a manner that reflects the total cash and invested balance of each fund and each accounting entity. The department shall adopt the necessary procedures to ensure that interdepartmental or intradepartmental transfers of money or loans do not result in inflation of figures reflecting total governmental costs and revenue.

(2) (a) Subject to 17-2-105, when the expenditure of an appropriation from a fund designated in 17-2-102(1)~~(a)~~ through ~~(1)(e)~~ *(3)* is necessary and the cash balance in the accounting entity from which the appropriation was made is insufficient, the department may authorize a temporary loan, bearing no interest, of unrestricted money from other accounting entities if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. An accounting entity receiving a loan or an accounting entity from which a loan is made may not be so impaired that all proper demands on the accounting entity cannot be met even if the loan is extended.

(b) (i) When an expenditure from a fund or subfund designated in ~~17-2-102(1)(d)~~ *17-2-102(4)* is necessary and the cash balance in the fund or subfund from which the expenditure is to be made is insufficient, the commissioner of higher education may authorize a temporary loan, bearing interest as provided in subsection (4) *of this section*, of money from the agency's other funds or subfunds if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. A fund or subfund receiving a loan or from which a loan is made may not be so impaired that all proper demands on the fund or subfund cannot be met even if the loan is extended.

(ii) One accounting entity within each fund or subfund designated in ~~17-2-102(1)(d)~~ *17-2-102(4)* must be established for the sole purpose of recording loans between the funds or subfunds. This accounting entity is the only accounting entity within each fund or subfund that may receive a loan or from which a loan may be made.

(c) A loan made under subsection (2)(a) or (2)(b) must be repaid within 1 calendar year of the date on which the loan is approved unless it is extended under subsection (3) or by specific legislative authorization.

(3) Under unusual circumstances, the director of the department or the board of regents may grant one extension for up to 1 year for a loan made under subsection (2)(a) or (2)(b). The director or board shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(4) Any loan from the current unrestricted subfund to funds designated in ~~17-2-102(1)(d)(i)(D)~~ *17-2-102(4)(a)(iv)* and ~~(1)(d)(ii)~~ *(4)(b)* through ~~(1)(d)(vi)~~ *(4)(f)* must bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool.

(5) If for 2 consecutive fiscal yearends a loan or an extension of a loan has been authorized to the same accounting entity as provided in subsection (2) or (3), the department or the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the second loan or extension was made, an analysis of the solvency of the accounting entity or accounting entities within the university fund or subfund, and a plan for repaying the loans.

(6) If for 2 consecutive fiscal yearends an accounting entity in a fund or subfund designated in ~~17-2-102(1)(d)~~ *17-2-102(4)* has a negative cash balance, the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the accounting entity has a negative cash balance, an analysis of the solvency of the accounting entity, and a plan to address any problems concerning the accounting entity's negative cash balance or solvency.

(7) (a) An accounting entity in a fund designated in 17-2-102(1)~~(a)~~ through ~~(1)(c)~~ *(3)* may not have a negative cash balance at fiscal yearend. The department may, however, allow a fund type within each agency to carry a negative balance at any point during the fiscal year if the negative cash balance does not exist for more than 7 working days.

(b) (i) Except as provided in subsection (7)(b)(ii) *of this section*, a unit of the university system shall maintain a positive cash balance in the funds and subfunds designated in ~~17-2-102(1)(d)~~ *17-2-102(4)*.

(ii) If a fund or subfund inadvertently has a negative cash balance, the department may allow the fund or subfund to carry the negative cash balance for no more than 7 working days. If the negative cash balance exists for more than 7 working days, a transaction may not be processed through the statewide accounting system for that fund or subfund.

(8) Notwithstanding the provisions of subsections (2) through (4), the department may authorize loans to accounting entities in the federal and state

special revenue funds with long-term repayment whenever necessary because of the timing of the receipt of agreed-upon reimbursements from federal, private, or other governmental entity sources for disbursements made. If possible, the loans must be made from funds other than the general fund. The department may approve the loans if the requesting agency can demonstrate that the total loan balance does not exceed total receivables from federal, private, or other governmental entity sources and receivables have been billed on a timely basis. The loan must be repaid under terms and conditions that may be determined by the department or by specific legislative authorization."

Section 9. Section 17-6-203, MCA, is amended to read:

"**17-6-203. Separate investment funds.** Separate investment funds ~~shall~~ *must* be maintained as follows:

(1) the ~~nonexpendable-trust~~ *permanent* funds, including all public school funds and funds of the Montana university system and other state institutions of learning referred to in ~~sections 2 and 10,~~ Article X, *sections 2 and 10,* of the ~~1972~~ Montana constitution. The principal and any part ~~thereof~~ *of the principal* of each ~~and every~~ fund constituting the Montana ~~nonexpendable trust~~ *permanent* fund type ~~shall be~~ *is* subject to ~~payment~~ *deposit* at any time when due under the statutory provisions applicable ~~thereto~~ *to the fund* and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular fund arises.

(2) a separate investment fund, which may not be held jointly with other funds, for money pertaining to each retirement or insurance system ~~now or hereafter~~ maintained by the state, including ~~those now maintained under the following statutes~~:

(a) the highway patrol officers' retirement system described in Title 19, chapter 6;

(b) the public employees' retirement system described in Title 19, chapter 3;

(c) the game wardens' and peace officers' retirement system described in Title 19, chapter 8;

(d) the teachers' retirement system described in Title 19, chapter 20; and

(e) the ~~industrial accident insurance~~ *workers' compensation* program described in Title 39, chapter 71, part 23;

(3) a pooled investment fund, including all other accounts within the treasury fund structure established by 17-2-102;

(4) the fish and wildlife mitigation trust fund established by 87-1-611;

(5) a fund consisting of gifts, donations, grants, legacies, bequests, devises, and other contributions made or given for a specific purpose or under conditions expressed in the gift, donation, grant, legacy, bequest, devise, or contribution ~~on the part of~~ *to be observed by* the state of Montana ~~to be observed~~. If ~~such~~ *a* gift, donation, grant, legacy, bequest, devise, or contribution permits investment and is not otherwise restricted by its terms, it may be treated jointly with other ~~such~~ gifts, donations, grants, legacies, bequests, devises, or contributions.

(6) a fund consisting of coal severance taxes allocated ~~thereto~~ under section 5, Article IX, of the Montana constitution~~;~~*.* ~~the~~ *The* principal of ~~this~~ *the coal severance tax* trust fund ~~shall be~~ *is* permanent~~;~~*.* ~~in the event~~ *If* the legislature appropriates any part of the principal of ~~this~~ *the coal severance tax trust* fund by *a*

vote of three-fourths of the members of each house, ~~such liquidation~~ *the appropriation or investment* may create a gain or loss in the principal~~;~~. ~~and~~

(7) ~~such~~ additional investment funds ~~as~~ *that* may be expressly required by law or ~~may be determined by~~ *that* the board of investments ~~to~~ *determines* ~~be~~ *are* necessary to fulfill fiduciary responsibilities of the state with respect to funds from a particular source."

Section 10. Section 17-7-150, MCA, is amended to read:

"**17-7-150. Definitions.** As used in 17-7-151, the following definitions apply:

(1) "Current biennium" means the biennium during which the legislature is meeting in regular session.

(2) "Next biennium" means the biennium for which the regular session of the legislature makes appropriations.

(3) (a) "State resources" means:

(i) the general fund;

(ii) state special revenue funds other than private funds;

(iii) federal special revenue funds;

(iv) proprietary funds that require an appropriation;

(v) long-range building program appropriations; and

(vi) agency funds distributed to local governments.

(b) The term does not include:

(i) debt service funds;

(ii) capital project funds other than those appropriated;

(iii) internal service or proprietary funds that do not require an appropriation;

(iv) fund transfers;

(v) enterprise funds;

(vi) unrestricted or other university funds;

(vii) agency funds not distributed to local governments;

(viii) ~~expendable~~ *private purpose* trust funds;

(ix) ~~nonexpendable trust~~ *permanent* funds;

(x) pension trust funds;

(xi) noncash accounting entries; and

(xii) private funds deposited in state special revenue accounts."

Section 11. Section 17-8-101, MCA, is amended to read:

"**17-8-101. Appropriation and disbursement of money from treasury.** (1) For purposes of complying with Article VIII, section 14, of the Montana constitution, money deposited in the general fund, the special revenue fund type (except money deposited in the treasury from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation), and the capital projects fund type, with the exception of refunds authorized in subsection (4), may be paid out of the treasury only on appropriation made by law.

(2) Subject to the provisions of subsection (8), money deposited in the enterprise fund type, debt service fund type, internal service fund type, ~~expendable~~ *private purpose* trust fund type, agency fund type, and state special revenue fund from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation, may be paid out of the treasury:

(a) by appropriation; or

(b) under general laws, or contracts entered into in pursuance of law, permitting the disbursement.

(3) The pension trust fund type is not considered a part of the state treasury for appropriation purposes. Money deposited in the pension trust fund type may be paid out of the treasury pursuant to general laws, trust agreement, or contract.

(4) Money paid into the state treasury through error or under circumstances such that the state is not legally entitled to retain it and a refund procedure is not otherwise provided by law may be refunded upon the submission of a verified claim approved by the department.

(5) Authority to expend appropriated money may be transferred from one state agency to another, provided that the original purpose of the appropriation is maintained. The office of budget and program planning shall report semiannually to the legislative finance committee concerning all appropriations transferred under the provisions of this section.

(6) Fees and charges for services deposited in the internal service fund type must be based upon commensurate costs. The legislative auditor, during regularly scheduled audits of state agencies, shall audit and report on the reasonableness of internal service fund type fees and charges and on the fund equity balances.

(7) The creation of accounts in the enterprise fund or the internal service fund must be approved by the department, using conformity with generally accepted accounting principles as the primary approval criteria. The department shall report annually to the office of budget and program planning and the legislative finance committee on the nature, status, and justification for all new accounts in the enterprise fund and the internal service fund.

(8) Enterprise and internal service funds must be appropriated if they are used as a part of a program that is not an enterprise or internal service function and that otherwise requires an appropriation. An enterprise fund that transfers its ending fund balance to the general fund is subject to appropriation. The payment of funds into an internal service fund must be authorized by law."

Section 12. Section 17-8-303, MCA, is amended to read:

"17-8-303. Warrants — presentation and cancellation. (1) State warrants must be presented for payment within the time limits specified as follows:

(a) Except as provided in subsection (1)(b), all warrants drawn by the state treasurer on the state treasury must be presented for payment within 6 months after the date of issue.

(b) Warrants issued for the department of public health and human services that are funded to any extent with federal money must be presented for payment within 180 days after the date of issue.

(2) If the payee or legal holder of any warrant fails to present it for payment within the time specified in subsection (1), the state treasurer shall record the warrant as canceled and the amount must be credited to a separate ~~expendable~~ *private purpose* trust fund account administered by the treasurer. If the payee or legal owner of a canceled warrant presents it for payment or presents a claim for payment within 4 years from the date of issue, the state treasurer may, upon proper showing by affidavit, issue a new warrant in lieu of the canceled warrant.

(3) Three years and 6 months after cancellation, the warrant must be classed as unclaimed property subject to the provisions of Title 70, chapter 9, part 8. If the payee or legal owner of a canceled warrant presents it for payment or presents a claim for payment, the presentation must be to the department of revenue as provided in 70-9-815."

Section 13. Section 20-9-601, MCA, is amended to read:

"20-9-601. Public school fund. The public school fund must be maintained by the state treasurer as a fund in the ~~nonexpendable trust~~ *permanent* fund type, and the principal amount of the fund is irreducible and permanent. The following money must be credited to the fund as an addition to the irreducible and permanent principal amount:

(1) appropriations and donations by the state;

(2) donations and bequests by individuals to the state or schools;

(3) the proceeds of land and other property that revert to the state by escheat and forfeiture;

(4) the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain;

(5) funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law;

(6) except as provided in 77-1-109, the proceeds of the sale of stone, materials, or other property from school lands other than those granted for specific purposes and all money other than rental recovered from persons trespassing on the lands;

(7) the principal of all money arising from the sale of lands and other property that has been and may be granted to the state for the support of common schools;

(8) except as provided in 77-1-109, the amount earmarked for deposit in this fund under the provisions of 20-9-341; and

(9) other money as may be provided by the legislature."

Section 14. Section 20-25-225, MCA, is amended to read:

"20-25-225. Experimental farms. (1) In accordance with the provisions of the Morrill Act of July 2, 1862, the regents shall make available for the purchase of sites or experimental farms from any funds deposited in the Montana ~~nonexpendable trust~~ *permanent* fund credited to the state university through provisions of the Morrill Land Act of 1862, known as the agricultural college Morrill permanent fund, a sum not to exceed 10% of the amount of ~~such~~ *the* fund.

(2) The total amount ~~which~~ *that* may be used for purchase of ~~needed~~ lands for sites or experimental farms may not exceed 10% ~~in the aggregate~~ of the total amount ~~which has now or which may accrue~~ *accrued* to the credit of the agricultural college Morrill permanent ~~trust~~ fund.

(3) ~~No portion of the moneys~~ *Money* apportioned from the endowment funds for the purchase of sites or experimental farms ~~shall~~ *may not* be applied directly or indirectly to the purchase, erection, preservation, or repair of any building ~~or buildings~~.

(4) The regents shall approve purchases of sites or experimental farms, which must be essential for the research programs of the state university."

Section 15. Section 22-1-225, MCA, is amended to read:

"**22-1-225. Montana state library trust — interest retention.** (1) There is an account in the ~~fiduciary~~ *governmental* fund category ~~expendable trust~~ *state special revenue* fund type to be known as the Montana state library trust, to be used as provided in 22-1-226.

(2) Interest and earnings of the account must be retained by the account."

Section 16. Section 22-1-226, MCA, is amended to read:

"**22-1-226. Use of Montana state library trust.** (1) The principal of the Montana state library trust established in 22-1-225 is ~~intended to be an expendable trust~~ subject to investment by the board of investments in accordance with investment principles established for the investment of state funds in Title 17, chapter 6, part 2.

(2) Unless otherwise provided by the donor, donations received pursuant to 22-1-103 must be placed in the Montana state library trust.

(3) Interest earned on the principal of the Montana state library trust may be used for providing library service to Montanans, including those who, because of disability, cannot read standard print.

(4) Revenue that is not expended on the service authorized in subsection (3) and that is not expended at the end of each fiscal year remains in the Montana state library trust for investment as provided in subsection (1).

(5) The provisions of 17-2-108 that require the expenditure of nongeneral fund money prior to the expenditure of general fund money do not apply to the expenditure of revenue made available to the library from the Montana state library trust."

Section 17. Section 22-3-113, MCA, is amended to read:

"**22-3-113. Acquisitions trust.** There is an account in the ~~fiduciary~~ *governmental* fund category ~~nonexpendable trust~~ *permanent* fund type to be known as the Montana historical society acquisitions trust, to be used exclusively for the acquisition of items or collections as provided in 22-3-114."

Section 18. Section 22-3-114, MCA, is amended to read:

"**22-3-114. Use of acquisitions trust funds — principal nonexpendable — investment of principal — reversion of unspent revenue.** (1) The principal of the acquisitions trust established in 22-3-113 is intended to be a permanent~~, nonexpendable trust~~ *fund* subject to investment by the board of investments in accordance with investment principles established for the investment of state funds in Title 17, chapter 6, part 2.

(2) Unless otherwise provided by the donor, donations of $500 or more received pursuant to 22-3-107(9) and revenue earned by the Montana historical society from sales provided for by 22-3-107(6) must be placed in the acquisitions trust.

(3) Interest earned on the principal of the acquisitions trust may be used only for the purpose of acquiring society library, museum, archive, and photoarchive items or collections.

(4) Revenue that is not expended on appropriate acquisitions authorized in subsection (3) and that remains at the end of each fiscal year reverts to the principal of the acquisitions trust for investment as provided in subsection (1).

(5) The provisions of 17-2-108 that require the expenditure of nongeneral fund money prior to the expenditure of general fund money do not apply to the expenditure of revenue made available to the society from the acquisitions trust."

Section 19. Section 39-3-213, MCA, is amended to read:

"**39-3-213. Disposition of wages.** (1) The commissioner of labor shall deposit wages collected under parts 2 and 4 of this chapter into the ~~expendable trust~~ *private purpose trust* fund and shall attempt to make payment of wages to the entitled person. Wages deposited into the ~~expendable trust~~ *private purpose trust* fund do not bear interest. The payment of wages collected may be made by means of state warrants.

(2) Warrants issued pursuant to subsection (1) that remain unclaimed for more than 1 year from the date of issuance must be returned to the state treasurer for cancellation in accordance with 17-8-303."

Section 20. Section 39-51-401, MCA, is amended to read:

"**39-51-401. Unemployment insurance fund — establishment and control.** There is established separate and apart from all public money or funds of this state a fund in the ~~expendable trust~~ *enterprise* fund type known as the unemployment insurance fund, which must be administered by the department exclusively for the purposes of this chapter. Any reference to the unemployment insurance fund in ~~this code~~ *the Montana Code Annotated* means the unemployment insurance ~~expendable trust~~ *enterprise* fund. All money in the fund must be mingled and undivided. This fund consists of:

(1) all contributions collected under this chapter and payments made in lieu of contributions as provided in 39-51-1124 through 39-51-1126;

(2) interest earned upon any money in the fund;

(3) any property or securities acquired through the use of money belonging to the fund;

(4) all earnings of ~~such~~ *the* property or securities *acquired by the fund*; and

(5) all money credited to this state's account in the unemployment trust fund pursuant to sections 903 and 904 of the Social Security Act (42 U.S.C. 1103 and 1104), as amended."

Section 21. Section 41-3-705, MCA, is amended to read:

"**41-3-705. Endowment for children.** (1) There is within the ~~nonexpendable trust~~ *permanent* fund type an endowment for children. The endowment is not subject to appropriation. The purpose of the endowment is to provide a permanent source of funding to support the programs and services referred to in 41-3-701.

(2) The endowment may receive funds from:

(a) appropriations;

(b) gifts, grants, and donations, from public or private sources; and

(c) other money credited or transferred to the endowment from any other fund or source.

(3) The state treasurer must receive and shall deposit money in the endowment. The board of investments shall invest the money in the endowment. Only the interest generated by the endowment is available for expenditure by the board."

Section 22. Section 72-14-204, MCA, is amended to read:

"**72-14-204. Order directing sale of property upon final settlement of estate.** At the final settlement of an estate, if there are no heirs or other claimants, the district judge shall order the public administrator to sell all property belonging to the estate and pay the proceeds to the county treasurer. The county treasurer shall keep an account of the money received from each estate and paid to the county treasurer and shall remit the money to the department of revenue with a statement of the estate to which the money belongs. The department shall immediately deliver the money to the state treasurer for deposit in the ~~expendable~~ *private purpose* trust fund."

Section 23. Section 72-14-205, MCA, is amended to read:

"**72-14-205. Unsold intangible personal property — how disposed of — auction sale.** (1) If the intangible personal property in an escheated estate was not sold by the personal representative at the final settlement of the estate, then the personal representative shall deliver all of the property to the department of revenue with a statement setting forth the name of the estate to which it belongs. The department shall, within 1 year of the receipt of the property, sell the property to the highest bidder at a public auction sale at the department's office in Helena, Montana.

(2) The department shall give notice of the sale by publication in a Helena newspaper once a week for 2 successive weeks. The last publication must be at least 20 days prior to the date of the sale. The notice must give the time and place of the sale and must contain a list and description of the stocks, bonds, securities, or other intangible personal property to be sold.

(3) All of the expenses of the sale must be deducted from the proceeds of the sale by the department, and the balance of the proceeds must be delivered by the department to the state treasurer for deposit in the ~~expendable~~ *private purpose* trust fund."

Section 24. Section 72-14-206, MCA, is amended to read:

"**72-14-206. Unsold real property — how disposed of — auction sale.** (1) If the real property was not sold by the personal representative at the final settlement of the estate, then the personal representative shall make and execute to the state of Montana a deed and deliver the deed to the county clerk and recorder of the county in which the real property is situated. The county clerk and recorder shall file and record the deed without charge and shall mail the deed to the department of revenue. The department of revenue shall record the deed and deliver it to the board of land commissioners.

(2) Within 1 year after the receipt of the recorded deed, the board shall sell the property to the highest bidder at a public auction sale to be held at the courthouse in the county where the real property or any part of the property is situated.

(3) The board shall give notice of the sale by publication once a week for 2 weeks in a newspaper published in the county in which the real estate or any part of the real estate is situated. The last publication must be at least 20 days prior to the date of the sale. The notice must give the time and place of the sale and contain a description of the real property to be sold.

(4) All expenses of the sale must be deducted by the board from the proceeds of the sale, and the balance of the proceeds must be turned over to the state treasurer for deposit in the ~~expendable~~ *private purpose* trust fund. The board shall provide the department with a statement indicating the sale price, expenses, and net proceeds resulting from each sale."

Section 25. Section 72-14-207, MCA, is amended to read:

"**72-14-207. Unsold tangible personal property — how disposed of — auction sale.** (1) If the tangible personal property in an escheated estate was not sold by the personal representative at the final settlement of the estate, the personal representative shall deliver the property to the county treasurer. The county treasurer shall, within 1 year of the receipt of the property, sell it to the highest bidder at a public auction sale at the county seat of the county of administration of the estate.

(2) The county treasurer shall give notice of the sale by publication once a week for 2 successive weeks in a newspaper published in the county of administration. The last publication must be at least 20 days prior to the date of the sale. The notice ~~shall~~ *must* give the time and place of ~~such~~ *the* sale and *must* contain a description of the property to be sold.

(3) All expenses of the sale must be deducted from the proceeds of the sale by the county treasurer, and the balance of the proceeds must be delivered by the county treasurer to the department of revenue for deposit in the ~~expendable~~ *private purpose* trust fund."

Section 26. Section 72-14-209, MCA, is amended to read:

"**72-14-209. Deposit of all sums escheated — ~~expendable~~ *private purpose* trust fund.** All sums escheated under the provisions of parts 1 through 3 of this chapter must be delivered by the department of revenue to the state treasurer and deposited by the treasurer in the ~~expendable~~ *private purpose* trust fund."

Section 27. Section 72-14-210, MCA, is amended to read:

"**72-14-210. ~~Expendable~~ *Private purpose* trust fund money to be held in trust — deposit in public school ~~nonexpendable trust~~ *permanent* fund.** Money and property placed in the ~~expendable~~ *private purpose* trust fund must be held in trust for a period of 5 years prior to deposit in the public school ~~nonexpendable trust~~ *permanent* fund by the state treasurer. The ~~expendable~~ *private purpose* trust is for the benefit of persons who claim property pursuant to part 3 of this chapter. A claim may be brought for an amount equal to the full amount or value of the property escheated minus the costs and expenses incident to reducing the property to the possession of the state."

Section 28. Section 72-14-403, MCA, is amended to read:

"**72-14-403. Deposit of unclaimed property in state treasury — escheat.** (1) All money or other property distributed in the administration of an estate of a decedent or as the subject of a trust and deposited ~~before or after July 1, 1947,~~ with the county treasurer to the credit of the distributee or beneficiary and any money remaining on deposit to the credit of an estate after final distribution must, within 1 year of receipt by the county treasurer, be delivered into the state treasury for deposit in the ~~expendable~~ *private purpose* trust fund ~~by the county treasurer~~.

(2) If money or other property deposited in the state treasury is not claimed by the person or persons entitled to the property by bringing an action as provided in part 3 of this chapter, the money or property escheats to the state and must be placed in the public school ~~nonexpendable trust~~ *permanent* fund."

Section 29. Section 77-1-108, MCA, is amended to read:

"**77-1-108. Trust land administration account.** (1) There is a trust land administration account in the state special revenue fund. Money in the account is available to the department by appropriation and must be used to pay the costs of administering state trust lands.

(2) Appropriations from the account for each fiscal year may not exceed the sum of 1 1/8% of the book value balance in the nine ~~nonexpendable trust~~ *permanent* funds administered by the department on the first day of January preceding the new biennium and 10% of the revenue deposited in the capitol building land grant trust fund in the last completed fiscal year prior to the new biennium.

(3) Unreserved funds remaining in the account at the end of a fiscal year must be transferred to each of the ~~nonexpendable trust~~ *permanent* funds in proportionate shares to each ~~trust's~~ *fund's* contribution to the account as calculated in 77-1-109(3)."

Section 30. Section 77-1-109, MCA, is amended to read:

"**77-1-109. Deposits of proceeds in trust land administration account.** (1) The department shall, until the deposit equals the amount appropriated for the fiscal year pursuant to 77-1-108, deposit into the trust land administration account created by 77-1-108, the following:

(a) mineral royalties;

(b) the proceeds or income from the sale of easements and timber, except timber from public school lands; and

(c) 5% of the interest and income annually credited to the public school fund in accordance with 20-9-341.

(2) After the deposits in subsection (1) have been made, the remainder of the proceeds must be deposited in the *appropriate* permanent fund ~~for the appropriate trust~~ and the capitol building land grant trust fund.

(3) The amount of money that is deposited into the trust land administration account may not exceed 1 1/8% of the book value balance in each of the nine ~~nonexpendable trust~~ *permanent* funds administered by the department on the

first day of January preceding the new biennium and 10% of the previous fiscal year revenue deposited into the capitol building land grant trust fund."

Section 31. Section 77-1-602, MCA, is amended to read:

"**77-1-602. Definition of terms.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Account" means the resource development account in the state special revenue fund.

(2) "Income" means all proceeds received for the use of state land except revenue required by law to be placed in the ~~Montana nonexpendable trust~~ *permanent* fund type and revenue from the sale of timber."

Section 32. Section 80-2-103, MCA, is amended to read:

"**80-2-103. Administration of trust assets.** Funds and the proceeds of the trust assets that are not authorized to be administered by the secretary of agriculture under 80-2-102 must be received by the department and paid by it to the state treasurer for deposit in the ~~expendable trust~~ *state special revenue* fund, to be used for expenditure or obligation by the department for the purposes of 80-2-102 or for the rural rehabilitation purposes permissible under the charter of the now dissolved Montana rural rehabilitation corporation as may be agreed upon between the department and the secretary of agriculture, subject to Public Law 499."

Section 33. Section 87-1-601, MCA, is amended to read:

"**87-1-601. Use of fish and game money.** (1) (a) Except as provided in subsection (7), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must be turned over to the state treasurer and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-412, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) The money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the state treasurer and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) *(a)* Money *must be deposited in an account in the permanent fund if it is* received by the department from*:*

(i) the sale of surplus real property;

(ii) ~~from~~ exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and

(iii) ~~from~~ leases of interests in department real property not contemplated at the time of acquisition ~~must be deposited in an account within the nonexpendable trust fund of the state treasury~~.

(b) The interest derived from the ~~fund~~ *account*, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt.

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(8) The state treasurer shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102."

Section 34. Section 90-3-1001, MCA, is amended to read:

"**90-3-1001. Purpose — definition.** (1) The purpose of establishing a research and commercialization ~~expendable trust fund~~ *special revenue account* in 90-3-1002 and 90-3-1003 is to:

(a) provide a predictable and stable source of funding for research and commercialization projects conducted in the state that demonstrates to both private and public sources, including federal research granting agencies, that Montana recognizes the important contributions that research and commercialization endeavors offer to the state's basic industries;

(b) expand and strengthen research efforts for the state's basic industries to increase their economic impact on the state's economy; and

(c) expand research efforts into areas beyond the scope of the state's basic industries to diversify and strengthen the state's economic security through the creation of technology-based operations and long-term quality jobs.

(2) As used in 90-3-1002 and 90-3-1003, "research and commercialization center" means the campuses of the university of Montana or Montana state university, tribal colleges, colleges of technology, community colleges, agricultural research centers, or a private, nonprofit laboratory or research center."

Section 35. Section 90-3-1002, MCA, is amended to read:

"**90-3-1002. Research and commercialization ~~expendable trust~~ *account*.** (1) There is a research and commercialization ~~expendable trust fund~~ *special revenue account* within the state treasury. The purpose of the ~~fund~~ *account* is to establish a permanent source of funding for research and commercialization projects to be conducted at research and commercialization centers in the state.

(2) The research and commercialization ~~expendable trust fund~~ *account* must be invested by the board of investments. Earnings on the ~~expendable trust fund~~ *account* must be deposited in the ~~fund~~ *account* for distribution pursuant to 90-3-1003(3) and (5)."

Section 36. Section 90-3-1003, MCA, is amended to read:

"**90-3-1003. Research and commercialization ~~expendable trust~~ *account* — use.** (1) The research and commercialization ~~expendable trust fund~~ *account* provided for in 90-3-1002 is statutorily appropriated, as provided in 17-7-502, to the board of research and commercialization technology, provided for in 2-15-1819, for the purposes provided in this section.

(2) The establishment of the ~~expendable trust fund~~ *account* in 90-3-1002 is intended to enhance the economic growth opportunities for Montana and constitute a public purpose.

(3) The ~~expendable trust fund~~ *account* may be used only for loans or for matching funds for grants from nonstate sources that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana. At least 20% of the investments made must be directed toward projects that enhance production agriculture. An amount allocated for matching funds must be matched by at least a 1-to-1 ratio.

(4) The board shall establish policies, procedures, and criteria that achieve the objectives in their research and commercialization strategic plan for the awarding of grants and loans. The criteria must include:

(a) the project's potential to diversify or add value to a traditional basic industry of the state's economy;

(b) whether the project shows promise for enhancing technology-based sectors of Montana's economy or promise for commercial development of discoveries;

(c) whether the project employs or otherwise takes advantage of existing research and commercialization strengths within the state's public university and private research establishment;

(d) whether the project involves a realistic and achievable research project design;

(e) whether the project develops or employs an innovative technology;

(f) verification that the project activity is located within the state;

(g) whether the project's research team possesses sufficient expertise in the appropriate technology area to complete the research objective of the project;

(h) verification that the project was awarded based on its scientific merits, following review by a recognized federal agency, philanthropic foundation, or other private funding source; and

(i) whether the project includes research opportunities for students.

(5) The board shall direct the state treasurer to distribute funds for approved projects. Unallocated interest and earnings from the ~~expendable trust fund~~ *account* must be retained in the ~~fund~~ *account*. Repayments of loans and any agreements authorizing the board to take a financial right to licensing or royalty fees paid in connection with the transfer of technology from a research and commercialization center to another nonstate organization or ownership of corporate stock in a private sector organization must be deposited in the ~~fund~~ *account*.

(6) The board shall refer grant applications to external peer review groups. The board shall compile a list of persons willing to serve on peer review groups for purposes of this section. The peer review group shall review the application and make a recommendation to the board as to whether the application for a grant should be approved. The board shall review the recommendation of the peer review group and either approve or deny a grant application.

(7) The board shall identify whether a grant or loan is to be used for basic research, applied research, or some combination of both. For the purposes of this section, "applied research" means research that is conducted to attain a specific benefit or solve a practical problem and "basic research" means research that is conducted to uncover the basic function or mechanism of a scientific question."

Section 37. Section 90-6-107, MCA, is amended to read:

"90-6-107. Deposit and expenditure of funds. (1) There is a housing authority enterprise fund in the proprietary fund type as provided for in ~~17-2-102(1)(b)~~ *17-2-102(2)*. All funds from the proceeds of bonds issued under this part, fees, and other ~~moneys~~ *money* received by the board, ~~moneys~~ *money* appropriated by the legislature for the use of the board in carrying out this part, and ~~moneys~~ *money* made available from any other source for the use of the board ~~shall~~ *must* be deposited in the housing authority enterprise fund except ~~where~~ *as* otherwise provided by law. All funds deposited in the housing authority enterprise fund, except funds appropriated by the legislature for use of the board in payment of expenses incurred in carrying out this part, are continuously appropriated to and may be expended by the board for the purposes authorized in this part.

(2) There is a capital reserve account in the housing authority enterprise fund provided for in subsection (1). The capital reserve account consists of the aggregate ~~of moneys~~ *money* retained by the board under existing agreements with bondholders as the minimum capital reserve requirement described in 90-6-119 for each bond issue sold by the board.

(3) Funds appropriated by the legislature for use of the board in payment of expenses incurred in carrying out this part ~~shall~~ *must* be deposited in the housing authority enterprise fund. Funds expended by the board under this subsection ~~shall~~ *must* be repaid by the board from the fees and charges collected under this

part and from any other ~~moneys~~ *money* available for ~~such~~ repayment in accordance with this part."

Section 38. Code commissioner instruction. The code commissioner is directed to change the names of accounts and funds established or referred to in legislation enacted during the 57th legislative session to conform to [this act].

Section 39. Effective date. [This act] is effective July 1, 2001.

Approved March 13, 2001

CHAPTER NO. 35

[SB 180]

AN ACT REVISING AND CLARIFYING LAWS GOVERNING SPECIAL SESSIONS; PROVIDING THAT A STANDING COMMITTEE MAY MEET PRIOR TO A SPECIAL SESSION TO HEAR AND ACT UPON PREINTRODUCED LEGISLATION REFERRED TO THAT COMMITTEE; REQUIRING A 7-DAY NOTICE FOR A HEARING HELD PRIOR TO A SPECIAL SESSION; PROVIDING THAT LEGISLATORS ARE ENTITLED TO COMPENSATION AND EXPENSE PAYMENTS FOR THE DAY PRIOR TO A SPECIAL SESSION AND FOR PRESESSION BUSINESS; AMENDING SECTION 5-3-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-3-101, MCA, is amended to read:

"**5-3-101. Convening of special session — limiting subjects —** ***committee meetings — compensation.*** *(1)* The legislature may be convened in special session by the governor or at the written request of a majority of the members. The governor or the legislature may limit the special session to the subjects specified in the call.

(2) (a) A standing committee of the legislature may meet prior to a special session for the purpose of holding hearings and taking action on preintroduced legislation that has been referred to that committee.

(b) Public notice of a hearing to be held by a standing committee prior to a special session must be given at least 7 days before the hearing.

(3) Members of the legislature engaged in presession business for a special session are entitled to receive compensation and expenses as provided in 5-2-302. Members of the legislature are entitled to receive compensation and expenses as provided in 5-2-301 for the day prior to the convening of a special session."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 13, 2001

CHAPTER NO. 36

[SB 189]

AN ACT ADDING FINANCIAL HOLDING COMPANIES TO THE DEFINITION OF "BANK HOLDING COMPANY"; ALLOWING A BANK TO REDEEM ITS OWN CAPITAL STOCK WITH APPROVAL OF THE DEPARTMENT OF COMMERCE; ELIMINATING DISTANCE LIMITATIONS ON THE PLACEMENT OF BRANCH BANKS; EXPANDING THE USES FOR WHICH A BANK MAY BORROW FUNDS FROM A FEDERAL HOME LOAN BANK; ALLOWING A BANK TO ACQUIRE FOR ITS OWN ACCOUNT SHARES OF STOCK OF A FEDERAL HOME LOAN BANK WITHOUT LIMITATION OF AMOUNT; AMENDING SECTIONS 32-1-109, 32-1-335, 32-1-362, 32-1-372, 32-1-382, 32-1-412, AND 32-1-422, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-109, MCA, is amended to read:

"**32-1-109. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Affiliate" has the meaning given that term in 12 U.S.C. 1841(k).

(2) "Bank holding company" means a bank holding company *or a financial holding company* registered under the federal Bank Holding Company Act of 1956, as amended.

(3) "Board" means the state banking board provided for in 2-15-1803.

(4) "Branch bank" means:

(a) a banking house, other than the main banking house, maintained and operated by a bank doing business in the state and at which deposits are received, checks are paid, or money is lent, but does not include a satellite terminal, as defined in 32-6-103, or the office of an affiliated depository institution acting as an agent; and

(b) in the case of a trust company, any office at which trust services are provided.

(5) "Capital", "capital stock", and "paid-in capital" mean that fund for which certificates of stock are issued to stockholders.

(6) "Consolidate" and "merge" mean the same thing and may be used interchangeably in this chapter.

(7) "Demand deposits" means all deposits, the payment of which can legally be required when demanded.

(8) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(9) "Depository institution" means a bank or savings association organized under the laws of a state or the United States.

(10) "Division" means the division of banking and financial institutions of the department.

(11) "Insured depository institution" means a bank or savings association in which the deposits are insured by the federal deposit insurance corporation.

(12) "Main banking house" means the designated principal place of business of a bank in the state.

(13) "Net earnings" means the excess of the gross earnings of a bank over expenses and losses chargeable against those earnings during any 1 year.

(14) "Principal shareholder" means a person who directly or indirectly owns or controls, individually or through others, more than 10% of any class of voting stock.

(15) "Profit and loss account" or "profit and loss" means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings", and against which all loss and other disbursement items are charged, revealing "net earnings", which are then properly closed to "undivided profits accounts" or "undivided profits", out of which dividends are paid and reserves set aside.

(16) "Savings association" means a savings association or savings bank organized under the laws of the United States or a building and loan association, savings and loan association, or similar entity organized under the laws of a state.

(17) "Shell bank" means a bank organized solely for the purpose of, and that does not conduct any banking business prior to, acquiring control of, merging with, or acquiring all or substantially all of the assets of an existing bank or savings association.

(18) "Subsidiary" means a company 25% or more of whose voting shares or equity interests are owned and controlled by a bank.

(19) "Surplus" means a fund paid in or created under this chapter by a bank from its net earnings or undivided profits that, when set apart and designated as surplus, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as the bank has undivided profits.

(20) "Time deposits" means all deposits, the payment of which cannot legally be required within 7 days.

(21) "Undivided profits" means the credit balance of the profit and loss account of a bank."

Section 2. Section 32-1-335, MCA, is amended to read:

"**32-1-335. Purchase or loan of own capital stock prohibited —** ***exception*.** ~~No~~ *A* bank ~~shall~~ *may not* purchase or invest its capital or surplus or money of its depositors, or any part of either, in shares of its own capital stock or loan its capital or surplus or the money of its depositors, or any part of either, on shares of its own capital stock unless ~~such~~ *the* purchase or loan ~~shall be~~ *is* necessary to prevent loss to ~~such~~ *the* bank on debts previously contracted in good faith. *However, a bank may redeem or otherwise purchase its own capital stock with the prior approval of the department and subject to any conditions that the department may require.* ~~Every~~ *A* person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of ~~such~~ *the capital* stock."

Section 3. Section 32-1-362, MCA, is amended to read:

"**32-1-362. National bank powers extended to state banks.** (1) A bank organized under the laws of this state may engage in any activity or business in which the bank could engage if it were operating as a national bank if the power or activity is not expressly prohibited or limited by the laws of this state and:

(a) if the power or activity is clearly authorized to national banks by federal statute, regulations, or interpretive ruling issued or adopted by a federal banking regulator having jurisdiction over national banks; ~~and~~ *and*

(b) upon application to ~~and approval~~ *and approval* by the department.

(2) The department may adopt rules to govern the application procedure under this section. The department shall act upon an application under this section within 15 days of receipt of the application. The department may, for good cause, extend the time period for processing an application under this section for an additional 15 days. *If the department fails to act on the application within 15 days of receipt of the application and does not extend the time period for good cause, the bank may engage in the activity requested without the approval of the department.*"

Section 4. Section 32-1-372, MCA, is amended to read:

"**32-1-372. Branch bank.** (1) A bank may establish and maintain branch banks, as provided in 32-1-371 and this section, at any place within the state. The formation and operation of a branch bank by a bank organized under the laws of this state require the prior approval of the department.

~~(2) A branch bank formed under this section may not be closer than 200 feet to a branch bank operated by any other commercial bank or closer than 300 feet to the main banking house of any other commercial bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The distances specified in this subsection may be decreased by written agreement of the banks involved.~~

~~(3)~~*(2)* A branch bank may but is not required to offer all services and conduct all business authorized to be offered or conducted by the bank.

~~(4)~~*(3)* A bank authorized to do banking business in this state may use a satellite terminal, as defined in the Montana Electronic Funds Transfer Act, at any location permitted by the Montana Electronic Funds Transfer Act.

~~(5)~~*(4)* A bank may continue to maintain and operate all branch banks and other banking offices, including detached facilities, that are in existence or authorized on July 1, 1997, without further consent, authorization, or approval of the department or the board. All offices established and maintained by a bank, other than the main banking house, at which deposits are received, checks are paid, or money is lent must be considered branch banks for all purposes under this title.

~~(6)~~*(5)* A bank located in this state may provide services for other banks located in this state, whether or not those banks are affiliates.

~~(7)~~*(6)* This section may not be interpreted to authorize a bank not located in this state to establish, operate, or maintain a branch bank in this state."

Section 5. Section 32-1-382, MCA, is amended to read:

"**32-1-382. Definitions.** As used in 32-1-381 through 32-1-384, unless the context requires otherwise, the following definitions apply:

(1) "Acquire" means:

(a) the direct or indirect purchase or exchange of stock;

(b) the direct or indirect purchase of assets and liabilities; or

(c) a merger.

(2) "Bank" means a commercial bank, as defined in 32-1-105, or a national banking association as designated by 12 U.S.C. 24.

(3) "Bank holding company" means a bank holding company *or a financial holding company* that is registered under the Bank Holding Company Act of 1956, as amended, regardless of where it is located or has its headquarters.

(4) "Control" means:

(a) ownership of, authority over, or power to vote, directly or indirectly, 25% or more of any class of voting security;

(b) authority in any manner over the election of a majority of directors; or

(c) power to exercise, directly or indirectly, a controlling influence over management and policies.

(5) "Department" means the department of commerce provided for in 2-15-1801.

(6) "Financial institution" means a bank or bank holding company.

(7) "Headquarters" means the state in which the activities of a bank holding company or a company controlling the bank holding company are "principally conducted" within the meaning of the Bank Holding Company Act of 1956, as amended.

(8) "Located in this state" means:

(a) in the case of a bank, that the organizational certificate identifies an address in this state as the principal place of conducting its business; and

(b) in the case of a bank holding company, an entity, partnership, or trust organized under the laws of this state."

Section 6. Section 32-1-412, MCA, is amended to read:

"32-1-412. Borrowing money — limitations. (1) Except as provided in subsection (3), a bank may not borrow money except to meet its seasonal requirements or unexpected withdrawals. The bills payable and rediscounts of a bank may not be permitted to exceed in the aggregate an amount equal to the capital and surplus of the bank, except with the written consent of the department. Security instruments sold under an agreement to repurchase do not apply to the limit on borrowing contained in this section. The division may prohibit excessive amounts of borrowing structured as a security instrument sold under an agreement to repurchase to a single customer or within the bank. When it appears to the department that a bank is borrowing money in excess of the limitation provided by this section or for the purposes other than as specified in this section, the department may require it to reduce the borrowing within a time to be fixed by the department.

(2) Subject to subsections (1) and (3), a bank may not at any time become indebted, either directly or indirectly, for borrowed money or rediscounts in an amount in excess of its paid-up capital and surplus~~;~~ without first obtaining written authority from the department. Debentures or certificates of indebtedness issued by an investment company to run for a period of 3 years or more may not be included in the deposit liabilities of that investment company, as affected by the provisions of this section.

(3) A bank may borrow funds from a federal home loan bank for use:

(a) in financing home ownership~~,~~*;*

(b) in financing affordable housing programs~~,~~*;*

(c) in financing small business, small farm, and agri-business loans; or

(d) in interest rate risk management, *liquidity management, or other banking activities undertaken pursuant to federal home loan bank advance programs authorized under the Federal Home Loan Bank Act or undertaken pursuant to rules or regulations of the federal housing finance board.*

(4) Loans or extensions of credit from a federal home loan bank are not subject to any limitations based on capital or surplus. The division may prevent excessive borrowing by an institution."

Section 7. Section 32-1-422, MCA, is amended to read:

"**32-1-422. Restriction on investment in corporate stock — rulemaking authority.** (1) Except as provided in subsections (2) and (3), a commercial or savings bank may not purchase or invest its capital or surplus or money of its depositors, or any part of its capital or surplus or money of its depositors, in the capital stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock purchased or acquired to prevent the loss must be sold by the bank within 6 months after purchase or acquisition if it can be sold for the amount of the claim of the bank against it. All capital stock purchased or acquired must be sold for the best price obtainable by the bank within 1 year after purchase or acquisition, or if the stock is unmarketable, it must be charged off as an investment loss, which is equivalent to the stock's sale. A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of the stock.

(2) A bank may acquire and hold for its own account:

(a) up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely for the purpose of providing services to banks;

(b) shares of stock of a federal reserve bank *and a federal home loan bank*, without limitation of amount;

(c) shares of stock in a Montana capital company or a Montana small business investment capital company within limits prescribed by the Montana Capital Company Act; and

(d) shares of stock or financial interests in an affiliate or a subsidiary, the business activities of which are limited to those allowed by law for a bank.

(3) A bank may invest any amount up to the limit established by the department of its unimpaired capital and surplus in shares of stock of:

(a) the federal national mortgage association;

(b) the federal home loan mortgage corporation;

(c) the federal agricultural mortgage corporation; *and*

~~(d) the federal home loan bank; and~~

~~(e)~~*(d)* other corporations created pursuant to acts of congress to meet the agricultural, housing, health, transit, educational, environmental, or similar needs of the nation when the department determines that the investment is in the public interest.

(4) A bank may, upon written application and approval of the department, make an investment in an amount permitted by the department by rule so long as the investment serves primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities in need of jobs, housing, and public services. A bank may also, with the department's approval, purchase interests in an entity, as defined in 35-1-113(9), that makes investments for similar public welfare purposes.

(5) The department shall adopt rules to implement this section. The rules pertaining to the investments allowed in subsection (4) may be substantially equivalent to or more stringent than the eleventh power provided for in 12 U.S.C. 24 and the policy guidelines on community development issued by the office of the comptroller of the currency."

Section 8. Effective date. [This act] is effective on passage and approval.

Approved March 13, 2001

CHAPTER NO. 37

[SB 192]

AN ACT CLARIFYING, AS A RESULT OF THE REPEAL OF MONTANA'S INHERITANCE TAX, THE FILING REQUIREMENTS BY A PERSON WITH AN INTEREST IN NONPROBATE REAL PROPERTY OF A DECEDENT; AMENDING SECTIONS 7-4-2613 AND 72-16-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2613, MCA, is amended to read:

"**7-4-2613. Documents subject to recording.** The county clerk shall, upon the payment of the appropriate fees, record by printing, typewriting, or photographic, micrographic, or electronic process or by the use of prepared blank forms:

(1) (a) subject to subsection (1)(b), deeds, grants, transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property any part of which is situated in the county, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, leases that have been acknowledged or proved, and abstracts of the instruments that have been acknowledged or proved;

(b) an instrument or deed evidencing either a division of real property or a merger of real property only if the instrument or deed is accompanied by a certification from the county treasurer that taxes and special assessments that have been assessed and levied have been paid;

(2) notices of buyer's interest in real property, notwithstanding any other requirement of law or rule relating to eligibility for recording of the deed, contract for deed, or other document relating to the notice of buyer's interest. However, if the instrument of conveyance underlying a notice of buyer's interest would be unrecordable, the clerk and recorder shall notify the buyer by certified mail that the underlying instrument is unrecordable and may be void;.

(3) ~~except as provided in 72-16-503, a document on a form provided by the department of revenue certifying that the holder of~~ *an acknowledged statement indicating that the holder of* a nonprobate interest in real property is deceased ~~and that the deceased's interest is terminated~~. A nonprobate interest in real property is a joint tenancy interest~~,~~ *or* a life estate interest~~, or any other interest not requiring probate~~. ~~The document may be on the form used by the department of revenue for responding to the application for determination of estate tax. It~~ *The acknowledged statement* must contain:

(a) a statement that the holder of the nonprobate interest has died and that the holder's interest in the property is terminated; *and*

~~(b) a certification by the county treasurer that the estate tax, if any tax was due, has been paid or that estate tax was not due;~~

~~(c)~~*(b)* a *legal* description of the property~~;~~.

(4) certificates of births and deaths;

(5) wills devising real estate admitted to probate;

(6) official bonds;

(7) transcripts of judgments that by law are made liens upon real estate;

(8) instruments describing or relating to the individual property of married persons;

(9) all orders and decrees made by the district court in probate matters affecting real estate and that are required to be recorded;

(10) notice of preemption claims;

(11) notice and declaration of water rights;

(12) assignments for the benefit of creditors;

(13) affidavits of annual work done on mining claims;

(14) notices of mining locations and declaratory statements;

(15) estrays and lost property;

(16) a book containing appraisement of state lands; and

(17) other writings that are required or permitted by law to be recorded."

Section 2. Section 72-16-503, MCA, is amended to read:

"72-16-503. ~~Additional filings~~ *Filings* required when *holder of nonprobate interest in* real property ~~involved and no representative~~ *has died.* ~~(1)~~ ~~If~~ *A person with* an interest in real property ~~is involved~~ *that was owned by a decedent, as defined* under 72-16-502, ~~the applicant~~ shall record with the clerk and recorder of each county in which the real property or any part of the property is located a document containing those matters required by 7-4-2613(3). ~~A surviving joint tenant described in 72-16-313(1) or (2) is not subject to the recording requirements under 7-4-2613(3).~~

~~(2) A surviving joint tenant described in 72-16-313(1) or (2) with an interest in real property under 72-16-502 shall record with the clerk and recorder of each county in which the real property is located an acknowledged statement that the holder of the nonprobate interest has died and that the holder's interest in the property is terminated. The acknowledged statement must include a legal description of the real property.~~"

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to deaths occurring after December 31, 2000.

Approved March 13, 2001

CHAPTER NO. 38

[SB 214]

AN ACT REVISING CERTAIN PROVISIONS RELATED TO THE MONTANA UNIVERSITY SYSTEM; SUBSTITUTING "UNIVERSITY OF MONTANA-WESTERN" FOR "WESTERN MONTANA COLLEGE OF THE UNIVERSITY OF MONTANA"; REVISING THE AUTHORITY OF THE BOARD OF REGENTS REGARDING THE STUDENT LOAN PROGRAM TO CONFORM WITH FEDERAL LAW; AMENDING SECTIONS 5-6-102, 20-25-253, 20-25-254, 20-25-255, AND 20-26-1103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-6-102, MCA, is amended to read:

"**5-6-102. Establishment of program.** It is the public policy of this state that there be a legislative intern program open to students attending the university of Montana-Missoula, Montana state university-Bozeman, Montana state university-Billings, Montana state university-northern, ~~western Montana college of the~~ university of ~~Montana~~ *Montana-western*, and Montana tech of the university of Montana or a state-funded, 2-year postsecondary institution. A private college of higher education or a tribally controlled community college in the state may also establish an intern program for the purposes of this chapter."

Section 2. Section 20-25-253, MCA, is amended to read:

"**20-25-253. Purpose of ~~western Montana college of the~~ university of ~~Montana~~ *Montana-western*.** ~~Western Montana college of the~~ *The* university of ~~Montana~~ *Montana-western* has for its primary purpose the instruction and training of teachers for the public schools of Montana."

Section 3. Section 20-25-254, MCA, is amended to read:

"**20-25-254. Donations to ~~western Montana college of the~~ university of ~~Montana~~ *Montana-western*.** The regents may accept for and on behalf of ~~western Montana college of~~ the university of ~~Montana~~ *Montana-western* any donations of lands and any other gifts for the use and benefit of the college."

Section 4. Section 20-25-255, MCA, is amended to read:

"**20-25-255. Acceptance of public lands.** (1) The regents ~~shall~~ *must* receive, in the names of ~~western Montana college of~~ the university of ~~Montana~~ *Montana-western* and Montana state university-Billings, all benefits derived from the distribution of lands contemplated in section 17 of an act of congress, approved February 22, 1889, entitled "An Act to Provide for the Division of Dakota Into Two States and to Enable the People of North Dakota, South Dakota, Montana, and Washington to Form Constitutions and State Governments and to be Admitted Into the Union on an Equal Footing With the Original States, and to Make Donations of Public Lands to Such States".

(2) The regents may, in carrying out the provisions of Title 20, pledge one-half of all interest and income derived from the land grant for the payment in whole or in part of notes, bonds, or other obligations issued by the regents for residence halls or other facilities at ~~western Montana college of~~ the university of ~~Montana~~ *Montana-western* or at Montana state university-Billings, provided that any pledge ~~shall~~ *must* be subject to any prior pledge."

Section 5. Section 20-26-1103, MCA, is amended to read:

"**20-26-1103. Duties of ~~the~~ board.** In discharging its duties in relation to the student loan program, the board shall:

(1) act as guarantor and administrator on loans of money, upon terms and conditions ~~as~~ *that* the board may prescribe, to assist persons attending or accepted for enrollment at an eligible educational institution to meet their educational expenses;

(2) approve financial or credit institutions or other lenders as eligible lenders upon their meeting the standards established by the board for making student loans;

(3) incur and discharge debts, including defaulted loan obligations that have been guaranteed by the board;

(4) make and execute agreements, contracts, and other instruments with any public or private person or agency, including the United States secretary of education, for the administration of the student loan program;

(5) provide for the operation of the student loan program to conduct loan approval processing, essential and special loan servicing, preclaims assistance, supplemental preclaims assistance, claim processing and collections, and other services that would promote lender and school participation and loan availability to students;

(6) perform any other duties necessary for the administration of the student loan program *and other student financial aid-related activities for the benefit of students as determined by the board.*"

Section 6. Effective date. [This act] is effective on passage and approval.

Approved March 13, 2001

CHAPTER NO. 39

[HB 83]

AN ACT ABOLISHING OBSOLETE PROVISIONS REQUIRING CLERKS OF DISTRICT COURTS TO KEEP NATURALIZATION RECORDS AND TO COLLECT FEES FOR NATURALIZATION; AND REPEALING SECTIONS 3-5-514 AND 3-5-515, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Sections 3-5-514 and 3-5-515, MCA, are repealed.

Approved March 14, 2001

CHAPTER NO. 40

[HB 111]

AN ACT REMOVING THE LIMITS ON LOCAL LAKESHORE PROTECTION FEES; AMENDING SECTION 75-7-210, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the revenue from the maximum local lakeshore protection fees established in Montana law is substantially less than the cost of administering the lakeshore protection laws; and

WHEREAS, the lakeshore protection laws impose a significantly underfunded mandate on local governments.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7-210, MCA, is amended to read:

"**75-7-210. Application for permit — fee ~~— limitations~~.** (1) A person seeking a permit for work in a lake or on a lakeshore shall apply to the local governing body and shall pay a permit fee established by the governing body under subsection (2).

(2) ~~(a)~~ The local governing body shall establish a permit fee as provided in subsection (1). The permit fee must ~~reasonably address~~ *be commensurate with* the cost of administering the permit application. Factors the local governing body shall consider when establishing the fee include but are not limited to:

~~(i)~~*(a)* the annual estimated total number of permit requests;

~~(ii)~~*(b)* the complexity of the specific project;

~~(iii)~~*(c)* the need for and location and number of onsite investigations; and

~~(iv)~~*(d)* the estimated cost of the specific project.

~~(b) The fees established in this subsection may not exceed the following limits:~~

~~(i) $25 for residential permits not requiring a variance from the local governing authority;~~

~~(ii) $60 for residential permits requiring a variance from the local governing authority;~~

~~(iii) $60 for commercial permits not requiring a variance from the local governing authority; and~~

~~(iv) $150 for commercial permits requiring a variance from the local governing authority.~~"

Section 2. Effective date. [This act] is effective July 1, 2001.

Approved March 14, 2001

CHAPTER NO. 41

[SB 112]

AN ACT CLARIFYING THE FUNDING OF ADMINISTRATIVE COSTS FOR THE BASIC AND ENHANCED 9-1-1 EMERGENCY TELEPHONE SERVICE

ACCOUNTS; PROVIDING FOR THE RETENTION OF INTEREST EARNINGS IN THE ACCOUNTS; AMENDING SECTION 10-4-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES.

WHEREAS, the Legislature finds public safety to be of paramount importance; and

WHEREAS, emergency telephone systems are a critical component of facilities and services use by private and public agencies in providing public safety services to Montana citizens; and

WHEREAS, the 49th Legislature enacted legislation providing for emergency telephone systems, and this legislation was amended in subsequent sessions to address changing technology; and

WHEREAS, the Legislature intends that all money collected under section 10-4-201, MCA, be used only for providing emergency telephone system services; and

WHEREAS, sound business practices suggest that 9-1-1 funds be invested until a city or county has sufficient revenue to purchase equipment and other necessary items; and

WHEREAS, sections 10-4-303 and 10-4-312, MCA, require that a city or county use income from investments of 9-1-1 funds only for providing emergency telephone services; and

WHEREAS, sections 10-4-302 and 10-4-311, MCA, require that the state withhold the transfer of 9-1-1 funds to a city or county until a plan is approved; and

WHEREAS, city and county governments have built their emergency public safety answering point budgets on the good faith expectation that interest on investments held in trust by the state until a plan was approved would continue to be distributed to city and county governments; and

WHEREAS, the 55th Legislature, in passing House Bill No. 2, House Bill No. 166, and House Bill No. 210, intended to fund 9-1-1 administrative costs from both the basic and enhanced 9-1-1 accounts using a general fund appropriation pursuant to House Bill No. 2, which was intended to correspond to amounts transferred to the general fund pursuant to House Bill No. 166, in the amount of 3.74% of the total fees imposed for telephone exchange access services; and

WHEREAS, the 56th Legislature, in passing House Bill No. 69, further clarified its intent that general fund appropriations corresponding to transfers of 9-1-1 collections to the general fund were to be the sole funding source of administrative costs.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-4-301, MCA, is amended to read:

"**10-4-301. Establishment of emergency telecommunications accounts.** (1) There are established in the state special revenue fund in the state treasury:

(a) an account for all fees collected for basic 9-1-1 services pursuant to 10-4-201(1)(a); and

(b) an account for all fees collected for enhanced 9-1-1 services pursuant to 10-4-201(1)(b).

(2) All money received by the department of revenue pursuant to 10-4-201 must be paid to the state treasurer for deposit in the appropriate account. An amount equal to 3.74% of the money received pursuant to 10-4-201 must be deposited in the state general fund.

(3) The accounts established in subsection (1) retain interest earned from the investment of money in the accounts.

~~(3)~~*(4)* After payment of refunds pursuant to 10-4-205, the balance of the respective accounts must be used for the purposes described in part 1 of this chapter.

~~(4)~~*(5)* The distribution of funds in the 9-1-1 emergency telecommunications accounts described in subsection (1), as required by 10-4-302 and 10-4-311, is statutorily appropriated, as provided in 17-7-502, to the department.

~~(5)~~*(6)* Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from appropriations made for that purpose."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to:

(1) January 1, 1987, for all fees collected and interest earned from the investment of the money collected for basic 9-1-1 services under 10-4-201; and

(2) July 1, 1997, for all fees collected and interest earned from the investment of the money collected for enhanced 9-1-1 services under 10-4-201.

Approved March 14, 2001

CHAPTER NO. 42

[SB 120]

AN ACT REVISING THE TYPE OF FUND FOR THE DEPOSIT OF RECEIPTS FROM SURPLUS PROPERTY SALES IN THE STATE TREASURY; AMENDING SECTION 18-5-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-5-203, MCA, is amended to read:

"**18-5-203. Agency for surplus property — authorization for financing.** The state agency for surplus property ~~shall~~ *must* be self-sustaining and shall pay for its operation and maintenance directly from receipts from surplus property ~~which shall~~ *that must* be deposited in the treasury in an ~~internal service~~ *enterprise* fund."

Section 2. Effective date. [This act] is effective July 1, 2001.

Approved March 14, 2001

CHAPTER NO. 43

[HB 19]

AN ACT EXPANDING THE EXEMPTION FROM COVERAGE UNDER THE WORKERS' COMPENSATION ACT TO INCLUDE EMPLOYMENT AS AN OFFICIAL AT ALL AMATEUR ATHLETIC EVENTS; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a broker or salesperson performing under a license issued by the board of realty regulation;

(f) employment as a direct seller as defined by 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, *umpire,* or judge, at a ~~school~~ *an* amateur athletic event~~, unless the person is otherwise employed by a school district~~;

(k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(p) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(q)(iv) total

20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(q)(iii)(A) or (2)(q)(iii)(B).

(r) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(s) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order.

(3) (a) A sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. There is a $25 fee for the initial application. Any subsequent application renewal must be accompanied by a $25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) The exemption, if approved, remains in effect for 3 years following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall every 3 years submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved on or after July 1, 1995. The renewal application and the $25 renewal application fee must be received by the department at least 30 days before the anniversary date of the previously approved exemption.

(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of $1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the department denies the application for exemption, the applicant may, after mediation pursuant to department rules, contest the denial by petitioning the workers' compensation court.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, dictributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2001

CHAPTER NO. 44

[HB 20]

AN ACT EXCLUDING ELECTION JUDGES FROM UNEMPLOYMENT INSURANCE COVERAGE; AND AMENDING SECTION 13-4-106, MCA.

WHEREAS, section 21, Chapter 195, Laws of 1995, contained a contingent termination provision based upon the amendment of 26 U.S.C. 3304 to no longer require that election judges receive unemployment insurance coverage, but the authority for states to exclude election officials and election workers from unemployment insurance coverage was contained in 26 U.S.C. 3309(b)(3)(F).

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-4-106, MCA, is amended to read:

"**13-4-106. Compensation of judges.** (1) Except as provided in subsection (2), election judges must be paid at the prevailing federal minimum wage for the number of hours worked during an election plus the number of hours spent at the instruction session. Mileage may be paid to election judges for attending instruction sessions. *Election judges are exempt from unemployment insurance coverage for services performed pursuant to this chapter if the remuneration received by the election judge is less than $1,000 in the calendar year.*

(2) The chief election judge may be paid at a rate higher than the other election judges and may be reimbursed for the actual expenses of transporting election materials.

(3) The election administrator shall certify the amount due each election judge to the county governing body as soon after an election as all records necessary for the certification are received. (See compiler's comments for contingent termination of certain text.)"

Approved March 16, 2001

CHAPTER NO. 45

[HB 97]

AN ACT GENERALLY REVISING LAWS RELATING TO THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING STATUTES GOVERNING THE SYSTEM, INCLUDING THOSE RELATING TO MEMBER ELIGIBILITY FOR BENEFITS, PURCHASING OF SERVICE, TAX DEFERRED CONTRIBUTIONS, AND ADMINISTRATIVE EXPENDITURES; REVISING PROVISIONS CONCERNING ASSETS HELD IN TRUST; PROVIDING FOR TRANSFER OF SERVICE; REVISING THE CALCULATION OF POSTRETIREMENT EARNINGS; CLARIFYING THE PROCEDURE FOR DESIGNATION OF BENEFICIARIES AND PAYMENT OF DEATH BENEFITS TO BENEFICIARIES; AMENDING SECTIONS 2-15-1010, 19-20-101, 19-20-201, 19-20-206, 19-20-302, 19-20-402, 19-20-403, 19-20-404, 19-20-408, 19-20-409, 19-20-410, 19-20-411, 19-20-414, 19-20-415, 19-20-417, 19-20-501, 19-20-502, 19-20-603, 19-20-705, 19-20-716, 19-20-804, AND 19-20-1001, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1010, MCA, is amended to read:

"2-15-1010. Teachers' retirement board — terms — allocation — definition. (1) There is a teachers' retirement board.

(2) The board consists of six members appointed by the governor, as follows:

(a) three persons appointed from the teaching profession who, when appointed, are active members of the retirement system. At least one of the three appointees must be actively employed as a public school classroom teacher and shall hold a class 1, 2, or 4 certificate pursuant to 20-4-106.

(b) two persons appointed as representatives of the public;

(c) one member who must be a retired teacher who was a member of the retirement system at the time of retirement.

(3) ~~Each~~ *(a) Except as provided in subsection (3)(b), each* appointed member of the board shall serve a term of 4 *5* years. Each appointed member shall take and

subscribe to the oath prescribed by Article III, section 3, of the Montana constitution. The oath must be filed in the office of the secretary of state.

(b) The first appointment of a member of the public after [the effective date of this act] is for a 4-year term. After that appointment, each appointment of a member of the public is for a 5-year term.

(4) If a vacancy in an unexpired term occurs on the board, the governor shall appoint a person to fill the unexpired portion of the term.

~~(4)~~*(5)* The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

~~(5)~~*(6)* As used in this section, "classroom teacher" means a staff member *who is* assigned professional activities of instructing pupils in self-contained classes or courses or in classroom situations."

Section 2. Section 19-20-101, MCA, is amended to read:

"**19-20-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings fund, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed~~,~~ ~~with regular interest, on~~ *upon* the basis of the ~~1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually~~ *mortality table and interest rate assumption set by the retirement board.*

(3) "Average final compensation" means the average of a member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under 19-20-716(1)(b).

(4) "Beneficiary" means ~~a person~~ *one or more persons* formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.

(5) "Creditable service" is that service defined by 19-20-401.

(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation.

(b) Earned compensation does not mean:

(i) direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for*:*

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

(F) any similar payment for any form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or

(iv) any noncash benefit provided by an employer to or on behalf of an employee.

(c) Unless included pursuant to 19-20-716, earned compensation does not include termination pay.

(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(e) Earned compensation does not include*:*

(i) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code*;*

(ii) payment for sick, annual, or other types of leave that is allowed to a member and that is accrued in excess of that normally allowed; or

(iii) incentive or bonus payments paid to a member that are not part of a series of annual payments.

(7) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state that employs a person who is designated a member of the retirement system.

(8) "Full-time service" means service that is full-time and that extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, full-time service means service that is full-time and that totals at least 9 months in any year.

(9) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a governmental plan, as the code provided on July 1, 1999.

(10) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

(11) "Normal retirement age" means an age no earlier than the age at which the member is eligible to retire:

(a) by virtue of age, length of service, or both;

(b) without disability; and

(c) with the right to receive immediate retirement benefits without actuarial or similar reduction in the benefits because of retirement before a specified age.

~~(11)~~*(12)* "Part-time service" means service that is less than full-time or that totals less than ~~9 months~~ *180 days* in a normal academic year. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

~~(12)~~*(13)* "Prior service" means employment of the same nature as service but rendered before September 1, 1937.

~~(13)~~*(14)* "Regular interest" means interest ~~at 4% a year compounded annually or~~ at a rate ~~as may be~~ set by the retirement board in accordance with 19-20-501(2).

~~(14)~~*(15)* "Retired member" means a person who has terminated employment that ~~is eligible~~ *qualified the person* for membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to this chapter.

~~(15)~~*(16)* "Retirement allowance" means a *monthly* payment due ~~monthly~~ to a person who has qualified for service or disability retirement or due to a beneficiary as provided in 19-20-1001.

~~(16)~~*(17)* "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

~~(17)~~*(18)* "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

~~(18)~~*(19)* "Service" means the performance of instructional duties or related activities that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

~~(19)~~*(20)* "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

~~(20)~~*(21)* (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment *and on which employee and employer contributions have been paid as required by 19-20-716.*

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code.

~~(21)~~*(22)* "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602 and 19-20-605, and who has a right to a future retirement benefit.

~~(22)~~*(23)* "Written application" *or "written election"* means a written instrument, ~~specified~~ *required* by *statute or the rules of* the board, properly ~~executed~~ *signed*, and filed with the board, that contains all the *required* information ~~required by the board~~, including documentation ~~as~~ *that* the board considers necessary."

Section 3. Section 19-20-201, MCA, is amended to read:

"**19-20-201. Administration by retirement board.** *(1)* The retirement board shall administer and operate the retirement system within the limitations prescribed by this chapter, and ~~to this end,~~ it is the duty of the retirement board to:

~~(1)~~*(a)* establish rules necessary for the proper administration and operation of the retirement system;

~~(2)~~*(b)* approve or disapprove all expenditures necessary for the proper operation of the retirement system;

~~(3)~~*(c)* keep a record of all its proceedings, which must be open to public inspection;

~~(4)~~*(d)* submit a report to the office of budget and program planning as a part of the information required by 17-7-111, detailing the fiscal transactions for the 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of the retirement system;

~~(5)~~*(e)* keep in convenient form ~~that~~ *the* data ~~which~~ *that* is necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system;

~~(6)~~*(f)* prepare an annual valuation of the assets and liabilities of the retirement system;

~~(7)~~*(g)* prescribe a form for membership application ~~which~~ *that* will provide adequate and necessary information for the proper operation of the retirement system;

~~(8)~~*(h)* annually determine the rate of regular interest as prescribed in 19-20-501;

~~(9)~~*(i)* establish and maintain the funds of the retirement system in accordance with the provisions of part 6 of this chapter; and

~~(10)~~*(j)* perform other duties and functions as are required to properly administer and operate the retirement system.

(2) The board may send retirement-related material to employers and the campuses of the Montana university system for delivery to employees. To facilitate distribution, employers and those campuses shall each provide the board with a point of contact who is responsible for distribution of the material provided by the board."

Section 4. Section 19-20-206, MCA, is amended to read:

"**19-20-206. Board to grant benefits.** It is the duty of the retirement board to grant retirement, disability, and other benefits under the provisions of this chapter. *However, benefits will be granted only if the board decides, in its discretion as limited by law, that an applicant for benefits is entitled to those benefits. All applicants who are in similar circumstances must be treated alike.*"

Section 5. Section 19-20-302, MCA, is amended to read:

"**19-20-302. Active membership.** (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system~~, with the exception that those persons who became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members~~:

(a) ~~any~~ *a* person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) ~~any~~ *a* person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the optional retirement program under Title 19, chapter 21;

(c) ~~any~~ *a* person employed as a speech-language pathologist, school nurse, or school psychologist or in ~~an instructional services~~ *a teaching* capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) ~~any~~ *a* person who is an administrative officer or a member of the instructional staff of the board of public education; *and*

~~(e) any person who has elected not to become a member of the retirement system and is reentering service in a capacity prescribed by subsection (1)(a), (1)(b), (1)(c), or (1)(d);~~

~~(f) any person who has elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by subsection (1)(a), (1)(b), (1)(c), or (1)(d) since the time of the election, and who may elect to become a member of the retirement system~~

(e) the superintendent of public instruction or a person employed in an instructional services capacity by the office of public instruction.

(2) A person elected to the office of county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 and may, within 30 days of taking office, elect to become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(4) (a) A substitute teacher *or a part-time teacher's aide*:

(i) shall ~~make~~ *file* an irrevocable *written* election *determining* whether to become an active member of the retirement system on the first day of employment; or

(ii) is required to become an active member of the retirement system ~~on the 31st day~~ *after completing 210 hours* of employment in any fiscal year if the substitute teacher *or part-time teacher's aide* has not elected membership under subsection (4)(a)(i).

(b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute teacher is required to remain a member as long as the teacher is available for employment in that capacity.

~~(b)~~*(c)* A person employed as a substitute teacher on July 1, 1999, who has not elected to become a member by that date shall ~~make~~ *file* an irrevocable *written* election as required by subsection (4)(a)(i) on the first day of employment as a substitute in the next school year after July 1, 1999.

(d) A person employed as a part-time teacher's aide on July 1, 2001, who is not a member of the retirement system shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a part-time teacher's aide after July 1, 2001.

~~(c)~~*(e)* The employer shall give written notification to a substitute teacher *or part-time teacher's aide* on the first day of employment of the option to elect membership under subsection (4)(a)(i).

~~(d)~~*(f)* If a substitute teacher *or part-time teacher's aide* declines to elect membership during the election period, the teacher *or part-time teacher's aide* shall ~~execute~~ *file* a written statement *with the employer* waiving membership and the employer shall retain the statement.

(5) A school district clerk or business official may not become a member of the teachers' retirement system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to remain an active member of the system while employed in that capacity, and any postretirement earnings from employment as a school district clerk or school business official are subject to the limit on earnings provided in 19-20-804.

~~(5)~~*(6)* At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike.

(7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours a day assisting a certified teacher in a classroom."

Section 6. Section 19-20-402, MCA, is amended to read:

"**19-20-402. Creditable service for *employment in* out-of-state public and federal ~~employment~~ *schools*.** (1) (a) A member who has 5 years of active membership service, who has completed 1 full year of active membership in Montana subsequent to the member's out-of-state service, and who contributes to the retirement system as provided in subsection (2) may receive creditable service in the retirement system for out-of-state ~~employment~~ service that would have been acceptable under the provisions of this chapter if the service had been performed in the state of Montana.

(b) If the member contributed to a public retirement plan, other than social security, while performing the out-of-state service, the member shall roll the member's contributions over into the retirement system or must receive a refund of the member's contributions for the service before ~~qualifying~~ *purchasing* service under this section.

(c) For the purpose of this section, out-of-state ~~employment~~ *service* means service performed:

(i) within the United States in a federal or other public school or institution; and

(ii) outside the United States in a federal or other public or private school or institution.

(2) (a) To ~~qualify~~ *purchase* the service described in subsection (1)(c)(i), a member who became a member before July 1, 1989, shall contribute for each year of service to be ~~qualified~~ *purchased* an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned in Montana after the member's out-of-state service, plus interest. The contribution rate must be the rate in effect at the time the member is eligible for the service.

(b) To ~~qualify~~ *purchase* the service described in subsection (1)(c)(ii), a member who became a member before July 1, 1989, shall contribute for each year of service to be ~~qualified~~ *purchased* an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned in Montana after the member's out-of-state service or after July 1, 1989, whichever date is later, plus interest. The contribution rate must be the rate in effect at the time the member is eligible to ~~qualify~~ *purchase* the service or the rate in effect on July 1, 1989, whichever date is later.

(c) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to ~~qualify~~ *purchase* the service.

(4) The contributions and interest required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section."

Section 7. Section 19-20-403, MCA, is amended to read:

"**19-20-403. Creditable service for employment while on leave.** (1) (a) A member who is eligible under subsection (1)(b) and who contributes to the retirement system as provided in subsection (2) may receive up to 2 years of creditable service for employment while on leave.

(b) To be eligible to ~~qualify~~ *purchase* service under this section, a member must have at least 5 years of membership service in the retirement system, must have been a member prior to the leave, and must have completed 1 year of active membership in Montana subsequent to the member's return.

(2) (a) For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute for each year of service to be ~~qualified~~ *purchased* an amount equal to the combined employer and employee contributions for the member's first full year's teaching salary earned in Montana after the member's return from leave, plus interest.

(b) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent actuarial valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to ~~qualify~~ *purchase* the service.

(4) The contributions and interest may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section."

Section 8. Section 19-20-404, MCA, is amended to read:

"**19-20-404. Creditable service for active service in military, red cross, or merchant marine.** (1) A member may receive up to 4 years of creditable service without cost for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Korean ~~conflict~~ *war* between June 1, 1950, and January 31, 1955, and the Vietnam conflict between December 22, 1961, and May 7, 1975, dates inclusive, if the member has 5 years or more of creditable service in the retirement system. To ~~qualify~~ *receive credit for* this service, a member shall submit to the board a written application ~~form~~ and proper certification of the member's military service.

(2) If a member is ineligible for service credit under subsection (1), the member may apply under the provisions of this subsection for creditable service in the retirement system for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or merchant marine. The person must be awarded creditable service, conditional upon the person's completing 5 years of active membership in Montana, for the number of years, not exceeding 2, that the retirement board determines to be creditable service, if the person contributes to the retirement system an amount equal to the combined employer and employee contributions for the person's first full year's teaching salary earned in Montana following the active service in the armed forces of the United States, the American red cross, or the merchant marine for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in the person's account upon completion of 5 years of membership service in Montana. The contribution rate is that rate in effect at the time the person is eligible for the service.

(3) The contribution required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the person and the retirement board."

Section 9. Section 19-20-408, MCA, is amended to read:

"19-20-408. Creditable service for employment in private schools. (1) (a) A member who has at least 5 years of membership service, who has completed 1 full year of active membership subsequent to the member's private school employment, and who contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service in the retirement system for employment within the United States in a private elementary, secondary, or postsecondary educational institution.

(b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a member of the scientific staff. If the employment is for teaching kindergarten through grade 12, the service must have been performed as a certified teacher.

(c) Members may not receive credit for service as a student employed by a private elementary, secondary, or postsecondary educational institution.

(2) (a) For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute to the retirement system an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned after becoming a member of the retirement system or after returning to the retirement system, whichever is later, plus interest. The contribution rate must be that rate in effect at the time the member is eligible to purchase the service.

(b) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to ~~qualify~~ *purchase* the service.

(4) The contributions and interest may be made in lump-sum payment or in installments as agreed between the person and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section."

Section 10. Section 19-20-409, MCA, is amended to read:

"19-20-409. Transfer of service credits and contributions from public employees' retirement system. (1) An active member may at any time before retirement ~~make~~ *file* a written ~~election~~ *application* with the retirement board to ~~qualify in the teachers' retirement system~~ *purchase* all of the member's previous creditable service in the public employees' retirement system. The amount that must be paid to the retirement system to ~~qualify~~ *purchase* this service under this section is the sum of subsections (2) and (3).

(2) The public employees' retirement system shall transfer to the teachers' retirement system an amount equal to 72% of the amount ~~payable~~ *paid* by the member.

(3) The member shall pay either directly or by transferring contributions on account with the public employees' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated, plus accrued interest. Interest must be calculated from the date of termination until ~~payment~~ *a transfer* is received by the retirement system, based on the interest tables in use by the public employees' retirement system.

(4) A member who ~~qualifies~~ *purchases* service from the public employees' retirement system in the teachers' retirement system must ~~complete~~ *have completed* 5 years of membership service in the teachers' retirement system to ~~qualify~~ *receive credit* or purchase military service, out-of-state ~~teaching~~ service, employment while on leave, and private school employment.

(5) The retirement board shall determine the service credits that may be transferred.

(6) If an active member who also has creditable service in the public employees' retirement system before becoming a member of the teachers' retirement system dies before ~~qualifying~~ *purchasing* this service in the teachers' retirement system and if the member's service credits from both systems, when combined, entitle the member's beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before payment of the death benefit, the public employees' retirement board must transfer to the teachers' retirement system the contributions necessary to ~~qualify~~ *purchase* this service in the teachers' retirement system as provided in subsections (2) and (3).

(7) *(a)* If the *teachers'* retirement board determines that an individual's membership was erroneously classified and reported to the public employees' retirement system, the *public employees' retirement board shall transfer to the teachers' retirement system the* member's accumulated contributions and service, together with employer contributions plus interest~~, must be transferred to the teachers' retirement system and any employee and employer contributions due as calculated in 19-20-602 and 19-20-605, respectively, are the liability of the employee and the employing entity where the error occurred~~.

(b) For the period of time that the employer contributions are held by the public employees' retirement system, interest paid on employer contributions transferred under this subsection *(7)* must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request.

(c) Any employee and employer contributions due as calculated in 19-20-602 and 19-20-605, plus interest, are the liability of the employee and the employing entity where the error occurred.

(8) A vested member who participated in the public employees' retirement system defined contribution plan provided for in Title 19, chapter 3, part 21, prior to becoming a member of the teachers' retirement system may purchase creditable service for the time spent as a participant in the defined contribution plan if:

(a) the member has completed at least 1 full year in the teachers' retirement system following the member's public employees' retirement system service;

(b) for each full year or portion of a year to be purchased pursuant to this subsection (8), the member contributes the actuarial cost of the service based on the most recent valuation of the system; and

(c) the member has withdrawn the member's money in the member's public employees' retirement system defined contribution plan account or has rolled over the amount required to purchase service in accordance with this subsection (8).

(9) Creditable service purchased under subsection (8) must be determined according to the laws and rules governing service credit in the public employees retirement system."

Section 11. Section 19-20-410, MCA, is amended to read:

"19-20-410. Creditable service for extension service employment. (1) (a) At any time before retirement, a member with 5 years or more of creditable service in the retirement system may ~~make~~ *file* a written ~~election~~ *application* with the retirement board to ~~qualify~~ *purchase* up to 5 years of employment service with the Montana cooperative extension service, subject to the limitation contained in 19-20-405, if:

(i) the member became a member of the retirement system before July 1, 1989;

(ii) the service involved instructional service at a unit of the Montana university system; and

(iii) the member received a refund of membership contributions under the civil service retirement system or the federal employees' retirement system for the service to be ~~qualified~~ *purchased.*

(b) ~~To qualify~~ *For each year of* service *to be purchased* under subsection (1)(a), the member shall contribute to the retirement system an amount equal to the combined employer and employee contribution ~~for~~ *rate in effect at the time that the member is eligible to purchase the service multiplied by* the member's first full year's teaching salary earned after becoming a member of the retirement system ~~for each year of creditable service~~, plus interest at the rate that the contribution would have earned had the contribution been in the member's account upon the completion of 5 years of membership service. ~~The contribution rate must be that rate in effect at the time that the member is eligible for the service.~~

(2) In addition to service purchased under subsection (1) and subject to 19-20-407, a member ~~with~~ *who has purchased* 5 years or more of ~~qualified~~ *creditable* service in the retirement system may ~~qualify any~~ *purchase additional years of* cooperative extension service by contributing to the system the full actuarial cost of the service.

(3) Contributions to ~~qualify~~ *purchase* service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the retirement board."

Section 12. Section 19-20-411, MCA, is amended to read:

"19-20-411. Absence because of employment-related injury. (1) Subject to the limitation in subsection (6), a member who is absent because of an injury entitling the member to workers' compensation payments may ~~qualify~~ *purchase* as creditable service the time during which the member is absent. To ~~qualify~~ *purchase* this service, a member shall contribute to the retirement system as provided in subsection (2) upon the member's return to contributing membership service.

(2) (a) A member who became a member before July 1, 1989, shall contribute an amount equal to:

(i) the contributions that the member would have made had the member not been absent, based on the member's compensation at the commencement of the absence;

(ii) the interest that begins to accrue 1 year from the date that the member returns to covered employment; and

(iii) the interest not paid by the employer under subsection (3).

(b) A member who became a member on or after July 1, 1989, shall pay the actuarial cost of the service based on the most recent valuation of the system.

(3) When a member elects to contribute under subsection (2)(a), the employer shall contribute an amount equal to the contributions that would have been made by the employer had the member not been absent, based on the member's compensation at the commencement of the absence. The employer may contribute an amount equal to the interest accruing on the employer's contributions calculated in the same manner as interest on the employee's contributions under subsection (2)(a). If the employer elects not to pay the interest, this amount must be paid by the employee.

(4) A member shall file with the retirement board a written notice of the member's intent to pay the contributions under subsection (2).

(5) Payment of the employee's contributions may be made in one sum at the time of filing the notice or in installments before termination of covered employment as agreed between the board and the member.

(6) A member absent as provided in subsection (1) loses the right to contribute under this section if the member's accumulated normal contributions are refunded under 19-20-603.

(7) The maximum amount of membership service allowable under this section is 2 years."

Section 13. Section 19-20-414, MCA, is amended to read:

"**19-20-414. Rollover or transfer of ~~public employee~~ accumulated contributions.** (1) A member who is eligible to ~~qualify~~ *purchase* service under this chapter may at any time before retirement apply to roll over or transfer the member's accumulated contributions on deposit with any other eligible retirement plan. The total amount transferred to the retirement system may not exceed the amount due to purchase service.

(2) If, in the case of a transfer, the transferred account includes both tax-deferred and taxed amounts, the transferring agency shall identify the member's tax-deferred and taxed amounts at the time the transfer is made.

(3) To the extent permitted by section 401(a)(31) of the Internal Revenue Code and as limited by subsection (1), the board shall accept a direct rollover of eligible distributions from another eligible retirement plan."

Section 14. Section 19-20-415, MCA, is amended to read:

"**19-20-415. Procedure for purchase of service credit and pick up.** (1) A member who wishes to redeposit pursuant to 19-20-602(2) amounts previously withdrawn or who is eligible to purchase service credit pursuant to this part shall make the following series of elections to accomplish the redeposit or purchase:

(a) The member may elect a lump-sum payment, a series of installment payments, or a combination of lump-sum payments and installment payments.

(b) If a series of installment payments ~~are~~ *is* elected by the member, the member may elect to pay the installments directly to the board or to have the installments paid by payroll deduction or the member may select a combination of both.

(c) With respect to installments payable by payroll deduction, if the member's employer has adopted the resolution described in subsection (2), the member shall ~~elect the irrevocable payroll deduction authorization~~ *complete the irrevocable written application to purchase service* provided *for* in subsection (4). If the member's employer has not adopted the resolution, the member may elect only a revocable ~~payroll deduction authorization~~ *written application to purchase service.*

(2) An employer may adopt a resolution to pick up and pay the member's elective contributions made pursuant to a binding, irrevocable ~~payroll deduction authorization~~ *written application.* The contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member. The resolution must contain the following statements:

(a) that the member contributions, even though designated as member contributions for state law purposes, are being paid by the employer in lieu of the contributions by the member; and

(b) that the member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the system.

(3) (a) With respect to any member's elective contributions, the effective date of the employer ~~pick-up~~ *pickup* is the later of:

(i) the adoption of the employer's resolution; or

(ii) the ~~execution of~~ *date that* the irrevocable ~~payroll deduction authorization form~~ *written application is signed by both the member and the member's employer.*

(b) The ~~pick-up~~ *pickup* does not apply to a contribution made before the effective date of the employer's resolution. ~~An irrevocable payroll deduction authorization~~ *A written application to purchase additional service that is* in effect on the effective date of the employer's resolution is void and the provisions of subsection (1) apply.

(4) ~~If the irrevocable payroll deduction authorization is elected by the member, it~~ *The irrevocable written application to purchase service* must be ~~executed~~ *signed* by the member and the member's employer *and filed with the board.* Subject to any maximum amounts or duration established by state or federal law, the irrevocable ~~payroll deduction authorization~~ *written application* must specify:

(a) the amount of the deduction;

(b) the number of installments;

(c) the number of years and type of service that the member is purchasing; and

(d) that the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the board in lieu of contributions by the member.

(5) The minimum duration of the ~~irrevocable payroll deduction authorization~~ *installments required by subsection (4)(b)* is 3 months, and the maximum duration is 5 years. ~~The minimum number of years specified to be purchased may not be less than 1 year or the total number of years that the member is eligible to purchase.~~ The maximum *number of years that may be purchased* may not exceed the total number of years that the member is eligible to purchase.

(6) The irrevocable ~~payroll deduction authorization may~~ *written application does* not give the member the option of receiving the deduction amounts directly

instead of having them paid by the employer to the system. ~~A member may make more than one binding, irrevocable payroll deduction authorization so long as a subsequent deduction authorization does not amend a previous binding, irrevocable payroll deduction authorization.~~ A member may not prepay any amounts under a binding, irrevocable ~~payroll deduction authorization~~ *written application.*

(7) If a member terminates or dies prior to completion of the installment payments, the binding, irrevocable ~~payroll deduction authorization~~ *written application* expires and the board shall prorate the service credit purchased based upon the amount paid as of the date of termination or death. In the case of a termination, the member may make a lump-sum contribution for the balance of the service subject to the limitations of section 415 of the Internal Revenue Code. In the case of the member's death, the payment to purchase service may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code."

Section 15. Section 19-20-417, MCA, is amended to read:

"**19-20-417. Credit for substitute teaching service, *teacher's aide service, or* ~~required~~ *other service not reported.*** *(1)* A substitute teacher *or part-time teacher's aide* who did not elect membership under 19-20-302 and who subsequently becomes a member must be awarded creditable service for ~~substitute teaching service if the substitute teacher contributes:~~

~~(1) an amount equal to the combined member and employer contributions that would have been made if the substitute teacher had elected membership; and~~

~~(2) interest at the rate that the contributions would have earned if they had been on deposit with the retirement system~~ *the service not reported if the member contributes the employee and employer contributions that would have been made if the member had been a member from the date of hire, plus interest.*

(2) A person who was employed in a capacity that would have been eligible for membership except for the fact that the person was employed for less than 30 days and who subsequently becomes an active member may purchase this service if the person contributes the employee and employer contributions that would have been made if the person had been a member from the date of hire, plus interest.

(3) If an employer fails to report a person who was eligible for membership under 19-20-302, the employee and employer shall make the contributions required by this chapter, plus interest.

(4) The contributions and interest may be made in a lump-sum payment or in installments as agreed to between the person and the board."

Section 16. Section 19-20-501, MCA, is amended to read:

"**19-20-501. Financial administration of money.** The members of the retirement board are the trustees of all money collected for the retirement system, and as trustees, they shall provide for the financial administration of the money as provided in Article VIII, section 15, of the Montana constitution in the following manner:

(1) The money must be invested and reinvested by the state board of investments.

(2) The retirement board ~~annually~~ shall *annually* establish the rate of regular interest. *The rate established by the board may not be less than 4%.*

(3) The retirement board ~~annually~~ shall *annually* divide among the several reserves of the retirement system an amount equal to the average balance of the reserves during the preceding fiscal year multiplied by the rate of regular interest. In accordance with the provisions of 19-20-605(5), the amount to be credited to each reserve must be allocated from the interest and other earnings on the money of the retirement system actually realized during the preceding fiscal year, less the amount allocated to administrative expenses. The administrative expenses of the retirement system, *less amortization of intangible assets,* may not exceed 1.5% of retirement benefits paid.

(4) The state treasurer is the custodian of the collected retirement system money and of the securities in which the money is invested.

(5) For purposes of Article VIII, section 12, of the Montana constitution, all the reserves established by part 6 of this chapter must be accounts in the pension trust fund type of the treasury fund structure of the state.

(6) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination."

Section 17. Section 19-20-502, MCA, is amended to read:

"**19-20-502. Restrictions on use of money.** (1) A member of the retirement board or an employee of the board may not:

(a) have an interest, ~~direct or indirect~~ *directly or indirectly*, in the gains or profits of any investment of money of the retirement system, except as provided in this section;

(b) directly or indirectly, for the member or employee or as an agent, in any manner use the money or deposits of the retirement system except to make current and necessary expenditures authorized by the retirement board; or

(c) become an endorser or surety or in any manner an obligor for money loaned by or borrowed from the retirement system.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

(3) The board may not engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

(4) The assets of the retirement system must remain in trust until a warrant for the assets has been paid or an electronic funds transfer of system assets has been made in accordance with law."

Section 18. Section 19-20-603, MCA, is amended to read:

"**19-20-603. Withdrawal of accumulated contributions — options.** An inactive member electing to do so or a person whose membership terminates without a prospect or anticipation that the member will return to work for an employer within 60 days of termination may withdraw the member's accumulated contributions from the annuity savings fund in the retirement system in accordance with the following provisions:

(1) An inactive member under the provisions of 19-20-303(1) or (3) may elect, without right of revocation, to withdraw the member's accumulated contributions. If the member does not withdraw the accumulated contributions, the member remains an inactive member of the retirement system with the right to qualify for its benefits.

(2) Upon recovery from a disabling illness or separation from the armed forces, a person qualifying as an inactive member under the provisions of 19-20-303(2) may withdraw the member's accumulated contributions unless the member returns to active membership.

(3) Upon written application to the board, a terminating member may have the payment of all or any portion of the member's accumulated contributions rolled over or transferred into another qualified plan designated by the member. The portion not rolled over or transferred must be paid directly to the terminating member. The board shall provide forms for ~~making~~ *filing* the written application. The terminating member is responsible for correctly designating an account or plan eligible to receive the tax-deferred amount in order to continue the tax-deferred status of the amount. To the extent required by section 401(a)(31) of the Internal Revenue Code, the board shall allow members and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

(4) If a nonvested member terminates with accumulated contributions of less than $200, the board shall pay the accumulated contributions in a lump sum as soon as administratively feasible without a written application from the member unless there is a return to service. Upon the payment of accumulated contributions, the member is considered to have withdrawn from the system."

Section 19. Section 19-20-705, MCA, is amended to read:

"**19-20-705. Correction of erroneous payments.** *(1)* If a change or error in the records results in a member or beneficiary receiving from the retirement system more or less than ~~he~~ *the member or beneficiary* would have been entitled to receive had the records been correct, then, on discovery of the error, the retirement board shall correct the error and, as far as practicable, shall adjust the payments ~~in such a manner~~ *so* that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled will be paid.

(2) If the amount of a contribution payment is incorrect, the board may reject the payment or accept the payment and approve an arrangement to collect the correct amount, including any or all of the following arrangements:

(a) adjustment of subsequent payments to the board from a member or an employer;

(b) collection of installment payments or a lump-sum payment from an employer; or

(c) collection of installment payments, a lump-sum payment, or a rollover payment from a member."

Section 20. Section 19-20-716, MCA, is amended to read:

"**19-20-716. Termination pay.** (1) If a member terminates and receives termination pay at the time of retirement, the member shall select, subject to subsection (4), ~~and~~ by ~~executing~~ *signing* a binding, irrevocable written election at least 90 days before the member's termination date, one of the following options:

(a) Option 1—The member may use the total termination pay in the calculation of the member's average final compensation. The member and the employer shall pay contributions to the retirement system as determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time of termination.

(b) Option 2—The member may use a yearly amount of the total termination pay added to each of the 3 consecutive years' salary used in the calculation of the member's average final compensation. To determine the amount of termination pay used in the calculation of average final compensation, termination pay must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602 and 19-20-605(1). The contributions must be made at the time of termination.

(c) Option 3—The member may exclude the termination pay from the average final compensation. A contribution is not required of either the member or the employer.

(2) A binding, irrevocable *written* election required by this section must be ~~executed~~ *signed* by both the member and the employer *at least 90 days prior to the member's termination date* and must contain statements with regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

(a) the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the system in lieu of contributions by the member and that the picked up contributions are paid from the same source as compensation is paid;

(b) the member may not choose to directly receive the amounts deducted from the member's termination pay instead of having them paid by the employer to the system;

(c) the member may not prepay any portion of the contributions; and

(d) the effective date of the ~~pick-up~~ *pickup* is the date ~~of execution of the binding,~~ *that the* irrevocable *written* election *is signed* by both the member and employer. *The effective date must be at least 90 days prior to the date of the member's termination.* The ~~pick-up~~ *pickup* does not apply to a contribution made before the effective date of the ~~pick-up~~ *pickup.*

(3) Pursuant to subsection (2), contributions required under subsection (1)(a) or (1)(b) must be:

(a) deducted from the portion of termination pay that:

(i) constitutes wages for the purposes of section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) can be included in the member's gross income for federal tax purposes; and

(b) picked up by the employer.

(4) If a member ~~fails~~ *and the member's employer fail* to ~~make~~ *sign* the written election within the time period required in subsection (1) or if the ~~member~~ *member's* contribution is greater than the total amount of termination pay, the member may contribute for the purposes specified in subsections (1)(a) and (1)(b) *on* all or any part of the termination pay received. A contribution made pursuant

to this subsection cannot be picked up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code."

Section 21. Designation of beneficiary. (1) Each member or recipient of a benefit shall file with the board a written application nominating a beneficiary who may be eligible to receive the benefit provided pursuant to this chapter. The board shall provide a form that may be used for this purpose. A member or benefit recipient may revoke the application and nominate a different beneficiary by filing a new form for this purpose with the board.

(2) A beneficiary who renounces an interest in the right to a payment of a benefit will be considered, for the purposes of further payment by the board of a renounced interest, to have predeceased the member or beneficiary.

Section 22. Section 19-20-804, MCA, is amended to read:

"**19-20-804. Allowance for service retirement.** (1) Upon termination, ~~an eligible~~ *a* member *who has attained normal retirement age* must receive a retirement allowance equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service and service transferred under 19-20-409.

(2) Except as provided in subsection (4), a retired member may be employed part-time in a position specified in 19-20-302 and may earn, without loss of retirement benefits, an amount not to exceed the greater of:

(a) one-third of the sum of the member's average final compensation ~~plus normal annual salary increases for teaching personnel employed by the school district, state agency, political subdivision, or university unit that employed the member at the time of retirement~~; or

(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(3) On July 1 of each year following the member's retirement effective date, the maximum earning amount allowed under subsection (2)(a) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding year.

~~(3)~~*(4)* (a) Except as provided in subsection ~~(4)~~ *(5)*, the retirement benefit of a retired member employed in a full-time position or earning more than allowed by subsection (2) must be canceled beginning *in* the month in which the retired member returns to full-time employment or earns more than allowed.

(b) The retirement benefits of a retired member who was employed in a full-time position or who exceeded the amount that the retired member was eligible to earn under subsection (2) and who was reemployed for less than 1 year must, upon termination of employment, be reinstated beginning *in* the later of either the month following termination or July 1 of the school year following the date on which the retired member was reemployed. The reinstated retirement benefit is the amount that the retired member would have been entitled to receive had the retired member not returned to employment.

(c) Upon retirement after cancellation of a retired member's benefit pursuant to subsection ~~(3)(a)~~ *(4)(a)*, a retired member who is reemployed as an active member for a minimum of 1 year of full-time service must receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment.

~~(4)~~*(5)* If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be terminated."

Section 23. Section 19-20-1001, MCA, is amended to read:

"**19-20-1001. Allowances for death of member.** (1) If a member dies before retirement, the member's accumulated contributions must be paid to the member's estate or to ~~a person~~ *the beneficiary that* the member ~~may have~~ nominated by a written ~~designation~~ *application* in a manner prescribed by the board and filed with the retirement board prior to the member's death.

(2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the nominated beneficiary may elect to receive a retirement allowance. The retirement allowance must be determined as prescribed in 19-20-804(1) and section 5, Chapter 549, Laws of 1981, in the same manner as if the member elected option A provided for in 19-20-702(2)(a).

(b) The effective date of the retirement allowance provided for in subsection (2)(a) is the earlier of:

(i) the first of the month following the date of death; or

(ii) the effective date of the member's retirement, as acknowledged in writing by the retirement system before the member's death.

~~(b)~~*(c)* In the event that payments made to ~~a recipient~~ *the beneficiary* do not equal the amount of the member's accumulated contributions before the member's death, the difference between the total retirement allowance payments made and the amount of the accumulated contributions at the time of the member's death must be paid to the ~~beneficiary~~ *beneficiary's estate.*

(3) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year before the member's death, a lump-sum death benefit of $500 is payable to the member's designated beneficiary.

(4) If a deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to the member's death, the sum of $200 a month must be paid to each minor child of the deceased member until the child reaches 18 years of age.

(5) If the member nominated more than one beneficiary to receive payment of a benefit provided by this section upon the member's death, then:

(a) each beneficiary is entitled to share in that benefit; and

(b) if a beneficiary predeceases the member, the benefit must be divided among the surviving beneficiaries."

Section 24. Codification instruction. [Section 21] is intended to be codified as an integral part of Title 19, chapter 20, part 7, and the provisions of Title 19, chapter 20, part 7, apply to [section 21].

Section 25. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 26. Effective date. [This act] is effective on passage and approval.

Section 27. Applicability. [Section 1(3)] applies to members whose terms expire after [the effective date of this act].

Approved March 16, 2001

CHAPTER NO. 46

[HB 141]

AN ACT REVISING LAWS RELATED TO THE SALE OF MINT OIL; ELIMINATING REFERENCES TO ASSESSMENTS ON THE PLEDGE OR MORTGAGE OF MINT OIL; LIMITING THE ASSESSMENT ON MINT OIL TO SALES OF 1,000 POUNDS OR MORE IN A CALENDAR YEAR; REDUCING THE MINT OIL PURCHASER LICENSE FEE FROM $50 TO $20 AND INCREASING THE TERM OF LICENSE FROM 1 YEAR TO 10 YEARS; PROVIDING THAT A MINT OIL PURCHASER LICENSE IS NOT REQUIRED FOR A PERSON WHO PURCHASES LESS THAN 1,000 POUNDS OF MINT OIL IN A CALENDAR YEAR; REVISING DEFINITIONS; AMENDING SECTIONS 80-11-402, 80-11-412, 80-11-413, 80-11-414, AND 80-11-417, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-11-402, MCA, is amended to read:

"80-11-402. Definitions. As used in this part, the following definitions apply:

(1) "Committee" means the Montana mint committee established in 2-15-3006.

(2) "First purchaser" means a person, partnership, association, cooperative, or other business unit or device that first buys mint oil ~~for subsequent sale or that acts as a sales or purchasing agent, broker, or factor of mint. The term includes a mortgagee, pledgee, lienor, or other person, public or private, having a claim against a grower, where the actual or constructive possession of mint oil is taken as partial payment or in satisfaction of a mortgage, pledge, lien, or claim~~ *from a grower.*

(3) "Grower" means a landowner who is personally engaged in growing mint, a tenant who is personally engaged in growing mint, or both the landowner and tenant jointly, and includes a person, partnership, association, corporation, trust, sharecropper, or other business unit, device, or arrangement that grows mint.

(4) "Sale" means ~~any pledge or mortgage of mint oil to any person, public or private~~ *the passing of title to mint oil from a grower to a first purchaser for a price."*

Section 2. Section 80-11-412, MCA, is amended to read:

"80-11-412. Assessment on mint oil — *exception.* (1) ~~There~~ *Except as provided in subsection (4), there* is levied on all mint oil produced in this state and sold through normal commercial channels an assessment of not less than 5 cents or more than 15 cents a pound. The assessment ~~is levied on each grower in the following manner:~~

~~(a) in the case of the sale of mint oil, the assessment~~ must be collected by the first purchaser from the grower at the time of each settlement for mint oil purchased~~; or~~

~~(b) in the case of a pledge or mortgage of mint oil as security for a loan, the assessment must be collected by deducting the amount of the assessment from the proceeds of the loan at the time the loan is made by the agency or person making the loan~~.

(2) The assessment must be ~~deducted and~~ collected whether the mint oil is stored in this state or any other state. The assessment is imposed *only* on the initial sale~~, pledge, mortgage, or other transaction~~ in which a grower parts with title to the mint oil ~~or creates an interest in the mint oil in a pledgee, mortgagee, or other person, but a grower is not subject to assessment more than once regardless of the number of times the oil is subject to a sale, pledge, mortgage, or other transaction~~.

(3) The committee shall by rule set the amount of the assessment ~~annually~~ in accordance with subsection (1).

(4) A first purchaser is not required to collect or pay the assessment unless 1,000 pounds or more of mint oil is purchased in a calendar year."

Section 3. Section 80-11-413, MCA, is amended to read:

"80-11-413. Buyer's delivery of invoice to grower — form. The purchaser of mint oil at the time of sale ~~or the pledgee, mortgagee, or other lender at the time of the loan or advance~~ shall give a separate invoice for each purchase to the grower. The invoice must be on forms approved by the committee and must contain:

(1) the name and address of the grower and seller;

(2) the name and address of the purchaser ~~or the lender~~;

(3) the number of pounds of mint oil sold~~, mortgaged, or pledged~~;

(4) the date of purchase~~, mortgage, or pledge~~; and

(5) the amount of the assessment collected and remitted to the committee."

Section 4. Section 80-11-414, MCA, is amended to read:

"80-11-414. Payment of assessment — sworn statement. (1) The purchaser~~, mortgagor, or pledgee~~ shall file with the committee, on forms prescribed by the committee, within 20 days after the end of a month in which mint oil is purchased, a sworn statement of the number of pounds of mint oil purchased in Montana ~~or the number of pounds of mint oil mortgaged, transferred, or otherwise subject to a lien as security for a loan during the preceding calendar month~~. At the time the statement is filed, the purchaser ~~or lender~~ shall pay to the committee the assessment provided for in 80-11-412 for deposit in the mint account in the state special revenue fund, *unless the purchaser is exempt under 80-11-412(4).*

(2) The sworn statement referred to in subsection (1) must be legible and free of corrections and alterations."

Section 5. Section 80-11-417, MCA, is amended to read:

"**80-11-417. Mint oil purchaser license — application — fee —** ***exception.*** (1) ~~Every~~ *Unless exempt under subsection (4), every* person acting as a first purchaser shall ~~annually~~ file a written application with the committee for a license. The application must include:

(a) the applicant's name;

(b) the applicant's principal business addresses, both within and outside Montana;

(c) the name of a person authorized to receive service of summons and legal notices of all kinds for the applicant; and

(d) any other information the committee may require.

(2) Each application must be accompanied by a license fee of ~~$50~~ *$20*. A license is valid for ~~the calendar year in which it is issued~~ *10 years*.

(3) A license must be issued if the committee is satisfied that the applicant is of good character and reputation and is financially responsible.

(4) A license is not required for a person who purchases less than 1,000 pounds of mint oil in a calendar year."

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 8. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2001

CHAPTER NO. 47

[HB 145]

AN ACT CLARIFYING THAT THE TERM "STATE BUILDING CODE" REFERS TO RULES ADOPTED BY THE DEPARTMENT OF COMMERCE UNDER TITLE 50, CHAPTER 60, PARTS 1 THROUGH 4, MCA; GENERALLY REVISING THE STATE ELECTRICAL CODE; EXCEPTING ELECTRICAL SIGNAL AND COMMUNICATIONS EQUIPMENT OWNED BY A COUNTY OR THE STATE, LOW-VOLTAGE ELECTRICAL SIGNAL AND COMMUNICATIONS EQUIPMENT, OPTICAL FIBER CABLES, TRAFFIC SIGNALS, STREET LIGHTING, TRAFFIC CONTROL DEVICES, AND MINES AND MINE BUILDINGS FROM THE PROVISIONS OF THE ELECTRICAL CODE; CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF COMMERCE TO ADOPT NATIONALLY RECOGNIZED ELECTRICAL CODES; ABOLISHING THE REQUIREMENT THAT A POWER SUPPLIER DELIVER AN INSPECTION TAG TO THE

DEPARTMENT OF COMMERCE AFTER ENERGIZING AN INSTALLATION; SUBSTITUTING THE TERM "ELECTRICAL PERMIT" FOR "INSPECTION TAG"; PROVIDING PENALTIES FOR VIOLATIONS OF THE ELECTRICAL CODE; AUTHORIZING INJUNCTIONS TO ENJOIN CERTAIN VIOLATIONS OF THE ELECTRICAL CODE; AMENDING SECTIONS 50-60-102, 50-60-602, 50-60-603, 50-60-605, AND 50-60-607, MCA; REPEALING SECTION 50-60-606, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-60-102, MCA, is amended to read:

"**50-60-102. Applicability.** (1) Except as provided in subsection (5), *the* state building ~~codes do~~ *code, as defined in 50-60-203(3), does* not apply to:

(a) residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building of any size, and any private garage or private storage structure of any size used only for the owner's own use, located within the municipality's or county's jurisdictional area, unless the local legislative body or board of county commissioners by ordinance or resolution makes the state building code applicable to these structures;

(b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to inspection under the Federal Mine Safety and Health Act;

(c) petroleum refineries and pulp and paper mills, except a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section 901, group H, outside of process units, of the 1991 edition of the Uniform Building Code; or

(d) industrial process piping, vessels, and equipment and process-related structures located outside of another structure occupied on a regular basis by employees or the public.

(2) Except as provided in subsection (5), the state may not enforce the state building code under 50-60-205 for the buildings referred to in subsection (1). Local governments that have made the state building ~~codes~~ *code* applicable to the buildings referred to in subsection (1) may enforce within their jurisdictional areas the state building code as adopted by the respective local government.

(3) When good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.

(4) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based ~~upon~~ *on* size, population density, special conditions prevailing in the area, or other factors that make differentiation or separate classification or regulation necessary, proper, or desirable.

(5) (a) For purposes of promoting the energy efficiency of home design and operation, the provisions of the state building code relating to energy conservation adopted pursuant to 50-60-203(1) apply to residential buildings, except:

(i) farm and ranch buildings; and

(ii) any private garage or private storage structure attached to a residential building and used only for the owner's own use.

(b) The provisions of the state building code relating to energy conservation in residential buildings are enforceable:

(i) by the department only for those residential buildings containing five or more dwelling units or otherwise subject to the state building code; and

(ii) through the builder self-certification program provided for in 50-60-802 for those residential buildings containing less than five dwelling units and not otherwise subject to the state building code."

Section 2. Section 50-60-602, MCA, is amended to read:

"**50-60-602. Exceptions.** (1) This part does not apply to:

(a) the installation, alteration, or repair of electrical signal or communications equipment ~~owned or operated by a public utility or a city~~ *and traffic signals, street lighting, and other electrical traffic control devices owned or operated by a public utility, city, or county or the state*; ~~or~~

(b) electrical installations on the premises of petroleum refineries, except a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section 901, group H, outside of process units, of the 1991 edition of the Uniform Building Code~~.~~*;*

(c) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to inspection under the Federal Mine Safety and Health Act; or

(d) the installation, alteration, or repair of low-voltage electrical signal and communications equipment and optical fiber cable.

(2) The inspection provisions of this part do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer nor do they apply to line work on the business premises of the employer or to ordinary and customary in-plant or onsite installations, modifications, additions, or repairs.

(3) ~~Any~~ *A* person who plugs in an electrical appliance where an approved electrical outlet is already installed may not be considered as an installer.

(4) This part does not in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure where the appliance is to be connected."

Section 3. Section 50-60-603, MCA, is amended to read:

"**50-60-603. ~~Electrical installations to comply with building~~ *Electrical* codes *to be* adopted by department *by rule.*** (1) ~~All installations in this state~~ *The department of commerce shall adopt rules relating to the installation* of wires and equipment to convey ~~electric~~ *electrical* current and installations of apparatus to be operated by current, except as provided in 50-60-602~~, shall be made substantially in accord with building codes adopted by the department of commerce~~.

(2) ~~Rules and standards relating to buildings and equipment shall be promulgated by the department.~~ *The department may adopt by reference the national fire protection association standard NFPA 70, national electrical code, in whole or in part, and may adopt rules more stringent than those in the national fire protection association standard NFPA 70, national electrical code.*"

Section 4. Section 50-60-605, MCA, is amended to read:

"**50-60-605. Power supplier not to energize installation without ~~inspection tag~~ *electrical permit*.** Individuals, firms, cooperatives, corporations, or municipalities selling electricity are power suppliers. Except for temporary connections ~~which~~ *that* the department *of commerce* may authorize by rule for a period not exceeding 14 days without a preconnection inspection, power suppliers may not connect with or energize an electrical installation under this part unless the owner or a licensed electrical contractor has delivered to the power supplier an ~~inspection tag~~ *electrical permit* covering the installation, issued by the department of commerce *or a municipality or county certified to enforce the electrical code pursuant to 50-60-302.*"

Section 5. Section 50-60-607, MCA, is amended to read:

"**50-60-607. ~~Unlawful acts~~ *Energizing electrical installation without permit — misdemeanor*.** ~~It is unlawful for a~~ *Any* person, partnership, company, firm, association, or corporation, other than a power supplier, ~~to energize~~ *that energizes* an electrical installation under this part ~~unless an application for an inspection tag covering the installation, together with the inspection fee, has been forwarded to~~ *for which an electrical permit has not been issued by* the department of commerce *or a municipality or county certified to enforce the electrical code pursuant to 50-60-302 is guilty of a misdemeanor.*"

Section 6. Injunction authorized. The use or installation of wires or equipment conveying electrical current or the use or installation of any apparatus operated by electrical current in violation of any provision of this part or a lawful order of a state or local government building official may be enjoined by a judge in the district court of the judicial district in which the wires, equipment, or apparatus is located.

Section 7. Repealer. Section 50-60-606, MCA, is repealed.

Section 8. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 50, chapter 60, part 6, and the provisions of Title 50, chapter 60, part 6, apply to [section 6].

Section 9. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2001

CHAPTER NO. 48

[HB 176]

AN ACT PROVIDING THAT CERTAIN INACTIVE VESTED JUDGES OR JUSTICES WHO LEAVE SERVICE VOLUNTARILY AND ARE NOT ELIGIBLE FOR A RETIREMENT BENEFIT BY REASON OF AGE MAY BE CALLED FOR DUTY; PROVIDING THAT RETIRED JUDGES OR JUSTICES MAY NOT BE CALLED FOR DUTY ON THE SUPREME COURT; PROVIDING THAT THE CALL FOR DUTY MAY BE MADE BY THE CHIEF JUSTICE:

AMENDING SECTION 19-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-5-103, MCA, is amended to read:

"**19-5-103. Call of retired ~~judge~~ *judges and justices and inactive vested members* for duty.** (1) *(a)* ~~Every~~ *If physically and mentally able, a retired* judge or justice who has voluntarily retired after *at least* 8 years of service ~~must, if physically and mentally able, be~~ *is* subject to call for duty by the ~~supreme court or the~~ chief justice to aid and assist ~~the supreme court,~~ any district court~~,~~ or any water court under directions ~~as~~ *that* the ~~supreme court~~ *chief justice* may give~~,~~ ~~including~~ *or to serve as water judge.*

(b) When called, a retired judge's or justice's duties include the examination of the facts, cases, and authorities cited and the preparation of opinions for and on behalf of the ~~supreme court, district court, or water court or to serve as water judge~~ *court to which the judge or justice is called to serve.* The opinions, when and if and to the extent approved by the court, may ~~by the court~~ be ordered *by the court* to constitute the opinion of the court. The court and the retired judge or justice may, subject to any rule that the supreme court may adopt, perform any duties preliminary to the final disposition of cases that are not inconsistent with the constitution of the state.

(2) *(a)* A retired judge or justice, when called to duty, must be reimbursed for actual expenses, if any, in responding to the call.

(b) In addition, a retired ~~justice or~~ judge *or justice* is entitled to receive compensation in an amount equal to:

~~(a)~~*(i)* the daily salary then currently applicable to the judicial position in which the duty is rendered for each day of duty rendered, up to a total of 180 days in a calendar year; and

~~(b)~~*(ii)* for each day of duty after 180 days in a calendar year, one-twentieth of the monthly salary then currently applicable to the judicial position in which the duty is rendered minus an amount equal to one-twentieth of the monthly retirement benefit that the retired ~~justice or~~ judge *or justice* is receiving, if any.

(3) A judge or justice who is an inactive vested member, who has voluntarily terminated service as an active judge after 8 years of service, and who, by reason of age, is not eligible to receive a retirement benefit under this chapter may be called for duty as provided in subsection (1). A judge or justice called to duty under this subsection must be reimbursed as provided in subsection (2)(a) and compensated as provided in subsection (2)(b)(i) regardless of the number of days served in a calendar year."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2001

CHAPTER NO. 49

[HB 185]

AN ACT CLARIFYING THAT A PERSON 17 YEARS OF AGE WHO LAWFULLY PURCHASES A YOUTH COMBINATION LICENSE BUT WHO

REACHES 18 YEARS OF AGE DURING THE LICENSE YEAR MAY LEGALLY HUNT OR FISH WITH THE LICENSE; REMOVING THE TERMINATION DATE APPLICABLE TO THE YOUTH COMBINATION SPORTS LICENSE; AMENDING SECTION 87-2-805, MCA; REPEALING SECTION 4, CHAPTER 568, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-805, MCA, is amended to read:

"87-2-805. ~~**(Temporary)**~~ **Persons under eighteen years of age — youth combination sports license.** (1) Resident minors who are 12 years of age or older and under 15 years of age may fish and may hunt upland game and migratory game birds during the open season with only a conservation license. Resident minors who are 15 years of age may hunt migratory game birds with only a conservation license. Resident minors who are under 12 years of age may fish without a license. A nonresident person under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B or B-4 fishing license unless the nonresident person under 15 years of age is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(2) A resident, as defined by 87-2-102, under 15 years of age may purchase Class A-3 and A-5 licenses at a price equal to one-half the fee paid by a resident who is 15 years of age or older and under 62 years of age.

(3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license at a price that, rounded to the nearest dollar, is 46% of the fee paid for the Class AAA combination sports license by a resident who is 18 years of age or older and under 62 years of age.

(b) The youth combination sports license includes:

(i) a conservation license;

(ii) a fishing license;

(iii) an upland game bird license;

(iv) an elk license; and

(v) a deer license.

(c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license at a price that is 50% of the fee paid by a resident who is 18 years of age or older and under 62 years of age.

(d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license at 50% of the fee paid by a resident who is 18 years of age or older and under 62 years of age.

(e) *A person who lawfully purchases a youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A* person who ~~is 18 years of age or older who~~ hunts or fishes using ~~the~~ *a* youth combination sports license *purchased after the person reaches 18 years of age* is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:

(i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and

(ii) a monetary fine of not less than $500 and not more than $5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.

(f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license. ~~(Terminates February 28, 2002—sec. 4, Ch. 568, L. 1999.)~~

~~**87-2-805. (Effective March 1, 2002) Persons under fifteen years of age.** (1) Resident minors from 12 years through 14 years of age may fish and may hunt upland and migratory birds during the open season with only a conservation license. Resident minors under 12 years of age may fish without a license. However, no nonresident person under the age of 15 years may fish in or on any Montana waters without first having obtained a Class B or B-4 fishing license unless the nonresident person under the age of 15 years is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.~~

~~(2) Residents, as defined by 87-2-102, under the age of 15 years may purchase Class A-3 and A-5 licenses at a price equal to one-half the fee paid by a resident who is 15 years of age or older and under 62 years of age.~~"

Section 2. Repealer. Section 4, Chapter 568, Laws of 1999, is repealed.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2001

CHAPTER NO. 50

[HB 192]

AN ACT ALLOWING THE PAYMENT OF INDIVIDUAL INCOME TAXES, INCLUDING PENALTIES, INTEREST, AND FEES, BY CREDIT CARD OR OTHER COMMERCIAL MEANS; IMPOSING A FEE ON THE TAXPAYER FOR NONPAYMENT OF THE TAX; AND REQUIRING THE TAXPAYER TO PAY FEES CHARGED BY FINANCIAL INSTITUTIONS OR CREDIT CARD COMPANIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Payment of individual income taxes by credit card and other commercially acceptable means. (1) The department may accept payment by credit card, debit card, or other commercially acceptable means from a person making a payment to the department of individual income taxes, including penalties, interest, and fees.

(2) (a) If the payment is made by credit card, debit card, charge card, or similar method, the tax liability is not discharged and the person has not paid the tax until the department receives payment or credit from the financial institution or credit card company responsible for making the payment or credit and the

payment or credit is not subsequently charged back to the state by the financial institution or credit card company. Upon receipt of the payment or credit, the amount is considered paid on the date on which the charge was made by the taxpayer, unless the payment or credit is subsequently charged back to the state by the financial institution or credit card company.

(b) Upon notice of nonpayment, the department may charge the person who attempted the payment of the tax a fee not to exceed the costs of processing the claim for payment of the tax. The amount of the fee must be added to the tax due and is collected in the same manner as the tax due.

(3) The taxpayer shall pay all fees required by a financial institution or credit card company for a payment made pursuant to this section.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 1, part 2, and the provisions of Title 15, chapter 1, part 2, apply to [section 1].

Approved March 16, 2001

CHAPTER NO. 51

[HB 231]

AN ACT REVISING THE MONTHLY PENSION PAYABLE TO A VOLUNTEER FIREFIGHTER; AND AMENDING SECTION 19-18-602, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-18-602, MCA, is amended to read:

"**19-18-602. Service pension.** (1) Each association shall pay, out of its disability and pension fund, a service pension to each of its members who elects to retire from active service after having completed 20 years or more of active duty and has reached the age of 50 years as a fully paid member of a paid or partly paid and partly volunteer fire department of the city or town in which the association was formed. The pension ~~shall~~ *must* be equal to one-half of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for ~~his~~ *the member's* services as an active member of the fire department.

(2) Effective July 1, 1974, a member who completes 20 years of service and elects to serve additional years ~~shall~~ *must* receive the pension provided for in subsection (1) increased at the rate of 1% ~~per~~ *a* year for each additional year of service completed, up to a maximum of 60% of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for ~~his~~ services as an active member of the fire department. ~~No~~ *A* member is *not* eligible to receive a service pension prior to attaining the age of 50 years.

(3) *(a)* The monthly pension paid to members retiring on or after July 1, 1973, must be at least one-half the regular monthly salary, excluding overtime and payments in lieu of sick leave and annual leave, paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to a member retiring prior to July 1, 1974, must be at least $200.

(b) In the case of volunteer firefighters, the pension may *be set by the board of trustees of the association, but may* not exceed ~~$150~~ *$225* a month.

(4) As of July 1, 1977, a member is not eligible to receive a service pension under this section unless ~~he~~ *the member* is making a monthly contribution to the disability and pension fund, as required by 19-18-501, and is on active duty as a fully paid member of a fire department when ~~he~~ *the member* reaches the age of 50 years.

(5) A member of a pure volunteer fire department who has served 20 years or more as an active member of the fire department is entitled to the benefits provided for in this chapter regardless of ~~his~~ age. A member of a pure volunteer fire department who has completed 10 years' service as an active member of the fire department but who is prevented from completing 20 years' service by dissolution or discontinuance of ~~his~~ *the member's* volunteer fire department, personal relocation ~~due to~~ *because of* transfer or loss of employment, personal disability, or any other factor beyond ~~his~~ *the member's* reasonable control may ~~nevertheless~~ qualify for a partial or reduced pension in an amount and to the extent determined by the board of trustees of the association, regardless of ~~his~~ age."

Approved March 16, 2001

CHAPTER NO. 52

[HB 234]

AN ACT ADOPTING THE UNIFORM ELECTRONIC TRANSACTIONS ACT; ALLOWING BUSINESS, COMMERCIAL, AND GOVERNMENTAL TRANSACTIONS TO OCCUR ELECTRONICALLY; PROVIDING RECOGNITION OF ELECTRONIC RECORDS, SIGNATURES, AND TRANSACTIONS; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 18] may be cited as the "Uniform Electronic Transactions Act".

Section 2. Definitions. In [sections 1 through 18]:

(1) "agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(2) "automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(3) "computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(4) "contract" means the total legal obligation resulting from the parties' agreement as affected by [sections 1 through 18] and other applicable law.

(5) "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(6) "electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances, in whole or in part, without review or action by an individual.

(7) "electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(8) "electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(9) "governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

(10) "information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(11) "information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(12) "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

(13) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) "security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(15) "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

(16) "transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

Section 3. Scope. (1) Except as otherwise provided in subsection (2), [sections 1 through 18] apply to electronic records and electronic signatures relating to a transaction.

(2) [Sections 1 through 18] do not apply to a transaction to the extent it is governed by:

(a) a law governing the creation and execution of wills, codicils, or testamentary trusts; and

(b) Title 30, chapter 1, other than 30-1-107 and 30-1-206, and chapters 3 through 9.

(3) [Sections 1 through 18] apply to an electronic record or electronic signature otherwise excluded from the application of [sections 1 through 18] under subsection (2) to the extent it is governed by a law other than those specified in subsection (2).

(4) A transaction subject to [sections 1 through 18] is also subject to other applicable substantive law.

Section 4. Use of electronic records and electronic signatures — variation by agreement. (1) [Sections 1 through 18] do not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(2) [Sections 1 through 18] apply only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(3) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(4) Except as otherwise provided in [sections 1 through 18], the effect of any of its provisions may be varied by agreement. The presence in certain provisions of [sections 1 through 18] of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(5) Whether an electronic record or electronic signature has legal consequences is determined by [sections 1 through 18] and other applicable law.

Section 5. Construction and application. [Sections 1 through 18] must be construed and applied:

(1) to facilitate electronic transactions consistent with other applicable law;

(2) to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(3) to effectuate its general purpose to make uniform the law with respect to the subject of [sections 1 through 18] among states enacting it.

Section 6. Legal recognition of electronic records, electronic signatures, and electronic contracts. (1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(3) If a law requires a record to be in writing, an electronic record satisfies the law.

(4) If a law requires a signature, an electronic signature satisfies the law.

Section 7. Provision of information in writing — presentation of records. (1) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(2) If a law other than [sections 1 through 18] requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, the following rules apply:

(a) The record must be posted or displayed in the manner specified in the other law.

(b) Except as otherwise provided in subsection (4)(b), the record must be sent, communicated, or transmitted by the method specified in the other law.

(c) The record must contain the information formatted in the manner specified in the other law.

(3) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(4) The requirements of this section may not be varied by agreement, but:

(a) to the extent a law other than [sections 1 through 18] requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (1) that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(b) a requirement under a law other than [sections 1 through 18] to send, communicate, or transmit a record by first-class mail, postage prepaid, or regular United States mail may be varied by agreement to the extent permitted by the other law.

Section 8. Attribution and effect of electronic record and electronic signature. (1) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(2) The effect of an electronic record or electronic signature attributed to a person under subsection (1) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

Section 9. Effect of change or error. If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that

party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(a) promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(b) takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(c) has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither subsection (1) nor (2) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(4) Subsections (2) and (3) may not be varied by agreement.

Section 10. Notarization and acknowledgment. If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

Section 11. Retention of electronic records — originals. (1) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record that:

(a) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(b) remains accessible for later reference.

(2) A requirement to retain a record in accordance with subsection (1) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(3) A person may satisfy subsection (1) by using the services of another person if the requirements of that subsection are satisfied.

(4) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (1).

(5) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (1).

(6) A record retained as an electronic record in accordance with subsection (1) satisfies a law requiring a person to retain a record for evidentiary, audit, or like

purposes, unless a law enacted after [the effective date of this act] specifically prohibits the use of an electronic record for the specified purpose.

(7) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

Section 12. Admissibility in evidence. In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

Section 13. Automated transaction. In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and that the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(3) The terms of the contract are determined by the substantive law applicable to it.

Section 14. Time and place of sending and receipt. (1) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(a) is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(b) is in a form capable of being processed by that system; and

(c) enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient that is under the control of the recipient.

(2) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(a) it enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(b) it is in a form capable of being processed by that system.

(3) Subsection (2) applies even if the place the information processing system is located is different from the place the electronic record is considered to be received under subsection (4).

(4) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is considered to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(a) If the sender or the recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(b) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(5) An electronic record is received under subsection (2) even if no individual is aware of its receipt.

(6) Receipt of an electronic acknowledgment from an information processing system described in subsection (2) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(7) If a person is aware that an electronic record purportedly sent under subsection (1), or purportedly received under subsection (2), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

Section 15. Transferable records. (1) In this section, "transferable record" means an electronic record that:

(a) would be a note under Title 30, chapter 3, or a document under Title 30, chapter 7, if the electronic record were in writing; and

(b) the issuer of the electronic record expressly has agreed is a transferable record.

(2) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(3) A system satisfies subsection (2), and a person is considered to have control of a transferable record, if the transferable record is created, stored, and assigned in a manner that:

(a) a single authoritative copy of the transferable record exists that is unique, identifiable, and, except as otherwise provided in subsections (3)(d) through (3)(f), unalterable;

(b) the authoritative copy identifies the person asserting control as:

(i) the person to which the transferable record was issued; or

(ii) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(c) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(d) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(e) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(f) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(4) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in 30-1-201(20), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under Title 30, chapters 1 through 9, including, if the applicable statutory requirements under 30-3-302(1), 30-7-501, or 30-9-350 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subsection.

(5) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under Title 30, chapters 1 through 9.

(6) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

Section 16. Creation and retention of electronic records and conversion of written records by governmental agencies. Each governmental agency shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records.

Section 17. Acceptance and distribution of electronic records by governmental agencies. (1) Except as otherwise provided in [section 11(5)], each governmental agency shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(2) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (1), the secretary of state, giving due consideration to security, may specify:

(a) the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;

(b) if electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(c) control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(d) any other required attributes for electronic records that are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(3) Except as otherwise provided in [section 11(5)], [sections 1 through 18] do not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

Section 18. Interoperability. (1) The secretary of state may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing the most appropriate standard for a particular application.

(2) The secretary of state may adopt rules to implement [sections 1 through 18] for state government that are consistent with the provisions of Title 2, chapter 20, however, governmental agencies are not limited to the use of a cryptosystem, as defined in 2-20-103, or any other specific technology for electronic transactions provided for in [sections 1 through 18].

Section 19. Codification instruction. [Sections 1 through 18] are intended to be codified as an integral part of Title 30, and the provisions of Title 30 apply to [sections 1 through 18].

Section 20. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 21. Effective date. [This act] is effective July 1, 2001.

Section 22. Applicability. [This act] applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after July 1, 2001.

Approved March 16, 2001

CHAPTER NO. 53

[HB 258]

AN ACT ELIMINATING THE SUNSET PROVISION APPLICABLE TO THE SHOOTING RANGE DEVELOPMENT GRANT PROGRAM; REPEALING SECTION 9, CHAPTER 475, LAWS OF 1999; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 9, Chapter 475, Laws of 1999, is repealed.

Section 2. Effective date. [This act] is effective July 1, 2001.

Approved March 16, 2001

CHAPTER NO. 54

[HB 271]

AN ACT REVISING CERTAIN PROVISIONS OF THE STATE-TRIBAL COOPERATIVE AGREEMENTS ACT; EXTENDING THE TIME IN WHICH STATE-TRIBAL COOPERATIVE AGREEMENTS MUST BE FILED FROM 10 DAYS TO 60 DAYS; ELIMINATING OUTDATED PROVISIONS REGARDING VALIDITY OF EXISTING AGREEMENTS; AMENDING SECTION 18-11-107, MCA; REPEALING SECTION 18-11-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-11-107, MCA, is amended to read:

"**18-11-107. Filing of agreement.** (1) Within ~~10~~ *60* days after approval by the attorney general and signature of the parties, an agreement made pursuant to this chapter must be filed with:

(a) the ~~area~~ *regional* office of the bureau of Indian affairs of the United States department of the interior having trust responsibility for the tribe that is party to the agreement or its successor agency;

(b) each county clerk and recorder of each county where the principal office of one of the parties to the agreement is located, except as provided in (2) of this section;

(c) the secretary of state; and

(d) the affected tribal government.

(2) If a party to the agreement is a state agency, the agreement need not be filed with the county clerk and recorder for Lewis and Clark County."

Section 2. Repealer. Section 18-11-111, MCA, is repealed.

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations.

Section 4. Effective date — applicability. [This act] is effective on passage and approval and applies to agreements entered into on or after [the effective date of this act].

Approved March 16, 2001

CHAPTER NO. 55

[HB 325]

AN ACT PROVIDING THAT A CANOE OR KAYAK THAT IS PROPELLED BY WIND IS NOT A SAILBOAT SUBJECT TO A FEE; AND AMENDING SECTIONS 23-2-502 AND 23-2-517, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-502, MCA, is amended to read:

"**23-2-502. Definitions.** As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Certificate of number" means the certificate issued annually by the county treasurer to the owner of a motorboat or by the department of justice to dealers or manufacturers, assigning such motorboat an identifying number and containing such information as required.

(2) "Certificate of ownership" means a certificate issued by the department of justice identifying the owner of a motorboat or sailboat 12 feet in length or longer.

(3) "Dealer" means any person who engages in whole or in part in the business of buying, selling, or exchanging new and unused vessels or used vessels, or both, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.

(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5) "Documented vessel" means a vessel which has and is required to have a valid marine document as a vessel of the United States.

(6) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat.

(7) "License decals" means the serially numbered license stickers issued annually by the county treasurer and displayed as required by law.

(8) "Lienholder" means a person holding a security interest.

(9) "Manufacturer" means any person engaged in the business of manufacturing or importing new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

(10) "Motorboat" means any vessel, including a canoe, kayak, personal watercraft, rubber raft, or pontoon, propelled by any machinery, motor, or engine of any description, whether or not such machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines but does not include a vessel which has a valid marine document issued by the U.S. coast guard of the United States government or any federal agency successor thereto.

(11) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(12) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(13) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(14) "Passenger" means every person carried on board a vessel other than:

(a) the owner or his representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

(d) any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage.

(15) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(16) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

(17) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion. The term does not include a canoe or kayak propelled by wind.

(18) "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

~~(18)~~*(19)* "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

~~(19)~~*(20)* "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~(20)~~*(21)* "Waters of this state" means any waters within the territorial limits of this state."

Section 2. Section 23-2-517, MCA, is amended to read:

"**23-2-517. Fees for motorboats, sailboats, personal watercraft, motorized canoes, motorized rubber rafts, and motorized pontoons.** (1) The owner of a motorboat 10 feet in length or longer or a sailboat 12 feet in length or longer shall pay a fee based on the length and age of the motorboat or sailboat as follows:

(a) The fee schedule for a motorboat at least 10 feet in length but less than 14 feet in length or sailboat at least 12 feet in length but less than 14 feet in length is as follows:

(i) for a motorboat or sailboat less than 5 years of age, $7.50;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $5.65; and

(iii) for a motorboat or sailboat 10 years of age or older, $3.75.

(b) The fee schedule for a motorboat or sailboat at least 14 feet in length but less than 16 feet in length is as follows:

(i) for a motorboat or sailboat less than 5 years of age, $15;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $11.25; and

(iii) for a motorboat or sailboat 10 years of age or older, $7.50.

(c) The fee schedule for a motorboat or sailboat at least 16 feet in length but less than 17 feet in length is as follows:

(i) for a motorboat or sailboat less than 5 years of age, $32;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $24; and

(iii) for a motorboat or sailboat 10 years of age or older, $16.

(d) The fee schedule for a motorboat or sailboat at least 17 feet in length but less than 19 feet in length is as follows:

(i) for a motorboat or sailboat less than 5 years of age, $3 a foot or fraction of a foot;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $2.25 a foot or fraction of a foot; and

(iii) for a motorboat or sailboat 10 years of age or older, $1.50 a foot or fraction of a foot.

(e) The fee schedule for a motorboat or sailboat 19 feet in length or longer is as follows:

(i) for a motorboat or sailboat less than 5 years of age, $4 a foot or fraction of a foot;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $3 a foot or fraction of a foot; and

(iii) for a motorboat or sailboat 10 years of age or older, $2 a foot or fraction of a foot.

(2) The owner of a personal watercraft shall pay a fee based on the age of the watercraft as follows:

(a) The fee for a personal watercraft less than 4 years of age is $22.

(b) The fee for a personal watercraft 4 years of age or older is $15.

(3) (a) Except as provided in subsection (3)(b), the age of a motorboat, sailboat, or personal watercraft is determined by subtracting the manufacturer's designated model year from the current calendar year.

(b) If the purchase year of a motorboat, sailboat, or personal watercraft precedes the designated model year of the motorboat, sailboat, or personal watercraft and the motorboat, sailboat, or personal watercraft is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

(4) The fee for a motorized canoe~~, a canoe or kayak propelled by wind,~~ or a motorized rubber raft is $7.50, regardless of its length or age.

(5) The fee for a motorized pontoon is $20, regardless of its length or age."

Approved March 16, 2001

CHAPTER NO. 56

[HB 369]

AN ACT PROHIBITING THE MANUFACTURE OR SALE OF CIGARETTES IN A PACKAGE CONTAINING FEWER THAN 20 CIGARETTES OR ROLLING TOBACCO IN A PACKAGE HAVING A NET WEIGHT OF LESS THAN 0.6 OUNCES OF TOBACCO; DEFINING "ROLLING TOBACCO"; PROVIDING FOR CIVIL ENFORCEMENT; AND AMENDING SECTIONS 16-11-111, 16-11-307, AND 16-11-308, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-11-111, MCA, is amended to read:

"**16-11-111. Cigarette sales tax — exemption for sale to tribal member.** (1) *(a)* A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is 18 cents on each package containing 20 cigarettes and, when packages contain ~~more or less~~ *other* than 20 cigarettes, a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

(2) The tax imposed in subsection (1) does not apply to quota cigarettes.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a credit or refund. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian

reservation at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation."

Section 2. Section 16-11-307, MCA, is amended to read:

"**16-11-307. Distribution of tobacco products in other than sealed packages prohibited — *minimum package size.*** *(1)* A person may not distribute a tobacco product for commercial purposes in other than a sealed package that is provided by the manufacturer and that contains the health warning required by federal law. Single cigarettes may not be sold.

(2) A person may not knowingly manufacture or distribute for commercial purposes cigarettes in a package containing fewer than 20 cigarettes or rolling tobacco in a package containing less than 0.6 ounces net weight of tobacco. For purposes of 16-11-308 and this section, "rolling tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes."

Section 3. Section 16-11-308, MCA, is amended to read:

"**16-11-308. *Civil penalties — license suspension — tobacco* ~~Tobacco~~ education fee.** (1) Failure to obtain a license, as required by 16-11-303, ~~or~~ *failure* to post signs, as provided in 16-11-304, *or the manufacture or sale of cigarettes or rolling tobacco in violation of the minimum package size requirements of 16-11-111 or 16-11-307* is punishable by a civil penalty of $100. The department may collect the penalty in the manner provided for the collection of other debts.

(2) A person who violates 16-11-305(1) or 16-11-307*(1)* at any one location within a 3-year period shall be punished as follows:

(a) A first through third offense is punishable by a verbal notification of violation.

(b) A fourth offense is punishable by a written notice of violation to be sent by the department of public health and human services to the owner of the establishment.

(c) A fifth offense is punishable by assessment against the owner of the establishment of a tobacco education fee of $500. The employee or other person who sold the tobacco product, the establishment manager, and the establishment owner, if the owner is a sole proprietor or partner, shall read and view the tobacco education material.

(d) A sixth offense *under 16-11-305(1) or 16-11-307(1) or a third offense under 16-11-307(2)* is punishable by suspension of the licenses required by 16-11-120 and 16-11-303 for 3 months.

(e) A seventh and subsequent offense *under 16-11-305(1) or 16-11-307(1) or a fourth and subsequent offense under 16-11-307(2)* is punishable by suspension of the licenses required by 16-11-120 and 16-11-303 for 1 year.

(3) After 2 years from the first violation, if a person has not received notice of any further violations, a second violation is considered a first violation for the purposes of subsection (2).

(4) A license may not be reissued after suspension under subsection (2)(d) or (2)(e) unless tobacco education fees *or civil penalties* are paid in full.

(5) Tobacco education fees must be assessed and collected by the department of public health and human services. Notice of an assessment pursuant to subsection (2) and this subsection must be made by the department of public health and human services within 30 days of the alleged violation by certified letter addressed to the establishment owner or manager. The notice of assessment against the owner of the establishment must provide an opportunity for a hearing. The hearing may be conducted using electronic equipment and must comply with the provisions of the Montana Administrative Procedure Act. Within 30 days from the date on which the notice of assessment was mailed, the owner or manager shall notify the department of public health and human services that the owner or manager objects to the assessment and request a hearing pursuant to this subsection.

(6) In addition to the penalty provided for in subsection (2), a first and subsequent violation of 16-11-305(1) or 16-11-307*(1)* is punishable by an assessment of a tobacco education fee of $25 against the employee who sold the tobacco product if the employee is not the owner of the establishment. The tobacco education fee must be assessed and collected by the department of public health and human services. Within 30 days of the alleged violation, notice of assessment pursuant to this subsection must be made by the department of public health and human services by certified letter addressed to the employee. The notice of assessment must provide an opportunity for a hearing. The hearing may be conducted using electronic equipment and must comply with the provisions of the Montana Administrative Procedure Act. Within 30 days from the date on which the notice of assessment was mailed, the employee shall notify the department of public health and human services that the employee objects to the assessment and requests a hearing pursuant to this subsection.

(7) The tobacco education material referred to in this section must be provided by the department of public health and human services in the form of written and video self-teaching materials. The education materials may be used only for the purposes provided in this section. Upon completion of the self-teaching materials, the establishment owner or manager shall execute a written statement on a form provided by the department of public health and human services verifying that the employee, owner, or manager, as appropriate, has read and viewed the self-teaching material and shall return the statement and the self-teaching video to the department of public health and human services.

(8) Upon the sixth and subsequent violation of this section, the department of public health and human services shall notify the department of revenue in writing to initiate suspension of the licenses required by 16-11-120 and 16-11-303 and shall notify the licensee in writing of the alleged violation and of the referral of the licensee's record of violations to the department of revenue for suspension of the licenses pursuant to 16-11-144 and this section. The department of revenue shall review the record of violations and may initiate license suspension proceedings in accordance with 16-11-144. If, upon a review of the record of violations, the department of revenue declines to initiate suspension proceedings, the violation may not be charged against the licensee for the purposes of this section.

(9) Fees assessed pursuant to this section must be deposited in the state general fund."

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Approved March 16, 2001

CHAPTER NO. 57

[SB 11]

AN ACT REVISING THE LAWS RELATING TO THE PRESESSION CAUCUSES AND LEGISLATIVE ORIENTATION; CLARIFYING THE CALLING OF THE PRESESSION CAUCUSES; PROVIDING FOR PAYMENT OF COMPENSATION AND EXPENSES FOR MEMBERS OF THE LEGISLATURE ATTENDING LEGISLATIVE ORIENTATION AND TRAINING; AMENDING SECTIONS 5-2-201, 5-2-202, AND 5-2-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-201, MCA, is amended to read:

"**5-2-201. Presession caucus.** Not later than December 1 of each year following an election when members of the legislature are elected, the parties of each house of the legislature shall hold a presession caucus for holdover senators, senators-elect, and representatives-elect. The purpose of the caucus of each party of each house is to nominate officers and establish the basis for additional presession activity, including hiring staff and appointing committees. *The legislative council shall designate the time for holding the presession caucuses.*"

Section 2. Section 5-2-202, MCA, is amended to read:

"**5-2-202. Presession activity.** (1) Members of the legislature nominated to leadership positions during the presession caucus *provided for in 5-2-201* and members nominated or appointed to the legislative administration committees, committee on committees, and rules committees may meet and perform necessary organizational tasks prior to the *regular* session, including but not limited to appointing committees, hiring staff, and assigning space and seating.

(2) Members of the house appropriations committee and of the senate finance and claims committee named prior to the *regular* session may begin reviewing requests for appropriations immediately and may visit state agencies and institutions to discuss requests."

Section 3. Section 5-2-203, MCA, is amended to read:

"**5-2-203. Compensation and expenses.** (1) Members of the legislature attending the presession caucus *provided for in 5-2-201 and legislative orientation and training* are entitled to receive compensation and expenses as provided in 5-2-302.

(2) While engaged in presession business, members nominated to serve as officers of the legislature and members of the committees named in 5-2-202 are entitled to receive compensation and expenses as provided in 5-2-302."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to November 7, 2000.

Approved March 16, 2001

CHAPTER NO. 58

[SB 32]

AN ACT AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO ISSUE A SAFETY RECOMMENDATION TO AN EMPLOYER WHO FAILS TO COMPLY WITH THE PROVISIONS OF THE MONTANA SAFETY CULTURE ACT OR WITH ADMINISTRATIVE RULES ADOPTED BY THE DEPARTMENT THAT IMPLEMENT THE ACT; AMENDING SECTION 39-71-1504, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-1504, MCA, is amended to read:

"39-71-1504. Safety programs — educational activities. (1) To promote health and safety in places of employment in this state:

(a) each public or private employer shall establish and administer a safety program in accordance with rules adopted by the department pursuant to 39-71-1505; and

(b) the department, relying upon the support and assistance of concerned private entities or other governmental agencies, shall produce and distribute material to the schools of Montana and provide guest speakers intended to:

(i) educate students about the necessity for safe work practices;

(ii) prepare students to embark on accident-free careers; and

(iii) disseminate information promoting the reduction and control of the rate of incidence of workplace injuries or occupational disease.

(2) An employer who employs temporary workers shall include those workers in the employer's safety program. A temporary services contractor shall provide a safety program for employees not employed by other employers.

(3) The department may issue a safety recommendation to an employer who fails to comply with the requirements of this section or with rules adopted by the department pursuant to 39-71-1505."

Section 2. Effective date. [This act] is effective July 1, 2001.

Approved March 16, 2001

CHAPTER NO. 59

[SB 45]

AN ACT REVISING THE PROVISIONS FOR OBTAINING A REFUND OF CERTAIN TAXES PAID ON MIGRATORY PROPERTY; CLARIFYING THAT REFUNDS ARE ONLY FOR PROPERTY TAXES PAID IN ANOTHER STATE; REQUIRING THAT AN APPLICATION FOR A REFUND BE FILED WITH THE BOARD OF COUNTY COMMISSIONERS; AMENDING SECTION

15-16-613, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-613, MCA, is amended to read:

"**15-16-613. Refund of certain taxes paid on migratory property.** (1) Subject to the provisions of 15-16-603 through 15-16-605 and upon proof that a *property* tax was paid in another state on the same property, a taxpayer whose property is assessed under 15-24-303 for a period longer than the actual number of months that the property is located in the state is entitled to a refund, as provided in this section.

(2) To obtain a refund, a taxpayer shall file an application for refund with the ~~county treasurer~~ *board of county commissioners* in the county where the property was originally taxed. If a taxpayer receives an order by the board of county commissioners pursuant to 15-16-603, the ~~taxpayer shall apply for a refund allowed under this section by January 31 following the year of assessment. The~~ county shall make the refund within the first quarter of the following fiscal year. The application must be made on a form provided by the department ~~of revenue~~ and may require information as prescribed by rule of the department.

(3) The amount of the refund is the difference between the amount of tax paid under 15-24-303 and the tax owed based upon the number of months the property was located in the state for the year. The refund may not exceed the amount of the tax paid.

(4) For the purposes of this section, "month" means any part of a calendar month."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000.

Approved March 16, 2001

CHAPTER NO. 60

[SB 54]

AN ACT ALLOWING AN INDIVIDUAL WHO HAS RECEIVED OR MAY RECEIVE A MONTANA RESIDENT HUNTING, FISHING, OR TRAPPING LICENSE BY VIRTUE OF MEMBERSHIP IN THE REGULAR ARMED FORCES OF THE UNITED STATES TO POSSESS, APPLY FOR, OR RECEIVE THAT RESIDENT LICENSE NOTWITHSTANDING POSSESSION, APPLICATION FOR, OR RECEIPT OF RESIDENT HUNTING, FISHING, OR TRAPPING PRIVILEGES IN ANOTHER STATE ALSO BY VIRTUE OF MEMBERSHIP IN THE REGULAR ARMED FORCES OF THE UNITED STATES; AMENDING SECTION 87-2-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-102, MCA, is amended to read:

"**87-2-102. Resident defined.** In determining *whether a person is* a resident for the purpose of issuing resident ~~fishing,~~ hunting, *fishing,* and trapping licenses, the following provisions apply:

(1) *(a)* A member of the regular armed forces of the United States, a member's dependent, as defined in 15-30-113, who resides in the member's Montana household, or a member of the armed forces of a foreign government attached to the regular armed forces of the United States is considered a resident for the purposes of this chapter if:

~~(a)~~*(i)* the member was a resident of Montana under the provisions of subsection (4) at the time the member entered the armed forces and continues to meet *the* residency criteria of subsections (4)(b) through (4)(e); or

~~(b)~~*(ii)* the member is currently stationed in and assigned to active duty in Montana, has resided in Montana for at least 30 days, and presents official assignment orders and proof of completion of a hunter safety course approved by the department, as provided in 87-2-105, or a certificate verifying the successful completion of a hunter safety course in any state or province. The 30-day residence requirement is waived in time of war. Reassignment to another state, United States territory, or country terminates Montana residency for purposes of this section, except that a reassigned member continues to qualify as a resident if the member's spouse and dependents continue to physically reside in Montana and the member continues to meet the residency criteria of subsections (4)(b) through (4)(e). The designation of Montana by a member of the regular armed forces as a "home of record" or "home of residence" in that member's armed forces records does not determine the member's residency for purposes of this section.

(b) A member of the regular armed forces of the United States who is otherwise considered a Montana resident pursuant to subsection (1)(a)(i) does not forfeit that status as a resident because the member, by virtue of that membership, also possesses, has applied for, or has received resident hunting, fishing, or trapping privileges in another state or country.

(2) A person who has physically resided in Montana as the person's principal or primary home or place of abode for 180 consecutive days and who meets the criteria of subsection (4) immediately before making application for any license is eligible to receive *resident* hunting, fishing, and trapping licenses. As used in this section, a vacant lot or a premises used solely for business purposes is not considered a principal or primary home or place of abode.

(3) A person who obtains residency under subsection (2) may continue to be a resident for purposes of this section by physically residing in Montana as the person's principal or primary home or place of abode for not less than 120 days a year and by meeting the criteria of subsection (4) prior to making application for any resident hunting, fishing, or trapping license.

(4) In addition to the requirements of subsection (2) or (3), a person shall meet the following criteria to be considered a resident for purposes of this section:

(a) the person's principal or primary home or place of abode is in Montana;

(b) the person files Montana state income tax returns as a resident if required to file;

(c) the person licenses and titles in Montana as required by law any vehicles that the person owns and operates in Montana;

(d) *except as provided in subsection (1)(b),* the person does not possess or apply for any resident hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or trapping privileges in another state or country; and

(e) if the person registers to vote, the person registers only in Montana.

(5) A student who is enrolled full-time in a ~~post-secondary~~ *postsecondary* educational institution out of state and who would qualify for Montana resident tuition or who otherwise meets the residence requirements of subsection (2) or (3) is considered a resident for purposes of this section.

(6) An enrollee of a job corps camp located within the state of Montana is, after a period of 30 days within Montana, considered a resident for the purpose of making application for a fishing license as long as the person remains an enrollee in a Montana camp.

(7) A person who does not reside in Montana but who meets all of the following requirements is a resident for purposes of obtaining hunting and fishing licenses:

(a) The person's principal employment is within this state and the income from this employment is the principal source of the applicant's family income.

(b) The person is required to pay and has paid Montana income tax in a timely manner and proper amount.

(c) The person has been employed within this state on a full-time basis for at least 12 consecutive months immediately preceding each application.

(d) The person's state of residency has laws substantially similar to this subsection (7).

(8) An unmarried minor is considered a resident for the purposes of this section if the minor's parents, legal guardian, or parent with joint custody, sole custody, or visitation rights is a resident for purposes of this section. The minor is considered a resident for purposes of this section regardless of whether the minor resides primarily in the state or otherwise qualifies as a resident. The resident parent or guardian of the minor may be required to show proof of the parental, guardianship, or custodial relationship to the minor.

(9) A person is not considered a resident for the purposes of this section if the person:

(a) claims residence in any other state or country for any purpose; or

(b) is an absentee property owner paying property tax on property in Montana.

(10) A license agent is not considered a representative of the state for the purpose of determining a license applicant's residence status."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2001

CHAPTER NO. 61

[SB 172]

AN ACT CLARIFYING THAT THE DISTRIBUTION OF INCOME FROM THE COAL SEVERANCE TAX PERMANENT FUND, TREASURE STATE ENDOWMENT FUND, TREASURE STATE ENDOWMENT REGIONAL WATER FUND, CULTURAL AND AESTHETIC PROJECTS TRUST FUND, PARKS ACQUISITION AND MANAGEMENT TRUST FUND, AND RESOURCE INDEMNITY TRUST FUND DOES NOT INCLUDE UNREALIZED GAINS AND LOSSES; CLARIFYING THAT THE FUND BALANCE FOR THE RESOURCE AND INDEMNITY TRUST FUND EXCLUDES UNREALIZED GAINS AND LOSSES; AMENDING SECTIONS 15-35-108, 15-38-202, 17-5-703, AND 17-5-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

"**15-35-108. (Temporary) Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund, *excluding unrealized gains and losses,* must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund, *excluding unrealized gains and losses,* must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) (a) Subject to subsection (7)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, for the biennium ending June 30, 2001, as follows:

(i) $65,000 to the cooperative development center;

(ii) $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) to the department of commerce:

(A) $350,000 for business recruitment;

(B) $125,000 for a small business development center;

(C) $50,000 for a small business innovative research program;

(D) $425,000 for certified communities;

(E) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(F) $300,000 for export trade enhancement; and

(iv) $600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in 7-15-4299. Reimbursement must be made to qualified districts on a proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district. (Terminates June 30, 2001—sec. 10(1), Ch. 10, Sp. L. May 2000.)

15-35-108. (Effective July 1, 2001) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund, *excluding unrealized gains and losses,* must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund, *excluding unrealized gains and losses,* must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) (a) Subject to subsections (7)(b) and (7)(c), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) to the department of commerce:

(A) $350,000 for business recruitment;

(B) $125,000 for a small business development center;

(C) $50,000 for a small business innovative research program;

(D) $425,000 for certified communities;

(E) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(F) $300,000 for export trade enhancement; and

(iv) $600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in 7-15-4299. Reimbursement must be made to qualified districts on a proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district.

(c) Beginning July 1, 2001, there is transferred annually from the interest income referred to in subsection (7)(b) $4.85 million to the research and commercialization expendable trust fund created in 90-3-1002. (Terminates June 30, 2005—sec. 10(2), Ch. 10, Sp. L. May 2000.)

15-35-108. (Effective July 1, 2005) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund, *excluding unrealized gains and losses*, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) Beginning July 1, 1997, and ending June 30, 1999, the amount of 0.87% must be allocated to an account in the state special revenue fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Beginning July 1, 1999, the amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund, *excluding unrealized gains and losses*, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

Section 2. Section 15-38-202, MCA, is amended to read:

"**15-38-202. (Temporary) Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. Only the net earnings, *excluding unrealized gains and losses*, may be appropriated and expended until the fund *balance, excluding unrealized gains and losses*, reaches $100 million. Thereafter, all net earnings, *excluding unrealized gains and losses*, and all receipts may be appropriated by the legislature and expended, provided that the ~~balance in the~~ fund *balance, excluding unrealized gains and losses*, may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, to be deposited into the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs. Any amount of the appropriation in this subsection (2)(a)(i) that is not pledged to repay bonds issued prior to January 1, 1999, may be deposited in a nonexpendable trust account, the income from which may be used for the purposes provided in this subsection.

(ii) $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(iii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants; and

(iv) $300,000 to be deposited into the ground water assessment account created by 85-2-905.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session.

15-38-202. (Effective July 1, 2001) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. Only the net earnings, *excluding unrealized gains and losses,* may be appropriated and expended until the fund *balance, excluding unrealized gains and losses,* reaches $100 million. Thereafter, all net earnings, *excluding unrealized gains and losses,* and all receipts may be appropriated by the legislature and expended, provided that the ~~balance in the~~ fund *balance, excluding unrealized gains and losses,* may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, to be deposited into the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs. Any amount of the appropriation in this subsection (2)(a)(i) that is not pledged to repay bonds issued prior to January 1, 1999, may be deposited in a nonexpendable trust account, the income from which may be used for the purposes provided in this subsection.

(ii) $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(iii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants;

(iv) $300,000 to be deposited into the ground water assessment account created by 85-2-905; and

(v) $500,000 to the department of fish, wildlife, and parks for the purposes of 87-1-283. The future fisheries review panel shall approve and fund qualified mineral reclamation projects before other types of qualified projects.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session. (Terminates July 1, 2009—sec. 9, Ch. 529, L. 1999.)

15-38-202. (Effective July 1, 2009) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. Only the net earnings, *excluding unrealized gains and losses,* may be appropriated and expended until the fund *balance, excluding unrealized gains and losses,* reaches $100 million. Thereafter, all net earnings, *excluding unrealized gains and losses,* and all receipts may be appropriated by the legislature and expended, provided that the ~~balance in the~~ fund *balance, excluding unrealized gains and losses,* may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, to be deposited into the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs. Any amount of the appropriation in this subsection (2)(a)(i) that is not pledged to repay bonds issued prior to January 1, 1999, may be deposited in a nonexpendable trust account, the income from which may be used for the purposes provided in this subsection.

(ii) $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(iii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants; and

(iv) $300,000 to be deposited into the ground water assessment account created by 85-2-905.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session. (Terminates June 30, 2014—sec. 5, Ch. 497, L. 1999.)

15-38-202. (Effective July 1, 2014) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. Only the net earnings, *excluding unrealized gains and losses,* may be appropriated and expended until the fund *balance, excluding unrealized gains and losses,* reaches $100 million. Thereafter, all net earnings, *excluding unrealized gains and losses,* and all receipts may be appropriated by the legislature and expended, provided that the ~~balance in the~~ fund *balance, excluding unrealized gains and losses,* may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(ii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants; and

(iii) $300,000 to be deposited into the ground water assessment account created by 85-2-905.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

Section 3. Section 17-5-703, MCA, is amended to read:

"**17-5-703. (Temporary) Coal severance tax trust funds.** (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a treasure state endowment regional water system fund;

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund; and

(f) a coal severance tax school bond contingency loan fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) through (5).

(3) (a) On January 21, 1992, and continuing as long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

(4) (a) Beginning July 1, 1993, and ending June 30, 2013, the state treasurer shall quarterly transfer to the treasure state endowment fund 75% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(b) Beginning July 1, 1999, and ending June 30, 2013, the state treasurer shall quarterly transfer to the treasure state endowment regional water system fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(c) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, *excluding unrealized gains and losses,* required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(d) The state treasurer shall monthly transfer from the treasure state endowment regional water system fund to the treasure state endowment regional water system special revenue account the amount of earnings, *excluding unrealized gains and losses,* required to meet the obligations of the state that are payable from the account for regional water systems authorized under 90-6-715. Earnings not transferred to the treasure state endowment regional water system special revenue account must be retained in the treasure state endowment regional water system fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund. (Terminates June 30, 2013—sec. 6, Ch. 495, L. 1999.)

17-5-703. (Effective July 1, 2013) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a coal severance tax permanent fund;

(d) a coal severance tax income fund; and

(e) a coal severance tax school bond contingency loan fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) through (5).

(3) (a) On January 21, 1992, and continuing as long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

(4) (a) Beginning July 1, 1993, and ending June 30, 2013, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(b) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, *excluding unrealized gains and losses*, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund."

Section 4. Section 17-5-704, MCA, is amended to read:

"**17-5-704. Investment of funds.** Money in the coal severance tax bond fund, the coal severance tax permanent fund, the coal severance tax income fund, and the coal severance tax school bond contingency loan fund must be invested in accordance with the investment standards for coal severance tax funds. Income and earnings, *excluding unrealized gains and losses,* from all funds must be deposited in the state general fund."

Section 5. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2001

CHAPTER NO. 62

[SB 235]

AN ACT ELIMINATING A PROVISION IN THE PUBLIC EMPLOYEES', JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS THAT PREVENTS A MEMBER FROM CONTINUING TO RECEIVE A GUARANTEED ANNUAL BENEFIT ADJUSTMENT IF THE MEMBER BECOMES ACTIVE IN ONE OF THE OTHER PUBLIC RETIREMENT SYSTEMS; AMENDING SECTIONS 19-3-1605, 19-5-901, 19-6-710, 19-7-711, 19-8-1105, 19-9-1009, AND 19-13-1010, MCA; REPEALING SECTION 19-2-1101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-1605, MCA, is amended to read:

"**19-3-1605. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 1.5% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if~~:~~

~~(a)~~ the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made~~; and~~

~~(b) the benefit recipient is not an active member of a public retirement system covered by this title~~.

(4) The board shall adopt rules to administer the provisions of this section."

Section 2. Section 19-5-901, MCA, is amended to read:

"**19-5-901. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 1.5% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made;

~~(b) the benefit recipient is not an active member of a public retirement system covered by this title;~~ and

~~(c)~~*(b)* the member or benefit recipient either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998.

(4) The board shall adopt rules to administer the provisions of this section."

Section 3. Section 19-6-710, MCA, is amended to read:

"**19-6-710. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made;

~~(b) the benefit recipient is not an active member of a public retirement system covered by this title;~~ and

~~(c)~~*(b)* the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section."

Section 4. Section 19-7-711, MCA, is amended to read:

"19-7-711. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 1.5% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if~~:~~

~~(a)~~ the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made~~; and~~

~~(b) the benefit recipient is not an active member of a public retirement system covered by this title~~.

(4) The board shall adopt rules to administer the provisions of this section."

Section 5. Section 19-8-1105, MCA, is amended to read:

"19-8-1105. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the

adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 1.5% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if~~:~~

~~(a)~~ the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made~~; and~~

~~(b) the benefit recipient is not an active member of a public retirement system covered by this title~~.

(4) The board shall adopt rules to administer the provisions of this section."

Section 6. Section 19-9-1009, MCA, is amended to read:

"**19-9-1009. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made;

~~(b) the benefit recipient is not an active member of a public retirement system covered by this title;~~ and

~~(c)~~*(b)* the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section."

Section 7. Section 19-13-1010, MCA, is amended to read:

"**19-13-1010. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made;

~~(b) the benefit recipient is not an active member of a public retirement system covered by this title;~~ and

~~(c)~~*(b)* the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section."

Section 8. Repealer. Section 19-2-1101, MCA, is repealed.

Section 9. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2001

CHAPTER NO. 63

[HB 80]

AN ACT REQUIRING AN ELECTOR TO FURNISH THE ELECTOR'S RESIDENTIAL STREET OR RURAL ADDRESS OR OTHER RESIDENTIAL

LOCATION INFORMATION TO THE ELECTION ADMINISTRATOR; AND PROHIBITING THE ELECTION ADMINISTRATOR FROM REGISTERING AN ELECTOR WHO DOES NOT PROVIDE THE REQUIRED ADDRESS OR OTHER INFORMATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Elector to furnish residential address — prohibiting registration for failure to provide address. (1) An elector shall provide the election administrator with the elector's current street address, rural address, or, if neither of those addresses is available, other specific geographic location information from which the location of the elector's residence may be easily determined by the election administrator.

(2) The election administrator may not register an elector who fails to provide the information required by subsection (1).

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 13, chapter 2, and the provisions of Title 13, chapter 2, apply to [section 1].

Approved March 16, 2001

CHAPTER NO. 64

[HB 191]

AN ACT GENERALLY REVISING MINOR IN POSSESSION LAWS; REVISING REQUIREMENTS REGARDING SUSPENSION OF DRIVER'S LICENSES IN RELATION TO MINOR IN POSSESSION VIOLATIONS; ELIMINATING THE REQUIREMENT THAT MINOR IN POSSESSION CONVICTIONS BE REPORTED TO THE DEPARTMENT OF JUSTICE OR SHOWN ON DRIVER RECORDS UNLESS THE CONVICTING COURT SPECIFICALLY ORDERS SUSPENSION OF THE DRIVER'S LICENSE OF A PERSON UNDER 18 YEARS OF AGE; REQUIRING THE DEPARTMENT OF JUSTICE TO REMOVE FROM ITS DRIVERS' RECORDS REFERENCES TO CONVICTIONS OF PERSONS UNDER 21 YEARS OF AGE FOR POSSESSION OF AN INTOXICATING SUBSTANCE; AMENDING SECTIONS 45-5-624 AND 61-2-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-624, MCA, is amended to read:

"**45-5-624. Unlawful attempt to purchase or possession of intoxicating substance — interference with sentence or court order.** (1) A person under 21 years of age commits the offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating substance. A person does not commit the offense if the person consumes or gains possession of the beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages.

(2) *(a)* In addition to any disposition by the youth court under 41-5-1512, a person under 18 years of age who is convicted of the offense of possession of an intoxicating substance:

~~(a)~~*(i)* for the first offense, shall be fined an amount not to exceed $100 and:

~~(i) must have the person's driver's license confiscated by the court for not less than 30 days and not more than 90 days and shall be ordered not to drive during that period if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred;~~

~~(ii)~~*(A)* shall be ordered to perform community service if a community service program is available; and

~~(iii)~~*(B)* shall be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available;

~~(b)~~*(ii)* for a second offense, shall be fined an amount not to exceed $200 and:

~~(i) must have the person's driver's license suspended for not less than 60 days and not more than 120 days;~~

~~(ii)~~*(A)* shall be ordered to perform community service if a community service program is available; and

~~(iii)~~*(B)* shall be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available;

~~(c)~~*(iii)* for a third or subsequent offense, shall be fined an amount not less than $300 or more than $500 and~~:~~

~~(i) must have the person's driver's license suspended for not less than 120 days and not more than 1 year, except that if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred, must have the person's driver's license revoked for 1 year or until the person reaches the age of 18, whichever occurs last;~~

~~(ii)~~ shall be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available, which may include alcohol or drug treatment, or both, approved by the department of public health and human services, if determined by the court to be appropriate.

(b) In addition to the penalties provided in subsection (2)(a), the court may order suspension of the offender's driver's license. The duration of the suspension must be set forth by court order and may not be less than 60 days or more than 1 year. Upon recommendation from the court, a restricted probationary driver's license under 61-2-302 may be issued during the suspension period after the person has completed at least 30 days of the suspension period.

(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance:

~~(a)~~*(a)* for a first offense, shall be fined an amount not to exceed $50 and *shall* be ordered to perform community service if a community service program is available;

~~(b)~~*(b)* for a second offense, shall be fined an amount not to exceed $100 and~~:~~

~~(i)~~ shall be ordered to perform community service if a community service program is available; ~~and~~

~~(ii) must have the person's driver's license suspended for not more than 60 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;~~

~~(c)~~*(c)* for a third or subsequent offense, shall be fined an amount not to exceed $200 and:

~~(i)~~*(i)* shall be ordered to perform community service if a community service program is available;

~~(ii) must have the person's driver's license suspended for not more than 120 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;~~

~~(iii)~~*(ii)* shall be ordered to complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both; and

~~(iv)~~*(iii)* in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed 6 months.

(4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed $50 if the person was 18 years of age or older at the time that the offense was committed or $100 if the person was under 18 years of age at the time that the offense was committed.

(5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need of intervention as defined in 41-5-103. The youth court may enter its judgment under 41-5-1512.

(6) A person commits the offense of interference with a sentence or court order if the person purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both.

(7) A conviction or youth court adjudication under this section ~~must~~ *may not* be reported by the court to the department of justice under 61-11-101 ~~for the purpose of keeping a record of the number of offenses committed but may not be considered part of the person's driving record for insurance purposes~~ unless a ~~second or subsequent conviction or adjudication under this section occurs~~ *suspension of the offender's driver's license is ordered by the court pursuant to*

subsection (2)(b). (See compiler's comments for contingent termination of certain text.)"

Section 2. Section 61-2-302, MCA, is amended to read:

"61-2-302. Establishment of driver rehabilitation and improvement program — participation by offending drivers. (1) The department may establish by administrative rules a driver rehabilitation and improvement program or programs that may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

(2) Official participation in the driver rehabilitation and improvement program is limited to those persons whose license to operate a motor vehicle in the state of Montana is:

(a) subject to suspension or revocation as a result of a violation of the traffic laws of this state or, unless otherwise provided by the sentencing court, a ~~violation of 45-5-624~~ *is suspended under 45-5-624(2)(b)*; or

(b) revoked and they have:

(i) completed at least 3 months of a 1-year revocation or, if revocation is for a second or subsequent violation of 61-8-401 or 61-8-406, have provided the department with proof of compliance with the ignition interlock device restriction imposed under 61-5-208; or

(ii) completed 1 year of a 3-year revocation; and

(iii) met the requirements for reobtaining a Montana driver's license.

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver improvement program and meets the eligibility requirements of subsection (2).

(4) In the event that a person's driver's license has been surrendered before the person's selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation order must be terminated and the order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) This part does not create a right to be included in any program established under this part.

(7) The department may establish a schedule of fees that may be charged those persons participating in the driver improvement and rehabilitation program. The fees must be used to help defray costs of maintaining the program.

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.

(9) The department may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

(10) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to the person under this section."

Section 3. Removal from drivers' records of references to convictions of persons under 21 years of age for possession of intoxicating substance. Within 30 days after [the effective date of this act], the department of justice shall remove from drivers' records that may be released under 61-11-105 all references to convictions for violations of 45-5-624 that were previously reported to the department.

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to offenses committed on or after [the effective date of this act].

Approved March 17, 2001

CHAPTER NO. 65

[SB 30]

AN ACT REQUIRING A TRACTION LICENSE TO OPERATE A STEAM LOCOMOTIVE; AMENDING THE EXPERIENCE REQUIREMENTS FOR OBTAINING A TRACTION LICENSE; AMENDING CRANE AND HOIST MANUFACTURING RATINGS TO OBTAIN A TRACTION LICENSE TO 6 TONS OR MORE; AND AMENDING SECTIONS 50-74-306, 50-74-307, AND 50-76-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-74-306, MCA, is amended to read:

"50-74-306. Traction licenses. (1) ~~None of the~~ *The* licenses named in 50-74-303 *do not* entitle ~~its~~ *the* holder to operate a traction engine.

(2) A person who is entrusted with the care and management of traction engines or boilers on wheels is required to pass an examination testing ~~his~~ *the person's* competency to operate that class of machinery and procure a traction license.

(3) A person who is entrusted with the care, management, and operation of steam locomotives not addressed by federal regulations is required to pass an examination testing the person's competency to operate that class of machinery and procure a traction license.

~~(3)~~*(4)* A traction license does not entitle its holder to operate any other class of steam machinery."

Section 2. Section 50-74-307, MCA, is amended to read:

"50-74-307. Requirements for traction licenses. An applicant for a traction engineer's license ~~must:~~

(1) must be 18 years of age or older~~, must~~*;*

(2) must have at least ~~6 months' full-time~~ *480 hours total* experience in the operation of steam traction engines~~, is required to~~*;*

(3) shall successfully pass a written examination prescribed by the department~~,~~*;* and ~~must~~

(4) must be found competent to operate a traction engine by the department."

Section 3. Section 50-76-103, MCA, is amended to read:

"**50-76-103. Crane and hoist license required.** (1) (a) It is unlawful for a person to operate any crane and hoist equipment, when used in hoisting or lowering personnel or material, that has a manufacturer's rating of ~~more than~~ 6 tons *or more* and a boom length of more than 25 feet without first obtaining a license from the department ~~of commerce~~. This equipment includes overhead trolley and gantry cranes used in construction only and excludes equipment with excavation attachments or log loading equipment when in use.

(b) In emergencies, 50-74-317 applies to the operation of the equipment named in this section.

(2) Licensing is as follows:

(a) First-class crane and hoist engineers are licensed to operate any hoisting equipment in industrial or construction operations.

(b) (i) An applicant for a first-class crane and hoist engineer's license must be 18 years of age or older and:

(A) must have no less than 3 years' experience operating equipment requiring a second-class crane and hoist engineer's license or shall demonstrate equivalent competency by examination; and

(B) is required to pass a written test prescribed by the department ~~of commerce~~.

(ii) A biennial physical exam is required of all licensees.

(c) Second-class crane and hoist engineers are licensed to operate crane and hoist equipment with a manufacturer's rating of 6 tons and a boom length of 25 feet up to equipment with a rating of 15 tons and a boom length of 60 feet.

(d) (i) An applicant for a second-class crane and hoist engineer's license must be 18 years of age or older and:

(A) must have no less than 2 years' experience in actual operation of crane and hoist equipment covered by this section or shall demonstrate equivalent competency by examination; and

(B) is required to successfully pass a written examination prescribed by the department ~~of commerce~~.

(ii) A biennial physical exam is required of all licensees.

(e) Third-class crane and hoist engineers are licensed to move all truck cranes driven by any power and of any capacity. This license requirement applies to truck crane oilers who move truck cranes.

(f) An applicant for a third-class crane and hoist engineer's license is required to successfully pass a written test prescribed by the department ~~of commerce~~ and must be 18 years of age or older before receiving a license.

(3) The department ~~of commerce~~ shall reexamine each licensed engineer or operator every 5 years during the anniversary month of the issuance of the license if the licensee has not worked at the trade for 5 years."

Approved March 16, 2001

CHAPTER NO. 66

[SB 37]

AN ACT INCREASING THE NUMBER OF HOURS THAT A RETIREE MAY RETURN TO WORK IN A POSITION COVERED BY THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AMENDING SECTIONS 19-2-706, 19-3-908, AND 19-3-1106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-2-706, MCA, is amended to read:

"**19-2-706. Additional service for member involuntarily terminated from membership service.** (1) An employee of the state or university system is entitled to the involuntary termination provision provided in subsection (3) if:

(a) the employee is a member of the public employees', game wardens' and peace officers', sheriffs', or highway patrol officers' retirement system;

(b) the employee's active service is involuntarily terminated because of elimination of the employee's position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature or, in the case of a legislator, because of term limits terminating the service of the legislator in either one of the houses of the legislature;

(c) the employee is eligible for a normal service retirement or early retirement under the applicable provisions of the retirement system to which the member belongs; and

(d) the employee waives termination benefits for which the employee would otherwise be eligible under the State Employee Protection Act.

(2) The cost of each year of service purchased under this section is the total actuarial cost of purchasing the service based on the most recent actuarial valuation of the retirement system.

(3) The employer of an eligible member under subsection (1) shall pay a portion of the total cost of purchasing up to 3 years of additional service that the member was qualified to purchase under 19-3-513, 19-6-804, 19-7-804, or 19-8-904. The employer-paid portion applied toward the service purchase must be calculated using the formula A x B x C when:

(a) A is equal to a maximum of 3 additional years of service that the member is eligible to purchase;

(b) B is equal to the sum of the employer and employee contribution rates in the member's retirement system; and

(c) C is equal to the member's gross compensation paid during the immediate preceding 12 months of membership service. The employer may not be charged more than the total actuarial cost of the service purchased by the terminated employee.

(4) The member shall pay the difference, if any, between the full actuarial cost of the service to be purchased and the amount contributed by the employer under subsection (3). A member may elect to purchase less than the full amount of service for which the member is eligible under this section, but the election may not reduce the amount of the employer's contribution as calculated under subsection (3).

(5) The board may allow an employer to pay the contributions required under subsection (3) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403.

(6) A member who has received additional service under this section and who returns to employment for the same jurisdiction for *960 or more hours in a calendar year in a position covered by the public employees' retirement system or for* 600 or more hours in a calendar year *in a position covered under any other retirement system* forfeits the additional service. The employer's contribution to purchase that member's additional service, minus any retirement benefits already paid, must be credited to the employer. As used in this subsection, the same jurisdiction means all agencies of the state, including the university system."

Section 2. Section 19-3-908, MCA, is amended to read:

"**19-3-908. Retirement incentive program — window of eligibility.** (1) Except as provided in subsection (4), a person who is an active member on February 1, 1993, and who voluntarily terminates service or whose service is involuntarily terminated because of a reduction in force on or after June 25, 1993, but before January 1, 1994, and who is eligible for a normal service retirement under 19-3-901 or early retirement under 19-3-902 is entitled to the retirement incentive provided in subsection (2).

(2) (a) The employer of an eligible member under subsection (1) shall pay the total cost of purchasing up to 3 years of additional service that the member is qualified to purchase under 19-3-513.

(b) The department of revenue shall pay the cost of purchasing up to 3 years of additional service for qualifying county assessors and deputy assessors eligible under subsection (1) whose employing county has not elected for participation in the incentive program as provided in subsection (4).

(c) A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member to be unqualified to receive all or part of the additional service provided in this section.

(3) An active member who is involuntarily terminated because of a reduction in force on or after March 1, 1993, but before June 25, 1993, and who, if the member had not been terminated, would have been eligible under subsection (1) for the retirement incentive is entitled to the retirement incentive under subsection (2) if the member was, at the time of termination, eligible for normal service retirement under 19-3-901 or early retirement under 19-3-902 and retires on or after June 25, 1993.

(4) Subject to subsection (2)(b), a contracting employer's participation in the incentive program described in this section is optional. A contracting employer may elect to provide the incentive by filing with the board a written notice of

election on or before June 1, 1993, and complying with rules adopted pursuant to subsection (6).

(5) County assessors and deputy assessors are eligible for the incentive program even if the employing county has not elected to participate in the incentive program.

(6) The board may allow an employer to pay the contributions required under subsection (2)(a) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403. The board shall adopt rules to implement the provisions of this section.

(7) A member who has received additional service under this section and who returns to employment for the same jurisdiction for *960 or more hours in a calendar year in a position covered by the public employees' retirement system or for* 600 or more hours in a calendar year *in a position covered under any other retirement system* shall forfeit the additional service. The employer's contributions to purchase that member's additional service, minus any retirement benefits already paid, must be refunded to the employer. For purposes of this subsection, all agencies of the state, including the university system, are considered the same jurisdiction and other public employers contracting with the retirement system are each considered separate jurisdictions."

Section 3. Section 19-3-1106, MCA, is amended to read:

"**19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — exception.** (1) A retired member under 65 years of age who is receiving a service retirement benefit may return to employment covered by the retirement system for a period not to exceed ~~640~~ *960* hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this ~~640-hour~~ *960-hour* limitation in any calendar year after retirement must be temporarily reduced $1 for each $1 earned after working ~~640~~ *960* hours in that calendar year.

(2) A retiree 65 years of age or older who returns to employment covered by the retirement system is either subject to the ~~640-hour~~ limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree's current annual retirement benefits, will not exceed the member's annualized final average salary, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree's benefits must be temporarily reduced $1 for each $1 of compensation earned in covered service beyond the applicable limitation during that calendar year.

(3) A retiree returning to employment covered by the retirement system and the returning employee's employer shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any month after retirement.

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.

(5) A retired member 70 1/2 years of age or older who returns to employment covered by the retirement system is not subject to the hour or earnings

limitations in subsections (1) and (2) or the reporting requirements in subsection (3)."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2001

CHAPTER NO. 67

[SB 75]

AN ACT PROVIDING A UNIFORM METHOD FOR DETERMINING THE DATE OF DELIVERY OF DOCUMENTS AND PAYMENTS TO THE STATE FOR USES OF STATE LANDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the state administers over 10,000 leases, licenses, permits, and agreements on state lands; and

WHEREAS, as a result of the decisions of the Montana Supreme Court in Johansen v. Department of Natural Resources and Conservation, 288 Mont. 39, 955 P.2d 653 (1998), and Johansen v. State, 1999 MT 187, 983 P.2d 962 (1999), the determination of the date of delivery for the submission of documents and payments required by the terms of leases, licenses, permits, and agreements issued by the Board of Land Commissioners or the Department has been made less efficient; and

WHEREAS, there is a need to provide a uniform and exclusive method for determining the date of delivery of documents and payments to the state for uses of state lands.

Be it enacted by the Legislature of the State of Montana:

Section 1. Determination of date of delivery. The date of delivery for a lease, license, permit, or agreement issued by the board or department under this title or under a rule implementing this title or for a document or payment required by the terms of the lease, license, permit, or agreement is:

(1) for mailing by means of the United States postal service, the date of the postmark stamped on the cover in which the document or payment is transmitted; or

(2) for delivery by means other than by the United States postal service or if there is no postmark stamped on a mailing delivered by the United States postal service, the date of actual physical receipt by the department.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 77, chapter 1, and the provisions of Title 77, chapter 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2001

CHAPTER NO. 68

[SB 156]

AN ACT CLARIFYING THE ASSESSMENT FEE PAID BY A PRIVATE INSURER UNDER THE WORKERS' COMPENSATION ACT; AMENDING SECTION 39-71-2615, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-2615, MCA, is amended to read:

"**39-71-2615. Initial fee — assessment.** (1) A private self-insurer shall pay to the fund an initial fee of $1,000 upon becoming a member. Thereafter, a member's financial obligation to the fund must be established by assessment as provided in subsection (2).

(2) *(a)* The fund may assess each of its members a pro rata share of the amount necessary to carry out the purposes of this part. However, the total annual assessments in any calendar year may not exceed 5% of the ~~indemnity compensation~~ *following benefits* paid by each member during the ~~previous~~ *preceding* calendar year*:*

(i) compensation benefits; and

(ii) except for medical benefits in excess of $200,000 for each occurrence that are exempt from assessment, the total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(b) Funds obtained by assessment pursuant to this subsection may be used only for the purposes of this part.

(3) A former member is liable for assessments made by the fund for 3 years following the date the member's status as a private self-insurer is terminated, whether the termination is by action of the private self-insurer or the department. A former member's assessment must be based on the ~~compensation~~ *benefits* paid during the last ~~approval~~ *calendar* year immediately preceding the ~~member's~~ termination of ~~its~~ *the member's* status as a private self-insurer.

(4) The board shall certify to the department the collection and receipt of assessments, noting any delinquencies. The board shall take appropriate action to collect a delinquent assessment."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2001

CHAPTER NO. 69

[HB 21]

AN ACT EXTENDING THE DURATION OF THE STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION; REVISING THE MEMBERSHIP OF THE COMMISSION TO INCLUDE THE LITTLE SHELL BAND OF CHIPPEWA; AMENDING SECTIONS 90-1-131, 90-1-135, AND 90-11-102, MCA, AND SECTION 19, CHAPTER 512, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-1-131, MCA, is amended to read:

"**90-1-131. (Temporary) State-tribal economic development commission — composition — compensation for members.** (1) There is a state-tribal economic development commission administratively attached to the office of the governor as prescribed in 2-15-121.

(2) The commission is composed of ~~nine~~ *10* members, each appointed by the governor ~~to 3-year staggered terms commencing on July 1 of each year of appointment~~ *to 3-year staggered terms commencing on July 1 of each year of appointment*, and must include:

(a) the state coordinator of Indian affairs;

(b) one member from the department of commerce;

(c) one member from each of the seven federally recognized tribes in Montana *and one member from the Little Shell band of Chippewa Indians. A tribal government may advertise for individuals interested in serving on the commission and develop a list of applicants from which it may choose its nominee to recommend to the governor. In place of choosing from a list of applicants, a tribal government may select an elected tribal official to recommend for membership on the commission.* If a tribal government nominates or otherwise recommends more than one person for membership on the commission, the governor shall select one individual from among those recommended persons.

~~(3) Each member may be reappointed for successive terms.~~

~~(4)~~*(3)* The members of the commission shall elect a presiding officer from among the members.

~~(5)~~*(4)* ~~Six~~ *Seven* members of the commission constitute a quorum and the affirmative vote of the majority of the members present is sufficient for any action taken by the commission.

~~(6)~~*(5)* Any vacancy on the commission must be filled in the same manner as the original appointment.

~~(7)~~*(6)* Each member of the commission is entitled to reimbursement for expenses as provided in 2-18-501 through 2-18-503. (Terminates June 30, ~~2001~~ *2005*~~—sec. 19, Ch. 512, L. 1999~~.)"

Section 2. Section 90-1-135, MCA, is amended to read:

"**90-1-135. (Temporary) Special revenue accounts.** (1) There is an account in the state treasury for the receipt of state and private funds and an account in the state treasury for the receipt of federal funds for expenditure by the state-tribal economic development commission established in 90-1-131.

(2) Money in the accounts established in subsection (1) must be used to pay:

(a) the commission's administrative costs;

(b) the salary, benefits, and administrative expenses of the tribal business center coordinator and the federal grants coordinator; and

(c) the costs of conducting or commissioning and periodically updating or otherwise modifying a comprehensive assessment of economic development needs and priorities on each of the Indian reservations in the state.

(3) Money in the accounts that is not expended for the purposes identified in subsection (2) may be used for other purposes that the commission considers prudent or necessary.

(4) Interest and income earned on the money in the accounts must be deposited in the accounts for the commission's use.

(5) Money in the accounts that is not expended by June 30, ~~2001~~ *2005*, must remain in the accounts for the commission's use. (Terminates June 30, ~~2001~~ *2005*~~—sec. 19, Ch. 512, L. 1999~~.)"

Section 3. Section 90-11-102, MCA, is amended to read:

"**90-11-102. (Temporary) Duties and assistance.** (1) It is the duty of the state coordinator of Indian affairs to carry out the legislative policy set forth in 90-11-101.

(2) The state coordinator shall:

(a) become acquainted with the problems confronting the Indians of Montana;

(b) advise the legislative and executive branches of the state of Montana of those problems;

(c) make recommendations for the alleviation of those problems;

(d) serve the Montana delegation in the federal congress as an adviser and intermediary in the field of Indian affairs;

(e) act on behalf of representative Indian organizations and groups, public and private, whenever the state coordinator's support is solicited by tribal entities;

(f) serve on the state-tribal economic development commission established in 90-1-131;

(g) report in detail at every meeting of the interim committee of the legislature ~~having jurisdiction over the office of the coordinator~~ *responsible for acting as a liaison between the legislature and the tribal governments* those actions taken by the state-tribal economic development commission established by 90-1-131 to carry out its duties; and

(h) hire, with the concurrence of the other members of the state-tribal economic development commission, a tribal business center coordinator and a federal grants coordinator, and subsequently provide administrative support for both positions.

(3) All executive and legislative agencies of state government may within the area of their expertise and authority provide assistance to tribal councils or their official designees requesting assistance on any matter relating to coal development on Indian reservation lands and may make an appropriate charge for that assistance. (Terminates June 30, ~~2001~~ *2005*~~—sec. 19, Ch. 512, L. 1999~~.)

90-11-102. (Effective July 1, ~~2001~~ *2005*) Duties and assistance. (1) It ~~shall be~~ *is* the duty of the state coordinator of Indian affairs to carry out the legislative policy set forth in 90-11-101.

(2) ~~He shall acquaint himself with the problems confronting the Indians of Montana, and he shall advise the legislative and executive branches of the state of Montana of those problems and shall make recommendations for the alleviation~~

~~thereof. He shall also serve the Montana delegation in the federal congress as an adviser and intermediary in the field of Indian affairs and shall act as spokesman for representative Indian organizations and groups, public and private, whenever his support is solicited~~ *The state coordinator shall:*

(a) become acquainted with the problems confronting the Indians of Montana;

(b) advise the legislative and executive branches of the state of Montana of those problems;

(c) make recommendations for the alleviation of those problems;

(d) serve the Montana delegation in the federal congress as an adviser and intermediary in the field of Indian affairs; and

(e) act on behalf of representative Indian organizations and groups, public and private, whenever the state coordinator's support is solicited by tribal entities.

(3) All executive and legislative agencies of state government may within the area of their expertise and authority provide assistance to tribal councils or their official designees requesting ~~such~~ assistance on any matter relating to coal development on Indian reservation lands and may make an appropriate charge ~~therefor~~ *for that assistance.*"

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 5. Section 19, Chapter 512, Laws of 1999, is amended to read:

"**Section 19. Termination.** [This act] terminates June 30, ~~2001~~ *2005.*"

Section 6. Effective date. [This act] is effective on passage and approval.

Approved March 19, 2001

CHAPTER NO. 70

[HB 40]

AN ACT RETAINING THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM FUND WITHIN THE COAL SEVERANCE TAX TRUST FUND FOR AN ADDITIONAL 3 YEARS; PROVIDING FOR THE CONTINUED DEPOSIT OF INTEREST ON THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM FUND INTO THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM STATE SPECIAL REVENUE ACCOUNT FOR AN ADDITIONAL 3 YEARS; AMENDING SECTION 6, CHAPTER 495, LAWS OF 1999; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 6, Chapter 495, Laws of 1999, is amended to read:

"**Section 6. Termination.** ~~[This act]~~ *[This act]* ~~terminates~~ *terminates* June 30, ~~2013~~ *2016.*"

Section 2. Effective date. [This act] is effective June 30, 2013.

Approved March 19, 2001

CHAPTER NO. 71

[HB 71]

AN ACT CLARIFYING THE APPLICABILITY OF MONTANA'S MINIMUM WAGE AND OVERTIME LAWS; AMENDING SECTIONS 39-3-405, 39-3-406, AND 39-3-408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-405, MCA, is amended to read:

"**39-3-405. Overtime compensation.** (1) ~~No~~ *An* employer ~~shall~~ *may not* employ any ~~of his employees~~ *employee* for a workweek longer than 40 hours unless ~~such~~ *the* employee receives compensation for ~~his~~ employment in excess of 40 hours in a workweek at a rate of not less than 1 1/2 times the hourly wage rate at which ~~he~~ *the employee* is employed.

(2) ~~No~~ *An* overtime provision ~~shall~~ *does not* apply for farm workers.

(3) Employers of students at an amusement or recreational area that operates on a seasonal basis who furnish ~~said~~ *the* students with board, lodging, or other facilities ~~shall~~ *may* not employ ~~said~~ *the* students for a workweek longer than 48 hours, unless ~~such~~ *the* students receive compensation for their employment in excess of 48 hours in a workweek at a rate of not less than 1 1/2 times the hourly wage rate at which they are employed.

(4) The application of the overtime provisions of subsection (1) to the employment of firefighters and law enforcement officers by the state must be consistent with the Fair Labor Standards Act of 1938, as amended, and consistent with regulations promulgated under the act."

Section 2. Section 39-3-406, MCA, is amended to read:

"**39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined by regulations of the commissioner;

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility;

(m) an outside salesperson or marketing representative paid on a commission, contract, or salary basis who is primarily employed in selling or marketing products or services in the food distribution industry for a food broker, wholesaler, or association;

(n) a direct seller as defined in 26 U.S.C. 3508;

(o) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

(p) a person serving as a foster parent, licensed as a foster care provider in accordance with 41-3-1141, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(q) an employee employed in domestic service employment to provide live-in companionship services, as defined in 29 CFR 552.6, for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act (29 U.S.C. 213).

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) an outside salesperson paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;

(e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, farm implements, or replacement parts if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles, implements, or replacement parts to wholesalers or ultimate purchasers;

(f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(g) an outside salesperson paid on a commission or contract basis who is primarily employed in selling office supplies, computers, or other office equipment for an office equipment dealer;

(h) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(i) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(j) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(k) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(l) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

(m) a driver employed by an employer engaged in the business of operating taxicabs;

(n) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(p) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(q) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(r) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(s) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(t) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(u) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

(x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

(y) an employee of the consolidated legislative branch as provided in 5-2-503*;*

(z) an employee of the state or its political subdivisions employed, at the employee's option, on an occasional or sporadic basis in a capacity other than the employee's regular occupation. Only the hours that the employee was employed in a capacity other than the employee's regular occupation may be excluded from the calculation of hours to determine overtime compensation."

Section 3. Section 39-3-408, MCA, is amended to read:

"**39-3-408. Provisions cumulative.** (1) The provisions of this part ~~shall be~~ *are* in addition to other provisions ~~now~~ provided by law for the payment and collection of wages and salaries *and are applicable to employees of the state of Montana, except that the penalty provisions of 39-3-206 do not apply to minimum wage and overtime claims that are subject to the Fair Labor Standards Act of 1938, in which case liquidated damages as determined under the Fair Labor Standards*

Act of 1938 apply ~~but shall not apply to employees covered by the Fair Labor Standards Act of 1938 except as provided in subsection (2)~~.

(2) Sections 39-3-402 and 39-3-404 ~~shall~~ apply to an employee covered by the Fair Labor Standards Act of 1938 if state law provides a minimum wage that is higher than the minimum wage established under federal law."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2001

CHAPTER NO. 72

[HB 78]

AN ACT CLARIFYING PROVISIONS RELATED TO SPECIAL AND PERSONALIZED MILITARY LICENSE PLATES FOR DISABLED VETERANS; AND AMENDING SECTIONS 61-3-332 AND 61-3-453, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-332, MCA, is amended to read:

"61-3-332. Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bears the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bears the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bears the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bears the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bears the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned to the dealer, in the position that the department designates.

(2) (a) All number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(b) For light vehicles that are permanently registered as provided in 61-3-527 or 61-3-562, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.

(3) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of $10. The additional fee must be distributed in accordance with the provisions of subsection (10)(f)(iii) and (10)(f)(iv).

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued:

(A) a special license plate under this section with a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter *irrespective of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i).*

(iii) Special license plates issued to a disabled veteran are not transferable to another person.

(iv) A disabled veteran is not entitled to a special disabled veteran's license plate for more than one vehicle.

(v) A vehicle *that is* lawfully displaying a disabled veteran's plate *with a design or decal displaying the letters "DV"* and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(i) Fees required under 61-3-321(1) and (5) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).

(ii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iii) An ex-prisoner of war is exempt from the light vehicle ~~taxes~~ *registration fees* imposed under ~~61-3-504~~ *61-3-560 through 61-3-562* for one vehicle that displays a set of ex-prisoner of war license plates.

(iv) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.

(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue account established in 10-2-603 for administration, construction, operation, and maintenance of the state veterans' cemeteries.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.

(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 2. Section 61-3-453, MCA, is amended to read:

"**61-3-453. Disabled veterans' plates limited to one automobile or truck — personalized plates.** (1) A disabled veteran is not entitled to special license plates for disabled veterans under 61-3-332(10)(c)(i)(A) or 61-3-426(2) for more than one passenger automobile or one truck up to and including 1 ton GVW-rated capacity.

(2) Upon submitting the application provided for in 61-3-405 and payment of the $25 fee provided for in 61-3-406, a disabled veteran must receive personalized disabled veteran license plates *or one set of any other military-related plates that the disabled veteran is entitled to under 61-3-332.*"

Approved March 19, 2001

CHAPTER NO. 73

[HB 103]

AN ACT ALLOWING FOR MULTIYEAR ACCREDITATION OF SCHOOLS; REQUIRING COMPLIANCE WITH TEACHER CERTIFICATION LAWS IN ORDER TO RECEIVE MULTIYEAR ACCREDITATION; PROVIDING FOR ACCREDITATION OF 7TH AND 8TH GRADES FUNDED AT HIGH SCHOOL RATES; AND AMENDING SECTION 20-7-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-102, MCA, is amended to read:

"**20-7-102. Accreditation of schools.** (1) ~~Every school year the~~ *The* conditions under which each elementary school, *each* middle school, *each* junior high school, *7th and 8th grades funded at high school rates,* and *each* high school operates ~~shall~~ *must* be reviewed by the superintendent of public instruction to determine ~~each school's~~ compliance with the standards of accreditation. The accreditation status of every school ~~shall~~ *must* then be established by the board of public education upon the recommendation of the superintendent of public instruction~~, and notification~~*. Notification* of ~~such~~ *the accreditation* status for the applicable school year ~~shall~~ *or years must* be given to each district *by the superintendent of public instruction.*

(2) *A school may be accredited for a period consisting of 1, 2, 3, 4, or 5 school years, except that multiyear accreditation may only be granted to schools that are in compliance with 20-4-101.*

(3) A nonpublic school may, through its governing body, request that the board of public education accredit the school. Nonpublic schools may be accredited in the same manner as provided in subsection (1).

(4) As used in this section, "7th and 8th grades funded at high school rates" means an elementary school district or K-12 district elementary program whose 7th and 8th grades are funded as provided in 20-9-306(10)(c)(i)."

Approved March 19, 2001

CHAPTER NO. 74

[HB 104]

AN ACT PROVIDING THAT A CONVICTED PERSON OR THE PROSECUTOR MAY REQUEST THAT THE SENTENCING COURT MODIFY A WRITTEN JUDGMENT TO CONFORM IT TO THE ORAL PRONOUNCEMENT OF SENTENCE OR OTHER DISPOSITION; PROVIDING THAT A CONVICTED PERSON OR PROSECUTOR WHO FAILS TO REQUEST MODIFICATION OF A WRITTEN JUDGMENT WITHIN 120 DAYS AFTER FILING OF THE WRITTEN JUDGMENT WAIVES THE RIGHT TO REQUEST A MODIFICATION OF THE WRITTEN JUDGMENT; PROVIDING THAT A FACTUALLY ERRONEOUS JUDGMENT MAY BE CORRECTED AT ANY TIME; AMENDING SECTION 46-18-116, MCA; REPEALING SECTION 46-18-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-116, MCA, is amended to read:

"**46-18-116. Judgment** — ***conflict between written judgment and oral pronouncement — correction of factually erroneous sentence or judgment.*** *(1)* The judgment must set forth the plea, verdict or finding, and the adjudication. If the defendant is convicted, it must set forth the sentence or other disposition. The judgment must be signed and entered on the record. *At the time that the judgment is filed, the prosecutor of the county in which the sentence was imposed shall serve a copy of the judgment on the defendant. The written judgment must include a statement of the rights set forth in subsection (2).*

(2) If a written judgment and an oral pronouncement of sentence or other disposition conflict, the defendant or the prosecutor in the county in which the sentence was imposed may, within 120 days after filing of the written judgment, request that the court modify the written judgment to conform to the oral pronouncement. The court shall modify the written judgment to conform to the oral pronouncement at a hearing, and the defendant must be present at the hearing unless the defendant waives the right to be present or elects to proceed pursuant to 46-18-115. The defendant and the prosecutor waive the right to request modification of the written judgment if a request for modification of the written judgment is not filed within 120 days after the filing of the written judgment in the sentencing court.

(3) The court may correct a factually erroneous sentence or judgment at any time. Illegal sentences must be addressed in the manner provided by law for appeal and postconviction relief."

Section 2. Repealer. Section 46-18-117, MCA, is repealed.

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to all cases currently pending on direct review or that are not yet final.

Approved March 20, 2001

CHAPTER NO. 75

[HB 108]

AN ACT AUTHORIZING A SCHOOL DISTRICT TO ENTER INTO A COOPERATIVE PURCHASING CONTRACT WITH ONE OR MORE DISTRICTS FOR THE PROCUREMENT OF SUPPLIES AND SERVICES; PROVIDING BIDDING AND ADVERTISEMENT REQUIREMENTS FOR A COOPERATIVE PURCHASING CONTRACT; PROVIDING FOR REJECTION OF ALL BIDS; AMENDING SECTION 20-9-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-204, MCA, is amended to read:

"**20-9-204. Conflicts of interests, letting contracts, and calling for bids.** (1) It is unlawful for a trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by the trustee while acting in that official capacity or by the board of trustees of which the trustee is a member; or

(b) be employed in any capacity by the trustee's own school district.

(2) For the purposes of subsection (1):

(a) "pecuniary interest" does not include holding an interest of 10% or less in a corporation;

(b) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions that are in the business of loaning or receiving money when the investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services, other than salaried services, or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of the lack of availability are entered in the minutes of the board meeting at which the contract is considered.

(3) Except for district needs that must be met ~~due to~~ *because of* an unforeseen emergency, as defined in 20-3-322(5), *or as provided in subsection (4) of this section*, whenever the estimated cost of any building, furnishing, repairing, or

other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of $15,000, the work done or the purchase made must be by contract. Each contract must be let to the lowest responsible bidder after advertisement for bids. The advertisement must be published in the newspaper that will give notice to the largest number of people of the district as determined by the trustees. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section is void. The bidding requirements ~~of~~ *applicable to services performed for the benefit of the district under* this ~~subsection~~ *section* do not apply to:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an attorney;

(d) a consulting actuary;

(e) a private investigator licensed by any jurisdiction;

(f) a claims adjuster; or

(g) an accountant licensed under Title 37, chapter 50.

(4) A district may enter into a cooperative purchasing contract for the procurement of supplies or services with one or more districts. The award of a contract to a successful bidder must comply with the requirements of subsection (5). The request for bids must be advertised in a daily newspaper of general circulation in each county in which a district participating in the cooperative purchasing contract is located. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids.

~~(4)~~*(5)* Whenever bidding is required, the ~~trustees shall award the~~ contract *must be awarded* to the lowest responsible bidder, except that ~~the trustees may reject any~~ *all* bids *may be rejected.*

~~(5)~~*(6)* Nothing in this section requires the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service that can be accomplished by district staff whose regular employment with the school district is related to the routine performance of maintenance for the district."

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to bids let on or after [the effective date of this act].

Approved March 19, 2001

CHAPTER NO. 76

[HB 110]

AN ACT AUTHORIZING A SCHOOL DISTRICT TO INVEST ENDOWMENTS ACCORDING TO THE PROVISIONS OF THE UNIFORM MANAGEMENT OF

INSTITUTIONAL FUNDS ACT; AMENDING SECTION 20-9-604, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-604, MCA, is amended to read:

"20-9-604. Gifts, legacies, devises, and administration of endowment fund. (1) The trustees of ~~any~~ *a* district may accept gifts, legacies, and devises, subject to the conditions imposed by the deed of the donor or the will of the testator or without any conditions imposed. Unless otherwise specified by the donor, devisor, or testator, when a district receives a gift, legacy, or devise, the trustees shall deposit ~~such~~ *the* gift, legacy, devise, or the proceeds ~~therefrom~~ in an endowment fund. The trustees shall administer the endowment fund so as to preserve the principal from loss, and only the income from the fund ~~shall~~ *may* be appropriated for any purpose.

(2) Unless the conditions of the endowment instrument require an immediate disbursement of the money, the money deposited in the endowment fund ~~shall~~ *must* be invested by the trustees~~, notwithstanding the provisions of any other state law, in:~~

~~(a) school district bonds of the district;~~

~~(b) bonds of other school districts within the state;~~

~~(c) first mortgage bonds, debentures, notes, and other evidences of indebtedness issued, assumed, or guaranteed by any solvent and operating public utility corporation existing under the laws of the United States of America or any state thereof, which bonds, debentures, notes, and other evidences of indebtedness are, at the time of such investment, within the three highest quality grades for the rating of such bonds, debentures, notes, and other evidences of indebtedness by any nationally recognized investment rating agency;~~

~~(d) certificates of deposit of Montana banks insured by the federal deposit insurance corporation; or~~

~~(e) direct obligations of the United States government~~ *according to the provisions of the Uniform Management of Institutional Funds Act, Title 72, chapter 30.*

(3) All interest collected on the deposits or investments ~~shall~~ *must* be credited to the endowment fund. No portion of the endowment fund may be loaned to the district, nor may any money of the fund be invested in warrants of the district.

(4) Whenever ~~any~~ *a* district has been abandoned, the endowment fund of the abandoned district ~~shall~~ *must* be transferred and placed in the endowment fund in the district to which the territory is attached.

(5) As the custodian of the endowment fund, the county treasurer is liable on ~~his~~ *the treasurer's* official bond for the endowment fund of any district of the county. No later than July 1 each school fiscal year, the county treasurer shall ~~account~~ *report* to the trustees of each district on the condition of its endowment fund, including the status of the investments that have been made with the money of the fund. The county treasurer shall also include the endowment fund in ~~his~~ *the treasurer's* reports to the board of county commissioners.

(6) The trustees of any district having an endowment fund shall provide suitable memorials for all persons or associations of persons making gifts to the district ~~which~~ *that* become a part of the endowment fund."

Section 2. Effective date — applicability. [This act] is effective July 1, 2001, and applies to investment of school district endowments on or after July 1, 2001.

Approved March 19, 2001

CHAPTER NO. 77

[HB 112]

AN ACT GENERALLY REVISING LAWS CONCERNING DOCUMENTS TO INCLUDE ELECTRONIC MAIL; PROVIDING THAT ELECTRONIC MAIL USED FOR THE TRANSACTION OF OFFICIAL BUSINESS IS A PUBLIC RECORD; INCLUDING THE UNLAWFUL INTERCEPTION OF ELECTRONIC MAIL AS A VIOLATION OF THE LAW ON PRIVACY IN COMMUNICATIONS; AMENDING SECTIONS 2-3-301, 2-6-101, 2-6-102, 2-6-110, 2-6-202, 2-6-301, 2-6-401, AND 45-8-213, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-3-301, MCA, is amended to read:

"2-3-301. Agency using electronic mail to accept public comment electronically — dissemination of electronic mail address and documents required — prohibiting fees. (1) An agency that accepts public comment pursuant to a statute, administrative rule, or policy, including an agency adopting rules pursuant to the Montana Administrative Procedure Act or an agency to which 2-3-111 applies, shall, if the agency is capable of receiving electronic mail from the internet world wide web, provide for the receipt of public comment by the agency by use of that electronic mail system.

(2) As part of the agency action required by subsection (1), an agency shall disseminate by appropriate mediums its electronic mail address to which public comment may be made, including dissemination in:

(a) rulemaking notices published pursuant to the Montana Administrative Procedure Act;

(b) the telephone directory of state agencies published by the department of administration;

(c) any notice of agency existence, purpose, and operations published on the internet world wide web, popularly known as a "website", used by the agency;

(d) the state electronic bulletin board; or

(e) any combination of the methods of dissemination provided in subsections (2)(a) through (2)(d).

(3) An agency that uses electronic mail and creates or receives electronic documents shall, at the request of another agency or person *and subject to 2-6-102*, disseminate the electronic documents to that agency or person by electronic mail in place of surface mail. An agency may not charge a fee for providing documents by electronic mail in accordance with this subsection.

(4) An agency that receives electronic mail pursuant to subsection (1) shall retain the electronic mail as either an electronic or a paper copy to the same extent that other comments are retained.

~~(4)~~*(5)* As used in this section, "agency" means a department, division, bureau, office, board, commission, authority, or other agency of the executive branch of state government."

Section 2. Section 2-6-101, MCA, is amended to read:

"**2-6-101. Definitions.** (1) Writings are of two kinds:

(a) public; and

(b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country, except records that are constitutionally protected from disclosure;

(b) public records, kept in this state, of private writings, *including electronic mail*, except as provided in 22-1-1103 and 22-3-807 and except for records that are constitutionally protected from disclosure.

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official documents;

(d) public records, kept in this state, of private writings, *including electronic mail*.

(4) All other writings are private."

Section 3. Section 2-6-102, MCA, is amended to read:

"**2-6-102. Citizens entitled to inspect and copy public writings.** (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103, 22-3-807, or subsection (3) of this section and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing that a citizen has a right to inspect is bound to give the citizen on demand a certified copy of it, on payment of the legal fees for the copy, and the copy is admissible as evidence in like cases and with like effect as the original writing. *The certified copy provision of this subsection does not apply to the public record of electronic mail provided in an electronic format.*

(3) Records and materials that are constitutionally protected from disclosure are not subject to the provisions of this section. Information that is constitutionally protected from disclosure is information in which there is an individual privacy interest that clearly exceeds the merits of public disclosure, including legitimate trade secrets, as defined in 30-14-402, and matters related to individual or public safety.

(4) A public officer may withhold from public scrutiny information relating to individual privacy or individual or public safety or security of public facilities, including jails, correctional facilities, private correctional facilities, and prisons, if release of the information may jeopardize the safety of facility personnel, the public, or inmates of a facility. Security features that may be protected under this

section include but are not limited to architectural floor plans, blueprints, designs, drawings, building materials, alarms system plans, surveillance techniques, and facility staffing plans, including staff numbers and locations. A public officer may not withhold from public scrutiny any more information than is required to protect an individual privacy interest or safety or security interest."

Section 4. Section 2-6-110, MCA, is amended to read:

"**2-6-110. Electronic information and nonprint records — public access — fees.** (1) (a) Except as provided by law, each person is entitled to a copy of *public* information compiled, created, or otherwise in the custody of public agencies that is in electronic format or other nonprint media, including but not limited to videotapes, photographs, microfilm, film, or computer disk, subject to the same restrictions applicable to the information in printed form. All restrictions relating to confidentiality, privacy, business secrets, and copyright are applicable to the electronic or nonprint information.

(b) The provisions of subsection (1)(a) do not apply to collections of the Montana historical society established pursuant to 22-3-101.

(2) Except as provided by law and subject to subsection (3), an agency may charge a fee, not to exceed:

(a) the agency's actual cost of purchasing the electronic media used for transferring data, if the person requesting the information does not provide the media;

(b) expenses incurred by the agency as a result of mainframe processing charges;

(c) expenses incurred by the agency for providing online computer access to the person requesting access;

(d) other out-of-pocket expenses directly associated with the request for information, *including the retrieval or production of electronic mail*; and

(e) the hourly rate for the current fiscal year for a state employee classified as grade 10, market salary, under 2-18-312 for each hour, or fraction of an hour, after one-half hour of copying service has been provided.

(3) (a) In addition to the allowable fees in subsection (2), the department of revenue may charge an additional fee as reimbursement for the cost of developing and maintaining the property valuation and assessment system database from which the information is requested. The fee must be charged to persons, federal agencies, state agencies, and other entities requesting the database or any part of the database from any department property valuation and assessment system. The fee may not be charged to the governor's office of budget and program planning, the state tax appeal board, or any legislative agency or committee.

(b) The department of revenue may not charge a fee for information provided from any department property valuation and assessment system database to a local taxing jurisdiction for use in taxation and other governmental functions or to an individual taxpayer concerning the taxpayer's property.

(c) All fees received by the department of revenue under subsection (2) and this subsection (3) must be deposited in a state special revenue fund as provided in 15-1-521.

(4) For the purposes of this section, the term "agency" has the meaning provided in 2-3-102 but includes legislative, judicial, and state military agencies.

(5) An agency may not charge more than the amount provided under subsection (2) for providing a copy of an existing nonprint record.

(6) An agency shall ensure that a copy of information provided to a requester is of a quality that reflects the condition of the original if requested by the requester.

(7) This section does not authorize the release of electronic security codes giving access to private information."

Section 5. Section 2-6-202, MCA, is amended to read:

"**2-6-202. Definitions.** As used in this part, the following definitions apply:

(1) *(a)* "Public records" includes any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies ~~thereof~~ *of the record*, regardless of physical form or characteristics, that has been made or received by a state agency in connection with the transaction of official business and preserved for informational value or as evidence of a transaction and all other records or documents required by law to be filed with or kept by any agency of the state of Montana.

(b) The term includes electronic mail sent or received in connection with the transaction of official business.

(2) "State records committee" or "committee" means the state records committee provided for in 2-15-1013."

Section 6. Section 2-6-301, MCA, is amended to read:

"**2-6-301. Definitions.** As used in this part, the following definitions apply:

(1) "Constitutionally designated and elected officials of the executive branch of government" means the governor, lieutenant governor, attorney general, secretary of state, superintendent of public instruction, and auditor.

(2) *(a)* "Official records" means any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies ~~thereof~~ *of the record*, regardless of physical form or characteristics, that has been made or received by a constitutionally designated and elected official of the executive branch of government in transacting ~~his~~ official duties and preserved for informational value or as evidence of a transaction.

(b) The term includes electronic mail sent or received in connection with the transaction of official duties."

Section 7. Section 2-6-401, MCA, is amended to read:

"**2-6-401. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Local government" means:

(a) any city, town, county, consolidated city-county, or school district; and

(b) any subdivision of an entity named in subsection (1)(a).

(2) *(a)* "Public records" includes any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies of the record, regardless of physical form or

characteristics, that has been made or received by any local government~~,~~ in connection with the transaction of official business~~,~~ and preserved for informational value or as evidence of a transaction and all other records or documents required by law to be filed with or kept by any local government in the state of Montana.

(b) The term includes electronic mail sent or received in connection with the transaction of official duties.

(3) "Records custodian" means any individual responsible for the proper filing, storage, or safekeeping of any public records."

Section 8. Section 45-8-213, MCA, is amended to read:

"**45-8-213. Privacy in communications.** (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with a person by telephone *or electronic mail* and uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person. The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend.

(b) uses a telephone *or electronic mail* to attempt to extort money or any other thing of value from a person or to disturb by repeated telephone calls *or electronic mailings* the peace, quiet, or right of privacy of a person at the place where the telephone call or calls *or electronic mailings* are received;

(c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation. This subsection (1)(c) does not apply to*:*

(i) elected or appointed public officials or employees when the transcription or recording is done in the performance of official duty~~,~~*;*

(ii) ~~to~~ persons speaking at public meetings~~,~~*;* or ~~to~~

(iii) persons given warning of the transcription or recording.

(d) by means of any machine, instrument, or contrivance or in any other manner:

(i) reads or attempts to read a message or learn the contents of a message while it is being sent over a telegraph line *or by electronic mail*;

(ii) learns or attempts to learn the contents of a message while it is in a telegraph office or is being received at or sent from a telegraph office; or

(iii) uses, attempts to use, or communicates to others any information obtained as provided in this subsection (1)(d);

(e) discloses the contents of a telegraphic message, *electronic mail*, or any part of a telegraphic message *or electronic mail* addressed to another person without the permission of the person, unless directed to do so by the lawful order of a court: or

(f) opens or reads or causes to be read any sealed letter *or electronic mail* not addressed to the person opening the letter *or reading the electronic mail* without being authorized to do so by either the writer of the letter, *the sender of the electronic mail,* or the person to whom ~~it~~ *the letter or electronic mail* is addressed or, without the like authority, publishes any of the contents of the letter *or electronic mail* knowing the letter *or electronic mail* to have been unlawfully opened.

(2) Subsection (1) does not apply to an employer or a representative of an employer who opens or reads, causes to be opened or read, or further publishes an electronic mail or other message that either originates at or is received by a computer or computer system that is owned, leased, or operated by or for the employer.

~~(2)~~*(3)* Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person purposely intercepts a telephonic voice or data communication. This subsection does not apply to elected or appointed public officials or employees when the interception is done in the performance of official duty or to persons given warning of the interception.

~~(3)~~*(4)* (a) A person convicted of the offense of violating privacy in communications shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed $1,000, or both.

(c) On a third or subsequent conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $10,000, or both."

Section 9. Effective date. [This act] is effective July 1, 2001.

Approved March 19, 2001

CHAPTER NO. 78

[HB 114]

AN ACT GENERALLY REVISING THE MONTANA WATER USE LAWS; DEFINING "DEVELOPED SPRING"; ELIMINATING THE REQUIREMENT TO MAKE WATER RIGHT APPLICATION FORMS, NOTICES OF COMPLETION FORMS, AND WELL LOG FORMS AVAILABLE AT THE OFFICES OF COUNTY CLERK AND RECORDERS; CLARIFYING THAT NOTIFICATION OF INTENT TO APPROPRIATE GROUND WATER FROM GROUND WATER DEVELOPMENT WORKS DOES NOT CREATE AN EASEMENT; AMENDING SECTIONS 85-2-102, 85-2-302, 85-2-306, AND 85-2-516, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. (Temporary) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436; or

(d) in the Upper Clark Fork River basin, to maintain and enhance streamflows to benefit the fishery resource in accordance with 85-2-439.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436; or

(d) a use of water to maintain and enhance streamflows to benefit the fishery resource in the Upper Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program authorized under 85-2-439.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

~~(9)~~*(10)* "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

~~(10)~~*(11)* "Ground water" means any water that is beneath the ground surface.

~~(11)~~*(12)* "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

~~(12)~~*(13)* "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(13)~~*(14)* "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

~~(14)~~*(15)* "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

~~(15)~~*(16)* "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(16)~~*(17)* "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

~~(17)~~*(18)* "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(18)~~*(19)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(19)~~*(20)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(20)~~*(21)* "Water division" means a drainage basin as defined in 3-7-102.

~~(21)~~*(22)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(22)~~*(23)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(23)~~*(24)* "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

~~(24)~~*(25)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 2005—sec. 14, Ch. 487, L. 1995.)

85-2-102. (Effective July 1, 2005) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

~~(9)~~*(10)* "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

~~(10)~~*(11)* "Ground water" means any water that is beneath the ground surface.

~~(11)~~*(12)* "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

~~(12)~~*(13)* "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(13)~~*(14)* "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

~~(14)~~*(15)* "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

~~(15)~~*(16)* "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(16)~~*(17)* "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

~~(17)~~*(18)* "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(18)~~*(19)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(19)~~*(20)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(20)~~*(21)* "Water division" means a drainage basin as defined in 3-7-102.

~~(21)~~*(22)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(22)~~*(23)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(23)~~*(24)* "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

~~(24)~~*(25)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)

85-2-102. (Effective July 1, 2009) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw (including by stock for stock water) a quantity of water; or

(b) in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; or

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

~~(8)~~*(9)* "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

~~(9)~~*(10)* "Ground water" means any water that is beneath the ground surface.

~~(10)~~*(11)* "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

~~(11)~~*(12)* "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(12)~~*(13)* "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

~~(13)~~*(14)* "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

~~(14)~~*(15)* "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(15)~~*(16)* "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

~~(16)~~*(17)* "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(17)~~*(18)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(18)~~*(19)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(19)~~*(20)* "Water division" means a drainage basin as defined in 3-7-102.

~~(20)~~*(21)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(21)~~*(22)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(22)~~*(23)* "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

~~(23)~~*(24)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 2. Section 85-2-302, MCA, is amended to read:

"85-2-302. Application for permit. Except as ~~otherwise~~ provided in 85-2-306~~(1) through (3)~~, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works except by applying for and receiving a permit from the department. The application must be made on a form prescribed by the department. ~~The department shall make the forms available through its offices and the offices of the county clerk and recorders.~~ *The department shall make the forms available through its offices.* The applicant shall submit a correct and complete application. The department shall notify the applicant of any defects in an application. An application does not lose priority of filing because of defects if the application is corrected or completed within 30 days of the date of notification of the defects or within a further time as the department may allow, but not to exceed 90 days from the date of notification. If an application is made correct and complete after the mandated time period, but within 90 days of the date of notification of the defects, the priority date of the application is the date the application is made correct and complete. An application not corrected or completed within 90 days from the date of notification of the defects is terminated."

Section 3. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, with the written consent of the person with those property rights. If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. *The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.* Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department ~~at its offices and at the offices of the county clerk and recorders~~ *through its offices.* Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days *of notification of defects* or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification as necessary under this subsection. The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (1), or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet a year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, "perennial flowing stream" means a stream that historically has flowed continuously during all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113."

Section 4. Section 85-2-516, MCA, is amended to read:

"85-2-516. Well logs. Within 60 days after any well is completed, the driller shall file with the department a well log report on a form provided by the department ~~at its offices and at the offices of the county clerk and recorders~~ *through its offices*. The department may return the report for refiling if it is incomplete or incorrect. The department shall provide a copy of the complete and correct well log to the Montana bureau of mines and geology."

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations.

Section 6. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2001

CHAPTER NO. 79

[HB 126]

AN ACT GENERALLY REVISING THE PROCEDURAL PROVISIONS OF THE WATER TREATMENT PLANT OPERATORS CERTIFICATION LAWS, THE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT, THE SANITATION IN SUBDIVISIONS LAWS, THE STRIP AND UNDERGROUND MINE SITING ACT, THE COAL AND URANIUM MINE RECLAMATION LAWS, THE METAL MINE RECLAMATION LAWS, AND THE OPENCUT MINING ACT; PROVIDING FOR HEARINGS BEFORE THE BOARD OF ENVIRONMENTAL REVIEW RATHER THAN THE DEPARTMENT OF ENVIRONMENTAL QUALITY; CLARIFYING PERMIT DENIAL HEARING REQUIREMENTS UNDER THE METAL MINE RECLAMATION LAWS; REVISING THE TIME WITHIN WHICH A HEARING MUST BE HELD UNDER THE OPENCUT MINING ACT; TRANSFERRING THE RESPONSIBILITY FOR HOLDING A HEARING UNDER THE OPENCUT MINE ACT FROM THE DEPARTMENT TO THE BOARD; AMENDING SECTIONS 37-42-102, 37-42-321, 75-10-714, 76-4-108, 76-4-126, 82-4-112, 82-4-130, 82-4-205, 82-4-206, 82-4-254, 82-4-338, 82-4-353, 82-4-361, 82-4-362, 82-4-422, 82-4-427, AND 82-4-441, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, certain environmental statutes administered by the Montana Department of Environmental Quality provide that a person aggrieved by a decision of the Department may appeal that decision to the Director of the Department; and

WHEREAS, the possibility of an appeal prevents the Director from becoming involved in certain Department decisions that are subject to appeal to the Director; and

WHEREAS, section 82-4-427, MCA, states that a contested case hearing requested under The Opencut Mining Act must be held within 30 days after the hearing is requested; and

WHEREAS, it is difficult for the Department to conduct a contested case hearing under that Act within 30 days after the hearing is requested; and

WHEREAS, certain revisions to statutes administered by the Department are necessary for clarity and consistency and to conform the statutes to current drafting style.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-42-102, MCA, is amended to read:

"**37-42-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

~~(1)~~*(2)* "Certificate" means a certificate of competency issued by the department, stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

~~(2)~~*(3)* "Community water system" means the term as defined in 75-6-102.

~~(3)~~*(4)* "Council" means the water and wastewater operators' advisory council provided for in 2-15-2105.

~~(4)~~*(5)* "Department" means the department of environmental quality provided for in 2-15-3501.

~~(5)~~*(6)* "Nontransient noncommunity water system" means a public water system, as defined in 75-6-202, that is not a community system and that regularly serves at least 25 of the same persons for at least 6 months a year.

~~(6)~~*(7)* "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or wastewater treatment plant.

~~(7)~~*(8)* "State waters" means the term as defined in 75-6-102.

~~(8)~~*(9)* "Wastewater treatment plant" means a facility that:

(a) is designed to remove solids, bacteria, or other harmful constituents of sewage, industrial wastes, or other wastes;

(b) discharges an effluent directly into state waters; and

(c) is part of either an industrial waste discharge system or a public sewage system as defined in 75-6-102.

~~(9)~~*(10)* "Water distribution system" means that portion of the water supply system that conveys water from the water treatment plant or other supply source to the premises of the consumer and that is part of a community water system or a nontransient noncommunity water system.

~~(10)~~*(11)* "Water supply system" means a system of pipes, structures, and facilities through which water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and that is part of a community water system or a nontransient noncommunity water system.

~~(11)~~*(12)* "Water treatment plant" means that portion of the water supply system that alters either the physical, chemical, or bacteriological quality of the water and renders it safe and palatable for human use."

Section 2. Section 37-42-321, MCA, is amended to read:

"37-42-321. Revocation of operator's certificate — disciplinary action by department. (1) The department may ~~revoke~~ *issue an order revoking* the certificate of an operator~~, following a hearing by the department,~~ when ~~it is found~~ *the department finds* that:

(a) the operator has practiced fraud or deception;

(b) reasonable care, judgment, or the application of ~~his~~ *the operator's* knowledge or ability was not used in the performance of ~~his~~ *the operator's* duties; or

(c) the operator is incompetent or unable to properly perform ~~his~~ *the operator's* duties.

(2) The department may ~~take~~ *issue an order taking* any disciplinary action ~~pursuant to~~ *listed in* 37-1-136.

(3) A person aggrieved by an order of the department under this section may request a hearing before the board by submitting a written request stating the reason for the request within 30 days after receipt of the department's decision.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section."

Section 3. Section 75-10-714, MCA, is amended to read:

"75-10-714. Administrative penalties. (1) In lieu of proceeding under 75-10-711(5), the department may assess penalties of not more than $1,000 ~~per~~ *a* day ~~per~~ *for each* violation against a person liable under 75-10-715(1) for a release or threat of release who has failed or refused to comply with an order issued by the department pursuant to 75-10-711(4) or against a person who has failed or refused to comply with an order issued by the department pursuant to 75-10-707(5).

(2) In determining the amount of any penalty assessed pursuant to this section, the department shall take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the person liable under 75-10-715(1)~~,~~*:*

(a) ~~his~~ *the person's* ability to pay;

(b) any prior history of ~~such~~ violations;

(c) the degree of culpability;

(d) the economic benefit or savings, if any, resulting from the noncompliance; and

(e) any other matters ~~as~~ *that* justice may require.

(3) An administrative penalty may not be collected pursuant to this section unless the person charged with the noncompliance is given notice and opportunity for a hearing with respect to the noncompliance. The ~~notice and opportunity for a~~ hearing ~~must conform to the requirements of Title 2, chapter 4, part 6~~ *is before the board of environmental review. A hearing may be requested by submitting a written request stating the reason for the request within 30 days after receipt of the notice of penalty assessment.*

(4) ~~A person against whom a penalty is assessed under this section may obtain judicial review of the penalty as provided for in~~ *The contested case provisions of*

the Montana Administrative Procedure Act, Title 2, chapter 4, part ~~7~~ *6, apply to a hearing held under this section.*

(5) Administrative penalties ~~payable~~ *collected* under this section must be deposited in the environmental quality protection fund established in 75-10-704."

Section 4. Section 76-4-108, MCA, is amended to read:

"**76-4-108. Enforcement.** (1) If the reviewing authority has reason to believe that a violation of this part or a rule ~~made~~ *adopted* under ~~it~~ *this part* has occurred, ~~it~~ *the reviewing authority* may have written notice *and an order* served personally or by *certified* mail ~~to the last-known address of~~ *on* the alleged violator or ~~his~~ *the alleged violator's* agent. The notice ~~shall~~ *must* state the provision alleged to be violated, the facts alleged to constitute the violation, the corrective action required by the reviewing authority, and the time within which the action is to be taken. ~~For the purpose of this part, service by mail is complete on the date of mailing.~~ The alleged violator may, no later than 30 days after service of a notice *and order* under this section, request a hearing before the *local* reviewing authority *if it issued the notice of violation* or the board *if the department issued the notice of violation. A request for a hearing must be filed in writing with the appropriate entity and must state the reason for the request.* If a request is filed, a hearing ~~shall~~ *must* be held within a reasonable time.

(2) In addition to or instead of issuing an order, the reviewing authority may initiate *any other* appropriate action to compel compliance with this part.

(3) The provisions of this part may be enforced by a reviewing authority other than the department or board only for those divisions described in 76-4-104(3). If a local reviewing authority fails to adequately enforce the provisions of this part, the department or the board may compel compliance with this part under the provisions of this section.

(4) When a local reviewing authority exercises the authority delegated to it by this section, the local reviewing authority ~~shall accept legal responsibility~~ *is legally responsible* for its actions under this part.

(5) If *the department or a local reviewing authority determines that* a violation of this part ~~is found to exist~~ *has occurred, the department or* ~~a~~ *the local* reviewing authority may revoke ~~a~~ *its* certificate of approval *for the subdivision* and reimpose sanitary restrictions ~~on a subdivision,~~ following ~~a hearing before the reviewing authority under this section~~ *written notice to the alleged violator. Upon revocation of a certificate, the person aggrieved by revocation may request a hearing. A hearing request must be filed in writing within 30 days after receipt of the notice of revocation and must state the reason for the request. The hearing is before the board if the department revoked the certificate or before the local reviewing authority if the local reviewing authority revoked the certificate.*

(6) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section."

Section 5. Section 76-4-126, MCA, is amended to read:

"**76-4-126. Right to hearing.** *(1)* Upon *a* denial of approval of subdivision plans and specifications relating to environmental health facilities, the person who is aggrieved by ~~such~~ *the* denial may request a hearing before the board ~~or the reviewing authority~~. *A hearing request must be filed, in writing, within 30 days after receipt of the notice of denial and must state the reason for the request.* ~~Such~~

~~hearings will be held pursuant to~~ *The contested case provisions of* the Montana Administrative Procedure Act, *Title 2, chapter 4, part 6, apply to a hearing held under this section.*

(2) If the grounds for a denial of approval under this part include noncompliance with local laws or regulations other than those adopting, pursuant to 50-2-116, state minimum standards for the control and disposal of sewage, the board shall upon receipt of a hearing request refer the local compliance issues to the appropriate local authority. After opportunity for a hearing, the local authority shall issue a determination regarding the local compliance issues, and the board shall incorporate the determination of the local authority in the board's final decision."

Section 6. Section 82-4-112, MCA, is amended to read:

"**82-4-112. Administration.** *(1)* The department shall:

~~(1)~~*(a)* exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

~~(2)~~*(b)* issue~~, after an opportunity for hearing,~~ orders requiring ~~an operator~~ *operators* to adopt remedial measures necessary to comply with this part and rules adopted under this part;

~~(3)~~*(c)* order the suspension of any permit for failure to comply with this part, any rule adopted under this part, or *a* permit issued pursuant to this part;

~~(4)~~*(d)* issue~~, after~~ an ~~opportunity for hearing, a final~~ order revoking a permit when the requirements set forth by ~~the~~ *a* notice of ~~noncompliance~~ *violation*, order of suspension, or order requiring remedial measures have not been complied with according to the terms in the notice or order;

~~(5)~~*(e)* order the halting of any operation that is started without first having ~~secured~~ *obtained* a permit as required by this part;

~~(6) conduct hearings under provisions of this part or rules adopted by the board;~~

~~(7)~~*(f)* ~~make~~ *conduct* investigations and inspections necessary to ~~insure~~ *ensure* compliance with this part; *and*

~~(8)~~*(g)* encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to new strip mines, new underground mines, and reclamation of lands and waters affected by preparatory work.

(2) The board shall conduct hearings under this part."

Section 7. Section 82-4-130, MCA, is amended to read:

"**82-4-130. Procedure for hearings ~~and appeals~~.** *(1) A person aggrieved by a final decision of the department under this part may request a hearing before the board by submitting a written request stating the reason for the request within 30 days after the department's decision.*

(2) ~~All hearing and appeal procedures shall be in accordance with~~ *The contested case provisions of* the Montana Administrative Procedure Act, *Title 2, chapter 4, part 6, apply to a hearing held under this part.*"

Section 8. Section 82-4-205, MCA, is amended to read:

"**82-4-205. Administration by department *and board.*** *(1)* The department:

~~(1)~~*(a)* shall exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

~~(2)~~*(b)* shall ~~examine and pass upon~~ *review for approval or disapproval* all plans and specifications submitted by ~~the~~ *an* operator for the method of operation, subsidence stabilization, water control, backfilling, grading, highwall reduction, and topsoiling and for the reclamation of the area of land affected by the operator's operation;

~~(3)~~*(c)* shall issue orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;

~~(4)~~*(d)* shall order the suspension of any permit for failure to comply with this part or a rule adopted under this part;

~~(5)~~*(e)* shall issue~~, after~~ an ~~opportunity for hearing, a final~~ order revoking a permit when the requirements set forth by *a* notice of ~~noncompliance~~ *violation*, order of suspension, or order requiring remedial measures have not been complied with according to the terms in the notice or order;

~~(6)~~*(f)* shall order the halting of any operation that is started without first having ~~secured~~ *obtained* a permit as required by this part or order the cessation of operations not in compliance with this part in accordance with 82-4-251;

~~(7)~~*(g)* shall conduct *public* hearings *required* under ~~the provisions of~~ this part or rules adopted by the board;

~~(8)~~*(h)* shall ~~make~~ *conduct* investigations and inspections necessary to ensure compliance with this part; *and*

~~(9)~~*(i)* may encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to strip mining and to underground mining and reclamation of lands and waters affected by strip mining and underground mining~~;~~

~~(10) may conduct hearings under the provisions of this part~~.

(2) The board shall conduct contested case hearings under this part."

Section 9. Section 82-4-206, MCA, is amended to read:

"**82-4-206. Procedure for *contested case* hearings ~~and appeals~~.** *(1) A person aggrieved by a final decision of the department under this part may request a hearing before the board by submitting a written request stating the reason for the request within 30 days after the department's decision.*

(2) ~~All hearings and appeal procedures shall be in accordance with parts 6 and 7 of chapter 4,~~ *The contested case provisions of the Montana Administrative Procedure Act,* Title 2, *chapter 4, part 6, apply to a hearing before the board under subsection (1).*"

Section 10. Section 82-4-254, MCA, is amended to read:

"**82-4-254. Violation — penalty — waiver.** (1) Except as provided in subsection (2), a person or operator who violates any of the provisions of this part, rules or orders adopted under this part, or term or condition of a permit and any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation shall pay ~~a civil~~ *a civil* penalty of not less than $100 or more than $5,000 for the violation and an additional ~~civil~~ *civil* penalty of not less than $100 or more than $5,000 for each day during which a violation continues and may be enjoined from continuing the violations as provided in this section. Any person or operator who fails to correct a violation within the period permitted by law, rule of the board, or order of the department ~~shall~~ *must* be assessed ~~a~~ *a* penalty of not less than $750 for each day, up to 30 days, during which the failure or violation continues. The period permitted for correction of a violation does not, in the case of any review proceeding under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements. If the failure to abate continues for more than 30 days, the department shall, within 30 days after the 30-day period, take appropriate action pursuant to 82-4-251(3) or request action under subsection (4) or (6) of this section.

(2) The department may waive the ~~civil~~ *civil* penalty for a minor violation of this part, a rule or order adopted under this part, or a term or condition of a permit if the department determines that the violation is not of potential harm to public health, public safety, or the environment and does not impair the administration of this part. The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) The department shall notify the person or operator of the violation. By filing a written request within 20 days of receipt of the notice of violation, *stating the reason for the request,* the person or operator is entitled to a hearing *before the board under 82-4-206* on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. The department shall issue a statement of proposed penalty no more than 10 days after *issuing the* notice of violation. After ~~the~~ *a* hearing ~~or after the time for requesting a hearing has expired~~, the ~~department~~ *board* shall make findings of fact, ~~and~~ shall issue a written decision as to the occurrence of the violation and, *if the board finds that the violation occurred,* the amount of penalty warranted, and shall order the payment of ~~a~~ *the* penalty ~~in that amount~~. *If the time for requesting a hearing expires without a hearing request, the department shall make the findings of fact and issue the written decision and order.* The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. Any person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district ~~of this state~~, ~~in and for the county of~~ Lewis and Clark *County*, or the district having jurisdiction over the defendant.

(4) The attorney general shall, upon request of the director of *the department* ~~environmental quality~~, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of this part;

(c) refuses to admit an authorized representative of the department to the permit area;

(d) refuses to permit inspection of the permit area by an authorized representative of the department;

(e) refuses to furnish any information or report requested by the department in furtherance of the provisions of this part; *or*

(f) refuses to permit access to and copying of records that the department determines to be necessary in carrying out the provisions of this part.

(5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or final termination of all proceedings for review of relief granted under this part unless, prior to the final determination, the district court granting the relief sets it aside or modifies it.

(6) A person who violates any of the provisions of this part or any determination or order adopted under this part or who willfully violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined *an amount* not less than $500 and not more than $10,000 or *be* imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(7) Any person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of not more than $10,000 or by imprisonment for not more than 1 year, or both.

(8) Any person who except as permitted by law willfully resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 1 year, or both.

(9) An employee of the department performing any function or duty under this part may not have a direct or indirect financial interest in any strip- or underground-coal-mining operation. A person who knowingly violates the provisions of this subsection shall upon conviction be punished by a fine of not more than $2,500 or by imprisonment of not more than 1 year, or both."

Section 11. Section 82-4-338, MCA, is amended to read:

"**82-4-338. Performance bond.** (1) ~~The~~ *An* applicant *for an exploration license or operating permit* shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than $200 for each acre or fraction of an acre of the disturbed land, conditioned upon the faithful performance of the requirements of this part, the rules of the board, and the permit. In lieu of a bond, the applicant may file with the department a cash deposit, an assignment of a certificate of deposit, or other surety acceptable to the department. The bond may not be less than the estimated cost to the state to ensure compliance with this part, the rules, and the permit, including the potential cost of department management, operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment, until full bond liquidation can be effected. A public or governmental agency may not be required to post a bond under the provisions of this part. A blanket performance bond covering two or more operations may be accepted by the department. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

(2) The department shall conduct an overview of the amount of each bond annually and shall conduct a comprehensive bond review at least every 5 years. The department may conduct additional comprehensive bond reviews if, after modification of ~~the~~ *a* reclamation or operation plan, an annual overview, or an inspection of the permit area, the department determines that an increase of the bond level may be necessary. The department shall consult with the licensee or permittee if ~~the~~ *a* review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of compliance with this part, the rules, and the permit, the department may modify the bonding requirements of that permit or license. The department shall make written findings, give the licensee or permittee a copy of the findings, and, for operating permits, publish notice of the findings in a newspaper of general circulation in the county in which the operation is located. The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing *before the board* under the provisions of the Montana Administrative Procedure Act, *Title 2, chapter 4, part 6,* on the adjusted bond level by filing with the department within 30 days of the notice a written request for hearing *stating the reason for the request.*

(3) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

(4) A bond filed for an operating permit obtained under 82-4-335 may not be released or decreased until the public has been provided an opportunity for a hearing and a hearing has been held if requested. The department shall provide reasonable statewide and local notice of the opportunity for a hearing, including but not limited to publishing the notice in newspapers of general daily circulation.

(5) All bonds required in accordance with the provisions of this section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply with conditions of an operating permit or license. Bonds may be required only for anticipated activities as described in subsection (1). Only those activities that themselves or in conjunction with other activities have a reasonable possibility of occurring may be bonded.

(6) At the applicant's discretion, bonding in addition to that required by this section may be posted. These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section."

Section 12. Section 82-4-353, MCA, is amended to read:

"82-4-353. Administrative remedies — notice — *appeals* — parties. (1) Upon receipt of an application for an operating permit, the department shall provide notice of the application by publication in a newspaper of general circulation in the area to be affected by the operation. The notice ~~shall~~ *must* be published once a week for 3 successive weeks.

(2) An applicant for a permit or license, or for an amendment or revision to a permit or license, may request a hearing on a denial of the application by submitting a written request for a hearing within 30 days of receipt of written

notice of the denial. The request must state the reason that the hearing is requested.

~~(2)~~*(3)* All hearings and ~~appeal procedures~~ *appeals under 82-4-337(3), 82-4-338(2), 82-4-341(7) and (8), 82-4-361, 82-4-362, and subsection (2) of this section* ~~shall be~~ *must be conducted by the board* in accordance with the Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an action taken pursuant to this part may become a party to any proceeding held ~~hereunder~~ *under this part* upon a showing that ~~such~~ *the* person is capable of adequately representing the interests claimed.

~~(3)~~*(4)* As used in this section, "person" means any individual, corporation, partnership, or other legal entity."

Section 13. Section 82-4-361, MCA, is amended to read:

"**82-4-361. Violation — penalties — waiver.** (1) (a) The department may assess an administrative ~~eivil~~ *civil* penalty of not less than $100 or more than $1,000 for each of the following violations and an additional administrative ~~eivil~~ *civil* penalty of not less than $100 or more than $1,000 for each day during which the violation continues and may bring an action for an injunction from continuing the violation against:

(i) a person or operator who violates a provision of this part, a rule or order adopted under this part, or a term or condition of a permit; or

(ii) any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a permit.

(b) If the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum penalty is $5,000 for each day of violation.

(2) The department shall take into account the following factors in determining whether to ~~institute a eivil~~ *institute a civil* penalty ~~aetion~~ *action* and in determining the penalty amount:

(a) the nature, circumstances, extent, and gravity of the violation;

(b) the violator's prior history of violations;

(c) the economic benefit or savings, if any, to the violator resulting from the violator's action;

(d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and

(e) other matters that justice may require.

(3) The department may bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order ~~adopted~~ *issued* under this part.

(4) The department shall notify the person or operator of the violation. The department shall issue a statement of proposed penalty within 30 days after *issuing the* notice of the violation. The person or operator, by filing a written request *stating the reason for the request* within 20 days of receipt of the notice of proposed penalty, is entitled to a hearing *before the board* on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. After the hearing ~~or after the time for requesting a hearing has~~

~~expired~~, the ~~department~~ *board* shall make findings of fact and issue a written decision as to the occurrence of the violation and, *if the board finds that the violation occurred,* ~~whether~~ the amount of penalty ~~is~~ warranted. The ~~department~~ *board* shall order the payment of a penalty in that amount. *If the time for requesting a hearing expires without a hearing request, the department shall make the findings of fact and issue the written decision and order.* The person or operator shall remit the amount of the penalty or petition for judicial review within 30 days of receipt of the order. A person or operator who fails to request the hearing provided for in this subsection or who fails to petition for judicial review within 30 days of receipt of the order forfeits that person's or operator's right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department *in district court.*

(5) Legal actions for injunctive relief under this section must be brought in the district court of the county in which the alleged violation occurred or, if mutually agreed to by the parties to the action, in any other judicial district. Legal actions for review of penalty orders or for recovery of penalties must be brought in the district court in the first judicial district, Lewis and Clark County."

Section 14. Section 82-4-362, MCA, is amended to read:

"**82-4-362. Suspension of permits — hearing.** (1) If any of the requirements of this part, of the rules adopted under this part, or of a license or permit has not been complied with, the department shall serve a notice of ~~noncompliance~~ *violation* on the licensee or permittee or, if necessary, the director shall order the suspension of the *license or* permit. ~~The~~ *A license or* permit may *also* be suspended for failure to comply with an order to pay ~~a civil~~ *a civil* penalty if the order is not subject to administrative or judicial review. The director may order immediate suspension of a *license or* permit whenever the director ~~makes a finding~~ *finds* that a violation of this part, of the rules adopted under this part, or of a license or permit is creating an imminent danger to the health or safety of persons outside the permit area. The notice or order must be handed to the licensee or permittee in person or served *on the licensee or permittee* by certified mail addressed to the permanent address shown on the application for a license or permit. The notice of ~~noncompliance~~ *violation* or order of suspension must specify ~~in what respects the operator has failed to comply with~~ *the provision of* this part, the rules adopted under this part, or the *license or* permit *violated and the facts alleged to constitute the violation* and must, if the violation has not been abated, order abatement within a specified time period.

(2) If the licensee or permittee has not complied with the requirements set forth in the notice of ~~noncompliance~~ *violation* or order of suspension within the time limits set in the notice or order, the *license or* permit may be revoked by order of the department and the performance bond forfeited to the department. ~~The licensee or permittee is entitled to a hearing before the department on the revocation of a permit or license or the forfeiture of a performance bond if a hearing is requested within 30 days after service of notice as provided in subsection (1).~~ The notice *of violation or order of suspension* must state when those measures may be undertaken and must give notice of *the* opportunity for a hearing *before the board. A hearing may be requested by submitting a written request stating the reason for the request to the board within 30 days after receipt of the notice or order.* If a hearing is requested within the 30-day period, the ~~permit or~~ license *or permit* may not be revoked and the bond may not be forfeited until a final decision is made by the ~~department~~ *board.*

(3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply within 30 days of receipt of the notice, the director shall suspend the permit. The director shall reinstate the permit upon compliance."

Section 15. Section 82-4-422, MCA, is amended to read:

"**82-4-422. Powers, duties, and functions.** (1) The department has the powers, duties, and functions to:

(a) issue permits when it is found on the basis of the information set forth in the application and an evaluation of the operation by the department that the requirements of the part or rules will be observed and that the operation and the reclamation of the affected area can be carried out consistently with the purpose of the part;

~~(b) conduct hearings and, for the purposes of conducting those hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry;~~

~~(c)~~*(b)* reclaim any affected land with respect to which a bond has been forfeited; and

~~(d)~~*(c)* make investigations or inspections that are considered necessary to ensure compliance with any provision of this part.

(2) The board shall ~~adopt rules~~:

(a) *adopt rules* that pertain to opencut mining in order to accomplish the purposes of this part; ~~and~~

(b) *adopt rules* establishing uniform procedures for filing of necessary records, for the issuance of permits, and for any other matters of administration not specifically enumerated in this part*; and*

(c) conduct hearings and, for the purposes of conducting those hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry."

Section 16. Section 82-4-427, MCA, is amended to read:

"**82-4-427. Hearing.** (1) A person who is aggrieved by a final decision of the department *under this part* is entitled to a hearing *before the board, if a written request is submitted to the board* within 30 days of the department's decision.

(2) The *contested case provisions of the* Montana Administrative Procedure Act, *Title 2, chapter 4, part 6,* ~~governs hearings before the department and judicial review of those decisions~~ *apply to a hearing held under this section.*"

Section 17. Section 82-4-441, MCA, is amended to read:

"**82-4-441. Penalty — enforcement.** (1) The department may assess against a person who violates any of the provisions of this part, rules adopted under this part, or provisions of a reclamation permit:

(a) ~~a civil~~ *a civil* penalty of not less than $100 or more than $1,000 for the violation; and

(b) an additional ~~civil~~ *civil* penalty of not less than $100 or more than $1,000 for each day during which a violation continues following the service of notice of the violation.

(2) The department shall take into account the following factors in determining whether to ~~institute a civil~~ *institute a civil* penalty ~~action~~ *action* and in determining the penalty amount:

(a) the nature, circumstances, extent, and gravity of the violation;

(b) the violator's prior history of violations;

(c) the economic benefit or savings, if any, to the violator resulting from the violator's action;

(d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and

(e) other matters that justice may require.

(3) The department shall notify the person or operator of the violation. ~~The person or operator is entitled, by filing a written request within 20 days of receipt of the notice of violation, to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be imposed is proper.~~ The department shall issue a statement of proposed penalty no more than 10 days after *issuing the* notice of violation. After ~~the~~ *a* hearing *provided for in 82-4-427* ~~or after the time for requesting a hearing has expired~~, the ~~department~~ *board* shall make findings of fact, issue a written decision as to the occurrence of the violation and, *if the board finds that the violation occurred,* the amount of penalty warranted, and order the payment of a penalty in that amount. *If the time for requesting a hearing expires without a hearing request, the department shall make the findings of fact and issue the written decision and order.* The person or operator shall remit the amount of ~~the~~ *any* penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. A person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in the district court of the first judicial district ~~of this state~~, ~~in and for the county of~~ Lewis and Clark *County*, or in the district court of the county in which the opencut mine is located.

(4) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a permit *issued* pursuant to this part in the district court of the first judicial district ~~of this state~~, ~~in and for the county of~~ Lewis and Clark *County*, or in the district court of the county in which the opencut mine is located."

Section 18. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 19. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2001

CHAPTER NO. 80

[HB 130]

AN ACT REVISING THE LAWS RELATING TO LIBRARIES; ALLOWING LIBRARIES RATHER THAN LOCAL GOVERNMENTS TO FORM FEDERATIONS; ELIMINATING REFERENCES TO LIBRARY NETWORKS; ELIMINATING THE OPTION OF AN ELECTION FOR AN ENTITY TO WITHDRAW FROM A LIBRARY FEDERATION; ALLOWING A LIBRARY FEDERATION TO CONTRACT WITH OTHER FEDERATIONS, LIBRARIES, OR THE STATE LIBRARY; CLARIFYING PARTICIPATION IN A LIBRARY FEDERATION; ALLOWING A LIBRARY DIRECTOR'S DESIGNEE TO SERVE AS COORDINATOR OF A LIBRARY FEDERATION AND AS A NONVOTING MEMBER OF A FEDERATION ADVISORY BOARD OF TRUSTEES; REQUIRING A LIBRARY FEDERATION TO MAKE ANNUAL REPORTS TO THE STATE LIBRARY COMMISSION ON PROGRESS OF STATE-FUNDED PROJECTS; AND AMENDING SECTIONS 22-1-402, 22-1-403, 22-1-404, AND 22-1-413, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-1-402, MCA, is amended to read:

"**22-1-402. Library ~~systems~~ *federations* — definition.** (1) ~~Library systems must include library federations or library networks.~~

~~(2) (a)~~ A library federation is a combination of libraries serving a multicounty, multicity, or city-county area within a federation area designated by the state library commission. Any other public, school, special, college, or university library or town, city, or county within the federation area may participate in a federation.

~~(b)~~*(2)* ~~Two or more cities, towns, or counties; a city and one or more counties; or school, special, college, or university libraries~~ *The governing body of a public library* may agree by contract to form a federation ~~by action of their respective governing bodies or duly created boards of library trustees~~ *with the governing board of another public, school, special, college, or university library* if one of the parties is or maintains a library that has been designated by the state library commission as a headquarters library for that federation area. The participating entities may retain the autonomy over their respective libraries specified in the contract.

~~(c)~~*(3)* The expense of providing library services for the library federation must be based on funds received from the state or participating libraries as agreed upon in the contract. The funds of the federation must be maintained as a separate account as provided in the contract. Participating libraries shall transfer semiannually to the account all money collected for the federation in their respective jurisdiction.

~~(d)~~*(4)* A participating entity may withdraw from a federation according to the terms for withdrawal provided in the contract by the action of its governing body ~~or by a majority of its qualified voters voting at a general or special election. A special election must be held in conjunction with a regular or primary election~~.

~~(3) A library network is an agreement between individual libraries or library systems, which may be intercity, intrastate, or interstate, for the exchange of~~

~~information or to provide specific library services not provided in existing library federations.~~

(5) A federation may contract with other federations, libraries, or the state library to provide federation services."

Section 2. Section 22-1-403, MCA, is amended to read:

"**22-1-403. Participation in ~~the~~ federation.** ~~(1)~~ When a library federation ~~shall have been~~ *is* established, the ~~legislative~~ *governing* body of any ~~government unit~~ *library* in the designated library federation area may decide~~, with the concurrence of the board of trustees of its library if it is maintaining a library,~~ to participate in the library federation. ~~Each local entity may determine the amount of services it wishes to supply to fulfill the needs of its unit. After the necessary contract has been executed and beginning with the next fiscal year, the governmental unit shall participate in the library federation and its residents shall be entitled to the benefits of the library federation and property within its boundaries shall be subject to taxation for library federation purposes.~~

~~(2) The board of regents of higher education may contract with the government of any city or county, or the governments of both the city and the county, in which a unit of the Montana university system is located for the establishment and operation of joint library services. Any such contract which proposes the erection of a building shall be subject to the approval of the legislature. Any joint library services established pursuant to this section shall be operated and supported as provided in such contract and under this part.~~"

Section 3. Section 22-1-404, MCA, is amended to read:

"**22-1-404. Board of trustees — coordinator.** (1) In a library federation, there must be a board of trustees with advisory powers only, the operation of the library federation having been specified by contract. The state library commission, provided for in 22-1-101, shall adopt rules governing the composition of the federation board of trustees. A majority of the members of each federation board of trustees must be trustees of a public library, as defined in 22-1-326.

(2) The ~~librarian~~ *library director or a designee* of the headquarters library shall serve as the coordinator of the federation and as a nonvoting member of the federation advisory board of trustees."

Section 4. Section 22-1-413, MCA, is amended to read:

"**22-1-413. Administration by Montana state library commission.** The Montana state library commission must receive and shall administer the appropriation for state funding to public library federations. The commission shall allocate the appropriation among grant programs and shall allocate funds among federations according to formulas for distribution as the commission establishes in rules adopted pursuant to 22-1-103. Federations receiving state funds from the commission shall submit annual plans for the expenditure of state funds and report ~~semiannually~~ *annually* to the commission concerning the progress of the various projects for which state funding was received. The reports must contain an accounting for all state funds received."

Approved March 19, 2001

CHAPTER NO. 81

[HB 138]

AN ACT GENERALLY REVISING THE MONTANA DEFERRED DEPOSIT LOAN ACT TO PROVIDE FOR AND REGULATE PREAUTHORIZED LOAN PAYMENTS AND FEES ELECTRONICALLY DEDUCTED FROM A CONSUMER'S ACCOUNT; PROVIDING THAT THE MONTANA DEFERRED DEPOSIT LOAN ACT DOES NOT APPLY TO COLLECTION AGENCIES; CLARIFYING THAT A LICENSE TO MAKE DEFERRED DEPOSIT LOANS IS BASED ON THE CALENDAR YEAR; PROVIDING FOR A LICENSE RENEWAL FEE; AND AMENDING SECTIONS 31-1-703, 31-1-704, 31-1-705, 31-1-714, 31-1-715, 31-1-722, AND 31-1-723, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-703, MCA, is amended to read:

"31-1-703. Definitions. For the purposes of this part, the following definitions apply:

(1) "Account" means any banking, checking, credit union, commercial, savings, savings and loan, brokerage, investment, or other kind of depository account held by a consumer.

~~(1)~~*(2)* "Check" means a negotiable instrument, as defined in 30-3-104, that is drawn on a bank and is payable on demand at the maturity of a deferred deposit loan.

~~(2)~~*(3)* "Consumer" means a natural person who, singly or jointly with another natural person, enters into a deferred deposit loan.

~~(3)~~*(4)* "Deferred deposit lender" or "licensee" means a person engaged in the business of making deferred deposit loans.

~~(4)~~*(5)* "Deferred deposit loan" means an arrangement, including all representations made by the deferred deposit lender whether express or implied, in which:

(a) a person accepts a check dated on the date *on which* the check is written and agrees to hold the check for a period of days prior to deposit or presentment; ~~or~~

(b) a person accepts a check dated subsequent to the date on which the check is written and agrees to hold the check for deposit or presentment until the date written on the check~~.~~*; or*

(c) a person accepts written authorization from a consumer to electronically deduct from the consumer's account on a specific date the amount of the loan and fees that are authorized under this part.

~~(5)~~*(6)* "Department" means the department of commerce.

~~(6)~~*(7)* "Person" means a natural person, sole proprietorship, firm, partnership, corporation, or other entity."

Section 2. Section 31-1-704, MCA, is amended to read:

"31-1-704. Scope. (1) This part applies to deferred deposit lenders and to persons who facilitate, enable, or act as a conduit for persons making deferred deposit loans.

(2) This part does not apply to:

(a) banks, savings and loan associations, credit unions, or other state or federally regulated financial institutions; ~~or~~

(b) retail sellers who cash checks incidental to or independent of a sale and who do not charge more than $2 per check for the service; *or*

(c) a collection agency licensed to do business in this state that has entered into an agreement with a deferred deposit lender for the collection of claims owed or due or asserted to be owed or due the deferred deposit lender."

Section 3. Section 31-1-705, MCA, is amended to read:

"**31-1-705. License — business locations — rules.** (1) A person may not engage in or offer to engage in the business of making deferred deposit loans unless licensed by the department.

(2) An applicant for a license to engage in the business of making deferred deposit loans shall pay to the department a license application fee of $375.

(3) The department may not issue or renew a license unless findings are made that:

(a) the financial responsibility, experience, character, and general fitness of the applicant warrant the belief that the business will be operated lawfully and fairly and within the provisions of this part;

(b) the applicant has unencumbered assets of at least $25,000 for each location;

(c) the applicant has provided a sworn statement that the applicant will not in the future, directly or indirectly, use a criminal process to collect the payment of deferred deposit loans or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default; and

(d) other information that the department considers necessary has been provided.

(4) A license may not be issued for longer than 1 year~~, and a renewal of a license may not be provided if the licensee has violated a provision of this part~~. *The license year must coincide with the calendar year, and the license fee for any period less than 6 months is $187.50.*

(5) Each licensee shall post a bond in the amount of $10,000 for each location. The bond must continue in effect for 2 years after the licensee ceases operation in the state. The bond must be available to pay damages and penalties to consumers harmed by any violation of this part.

(6) More than one place of business may not be maintained under the same license, but the department may issue more than one license to the same licensee upon compliance with the provisions of this section governing issuance of a single license."

Section 4. License renewal fee. (1) A person licensed under 31-1-705 shall pay, on or before December 1 of each year, a license renewal fee of $125 for each license that the person holds under this part.

(2) Failure to pay any yearly license renewal fee required by this section within the time prescribed will result in the automatic revocation of the license subject to renewal.

Section 5. Section 31-1-714, MCA, is amended to read:

"**31-1-714. Information and annual reports.** (1) Each licensee shall keep and use books, accounts, and records that will enable the department to determine if the licensee is complying with the provisions of this part and maintain any other records required by the department. The department is authorized to examine the records at any reasonable time. The records must be kept for 4 years following the last entry on a loan and must be kept according to generally accepted accounting procedures that include an examiner being able to review the recordkeeping and reconcile each consumer loan with documentation maintained in the consumer's loan file records.

(2) Each licensee shall file, on forms prescribed by the department, an annual report with the department on or before March 31 for the 12-month period in the preceding year ending as of December 31. The report must disclose in detail and under appropriate headings:

(a) the resources, assets, and liabilities of the licensee at the beginning and the end of the period;

(b) the income, expense, gain, loss, and balance sheets;

(c) the total number of deferred deposit loans made in the year ending as of December 31 of the previous year;

(d) the total number of deferred deposit loans outstanding as of December 31 of the previous year;

(e) the minimum and maximum amount of checks for which deposits were deferred in the year ending as of December 31 of the previous year;

(f) the total number and dollar amount of returned checks, the total number and dollar amount of checks recovered, and the total number and dollar amount of checks charged off during the year ending as of December 31 of the previous year; ~~and~~

(g) the total number and dollar amount of agreements involving electronic transactions or deductions, the total number and dollar amount of electronic deductions made by the licensee, and the total number and dollar amount of electronic deductions for insufficient funds charged off during the year ending as of December 31 of the previous year; and

~~(g)~~*(h)* verification that the licensee has not used a criminal process or caused a criminal process to be used in the collection of any deferred deposit loans or used any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default during the year ending as of December 31 of the previous year.

(3) A report must be verified by the oath or affirmation of the owner, manager, or president of the deferred deposit lender.

(4) (a) If a licensee conducts another business or is affiliated with other licensees under this part or if any other situation exists under which allocations of expense are necessary, the licensee shall make the allocation according to appropriate and reasonable accounting principles as approved by the department.

(b) Information about any other business conducted on the same premises where deferred deposit loans are made must be provided as required by the department.

(5) Each licensee shall file a copy of the disclosure documents described in 31-1-721 with the department prior to the date of commencement of business at each location, at the time any changes are made to the documents, and annually upon renewal of the license. These documents must be available to interested parties and to the general public through the department."

Section 6. Section 31-1-715, MCA, is amended to read:

"**31-1-715. Loan requirements.** (1) Each deferred deposit loan may not have a term that exceeds 31 days.

(2) The amount of the deferred deposit loan, exclusive of the fee allowed in 31-1-722(2), may not exceed $300.

(3) The minimum amount of a deferred deposit loan is $50.

(4) The check written by the consumer in a deferred deposit loan must be made payable to the licensee.

(5) Only the licensee may make an electronic deduction from the consumer's account. The licensee shall ensure that information obtained from the consumer about the consumer's account remains confidential.

~~(5)~~*(6)* The licensee shall provide the consumer, or each consumer if there is more than one, with a copy of the loan documents described in 31-1-721 upon consummation of the loan.

~~(6)~~*(7)* The holder or assignee of any check written by a consumer in connection with a deferred deposit loan takes the instrument subject to all claims and defenses of the consumer."

Section 7. Section 31-1-722, MCA, is amended to read:

"**31-1-722. Prohibited and permitted fees — attorney fees and costs.** (1) A licensee may not charge or receive, directly or indirectly, any interest, fees, or charges except those specifically authorized by this section.

(2) A licensee may not charge a fee for each deferred deposit loan entered into with a consumer that exceeds 25% of the ~~face amount of the check against which the delayed~~ *principal amount of the deferred* deposit loan *that* is advanced *or, in the case of an electronic transaction, 25% of the principal amount of the deferred deposit loan.*

(3) If there are insufficient funds to pay a check on the date of presentment, a licensee may charge a fee, not to exceed $15. Only one fee may be collected pursuant to this subsection with respect to a particular check even if it has been redeposited and returned more than once. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment.

(4) If the loan involves an electronic deduction and there are insufficient funds to deduct on the date on which the payment is due, a licensee may charge a fee, not to exceed $15. Only one fee may be collected pursuant to this subsection with respect to a particular loan even if the licensee has attempted more than once to deduct the amount due from the consumer's account. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment.

~~(4)~~*(5)* If the loan agreement in 31-1-721 requires, reasonable attorney fees and court costs may be awarded to the party in whose favor a final judgment is rendered in any action on a deferred deposit loan entered into pursuant to this part."

Section 8. Section 31-1-723, MCA, is amended to read:

"**31-1-723. Prohibited acts.** A licensee making deferred deposit loans may not commit, or have committed on behalf of the licensee, any of the following prohibited acts:

(1) engaging in the business of deferred deposit lending unless the department has first issued a valid license;

(2) threatening to use or using a criminal process in this or any other state to collect on the loan made to a consumer in this state or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default;

(3) altering the date or any other information on a check received from a consumer;

(4) altering or changing the date upon which the licensee and consumer agreed to make any electronic deductions from the consumer's account unless the consumer agrees in writing to the change;

(5) making any false, misleading, or deceptive representation to a financial institution relating to a consumer who has agreed to provide payment for a loan through an electronic deduction;

~~(4)~~*(6)* using any device or agreement that would have the effect of charging or collecting more fees, charges, or interest than those allowed by this part, including but not limited to entering into a different type of transaction or renewing or rolling over a loan with the consumer;

~~(5)~~*(7)* engaging in unfair, deceptive, or fraudulent practices in the making or collection of a deferred deposit loan;

~~(6)~~*(8)* entering into a deferred deposit loan with a consumer that is unconscionable. In determining whether a deferred deposit loan transaction is unconscionable, consideration must be given to, but is not limited to, whether the amount of the loan exceeds 25% of the consumer's monthly net income.

~~(7)~~*(9)* charging to cash a check representing the proceeds of the deferred deposit loan;

(10) charging to perform an electronic deduction or transaction to obtain the proceeds of the deferred deposit loan;

~~(8)~~*(11)* using or attempting to use the check provided by the consumer in a deferred deposit loan as security for purposes of any state or federal law;

(12) using or attempting to use the consumer's authorization to deduct the amount set forth in the loan agreement or any other information obtained from the consumer or the consumer's financial institution for any purpose other than to collect the proceeds of the deferred deposit loan;

~~(9)~~*(13)* accepting payment of the deferred deposit loan through the proceeds of another deferred deposit loan provided by the same licensee or any affiliate;

~~(10)~~*(14)* making a deferred deposit loan that, when combined with another outstanding deferred deposit loan owed to the licensee, exclusive of the fee allowed in 31-1-722(2), exceeds a total of $300 when combining the face amount of the checks written in connection with each loan. Regardless of the total of the loans, a licensee may not make a loan to a consumer who has two or more deferred deposit loans outstanding with the licensee.

~~(11)~~*(15)* renewing, repaying, refinancing, or consolidating a deferred deposit loan with the proceeds of another deferred deposit loan made to the same consumer. However, a licensee may without charge extend the term of the loan beyond the due date.

~~(12)~~*(16)* accepting any collateral for a deferred deposit loan;

~~(13)~~*(17)* charging any interest, fees, or charges other than those specifically authorized by this part, including but not limited to charges for insurance;

~~(14)~~*(18)* threatening to take any action against a consumer that is prohibited by this part or making any misleading or deceptive statements regarding the deferred deposit loan;

~~(15)~~*(19)* making a misrepresentation of a material fact by an applicant in obtaining or attempting to obtain a license;

~~(16)~~*(20)* including any of the following provisions in the loan agreement required by 31-1-721:

(a) a hold harmless clause;

(b) a confession of judgment clause;

(c) a waiver of the right to a jury trial, if applicable, in any action brought by or against a consumer;

(d) a mandatory arbitration clause;

(e) any assignment of or order for payment of wages or other compensation for services;

(f) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract; or

(g) a waiver of any provision of this part."

Section 9. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 31, chapter 1, part 7, and the provisions of Title 31, chapter 1, part 7, apply to [section 4].

Approved March 19, 2001

CHAPTER NO. 82

[HB 147]

AN ACT REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO COMPLETE AND PUBLISH A FINAL ENVIRONMENTAL IMPACT STATEMENT AT LEAST 15 DAYS PRIOR TO THE DATE OF ISSUANCE OF THE WRITTEN FINDINGS ON A PERMIT APPLICATION; AMENDING SECTION 82-4-231, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, The Montana Strip and Underground Mine Reclamation Act now requires the Department of Environmental Quality to complete and publish a final environmental impact statement within 365 days of notifying the applicant that the application for a permit or a major permit amendment is administratively complete; and

WHEREAS, applications that are administratively complete may be revised significantly because of substantive deficiencies under The Montana Strip and Underground Mine Reclamation Act discovered by the Department in its subsequent acceptability review of the application; and

WHEREAS, the preparation of an environmental impact statement prior to the Department's acceptability review is inefficient; and

WHEREAS, completion of the environmental impact statement 15 days prior to the Department's written findings will allow efficient preparation of the environmental impact statement and will not delay the decision on the application.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-231, MCA, is amended to read:

"82-4-231. Submission of and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, *a* plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, *and* topsoiling~~,~~ and a reclamation plan for the area of land affected by the operation. In developing a method of operation and plans of *grading,* backfilling, *highwall reduction,* subsidence stabilization, water control, ~~grading, highwall reduction,~~ topsoiling, and reclamation, all measures ~~shall~~ *must* be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan ~~shall~~ *must* set forth in detail the manner in which the applicant intends to comply with ~~this section and~~ 82-4-232 through 82-4-234 *and this section*~~, as amended,~~ and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for permit or major revision of a permit, which ~~shall~~ *must* contain the reclamation plan, ~~shall~~ *must* be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items ~~which~~ *that* the application must address. The application ~~shall be~~ *is* presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, the applicant shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest ~~which~~ *that* is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority ~~shall have the right to~~ *may* file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons ~~therefor~~ *for the decision* within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference ~~shall~~ *may* not preclude the department from proceeding with its review of the application as specified in subsection (8).

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined to be necessary prior to making a permit decision, the department shall complete and publish the final environmental impact statement ~~within 365 days of the date of notice provided pursuant to subsection (5)~~ *at least 15 days prior to the date of issuance of the written findings pursuant to subsection (8)(f).*

(d) Within 120 days after it determines that an application is administratively complete, the department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. If the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. Any person having an interest that is or may be adversely affected may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons ~~therefor~~ *for the decision* within 10 days of the informal conference.

(f) The department shall prepare written findings granting or denying the permit or major revision application in whole or in part no later than 45 days from the date the application is determined acceptable ~~or from the publication of the final environmental impact statement, whichever occurs later~~. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when ~~such~~ *the* concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall immediately notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by the department's permit decision may within 30 days of that decision submit a written notice requesting a hearing. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing ~~shall~~ *must* be held within 30 days of the request. For purposes of a hearing, the department may order site inspections of the area pertinent to the application. The department shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. ~~No~~ *A* person who presided at the informal conference may *not* ~~either~~ preside at the hearing or participate in the decision ~~thereon~~.

(10) In addition to the method of operation, grading, backfilling, *highwall reduction,* subsidence stabilization, water control, ~~highwall reduction,~~ topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1) ~~of this section~~, shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be ~~acid producing~~ *acid-producing,* toxic, undesirable, or creating a hazard;

(b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the department approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant ~~must~~ *shall* show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health~~,~~ or ~~constitute a hazard~~ to domestic livestock or ~~to~~ a viable agricultural operation, or violate any other restrictions the department may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in ~~such~~ *a* manner ~~as to~~ *that will* prevent or minimize land subsidence. The remaining waste material ~~shall~~ *must* be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of ~~such~~ *those* resources ~~where~~ *when* practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface water and ground water systems both during and after strip- or underground-coal-mining operations and during reclamation by:

(i) avoiding acid or other toxic mine drainage by ~~such~~ measures ~~as,~~ *including* but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content ~~which~~ *that* adversely affects downstream water upon being released to water courses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but ~~in no event shall~~ *the* contributions *may not* be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement of strip- or underground-mining operations, ~~such~~ *the* structures to be certified by a qualified registered engineer *and* to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations ~~requiring~~ *that requires* the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(vii) ~~such~~ other actions ~~as~~ *that* the department may prescribe;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the department determines that the resulting impoundment of water in ~~such~~ auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in ~~such~~ proximity to ~~such~~ *the* channel so as to seriously alter the normal flow of water;

(q) meet ~~such~~ other criteria ~~as~~ *that* are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions ~~which~~ *that* constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in ~~such~~ a manner ~~as to prevent~~ *that prevents* a gravity discharge of water from the mine.

(11) An operator may not throw, dump, pile, or permit the *throwing,* dumping, *or* piling~~, or throwing~~ or otherwise placing *of* any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land ~~which~~ *that* is under permit and for which a bond has been posted under 82-4-223~~, as amended,~~ or place the materials described in this section in ~~such~~ a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct

the strip- or underground-mining operation in ~~such~~ a manner ~~as to protect~~ *that protects* areas outside the permit area."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2001

CHAPTER NO. 83

[HB 223]

AN ACT REVISING THE LAWS RELATING TO SERVICE OF PROCESS IN CHILD ABUSE AND NEGLECT PROCEEDINGS; CLARIFYING PROVISIONS RELATING TO SERVICE OF PROCESS BY PUBLICATION IN CHILD ABUSE AND NEGLECT PROCEEDINGS; AMENDING SECTIONS 41-3-401, 41-3-403, AND 41-3-608, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Service of process — service by publication — effect. (1) Except as provided in subsection (2), service of process under this chapter must be made as provided in the Montana Rules of Civil Procedure.

(2) If a person cannot be served personally, the person may be served by publication as provided in [section 2]. Publication constitutes conclusive evidence of service, and a hearing must then proceed at the time and date set, with or without the appearance of the person served by publication. At or after the hearing, the court may issue an order that will adjudicate the interests of the person served by publication.

(3) If a parent cannot be identified or found prior to the initial hearings allowed by part 4, the court may grant the following relief, pending service by publication on the parent who cannot be identified or found and based upon service of process on only the parent, guardian, or other person having legal custody of the child:

(a) immediate protection;

(b) temporary investigative authority; and

(c) temporary legal custody.

Section 2. Service by publication — summons — form. (1) Before service by publication is authorized in a proceeding under this chapter, the department shall file with the court an affidavit stating that, after due diligence, the person cannot be identified or found and stating the diligent efforts made to identify, locate, and serve the person. The affidavit is sufficient evidence of the diligence of any inquiry made by the department. The affidavit may be combined with any other affidavit filed by the department. Upon complying with this subsection, the department may obtain an order for the service to be made upon the party by publication. The order may be issued by either the judge or the clerk of the court.

(2) Service by publication must be made by publishing notice three times, once each week for 3 successive weeks:

(a) in a newspaper in a community in which the publication can reasonably be calculated to be seen by the person, based upon the last-known address or whereabouts, if known, of the person, whether inside or outside this state; or

(b) if the identity or location of the person is unknown, in a newspaper in the county in which the action is pending, if a newspaper is published in the county, and, if a newspaper is not published in the county, in a newspaper published in an adjoining county and having a general circulation in the county.

(3) Service by publication is complete on the date of the last publication required by subsection (2).

(4) A summons required under this chapter must:

(a) be directed to the parent, legal guardian, other person having legal custody of the child, or any other person who is required to be served; and

(b) be signed by the clerk of court, be under the seal of the court, and contain:

(i) the name of the court and the cause number;

(ii) the initials of the child who is the subject of the proceedings;

(iii) the name of the child's parents, if known;

(iv) the time within which an interested person shall appear;

(v) the department's address;

(vi) a statement in general terms of the nature of the proceedings, including the date and place of birth of the child, the date and place of the hearing, and the phone number of the clerk of the court in which the hearing is scheduled; and

(vii) notification apprising the person served by publication that failure to appear at the hearing will constitute a denial of interest in the child, which denial may result, without further notice of this proceeding or any subsequent proceeding, in judgment by default being entered for the relief requested in the petition.

Section 3. Putative fathers — service by publication — continuation of proceedings. (1) Reasonable efforts must be made to resolve issues of paternity, if any, as early as possible in proceedings under this chapter. The department shall make every reasonable effort to obtain service of process of a petition on a putative father, as defined in 42-2-201.

(2) If a putative father cannot be served personally, the putative father may be served by publication as provided in [sections 1 and 2].

(3) Regardless of the provisions of subsections (1) and (2), if a putative father cannot be identified or found prior to the initial hearings allowed by part 4, the court may grant the following relief, pending service by publication on the putative father and based upon service of process on only the parent, guardian, or other person having legal custody of the child:

(a) immediate protection;

(b) temporary investigative authority; and

(c) temporary legal custody.

(4) Throughout the proceedings, the court, in its discretion, may order the department to continue to attempt to identify, locate, and serve a putative father.

(5) A court may order termination of the parental rights of a putative father under this chapter based on service by publication if the provisions of [sections 1 and 2] have been met.

Section 4. Section 41-3-401, MCA, is amended to read:

"**41-3-401. Abuse and neglect petitions.** (1) The county attorney, attorney general, or an attorney hired by the county is responsible for filing all petitions under this chapter. The petition must be accompanied by an affidavit by the department alleging that the child appears to have been abused, neglected, or abandoned and stating the basis for the allegation.

(2) Upon receipt of a petition, except a petition for temporary investigative authority, the court shall set a date for an adjudicatory hearing on the petition. The petitions must be given preference by the court in setting hearing dates.

(3) A petition alleging abuse or neglect is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure apply except as modified in this part. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, must be served personally with a copy of the petition and summons at least 5 working days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication ~~in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings~~ *as provided in [sections 1 and 2]*.

(5) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(8) Except when the proceeding is instituted or commenced at the request of the department, a citation must be issued and served upon a representative of the department before the court hearing.

(9) The petition must:

(a) state the nature of the alleged abuse or neglect;

(b) state the full name, age, and address of the youth and the name and address of the youth's parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services, as provided in 41-3-402;

(b) temporary legal custody, as provided in 41-3-406;

(c) appointment of a guardian pursuant to 41-3-421;

(d) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right to consent to adoption, as provided in 41-3-607; or

(ii) appointment of a guardian; or

(e) any combination of the provisions of subsections (10)(a) through (10)(d) or any other relief that may be required for the best interests of the child.

(11) A request for a determination that reunification services need not be provided pursuant to 41-3-403 may be made in conjunction with the filing of a petition requesting relief, as provided for in subsection (10) of this section.

(12) The petition may be modified for different relief at any time within the discretion of the court.

(13) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party."

Section 5. Section 41-3-403, MCA, is amended to read:

"**41-3-403. Order for immediate protection of youth.** (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court, after consideration of the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court, may issue an order granting relief that may be required for the immediate protection of the youth.

(b) The order, along with the petition and supporting documents, must be served ~~pursuant to the Montana Rules of Civil Procedure~~ on the person or persons named in the order *as provided in [sections 1 and 2]*. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon after placement as possible.

(c) The order must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. At the show cause hearing, the court shall provide an opportunity for a parent or guardian, if present, and any other person having relevant knowledge to provide relevant testimony. The court may consider all relevant evidence in accordance with the rules of civil procedure as modified by this part, but may in its discretion limit testimony and evidence to only that which is relevant to the issues of removal from the home and the child's need for continued protection. The court may amend the order. Except as otherwise provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title

2, chapter 4, part 6, that results from adverse licensing action taken by the department.

(d) If the child is not returned home after the show cause hearing, the person served may request that a local citizen review board, if available pursuant to part 10, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(e) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the youth with the department until further order.

(2) At the conclusion of a show cause hearing, in an order granting or denying relief, the court shall make a finding regarding the reasonableness of agency efforts to prevent the child's removal from the home or to make it possible to safely return the child to the child's home. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern. Reasonable efforts to provide preservation or reunification services are not required if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; and

(ii) recorded on the child's birth certificate as the child's father.

(4) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home.

(6) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department worker;

(b) medical and psychological evaluation of the youth or parents, guardians, or person having physical or legal custody;

(c) requirement that the youth, parents, guardians, or person having physical or legal custody receive counseling services;

(d) placement of the youth in a temporary medical facility or a facility for protection of the youth;

(e) requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate, *including the name and address of a putative father, as defined in 42-2-201, for the purpose of obtaining service of process in the proceeding*;

(f) inquiry into the financial ability of the parents, guardian, or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a contribution for those costs pursuant to the requirements of 41-3-411; or

(g) other temporary disposition that may be required in the best interests of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(7) An order for temporary investigative authority and protective services may not be issued for a period longer than 90 days following the show cause hearing and must be limited to one extension of 90 days. Before the expiration of the time provided for in an order for temporary investigative authority and protective services, the county attorney, the attorney general, or an attorney hired by the county shall file a petition for one of the following:

(a) limited emancipation;

(b) temporary legal custody;

(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption; or

(d) dismissal.

(8) Notwithstanding the above time limits, the court may continue an order for temporary investigative authority pending a hearing on a petition provided for in subsection (7).

(9) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 6. Section 41-3-608, MCA, is amended to read:

"41-3-608. Notice. Before a termination of the parent-child legal relationship ~~based on abandonment~~ may be ordered, the court shall determine whether the ~~rules of civil procedure~~ *provisions of [sections 1 and 2]* relating to service of process ~~on the parents~~ have been followed. ~~If the parents were not served personally, the petitioner must file an affidavit stating what efforts have been made to locate the parent or parents of the child. The affidavit must be filed at least 10 days prior to the hearing.~~"

Section 7. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, apply to [sections 1 through 3].

Section 8. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 9. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2001

CHAPTER NO. 84

[HB 272]

AN ACT ALLOWING A SCHOOL DISTRICT TO DETERMINE THE AMOUNT OF TIME FOR WHICH A STUDENT MAY BE RELEASED FROM SCHOOL FOR RELIGIOUS INSTRUCTION; AND AMENDING SECTION 20-1-308, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-1-308, MCA, is amended to read:

"20-1-308. Religious instruction released time program. (1) The trustees of ~~an elementary or high~~ *a* school district may provide for a religious instruction released time program under which a pupil may be released from regular school attendance ~~for a period not to exceed 2 hours per week~~ for the purpose of receiving religious instruction upon written request, renewed at least annually, of the pupil's parent or guardian. *The trustees shall determine the amount of time for which a pupil may be released for religious instruction.*

(2) ~~No~~ *A* religious instruction released time program may *not* be established or administered in such a way that public school property is utilized for the purpose of religious instruction.

(3) ~~No public moneys~~ *Public money* may *not* be used, directly or indirectly, for ~~such~~ *the* religious instruction.

(4) Any period for which a pupil is released under a religious instruction released time program is part of the school day and week for purposes of 20-1-301, 20-1-302, 20-5-103, 20-9-311, and all other provisions of Title 20, and ~~such~~ *the* release may not adversely affect the pupil's attendance record."

Approved March 19, 2001

CHAPTER NO. 85

[HB 308]

AN ACT REDUCING FROM 5 YEARS TO 3 YEARS THE TIME PERIOD IN WHICH AN ALL-BEVERAGES LIQUOR LICENSE MAY NOT BE TRANSFERRED, MORTGAGED, OR PLEDGED AS SECURITY AFTER THE LICENSE WAS TRANSFERRED BETWEEN QUOTA AREAS; AMENDING SECTION 16-4-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-204, MCA, is amended to read:

"**16-4-204. Transfer — catering endorsement.** (1) (a) Except as provided in subsection (1)(b), a license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred, exclusive of those issued under 16-4-209(1)(a) and (1)(b), did not exceed that area's quota in the most recent census prescribed in 16-4-502:

(A) by more than 33%; or

(B) in an incorporated city of more than 10,000 inhabitants and within a distance of 5 miles from its corporate limits by more than 43%; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license within an incorporated quota area may be transferred to a new ownership and to a new unincorporated location within the same county on application to and with consent of the department when the quota of the all-beverages licenses in the original quota area, exclusive of those issued under 16-4-209(1)(a) and (1)(b), exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(c) For ~~5 years~~ *3 years* after the transfer of a license between quota areas under subsection (1)(a), the license may not be mortgaged or pledged as security and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee.

(d) Once a license is transferred to a new quota area under subsection (1)(a), it may not be transferred to another quota area or back to the original quota area.

(e) A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

(2) (a) Any all-beverages licensee is, upon the approval and in the discretion of the liquor division, entitled to a catering endorsement to the licensee's all-beverages license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages for ~~on-premise~~ *on-premises* consumption. The alcoholic beverages must be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of $250 must be submitted to the department for its approval.

(c) An all-beverages licensee who holds an endorsement granted under this subsection (2) may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(d) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises where the catered event is to be held. A fee of $35 must accompany the notice.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(g) A catering endorsement issued for the purpose of selling and serving beer at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 19, 2001

CHAPTER NO. 86

[HB 309]

AN ACT EXTENDING THE HEALTH CARE PROVIDER LIEN LAWS TO AMBULATORY SURGICAL FACILITIES; AMENDING SECTIONS 71-3-1111, 71-3-1112, 71-3-1113, 71-3-1114, 71-3-1115, 71-3-1117, AND 71-3-1118, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-1111, MCA, is amended to read:

"**71-3-1111. Short title.** This part may be cited as the "Physician, Nurse, Physical Therapist, Occupational Therapist, Chiropractor, Dentist, Psychologist, Licensed Social Worker, Licensed Professional Counselor, ~~and~~ Hospital, *and Ambulatory Surgical Facility* Lien Act"."

Section 2. Section 71-3-1112, MCA, is amended to read:

"**71-3-1112. Purpose.** The purpose of this part is to establish lien rights for physicians, nurses, physical therapists, occupational therapists, chiropractors, ~~persons practicing dentistry~~ *dentists*, ~~and~~ hospitals, *and ambulatory surgical facilities* for the value of services rendered and products provided for the diagnosis and treatment of medical conditions and to establish lien rights for psychologists, licensed social workers, and licensed professional counselors for services rendered and products provided when a person receiving treatment:

(1) is injured through the fault or neglect of another; or

(2) is either insured or a beneficiary under insurance."

Section 3. Section 71-3-1113, MCA, is amended to read:

"**71-3-1113. Definitions.** As used in this part, the following definitions apply:

(1) "Ambulatory surgical facility" means a facility registered as provided in 50-32-314.

~~(1)~~*(2)* "Beneficiary" means a person entitled to insurance benefits.

(3) "Dentist" means a person practicing dentistry as provided in 37-4-101.

~~(2)~~*(4)* "Insurance" means a contract whereby a person, the insurer, undertakes to indemnify another, the insured, or pay or provide a determinable amount or benefit upon determinable contingencies.

(5) ~~The term "insurer"~~ *"Insurer"* includes a health service corporation.

~~(3)~~*(6)* "Person" means an individual, a corporation, an organization, or other legal entity."

Section 4. Section 71-3-1114, MCA, is amended to read:

"**71-3-1114. Liens of physicians, nurses, physical therapists, occupational therapists, chiropractors, ~~persons practicing dentistry~~ *dentists*, ~~and~~ hospitals, *and ambulatory surgical facilities* and liens of psychologists, licensed social workers, and licensed professional counselors.** (1) (a) Upon the required notice of a lien being given, there is a lien as provided in subsection (1)(b) whenever:

(i) a physician, nurse, physical therapist, occupational therapist, chiropractor, ~~person practicing dentistry~~ *dentist*, ~~or~~ hospital, *or ambulatory surgical facility* renders services or provides products for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor renders services or provides products; and

(iii) the services rendered or products provided under subsection (1)(a)(i) or (1)(a)(ii) are rendered or provided to a person injured through the fault or neglect of another.

(b) The physician, nurse, physical therapist, occupational therapist, chiropractor, ~~person practicing dentistry~~ *dentist*, hospital, *ambulatory surgical facility*, psychologist, licensed social worker, or licensed professional counselor has a lien for the value of services rendered or products provided on:

(i) any claim or cause of action that the injured person or the injured person's estate or successors may have for injury, disease, or death;

(ii) any judgment that the injured person or the estate or successors may obtain for injury, disease, or death; and

(iii) all money paid in satisfaction of the judgment or in settlement of the claim or cause of action.

(2) (a) If a person is an insured or a beneficiary under insurance that provides coverage in the event of injury or disease, there is a lien as provided in subsection (2)(b) upon required notice of a lien being given by:

(i) a physician, nurse, physical therapist, occupational therapist, chiropractor, ~~person practicing dentistry~~ *dentist*, ~~or~~ hospital, *or ambulatory surgical facility* for the value of services rendered or products provided for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor for services rendered or products provided.

(b) The lien is on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) The lien is subject to the lien of an attorney provided in 37-61-420."

Section 5. Section 71-3-1115, MCA, is amended to read:

"**71-3-1115. Notice of lien.** (1) A physician, nurse, physical therapist, occupational therapist, chiropractor, ~~person practicing dentistry~~ *dentist*, psychologist, licensed social worker, licensed professional counselor, ~~or~~ hospital, *or ambulatory surgical facility* claiming a lien shall serve written notice upon the person and upon the insurer, if any, against whom liability for injury, disease, counseling service, or death is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

(2) A physician, nurse, physical therapist, occupational therapist, chiropractor, ~~person practicing dentistry~~ *dentist*, psychologist, licensed social worker, licensed professional counselor, ~~or~~ hospital, *or ambulatory surgical facility* claiming a lien upon proceeds or payments payable by an insurer shall serve written notice upon the insurer against whom the lien is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed."

Section 6. Section 71-3-1117, MCA, is amended to read:

"**71-3-1117. Liability for failure to recognize lien.** If any insurer or person, after receiving notice of lien, makes payment on account of injury, disease, counseling service, or death and the amount of the lien claimed by any physician, nurse, physical therapist, occupational therapist, chiropractor, ~~person practicing dentistry~~ *dentist*, psychologist, licensed social worker, licensed professional counselor, ~~or~~ hospital, *or ambulatory surgical facility* has not been paid, the insurer or person is liable to the physician, nurse, physical therapist, occupational therapist, chiropractor, ~~person practicing dentistry~~ *dentist*, psychologist, licensed social worker, licensed professional counselor, ~~or~~ hospital, *or ambulatory surgical facility* for the reasonable value of the services."

Section 7. Section 71-3-1118, MCA, is amended to read:

"71-3-1118. Applicability. (1) Except as provided in subsection (2), this part does not apply to compensation awarded to workers for injury, disease, or death pursuant to the Workers' Compensation Act or the Occupational Disease Act of Montana.

(2) This part applies to all payments awarded for medical, therapy, chiropractic, dentistry, counseling, and hospital services pursuant to the acts referred to in subsection (1).

(3) This part does not apply to any benefits payable under*:*

(a) a policy of life insurance or group life insurance;

(b) a contract of disability insurance, except benefits payable in reimbursement for services rendered by a physician, nurse, physical therapist, occupational therapist, chiropractor, ~~person practicing dentistry~~ *dentist,* psychologist, licensed social worker, licensed professional counselor, ~~or~~ hospital, *or ambulatory surgical facility*; or

(c) an annuity contract or to pension benefits payable under a qualified pension plan."

Section 8. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2001

CHAPTER NO. 87

[HB 411]

AN ACT REVISING THE AUTHORITY OF THE MEDICAID FRAUD CONTROL UNIT; ALLOWING THE UNIT TO INVESTIGATE AND PROSECUTE ALL CASES OF PATIENT ABUSE, PATIENT NEGLECT, AND MISAPPROPRIATION OF PATIENT PROPERTY; PROVIDING FOR THE REFERRAL OF COMPLAINTS TO APPROPRIATE FEDERAL, STATE, OR LOCAL AGENCIES; AMENDING SECTION 53-6-157, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-157, MCA, is amended to read:

"53-6-157. Powers and duties of medicaid fraud control unit. (1) The medicaid fraud control unit shall:

(a) investigate and prosecute under applicable criminal statutes fraud and abuse by applicants, recipients, providers, or *any* other persons ~~under the medical assistance program established under this chapter~~, including but not limited to cases referred by the department;

(b) review any complaint of patient abuse, patient neglect, and misappropriation of patient property ~~by providers or their employees or agents~~ and, when appropriate, shall investigate and initiate criminal proceedings or refer the complaint to another *federal,* state, *or local* agency for action;

(c) refer to the department for collection and, when appropriate, consideration and imposition of appropriate recipient restrictions or provider sanctions cases involving recipient or provider overpayments, fraud, abuse, inappropriate use of services, or other improper activities discovered by the unit in carrying out its activities;

(d) communicate and cooperate with and, subject to applicable confidentiality laws, provide information to other ~~state and~~ federal, *state, and local* agencies involved in the investigation and prosecution of health care fraud, abuse, and other improper activities related to the medicaid program;

(e) transmit to other state and federal agencies, in accordance with law reports of convictions, copies of judgments and sentences imposed and other information and documents for purposes of program exclusions or other sanctions or penalties under medicaid, medicare, or other state or federal benefit or assistance programs; and

(f) recommend to state agencies appropriate or necessary adoption or revision of statutes, regulations, rules, policies, and procedures to prevent fraud, abuse, and other improper activities under the medicaid program and to aid in the investigation and prosecution of fraud, abuse, and other improper activities under the medicaid program.

(2) The medicaid fraud control unit may:

(a) initiate criminal prosecutions ~~related to the medicaid program~~ *pursuant to subsection (1)* in any court of competent jurisdiction in the state of Montana;

(b) upon written request, obtain information and records from applicants, recipients, and providers;

(c) exercise the authority granted to prosecutors with respect to criminal investigative subpoenas under Title 46, chapter 4, part 3;

(d) subject to applicable federal confidentiality laws and regulations and for purposes related to any investigation or prosecution ~~related to the medicaid program~~ *pursuant to subsection (1)*, obtain from the department, county welfare and human services offices, and other local, county, or state government departments or agencies records and other information, including but not limited to applicant and recipient applications, provider enrollment forms, claims and reports, individual or entity tax returns, or other information provided to or in the possession of the department of revenue or the state auditor;

(e) refer appropriate cases to other ~~state or~~ federal, *state, or local* agencies for investigation, prosecution, or imposition of penalties, restrictions, or sanctions;

(f) enter into agreements with the department and other ~~state and~~ federal, *state, and local* agencies in furtherance of the unit's mission; and

(g) do all things necessary to comply with 42 U.S.C. 1396a(a)(61) and 42 U.S.C. 1396b(q) and any implementing federal regulations and policies that require the state to operate a medicaid fraud control unit."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2001

CHAPTER NO. 88

[SB 41]

AN ACT REQUIRING CERTIFICATION OF PUBLIC SAFETY COMMUNICATIONS OFFICERS WITHIN 1 YEAR OF DATE OF HIRE; REQUIRING CERTIFICATION STANDARDS TO INCLUDE A BASIC COURSE REQUIREMENT; PROVIDING EXEMPTIONS FROM CERTIFICATION; PROVIDING FOR TERMINATION OF EMPLOYMENT OF NONCERTIFIED PUBLIC SAFETY COMMUNICATIONS OFFICERS; AMENDING SECTION 7-31-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-31-203, MCA, is amended to read:

"7-31-203. Certification of public safety communications officers — suspension or revocation — penalty — notification requirements. (1) A local government ~~may~~ *shall* require that a person, *unless exempt under subsection (3),* appointed to receive requests for emergency services, as defined in 10-4-101, and to dispatch the appropriate emergency service units be certified by the board as a public safety communications officer.

(2) *(a)* The board shall determine the certification standards for public safety communications officers as provided in 7-31-202.

(b) The certification standards must contain a requirement that an applicant for certification attend and successfully complete a basic course for public safety communications officers conducted by the Montana law enforcement academy within 1 year of date of hire.

(3) (a) A person certified by the board prior to July 1, 2001, and employed as a public safety communications officer as of July 1, 2001, is not subject to the requirement of subsection (2)(b).

(b) A person under permanent appointment as a public safety communications officer as of July 1, 2001, is not subject to the requirements of subsection (2).

~~(3)~~*(4)* A public safety communications officer who has successfully met the certification standards set by the board, *or who is exempt from certain certification standards pursuant to subsection (3),* ~~and~~ *who has met* the qualification requirements in 7-31-202, and who has completed a 6-month probationary term *and 1 year* of employment must, upon application to the board, be issued a basic public safety communications officer certificate.

(5) Failure by any person appointed as a public safety communications officer after July 1, 2001, unless exempt under the provisions of subsection (3), to meet the minimum requirements in 7-31-202 or to satisfy the certification requirements provided for in subsection (2) of this section is cause to terminate that person's employment as a public safety communications officer.

~~(4)~~*(6)* It is unlawful for a person whose certification as a public safety communications officer has been suspended or revoked by the board to act as a public safety communications officer. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine *in an amount* not to exceed $500, or both.

~~(5)~~*(7)* Within 10 days of the appointment, termination, resignation, or death of any public safety communications officer, written notice must be given to the board by the employing authority."

Section 2. Effective date. [This act] is effective July 1, 2001.

Approved March 20, 2001

CHAPTER NO. 89

[SB 59]

AN ACT CLARIFYING THAT A POST OF A NATIONALLY CHARTERED VETERANS' ORGANIZATION OR A LODGE OF A RECOGNIZED NATIONAL FRATERNAL ORGANIZATION IS ENTITLED TO A SPECIAL PERMIT TO SELL BEER AND TABLE WINE TO PATRONS OF AN EVENT EVEN IF THE POST OR LODGE IS OTHERWISE LICENSED UNDER THE PROVISIONS OF TITLE 16, MCA; LIMITING EVENTS TO THREE A YEAR; REQUIRING THAT NET PROCEEDS FROM AN EVENT GO TO THE POST OR LODGE ACQUIRING THE SPECIAL PERMIT; AMENDING SECTION 16-4-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-301, MCA, is amended to read:

"16-4-301. Special permits to sell all alcoholic beverages, beer, and table wine — application and issuance. (1) (a) Any association or corporation conducting a picnic, convention, fair, civic or community enterprise, or sporting event ~~shall~~ *is,* in the discretion of the liquor division, ~~be~~ entitled to a special permit to sell beer and table wine to the patrons of ~~such~~ *the* event, *and except as provided in subsection (1)(c), the beer and wine must* ~~to~~ be consumed within the enclosure ~~wherein~~ *where* the event is held~~, except as provided in subsection (1)(d)~~.

(b) The application of ~~any such~~ *an* association or corporation ~~shall~~ *must* be presented 3 days in advance and ~~shall~~ *must* describe the location of ~~such~~ *the* enclosure where ~~such~~ *the* event is to be held, the nature of the event, and the period when it is contemplated that the event will be held. The application ~~shall~~ *must* be accompanied by the amount of the permit fee and a written statement of approval of the premises where the event is to be held issued by the local law enforcement agency that has jurisdiction over the premises where the event is to be held.

(c) The permit issued to ~~such~~ *the* association or corporation is a special permit but ~~shall~~ *does* not authorize the sale of beer and table wine except starting 1 day ~~in advance of~~ *before* the regular period when events are being held upon ~~such~~ *the* grounds, ~~and~~ during the period described in the application, and for 1 day ~~thereafter~~ *after the period described in the application.*

(d) A special permit issued under this subsection (1) for the purpose of selling and serving beer at an event conducted on the premises of a county fairground or public sports arena authorizes the permitholder to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

(e) For the purposes of this subsection (1), a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization otherwise licensed under this code is an association entitled to special permits for three events a year as described in subsection (1)(a) to sell beer and table wine. All net proceeds must go to the post or lodge acquiring the special permit.

(2) (a) A post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization not otherwise licensed under this code ~~shall~~ *is*, in the discretion of the department, without notice or hearing as provided in 16-4-207, ~~be~~ entitled to a special permit to sell beer and table wine or a special permit to sell all alcoholic beverages at ~~such~~ *the* post or lodge to members and their guests only, to be consumed within the hall or building of ~~such~~ *the* post or lodge.

(b) The application of ~~such~~ *a* nationally chartered veterans' organization or lodge of a recognized national fraternal organization ~~shall~~ *must* describe the location of the hall or building where the special permit will be used and the date it will be used.

(c) The special permit issued ~~shall be~~ *is* for a 24-hour period only, ending at 2 a.m., and the department may not issue more than 12 ~~such~~ *special* permits to any ~~such~~ post or lodge during a calendar year."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2001

CHAPTER NO. 90

[SB 142]

AN ACT PROVIDING A PROCEDURE FOR THE TRANSFER OF A LIQUOR LICENSE OWNED BY THE UNITED STATES; AND REQUIRING NOTICE BY THE UNITED STATES WHEN IT BECOMES OWNER OF A LIQUOR LICENSE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Ownership of liquor license by United States. (1) Whenever right, title, and interest in a liquor license vests in the United States, the United States shall promptly give notice to the department of its interest and must have the license placed on nonuse status. The United States shall transfer ownership of the license to a qualified applicant within 200 days from the date on which it obtained an interest in the license. Upon receipt of an application to transfer the license, the department may, pursuant to 16-4-404, grant the applicant temporary authority to operate the license.

(2) The department, upon a showing of good cause, may in its discretion extend the time for sale of the license for an additional period of up to 180 days.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, part 4, and the provisions of Title 16, chapter 4, part 4, apply to [section 1].

Approved March 20, 2001

CHAPTER NO. 91

[SB 148]

AN ACT GENERALLY REVISING THE LAWS GOVERNING ACCESS TO PUBLIC INFORMATION; SPECIFYING THE KIND OF INFORMATION COLLECTED ON A MARRIAGE LICENSE APPLICATION THAT MAY BE RELEASED TO THE PUBLIC WITHOUT RESTRICTION; DEFINING "AUTHORIZED REPRESENTATIVE"; PROVIDING THAT THE MARRIAGE LICENSE AND THE CERTIFICATE OF MARRIAGE ARE PUBLIC DOCUMENTS; AND AMENDING SECTIONS 40-1-107, 50-15-101, AND 50-15-122, MCA.

WHEREAS, an opinion by the Attorney General, issued on March 23, 2000, 48 A.G. Op. 10, held that applications for marriage licenses should be treated as confidential records once they have been completed and filed with the Clerk of the District Court; and

WHEREAS, the same opinion interprets the intent of the Legislature in enacting sections 50-15-121 and 50-15-122, MCA, to allow general information about a marriage to be made public, while safeguarding the detailed background information about the bride and groom; and

WHEREAS, the opinion seeks to clarify who is entitled to receive marriage license application information that is not made available to the public.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-1-107, MCA, is amended to read:

"40-1-107. Form of application, license, marriage certificate, and consent. (1) The director of the department of public health and human services shall prescribe the form for an application for a marriage license, which must include the following information:

(a) name, sex, address, [social security number,] and date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, the party's name~~,~~ and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party; *and*

(d) whether the parties are related to each other and, if so, their relationship~~; and~~.

~~(e) the name and date of birth of any child of whom both parties are parents born prior to the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.~~

(2) The director of the department of public health and human services shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

[(3) The license, certificate, or consent may not contain the social security number, and the department shall keep the number from this source confidential, except that the department may use the number in administering Title IV-D of the Social Security Act.]

(4) The information contained in the marriage license application is subject to the disclosure restrictions provided in 50-15-122(5). (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)"

Section 2. Section 50-15-101, MCA, is amended to read:

"**50-15-101. Definitions.** Unless the context requires otherwise, in parts 1 through 4, the following definitions apply:

(1) "Authorized representative" means a person:

(a) designated by an individual, in a notarized written document, to have access to the individual's vital records;

(b) who has a general power of attorney for an individual; or

(c) appointed by a court to manage the personal or financial affairs of an individual.

~~(1)~~*(2)* "Dead body" means a human body or parts of a human body from which it reasonably may be concluded that death occurred.

~~(2)~~*(3)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(3)~~*(4)* "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

~~(4)~~*(5)* "Fetal death" means death of the fetus prior to the complete expulsion or extraction from its mother as a product of conception, notwithstanding the duration of pregnancy. The death is indicated by the fact that after expulsion or extraction, the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

~~(5)~~*(6)* "Final disposition" means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

~~(6)~~*(7)* "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in 40-1-402.

~~(7)~~*(8)* "Live birth" means the complete expulsion or extraction from the mother as a product of conception, notwithstanding the duration of pregnancy. The birth is indicated by the fact that after expulsion or extraction, the child breathes or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

~~(8)~~*(9)* "Local registrar" means a person appointed by the department to act as its agent in administering this chapter in the area set forth in the letter of appointment.

~~(9)~~*(10)* "Person in charge of disposition of a dead body" means a person who places or causes a dead body or the ashes after cremation to be placed in a grave, vault, urn, or other receptacle or otherwise disposes of the body or fetus and who is a funeral director licensed under Title 37, chapter 19, an employee acting for a funeral director, or a person who first assumes custody of a dead body or fetus.

~~(10)~~*(11)* "Physician" means a person legally authorized to practice medicine in this state.

~~(11)~~*(12)* "Registration" means the process by which vital records are completed, filed, and incorporated into the official records of the department.

~~(12)~~*(13)* "Research" means a systematic investigation designed primarily to develop or contribute to generalizable knowledge.

~~(13)~~*(14)* "System of vital statistics" means the registration, collection, preservation, amendment, and certification of vital records. The term includes the collection of reports required by this chapter and related activities, including the tabulation, analysis, publication, and dissemination of vital statistics.

~~(14)~~*(15)* "Vital records" means certificates or reports of birth, death, fetal death, marriage, and dissolution of marriage and related reports.

~~(15)~~*(16)* "Vital statistics" means the data derived from certificates or reports of birth, death, fetal death, induced termination of pregnancy, marriage, and dissolution of marriage and related reports."

Section 3. Section 50-15-122, MCA, is amended to read:

"50-15-122. Disclosure of information from vital records or vital reports — rules. (1) It is the policy of the state to protect the integrity of vital records and vital reports, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics. In furtherance of the policy, ~~it is unlawful for any~~ *a* person ~~to~~ *may not* permit inspection of or ~~to~~ disclose information contained in vital records or in vital reports or ~~to~~ copy or issue a copy of all or a part of a record or report unless authorized by this chapter, by administrative rule, or by order of a court of competent jurisdiction. Rules adopted under this chapter must provide for adequate standards of security and confidentiality of vital records.

(2) The execution of a research agreement that protects the confidentiality of the information provided to a researcher in response to a written request is required for disclosure of information that may identify a person or institution named in a vital record or report. This agreement must be made in compliance with this chapter or rules adopted to implement this chapter. Each agreement must prohibit the release by the researcher of any information that might identify a person or institution, other than releases that may be provided for in the agreement.

(3) This section does not prohibit the release of information or data that does not identify a person or institution named in a vital record or report.

(4) A challenge to a decision of a custodian of vital records to refuse disclosing information from records, as prescribed by this section and rules issued to implement this section, must be made before the department in the case of a county clerk and recorder and to a district court in the case of the department. A challenge before the department must be in the form of a contested case pursuant to the Montana Administrative Procedure Act. An appeal of the department's decision to district court must be made by filing an original action pursuant to the Montana Rules of Civil Procedure.

(5) *(a)* Immediately upon the filing of a record with the department, the fact that a birth ~~or death~~ *or death* has occurred ~~or a record of marriage or dissolution of marriage~~ may be released to the public without restriction. Notwithstanding the restrictions provided in 50-15-121, complete birth records may be released to

the public 30 years after the date of birth. The department shall adopt rules that provide for the continued safekeeping of the records.

(b) Upon the filing of a record of marriage with the clerk of the district court, information that may be released to the public without restriction is specifically limited to:

(i) the names of the parties, the age of the parties, and their place of birth;

(ii) the date and place of the marriage;

(iii) the names and addresses of the parents of the parties;

(iv) the name of the officiant; and

(v) the type of ceremony.

(c) Any other information contained in a marriage license application that is not authorized to be disclosed under subsection (5)(b) is considered confidential and is subject to the disclosure limitations and penalties provided in 50-15-114.

(d) Notwithstanding the restrictions provided in 50-15-121 and this section, the information contained in a marriage license and marriage certificate may be released to the public 30 years after the date of the marriage.

(e) Upon the filing of a record of a dissolution of marriage with the clerk of the district court, that record may be released to the public without restriction unless designated confidential by the court. A record of dissolution of marriage designated confidential by the court may be provided to a federal, state, or local government agency upon request when the record is used solely in the conduct of the agency's official duties.

(6) The department may provide the national center for health statistics or a successor agency with copies of records, reports, or data from the system of vital statistics that are required for national statistics. The department shall enter into an agreement with the center, indicating the scope of disclosure of information, as required by this chapter or rules implementing this chapter, concerning the use of records, reports, or data for statistical or research purposes. The agreement must set forth the financial support to be provided by the center for the collection, processing, and transmission of the records, reports, or data. Upon written request of the center, the department may approve, by amendment to the agreement, additional statistical or research uses of the records, reports, or data supplied under the agreement.

(7) Federal, state, and local governmental agencies may, subject to this chapter and rules implementing this chapter, upon request, be furnished copies of records or data from the system of vital statistics if the copies or data is used solely in the conduct of the agency's official duties. The department shall, upon request by a licensed adoption agency, provide a birth certificate and related records for purposes of adoption, termination of parental rights, custody actions, paternity actions, child support actions, social security eligibility determinations, or Indian tribal enrollment determinations.

(8) Subject to this chapter and rules implementing this chapter, the department may, by agreement, transmit copies of records and other reports required to be compiled by this chapter to offices of vital statistics outside this state when the records or reports concern residents of those jurisdictions or persons born in those jurisdictions. The agreement must specify the statistical and administrative purposes for which the records may be used, and the agreement must provide instructions concerning proper retention,

confidentiality requirements, and disposition of the copies. Copies received by the department from offices of vital statistics in other states must be handled as provided for in this subsection."

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 20, 2001

CHAPTER NO. 92

[SB 149]

AN ACT AUTHORIZING THE CREATION OF PUBLIC LIBRARY DISTRICTS; PROVIDING FOR AN ELECTED BOARD OF TRUSTEES TO ADMINISTER A DISTRICT; PROVIDING FOR CONSOLIDATION OF EXISTING PUBLIC LIBRARIES WITH PUBLIC LIBRARY DISTRICTS; PROVIDING FOR A PROPERTY TAX MILL LEVY FOR THE OPERATION OF A DISTRICT; PROVIDING THAT THE MAXIMUM DISTRICT MILL LEVY MUST BE APPROVED BY THE DISTRICT ELECTORATE; AND PROVIDING FOR THE DISSOLUTION OF A DISTRICT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Public library districts — purpose — territory. (1) The purpose of [sections 1 through 11] is to provide a method for:

(a) establishing, equipping, administering, and funding public libraries; and

(b) contracting for library services from existing public libraries.

(2) A public library district may contain the entire territory of a county, the territory of part of a county, or territory in more than one county. A public library district may include incorporated municipalities within a county.

(3) The territory included in a public library district must contain a taxable value of at least $5 million.

Section 2. Creation or enlargement of public library district. (1) Proceedings for the creation or enlargement of a public library district or the conversion of a public library to a public library district may be initiated by:

(a) a petition signed by not less than 15% of the qualified electors who reside within the proposed district or the area to be added to an existing district; or

(b) a resolution of intent adopted by the county governing body, calling for the creation of a district.

(2) The petition must contain:

(a) the boundaries of the proposed public library district;

(b) a map showing the boundaries;

(c) subject to 15-10-420, the proposed maximum property tax mill levy that could be levied on property owners within the district for the operation of the district; and

(d) the proposed number of members on the board of trustees. The number of members must be five or seven.

(3) When the territory to be included in the proposed public library district lies in more than one county, a petition must be presented to the governing body of each county in which the territory lies. Each petition must be signed by not less than 15% of the qualified electors of the territory within the county proposed for inclusion in the district.

(4) Upon receipt of a petition to create a public library district, the county clerk shall examine the petition and within 15 days either reject the petition if it is insufficient under the provisions of subsection (1), (2), or (3) or certify that the petition is sufficient and present it to the county governing body at its next meeting.

(5) The text of the petition must be published as provided in 7-1-2121 in each county in which territory of the proposed public library district lies.

(6) At a hearing on the proposed public library district, the county governing body shall hear testimony:

(a) of all interested persons on whether a district should be created;

(b) regarding the proposed boundary, the property tax mill levy, and the number of members of the board of trustees; and

(c) on any other matter relating to the petition.

(7) After the hearing, if the county governing body determines that the proposed public library district should be created, it shall by resolution:

(a) set the boundaries of the proposed district;

(b) set the maximum mill levy for the proposed district;

(c) set the number of members to be on the board of trustees; and

(d) call for an election on the question of whether to create the district. The election may be:

(i) held in conjunction with a regular or primary election; or

(ii) conducted by mail ballot in accordance with the provisions of Title 13, chapter 19.

(8) Except as provided in [section 5], if all or part of the territory served by an existing public library, as defined in 22-1-326, is included within the boundaries of a newly created or enlarged public library district, the governing body of the county shall adjust the boundaries of the district to exclude the territory served by the public library.

Section 3. Election on creation of district. (1) The election on the question of whether to create a public library district must be conducted as provided in Title 13.

(2) Only qualified electors residing within the proposed public library district may vote on the question of whether to create the district.

(3) The question of creating a public library district must be submitted to the electors in substantially the following form:

☐ FOR the creation of a public library district that may levy not more than ... mills of property tax for the operation of the district.

☐ AGAINST the creation of a public library district.

Section 4. Formation of public library district — appointment of initial board of trustees. (1) If a majority of the votes cast at the election in the territory of each county included in the proposed public library district approve the formation of the district, the governing body of each county shall, within 10 days of the receipt of the official canvass of the result, certify that the district is formed.

(2) Within 30 days after the certification of the formation of the public library district, the governing body of each county with territory included in the district shall jointly appoint the initial members of the district's board of trustees. The members shall serve until their successors are elected and qualified.

Section 5. Consolidation of existing public libraries or public library districts. (1) (a) If all or part of the territory served by an existing public library, as defined in 22-1-326, is included within the boundaries of a public library district, the territory served by the public library may be consolidated into the district upon the adoption of a resolution, following a public hearing, by the governing body of the city or county that established the public library and by the board of trustees of the district.

(b) Any existing bonded indebtedness against the territory served by the public library remains the indebtedness of the original territory and must be paid by levies on the original territory.

(2) The territory of an existing public library district may be consolidated into a contiguous district upon the adoption of a resolution, following a public hearing, by the board of trustees of each district. The governing board of the county containing the largest percentage of territory in the district shall appoint the board of trustees for the consolidated district. The appointed trustees shall serve until their successors are elected, in accordance with the provisions of [section 6].

Section 6. Election of board of trustees — compensation — removal — single-member trustee districts. (1) After appointment of the initial members of the board of trustees, all members must be elected by the electors of the public library district.

(2) The election of members to the board of trustees must be held in conjunction with the annual school elections held pursuant to 20-3-304.

(3) (a) A candidate for the office of trustee of the public library district must be a resident of the district and must be nominated by petition, signed by at least five electors of the district and filed with the office of the election administrator not earlier than 135 days or later than 75 days prior to the election day.

(b) If the district lies in more than one county, the petition for nomination must be presented to the election administrator whose county contains the largest percentage of territory in the district.

(4) If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the county governing body shall declare elected by acclamation each candidate who filed a nomination petition for a position. If a nomination petition is not filed for an office, the county governing body of the county containing the largest percentage of the territory in the public library district shall appoint a member to fill the term. A person appointed pursuant to this subsection has the same term and obligations as a person elected to fill the office.

(5) The term of office of an elected board member begins on the date that the board member is elected and qualified. The term of office of an elected member is 4 years, except that a simple majority of the members of the first elected board shall serve a term of 2 years, with the minority of the board serving terms of 4 years. The members serving 2-year terms must be selected by lot.

(6) A vacancy in the office of a member must be filled by appointment by the remaining members of the board. The term of the appointed member expires upon the election and qualification of an elected successor or upon the election of a member to fill the unexpired term of the vacant office. The election must be held at the next scheduled school election held pursuant to 20-3-304.

(7) Members of the board of trustees serve without compensation.

(8) A trustee may be removed from office by a court of competent jurisdiction pursuant to state law governing the removal of elected officials. If charges are brought against a trustee and if good cause is shown, the governing body of the county containing the largest percentage of territory in the public library district may suspend the trustee until the charges can be heard in a court of competent jurisdiction.

(9) (a) If the trustees determine that it is in the best interest of the electors of the public library district, they shall:

(i) propose the creation of a single-member trustee district plan with districts that are as compact in area and as equal in population as possible;

(ii) schedule and hold a public hearing on the plan; and

(iii) publish a notice of the public hearing as provided in 7-1-2121.

(b) After the public hearing is held, the trustees may amend, revise, approve, or disapprove the proposed plan. If the plan is adopted, the trustees shall publish notice of its adoption as provided in 7-1-2121.

(c) All successors to the board of trustees must be elected in accordance with the adopted single-member trustee district plan, and the election of each member must be submitted to the electors of the trustee district in which the candidate resides.

Section 7. Duties and powers of board of trustees. (1) The board of trustees of a public library district shall:

(a) operate and maintain library property within the district and may conduct programs relating to libraries and make improvements to district property as the board considers appropriate;

(b) prepare annual budgets as required by the county governing body or bodies;

(c) pay necessary expenses of district staff members when on business of the district; and

(d) prepare and submit any records required by the Montana state library.

(2) The board has all powers necessary for the betterment, operation, and maintenance of library property within the territory of the public library district, including establishing library locations. In the exercise of this general grant of powers, the board may:

(a) (i) employ or contract with administrative, professional, or other personnel necessary for the operation of the district; or

(ii) contract with other entities to provide or receive library services and to pay out or receive funds for those library services;

(b) lease, purchase, or contract for the purchase of personal property, including property that after purchase constitutes a fixture on real property;

(c) (i) lease, purchase, or contract for the purchase of buildings and facilities on lands controlled by the district and equip, operate, and maintain the buildings and facilities; or

(ii) receive by transfer, conditionally or otherwise, from a county or city, the ownership or control of a library building, with all or any part of its property, provided that any existing debt of the governing body transferring the interest tied to the property must remain an obligation of the governing body and may not become an obligation of the district;

(d) adopt by resolution, bylaws and rules for the operation and administration of the district;

(e) subject to 15-10-420, establish a property tax mill levy for the operation of the district as provided in [section 8];

(f) with the concurrence of the county governing body or bodies, accept donations of land or facilities within the district to be used for district purposes;

(g) accept donations and devises of money or personal property; and

(h) exercise other powers, not inconsistent with the law, necessary for the operation and management of the district.

Section 8. Public library district budget — property tax levy. (1) The board of trustees shall annually prepare a budget for the ensuing fiscal year and present the budget to the governing body of each county with territory in the public library district at the regular budget meetings as prescribed in Title 7, chapter 6, part 23, and certify the amount of money necessary for the operation of the district for the ensuing fiscal year.

(2) Subject to 15-10-420, the county governing body shall, annually at the time of levying county taxes, fix and levy a tax on all taxable property within the public library district sufficient to raise the amount certified by the board of trustees and approved by the electors. The tax levied may not in any year exceed the maximum amount approved by the electorate in [section 3 or 9].

Section 9. Election to change maximum property tax mill levy. (1) The maximum property tax mill levy authorized for the operation of a public library district may be changed by an election on the question of changing the maximum mill levy.

(2) A vote on the question of raising or lowering the maximum property tax mill levy in the public library district may be initiated by:

(a) a petition signed by not less than 15% of the electorate of the district; or

(b) a resolution of the board of trustees.

(3) The petition must set forth the proposed new maximum mill levy for the operation of the district.

(4) Upon receipt of a petition for a change in the maximum mill levy, certified by the county clerk as sufficient under this section, or upon receipt of a resolution for a change adopted by the board of trustees, the county governing body shall submit to the electorate of the public library district, at the next regular or primary election, a ballot question on changing the maximum mill levy. The election must be held as provided in Title 13. The question must be submitted to the electors of the district in substantially the following form:

☐ FOR changing the authorized maximum property tax mill levy for the operation of the public library district from .... to ....

☐ AGAINST changing the authorized maximum property tax mill levy for the operation of the public library district.

Section 10. Dissolution of public library district. (1) A public library district may be dissolved after an election on the question of dissolving the district. The process of dissolving the district may be initiated by a petition of 15% of the electorate of the district or by a resolution of intent to dissolve the district adopted by either the board of trustees or the governing body of the county in which territory of the district is located.

(2) Upon receipt of a petition that has been certified by the county clerk as sufficient under this section or upon adoption of a resolution of intent, the county governing body shall hold a public hearing on the question of dissolving the public library district. Notice of the hearing must be published as provided in 7-1-2121.

(3) At the public hearing, the county governing body shall hear testimony of interested persons regarding the dissolution of the public library district. After the public hearing, the county governing body may either submit the question of dissolving the district to the electorate of the district or it may call for a public hearing on the question of altering the boundaries of the district. If the county governing body calls for a public hearing on the question of altering the boundaries of the district by the withdrawal of territory, it shall publish notice of the hearing as provided in 7-1-2121. The notice must state the boundaries of the area proposed to be withdrawn from the district. After hearing testimony at the hearing, the county governing body may submit the question of either dissolving the district or altering the district by the withdrawal of specified territory from the district to the electorate of the district.

(4) The question must be submitted by a resolution calling for an election on either dissolving the public library district or altering the boundaries of the district by the withdrawal of land from the district. The county governing body shall schedule the election in conjunction with any other regularly scheduled election. The election on the question must be conducted as provided in Title 13.

(5) The question of withdrawal of territory under this section must be voted upon separately by the electorate of the territory to be withdrawn and the electorate of the balance of the territory of the public library district. The question fails unless a simple majority of those voting on the question in each of the two territories authorize altering the district boundary. If the question passes, the boundary alteration is effective the following January 1. If the question fails, the county governing body shall by resolution call for an election on the question of dissolving the district.

Section 11. Effect of dissolution. (1) If dissolution of a public library district is authorized by a majority of the electorate of the district, the county governing body shall order the dissolution and file the order with the county clerk. The dissolution is effective upon the earlier of the following:

(a) 6 months after the date of the filing of the order; or

(b) certification by the board of trustees that all debts and obligations of the district have been paid, discharged, or irrevocably settled.

(2) (a) If debts or obligation of the public library district remain unsatisfied after the dissolution of the district, the county governing body shall, subject to 15-10-420 and for as long as necessary, levy a property tax in an amount not to exceed the amount authorized for the district, on all taxable property that is in the territory formerly comprising the district, to be used to discharge the debts of the former district.

(b) If the electors of the district lowered the maximum amount to be levied for the operation of the district within 2 calendar years prior to the election authorizing the dissolution, the county governing body may, subject to 15-10-420, levy a property tax not to exceed the levy authorized prior to the reduction of the maximum levy for the discharge of the district's obligations.

(3) Any asset of the public library district remaining after all debts and obligations have been discharged becomes the property of the county in which the asset is located.

Section 12. Codification instruction. [Sections 1 through 11] are intended to be codified as an integral part of Title 22, chapter 1, and the provisions of Title 22, chapter 1, apply to [sections 1 through 11].

Approved March 20, 2001

CHAPTER NO. 93

[HB 18]

AN ACT AUTHORIZING THE STATE TRANSPORTATION COMMISSION, UPON REQUEST BY A LOCAL AUTHORITY, TO SET TEMPORARY SPECIAL REDUCED OR INCREASED SPEED LIMITS BASED UPON A REVIEW BY THE DEPARTMENT OF TRANSPORTATION FOR ROUTES THAT HAVE AN ENGINEERING AND TRAFFIC INVESTIGATION PENDING FOR A CHANGE OF SPEED LIMIT; AMENDING SECTION 61-8-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-309, MCA, is amended to read:

"61-8-309. Establishment of special speed zones. (1) (a) If the commission determines upon the basis of an engineering and traffic investigation that a speed limit set by 61-8-303 is greater or less than is reasonable or safe under the conditions found to exist at an intersection, curve, or dangerous location or on a segment of a highway less than 50 miles in length under its jurisdiction, the commission may set a reasonable and safe special speed limit at that location.

(b) If a local authority requests the department of transportation or an engineer, as provided in subsection (1)(c)(i), to conduct an engineering and traffic investigation based on the belief that a speed limit on a highway under the ~~department's~~ jurisdiction *of the department of transportation* is greater than is reasonable or safe, the commission may not increase the speed limit under consideration as a result of the investigation.

(c) (i) A local authority may request at its own expense that an engineering and traffic investigation be completed by a licensed professional engineer selected from a list compiled and approved by a committee as provided in subsection (1)(c)(ii).

(ii) A committee containing two department of transportation staff appointed by the director and two representatives of associations whose membership comprises cities, towns, and counties, as authorized by 7-5-2141 and 7-5-4141, shall review credentials submitted by licensed professional engineers and shall determine who appears on the list of individuals authorized to conduct engineering and traffic investigations for local governments. The list must be updated every 2 years.

(iii) Upon completion of an engineering and traffic investigation conducted for a local government, the department of transportation shall submit a report to the commission with findings and recommendations. The commission shall decide on an appropriate speed limit based on the traffic investigation within 120 days from the date the investigation is submitted to the department *of transportation*.

(d) A local authority may request a temporary special reduced or increased speed zone for a route or route segment that is under consideration for a reduced or increased speed limit under subsection (1)(a), (1)(b), or (1)(c). If a local authority makes multiple requests for temporary special reduced or increased speed zones, the local authority shall prioritize the requests. The department of transportation shall conduct a preliminary visual and engineering review of a route or a route segment for which a temporary special speed zone is requested. The reviewing party must include a representative of the local authority. Upon completion of the preliminary review, if the department of transportation concurs with the local authority that a temporary special reduced or increased speed limit is warranted, a temporary special reduced or increased speed zone may be established upon formal approval by the commission. The temporary special reduced or increased speed limit remains in effect until a complete traffic and engineering study has been done on the route or route segment and the commission has made a determination on changing the speed limit.

(2) The department of transportation shall erect and maintain appropriate signs giving notice of ~~these~~ special limits. When ~~they~~ *the signs* are erected, the limits are effective ~~at that part~~ *for those zones* at all times or at other times that the commission sets.

(3) The authority of the commission under this section includes the authority to set reduced nighttime speed limits on curves and other dangerous locations.

(4) This section does not authorize the commission to set a statewide speed limit."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 21, 2001

CHAPTER NO. 94

[HB 44]

AN ACT ELIMINATING LICENSING PROCEDURES FOR PORTABLE SAWMILLS ON FOREST LANDS; REPEALING SECTIONS 76-13-501, 76-13-502, 76-13-503, 76-13-504, 76-13-505, 76-13-506, AND 76-13-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the law regulating portable sawmills on forest lands was enacted in 1931; and

WHEREAS, the licensing of portable saw mills was an active protection program in the 1940s and 1950s, with hundreds of portable sawmill licenses issued annually; and

WHEREAS, since 1980, there has been a total of nine licenses issued, with only three of those in the last 9 years; and

WHEREAS, the Legislative Audit Division has recommended that executive agencies recommend legislation to repeal archaic and obsolete state laws.

THEREFORE, the Legislature of the State of Montana finds it appropriate to repeal this archaic and obsolete state law.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Sections 76-13-501, 76-13-502, 76-13-503, 76-13-504, 76-13-505, 76-13-506, and 76-13-507, MCA, are repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 21, 2001

CHAPTER NO. 95

[HB 132]

AN ACT REVISING CERTAIN STATUTES RELATED TO THE ALLOCATION AND DISPOSITION OF THE FEE IN LIEU OF TAX ON MOTORBOATS AND RELATED TO THE BOATING ADVISORY COUNCIL; EXTENDING THE TERMINATION DATE APPLICABLE TO THE ALLOCATION AND DISPOSITION OF A PERCENTAGE OF THE FEE IN LIEU OF TAX ON MOTORBOATS FOR BOATING FACILITIES; EXTENDING THE TERMINATION DATE FOR THE BOATING ADVISORY COUNCIL; EXTENDING THE TERMINATION DATE APPLICABLE TO THE CHANGE IN THE PENALTY FOR FAILURE TO PAY THE BOAT FEE IN LIEU OF TAX; EXTENDING THE TERMINATION DATE APPLICABLE TO STATE-FUNDED AND STATE-CERTIFIED COUNTY BOATING SAFETY PROGRAMS; AUTHORIZING THE USE OF BOAT FEES TO BENEFIT PUBLIC BOATING FACILITIES; REMOVING A PROVISION THAT LIMITS DISBURSEMENT OF COLLECTED FEES TO THE REGION IN WHICH THE PAYOR'S BOATING ACTIVITIES OCCUR; AMENDING SECTION 23-2-533, MCA, SECTION 6, CHAPTER 511, LAWS OF 1993, AND SECTIONS 9 AND 10, CHAPTER 476, LAWS OF 1995; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-533, MCA, is amended to read:

"23-2-533. ~~**(Temporary)**~~ **Use of** ~~**percentage of**~~ **boat fees** ***allocated to department*** **for** ~~**boat**~~ ***boating*** **facilities** ~~**— designation of fees for regional use.**~~ (1) ~~At the time the fee in lieu of tax imposed under 23-2-516 is collected, the payor shall designate the fish, wildlife, and parks administrative region in which the majority of the payor's boating activities take place. Upon receipt of the fee in the motorboat account in the state special revenue fund, the department shall earmark the fee for use in the designated region.~~

~~(2)~~ *(a)* All fees designated to the motorboat account by 23-2-518(2) must be used by the department to*:*

(i) improve, ~~regional~~ *operate, or maintain public* boating facilities ~~under the control of the department and, in conjunction with other funds in the motorboat account, to~~*; and*

(ii) cover costs associated with the boating advisory council created in 23-2-536. ~~The department may use the fees to match available federal funds to the extent possible.~~

(b) Expenditure of fees must be made after consideration of recommendations by the boating advisory council.

(c) The department shall conduct a survey of the payors of the fee in lieu of tax imposed under 23-2-516 periodically but at least once every 2 years to determine where the majority of the payors' boating activities take place.

(2) The department may use its portion of the fees collected under 23-2-518 to match available federal funds to the extent possible. ~~(Terminates June 30, 2002—sec. 9, Ch. 476, L. 1995.)~~"

Section 2. Section 6, Chapter 511, Laws of 1993, is amended to read:

"**Section 6. Termination.** [This act] terminates June 30, ~~1995~~ *2006.*"

Section 3. Section 9, Chapter 476, Laws of 1995, is amended to read:

"**Section 9.** Section 6, Chapter 511, Laws of 1993, is amended to read:

"**Section 6. Termination.** [This act] terminates June 30, ~~1995~~ *2006.*""

Section 4. Section 10, Chapter 476, Laws of 1995, is amended to read:

"**Section 10. Termination.** [Sections 1 and 3] terminate June 30, ~~2002~~ *2006.*"

Section 5. Coordination instruction. If both House Bill No.124 and [this act] are passed and approved:

(1) and House Bill No. 124 includes a revision of county funding of the motorboat account, then the allocation to the department of fish, wildlife, and parks in [section 3(4)] of House Bill No.124 is increased by $337,500;

(2) then [section 1 of this act] must read as follows:

"**23-2-533.** ~~**(Temporary)**~~ **Use of** ~~**percentage of boat fees**~~ ***allocated funds*** **for** ~~**boat**~~ ***boating*** **facilities** ~~**— designation of fees for regional use.**~~ (1) ~~At the time the fee in lieu of tax imposed under 23-2-516 is collected, the payor shall designate the fish, wildlife, and parks administrative region in which the majority of the payor's boating activities take place. Upon receipt of the fee in the motorboat account in the state special revenue fund, the department shall earmark the fee for use in the designated region.~~

~~(2) All fees designated~~ *Funds allocated* to the motorboat account ~~by 23-2-518(2)~~ must be used by the department *to:*

(a) improve, *operate, or maintain* ~~regional~~ boating facilities ~~under the control of the department and, in conjunction with other funds in the motorboat account, to~~*; and*

(b) cover costs associated with the boating advisory council created in 23-2-536.

(2) The department may use the ~~fees~~ *funds* to match available federal funds to the extent possible. Expenditure of fees must be made after consideration of recommendations by the boating advisory council. ~~(Terminates June 30, 2002—sec. 9, Ch. 476, L. 1995.)~~"

(3) then 23-2-534, MCA, is amended to read:

"**23-2-534.** ~~**(Temporary)**~~ **Funding of state recreational boating safety program — certification of county programs -- administration by counties.** (1) The department may in its discretion use available state funds and federal matching funds to contract with counties to implement designated parts of the state recreational boating safety program. If a county accepts a grant, the county shall agree to implement a program that is certified by the department as fulfilling the requirements of the state recreational boating safety program.

(2) A county may ~~designate any amount of boat fees in lieu of tax, unless otherwise allocated by 23-2-518(2), or other~~ *allocate* funds ~~for collection by~~ *to* the department for the recreational boating safety program. This money must be used by the department for contracts with counties for the recreational boating safety program. ~~(Terminates June 30, 2002—sec. 10, Ch. 476, L. 1995.)~~"

Section 6. Effective date. [This act] is effective July 1, 2001.

Approved March 21, 2001

CHAPTER NO. 96

[HB 204]

AN ACT PROVIDING THAT AN ELECTOR'S VOTER REGISTRATION IS CANCELED IF THE ELECTOR FAILS TO VOTE IN TWO CONSECUTIVE FEDERAL GENERAL ELECTIONS; AND AMENDING SECTION 13-2-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-2-402, MCA, is amended to read:

"**13-2-402. Reasons for cancellation.** The election administrator shall cancel the registration of an elector:

(1) at the written request of the registered elector;

(2) if a certificate of the death of the elector is filed or if the elector is reported as deceased by the department of public health and human services in the department's reports submitted to the county under 50-15-409;

(3) if the elector is of unsound mind as established by a court;

(4) if the incarceration of the elector in a penal institution for a felony conviction is legally established;

(5) if a certified copy of a court order directing the cancellation is filed with the election administrator;

(6) if the elector is successfully challenged and not allowed to vote at an election upon determination of an election judge;

(7) if a notice is received from another county or state that the elector has registered in that county or state; or

(8) if the elector fails to respond to certain confirmation mailings and fails to vote in two ~~subsequent~~ *consecutive* federal general elections."

Approved March 21, 2001

CHAPTER NO. 97

[HB 221]

AN ACT GRANTING MORE FLEXIBILITY TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS IN LEASING THE MONTANA AGRICULTURAL CENTER AND MUSEUM OF THE NORTHERN GREAT PLAINS BY AUTHORIZING THE DEPARTMENT TO LEASE THE FACILITY TO A QUALIFIED LOCAL GOVERNMENT ENTITY OR NONPROFIT CORPORATION; AMENDING SECTION 23-1-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-1-109, MCA, is amended to read:

"**23-1-109. Establishment of Montana agricultural center and museum of the Northern Great Plains.** There is a Montana agricultural center and museum of the Northern Great Plains located in Fort Benton. The department of fish, wildlife, and parks shall have jurisdiction, custody, and control of the center and museum, but ~~shall~~ *may* lease the facility to ~~the city of Fort Benton~~ *a qualified local government entity or nonprofit corporation* for so long as the ~~city of Fort Benton~~ *local government entity or nonprofit corporation* provides for development, operation, and maintenance of the center and museum without cost to the state of Montana."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 21, 2001

CHAPTER NO. 98

[HB 74]

AN ACT INCREASING THE SERVICE RETIREMENT BENEFIT FORMULA FOR MEMBERS OF THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM; AND AMENDING SECTION 19-8-603, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-8-603, MCA, is amended to read:

"**19-8-603. Service retirement benefit.** The service retirement benefit is equal to ~~2%~~ *2.5%* of the member's final average salary for each year of service credit."

Section 2. Coordination instruction. (1) If either House Bill No. 294 or Senate Bill No. 284 and [this act] are passed and approved, then [this act] must be amended by adding the following section:

"**Section 2.** Section 19-8-502, MCA, is amended to read:

"**19-8-502. Member's contribution.** (1) Each member is required to contribute into the pension trust fund ~~8.5%~~ *10%* of the member's monthly compensation, which must be deposited to the member's credit in the pension trust fund.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and the member's compensation as used to define the member's final average salary in 19-8-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.""

(2) If either House Bill No. 294 or Senate Bill No. 284 and Senate Bill No. 89 and [this act] are passed and approved, then [this act] must be amended by adding the following section:

"**Section 2.** Section 19-8-502, MCA, is amended to read:

"**19-8-502. Member's contribution.** (1) Each member is required to contribute into the pension trust fund ~~8.5%~~ *10.56%* of the member's monthly compensation, which must be deposited to the member's credit in the pension trust fund.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and the member's compensation as used to define the member's final average salary in 19-8-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.""

(3) If Senate Bill No. 89 and [this act] are both passed and approved, then [this act] must be amended by adding the following section:

"**Section 2.** Section 19-8-502, MCA, is amended to read:

"**19-8-502. Member's contribution.** (1) Each member is required to contribute into the pension trust fund ~~8.5%~~ *8.7%* of the member's monthly compensation, which must be deposited to the member's credit in the pension trust fund.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and the member's compensation as used to define the member's final average salary in 19-8-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.""

Approved March 22, 2001

CHAPTER NO. 99

[HB 152]

AN ACT GENERALLY REVISING PROVISIONS OF THE PUBLIC EMPLOYEES', JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', FIREFIGHTERS' UNIFIED, AND VOLUNTEER FIREFIGHTER'S COMPENSATION ACT RETIREMENT SYSTEMS; CLARIFYING DEFINITIONS AND TERMS; REVISING THE PUBLIC EMPLOYEES' RETIREMENT BOARD POWERS AND DUTIES PROVISIONS; REVISING INTERLOCAL AGREEMENTS; CLARIFYING SERVICE PURCHASE, PLAN MEMBERSHIP ELECTION, SURVIVORSHIP, FAMILY LAW ORDER, INCOME WITHHOLDING ORDER, ALTERNATE PAYEE, AND BENEFIT COMMENCEMENT PROVISIONS; CLARIFYING CERTAIN INTEREST PAYMENTS; REVISING CERTAIN SURVIVORSHIP

BENEFITS; REVISING AND STANDARDIZING CERTAIN INTEREST, CONTRIBUTION, AND REPORTING PROVISIONS; CLARIFYING CATCHUP PROVISIONS AND NORMAL RETIREMENT AGE FOR THE DEFERRED COMPENSATION PROGRAM; REPEALING DUPLICATE SECTIONS; AMENDING SECTIONS 2-18-1101, 5-2-304, 7-11-105, 19-2-303, 19-2-403, 19-2-406, 19-2-505, 19-2-506, 19-2-602, 19-2-703, 19-2-704, 19-2-708, 19-2-801, 19-2-903, 19-2-907, 19-2-908, 19-2-909, 19-3-108, 19-3-403, 19-3-412, 19-3-503, 19-3-505, 19-3-509, 19-3-510, 19-3-511, 19-3-512, 19-3-513, 19-3-901, 19-3-904, 19-3-1002, 19-3-1005, 19-3-1007, 19-3-1008, 19-3-1015, 19-3-1103, 19-3-1105, 19-3-1106, 19-3-1203, 19-3-1204, 19-3-1501, 19-5-101, 19-5-409, 19-5-501, 19-5-502, 19-5-503, 19-5-601, 19-5-701, 19-5-801, 19-5-802, 19-6-101, 19-6-402, 19-6-403, 19-6-501, 19-6-502, 19-6-505, 19-6-601, 19-6-612, 19-6-709, 19-6-801, 19-6-802, 19-6-803, 19-6-804, 19-6-810, 19-6-901, 19-6-902, 19-6-903, 19-7-101, 19-7-301, 19-7-403, 19-7-501, 19-7-503, 19-7-601, 19-7-801, 19-7-802, 19-7-803, 19-7-804, 19-7-810, 19-7-901, 19-7-1001, 19-7-1101, 19-8-101, 19-8-302, 19-8-308, 19-8-502, 19-8-601, 19-8-603, 19-8-701, 19-8-712, 19-8-801, 19-8-901, 19-8-902, 19-8-903, 19-8-904, 19-8-1001, 19-9-104, 19-9-301, 19-9-403, 19-9-405, 19-9-411, 19-9-801, 19-9-1101, 19-9-1102, 19-13-301, 19-13-403, 19-13-404, 19-13-405, 19-13-604, 19-13-701, 19-13-902, 19-13-903, 19-17-102, 19-17-104, 19-17-106, 19-17-202, 19-17-401, 19-17-403, 19-17-404, 19-17-405, AND 19-17-407, MCA; REPEALING SECTIONS 19-2-1101 AND 19-2-1102, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-1101, MCA, is amended to read:

"**2-18-1101. Definitions.** As used in this part, the following definitions apply:

(1) "Agency head" means a director, commissioner, or constitutional officer in charge of an executive, legislative, or judicial branch agency or an agency of the Montana university system. The term includes the president or other person in charge of *a public retirement board or* a unit of the Montana university system.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Employee" means an employee of the executive, legislative, or judicial branch or the Montana university system.

(4) "Group or team of employees" means a group, team, or work unit of employees working cooperatively."

Section 2. Section 5-2-304, MCA, is amended to read:

"**5-2-304. Continued participation in public retirement systems.** (1) The purpose of this section is to provide a means whereby persons serving in the Montana legislature may continue their participation in public retirement systems governed by state law. This section is not intended to provide duplicate credit for the same service in two retirement systems supported wholly or in part by public funds. This section does not affect contribution rates or benefit payments specifically provided for in the laws governing the operation of individual retirement systems.

(2) A person who is engaged in official duties as a member of the Montana legislature and who is a member of a public retirement system governed by state law may, but is not required to, continue the person's participation in that public

retirement system while engaged in official duties as a legislator. ~~A legislator shall make an irrevocable election within 180 days of taking office whether to~~ *To* continue participation in the public retirement system, *a legislator shall, within 180 days of taking office and in a manner prescribed by the appropriate board, file an irrevocable written election with the teachers' retirement board or the public employees' retirement board.* ~~A person who is a member of the Montana legislature on July 1, 1999, has until January 1, 2000, to file a written application with the teachers' or public employees' retirement board that is the irrevocable election required by this section.~~

(3) A legislator who elects to continue participation as provided in subsection (2) shall continue the payments into the fund of the retirement system at the rate currently in effect in the system based on the legislator's monthly salary as a member of that system.

(4) The state contribution must be made by legislative appropriation. It must equal the appropriate employer contribution at the rate currently in effect in the system."

Section 3. Section 7-11-105, MCA, is amended to read:

"**7-11-105. Detailed contents of interlocal agreements.** The contract authorized by 7-11-104 ~~shall~~ *must* specify the following:

(1) its duration;

(2) the precise organization, composition, and nature of any separate legal entity created ~~thereby~~ *by the agreement*;

(3) the purpose or purposes of ~~said~~ *the* interlocal contract;

(4) the manner of financing the joint or cooperative undertaking and establishing and maintaining a budget ~~therefor~~ *for the entity*;

(5) the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon ~~such~~ *the* partial or complete termination;

(6) provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking, including representation of the contracting parties on ~~said~~ *the* joint board;

(7) the manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking;

(8) *the contracting party responsible for reports and payment of retirement system contributions pursuant to 19-2-506; and*

(9) any other necessary and proper matters."

Section 4. Section 19-2-303, MCA, is amended to read:

"**19-2-303. (Temporary) Definitions.** Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a system, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a retirement system over the present value of future normal costs in that retirement system.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member to purchase various types of optional service credit as allowed by the applicable retirement system.

(8) "Annuity" means equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement system and as such are not benefits paid by a retirement system and are not subject to periodic or one-time increases.

(9) "Benefit" means the service or disability retirement or survivorship benefit payment provided by a retirement system.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(12) "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement system and that are used to calculate service or disability retirement or survivorship benefits under a retirement system.

(13) "Department" means the department of administration.

(14) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits or lump-sum payments upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(15) "Disability" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(16) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer *or a person for whom an*

interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(17) "Employer" means a governmental ~~entity~~ *agency* participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. *The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.*

(18) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

(19) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(20) "Inactive member" means a member who is not an active or retired member.

(21) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999.

(22) "Member" means any person with accumulated contributions and service credited with a retirement system or receiving a retirement benefit on account of the person's previous service credited in a retirement system.

(23) "Membership service" ~~or "years of service"~~ means the periods of service that are used to determine eligibility for retirement or other benefits.

(24) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a retirement system during any year in the future. Normal cost does not include any portion of the supplemental costs of a retirement system.

(25) *"Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age, length of service, or both, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.*

(26) "Pension" means benefit payments for life derived from contributions to a system made from state- or employer-controlled funds.

~~(26)~~*(27)* "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system in public trust.

~~(27)~~*(28)* "Regular contributions" means contributions required from members under a retirement system.

~~(28)~~*(29)* "Regular interest" means interest at ~~the rate~~ *rates* set from time to time by the board.

~~(29)~~*(30)* "Retirement" or "retired" means the status of a member who has been terminated from service for at least 30 days and has received and accepted a retirement benefit from a retirement system.

~~(30)~~*(31)* "Retirement benefit" means the periodic benefit payable as a result of service, early, or disability retirement under a retirement system. An annuity is not a retirement benefit.

~~(31)~~*(32)* "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

~~(32)~~*(33)* "Service" means employment of an employee in a position covered by a retirement system.

~~(33)~~*(34)* "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

~~(34)~~*(35)* "Supplemental cost" means an element of the total actuarial cost of a retirement system arising from benefits payable for service performed prior to the inception of the retirement system or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement system.

~~(35)~~*(36)* "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a retirement system.

~~(36)~~*(37)* "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

~~(37)~~*(38)* "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a retirement system's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

~~(38)~~*(39)* "Vested member" or "vested" means a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under a retirement system.

~~(39)~~*(40)* "Written application" *or "written election"* means a written instrument, ~~specified~~ *prescribed* by the board *or required by law*, properly ~~executed~~ *signed*~~,~~ and filed with the board, that contains all ~~the~~ *required* information ~~required by the board~~, including documentation that the board considers necessary.

19-2-303. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Account balance" means all contributions, income, and other assets in a retirement account that have, pursuant to 19-3-2116, vested to a member of the defined contribution plan.

(2) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(3) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(4) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(5) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(6) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(7) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(8) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(9) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(10) "Benefit" means:

(a) the service or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

(11) "Board" means the public employees' retirement board provided for in 2-15-1009.

(12) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(13) "Covered employment" means employment in a covered position.

(14) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(15) "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used

to calculate service or disability retirement or survivorship benefits under a defined benefit retirement plan.

(16) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(17) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

(18) "Department" means the department of administration.

(19) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(20) "Disability" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(21) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer *or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105*.

(22) "Employer" means a governmental ~~entity~~ *agency* participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. *The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.*

(23) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

(24) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(25) "Inactive member" means a member who is not an active or retired member.

(26) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999.

(27) "Member" means either:

(a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

(b) a person with a retirement account in the defined contribution plan.

(28) "Membership service" ~~or "years of service"~~ means the periods of service that are used to determine eligibility for retirement or other benefits.

(29) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future. Normal cost does not include any portion of the supplemental costs of a retirement plan.

(30) *"Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age, length of service, or both, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.*

(31) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

~~(31)~~*(32)* "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

~~(32)~~*(33)* "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

~~(33)~~*(34)* "Regular contributions" means contributions required from members under a retirement plan.

~~(34)~~*(35)* "Regular interest" means interest at ~~the rate~~ *rates* set from time to time by the board.

~~(35)~~*(36)* "Retirement" or "retired" means the status of a member who has been terminated from service for at least 30 days and has received and accepted a retirement benefit from a retirement plan.

~~(36)~~*(37)* "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and employee contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

~~(37)~~*(38)* "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service, early, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (10)(b).

~~(38)~~*(39)* "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

~~(39)~~*(40)* "Service" means employment of an employee in a position covered by a retirement system.

~~(40)~~*(41)* "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

~~(41)~~*(42)* "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

~~(42)~~*(43)* "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

~~(43)~~*(44)* "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

~~(44)~~*(45)* "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

~~(45)~~*(46)* "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under the retirement plan; or

(b) with respect to the defined contribution plan, a member or the status of a member who, pursuant to 19-3-2116, is entitled to employer contributions and income on those contributions in the member's retirement account.

~~(46)~~*(47)* "Written application" *or "written election"* means a written instrument, ~~specified~~ *prescribed* by the board *or required by law*, properly ~~executed~~ *signed*~~,~~ and filed with the board, that contains all ~~the~~ *required* information ~~required by the board~~, including documentation that the board considers necessary."

Section 5. Section 19-2-403, MCA, is amended to read:

"**19-2-403. (Temporary) Powers and duties of board.** (1) The board shall administer the provisions of the chapters enumerated in 19-2-302.

(2) The board may establish rules that it considers proper for the administration and operation of the retirement systems and enforcement of the chapters under which each retirement system is established.

(3) The board shall establish uniform rules that are necessary to determine service credit for fractional years of service.

(4) The board shall determine who are employees within the meaning of each retirement system. The board is the sole authority for determining the conditions under which persons may become members of and receive benefits under the retirement systems.

(5) The board shall determine and may modify retirement benefits under the retirement systems. *Benefits may be paid only if the board decides, in its discretion, that the applicant is, under the provisions of the appropriate retirement system, entitled to the benefits.*

(6) In matters of board discretion under the systems, the board shall treat all persons in similar circumstances in a uniform and nondiscriminatory manner.

(7) The board shall maintain records and accounts it determines necessary for the administration of the retirement systems.

(8) Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial rates and rates of regular interest it determines appropriate for the administration of the retirement systems.

(9) The board shall review the sufficiency of benefits paid by the retirement system and recommend to the legislature those changes in benefits that may be necessary for retired members and their beneficiaries to maintain a stable standard of living.

(10) The board may implement third-party mailings under the provisions of 2-6-109. If third-party mailings are implemented, the board shall adopt rules governing means of implementation, including the specification of eligible third parties, appropriate materials, and applicable fees and procedures. Fees generated by third-party mailings must be deposited in an account in the state special revenue fund and must be appropriated to the board for the benefit of participants of retirement systems administered by the board.

(11) In discharging duties, the board, a member of the board, or an authorized representative of the board may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. *Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.*

(12) The board may by rule or otherwise delegate to the board's executive director or any other staff member any of the powers or duties conferred by law upon the board except as otherwise provided by law and except for the adoption of rules and the issuance of final orders after hearings held pursuant to subsection (11) or the contested case procedure of the Montana Administrative Procedure Act.

19-2-403. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Powers and duties of board. (1) The board shall administer the provisions of the chapters enumerated in 19-2-302.

(2) The board may establish rules that it considers proper for the administration and operation of the retirement systems and enforcement of the chapters under which each retirement system is established.

(3) The board shall establish uniform rules that are necessary to determine service credit for fractional years of service.

(4) The board shall determine who are employees within the meaning of each retirement system. The board is the sole authority for determining the conditions under which persons may become members of and receive benefits under the retirement systems.

(5) The board shall determine and may modify retirement benefits under the retirement systems. *Benefits may be paid only if the board decides, in its discretion, that the applicant is, under the provisions of the appropriate retirement system, entitled to the benefits.*

(6) In matters of board discretion under the systems, the board shall treat all persons in similar circumstances in a uniform and nondiscriminatory manner.

(7) The board shall maintain records and accounts it determines necessary for the administration of the retirement systems.

(8) Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial rates and rates of regular interest it determines appropriate for the administration of the retirement systems.

(9) The board shall review the sufficiency of benefits paid by the retirement system or plan and recommend to the legislature those changes in benefits in a defined benefit plan or in contributions under the defined contribution plan that may be necessary for members and their beneficiaries to maintain a stable standard of living.

(10) The board may implement third-party mailings under the provisions of 2-6-109. If third-party mailings are implemented, the board shall adopt rules governing means of implementation, including the specification of eligible third parties, appropriate materials, and applicable fees and procedures. Fees generated by third-party mailings must be deposited in an account in the state special revenue fund and must be appropriated to the board for the benefit of participants of retirement systems or plans administered by the board.

(11) In discharging duties, the board, a member of the board, or an authorized representative of the board may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. *Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.*

(12) The board may by rule or otherwise delegate to the board's executive director or any other staff member any of the powers or duties conferred by law upon the board except as otherwise provided by law and except for the adoption of rules and the issuance of final orders after hearings held pursuant to subsection (11) or the contested case procedure of the Montana Administrative Procedure Act.

(13) The board shall perform other duties and may exercise the powers concerning the defined contribution plan for plan members as provided in chapter 3, part 21, of this title."

Section 6. Section 19-2-406, MCA, is amended to read:

"**19-2-406. (Temporary) Determination of disability by board — compliance with federal law — conversion to service retirement benefit — rules.** (1) The board shall determine whether a member has become disabled. In the discharge of its duty regarding determinations, the board, any member of the board, or any authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement. *Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.*

(2) The board shall adopt rules requiring employers to identify and explain the essential elements of a member's position, any accommodations that were or can be made in compliance with the Americans With Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), and the effectiveness of the accommodations.

(3) The board shall retain medical personnel to advise it in assessing the nature and extent of disabling conditions while reviewing claims for disability retirement.

(4) The disability retirement benefit paid to a member must be converted to a service retirement benefit, without recalculation of the monthly benefit amount, when the member has attained ~~the minimum age required for~~ normal ~~service~~ retirement *age*. The board shall notify the member in writing as to the change in status.

19-2-406. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Determination of disability by board — compliance with federal law — conversion to service retirement benefit — rules. (1) The board shall determine whether a member has become disabled. In the discharge of its duty regarding determinations, the board, any member of the board, or any authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement. *Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.*

(2) The board shall adopt rules requiring employers to identify and explain the essential elements of a member's position, any accommodations that were or can be made in compliance with the Americans With Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), and the effectiveness of the accommodations.

(3) The board shall retain medical personnel to advise it in assessing the nature and extent of disabling conditions while reviewing claims for disability retirement.

(4) The disability retirement benefit paid to a member *of a defined benefit plan* must be converted to a service retirement benefit, without recalculation of the monthly benefit amount, when the member has attained ~~the minimum age required for~~ normal ~~service~~ retirement *age*. The board shall notify the member in writing as to the change in status.

(5) This section does not apply to members of the defined contribution plan."

Section 7. Section 19-2-505, MCA, is amended to read:

"**19-2-505. (Temporary) Restrictions on use of funds.** (1) Except as provided in this section, a member or an employee of the board or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust funds;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust funds or deposits;

(c) in any manner use the pension trust funds except to make current and necessary payments that are authorized by the board;

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust funds; or

(e) engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

(2) The assets of the retirement systems may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable administrative expenses of the retirement systems administered by the board.

(3) *The assets of the retirement systems remain in trust until a warrant has been negotiated or an electronic funds transfer has been deposited in accordance with law.*

(4) Retirement benefits not claimed within 5 years after the member's death are forfeited and revert to the retirement system trust fund.

19-2-505. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Restrictions on use of funds. (1) Except as provided in this section, a member or an employee of the board or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust funds;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust funds or deposits;

(c) in any manner use the pension trust funds except to make current and necessary payments that are authorized by the board;

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust funds; or

(e) engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

(2) The assets of the retirement systems, including the assets of retirement accounts, may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable administrative expenses of the retirement systems administered by the board.

(3) *The assets of the retirement systems remain in trust until a warrant has been negotiated or an electronic funds transfer has been deposited in accordance with law.*

(4) Retirement benefits not claimed within 5 years after the member's death are forfeited and revert to the retirement system trust fund.

~~(4)~~*(5)* This section does not prevent the administration of an investment alternative within the defined contribution plan to the same extent that all other investment alternatives within the defined contribution plan are managed."

Section 8. Section 19-2-506, MCA, is amended to read:

"19-2-506. Payment of contributions by employers — accompanying reports — penalty. (1) ~~At a time prescribed by the rules of the board, each employer~~ *The board shall prescribe by rule the procedure for payment of retirement contributions for the retirement systems administered by the board. Each employer* shall *pick up the employee contributions and* remit ~~to the board all~~ *the employer and employee* contributions required ~~of the employer and its employees under~~ *by the member's* retirement ~~systems subject to this chapter on the basis of covered compensation paid during the previous pay period~~ *system*.

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or $10 a day, whichever is greater. The board may, in its discretion, waive the penalty. The collection may be made by either:

(a) an action in a court of competent jurisdiction against the employer; or

(b) deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state.

(3) ~~Employers shall submit~~ *The board shall prescribe by rule the procedure for submitting employer* reports ~~to the board, as the board requires by rule, of compensation paid to both member and nonmember employees~~. *The reports must include data about member and nonmember employees who work for the employer. The data required must include items such as compensation paid, hourly rates, changes in pay status, current home addresses, and any other data concerning employees that the board needs to administer the specific retirement system or plan. The board shall establish the method of reporting, the reporting period, and the frequency of reports to meet the demands of the relevant retirement system or plan.*

(4) ~~The chief administrative officer of each employer shall furnish monthly reports to the board showing any changes in status during the preceding month of the employer's members resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal, or death. The chief administrative officer~~ *Each employer* shall furnish additional information concerning ~~the~~ members ~~that the board may require in the administration of the retirement systems, including the services of the employer's office and departments~~ that the board may request in connection with claims by members for benefits *or service* under ~~the~~ *a* retirement ~~systems~~ *system*.

(5) The board, from time to time, may send materials to an employer for redistribution to employees. To facilitate distribution, each employer shall provide the board with a point of contact responsible for distributing the materials."

Section 9. Section 19-2-602, MCA, is amended to read:

"19-2-602. Refund of member's contributions on termination of service. (1) Except as provided in this section, any member whose service has been discontinued, other than by death or retirement, must be paid the member's accumulated contributions ~~on~~ *upon the filing of a* written application by the member and board approval. Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions.

(2) A nonvested member who terminates from service with accumulated contributions of less than $200 must be paid the accumulated contributions in a lump sum as soon as administratively feasible after termination without a written application ~~from~~ *being filed by* the member.

(3) A nonvested member who terminates from service with accumulated contributions of $200 to $5,000 must be paid the accumulated contributions in a lump sum as soon as administratively feasible after termination, unless a written application is ~~made~~ *filed* pursuant to subsection (4).

(4) Upon the *filing of a* written application ~~of~~ *by an alternate payee eligible to receive a single distribution of $200 or more under 19-2-907 or 19-2-909 or* a terminating member ~~with~~ *eligible to receive a refund of* $200 or more of accumulated contributions, the board shall make a direct rollover distribution as allowed under Internal Revenue Code section 401(a)(31) ~~of the eligible portion of a refund of the member's accumulated contributions~~. The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law. The ~~terminating member shall designate the~~ *applicant is responsible for designating an* eligible retirement plan on forms provided by the board. ~~Amounts of the member's accumulated contributions that are~~ *The portion of the account* not eligible for direct rollover distribution must be paid ~~to the terminating member. The terminating member is responsible to correctly designate an eligible retirement plan to receive the direct rollover distribution~~ *directly to the recipient.*"

Section 10. Section 19-2-703, MCA, is amended to read:

"**19-2-703. No duplication of benefits for same period of service.** *(1)* A ~~period of service of the~~ member may not ~~be credited~~ *receive service credit or membership service* in more than one retirement system ~~enumerated in 19-2-302,~~ *plan, or program under Title 19* for ~~purposes of calculation of retirement benefits~~ *the same period of service.*

(2) A member may not receive service credit or membership service in more than one retirement system, plan, or program in Title 19 for the same period of military service."

Section 11. Section 19-2-704, MCA, is amended to read:

"**19-2-704. Purchasing service credits allowed — payroll deduction.** (1) Subject to the rules promulgated by the board, an eligible member may elect to contribute amounts in addition to the mandatory employee contributions required by the *member's* retirement system ~~in which the member participates for the purpose of purchasing~~ *to purchase* service credits as provided by the statutes governing the retirement system.

(2) Subject to any statutory provision establishing stricter limitations, only active or vested inactive members are eligible to purchase~~, qualify,~~ or transfer service credits, membership service, or contributions.

(3) A member who wishes to redeposit amounts withdrawn under 19-2-602 or who is eligible to purchase service as provided by the statutes governing the retirement system to which the member belongs may *elect to* make a lump-sum payment, installment payments, or a combination of a lump-sum payment and installment payments.

(4) Installment payments must be paid directly to the board, unless the member ~~makes~~ *elects to make* payments by irrevocable payroll deduction. The minimum installment period for payments made directly to the board is 3 months, and the maximum installment period is 5 years.

(5) To elect installment payments by irrevocable payroll deduction, the member shall file with the board and the member's employer ~~a binding,~~ *an*

irrevocable, written application and authorization for payroll deductions. The application and authorization:

(a) must be ~~executed~~ *signed* by the member and the member's employer;

(b) must specify the dollar amount of each deduction and the number of deductions to be made, subject to any maximum amounts or duration established by state or federal law;

(c) must provide that the deductions are to be made over a period of time of no less than 3 months and no more than 5 years in duration;

(d) may not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the board; and

(e) must specify that the contributions being picked up, although designated as employee contributions, are being paid by the employer directly to the board in lieu of contributions paid directly by the employee.

(6) If the board notifies the employer that a proper written application and authorization has been ~~received by~~ *filed with* the board, the employer shall initiate the payroll deduction as follows:

(a) An employer shall pick up the member's elective contributions made pursuant to a payroll deduction authorization. The contributions picked up by the employer must be paid from the same source as is used to pay compensation to the member and must be included as part of the member's earned compensation before the deduction is made.

(b) Employee contributions, even though designated as employee contributions for state law purposes, are paid by the member's employer in lieu of contributions paid directly by the member to the board.

(c) The member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the board.

(d) The effective date of the employer pickup and payment pursuant to this section is the date on which the employee contribution is first deducted from the employee's compensation. However, the effective date may not be prior to the date that the member properly completes the written application and authorization for payroll deductions and files it with the board. The pickup may not apply to any contributions made before the effective date or to any contributions related to compensation earned for services rendered before the effective date.

(e) ~~A contract for installment~~ *Installment* payments initiated ~~before~~ *by contract prior to* July 1, 1999, may be ~~made~~ *paid by payroll deduction* only if the member ~~executes~~ *files* a written application and authorization for payroll deductions pursuant to this section. If the member does not ~~execute~~ *file* a written application and authorization for payroll deductions pursuant to this section, the installment contract payments agreed to by the member must be paid by the member directly to the board.

(f) A member may ~~make~~ *file* more than one ~~binding,~~ irrevocable payroll deduction *agreement and* authorization as long as a subsequent deduction authorization does not amend a previous ~~binding,~~ irrevocable authorization. A member may not prepay an amount under ~~a binding,~~ *an* irrevocable payroll deduction.

(7) If a member terminates service or dies before completing all payments required by a payroll deduction authorization ~~made~~ *filed* pursuant to this section, the deduction authorization expires and the board shall prorate the service credit based on the amount paid as of the date of termination unless further payment is made as provided in this subsection. In the case of a termination, the member may make a lump-sum payment for the balance of the service subject to the limitations of section 415 of the Internal Revenue Code. In the case of death of the member, the payment may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code."

Section 12. Section 19-2-708, MCA, is amended to read:

"**19-2-708. Rollover of contributions.** (1) A member who ~~wishes~~ *elects* to and is eligible to ~~qualify~~ *purchase* service from another retirement system or plan into a retirement system provided for in 19-2-302 may, prior to retirement, ~~make~~ *file a* written application ~~to~~ *with* the board to roll over, in accordance with the requirements of this part, to the retirement system to which the member belongs all or a portion of the member's account with the other eligible retirement system or plan. The total amount of the rollover to the retirement system may not exceed the amount of service that the member is allowed to purchase as a member of that system. The rollover must be completed prior to the member's retirement.

(2) The board shall accept a direct rollover of eligible distributions from another eligible retirement plan as provided in subsection (1) only to the extent permitted by section 401(a)(31) of the Internal Revenue Code."

Section 13. Section 19-2-801, MCA, is amended to read:

"**19-2-801. Designation of beneficiary.** *(1)* In the absence of any statutory beneficiaries, designated beneficiaries are the natural persons, charitable organizations, or trusts for the benefit of natural living persons that the member or payment recipient designates on the membership card or other form provided by the board. Unless otherwise provided by statute, a member or payment recipient may revoke the designation and name different designated beneficiaries by filing with the board a new membership card or other form provided by the board.

(2) A statutory or designated beneficiary who renounces an interest in the payment rights of a member or payment recipient will be considered, with respect to that interest, as having predeceased the member or payment recipient."

Section 14. Section 19-2-903, MCA, is amended to read:

"**19-2-903. Adjustment of errors in payments.** (1) If ~~more or less than~~ the ~~correct~~ amount of *a* contribution ~~required by a retirement system subject to this chapter is or has been paid, proper adjustment must be made in connection with the subsequent payments or the adjustments may be made by direct cash payments between the member, state, or contracting employer in connection with whom the error was made and the board~~ *payment is incorrect, the board may reject the payment or accept the payment and approve any of the following methods to collect the correct amount:*

(a) adjustment of subsequent payments from a member or an employer;

(b) installment payments or a lump-sum payment from an employer; or

(c) a lump-sum payment or a rollover from a member.

(2) If any fraudulent change or any inadvertent mistake in records results in any member, survivor, or beneficiary receiving more or less than entitled to, then on the discovery of the error, the board shall correct the error and adjust the payments to the member, survivor, or beneficiary in an equitable manner."

Section 15. Section 19-2-907, MCA, is amended to read:

"**19-2-907. Alternate payees — family law orders — rulemaking.** (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section; and

(b) "participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(3) A family law order must identify an alternate payee by full name, current address, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system.

(5) In a defined benefit plan, a family law order may only provide for payment to an alternate payee as follows:

(a) Service retirement benefit payments or ~~withdrawals of member contributions~~ *refunds* may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. Conversion of a disability retirement to a service retirement pursuant to 19-2-406(4), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be apportioned to an alternate payee.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(d) Payments must be limited to the life of the appropriate participant. The duration of payments to an alternate payee may be further limited only to a specified maximum time, the life of the alternate payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(e) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system or plan allows for that option.

(6) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(7) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(8) The board shall adopt rules to provide for the application of a family law order within the defined contribution plan."

Section 16. Section 19-2-908, MCA, is amended to read:

"**19-2-908. Time of commencement of benefit — rulemaking.** (1) (a) The board shall grant a benefit to any member, or the member's statutory or designated beneficiary, who has fulfilled all eligibility requirements, terminated covered service, and filed the appropriate written application *with the board*. However, the board may, on its own accord and without a written application, begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.

(b) A member may apply for retirement benefits before terminating covered service, but commencement of the benefits must be as provided in this section.

(2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first day of the month following the eligible member's last day of membership service or, if requested by the inactive member in writing, on the first day of a later month following ~~receipt~~ *filing* of the written application.

(b) If an elected official's term of office expires before the 15th day of the month, the official may elect that service retirement benefits from a defined benefit plan commence on the first day of the month following the official's last full month in office. *An official electing this option shall file a written application with the board.* An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating ~~final~~ *highest* average ~~salary~~ *compensation or final average compensation, as defined* under the *provisions of the appropriate* retirement system, in the partial month ending the official's term, and compensation earned in that partial month is not subject to employer or employee contributions.

(3) The disability retirement benefit payable to a member must commence on the day following the member's termination from service.

(4) Monthly survivorship benefits from a defined benefit plan must commence on the day following the death of the member.

(5) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board.

(6) With respect to the defined contribution plan, the board shall adopt rules regarding the commencement of benefits that are consistent with applicable provisions of the Internal Revenue Code and its implementing regulations."

Section 17. Section 19-2-909, MCA, is amended to read:

"**19-2-909. Execution or withholding for support obligation — rulemaking.** (1) Benefits in the retirement systems or plans provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution and income withholding for the payment of a participant's support obligation.

(2) For purposes of this section, the following definitions apply:

(a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-157.

(c) "Participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(d) "Support obligation" has the meaning provided in 40-5-403 for a support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(4) An execution or income-withholding order applied to a defined benefit retirement plan may provide for payment only as follows:

(a) Service retirement benefit payments or ~~withdrawals of member contributions~~ *refunds* may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(d) Payments must be limited to the life of the appropriate participant. The duration of payments under this section may be further limited only to a specified maximum time or the life of a specified participant. Payments may also be limited to a specific amount each month if the number of payments is specified.

(5) The board shall adopt rules to provide for the application of an execution or income-withholding order within the defined contribution plan."

Section 18. Section 19-3-108, MCA, is amended to read:

"**19-3-108. (Temporary) Definitions.** Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Compensation" means remuneration paid out of funds controlled by an employer before any pretax deductions allowed by state or federal law are made. Compensation does not include the payments or contributions made in lieu of wages for an individual subject to 19-3-403(4)(a).

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer, except that a nonprofit mental health corporation established pursuant to 53-21-204 may not be an employer with regard to employees hired after June 30, 1999.

(4) "Employer contributions" means payments to the pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(5) ~~"Final~~ *"Highest* average ~~salary~~ *compensation"* means a member's highest average monthly compensation during any 36 consecutive months of membership service. Lump-sum payments for severance pay, sick leave, and annual leave paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the ~~final~~ *highest* average ~~salary~~ *compensation*. A lump-sum payment may not be added to a single month's compensation.

19-3-108. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Compensation" means remuneration paid out of funds controlled by an employer before any pretax deductions allowed by state or federal law are made. Compensation does not include the payments or contributions made in lieu of wages for an individual subject to 19-3-403(4)(a).

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Defined benefit plan" means the plan within the public employees' retirement system established in 19-3-103 that is not the defined contribution plan.

(4) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer, except that a nonprofit mental health corporation established pursuant to 53-21-204 may not be an employer with regard to employees hired after June 30, 1999.

(5) "Employer contributions" means payments to a pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(6) ~~"Final~~ *"Highest* average ~~salary~~ *compensation*" means a member's highest average monthly compensation during any 36 consecutive months of membership service. Lump-sum payments for severance pay, sick leave, and annual leave paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the ~~final~~ *highest* average ~~salary~~ *compensation*. A lump-sum payment may not be added to a single month's compensation.

(7) "System" or "retirement system" means the public employees' retirement system established in 19-3-103."

Section 19. Section 19-3-403, MCA, is amended to read:

"19-3-403. Exclusions from membership. The following persons may not become members of the retirement system:

(1) inmates of state institutions;

(2) persons in state institutions principally for the purpose of training but who receive compensation;

(3) independent contractors;

(4) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision of the state and who are receiving credit in the other system for service. It is the purpose of this subsection to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds, except when the service qualifies, is applied for, and is purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the state, is required to become a member of any other system described in this subsection is considered, solely for the purposes of making regular contributions, as permanently separated from service. Exclusion under this subsection is subject to the following exceptions:

(a) When an employer has entered into a collective bargaining agreement that includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for membership in the retirement system.

(b) For the purpose of this subsection (4), persons receiving pensions, retirement benefits, or other payments from any source on account of employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

(5) court commissioners, elected officials, or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(6) full-time students employed at and attending the same public elementary school, high school, community college, or unit of the state university system, except that a person excluded from membership as a student of a public

community college or a unit of the state university system who later becomes ~~a~~ *an active* member by otherwise becoming an employee may affirmatively exercise the option of ~~qualifying~~ *purchasing* the service excluded by this subsection by applying to the board in writing after becoming ~~a~~ *an active* member and become eligible to receive credited service for the excluded service under the provisions of 19-3-505."

Section 20. Section 19-3-412, MCA, is amended to read:

"**19-3-412. Optional membership.** (1) The following employees in covered employment may become members of the retirement system at their option by filing an irrevocable, written application with the board within 180 days of commencement of their employment:

(a) elected officials of the state or local governments who are paid on a salary or wage basis rather than on a per diem or other reimbursement basis;

(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes in counties of the third, fourth, fifth, sixth, and seventh class.

(2) Employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.

(3) If an employee declines optional membership, the employee shall ~~execute~~ *sign* a statement waiving membership and ~~the~~ *file it with the employer. The* employer shall *file the statement with the board and* retain *a copy of* the statement. An employee who declines optional membership may not receive membership credit or service credit for the employment for which membership was declined.

(4) An employee who declined optional membership but later becomes a member may ~~qualify~~ *purchase* service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. ~~Qualification~~ *Purchase* of service pursuant to this subsection must comply with 19-3-505.

(5) Membership in the retirement system is not optional for an employee who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(6) An employee who declines membership while employed in a position for which membership is optional may not later become a member while still employed in that position. If, after a break in service of 30 days or more, an employee who was a member in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership. However, if the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(7) An employee accepting a position that requires membership shall become a member even if the employee previously declined membership and did not have a 30-day break in service.

(8) If an employee or official fails to file with the board an irrevocable, written application within the time allowed in this section, the employee or official waives membership."

Section 21. Section 19-3-503, MCA, is amended to read:

"19-3-503. (Temporary) ~~Election~~ *Application* to ~~qualify~~ *purchase* military service. (1) (a) Except as *otherwise* provided in ~~subsection (2)~~ *this section*, a member with *at least* 10 years ~~or more~~ of service ~~credits~~ *credit* may, at any time prior to retirement, ~~make~~ *file* a written ~~election~~ *application* with the board to purchase service ~~credits~~ *credit* for ~~all or any portion~~ *up to 5 years* of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945~~, up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to 19-2-707 or is ineligible under subsection (2)~~.

(b) Except as provided in subsection (3)*(b)*, to ~~qualify~~ *purchase* this *military* service, the member shall ~~contribute to the pension trust fund~~ *pay* the actuarial cost of the *member's military* service ~~credit~~, based on the *system's* most recent actuarial valuation ~~of the system~~.

(2) ~~If a~~ *A member is not eligible to purchase military service under this section if the* member*:*

(a) has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit~~, the member may not qualify the member's military service under subsection (1) or (3)~~ *based on that military service;*~~.~~

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.

(3) (a) A member may, prior to retirement, ~~receive~~ *purchase* up to 4 years of creditable service for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Korean conflict between June 1, 1950, and January 31, 1955, and the Vietnam conflict between December 22, 1961, and May 7, 1975, dates inclusive, if the

member has at least 10 years of membership service in the retirement system and is not otherwise ineligible under subsection (2).

(b) To ~~qualify this~~ *purchase* service *under subsection (3)(a)*, a member shall:

(i) ~~submit to~~ *file with* the board a completed application form and proper certification of the member's military service; and

(ii) ~~contribute~~ *pay* to the pension trust fund the amount determined by the board to be due, based on the member's compensation and regular contribution rate ~~as of~~ *in* the member's 11th year ~~and based on~~ *for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of* as many ~~succeeding~~ years *succeeding the member's 11th year* as are required to ~~qualify this service~~ *complete the purchase*, with regular interest from the date on which the member becomes eligible for this benefit to the date on which the ~~member makes the required contribution~~ *purchase is complete.*

(c) Service ~~qualified~~ *purchased* pursuant to this subsection (3) is in addition to the service that may be ~~qualified~~ *purchased* under subsection (1), except that a member may not receive duplicate credit for the same years of military service.

(d) A member purchasing service under this subsection (3) may not purchase more military service than the member has membership service in excess of 10 years. (Terminates July 1, 2001—sec. 4, Ch. 494, L. 1999.)

19-3-503. (Effective July 1, 2001) ~~Election~~ *Application* to ~~qualify~~ *purchase* military service. (1) (a) Except as provided in ~~subsection (2)~~ *subsection (2) and subject to [section 29]*, a member with *at least* 10 years ~~or more~~ of service ~~credits~~ *credit* may, at any time prior to retirement, ~~make~~ *file* a written ~~election~~ *application* with the board to purchase service ~~credits~~ *credit* for ~~all or any portion~~ *up to 5 years* of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945~~, up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to 19-2-707 or is ineligible under subsection (2)~~.

(b) To ~~qualify~~ *purchase* this service, the member shall ~~contribute to the pension trust fund~~ *pay* the actuarial cost of the *member's military* service ~~credit~~, based on the *system's* most recent actuarial valuation ~~of the system~~.

(2) ~~If a~~ *A member is not eligible to purchase military service under this section if the* member*:*

(a) has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit~~, the member may not qualify the member's military service under subsection (1)~~ *based on that military service;*

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan."

Section 22. Section 19-3-505, MCA, is amended to read:

"19-3-505. ~~Qualification~~ *Purchase* of previous employment with employer. (1) Subject to the provisions of this section, a member who has employment for which optional membership was declined or employment with an employer prior to the employer's contract coverage may ~~request~~ *file a written application with the board* to ~~qualify~~ *purchase* all or a portion of the employment ~~as membership service by filing written application with the board~~ *for service credit. The application must include salary information certified by the member's employer or former employer.*

(2) (a) *A purchase of service under this section is subject to the board's approval.*

(b) If the board approves the ~~application~~ *request,* the member shall pay ~~to the board the sum of~~ the amount that the member and the member's employer would have contributed during the period of employment *as* if the employment had been covered by the retirement system and *shall pay* the regular interest that would have accumulated on the amount to the time of payment. However, the employer may pay the employer's portion, including accrued regular interest as provided in subsection ~~(2)(b)~~ *(2)(c).*

~~(b)~~*(c)* The employer shall establish a policy as to the payment of retroactive employer contributions and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination are subject to the determination of the board. All successful appeals obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing the appeal with the board. Each appeal must be heard on its individual merits and may not bind the employer to pay all retroactive payments for all former and present employees.

~~(3) A member may secure service credit not previously credited by submitting salary information certified by the member's employer or former employer to the board. The board shall determine the eligibility of all service credit requests.~~"

Section 23. Section 19-3-509, MCA, is amended to read:

"19-3-509. ~~Qualification~~ *Purchase* of other Montana public service. (1) (a) A member may, at any time before retirement, ~~make~~ *file* a written ~~election~~ *application* with the board to ~~qualify~~ *purchase* as service in this retirement system all or any portion of the member's service credit in the highway patrol officers', sheriffs', game wardens' and peace officers', firefighters' unified, or municipal police officers' retirement system ~~for which~~ *to the extent that* the member either has received or is eligible to receive a refund of membership contributions. To ~~qualify~~ *purchase* this service, the member shall ~~contribute to the pension trust fund~~ *pay* the actuarial cost of ~~granting~~ the service in the public employees' retirement system, as determined by the board, based on the *system's* most recent actuarial valuation minus the employer contribution provided in subsection (1)(b).

(b) Upon receiving the member's payment under subsection (1)(a), the board shall transfer from the member's former retirement system to the public employees' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal cost contribution rate minus the employee contribution rate in the public employees' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, ~~make~~ *file* a written ~~election~~ *application* with the board to ~~qualify~~ *purchase* ~~any~~ *all or a portion of* full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's former public employer. ~~The board may grant service credit upon contribution by~~ *To purchase service under this section,* the employee ~~of~~ *shall pay* the actuarial cost of ~~granting this~~ *the* service in the public employees' retirement system, as determined by the board, based on the *system's* most recent actuarial valuation ~~of the system~~.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service."

Section 24. Section 19-3-510, MCA, is amended to read:

"**19-3-510. Employment in United States government.** (1) A member who is assigned to an agency of the United States government under Title IV, the Intergovernmental Personnel Act of 1970, may ~~qualify~~ *purchase* the federal employment as service in the retirement system under subsection (2)~~, provided that~~ *if*:

(a) the member has accrued 5 years or more of membership service in the retirement system; and

(b) the member returns to full-time service with the former state or local government employer for at least 1 year after completing employment in the United States government.

(2) A member of the retirement system who is assigned to an agency of the United States government has the option to:

(a) continue the member's payments into the pension trust fund; or

(b) ~~qualify~~ *purchase* the period of federal employment under this section within 2 years after return to service under the retirement system.

(3) Salary earned while on assignment to an agency of the United States government must be considered compensation for the purposes of the retirement system and may be included in the determination of ~~final~~ *highest* average ~~salary~~ *compensation*, provided that the ~~final~~ *highest* average ~~salary~~ *compensation* ~~cannot~~ *does not* exceed 100% of the member's highest annual compensation earned as a state or local government employee."

Section 25. Section 19-3-511, MCA, is amended to read:

"**19-3-511. Transfer *and purchase* of service credits and contributions from teachers' retirement system.** (1) ~~An~~ *Except as provided in subsection (3)(b), an* active member may, at any time before retirement ~~make~~, *file* a written ~~election~~ *application* with the board to ~~qualify~~ *purchase* in the public employees' retirement system ~~all of~~ the member's service in the teachers' retirement system ~~for which~~ *to the extent that* the member *has* either ~~has~~ received or is eligible to receive a refund *for the service.*

(2) ~~The amount that must be paid or transferred to the retirement system to qualify~~ *The cost of purchasing* ~~this~~ service under this section is the sum of subsections (2)(a) and (2)(b) as follows:

(a) The teachers' retirement system shall transfer an amount equal to 72% of the amount payable by the member.

(b) The member shall pay either directly or by transferring contributions on account with the teachers' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated with the teachers' retirement system, plus accrued interest. Interest must be calculated from the date of termination until payment is received by the public employees' retirement system, based on the interest tables in use by the teachers' retirement system.

(3) *(a)* The amount of service credit granted in subsection (1) must be on a month-by-month basis.

(b) ~~Military service~~ *Service* credit transferred from the teachers' retirement system ~~must be included in the 5-year maximum military service credit provided for in 19-3-503~~ *is subject to the provisions and limitations of [section 28].*

(4) Subject to the provisions of 19-2-403, the board is the sole authority in determining the amount of service credit ~~qualified~~ *that a member may purchase* under this section and the amount paid to the retirement system under subsection (2).

(5) If an active member who also has service credit in the teachers' retirement system dies before the member ~~qualifies~~ *purchases* this service in the public employees' retirement system and if the service credits from both systems, when combined, entitle the member's designated beneficiary to a survivorship benefit, the payment of the survivorship benefit is the liability of the public employees' retirement system. Before payment of the survivorship benefit, the teachers' retirement board shall transfer to the public employees' retirement system the contributions necessary to ~~qualify~~ *purchase* this service in the public employees' retirement system, as provided in subsection (2).

(6) If the board determines that a member was erroneously classified and reported to the teachers' retirement system, the member's accumulated contributions and service, together with the employer contributions plus interest, must be transferred to the public employees' retirement system. Employee and employer contributions due as calculated under 19-3-315 and 19-3-316 are the liability of the employee and the employing entity, respectively, where the error occurred. For the period of time that the employer contributions are held by the teachers' retirement system, interest paid on employer contributions transferred under this subsection must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request."

Section 26. Section 19-3-512, MCA, is amended to read:

"19-3-512. ~~Qualification~~ *Purchase* of service from other public retirement systems. (1) ~~A~~ *Subject to [section 28], a* member with *at least* 5 ~~or more~~ years of membership service in the public employees' retirement system may ~~qualify~~ *purchase*:

(a) public service employment covered under a public retirement system other than a system provided for in Title 19 for which the member received a refund of the member's membership contribution; and

(b) public service employment that occurred before the public employer adopted a public retirement system.

(2) A member may not ~~qualify~~ *purchase* more than 5 years of service under this section. To ~~qualify~~ *purchase* this service, a member shall:

(a) at any time before retirement ~~make,~~ *file* a written ~~election~~ *application* with the board ~~to qualify the service~~; and

(b) ~~contribute to the pension trust fund~~ *pay* the actuarial cost of ~~granting~~ the service in the public employees' retirement system, as determined by the board, based on the *system's* most recent actuarial valuation ~~of the system~~.

(3) Service ~~qualified~~ *purchased* under this section may not be used to qualify a member to purchase military service under 19-3-503.

(4) Service ~~qualified~~ *purchased* under this section may not be used in calculating a member's retirement benefit unless the member's last 5 years of service credit were earned under the public employees' retirement system. If ~~a,~~ *upon the member's retirement, the* member's ~~qualified~~ *purchased* service ~~may not~~ *cannot* be used in calculating the member's retirement benefit, the member ~~may choose to~~ *must* receive a refund of the ~~accumulated contributions made~~ *amount paid* to ~~qualify~~ *purchase* the service, *plus regular interest on that amount.*"

Section 27. Section 19-3-513, MCA, is amended to read:

"19-3-513. (Temporary) ~~Election~~ *Application* to purchase additional service. (1) ~~At any time before retirement, a person who has 5 years or more of membership service may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the~~ *Subject to [section 28], a* member *with at least 5 years of membership service* may, *at any time before retirement, file a written application with the board to* purchase 1 year of additional service credit for each 5 years of membership service that the member has ~~qualified under~~ *in* the retirement system~~, up to a maximum of 5 years of additional service~~.

(2) ~~For each year of service credit purchased under this section~~ *To purchase service under this section*, a member shall ~~contribute to the pension trust fund~~ *pay* the actuarial cost of the service credit, based on the *system's* most recent actuarial valuation ~~of the system~~.

(3) ~~(a) Except as provided in subsection (3)(b), a member may elect to qualify a combined total of 5 years of service under 19-3-512 or this section.~~

~~(b) A member who has purchased service under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service under this section must receive credit for the full months of service purchased on or before January 1, 1990.~~

~~(4)~~ Service purchased under this section is not membership service and may not be used to qualify a member for service retirement. (Terminates July 1, 2001—sec. 4, Ch. 494, L. 1999.)

19-3-513. (Effective July 1, 2001) ~~Election~~ *Application* to purchase additional service. (1) ~~At any time before retirement, a person who has 5 years or more of membership service may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the~~ *Subject to [section 29], a* member *with at least 5 years of membership service* may, *at any time before retirement, file a written application with the board to* purchase 1 year of additional service credit for each 5 years of membership service ~~that the member has qualified under the retirement system, up to a maximum of 5 years of additional service~~.

(2) ~~For each year of service credit purchased under this section~~ *To purchase this service under this section*, a member shall ~~contribute to the pension trust fund~~ *pay* the actuarial cost of the service ~~credit~~, based on the *system's* most recent actuarial valuation ~~of the system~~.

(3) ~~(a) Except as provided in subsection (3)(b), a member may elect to qualify a combined total of 5 years of service under 19-3-503, 19-3-512, or this section.~~

~~(b) A member who has purchased service under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service under this section shall receive credit for the full months of service purchased on or before January 1, 1990.~~

~~(4)~~ Service purchased under this section is not membership service and may not be used to qualify a member for service retirement."

Section 28. Service purchase limit — exception. (1) Except as provided in subsection (2), a member may not purchase more than a combined total of 5 years under 19-3-511(3)(b), 19-3-512, and 19-3-513.

(2) A member who has purchased service under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service under 19-3-513 must receive credit for the full months of service purchased on or before January 1, 1990.

Section 29. Service purchase limit — exception. (1) Except as provided in subsection (2), a member may not purchase more than a combined total of 5 years under 19-3-503, 19-3-511(3)(b), 19-3-512, and 19-3-513.

(2) A member who has purchased service under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service under 19-3-513 must receive credit for the full months of service purchased on or before January 1, 1990.

Section 30. Section 19-3-901, MCA, is amended to read:

"19-3-901. Eligibility for service retirement. *(1)* A member who has attained the age of 60 and has 5 years of membership service is eligible for service retirement. A member who has attained age 65 while employed in a position covered by a public employees' retirement system is eligible for service retirement regardless of the member's years of membership service. A member who has 30 years or more of membership service is eligible for service retirement regardless of the member's age.

(2) In each of the circumstances described in subsection (1), the member has attained normal retirement age."

Section 31. Section 19-3-904, MCA, is amended to read:

"19-3-904. Amount of service retirement benefit. The monthly amount of retirement benefit payable to a member following service retirement is the greater of subsection (1) or (2) as follows:

(1) one fifty-sixth of the member's ~~final~~ *highest* average ~~salary~~ *compensation* multiplied by the number of years of the member's total service credit; or

(2) a monthly benefit that is the *sum of:*

(a) the actuarial equivalent of double the member's regular contributions ~~plus~~ *and* regular interest; *plus*

(b) the actuarial equivalent of any additional contributions and regular interest."

Section 32. Section 19-3-1002, MCA, is amended to read:

"**19-3-1002. Eligibility for disability retirement.** (1) Except as provided in subsections (2) and (3), a member entering service prior to February 24, 1991, who is not eligible for service or early retirement but has at least 5 years of membership service and has become disabled while an active member is eligible for disability retirement, as provided in 19-3-1008(1).

(2) An active member age 60 or older who has completed 5 years of membership service and has had a duty-related accident forcing the member to terminate employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-related accident may conditionally waive the member's eligibility for a service retirement in order to be eligible for disability retirement. The waiver is effective only upon approval by the board of the member's *written* application for disability retirement. The board shall determine whether a member has become disabled. The board may request any information on file with the state compensation insurance fund concerning any duty-related accident. If information is not available, the board may request and the state fund shall *then* provide an investigative report on the disabling accident.

(3) (a) A member in service on February 24, 1991, has a one-time election to be covered for disability purposes under the provisions of 19-3-1008(2). This election is irrevocable and must be made in writing by the member no later than December 31, 1991. Coverage under the provisions of 19-3-1008(2) commences on the date the completed *written* election ~~form~~ is received by the board or its designated representative. To be eligible for disability benefits under the provisions of this part, a member must have completed 5 years of membership service and must have become disabled while an active member.

(b) An individual becoming a member after February 24, 1991, who has completed 5 years of membership service and has become disabled while an active member is covered for disability purposes under the provisions of 19-3-1008(2)."

Section 33. Section 19-3-1005, MCA, is amended to read:

"**19-3-1005. Application for disability retirement benefit.** The board shall grant a disability retirement benefit to any member who has fulfilled the eligibility requirements of 19-3-1002 and filed the appropriate written application *with the board.* An application may be filed on a member's behalf by the head of the office or department in which the member is or was last employed, ~~or~~ by any other person on behalf of the member, or *by* the board upon its own motion ~~may make the application~~. ~~Application~~ *The application* must be ~~made~~ *filed* within 4 months after the member's termination from service unless the member is disabled continuously from the date of termination from service to the date of the application."

Section 34. Section 19-3-1007, MCA, is amended to read:

"**19-3-1007. Benefit for duty-related disability.** (1) The retirement benefit payable to a member eligible for disability retirement for duty-related reasons and granted prior to July 1, 1977, is 50% of the member's ~~final~~ *highest* average ~~salary~~ *compensation*.

(2) ~~Any~~ *A* retired member receiving a disability retirement benefit on July 1, 1977, who has previously been granted a duty-related disability under provisions in effect on June 30, 1977, is subject to the provisions of this section after July 1, 1977."

Section 35. Section 19-3-1008, MCA, is amended to read:

"**19-3-1008. Benefit for disability.** (1) The monthly amount of the retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(1) is the greater of subsection (1)(a) or (1)(b) as follows:

(a) 90% of one fifty-sixth of the member's ~~final~~ *highest* average ~~salary~~ *compensation* multiplied by the member's years of service credit, including any additional service purchased under 19-3-513; or

(b) a retirement benefit equal to 25% of the member's ~~final~~ *highest* average ~~salary~~ *compensation*.

(2) The monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) is a retirement benefit equal to one fifty-sixth of the member's ~~final~~ *highest* average ~~salary~~ *compensation* multiplied by the member's years of service credit, including any additional service purchased under 19-3-513.

(3) Subject to the provisions of part 11 of this chapter, a retired member receiving a disability retirement benefit on February 24, 1991, who has previously been granted a disability retirement benefit under the provisions of this section will continue to receive the monthly disability retirement benefit as calculated prior to February 24, 1991, subject to any postretirement or cost-of-living increases granted by the legislature."

Section 36. Section 19-3-1015, MCA, is amended to read:

"**19-3-1015. Medical examination of disability retiree — cancellation and reinstatement.** (1) The board may, in its discretion, require a disabled member to undergo a medical examination. The examination must be made by a physician or surgeon appointed by the board, at a place mutually agreed upon by the retired member and the board. Upon the basis of the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements of either the position held by the member when the member retired or the position proposed to be assigned to the member. If the board determines the member is not incapacitated or if the member refuses to submit to a medical examination, the member's retirement benefit must be canceled.

(2) If the board determines that a disabled member should no longer be subject to medical review, the board may grant service retirement status to the member without recalculating the monthly benefit. The board shall notify the member in writing as to the change in status. If the disabled member disagrees with the board's determination, the member may ~~make~~ *file* a written application ~~to the board to request~~ *with the board requesting that* the board ~~to~~ reconsider its action. The written application for reconsideration must be ~~made~~ *filed* within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), a member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be reinstated to the position held by

the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if the member was an employee of the state or of the university. If the member was an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the disability retirement benefit has been canceled and that the former employee is eligible for reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have.

(b) A member who is employed by an employer terminates any right to reinstatement provided by this section.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) If a member whose disability retirement benefit is canceled is not reemployed in a position subject to the retirement system, the member's service is considered, for the purposes of 19-2-602, to have been discontinued coincident with the commencement of the member's retirement benefit."

Section 37. Section 19-3-1103, MCA, is amended to read:

"**19-3-1103. Disability benefit reduced by earnings** ~~**— change in retirement status**~~. (1) (a) If the recipient of a disability retirement benefit engages in a gainful occupation during any month other than in a position covered by the retirement system, the amount of the recipient's retirement benefit for that month must be reduced to an amount that, when added to the compensation earned by the recipient in that occupation, does not exceed the amount of the recipient's monthly compensation at the time of the recipient's retirement.

(b) The board~~, upon the written application of a recipient of a disability retirement benefit, may~~ *shall annually* adjust the recipient's monthly compensation as it was at the time of retirement by an inflationary factor if the recipient has been receiving a disability retirement benefit for more than 36 consecutive months.

(2) ~~At the request of a recipient of a disability retirement benefit who is age 60 or older, the board may grant service retirement status to the recipient without recalculating the recipient's monthly benefit.~~

~~(3)~~ Benefit adjustments granted by the legislature may not be included in calculations required under this section."

Section 38. Section 19-3-1105, MCA, is amended to read:

"**19-3-1105. Benefit upon second retirement.** (1) *Except as otherwise expressly provided by law, a member with at least 2 years of service credit accrued after reemployment must receive the benefit of provisions enacted after the member's initial retirement, but only with respect to the service credit earned after reemployment.*

(2) Upon retirement subsequent to a cancellation under 19-3-1104, a member ~~shall~~ *must* receive a recalculated benefit as provided in 19-3-904. The recalculated benefit is based on service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment.

~~(2) Except as otherwise expressly provided by law, the member must receive the benefit of provisions enacted subsequent to initial retirement only if the member accrues at least 2 years of service credit subsequent to reinstatement and then only with respect to the service credit.~~"

Section 39. Section 19-3-1106, MCA, is amended to read:

"**19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — exception.** (1) A retired member under 65 years of age who is receiving a service retirement benefit may return to employment covered by the retirement system for a period not to exceed 640 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 640-hour limitation in any calendar year after retirement must be temporarily reduced $1 for each $1 earned after working 640 hours in that calendar year.

(2) A retiree 65 years of age or older who returns to employment covered by the retirement system is either subject to the 640-hour limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree's current annual retirement benefits, will not exceed the member's annualized ~~final~~ *highest* average ~~salary~~ *compensation*, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree's benefits must be temporarily reduced $1 for each $1 of compensation earned in covered service beyond the applicable limitation during that calendar year.

(3) A retiree returning to employment covered by the retirement system and the returning employee's employer shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any month after retirement.

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.

(5) A retired member 70 1/2 years of age or older who returns to employment covered by the retirement system is not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3)."

Section 40. Section 19-3-1203, MCA, is amended to read:

"**19-3-1203. Election of optional death annuity.** The designated beneficiary of a member may elect, *by filing a written application with the board,* to have the lump-sum death payment paid in an actuarially equivalent form, subject to ~~the~~ rules *that* the board may adopt. ~~Election of an optional death annuity must be by written application.~~ The annuity payments are not subject to increases that may be granted to other monthly retirement benefits."

Section 41. Section 19-3-1204, MCA, is amended to read:

"**19-3-1204. Survivorship benefit elected by beneficiary.** (1) A designated beneficiary eligible to receive a lump-sum death payment may *instead* elect~~,~~ *a survivorship benefit* by *filing a* written application *with the board,* a ~~survivorship benefit instead,~~ if all of the following conditions are met:

(a) The member on behalf of whom the death benefit is payable had completed 5 years of membership service.

(b) The designated beneficiary is a natural person.

(c) The designated beneficiary elects the survivorship benefit within 90 days of receipt of notice from the board that the designated beneficiary is eligible to receive the lump-sum death payment.

(2) The designated beneficiary of a vested member may, *by filing a written application with the board,* elect to receive a survivorship benefit in lieu of a lump-sum payment of the member's account.

(3) (a) If the designated beneficiary is a minor, the custodian designated in 19-2-803 may, on the minor's behalf, file a written application with the board.

(b) If an application is not filed on the minor's behalf and no payment has been made, the designated beneficiary may file a written application upon reaching the age of majority. For the purposes of this subsection (3)(b), the survivorship benefit provided for in 19-3-1205 must be calculated as if the member had died on the last day of the month before the month in which the application was filed."

Section 42. Section 19-3-1501, MCA, is amended to read:

"19-3-1501. Optional forms of benefits — *designation of contingent annuitant.* (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who ~~makes an election~~ *so elects* must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit to ~~the~~ *a* contingent annuitant ~~whom the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits,~~ as follows:

(a) ~~Option~~ *option* 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) ~~Option~~ *option* 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) ~~Option~~ *option* 4—upon the initial payee's death, other actuarially equivalent amounts *payable to a contingent annuitant* as may be approved by the board.

(2) ~~Election of~~ *The member or the designated beneficiary who elects* an optional retirement benefit ~~must be by~~ *shall file a* written application ~~filed~~ *with the board* prior to the first payment of the benefit. *A contingent annuitant must be identified on the application.*

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If a member dies after retirement and within 30 days from the date *that* the member's ~~election~~ *written application electing* or ~~changed~~ *changing an* election of an optional retirement benefit is received by the board, then the election is void ~~and the death is considered as that of a member before retirement~~.

(5) (a) Upon *filing a* written application ~~to~~ *with* the board, a retired member who is receiving an optional retirement benefit that became effective before October 1, 1999, may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of the dissolution settlement or family law order.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change.

(6) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is *initially* effective *on or* after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary was not granted the right to receive the optional retirement benefit as part of the dissolution settlement or a family law order, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the dissolution settlement or family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (6) must be increased by the value of any postretirement adjustments received by the member since the effective date of the member's retirement.

(7) A written application pursuant to subsection (5) or (6) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 43. Section 19-5-101, MCA, is amended to read:

"**19-5-101. Definitions.** Unless a different meaning is plainly implied by the context, the following definitions apply in this chapter:

(1) "Compensation" means remuneration, as defined in 2-16-403, 3-5-211, and 3-7-222, paid to a member.

(2) "Current salary" means the current compensation for the office retired from.

(3) ~~"Final~~ *"Highest* average ~~salary~~ *compensation*" means the average of the member's highest monthly compensation during any 36 consecutive months of membership service in the retirement system.

(4) "Involuntary retirement" means a retirement not for cause and before retirement age.

(5) "Retired judge" means any judge or justice in receipt of a retirement benefit under this chapter."

Section 44. Section 19-5-409, MCA, is amended to read:

"**19-5-409. ~~Election~~*Application* to purchase additional service.** (1) At any time before retirement, a member may ~~make~~ *file* a written ~~election~~ *application* with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has ~~qualified under~~ *in* the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board.

(3) A member may ~~elect to qualify no~~ *not purchase* more than 5 years of service under 19-2-707 and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement."

Section 45. Section 19-5-501, MCA, is amended to read:

"**19-5-501. Eligibility for service retirement.** (1) ~~Any~~*A* member who has at least 5 years of membership service and has reached the age of 65 *has attained normal retirement age and* may retire and receive the ~~proportional~~ retirement benefits provided in 19-5-502.

(2) Retirement benefits may not be approved by the board while the member is drawing full compensation as a judge or justice. However, benefits may not be withheld for receiving compensation as a judge pro tempore."

Section 46. Section 19-5-502, MCA, is amended to read:

"**19-5-502. Service retirement benefit.** Upon retirement from service, the service retirement benefit must be as follows:

(1) for members not covered under 19-5-901, 3 1/3% ~~per~~ *a* year of the member's current salary for the first 15 years of credited service and 1.785% ~~per~~ *a* year for each year of credited service after 15 years; or

(2) for members covered under 19-5-901, the benefit provided under subsection (1) except that the benefit must be calculated using ~~final~~ *highest* average ~~salary~~ *compensation*."

Section 47. Section 19-5-503, MCA, is amended to read:

"**19-5-503. Involuntary retirement benefit.** (1) If a member is involuntarily discontinued from service after having completed 5 years of membership service but before reaching *normal* retirement age, the member ~~shall~~ *must*, upon filing *with the board* an application in the manner prescribed by the board, be paid an involuntary retirement benefit of equivalent actuarial value to the service retirement benefit payable under 19-5-502 then standing to the member's credit.

(2) If a member elected or appointed to office after July 1, 1983, is discontinued from service after having earned at least 12 years of service credit but before reaching ~~service~~ *normal* retirement age, the member may apply for

and receive a retirement benefit that is the actuarial equivalent of benefits pursuant to subsection (1)."

Section 48. Section 19-5-601, MCA, is amended to read:

"**19-5-601. Disability retirement benefit.** In *the* case of the disability of a member, a disability retirement benefit must be granted the member in an amount actuarially equivalent to the service retirement benefit standing to the member's credit at the time of the member's disability retirement. If the disability is a direct result of any service or duty for the Montana judiciary, the member's disability retirement benefit must be:

(1) the greater of one-half of the member's ~~final~~ current salary or the contingent annuitant's benefit, if applicable, for a person not covered under 19-5-901; or

(2) the greater of one-half of the member's ~~final~~ *highest* average ~~salary~~ *compensation* or the contingent annuitant's benefit, if applicable, for a person covered under 19-5-901."

Section 49. Section 19-5-701, MCA, is amended to read:

"**19-5-701. Optional forms of benefits — *designation of contingent annuitant.*** (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects~~,~~ must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit ~~payable~~ to ~~the~~ *a* contingent annuitant ~~that the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits,~~ as follows:

(a) ~~Option~~ *option* 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) ~~Option~~ *option* 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) ~~Option~~ *option* 4—upon the initial payee's death, other actuarially equivalent amounts *payable to a contingent annuitant* as may be approved by the board.

(2) ~~Election of~~ *The member or designated beneficiary who elects* an optional retirement benefit ~~must be by~~ *shall file a* written application ~~filed~~ *with the board* prior to the first payment of the benefit. *A contingent annuitant must be identified on the application.*

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date *that* the member's ~~election~~ *written application electing* or ~~changed~~ *changing an* election of an optional retirement benefit is received by the board, the election is void ~~and the death is considered as that of a member before retirement~~.

(5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is *initially* effective *on or* after October 1, 1999,

may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary was not granted the right to receive the optional retirement benefit as part of the dissolution settlement or a family law order, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the dissolution settlement or family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the value of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

(7) (a) Upon *filing a* written application ~~to~~ *with* the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of the divorce settlement.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 50. Section 19-5-801, MCA, is amended to read:

"**19-5-801. Payments upon employment-related death.** *(1)* If the board finds that a member died as a direct and proximate result of injury received in the course of the member's service or duty, a survivorship benefit must be paid to the member's designated beneficiary.

(2) The survivorship benefit is the greater of the *following:*

(a) the ~~actuarial~~ equivalent of *the contingent annuitant's benefit, if applicable; or*

(b) the ~~a~~ member's service retirement benefit standing to the member's credit on the date of death ~~or of the contingent annuitant's benefit, if applicable~~."

Section 51. Section 19-5-802, MCA, is amended to read:

"**19-5-802. Payments in case of death from other causes.** (1) If a retired member not covered under 19-5-901 dies without designating a contingent annuitant under 19-5-701*(2)*, the member's designated beneficiary must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account. At the designated beneficiary's request, the lump sum may be paid as an actuarially equivalent annuity that will not be subject to increases for any purpose.

(2) If a retired member covered under 19-5-901 dies without designating a contingent annuitant under 19-5-701*(2)*, the member's designated beneficiary must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(3) If a member dies before reaching *normal* retirement age, the member's designated beneficiary is entitled to a monthly survivorship benefit that is the actuarial equivalent of the involuntary retirement ~~options~~ *benefit* provided in 19-5-503."

Section 52. Section 19-6-101, MCA, is amended to read:

"**19-6-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code have been made and exclusive of maintenance, allowances, and expenses.

(2) "Dependent child" means an unmarried child of a deceased retired member, who is:

(a) under 18 years of age; or

(b) under 24 years of age and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(3) ~~"Final~~ *"Highest* average ~~salary~~ *compensation*" means the *highest* average monthly compensation received by a member for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for severance pay, sick leave, and annual leave paid to an employee upon termination of service may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the ~~final~~ *highest* average ~~salary~~ *compensation*. A lump-sum payment may not be added to a single month's compensation.

(4) "Surviving spouse" means the spouse married to a retired member at the time of the retired member's death.

(5) "Survivor" means a surviving spouse or dependent child of a member."

Section 53. Section 19-6-402, MCA, is amended to read:

"**19-6-402. Member's contribution.** (1) (a) A member not covered under 19-6-710 shall contribute into the pension trust fund 9% of the member's monthly compensation.

(b) A member covered under 19-6-710 shall contribute to the pension trust fund 9.05% of the member's monthly compensation.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up

and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and compensation as used to define the member's ~~final~~ *highest* average ~~salary~~ *compensation* in 19-6-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 54. Section 19-6-403, MCA, is amended to read:

"**19-6-403. Refund of member's contribution.** If a member willingly resigns or is discharged for cause before becoming entitled to a retirement benefit, the accumulated contributions standing to the member's credit must be paid to the member upon the member's *filing of a* written application ~~to~~ *with* the board."

Section 55. Section 19-6-501, MCA, is amended to read:

"**19-6-501. Eligibility for service retirement benefit.** (1) A member first employed by the Montana highway patrol on or before July 1, 1985, *has attained normal retirement age and* is eligible to receive a service retirement benefit after completing 20 years or more of membership service and terminating service.

(2) A member first employed by the Montana highway patrol after July 1, 1985, *has attained normal retirement age and* is eligible to receive a service retirement benefit when the member has reached age 50, completed 20 years or more of membership service, and terminated service."

Section 56. Section 19-6-502, MCA, is amended to read:

"**19-6-502. Service retirement benefit.** Upon retirement from service, a member must receive a service retirement benefit equal to 2.5% of the member's ~~final~~ *highest* average ~~salary~~ *compensation* for each year of service credit."

Section 57. Section 19-6-505, MCA, is amended to read:

"**19-6-505. Payment of retirement benefits.** (1) The service retirement benefit must be paid to the retired member for the remainder of the member's life.

(2) Upon the retired member's death, the retirement benefit must be paid to the member's surviving spouse, if there is one.

(3) (a) If upon the retired member's death there is no surviving spouse or if the spouse dies, the retirement benefit must be paid as provided in subsection (3)(c) to the retired member's child, if there is one, for as long as the child remains a dependent child.

(b) If there is more than one dependent child, the retirement benefit must be paid as provided in subsection (3)(c) to the children collectively. When a child is no longer a dependent child, the pro rata payments to that child must cease and be made to the remaining child or children until all the children are no longer dependent.

(c) Payments to a dependent child must be made to the child's appointed guardian for the child's use.

(4) If a retired member dies without a surviving spouse or dependent child ~~and if the member had designated a beneficiary as provided in 19-2-801~~, the *member's* designated beneficiary must be paid the amount, if any, of the retired member's accumulated contributions minus the total of any retirement benefits already paid from the member's account.

~~(5) If the retired member did not designate a beneficiary or if the beneficiary predeceased the retired patrol officer, the amount provided in subsection (4) must be paid to the member's estate.~~"

Section 58. Section 19-6-601, MCA, is amended to read:

"**19-6-601. Disability retirement benefit.** (1) In *the* case of the disability of a member, a disability retirement benefit must be granted the member that is the actuarial equivalent of the service retirement benefit under 19-6-502 standing to the member's credit at the time of the member's disability retirement. If the disability is a direct result of any service to the Montana highway patrol in the line of duty, then the member who is disabled must be retired on a disability retirement benefit of one-half the member's ~~final~~ *highest* average ~~salary~~ *compensation* regardless of the member's length of service.

(2) Upon the death of a retired member receiving a disability retirement benefit as provided in subsection (1), the benefit must be paid to the member's surviving spouse or dependent child, if there is a spouse or child, in the same manner as provided for in 19-6-505(2) and (3)."

Section 59. Section 19-6-612, MCA, is amended to read:

"**19-6-612. Medical examination of disability retiree — cancellation of benefit.** (1) The board may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may ~~submit~~ *file* a written application ~~to~~ *with* the board ~~to request~~ *requesting that* the board ~~to~~ reconsider its action. The request for reconsideration must be ~~made in writing~~ *filed* within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in a comparable pay and benefit category within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) The department of justice may request a medical or psychological review as to the ability of the recipient to return to work as a member of the highway patrol. If the board's findings are upheld, the department of justice shall pay the cost of the review."

Section 60. Section 19-6-709, MCA, is amended to read:

"19-6-709. (Temporary) Supplemental benefits for certain retirees. (1) In addition to any retirement benefit payable under this chapter, a retired member or a survivor determined by the board to be eligible under subsection (2) must receive an annual lump-sum benefit payment beginning in September 1991 and each succeeding year as long as the member remains eligible.

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, may not be covered by 19-6-710, and must be:

(a) a retired member who is 55 years of age or older and who has been receiving a service retirement benefit for at least 5 years prior to the date of distribution;

(b) a survivor of a member who would have been eligible under subsection (2)(a); or

(c) a recipient of a disability *benefit under 19-6-601* or *a* survivorship benefit under ~~19-6-601 or~~ 19-6-901.

(3) A retired member otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19 is ineligible to receive any lump-sum benefit payments provided for in this section until the member's service in the covered position is terminated. Upon termination of the member's covered service, the retired member becomes eligible in the next fiscal year succeeding the member's termination.

(4) (a) An amount equal to 25 cents of each motor vehicle registration fee provided for in 61-3-321(5) must be paid from the general fund to the pension trust fund at the end of each fiscal year. The payment is statutorily appropriated, as provided in 17-7-502, to the pension fund for payment of benefits to eligible recipients. The total funds must be distributed by the board in lump-sum payments to eligible recipients along with their normal retirement benefit payment.

(b) The lump-sum payment must be distributed proportionally to all eligible recipients based on service credit at the time of retirement, subject to the following:

(i) a recipient under subsection (2)(c) is considered to have 20 years of service for the purposes of the distributions;

(ii) any recipient of a service retirement benefit exceeding the maximum monthly benefit under 19-6-707(2)(a) must have the recipient's service credit reduced 25% for the purposes of the distributions;

(iii) the maximum annual increase in the amount of supplemental benefits paid to each individual under this section is the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency.

(c) Any amount deposited in the pension trust fund under subsection (4)(a) for the payment of supplemental benefits under this section that exceeds the limitation of subsection (4)(b)(iii) must be used to amortize unfunded liabilities of the retirement system.

(5) Every 10 years following July 1, 1991, the board shall review the size of the additional fee collected under 61-3-321(5) and paid to the pension trust fund in accordance with subsection (4)(a) and recommend to each legislature following the board's review any legislation necessary to reduce the fee to the minimum amount necessary to provide the supplemental benefits provided by this section. (Terminates upon death of last eligible recipient—sec. 1, Ch. 567, L. 1991.)"

Section 61. Section 19-6-801, MCA, is amended to read:

"**19-6-801. ~~Election~~ *Application* to ~~qualify~~ *purchase* military service.** (1) ~~A~~ *Except as otherwise provided in this section and subject to [section 65], a* member with *at least* 15 years ~~or more~~ of service credit ~~with the Montana highway patrol~~ may, at any time prior to retirement, ~~make~~ *file* a written ~~election~~ *application* with the board to ~~qualify~~ *purchase* ~~all or any portion~~ *up to 5 years* of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits~~, up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to 19-2-707~~.

(2) To ~~qualify~~ *purchase* this *military* service:

(a) a member *who is* not covered by 19-6-710 shall contribute ~~to the account~~ the amount determined by the board to be due based on the member's compensation and regular contribution rate ~~as of~~ *in* the member's 16th year ~~and as many succeeding years as are required to qualify this service~~ *for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of as many years succeeding the member's 16th year as are required to complete the purchase*, with *regular* interest from the date the member becomes eligible for this benefit to the date the ~~member contributes~~ *purchase is complete*. The member may not ~~qualify~~ *purchase* more ~~of this~~ *military* service *under this subsection (2)(a)* than the member has service ~~with the Montana highway patrol~~ *credit* in excess of 15 years.

(b) a member *who is* covered by 19-6-710 shall ~~contribute~~ *pay* the actuarial cost of the *member's military* service, ~~credit~~ based on the *system's* most recent actuarial valuation ~~of the system~~.

(3) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan."

Section 62. Section 19-6-802, MCA, is amended to read:

"19-6-802. ~~Qualification~~ *Purchase* of other Montana public service. (1) (a) A member may, at any time before retirement, ~~make~~ *file* a written ~~election~~ *application* with the board to ~~qualify~~ *purchase* all or any portion of the member's service in the public employees', sheriffs', game wardens' and peace officers', firefighters' unified, or municipal police officers' retirement system ~~for which~~ *to the extent that* the member either has received or is eligible to receive a refund of the member's membership contributions. To ~~qualify~~ *purchase* this service, the member shall ~~contribute to the pension trust fund~~ *pay* the actuarial cost of ~~granting~~ the service ~~credit~~ in the highway patrol officers' retirement system, as determined by the board, based on the *system's* most recent actuarial valuation minus the employer contribution provided in subsection (1)(b).

(b) Upon receiving the member's payment under subsection (1)(a), the board shall transfer from the member's former retirement system to the highway patrol officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the highway patrol officers' retirement system, according to the most recent actuarial valuation.

(2) (a) A member may, at any time before retirement, ~~make~~ *file* a written ~~election~~ *application* with the board to ~~qualify~~ *purchase all or a portion of* ~~any~~ full-time public service employment performed for the state or a political subdivision of the state. The member shall provide compensation and employment documentation certified by the member's public employer. The board shall grant service credit subject to *the board's* rules ~~adopted by the board.~~ ~~upon contribution by~~ *To purchase service under this section,* the employee ~~of~~ *shall pay* the actuarial cost of ~~granting this~~ *the* service in the highway patrol officers' retirement system, as determined by the board, based on the *system's* most recent actuarial valuation ~~of the system~~.

(b) The board is the sole authority under this subscction (2) in determining what constitutes full-time public service."

Section 63. Section 19-6-803, MCA, is amended to read:

"19-6-803. ~~Election~~ *Application* to ~~qualify~~ *purchase* law enforcement service performed in another state. (1) ~~Except as provided in subsections (2) through (5)~~ *Subject to [section 65],* a member with *at least* 5 years ~~or more~~ of ~~membership~~ service ~~in the retirement system~~ *credit* may ~~qualify,~~ *at any time before retirement, file a written application with the board to purchase* 1 year of out-of-state law enforcement employment for each year of service credit ~~under the retirement system, up to a maximum of 5 years, provided that~~, *unless* the member is ~~not~~ eligible to receive a retirement benefit *in another system or plan* for that ~~out-of-state law enforcement employment~~ *same service.*

(2) To ~~qualify~~ *purchase* this service, a member shall~~:~~

~~(a) at any time before the member's retirement, make a written election with the board to qualify the service; and~~

~~(b) contribute to the pension trust fund~~ *pay* the actuarial cost of ~~granting~~ the service in the retirement system, as determined by the board, based on:

~~(i)~~*(a)* the member's compensation for the 12 months immediately preceding the date of the member's election to cover the service under the retirement system; and

~~(ii)~~*(b)* the actuarial rate in effect at the time of purchase of service.

(3) Service ~~qualified~~ *purchased* under this section may not be used to qualify a member to purchase military service under 19-6-801.

(4) Service ~~qualified~~ *purchased* under this section may not be used in calculating a member's retirement benefit unless the last 5 years of service credit were earned under the retirement system. If, *upon retirement,* a member's ~~qualified~~ *purchased* service may not be used in calculating the member's retirement benefit, the member ~~may choose to~~ *must* receive a refund of the ~~contributions made~~ *amount paid by the member* to ~~qualify~~ *purchase* the service, *plus regular interest on that amount.*

~~(5) The combined total service qualified under this section and military service qualified under 19-6-801 may not exceed 5 years.~~"

Section 64. Section 19-6-804, MCA, is amended to read:

"**19-6-804. ~~Election~~ *Application* to purchase additional service.** (1) ~~At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the~~ *Subject to [section 65], a* member *with at least 5 years of membership service* may, *at any time before retirement, file a written application with the board to* purchase 1 year of additional service credit for ~~every~~ *each* 5 years of membership service that the member has ~~qualified under~~ *in* the retirement system.

(2) ~~For each year of service credit purchased under this section~~ *To purchase service under this section*, a member shall ~~contribute to the pension trust fund an amount equal to~~ *pay* the actuarial cost of ~~granting~~ the service, based on the *system's* most recent actuarial valuation ~~of the system~~ as determined by the board.

(3) ~~A member may elect to qualify no more than a combined total of 5 years of service under 19-2-707, 19-6-801, 19-6-803, and this section.~~

~~(4)~~ Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement."

Section 65. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service under 19-6-801, 19-6-803, and 19-6-804.

Section 66. Section 19-6-810, MCA, is amended to read:

"**19-6-810. Absence ~~due to~~ *because of* illness or injury.** (1) Time, not to exceed 5 years, during which a member is absent from service because of injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined by the board to have arisen out of and in the course of the member's employment. However, the member may not ~~earn~~ *purchase* service ~~credits~~ *credit* for this period unless the member complies with subsections (2) through (4), in which case the absence is considered as time spent in service for both service ~~credits~~ *credit* and membership service.

(2) After returning to service and while still in service, a member desiring service credit for the period of time referred to in subsection (1) shall file with the board a written application to pay the contributions under subsection (3).

(3) (a) A member eligible to ~~earn~~ *purchase* service ~~credits~~ *credit* pursuant to subsection (1) shall contribute to the retirement system an amount equal to the contributions that would have been made by the member to the system during the member's period of absence on the basis of the member's compensation immediately prior to the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to service to the date the member contributes for the period of absence.

(b) If a member elects to contribute under subsection (3)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (3)(a) and shall pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (3)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(4) A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions have been refunded pursuant to 19-2-602. The member loses the right to contribute for the period of time during which retirement benefits have been received if the member retires during the absence."

Section 67. Section 19-6-901, MCA, is amended to read:

"**19-6-901. Survivorship benefits — employment-related death.** (1) If the board finds that a member died as a direct and proximate result of injury received in the course of the member's service, a survivorship benefit must be paid to the member's surviving spouse or dependent child in the same manner as provided for in 19-6-505(2) through (4).

(2) The retirement benefit must equal 50% of the ~~final~~ *highest* average ~~salary~~ *compensation* of the member."

Section 68. Section 19-6-902, MCA, is amended to read:

"**19-6-902. Survivorship benefits — death from other causes.** If ~~a~~ *an active or inactive* member dies before reaching retirement age, the member's surviving spouse or dependent child must be paid a survivorship benefit that is the actuarial equivalent of the early retirement benefit provided in 19-6-503, in the same manner as provided for in 19-6-505*(2) through (4)*."

Section 69. Section 19-6-903, MCA, is amended to read:

"**19-6-903. Death payments in absence of survivors.** If ~~upon the member's death before retirement there is no surviving spouse or dependent child and if the member had designated a beneficiary as provided in 19-2-801~~, *after a member's death, a benefit is not paid pursuant to 19-6-505, 19-6-601, 19-6-901, or 19-6-902, then* the *member's* designated beneficiary must be paid an amount equal to the member's accumulated contributions *minus the total of any* *benefits already paid from the member's account.* ~~If there is no designated beneficiary, death payments must be paid to the member's estate.~~"

Section 70. Section 19-7-101, MCA, is amended to read:

"**19-7-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code are made and exclusive of maintenance, allowances, and expenses.

(2) ~~"Final~~ *"Highest* average ~~salary~~ *compensation"* means the *highest* average monthly compensation received by a member for any 3 years of continuous service from which contributions were deducted or, in the event that a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the ~~final~~ *highest* average ~~salary~~ *compensation.* A lump-sum payment may not be added to a single month's compensation.

(3) "Investigator" means a person who is employed as a criminal investigator or as a gambling investigator for the department of justice.

(4) "Sheriff" means any elected or appointed county sheriff or undersheriff or any appointed, lawfully trained, appropriately salaried, and regularly acting deputy sheriff *with the requisite professional certification and licensing.* ~~The board shall adopt rules incorporating both the peace officers standards and training council's current law enforcement training requirements and the legislatively authorized salary requirements as effective for deputy sheriffs who are eligible for membership in this retirement system.~~"

Section 71. Section 19-7-301, MCA, is amended to read:

"**19-7-301. Membership — inactive vested members — inactive nonvested members.** (1) ~~Each~~ *(a) Except as provided in subsection (1)(b), each* sheriff ~~is required to~~ *shall* become a member of the sheriffs' retirement system ~~unless the~~.

(b) A sheriff *who* was a member of the public employees' retirement system on July 1, 1974, ~~in which case the sheriff~~ may ~~at the sheriff's option~~ *remain a public employees' retirement system member or elect to* become a member of the sheriffs' retirement system *by filing a written election with the board at any time before retirement.*

(2) ~~An~~ *(a) Except as provided in subsection (2)(b), an* investigator ~~is required to~~ *must* become a member of the sheriffs' retirement system.

(b) ~~unless the~~ *An* investigator *who* was a member of the public employees' retirement system on July 1, 1993, ~~in which case the investigator has the option of becoming~~ *may remain in the public employees' retirement system or elect to become* a member of the sheriffs' retirement system *by filing a written election with the board at any time before retirement.*

(3) *A member of the public employees' retirement system who begins employment in a position covered by the sheriffs' retirement system may remain in*

the public employees' retirement system or may elect to become a member of the sheriffs' retirement system by filing a written election with the board no later than 30 days after beginning the employment.

(4) ~~All sheriffs and investigators~~ *A sheriff or investigator* who *elects to* become ~~members~~ *a member* of the sheriffs' retirement system ~~shall remain~~ *must be an active* ~~members so~~ *member as* long as ~~they are~~ actively employed in an eligible capacity, except as provided in 19-7-1101*(2)*.

~~(4)~~*(5)* A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

~~(5)~~*(6)* A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 72. Section 19-7-403, MCA, is amended to read:

"**19-7-403. Member's contributions deducted.** (1) Each member shall contribute into the pension trust fund 9.245% of the member's monthly compensation, which must be deposited to the member's credit in the pension trust fund.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and salary as used to define the member's ~~final~~ *highest* average ~~salary~~ *compensation* in 19-7-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 73. Section 19-7-501, MCA, is amended to read:

"**19-7-501. Eligibility for service retirement.** A member who has completed at least 20 years of membership service *has attained normal retirement age and* may retire on a service retirement benefit."

Section 74. Section 19-7-503, MCA, is amended to read:

"**19-7-503. Service retirement benefit.** (1) The amount of any service retirement benefit granted to a member is 2.5% of the member's ~~final~~ *highest* average ~~salary~~ *compensation* for each year of service credit.

(2) If a retired member dies without designating a contingent annuitant under 19-7-1001, the member's designated beneficiary must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account."

Section 75. Section 19-7-601, MCA, is amended to read:

"**19-7-601. Disability retirement benefit.** In the case of the disability of a member, regardless of the member's length of service, a disability retirement benefit must be awarded to the member based on the actuarial equivalent of the member's service retirement benefit under 19-7-503 standing to the member's credit at the time of the member's disability retirement. If the disability is a direct result of the member's service as a member in the line of duty, then the member must be awarded a benefit of one-half of the member's ~~final~~ *highest* average ~~salary~~ *compensation*."

Section 76. Section 19-7-801, MCA, is amended to read:

"**19-7-801. Membership in municipal police officers' retirement system prior to or following city-county consolidation — payment of benefits by two systems.** (1) A law enforcement officer who has not changed employment but who has, because of a city-county consolidation, been transferred either from a city police force to a county sheriff's department or from a county sheriff's department to a city police force as a law enforcement officer is eligible for a service retirement benefit if the officer's combined service in the sheriffs' retirement system and the municipal police officers' retirement system satisfies the minimum membership service requirement of the system to which the officer last made contributions. A member who has elected to continue membership in the public employees' retirement system under 19-7-301 may continue the election. However, credit for service in the public employees' retirement system that has not been transferred prior to January 1, 1979, may not be transferred.

(2) *A member of the municipal police officers' retirement system who begins employment in a position covered by the sheriffs' retirement system following a city-county consolidation may remain in the municipal police officers' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board no later than 30 days after beginning the employment.*

(3) Eligibility for and calculation of disability retirement, death benefits, and refund of contributions are governed by the provisions of the retirement system to which the officer last made contributions.

~~(3)~~*(4)* The service retirement benefit of a member described in subsection (1) must be calculated separately for each system based on the service credited under each system. The calculation for the sheriffs' retirement system portion of the benefit must include the appropriate reduction in the retirement benefit for an optional retirement benefit elected under 19-7-1001. The final salary or ~~final~~ *highest* average ~~salary~~ *compensation* for each calculation must be based on the highest compensation earned while a member of either system. Each system shall pay its proportionate share, based on the number of years of service credited, of the combined benefit.

~~(4)~~*(5)* Upon the death of a retired member receiving a service retirement benefit under this section, the survivor or contingent annuitant and the continuing benefit must be determined separately for each system as follows:

(a) For the municipal police officers' retirement system portion of the benefit, the surviving spouse must receive a benefit equal to the municipal police officers' retirement system portion of the service retirement benefit as calculated at the time of the member's retirement. If the retired member leaves no surviving spouse or upon the death of the surviving spouse, the retired member's surviving dependent child, or children collectively if there are more than one, ~~shall~~ *must* receive the same monthly benefits that a surviving spouse would receive for as long as the child or one of the children remains dependent, as defined in 19-9-104. The benefits must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata benefits to that child must cease and be paid to the remaining children until all the children are no longer dependent.

(b) For the sheriffs' retirement system portion of the benefit:

(i) the contingent annuitant must receive a continuing benefit as determined under 19-7-1001, if the retired member elected an optional retirement benefit; or

(ii) if the retired member did not elect an optional retirement benefit, any payment owed the retired member, including the excess, if any, of the retired member's accumulated contributions standing to the retired member's credit at the time of retirement less payments made to the retired member must be paid to the retired member's designated beneficiary."

Section 77. Section 19-7-802, MCA, is amended to read:

"**19-7-802. ~~Qualification~~ *Purchase* of other Montana public service.** (1) (a) A member may, at any time before retirement, ~~make~~ *file* a written ~~election~~ *application* with the board to ~~qualify~~ *purchase* all or any portion of the member's service in the public employees', highway patrol officers', firefighters' unified, game wardens' and peace officers', or municipal police officers' retirement system ~~for which~~ *to the extent that* the member either has received or is eligible to receive a refund of the member's membership contributions. To ~~qualify~~ *purchase* this service, the member shall ~~contribute to the pension trust fund~~ *pay* the actuarial cost of ~~granting~~ the service in the sheriffs' retirement system, as determined by the board, based on the *system's* most recent actuarial valuation minus the employer contribution provided in subsection (1)(b).

(b) Upon receiving the member's payment under subsection (1)(a), the board shall transfer from the member's former retirement system to the sheriffs' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the sheriffs' retirement system, according to the most recent actuarial valuation, based on the compensation earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, ~~make~~ *file* a written ~~election~~ *application* with the board to ~~qualify any~~ *purchase all or a portion of* full-time public service employment performed for the state or a political subdivision of the state. The member shall provide compensation and employment documentation certified by the member's public employer. ~~The board shall grant service credit upon contribution by~~ *To purchase service under this section,* the employee ~~of~~ *shall pay* the actuarial cost of ~~granting this~~ *the*

service in the sheriffs' retirement system, as determined by the board, based on the *system's* most recent actuarial valuation ~~of the system~~.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service."

Section 78. Section 19-7-803, MCA, is amended to read:

"**19-7-803. ~~Election~~ *Application* to ~~qualify~~ *purchase* ~~previous~~ military service.** (1) ~~A~~ *Except as otherwise provided in this section and subject to [section 80], a* member with *at least* 15 years ~~or more~~ of service credit may, at any time prior to retirement, ~~make~~ *file* a written ~~election~~ *application* with the board to ~~qualify all or any portion~~ *purchase up to 5 years* of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits~~, up to a maximum of 5 years, except as provided in subsection (3), if the member is not otherwise eligible to receive credit~~.

(2) To ~~qualify~~ *purchase this* military service, the member shall ~~contribute to the account~~ *pay* the actuarial cost of ~~granting~~ the *member's military* service, ~~to be determined by the board~~ based on the *system's* most recent actuarial valuation ~~of the system. The member may not qualify more of the member's military service than the member has service credits in the sheriffs' retirement system in excess of 15 years. Military service purchased under this section is not membership service and may not be used in determining eligibility for a service retirement benefit.~~

~~(2)~~*(3)* ~~If a~~ *A* member *is not eligible to purchase military service under this section if the member:*

(a) has retired from active duty in the armed forces of the United States with military retirement benefits~~, the member may not qualify the member's military service under subsection (1)~~ *based on that military service;*

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.

~~(3) The combined total purchase of additional years of service under the provisions of 19-7-804 and this section may not exceed 5 years.~~

(4) Military service purchased under this section is not membership service and may not be used in determining the member's eligibility for a service retirement benefit."

Section 79. Section 19-7-804, MCA, is amended to read:

"**19-7-804. ~~Election~~ *Application* to purchase additional service.** (1) ~~Except as provided in subsection (5)~~ *Subject to [section 80],* ~~at any time before retirement,~~ a member *with at least 5 years of membership service* may ~~make~~, *at any time before retirement, file* a written ~~election~~ *application* with the board to purchase 1 additional year of service credit for ~~every~~ *each* 5 years of membership service.

(2) ~~Service purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits.~~

~~(3)~~ To ~~qualify~~ *purchase* ~~this~~ service *under this section*, a member shall~~:~~

~~(a) make a written election with the board to qualify the service; and~~

~~(b) contribute to the pension trust fund~~ *pay* the actuarial cost of ~~granting~~ the service in the sheriffs' retirement system, as determined by the board, based on the *system's* most recent actuarial valuation ~~of the system~~.

~~(4)~~*(3)* Service ~~qualified~~ *purchased* under this section may not be used to qualify *a member* for the purchase of military service under 19-7-803.

(4) Service purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits.

~~(5) The combined total of additional years of service purchased under the provisions of 19-7-803 and this section may not exceed 5 years.~~"

Section 80. Service purchase limitation. A member may not purchase a combined total of more than 5 years of service under 19-7-803 and 19-7-804.

Section 81. Section 19-7-810, MCA, is amended to read:

"19-7-810. Absence ~~due to~~ *because of* illness or injury. (1) Time, not to exceed 5 years, during which a member is absent from service because of injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined by the board to have arisen out of and in the course of the member's employment. However, the member may not ~~earn~~ *purchase* service ~~credits~~ *credit* for this period unless the member complies with subsections (2) through (4), in which case the absence is considered as time spent in service for both service ~~credits~~ *credit* and membership service.

(2) After returning to service and while still in service, a member desiring service credit for the period of time referred to in subsection (1) shall file with the board a written application to pay the contributions under subsection (3).

(3) (a) A member eligible to ~~earn~~ *purchase* service ~~credits~~ *credit* pursuant to subsection (1) shall contribute to the retirement system an amount equal to the contributions that would have been made by the member to the system during the member's period of absence on the basis of the member's compensation immediately prior to the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to service to the date the member contributes for the period of absence.

(b) If a member elects to contribute under subsection (3)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (3)(a) and shall pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (3)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(4) A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions have been refunded pursuant to 19-2-602. The member loses the right to contribute for the period of time during which retirement benefits have been received if the member retires during the absence."

Section 82. Section 19-7-901, MCA, is amended to read:

"19-7-901. Payments in case of death before retirement. If a member dies before retirement, the member's designated beneficiary may elect one of the following options for which the member qualified and *for which* the designated beneficiary qualifies:

(1) a lump-sum payment of the accumulated contributions standing to the member's credit at the member's death;

(2) a survivorship benefit equal to 2.5% of the member's ~~final~~ *highest* average ~~salary~~ *compensation* for each year of service credit actuarially reduced from age 65 or the date on which the member would have completed 20 years of membership service, whichever provides a larger retirement benefit; or

(3) a survivorship benefit that is no less than one-half of the member's ~~final~~ *highest* average ~~salary~~ *compensation* if the board finds that the member died as a direct and proximate result of injuries received in the course of employment."

Section 83. Section 19-7-1001, MCA, is amended to read:

"**19-7-1001. Optional forms of benefits — *designation of contingent annuitant.*** (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit to ~~the~~ *a* contingent annuitant ~~that the member or designated beneficiary nominated by written application, executed and filed with the board with the application for benefits~~, as follows:

(a) ~~Option~~ *option* 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) ~~Option~~ *option* 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) ~~Option~~ *option* 4—upon the initial payee's death, other actuarially equivalent amounts *payable to a contingent annuitant* as may be approved by the board.

(2) ~~Election of~~ *The member or the designated beneficiary who elects* an optional retirement benefit ~~must be by~~ *shall file a* written application ~~filed~~ *with the board* prior to the first payment of the benefit. *A contingent annuitant must be identified on the application.*

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date *that* the member's ~~election~~ *written application electing* or ~~changed~~ *changing an* election of an optional retirement benefit is received by the board, the election is void ~~and the death is considered as that of a member before retirement~~.

(5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is *initially* effective *on or* after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary was not granted the right to receive the optional retirement benefit as part of the dissolution settlement or a family law order, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the dissolution settlement or family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the value of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

(7) (a) Upon *filing a* written application ~~to~~ *with* the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of the divorce settlement.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 84. Section 19-7-1101, MCA, is amended to read:

"**19-7-1101. Reemployment of a retired member.** (1) A retired member who returns to service for ~~at least~~ 60 *or more* working days in a calendar year ~~is~~ *shall become* an active member of the system. Upon reinstatement as an active member, benefit payments must cease until subsequent retirement.

(2) A retired member who returns to service for less than 60 working days in a calendar year ~~is excluded from membership~~ *may not become an active member.* The retirement benefit of a retired member employed in service must be reduced by $1 for each $3 earned in excess of $5,000 in a calendar year."

Section 85. Section 19-8-101, MCA, is amended to read:

"**19-8-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code are made and exclusive of maintenance, allowances, and expenses.

(2) ~~"Final~~ *"Highest* average ~~salary~~ *compensation*" means the *highest* average monthly compensation received by a member for any 3 years of continuous service upon which contributions were made or, in the event a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for severance pay, sick leave, and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months

included in the calculation of the ~~final~~ *highest* average ~~salary~~ *compensation.* A lump-sum payment may not be added to a single month's compensation.

(3) "Game warden" means a state fish and game warden hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks money.

(4) "Motor carrier officer" means an employee of the department of transportation appointed as a peace officer pursuant to 61-12-201.

(5) "Peace officer" or "state peace officer" means a person who by virtue of the person's employment with the state is vested by law with a duty to maintain public order or make arrests for offenses while acting within the scope of the person's authority or who is charged with specific law enforcement responsibilities on behalf of the state."

Section 86. Section 19-8-302, MCA, is amended to read:

"19-8-302. Public employees' retirement system — transfer of membership. (1) Except as provided in subsections (2) and (4), an eligible peace officer shall become a member of the game wardens' and peace officers' retirement system on the first day of covered service.

(2) A member of the public employees' retirement system who first becomes eligible for membership in the game wardens' and peace officers' retirement system on July 1, 1997, may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by ~~submitting~~ *filing* a written election ~~of intent to~~ *with* the board no later than December 31, 1997.

(3) A person who is a member of the game wardens' and peace officers' retirement system assigned to law enforcement who transfers to a position involving duties other than law enforcement within the same state agency may retain membership in the retirement system by filing a written election ~~of intent~~ with the board no later than 30 days after transfer to the new position.

(4) A person who is a member of the public employees' retirement system who transfers to a position covered by the game wardens' and peace officers' retirement system may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election ~~of intent~~ with the board no later than 30 days after transfer to the new position."

Section 87. Section 19-8-308, MCA, is amended to read:

"19-8-308. Transfer of ~~membership — qualification of previous~~ service. A person who elects to become a member of the game wardens' and peace officers' retirement system pursuant to 19-8-302 may transfer the member's ~~creditable~~ service in the public employees' retirement system into the game wardens' and peace officers' retirement system under the provisions of 19-8-902."

Section 88. Section 19-8-502, MCA, is amended to read:

"19-8-502. Member's contribution. (1) Each member is required to contribute into the pension trust fund 8.5% of the member's monthly compensation, which must be deposited to the member's credit in the pension trust fund.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and the member's compensation as used to define the member's ~~final~~ *highest* average ~~salary~~ *compensation* in 19-8-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 89. Section 19-8-601, MCA, is amended to read:

"**19-8-601. Time of retirement.** A member ~~in service~~ who has completed at least 20 years of membership service~~,~~ *and* reached the age of 50 years~~, and terminated service~~ *has attained normal retirement age and* may retire with a service retirement benefit ~~upon~~ *by filing a* written application ~~to~~ *with* the board."

Section 90. Section 19-8-603, MCA, is amended to read:

"**19-8-603. Service retirement benefit.** The service retirement benefit is equal to 2% of the member's ~~final~~ *highest* average ~~salary~~ *compensation* for each year of service credit."

Section 91. Section 19-8-701, MCA, is amended to read:

"**19-8-701. Disability retirement benefit.** (1) A member who is determined by the board to be disabled must be granted a disability retirement benefit in an amount calculated on the actuarial equivalent of the service retirement benefit standing to the member's credit at the time of the member's disability retirement.

(2) If the disability is a direct result of any service to the state in the line of duty and the member has at least 5 years of membership service, the member who is disabled must be retired on a disability retirement benefit of not less than one-half of the member's ~~final~~ *highest* average ~~salary~~ *compensation*."

Section 92. Section 19-8-712, MCA, is amended to read:

"**19-8-712. Medical examination of disability retiree — cancellation of benefit.** (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may ~~submit~~ *file* a written application ~~to~~ *with* the board ~~to request~~ *requesting that* the board ~~to~~ reconsider its action. The request for reconsideration must be ~~made in writing~~ *filed* within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in a comparable pay and benefit category within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(4) The member's former employer may request a medical or psychological review as to the ability of the recipient to return to work as a peace officer. If the board's findings are upheld, the former employer shall pay the cost of the review."

Section 93. Section 19-8-801, MCA, is amended to read:

"**19-8-801. Optional forms of benefits — *designation of contingent annuitant.*** (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must ~~be converted~~, in lieu of all other benefits under this chapter, *be converted* into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit to ~~the~~ *a* contingent annuitant ~~that the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits,~~ as follows:

(a) ~~Option~~ *option* 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) ~~Option~~ *option* 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) ~~Option~~ *option* 4—upon the initial payee's death, other actuarially equivalent amounts *payable to a contingent annuitant* as may be approved by the board.

(2) ~~Election of~~ *The member or the designated beneficiary who elects* an optional retirement benefit ~~must be by~~ *shall file a* written application ~~filed~~ *with the board* prior to the first payment of the benefit. *A contingent annuitant must be identified on the application.*

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date *that* the member's ~~election~~ *written application electing* or ~~changed~~ *changing an* election of an optional retirement benefit is received by the board, the election is void ~~and the death is considered as that of a member before retirement~~.

(5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is *initially* effective *on or* after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary was not granted the right to receive the optional retirement benefit as part of the dissolution settlement or a family law order, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the dissolution settlement or family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the value of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

(7) (a) Upon *filing a* written application ~~to~~ *with* the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of the divorce settlement.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 94. Section 19-8-901, MCA, is amended to read:

"19-8-901. ~~Election~~ *Application* to ~~qualify~~ *purchase* military service. (1) ~~A~~ *(a) Except as otherwise provided in this section and subject to [section 98], a* member with *at least* 15 years ~~or more~~ of service credit ~~qualified under this chapter~~ may, at any time prior to retirement, ~~make~~ *file* a written application with the board to ~~qualify all or any portion~~ *purchase up to 5 years* of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits~~, up to a maximum of 5 years, if the member is not otherwise eligible to receive credit for this service~~.

~~(2)~~*(b)* To ~~qualify~~ *purchase* this *military* service, the member shall ~~contribute to the pension trust fund~~ *pay* the actuarial cost of ~~granting~~ the *member's military* service, based on the *system's* most recent actuarial valuation ~~of the system~~ as determined by the board~~. The member may not qualify more years of military service than the member has years of service credits in excess of 15 years~~.

(2) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan."

Section 95. Section 19-8-902, MCA, is amended to read:

"19-8-902. ~~Qualification~~ *Purchase* of other Montana public service. (1) (a) A member may, at any time before retirement, ~~make~~ *file* a written ~~election~~ *application* with the board to ~~qualify~~ *purchase* all or any portion of the member's service credit in the public employees', highway patrol officers', firefighters' unified, sheriffs', or municipal police officers' retirement system ~~for which~~ *to the extent that* the member either has received or is eligible to receive a refund of the member's accumulated contributions. To ~~qualify~~ *purchase* this service, the member shall ~~contribute to the pension trust fund~~ *pay* the actuarial cost of ~~granting~~ the service in the game wardens' and peace officers' retirement system, as determined by the board, based on the *system's* most recent actuarial valuation ~~of the system~~ minus the employer contribution provided in subsection (1)(b).

(b) Upon receiving the member's payment under subsection (1)(a), the board shall transfer from the member's former retirement system to the game wardens' and peace officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the game wardens' and peace officers' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, ~~make~~ *file* a written ~~election~~ *application* with the board to ~~qualify any~~ *purchase all or a portion of* full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's public employer. The board shall grant service credit subject to *the board's* rules ~~adopted by the board~~. ~~upon contribution by~~ *To purchase service under this section,* the employee ~~of~~ *shall pay* the actuarial cost of ~~granting this~~ *the* service in the game wardens' and peace officers' retirement system, as determined by the board, based on the *system's* most recent actuarial valuation ~~of the system~~.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service."

Section 96. Section 19-8-903, MCA, is amended to read:

"19-8-903. Employment in United States government. (1) A member who is assigned to an agency of the United States government under Title IV, the

Intergovernmental Personnel Act of 1970, may ~~qualify~~ *purchase* the federal employment in the retirement system under subsection (2) of this section~~; provided that~~ *if*:

(a) the member has accumulated at least 5 years of membership service; and

(b) the member returns to full-time service for at least 1 year after completing employment in the United States government.

(2) A member who is assigned to an agency of the United States government has the option to:

(a) continue the member's payments into the pension trust fund; or

(b) pay an amount equal to the normal employer and employee contributions plus interest within 2 years after the member's return to active state peace officer status.

(3) Compensation earned while on assignment to an agency of the United States government must be considered compensation for purposes of the retirement system and may be included in the determination of ~~final~~ *highest* average ~~salary~~ *compensation*, provided that the ~~final~~ *highest* average ~~salary cannot~~ *compensation does not* exceed 100% of the member's highest monthly compensation earned as a state peace officer."

Section 97. Section 19-8-904, MCA, is amended to read:

"**19-8-904. ~~Election~~*Application* to purchase additional service.** (1) ~~At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the~~ *Subject to [section 98], a* member *with at least 5 years of membership service,* may, *at any time before retirement, file a written application with the board to* purchase 1 year of additional service credit for ~~every~~ *each* 5 years of membership service that the member has qualified ~~under~~ *in* the retirement system.

(2) ~~For each year of service credit purchased~~ *To purchase service* under this section, a member shall ~~contribute to the pension trust fund an amount equal to~~ *pay* the actuarial cost of ~~granting~~ the service, based on the *system's* most recent actuarial valuation ~~of the system~~ as determined by the board.

(3) ~~A member may elect to qualify no more than a combined total of 5 years of service under 19-2-707, 19-8-901, 19-8-903, and this section.~~

~~(4)~~ Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement."

Section 98. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service under 19-8-901 and 19-8-904.

Section 99. Section 19-8-1001, MCA, is amended to read:

"**19-8-1001. Benefits upon employment-related death.** If the board finds that a member died as a direct and proximate result of injury received in the course of the member's service, a monthly survivorship benefit must be paid to the member's designated beneficiary equal to 50% of the ~~final~~ *highest* average ~~salary~~ *compensation* of the member. *If the deceased member has completed more* *than 25 years of service credit, the survivorship benefit must equal 2% of the member's highest average compensation for each year of service credit.*"

Section 100. Section 19-9-104, MCA, is amended to read:

"**19-9-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means the remuneration, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code have been made.

(2) "Dependent child" means a child of a deceased member:

(a) who is unmarried and under 18 years of age; or

(b) who is unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(3) "Employer" means any city that participated in a prior plan or that elects to join this retirement system under 19-9-207.

(4) "Final average compensation" means the monthly compensation of a member, averaged over the last 36 months of the member's service or, in the event a member has not been a member that long, over the period of membership.

(5) "Minimum retirement date" means the first day of the month coinciding with or, if none coincides, the date on which a member both becomes age 50 and completes 5 years of membership service.

(6) Any reference to "municipality", "city", or "town" includes those jurisdictions that, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

(7) "Police officer" means an appointed, lawfully trained, appropriately salaried, and regularly acting officer with the requisite professional certification and licensing.

(8) "Prior plan" means the local police reserve or pension trust fund of a city that elects to join the retirement system under 19-9-207.

~~(8)~~*(9)* "Retirement date" means the date on which the first payment of the retirement, disability, or survivorship benefits of a member or a survivor is payable.

~~(9)~~*(10)* "Surviving spouse" means the spouse married to a member at the time of the member's death.

~~(10)~~*(11)* "Survivor" means a surviving spouse or dependent child of the member."

Section 101. Section 19-9-301, MCA, is amended to read:

"**19-9-301. Active membership — inactive vested member — inactive nonvested member.** (1) A police officer becomes an active member of the retirement system:

(a) on the date the police officer's service with an employer commences;

(b) on July 1, 1977, if the police officer is employed by an employer on that date; or

(c) in the case of an employer that elects to join the retirement system, as provided in 19-9-207, on the effective date of the election if the police officer is employed by the employer on that date. *A person who is a member of the public employees' retirement system on the date of the employer's election may remain in the public employees' retirement system or may elect to become a member of the municipal police officers' retirement system by filing a written election with the board no later than 30 days after the date of the employer's election.*

(2) Upon becoming eligible for membership, the police officer shall complete the forms and furnish the proof required by the board.

(3) A member becomes an inactive member on the first day of an approved absence from service of a substantial duration.

(4) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(5) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 102. Section 19-9-403, MCA, is amended to read:

"19-9-403. ~~Election~~ *Application* to ~~qualify~~ *purchase* ~~previous~~ military service. (1) ~~A~~ *Except as otherwise provided in this section and subject to [section 105], a* member with *at least* 15 years ~~or more~~ of service credit may, at any time prior to retirement, ~~make~~ *file* a written ~~election~~ *application* with the board to ~~qualify~~ *purchase* up to ~~a maximum of~~ 5 years of the member's active duty service in the armed forces of the United States for the purpose of calculating retirement benefits ~~if the member is not otherwise eligible to receive credit~~.

(2) To ~~qualify~~ *purchase* this *military* service, the member shall ~~contribute to the pension trust fund~~ *pay* the actuarial cost of ~~granting~~ the *member's military* service ~~to be determined by the board~~, based on the *system's* most recent actuarial valuation ~~of the system~~.

(3) The member may not ~~qualify~~ *purchase* more ~~of the member's~~ military service than the ~~member has~~ *member's years of membership* service ~~credit~~ in excess of 15 years.

~~(2) If a~~ *(4) A member is not eligible to purchase military service under this section if the* member*:*

(a) has retired from active duty in the armed forces of the United States with a ~~normal military service~~ *military* retirement benefit~~, the member may not qualify the member's military service under subsection (1)~~ *based on that military service;*

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service: or

(c) is eligible to receive credit for that service in any other retirement system or plan."

Section 103. Section 19-9-405, MCA, is amended to read:

"19-9-405. ~~Qualification~~ *Purchase* of other Montana public service. (1) (a) A member may, at any time before retirement, ~~make~~ *file* a written ~~election~~ *application* with the board to ~~qualify~~ *purchase* all or any portion of the member's service credit in the public employees', highway patrol officers', firefighters' unified, sheriffs', or game wardens' and peace officers' retirement system ~~for which~~ *to the extent that* the member either has received or is eligible to receive a refund of the member's accumulated contributions.

(b) To ~~qualify~~ *purchase* this service, the member shall ~~contribute to the pension trust fund~~ *pay* the actuarial cost of ~~granting~~ the service in the municipal police officers' retirement system, as determined by the board, based on the *system's* most recent actuarial valuation minus the employer contribution provided in subsection ~~(1)(b)~~ *(1)(c)*.

~~(b)~~*(c)* Upon receiving the member's payment under subsection ~~(1)(a)~~ *(1)(b)*, the board shall transfer from the member's former retirement system to the municipal police officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the regular contribution rate minus the employee contribution rate in the municipal police officers' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, ~~make~~ *file* a written ~~election~~ *application* with the board to ~~qualify~~ *purchase all or a portion of* ~~any~~ full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's public employer. The board shall grant service credit subject to *the board's* rules ~~adopted by the board~~. ~~upon contribution by~~ *To purchase service under this section,* the employee ~~of~~ *shall pay* the actuarial cost of ~~granting this~~ *the* service in the municipal police officers' retirement system, as determined by the board, based on ~~the employee's compensation earned during this period of service and the regular contribution rate according to~~ the *system's* most recent actuarial valuation ~~of the system~~.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service."

Section 104. Section 19-9-411, MCA, is amended to read:

"19-9-411. ~~Election~~ *Application* to purchase additional service. (1) ~~At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the~~ *Subject to [section 105], a* member *with at least 5 years of membership service* may, *at any time before retirement, file a written application with the board to* purchase 1 year of additional service credit for ~~every~~ *each* 5 years of membership service ~~that the member has qualified under the retirement system~~.

(2) ~~For each year of service credit purchased under this section~~ *To purchase service under this section*, a member shall ~~contribute to the pension trust fund an amount equal to~~ *pay* the actuarial cost of ~~granting~~ the service, based on the

system's most recent actuarial valuation ~~of the system~~ as determined by the board.

(3) ~~A member may elect to qualify no more than a combined total of 5 years of service under 19-2-707, 19-9-403, and this section.~~

~~(4)~~ Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement."

Section 105. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service under 19-9-403 and 19-9-411.

Section 106. Section 19-9-801, MCA, is amended to read:

"**19-9-801. Eligibility for service retirement — commencement of benefit.** ~~(1) Members are~~ *A member has attained normal retirement age and is* eligible for *a service* retirement ~~as provided in this section.~~ *benefit after terminating service if:*

~~(2) A member is eligible to receive a service retirement benefit when~~ *(1)* the member has completed 20 years or more of membership service ~~and has terminated service.~~*; or*

~~(3) A~~ *(2) the* member ~~who terminates service after completing~~ *has completed* at least 5 years of membership service ~~but prior to completing 20 years of membership service is eligible to receive a service retirement benefit when the member has~~ *and* reached 50 years of age."

Section 107. Section 19-9-1101, MCA, is amended to read:

"**19-9-1101. Preretirement death benefits.** ~~(1)~~ Upon the death of ~~a~~ *an active* member ~~before retirement~~, the member's surviving spouse or dependent child is eligible for benefits equal to one-half of the member's final average compensation, *payable* as provided in 19-9-804*(2)*. If the deceased member has completed over 20 years of membership service, the survivorship benefit must equal 2.5% of the member's final average compensation for each year of membership service.

~~(2) Upon the death of an inactive nonvested member, the member's surviving spouse or dependent child is eligible for a refund of the member's accumulated contributions.~~"

Section 108. Section 19-9-1102, MCA, is amended to read:

"**19-9-1102. Payments in absence of spouse or child.** If, *after* a ~~retired~~ member dies ~~without leaving a surviving spouse or dependent child and if the member had designated a beneficiary in writing to the board as provided in 19-2-801, the~~, *a benefit is not paid pursuant to 19-9-804, 19-9-903, or 19-9-1101, then the member's* designated beneficiary must be paid the amount, if any, of the member's accumulated contributions minus the total of any ~~retirement~~ benefits already paid from the member's account. ~~If the member did not designate a beneficiary or the designated beneficiary predeceased the member, the amount must be paid to the member's estate.~~"

Section 109. Section 19-13-301, MCA, is amended to read:

"19-13-301. Active membership — inactive vested member — inactive nonvested member. (1) Except as provided in subsection (7), a full-paid firefighter becomes an active member of the retirement system:

(a) on the first day of the firefighter's service with an employer;

(b) on July 1, 1981, if the firefighter is employed by an employer on that date; or

(c) in the case of an employer who elects to join the retirement system, as provided in 19-13-211, on the effective date of the election if the firefighter is employed by the employer on that date.

(2) Upon becoming eligible for membership, the firefighter shall complete the forms and furnish any proof required by the board.

(3) A part-paid firefighter may elect to become a member of the retirement system by filing a membership application with the board *within 6 months of becoming a part-paid firefighter or [the effective date of this section], whichever is later*.

(4) An active member becomes an inactive member upon the occurrence of the earliest of the following:

(a) the date on which the member ceases service with an employer;

(b) the 31st day of an approved absence from active duty with an employer; or

(c) the date on which the member ceases to be employed because of a reduction of the number of firefighters in the fire department as provided in 7-33-4125.

(5) A member with at least 5 years of membership service who terminates service and does not take a refund of *the member's* accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(6) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

(7) (a) A firefighter previously employed in a position covered under the public employees' retirement system and who is first hired into a position covered under the firefighters' unified retirement system after attaining 45 years of age may elect to remain in the public employees' retirement system.

(b) A firefighter making an election to remain in the public employees' retirement system shall make the election in a manner prescribed by the board within ~~1 month~~ *30 days* of being hired into the position otherwise covered under the firefighters' unified retirement system."

Section 110. Section 19-13-403, MCA, is amended to read:

"19-13-403. ~~Election~~ *Application* to ~~qualify~~ *purchase* ~~previous~~ military service. (1) ~~A~~ *(a) Except as otherwise provided in this section and subject to [section 113], a* member with *at least* 15 years ~~or more~~ *of* service credit may, at any time prior to retirement, ~~make~~ *file* a written ~~election~~ *application* with the board to ~~qualify~~ *purchase* ~~all or any portion~~ *up to 5 years* of the member's active duty service in the armed forces of the United States for the purpose of calculating retirement benefits~~, up to a maximum of 5 years, if the member is not otherwise eligible to receive credit for this service under 19-2-707~~.

(b) To ~~qualify~~ *purchase* this *military* service, the member shall ~~contribute to the pension trust fund~~ *pay* the actuarial cost of ~~granting~~ the service ~~to be determined by the board~~, based on the *system's* most recent actuarial valuation ~~of the system~~.

(2) A member may not ~~qualify~~ *purchase* more ~~of the member's~~ military service than the ~~member has~~ *member's years of membership* service ~~credit~~ in excess of 15 years. ~~Military service purchased under this section may not be used in determining the member's eligibility for a service retirement.~~

~~(2)~~*(3)* ~~If a~~ *A member is not eligible to purchase military service under this section if the* member*:*

(a) has retired from active duty in the armed forces of the United States with military retirement benefits~~, the member may not qualify military service under subsection (1)~~ *based on that military service;*

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.

(4) Military service purchased under this section is not membership service and may not be used in determining the member's eligibility for a service retirement benefit."

Section 111. Section 19-13-404, MCA, is amended to read:

"19-13-404. ~~Qualification~~ *Purchase* of other Montana public service. (1) (a) A member may, at any time before retirement, ~~make~~ *file* a written ~~election~~ *application* with the board to ~~qualify~~ *purchase* all or any portion of the member's service credit in the public employees', highway patrol officers', sheriffs', municipal police officers', or game wardens' and peace officers' retirement system ~~for which~~ *to the extent that* the member either has received or is eligible to receive a refund of the member's accumulated contributions.

(b) To ~~qualify~~ *purchase* this service, the member shall ~~contribute to the pension trust fund~~ *pay* the actuarial cost of ~~granting~~ the service in the firefighters' unified retirement system, as determined by the board, based on the *system's* most recent actuarial valuation minus the employer contribution provided in subsection ~~(1)(b)~~ *(1)(c).*

~~(b)~~*(c)* Upon receiving the member's payment under subsection ~~(1)(a)~~ *(1)(b)*, the board shall transfer from the member's former retirement system to the firefighters' unified retirement system an amount equal to the employer contributions made during the member's service~~,~~ but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the firefighters' unified retirement system, according to the most recent actuarial valuation, based on the compensation earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, ~~make~~ *file* a written ~~election~~ *application* with the board to ~~qualify any~~ *purchase all or a portion of* full-time public service employment performed for the state or a political subdivision of the state. The member shall provide compensation and

employment documentation certified by the member's public employer. The board shall grant service credit subject to *the board's* rules ~~adopted by the board upon contribution by~~. *To purchase service under this section,* the employee ~~of~~ *shall pay* the actuarial cost of ~~granting this~~ *the* service in the firefighters' unified retirement system, ~~as determined by the board,~~ based on the *system's* most recent actuarial valuation ~~of the system~~.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service."

Section 112. Section 19-13-405, MCA, is amended to read:

"**19-13-405. ~~Election~~ *Application* to purchase additional service.** (1) ~~At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the~~ *Subject to [section 113], a* member *with at least 5 years of membership service* may, *at any time before retirement, file a written application with the board to* purchase 1 year of additional service credit for ~~every~~ *each* 5 years of membership service ~~that the member has qualified under the retirement system~~.

(2) ~~For each year of service credit purchased under this section~~ *To purchase service under this section*, a member shall ~~contribute to the pension trust fund an amount equal to~~ *pay* the actuarial cost of ~~granting~~ the service, based on the *system's* most recent actuarial valuation ~~of the system~~ as determined by the board.

(3) ~~A member may elect to qualify no more than a combined total of 5 years of service under 19-2-707, 19-13-403, and this section.~~

~~(4)~~ Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement."

Section 113. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service under 19-13-403 and 19-13-405.

Section 114. Section 19-13-604, MCA, is amended to read:

"**19-13-604. State contribution.** The state shall make its contributions from the general fund. ~~Payments must be made annually from the~~ *The* general fund ~~to the pension trust fund~~ *contributions must be made annually* after the end of each fiscal year but no later than November 1. The board shall notify the state auditor *by September 1 of each fiscal year* of the annual compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid to all active members during the preceding *fiscal* year. The state's contribution is 32.61% of this total compensation. The contributions are statutorily appropriated, as provided in 17-7-502."

Section 115. Section 19-13-701, MCA, is amended to read:

"**19-13-701. Eligibility for service retirement.** (1) A member who has completed 20 years or more of membership service *has attained normal retirement age and* is eligible for service retirement.

(2) A vested member who terminates service before the minimum retirement date and keeps the member's accumulated contributions on deposit *has attained*

normal retirement age and is eligible for service retirement commencing on the member's minimum retirement date."

Section 116. Section 19-13-902, MCA, is amended to read:

"19-13-902. Survivorship benefit. (1) ~~Upon the death before retirement of an active member the~~ *A* member's surviving spouse, if there is one, must receive a survivorship benefit ~~equal to one-half the final average compensation received by the member~~ *amount as provided in this section.* If ~~the~~ *a* member leaves ~~one or more dependent children, then, upon the member's death if the member leaves~~ no surviving spouse or upon the death of the surviving spouse, the member's *surviving* dependent children must collectively receive the same benefit that a surviving spouse would have received~~;~~ *under this section. A child may receive a share of the benefit* as long as the ~~children remain~~ *child is a* dependent ~~children~~ *child,* as defined in 19-13-104.

(2) ~~If the deceased~~ *(a) The survivorship benefit paid upon the death of an active member who has completed less than 20 years of membership service is one-half the final average compensation received by the member.*

(b) The survivorship benefit paid upon the death of an active or inactive member *who has* completed over 20 years of membership service~~, the survivorship benefit must be equal to 2.5% of the final average compensation for each year of service~~ *is the benefit amount to which the member was entitled on the date of death.*

(3) Benefits provided under this section are subject to the benefit adjustments provided pursuant to part 10 of this chapter."

Section 117. Section 19-13-903, MCA, is amended to read:

"19-13-903. Payments ~~in absence of spouse or dependent child~~ *to designated beneficiary.* If, *after* a member dies ~~without leaving a surviving spouse or dependent child and if the member had designated a beneficiary in writing to the board as provided in 19-2-801~~, *a benefit is not paid pursuant to 19-13-704, 19-13-803, or 19-13-902, then* the board shall pay to the *member's* designated beneficiary the amount, if any, of the retired member's accumulated contributions minus the total of any ~~retirement~~ benefits already paid from the member's account. ~~If the deceased member did not designate a beneficiary or the beneficiary predeceased the member, the amount must be paid to the member's estate.~~"

Section 118. Section 19-17-102, MCA, is amended to read:

"19-17-102. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Active member" means a volunteer firefighter credited with service under this chapter during the most recently reportable fiscal year.

(2) "Benefit" means the pension, disability, or survivorship benefit provided under this chapter.

(3) "Board" means the public employees' retirement board provided for in 2-15-1009.

(4) "Claim" means a request from a member, surviving spouse, or dependent child for payment of medical or funeral expenses.

(5) "Department" means the department of administration.

(6) "Dependent child" means a child who is unmarried, who is under 18 years of age, and who is the child of a deceased member.

(7) "Disability" or "permanent total disability" means permanent total disability as defined in 39-71-116.

(8) "Fire company" means a fire company organized in an unincorporated area, town, or village in accordance with 7-33-2311.

(9) "Fiscal year" means the 12-month period that begins on July 1 and ends on June 30 of the following year.

(10) "Member" means a volunteer firefighter who has service credited under this chapter.

(11) "Pension trust fund" means the volunteer firefighters' pension trust fund established to pay *claims and* benefits under this chapter.

(12) "Retiree" or "retired member" means a member who is receiving full or partial participation benefits *or disability benefits* from the pension trust fund.

(13) "Service" means cumulative periods of active membership that are credited only in full fiscal ~~years~~ *year increments*.

(14) "Supplemental insurance" means insurance that is carried by a fire company for the purposes of providing disability or death benefits and that is in addition to any insurance required by law, including workers' compensation insurance.

(15) "Surviving spouse" means the spouse married to a member when the member dies.

(16) "Survivorship benefit" means the monthly benefit paid to the surviving spouse or dependent child of a deceased member.

(17) "Volunteer firefighter" means a person who is an active member of an eligible fire company and is not compensated for services as a firefighter."

Section 119. Section 19-17-104, MCA, is amended to read:

"19-17-104. Penalty for false statements or claims. A person required to make a statement or affidavit by this chapter who willfully falsifies ~~such~~ *the* statement or affidavit or a person who files a false claim under this chapter is guilty of a misdemeanor and upon conviction ~~thereof~~ shall be punished by a fine *in an amount* not exceeding ~~$500~~ *$1,000* or *by* imprisonment *for a term* not exceeding ~~6 months~~ *1 year*, or both."

Section 120. Section 19-17-106, MCA, is amended to read:

"19-17-106. Pension trust fund established — restrictions on use. (1) A pension trust fund is established and maintained for payment of claims and benefits provided under the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan.

(2) *The pension trust fund must be funded on an actuarially sound basis. For purposes of this subsection, "actuarially sound basis" means that contributions must be sufficient to pay the full actuarial cost of the fund. The full actuarial cost includes both the normal cost of providing benefits as they accrue in the future and the cost of amortizing unfunded liabilities over a scheduled period of no more than 30 years.*

(3) Except as provided in this section, a member or an employee of the department or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust fund;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust fund or deposits;

(c) in any manner use the pension trust fund except to make current and necessary payments that are authorized by the board; or

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust fund.

~~(3)~~*(4)* The assets of the pension trust fund may not be used for or diverted to any purpose other than for the exclusive benefit of members, their surviving spouses, their dependent children, and qualified fire companies and for paying the reasonable administrative expenses of administering this chapter.

(5) Upon the termination of the pension trust fund, the substantial reduction in the number of members that would constitute a partial termination of the pension trust fund, or the complete discontinuance of contributions to the pension trust fund, the pension benefit accrued to each member directly affected by the occurrence becomes fully vested and nonforfeitable to the extent that the benefit is funded."

Section 121. Section 19-17-202, MCA, is amended to read:

"**19-17-202. Reports of board.** (1) ~~The~~ *As soon as practical after the close of each fiscal year, the* board shall~~, not later than November 1 of each year, make a report to~~ *file with* the governor *a report* covering ~~the operations and proceedings for the prior fiscal year relative to its~~ administration of the Volunteer Firefighters' Compensation Act ~~and the volunteer firefighters' pension plan~~ *for that fiscal year.*

(2) The report ~~may include suggestions or recommendations that the board considers of value for public information~~ *must include:*

(a) a statement of the accumulated cash and securities in the pension trust fund as certified by the state treasurer and the board of investments; and

(b) the most recent published report of the actuary of the actuarial valuation of the assets and liabilities of the plan.

~~(2) Copies of the reports must be made available by the board to the chief or other representative of any volunteer fire company or companies that request them.~~"

Section 122. Section 19-17-401, MCA, is amended to read:

"**19-17-401. Eligibility for pension and disability benefits.** (1) To qualify for pension and disability benefits under this chapter, a member shall meet the requirements of subsections (2) or (3) and (4).

(2) (a) For full pension benefits, a member must have completed at least 20 years' service and must have attained 55 years of age, but need not be an active member of a fire company when 55 years of age is reached.

(b) A member who is prevented from completing at least 20 years' service may qualify for partial pension benefits if the member has completed at least 10 years' service and has attained 60 years of age, but need not be an active member of any fire company when 60 years of age is reached.

(3) An active member of a fire company whose duty-related injury results in permanent total disability, *as defined in 39-71-116 and determined pursuant to [section 127],* is eligible, regardless of age or service, to receive a disability benefit.

(4) To receive *a* pension or disability ~~benefits~~ *benefit,* a volunteer firefighter may not be an active member of any fire company. A volunteer firefighter who receives *a* pension or disability ~~benefits~~ *benefit* under this chapter may not become an active member of any fire company."

Section 123. Section 19-17-403, MCA, is amended to read:

"**19-17-403. Application for benefits.** (1) *A member may, as provided in this section, apply for retirement benefits before terminating covered service, but commencement of the benefits must be as provided in [section 128].*

(2) A member, surviving spouse, or dependent child shall apply for benefits on a form provided by the board.

~~(2)~~*(3)* The application must contain:

(a) the name, address, and date of birth of the member, surviving spouse, or dependent child;

(b) the date of birth of the member; ~~and~~

(c) *the date of the member's death, if applicable; and*

(d) the fiscal years during which service as an active member is claimed and the names of the fire companies with which the service was rendered.

~~(3)~~*(4)* The board may require any proof of age, *death,* and service that it may consider proper, but it must accept a certificate properly completed and timely filed under 19-17-402 or subsection (3) of section 22, Chapter 157, Laws of 1977, as prima facie proof of service.

~~(4) If a qualified member properly submits an application, the member is entitled to receive benefits as of the first day of the month following approval of the application.~~"

Section 124. Section 19-17-404, MCA, is amended to read:

"**19-17-404. Amount of pension and disability benefits.** (1) (a) Each eligible member must receive pension and disability benefits as provided in this section.

(b) The base pension benefit is $100 ~~per~~ *a* month for members who are eligible for full pension benefits.

(c) Partial pension benefits are calculated by multiplying the full pension benefit of $100 by a fraction, the numerator of which is the member's years of service and the denominator of which is 20.

(2) The disability benefit paid to eligible members is calculated in the same manner as partial pension benefits described in subsection (1)(c), except that the numerator may not be less than 10.

(3) If any fraudulent change or any inadvertent mistake in records results in any member, surviving spouse, or dependent child receiving more or less than entitled to, then on the discovery of the error, the board shall correct the error and adjust the payments to the member, surviving spouse, or dependent child in an equitable manner."

Section 125. Section 19-17-405, MCA, is amended to read:

"**19-17-405. Survivorship benefits to surviving spouse or dependent children.** (1) Subject to the limitation in subsection (3), survivorship benefits equal to the full or partial pension benefits otherwise payable to the deceased member must be paid or continue to be paid to the surviving spouse or, if the deceased member left no surviving spouse but left a dependent child, to the guardian or other person having custody of the dependent child.

(2) The survivorship benefit must be paid in each of the following circumstances:

(a) the death on or after July 1, 1995, of a member who had at least 10 years of service and who was not receiving pension benefits; or

(b) the death on or after July 1, 1985, of a retired member who was receiving pension benefits but who had not received benefits for a total of 40 months.

(3) Survivorship benefits under subsection (1) terminate when benefits have been paid for a total of 40 months, including any pension or disability benefits paid to the retiree before death. *At the request of the recipient, a lump-sum payment may be made in lieu of up to 40 months of survivorship benefits.*"

Section 126. Section 19-17-407, MCA, is amended to read:

"**19-17-407. Exemption from taxation *and legal process.*** *(1)* The first $3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and municipal taxation.

(2) Except as provided in 19-2-907 and 19-2-909, benefits received under this part are not subject to execution, garnishment, attachment, or any other process."

Section 127. Determination of disability. (1) The board shall determine whether a member has become disabled. In the discharge of its duty regarding determinations, the board, any member of the board, or any authorized representative of the board may order medical examinations, conduct contested case hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability benefits.

(2) The board shall retain medical personnel to advise it in initially determining the nature and extent of disabling conditions.

Section 128. Time benefits commence. (1) The pension benefit payable pursuant to this part may commence on the first day of the month following the eligible member's last day of service or on the first day of a later month following filing of the written application.

(2) The disability retirement benefit payable pursuant to this part must commence on the day following the member's termination from service.

(3) Monthly survivorship benefits payable pursuant to this part must commence on the day following the death of the member.

Section 129. Catchup eligibility and normal retirement age. For the purposes of determining a participant's eligibility to catch up on making the maximum annual deferrals allowable, normal retirement age must be specified in writing by the participant and must be no earlier than:

(1) the age at which the participant is eligible to retire pursuant to the participant's Title 19 retirement system because of the participant's age, length of service, or both, without disability, and with the right to receive immediate retirement benefits without actuarial or similar reduction because of retirement before a specified age; or

(2) 60 years of age if the participant is not a member of a Title 19 retirement plan or is a member of a defined contribution retirement plan.

Section 130. Repealer. Sections 19-2-1101 and 19-2-1102, MCA, are repealed.

Section 131. Codification instruction. (1) [Sections 28 and 29] are intended to be codified as an integral part of Title 19, chapter 3, part 5, and the provisions of Title 19, chapter 3, part 5, apply to [sections 28 and 29].

(2) [Section 65] is intended to be codified as an integral part of Title 19, chapter 6, part 8, and the provisions of Title 19, chapter 6, part 8, apply to [section 65].

(3) [Section 80] is intended to be codified as an integral part of Title 19, chapter 7, part 8, and the provisions of Title 19, chapter 7, part 8, apply to [section 80].

(4) [Section 98] is intended to be codified as an integral part of Title 19, chapter 8, part 9, and the provisions of Title 19, chapter 8, part 9, apply to [section 98].

(5) [Section 105] is intended to be codified as an integral part of Title 19, chapter 9, part 4, and the provisions of Title 19, chapter 9, part 4, apply to [section 105].

(6) [Section 113] is intended to be codified as an integral part of Title 19, chapter 13, part 4, and the provisions of Title 19, chapter 13, part 4, apply to [section 113].

(7) [Sections 127 and 128] are intended to be codified as an integral part of Title 19, chapter 17, part 4, and the provisions of Title 19, chapter 17, part 4, apply to [sections 127 and 128].

(8) [Section 129] is intended to be codified as an integral part of Title 19, chapter 50, part 1, and the provisions of Title 19, chapter 50, part 1, apply to [section 129].

Section 132. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 29] is effective June 30, 2001.

Section 133. Termination. [Section 28] terminates June 30, 2001.

Approved March 21, 2001

CHAPTER NO. 100

[HB 174]

AN ACT PROVIDING THAT A PERSON CONVICTED OF A FIRST VIOLATION OF CRIMINAL POSSESSION OF DANGEROUS DRUGS OR POSSESSION OF DRUG PARAPHERNALIA IS PRESUMED TO BE

ENTITLED TO A DEFERRED IMPOSITION OF ANY SENTENCE OF IMPRISONMENT; AND AMENDING SECTIONS 45-9-102 AND 45-10-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-9-102, MCA, is amended to read:

"**45-9-102. Criminal possession of dangerous drugs.** (1) A person commits the offense of criminal possession of dangerous drugs if ~~he~~ *the person* possesses any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed $1,000 or imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and imprisonment.

(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not more than 6 months, or both.

(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than $50,000, except as provided in 46-18-222.

(5) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2), (3), or (4) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $50,000, or both.

(6) A person ~~of the age of 21 years or under~~ convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

(7) Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Section 2. Section 45-10-103, MCA, is amended to read:

"**45-10-103. Criminal possession of drug paraphernalia.** It is unlawful for ~~any~~ *a* person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. ~~Any~~ *A* person who violates this section is guilty of a misdemeanor and upon conviction shall be ~~imprisoned~~ *imprisoned* in the county jail for not more than 6 months, fined *an amount of* not more than $500, or both. *A person convicted of a first violation of this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.*"

Approved March 22, 2001

CHAPTER NO. 101

[HB 175]

AN ACT ALLOWING DISCLOSURE OF CONFIDENTIAL HEALTH CARE INFORMATION WITHOUT A PATIENT'S AUTHORIZATION TO THE STATE MEDICAL EXAMINER OR COUNTY CORONER FOR THE PURPOSE OF DETERMINING A CAUSE OF DEATH; AND AMENDING SECTION 50-16-530, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-16-530, MCA, is amended to read:

"50-16-530. Disclosure without patient's authorization — other bases. A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

(1) directory information, unless the patient has instructed the health care provider not to make the disclosure;

(2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;

(3) to federal, state, or local law enforcement authorities to the extent required by law;

(4) to a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured on a public roadway or was injured by the possible criminal act of another;

(5) in response to a request of the division of crime control for information under 53-9-104(2)(b);

(6) pursuant to compulsory process in accordance with 50-16-535 and 50-16-536; ~~or~~

(7) pursuant to 50-16-712*; or*

(8) to the state medical examiner or a county coroner for use in determining cause of death. The information is required to be held confidential as provided by law."

Approved March 22, 2001

CHAPTER NO. 102

[HB 238]

AN ACT REQUIRING THAT VICTIMS OF JUVENILE FELONY OFFENSES BE NOTIFIED OF AN OFFENDER'S RELEASE PRIOR TO RELEASE; AND AMENDING SECTION 41-5-1416, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-1416, MCA, is amended to read:

"41-5-1416. Victims and witnesses of juvenile felony offenses — consultation — notification of proceedings. (1) The attorney general shall ensure that the services and assistance that must be provided under Title 46, chapter 24, to a victim or witness of a crime are also provided to the victim or witness of a juvenile felony offense.

(2) In a proceeding filed under this part, the county attorney or a designee shall consult with the victim of a juvenile felony offense regarding the disposition of the case, including:

(a) a dismissal of the petition filed under 41-5-1402;

(b) a reduction of the charge to misdemeanor;

(c) the release of the youth from detention or shelter care pending the adjudicatory hearing~~; and~~ *or pending a probable cause hearing. The consultation required by this subsection (2)(c) must take place prior to the youth's release, whether or not the county attorney or designee has received information from the victim under subsection (3)(a), unless the county attorney or designee is unable to contact the victim after making a good faith effort to contact the victim.*

(d) the disposition of the youth.

(3) (a) Whenever possible, a person described in subsection (3)(b) who provides the appropriate agency with a current address and telephone number must receive prompt advance notification of youth court case proceedings, including:

(i) the filing of a petition under 41-5-1402;

(ii) the release of the youth from detention or shelter care; and

(iii) proceedings in the adjudication of the petition, including, when applicable, entry of a consent decree under 41-5-1501, the setting of a date for the adjudicatory hearing under 41-5-1502, the setting of a date for the dispositional hearing under 41-5-1511, the disposition made, and the release of the youth from a youth correctional facility.

(b) A person entitled to notification under this subsection (3) must be a victim, as defined in 41-5-103, of a juvenile felony offense.

(c) The county attorney or a designee ~~that~~ *who* provides the consultation regarding the disposition of a case required in subsection (2) shall give the victim the opportunity to provide the victim's current telephone number and address and shall provide the victim with the name and address of the agency or agencies responsible for operation of youth detention, correctional, or shelter care facilities that are responsible for the custody of the youth.

(d) The appropriate official or agency shall provide the notification required by this subsection (3) in the same manner as required for offenses committed by adults.

(4) For purposes of this section, "juvenile felony offense" means an offense committed by a juvenile that, if committed by an adult, would constitute a felony offense. The term includes any offense for which a juvenile may be declared a serious juvenile offender, as defined in 41-5-103."

Approved March 22, 2001

CHAPTER NO. 103

[HB 268]

AN ACT INCREASING THE BIDDING REQUIREMENTS FOR A SCHOOL DISTRICT FROM $15,000 TO $25,000; AND AMENDING SECTION 20-9-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-204, MCA, is amended to read:

"**20-9-204. Conflicts of interests, letting contracts, and calling for bids.** (1) It is unlawful for a trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by the trustee while acting in that official capacity or by the board of trustees of which the trustee is a member; or

(b) be employed in any capacity by the trustee's own school district.

(2) For the purposes of subsection (1):

(a) "pecuniary interest" does not include holding an interest of 10% or less in a corporation;

(b) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions that are in the business of loaning or receiving money when the investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services, other than salaried services, or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of the lack of availability are entered in the minutes of the board meeting at which the contract is considered.

(3) Except for district needs that must be met due to an unforeseen emergency as defined in 20-3-322(5), whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of ~~$15,000~~ *$25,000*, the work done or the purchase made must be by contract. Each contract must be let to the lowest responsible bidder after advertisement for bids. The advertisement must be published in the newspaper that will give notice to the largest number of people of the district as determined by the trustees. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section is void. The bidding requirements of this subsection do not apply to:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an attorney;

(d) a consulting actuary;

(e) a private investigator licensed by any jurisdiction;

(f) a claims adjuster; or

(g) an accountant licensed under Title 37, chapter 50.

(4) Whenever bidding is required, the trustees shall award the contract to the lowest responsible bidder, except that the trustees may reject any bids.

(5) ~~Nothing in this~~ *This* section ~~requires~~ *may not require* the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service that can be accomplished by district staff whose regular employment with the school district is related to the routine performance of maintenance for the district."

Approved March 22, 2001

CHAPTER NO. 104

[HB 286]

AN ACT ESTABLISHING THE RIGHT OF CRIME VICTIMS TO ATTEND CRIMINAL PROCEEDINGS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Crime victims — family members — right to attend proceedings — exceptions. (1) Except as provided in subsection (2), a victim of a criminal offense has the right to be present during any trial or hearing conducted by a court that pertains to the offense, including a court proceeding conducted under Title 41, chapter 5. A victim of a criminal offense may not be excluded from any trial or hearing based solely on the fact that the victim has been subpoenaed or required to testify as a witness in the trial or hearing.

(2) A judge may exclude a victim of a criminal offense from:

(a) a trial or hearing upon the finding of specific facts supporting exclusion or for disruptive behavior; or

(b) a portion of a proceeding under Title 41, chapter 5, that deals with sensitive personal matters of a youth or a youth's family and that does not directly relate to the act or alleged act committed against the victim.

(3) If a victim is excluded from a trial or hearing upon the finding of specific facts supporting exclusion, the victim must be allowed to address the court on the issue of exclusion prior to the findings.

(4) A family member of a victim may not be excluded from a trial or hearing based solely on the fact that the family member is subpoenaed or required to testify as a witness in the trial or hearing unless there is a showing that the family member can give relevant testimony as to the guilt or innocence of the defendant or that the defendant's right to a fair trial would be jeopardized if the family member is not excluded.

(5) As used in this section, "victim" means:

(a) a person who suffers loss of property or bodily injury as a result of:

(i) the commission of an offense;

(ii) the good faith effort to prevent the commission of an offense; or

(iii) the good faith effort to apprehend a person reasonably suspected of committing an offense; or

(b) a member of the immediate family of a homicide victim.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 24, part 1, and the provisions of Title 46, chapter 24, part 1, apply to [section 1].

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 22, 2001

CHAPTER NO. 105

[HB 358]

AN ACT REVISING THE PROCEDURES FOR OPENING OR REOPENING AN ELEMENTARY SCHOOL; ALLOWING PARENTS OF AT LEAST TWO PUPILS TO PETITION THE TRUSTEES; LOWERING THE REQUIRED ANB TO TWO; ALLOWING THE TRUSTEES TO OPEN OR REOPEN THE SCHOOL DURING THE CURRENT SCHOOL FISCAL YEAR; REQUIRING A SCHOOL TO BE CLASSIFIED AS ISOLATED BEFORE OPENING OR REOPENING DURING THE CURRENT SCHOOL FISCAL YEAR; AMENDING SECTIONS 20-6-502 AND 20-9-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-6-502, MCA, is amended to read:

"20-6-502. Opening or reopening of elementary school. The trustees of any elementary district may open or reopen an elementary school of the district when ~~such~~ *the* opening or reopening has been approved in accordance with the following procedure:

(1) The parents of at least ~~three~~ *two* pupils who would attend the opened or reopened school petition the trustees of the district to open or reopen a school ~~during the ensuing school fiscal year~~. ~~Such~~ *The* petition ~~shall~~ *must* identify the school, state the reasons for requesting the opening or reopening, and give the names of the children who would attend ~~such~~ *the* school.

(2) If the trustees approve the opening or reopening of a school, they shall send the petition with a copy of their approval resolution to the county superintendent. The county superintendent shall review the petition to determine if the average number belonging (ANB) of ~~such~~ *the* school would be ~~five~~ *two* or more. *If the trustees plan to open or reopen the school during the current school fiscal year, the trustees shall include the proposed opening date in the approval resolution and shall request that the process outlined in this section be expedited.*

(3) The county superintendent shall present the petition, trustees' approval, and ~~his~~ *the county superintendent's* findings on the probable ANB to the board of county commissioners ~~(budget board)~~ for their consideration. The ~~budget~~ board shall deny the opening or reopening of any school if the county superintendent's enrollment estimate for ~~such~~ *the* school is less than ~~five~~ *two* ANB. In all other cases, the ~~budget~~ board may approve or disapprove the requested opening or reopening of the elementary school.

(4) *(a)* If the ~~budget~~ board approves a school opening or reopening, the county superintendent shall send a copy of ~~such~~ *the* approval, along with the petition, trustees' approval, and ~~his~~ *the county superintendent's* estimate of the probable ANB, to the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the requested opening or reopening of the elementary school. If the opening or reopening is approved, the superintendent of public instruction shall approve or adjust the ANB estimate of the county superintendent for ~~such~~ *the* school and ~~such~~ *the* ANB amount ~~shall~~ *must* be used for budgeting and BASE funding program purposes during the ensuing school fiscal year. ~~No~~ *An* ANB amount ~~shall~~ *may not* be approved for the ensuing school fiscal year for an opening or reopening school when the request for ~~such~~ *the* school has not been received by the superintendent of public instruction before the fourth Monday of June.

(b) (i) If the opening or reopening is approved and the trustees want to open or reopen the school during the current school fiscal year, the trustees shall submit a budget request to the superintendent of public instruction for that portion of the fiscal year in which the school will be in operation prior to the ensuing school fiscal year. The superintendent of public instruction shall approve or adjust the budget request and shall fund the budget for the portion of the school year in which the school will be in operation.

(ii) Before a school can open or reopen during the current school fiscal year, the school must be classified as an isolated school in accordance with the provisions of 20-9-302, except that the dates in that section for the submission and approval of the application for classification do not apply and the application must be made at the same time that the application for opening or reopening the school is made."

Section 2. Section 20-9-302, MCA, is amended to read:

"**20-9-302. School isolation.** (1) ~~The~~ *Except as provided in 20-6-502(4)(b), the* trustees of any district operating an elementary school of less than 10 ANB or a high school of less than 25 ANB for 2 consecutive years shall apply to have the school classified as an isolated school. The application ~~shall~~ *must* be submitted by the trustees to the county superintendent by May 1 of the second consecutive year that enrollment falls below the amount specified in this subsection. ~~Such~~ *The* application ~~shall~~ *must* include:

(a) the name of each pupil who will attend the school during the ensuing school fiscal year with the distance the pupil resides from the nearest county road or highway;

(b) a description of conditions affecting transportation such as poor roads, mountains, rivers, or other obstacles to travel, the distance the school is from the nearest open school having room and facilities for the pupils of ~~such~~ *the* school, or any other condition that would result in an unusual hardship to the pupils of the school if they were transported to another school; and

(c) any other information prescribed by the superintendent of public instruction.

(2) The county superintendent shall submit the applications to the board of county commissioners ~~(budget board)~~ for their consideration on or before May 15. The ~~budget~~ board shall approve or disapprove the application on the basis of the criteria established by the superintendent of public instruction. The ~~budget~~ board ~~also~~ may approve an application because of the existence of other conditions which would result in an unusual hardship to the pupils of ~~such~~ *the* school if they were transported to another school.

(3) When an application is approved, the county superintendent shall submit ~~such~~ *the* application to the superintendent of public instruction before June 1. The superintendent of public instruction shall approve or disapprove ~~such~~ *the* application for isolated classification by the fourth Monday of June on the basis of the information supplied by the application or objective information the superintendent of public instruction may collect on ~~his~~ *the superintendent's* own initiative. ~~No~~ *An* elementary or high school ~~shall~~ *may not* be considered an isolated school until the approval of the superintendent of public instruction has been received."

Section 3. Effective date. [This act] is effective July 1, 2001.

Approved March 22, 2001

CHAPTER NO. 106

[HB 417]

AN ACT GENERALLY REVISING LAWS RELATING TO INSURANCE PRODUCERS; AUTHORIZING THE COMMISSIONER OF INSURANCE TO PARTICIPATE IN A NATIONAL CENTRALIZED PRODUCER LICENSE REGISTRY; PROVIDING ADDITIONAL DEFINITIONS; PROVIDING AN EXEMPTION FROM PRELICENSING EDUCATION AND EXAMINATION REQUIREMENTS FOR NONRESIDENT INSURANCE PRODUCERS UNDER CERTAIN CIRCUMSTANCES; ITEMIZING THE LINES OF AUTHORITY FOR WHICH AN INSURANCE PRODUCER MAY RECEIVE A LICENSE; AMENDING SECTIONS 33-17-101, 33-17-102, 33-17-212, 33-17-214, 33-17-401, AND 33-17-1203, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Centralized producer license registry — rules. (1) The commissioner may participate, in whole or in part, with the national association of insurance commissioners, or any affiliates or subsidiaries that the national association of insurance commissioners oversees, in a centralized producer license registry in which insurance producer licenses and appointments may be centrally or simultaneously effected for all states that participate in the registry and that require an insurance producer license.

(2) If the commissioner finds that participation in the centralized producer license registry is in the public interest, the commissioner may adopt by rule any uniform standards and procedures necessary to participate in the registry, including the central collection of all fees for licenses or appointments that are processed through the registry.

Section 2. Section 33-17-101, MCA, is amended to read:

"**33-17-101. Scope of chapter.** (1) The purpose of this chapter is to govern the qualifications and procedures for licensing insurance producers.

(2) ~~This~~ *Except as provided in subsection (3), this* chapter applies to all stock, mutual, and reciprocal insurers and to all kinds of insurance and annuities.

(3) Except as provided in 33-17-401 and [section 8(2)], this chapter does not apply to surplus lines producers."

Section 3. Section 33-17-102, MCA, is amended to read:

"**33-17-102. Definitions.** As used in this title, the following definitions apply:

(1) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of an independent contractor or for fee or commission investigates and negotiates settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer. The term does not include a:

(a) licensed attorney who is qualified to practice law in this state;

(b) salaried employee of an insurer or of a managing general agent;

(c) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies issued by the insurer; or

(d) licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies issued by the insurer.

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster.

(3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on these coverages.

(b) The term does not mean:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or

(B) a health service corporation as defined in 33-30-101;

(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from its credit card holders who have authorized it to do so, if the company does not adjust or settle claims;

(xi) a person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities; or

(xii) a person appointed as a managing general agent in this state whose activities are limited exclusively to those described in 33-2-1501(10) and Title 33, chapter 2, part 16.

(4) "Administrator license" means a document issued by the commissioner that authorizes a person to act as an administrator.

(5) "Consultant" means a person who for a fee examines, appraises, reviews, or evaluates an insurance policy, annuity, or pension contract, plan, or program or who makes recommendations or gives advice on an insurance policy, annuity, or pension contract, plan, or program.

(6) "Consultant license" means a document issued by the commissioner that authorizes a person to act as an insurance consultant.

(7) "Controlled business" means insurance procured or to be procured by or through a person upon the life, person, property, or risks of the person or the person's spouse, employer, or business.

(8) "Individual" means a private or natural person, as distinguished from a partnership, corporation, or association.

(9) "Insurance producer", except as provided in 33-17-103:

(a) means:

(i) a person who solicits, negotiates, effects, procures, delivers, renews, continues, or binds:

(A) policies of insurance for risks residing, located, or to be performed in this state; or

(B) membership contracts as defined in 33-30-101;

(ii) a managing general agent. For purposes of this chapter, the term "managing general agent" has the same meaning as set forth in 33-2-1501.

(b) does not mean a customer service representative. For purposes of this definition, a "customer service representative" means a salaried employee of an insurance producer who assists and is responsible to the insurance producer.

(10) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the kinds of insurance specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

(11) "Limited line credit insurance" includes credit life insurance, credit disability insurance, credit property insurance, credit unemployment insurance, involuntary unemployment insurance, mortgage life insurance, mortgage guaranty insurance, mortgage disability insurance, gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation and that the commissioner determines should be designated as a form of limited line credit insurance.

(12) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

(13) "Limited lines insurance" means those lines of insurance defined in 33-1-211 through 33-1-217 and [sections 9 and 10] or any other line of insurance that the commissioner finds necessary to recognize for the purposes of complying with 33-17-401(3).

(14) "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or negotiate limited lines insurance.

(15) "Lines of authority" means any kind of insurance as defined in Title 33.

~~(11)~~*(16)* "Person" means an individual, partnership, corporation, association, or other legal entity.

~~(12)~~*(17)* "Public adjuster" means an adjuster employed by and representing the interests of the insured.

(18) "Uniform application" means the national association of insurance commissioners' uniform application for resident and nonresident insurance producer licensing."

Section 4. Section 33-17-212, MCA, is amended to read:

"33-17-212. Examination required — exceptions — fees. (1) Except as provided in subsection (6), an individual applying for a license is required to pass a written examination. The examination must test the knowledge of the individual concerning each kind of insurance listed in subsection (5) for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. The examination must be developed and conducted under rules adopted by the commissioner.

(2) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination. The commissioner may arrange for the testing service to recover the cost of the examination from the applicant.

(3) An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination and shall remit all forms before being rescheduled for another examination.

(4) If the applicant is a partnership or corporation, each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license shall meet the qualifications as provided in this section.

(5) Examination of an applicant for a license must cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance. For the purposes of this provision, property insurance includes marine insurance.

(d) casualty insurance;

(e) surety insurance;

(f) credit life and disability insurance;

(g) title insurance.

(6) This section does not apply to and an examination is not required of:

(a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and who continues to be licensed;

(b) an applicant for a license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months immediately preceding the date of application unless the commissioner has suspended, revoked, or refused to continue the previous license, except that this subsection (6)(b) does not apply to a title insurance producer, as defined in 33-25-105;

(c) an applicant for a license as a nonresident insurance producer;

(d) an applicant for a license to sell all-risk federal crop insurance if the applicant provides certification from an appropriate governmental agency to the commissioner that the applicant is qualified to sell the insurance;

(e) transportation ticket agents of common carriers applying for a license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on a common carrier, as incidental to their duties as transportation ticket agents;

(f) an association applying for a license under 33-17-211;

(g) a mechanical breakdown insurance producer;

(h) a prepaid legal plans producer;

(i) a gap insurance producer;

(j) involuntary unemployment insurance producer; ~~or~~

(k) a credit property insurance, credit unemployment insurance, or mortgage guaranty insurance producer; or

~~(k)~~*(l)* an individual who, within 60 days of cancellation of a license issued by the state of the individual's residence, files with the commissioner a current letter of clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and that is not covered under the license held in the other state.

(7) (a) Subject to the provisions of subsection (7)(b), an individual who applies for a nonresident insurance producer license in this state and who was previously

licensed for the same lines of authority in another state may not be required to complete any prelicensing education or examination.

(b) The exemption in subsection (7)(a) is available only if the individual is currently licensed in the other state or the individual's application is received within 90 days of the cancellation of the individual's previous license and if the other state issues a certification that, at the time of the cancellation, the individual was in good standing in that state or the state's database records, maintained by the national association of insurance commissioners or any of the association's affiliates or subsidiaries that the association oversees, indicate that the insurance producer is or was licensed in good standing for the lines of authority requested."

Section 5. Section 33-17-214, MCA, is amended to read:

"**33-17-214. Issuance of license — ~~contents~~ *insurance producer lines of authority — license data* — lapse of license — change of address.** (1) ~~The commissioner shall promptly issue a license to a person pursuant to 33-17-211 and 33-17-212.~~ *A person who has met the requirements of 33-17-211 and 33-17-212 must be issued a license, unless that person has been denied a license pursuant to 33-17-1001.*

(2) An insurance producer may receive a license qualifying the insurance producer in one or more of the following lines of authority:

(a) life insurance coverage on human lives, including benefits of endowment and annuities, and the coverage may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(b) accident and health or sickness insurance coverage providing for sickness, bodily injury, or accidental death, and the coverage may provide benefits for disability income;

(c) property insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) casualty insurance coverage against legal liability, including liability for death, injury, or disability or damage to real or personal property;

(e) variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities;

(f) personal lines of property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(g) limited line credit insurance; or

(h) any other line of insurance permitted under Title 33.

~~(2)~~*(3)* The license must state the name and address of the licensee, personal identification number, date of issuance, general conditions relative to expiration or termination, kind of insurance covered, and other information ~~as~~ *that* the commissioner considers necessary.

~~(3)~~*(4)* The license of a partnership, corporation, or association must also state the name of each individual authorized to exercise the license powers.

~~(4)~~*(5)* Each license remains in effect, unless suspended or revoked.

~~(5)~~*(6)* A person shall inform the commissioner in writing of a change of address within 30 days of the change."

Section 6. Section 33-17-401, MCA, is amended to read:

"33-17-401. Nonresident insurance producer — ~~reciprocity~~ *license*. (1) A nonresident person, *unless denied licensure pursuant to 33-17-1001,* ~~may apply for a license~~ *must be granted a license* if:

(a) ~~the person meets the requirements of 33-17-211(2);~~

~~(b) the person is licensed in the state of his residence to act as insurance producer for the kind or kinds of insurance for which he applies for licensing in this state; and~~

~~(c) the person's state of residence issues a similar license to a resident of this state for the same kind or kinds of insurance for which the person is qualified in this state.~~

~~(2) The commissioner may license a nonresident individual without written examination if the insurance department in the individual's state of residence certifies that:~~

~~(a) the individual either has passed a written examination for each kind of insurance applied for or was licensed prior to the time a written examination was required in the individual's state of residence; and~~

~~(b) is currently licensed and in good standing.~~

~~(3) The commissioner may issue only a nonresident license to a person, partnership, or corporation otherwise qualified under this code but not a resident of this state.~~

~~(4) If, by the laws or rules of another state, a limitation of rights and privileges, conditions precedent, or any other requirements are imposed upon a resident of this state who is a nonresident licensee of the other state and the limitation, conditions, or requirements are in addition to or in excess of those imposed on nonresident persons under this chapter, the same limitation, conditions, or requirements must be imposed upon the residents of the other state.~~ *the person is currently licensed as a resident and is in good standing in the person's home state;*

(b) the person has submitted the proper request for licensure and has paid the fees required by 33-2-708;

(c) the person has submitted or transmitted to the commissioner the application for licensure that the person submitted to the person's home state or a completed uniform application; and

(d) the person's home state awards nonresident insurance producer licenses to residents of this state on the same basis.

(2) A person licensed as a surplus lines producer in that person's home state must receive a nonresident surplus lines producer license upon meeting the requirements of subsection (1). Except for subsection (1), this section does not amend or supercede any provision of the surplus lines insurance law established in Title 33, chapter 2, part 3.

(3) A person licensed as a limited line credit insurance producer or other type of limited lines producer in that person's home state must receive a nonresident limited lines producer license upon meeting the requirements of subsection (1), granting the same scope of authority as granted under the license issued by the producer's home state. For the purposes of this subsection, limited lines insurance is any authority granted by a nonresident's home state that restricts the authority

of the licensee to less than the total authority prescribed in the associated major lines pursuant to 33-17-214(2)(a) through (2)(e).

~~(5)~~*(4)* If a nonresident insurance producer's state of residence suspends, revokes, or terminates ~~his~~ *the insurance producer's* insurance license in that state, ~~his~~ *the insurance producer's* Montana nonresident license automatically terminates. ~~and the~~ *The* nonresident insurance producer shall notify the commissioner that ~~his~~ *the insurance producer's* state of residence has suspended, revoked, or terminated ~~his~~ *the insurance producer's* insurance license in that state."

Section 7. Section 33-17-1203, MCA, is amended to read:

"33-17-1203. Continuing education — basic requirements — exceptions. (1) Unless exempt under subsection (4):

(a) a person licensed to act as an insurance producer for property, casualty, surety, or title insurance or as a consultant for general insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;

(b) a person licensed to act as an insurance producer for life or disability insurance or as a consultant for life insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;

(c) a person holding multiple licenses shall, during each calendar year, complete at least 15 credit hours of approved continuing education;

(d) a person licensed to act as an insurance producer only for credit life and disability insurance shall, during each calendar year, complete 2 1/2 credit hours of approved continuing education in the areas of insurance law, ethics, or credit life and disability insurance;

(e) a person licensed as an insurance producer or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.

(2) If a person licensed as an insurance producer or consultant completes more credit hours of approved continuing education in a year than the minimum required in subsection (1), the excess credit hours may be carried forward and applied to the continuing education requirements of the next year.

(3) The commissioner may, for good cause, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.

(4) The minimum continuing education requirements do not apply to:

(a) a person licensed to sell any kind of insurance for which an examination is not required under 33-17-212~~(7)(d) through (7)(k)~~ *(6)(d) through (6)(l)*;

(b) a person holding a temporary license issued under 33-17-216;

~~(c) a nonresident licensee who must meet continuing education requirements in the licensee's state of residence if that state grants substantially similar privileges to and has similar requirements for residents of this state;~~

~~(d)~~*(c)* a newly licensed insurance producer or consultant during the calendar year in which the licensee first received a license;

~~(e)~~*(d)* a person who only executes surety bail bonds; or

~~(f)~~*(e)* an insurance producer or consultant otherwise exempted by the commissioner."

Section 8. Reciprocity — nonresident insurance producer licensing and continuing education. (1) The commissioner shall waive any requirements, except for the requirements of 33-17-401, for a nonresident applicant for an insurance producer's license who has a valid license from the applicant's home state if the applicant's home state awards nonresident licenses to residents of this state on the same basis.

(2) A nonresident insurance producer's satisfaction of the insurance producer's home state's continuing education requirements for licensed insurance producers constitutes satisfaction of this state's continuing education requirements if the nonresident insurance producer's home state recognizes the satisfactions of its continuing education requirements imposed upon insurance producers from this state on the same basis.

Section 9. Credit insurances — definitions. As used in this code, the following definitions apply:

(1) "Credit disability insurance" means the same as defined in 33-21-103.

(2) "Credit life insurance" means the same as defined in 33-21-103.

(3) "Credit property insurance" means any policy, endorsement, rider, cover note, memorandum, certificate, or other instrument or evidence of insurance covering perils to goods purchased through a credit transaction or pledged as collateral for a credit transaction and that concerns a creditor's interest in the purchased goods or pledged collateral either in whole or in part. Credit property insurance is a type of property insurance as provided for in 33-1-210.

(4) "Credit unemployment insurance" means insurance on a debtor to provide indemnity for payments or debt becoming due on a specific loan or other credit transaction while the debtor is involuntarily unemployed as defined in the policy. Credit unemployment insurance is a type of involuntary unemployment insurance as provided for in 33-1-216.

(5) "Debtor" means the same as defined in 33-21-103.

Section 10. Mortgage insurances — definitions. (1) "Mortgage" or "mortgage loan" is an indebtedness of more than 10 years duration that is secured by a real estate mortgage.

(2) "Mortgage disability insurance" is disability insurance designed to pay off all or a part of a mortgage loan in the event of the insured's disability. Mortgage disability insurance is a type of credit disability insurance.

(3) (a) "Mortgage guaranty insurance" is:

(i) insurance against financial loss by reason of nonpayment of principal, interest, or other sums agreed to be paid under the terms of any note, bond, or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate if the improvement of the real estate is a residential building, a condominium unit, or other building designed for occupancy by not more than four families;

(ii) insurance against financial loss by reason of nonpayment of principal, interest, or other sums agreed to be paid under the terms of any note, bond, or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate if the improvement on the real estate is a building or buildings designed for occupancy by five or more families or is designed to be occupied for industrial or commercial purposes; or

(iii) insurance against financial loss by reason of nonpayment of rent or other sums agreed to be paid under the terms of a written lease for the possession, use, or occupancy of real estate if the improvement of the real estate is a building or buildings designed to be occupied for industrial or commercial purposes.

(b) Mortgage guaranty insurance is a type of casualty insurance as provided for in 33-1-206.

(4) "Mortgage life insurance" is life insurance designed to pay off all or a part of a mortgage loan in the event of the insured's death. Mortgage life insurance is a type of credit life insurance as defined in 33-21-103.

Section 11. Codification instruction. (1) [Sections 1 and 8] are intended to be codified as an integral part of Title 33, chapter 17, and the provisions of Title 33, chapter 17, apply to [sections 1 and 8].

(2) [Sections 9 and 10] are intended to be codified as an integral part of Title 33, chapter 1, part 2, and the provisions of Title 33, chapter 1, part 2, apply to [sections 9 and 10].

Section 12. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2001.

(2) [Section 6(3)] is effective November 1, 2002.

Approved March 21, 2001

CHAPTER NO. 107

[HB 458]

AN ACT REQUIRING MANAGED CARE ORGANIZATIONS TO EMPLOY OR CONTRACT WITH A LICENSED PHYSICIAN TO SERVE AS A MEDICAL DIRECTOR.

Be it enacted by the Legislature of the State of Montana:

Section 1. Administration of managed care organization. Each managed care organization shall employ or contract with a physician who must be licensed in the state pursuant to Title 37, chapter 3, to serve as medical director.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 37, and the provisions of Title 33, chapter 37, apply to [section 1].

Approved March 22, 2001

CHAPTER NO. 108

[SB 44]

AN ACT PROVIDING FOR THE ACCRUAL OF PENALTIES THAT MAY BE ASSESSED AFTER A WARRANT FOR DISTRAINT HAS BEEN FILED; PROVIDING FOR UNIFORM PENALTY AND INTEREST FOR INDIVIDUAL

INCOME TAXES, THE PUBLIC CONTRACTOR'S TAX, AND THE RETAIL TELECOMMUNICATIONS EXCISE TAX; AMENDING SECTIONS 15-1-701, 15-1-708, 15-30-209, 15-50-301, AND 15-53-147, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-701, MCA, is amended to read:

"**15-1-701. Warrant for distraint.** (1) A warrant for distraint is an order, under the official seal of the department ~~of revenue~~ or of the department of transportation, directed to a sheriff of a county of Montana or to an agent authorized by law to collect a tax. The order commands the recipient to levy upon and sell the real and personal property of a delinquent taxpayer.

(2) Upon filing the warrant as provided in 15-1-704, there is a lien against all real and personal property of the delinquent taxpayer located in the county where the warrant is filed. The resulting lien is treated in the same manner as a properly docketed judgment lien, the department is a judgment lien creditor, and the department may collect delinquent taxes and enforce the tax lien in the same manner as a judgment is enforced, except that the department may enforce the judgment lien at any time within 10 years of its creation or effective date, whichever is later.

(3) A warrant may be issued for the amount of unpaid tax plus *accumulated* penalty, if any, and accumulated interest. The lien is for the amount indicated on the warrant plus accrued *penalty and* interest from the date of the warrant. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.

(4) The accelerated priority date provided for in (3) is not valid against purchasers, holders of security interests, judgment lien creditors, and those lienholders identified in Title 71, chapter 3, parts 3 through 15, whose interest is recorded prior to the filing of the warrant for distraint."

Section 2. Section 15-1-708, MCA, is amended to read:

"**15-1-708. Release of lien.** (1) Upon payment in full of the unpaid tax plus *accumulated* penalty, if any, and accumulated interest, the department shall release the lien acquired by filing the warrant for distraint.

(2) Upon partial payment or whenever the department determines that a release or partial release of the lien will facilitate the collection of the unpaid tax, penalty, and interest, the department may release or may partially release the lien acquired by filing the warrant for distraint. The department may release the lien if it determines that the lien is unenforceable.

(3) (a) After making all reasonable efforts to collect unpaid taxes, penalties, and interest on the taxes and penalties, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may transfer the debt to the department of administration for collection as provided in 17-4-104.

(b) Subject to approval by the department, reasonable fees or costs of collection incurred by the department of administration may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the department of administration. If less than the full amount of the debt is collected, the department of administration shall retain only a proportionate share of the collection fees or costs."

Section 3. Section 15-30-209, MCA, is amended to read:

"15-30-209. Violations by employer — penalties, interest, and remedies. *(1) The department shall, as provided in 15-1-216, add penalty and interest to the amount of all delinquent withholding taxes.*

~~(1)~~*(2)* The first time in any consecutive 3-year period that an employer files a report or remits a tax after the due date, the department shall issue a warning notice explaining to the employer that the employer failed to file a report on the due date as required by law and, if applicable, that the employer failed to remit the tax on the due date as required by law and the department shall notify the employer of the consequences of any further subsequent late reporting or late remittance.

~~(2)~~*(3)* A late report penalty may not be assessed under 15-1-216 if an employer files the late report prior to the issuance of a notice of delinquent report.

~~(3)~~*(4)* A late payment penalty may be waived pursuant to 15-1-206 if an acceptable payment agreement is made between the department and the employer. An employer's failure to meet the terms of the payment agreement voids the waiver and the penalty must be recomputed from the due date on the unpaid tax.

~~(4)~~*(5)* (a) A subpoena penalty of $50 must be assessed whenever, as the result of a refusal of an employer to furnish wage information or pay taxes on time, the department issues a subpoena pursuant to 15-1-302, to obtain wage information or make a summary or jeopardy assessment pursuant to 15-1-703.

(b) If an employer fails to honor the subpoena provided in subsection ~~(4)(a)~~ *(5)(a)*, an additional $100 penalty must be added to the liability.

~~(5)~~*(6)* In addition to any other penalty provided by law, the failure of an employer to furnish a wage and tax statement as required by 15-30-207(1) subjects the employer to a penalty of $5 for each failure with a minimum of $50.

~~(6)~~*(7)* Penalties may be waived by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts including a tax lien.

~~(7)~~*(8)* If any tax imposed by this chapter or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.

~~(8)~~*(9)* The tax lien provided for in subsection ~~(7)~~ *(8)* is not valid against any third party owning an interest in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if the third party receives from the most recent grantor of the interest an affidavit stating that all taxes, assessments, penalties, and interest due from the grantor have been paid.

~~(9)~~*(10)* A grantor who signs and delivers to the third party an affidavit as provided in subsection ~~(8)~~ *(9)* is subject to the penalties imposed by 15-30-321(1) if any part of the affidavit is untrue. The department may bring an action as provided in 15-30-321(1) in the name of the state to recover the civil penalty and any delinquent taxes.

~~(10)~~*(11)* All of the remedies available to the state for the administration, enforcement, and collection of income taxes are available and apply to the tax required to be deducted and withheld under the provisions of 15-30-201 through 15-30-208 unless otherwise specifically addressed in this part."

Section 4. Section 15-50-301, MCA, is amended to read:

"**15-50-301. ~~Rule~~ *Rules* for contractor's return ~~— penalty.~~** ~~(1)~~ The department ~~of revenue~~ shall establish rules requiring public contractors to file a contractor's return showing public works contracts performed during a calendar year.

~~(2) A person failing to file a contractor's license return as provided and required by the department of revenue, upon conviction, shall be fined not less than $1,000 or more than $10,000.~~"

Section 5. Section 15-53-147, MCA, is amended to read:

"**15-53-147. Penalty and interest for delinquency — waiver.** (1) Taxes due under this part become delinquent if not paid within 60 days after the end of each calendar quarter. The department shall add to the amount of all delinquent retail telecommunications excise taxes a penalty ~~of 10% of the excise tax due plus~~ *and* interest ~~at the rate of 1% a month or fraction of a month, computed from the date on which the tax becomes delinquent to the date of payment~~, *as provided in 15-1-216.*

(2) ~~The 10% penalty~~ *Penalty and interest, as provided in 15-1-216,* may be waived by the department if reasonable cause for the failure to file the return, as required by 15-53-139, or to pay the tax due is provided to the department."

Section 6. Effective date. [This act] is effective July 1, 2001.

Approved March 21, 2001

CHAPTER NO. 109

[SB 122]

AN ACT GENERALLY REVISING THE COOPERATIVE ASSOCIATION LAWS; ELIMINATING THE 40-YEAR LIMIT ON EXISTENCE FOR COOPERATIVE ASSOCIATIONS; CHANGING THE LIMIT ON THE NUMBER OF PERSONS WHO MAY FORM A COOPERATIVE ASSOCIATION; REMOVING THE MINIMUM REQUIREMENT FOR INITIALLY SUBSCRIBED STOCK; ELIMINATING PRICE LIMITS ON COOPERATIVE ASSOCIATION SHARES; AUTHORIZING THE SECRETARY OF STATE TO ESTABLISH FILING FEES COMMENSURATE WITH COSTS; AND AMENDING SECTIONS 35-15-103, 35-15-201, 35-15-203, 35-15-204, 35-15-205, AND 35-15-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-15-103, MCA, is amended to read:

"**35-15-103. Powers.** (1) Associations formed under this chapter ~~shall be~~ *are* bodies corporate and politic for the period for which they are organized, ~~not exceeding 40 years~~ *which may be of perpetual duration.*

(2) ~~Associations~~ *An association* formed under this chapter may:

(a) sue and be sued;

(b) have a common seal ~~which they~~ *that the association* may alter or renew at pleasure;

(c) own, possess, and enjoy ~~so much~~ real and personal property ~~as shall be~~ necessary for the transaction of ~~their~~ business and sell and dispose of the ~~same~~ *property*; and

(d) borrow money and pledge ~~their~~ property, both real and personal, to secure the payment ~~thereof~~ *of any borrowed money.*

(3) Associations formed under this chapter ~~shall~~ have ~~and exercise~~ all powers necessary ~~and requisite~~ to carry into effect the objects for which ~~they~~ *the associations* may be formed ~~and such as are~~, *including those powers* usually exercised by cooperative associations, subject to all duties, restrictions, and liabilities set forth in the general laws ~~in relation~~ *relating* to similar corporations~~;~~ ~~except so far as the same may be~~ *that are not* limited or enlarged by this chapter."

Section 2. Section 35-15-201, MCA, is amended to read:

"35-15-201. Incorporation. (1) Whenever ~~any number of persons, not less than three or more than seven, may~~ *two or more persons* desire to ~~become incorporated~~ *incorporate* as a cooperative association for the purpose of trade or of ~~prosecuting~~ *carrying out* any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, ~~they~~ *the persons* shall ~~make~~ *prepare* a statement to that effect ~~under their hands setting~~ *that also sets* forth:

(a) the name of the proposed ~~corporation~~ *cooperative association*;

(b) its capital stock;

(c) its location;

(d) the duration of the association; and

(e) the particular branch or branches of industry ~~which~~ ~~they~~ *that the association* ~~intend~~ *intends* to ~~prosecute~~ *carry out.*

(2) In addition to ~~provisions~~ *the items* required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with ~~law regarding~~ *the* liability *provisions* ~~as~~ set forth in 35-1-216.

(3) The statement, *accompanied by the required filing fee,* ~~shall~~ *must* be filed in the office of the secretary of state as the articles of incorporation of the association. ~~The~~ *After receiving the statement and the fee, the* secretary of state shall ~~thereupon~~ issue to ~~such~~ *the* persons *forming the association* a license as commissioners to open books for subscription to the capital stock of ~~such corporation,~~ *the association* at ~~such~~ *a* time and place ~~as they~~ *that the persons forming the association* may determine~~, for which he shall receive the fee of $20~~."

Section 3. Section 35-15-203, MCA, is amended to read:

"35-15-203. First meeting. As soon as ~~10 or more~~ *the initial* shares of the capital stock ~~shall be~~ *have been* subscribed, the commissioners shall convene a meeting of the subscribers for the purpose of electing directors, adopting bylaws, and transacting ~~such~~ other business ~~as shall~~ properly ~~come~~ before them. Notice ~~thereof shall~~ *of the meeting must* be given to each subscriber by ~~depositing same in the post office~~ *mailing the notice*, properly addressed, at least 10 days before the

~~time fixed,~~ *meeting. The notice must contain* ~~stating~~ the object, time, and place of ~~said~~ *the* meeting."

Section 4. Fees for filing, copying, and services. (1) The secretary of state shall establish by rule fees for filing documents and issuing certificates as required by this chapter.

(2) The secretary of state shall establish by rule fees for copying documents, priority handling, transmitting or filing facsimile copies, and providing computer-generated information.

(3) The fees prescribed under this section must be reasonably related to the costs of processing the documents and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section.

Section 5. Section 35-15-204, MCA, is amended to read:

"35-15-204. Issuance of certificate of organization — effect. (1) The commissioners shall make a full report of ~~their proceedings~~ *the first meeting,* including ~~therein~~ a copy of the notice provided for in ~~the preceding section~~ *35-15-203,* a copy of the subscription list, a copy of the bylaws adopted by the association, and the names of the directors elected and their respective terms of office~~,~~. ~~which~~ *The* report ~~shall~~ *must* be executed by at least a majority of the commissioners and ~~shall~~ *must* be filed in the office of the secretary of state *along with any required filing fee.* The secretary of state shall, ~~thereupon~~ *upon filing the report,* issue a certificate of the ~~complete~~ *completed* organization of the association~~,~~. ~~making a part thereof a copy of all papers filed in his office in and about the organization and duly authenticated under his hand and seal of the state, for which he shall receive the sum of $20, and thereupon a certified copy of said certificate shall be filed in the office of the county clerk in which the principal office of the association is located.~~

(2) Upon the filing of ~~said certified copy~~ *the report of the first meeting and the statement of incorporation with the secretary of state and the issuance of the certificate provided for in subsection (1),* the association ~~shall be deemed~~ *is considered* to be fully organized and may ~~proceed to~~ *engage in* business."

Section 6. Section 35-15-205, MCA, is amended to read:

"35-15-205. Amendment of articles of incorporation. At any time after the filing of the certificate of complete organization, the articles of incorporation may be amended. Any amendment of the articles of incorporation ~~shall first~~ *must* be *first* approved by two-thirds of the directors and then adopted by a vote of not less than two-thirds of those stockholders voting ~~thereon~~ *on the issue* at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A certificate setting forth ~~such~~ *any* amendment ~~shall~~ *must* be executed on behalf of the association by its president or ~~vice-president~~ *vice president* and ~~its corporate seal affixed thereto and~~ attested *to* by its secretary. ~~Such~~ *The* certificate *and any required filing fee* ~~shall~~ *must* be filed in the office of the secretary of state, who shall ~~thereupon~~ issue a certificate of amendment of the articles of incorporation~~, for which he shall receive the sum of $10, and thereupon a certified copy of such certificate shall be filed in the office of the county clerk in which the principal office of the association is located~~."

Section 7. Section 35-15-401, MCA, is amended to read:

"35-15-401. Classes of stock. (1) The *purchase price of the* shares of stock ~~shall not be less than $10 or more than $5,000 per share~~ *must be set by the cooperative association* and may be made payable in installments.

(2) ~~Every~~ *A* cooperative association may divide its shares of stock into preferred and common stock. The holders of preferred stock ~~shall have no~~ *may not have* voting power and ~~shall~~ *may* not participate in the management and affairs of the association~~;~~. ~~and the~~ *The* owners ~~thereof~~ *of preferred stock* shall share in the profits of the association to the extent ~~of not exceeding 6% per annum on the par value thereof~~ *determined by the cooperative association.* The common stock may be divided into classes of different values, and the owners ~~thereof~~ *of the common stock* shall share in the profits of the association ~~in proportion to the par value of their shares~~ *as determined by the cooperative association.* However, the owners of common stock in the different classes ~~shall~~ have the same power and ~~vote~~ *voting rights* in the association.

~~(3) The stock heretofore issued in classes of different par values by any cooperative association is hereby legalized and made valid.~~"

Section 8. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 35, chapter 15, part 2, and the provisions of Title 35, chapter 15, part 2, apply to [section 4].

Section 9. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved March 21, 2001

CHAPTER NO. 110

[HB 148]

AN ACT RELATING TO ELECTRONIC FILING FOR GASOLINE AND SPECIAL FUEL TAXES; EXTENDING THE DUE DATE FOR GASOLINE OR SPECIAL FUEL TAXES PAID BY ELECTRONIC FUNDS TRANSFER; ALLOWING A TAXPAYER TO FILE AN ELECTRONIC CLAIM FOR A REFUND ON FUEL TAXES PAID; AMENDING SECTIONS 15-70-113, 15-70-225, AND 15-70-364, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-113, MCA, is amended to read:

"15-70-113. Total remittance payable by electronic funds transfer. (1) Total remittance due the state may be paid by electronic funds transfer.

(2) If the payment of total remittance is by electronic funds transfer under this section and the due date falls on a Saturday, Sunday, or legal holiday, the payment must be made on the first business day following the Saturday, Sunday, or legal holiday.

(3) If the payment of the tax due on gasoline or special fuel pursuant to 15-70-205 and 15-70-344 is made by electronic funds transfer, the payment due date is ~~the 28th~~ *5 days after the 25th* day of each calendar month."

Section 2. Section 15-70-225, MCA, is amended to read:

"15-70-225. Application for refund or credit — filing — correction by department. (1) *(a)* ~~The~~ *Except as provided in subsection (1)(b), the* application for refund is a signed statement, on a form furnished by the department of transportation. Except for a claim for a credit of taxes paid on unpaid accounts *or a claim for a refund filed electronically*, the form must be accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery, showing the total amount of gasoline purchased or aviation fuel purchased by a certified scheduled passenger air carrier, the total amount of gasoline or aviation fuel on which a refund is claimed, and the amount of the tax claimed for refund.

(b) A claim for a refund that is filed electronically in the manner specified by the department does not require a signature or the original invoices.

(c) A claim for a refund that is filed electronically does not relieve the taxpayer of maintaining the records upon which the claim for a refund is based.

(2) A claim for a credit for taxes paid on accounts for which the distributor did not receive compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to a claim must be furnished as required by the department.

(3) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery under 15-70-201 is not valid for refund purposes.

(4) All applications for refunds must be filed with the department within 36 months after the date on which the gasoline or aviation fuel was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid or for a credit for taxes paid by the distributor on unpaid accounts within 3 years after the date of payment.

(5) If the department finds that the statement contains errors that are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement."

Section 3. Section 15-70-364, MCA, is amended to read:

"15-70-364. Application for refund or credit — filing — correction by department. (1) *(a)* ~~The~~ *Except as provided in subsection (1)(b), the* application for a refund must be a signed statement on a form furnished by the department. Except for a claim for a credit for taxes paid on unpaid accounts or taxes paid by the United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state~~,~~ *or except for a claim for a refund filed electronically,* the form must be accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery and must show the total amount of special fuel purchased, the total amount of special fuel on which a refund is claimed, and the amount of the tax claimed for refund. A claim for a credit for taxes paid on accounts for which the distributor did not receive compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to a claim must be furnished as required by the department.

(b) A claim for a refund that is filed electronically in the manner specified by the department does not require a signature or the original invoices.

(c) A claim for a refund that is filed electronically does not relieve the taxpayer of maintaining records upon which the claim for a refund is based.

(2) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery, as defined in 15-70-301, is not valid for refund purposes.

(3) All applications for refunds must be filed with the department within 36 months after the date on which the special fuel was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid or for a credit for taxes paid by the distributor on unpaid accounts within 3 years after the date of payment.

(4) If the department finds that the statement contains errors that are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement."

Section 4. Effective date. [This act] is effective July 1, 2001.

Approved March 23, 2001

CHAPTER NO. 111

[HB 300]

AN ACT REVISING THE MANNER IN WHICH AN INDEPENDENT LIABILITY FUND MAY BE TERMINATED; PROVIDING THAT AN INDEPENDENT LIABILITY FUND MAY BE TERMINATED WITHIN 5 YEARS OR ANY LEGALLY REQUIRED PERIOD OF INSURANCE COVERAGE; PROVIDING THAT A BUSINESS WITH AN INDEPENDENT LIABILITY FUND MAY TERMINATE THE FUND BY SUBSTITUTING EQUIVALENT LIABILITY INSURANCE FOR A PERIOD OF 5 YEARS OR THE LEGALLY REQUIRED PERIOD FOR INSURANCE COVERAGE, WHICHEVER IS LONGER; AND AMENDING SECTIONS 15-30-107, 15-31-118, AND 33-27-119, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-107, MCA, is amended to read:

"**15-30-107. Taxable liability on termination of independent liability fund.** If an independent liability fund established pursuant to Title 33, chapter 27, is terminated as provided in 33-27-119, the income from the principal distributed pursuant to 33-27-119~~(2)~~*(3)* is taxable to that person or persons under the applicable provisions of this chapter."

Section 2. Section 15-31-118, MCA, is amended to read:

"**15-31-118. Taxable liability on termination of independent liability fund.** If an independent liability fund established pursuant to Title 33, chapter 27, is terminated as provided in 33-27-119, the income from the principal distributed pursuant to 33-27-119~~(2)~~*(3)* is taxable to that person or persons under the applicable provisions of this chapter."

Section 3. Section 33-27-119, MCA, is amended to read:

"**33-27-119. Termination of independent liability fund.** (1) ~~When a~~ *A* small business with an independent liability fund ~~ceases its operations, either voluntarily or involuntarily, it shall~~ *may terminate the independent liability fund by:*

(a) ~~provide~~ *providing* a trust to administer any principal remaining in its fund and to pay any outstanding claims for *whichever is longer:* ~~the longest of the following applicable periods:~~

~~(a) any statute of limitations applicable to operations of that particular small business;~~

~~(b)~~*(i)* any legally required period of insurance coverage; or

~~(c)~~*(ii)* ~~15~~ *5* years~~.~~*; or*

(b) substituting an equivalent liability insurance policy plus five times the amount of the deductible for any legally required period of insurance coverage or 5 years, whichever is longer.

(2) If an equivalent insurance policy as provided for in subsection (1)(b) cannot be procured for the full period required, the small business shall deposit the estimated premium for the required equivalent insurance policy in a suitable trust account. The trust account must be used to purchase liability insurance for the required period of insurance coverage.

~~(2)~~*(3)* The principal of an independent liability fund must remain inviolate, except as it is needed to pay just claims, for the full applicable termination period *as provided in subsection (1).* However, income from the principal not needed for administrative costs may be paid during the termination period to the person or persons who are designated to ultimately receive the principal of the fund, and ~~such~~ *the* income is taxable to that person or persons."

Approved March 23, 2001

CHAPTER NO. 112

[HB 462]

AN ACT ALLOWING A PETROLEUM STORAGE TANK OWNER OR OPERATOR WHO WOULD OTHERWISE LOSE ELIGIBILITY FOR REIMBURSEMENT FROM THE PETROLEUM TANK RELEASE CLEANUP FUND BY FAILING TO REMAIN IN COMPLIANCE WITH OPERATIONAL AND CLEANUP REQUIREMENTS TO POTENTIALLY RECEIVE SOME REIMBURSEMENT WHEN NONCOMPLIANCE ISSUES ARE CORRECTED; AMENDING SECTIONS 75-11-308 AND 75-11-318, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-11-308, MCA, is amended to read:

"**75-11-308. Eligibility.** (1) An owner or operator is eligible for reimbursement for the applicable percentage as provided in 75-11-307(4)(a) and (4)(b) of eligible costs caused by a release from a petroleum storage tank only if:

(a) the release was discovered on or after April 13, 1989;

(b) the department is notified of the release in the manner and within the time provided by law or rule;

(c) the department has been notified of the existence of the tank in the manner required by department rule or has waived the requirement for notification;

(d) the release was an accidental release;

(e) with the exception of the release, the operation and management of the tank complied with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases when the release was discovered and remained in compliance following discovery of the release; and

(f) the owner or operator undertakes corrective action to respond to the release and the corrective action is undertaken, in accordance with a corrective action plan approved by the department, from the time of discovery until the release is resolved.

(2) An owner or operator is not eligible for reimbursement from the petroleum tank release cleanup fund for expenses caused by releases from the following petroleum storage tanks:

(a) a tank located at a refinery or a terminal of a refiner;

(b) a tank located at an oil and gas production facility;

(c) a tank that is or was previously under the ownership or control of a railroad, except for a tank that was operated by a lessee of a railroad in the course of nonrailroad operations;

(d) a tank belonging to the federal government;

(e) a tank owned or operated by a person who has been convicted of a substantial violation of state or federal law or rule that relates to the installation, operation, or management of petroleum storage tanks; or

(f) a mobile storage tank used to transport petroleum or petroleum products from one location to another.

(3) When, subsequent to the discovery of a release, an owner or operator fails to remain in compliance as required by subsection (1)(e) or fails to conduct corrective action as required by subsection (1)(f) and is issued a violation letter by the department, all reimbursement of claims submitted after the date of the violation letter must be suspended. Upon a determination by the department that all violations identified in the violation letter have been corrected, all suspended and future claims may be reimbursed according to criteria established by the board. In determining the amount of reimbursement, if any, the board may consider the effect and duration of the noncompliance."

Section 2. Section 75-11-318, MCA, is amended to read:

"75-11-318. Powers and duties of board. (1) The board shall administer the petroleum tank release cleanup fund in accordance with the provisions of this part, including the payment of reimbursement to owners and operators.

(2) The board shall determine whether to approve reimbursement of eligible costs under the provisions of 75-11-309(2), shall obligate money from the fund for approved costs, and shall act on requests for the guarantee of payments through the procedures and criteria provided in 75-11-309.

(3) The board may conduct meetings, hold hearings, undertake legal action, and conduct other business that may be necessary to administer its responsibilities under this part. The board shall meet at least quarterly for the purpose of reviewing and approving claims for reimbursement from the fund and conducting other business as necessary.

(4) The department shall provide staff support to the board as the department determines it is able. The board shall use the fund to pay:

(a) for department staff used:

(i) for the review or preparation of corrective action plans;

(ii) for the oversight of corrective action undertaken by owners and operators for the purposes of this part; and

(iii) for the review and processing of claims for reimbursement submitted by owners and operators under this part; and

(b) for department of transportation staff used for the collection of the petroleum storage tank cleanup fee.

(5) The board shall adopt rules to administer this part, including:

(a) rules governing submission of claims by owners or operators to the department and board;

(b) procedures for determining owners or operators who are eligible for reimbursement and determining the validity of claims;

(c) procedures for the review and approval of corrective action plans;

(d) procedures for conducting board meetings, hearings, and other business necessary for the implementation of this part; ~~and~~

(e) the criteria and reimbursement rates applicable to those owners and operators who comply with a violation letter issued by the department; and

~~(e)~~*(f)* other rules necessary for the administration of this part.

(6) The board may apply for, accept, and repay loans from the board of investments pursuant to 17-6-225."

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2001.

(2) [Section 2 and this section] are effective on passage and approval.

Approved March 23, 2001

CHAPTER NO. 113

[SB 6]

AN ACT LIMITING THE LIABILITY OF A PROPERTY OWNER WHOSE PROPERTY IS TAKEN BY EMINENT DOMAIN TO INSTANCES OF NEGLIGENCE OR INTENTIONAL CONDUCT; PROVIDING FOR INDEMNIFICATION FOR COSTS AND ATTORNEY FEES FOR A PROPERTY OWNER WHO IS MADE A PARTY TO AN ACTION BUT IS NOT FOUND LIABLE FOR DAMAGES; AMENDING SECTION 75-10-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Liability limitation — several liability — defense costs. (1) Subject to subsection (2), a condemnee or a condemnee's successor in interest is not liable for damages that result from the construction, use, or maintenance of a project on property in which the condemnee or the condemnee's successor in interest has an interest unless the negligence or intentional conduct of the condemnee or the condemnee's successor in interest is a cause of the damages.

(2) A condemnee or a condemnee's successor in interest who is liable for damages under subsection (1) is severally liable only and is responsible only for the percentage of negligence attributable to the condemnee or the condemnee's successor in interest.

(3) If a condemnee or a condemnee's successor in interest is joined in an action for damages that are alleged to result from the construction, use, or maintenance of a project on property in which the condemnee or the condemnee's successor in interest has an interest, the project owner or operator is liable for the costs and attorney fees incurred by the condemnee or the condemnee's successor in interest unless the condemnee or the condemnee's successor in interest is found liable for damages under subsections (1) and (2).

Section 2. Section 75-10-715, MCA, is amended to read:

"**75-10-715. Liability — reimbursement and penalties — proceedings — defenses and exclusions.** (1) Except as provided in *[section 1] and* 75-10-742 through 75-10-752, notwithstanding any other provision of law, and subject only to the defenses set forth in subsection (5) and the exclusions set forth in subsection (7), the following persons are jointly and severally liable for a release or threatened release of a hazardous or deleterious substance from a facility:

(a) a person who owns or operates a facility where a hazardous or deleterious substance was disposed of;

(b) a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of;

(c) a person who generated, possessed, or was otherwise responsible for a hazardous or deleterious substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment of the substance or arranged with a transporter for transport of the substance for disposal or treatment; and

(d) a person who accepts or has accepted a hazardous or deleterious substance for transport to a disposal or treatment facility.

(2) A person identified in subsection (1) is liable for the following costs:

(a) all remedial action costs incurred by the state; and

(b) damages for injury to, destruction of, or loss of natural resources caused by the release or threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were specifically identified as an irreversible and irretrievable commitment of natural resources in an approved final state or federal environmental impact statement or other comparable approved final environmental analysis for a project or facility that was the subject of a governmental permit or license and the project or facility was being operated within the terms of its permit or license.

(3) If the person liable under subsection (1) fails, without sufficient cause, to comply with a department order issued pursuant to 75-10-711(4) or to properly provide remedial action upon notification by the department pursuant to 75-10-711(3), the person may be liable for penalties in an amount not to exceed two times the amount of any costs incurred by the state pursuant to this section.

(4) The department may initiate civil proceedings in district court to recover remedial action costs, natural resource damages, or penalties under subsections (1), (2), and (3). Proceedings to recover costs and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs, damages, or penalties lies in the county where the release occurred or where the person liable under subsection (1) resides or has its principal place of business or in the district court of the first judicial district.

(5) A person has a defense and is not liable under subsections (1), (2), and (3) if the person can establish by a preponderance of the evidence that:

(a) the department failed to follow the notice provisions of 75-10-711 when required;

(b) the release did not emanate from any vessel, vehicle, or facility to which the person contributed any hazardous or deleterious substance or over which the person had any ownership, authority, or control and was not caused by any action or omission of the person;

(c) the release or threatened release occurred solely as a result of:

(i) an act or omission of a third party other than either an employee or agent of the person; or

(ii) an act or omission of a third party other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the person, if the person establishes by a preponderance of the evidence that the person:

(A) exercised due care with respect to the hazardous or deleterious substance concerned, taking into consideration the characteristics of the hazardous or deleterious substance in light of all relevant facts and circumstances; and

(B) took precautions against foreseeable acts or omissions of a third party and the consequences that could foreseeably result from those acts or omissions;

(d) the release or threat of release occurred solely as the result of an act of God or an act of war;

(e) the release or threatened release was from a facility for which a permit had been issued by the department, the hazardous or deleterious substance was specifically identified in the permit, and the release was within the limits allowed in the permit;

(f) in the case of assessment of penalties under subsection (3), factors beyond the control of the person prevented the person from taking timely remedial action; or

(g) the person transported only household refuse, unless that person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse.

(6) (a) For the purpose of subsection (5)(c)(ii), the term "contractual relationship" includes but is not limited to land contracts, deeds, or other instruments transferring title or possession, unless the real property on which the facility is located was acquired by the person after the disposal or placement of the hazardous or deleterious substance on, in, or at the facility and one or more of the following circumstances is also established by the person by a preponderance of the evidence:

(i) At the time the person acquired the facility, the person did not know and had no reason to know that a hazardous or deleterious substance that is the subject of the release or threatened release was disposed of on, in, or at the facility.

(ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or condemnation.

(iii) The person acquired the facility by inheritance or bequest.

(b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through (6)(a)(iii), the person shall establish that the person has satisfied the requirements of subsection (5)(c)(i) or (5)(c)(ii).

(c) To establish that the person had no reason to know, as provided in subsection (6)(a)(i), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of assessing this inquiry, the following must be taken into account:

(i) any specialized knowledge or experience on the part of the person;

(ii) the relationship of the purchase price to the value of the property if uncontaminated;

(iii) commonly known or reasonably ascertainable information about the property;

(iv) the obviousness of the presence or the likely presence of contamination on the property; and

(v) the ability to detect the contamination by appropriate inspection.

(d) (i) Subsections (5)(b) and (5)(c) or this subsection (6) may not diminish the liability of a previous owner or operator of the facility who would otherwise be liable under this part.

(ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge of the release or threatened release of a hazardous or deleterious substance at the facility when the person owned the real property and then subsequently transferred ownership of the property to another person without disclosing the knowledge, the previous owner is liable under subsections

(1), (2), and (3) and a defense under subsection (5)(b) or (5)(c) is not available to that person.

(e) Subsection (6) does not affect the liability under this part of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous or deleterious substance that is the subject of the action relating to the facility.

(7) A person has an exclusion and is not liable under this section if:

(a) the person generated or disposed of only household refuse, unless the person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse;

(b) the person owns or operates real property where hazardous or deleterious substances have come to be located solely as a result of subsurface migration in an aquifer from a source or sources outside the person's property, provided that the following conditions are met:

(i) the owner or operator did not cause, contribute to, or exacerbate the release or threatened release of any hazardous or deleterious substances through any act or omission. The failure to take affirmative steps to mitigate or address contamination that has migrated from a source outside the owner's or operator's property does not, in the absence of exceptional circumstances, constitute an omission by the owner or operator.

(ii) the person who caused, contributed to, or exacerbated the release or threatened release of any hazardous or deleterious substance is not and was not an agent or employee of the owner or operator and is not or was not in a direct or indirect contractual relationship with the owner or operator, unless the department provides a written determination that an existing or proposed contractual relationship is an insufficient basis to establish liability under this section;

(iii) there is no other basis of liability under subsection (1) for the owner or operator for the release or threatened release of a hazardous or deleterious substance; and

(iv) the owner or operator cooperates with the department and all persons conducting department-approved remedial actions on the property, including granting access and complying with and implementing all required institutional controls;

(c) the person owns or occupies real property of 20 acres or less for residential purposes, provided that the following conditions are met:

(i) the person did not cause, contribute to, or exacerbate the release or threatened release of any hazardous or deleterious substance through any act or omission;

(ii) the person uses or allows the use of the real property for residential purposes. This exclusion does not apply to any person who acquires or develops real property for commercial use or any use other than residential use.

(iii) at the time the person purchased or occupied the real property, there were no visible indications of contamination on the surface of the real property;

(iv) the person cooperates with the department and all persons conducting department-approved remedial actions on the property, including granting access and complying with and implementing all required institutional controls; and

(v) there is no other basis of liability under subsection (1) for the owner or occupier for the release or threatened release of a hazardous or deleterious substance.

(8) A person is liable under this section if the department provides substantial credible evidence that the person fails to satisfy any element of each exclusion in subsections (7)(a) through (7)(c).

(9) The liability of a fiduciary under the provisions of this part for a release or a threatened release of a hazardous or deleterious substance from a facility held in a fiduciary capacity may not exceed the assets held in the fiduciary capacity that are available to indemnify the fiduciary unless the fiduciary is liable under this part independent of the person's ownership or actions taken in a fiduciary capacity.

(10) A person who holds indicia of ownership in a facility primarily to protect a security interest is not liable under subsections (1)(a) and (1)(b) for having participated in the management of a facility within the meaning of 75-10-701(15)(b) because of any one or any combination of the following:

(a) holding an interest in real or personal property when the interest is being held as security for payment or performance of an obligation, including but not limited to a mortgage, deed of trust, lien, security interest, assignment, pledge, or other right or encumbrance against real or personal property that is furnished by the owner to ensure repayment of a financial obligation;

(b) requiring or conducting financial or environmental assessments of a facility or a portion of a facility, making financing conditional upon environmental compliance, or providing environmental information or reports;

(c) monitoring the operations conducted at a facility or providing access to a facility to the department or its agents or to remedial action contractors;

(d) having the mere capacity or unexercised right to influence a facility's management of hazardous or deleterious substances;

(e) giving advice, information, guidance, or direction concerning the administrative and financial aspects, as opposed to day-to-day operational aspects, of a borrower's operations;

(f) providing general information concerning federal, state, or local laws governing the transportation, storage, treatment, and disposal of hazardous or deleterious substances and concerning the hiring of remedial action contractors;

(g) engaging in financial workouts, restructuring, or refinancing of a borrower's obligations;

(h) collecting rent, maintaining utility services, securing a facility from unauthorized entry, or undertaking other activities to protect or preserve the value of the security interest in a facility;

(i) extending or denying credit to a person owning or in lawful possession of a facility;

(j) in an emergency, requiring or undertaking activities to prevent exposure of persons to hazardous or deleterious substances or to contain a release:

(k) requiring or conducting remedial action in response to a release or threatened release if prior notice is given to the department and the department approves of the remedial action; or

(l) taking title to a facility by foreclosure, provided that the holder of indicia of ownership, from the time the holder acquires title, undertakes to sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the property in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the facility and taking all facts and circumstances into consideration and provided that the holder does not:

(i) outbid or refuse a bid for fair consideration for the property or outbid or refuse a bid that would effectively compensate the holder for the amount secured by the facility;

(ii) worsen the contamination at the facility;

(iii) incur liability under subsection (1)(c) or (1)(d) by arranging for disposal of or transporting hazardous or deleterious substances; or

(iv) engage in conduct described in subsection (11).

(11) The protection from liability provided in subsections (9) and (10) is not available to a fiduciary or to a person holding indicia of ownership primarily to protect a security interest if the fiduciary or person through affirmative conduct:

(a) causes or contributes to a release of hazardous or deleterious substances from the facility;

(b) allows others to cause or contribute to a release of hazardous or deleterious substances; or

(c) in the case of a person holding indicia of ownership primarily to protect a security interest, actually participates in the management of a facility by:

(i) exercising decisionmaking control over environmental compliance; or

(ii) exercising control at a level comparable to that of a manager of the enterprise with responsibility for day-to-day decisionmaking either with respect to environmental compliance or substantially all of the operational, as opposed to financial or administrative, aspects of the facility."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 70, chapter 30, part 3, and the provisions of Title 70, chapter 30, part 3, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 22, 2001

CHAPTER NO. 114

[SB 29]

AN ACT CORRECTING INCONSISTENCIES BETWEEN TITLE 41, CHAPTER 3, RELATING TO CHILD ABUSE AND NEGLECT, AND TITLE 41, CHAPTER 5, THE YOUTH COURT ACT, REGARDING JURISDICTION OF THE YOUTH COURT AND DISTRICT COURT; AMENDING SECTIONS

41-3-103, 41-5-103, 41-5-203, 41-5-204, 41-5-321, 41-5-1201, AND 41-5-1801, MCA; AND REPEALING SECTIONS 41-3-1114 AND 41-5-344, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-103, MCA, is amended to read:

"41-3-103. Jurisdiction and venue. (1) In all matters arising under this chapter, the ~~youth~~ *district* court has ~~concurrent~~ jurisdiction ~~with the district court~~ over:

(a) a youth who is within the state of Montana for any purpose;

(b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court; or

(c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose.

~~(2) Venue is determined pursuant to 41-5-204.~~

(2) The county where a youth is located has initial jurisdiction over a youth alleged to be a youth in need of care. Venue may be transferred to the county of residence of the youth's parent or guardian."

Section 2. Section 41-5-103, MCA, is amended to read:

"41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

(4) "Commit" means to transfer to legal custody.

(5) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.

(6) "Court", when used without further qualification, means the youth court of the district court.

(7) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to 41-5-206.

(8) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(9) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who has been placed on probation as a delinquent youth or a youth in need of intervention and who has violated any condition of probation.

(10) "Department" means the department of corrections provided for in 2-15-2301.

(11) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed to the department under 41-5-1512(3) or 41-5-1513(1)(b) or (1)(c) or who are under parole supervision. Department records do not include information provided by the department to the department of public health and human services' management information system.

(12) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of a youth parole agreement.

(13) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(14) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

(15) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

(16) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

(17) "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

(18) "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.

(19) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

(20) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest but does not include a collocated juvenile detention facility that complies with 28 CFR, part 31.

(21) "Judge", when used without further qualification, means the judge of the youth court.

(22) "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

(23) "Law enforcement records" means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

(24) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

(25) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

(26) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

(27) "Probable cause hearing" means the hearing provided for in 41-5-332.

(28) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(29) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

(30) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

(31) "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(32) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(33) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(34) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in ~~41-5-344~~ *41-5-347*.

(35) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

(36) "State youth correctional facility" means a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills youth correctional facility in Miles City.

(37) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

(38) "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection (38)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

(39) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(40) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1201.

(41) "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

(42) "Youth care facility" has the meaning provided in 41-3-1102.

(43) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth~~,~~ *or* a youth in need of intervention~~, or a youth in need of care~~ and includes the youth court judge, probation officers, and assessment officers.

(44) "Youth court records" means information or data, either in written or electronic form, maintained by the youth court pertaining to a youth under jurisdiction of the youth court and includes reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, youth assessment materials, predispositional studies, and supervision records of probationers. Youth court records do not include information provided by the youth court to the department of public health and human services' management information system.

(45) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a) (i) operated, administered, and staffed separately and independently of a jail; or

(ii) a collocated secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

~~(46) "Youth in need of care" has the meaning provided for in 41-3-102.~~

~~(47)~~*(46)* "Youth in need of intervention" means a youth who is adjudicated as a youth and who commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding alcoholic beverages;

(b) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention."

Section 3. Section 41-5-203, MCA, is amended to read:

"**41-5-203. Jurisdiction of court.** (1) Except as provided in subsection (2) and for cases filed in the district court under 41-5-206, the court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth~~,~~ *or* a youth in need of intervention~~, or a youth in need of care~~ or concerning any person under 21 years of age charged with having violated any law of the state or any ordinance of a city or town other than a traffic or fish and game law prior to having become 18 years of age.

(2) Justice, municipal, and city courts have concurrent jurisdiction with the youth court over all alcoholic beverage, tobacco products, and gambling violations alleged to have been committed by a youth.

(3) The court has jurisdiction to:

(a) transfer a youth court case to the district court after notice and hearing; and

(b) with respect to extended jurisdiction juvenile cases:

(i) designate a proceeding as an extended jurisdiction juvenile prosecution;

(ii) conduct a hearing, receive admissions, and impose upon a youth who is adjudicated as an extended jurisdiction juvenile a sentence that may extend beyond the youth's age of majority;

(iii) stay that portion of an extended jurisdiction sentence that is extended beyond a youth's majority, subject to the performance of the juvenile portion of the sentence;

(iv) continue, modify, or revoke the stay after notice and hearing;

(v) after revocation, transfer execution of the stayed sentence to the department;

(vi) transfer supervision of any juvenile sentence if, after notice and hearing, the court determines by a preponderance of the evidence that the juvenile has violated or failed to perform the juvenile portion of an extended jurisdiction sentence; and

(vii) transfer a juvenile case to district court after notice and hearing."

Section 4. Section 41-5-204, MCA, is amended to read:

"41-5-204. Venue and transfer. (1) The county where a youth is a resident or is alleged to have violated the law has initial jurisdiction over any youth alleged to be a delinquent youth. Except as provided in 41-5-206, the youth court shall assume the initial handling of the case.

(2) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a youth in need of intervention ~~or a youth in need of care~~. The youth court of that county shall assume the initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

(a) the county in which the youth is apprehended or found;

(b) the county in which the youth is alleged to have violated the law; or

(c) the county of residence of the youth's parents or guardian.

(3) In the case of a youth alleged to be a youth in need of intervention ~~or a youth in need of care~~, a change of venue may be ordered at any time by the concurrence of the youth court judges of both counties in order to ensure a fair, impartial, and speedy hearing and final disposition of the case.

(4) In the case of a youth 16 years of age or older who is accused of one of the serious offenses listed in 41-5-206 and who is to be tried in district court, the charge must be filed and trial held in the district court of the county where the offense occurred."

Section 5. Section 41-5-321, MCA, is amended to read:

"41-5-321. Taking into custody. (1) A youth may be taken into custody under the following circumstances:

(a) by a law enforcement officer pursuant to a lawful order or process of any court;

(b) by a law enforcement officer pursuant to a lawful arrest for violation of the law;

~~(c) by a law enforcement officer, agent of the department, county attorney, or a person or physician treating a youth when there is reason to believe the youth is a youth in need of care and that the residence of the youth or the custody by the person legally responsible for the youth presents an imminent danger to the life or health of the youth;~~

~~(d)~~*(c)* by a juvenile home arrest officer or an officer listed in subsections (1)(a) ~~through (1)(c)~~ *and (1)(b)* if a youth placed under a home arrest program has violated a condition of the placement and the home arrest officer or law enforcement officer has direct knowledge of the violation or a juvenile probation officer has provided the juvenile home arrest officer notice of a violation.

(2) The taking of a youth into custody is not an arrest except for the purpose of determining the validity of the taking under the constitution of Montana or the United States."

Section 6. Section 41-5-1201, MCA, is amended to read:

"41-5-1201. Preliminary inquiry — referral of youth in need of care. (1) Whenever the court receives information from an agency or person, including a parent or guardian of a youth, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of intervention or that the youth is subject to a court order or consent order and has violated the terms of an order, a probation officer or an assessment officer shall make a preliminary inquiry into the matter.

(2) If the probation officer or assessment officer determines that the facts indicate that the youth is a youth in need of care, *as defined in 41-3-102,* the matter must be immediately referred to the department of public health and human services."

Section 7. Section 41-5-1801, MCA, is amended to read:

"41-5-1801. Shelter care facilities. (1) Counties, cities, or nonprofit corporations may provide by purchase, lease, or otherwise, a shelter care facility.

(2) A shelter care facility may be used to provide an appropriately physically restricting setting for youth alleged or adjudicated to be a delinquent youth~~;~~ *or* a youth in need of intervention~~, or a youth in need of care~~.

(3) A shelter care facility must be physically separated from any facility housing adults accused or convicted of criminal offenses.

(4) State appropriations and federal funds may be received by counties, cities, or nonprofit corporations for establishment, maintenance, or operation of a shelter care facility.

(5) A shelter care facility must be furnished in a comfortable manner.

(6) A shelter care facility may be operated in conjunction with a youth detention facility.

(7) A shelter care facility may permit a school district to use the facility as an alternative education site provided that the school district provides the educational program and personnel necessary to instruct the youth. Public schools shall follow the requirements of the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., in making education placement decisions for youth with disabilities."

Section 8. Repealer. Sections 41-3-1114 and 41-5-344, MCA, are repealed.

Approved March 22, 2001

CHAPTER NO. 115

[SB 58]

AN ACT RELATING TO CIVIL AND CRIMINAL PENALTIES FOR VIOLATION OF THE PROVISIONS OF MOTOR FUELS LAWS; ALLOWING THE DEPARTMENT OF TRANSPORTATION TO IMPOSE CIVIL PENALTIES FOR VIOLATION OF GASOLINE AND SPECIAL FUEL LAWS:

REDUCING THE MAXIMUM FINE FOR A CRIMINAL VIOLATION OF THE SPECIAL FUEL LAWS; AMENDING SECTIONS 15-70-330 AND 15-70-336, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Civil penalty. The department may, after giving notice and holding a hearing, if requested, pursuant to Title 2, chapter 4, part 6, impose a civil penalty not to exceed $100 for any violation of this part. The civil penalty may be in addition to the criminal penalties imposed under 15-70-232.

Section 2. Civil penalty. The department may, after giving notice and holding a hearing, if requested, pursuant to Title 2, chapter 4, part 6, impose a civil penalty not to exceed $100 for any violation of this part. The civil penalty may be in addition to the criminal penalties imposed under 15-70-330, 15-70-336, and 15-70-366.

Section 3. Section 15-70-330, MCA, is amended to read:

"**15-70-330. Special fuel penalties.** (1) In the case of a special fuel user who refuses or fails to file a return required by this part within the time prescribed by 15-70-103 and 15-70-325, there is imposed a penalty of $25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the rate of 1% on the tax due for each calendar month or fraction of a month during which the refusal or failure continues. However, if any special fuel user establishes to the satisfaction of the department that the failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty provided by this section.

(2) Whenever a special fuel user files a return but fails to pay in whole or in part the tax due under this part, interest at the rate of 1% ~~per~~ *a* month or fraction of a month from the date on which the tax was due to the date of payment in full must be added to the amount due and unpaid.

(3) (a) A special fuel user may not use dyed special fuel to operate a motor vehicle upon the public roads and highways of this state unless the fuel is subject to taxation under 15-70-321(1)(b) or the use is permitted pursuant to rules adopted under subsection (3)(b). The purposeful or knowing use of dyed special fuel in a motor vehicle operating upon the public roads and highways of this state in violation of this subsection *is subject to the civil penalty imposed under [section 2] for the first offense. A subsequent offense* is a misdemeanor punishable ~~by a fine not to exceed $500 upon conviction for the first offense, not to exceed $1,000 upon conviction for the second offense, and not to exceed $2,000 for each subsequent conviction~~ *as provided in 15-70-336.* Each use is a separate offense.

(b) The department shall adopt and enforce reasonable rules for the movement of off-highway vehicles traveling from one location to another on public highways, public roads, or streets when using dyed fuel or nontaxed fuel.

(4) The operator of the vehicle is liable for the tax imposed in 15-70-321. If the operator refuses or fails to pay the tax, in whole or in part, the seller of the special fuel is jointly and severally liable for the tax imposed under 15-70-321 and for the penalties described in this section if the seller knows or has reason to know that the fuel will be used for a taxable purpose."

Section 4. Section 15-70-336, MCA, is amended to read:

"**15-70-336. Criminal penalties.** (1) ~~Any~~ *A* person violating any provision of ~~15-70-101 or~~ this part, except 15-70-311 through 15-70-314 and 15-70-321, is guilty of a misdemeanor ~~unless the act is by any other law of this state declared to be a felony~~ and upon conviction is punishable by a fine of not less than $100 or more than ~~$2,000~~ *$1,000* or by imprisonment for not less than 30 days or more than 6 months, or ~~by~~ both ~~such fine and imprisonment~~.

(2) The fine and imprisonment provided for in this section ~~shall be~~ *is* in addition to any other penalty imposed by any other provision of this part."

Section 5. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 70, part 2, and the provisions of Title 15, chapter 70, part 2, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 70, part 3, and the provisions of Title 15, chapter 70, part 3, apply to [section 2].

Section 6. Effective date. [This act] is effective July 1, 2001.

Approved March 22, 2001

CHAPTER NO. 116

[SB 78]

AN ACT ALLOWING THE LICENSING COORDINATION CENTER TO PASS UP TO ONE-HALF OF THE COST OF PROCESSING LICENSE APPLICATIONS TO THE PARTICIPATING AGENCIES AND THE REMAINING COST TO THE LICENSE APPLICANT; AMENDING SECTION 30-16-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-16-303, MCA, is amended to read:

"30-16-303. Participation of state agencies. (1) The legislature directs full participation in the implementation of this chapter by:

(a) the departments of agriculture, commerce, environmental quality, revenue, justice, labor and industry, and public health and human services;

(b) the secretary of state;

(c) the public service commission; and

(d) other agencies as directed by the governor.

(2) The board of review may include licenses not specified in 30-16-301 in a plan for streamlined registration and licensing if:

(a) the agency administering the license requests that the license be included in the plan;

(b) the board of review approves including the license by a majority vote of a quorum of the board of review; and

(c) licensees affected by the license's inclusion in the plan are given 60 days' notice of the plan's implementation and the notice sets forth in detail the changes in the licensing procedures.

(3) If a license is included in a streamlined registration and licensing plan pursuant to subsection (2):

(a) the agency administering the license may provide for a variance in the timing of the payment of the license fee and a variance in the application form, filing date, and penalty provisions in order to conform with the plan's criteria;

(b) the board of review shall provide for the equitable proration to the agency administering the license of any fees paid by a licensee prior to the plan's implementation; and

(c) the license must be processed and issued by the department of revenue as provided in this chapter.

(4) *(a)* In order to defray the costs associated with administering a streamlined registration and licensing plan, the department may require a transfer of funds from the participating agencies *in an amount equal to no more than one-half of the total cost of processing and issuing a license.*

(b) The amount remaining of the total cost of processing and issuing a license may be charged to the license applicant.

(c) The amount of funds transferred by an agency must be based on the number of licenses processed and issued on behalf of that agency versus the total number of licenses processed and issued under the streamlined registration and licensing plan."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 23, 2001

CHAPTER NO. 117

[SB 103]

AN ACT REQUIRING ALL REVENUE RECEIVED FROM THE IMPOSITION OF FINES AND CIVIL PENALTIES UNDER THE RECREATIONAL USE OF STATE LANDS STATUTES TO BE DEPOSITED IN THE STATE GENERAL FUND; AMENDING SECTION 77-1-808, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-1-808, MCA, is amended to read:

"**77-1-808. State lands recreational use account.** (1) There is a state lands recreational use account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue received from the recreational use license established by 77-1-802; *and*

~~(b) all revenue received from the imposition of fines under 77-1-801 and 77-1-806 and from civil penalties imposed pursuant to 77-1-804; and~~

~~(c)~~*(b)* money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.

(3) Money deposited in the state lands recreational use account must be used by the department for the following purposes:

(a) compensation pursuant to 77-1-809 for damage to the improvements of leases that has been proved to be caused by recreational users;

(b) assistance in weed control management necessary as a result of recreational use of state lands;

(c) protection of the resource value of the trust assets; and

(d) administration and management for the implementation of recreational use of state lands."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 23, 2001

CHAPTER NO. 118

[SB 113]

AN ACT CLARIFYING THAT FUNDING FOR CRIME VICTIMS COMPENSATION AND ASSISTANCE IS DEPENDENT UPON GENERAL FUND APPROPRIATIONS; AMENDING SECTIONS 44-13-103, 46-18-236, 46-18-242, 46-18-248, 46-18-250, 46-18-251, 53-1-107, 53-9-104, AND 53-30-132, MCA; REPEALING SECTION 53-9-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the 1995 Legislature in Senate Bill No. 83 changed funding for the crime victims compensation and assistance program from an earmarked special revenue account to the general fund; and

WHEREAS, the crime victims compensation and assistance program has been supported entirely by general fund money since fiscal year 1996; and

WHEREAS, repealing section 53-9-109 is necessary in order to clarify the conflict that currently exists between actual appropriation practices and the law.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-13-103, MCA, is amended to read:

"44-13-103. Limitations on use of special law enforcement assistance account. (1) After property is credited to the account, the attorney general may:

(a) transfer the property to any local or state law enforcement agency to be used for criminal investigation purposes;

(b) sell the property by public sale;

(c) destroy any illegal or controlled substances and sell or destroy raw materials, products, and equipment used or intended for use in manufacturing, compounding, or processing a controlled substance;

(d) compromise and pay claims against the property; and

(e) make any other disposition of the property authorized by law.

(2) Money and proceeds from property credited to the account may be used by the attorney general for:

(a) the payment of any expenses necessary to seize, detain, appraise, inventory, safeguard, maintain, advertise, or sell seized, detained, or forfeited property, including but not limited to payment for contract services and reimbursement to a federal, state, or local agency for its expenses;

(b) the payment of awards for information or assistance leading to a criminal proceeding or a civil forfeiture proceeding;

(c) the compromise and payment of claims against property;

(d) the payment of sums for criminal investigation purposes, including but not limited to:

(i) payment of informants;

(ii) use by undercover agents to purchase unlawful substances, including, without limitation, counterfeit or real controlled substances, pornographic materials, stolen property, or other contraband;

(iii) use by undercover agents as gambling front money; and

(iv) payment of overtime to state or local law enforcement officers when engaged in special criminal investigations;

(e) the payment ~~of funds into the account created by 53-9-109~~ *for services for victims of crimes as provided in Title 53, chapter 9, part 1*; and

(f) matching federal grants for criminal investigation purposes."

Section 2. Section 46-18-236, MCA, is amended to read:

"**46-18-236. (Temporary) Imposition of charge upon conviction or forfeiture — administration.** (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $15 for each misdemeanor charge;

(b) the greater of $20 or 10% of the fine levied for each felony charge; and

(c) an additional $10 for each misdemeanor and felony charge under Title 45, 61-8-401, or 61-8-406.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment of the charge imposed by this section.

(3) The charges imposed by this section are not fines and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charges imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charges.

(5) The charges collected under subsection (1), except those collected by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited

with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its county attorney and deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for those salaries may be used for the payment of any other county salaries.

(7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program that provides the services specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

(b) The appropriate county, city, or town finance officer or treasurer shall deposit $1 of each $10 charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.

(c) ~~If~~ *Except as provided in subsection (7)(b), if* the county, city, or town does not operate or use a victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the *crime victims compensation and assistance program in the department of justice for deposit in the state general fund for use in providing services for* crime victims ~~compensation and assistance account established in 53-9-109, except as provided in subsection (7)(b)~~ *as provided in Title 53, chapter 9, part 1.* (Terminates July 1, 2001—sec. 4, Ch. 411, L. 1999.)

46-18-236. (Effective July 1, 2001) Imposition of charge upon conviction or forfeiture — administration. (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a defendant upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $15 for each misdemeanor charge;

(b) the greater of $20 or 10% of the fine levied for each felony charge; and

(c) an additional $10 for each misdemeanor and felony charge under Title 45, 61-8-401, or 61-8-406.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the defendant is not able to pay the fine and costs or that the defendant is unable to pay within a reasonable time, the court shall waive payment of the charge imposed by this section.

(3) The charges imposed by this section are not fines and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charges imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charges.

(5) The charges collected under subsection (1), except those collected by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for those salaries may be used for the payment of any other county salaries.

(7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program that provides the services specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

(b) The appropriate county, city, or town finance officer or treasurer shall deposit $1 of each $10 charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.

(c) ~~If~~ *Except as provided in subsection (7)(b), if* the county, city, or town does not operate or use a victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the *crime victims compensation and assistance program in the department of justice for deposit in the state general fund to be used to provide services to* crime victims ~~compensation and assistance account established in 53-9-109, except as provided in subsection (7)(b)~~ *as provided in Title 53, chapter 9, part 1.*"

Section 3. Section 46-18-242, MCA, is amended to read:

"**46-18-242. Investigation and report of victim's loss.** (1) Whenever the court believes that a victim of the offense may have sustained a pecuniary loss as a result of the offense or whenever the prosecuting attorney requests, the court shall order the probation officer, restitution officer, or other designated person to include in the presentence investigation and report:

(a) documentation of the offender's financial resources and future ability to pay restitution; and

(b) documentation of the victim's pecuniary loss, submitted by the victim or by the board of crime control if compensation for the victim's loss has been reimbursed by the ~~crime victims compensation and assistance account~~ *state*.

(2) When a presentence report is not authorized or requested, the court may receive evidence of the offender's ability to pay and the victim's loss at the time of sentencing."

Section 4. Section 46-18-248, MCA, is amended to read:

"**46-18-248. Rights of *state for* crime victims compensation and assistance ~~account~~.** (1) Whenever a victim is paid from the *state* crime victims compensation and assistance ~~account established in 53-9-109~~ *program as provided in Title 53, chapter 9, part 1,* for loss arising out of a criminal act, the ~~account~~ *state* is subrogated, to the extent of the ~~account's~~ payment to the victim, to the rights of the victim to any restitution ordered by the court.

(2) The rights of the ~~crime victims compensation and assistance account~~ *state* are subordinate to the claims of multiple victims who have suffered loss arising out of multiple offenses by the same offender or arising from any transaction that is part of the same continuous scheme of criminal activity of an offender."

Section 5. Section 46-18-250, MCA, is amended to read:

"**46-18-250. Victim's location unknown — payments to restitution fund — use of restitution fund.** (1) If the location of a victim on whose behalf restitution is being paid is unknown, the court may order that restitution payments made on that victim's behalf be deposited in a fund known as the county restitution fund. Subject to the availability of money in the fund, if the ~~whereabouts~~ *location* of a victim whose restitution payments were deposited in the county restitution fund ~~become~~ *becomes* known, the county shall refund to the victim payments that were deposited in the fund.

(2) Money in the restitution fund may be used to provide payments on behalf of offenders who are ordered to pay restitution but, due to circumstances beyond their control, are unable to obtain employment or are unable to obtain employment sufficient to make restitution payments and sustain themselves and their dependents. The offender may perform community service, and for each hour of community service performed, the victim shall receive an amount equal to the minimum hourly wage from the county restitution fund. A judge may order an offender to perform community service work for restitution payments upon a finding that the offender would not otherwise be able to make restitution payments and that there are funds available in the county restitution fund for payments to the victim.

(3) Money in the county restitution fund that is due to a victim under this part must be paid to the *crime victims compensation and assistance program in the department of justice for deposit in the state general fund* ~~crime victims compensation and assistance account, established in 53-9-109,~~ if payments have been made to or on behalf of the victim from the ~~account~~ *state*. Payment from the county restitution fund to the crime victims compensation and assistance

~~account~~ *program in the department of justice for deposit in the state general fund* may be made only from money paid by the offender who caused the injury or death that resulted in the payment from the account."

Section 6. Section 46-18-251, MCA, is amended to read:

"**46-18-251. Allocation of fines, costs, restitution, and other charges.** (1) Except as provided in 46-18-236(7)(b), if an offender is subjected to any combination of fines, costs, restitution, charges, or other payments arising out of the same criminal proceeding, money collected from the offender must be allocated as provided in this section.

(2) Except as otherwise provided in 46-18-236(7)(b) and this section, if a defendant is subject to payment of restitution and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments, 50% of all money collected from the defendant must be applied to payment of restitution and the balance must be applied to other payments in the following order:

(a) payment of charges imposed pursuant to 46-18-236;

(b) payment of supervisory fees imposed pursuant to 46-23-1031;

(c) payment of costs imposed pursuant to 46-18-232 or 46-18-233;

(d) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and

(e) any other payments ordered by the court.

(3) The money applied under subsection (2) to the payment of restitution must be paid in the following order:

(a) to the victim until the victim's unreimbursed pecuniary loss is satisfied;

(b) to the crime victims compensation and assistance ~~account provided for in 53-9-109~~ *program in the department of justice for deposit in the state general fund* until the ~~account~~ *state* is fully reimbursed for compensation to the victim *provided pursuant to Title 53, chapter 9, part 1*;

(c) to any other government agency that has compensated the victim for the victim's pecuniary loss; *and*

(d) to any insurance company that has compensated the victim for the victim's pecuniary loss.

(4) If any fines, costs, charges, or other payments remain unpaid after all of the restitution has been paid, any additional money collected must be applied to payment of those fines, costs, charges, or other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments have been paid, any additional money collected must be applied toward payment of the restitution."

Section 7. Section 53-1-107, MCA, is amended to read:

"**53-1-107. Limits on inmate financial transactions.** (1) An inmate of the Montana state prison in Deer Lodge or the women's prison in Billings shall use the prison inmate trust account system administered by the department of corrections to send money out of or receive money in the facility unless the department grants the inmate an exception. If an inmate accumulates a balance in excess of $200 in the inmate's prison inmate trust account, the excess must, consistent with department rules, be forfeited for the payment of restitution or costs of incarceration. The department may charge an inmate a minimum fee, not to exceed $1.60 each month, to administer the inmate's account.

(2) (a) Money forfeited under subsection (1) to the payment of restitution must be paid in the following order:

(i) to the victim until the victim's unreimbursed pecuniary loss is satisfied;

(ii) to the crime victims compensation and assistance ~~account provided for in 53-9-109~~ *program in the department of justice for deposit in the state general fund* until the ~~account~~ *state* is fully reimbursed for compensation to the victim *provided pursuant to Title 53, chapter 9, part 1*;

(iii) to any other government agency that has compensated the victim for the victim's pecuniary loss; *and*

(iv) to any insurance company that has compensated the victim for the victim's pecuniary loss.

(b) If the inmate's sentence did not provide for the payment of restitution or if there is a balance of money after restitution has been paid under subsection (2)(a), money forfeited under subsection (1) must be applied to the inmate's costs of incarceration.

(3) The department shall adopt rules establishing criteria for forfeiture of funds under subsection (1). The rules must contain clear guidelines regarding forfeiture that ensure restitution under subsection (2) but that:

(a) do not unreasonably inhibit an inmate's ability to save money for the purchase of tools or other items to further the education of the inmate for purposes of rehabilitation or seeking employment after release from the correctional facility; and

(b) do inhibit any inmate's ability to deal in contraband or illegal acts within or outside the correctional facility."

Section 8. Section 53-9-104, MCA, is amended to read:

"**53-9-104. Powers and duties of division.** (1) The division shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, book, photograph, movie, television production, play, or article relating to such crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, if the individual is convicted of the crime, to be held for ~~such~~ *a* period of time ~~as~~ *that* the division may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to pay the costs and attorney fees of court-appointed counsel for the charged person. Each victim and dependent of a deceased victim is entitled to ~~his~~ actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the county as reimbursement for any public defender or any attorney appointed for the charged person must be deposited in the ~~account established in 53-9-109~~ *state general fund*.

(2) The division may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the division to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant, provided that the division has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection *(2)*(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims' assistance coordinating and planning program."

Section 9. Section 53-30-132, MCA, is amended to read:

"53-30-132. Inmate participation and status in prison work programs — prison industries and vocational training program — wages and benefits. (1) The department of corrections may:

(a) establish prison industries that will result in the production or manufacture of products and the rendering of services that may be needed by any department or agency of the state or any political subdivision of the state, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of inmates in institutions;

(b) obtain federal certification of specific prison industries programs in order to gain access to interstate markets for prison industries products;

(c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction and for the employment of inmates in federally certified prison industries programs;

(d) print catalogs describing goods manufactured or produced by prison industries and distribute the catalogs;

(e) fix the sale price for goods produced or manufactured by prison industries. Prices may not exceed prices existing in the open market for goods of comparable quality.

(f) require a correctional facility to purchase needed goods from other correctional facilities:

(g) provide for the repair and maintenance of property and equipment of institutions by inmates;

(h) provide for the removal of graffiti from property and equipment of institutions and the removal of litter from the property of institutions, public roads, and public parks by inmates;

(i) provide for construction projects, up to the aggregate sum of $200,000 for each project, performed by inmates. The department of administration may:

(i) exempt projects authorized by this subsection from the provisions of Title 18, chapter 2, relating to construction, public bidding, bonding, or contracts; and

(ii) exempt inmates who provide labor for those projects from the labor and wage requirements of Title 18, chapter 2, part 4. Inmates providing labor for projects under this subsection must be paid a rate of pay as provided in subsection (5).

(j) provide for the repair and maintenance by prison industries of furniture and equipment of any state agency;

(k) provide for the manufacture by prison industries of motor vehicle license plates and other related articles;

(l) sell manufactured or agricultural products and livestock on the open market;

(m) provide for the manufacture by prison industries of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(n) pay an inmate from receipts from the sale of products produced or manufactured or services rendered in a program in which the inmate is working;

(o) collect 15% of the net wages paid to an inmate employed in a federally certified prison industries program for ~~deposit in~~ *transfer to* the ~~Montana~~ crime victims compensation and assistance ~~account established under 53-9-109~~ *program in the department of justice for deposit in the state general fund as provided in Title 53, chapter 9, part 1*; and

(p) collect from an inmate employed in a federally certified prison industries program charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers.

(2) Except as provided in subsection (3), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

(3) Any state institution, facility, or program operated by the department of corrections may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.

(4) While engaged in on-the-job training and production, inmates not employed in a federally certified prison industries program may be paid a wage in accordance with subsection (5). Inmates employed in a federally certified prison industries program must be paid as provided in subsection (5).

(5) (a) Except as provided for in subsection (5)(b), payment for the performance of work may be based on the following criteria:

(i) knowledge and skill;

(ii) attitude toward authority;

(iii) physical effort;

(iv) responsibility for equipment and materials; and

(v) regard for safety of others.

(b) The maximum rate of pay must be determined by the appropriation established for the program, except that an inmate employed in a federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.

(6) Premiums for workers' compensation and occupational disease coverage for federally certified prison industries programs must be paid by the prison industries program or by the department of corrections. If the department of corrections pays the premium, reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department of corrections by the private company contracting with the federally certified prison industries program for services and products.

(7) Inmates not working in a federally certified prison industries training program are not employees, either public or private, and employment rights accorded other classes of workers do not apply to the inmates. Inmates working in a federally certified prison industry program are entitled to coverage and benefits as provided in 39-71-744.

(8) Able-bodied persons committed to a state prison as adult offenders must be required to perform work as provided for by the department of corrections, including the manufacture of products or the rendering of services. In order to ensure the public safety, the department may secure inmates performing work."

Section 10. Repealer. Section 53-9-109, MCA, is repealed.

Section 11. Effective date. [This act] is effective on passage and approval.

Approved March 23, 2001

CHAPTER NO. 119

[SB 150]

AN ACT PROVIDING A CIVIL PENALTY FOR FAILURE TO MARK DYED DIESEL FUEL PUMPS WITH AN APPROPRIATE DECAL; AND AMENDING SECTION 15-70-371, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-371, MCA, is amended to read:

"**15-70-371. Marking of dyed diesel fuel pumps.** *(1)* A fuel pump at a retail *motor fuel* outlet that dispenses nontaxed dyed special fuel for off-road use must be identified by a decal designed by the department and affixed to each side of the fuel pump so as to be easily identified and read by any person operating the fuel pump.

(2) The department may, after giving notice and holding a hearing, if requested, pursuant to Title 2, chapter 4, part 6, impose a civil penalty for failure to mark a dyed fuel pump with the appropriate decal. The penalty for each violation is $100 for each fuel pump."

Approved March 22, 2001

CHAPTER NO. 120

[SB 153]

AN ACT REVISING THE PENALTY AND INTEREST PROVISIONS ON LATE-FILED GASOLINE AND SPECIAL FUEL TAXES; AMENDING SECTIONS 15-70-210 AND 15-70-352, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-210, MCA, is amended to read:

"**15-70-210. Tax penalty for delinquency.** (1) Any license tax not paid within the time provided in *15-70-113(3) and* 15-70-205 is delinquent, ~~and~~ a penalty of 10% must be added to the tax, and the tax bears interest at the rate of 1% a month, *prorated daily,* from the date of delinquency until paid. Upon a showing of good cause by the distributor, the department ~~of transportation~~ may waive any penalty.

(2) If ~~any~~ *a* distributor or other person subject to the payment of the license tax willfully fails, neglects, or refuses to make any statement required by this part or willfully fails to make payment of the license tax within the time provided, the department may revoke any license issued under this part.

(3) The department shall set forth the information that it requires in the statement and determine the amount of the license tax due from the distributor and shall add a penalty of ~~$25~~ *$100* or 10% of the amount due, whichever is greater, together with interest at the rate of 1% a month, *prorated daily,* from the date that the statements should have been made and the license tax should have been paid.

(4) The department shall proceed to collect the license tax, with penalties and interest. At the request of the department, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the license tax."

Section 2. Section 15-70-352, MCA, is amended to read:

"**15-70-352. Penalties for delinquency.** (1) Any license tax not paid within the time provided in 15-70-113(3) and 15-70-344 is delinquent, a penalty of 10% is added to the tax, and the tax bears interest at the rate of 1%, *prorated daily,* on the tax due for each calendar month ~~or fraction of a month~~. Upon a showing of good cause by the distributor, the department ~~of transportation~~ may waive *the* penalty.

(2) If ~~any~~ *a* distributor or other person subject to the payment of the license tax willfully fails, neglects, or refuses to make any statement required by this part or willfully fails to make payment of the license tax within the time provided, the department may revoke any license issued under this part.

(3) The department shall set forth the information it requires in the statement and determine the amount of the license tax due from the distributor and shall add a penalty of ~~$25~~ *$100* or 10% of the amount due, whichever is greater, together with an interest rate of 1% ~~per month or fraction of~~ a month, *prorated daily,* from the date the statements should have been made and the license tax should have been paid.

(4) The department shall proceed to collect the license tax, with penalties and interest. At the request of the department, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the license tax."

Section 3. Effective date. [This act] is effective July 1, 2001.

Section 4. Applicability. [This act] applies to gasoline and special fuel tax liabilities occurring after June 30, 2001.

Approved March 22, 2001

CHAPTER NO. 121

[SB 157]

AN ACT REVISING ELIGIBILITY FOR TEMPORARY TOTAL DISABILITY BENEFITS; AMENDING SECTIONS 39-71-701 AND 39-71-712, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-701, MCA, is amended to read:

"39-71-701. Compensation for temporary total disability — exception. (1) Subject to the limitation in 39-71-736 and subsection (4) of this section, a worker is eligible for temporary total disability benefits:

(a) when the worker suffers a total loss of wages as a result of an injury and until the worker reaches maximum healing; or

(b) until the worker has been released to return to the employment in which the worker was engaged at the time of the injury or to employment with similar physical requirements.

(2) The determination of temporary total disability must be supported by a preponderance of objective medical findings.

(3) Weekly compensation benefits for injury producing temporary total disability are 66 2/3% of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury. Temporary total disability benefits must be paid for the duration of the worker's temporary disability. The weekly benefit amount may not be adjusted for cost of living as provided in 39-71-702(5).

(4) If the treating physician releases a worker to return to the same, a modified, or an alternative position that the individual is able and qualified to perform with the same employer at an equivalent or higher wage than the individual received at the time of injury, the worker is no longer eligible for temporary total disability benefits even though the worker has not reached maximum healing. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available ~~for any reason~~ to the

worker *for any reason except for the worker's incarceration as provided for in 39-71-744, resignation, or termination for disciplinary reasons caused by a violation of the employer's policies that provide for termination of employment* and *if* the worker continues to be temporarily totally disabled, as defined in 39-71-116.

(5) In cases in which it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for the week, which amount is to be calculated from the date of the disability social security entitlement.

(6) If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan.

(7) A worker may not receive both wages and temporary total disability benefits without the written consent of the insurer. A worker who receives both wages and temporary total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

Section 2. Section 39-71-712, MCA, is amended to read:

"39-71-712. Temporary partial disability benefits. (1) If, prior to maximum healing, an injured worker has a physical restriction and is approved to return to a modified or alternative employment that the worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a temporary work restriction, the worker qualifies for temporary partial disability benefits.

(2) An insurer's liability for temporary partial disability must be the difference between the injured worker's average weekly wage received at the time of the injury, subject to a maximum of 40 hours a week, and the actual weekly wages earned during the period that the claimant is temporarily partially disabled, not to exceed the injured worker's temporary total disability benefit rate.

(3) Temporary partial disability benefits are limited to a total of 26 weeks. The insurer may extend the period of temporary partial disability payments.

(4) A worker is not eligible for temporary partial disability benefits or temporary total disability benefits if:

(a) the worker has been released by the treating physician to return to a modified or alternative position that the individual is able and qualified to perform with the same employer;

(b) the wages payable in the modified or alternative position, when combined with the temporary partial disability benefits, would result in an equivalent or higher wage than the worker received at the time of injury; and

(c) the worker refuses to accept the modified or alternative position. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available to the worker *for any reason except for the worker's incarceration as provided for in 39-71-744, resignation, or termination for disciplinary reasons caused by a violation of the employer's policies that provide* *for termination of employment* and *if* the worker continues to be temporarily totally disabled, as defined in 39-71-116.

(5) Temporary partial disability may not be credited against any permanent partial disability award or settlement under 39-71-703."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 22, 2001

CHAPTER NO. 122

[SB 205]

AN ACT GENERALLY REVISING THE LAWS GOVERNING ETHICS; REVISING AND CLARIFYING THE PROHIBITIONS ON POLITICAL ACTIVITY; CLARIFYING THE ENFORCEMENT AUTHORITY OF THE COMMISSIONER OF POLITICAL PRACTICES; CLARIFYING THE PROCEDURE FOR HANDLING AN ETHICS COMPLAINT; PROVIDING FOR JUDICIAL REVIEW OF ETHICS DECISIONS; ELIMINATING THE ETHICS COMMISSION; PROVIDING A PROCEDURE FOR A COMPLAINT INVOLVING A COUNTY ATTORNEY; AMENDING SECTIONS 2-2-102, 2-2-103, 2-2-121, 2-2-136, AND 2-2-144, MCA; AND REPEALING SECTIONS 2-2-125, 2-2-137, 2-2-138, 2-2-139, 2-2-142, AND 2-2-143, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-102, MCA, is amended to read:

"**2-2-102. Definitions.** As used in this part, the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person or another.

(3) (a) "Gift of substantial value" means a gift with a value of $50 or more for an individual.

(b) The term does not include:

(i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;

(ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer's or public employee's office or employment or when the officer or employee is in attendance in an official capacity;

(iii) educational material directly related to official governmental duties;

(iv) an award publicly presented in recognition of public service; or

(v) educational activity that:

(A) does not place or appear to place the recipient under obligation;

(B) clearly serves the public good; and

(C) is not lavish or extravagant.

(4) "Local government" means a county, a consolidated government, an incorporated city or town, a school district, or a special district.

~~(4)~~*(5)* "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.

~~(5)~~*(6)* "Private interest" means an interest held by an individual that is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment or prospective employment for which negotiations have begun;

(d) an ownership interest in real property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

~~(6)~~*(7)* "Public employee" means:

(a) any temporary or permanent employee of the state ~~or any subdivision of the state~~;

(b) any temporary or permanent employee of a local government;

~~(b)~~*(c)* a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and

~~(c)~~*(d)* a person under contract to the state.

~~(7)~~*(8)* "Public officer" includes any state officer *and any elected officer of a local government.* ~~The term includes an elected officer of any subdivision of the state.~~

(9) "Special district" means a unit of local government, authorized by law to perform a single function or a limited number of functions. The term includes but is not limited to conservation districts, water districts, weed management districts, irrigation districts, fire districts, community college districts, hospital districts, sewer districts, and transportation districts. The term also includes any district or other entity formed by interlocal agreement.

~~(8)~~*(10)* (a) "State agency" includes:

(i) the state;

(ii) the legislature and its committees;

(iii) all executive departments, boards, commissions, committees, bureaus, and offices;

(iv) the university system; and

(v) all independent commissions and other establishments of the state government.

(b) The term does not include the judicial branch.

~~(9)~~*(11)* "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102."

Section 2. Section 2-2-103, MCA, is amended to read:

"2-2-103. Public trust — public duty. (1) The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator, or public employee shall carry out the individual's duties for the benefit of the people of the state.

(2) A public officer, legislator, or public employee whose conduct departs from the person's public duty is liable to the people of the state and is subject to the penalties provided in this part for abuse of the public's trust.

(3) This part sets forth various rules of conduct, the transgression of any of which is a violation of public duty, and various ethical principles, the transgression of any of which must be avoided.

(4) (a) The enforcement of this part for:

(i) state officers, legislators, and state employees is provided for in 2-2-136 ~~and 2-2-137~~;

(ii) legislators, involving legislative acts, is provided for in 2-2-135 and for all other acts is provided for in 2-2-136 ~~and 2-2-137~~;

(iii) local government officers and employees is provided for in 2-2-144.

(b) Any money collected in the civil actions that is not reimbursement for the cost of the action must be deposited in the general fund of the unit of government."

Section 3. Section 2-2-121, MCA, is amended to read:

"2-2-121. Rules of conduct for public officers and public employees. (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) *(a)* A public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds ~~for any campaign activity persuading or affecting a political decision~~ *to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue* unless the use is:

~~(a)~~*(i)* authorized by law; or

~~(b)~~*(ii)* properly incidental to another activity required or authorized by law, such as the function of an elected public ~~official~~ *officer*, the ~~official's~~ *officer's* staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(4) A ~~state~~ *public officer or public* employee may not participate in a proceeding when an organization of which the *public officer or public* employee is an officer or director is:

(a) involved in a proceeding before the employing ~~state~~ agency that is within the scope of the *public officer's or public* employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the *public officer or public* employee represents the state *or local government.*

(5) A ~~state~~ *public* officer or ~~state~~ *public* employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization of which the *public* officer or *public* employee is a member while performing the *public* officer's or *public* employee's job duties. The provisions of this subsection do not prohibit ~~an~~ *a public* officer or *public* employee from performing charitable fundraising activities if approved by the *public officer's or public* employee's supervisor or authorized by law.

(6) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

(7) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(8) ~~A person who purposely or knowingly violates this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $50 or more than $1,000, by imprisonment in the county jail for not more than 6 months, or by both. A civil proceeding under 2-2-136 or 2-2-144 does not preclude an action under this subsection.~~ *Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official*

act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act."

Section 4. Section 2-2-136, MCA, is amended to read:

"**2-2-136. Enforcement for state officers, legislators, and state employees — *referral of complaint involving county attorney.*** (1) (a) A person alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the commissioner of political practices. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. *The commissioner also has jurisdiction over complaints against a county attorney that are referred by a local government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to 2-2-144(6).* The commissioner ~~shall~~ *may* request ~~any~~ *additional* information ~~necessary to make a determination~~ from the complainant or the person who is the subject of the complaint ~~and may issue subpoenas~~ *to make an initial determination of whether the complaint states a potential violation of this part.*

(b) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation of this part, or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states a potential violation of this part. If the issues presented in a complaint have been addressed and decided in a prior decision and the commissioner determines that no additional factual development is necessary, the commissioner may issue a summary decision without holding an informal contested case hearing on the complaint.

~~(b)~~*(c)* ~~Unless the complaint is referred to the county attorney under subsection (1)(c)~~ *Except as provided in subsection (1)(b), if the commissioner determines that the complaint states a potential violation of this part*, the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record established before the commissioner.

~~(c) If it appears to the commissioner that a complaint alleges criminal conduct, the commissioner shall stay the proceedings under this section and refer the matter to the appropriate county attorney.~~

(2) If the commissioner determines that a violation of this part has occurred, the commissioner may impose an administrative penalty of not less than $50 or more than $1,000, and if the violation was committed by a state employee, the commissioner may also recommend that the employing state agency discipline the employee. *The employing entity of a state employee may take disciplinary action against an employee for a violation of this part, regardless of whether the commissioner makes a recommendation for discipline.* The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

(3) ~~The decision of the commissioner may be appealed to the ethics commission as provided in 2-2-137.~~ *A party may seek judicial review of the commissioner's decision, as provided in chapter 4, part 7, of this title, after a hearing, a dismissal, or a summary decision issued pursuant to subsection (1)(b).*

(4) Except for records made public in the course of a hearing *held under subsection (1) and records that are open for public inspection pursuant to Montana*

law, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint *are confidential documents and* are not open for public inspection. *The complainant and the person who is the subject of the complaint shall maintain the confidentiality of the complaint and any related documents released to the parties by the commissioner until the commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing, the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner, the complaint and any related documents must be open for public inspection.* The commissioner's decision issued after a hearing is a public record open to inspection.

(5) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects and status of the case.

~~(5)~~*(6)* The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."

Section 5. Section 2-2-144, MCA, is amended to read:

"**2-2-144. Enforcement for local government.** (1) Except as provided in ~~subsection~~ *subsections* (5) *and (6)*, a person alleging a violation of this part by a local government officer or local government employee shall notify the county attorney of the county where the local government is located. The county attorney shall request from the complainant or the person who is the subject of the complaint any information necessary to make a determination concerning the validity of the complaint.

(2) If the county attorney determines that the complaint is justified, the county attorney may bring an action in district court seeking a civil fine of not less than $50 or more than $1,000. If the county attorney determines that the complaint alleges a criminal violation, the county attorney shall bring criminal charges against the officer or employee.

(3) If the county attorney declines to bring an action under this section, the person alleging a violation of this part may file a civil action in district court seeking a civil fine of not less than $50 or more than $1,000. In an action filed under this subsection, the court may assess the costs and attorney fees against the person bringing the charges if the court determines that a violation did not occur or against the officer or employee if the court determines that a violation did occur. The court may impose sanctions if the court determines that the action was frivolous or intended for harassment.

(4) The employing entity of a local government employee may take disciplinary action against an employee for a violation of this part.

(5) (a) A local government may establish a three-member panel to review complaints alleging violations of this part by officers or employees of the local government. The local government shall establish procedures and rules for the panel. The members of the panel may not be officers or employees of the local government. The panel shall review complaints and may refer to the county attorney complaints that appear to be substantiated. *If the complaint is against the county attorney, the panel shall refer the matter to the commissioner of political practices and the complaint must then be processed by the commissioner pursuant to 2-2-136.*

(b) In a local government that establishes a panel under this subsection *(5)*, a complaint must be referred to the panel prior to making a complaint to the county attorney.

(6) ~~For purposes of this section, "local government" means a county, an incorporated city or town, a consolidated government, or a school district~~ *If a local government review panel has not been established pursuant to subsection (5), a person alleging a violation of this part by a county attorney shall file the complaint with the commissioner of political practices pursuant to 2-2-136.*"

Section 6. Repealer. Sections 2-2-125, 2-2-137, 2-2-138, 2-2-139, 2-2-142, and 2-2-143, MCA, are repealed.

Approved March 22, 2001

CHAPTER NO. 123

[SB 219]

AN ACT ALLOWING PERSONS NOT LICENSED OR CERTIFIED AS ACCOUNTANTS TO HAVE A MINORITY OWNERSHIP INTEREST IN ACCOUNTING PARTNERSHIPS OR CORPORATIONS; AMENDING SECTION 37-50-301, MCA; AND REPEALING SECTIONS 37-50-331, 37-50-332, 37-50-333, AND 37-50-334, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Corporations and partnerships — registration — compliance with ownership requirements. (1) A corporation or partnership composed of certified public accountants or a corporation or partnership composed of public accountants that is or plans to become engaged in the practice of public accounting may include individuals who are not licensed as public accountants or certified as certified public accountants if:

(a) the corporation or partnership designates an accountant who is licensed or certified in this state to be responsible for the proper registration of the corporation or partnership;

(b) a simple majority of ownership in the corporation or partnership, in terms of equity and voting rights, is held by accountants who are licensed or certified accountants in this state or in another jurisdiction;

(c) all persons with an ownership interest in the partnership or corporation are individuals actively participating in the business of the partnership or corporation; and

(d) any person with an ownership interest in the partnership or corporation who is not licensed or certified as an accountant and who holds a professional license, registration, or certification issued by this state or another jurisdiction is in compliance with the requirements for that license, registration, or certification.

(2) An accountant licensed or certified in this state who holds an ownership interest in a partnership or corporation organized pursuant to this section is ultimately responsible for all services provided by the partnership or corporation including any unit, branch, or division of the partnership or corporation providing attestation services.

(3) (a) A partnership or corporation that is no longer in compliance with the ownership requirements of subsection (1)(b) shall give notice to the board within 90 days of the noncompliance.

(b) The board shall grant the partnership or corporation a reasonable amount of time to reestablish compliance with the ownership requirements of subsection (1)(b). The time granted by the board to a partnership or corporation to reestablish compliance may not be less than 90 days from the date the board receives the partnership's or corporation's notice of noncompliance.

(c) The failure of a partnership or corporation to reestablish compliance with the ownership requirements of subsection (1)(b) is grounds for the board to suspend or revoke the partnership's or corporation's registration required by 37-50-335.

Section 2. Section 37-50-301, MCA, is amended to read:

"37-50-301. Illegal use of title. (1) ~~No~~ *A* person may *not* assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device ~~tending to indicate~~ *indicating* that ~~such~~ *the* person is a certified public accountant unless ~~such~~ *the* person holds a current certificate as a certified public accountant under this chapter. However, a foreign accountant who has registered under the provisions of 37-50-313 ~~may~~ *shall* use the title under which ~~he~~ *the foreign accountant* is generally known in ~~his~~ *the foreign* country, followed by the name of the country from which ~~he received his~~ *the foreign accountant's* certificate, license, or degree *was received*.

(2) ~~No~~ *A* partnership or corporation ~~shall~~ *may not* assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device ~~tending to indicate~~ *indicating* that ~~such~~ *the* partnership or corporation is composed of certified public accountants *pursuant to the requirements of [section 1]* unless it is registered ~~under 37-50-331 or 37-50-332, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered~~ as required under 37-50-335.

(3) ~~No~~ *A* person may *not* assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device ~~tending to indicate~~ *indicating* that ~~such~~ *the* person is a public accountant unless ~~such~~ *the* person holds a current license as a licensed public accountant under this chapter.

(4) ~~No~~ *A* partnership or corporation may *not* assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device ~~tending to indicate~~ *indicating* that ~~such~~ *the* partnership or corporation is composed of public accountants unless it is registered ~~under 37-50-331, 37-50-332, 37-50-333, or 37-50-334, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered~~ as required under 37-50-335.

(5) ~~No~~ *A* person, corporation, or partnership may *not* assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", or any other title or designation likely to be confused with "certified public accountant", "licensed public accountant", "public accountant" or any of the abbreviations "CA", "EA",

“LA”, or “RA” or similar abbreviations likely to be confused with “CPA”. However, a foreign accountant who has registered under 37-50-313 ~~may~~ *shall* use the title under which ~~he~~ *the foreign accountant* is generally known in ~~his~~ *the foreign* country, followed by the name of the country from which ~~he~~ *the foreign accountant's* ~~received his~~ certificate, license, or degree *was received, and a person who is licensed as an enrolled agent by the internal revenue service may use the title "enrolled agent" or the abbreviation "EA".*

(6) ~~No~~ *A* person may *not* sign or affix ~~his~~ *the person's* name or any trade or assumed name used by ~~him~~ *the person* in ~~his~~ *the person's* profession or business with any wording indicating that ~~he~~ *the person* has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless ~~he~~ *the person* holds a current permit issued under 37-50-314 and all of ~~his~~ *the person's* offices in this state for the practice of public accounting are maintained and registered under 37-50-335. However, the provisions of this subsection do not prohibit any officer, employee, partner, or principal of any organization from affixing ~~his~~ *a* signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title, or office ~~which he~~ *that the person* holds in that organization, nor do the provisions of this subsection prohibit any act of a public official or public employee in the performance of ~~his~~ *the official's or employee's public* duties ~~as such~~.

(7) ~~No~~ *A* person may *not* sign or affix a partnership or corporation name with any wording indicating that it is a partnership or corporation composed of persons having expert knowledge in accounting or auditing to any accounting or financial statement or to any report on or certificate to any accounting or financial statement unless the partnership or corporation *conforms to the requirements of [section 1] and* is registered ~~under 37-50-331, 37-50-332, 37-50-333, or 37-50-334 and all of its offices in this state for the practice of public accounting are maintained and registered~~ as required under 37-50-335.

(8) ~~No~~ *A* person may *not* assume or use the title or designation “certified public accountant” or “public accountant” in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation “and company” or “and co.” or a similar designation if~~, in any such case,~~ there is in fact no bona fide partnership or corporation *that has been formed subject to the provisions of [section 1] and* registered under ~~37-50-331, 37-50-332, 37-50-333, or 37-50-334~~ *37-50-335*. However, it is lawful for a sole proprietor to continue the use of ~~the~~ *a* deceased's name in connection with ~~his~~ *the sole proprietor's* business for a reasonable period of time after the death of a former partner.”

Section 3. Repealer. Sections 37-50-331, 37-50-332, 37-50-333, and 37-50-334, MCA, are repealed.

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 50, part 3, and the provisions of Title 37, chapter 50, part 3, apply to [section 1].

Approved March 23, 2001

CHAPTER NO. 124

[SB 254]

AN ACT CREATING AN OFFICE OF VICTIMS SERVICES IN THE DEPARTMENT OF JUSTICE; TRANSFERRING THE DUTIES AND RESPONSIBILITIES FOR ADMINISTRATION OF THE CRIME VICTIMS COMPENSATION ACT OF MONTANA FROM THE DIVISION OF CRIME CONTROL OF THE DEPARTMENT OF JUSTICE TO THE OFFICE OF VICTIMS SERVICES; AMENDING SECTIONS 50-16-530, 53-9-103, 53-9-104, 53-9-105, 53-9-106, 53-9-107, 53-9-108, 53-9-109, 53-9-110, 53-9-121, 53-9-122, 53-9-123, 53-9-124, 53-9-125, 53-9-126, 53-9-127, 53-9-128, 53-9-130, 53-9-131, 53-9-132, AND 53-9-133, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Office of victims services. There is an office of victims services in the department of justice. The office shall ensure that victims and witnesses of crime receive fair and proper treatment in the criminal justice system and that they are provided important services and assistance required by Title 46, chapter 24. The office is under the supervision and control of the attorney general.

Section 2. Section 50-16-530, MCA, is amended to read:

"50-16-530. Disclosure without patient's authorization — other bases. A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

(1) directory information, unless the patient has instructed the health care provider not to make the disclosure;

(2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;

(3) to federal, state, or local law enforcement authorities to the extent required by law;

(4) to a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured on a public roadway or was injured by the possible criminal act of another;

(5) in response to a request of the ~~division of crime control~~ *office of victims services* for information under 53-9-104(2)(b);

(6) pursuant to compulsory process in accordance with 50-16-535 and 50-16-536; or

(7) pursuant to 50-16-712."

Section 3. Section 53-9-103, MCA, is amended to read:

"53-9-103. Definitions. As used in this part, the following definitions apply:

(1) "Claimant" means any of the following claiming compensation under this part:

(a) a victim;

(b) a dependent of a deceased victim; or

(c) an authorized person acting on behalf of any of them.

(2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable under this part that the claimant has received or that is readily available to the claimant from:

(a) the offender;

(b) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this part;

(c) social security, medicare, and medicaid;

(d) workers' compensation;

(e) wage continuation programs of any employer;

(f) proceeds of a contract of insurance payable to the claimant for loss that was sustained because of the criminally injurious conduct;

(g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. A contract in this state may not provide that benefits under this part are a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are a primary source.

(h) a crime victims compensation program operated by the state in which the victim was injured or killed that compensates residents of this state injured or killed in that state; or

(i) any other third party.

(3) "Criminally injurious conduct" means conduct that:

(a) occurs or is attempted in this state or an act of international terrorism, as defined in 18 U.S.C. 2331, committed outside of the United States against a resident of this state;

(b) results in bodily injury or death; and

(c) is punishable by fine, imprisonment, or death or would be so punishable except that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; however, criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle unless the bodily injury or death occurred during the commission of an offense defined in Title 45 that requires the mental state of purposely as an element of the offense or the injury or death was inflicted by the driver of a motor vehicle who is found by the ~~division~~ *office*, by a preponderance of the evidence, to have been operating the motor vehicle while under the influence, as that term is defined in 61-8-401; or

(d) is committed in a state without a crime victims compensation program that covers a resident of this state if the conduct meets the requirements in subsections (3)(b) and (3)(c).

(4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

~~(5) "Division" means the division of crime control of the department of justice.~~

(5) "Office" means the office of victims services established in [section 1].

(6) "Victim" means a person who suffers bodily injury or death as a result of:

(a) criminally injurious conduct;

(b) the person's good faith effort to prevent criminally injurious conduct; or

(c) the person's good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct."

Section 4. Section 53-9-104, MCA, is amended to read:

"**53-9-104. Powers and duties of ~~division~~ *office*.** (1) The ~~division~~ *office* shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, book, photograph, movie, television production, play, or article relating to ~~such~~ *the* crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, if the individual is convicted of the crime, to be held for ~~such~~ *a* period of time as the ~~division~~ *office* may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to pay the costs and attorney fees of court-appointed counsel for the charged person. Each victim and dependent of a deceased victim is entitled to ~~his~~ actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the county as reimbursement for any public defender or any attorney appointed for the charged person must be deposited in the account established in 53-9-109.

(2) The ~~division~~ *office* may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the ~~division~~ *office* to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant, provided that the ~~division~~ *office* has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection *(2)*(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims' assistance coordinating and planning program."

Section 5. Section 53-9-105, MCA, is amended to read:

"**53-9-105. Rehabilitation of victims.** The ~~division~~ *office* shall refer to the department of public health and human services victims who have been permanently disabled through criminally injurious conduct, who are receiving benefits under this part, and who in the opinion of the ~~division~~ *office* may be vocationally rehabilitated. The department of public health and human services shall provide for the vocational rehabilitation of the victims under its rehabilitation programs to the extent funds are available under the programs."

Section 6. Section 53-9-106, MCA, is amended to read:

"**53-9-106. ~~Attorneys'~~ *Attorney* fees.** (1) The ~~division~~ *office* may grant ~~attorneys'~~ *attorney* fees to attorneys for representing claimants before the ~~division~~ *office*. Any ~~attorney's~~ *attorney* fee granted by the ~~division~~ *office* ~~shall be~~ *is* in addition to compensation awarded the claimant under this part.

(2) The ~~division~~ *office* may regulate the amount of the ~~attorney's~~ *attorney* fee in any claim under this part when an attorney is representing a claimant.

(3) In cases under this part that go before a district court, the judge may grant, in addition to compensation benefits granted, ~~attorneys'~~ *attorney* fees to attorneys for representing claimants before the court.

(4) ~~In no claim or case may attorney~~ *Attorney* fees in excess of 5% of the amount paid to a claimant or on ~~his~~ *a claimant's* behalf *may not* be paid directly or indirectly to a claimant's attorney."

Section 7. Section 53-9-107, MCA, is amended to read:

"**53-9-107. Public inspection and disclosure of ~~division's~~ *office's* records.** (1) Except as provided in subsections (2) and (3), the records the ~~division~~ *office* maintains in its possession in the administration of this part are open to public inspection and disclosure.

(2) Confidential criminal justice information obtained by the ~~division~~ *office* is subject to the confidentiality provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5.

(3) In assuring that the right of individual privacy so essential to the well-being of a free society may not be infringed without the showing of a compelling state interest, the following public records of the ~~division~~ *office* are exempt from disclosure:

(a) information of a personal nature, such as personal, medical, or similar information, if the public disclosure ~~thereof~~ *of the information* would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure has the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(b) any public records or information, the disclosure of which is prohibited by federal law or regulations.

(4) If any public record of the ~~division~~ *office* contains material that is not exempt under subsection (3), as well as material that is exempt from disclosure, the ~~division~~ *office* shall separate the exempt and nonexempt and make the nonexempt material available for examination."

Section 8. Section 53-9-108, MCA, is amended to read:

"**53-9-108. Limitation of benefit entitlements to proportionate share of available funds.** Claimants receiving benefits under this part are not granted an absolute entitlement to benefits. Benefits must be paid in accordance with the amount of the legislative appropriation. If the ~~division~~ *office* determines at any time that the appropriated funds for a fiscal year will not be an amount that will fully pay all claims, the ~~division~~ *office* may make appropriate proportionate reductions in benefits to all claimants. ~~Such~~ *The* reductions do not entitle claimants to future retroactive reimbursements in future fiscal years unless the legislature makes appropriations for ~~such~~ retroactive benefits."

Section 9. Section 53-9-109, MCA, is amended to read:

"**53-9-109. Crime victims compensation and assistance account.** (1) There is a crime victims compensation and assistance account in the state special revenue fund. There must be paid into this account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that are a result of citations or tickets issued by the highway patrol. Except as provided in subsection (2), the money in the account must be used solely for the purposes of this part and for victims' assistance program coordination and planning provided by the ~~division~~ *office*.

(2) The fund balance in the account as of March 31 of each year is limited to $500,000. Whenever the fund balance on March 31 exceeds $500,000, the amount of the fund balance in excess of $500,000 must be deposited in the general fund. (See compiler's comments for contingent termination of certain text.)"

Section 10. Section 53-9-110, MCA, is amended to read:

"**53-9-110. Receipt of federal funds.** The ~~division~~ *office* may adopt appropriate rules in order to receive federal funds under federal criminal reparation and compensation acts."

Section 11. Section 53-9-121, MCA, is amended to read:

"**53-9-121. Application for compensation.** An applicant for an award of compensation may apply in writing in a form that conforms substantially to that prescribed by the ~~division~~ *office*."

Section 12. Section 53-9-122, MCA, is amended to read:

"**53-9-122. Informal hearings.** The ~~division~~ *office* may hold informal hearings in order to make determinations regarding the compensability of a claim. At ~~such~~ *the* hearings, the ~~division~~ *office* may subpoena witnesses and documents as set forth in 2-4-104. Hearings held under this section are not considered contested case hearings under the Montana Administrative Procedure Act. However, the ~~division~~ *office* shall adopt rules regarding its informal hearing procedures."

Section 13. Section 53-9-123, MCA, is amended to read:

"**53-9-123. Evidence of condition.** (1) The ~~division~~ *office* may require the claimant to supplement the application with any reasonably available medical reports relating to the injury for which compensation is claimed.

(2) If the physical condition of a victim or claimant is material to a claim, the ~~division~~ *office* may order the victim or claimant to submit from time to time to a physical examination by a physician or may order an autopsy of a deceased victim. The ~~division~~ *office* shall pay for ~~such~~ *the* examination or autopsy. The order ~~shall~~ *must* specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made and ~~shall~~ *must* require the person to file with the ~~division~~ *office* a detailed written report of the examination or autopsy. The report ~~shall~~ *must* set out ~~his~~ *physician's* findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions. On request of the person examined, the ~~division~~ *office* shall furnish ~~him~~ *the person* a copy of the report. If the victim is deceased, the ~~division~~ *office*, on request, shall furnish the claimant a copy of the report.

(3) There is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical condition of the claimant or victim in a proceeding under this part in which that condition is an element."

Section 14. Section 53-9-124, MCA, is amended to read:

"**53-9-124. Enforcement of ~~division's~~ *office's* orders — improper assertion of privilege.** If a person refuses to comply with an order of the ~~division~~ *office* or asserts a privilege to withhold or suppress evidence relevant to a claim, except privileges arising from the attorney-client relationship, the ~~division~~ *office* may make any just order, including denial of the claim."

Section 15. Section 53-9-125, MCA, is amended to read:

"**53-9-125. Limitations on awards.** (1) Except as otherwise provided in this section, compensation may not be awarded unless the claim is filed with the ~~division~~ *office* within 1 year after the day the criminally injurious conduct occurred causing the injury or death upon which the claim is based. Compensation in cases involving sexual offenses against minors may not be awarded unless the claim is filed with the ~~division~~ *office* within 1 year after the day the criminally injurious conduct was reported to a law enforcement agency or an agency of the state responsible for provision of child welfare services, or within 1 year after the day the victim reaches 18 years of age, whichever occurs last. The time for filing a claim may be extended by the ~~division~~ *office* for good cause shown.

(2) Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender or to any claimant if the award would unjustly benefit the offender or accomplice.

(3) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer. The report must be made within 72 hours after its occurrence, except in a case involving a sexual offense against a minor or when the ~~division~~ *office* finds there was good cause for the failure to report within that time.

(4) In order to be entitled to benefits under this part, a claimant ~~must~~ *shall* fully cooperate with all law enforcement agencies and prosecuting attorneys in the apprehension and prosecution of the offender causing the criminally

injurious conduct. The ~~division~~ *office*, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies or prosecuting attorneys, may deny or reconsider and reduce an award of compensation.

(5) Compensation otherwise payable to a claimant ~~shall~~ *must* be reduced or denied to the extent the compensation benefits payable are or can be recouped from collateral sources.

(6) Persons serving a sentence of imprisonment or residing in any other public institution which provides for the maintenance of ~~such~~ *the* person are not entitled to the benefits of this part.

(7) Compensation may be denied or reduced if the victim contributed to the infliction of death or injury with respect to which the claim is made. Any reduction in benefits under this subsection ~~shall~~ *must* be in proportion to what the ~~division~~ *office* finds to be the victim's contribution to the infliction of death or injury."

Section 16. Section 53-9-126, MCA, is amended to read:

"**53-9-126. Tentative award of compensation.** If the ~~division~~ *office* determines that the claimant will suffer financial hardship unless a tentative award is made and it appears likely that a final award will be made, an amount may be paid to the claimant, to be deducted from the final award or repaid by and recoverable from the claimant to the extent that it exceeds the final award."

Section 17. Section 53-9-127, MCA, is amended to read:

"**53-9-127. Award of compensation.** (1) The ~~division~~ *office* shall award compensation benefits under this part if satisfied by a preponderance of the evidence that the requirements for compensation have been met.

(2) An award may be made whether or not any person is prosecuted or convicted. Proof of conviction of a person whose acts give rise to a claim is conclusive evidence that the crime was committed unless an application for rehearing, an appeal of the conviction, or certiorari is pending or a rehearing or new trial has been ordered.

(3) The ~~division~~ *office* may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent and may make a tentative award under 53-9-126."

Section 18. Section 53-9-128, MCA, is amended to read:

"**53-9-128. Compensation benefits.** (1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the time the claimant seeks weekly benefits, the claimant, as a result of the injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is 66 2/3% of the wages received at the time of the criminally injurious conduct, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments must be made at the end of each 2-week period. Weekly compensation payments may not be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1 week, weekly compensation payments must be paid from the date the wage loss began. Weekly compensation payments must continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

(2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon, reasonable hospital services and medicines, and other treatment approved by the ~~division~~ *office* for the injuries suffered due to criminally injurious conduct. Unless expressly requested by the claimant, benefits may not be paid under this subsection until the claimant has been fully compensated for total wage loss benefits as provided in subsection (1) or (7).

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66 2/3% of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments must be made at the end of each 2-week period.

(b) Benefits under subsection (3)(a) must be paid to the spouse for the benefit of the spouse and other dependents unless the ~~division~~ *office* determines that other payment arrangements should be made. If a spouse dies or remarries, benefits under subsection (3)(a) must cease to be paid to the spouse but must continue to be paid to the other dependents as long as their dependent status continues.

(4) Reasonable funeral and burial expenses of the victim, not exceeding $3,500, must be paid if all other collateral sources have properly paid expenses but have not covered all expenses.

(5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death because of injuries suffered due to an act of criminally injurious conduct may not exceed $25,000 in the aggregate.

(6) Compensation benefits are not payable for pain and suffering, inconvenience, physical impairment, or nonbodily damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of the injury has no reasonable prospect of being regularly employed in the normal labor market and who was employable but was not employed at the time of the injury may in the discretion of the ~~division~~ *office* be awarded weekly compensation benefits in an amount determined by the ~~division~~ *office* not to exceed $100 per week. Weekly compensation payments must continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market. The claimant must be awarded benefits as provided in subsection (2).

(b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at the time of death may in the discretion of the ~~division~~ *office* be awarded, in a gross single amount payable to all dependents, a sum not to exceed $100 per week, which is payable in the manner and for the period provided by subsection (3)(b) or for a shorter period as determined by the ~~division~~ *office*. The claimant must be awarded benefits as provided in subsection (4).

(8) Except for benefits paid under subsections (3), (5), and (7)(b) or other benefits paid when the victim is killed as a result of criminally injurious conduct, amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every 2 weeks.

(9) (a) Subject to the limitations in subsection (9)(c), the spouse, parent, child, brother, or sister of a victim who is killed as a result of criminally injurious

conduct is entitled to reimbursement for mental health treatment received as a result of the victim's death.

(b) Subject to the limitations in subsection (9)(c), the parent, brother, or sister of a minor who is a victim of criminally injurious conduct involving a sexual offense and who is not entitled to receive services under Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as a result of that criminally injurious conduct.

(c) Total payments made under subsections (9)(a) and (9)(b) may not exceed $2,000 or 12 consecutive months of treatment for each person, whichever occurs first."

Section 19. Section 53-9-130, MCA, is amended to read:

"53-9-130. Reconsideration and review of ~~division's~~ *office's* decisions. (1) The ~~division~~ *office* on its own motion or on request of the claimant may reconsider a decision making or denying an award or determining its amount. The ~~division~~ *office* shall reconsider at least annually every award being paid in installments. An order on reconsideration of an award may not require refund of amounts previously paid unless the award was obtained by fraud.

(2) The right of reconsideration does not affect the finality of ~~a division~~ *an office* decision for the purpose of appeal."

Section 20. Section 53-9-131, MCA, is amended to read:

"53-9-131. Appeals. After the ~~division~~ *office* has made final determination concerning any matter relating to a claim, if the claimant disputes the ~~division's~~ *office's* determination, ~~he~~ *the claimant* may appeal to the district court for the county in which ~~he~~ *the claimant* resides or Lewis and Clark County for review. Review on appeal must be in conformity with 2-4-701 through 2-4-704 of the Montana Administrative Procedure Act. The judge, after a hearing, shall make a final determination concerning the dispute and issue an appropriate order affirming, reversing, or modifying the ~~division's~~ *office's* determination."

Section 21. Section 53-9-132, MCA, is amended to read:

"53-9-132. Subrogation. (1) If a claimant seeks compensation under this part and compensation is awarded, the ~~division~~ *office* is entitled to full subrogation against a judgment or recovery received by the claimant against the offender or a collateral source arising from the criminally injurious conduct committed by the offender for all compensation paid under this part. The ~~division's~~ *office's* right of subrogation ~~shall be~~ *is* a first lien on the judgment or recovery. If the claimant does not institute the action against the offender or collateral source within 1 year from the date the criminally injurious conduct occurred, the ~~division~~ *office* may institute the action in the name of the claimant or the claimant's personal representative.

(2) If the claimant institutes the action, the ~~division~~ *office* shall pay a proportional share of costs and ~~attorneys'~~ *attorney* fees if it recovers under its subrogation interest.

(3) If the ~~division~~ *office* institutes the action in the name of the claimant or the claimant's personal representative and the recovery is in excess of the amount of compensation paid to the claimant and costs incurred by the ~~division~~ *office* in pursuit of the action, the excess ~~shall~~ *must* be paid to the claimant.

(4) If a judgment or recovery includes both damages for bodily injury or death for which the ~~division~~ *office* has paid compensation under this part and damages for which the ~~division~~ *office* has not paid compensation, then the ~~division's~~ *office's* subrogation interest ~~shall apply~~ *applies* only to that proportion of the judgment or recovery for which it has paid compensation. In a civil action in a court of this state arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict indicating separately the amounts of the various items of damages awarded. A claimant may not make recoveries against the offender or collateral source in such a way as to avoid and preclude the ~~division~~ *office* from receiving its proper subrogation share as provided in this section. The ~~division~~ *office* shall release its lien provided for in subsection (1) ~~above~~ upon receipt of its subrogation share."

Section 22. Section 53-9-133, MCA, is amended to read:

"**53-9-133. Effect of award on probation and parole of offender.** (1) When placing any convicted person on probation, the court may set as a condition of probation the payment to the state of an amount equal to any benefits paid by the ~~division~~ *office* to a victim or a victim's dependents. The court may set a repayment schedule and modify it as circumstances change.

(2) Payment of the debt may be made a condition of parole subject to modification based on a change in circumstances."

Section 23. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 20, and the provisions of Title 2, chapter 15, part 20, apply to [section 1].

Section 24. Effective date. [This act] is effective July 1, 2001.

Approved March 22, 2001

CHAPTER NO. 125

[SB 7]

AN ACT REVISING THE LAWS RELATING TO EMINENT DOMAIN FOR THE SOLE PURPOSE OF MODERNIZING THE LANGUAGE, INCLUDING REFERENCES TO THE PROCEDURE TO BE FOLLOWED IN EMINENT DOMAIN ACTIONS, AND SPECIFICALLY ENUMERATING THE PUBLIC USES FOR WHICH THE POWER OF EMINENT DOMAIN MAY BE EXERCISED; AND AMENDING SECTIONS 7-1-4124, 7-5-4106, 7-7-4404, 7-13-2218, 7-13-4404, 7-13-4405, 7-13-4406, 7-14-101, 7-14-1625, 7-14-2101, 7-14-2108, 7-14-2123, 7-14-2621, 7-14-2803, 7-14-2829, 7-14-4501, 7-14-4622, 7-14-4626, 7-14-4801, 7-15-4204, 7-15-4258, 7-15-4259, 7-15-4460, 7-15-4462, 7-16-2105, 7-16-4106, 7-35-2201, 15-70-301, 15-70-701, 23-1-102, 35-18-106, 35-20-104, 53-2-201, 60-1-103, 60-5-104, 67-2-301, 67-5-202, 67-6-301, 67-10-102, 67-10-103, 67-10-201, 67-10-205, 67-10-221, 67-11-201, 67-11-204, 67-11-231, 67-11-401, 69-13-104, 69-14-513, 69-14-536, 69-14-552, 70-30-102, 70-30-103, 70-30-104, 70-30-105, 70-30-106, 70-30-107, 70-30-108, 70-30-109, 70-30-110, 70-30-111, 70-30-202, 70-30-203, 70-30-206, 70-30-207, 70-30-301, 70-30-302, 70-30-303, 70-30-304, 70-30-305, 70-30-306, 70-30-307, 70-30-308, 70-30-309, 70-30-310, 70-30-311, 70-30-312, 70-30-314, 70-30-315, 70-30-321, 70-30-322, 70-31-102, 70-31-104, 70-31-105, 70-31-301, 70-31-311, 70-32-215, 75-10-715, 75-10-720, 75-15-123, 75-15-223, 76-5-1108, 76-5-1111, 76-6-105, 76-12-108, 76-12-110, 82-2-221, 82-2-222, 82-2-224, 82-10-303, 82-10-304, 82-10-305, 85-1-204, 85-1-209, 85-7-1411, 85-7-1904, 85-7-1932, 85-9-410, AND 87-1-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-4124, MCA, is amended to read:

"**7-1-4124. Powers.** A municipality with general powers has the power, subject to the provisions of state law, to:

(1) enact ordinances and resolutions;

(2) sue and be sued;

(3) buy, sell, mortgage, rent, lease, hold, manage, or dispose of any interest in real or personal property;

(4) contract with persons, corporations, or any other governmental entity;

(5) pay debts and expenses;

(6) borrow money;

(7) solicit and accept bequests, donations, or grants of money, property, services, or other advantages and comply with any condition that is not contrary to the public interest;

(8) execute documents necessary to receive money, property, services, or other advantages from the state government, the federal government, or any other source;

(9) make grants and loans of money, property, and services for public purposes;

(10) require the attendance of witnesses and production of documents relevant to matters being considered by the governing body;

(11) hire, direct, and discharge employees and appoint and remove members of boards;

(12) ratify any action of the municipality or its officers or employees ~~which~~ *that* could have been approved in advance;

(13) have a corporate seal and flag;

(14) acquire by eminent domain, as provided in Title 70, chapter 30, any interest in property ~~to provide any service or facility~~ *for a public use* authorized by law;

(15) initiate a civil action to restrain or enjoin violation of an ordinance;

(16) enter private property, obtaining warrants when necessary, for the purpose of enforcing ordinances that affect the general welfare and public safety;

(17) conduct a census;

(18) conduct inventories of public property and preparatory studies;

(19) condemn and demolish hazardous structures;

(20) purchase insurance and establish self-insurance plans;

(21) impound animals and other private property creating a nuisance or obstructing a street or highway;

(22) establish quarantines;

(23) classify all violations of city ordinances as civil infractions, with civil penalties, as provided in 7-1-4150; and

(24) exercise powers not inconsistent with law necessary for effective administration of authorized services and functions."

Section 2. Section 7-5-4106, MCA, is amended to read:

"**7-5-4106. Power of condemnation.** The city or town council ~~has power to~~ *may* condemn private property for ~~opening, establishing, widening, or altering any street, alley, park, sewer, or waterway in the city or town and for establishing, constructing, and maintaining any sewer, waterway, or drain ditch outside of the corporate limits of the municipality or for~~ any ~~other municipal and~~ public use *listed in 70-30-102*. The ordinance authorizing the taking of private property for ~~any such~~ *a public* use is conclusive as to the necessity of the taking and must conform to and ~~the proceedings thereunder had~~ *be conducted* as provided in Title 70, chapters 30 and 31, concerning eminent domain."

Section 3. Section 7-7-4404, MCA, is amended to read:

"**7-7-4404. Authority to acquire, construct, maintain, and operate various undertakings.** ~~In addition to the powers which it may now have, any~~ *A* municipality ~~shall have power~~ under this part ~~to~~ *may*:

(1) construct, ~~acquire by gift, purchase, or the exercise of the right of eminent domain,~~ reconstruct, improve, ~~better,~~ or extend any undertaking, within or ~~without~~ *outside of* the municipality or partially within or partially ~~without~~ *outside of* the municipality, and acquire by gift, purchase, or the exercise of the right of eminent domain *pursuant to Title 70, chapter 30, any undertaking and* ~~lands~~ *land* or rights in land or water rights in connection ~~therewith~~ *with the undertaking*;

(2) operate and maintain any undertaking and furnish the service, facilities, and commodities ~~thereof~~ *of the undertaking* for its own use and for the use of public and private consumers within or ~~without~~ *outside of* the territorial boundaries of ~~such~~ *the* municipality; and

(3) prescribe and collect rates, fees, and charges for the services, facilities, and commodities furnished by ~~such~~ *the* undertaking."

Section 4. Section 7-13-2218, MCA, is amended to read:

"**7-13-2218. District powers related to water and sewer projects.** ~~Any~~ *A* district *that is* incorporated as provided in this part may:

(1) construct, purchase, lease, or otherwise acquire and operate and maintain water rights, waterworks, sanitary sewerworks, storm sewerworks, canals, conduits, reservoirs, lands, and rights useful or necessary to store, conserve, supply, produce, convey, or drain water or sewage for purposes beneficial to the district. Beneficial purposes include but are not limited to flood prevention, flood control, irrigation, drainage, municipal and industrial water supplies, domestic water supplies, wildlife, recreation, pollution abatement, livestock water supply, and other similar purposes.

(2) if the incorporators of the district are members of a private, nonprofit water association that was formed under the laws of this state, acquire by eminent domain, *pursuant to Title 70, chapter 30,* from that water association any type of property referred to in this section;

(3) store water for the benefit of the district;

(4) conserve water for future use;

(5) appropriate, acquire, and conserve water and water rights for the purposes of the district;

(6) in the name of the district, commence, maintain, intervene in, ~~and~~ compromise, ~~in the name of the district,~~ and assume the costs of any action or proceeding*:*

(a) involving or affecting the ~~ownership or~~ use of ~~waters~~ *water*, water rights, or sewer rights within the district *that are* used or useful for any purpose of the district or a benefit to any land situated in the district;

~~(4)~~*(b)* ~~commence, maintain, intervene in, defend, and compromise actions and proceedings~~ to prevent interference with or diminution of the natural flow of any stream or natural subterranean supply of ~~waters~~ *water that is* used or useful for any purpose of the district or *that is* a common benefit to the lands within the district or its inhabitants;

~~(5)~~*(c)* ~~commence, maintain, and defend actions and proceedings~~ to prevent any interference with the ~~waters~~ *water* or *water or sewer* rights referred to in this section ~~as~~ *that* may endanger the inhabitants or lands of the district;

~~(6)~~*(7)* lease *or purchase and carry on and maintain* ~~from any person, firm, or public or private corporation, with the privilege of purchase or otherwise,~~ existing water rights, waterworks, sewerworks, canals, or reservoir systems; ~~and carry on and maintain them;~~

~~(7)~~*(8)* sell water or the use of water for household, ~~or~~ domestic, or other similar purposes, ~~or~~ sell sewer service, and, whenever there is a surplus of water or sewerworks capacity, sell or otherwise dispose of the water or sewerworks capacity to municipalities, ~~or~~ towns, or ~~to~~ consumers located within or outside *of* the boundaries of the district;

~~(8)~~*(9)* retain the services of architects and engineers for designing, preparing a feasibility study for, and drawing plans and specifications ~~of~~ *for* a water or sewer system for the district, with the cost of these services apportioned and assigned against properties in the district; and

~~(9)~~*(10)* establish, by ordinance or resolution, rules and regulations for the operation, maintenance, use, and availability of any of ~~its~~ *the district's* systems or improvements, including but not limited to connection procedures, service termination, and *the* payment of rates and charges, including penalties and interest charges for delinquent accounts."

Section 5. Section 7-13-4404, MCA, is amended to read:

"7-13-4404. Use of eminent domain powers to acquire water supply system. (1) ~~In case~~ *If* agreement is not reached pursuant to 7-13-4403, then the city or town shall proceed to acquire the plant or water supply under ~~the laws relating to the taking of private property for public use~~ *Title 70, chapter 30.*

(2) ~~Any~~ *A* city or town acquiring property under ~~the laws relating to the taking of private property for public use~~ *Title 70, chapter 30,* shall ~~make payment~~ *pay the amount of compensation* to the owner ~~or owners~~ of the plant or water supply~~, of the value thereof legally determined,~~ within 6 months from ~~and after~~ *the date that* final judgment is entered in the condemnation proceedings."

Section 6. Section 7-13-4405, MCA, is amended to read:

"**7-13-4405. Acquisition of water rights and other necessary property.** For the purpose of providing the city or town with an adequate water supply for municipal and domestic purposes, the city or town council shall procure appropriate water rights ~~and title to the same~~ and the necessary real and personal property to make ~~said rights and~~ *an adequate water* supply available~~,~~. *The water rights and property may be acquired* by purchase, appropriation, location, condemnation *pursuant to Title 70, chapter 30*, or ~~otherwise~~ *in any other legal manner*."

Section 7. Section 7-13-4406, MCA, is amended to read:

"**7-13-4406. Control over territory occupied by water supply system — taxation and condemnation powers.** *(1)* Cities and towns ~~shall~~ have jurisdiction and control*:*

(a) over the territory occupied by their public works;

(b) over and along the line of reservoirs, streams, trenches, pipes, drains, and other appurtenances used in the construction and operation of ~~such~~ *the public* works; and ~~also~~

(c) over the source of streams from which water is taken for the enforcement of its sanitary ordinances, the abatement of nuisances, and the general preservation of the purity of its water supply~~,~~.

(2) ~~with power to~~ *Cities and towns may* enact all ordinances and regulations necessary to ~~carry the powers hereby conferred into effect~~ *implement subsection (1)*. For this purpose, the city or town ~~shall be authorized to~~ *may* condemn private property in the manner provided ~~by law~~ *in Title 70, chapter 30,* and ~~shall have authority to~~ *may* levy a ~~just and equitable~~ tax on all consumers of water for the purpose of defraying the expenses of ~~its~~ procurement."

Section 8. Section 7-14-101, MCA, is amended to read:

"**7-14-101. Acquisition of property for controlled-access facility.** The highway authorities of the counties, incorporated cities, and towns *may*, respectively or in cooperation with each other or the state, ~~may~~ acquire private or public property and property rights for controlled-access highways or controlled-access facilities and service roads. ~~Such~~ *The property* rights may include rights of access, air, view, and light. ~~They~~ *The property rights* may be acquired by gift, devise, purchase, or condemnation in the ~~same~~ manner ~~as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions~~ *provided in Title 60, chapter 4, part 1, and Title 70, chapter 30*."

Section 9. Section 7-14-1625, MCA, is amended to read:

"**7-14-1625. Railroad acquisition and operation — permits — eminent domain.** (1) Within the boundaries of the authority, the authority may establish, acquire, construct, purchase, improve, maintain, equip, operate, regulate, and protect railroads and railroad facilities, including but not limited to terminal buildings, roadways, crossings, bridges, causeways, tunnels, equipment, and rolling stock, ~~as~~ *that* may be necessary to carry out the provisions of this part.

(2) The authority may apply to a public agency for permits~~, consents, authorizations,~~ and approvals required for the acquisition and operation of a

railroad and take all actions necessary to comply with ~~their~~ conditions *required in a permit or approval.*

(3) The authority may acquire property for a public ~~purpose~~ *use, as provided in Title 70, chapter 30,* in the same manner as a county, except that the authority does not have the power of eminent domain with respect to property owned by another authority or by a political subdivision or property owned by a railroad corporation unless the interstate commerce commission or another ~~authority~~ *entity* with *the* power to make the finding has found that the public convenience and necessity permit discontinuance of rail service on the property."

Section 10. Section 7-14-2101, MCA, is amended to read:

"7-14-2101. General powers of county relating to roads and bridges — definitions. (1) The board of county commissioners, under the limitations and restrictions that are prescribed by law, may:

(a) (i) lay out, maintain, control, and manage county roads and bridges within the county;

(ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, and management of the county roads and bridges within the county as provided by law;

(b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county roads and bridges in adjacent counties, wholly or in part as agreed upon between the boards of the counties concerned;

(ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, management, and improvement of county roads and bridges in adjacent counties or shared jointly with other counties, as agreed upon between the boards of the counties concerned and as provided by law;

(c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward the cost of joint highway or bridge construction projects entered into in cooperation with other counties, the state, or the United States;

(ii) subject to 15-10-420, place a joint project in the budget and levy taxes for a joint project as provided by law.

(2) ~~(a)~~ Unless the context requires otherwise, for the purposes of this chapter, the ~~term~~ *following definitions apply:*

(a) "bridge" includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills;

(b) "county road" means:

(i) a road that is petitioned by freeholders, approved by resolution, and opened by a board of county commissioners in accordance with this title;

(ii) a road that is dedicated for public use in the county and approved by resolution by a board of county commissioners; or

(iii) a road that has been acquired by eminent domain *pursuant to Title 70, chapter 30,* and accepted by resolution as a county road by a board of county commissioners.

~~(b)~~*(3) (a)* Following a public hearing, a board of county commissioners may accept by resolution a road that has not previously been considered a county road but that has been laid out, constructed, and maintained with state department of transportation or county funds.

~~(c)~~*(b)* A survey is not required of an existing county road that is accepted by resolution by a board of county commissioners.

~~(d)~~*(c)* A road that is abandoned by the state may be designated as a county road upon the acceptance and approval by resolution of a board of county commissioners.

~~(e) Unless the context requires otherwise, the term "bridge" includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills.~~"

Section 11. Section 7-14-2108, MCA, is amended to read:

"**7-14-2108. Recording of instruments related to acquisition of right-of-way.** (1) When a right-of-way is voluntarily given or purchased, ~~an~~ *a written* instrument ~~in writing~~ conveying the right-of-way and incidents ~~thereto~~ *to the right-of-way* must be signed and acknowledged by the person making it. ~~It~~ *The instrument* must then be recorded in the office of the clerk of the county where the land is located.

(2) When a right-of-way is condemned *pursuant to Title 70, chapter 30*, a certified copy of the judgment of the court must be made. ~~It~~ *The copy* must then be filed in the office of the clerk of the county where the land is located.

(3) Both types of instruments ~~shall~~ *must* particularly describe the land."

Section 12. Section 7-14-2123, MCA, is amended to read:

"**7-14-2123. Acquisition of machinery and materials.** (1) Out of the county road fund, ~~each~~ *a* board of county commissioners may:

(a) purchase and operate grading and other machinery necessary or desirable for the improvement of the county roads;

(b) acquire deposits or quarries of suitable road-building material by purchase, condemnation *pursuant to Title 70, chapter 30*, or lease.

(2) ~~Each~~ *A* board may also acquire ~~such~~ road-building material by gift."

Section 13. Section 7-14-2621, MCA, is amended to read:

"**7-14-2621. Establishment and alteration of stock lanes.** (1) A stock lane is a county road established and maintained for the driving and travel of livestock. ~~It shall be~~ *A stock lane may* not *be* less than 60 feet wide. The width ~~shall~~ *must* be determined by the board in the order creating it.

(2) Upon presentation of a proper petition, ~~each~~ *a* board may establish, alter, or vacate stock lanes when it ~~deems~~ *considers* it expedient and necessary for the convenience of the public and for the convenience of travel on *established* roads ~~now established~~. ~~Any~~ *A stock* lane may adjoin and parallel a county road and ~~shall~~ *must* be described in the petition for creation and in the order of the board creating ~~it~~ *the stock lane.*

(3) The provisions of this part and the general laws relating to establishing, altering, and vacating county roads, including the exercise of the right of eminent domain *as provided in Title 70, chapter 30*, ~~shall~~ apply to stock lanes. References in all petitions, orders, and proceedings ~~shall~~ *must* be to stock lanes in order to differentiate them from other highways."

Section 14. Section 7-14-2803, MCA, is amended to read:

"**7-14-2803. Establishment and operation of public ferry or wharf upon petition.** When ~~it shall be made to appear by~~ *a* petition to ~~any~~ *a* board of county commissioners ~~in this state~~ *indicates* that it is necessary to ~~keep~~ *establish* and maintain a public ferry across or a wharf at any unfordable stream, lake, estuary, or bay, ~~any~~ *the* county ~~within the state~~, through its board of county commissioners, ~~is hereby authorized to~~ *may* construct *a ferry or wharf* or ~~to~~ *may purchase or* acquire *a ferry or wharf* by condemnation, *as provided in Title 70, chapter 30,* ~~or purchase~~ and ~~to~~ *may* operate~~,~~ *and* maintain~~, direct, regulate, and control the operation of~~ a ferry across or a wharf at any unfordable stream, lake, estuary, or bay within or bordering ~~on said~~ *the* county~~;~~. ~~together with~~ *The county may also acquire, operate, and maintain* all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining ~~thereto,~~ *to the ferry or wharf.* ~~with full jurisdiction and authority to operate and maintain the same~~ *The county may operate the ferry or wharf for* free or ~~for toll~~ *may charge for the use.*"

Section 15. Section 7-14-2829, MCA, is amended to read:

"**7-14-2829. Acquisition of land for ferry.** When ~~there are~~ lands *are* necessary for the construction, erection, or use of ~~such~~ *a* ferry ~~which~~ *that* cannot be procured by agreement between the owner *of the ferry* and the landowner, the right-of-way and all other lands necessary for the use and construction or erection ~~thereof~~ *of the ferry* may be acquired by condemnation *as provided in Title 70, chapter 30.*"

Section 16. Section 7-14-4501, MCA, is amended to read:

"**7-14-4501. Acquisition, construction, and maintenance of parking areas.** A city or town council ~~shall have power to~~ *may*:

(1) acquire by lease, gift, purchase, or condemnation *pursuant to Title 70, chapter 30,* lots or lands for use as parking areas for motor vehicles;

(2) construct and maintain ~~thereon~~ *on the acquired land* or on any premises owned or under lease by ~~such~~ *the* city or town suitable parking facilities for the use of the public and for general traffic control; and

(3) ~~make charges~~ *charge* for the use of ~~such~~ *parking* facilities."

Section 17. Section 7-14-4622, MCA, is amended to read:

"**7-14-4622. Powers of parking commission related to provision of parking services.** For the purpose of offstreet parking, each parking commission, subject to the limitations imposed by this part, ~~shall have the following powers~~ *may*:

(1) ~~to~~ purchase, lease, obtain option upon, or acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest ~~therein~~ *in real or personal property*, together with any improvements ~~thereon~~ *on real property*;

(2) ~~to~~ *subject to 7-14-4626,* acquire by the exercise of the power of eminent domain, *as provided in Title 70, chapter 30,* any property ~~in accordance with the applicable provisions of the law of eminent domain~~ upon approval of the city council;

(3) ~~to~~ sell, lease, exchange, transfer, assign, or otherwise dispose of any real or personal property or any interest ~~therein~~ *in real or personal property*;

(4) ~~to~~ lay out, open, extend, widen, straighten, establish, or change the grade, in whole or in part, of public parking facilities and public rights-of-way necessary or convenient ~~therefor~~ *for offstreet parking*;

(5) ~~to~~ insure or provide for the insurance of any real or personal property or operation of the *parking* commission against risks or hazards;

(6) ~~to~~ acquire, construct, rent, lease, maintain, and repair ~~such~~ real and personal property *used for parking services* ~~or any portion thereof~~, either on behalf of the *parking* commission or as an agent of the city, including the leasing of the operation ~~thereof~~ *of the offstreet parking*;

(7) ~~to~~ regulate onstreet parking ~~where~~ *when* it remains in use, in coordination with offstreet parking, subject to traffic regulations imposed by the state."

Section 18. Section 7-14-4626, MCA, is amended to read:

"7-14-4626. Limitation on power of eminent domain. (1) ~~Notwithstanding the provisions of 7-14-4622(2), no~~ *A parking commission may not acquire the* property of a ~~state~~ public ~~body may be acquired~~ *entity* without ~~its~~ *the entity's* consent.

(2) ~~No~~ *A parking commission or the city may not acquire an* existing parking facility ~~shall be acquired~~ by the exercise of the power of eminent domain, *as provided in Title 70, chapter 30,* by a commission or the city except after *a* public hearing. ~~following~~ *A* notice of the date, time, place, and purpose of ~~such~~ *the* hearing *must be* published once not less than 10 or more than 20 days prior to the date of ~~such~~ *the* hearing."

Section 19. Section 7-14-4801, MCA, is amended to read:

"7-14-4801. Acquisition of landing fields and parking areas for aircraft. ~~The~~ *A* city or town council ~~has power to~~ *may* acquire by lease, gift, purchase, or condemnation *pursuant to Title 70, chapter 30,* lots or lands for landing fields or parking areas for aircraft, within or ~~without~~ *outside of* the corporate limits of the municipality~~;~~. ~~and to~~ *The city or town council may* exercise municipal jurisdiction over the lots or lands *acquired pursuant to this section,* ~~where such~~ *even though the* lots or lands or any portion ~~thereof~~ *of the lots or lands* ~~are without~~ *is outside of* the corporate limits of the municipality~~, to the same extent as though they were within such corporate limits~~."

Section 20. Section 7-15-4204, MCA, is amended to read:

"7-15-4204. Interpretation. ~~It is further found and declared:~~

~~(1) that the~~ *The* powers conferred by ~~this part and~~ part 43 *and this part* are for public uses and purposes for which public money may be expended and the power of eminent domain *may be* exercised~~; and~~ *as provided in Title 70, chapter 30.*

~~(2) that the~~ *The legislature finds and declares that* necessity in the public interest *exists* for the provisions enacted in ~~this part and~~ part 43 ~~is hereby declared as a matter of legislative determination~~ *and this part concerning urban renewal.*"

Section 21. Section 7-15-4258, MCA, is amended to read:

"7-15-4258. Acquisition and administration of real and personal property. (1) ~~Every~~ *A* municipality ~~shall have power to~~ *may*:

(a) acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain *pursuant to Title 70, chapter 30*, or otherwise any real property and ~~such~~

personal property ~~as~~ *that* may be necessary for the administration of the provisions contained in ~~this part and~~ part 43 *and this part*, together with any improvements ~~thereon~~ *on the real property*;

(b) hold, improve, clear, or prepare for redevelopment ~~any such~~ property *acquired pursuant to subsection (1)(a)*;

(c) dispose of ~~any~~ real or personal property;

(d) insure or provide for the insurance of ~~any~~ real or personal property or *the* operations of the municipality against any risks or hazards, including the power to pay premiums on any ~~such~~ insurance; and

(e) enter into a development agreement with the owner of real property within an urban renewal area and undertake activities, including the acquisition, removal, or demolition of structures, improvements, or personal property located on the real property, to prepare the property for redevelopment.

(2) A development agreement entered into in accordance with subsection (1)(e) must contain provisions obligating the owner to redevelop the real property for a specified use consistent with the urban renewal plan and offering recourse to the municipality if the redevelopment is not completed as determined by the local governing body. The development agreement may not constitute the acquisition of an interest in real property by the municipality within the meaning of 7-15-4262 or 7-15-4263.

(3) However, ~~no~~ statutory ~~provision~~ *provisions* with respect to the acquisition, clearance, or disposition of property by public bodies ~~shall~~ *may not* restrict a municipality in the exercise of ~~such~~ functions with respect to an urban renewal project.

(4) A municipality ~~shall~~ *may* not acquire real property for an urban renewal project or enter into a development agreement, as provided in subsection (1)(e), unless the local governing body has approved the urban renewal project plan in accordance with 7-15-4216(2) and 7-15-4217."

Section 22. Section 7-15-4259, MCA, is amended to read:

"**7-15-4259. Exercise of power of eminent domain.** (1) After the adoption by the local governing body of a resolution declaring that the acquisition of the real property described ~~therein~~ *in the resolution* is necessary for an urban renewal project under this part, a municipality ~~shall have the right to~~ *may* acquire by condemnation, *as provided in Title 70, chapter 30,* any interest in real property ~~which~~ *that* it ~~may deem~~ *considers* necessary for ~~such purpose~~ *urban renewal.*

(2) Condemnation for urban renewal of blighted areas is ~~declared to be~~ a public use, and property already devoted to any other public use or acquired by the owner or ~~his~~ *the owner's* predecessor in interest by eminent domain may be condemned for the purposes of this part.

(3) The award of compensation for real property taken for ~~such a~~ *an urban renewal* project ~~shall~~ *may* not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction or proposed assembly, clearance, or reconstruction in the project area. ~~No~~ *An* allowance ~~shall~~ *may not* be made for the improvements begun on real property after notice to the owner of ~~such~~ *the* property of the institution of proceedings to condemn ~~such~~ *the* property. Evidence ~~shall be~~ *is* admissible bearing upon the unsanitary, unsafe, or substandard condition of the premises or the unlawful use ~~thereof~~ *of the premises.*"

Section 23. Section 7-15-4460, MCA, is amended to read:

"**7-15-4460. Powers of housing authority relating to acquisition and disposition of property.** (1) An authority ~~shall have power to~~ *may*:

(a) purchase, lease, obtain options upon, *or* acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest ~~therein~~ *in property* from any person, firm, corporation, city, municipality, or government;

(b) acquire by eminent domain, *as provided in Title 70, chapter 30,* any real property, including improvements and fixtures ~~thereon~~ *on the real property*;

(c) sell, exchange, transfer, assign, or pledge any real or personal property or any interest ~~therein~~ *in property* to any person, firm, corporation, municipality, city, or government;

(d) own, hold, clear, and improve property;

(e) insure or provide for the insurance of the property or operations of the authority against ~~such~~ risks ~~as~~ *that* the authority ~~may deem~~ *considers* advisable;

(f) procure insurance or guarantees from the federal government of the payment of any debts or parts ~~thereof~~ *of debt* secured by mortgages made or held by the authority on any property included in ~~any~~ *a* housing project.

(2) ~~No provisions~~ *Statutes* with respect to the acquisition, operation, or disposition of property by other public bodies ~~shall be~~ *are not* applicable to an authority unless the legislature ~~shall~~ specifically ~~so state~~ *declares that the provisions are applicable.*"

Section 24. Section 7-15-4462, MCA, is amended to read:

"**7-15-4462. Exercise of power of eminent domain.** (1) After the adoption by ~~it~~ *the authority* of a resolution declaring that the acquisition of the property described ~~therein~~ *in the resolution* is in the public interest and necessary for public use, the authority ~~shall have the right to~~ *may* acquire by eminent domain any real property, including fixtures and improvements, ~~which~~ *that* it ~~may deem~~ *considers* necessary to carry out the purposes of ~~this part and~~ part 45 *and this part.*

(2) The authority ~~may~~ *shall* exercise the power of eminent domain pursuant to the provisions of ~~either:~~

~~(a)~~ Title 70, chapter 30~~; or~~

~~(b) Any other applicable statutory provisions for the exercise of the power of eminent domain~~.

(3) Property already devoted to a public use may be acquired, provided that*:*

(a) ~~no~~ property belonging to any city or municipality within the boundaries of the authority or *belonging* to any government may *not* be acquired without ~~its~~ *the government's* consent*;* and

(b) ~~that no~~ property belonging to a public utility corporation may *not* be acquired without the approval of the commission or other officer or tribunal~~, if there be any,~~ having regulatory power over ~~such~~ *the* corporation *if the utility is subject to regulatory power.*"

Section 25. Section 7-16-2105, MCA, is amended to read:

"7-16-2105. Acquisition of land by county for public recreational or cultural purposes. (1) ~~The counties of this state are authorized to~~ *A county may* acquire, by purchase, grant, deed, gift, devise, condemnation *pursuant to Title 70, chapter 30,* or otherwise, lands suitable for public camping, public recreational purposes, civic centers, youth centers, museums, recreational centers, and any combination ~~thereof~~ *of the enumerated uses.* ~~or~~ *A county* may lease the land tracts, each of which must be situated ~~as to offer~~ *so that it offers* ready access to a public highway.

(2) This section may not be construed as amending or repealing 7-16-2201 through 7-16-2203."

Section 26. Section 7-16-4106, MCA, is amended to read:

"7-16-4106. Acquisition of property for athletic fields and civic stadiums. (1) ~~Every~~ *A* city or town council ~~shall have power to~~ *may*:

(a) acquire by gift, purchase, or condemnation *pursuant to Title 70, chapter 30,* lands for athletic fields and civic stadiums within or ~~without~~ *outside of* the corporate limits of the municipality;

(b) establish and regulate ~~such~~ *athletic* fields and civic stadiums;

(c) exercise municipal jurisdiction over the ~~lands so~~ acquired *land* ~~where such lands~~ *when the land* or any portion ~~thereof are without~~ *of the land is outside of* the corporate limits of the municipality to the same extent as though ~~they were~~ *the land was* within ~~said~~ *the* corporate limits; and

(d) construct, maintain, and regulate athletic and civic stadiums ~~thereon~~ *on the land.*

(2) The city or town ~~councils are authorized to~~ *council may* set aside or designate portions or tracts of land now owned by any municipality for the purpose of providing athletic fields and civic stadiums."

Section 27. Section 7-35-2201, MCA, is amended to read:

"7-35-2201. Power of county commissioners to conduct cemeteries. ~~The~~ *A* board of county commissioners ~~of any county within Montana is hereby given jurisdiction and power to~~ *may*:

(1) establish and conduct cemeteries;

(2) acquire *by purchase, gift, devise, or condemnation pursuant to Title 70, chapter 30:*

(a) lands for ~~said purpose by purchase, condemnation, gift, or devise~~ *cemetery purposes*; and

~~(3)~~*(b)* ~~acquire by purchase, condemnation, gift, or devise~~ cemeteries already established and conducted by persons, firms, or corporations, including municipal corporations."

Section 28. Section 15-70-301, MCA, is amended to read:

"15-70-301. (Temporary) Definitions. As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Bond" means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(3) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

(4) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(5) "Department" means the department of transportation.

(6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

(7) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter.

(8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(10) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

(12) "Improperly imported fuel" means special fuel ~~as defined in subsection (16)~~ that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

(14) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

(15) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, *as provided in Title 60, chapter 4, or Title 70, chapter 30*; or

(d) acquired by adverse use by the public, *with* jurisdiction having been assumed by the state or any political subdivision of the state.

(16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes all other types of additives when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

(17) "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

(18) *(a)* "Special fuel user" means a person ~~other than the U.S. government, a state, or a county, incorporated city or town, or school district of this state~~ who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(b) The term does not include the U.S. government, a state, a county, an incorporated city or town, or a school district of this state.

(19) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state. (Terminates June 30, 2001—sec. 7, Ch. 461, L. 1999.)

15-70-301. (Effective July 1, 2001) Definitions. As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person whose major endeavor is the business of farming or ranching and whose primary source of earned income is from the business of farming or ranching.

(2) "Bond" means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(3) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

(4) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(5) "Department" means the department of transportation.

(6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

(7) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter.

(8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(10) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

(12) "Improperly imported fuel" means special fuel ~~as defined in subsection (16)~~ that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

(14) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

(15) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, *as provided in Title 60, chapter 4, or Title 70, chapter 30*; or

(d) acquired by adverse use by the public, *with* jurisdiction having been assumed by the state or any political subdivision of the state.

(16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes all other types of additives when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

(17) "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

(18) *(a)* "Special fuel user" means a person ~~other than the U.S. government, a state, or a county, incorporated city or town, or school district of this state~~ who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(b) The term does not include the U.S. government, a state, a county, an incorporated city or town, or a school district of this state.

(19) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state."

Section 29. Section 15-70-701, MCA, is amended to read:

"**15-70-701. Definitions.** As used in this part, the following definitions apply:

(1) "Bond" means:

(a) a bond executed by a compressed natural gas dealer or a liquefied petroleum gas dealer as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, conditioned upon performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the compressed natural gas dealer or the liquefied petroleum gas dealer arising out of this part; or

(b) a deposit with the department by the compressed natural gas dealer or the liquefied petroleum gas dealer, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(2) "Compressed natural gas" means a product that is used as a fuel and that contains carbon or hydrogen, or both, and is compressed to greater than 24 pounds per square inch absolute base pressure and up to 3,600 pounds per square inch absolute base pressure when sold for use in motor vehicles operated on the public roads and highways of this state.

(3) "Compressed natural gas dealer" or "dealer" means a person who delivers any part of compressed natural gas into the fuel supply tank or tanks of a motor vehicle.

(4) "Department" means the department of transportation.

(5) "Liquefied petroleum gas" means any petroleum product that is sold for use in motor vehicles and that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons:

(a) propane;

(b) propylene;

(c) butane, including normal butane or isobutane; or

(d) butylene.

(6) "Liquefied petroleum gas dealer" or "dealer" means a person who delivers any part of liquefied petroleum gas into the fuel supply tank or tanks of a motor vehicle.

(7) "Motor vehicle" means any vehicle that is self-propelled by compressed natural gas or by liquefied petroleum gas and that is driven upon the public roads and highways of this state.

(8) (a) "Person" means a person, firm, association, joint-stock company, syndicate, partnership, or corporation.

(b) When used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, person means the partners or members of a firm, association, syndicate, or partnership~~; as~~. *As* applied to a joint-stock company or corporation, the term means the officers of the joint-stock company or corporation.

(9) "Public roads and highways of this state" means all streets, roads, highways, and related structures that are:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, *as provided in Title 60, chapter 4, or Title 70, chapter 30*; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state."

Section 30. Section 23-1-102, MCA, is amended to read:

"23-1-102. Powers and duties of department of fish, wildlife, and parks. *(1)* The department shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state. ~~and~~ *The department* may by purchase, lease, agreement, *or* acceptance of donations~~, or condemnation for the purposes outlined in 87-1-209(2)~~ acquire for the state any areas, sites, or objects ~~which~~ *that* in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historical sites. *The department, with the consent of the commission, may acquire by condemnation, pursuant to Title 70, chapter 30, lands or structures for the purposes provided in 87-1-209(2).*

(2) The department may ~~in its discretion~~ accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state. It may ~~in its discretion~~ accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part.

(3) A contract, for any of the purposes of this part, may not be entered into or ~~other~~ *another* obligation incurred until ~~moneys have~~ *money has* been appropriated by the legislature or ~~are~~ *is* otherwise available. ~~and, if~~ *If* the contract or obligation pertains to acquisition of areas or sites in excess of either 100 acres or $100,000 in value, ~~until~~ the board of land commissioners ~~has~~ *shall* specifically ~~approved such~~ *approve the* acquisition.

(4) The department ~~also~~ has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, historical sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of transportation and contiguous to the state highway system. The department may designate lands under its control as state parks, state historical sites, state monuments, or by any other designation *that* it considers appropriate~~;~~. *The department may* remove or change the designation of any area or portion *of an area*~~;~~ and *may* name or change the name of any area ~~as designated~~. The department may lease those portions of designated lands ~~which~~ *that* are necessary for the proper administration of ~~these~~ *the* lands in keeping with the basic purpose of this part."

Section 31. Section 35-18-106, MCA, is amended to read:

"35-18-106. Powers of cooperatives. *(1)* A cooperative ~~has power to~~ *may*:

~~(1)~~*(a)* sue and be sued in its corporate name;

~~(2)~~*(b)* have perpetual existence;

~~(3)~~*(c)* adopt a corporate seal and alter the ~~same at pleasure~~ *seal*;

~~(4)~~*(d)* become a member in one or more other cooperatives or corporations or ~~to~~ own stock in other cooperatives or corporations;

~~(5)~~*(e)* construct, purchase, take, receive, lease as lessee, or otherwise acquire and ~~to~~ own, hold, use, equip, maintain, and operate and sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber*:*

(i) electric transmission and distribution lines or systems~~,~~*;*

(ii) electric generating plants~~,~~*;*

(iii) electric refrigeration plants~~,~~*;*

(iv) telephone lines, facilities, or systems (but not telegraph or radio broadcasting services or facilities) as defined by law~~;~~*;*

(v) lands, buildings, structures, dams, plants and equipment, and all kinds or classes of real or personal property~~,~~ ~~which~~ *that* may be considered necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;

~~(6)~~*(f)* purchase or otherwise acquire and own, hold, use, and exercise and sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights-of-way, and easements;

~~(7)~~*(g)* borrow money and otherwise contract indebtedness and issue notes, bonds, and other evidences of indebtedness and secure the payment of indebtedness by mortgage, pledge, deed of trust, or any other encumbrance upon all of its ~~then owned~~ *then-owned* or after-acquired real or personal property, assets, franchises, ~~revenues~~ *revenue*, or income;

~~(8)~~*(h) subject to the requirements on the use of public thoroughfares and land that are imposed by the appropriate authority having jurisdiction over corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems,* construct, maintain, and operate electric transmission and distribution lines or telephone, cable television, or broadband lines, facilities, or systems*:*

(i) along, upon, under, and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges, and causeways*;* and

(ii) upon, under, and across all publicly owned lands~~, subject, however, to the same requirements in respect of the use of the thoroughfares and lands as are imposed by the respective authorities having jurisdiction of them upon corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems~~;

~~(9)~~*(i)* exercise the power of eminent domain in the manner provided ~~by the laws of this state~~ *in Title 70, chapter 30,* for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

~~(10)~~*(j)* conduct its business and exercise all of its powers within or ~~without~~ *outside of* this state;

~~(11)~~*(k)* adopt, amend, and repeal bylaws; *and*

~~(12) in the case of corporations organized under the provisions of 35-18-105(1):~~

~~(a) generate, manufacture, purchase, acquire, accumulate, and transmit electric energy and distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10% of the number of its members;~~

~~(b) make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of and otherwise to assist those persons in wiring their premises and installing in their premises electrical and plumbing fixtures, appliances, apparatus, and equipment of all kinds and character and, in connection with electrical and plumbing fixtures, purchase, acquire, lease, sell, distribute, install, and repair the electrical and plumbing fixtures, appliances,~~

~~apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and all types of security for electrical and plumbing fixtures;~~

~~(e) make loans to persons to whom electric energy is or will be supplied by the cooperatives for the purpose of and otherwise to assist those persons in constructing, maintaining, and operating electric refrigeration plants;~~

~~(13) in the case of corporations organized under the provisions of 35-18-105(2):~~

~~(a) improve and expand existing telephone lines, facilities, and systems and construct, acquire, operate, and furnish additional telephone lines, facilities, and systems as are required to assure the availability of adequate telephone service to the widest practicable number of users of telephone service;~~

~~(b) make loans to persons to whom telephone service is or will be supplied by the cooperative for the purpose of and otherwise to assist those persons in wiring their premises for telephone service and installing in their premises telephone fixtures, appliances, apparatus, and equipment of all kinds and character and, in connection with telephone fixtures, purchase, acquire, lease, sell, distribute, install, and repair the telephone fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and all types of security for telephone fixtures;~~

~~(14)~~*(l)* ~~do and~~ perform all other acts and things and have and exercise all other powers that may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized or authorized under federal law.

(2) In addition to the powers listed in subsection (1), corporations organized under the provisions of 35-18-105(1) may:

(a) generate, manufacture, purchase, acquire, accumulate, and transmit electrical energy;

(b) distribute, sell, supply, and dispose of electrical energy in rural areas to:

(i) its members;

(ii) governmental agencies and political subdivisions; and

(iii) other persons not in excess of 10% of the number of its members;

(c) make loans to persons to whom electrical energy is or will be supplied by the cooperative to assist those persons in wiring their premises and installing in their premises electrical and plumbing fixtures, appliances, apparatus, and equipment of all kinds and character;

(d) in connection with electrical and plumbing fixtures, purchase, acquire, lease, sell, distribute, install, and repair the electrical and plumbing fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and all types of security for electrical and plumbing fixtures; and

(e) make loans to persons to whom electrical energy is or will be supplied by the cooperatives for the purpose of and otherwise to assist those persons in constructing, maintaining, and operating electric refrigeration plants.

(3) In addition to the powers listed in subsection (1), corporations organized under the provisions of 35-18-105(2) may:

(a) improve and expand existing telephone lines, facilities, and systems;

(b) construct, acquire, operate, and furnish additional telephone lines, facilities, and systems that are required to ensure the availability of adequate telephone service to the widest practicable number of users of telephone service;

(c) make loans to persons to whom telephone service is or will be supplied by the cooperative to assist those persons in wiring their premises for telephone service and installing in their premises telephone fixtures, appliances, apparatus, and equipment of all kinds and character;

(d) in connection with telephone fixtures, purchase, acquire, lease, sell, distribute, install, and repair the telephone fixtures, appliances, apparatus, and equipment; and

(e) accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and all types of security for telephone fixtures."

Section 32. Section 35-20-104, MCA, is amended to read:

"**35-20-104. Effect of filing — powers of association — eminent domain.** ~~Whenever such~~ *When a* certificate *of incorporation* is ~~duly~~ acknowledged, ~~and~~ recorded, and filed as provided in ~~the last section~~ *35-20-103*, the association ~~mentioned therein shall be deemed~~ *is considered* legally incorporated and ~~shall have~~ *has* the general powers and privileges of corporations with the right to sue and be sued and to continue perpetually. ~~and in addition thereto such corporations shall have the right and power to~~ *The association may also* take private property for public use ~~to be used exclusively~~ for a cemetery or place of burial of the dead. ~~Such~~ *The* power of eminent domain ~~to~~ *must* be exercised under the provisions of Title 70, chapter 30."

Section 33. Section 53-2-201, MCA, is amended to read:

"**53-2-201. Powers and duties of department.** (1) The department shall:

(a) administer and supervise public assistance, including the provision of food stamps, food commodities, FAIM financial assistance, as defined in 53-2-902, energy assistance, weatherization, vocational rehabilitation, services for persons with severe disabilities, developmental disability services, medical care payments in behalf of recipients of public assistance, employment and training services for recipients of public assistance, and other programs as necessary to strengthen and preserve families;

(b) give consultant service to private institutions providing care for adults who are needy, indigent, or dependent or who have disabilities;

(c) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(d) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administration of public assistance functions and for efficiency and economy;

(e) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when requested, by performing services in conformity with public assistance purposes;

(f) administer all state and federal funds allocated to the department for public assistance and do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes;

(g) make rules governing payment for services and supplies provided to recipients of public assistance; and

(h) adopt rules regarding assignment of monetary and medical support upon application for FAIM financial assistance, as defined in 53-2-902, and related medical assistance.

(2) The department may:

(a) purchase, exchange, condemn, *as provided in Title 70, chapter 30*, or receive by gift either real or personal property that is necessary to carry out its public assistance functions. Title to property obtained under this subsection must be taken in the name of the state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its public assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance."

Section 34. Section 60-1-103, MCA, is amended to read:

"60-1-103. General definitions. Subject to additional definitions contained in this title that are applicable to specific chapters or sections and unless the context otherwise requires, the following definitions apply:

(1) "Abandonment" means cessation of use of right-of-way or an easement or cessation of activity on the right-of-way or easement with no intention to reclaim or use again. Abandonment is sometimes called vacation.

(2) "Bridge" means any bridge constructed by the department, together with all appurtenances, additions, alterations, improvements, and replacements and the approaches to the bridge, lands used in connection with the bridge, and improvements incidental or integral to the bridge.

(3) "Commission" means the transportation commission provided for in 2-15-2502.

(4) "Condemnation" means taking by exercise of the right of eminent domain, *as provided in Title 70, chapter 30, and chapter 4 of this title.*

(5) "Construction" means supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, mapping, and costs of right-of-way or other interests in land and elimination of hazards at railway grade crossings.

(6) "Control of access" means the condition in which the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.

(7) "County road" means any public highway opened, established, constructed, maintained, abandoned, or discontinued by a county in accordance with Title 7, chapter 14.

(8) "Department" means the department of transportation provided for in Title 2, chapter 15, part 25.

(9) "Director" means the director of transportation, a position provided for in 2-15-2501.

(10) "Easement" means a right acquired by public authority to use or control property for a designated purpose.

(11) "Eminent domain" means the right of the state to take private property for public use.

(12) "Federal-aid highway" means a public highway that is a portion of any of the federal-aid highway systems.

(13) "Federal-aid highway systems" means all of the systems named as part of the systems and their urban extensions.

(14) "Federal-aid interstate system" means that system of public highways selected by the commission in cooperation with adjoining states, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(15) "Federal-aid primary system" means that system of connected public highways designated by the commission, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(16) "Federal-aid secondary system" means that system of public highways not in the federal-aid primary or interstate systems selected by the commission in cooperation with the boards of county commissioners, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(17) "Fee simple" means an absolute estate or ownership in property, including unlimited power of alienation.

(18) "Highway" includes rights-of-way or other interests in land, embankments, retaining walls, culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and protective structures.

(19) "Highway", "road", and "street", whether the terms appear together or separately or are preceded by the adjective "public", are general terms denoting a public way for purposes of vehicular travel and include the entire area within the right-of-way.

(20) "Highway authority" means the entity at any level of government authorized by law to construct and maintain highways.

(21) "Maintenance" means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and traffic-control devices that are necessary for the safe and efficient use of the highway.

(22) "Public highways" means all streets, roads, highways, bridges, and related structures:

(a) built and maintained with appropriated funds of the United States or the state or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, *as provided in Title 70, chapter 30, and chapter 4 of this title*; or

(d) acquired by adverse use by the public, *with* jurisdiction having been assumed by the state or any political subdivision of the state.

(23) "Right-of-way" is a general term denoting land, property, or any interest in land or property, usually in a strip, acquired for or devoted to highway purposes.

(24) "Scenic-historic byway" means a public road or segment of a public road that has been designated as a scenic-historic byway by the commission, as provided in 60-2-601.

(25) "State highway" means any public highway planned, laid out, altered, constructed, reconstructed, improved, repaired, maintained, or abandoned by the department."

Section 35. Section 60-5-104, MCA, is amended to read:

"60-5-104. Powers of highway authorities. (1) Those authorities of the state, counties, and municipalities authorized to participate in construction and maintenance of highways may plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled-access facilities for public use. Each ~~such~~ authority shall by resolution make the findings and determinations provided for in 60-5-103 *in order to designate a highway as a controlled-access facility*.

(2) The highway authorities of the state, counties, incorporated cities, and towns, respectively~~;~~ or in cooperation each with the other, may acquire private or public property and property rights for controlled-access highways or controlled-access facilities and service roads. ~~Such~~ *The property* rights may include rights of access, air, view, and light. ~~They~~ *The property and property rights* may be acquired by gift, devise, purchase, or condemnation, ~~in the same manner as may now or hereafter be authorized by law~~ *as provided in Title 70, chapter 30, and chapter 4 of this title*, for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

(3) Within incorporated cities and towns and upon county roads or secondary highways, the department of transportation ~~shall~~ *may* not control access without the consent of the appropriate governing body.

(4) Each authority may also exercise with relation to controlled-access facilities any ~~and all additional~~ *current or future* authority ~~now or hereafter vested in~~ it *has* over highways, roads, or streets within its ~~respective~~ jurisdiction. ~~It~~ *Each authority* may, *within its jurisdiction*, regulate, restrict, or prohibit the use of controlled-access facilities by any vehicles or traffic."

Section 36. Section 67-2-301, MCA, is amended to read:

"67-2-301. State airports — acquisition. (1) The department may, on behalf of and in the name of this state:

(a) acquire real or personal property by purchase, gift, devise, lease, condemnation proceedings *pursuant to Title 70, chapter 30*, or otherwise for the purpose of establishing and constructing airports, restricted landing areas, and other air navigation facilities;

(b) acquire in like manner, own, control, establish, construct, enlarge, improve, maintain, equip, operate, regulate, and police airports, restricted landing areas, and other air navigation facilities either within or outside *of* this state;

(c) prior to acquisition, make investigations, surveys, and plans;

(d) erect, install, construct, and maintain facilities at those airports for the servicing of aircraft and for the comfort and accommodation of air travelers; and

(e) dispose of any property, airport, restricted landing area, or ~~any~~ other air navigation facility by sale, lease, or otherwise in accordance with the laws of this state governing the disposition of other ~~like~~ *similar* property of the state.

(2) The department may not~~, however,~~ acquire or take over an airport, restricted landing area, or other air navigation facility owned or controlled by a municipality of this state without the consent of the municipality. The department may erect, equip, operate, and maintain ~~on~~ *at* an airport~~,~~ *all* buildings and equipment necessary and proper to establish, maintain, and conduct the airport and air navigation facilities connected with ~~it~~ *the airport.*

(3) ~~Where~~ *When* necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and restricted landing areas acquired or operated under the provisions of this title, the department may acquire, in the manner provided for the acquisition of property for airport purposes, easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of the airports or restricted landing areas, and ~~such~~ other airport protection privileges ~~as~~ *that* are necessary to ensure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation of them. The department may also acquire in the same manner the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from the airport hazards for the purpose of maintaining and repairing the lights and marks. This authority does not limit the right, power, or authority of the state or a municipality to zone property adjacent to an airport or restricted landing area pursuant to a law of this state.

(4) The department may engage in ~~all those~~ *the* activities *listed in subsections (1) through (3)* jointly with the United States, *with* other states, and with municipalities or other agencies of this state.

(5) For the purpose of acquiring any property ~~which~~ *that* it is authorized to acquire, the department may exercise the right of eminent domain, in the name of the state, in the manner provided ~~by the laws of this state for the acquisition of real property for public purposes~~ *in Title 70, chapter 30.* The acquisition of property for any of ~~those~~ *the* purposes *listed in this section* is a public use."

Section 37. Section 67-5-202, MCA, is amended to read:

"67-5-202. Regulation of existing structures — power of acquisition. ~~With respect to any~~ *A* building or other structure existing on February 7, 1939, ~~which~~ *that* does not conform to the *height* regulations of this chapter ~~in the manner of height,~~ *is subject to acquisition by the governmental entity owning or operating an airport or landing field. In order to protect its own airports and landing fields and to implement this chapter,* the governmental authority ~~affected thereby (whether the United States, the state of Montana, the several~~

~~counties, or the several municipalities) in its own right and name, to protect its own airports and landing fields and to carry out the purposes and provisions of this chapter, shall have and is hereby given the right and authority to~~ *may* acquire by purchase, grant, or condemnation *pursuant to Title 70, chapter 30*, ~~such~~ *an* estate or interest in any ~~such~~ building, ~~or~~ structure, or other object, whether *a* natural object or not, ~~and/or~~ *and* in the lands upon which *it is* situated ~~as~~ *that* is necessary to vest full ~~and absolute ownership and~~ control in perpetuity of the space above ~~such~~ *the* land. *The acquisition is limited* to the extent necessary to correct ~~or abate~~ the height of any ~~such~~ nonconforming building, ~~or~~ other structure, or object to meet the requirements of this chapter ~~as~~ *with respect* to height limitation within the *designated* zones ~~designated~~."

Section 38. Section 67-6-301, MCA, is amended to read:

"**67-6-301. Acquisition of property rights when zoning not sufficient.** The political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by ~~it~~ *the airport* may acquire, by purchase, grant, or condemnation ~~in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes~~ *pursuant to Title 70, chapter 30*, ~~such~~ *an* air right, aviation easement, or other estate or interest in the property or nonconforming structure or use ~~in question as may be~~ *that is* necessary to effectuate the purposes of this chapter~~,~~. ~~in any case in which~~ *The governmental entity may acquire an interest when*:

(1) it is ~~desired~~ *desirable* to remove, lower, or otherwise terminate a nonconforming structure or use;

(2) the *necessary* approach protection ~~necessary~~ cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; or

(3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations."

Section 39. Section 67-10-102, MCA, is amended to read:

"**67-10-102. Acquisition and establishment of airports and landing fields.** (1) Counties, cities, and towns ~~in this state~~ may, either individually or by the joint action of a county and one or more of the cities and towns within ~~its border~~ *the county*, acquire by gift, deed, purchase, or condemnation *pursuant to Title 70, chapter 30,* land for airport or landing field purposes. ~~and thereon~~ *The local governments may use the land to* establish, construct, own, control, lease, equip, improve, operate, and regulate airports or landing fields for the use of airplanes and other aircraft ~~and may use for such purpose or purposes any property suitable therefor that now or may at any time hereafter be acquired, owned, or controlled by such county, city, or town~~.

(2) In addition, a county, city, or town may ~~do the acts authorized~~ *exercise the authority granted* by this section by acting jointly with one or more counties, with one or more cities, with one or more towns, or *with* any combination of ~~such~~ counties, cities, or towns. ~~Such~~ *A multijurisdictional* airport ~~need~~ *is* not *required to* be located, in whole or in part, within the limits of each subdivision participating in the joint venture."

Section 40. Section 67-10-103, MCA, is amended to read:

"**67-10-103. Public purpose.** (1) ~~Any lands~~ *Land* acquired, owned, controlled, or occupied by ~~any~~ *a* county, city, or town, individually or pursuant to joint action ~~as herein provided~~ for the purposes enumerated in 67-10-102, ~~are~~ *is* acquired, owned, controlled, and occupied for a public use and as a matter of public necessity~~;~~. ~~and such counties~~ *Counties*, cities, and towns, whether acting individually or jointly, have the right to acquire property for ~~such~~ *the enumerated* purposes under the power of eminent domain as ~~and for a public use or necessity~~ *provided in Title 70, chapter 30.*

(2) The *following are public and governmental functions, exercised for a public purpose and as matters of public necessity:*

(a) the acquisition of ~~any~~ land or *an* interest ~~therein~~ *in land* pursuant to this chapter;

(b) the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection, and policing of airports and air navigation facilities, including the acquisition or elimination of airport hazards; and

(c) the exercise of any other powers ~~herein~~ granted *in this chapter* to municipalities and other public agencies, to be severally or jointly exercised~~, are public and governmental functions, exercised for a public purpose and matters of public necessity and, in the case of any county, are county functions and purposes as well as public and governmental and, in the case of any municipality other than a county, are municipal functions and purposes as well as public and governmental~~.

(3) All land and other property and privileges acquired and used by or on behalf of any municipality or other public agency in the manner and for the purposes enumerated in this chapter are acquired and used for public and governmental purposes and as a matter of public necessity and, in the case of a county or municipality, for county or municipal purposes, respectively."

Section 41. Section 67-10-201, MCA, is amended to read:

"**67-10-201. General municipal powers.** (1) ~~Every~~ *A* municipality may, out of any appropriations or other money made available for ~~such~~ *airport* purposes, plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police airports and air navigation facilities, either within or ~~without~~ *outside of* the territorial limits of ~~such~~ *the* municipality and within or ~~without~~ *outside of* the territorial boundaries of this state~~,~~. ~~including~~ *The airport purposes include* the construction, installation, ~~equipment~~ *equipping*, maintenance, and operation at ~~such~~ airports of buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers and the purchase and sale of supplies, goods, and commodities as an incident to the operation of its airport properties. ~~For such purposes the~~ *A* municipality may use any available property that it ~~may now or hereafter own or control and may,~~ *owns or controls for airport purposes. A municipality may acquire real or personal property or any interest in property* by purchase, gift, devise, lease, eminent domain proceedings *pursuant to Title 70, chapter 30*, or otherwise~~, acquire property, real or personal, or any interest therein,~~. *A municipality may also acquire property interests,* including easements, in airport hazards or land outside the boundaries of an airport or airport site~~, as is~~ *that are* necessary to*:*

(a) permit safe and efficient operation of the airport;

(b) ~~to~~ permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards; or

(c) ~~to~~ prevent the establishment of airport hazards.

(2) The municipality may, by purchase, gift, devise, lease, eminent domain proceedings *pursuant to Title 70, chapter 30,* or otherwise, acquire existing airports and air navigation facilities~~,~~. ~~provided however it~~ *However, a municipality* may not acquire ~~or take over~~ any airport or air navigation facility owned or controlled by another municipality or public agency of this or any other state without the consent of ~~such~~ *the* municipality or public agency.

(3) For the purposes of this chapter, a municipality may establish or acquire and maintain, within or bordering upon the territorial limits of the municipality, airports in, over, and upon any public waters of this state, any submerged lands under ~~such~~ public waters, and any artificial or reclaimed lands ~~which~~ *that* before the artificial making or reclamation ~~thereof~~ constituted a portion of the submerged lands under ~~such~~ *the* public waters~~,~~. ~~and~~ *A municipality* may construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any ~~such~~ airport~~,~~ and *may construct and maintain* landing floats and breakwaters for the protection ~~thereof~~ *of the other improvements.*

(4) All air navigation facilities established or operated by municipalities ~~shall~~ *must* be supplementary to and coordinated in design and operation with ~~those~~ *air navigation facilities* established and operated by the federal and state governments.

(5) A municipality may enter into any contracts necessary ~~for the execution of the powers granted it and~~ for the purposes provided by this chapter."

Section 42. Section 67-10-205, MCA, is amended to read:

"**67-10-205. Joint airport board.** (1) Public agencies acting jointly pursuant to 67-10-204 through 67-10-206 shall create a joint board ~~which shall~~ *that must* consist of members appointed by the governing body of each participating public agency. Per diem and mileage of ~~such~~ *the* joint board may be set by resolution of the board of county commissioners. The number *of members* to be appointed and their ~~term shall~~ *terms must* be provided for in the joint agreement. ~~Each such~~ *A* joint board shall organize, select officers for terms to be fixed by the agreement, and from time to time adopt and amend rules for its own procedure. The joint board ~~shall have power to~~ *may* plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled, and operated~~;~~. ~~and such~~ *Subject to subsection (2), the* board may exercise on behalf of its constituent public agencies all the powers of each *public agency* with respect to ~~such~~ *the* airport, air navigation facility, or airport hazard~~, subject to the limitations of subsection (2) of this section~~.

(2) (a) The total expenditures to be made by the joint board for any purpose in any calendar year ~~shall~~ *must* be determined by a budget approved by the governing bodies of its constituent public agencies.

(b) ~~No~~ *An* airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums ~~therefor~~ fixed by the joint agreement or allotted in the annual budget, may *not* be acquired by the joint board without the approval of the governing bodies of its constituent public agencies.

(c) Eminent domain proceedings *authorized* under 67-10-204 through 67-10-206 *and conducted as provided in Title 70, chapter 30,* may be instituted only by authority of the governing bodies of the constituent public agencies of the joint board. If ~~so~~ authorized, ~~such~~ *eminent domain* proceedings ~~shall~~ *must* be instituted in the names of the constituent public agencies jointly, and the property ~~so~~ acquired ~~shall~~ *must* be held by ~~said~~ *the* public agencies as tenants in common until conveyed by them to the joint board.

(d) The joint board ~~shall~~ *may* not dispose of any airport, air navigation facility, or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies~~;~~. ~~provided that~~ *However,* the joint board may, without ~~such~~ consent, enter into the contract, lease, or other arrangements contemplated by 67-10-302.

(e) Any resolutions, rules, or orders of the joint board ~~dealing~~ *that deal* with subjects authorized by 67-10-301 ~~shall become~~ *are* effective only upon approval of the governing bodies of the constituent public agencies~~;~~. ~~provided that upon such~~ *Upon* approval, the resolutions, rules, or orders of the joint board ~~shall~~ have the same force and effect in the territories or jurisdictions involved ~~as~~ *that* the ordinance, resolutions, rules, or orders of each public agency would have in its own territory or jurisdiction."

Section 43. Section 67-10-221, MCA, is amended to read:

"67-10-221. Airport property — acquisition by eminent domain. In the acquisition of property by eminent domain proceedings authorized by this chapter, the municipality shall proceed ~~in the manner~~ *as* provided ~~by the laws governing eminent domain of the state of Montana~~ *in Title 70, chapter 30.* The municipality is not precluded from abandoning ~~such~~ *the* proceedings in any case ~~where~~ *in which* possession of the property has not been taken."

Section 44. Section 67-11-201, MCA, is amended to read:

"67-11-201. General powers of authority. An authority has all the powers necessary or convenient to carry out the purposes of this chapter, including, subject to 15-10-420, the power to certify annually to the governing bodies creating it the amount of tax to be levied by the governing bodies for airport purposes. ~~and including but not limited to the power~~ *Authority powers include but are not limited to the power to*:

(1) sue and be sued, have a seal, and have perpetual succession;

(2) execute contracts and other instruments and take ~~such~~ other action ~~as~~ *that* may be necessary or convenient to carry out the purposes of this chapter;

(3) plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities, within this state and within any adjoining state, including the acquisition, construction, installation, equipment, maintenance, and operation at the airports or buildings and other facilities for the servicing of aircraft or for comfort and accommodation of air travelers and the purchase and sale of supplies, goods, and commodities that are incident to the operation of its airport properties. For the authorized purposes, an authority may, by purchase, gift, devise, lease, eminent domain proceedings *pursuant to Title 70, chapter 30,* or otherwise, acquire property, real or personal, or any interest in property,

including easements in airport hazards or land outside the boundaries of an airport or airport site, that is necessary to permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards or to prevent the establishment of airport hazards.

(4) establish comprehensive airport zoning regulations in accordance with the laws of this state;

(5) acquire, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, existing airports and air navigation facilities~~;~~. ~~provided, however~~ *However,* an authority may not acquire or take over any airport or air navigation facility owned or controlled by another authority, a municipality, or *a* public agency of this or any other state without the consent of the authority, municipality, or public agency~~;~~.

(6) establish or acquire and maintain airports in, over, and upon any public waters of this state or any submerged lands under public waters, provided that the authority has obtained the approval of the owner or agency that controls the water, and construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any airport and landing floats and breakwaters for the protection of the airport."

Section 45. Section 67-11-204, MCA, is amended to read:

"**67-11-204. Joint board.** (1) Public agencies acting jointly pursuant to 67-11-203 through 67-11-205 shall create a joint board ~~which shall~~ *that must* consist of members appointed by the governing body of each participating public agency. The number *of members* to be appointed and their ~~term~~ *terms* and compensation, if any, ~~shall~~ *must* be provided for in the joint agreement. ~~Each~~ *A* joint board shall organize, select officers for ~~such~~ terms ~~as~~ *that* are fixed by the agreement, and adopt and amend from time to time rules for its own procedure. The joint board, as agent of the participating public agencies, may plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled, and operated~~;~~. ~~and the~~ *Subject to subsection (2), the* board may be authorized by the participating public agencies to exercise on behalf of its constituent public agencies all the powers of each *public agency* with respect to the airport, air navigation facility, or airport hazard~~, subject to the limitations of subsection (2) of this section~~.

(2) (a) The total expenditures to be made by the joint board for any purpose in ~~any~~ *a* calendar year ~~shall~~ *must* be as determined by a budget approved by the constituent public agencies on or before the preceding June 10 or as otherwise specifically authorized by the constituent public agencies.

(b) ~~No~~ *An* airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums fixed ~~therefor~~ by the joint agreement or allotted in the annual budget, may *not* be acquired, established, or developed by the joint board without the approval of the governing bodies of its constituent public agencies.

(c) Eminent domain proceedings under 67-11-203 through 67-11-205 *and Title 70, chapter 30,* may be instituted by the joint board only by authority of the governing bodies of the constituent public agencies of the joint board. If ~~so~~ authorized, ~~such~~ *the* proceedings ~~shall~~ *must* be instituted in the names of the constituent public agencies jointly, and the property ~~so~~ acquired ~~shall~~ *must* be held by the public agencies as tenants in common.

(d) The joint board may not dispose of any airport, air navigation facility, or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies. However, the joint board may, without ~~such~~ consent, enter into contracts, leases, or other arrangements contemplated by 67-11-211.

(e) Resolutions, rules, or orders of the joint board ~~dealing~~ *that deal* with subjects authorized by 67-11-211 become effective only upon approval of the governing bodies of the constituent public agencies. However, upon ~~such~~ approval, the resolutions, rules, or orders of the joint board ~~shall~~ have the same force in the territories or jurisdictions involved ~~as~~ *that* the ordinances, resolutions, rules, or orders of each public agency would have in its own territory or jurisdiction."

Section 46. Section 67-11-231, MCA, is amended to read:

"67-11-231. Airport property — acquisition by eminent domain. In the acquisition of property by eminent domain proceedings authorized by this chapter, an airport authority shall proceed ~~in the manner provided by the laws of this state and such other laws that may now or hereafter apply to the state or to political subdivisions of this state in exercising the right of eminent domain~~ *as provided in Title 70, chapter 30.* The municipality ~~shall~~ *is* not ~~be~~ precluded from abandoning ~~such~~ *the* proceedings in any case ~~where~~ *in which* possession of the property has not been taken."

Section 47. Section 67-11-401, MCA, is amended to read:

"67-11-401. Out-of-state airport jurisdiction — reciprocity. (1) ~~This section may be cited as the "Extraterritorial Airports Section".~~

~~(2)~~ For the purpose of this section, "governmental agency" means any municipality, city, town, county, public corporation, or other public agency.

~~(3)~~*(2)* ~~This~~ *The* state or any governmental agency of this state having any powers with respect to planning, establishing, acquiring, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, or protecting airports or air navigation facilities within this state may exercise those powers within any state or jurisdiction adjoining this state, subject to the laws of that state or jurisdiction.

~~(4)~~*(3) (a)* ~~Any~~ *A* state adjoining this state or any governmental agency ~~thereof~~ *of an adjoining state* may plan, establish, acquire, develop, construct, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities within this state, subject to the laws of this state applicable to airports and air navigation facilities. ~~The~~ *Subject to subsection (3)(b), the* adjoining state or governmental agency ~~shall have~~ *has* the power of eminent domain in this state, which ~~shall~~ *must* be exercised ~~in the manner provided by the laws of this state governing condemnation proceedings, provided that the~~ *as provided in Title 70, chapter 30.*

(b) The power of eminent domain ~~shall~~ *may* not be exercised unless the adjoining state authorizes the exercise of that power ~~therein~~ *in the adjoining state* by this state or any governmental agency ~~thereof~~ *of this state* having any of the powers mentioned in this section.

~~(5)~~*(4)* The powers granted in this section may be exercised jointly by two or more states or governmental agencies, including this state and its governmental agencies, in ~~such~~ *a* combination ~~as~~ *that* may be agreed upon by ~~them~~ *the states or governmental agencies.*"

Section 48. Section 69-13-104, MCA, is amended to read:

"**69-13-104. Use of power of eminent domain.** Every person, firm, corporation, limited partnership, joint-stock association, or association of any kind mentioned in this chapter~~, which shall have~~ *that has* filed with the commission its acceptance of the provisions of this chapter~~, is hereby granted~~ *has* the ~~right and~~ power of eminent domain. ~~in~~ *In* the exercise of ~~which he, it, or they~~ *the power of eminent domain, the entity* may enter upon and condemn the land, rights-of-way, easements, and property of any person or corporation necessary for the construction, maintenance, or authorization of ~~his, its, or their~~ *the entity's* common carrier pipeline. The ~~manner and method of such condemnation and the assessment and payment of the damages therefor shall be the same as is provided by law in the case of railroads~~ *power of eminent domain must be exercised as provided in Title 70, chapter 30.*"

Section 49. Section 69-14-513, MCA, is amended to read:

"**69-14-513. Lease or purchase of other railroads.** (1) Any railroad corporation, whether chartered by or organized under the laws of ~~the state or territory of~~ Montana, the United States, or any other state ~~or territory~~, may lease or purchase the whole or any part of the railroad or *rail* line ~~of railroad~~ of any railroad corporation, constructed or unconstructed, together with all the rights, powers, immunities, privileges, franchises, and all other property or appurtenances ~~thereto~~ *to the railroad or rail line.* The railroad company of any other state of the United States ~~which~~ *that* purchases or leases a railroad or any part ~~thereof~~ *of a railroad* in this state:

(a) ~~shall possess~~ *possesses* and may exercise and enjoy, as to the control, management, and operation of the road, all the rights, powers, privileges, and franchises possessed by railroad corporations organized under the laws of this state, including the exercise of the power of eminent domain, *as provided in Title 70, chapter 30*; and

(b) shall establish and maintain an office or offices in this state at some point or points on its line at which legal process and notice may be served, as upon railroad corporations of this state.

(2) Any railroad company may sell or lease the whole or any part of its railroad or branches within this state, constructed or to be constructed, together with all property and rights, privileges, and franchises pertaining ~~thereto~~ *to the railroad or branches*, to any railroad company organized or existing pursuant to the laws of the United States, this state, or any other state ~~or territory~~ of the United States.

(3) All roads or branches ~~thereof~~ *of a railroad* in this state, whether purchased or leased, ~~shall be~~ *are* subject to taxation and to regulation and control by the laws of this state~~,~~ in all respects ~~the same~~ as if *the line were* constructed by corporations organized under the laws of this state.

(4) Before any ~~such~~ lease or purchase ~~shall be~~ *is* effective, ~~it shall~~ *the lease or purchase must* be assented to or approved or ratified by the stockholders of each corporation by a vote in favor ~~thereof~~ *of the lease or purchase*, at a general or special meeting of ~~such~~ stockholders, by the holders of a majority ~~in amount~~ of all the outstanding capital stock of the company."

Section 50. Section 69-14-536, MCA, is amended to read:

"**69-14-536. Extension of rail lines into Montana.** (1) Any railroad corporation chartered by or organized under the laws of the United States or of any state ~~or territory~~ may extend, construct, maintain, and operate its railroad into and through this state to any place within the state and may build branches from any point on ~~such~~ *the* extension or continuation of any ~~such~~ extension or branch. Before making ~~such~~ *an* extension into the state or building any ~~such~~ branch road or any ~~such~~ continuation, the corporation shall, by resolution of its board of directors, to be entered in the records of its proceedings, designate the general route of ~~such~~ *the* proposed extension, branch, or continuation and file a copy of ~~such~~ *the* record, certified by the president and secretary, in the office of the secretary of state~~,~~. ~~who~~ *The secretary of state* shall record the ~~same~~ *resolution* ~~when presented for record~~. ~~Thereupon such~~ *After the recording, the* corporations ~~shall~~ have all the rights, powers, privileges, immunities, and franchises to make, maintain, and operate ~~such~~ *the* extension and build, maintain, and operate ~~such~~ *the* branch or continuation, including the right of eminent domain *as provided in Title 70, chapter 30,* ~~which~~ *that* it would have ~~had~~ if it had been incorporated ~~for such purposes~~ under the general laws of Montana. Any corporation of another state or of the United States extending its railroad or any portion ~~thereof~~ *of its railroad* into or through this state:

(a) shall establish and maintain an office or offices in this state at some point or points on its line at which legal process and notice may be served, as upon railroad corporations of this state; and

(b) is subject to taxation and regulation and control by the laws of this state, in all respects ~~the same~~ as if the line were constructed by corporations organized under the laws of this state.

(2) Before any railroad corporation organized under the laws of any other state ~~or territory~~ or of the United States ~~shall be~~ *is* permitted to avail itself of the benefits of this section, ~~such~~ *the* corporation shall file with the secretary of state a ~~true~~ copy of its charter or articles of incorporation."

Section 51. Section 69-14-552, MCA, is amended to read:

"**69-14-552. Authority to hold and transfer property.** Every railroad corporation ~~has power to~~ *may*:

(1) receive, hold, take, and convey, by deed or otherwise, as a natural person, ~~such~~ voluntary grants and donations of real estate and other property ~~which~~ *that* may be made to ~~it~~ *the corporation* to aid and encourage the construction, maintenance, and accommodation of ~~such~~ *the* railroad;

(2) purchase or by voluntary grants or donations receive, enter, take possession of, hold, and use all ~~such~~ real estate and other property ~~as~~ *that* may be absolutely necessary for the construction and maintenance of ~~such~~ *the* railroad and for all stations, depots, and other purposes necessary to successfully work and conduct the business of the ~~road~~ *railroad*;

(3) purchase ~~lands~~ *land*, timber, stone, gravel, or other ~~materials~~ *material* to be used in the construction and maintenance of its road and all *related projects* necessary ~~appendages and adjuncts~~ *for the construction and maintenance of the railroad* or acquire them in the manner provided in Title 70, chapter 30, for the condemnation of lands."

Section 52. Section 70-30-102, MCA, is amended to read:

"70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised ~~in behalf of~~ *for* the following public uses:

(1) all public uses authorized by the government of the United States;

(2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;

(3) public buildings and grounds for the use of any county, city, ~~or~~ town, or school district;

(4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town;

(5) ~~raising~~ *projects to raise* the banks of streams, ~~removing~~ *remove* obstructions ~~therefrom~~ *from streambanks*, and ~~widening, deepening, or straightening their~~ *widen, deepen, or straighten stream* channels;

(6) water and water supply systems as provided in Title 7, chapter 13, part 44;

(7) roads, streets, ~~and~~ alleys, *controlled-access facilities,* and all other public uses for the benefit of ~~any~~ *a* county, city, or town or the inhabitants ~~thereof, which may be authorized by the legislature; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized~~ *of a county, city, or town*;

(8) acquisition of road-building material as provided in 7-14-2123;

(9) stock lanes as provided in 7-14-2621;

(10) parking areas as provided in 7-14-4501 and 7-14-4622;

(11) airport and landing field purposes as provided in 7-14-4801, 67-2-301, 67-5-202, 67-6-301, and Title 67, chapters 10 and 11;

(12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43;

(13) housing authority purposes as provided in Title 7, chapter 15, part 44;

(14) county recreational and cultural purposes as provided in 7-16-2105;

(15) city or town athletic fields and civic stadiums as provided in 7-16-4106;

(16) county cemetery purposes as provided in 7-35-2201 and cemetery association purposes as provided in 35-20-104;

(17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);

(18) public assistance purposes as provided in 53-2-201;

(19) highway purposes as provided in 60-4-103 and 60-4-104;

(20) common carrier pipelines as provided in 69-13-104;

(21) water supply, water transportation, and water treatment systems as provided in 75-6-313;

(22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided in 75-10-720;

(23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;

(24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;

(25) water conservation and flood control projects as provided in 76-5-1108;

(26) acquisition of natural areas as provided in 76-12-108;

(27) acquisition of water rights for the natural flow of water as provided in 85-1-204;

(28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;

(29) conservancy district purposes as provided in 85-9-410;

~~(4)~~*(30)* wharves, docks, piers, chutes, booms, ferries, bridges, ~~of all kinds,~~ private roads, plank and turnpike roads, *and* railroads~~,~~*;*

(31) canals, ditches, flumes, aqueducts, and pipes for ~~public transportation,~~*:*

(a) supplying mines, mills, and smelters for the reduction of ores*;* ~~and~~

(b) *supplying* farming neighborhoods with water and drainage*;* ~~and~~

(c) reclaiming lands*;* and ~~for~~

(d) floating logs and lumber on streams *that are* not navigable*;* ~~and~~

(32) sites for reservoirs necessary for collecting and storing water. However, ~~such~~ reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

~~(5)~~*(33)* roads, tunnels, ~~ditches, flumes, pipes,~~ and dumping places for working mines, mills, or smelters for the reduction of ores;

(34) ~~also~~ outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores;

(35) ~~also~~ an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water *for the mines, mills, or smelters*. However, ~~such~~ *the* reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

~~(6)~~*(36)* private roads leading from highways to residences or farms;

~~(7)~~*(37)* telephone or ~~electric light~~ *electrical energy* lines;

~~(8)~~*(38)* telegraph lines;

~~(9)~~*(39)* sewerage of any*:*

(a) county, city, ~~county,~~ or town or any subdivision ~~thereof~~ *of a county, city, or town*, whether incorporated or unincorporated~~, or of~~*;*

(b) ~~any~~ settlement consisting of not less than 10 families*;* or

(c) ~~of any~~ public buildings belonging to the state or to any college or university;

~~(10)~~*(40)* tramway lines;

~~(11) electric power lines;~~

~~(12)~~*(41)* logging railways;

~~(13)~~*(42)* temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for ~~such~~ *a* time ~~as~~ *that* the court or judge may determine~~;~~. ~~provided~~ *However*, the grounds of state institutions ~~be excepted;~~ *may not be used for this purpose.*

~~(14)~~*(43)* underground reservoirs suitable for storage of natural gas;

~~(15)~~*(44) projects* to mine and extract ores, metals, or minerals owned by the ~~plaintiff~~ *condemnor* located beneath or upon the surface of property where the title to ~~said~~ *the* surface vests in others. However, the use of the surface *of property* for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose~~;~~.

~~(16)~~*(45) projects* to restore and reclaim lands ~~strip- or underground-mined~~ *that were strip mined or underground mined* for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse affects of strip or underground mining on those lands."

Section 53. Section 70-30-103, MCA, is amended to read:

"**70-30-103. What ~~private~~ property may be taken.** (1) The ~~private~~ property ~~which~~ *that* may be taken under this chapter includes:

(a) all real property belonging to any person;

(b) ~~lands belonging~~ *land that belongs* to this state or to any county, city, or town *and that is* not appropriated to some public use;

(c) property appropriated to *a* public use, but ~~such~~ *the* property ~~must~~ *may* not be taken unless for a more necessary public use than that to which it has already been appropriated;

(d) franchises for roads, bridges, and ferries and all other franchises; but ~~such~~ *the* franchises ~~must~~ *may* not be taken unless for free highways, free bridges, railroads, or ~~other~~ *another* more necessary public use; *or*

(e) ~~all rights-of-way~~ *a right-of-way* for any ~~and all the purposes~~ *public use* mentioned in 70-30-102 and any ~~and all~~ structures and improvements ~~thereon~~ *on the right-of-way*~~, and the lands~~. *The land* held and used in connection ~~therewith~~ *with the right-of-way* must be subject to ~~be~~ *being* connected with, crossed, or intersected by any other right-of-way ~~of~~ improvements or structures ~~thereon~~ *on the right-of-way*. ~~They~~ *The improvements or structures* must also be subject to a limited use in common with the owner ~~thereof~~ *of the improvements or structures* when necessary~~;~~. ~~but such~~ *However, the* uses, crossings, intersections, and connections must be made in *the* manner *that is* most compatible with the greatest public benefit and least private injury.

(2) All classes of private property not enumerated may be taken for public use when ~~such~~ *the* taking is authorized by law."

Section 54. Section 70-30-104, MCA, is amended to read:

"**70-30-104. What estates and rights in land may be taken.** The following is a classification of the estates and rights in ~~lands~~ *land* subject to ~~be taken~~ *taking* for ~~the~~ public use:

(1) ~~such estate~~ *estates* or rights ~~as may be~~ *that are* necessary, up to and including a fee simple, when taken for*:*

(a) public buildings or grounds*;* ~~or for~~

(b) permanent buildings*;* ~~or for~~

(c) an outlet for a flow or a place for the deposit of debris or tailings of a mine*;* ~~or for~~

(d) the mining and extracting of ores, metals, or minerals when the ~~same~~ *ores, metals, or minerals* are owned by the ~~plaintiff~~ *condemnor* but *are* located beneath or upon the surface of property ~~where~~ *for which* the title to ~~said~~ *the* surface vests in others*;* or

(e) ~~for~~ the underground storage of natural gas by a natural gas public utility as defined in 82-10-301. When the ~~appropriation~~ *taking* is for the underground storage of natural gas, all of the right, title, interest, and estate in the real property and in the subsand stratum, formation, or reservoir ~~so appropriated shall~~ *taken must* be determinable and for all purposes ~~terminate~~ *terminates* upon abandonment or upon cessation for the period of 1 year of the use for which the ~~same~~ *property* was ~~appropriated,~~ *taken.* ~~and thereupon~~ *Upon the abandonment or cessation,* the ownership of the residue of natural gas ~~therein~~ remaining ~~shall likewise vest~~ *in the reservoir vests* in the ~~then~~ *current* owners of ~~such~~ *the surface property over the* reservoir space.

(2) ~~such~~ *the* estate or rights in the surface ~~as~~ *property that* are necessary for a reservoir or dam and for the permanent flooding that results *from the reservoir or dam*, up to the edge of the maximum pool of the reservoir;

(3) an easement, leasehold, or other interest, for ~~so~~ *as* long as the interest is necessary for the purpose described in the complaint, or fee simple when taken for any other use;

(4) the right of entry upon and occupation of land and the right to take ~~therefrom such~~ *from the land any* earth, gravel, stones, trees, and timber ~~as~~ *that* may be necessary for some public use."

Section 55. Section 70-30-105, MCA, is amended to read:

"70-30-105. ~~Appropriation~~ *Taking* of underground *natural* gas *storage* reservoir — effect on owner's right to drill. (1) The ~~appropriation~~ *taking* of any sand, stratum, or formation for use as an underground natural gas storage reservoir ~~shall be~~ *is* without prejudice to the rights of the owner or owners of ~~said lands~~ *the land* or of the oil, gas, or other mineral rights ~~therein~~ *in the land* to drill or bore through the sand, stratum, or formation ~~so appropriated~~ *taken* for use as an underground natural gas storage reservoir in order to explore for, produce, process, treat, or market any oil, gas, or other minerals that might be contained in ~~said lands~~ *the land* above or below the sand, stratum, or formation ~~so appropriated~~ *taken.*

(2) Any additional cost or expense required to be incurred in order to protect the underground *natural* gas storage reservoir against pollution and the escape of the gas ~~therefrom~~ *from the reservoir* by reason of ~~such~~ boring or drilling through ~~of~~ the sand, stratum, or formation used as ~~such~~ *an* underground *natural* gas storage reservoir ~~shall~~ *must* be paid by the persons, firm, or corporation ~~then~~ owning ~~such~~ *the* underground *natural* gas storage reservoir *at the time of the boring or drilling.*"

Section 56. Section 70-30-106, MCA, is amended to read:

"**70-30-106. Eminent domain not to be used for coal mining in certain cases — policy.** *(1)* For the ~~following~~ reasons *contained in this section,* the state's power of eminent domain may not be exercised to mine and extract coal owned by the ~~plaintiff~~ *condemnor* located beneath the surface of property ~~where~~ *for which* the title to the surface is vested in others~~:~~.

~~(1)~~*(2)* Because of the large reserves of and the renewed interest in coal in eastern Montana, coal development is potentially more destructive to land and watercourses and underground aquifers and potentially more extensive geographically than the foreseeable development of other ores, metals, or minerals and affects large areas of land and large numbers of people.

~~(2)~~*(3)* In ~~many~~ *certain* areas of Montana ~~set forth~~ *referred to* in ~~(1) hereinabove~~ *subsection (2),* the title to the surface *property* is vested in an owner other than the mineral owner~~,~~ and the surface owner is putting that surface *property* to a productive use, and it is the public policy of the state to encourage and foster ~~such~~ *that* productive use by ~~such~~ *the surface* owner~~, and to~~. *To* permit the mineral owner to condemn the surface ~~owner~~ *owner's property* is to deprive the surface owner of the right to use ~~his~~ *the* property in ~~a~~ *the* productive manner ~~as he~~ *that the surface owner* determines and is also contrary to public policy ~~as~~ set forth in subsection ~~(4)~~ *(5).*

~~(3)~~*(4)* The magnitude of the potential coal development in eastern Montana will subject landowners to undue harassment by excessive use of eminent domain.

~~(4)~~*(5)* It is the public policy of the state to encourage and foster diversity of land ownership, and the surface mining of coal and control of large areas of land by the surface coal mining industry would not ~~foster~~ *promote* public policy and further the public interest."

Section 57. Section 70-30-107, MCA, is amended to read:

"**70-30-107. Private roads.** Private roads may be opened in the manner prescribed by this chapter, but in every case the necessity of the road and the amount of all damage to be sustained by the opening ~~thereof shall~~ *of the road must* be first determined by a jury, and ~~such~~ *the* amount *of damages*, together with the expenses of the proceeding, ~~shall~~ *must* be paid by the person to be benefited."

Section 58. Section 70-30-108, MCA, is amended to read:

"**70-30-108. No abrogation of provisions relating to city or county roads.** ~~Nothing in this code must~~ *This chapter may not* be construed to abrogate or repeal any statute providing for the taking of property in any *county,* city, *or* town~~, or county~~ for road or street purposes."

Section 59. Section 70-30-109, MCA, is amended to read:

"**70-30-109. Temporary logging roads and banking grounds.** (1) In the event that *a* temporary ~~roads~~ *road used* for logging purposes or ~~grounds~~ *land used* for banking ~~purposes are opened or~~ *grounds is* taken, the ~~same shall include~~ *taking includes* only the temporary right to use the ~~same, and the~~ *road or land. The* order of condemnation for ~~said~~ *the* road ~~shall~~ *or land must* fix the length of time and the date from which ~~such~~ *the* road ~~shall~~ *must* be opened or land ~~shall~~ *must* be used, and at the expiration of ~~said~~ *that* period ~~so fixed~~, the right to use ~~said~~ *the* road or land ~~shall cease.~~ *ceases.* ~~and the~~ *The* use of ~~said~~ *the road or* land

~~shall revert~~ *reverts* to the party from whom the ~~same is~~ *road or land was* taken or to ~~his~~ *that party's* legal successor in interest~~; provided, that no lands or grounds shall~~. *However, land may not* be taken for ~~such~~ temporary logging roads or banking grounds for a period of time longer than 5 years~~;~~. ~~and when~~ *When* taken for a period of time exceeding 1 year, the amount of damage for ~~such~~ *each* year ~~shall~~ *must* be fixed separately, and the amount fixed for each particular year must be paid on or before January 1 of each year~~;~~. ~~and in the event that~~ *If* the amount ~~so~~ fixed for any ~~one~~ *1* year is not paid as ~~herein~~ specified *in this subsection*, then ~~and in that event~~ the use of ~~such lands shall revert~~ *the road or land reverts* to the party from whom the ~~same is~~ *road or land was* taken or to ~~his~~ *that party's* successor in interest.

(2) In any suit for the opening of any temporary logging road or for the use of any ~~ground or~~ land for banking ~~purposes~~ *grounds*, the court ~~shall~~ *may* not finally order the opening of ~~such~~ *the* road or the right to use ~~such~~ *the* land ~~or ground~~ until the amount assessed as damages has been paid into court for the benefit of the party or parties owning or holding ~~such~~ *the road or* land.

(3) In the event that any ~~such~~ *road or* land *taken or used as provided in this section* is occupied by a lessee, ~~such~~ *the* lessee ~~shall~~ *must* be made a party to the suit, and the final decree of the court ~~shall~~ *must* apportion the amount of compensation received between the lessee and the owner of ~~such lands,~~ *the road or land.* ~~such~~ *The* decree ~~being~~ *is* subject to the right of appeal ~~of~~ *by* any party in interest."

Section 60. Section 70-30-110, MCA, is amended to read:

"**70-30-110. Survey and location of property to be taken — greatest public good — least private injury.** In all cases ~~where~~ *in which* land is required for public use, the state or its agents in charge of ~~such~~ *the public* use may survey and locate the ~~same,~~ *land to be used.* ~~but it~~ *The use* must be located in the manner ~~which~~ *that* will be most compatible with the greatest public good and the least private injury, and *the location is* subject to the provisions of 70-30-206. The state or its agents in charge of ~~such~~ *the* public use may, after giving 30 days' written notice to the owners and persons in possession of the land, enter upon the land and make examination, surveys, and maps ~~thereof,~~ *of the land.* ~~and such~~ *The* entry ~~shall~~ *does not* constitute ~~no~~ *a* cause of action in favor of the owners of the land except from injuries resulting from negligence~~, wantonness,~~ or ~~malice~~ *intentional acts*. Upon written request of the state or its agents, the owner shall provide the names and addresses of all persons who are in possession of ~~his~~ *the owner's* land within 14 days from receipt of the written notice. The state or its agents shall within 14 days from receipt of ~~such~~ *that* information furnish written notice to ~~such~~ *the listed* persons."

Section 61. Section 70-30-111, MCA, is amended to read:

"**70-30-111. Facts necessary to be found before condemnation.** Before property can be taken, the ~~plaintiff must~~ *condemnor shall* show by a preponderance of the evidence that the public interest requires the taking based on the following findings:

(1) ~~that~~ the use to which ~~it~~ *the property* is to be applied is a use authorized by law;

(2) ~~that~~ the taking is necessary to ~~such~~ *the* use;

(3) if already ~~appropriated to some~~ *being used for a* public use, that the public use ~~to~~ *for* which ~~it~~ *the property* is *proposed* to be ~~applied~~ *used* is a more necessary public use;

(4) ~~that~~ an effort to obtain the *property* interest sought to be ~~condemned~~ *taken* was made by submission of a written offer and ~~that such~~ *the* offer was rejected."

Section 62. Section 70-30-202, MCA, is amended to read:

"**70-30-202. Jurisdiction and venue — complaint and summons required.** All proceedings under this chapter must be brought in the district court of the county in which the property or some part ~~thereof~~ *of the property* is situated. ~~They~~ *A proceeding* must be commenced by filing a complaint and issuing a summons ~~thereon~~. A summons served under this chapter must contain a notice to the ~~defendant~~ *condemnee* to file and serve an answer. Within 6 months from the date *that* the summons is served, unless the court shortens or ~~enlarges~~ *lengthens* that time for good cause, the court, sitting without a jury, shall commence ~~its~~ *a* trial on the issue of whether a preliminary condemnation order should be issued."

Section 63. Section 70-30-203, MCA, is amended to read:

"**70-30-203. Contents of complaint.** *(1)* The complaint *for condemnation* must ~~allege~~ *contain*:

~~(1)~~*(a)* the name of the corporation, association, commission, or person in charge of the public use for which the property is sought *to be taken*, who ~~must be styled~~ *is the* plaintiff;

~~(2)~~*(b)* the names of all owners, purchasers under contracts for deed, mortgagees, and lienholders of record and any other claimants ~~of the property~~ of record *of the property sought to be taken*, if known, or a statement that they are unknown, who ~~must be styled~~ *are the* defendants;

~~(3)~~*(c)* a statement of the right of *the* plaintiff *to take property for public use*;

~~(4)~~*(d)* statements of each of the facts necessary to be found in 70-30-111; *and*

(e) a description of each interest in real property sought to be taken, a statement of whether the property sought to be taken includes the whole or only a part of the entire parcel or tract, and a statement that the interest sought is the minimum necessary interest. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.

~~(5)~~*(2)* ~~if~~ *If* a right-of-way is sought, *in addition to the items listed in subsection (1),* the complaint must show the location, general route, and termini and must be accompanied with a map ~~thereof~~ *of the route*, so far as the ~~same~~ *route* is involved in the action or proceeding~~;~~.

~~(6) a description of each interest in real property sought to be taken and whether the same includes the whole or only a part of the entire parcel or tract and a statement that the interest sought is the minimum necessary interest. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.~~

~~(7)~~*(3) (a)* ~~if~~ *If* a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir is sought to be ~~appropriated~~ *taken*, *in addition to the* *items listed in subsection (1), the complaint must include* a description ~~thereof~~ *of the reservoir* and of the land in which ~~it~~ *the reservoir* is alleged to be contained and a description of all other property and rights sought to be ~~appropriated~~ *taken* for use in connection with the ~~appropriation of the~~ right to store natural gas in and withdraw natural gas from ~~such~~ *the* reservoir.

(b) In addition, the complaint ~~shall~~ *must* state facts showing that*:*

(i) the ~~underground~~ reservoir is ~~one~~ subject to ~~appropriation~~ *being taken* by *the* plaintiff*;*

(ii) ~~also stating that~~ the underground storage of natural gas in the land sought to be ~~appropriated~~ *taken* is in the public interest;

(iii) ~~that~~ the ~~underground~~ reservoir is suitable and practicable for natural gas storage;

(iv) ~~that~~ the plaintiff in good faith has been unable to acquire the rights sought to be ~~appropriated hereunder~~ *taken;* and

(v) a statement that the rights and property sought to be ~~appropriated~~ *taken* are not prohibited by law~~;~~ *from being taken.*

(c) ~~and in addition, the~~ *The* complaint must be accompanied by a certificate from the board of oil and gas conservation as ~~set forth~~ *provided* in 82-10-304."

Section 64. Section 70-30-206, MCA, is amended to read:

"70-30-206. Powers of court — preliminary condemnation order. (1) ~~The~~ *In a condemnation proceeding, the* court ~~has power to~~ *may*:

(a) regulate and determine the place and manner of*:*

(i) making the connections and crossings and enjoying the common uses mentioned in 70-30-103(1)(e)*;* and

(ii) ~~of the~~ occupying ~~of~~ canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States; or

(b) limit the interest in real property sought to be ~~appropriated~~ *taken* if in the opinion of the court the interest sought is not necessary.

(2) If the court finds and concludes from the evidence presented that the public interest requires the taking of ~~such~~ *an* interest in real property and that the ~~plaintiff~~ *condemnor* has met ~~his~~ *the* burden of proof under 70-30-111, ~~it must forthwith make and~~ *the court shall* enter a preliminary condemnation order *providing* that the condemnation of the interest in real property may proceed in accordance with the provisions of this chapter.

(3) *(a)* If the property sought to be ~~appropriated~~ *taken* is a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of ~~it~~ *the property* for ~~such~~ *that* use has been proved by ~~plaintiff~~ *the condemnor based* upon substantial evidence, the order of the court ~~shall~~ *must* direct the *condemnation* commissioners to ~~ascertain and~~ determine the amount to be paid by the ~~plaintiff~~ *condemnor* to each person for ~~his~~ *each person's* interest in the property sought to be ~~appropriated~~ *taken* for use as ~~such~~ *an* underground natural gas storage reservoir ~~and/or as~~.

(b) In addition to or in lieu of the amount paid under subsection (3)(a), the court may direct the commissioners to determine the annual rental for*:*

(i) the use of ~~such~~ *the* underground *natural* gas storage reservoir*;*

(ii) ~~and for~~ the use of so much of the surface as is required in the operation of the ~~underground gas storage~~ reservoir and for the use in connection with the creation, operation, and maintenance ~~thereof~~ *of the reservoir;* and

(iii) ~~for~~ all the native gas contained in ~~said~~ *the* reservoir ~~as compensation and damages by reason of the appropriation of such property~~. However, the amount to be paid for ~~such~~ *the* native gas ~~and all thereof shall be no~~ *may not be* less than the market value of ~~such~~ *the* gas.

(4) The court shall appoint three persons, qualified *and recommended* as experts ~~and recommended as such~~ by the board of oil and gas conservation, to assist and advise the commissioners in determining the compensation and damages to be paid by ~~plaintiff~~ *the condemnor* to each person for ~~his~~ *each person's* interest in the property sought to be ~~appropriated,~~ *taken.* ~~and the~~ *The* fees and expenses of ~~such persons shall be~~ *the experts are* chargeable as costs of the proceedings to be paid by the ~~plaintiff~~ *condemnor.*

~~(4)~~*(5)* After a complaint as described in 70-30-203 is filed and prior to the issuance of the preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without prejudicing any party's position, with all aspects of the preliminary condemnation proceeding including discovery and trial. The court shall give ~~such~~ *the* proceedings expeditious and priority consideration. The preliminary condemnation proceeding ~~shall~~ *must* be tried by the court sitting without a jury."

Section 65. Section 70-30-207, MCA, is amended to read:

"70-30-207. Appointment of *condemnation* commissioners — affidavit — compensation. (1) Within 30 days of entry of a preliminary condemnation order, the ~~defendant~~ *condemnee* shall file a statement of ~~his~~ *the condemnee's* claim of just compensation. If within 20 days of service of ~~defendant's~~ *the condemnee's* claim ~~plaintiff~~ *the condemnor* fails to accept the claim, the court ~~must~~ *shall* appoint condemnation commissioners. ~~and the~~ *The* commission hearing may be waived by written consent of both parties, in which case the proceeding ~~shall~~ *must* be conducted in the district court as if the case had been appealed from an award by ~~such~~ *the* commissioners.

(2) The court ~~must thereupon~~ *shall* appoint three qualified, disinterested condemnation commissioners, unless appointment has been waived. One of ~~such~~ *the* commissioners ~~shall~~ *must* be nominated by the ~~party or parties plaintiff~~ *condemnor.* One of ~~such~~ *the* commissioners ~~shall~~ *must* be nominated by the ~~party or parties defendant~~ *condemnee.* The third commissioner ~~shall be the chairman~~ *is the presiding officer* and ~~shall~~ *must* be nominated by the two commissioners previously nominated. However, if ~~said~~ *the* two commissioners fail to make ~~such~~ *the* choice at the time of their appointment, then ~~such~~ *the* nomination ~~shall~~ *must* be made by the presiding judge.

(3) Each commissioner ~~shall possess the following qualifications~~:

(a) ~~that he is possessed of~~ *must have* sufficient knowledge of the English language;

(b) ~~that he is~~ *must be* a resident of a county within the judicial district in which the action is pending;

(c) ~~that he is not~~ *may not be* related within the sixth degree *of consanguinity* to any party; and

(d) ~~that he does~~ *may* not stand in the relation of guardian and ward, master and servant, debtor and creditor, ~~or~~ principal and agent, or partner or surety ~~as~~ to any party.

(4) At the time of ~~such~~ *the* meeting and nominations, there ~~shall~~ *must* be filed with the court by each nominating party or judge an affidavit of the person ~~so~~ nominated stating substantially ~~as follows~~ *the following*:

(a) that ~~he~~ *the person* has *not* formed ~~no~~ *an* unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the ~~plaintiff's~~ *condemnor's* offer for the lands and improvements of the ~~defendants~~ *condemnee*;

(b) that ~~he~~ *the person* has no enmity against or bias in favor of any party and has not discussed, communicated, ~~or~~ overheard, or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded, or to be awarded;

(c) that if selected as a condemnation commissioner, ~~he~~ *the person* is willing to serve and will ~~well and truly~~ try the issues of compensation and render a ~~true~~ decision according to the evidence and in compliance with the instructions of the court; *and*

(d) that ~~he~~ *the person* will not discuss the case with anyone except the other commissioners until a decision has been filed with the court.

(5) The court shall specify the compensation of the condemnation commissioners, which may not exceed $250 ~~a~~ *for each* hearing day, including expenses. The ~~condemning party~~ *condemnor* shall pay the compensation of the commissioners ~~nominated~~."

Section 66. Section 70-30-301, MCA, is amended to read:

"**70-30-301. Hearing — judge to preside — determinations by *condemnation* commissioners.** (1) ~~Immediately upon nomination and appointment of commissioners under 70-30-207, the same shall proceed to~~ *The condemnation commissioners shall* meet at the time and place stated in the order appointing them~~;~~. ~~which~~ *The meeting* time ~~shall~~ *may* not be more than 10 days after the order of ~~appointing~~ *appointment*~~;~~. ~~and proceed to~~ *The commissioners shall* examine the lands sought to be ~~appropriated~~ *taken*. At a time appointed by the judge and within ~~said~~ *the* 10-day period, ~~they~~ *the commissioners* shall hear the allegations and evidence of all persons interested in each ~~of the several parcels~~ *parcel* of land.

(2) ~~Such~~ *The* hearing ~~shall~~ *must* be attended by and presided over by the presiding judge, who shall make all necessary rulings upon procedure and the admissibility of evidence.

(3) *(a)* At the conclusion of the ~~aforesaid~~ hearing, the ~~court or~~ judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to determine, *based* solely upon ~~the basis of said~~ *their* examination of lands, the evidence produced at the hearing or hearings, and the instructions of the court, the ~~following:~~ *appropriate findings provided for in subsections (3)(b) through (3)(d).*

~~(a)~~*(b) The commissioners shall determine* the current fair market value of the *real* property sought to be ~~appropriated~~ *taken* and all improvements ~~thereon~~ pertaining to the ~~realty~~ *real property* and of each ~~and every~~ separate estate and interest ~~therein~~ *in the real property and improvements*. If ~~it~~ *the real property* consists of different parcels, the current fair market value of each parcel and each estate or interest ~~therein~~ *in the real property* must be separately assessed.

~~(b)~~*(c) (i)* ~~if~~ *If* the property sought to be ~~appropriated~~ *taken* constitutes only a part of a larger parcel, *the commissioners shall determine* the depreciation in current fair market value ~~which~~ *that* will accrue to the ~~portion not sought to be condemned~~ *remaining parcel* by reason of ~~its severance from the portion sought to be condemned~~ *the condemnation* and the construction of the improvements in the manner proposed by the ~~plaintiff;~~ *condemnor.*

~~(c)~~*(ii)* ~~separately,~~ *The commissioners shall also determine* how much the ~~portion not sought to be condemned~~ *remaining parcel* and each estate or interest ~~therein~~ *in the remaining parcel* will be benefited, if at all, by the construction of the improvements proposed by the ~~plaintiff;~~ *condemnor.* ~~and if~~ *If* the benefit ~~shall be~~ *is* equal to the amount assessed under subsection ~~(3)(b)~~ *(3)(c)(i)*, the ~~owner of the parcel shall be allowed no compensation except~~ *compensation to the condemnee is limited to* the value of the portion taken~~;~~. ~~but~~ *However,* if the ~~benefits shall be~~ *benefit is* less than the amount assessed under subsection ~~(3)(b)~~ *(3)(c)(i)*, the ~~former shall~~ *benefit to the condemnee must* be deducted from the ~~latter,~~ *amount assessed under subsection (3)(c)(i)* and the remainder ~~shall be~~ *is* the only amount allowed in addition to the current fair market value~~;~~.

(d) ~~if~~ *If* the property sought to be ~~condemned be~~ *taken is* for a railroad, *the commissioners shall also determine* the cost of good and sufficient fences along the line of ~~such~~ *the* railroad and the cost of cattle guards where fences may cross the line of ~~such~~ *the* railroad.

(4) ~~Where~~ *When* there are two or more estates or divided interests in property sought to be ~~condemned~~ *taken*, the ~~plaintiff~~ *condemnor* is entitled to have the amount of the award for ~~said~~ *the* property first determined~~, as hereinbefore stated,~~ as between ~~plaintiff~~ *the condemnor* and all ~~defendants~~ *condemnees* claiming any ~~interests therein~~ *interest in the property.* ~~Thereafter in~~ *In* the same proceeding, the respective rights of each of ~~such defendants~~ *the condemnees* in and to the *total* award ~~shall~~ *must* be determined by the commissioners, under supervision and instruction of the court, and the award *must be* apportioned accordingly."

Section 67. Section 70-30-302, MCA, is amended to read:

"**70-30-302. Assessing compensation — date and measure — interest.** (1) For the purpose of assessing compensation, the right ~~thereto shall be deemed~~ *to compensation is considered* to have accrued at the date of the service of the summons, and ~~its~~ *the property's* current fair market value as of that date ~~shall be~~ *is* the measure of compensation for all property to be actually taken and the basis of depreciation in the current fair market value of property not actually taken but injuriously affected. This ~~shall~~ *subsection may* not be construed to limit the amount of compensation payable by the department of transportation under the provisions of any legislation enacted pursuant to the federal Highway Beautification Act of 1965.

(2) If an order ~~be~~ *is* made ~~letting~~ *allowing* the ~~plaintiff into~~ *condemnor to take* possession, as provided in 70-30-311, the full amount finally awarded ~~shall~~ *must* draw interest at the rate of 10% ~~per annum~~ *a year* from the date of the service of the summons to the earlier of the following dates:

(a) the date on which the right to appeal to the Montana supreme court expires or, if *an* appeal is filed, ~~to~~ the date of final decision by the supreme court; or

(b) the date on which the ~~property owner~~ *condemnee* withdraws from *the* court the full amount finally awarded.

(3) If the ~~property owner~~ *condemnee* withdraws from *the* court a fraction of the amount finally awarded, interest on ~~such~~ *that* fraction ~~shall cease~~ *ceases* on the date it is withdrawn but interest on the remainder of the amount finally awarded ~~shall continue~~ *continues* to the earlier of the ~~aforesaid~~ dates ~~defined~~ *referred to* in *subsections* (2)(a) and (2)(b) ~~of this section~~ until the full amount is withdrawn from the court.

(4) None of the amount finally awarded ~~shall draw~~ *draws* interest after the date on which the right to appeal to the Montana supreme court expires.

(5) ~~No improvements~~ *Improvements* put upon the property subsequent to the date of the service of summons ~~shall~~ *may not* be included in the assessment of compensation or depreciation in current fair market value~~, nor shall the same~~ *and may not* be used as the basis of computing ~~such~~ compensation or depreciation."

Section 68. Section 70-30-303, MCA, is amended to read:

"70-30-303. Final report and award of *condemnation* commissioners — procedure on failure to agree. (1) The report of *the condemnation* commissioners ~~shall~~ *must* be made on ~~such~~ forms ~~as~~ *that* are provided for their use by ~~authority of~~ the court. The report must be filed within 10 days after the completion of the hearing or within ~~such~~ *any* additional time ~~as~~ allowed by the judge upon a clear showing of necessity. ~~and~~ *The report* must be filed with the clerk of court. The clerk shall notify the parties ~~interested~~ that the report has been filed~~,~~. ~~which~~ *The* notice, together with a ~~true~~ copy of the report, must be served upon all the parties ~~interested~~ in the same manner as a summons.

(2) A concurrence of two commissioners is necessary to the making of a final report or award as to any parcel of property or interest ~~therein~~ *in a parcel of property*. If ~~no~~ two of the commissioners are ~~able~~ *unable* to agree as to the amount of any award, ~~they~~ *the commissioners* shall report the fact to the judge or court within the time ~~herein~~ specified *in subsection (1)* and the court shall ~~forthwith~~ impanel and appoint new commissioners ~~as herein provided,~~. ~~which~~ *The new* commissioners shall proceed as provided ~~herein~~ *in this part* to determine any award upon which the previous commissioners failed to agree.

(3) The report of the commissioners ~~shall also state~~ *must include a statement of* the number of days or portions ~~thereof consumed~~ *of days worked* by the commissioners in performance of their duties ~~as prescribed herein~~."

Section 69. Section 70-30-304, MCA, is amended to read:

"70-30-304. Appeal to district court from assessment of *condemnation* commissioners. (1) ~~An~~ *Any party may* appeal from any assessment made by the *condemnation* commissioners ~~may be taken and prosecuted~~ in the court ~~where~~ *in which* the report of ~~said~~ *the* commissioners is filed ~~by any party interested~~. ~~Such~~ *The* appeal must be taken within ~~the period of~~ 30 days after the service upon ~~appellant~~ *the parties* of the notice of the filing of the award. ~~by the service of~~ *The appealing party shall serve* notice of ~~such~~ *the* appeal upon the opposing party or ~~his~~ *the opposing party's* attorney ~~in such proceedings~~

and ~~the filing of the same~~ *shall file the notice of appeal* in the district court ~~wherein~~ *in which* the action is pending~~;~~. ~~and the same shall be brought on for trial~~ *The appeal must be tried* upon the same notice and in the same manner as other civil actions~~;~~. ~~and unless~~ *Unless* a jury ~~shall be~~ *is* waived by the consent of all parties to ~~such~~ *the* appeal, the ~~same shall~~ *appeal must* be tried by *a* jury~~, and the~~. *The* amount to which ~~appellant~~ *the condemnee* may be entitled, by reason of the ~~appropriation~~ *taking* of ~~his~~ *the condemnee's* property, ~~shall~~ *must* be reassessed ~~upon the same principle as hereinbefore~~ *as* prescribed *in this part* for the assessment of ~~such~~ *that* amount by *the* commissioners.

(2) Upon any verdict or assessment by *the* commissioners becoming final, judgment ~~shall~~ *must* be entered declaring that upon payment of ~~such~~ *the amount of the* verdict or assessment, together with the interests and costs allowed by law, if any, the *condemnor has the* right to construct and maintain the ~~highway, railroad, or other public work or improvement~~ *public use project* and to take~~, use, and appropriate~~ the property described in ~~such~~ *the* verdict or assessment for the use and purposes for which ~~said land~~ *the property* has been ~~condemned~~ *taken.* ~~shall, as against the parties interested in such verdict or assessment, be and~~ *The rights granted in the verdict or assessment* remain in the ~~plaintiff~~ *condemnor* and ~~his or its~~ *the condemnor's* heirs, successors, or assigns forever.

(3) ~~In case~~ *If* the party appealing from the award of the commissioners ~~in any proceeding, as aforesaid, shall~~ *does* not succeed in changing to ~~his~~ *the appellant's* advantage the amount finally awarded in ~~such~~ *the* proceeding, ~~he shall~~ *the appellant may* not recover the costs of ~~such~~ *the* appeal, but all the costs of the appellee ~~upon such~~ *in the* appeal ~~shall~~ *must* be taxed against and recovered from the appellant~~;~~. ~~provided, that~~ *However,* upon the trial of ~~such~~ *the* appeal, the ~~plaintiff~~ *appellant* may contest the right of any party ~~or parties thereto~~ to any of the property mentioned and set forth or involved in ~~said~~ *the* appeal~~, which~~ *that* was located after the preliminary survey of any ~~such~~ highway or railroad, seeking to condemn ~~its~~ *a* right-of-way ~~under and~~ pursuant to the provisions of this chapter~~, provided such~~ *if the* condemnation proceedings are begun within 1 year after ~~such~~ *the* preliminary survey."

Section 70. Section 70-30-305, MCA, is amended to read:

"**70-30-305. Condemnor to make offer upon appeal — award of expenses of litigation.** (1) The condemnor shall, within 30 days after an appeal is perfected from the *condemnation* commissioner's award or report or not more than 60 days after *the* waiver of appointment of ~~condemnation~~ commissioners, submit to *the* condemnee a written final offer of judgment for the property *sought* to be ~~condemned~~ *taken*, together with *the accrued* necessary expenses of *the* condemnee ~~then accrued~~. If at any time prior to 10 days before trial the condemnee serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service ~~thereof~~ *of the acceptance*, and ~~thereupon~~ judgment ~~shall~~ *must* be entered. An offer not accepted ~~shall be deemed~~ *is considered* withdrawn and evidence ~~thereof~~ *of the offer* is not admissible at the trial except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(2) In the event of litigation and when the ~~private property owner~~ *condemnee* prevails by receiving an award in excess of the final offer of the condemnor, the court shall award necessary expenses of litigation to the condemnee."

Section 71. Section 70-30-306, MCA, is amended to read:

"**70-30-306. Necessary expenses of litigation defined.** (1) Necessary expenses of litigation as authorized by 70-30-305 mean reasonable and necessary attorney fees, expert witness fees, exhibit costs, and court costs.

(2) Reasonable and necessary attorney fees are the customary hourly rates for an attorney's services in the county in which *the* trial is held. Reasonable and necessary attorney fees ~~shall~~ *must* be computed on an hourly basis and may not be computed on the basis of any contingent fee contract ~~entered into after July 1, 1977~~.

(3) Reasonable and necessary expert witness fees may not exceed the customary rate for the services of a witness of ~~such~~ *that* expertise in the county in which *the* trial is held."

Section 72. Section 70-30-307, MCA, is amended to read:

"**70-30-307. When payment of compensation to be made — deposit of bond.** ~~The plaintiff must~~ *In a proceeding for condemnation for a railroad, the condemnor shall* within 30 days after final judgment pay the sum of money assessed but may at the time of or before the payment elect to build ~~the~~ *any required* fences and cattle guards. ~~and, if he so elect,~~ *A condemnor who elects to build the required fences and cattle guards* shall execute to the ~~defendant~~ *condemnee* a bond with sureties to be approved by the court, in double the assessed cost of the ~~same~~ *fences and cattle guards*, ~~to build such~~ *conditioned upon building the* fences and cattle guards within 8 months from the time the railroad is built on the land taken. ~~and, if such~~ *If the* bond ~~be~~ *is* given, *the condemnor* ~~need~~ *is* not *required to* pay the cost of ~~such~~ *the* fences and cattle guards. In an action on ~~such~~ *the* bond, the ~~plaintiff~~ *condemnee* may recover reasonable ~~attorney's~~ *attorney* fees."

Section 73. Section 70-30-308, MCA, is amended to read:

"**70-30-308. How payment made — execution or annulment for nonpayment.** (1) Payment may be made to the ~~defendants entitled thereto~~ *condemnee*, or the money may be deposited in court for the ~~defendants~~ *condemnee* and be distributed ~~to those entitled thereto~~ *pursuant to the assessment or judgment*. However, at the option of the ~~defendants~~ *condemnee*, payments may be made:

(a) on an annual basis, ~~utilizing~~ *using* the installment contract method; or

(b) if other land is reasonably available and the ~~plaintiff~~ *condemnor* consents, by means of a land exchange between the ~~defendants~~ *condemnee* and ~~plaintiffs~~ *condemnor* if the land to be provided by the ~~plaintiffs~~ *condemnor* in the exchange is of equal or more value than the land being condemned.

(2) If the money ~~be~~ *is* not ~~so~~ paid or deposited, the ~~defendants~~ *condemnee* may have execution as in civil cases, and if the money cannot be ~~made on execution~~ *executed upon*, the court, upon a showing to that effect, ~~must~~ *shall* set aside and annul the entire proceedings and restore possession of the property to the ~~defendant~~ *condemnee* if possession has been taken by the ~~plaintiff~~ *condemnor*."

Section 74. Section 70-30-309, MCA, is amended to read:

"**70-30-309. Final order of condemnation — contents — vesting upon filing.** (1) When payments have been made and the bond, *if appropriate, has been* given~~, if the plaintiff elects to give one,~~ as required by 70-30-307 and 70-30-308, the court ~~must~~ *shall* make a final order of condemnation~~,~~. ~~which~~ *The order* must describe the property condemned and the purposes of ~~such~~ *the* condemnation.

(2) A copy of the order must be filed in the office of the county clerk and recorder, and ~~thereupon~~ *upon filing,* the property described ~~therein shall vest~~ *in the order vests* in the ~~plaintiff~~ *condemnor* for the purposes ~~therein~~ specified *in the order.*"

Section 75. Section 70-30-310, MCA, is amended to read:

"**70-30-310. New proceedings to cure defective title.** If the title *to property* attempted to be acquired is found to be defective from any cause, the ~~plaintiff~~ *condemnor* may again institute proceedings to acquire the ~~same~~ *property*, as *prescribed* in this chapter ~~prescribed~~."

Section 76. Section 70-30-311, MCA, is amended to read:

"**70-30-311. Putting ~~plaintiff~~ *condemnor* in possession.** (1) At any time after the filing of the preliminary condemnation order ~~or after the report and assessment of the commissioners have been made and filed in the court and either before or after appeal from such assessment or from any other order or judgment in the proceedings~~ *and while it retains jurisdiction*, the court upon application of the ~~plaintiff shall have power to~~ *condemnor may* make an order that, upon payment into court ~~for the defendant entitled thereto~~ of the amount of compensation claimed by the ~~defendant~~ *condemnee* in ~~his~~ *the condemnee's* statement of claim of just compensation under 70-30-207 or the amount assessed either by the commissioners or by the jury, ~~as the case may be,~~ the ~~plaintiff be~~ *condemnor is* authorized:

(a) if already in possession of the property of ~~such defendant~~ *the condemnee that is* sought to be ~~appropriated~~ *taken*, to continue in ~~such~~ possession; or

(b) if not in possession, to take possession of ~~such~~ *the* property and use and possess the ~~same~~ *property* during the pendency and until the final conclusion of the proceedings and litigation and that all actions and proceedings against the ~~plaintiff~~ *condemnor* on account ~~thereof be~~ *of the possession are* stayed until ~~such~~ *that* time.

(2) If the ~~defendant~~ *condemnee* fails to file a statement of claim of just compensation within the time specified in 70-30-207, the ~~plaintiff~~ *condemnor* may obtain an order for possession provided for in subsection (1), subject to the condition subsequent that a ~~plaintiff's~~ *condemnor's* payment into court ~~shall~~ *must* be made within 10 days of receipt of the ~~defendant's~~ *condemnee's* statement of claim.

(3) However, ~~where~~ *when* an appeal is taken by ~~such defendant~~ *the condemnee*, the court may~~, in its discretion,~~ require the ~~plaintiff~~ *condemnor* before continuing or taking ~~such~~ possession, in addition to paying into court the amount assessed, to give *a* bond or undertaking with sufficient sureties ~~to be~~ approved by the court and ~~to be~~ in ~~such sum as~~ *an amount that* the court may direct, conditioned to pay the ~~defendant~~ *condemnee* any additional damages and costs ~~over and~~ above the amount assessed, which ~~it may~~ *is* finally ~~be~~ determined *as the amount* that ~~defendant~~ *the condemnee* is entitled to for the ~~appropriation~~ *taking* of the property, and all damages ~~which defendant~~ *that the condemnee* may sustain if for any cause ~~such~~ *the* property ~~shall~~ *is* not ~~be~~ finally taken for public ~~uses~~ *use*.

(4) The amount assessed by the commissioners or by the jury on appeal~~, as the case may be, shall be taken and~~ *is* considered, for the purposes of this section~~;~~ *and* until reassessed or changed in the further proceedings, as just compensation for the property ~~appropriated;~~ *taken.* ~~but~~ *However,* the ~~plaintiff~~ *condemnor,* by payment into court of the amount claimed in the answer or the amount assessed or by giving security as ~~above~~ provided *in subsection (3),* ~~shall~~ *may* not be ~~thereby~~ prevented ~~or precluded~~ from appealing from ~~such~~ *the* assessment but may appeal in the same manner and with the same effect as if ~~no~~ money had *not* been deposited or security *had not been* given.

(5) (a) ~~In~~ *Subject to subsection (5)(b), in* all cases ~~where~~ *in which* the ~~plaintiff~~ *condemnor* deposits the amount of the assessment and continues in possession or takes possession of the property, as ~~herein~~ provided *in this section,* the ~~defendant entitled thereto~~ *condemnee,* if there ~~be~~ *is* no dispute as to the ownership of the property, may at any time demand and receive upon order of the court all or any part of the money ~~so~~ deposited. ~~and shall not by such~~ *The* demand or receipt ~~be barred or precluded from his~~ *may not preclude the condemnee's* right of appeal from ~~such~~ *the* assessment. ~~but may, notwithstanding, take and prosecute his appeal from such assessment; provided that~~ *However,* if the amount of ~~such~~ *the* assessment is finally reduced on appeal by either party, ~~such defendant~~ *the condemnee* who has received all or any part of the amount deposited ~~shall be~~ *is* liable to the ~~plaintiff~~ *condemnor* for any excess of the amount ~~so~~ received ~~by him~~ over the amount finally assessed, with legal interest on ~~such~~ *the* excess from the time ~~such defendant~~ *the condemnee* received the money deposited~~;~~. ~~and the same~~ *The excess, plus interest,* may be recovered by *a civil* action~~;~~. ~~and provided, further, that upon~~ *Upon* any appeal from *an* assessment by the commissioners to a jury, the jury may ~~find a less as well as an equal or greater amount than that assessed by the commissioners; and provided, further, that the~~ *make a finding for any amount that it considers appropriate.*

(b) The court ~~shall~~ *may* not order the delivery to any ~~defendant~~ *condemnee* of more than 75% of the money deposited on ~~his~~ *the condemnee's* account except upon posting of bond by ~~such defendant~~ *the condemnee* equal to the amount in excess of 75%, with sureties to be approved by the court, to repay to the ~~plaintiff such~~ *condemnor* amounts withdrawn ~~as~~ *that* are in excess of ~~his~~ *the condemnee's* final award in the proceedings."

Section 77. Section 70-30-312, MCA, is amended to read:

"**70-30-312. Appeal to supreme court.** (1) ~~The plaintiff or defendant or any~~ *Any* party interested in the proceedings can appeal to the supreme court from any finding or judgment made or rendered under this chapter, as in other cases.

(2) ~~Such~~ *An* appeal does not stay any further proceedings under this chapter, except that the district court on motion or ex parte may grant a stay for ~~such~~ *a* period of time and under ~~such~~ conditions as *that* the court ~~deems~~ *considers* proper."

Section 78. Section 70-30-314, MCA, is amended to read:

"**70-30-314. Weed control responsibility.** The ~~plaintiff~~ *condemnor,* upon taking possession of the land, is responsible for the control and destruction of noxious weeds on ~~such~~ *the* land until natural grasses have taken over the property and noxious weeds have ceased to exist."

Section 79. Section 70-30-315, MCA, is amended to read:

"**70-30-315. Proration of taxes.** The ~~plaintiff shall~~ *condemnor must* be assessed ~~his~~ *the condemnor's* pro rata share of taxes for the land being ~~condemned~~ *taken* as of the date of possession or summons, whichever occurs first. The ~~plaintiff shall~~ *condemnor must* be assessed for all taxes accruing after the date of possession or summons, whichever occurs first."

Section 80. Section 70-30-321, MCA, is amended to read:

"**70-30-321. Sale of property acquired for public use when use abandoned — procedure.** (1) Except as provided in subsection (3), whenever a person who has acquired a real property interest for a public use, whether by right of eminent domain or otherwise, abandons ~~such~~ *the* public use and places ~~such~~ *the property* interest for sale, the seller may sell the interest to the highest bidder at public auction.

(2) ~~In the event~~ *If* the seller decides to sell an interest in real property as set forth in subsection (1), ~~he~~ *the seller* shall publish notice of the public sale in a newspaper published in the county in which the real property ~~interest~~ is located once a week for 4 successive weeks. ~~Sale shall~~ *The sale must* be held in the county where the real property ~~interest~~ is located. The notice of sale ~~shall~~ *must* contain the information required by 77-2-322.

(3) When an interest, other than a fee simple interest, in property~~, which~~ *that* has been acquired for a public purpose by right of eminent domain, or otherwise, is abandoned or *when* the purpose for which it was acquired is terminated, the property reverts to the original owner or ~~his~~ *the original owner's* successor in interest."

Section 81. Section 70-30-322, MCA, is amended to read:

"**70-30-322. Option of original owner or successor in interest to purchase at sale price.** (1) Except as provided in subsection (3), the owner from whom the real property interest was originally acquired by eminent domain or otherwise or *the owner's successor in interest*, if there is a successor in interest, ~~the owner or his successor in interest shall~~ *must* be notified by the seller by certified mail and ~~shall have~~ *has* a 30-day option from the date of a sale provided for in 70-30-321 to purchase the interest by offering ~~therefor~~ an amount of money equal to the highest bid received for the interest at the sale. If more than one person claims an equal entitlement, the option may not be exercised.

(2) If ~~no~~ bids are *not* received by the seller and the optionholder indicates in writing to the seller that ~~he~~ *the optionholder* wishes to exercise the option, the seller shall have the real property interest appraised and sell the interest at that price to the optionholder.

(3) When an interest, other than a fee simple interest, in property~~, which~~ *that* has been acquired for a public purpose by right of eminent domain, or otherwise, is abandoned or *when* the purpose for which it was acquired is terminated, the property reverts to the original owner or ~~his~~ *the original owner's* successor in interest."

Section 82. Section 70-31-102, MCA, is amended to read:

"**70-31-102. Definitions.** As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Agency" means ~~any~~ *a* department, agency, or instrumentality of the state of Montana or of a political subdivision of the state, ~~any~~ *a* department, agency, or

instrumentality of two or more states or two or more political subdivisions of the state or of two or more states, ~~and~~ ~~any~~ *or a* person who has the authority to acquire property by eminent domain ~~under state law~~ *as provided in Title 70, chapter 30.*

(2) "Appraisal" means a written statement, independently and impartially prepared by a qualified appraiser, setting forth an opinion of defined value of an adequately described property as of a specified date and supported by the presentation and analysis of relevant market information.

(3) "Average annual net earnings" means one-half of any net earnings of a business or farm operation, before federal and state income taxes, during the 2 ~~taxable~~ *tax* years immediately preceding the ~~taxable~~ *tax* year in which the business or farm operation moves from real property acquired for a project of an agency (for which federal financial assistance is available to pay all or any part of the cost) or during any other period that the acquiring agency determines to be more equitable for establishing earnings and includes any compensation paid by the business or farm operation to the owner, ~~his~~ *the owner's* spouse, or ~~his~~ *the owner's* dependents during the period.

(4) "Business" means any lawful activity, ~~excepting~~ *except* a farm operation, conducted:

(a) primarily for the purchase, sale, lease, and rental of personal and real property and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(b) primarily for the sale of services to the public;

(c) primarily by a nonprofit organization; or

(d) solely for the purposes of paying moving or related expenses~~, for assisting~~ *to assist* in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not the display or displays are located on the premises on which any of the ~~above~~ activities *included as a business* are conducted.

(5) (a) "Displaced person" means:

(i) any person who moves from real property or moves ~~his~~ *that person's* personal property from real property:

(A) as a direct result of a written notice of intent to acquire or by the acquisition of the real property, in whole or in part, for a program or project undertaken by a displacing agency for which federal financial assistance will be available to pay all or any part of the cost; or

(B) on which ~~he~~ *the person* is a residential tenant or conducts a small business, farm operation, or a business defined in subsection (4)(d), as a direct result of rehabilitation, demolition, or other displacing activity prescribed by the agency under a program or project undertaken by a displacing agency that has determined that the displacement is permanent and for which federal financial assistance will be available to pay all or any part of the cost;

(ii) any person who, for purposes of providing moving and related expenses or relocation advisory services only, moves from real property or moves ~~his~~ *that person's* personal property from real property as a direct result of:

(A) a written notice of intent to acquire or as a direct result of the acquisition of other real property, in whole or in part, on which the person conducts a business or farm operation, for a program or project undertaken by a displacing agency; or

(B) the rehabilitation, demolition, or other displacing activity prescribed by the agency under a program or project undertaken by a displacing agency that has determined that the displacement is permanent.

(b) The term "displaced person" does not include a person who:

(i) has been determined, according to criteria established by the agency, to be either unlawfully occupying the displacement dwelling or to have been occupying the dwelling for the purpose of obtaining assistance under this part; or

(ii) occupies property owned by the agency on a short-term rental basis or for a period subject to termination when the property is needed for the program or project and who was not an occupant of the property at the time it was acquired by the agency.

(6) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing ~~such~~ *agricultural* products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(7) "Federal act" means the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" or as that act may be amended.

(8) "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any federal guarantee or insurance.

(9) "Person" means any individual, partnership, corporation, or association."

Section 83. Section 70-31-104, MCA, is amended to read:

"**70-31-104. New rights and powers not created.** (1) ~~Nothing in this~~ *This* chapter ~~shall~~ *may not* be construed as creating, in any condemnation proceedings brought under the power of eminent domain *as provided in Title 70, chapter 30,* any element of value or damage *that is* not in existence immediately prior to July 1, 1971.

(2) ~~Nothing in this~~ *This* chapter ~~shall~~ *may not* be construed as, directly or indirectly, granting any new or additional power of eminent domain."

Section 84. Section 70-31-105, MCA, is amended to read:

"**70-31-105. Duplication of eminent domain payments not intended.** ~~No~~ *A* payment or assistance provided for in this chapter ~~shall~~ *may not* be required to be made by an agency if the displaced person receives a payment required ~~by the laws of eminent domain which~~ *under Title 60, chapter 4, or Title 70, chapter 30, that* is determined by the agency to have substantially the same purpose and effect as ~~such~~ *a* payment under this chapter."

Section 85. Section 70-31-301, MCA, is amended to read:

"**70-31-301. Appraisal, negotiation, and other condemnation policies mandated.** An agency ~~which~~ *that* acquires real property for a program or project (for which federal financial assistance will be available to pay all or any part of the cost of ~~such~~ *the* program or project) shall comply with the following policies:

(1) The agency shall make every reasonable effort to ~~acquire~~ expeditiously *acquire* real property by negotiation.

(2) Real property ~~shall~~ *must* be appraised before the initiation of negotiations, and the owner or ~~his~~ *or the owner's* designated representative ~~shall~~ *must* be given an opportunity to accompany the appraiser during ~~his~~ *the appraiser's* inspection of the property. The head of the agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

(3) Before the initiation of negotiations for real property, an amount ~~shall~~ *must* be established ~~which~~ *that* ~~it~~ is reasonably believed ~~is~~ *to be* just compensation ~~therefor~~ *for the property or interest taken,* and ~~such~~ *that* amount ~~shall~~ *must* be offered for the property. ~~In no event shall such~~ *The* amount *may not* be less than the approved appraisal of the fair market value of ~~such~~ *the* property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which ~~such~~ *the* property is acquired or by the likelihood that the property would be acquired for ~~such~~ *the* improvement, other than ~~that~~ *an amount* due to physical deterioration within the reasonable control of the owner, ~~shall~~ *must* be disregarded in determining the compensation for the property. The owner of the real property to be acquired ~~shall~~ *must* be provided with a written statement of and summary of the basis for the amount established as just compensation. ~~Where~~ *When* appropriate, the just compensation for the real property acquired and for damages to remaining real property ~~shall~~ *must* be separately stated.

(4) ~~No~~ *An* owner ~~shall~~ *may not* be required to surrender possession of real property before the agreed purchase price is paid or before there is deposited with the court, in accordance with applicable law, for the benefit of the owner, an amount not less than the approved appraisal of the fair market value of ~~such~~ *the* property or the amount of the award of compensation in the condemnation proceeding of ~~such~~ *the* property.

(5) The construction or development of a program or project (for which federal financial assistance will be available to pay all or any part of the cost of the program or project) ~~shall~~ *must* be ~~so~~ scheduled *so* that, to the greatest extent practicable, ~~no~~ *a* person lawfully occupying real property ~~shall be~~ *is not* required to move from a dwelling (assuming a replacement dwelling will be available) or to move ~~his~~ *the person's* business or farm operation without at least 90 days' written notice of the date by which ~~such~~ *a* move is required.

(6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the acquiring agency on short notice, the amount of rent required ~~shall~~ *may* not exceed the fair rental value of the property to a short-term occupier.

(7) ~~In no event shall the~~ *The* time of condemnation *may not* be advanced, ~~or~~ negotiations or condemnation and the deposit of funds in court for the use of the owner *may not* be deferred, ~~or~~ *and* any other action coercive in nature *may not* be taken to compel an agreement on the price to be paid for the property.

(8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings ~~shall~~ *must* be instituted *as provided in Title 70, chapter 30.* The acquiring agency ~~shall~~ *may* not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of ~~his~~ *the owner's* real property.

(9) If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the uneconomic remnant ~~shall~~ *must* be made.

(10) A person whose real property is being acquired may, after being fully informed of ~~his~~ *the person's* right to receive just compensation, donate to an agency the property, any interest in the property, or any compensation received for the property."

Section 86. Section 70-31-311, MCA, is amended to read:

"**70-31-311. Relocation payments and assistance.** For any project that results in the displacement of a person from ~~his~~ *the person's* home, business, or farm and for which federal financial assistance may be available to pay all or any part of the cost of displacement, an entity of the state or any public or private entity that has the authority to acquire property by eminent domain under ~~state law~~ *Title 60, chapter 4, or Title 70, chapter 30,* is authorized to provide relocation assistance and to make relocation payments to the full extent permitted by the federal relocation assistance law, 42 U.S.C. 4601, et seq., as amended. The entity is authorized to do what may be necessary or required to obtain for property owners the full benefit of federal relocation assistance, including the adoption of methods of administration ~~as~~ *that* may be required by federal law or rules to carry out the operation of relocation assistance."

Section 87. Section 70-32-216, MCA, is amended to read:

"**70-32-216. Tracing homestead proceeds.** (1) If property or a part ~~thereof~~ *of property* that could have been claimed as an exempt homestead has been sold or taken by condemnation, *as provided in Title 60, chapter 4, or Title 70, chapter 30,* or has been lost, damaged, or destroyed and the owner has been indemnified for ~~it~~ *the property,* ~~he~~ *the owner* is entitled for 18 months to exemption of the proceeds that are traceable.

(2) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor."

Section 88. Section 75-10-715, MCA, is amended to read:

"**75-10-715. Liability — reimbursement and penalties — proceedings — defenses and exclusions.** (1) Except as provided in 75-10-742 through 75-10-752, notwithstanding any other provision of law, and subject only to the defenses set forth in subsection (5) and the exclusions set forth in subsection (7), the following persons are jointly and severally liable for a release or threatened release of a hazardous or deleterious substance from a facility:

(a) a person who owns or operates a facility where a hazardous or deleterious substance was disposed of;

(b) a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of;

(c) a person who generated, possessed, or was otherwise responsible for a hazardous or deleterious substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment of the substance or arranged with a transporter for transport of the substance for disposal or treatment; and

(d) a person who accepts or has accepted a hazardous or deleterious substance for transport to a disposal or treatment facility.

(2) A person identified in subsection (1) is liable for the following costs:

(a) all remedial action costs incurred by the state; and

(b) damages for injury to, destruction of, or loss of natural resources caused by the release or threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were specifically identified as an irreversible and irretrievable commitment of natural resources in an approved final state or federal environmental impact statement or other comparable approved final environmental analysis for a project or facility that was the subject of a governmental permit or license and the project or facility was being operated within the terms of its permit or license.

(3) If the person liable under subsection (1) fails, without sufficient cause, to comply with a department order issued pursuant to 75-10-711(4) or to properly provide remedial action upon notification by the department pursuant to 75-10-711(3), the person may be liable for penalties in an amount not to exceed two times the amount of any costs incurred by the state pursuant to this section.

(4) The department may initiate civil proceedings in district court to recover remedial action costs, natural resource damages, or penalties under subsections (1), (2), and (3). Proceedings to recover costs and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs, damages, or penalties lies in the county where the release occurred or where the person liable under subsection (1) resides or has its principal place of business or in the district court of the first judicial district.

(5) A person has a defense and is not liable under subsections (1), (2), and (3) if the person can establish by a preponderance of the evidence that:

(a) the department failed to follow the notice provisions of 75-10-711 when required;

(b) the release did not emanate from any vessel, vehicle, or facility to which the person contributed any hazardous or deleterious substance or over which the person had any ownership, authority, or control and was not caused by any action or omission of the person;

(c) the release or threatened release occurred solely as a result of:

(i) an act or omission of a third party other than either an employee or agent of the person; or

(ii) an act or omission of a third party other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the person, if the person establishes by a preponderance of the evidence that the person:

(A) exercised due care with respect to the hazardous or deleterious substance concerned, taking into consideration the characteristics of the hazardous or deleterious substance in light of all relevant facts and circumstances; and

(B) took precautions against foreseeable acts or omissions of a third party and the consequences that could foreseeably result from those acts or omissions;

(d) the release or threat of release occurred solely as the result of an act of God or an act of war;

(e) the release or threatened release was from a facility for which a permit had been issued by the department, the hazardous or deleterious substance was specifically identified in the permit, and the release was within the limits allowed in the permit;

(f) in the case of assessment of penalties under subsection (3), factors beyond the control of the person prevented the person from taking timely remedial action; or

(g) the person transported only household refuse, unless that person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse.

(6) (a) For the purpose of subsection (5)(c)(ii), the term "contractual relationship" includes but is not limited to land contracts, deeds, or other instruments transferring title or possession, unless the real property on which the facility is located was acquired by the person after the disposal or placement of the hazardous or deleterious substance on, in, or at the facility and one or more of the following circumstances is also established by the person by a preponderance of the evidence:

(i) At the time the person acquired the facility, the person did not know and had no reason to know that a hazardous or deleterious substance that is the subject of the release or threatened release was disposed of on, in, or at the facility.

(ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or condemnation *pursuant to Title 70, chapter 30.*

(iii) The person acquired the facility by inheritance or bequest.

(b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through (6)(a)(iii), the person shall establish that the person has satisfied the requirements of subsection (5)(c)(i) or (5)(c)(ii).

(c) To establish that the person had no reason to know, as provided in subsection (6)(a)(i), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of assessing this inquiry, the following must be taken into account:

(i) any specialized knowledge or experience on the part of the person;

(ii) the relationship of the purchase price to the value of the property if uncontaminated;

(iii) commonly known or reasonably ascertainable information about the property;

(iv) the obviousness of the presence or the likely presence of contamination on the property; and

(v) the ability to detect the contamination by appropriate inspection.

(d) (i) Subsections (5)(b) and (5)(c) or this subsection (6) may not diminish the liability of a previous owner or operator of the facility who would otherwise be liable under this part.

(ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge of the release or threatened release of a hazardous or deleterious substance at the facility when the person owned the real property and then subsequently transferred ownership of the property to another person without disclosing the knowledge, the previous owner is liable under subsections (1), (2), and (3) and a defense under subsection (5)(b) or (5)(c) is not available to that person.

(e) ~~Subsection~~ *This subsection* (6) does not affect the liability under this part of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous or deleterious substance that is the subject of the action relating to the facility.

(7) A person has an exclusion and is not liable under this section if:

(a) the person generated or disposed of only household refuse, unless the person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse;

(b) the person owns or operates real property where hazardous or deleterious substances have come to be located solely as a result of subsurface migration in an aquifer from a source or sources outside the person's property, provided that the following conditions are met:

(i) the owner or operator did not cause, contribute to, or exacerbate the release or threatened release of any hazardous or deleterious substances through any act or omission. The failure to take affirmative steps to mitigate or address contamination that has migrated from a source outside the owner's or operator's property does not, in the absence of exceptional circumstances, constitute an omission by the owner or operator.

(ii) the person who caused, contributed to, or exacerbated the release or threatened release of any hazardous or deleterious substance is not and was not an agent or employee of the owner or operator and is not or was not in a direct or indirect contractual relationship with the owner or operator, unless the department provides a written determination that an existing or proposed contractual relationship is an insufficient basis to establish liability under this section;

(iii) there is no other basis of liability under subsection (1) for the owner or operator for the release or threatened release of a hazardous or deleterious substance; and

(iv) the owner or operator cooperates with the department and all persons conducting department-approved remedial actions on the property, including granting access and complying with and implementing all required institutional controls;

(c) the person owns or occupies real property of 20 acres or less for residential purposes, provided that the following conditions are met:

(i) the person did not cause, contribute to, or exacerbate the release or threatened release of any hazardous or deleterious substance through any act or omission;

(ii) the person uses or allows the use of the real property for residential purposes. This exclusion does not apply to any person who acquires or develops real property for commercial use or any use other than residential use.

(iii) at the time the person purchased or occupied the real property, there were no visible indications of contamination on the surface of the real property;

(iv) the person cooperates with the department and all persons conducting department-approved remedial actions on the property, including granting access and complying with and implementing all required institutional controls; and

(v) there is no other basis of liability under subsection (1) for the owner or occupier for the release or threatened release of a hazardous or deleterious substance.

(8) A person is liable under this section if the department provides substantial credible evidence that the person fails to satisfy any element of each exclusion in subsections (7)(a) through (7)(c).

(9) The liability of a fiduciary under the provisions of this part for a release or a threatened release of a hazardous or deleterious substance from a facility held in a fiduciary capacity may not exceed the assets held in the fiduciary capacity that are available to indemnify the fiduciary unless the fiduciary is liable under this part independent of the person's ownership or actions taken in a fiduciary capacity.

(10) A person who holds indicia of ownership in a facility primarily to protect a security interest is not liable under subsections (1)(a) and (1)(b) for having participated in the management of a facility within the meaning of 75-10-701(15)(b) because of any one or any combination of the following:

(a) holding an interest in real or personal property when the interest is being held as security for payment or performance of an obligation, including but not limited to a mortgage, deed of trust, lien, security interest, assignment, pledge, or other right or encumbrance against real or personal property that is furnished by the owner to ensure repayment of a financial obligation;

(b) requiring or conducting financial or environmental assessments of a facility or a portion of a facility, making financing conditional upon environmental compliance, or providing environmental information or reports;

(c) monitoring the operations conducted at a facility or providing access to a facility to the department or its agents or to remedial action contractors;

(d) having the mere capacity or unexercised right to influence a facility's management of hazardous or deleterious substances;

(e) giving advice, information, guidance, or direction concerning the administrative and financial aspects, as opposed to day-to-day operational aspects, of a borrower's operations;

(f) providing general information concerning federal, state, or local laws governing the transportation, storage, treatment, and disposal of hazardous or deleterious substances and concerning the hiring of remedial action contractors;

(g) engaging in financial workouts, restructuring, or refinancing of a borrower's obligations;

(h) collecting rent, maintaining utility services, securing a facility from unauthorized entry, or undertaking other activities to protect or preserve the value of the security interest in a facility;

(i) extending or denying credit to a person owning or in lawful possession of a facility;

(j) in an emergency, requiring or undertaking activities to prevent exposure of persons to hazardous or deleterious substances or to contain a release;

(k) requiring or conducting remedial action in response to a release or threatened release if prior notice is given to the department and the department approves of the remedial action; or

(l) taking title to a facility by foreclosure, provided that the holder of indicia of ownership, from the time the holder acquires title, undertakes to sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the property in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the facility and taking all facts and circumstances into consideration and provided that the holder does not:

(i) outbid or refuse a bid for fair consideration for the property or outbid or refuse a bid that would effectively compensate the holder for the amount secured by the facility;

(ii) worsen the contamination at the facility;

(iii) incur liability under subsection (1)(c) or (1)(d) by arranging for disposal of or transporting hazardous or deleterious substances; or

(iv) engage in conduct described in subsection (11).

(11) The protection from liability provided in subsections (9) and (10) is not available to a fiduciary or to a person holding indicia of ownership primarily to protect a security interest if the fiduciary or person through affirmative conduct:

(a) causes or contributes to a release of hazardous or deleterious substances from the facility;

(b) allows others to cause or contribute to a release of hazardous or deleterious substances; or

(c) in the case of a person holding indicia of ownership primarily to protect a security interest, actually participates in the management of a facility by:

(i) exercising decisionmaking control over environmental compliance; or

(ii) exercising control at a level comparable to that of a manager of the enterprise with responsibility for day-to-day decisionmaking either with respect to environmental compliance or substantially all of the operational, as opposed to financial or administrative, aspects of the facility."

Section 89. Section 75-10-720, MCA, is amended to read:

"75-10-720. Condemnation — creation of state lien. (1) Whenever the department determines that property upon which a release or threatened release of a hazardous or deleterious substance has occurred may present an imminent and substantial endangerment to the public health, safety, or welfare or the environment, the department may condemn the property for public use to mitigate the threat. The taking of the property must be conducted in accordance with the procedure set forth in Title 70, chapter 30~~, parts 1 through 3~~.

(2) All costs, penalties, and natural resource damages for which a person has been judicially determined to be liable to the state pursuant to 75-10-715 constitute a lien in favor of the state upon all property and rights to the property that belong to the person.

(3) The lien imposed by this section arises at the time notice incorporating a description of the property subject to the remedial action and an identification of the amount of costs, penalties, and natural resource damages is filed with the clerk and recorder of the county in which the real property is located. A copy of the notice must be served by certified mail upon the liable person.

(4) The costs, penalties, and natural resource damages constituting the lien may be recovered in an action in the district court for the district in which the property is located or in which the remedial action is occurring or has occurred. This section does not affect the right of the state to bring an action against a person to recover all costs, penalties, and natural resource damages for which that person is liable under this part or any other provision of state or federal law.

(5) The lien must continue until the liability for the costs and damages incurred as a result of the release of a hazardous or deleterious substance is satisfied.

(6) If the department expends money from the fund for orphan share remedial action costs at a facility or for a facility at which a reimbursed orphan share exists, the state has a lien upon the facility for the unrecovered costs. The lien:

(a) may not exceed the increase in fair market value of the property attributable to the unfunded portion of the remedial action at the time of a subsequent sale or other disposition of the property;

(b) arises at the time costs are first incurred by the department with respect to a remedial action at the facility;

(c) must be filed according to subsection (3); and

(d) continues until the earlier of satisfaction of the lien or recovery of all remedial action costs incurred at the facility.

(7) Payment of any liens under this section must be deposited in one of the two accounts from which the remedial action costs originated, including the fund established in 75-10-704 or the orphan share fund established in 75-10-743."

Section 90. Section 75-15-123, MCA, is amended to read:

"**75-15-123. Acquisition of outdoor advertising rights — compensation.** (1) The department may acquire by gift, purchase, agreement, exchange, or eminent domain existing outdoor advertising and property rights pertaining to advertising that was lawfully in existence on June 24, 1971, and ~~which~~ *that* by virtue of 75-15-111(1) is nonconforming. Eminent domain ~~shall~~ *must* be exercised in accordance with ~~the laws of the state~~ *Title 70, chapter 30.*

(2) Just compensation ~~shall~~ *must* be paid for outdoor advertising and property rights pertaining to the advertising acquired through the process of eminent domain. The department may remove outdoor advertising found *to be* in violation of 75-15-112 or 75-15-132 without payment of compensation.

(3) Except as provided in 75-15-131 and 75-15-132, a sign may not be required to be removed unless at the time of removal or discontinuance there are sufficient funds, from whatever source, appropriated and immediately available to pay the just compensation required under this section and unless at that time the federal funds required to be contributed under 23 U.S.C. 131(g), with respect to the outdoor advertising being removed, have been apportioned and are immediately available to this state."

Section 91. Section 75-15-223, MCA, is amended to read:

"**75-15-223. Authority to acquire interest in land for screening and removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills.** (1) When the department of transportation determines that it is in the best interests of the state, it may acquire ~~such lands~~ *land* or ~~interests~~ *interest* in ~~lands as~~ *land that* may be necessary to provide adequate screening *for junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills.*

(2) When the department of transportation determines that the topography of the land adjoining the highway will not permit adequate or economically feasible screening, it may acquire by gift, purchase, exchange, or condemnation ~~such~~ ~~interests~~ *interest* in ~~lands as~~ *land that* may be necessary to secure the relocation, removal, or disposal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, or sanitary landfills ~~which~~ *that* were either lawfully:

(a) in existence on October 22, 1965;

(b) along any highway made a part of the interstate or primary systems on or after October 22, 1965, and before January 1, 1968; or

(c) established on or after January 1, 1968.

(3) The department of transportation shall pay just compensation to the owner for the relocation, removal, or disposal of any ~~such~~ facility. *Condemnation must be exercised pursuant to Title 60, chapter 4, and Title 70, chapter 30.*

(4) Any new site chosen by the department of transportation pursuant to subsection (2) for the relocation of a garbage dump or sanitary landfill must be approvable as the site of a solid waste management system pursuant to Title 75, chapter 10, part 2, and the rules promulgated under authority of that part."

Section 92. Section 76-5-1108, MCA, is amended to read:

"**76-5-1108. Acquisition of property.** (1) Cities, towns, and counties may acquire by gift, purchase, or condemnation ~~and appropriation~~ *pursuant to Title 70, chapter 30,* private property within the limits of the project~~,~~ ~~including the right to cross railroad right-of-way and property and highway right-of-way and property, so as not to impair the previous public use, as~~ *that* may be necessary to carry into effect the provisions of this part and to provide an outlet for the watercourses, either natural or artificial~~;~~. ~~which~~ *Watercourses* may be deepened, widened, straightened, altered, changed, diverted, or otherwise improved under the provisions of this part. *Property rights that may be acquired include the right to cross railroad right-of-way and property and highway right-of-way and property so as not to impair the previous public use.*

(2) All *applicable* provisions of ~~the laws of Montana relating to the condemnation of lands for public purposes shall~~ *Title 70, chapter 30,* apply to ~~the~~

~~provisions thereof insofar as~~ *the condemnation of property under this section* ~~applicable~~."

Section 93. Section 76-5-1111, MCA, is amended to read:

"**76-5-1111. Apportionment of costs.** (1) The cost of all right-of-way acquired by purchase or condemnation *pursuant to Title 70, chapter 30,* together with any other property rights ~~which~~ *that* may be required in furtherance of ~~such~~ projects *under this part,* may be borne by the city, town, or county.

(2) The work of actual construction and the cost ~~thereof~~ *of construction* may be borne by the federal government."

Section 94. Section 76-6-105, MCA, is amended to read:

"**76-6-105. Construction of chapter.** (1) To the extent that the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter are controlling. The powers conferred by this chapter are in addition and supplemental to the powers conferred by any other law.

(2) This chapter may not be construed to imply that any easement, covenant, condition, or restriction that does not have the benefit of this chapter is not enforceable based on any provisions of this chapter. This chapter does not diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain *pursuant to Title 70, chapter 30,* or otherwise and to use land for public purposes."

Section 95. Section 76-12-108, MCA, is amended to read:

"**76-12-108. Acquisition of lands.** Subject to the limits of available appropriations, the board is authorized to acquire interests ~~to lands~~ *in land* by any lawful means for the purpose of designating natural areas~~;~~. ~~provided that the~~ *The* board ~~shall~~ *may* exercise the power of eminent domain, *provided for in Title 70, chapter 30,* only in specific instances ~~where~~ authorized by the legislature."

Section 96. Section 76-12-110, MCA, is amended to read:

"**76-12-110. Restriction on condemnation or development of natural areas.** Natural areas acquired or designated in accordance with the provisions of this part are protected from condemnation or other development adversely affecting the integrity of the natural area until legislative action is taken specifically authorizing the ~~condemnation or~~ development *or condemnation, as provided in Title 70, chapter 30.*"

Section 97. Section 82-2-221, MCA, is amended to read:

"**82-2-221. Eminent domain for open-pit mining — purchase of property required.** *(1) (a)* ~~Whenever~~ *Subject to subsection (1)(b), when* the right of eminent domain is exercised *pursuant to Title 70, chapter 30,* to acquire estates and rights in land for the purpose of open-pit mining of the ores, metals, or minerals owned by the ~~plaintiff~~ *condemnor*, the decree ~~shall~~ *must* be granted on *the* condition that the ~~plaintiff~~ *condemnor* protects the public in the immediate area by agreeing to purchase all property within 300 yards of the surface tract condemned, including vacant lots~~;~~.

(b) ~~provided~~ *In order to fall within the protection provided by subsection (1)(a),* the owner ~~or owners thereof~~ *of land within 300 yards of the surface tract condemned shall* serve upon the ~~plaintiff~~ *condemnor* and file with the court a written offer stating the amount asked for ~~such~~ *the* property within 30 days from

the entry of the court order appointing commissioners in ~~said~~ *the* eminent domain proceeding. ~~In the event the plaintiff~~

(2) If the condemnor and ~~the~~ *an* owner ~~or owners~~ are unable to agree upon the compensation to be paid for ~~such~~ *the* property, the court, upon petition of either party, may proceed to determine the compensation to be paid for ~~such~~ property in the manner prescribed in Title 70, chapters 30 and 31, ~~as amended,~~ for ascertaining the value of property taken through the exercise of the right of eminent domain."

Section 98. Section 82-2-222, MCA, is amended to read:

"82-2-222. Construction of alternate facilities. ~~Whenever it is sought~~ *If a mineral owner seeks* to condemn streets, roads, alleys, or highways *pursuant to Title 70, chapter 30,* for the purposes stated in 82-2-221 ~~hereof~~, there ~~shall~~ *must* also be attached to the complaint for condemnation a plat or plats showing the alternate facilities to be proposed and paid for by the ~~plaintiff,~~ *condemnor.* ~~and the~~ *The* court, in its final order of condemnation, may order the ~~plaintiff~~ *condemnor* to construct ~~such~~ reasonable and adequate alternate facilities ~~as~~ *that* it ~~deems~~ *considers* appropriate under the circumstances."

Section 99. Section 82-2-224, MCA, is amended to read:

"82-2-224. Notice of condemnation — filing of plat. Any party seeking to condemn property for open-pit mining purposes *pursuant to Title 70, chapter 30,* shall serve *written* notice ~~in writing~~ on all owners and purchasers under contracts for deed of property within 300 yards of the surface tract sought to be condemned or ~~in lieu thereof~~ shall file a plat showing the boundaries of the property sought to be condemned in the office of the county clerk and recorder~~,~~. ~~and the~~ *The* filing of ~~said~~ *the* plat ~~shall constitute~~ *constitutes* notice to the owner or owners not personally served with written notice ~~as herein provided~~."

Section 100. Section 82-10-303, MCA, is amended to read:

"82-10-303. Use of eminent domain to acquire underground reservoirs. (1) A natural gas public utility may acquire, through the exercise of the right of eminent domain as provided in *Title 70, chapter 30, and* this part, *an underground reservoir* for its use for the underground storage of natural gas. ~~an underground reservoir which~~ *The right of eminent domain may be exercised only if* the board finds *that the reservoir* is suitable and *its taking is* in the public interest for the underground storage of natural gas~~;~~. ~~and in~~ *In* connection with the underground reservoir, the utility may acquire ~~such~~ other interests in property ~~as~~ *that* may be required *to* adequately ~~to~~ maintain and operate the underground reservoir facilities. The acquisition by the exercise of the right of eminent domain of underground reservoirs granted by this section is limited as follows:

(a) ~~No sand~~ *Sand, a* formation, or *a* stratum ~~which~~ *that* is producing, ~~or~~ *that* has produced, or ~~which~~ *that* is capable of producing oil is *not* subject to ~~appropriation~~ *taking* under this section.

(b) ~~No~~ *A* gas-bearing sand, formation, or stratum is *not* subject to ~~appropriation~~ *taking* under this section~~,~~ unless the recoverable volumes of native gas ~~therein~~ *in the interest sought to be taken* have all been produced or unless the sand, formation, or stratum has a greater value or utility as an underground reservoir for the purpose of ~~insuring~~ *ensuring* an adequate supply of natural gas for domestic, commercial, or industrial consumers of natural gas or for the conservation of natural gas than for the production of the remaining relatively small volumes of native gas as compared with the original volumes of natural gas ~~therein~~ *in the sand, formation, or stratum*. Gas, sand, formation, or stratum may not be acquired under this part when the gas in the underground reservoir is being used for the secondary recovery of oil~~,~~ unless gas in necessary and required amounts is furnished to the operator of the secondary recovery operations for as long as oil is produced in paying quantities in the secondary operations for the recovery of oil at the same cost as the cost to the operator at the time of acquisition of the gas being used in the secondary operations~~,~~. ~~not exceeding, however~~ *However, the amount of gas furnished may not exceed* the quantity of the appropriated gas that remained recoverable from the sand, formation, or stratum at the time of its ~~acquisition,~~ *taking* if the operator was at that time entitled to ~~the whole thereof~~ *all of the gas* or if ~~the operator was at that time~~ entitled to less than *all of* the ~~whole thereof~~ *gas*, then *an amount* not to exceed the quantity ~~thereof~~ *of gas* to which the operator was ~~then~~ entitled.

(c) Only the area of the underground sand, formation, or stratum ~~as~~ *that* may reasonably be expected to be penetrated by gas displaced or injected into the underground ~~gas storage~~ reservoir may be ~~appropriated~~ *taken*.

(d) ~~No rights~~ *Rights* or interests in existing underground ~~gas~~ reservoirs being used for the injection, storage, or withdrawal of natural gas owned or operated by a natural gas public utility other than the natural gas public utility seeking to acquire the ~~same~~ *reservoir* are *not* subject to appropriation.

(2) The exercise of the right of eminent domain granted by this section ~~shall be~~ *is* without prejudice to the rights of the owner of the ~~lands~~ *land* or of other rights or interests ~~therein~~ *in the land* to drill or bore into or through the underground reservoir ~~so appropriated~~ in a manner that complies with orders and rules of the board issued for the purpose of protecting the underground reservoir against pollution and against the escape of natural gas ~~therefrom~~ and ~~shall be~~ *is* without prejudice to the rights of the owner of the ~~lands~~ *land* or other rights or interests ~~therein~~ *in the land* as to all other uses ~~thereof~~ *of the land*. The additional cost of complying with those rules or orders in order to protect the ~~storage~~ reservoir ~~shall~~ *must* be paid by the natural gas public utility."

Section 101. Section 82-10-304, MCA, is amended to read:

"**82-10-304. Certificate of board required prior to use of eminent domain.** (1) A natural gas public utility desiring to exercise the right of eminent domain *pursuant to Title 70, chapter 30, and this chapter* ~~as to any property~~ for *taking property to* use for underground storage of natural gas shall, as a condition precedent to the filing of its complaint in the district court, apply for and obtain ~~from the board~~ a certificate *from the board. The certificate must contain* ~~setting out~~ the *following* findings of the board:

(a) that the underground sand, stratum, or formation sought to be ~~acquired~~ *taken* is suitable for an underground reservoir for the storage of natural gas and that its use for ~~such purposes~~ *that purpose* is in the public interest;

(b) the amount of native gas, if any, remaining ~~therein~~ *in the reservoir* and the portion ~~thereof~~ *of gas* recoverable; and

(c) that the applicant has in good faith sought to acquire the rights sought under this part.

(2) The board may not issue the certificate until after a public hearing is ~~had~~ *held* on the application, pursuant to notice given to all persons known to have an interest in the property proposed to be acquired in the manner provided by the laws of the state for service of process in a civil action."

Section 102. Section 82-10-305, MCA, is amended to read:

"**82-10-305. Proceedings.** ~~Having first obtained~~ *After obtaining* a certificate from the board, a natural gas public utility desiring to exercise the right of eminent domain for the purpose of acquiring property for the underground storage of natural gas shall ~~do so in the manner~~ *proceed as* provided in this section. The natural gas public utility shall present to the district court of the county ~~wherein~~ *in which* the land is situated a complaint setting forth the purpose for which the property is sought to be ~~acquired~~ *taken*, a description of the property sought to be ~~appropriated~~ *taken*, and the names of the owners ~~thereof~~ *of the property* as shown by the records of the county. The ~~plaintiff~~ *utility* shall file the certificate of the board as a part of its complaint, and ~~no~~ *an* order by the court granting the complaint ~~shall~~ *may not* be entered without the certificate being filed ~~therewith~~ *with the complaint*. Subsequent proceedings ~~shall~~ *must* follow the procedure provided by ~~law in the exercise of the rights of eminent domain,~~ Title 70, ~~chapters~~ *chapter* 30 ~~and 31~~."

Section 103. Section 85-1-204, MCA, is amended to read:

"**85-1-204. Department powers over state water.** (1) The department may sell, lease, and otherwise dispose of water impounded under this chapter. The water may be sold for the purpose of irrigation, development of power, watering of stock, or other purposes. The department may also lease water under the state water leasing program established under the provisions of 85-2-141. To the extent that it may be necessary to carry out this chapter and subject to compliance with the other provisions of this chapter, the department has full control of all the water of the state not under the exclusive control of the United States and not ~~vested in~~ *appropriated for* private ~~ownership,~~ *use.* ~~and it~~ *The department* shall take the necessary actions to appropriate and conserve the water for the use of the people. The authority of the department conferred by this chapter extends and applies to rights to the natural flow of the water of this state that it may acquire by condemnation *pursuant to Title 70, chapter 30, or by* purchase, exchange, appropriation, or agreement.

(2) For the purpose of regulating the diversion of water, the department may enter upon the means and place of use of all appropriators for making surveys of respective rights and seasonal needs.

(3) The department may take into consideration the decrees of the courts of this state having jurisdiction that purport to adjudicate the water of a stream or its tributaries. A fair, reasonable, and equitable reconciliation must be made between the claimants asserting rights under different decrees and between decreed rights and asserted rights of appropriation not adjudicated by a court.

(4) The department may hold hearings relating to the rights of respective claimants after first giving the notice that it considers appropriate. The department shall make findings of the date and quantity of appropriation and use of all claimants that the department recognizes and observes in diverting the water that the department ~~owns~~ *is appropriated*. The department may measure and distribute the water to the ~~owner~~ *holder* of the recognized appropriation *right* under agreed-upon terms.

(5) The department, when engaged in controlling and dividing the natural flow of a stream under the authority granted by this chapter, is exercising a police power of the state, and water commissioners appointed by any court may not deprive the department of any of the water ~~owned~~ *appropriated* or administered under agreement with respective ~~owners~~ *water right holders*. The ~~owner~~ *holder* of a prior right who contends that the department is not recognizing and respecting the appropriation may resort to a court for the purpose of determining whether or not the rights of the claimant have been invaded, and the department shall observe the terms of the final decree.

(6) When the department impounds or acquires the right of appropriation of the water of a stream, it may divert or authorize the diversion at a point on the stream or a portion of the stream when it is done without injury to a prior appropriator."

Section 104. Section 85-1-209, MCA, is amended to read:

"85-1-209. Acquisition of property by department. (1) The department may acquire by purchase or exchange, upon terms and conditions and in a manner it considers proper, and may acquire by condemnation, in accordance with ~~laws applicable to the condemnation of property for public use~~ *Title 70, chapter 30*, any land, rights, water rights, easements, franchises, and other property considered necessary for the construction, operation, and maintenance of works. Title to property purchased or condemned must be taken in the name of the department. The department is under no obligation to accept and pay for any property condemned under this chapter except from the funds provided by this chapter. In any proceedings to condemn, orders may be made by the court that has jurisdiction of the suit, action, or proceeding ~~as~~ *that* may be warranted by law and the facts.

(2) In a condemnation proceeding brought under ~~the powers of eminent domain~~ *Title 70, chapter 30*, for the purpose of carrying out this chapter, all persons interested in the title of or holding liens upon the property sought to be ~~acquired~~ *taken*, as disclosed by the public records, must be made parties and the court in the action shall partition and distribute the damages awarded, if any, among those persons ~~as their rights appear~~. If there is controversy between ~~them~~ *the condemnees*, the court may direct the amount of the damage awarded to be paid into court to ~~abide the result of~~ *be allocated in* further appropriate proceedings either at law or in equity.

(3) Taking possession of the property sought to be condemned may not be delayed by reason of any dispute between the rival claimants or the failure to join any of them as a party to the *condemnation* proceedings ~~in condemnation~~.

(4) If water rights are acquired or exercised by the department in connection with two or more works or projects, the department by order shall apportion or allocate to each of the works or projects the part of the water rights that the department determines is necessary. Upon the adoption of the order, the water rights are considered a part of each of the works or projects to the extent that the water rights have been apportioned or allocated to the works or projects."

Section 105. Section 85-7-1411, MCA, is amended to read:

"85-7-1411. Authority to acquire, construct, maintain, operate, and lease various undertakings. (1) An irrigation district may:

(a) construct, acquire by gift, purchase, *or* lease, or improve any undertaking, within or outside the irrigation district, and acquire by gift, purchase, or lease land or rights in land or water rights in connection with the undertaking;

(b) operate and maintain or enter into a contract for the operation and maintenance of any undertaking and furnish or enter into a contract for the furnishing of services, facilities, and commodities of the undertaking for its own use and for the use of public and private consumers within or outside the territorial boundaries of the irrigation district. However, an irrigation district may not furnish or enter into a contract for the furnishing of electrical energy or capacity except to a qualified purchaser under the Public Utility Regulatory Policy Act of 1978.

(c) lease any undertaking to a private or governmental entity.

(2) ~~Nothing in this~~ *This* section may *not* be construed to permit an irrigation district to condemn any property owned or controlled by a rural electric cooperative or a utility, whether publicly or privately owned. An irrigation district is expressly prohibited from condemning, *pursuant to Title 70, chapter 30,* ~~such~~ property *owned or controlled by a rural electric cooperative or utility*."

Section 106. Section 85-7-1904, MCA, is amended to read:

"**85-7-1904. Acquisition of water and waterworks by board.** (1) The board ~~shall have power and authority to~~ *may*:

(a) appropriate water in the name of the district;

(b) acquire, by purchase, lease, or contract~~;~~*:*

(i) water and water rights;

(ii) additional ~~waters~~ *water* and supplies of water; *and*

(iii) canals, reservoirs, dams, and other works already constructed or in the course of construction; and

(c) acquire by purchase, lease, contract, condemnation *pursuant to Title 70, chapter 30,* or other legal means:

(i) ~~lands~~ *land* and rights in lands for rights-of-way, for reservoirs, for the storage of ~~needful~~ waters, and for dam sites and necessary appurtenances; and

(ii) other lands and property ~~as~~ *that* may be necessary for the construction, use, maintenance, repair, improvement, enlargement, and operation of any district or subdistrict system of irrigation works.

(2) The board may contract with the owner or owners of canals, reservoirs, dams, and other works purchased and in the course of construction for the completion ~~thereof~~ *of the works.*

(3) A purchase, lease, or contract for purchase of any water, water rights, canals, reservoirs, reservoir sites, dam sites, irrigation works, or other property of any nature or kind or for the making or purchasing of surveys, maps, plans, estimates, and specifications or for the purchase of machinery for pumping plants or for the erection of buildings, aqueducts, and other structures necessarily used in connection with ~~such~~ *the* pumping plants, for a price or rental in excess of $150,000 or 25% of the district's annual operation and maintenance budget, whichever is greater, may not be entered into by the district without the written consent or petition of at least a majority in number and acreage of the holders of title or evidence of title to the lands within the district or, if the purchase, lease, or

contract substantially benefits a subdistrict in the district, by a majority in number and acreage of the holders of title or evidence of title to lands within the subdistrict. Any splitting or division of a purchase, lease, or contract with the purpose or intention of avoiding or circumventing the provisions of this section renders the divided or split contract or contracts void."

Section 107. Section 85-7-1932, MCA, is amended to read:

"**85-7-1932. Noninterference with navigation or water rights.** Navigation ~~shall never in anywise~~ *may not* be impeded by the operation of this chapter~~;~~. ~~nor shall any~~ *A* vested interest in or to any mining or agricultural water rights or ditches or in or to any water rights, reservoirs, or dams now used beneficially ~~by the owners or possessors thereof~~ in connection with any mining or agricultural industry or by persons purchasing or renting the use ~~thereof~~ *of the interest* or in or to any other property ~~now~~ used, directly or indirectly, in carrying on or in promoting the mining or agricultural industry ~~ever~~ *may not* be affected by or taken under ~~its provisions~~ *this chapter*, ~~save and~~ except that rights-of-way may be acquired over the ~~same~~ *mining or agricultural property or interest*. The right of eminent domain, *as provided in Title 70, chapter 30, is* ~~shall~~ not ~~be~~ otherwise ~~considered abridged~~ *affected* by the provisions ~~hereof~~ *of this section*."

Section 108. Section 85-9-410, MCA, is amended to read:

"**85-9-410. Condemnation authorized.** The district may exercise the right of eminent domain, ~~in the manner~~ *as* provided ~~by the law to take private property for public use, with just compensation~~ *in Title 70, chapter 30*, ~~where~~ *when* the taking is necessary for the purposes of the district. Water rights ~~as such shall~~ *are* not ~~be~~ subject to ~~such~~ taking but may be taken as an incident to the condemnation of land to which ~~such~~ *the water* rights are appurtenant~~, where~~ *when* the taking of the land is the principal purpose of the condemnation."

Section 109. Section 87-1-209, MCA, is amended to read:

"**87-1-209. Acquisition and sale of lands or waters.** (1) The department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or $100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries, nursery ponds, or ~~game farms~~ *alternative livestock ranches*;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the commission, may acquire by condemnation, *as provided in Title 70, chapter 30,* lands or structures for the

preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) The department, with the consent of the commission, may dispose of lands and ~~waters~~ *water rights* acquired by it on those terms after public notice as required by subsection (3)(b), without regard to other laws that provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission, may convey department lands and ~~waters~~ *water rights* for full market value to other governmental entities without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than $20,000. When the department conveys land or water *rights* to another governmental entity pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Notice of sale describing the lands or waters to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or ~~waters~~ *water rights* at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) The department shall convey lands and ~~waters~~ *water rights* without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(5) The department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(6) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land."

Approved March 26, 2001

CHAPTER NO. 126

[SB 105]

AN ACT ESTABLISHING AN ENTERPRISE FUND TO MANAGE STATE PARK VISITOR SERVICES REVENUE; AMENDING SECTIONS 23-1-105 AND 61-3-512, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-1-105, MCA, is amended to read:

"23-1-105. Fees and charges. (1) The department ~~shall have power to~~ *may* levy and collect reasonable fees or other charges for the use of privileges and conveniences ~~as~~ *that* may be provided and to grant concessions ~~as~~ *that* it considers advisable, except as provided in subsection (2). All money derived from the activities of the department, *except as provided in subsection (5),* must be deposited in the state treasury in a state special revenue fund to the credit of the department.

(2) Overnight camping fees established by the department under subsection (1) must be discounted 50% for a campsite rented by a person who is a resident of Montana, as defined in 87-2-102, and either 62 years of age or older or certified as disabled in accordance with rules adopted by the department.

(3) For a violation of any fee collection rule involving a vehicle, the registered owner of the vehicle at the time of the violation is personally responsible if an adult is not in the vehicle at the time the violation is discovered by an authorized officer. A defense that the vehicle was driven into the fee area by another person is not allowable unless it is shown that at that time, the vehicle was being used without the consent of the registered owner.

(4) Money received from the collection of fees and charges is not subject to the deposit requirements of 17-6-105. The department shall deposit money collected under this section within a reasonable time after receipt.

(5) There is a fund of the enterprise fund type, as defined in 17-2-102(1)(b)(i), for the purpose of managing state park visitor services revenue. The fund is to be used by the department to serve the recreating public by providing for the obtaining of inventory through purchase, production, or donation and for the sale of educational, commemorative, and interpretive merchandise and other related goods and services at department sites and facilities. The fund consists of money from the sale of educational, commemorative, and interpretive merchandise and other related goods and services and from donations. Gross revenue from the sale of educational, commemorative, and interpretive merchandise and other related goods and services must be deposited in the fund. All interest and earnings on money deposited in the fund must be credited to the fund for use as provided in this subsection."

Section 2. Section 61-3-512, MCA, is amended to read:

"61-3-512. State parks recreational vehicle fee — collection and expenditure — exception. (1) There is a fee of $3.50 imposed on the registration or reregistration of each recreational vehicle as defined in 61-1-132, camper as defined in 61-1-129, motor home as defined in 61-1-130, and travel trailer as defined in 61-1-131. The fee is in addition to annual registration fees and is due and payable at the time of registration.

(2) The fee must be collected by the county treasurer and submitted to the department of revenue to be expended as provided in this section. The department of revenue shall place the fee proceeds in the state treasury in the special revenue fund established in 23-1-105*(1)* to the credit of the department of fish, wildlife, and parks. The funds may be used to provide recreational vehicle services and facilities in state parks.

(3) The fee imposed by subsection (1) need not be paid by a dealer for vehicles that constitute the inventory of the dealership."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 26, 2001

CHAPTER NO. 127

[SB 115]

AN ACT REMOVING THE TERMINATION PROVISION IN SECTION 7, CHAPTER 461, LAWS OF 1999, WITH REGARD TO THE AGRICULTURAL MOTOR FUEL TAX REFUND PROCESS; REPEALING SECTION 7, CHAPTER 461, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 7, Chapter 461, Laws of 1999, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 26, 2001

CHAPTER NO. 128

[SB 211]

AN ACT ELIMINATING DUTIES OF THE DEPARTMENT OF COMMERCE RELATED TO ASBESTOS REGULATION IN BUILDING CONSTRUCTION AND DEMOLITION; REPEALING SECTIONS 50-64-101, 50-64-102, 50-64-103, 50-64-104, 50-64-105, 50-64-106, AND 50-64-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Sections 50-64-101, 50-64-102, 50-64-103, 50-64-104, 50-64-105, 50-64-106, and 50-64-107, MCA, are repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 26, 2001

CHAPTER NO. 129

[SB 238]

AN ACT INCREASING THE LICENSE FEE FOR A NONRESIDENT WHO WISHES TO HUNT MIGRATORY GAME BIRDS; AMENDING SECTION 87-2-411, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-411, MCA, is amended to read:

"**87-2-411. (Temporary) License required to hunt migratory game birds.** It is unlawful for any person 16 years of age or older to hunt migratory game birds without first having obtained a valid migratory bird license from the department. The fee for the license is $5. (Terminates February 28, 2002—sec. 4, Ch. 568, L. 1999.)

87-2-411. (Effective March 1, 2002) License required to hunt migratory game birds. It is unlawful for any person 15 years of age or older to hunt migratory game birds without first having obtained a valid migratory bird license from the department. The fee for *a resident to purchase* the license is $5. *The fee for a nonresident to purchase the license is $50.*"

Section 2. Effective date. [This act] is effective March 1, 2002.

Approved March 26, 2001

CHAPTER NO. 130

[SB 425]

AN ACT MAKING PERMANENT THE DESIGNATION OF THE BOARD OF REGENTS AS THE ELIGIBLE AGENCY FOR ADMINISTERING THE CARL D. PERKINS VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION ACT PROGRAMS IN MONTANA; REVISING THE PROVISIONS OF THE DEVELOPMENT OF THE STATE PLAN TO REQUIRE CREATION OF A STATE PLAN COMMITTEE; AMENDING SECTION 20-7-330, MCA; REPEALING SECTION 6, CHAPTER 460, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-330, MCA, is amended to read:

"**20-7-330. ~~(Temporary) Development of~~ *Creation of* state plan *committee* — meetings — report.** (1) The superintendent of public instruction and the commissioner shall each appoint ~~two~~ *three* people *from their respective advisory boards* to serve on a committee to ~~develop~~ *review and update* the 5-year state plan for vocational and technical education as required by 20 U.S.C. 2323. ~~The four appointed members shall select a fifth member who~~ *Two members appointed from each advisory board must be educators, and the remaining member appointed from each advisory board* must ~~represent a community-based organization that provides vocational and technical education services~~ *be a representative of a business or community interest.*

(2) At least four times a year. the board of regents shall meet with the superintendent of public instruction, teachers, students, labor organizations,

businesses, and institutions or agencies involved in vocational and technical education to:

(a) ~~discuss the implementation of~~ *discuss* the state plan;

~~(b) evaluate the state plan;~~

~~(c)~~*(b)* identify any issues or concerns with the administration of the Carl D. Perkins Vocational and Applied Technology Education Act in Montana;

~~(d)~~*(c)* identify the needs of vocational-technical students and programs in Montana and determine the best way to meet those needs; and

~~(e)~~*(d)* if necessary, make changes in the administration and operation of the Carl D. Perkins Vocational and Applied Technology Education Act in Montana.

(3) The board of regents shall report the results of the meetings required in subsection (2) to the ~~57th~~ legislature in accordance with the provisions of 5-11-210. ~~(Terminates June 30, 2001—sec. 6, Ch. 460, L. 1999.)~~"

Section 2. Repealer. Section 6, Chapter 460, Laws of 1999, is repealed.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 26, 2001

CHAPTER NO. 131

[HB 27]

AN ACT ALLOWING THE GOVERNING BODY OF A COUNTY TO PASS AN ORDINANCE CREATING A CURFEW FOR MINORS THAT APPLIES COUNTYWIDE OR TO ANY PORTION OF A COUNTY EXCEPT THOSE AREAS WITHIN THE BOUNDARIES OF AN INCORPORATED CITY OR TOWN; PROVIDING FOR ABSOLUTE LIABILITY FOR A VIOLATION OF A CURFEW ORDINANCE; AND AMENDING SECTION 7-32-2302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-2302, MCA, is amended to read:

"7-32-2302. Establishment of curfew — penalty. (1) *(a)* ~~A board~~ *The governing body* of *a* county ~~commissioners~~ may adopt an ordinance that establishes a curfew hour after which minors will not be allowed abroad on the public streets, *roadways, or lands* ~~within the confines of unincorporated cities and towns~~ of the county.

(b) The ordinance must contain a description of the area covered by the curfew and provide exceptions for approved activities. The curfew may be countywide or pertain to any portion of the county, including an unincorporated city or town. The curfew may not extend to any area within the boundaries of an incorporated city or town.

(2) ~~The enforcement of the provisions of this section is enjoined upon~~ *It is the duty of* ~~each~~ *any* officer ~~and~~ *or* official ~~whose duty it is to enforce~~ *enforcing* the laws of the state *to enforce the provisions of this section.*

(3) A person convicted of violating a curfew ordinance adopted under subsection (1) shall be punished by a fine *in an amount* not exceeding $75 or by a

sentence of up to 10 hours of community service, or both. *Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.*"

Approved March 27, 2001

CHAPTER NO. 132

[HB 129]

AN ACT EXEMPTING CERTAIN REPLACEMENT WELLS FROM CERTAIN PROCEDURES AND CRITERIA APPLICABLE TO CHANGES IN WATER RIGHTS; AMENDING SECTION 85-2-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-402, MCA, is amended to read:

"**85-2-402. (Temporary) Changes in appropriation rights.** (1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. ~~An~~ *Except as provided in subsection (15), an* appropriator may not make a change in an appropriation right ~~except, as permitted under this section, by applying for and receiving~~ *without* the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6) *and (15)*, the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a lease authorization pursuant to 85-2-436, a temporary change authorization for instream use to benefit the fishery resource pursuant to 85-2-408, or water use pursuant to 85-2-439 when authorization does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a lease authorization pursuant to 85-2-436 or a temporary change authorization pursuant to 85-2-408 or 85-2-439 for instream flow to benefit the fishery resource, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to *the* terms, conditions, restrictions, and limitations as *that* it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed 35 gallons a minute and 10 acre-feet a year;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The

appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a). (Terminates June 30, 2005—sec. 6, Ch. 322, L. 1995; sec. 14, Ch. 487, L. 1995.)

85-2-402. (Effective July 1, 2005) Changes in appropriation rights. (1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. ~~An~~ *Except as provided in subsection (15), an* appropriator may not make a change in an appropriation right ~~except, as permitted under this section, by applying for and receiving~~ *without* the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6) *and (15),* the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a lease authorization pursuant to 85-2-436 that does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed 35 gallons a minute and 10 acre-feet a year;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The

appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a). (Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)

85-2-402. (Effective July 1, 2009) Changes in appropriation rights. (1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. ~~An~~ *Except as provided in subsection (15), an* appropriator may not make a change in an appropriation right ~~except, as permitted under this section, by applying for and receiving~~ *without* the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6) *and (15)*, the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; *and*

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed 35 gallons a minute and 10 acre-feet a year;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The

appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a)."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 27, 2001

CHAPTER NO. 133

[HB 134]

AN ACT REVISING CERTAIN PROVISIONS RELATED TO K-12 VOCATIONAL EDUCATION; SUBSTITUTING "K-12 CAREER AND VOCATIONAL/TECHNICAL EDUCATION" FOR REFERENCES TO K-12 VOCATIONAL EDUCATION; REVISING THE DEFINITION OF "VOCATIONAL-TECHNICAL EDUCATION" TO INCLUDE A TRIBALLY CONTROLLED COMMUNITY COLLEGE; REVISING THE K-12 CAREER AND VOCATIONAL/TECHNICAL EDUCATION FUNDING FORMULA; ELIMINATING THE PROPRIETARY POSTSECONDARY EDUCATIONAL ADVISORY COUNCIL; AMENDING SECTIONS 20-1-101, 20-3-103, 20-3-104, 20-3-106, 20-3-324, 20-7-301, 20-7-302.1, 20-7-303, 20-7-305, 20-7-306, 20-7-329, 20-7-702, AND 41-2-109, MCA; REPEALING SECTION 2-15-1804, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-1-101, MCA, is amended to read:

"**20-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Agricultural experiment station" means the agricultural experiment station established at Montana state university-Bozeman.

(2) "Average number belonging" or "ANB" means the average number of regularly enrolled, full-time pupils attending the public schools of a district.

(3) "Board of public education" means the board created by Article X, section 9, subsection (3), of the Montana constitution and 2-15-1507.

(4) "Board of regents" means the board of regents of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

(5) "Commissioner" means the commissioner of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1506.

(6) "County superintendent" means the county government official who is the school officer of the county.

(7) "District superintendent" means a person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(8) "K-12 ~~vocational~~ *career and vocational/technical* education" means ~~vocational education in public school kindergarten through grade 12~~ *organized educational activities that have been approved by the office of public instruction and that:*

(a) offer a sequence of courses that provide a pupil with the academic and technical knowledge and skills that the pupil needs to prepare for further education and for careers in the current or emerging employment sectors; and

(b) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills of the pupil.

(9) "Principal" means a person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal. For the purposes of this title, any reference to a teacher must be construed as including a principal.

(10) "Pupil" means a child who is 6 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3) but has not yet reached 19 years of age and who is enrolled in a school established and maintained under the laws of the state at public expense. For purposes of calculating the average number belonging pursuant to 20-9-311, the definition of pupil includes a person who has not yet reached 19 years of age by September 10 of the year and is enrolled under 20-5-101(3) in a school established and maintained under the laws of the state at public expense.

(11) "Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

(12) "Regents" means the board of regents of higher education.

(13) "School food services" means a service of providing food for the pupils of a district on a nonprofit basis and includes any food service financially assisted through funds or commodities provided by the United States government.

(14) "State board of education" means the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the Montana constitution.

(15) "State university" means Montana state university-Bozeman.

(16) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the Montana constitution.

(17) "System" means the Montana university system.

(18) "Teacher" means a person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher includes a person for whom an emergency authorization of employment has been issued under the provisions of 20-4-111.

(19) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

(20) "Textbook dealer" means a party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state.

(21) "Trustees" means the governing board of a district.

(22) "University" means the university of Montana-Missoula.

~~(23) "Vocational education" means the instruction to prepare or improve the pupil for gainful employment that does not require a baccalaureate or higher degree. This definition of vocational education includes guidance and prevocational, related, or technical instruction necessary to prepare the pupil for further vocational education or for entry into employment.~~

~~(24)~~*(23)* "Vocational-technical education" means vocational-technical education of vocational-technical students that is conducted by a unit of the Montana university system ~~or~~, a community college, *or a tribally controlled community college,* as designated by the board of regents."

Section 2. Section 20-3-103, MCA, is amended to read:

"**20-3-103. Deputy superintendent — staff.** (1) The state superintendent of public instruction shall appoint a deputy who, in the absence of the superintendent or in the case of vacancy in ~~his~~ *that* office, shall perform all the duties of office until the disability is removed or the vacancy is filled. The deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of ~~his~~ *the deputy's* duties.

(2) The superintendent of public instruction has the power to employ, organize, and administer a staff of personnel to assist ~~him~~ in the administration of the duties and services of the office. In organizing ~~his~~ *the* staff, the superintendent of public instruction may employ:

(a) a supervisor of physical education who is a graduate of an accredited institution of higher education with a master's degree in physical education;

(b) a professional staff ~~for the state supervision and administration of K-12 vocational education~~ *consisting of individuals prepared in agriculture education, business and marketing education, family and consumer sciences education, and industrial technology education*; and

(c) a special education supervisor who is a graduate of an accredited institution of higher education with a master's degree in a field related to special education for persons with disabilities and who has not less than 2 years' experience in special education."

Section 3. Section 20-3-104, MCA, is amended to read:

"**20-3-104. Discretionary staff.** In addition to the positions of employment listed in 20-3-103, the superintendent of public instruction may employ:

(1) one or more assistant superintendents, one of whom may be designated as assistant superintendent for ~~vocational~~ *K-12 career and vocational/technical* education;

(2) a high school supervisor who is the holder of a class 3 teacher certificate with a district superintendent endorsement;

(3) an elementary supervisor who is the holder of a valid teacher certificate;

(4) a competent person to develop economy and efficiency in school transportation and to otherwise supervise the transportation program;

(5) a music supervisor who is a graduate of an accredited institution of higher education in music education and who has not less than 5 years of teaching experience;

(6) an educational media supervisor who is a graduate of an accredited institution of higher education and who has experience in the field of educational media; and

(7) any other supervisors or assistants ~~as~~ *that* may be required to carry out the duties of ~~his~~ *the* office."

Section 4. Section 20-3-106, MCA, is amended to read:

"**20-3-106. Supervision of schools — powers and duties.** The superintendent of public instruction has the general supervision of the public schools and districts of the state and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(5) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(6) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

(7) establish a system of communication for calculating joint district revenue in accordance with the provisions of 20-9-151;

(8) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an

application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;

(9) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(10) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(6) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(11) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(12) distribute BASE aid and special education allowable cost payments in support of the BASE funding program in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;

(13) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(14) request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;

(15) authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(16) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(17) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303;

(18) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with the standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

(19) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(20) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(21) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(22) as the governing agent and executive officer of the state of Montana for K-12 ~~vocational~~ *career and vocational/technical* education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(23) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(24) administer the traffic education program in accordance with the provisions of 20-7-502;

(25) administer the school food services program in accordance with the provisions of 20-10-201 through 20-10-203;

(26) review school building plans and specifications in accordance with the provisions of 20-6-622;

(27) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408;

(28) provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of the student assessment for the board of public education and the legislature;

(29) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties all school district student assessment data for a test required by the board of public education;

(30) administer the distribution of guaranteed tax base aid in accordance with 20-9-366 through 20-9-369; and

(31) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education."

Section 5. Section 20-3-324, MCA, is amended to read:

"**20-3-324. Powers and duties.** As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title:

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) subject to 15-10-420, establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative agreement fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, ~~vocational~~ *K-12 career and vocational/technical* education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

(22) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(23) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.

(24) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

(25) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education; and

(26) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Section 6. Section 20-7-301, MCA, is amended to read:

"**20-7-301. Duties of the superintendent of public instruction.** The superintendent of public instruction ~~shall be~~ *is* the governing agent and executive officer of the state of Montana for K-12 ~~vocational~~ *career and vocational/technical* education. The superintendent of public instruction shall adopt and administer policies to effect the orderly development of a system of K-12 ~~vocational~~ *career and vocational/technical* education that is adaptable to changing needs, controlled to prevent unnecessary duplication, coordinated with federal guidelines and requirements for ~~vocational~~ *K-12 career and vocational/technical* education, and funded to ensure growth and quality programming. In order to accomplish the orderly development of a system of K-12 ~~vocational~~ *career and vocational/technical* education, the *policies adopted by the* superintendent of public instruction ~~policies shall~~ *must* include:

(1) a state plan for ~~such~~ development *of the system*;

(2) standards for K-12 ~~vocational~~ *career and vocational/technical* education courses and programs;

(3) a review process for the establishment and deletion of programs;

(4) instructor qualifications for K-12 ~~vocational~~ *career and vocational/technical* education courses and programs;

(5) criteria for approval of K-12 ~~vocational~~ *career and vocational/technical* education courses and programs;

(6) a basis for apportionment of all ~~moneys~~ *money* appropriated by the legislature for K-12 ~~vocational~~ *career and vocational/technical* education in accordance with the intent of the legislature as reflected in the terms of the appropriation;

(7) a basis for apportionment of all ~~moneys~~ *money* received by the state of Montana for K-12 ~~vocational~~ *career and vocational/technical* education from the federal government in accordance with the acts of congress;

(8) a system of evaluation of K-12 ~~vocational~~ *career and vocational/technical* education ~~which~~ *that* allows for consideration of the current and projected ~~manpower~~ *workforce* needs and job opportunities; and

(9) any other policy ~~not inconsistent~~ *that is consistent* with public law and ~~which~~ *that* is necessary for the proper operation of a system of K-12 ~~vocational~~ *career and vocational/technical* education."

Section 7. Section 20-7-302.1, MCA, is amended to read:

"**20-7-302.1. State director of K-12 ~~vocational~~ *career and vocational/technical* education — duties.** There is a state director of K-12 ~~vocational~~ *career and vocational/technical* education appointed by the superintendent of public instruction. ~~He must~~ *The director shall*:

(1) administer the K-12 ~~vocational~~ *career and vocational/technical* education policies adopted by the superintendent of public instruction;

(2) prepare curriculum guides for *adoption by the* superintendent of public instruction ~~adoption~~;

(3) employ, with the confirmation of the superintendent of public instruction, ~~the~~ professional staff ~~necessary for the state supervision and administration of K-12 vocational education~~ *consisting of individuals prepared in agriculture education, business and marketing education, family and consumer sciences education, and industrial technology education*;

(4) report the status of K-12 ~~vocational~~ *career and vocational/technical* education in the state of Montana when requested by the superintendent of public instruction;

(5) keep all K-12 ~~vocational~~ *career and vocational/technical* education records in ~~his~~ *the director's* office;

(6) provide K-12 ~~vocational~~ *career and vocational/technical* education supervisory and consultative assistance to districts;

(7) prepare any necessary reports for the superintendent of public instruction or the legislature; and

(8) perform any other duty assigned by the superintendent of public instruction."

Section 8. Section 20-7-303, MCA, is amended to read:

"**20-7-303. Authorization to establish and maintain ~~vocational~~ *K-12 career and vocational/technical* education courses and programs.** The trustees of an elementary or high school district may establish and maintain a ~~vocational~~ *K-12 career and vocational/technical* education course or program that complies with the K-12 ~~vocational~~ *career and vocational/technical* education standards adopted by the superintendent of public instruction. In order for a course or program to be eligible for state or federal ~~financing~~ *funding*, it ~~shall~~ *must* be approved by the superintendent of public instruction for compliance with K-12 ~~vocational~~ *career and vocational/technical* education standards."

Section 9. Section 20-7-305, MCA, is amended to read:

"**20-7-305. Funding for secondary *K-12 career and* ~~vocational~~ *vocational/technical* education ~~and industrial arts~~ programs — application — rules.** (1) The superintendent of public instruction shall annually distribute money from the biennial appropriation for secondary ~~vocational~~ *K-12 career and vocational/technical* education ~~and industrial arts~~. The money ~~shall~~ *must* be allocated to high school districts providing approved secondary ~~vocational~~ *K-12 career and vocational/technical* education ~~and industrial arts~~ programs in accordance with this section and 20-7-306.

(2) A high school district providing secondary ~~vocational~~ *K-12 career and vocational/technical* education ~~and industrial arts~~ programs ~~must~~ *shall* apply to the superintendent of public instruction for funds available under this section and 20-7-306. The superintendent of public instruction shall by rule prescribe the method for ~~ANB determination~~ *distribution*, the form of the application, budget procedures, and accounting rules for the funds. The superintendent of public instruction may prescribe other requirements for the receipt of funding ~~not inconsistent~~ *consistent* with Title 20, chapter 7, part 3.

(3) A secondary ~~vocational~~ *K-12 career and vocational/technical* education ~~or industrial arts~~ program ~~or a course in such a program~~ in a high school district may not be funded until that program ~~or course~~ has been offered by the school district for 1 school year.

(4) As used in this section and 20-7-306 the term "school district" means a district organized for the purpose of providing educational services for grades 9 through 12, but the term does not include postsecondary vocational education centers."

Section 10. Section 20-7-306, MCA, is amended to read:

"**20-7-306. Distribution of secondary ~~vocational~~ *K-12 career and vocational/technical* education ~~and industrial arts~~ funds.** (1) The superintendent of public instruction shall categorize secondary ~~vocational~~ *K-12 career and vocational/technical education* programs ~~into one of five weighted categories based upon~~ *according to* the relative additional costs of those programs *based on weighted factors, including but not limited to:*

(a) K-12 career and vocational/technical education enrollment;

(b) approved career and technical student organizations;

(c) field supervision of students beyond the school year for K-12 career and vocational/technical education; and

(d) district expenditures related to the K-12 career and vocational/technical education programs.

~~(2) The superintendent of public instruction shall determine the weighted category to be assigned industrial arts programs.~~

~~(3)~~*(2)* The superintendent of public instruction shall adjust the weighted ~~categories~~ *factors outlined in subsection (1)* as necessary to ~~assure~~ *ensure* that the ~~procedures outlined in subsection (4) do not result in entitlements that~~ *allocations do not* exceed the amount appropriated.

~~(4)~~*(3)* ~~Funding~~ *Except for other expenditures outlined in subsection (1)(d), funding* must be based upon the ~~average number belonging (ANB)~~ *calculation* for secondary ~~vocational~~ *K-12 career and vocational/technical* education ~~and industrial arts~~ programs of the high school district in the ~~ANB calculation period immediately~~ *year* preceding the year for which funding is requested. *Funding for the expenditures referred to in subsection (1)(d) must be based on the calculation for the secondary K-12 career and vocational/technical education programs of the high school district for the 2 years preceding the year for which funding is requested.* The ~~ANB~~ *funding* must be computed for each separate secondary ~~vocational~~ *K-12 career and vocational/technical* education ~~and industrial arts~~ program.

~~(5)~~*(4)* For secondary ~~vocational~~ *career and vocational/technical* education programs, the ~~ANB generated for each category established in subsection (1) must be multiplied by the factor for that category, and the product must be multiplied by the district's direct state aid per-ANB. Industrial arts programs must be funded at 50% of the category assigned. The high school district is entitled to receive for secondary vocational education and industrial arts, the total of the computation of all secondary vocational education and industrial arts categories~~ *total funding must be distributed to eligible programs based on the four factors listed in subsections (1)(a) through (1)(d).*

~~(6)~~*(5)* The superintendent of public instruction shall annually distribute the funds allocated in this section by November 1. The money received by the high school district must be deposited into the subfund of the miscellaneous programs fund established by 20-9-507 and may be expended only for approved secondary ~~vocational~~ *k-12 career and vocational/technical* education ~~and industrial arts~~ programs. The expenditure of the money must be reported in the annual trustees' report as required by 20-9-213."

Section 11. Section 20-7-329, MCA, is amended to read:

"20-7-329. (Temporary) Eligible agency for federal vocational education requirements. (1) The board of regents is the eligible agency for purposes of the 1984 federal Carl D. Perkins Vocational and Applied Technology Education Act, as amended, which requires a state participating in programs under that act to designate a state board as the eligible agency responsible for administration or supervision of those programs.

(2) The board of regents shall contract with the superintendent of public instruction for the administration and supervision of K-12 ~~vocational~~ *career and vocational/technical* education programs, services, and activities allowed by the 1984 federal Carl D. Perkins Vocational and Applied Technology Education Act, as amended, and in concert with the state plan for vocational and technical education required by the act. The board of regents may contract with other agencies for the administration and supervision of ~~postsecondary vocational~~ *vocational-technical* education programs, services, and activities that receive funding allowed by the 1984 federal Carl D. Perkins Vocational and Applied Technology Education Act, as amended. (Terminates June 30, 2001—sec. 6, Ch. 460, L. 1999.)"

Section 12. Section 20-7-702, MCA, is amended to read:

"20-7-702. Authorization to establish adult education program. The trustees of ~~any~~ *a* district or community college district may establish and operate an adult education program at any time of the day when facilities and personnel are available. An adult education program may provide both basic and secondary general education, ~~vocational~~ *K-12 career and vocational/technical* education, *vocational-technical education,* American citizenship education, including courses in the English language and American history and government, or any other areas of instruction approved by the trustees."

Section 13. Section 41-2-109, MCA, is amended to read:

"41-2-109. Exemptions from prohibited occupations in agriculture. (1) The prohibitions from employment in agricultural operations provided for in 41-2-106(7) do not apply to the employment of a student-learner who is 14 or 15 years of age if all of the following requirements are met:

(a) The student-learner is enrolled in a ~~vocational~~ *K-12 career and vocational/technical* education training program in agriculture under a recognized state or local educational authority or in a substantially similar program conducted by a private school.

(b) The student-learner is employed under a written agreement, providing that:

(i) the work is incidental to training;

(ii) the work is intermittent, for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(iii) safety instruction is given by the school and correlated by the employer with on-the-job training; and

(iv) a schedule of organized and progressive work processes to be performed on the job has been prepared.

(c) The written agreement contains the name of the student-learner and is signed by the employer and by a person authorized to represent the educational authority or school.

(d) Copies of each agreement are kept on file both by the educational authority or school and by the employer.

(2) The prohibitions in 41-2-106(7) do not apply to the employment of a minor who is 14 or 15 years of age in those occupations in which the minor has successfully completed a work training program, including safety instruction and training in the use of machinery, under the 4-H program of the federal extension service, a program of the United States department of education, or a similar program if the safety program has been approved by the department and if the minor is employed outside school hours on the equipment for which the minor has been trained."

Section 14. Repealer. Section 2-15-1804, MCA, is repealed.

Section 15. Effective date — applicability. [This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001.

Approved March 27, 2001

CHAPTER NO. 134

[HB 241]

AN ACT CLARIFYING HOW INSTRUCTIONS ON PREPARING A BALLOT ARE PROVIDED TO VOTERS; REQUIRING THAT THE ELECTOR GET A NEW BALLOT IF THE INITIAL BALLOT IS SPOILED; AND AMENDING SECTION 13-13-117, MCA.

WHEREAS, most counties use some form of voting or tabulating machines; and

WHEREAS, it is confusing to the elector to be required to mark one ballot one way and mark another ballot another way.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-13-117, MCA, is amended to read:

"**13-13-117. Method of voting.** (1) ~~On~~ *Upon* receipt of ~~his~~ *a* ballot, ~~the~~ *an* elector ~~must~~ *shall* immediately retire to one of the booths and prepare ~~his~~ *the elector's* ballot.

(2) ~~He~~ *The elector* shall prepare ~~his~~ *the* ballot ~~by marking an "x" in the square before the name of the individual or individuals for whom he intends to vote.~~

~~(3) If the ballot contains a ballot issue, he shall mark an "x" in the applicable square indicating his vote either for or against the issue.~~

~~(4) The elector may write the name of an individual for whom he wishes to vote in the blank space or affix a preprinted label in the blank space and may vote for that individual by marking an "x" before the name. When the ballot is marked in this manner, it must be counted the same as though the name were printed upon the ballot and marked by the elector, except as provided in 13-15-202.~~

~~(5) An elector voting a ballot that will be counted by an optical scan ballot tabulating device shall mark his ballot in the manner prescribed on his ballot. However, his ballot must not be invalidated if he marks the voting positions with an "x".~~

~~(6) After preparing his ballot, the elector must fold it so the face of the ballot will be concealed and the official stamp may be seen and hand it to the election judges.~~

~~(7)~~ *in the manner prescribed in the instructions for electors provided pursuant to 13-13-112.*

(3) The elector may vote for a write-in candidate by marking the ballot in a manner consistent with the instructions provided by the election administrator pursuant to 13-13-112. Except as provided in 13-15-202, a ballot marked for a write-in candidate in accordance with the appropriate instructions must be counted as if the name of the write-in candidate had been printed on the ballot.

(4) The judge receiving the ballots shall remove the stubs in sight of the elector and deposit each ballot in the ballot box and each stub in a box for detached stubs. The judge ~~must~~ *shall* place the ballots in the ballot box immediately without opening or examining them.

~~(8)~~*(5)* No individual except an election judge may put a ballot, any paper resembling a ballot, or anything other than a ballot in a ballot box.

~~(9)~~*(6)* ~~Any~~ *An* elector who spoils ~~his~~ *the elector's* ballot ~~may~~ *must*, on returning the spoiled ballot, receive another in place of it."

Approved March 27, 2001

CHAPTER NO. 135

[HB 351]

AN ACT ALLOWING PROPERTY TAX BENEFITS FOR THE INCREASED TAXABLE VALUE RESULTING FROM REMODELING, RECONSTRUCTION, OR EXPANSION OF COMMERCIAL BUILDINGS AND STRUCTURES THAT HAVE NOT BEEN USED IN A BUSINESS FOR AT LEAST 6 MONTHS; AUTHORIZING A LOCAL GOVERNING BODY TO EXEMPT FROM PROPERTY TAXATION THE INCREASED TAXABLE

VALUE FOR THE CONSTRUCTION PERIOD AND FOR 5 YEARS FOLLOWING THE CONSTRUCTION PERIOD; AUTHORIZING A LOCAL GOVERNING BODY TO PARTIALLY EXEMPT FROM PROPERTY TAXATION THE INCREASED TAXABLE VALUE FOR AN ADDITIONAL 4 YEARS; AMENDING SECTION 15-6-134, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Tax exemption and abatement for remodeling, reconstruction, or expansion of certain commercial property — approval. (1) (a) Subject to the conditions of this section, remodeling, reconstruction, or expansion of an existing commercial building or structure that increases its taxable value by at least 5%, as determined by the department, may receive a property tax exemption during the construction period, not to exceed 12 months, and for up to 5 years following completion of construction. The property tax exemption is limited to 100% of the increase in taxable value caused by remodeling, reconstruction, or expansion.

(b) (i) In addition to the property tax exemption described in subsection (1)(a), the buildings and structures may receive a property tax reduction for 4 years following the exemption period as provided in this subsection (1)(b). The percentages must be applied to the increase in taxable value caused by remodeling, reconstruction, or expansion according to the following schedule:

First year following the exemption period:	20%
Second year following the exemption period:	40%
Third year following the exemption period:	60%
Fourth year following the exemption period:	80%
Fifth year following the exemption period:	100%
Following years	100%

(ii) Mill levies are assessed against the reduced taxable value of the remodeling, reconstruction, or expansion determined under subsection (1)(b)(i).

(c) To be eligible for the property tax exemption and the property tax reduction, the commercial building or structure may not have been used in a business for at least 6 months immediately preceding the date of application to the governing body for approval under subsection (2).

(2) (a) In order to confer the tax benefits described in subsection (1), the governing body of the affected county or consolidated government or, if the construction will occur within an incorporated city or town, the governing body of the incorporated city or town shall approve by resolution for each remodeling, reconstruction, or expansion project the use of the property tax exemption and property tax reduction.

(b) The governing body may not grant the property tax benefits described in subsection (1) if property taxes on the buildings or structures are delinquent.

Section 2. Section 15-6-134, MCA, is amended to read:

"15-6-134. Class four property — description — taxable percentage. (1) Class four property includes:

(a) subject to 15-6-201(1)(z) and (1)(aa) and subsections (1)(f) and (1)(g) of this section, all land, except that specifically included in another class;

(b) subject to 15-6-201(1)(z) and (1)(aa) and subsections (1)(f) and (1)(g) of this section, all improvements, including trailers, manufactured homes, or mobile homes used as a residence, except those specifically included in another class;

(c) the first $100,000 or less of the taxable market value of any improvement on real property, including trailers, manufactured homes, or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 7 months a year as the primary residential dwelling of any person whose total income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than $15,000 for a single person or $20,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii). For the purposes of this subsection (1)(c), net business income is gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both.

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least nine holes and not less than 700 lineal yards;

(e) subject to 15-6-201(1)(z), all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202, including 1 acre of real property beneath improvements on land described in 15-6-133(1)(c). The 1 acre must be valued at market value.

(f) (i) single-family residences, including trailers, manufactured homes, or mobile homes;

(ii) rental multifamily dwelling units;

(iii) appurtenant improvements to the residences or dwelling units, including the parcels of land upon which the residences and dwelling units are located and any leasehold improvements; and

(iv) vacant residential lots; and

(g) (i) commercial buildings and the parcels of land upon which they are situated; and

(ii) vacant commercial lots.

(2) Class four property is taxed as follows:

(a) (i) Except as provided in 15-24-1402, ~~or~~ 15-24-1501, *[section 1]*, and subsection (2)(a)(ii) of this section, property described in subsections (1)(a), (1)(b), (1)(e), (1)(f), and (1)(g) of this section is taxed at 3.794% of its taxable market value in tax year 1999.

(ii) The taxable percentage rate in subsection (2)(a)(i) must be adjusted downward by subtracting 0.0835 percentage points each year until the tax rate is equal to or less than 3.46%.

(b) (i) Property qualifying under the property tax assistance program in subsection (1)(c) is taxed at the rate provided in subsection (2)(a)(ii) of its market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
$0 - $ 6,000	$0 -$ 8,000	20%
6,001 - 9,200	8,001 - 14,000	50%
9,201 - 15,000	14,001 - 20,000	70%

(ii) The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1995; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a)(i).

(3) Within the meaning of comparable property, as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 24, part 15, and the provisions of Title 15, chapter 24, part 15, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000.

Approved March 27, 2001

CHAPTER NO. 136

[SB 20]

AN ACT CODIFYING THE FAMILY LAW EXCEPTION TO THE APPEAL OF CONTEMPT JUDGMENTS OR ORDERS; ALLOWING THE APPEAL OF A CONTEMPT JUDGMENT OR ORDER IN A FAMILY LAW PROCEEDING ONLY WHEN THE JUDGMENT OR ORDER APPEALED FROM INCLUDES AN ANCILLARY ORDER THAT AFFECTS THE SUBSTANTIAL RIGHTS OF THE PARTIES INVOLVED; AND AMENDING SECTION 3-1-523. MCA.

WHEREAS, in Lee v. Lee, 2000 MT 67, 996 P.2d 389, 57 St. Rep. 308 (2000), the Montana Supreme Court formally adopted the "family law" exception for appeals of contempt orders.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-523, MCA, is amended to read:

"**3-1-523. Judgment and orders in contempt cases final** — ***family law exception.*** *(1)* The judgment and orders of the court or judge made in cases of contempt are final and conclusive. ~~There~~ *Except as provided in subsection (2), there* is no appeal, but the action of a district court or judge can be reviewed on a writ of certiorari by the supreme court or a ~~judge~~ *justice* ~~thereof~~ *of the supreme court* and the action of a justice of the peace or other court of limited jurisdiction *can be reviewed* by the district court or judge of the county in which ~~such~~ *the* justice or judge of ~~such~~ *the* court of limited jurisdiction resides.

(2) A party may appeal a contempt judgment or order in a family law proceeding only when the judgment or order appealed from includes an ancillary order that affects the substantial rights of the parties involved."

Approved March 28, 2001

CHAPTER NO. 137

[SB 34]

AN ACT CHANGING THE NAME OF THE MONTANA HEALTH FACILITY AUTHORITY TO THE MONTANA FACILITY FINANCE AUTHORITY; ALLOWING THE AUTHORITY TO MAKE GRANTS FROM ITS ENTERPRISE FUND TO INSTITUTIONS TO ASSIST IN DETERMINING ELIGIBILITY FOR OR COMPLIANCE WITH GOVERNMENT PROGRAMS; DELETING THE REQUIREMENT THAT AN APPRAISAL BE OBTAINED WHEN FINANCING AN ELIGIBLE FACILITY; REVISING THE REQUIREMENT FOR CERTAIN FINDINGS FOR THE ISSUANCE OF BONDS; AMENDING SECTIONS 2-15-1815, 17-5-1302, 17-5-1312, 17-6-308, 90-7-101, 90-7-102, 90-7-103, 90-7-104, 90-7-202, 90-7-211, 90-7-213, 90-7-214, 90-7-220, 90-7-301, 90-7-302, 90-7-303, AND 90-7-304, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1815, MCA, is amended to read:

"**2-15-1815. Montana ~~health~~ facility *finance* authority.** (1) There is created a public body corporate designated as the Montana ~~health~~ facility *finance* authority. This authority is constituted a public instrumentality, and its exercise of the powers conferred by Title 90, chapter 7, ~~shall~~ *must* be considered and held to be the performance of an essential public function.

(2) The authority consists of seven members appointed by the governor as prescribed in 2-15-124. The board must be broadly representative of the state, seeking to balance professional expertise and public accountability.

(3) The board is designated as a quasi-judicial board for the purposes of 2-15-124.

(4) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121. The board has authority over its own personnel as provided in 90-7-203."

Section 2. Section 17-5-1302, MCA, is amended to read:

"17-5-1302. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Allocation" means an allocation of a part of the volume cap to an issuer pursuant to this part.

(2) "Board" means the board of examiners.

(3) "Bonds" means bonds, notes, or other interest-bearing obligations of an issuer.

(4) "Cap bonds" means those private activity bonds and that portion of governmental bonds for which a part of the volume cap is required to be allocated pursuant to the tax act.

(5) "Department" means the department of administration.

(6) "Governmental bonds" means bonds other than private activity bonds.

(7) "Issuer" means a state issuer or local issuer.

(8) "Local issuer" means a city, town, county, or other political subdivision of the state authorized to issue private activity bonds or governmental bonds.

(9) "Local portion" means that portion of the volume cap reserved for local issuers.

(10) "Montana board of housing" (MBH) means the board created in 2-15-1814.

(11) "Montana board of investments" (MBI) means the board provided for in 2-15-1808.

(12) "Montana ~~health~~ facility *finance* authority" ~~(MHFA)~~ *(MFFA)* means the authority provided for in 2-15-1815.

(13) "Montana higher education student assistance corporation" (MHESAC) means the nonprofit corporation established under Title 20, chapter 26, part 11.

(14) "Private activity bonds" (PABs) has the meaning prescribed under section 1301 of the tax act.

(15) "State issuer" means the state and any agency ~~thereof~~ *of the state* authorized to issue private activity bonds. For this part only, the Montana higher education student assistance corporation is considered an agency of the state.

(16) "State portion" means that portion of the volume cap reserved for state issuers.

(17) "Tax act" means the Tax Reform Act of 1986 enacted by the United States congress.

(18) "Volume cap" means, with respect to each calendar year, the principal amount of cap bonds that may be issued in the state in a calendar year as determined under the provisions of the tax act."

Section 3. Section 17-5-1312, MCA, is amended to read:

"**17-5-1312. Allocation to state issuers.** (1) Except as provided in subsection (5), the state portion must be allocated to state issuers pursuant to 17-5-1316.

(2) As a condition of receiving an allocation, each state issuer, upon issuance of the bonds, shall pay 30 cents per thousand of bonds to be deposited in the state general fund for the purpose of funding a portion of the comprehensive annual financial report audit.

(3) The following set-asides must be made in each calendar year for the following state issuers:

State Issuer	Percentage	Allocation Amount
Board	4	$4,200,000
MBH	41	43,050,000
MBI	25	26,250,000
MHESAC	26	27,300,000
~~MHFA~~ *MFFA*	4	4,200,000
Total	100%	$105,000,000

(4) Each set-aside expires on the first Monday in September.

(5) Prior to the set-aside expiration date, allocations may be made by the department to each state issuer only from its respective set-aside pursuant to 17-5-1316 and no state issuer is entitled to an allocation except from its set-aside unless otherwise provided by the governor.

(6) After the expiration date, the amount of the set-aside remaining unallocated is available for allocation by the department to issuers pursuant to 17-5-1316 without preference or priority."

Section 4. Section 17-6-308, MCA, is amended to read:

"**17-6-308. Authorized investments.** (1) Except as provided in subsections (2) through (4) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The board shall manage the seed capital and research and development loan portfolios created by the former Montana board of science and technology development. The board shall establish an appropriate repayment schedule for all outstanding research and development loans made to the university system. The board is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research and development loan

portfolios, except agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. The board shall administer the agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. Until the department makes a loan pursuant to the provisions of part 5 of this chapter, the $915,000 in funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As loans made pursuant to part 5 of this chapter are repaid, the board shall deposit the proceeds or loans made from the coal severance tax trust fund in the coal severance tax permanent fund until all investments are paid back with 7% interest.

(4) The board shall allow the Montana ~~health~~ facility *finance* authority to administer $15 million of the permanent coal tax trust fund for capital projects. Until the authority makes a loan pursuant to the provisions of Title 90, chapter 7, the funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As loans for capital projects made pursuant to this subsection are repaid, the principal and interest payments on the loans must be deposited in the coal severance tax permanent fund until all principal and interest have been repaid. The board and the authority shall calculate the amount of the interest charge. Individual loan amounts may not exceed 10% of the amount administered under this subsection.

(5) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations.

(6) All repayments of proceeds pursuant to subsection (3) of investments made from the coal severance tax trust fund must be deposited in the coal severance tax permanent fund."

Section 5. Section 90-7-101, MCA, is amended to read:

"**90-7-101. Short title.** This chapter may be cited as the "Montana ~~Health~~ Facility *Finance* Authority Act"."

Section 6. Section 90-7-102, MCA, is amended to read:

"**90-7-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Authority" means the Montana ~~health~~ facility *finance* authority created in 2-15-1815.

(2) "Capital reserve account" means the account established in 90-7-317.

(3) "Costs" means costs allowed under 90-7-103.

(4) ~~"Facility"~~ *"Eligible facility"* means any ~~health care~~ *eligible* facility ~~or prerelease center provided for~~ *as defined* in 90-7-104.

(5) (a) "Institution" means any public or private:

(i) nonprofit hospital, corporation, or other organization authorized to provide or operate ~~a health~~ *an eligible* facility in this state; or

(ii) nonprofit prerelease center, corporation, or other organization authorized to operate a prerelease center in this state.

(b) The term also includes the following, provided that the entity is a nonprofit entity or is controlled by one or more nonprofit entities:

(i) a network of health care providers, regardless of how it is organized;

(ii) an integrated health care delivery system;

(iii) a joint venture or partnership between or among health care providers;

(iv) a purchasing alliance composed of health care providers;

(v) any health insurers and third-party administrators that are participants in a system, network, joint venture, or partnership that provides health services through one or more health facilities.

(6) "Participating institution" means ~~a health~~ *an* institution ~~or prerelease center~~ that undertakes the financing, refunding, or refinancing of obligations on the construction or acquisition of ~~a~~ *an eligible* facility pursuant to the provisions of this chapter.

(7) ~~"Revenues"~~ *"Revenue"* means, with respect to *eligible* facilities, the rents, fees, charges, interest, principal repayments, and other income received or to be received by the authority from any source on account of the *eligible* facilities."

Section 7. Section 90-7-103, MCA, is amended to read:

"**90-7-103. Allowable costs.** Costs eligible for financing or refinancing under this chapter include:

(1) the total of all reasonable or necessary costs incidental to the acquisition, construction, reconstruction, repair, alteration, equipment, enlargement, and improvement of an eligible facility and the acquisition of all real and personal property interests necessary or useful in connection with the *eligible* facility and all other undertakings that the authority considers reasonable or necessary for the development of the *eligible* facility;

(2) the cost of demolishing or removing any building or structure on land so acquired, the cost of acquiring any land to which the building or structure may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if judged advisable by the authority, for a period after completion of construction, and the cost of financing the *eligible* facility, including interest on bonds and notes issued by the authority to finance the *eligible* facility;

(3) reserves for principal and interest and for extensions, enlargements, additions, and improvements, including without limitation the cost of studies and surveys;

(4) the costs for land title and mortgage guaranty policies;

(5) the costs of plans, specifications, and architectural and engineering services;

(6) the costs of legal, organization, marketing, or other special services;

(7) the costs of financing, acquisition, demolition, construction, equipment, and site development of new and rehabilitated buildings;

(8) the costs of rehabilitation, reconstruction, repair, or remodeling of existing buildings; and

(9) all other expenses necessary and incidental to the construction and acquisition of the *eligible* facility, the financing of construction, and the acquisition and placing of the *eligible* facility into operation."

Section 8. Section 90-7-104, MCA, is amended to read:

"**90-7-104. Eligible facility.** (1) The term "eligible facility" means any structure or building suitable for use as:

(a) a hospital, clinic, nursing home, or other health care facility as defined in 50-5-101;

(b) a public health center, as defined in 7-34-2102;

(c) a facility for persons with disabilities;

(d) a chemical dependency treatment facility;

(e) a nursing school;

(f) a medical teaching facility;

(g) a laboratory;

(h) a dental care facility;

(i) a prerelease center;

(j) a diagnostic, treatment, or surgical center; ~~or~~

(k) a facility providing services for the elderly; or

~~(k)~~*(l)* a structure or facility related to any of the uses enumerated in subsections (1)(a) through ~~(1)(j)~~ *(1)(k)* or required or useful for the operation of ~~a health~~ *an eligible* facility. These related facilities include supporting service structures and all necessary, useful, and related equipment, furnishings, and appurtenances and include without limitation the acquisition, preparation, and development of all lands and real and personal property necessary or convenient as a site for any of the uses enumerated in subsections (1)(a) through ~~(1)(j)~~ *(1)(k).*

(2) An eligible facility does not include:

(a) items such as food, fuel, supplies, or other items that are customarily considered as current operating expenses; and

(b) a structure used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship."

Section 9. Section 90-7-202, MCA, is amended to read:

"**90-7-202. Powers of authority.** The authority may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this chapter;

(4) issue bonds or incur other debt as described in this chapter, including the issuance of notes or refunding bonds;

(5) except as provided in 17-6-308, invest any funds that are not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except that all investment income from funds invested by the authority, less the cost for investment, must be deposited in an enterprise fund to the credit of the authority to be used to carry out the purposes of this chapter;

(6) contract in its own name for the investment of funds, borrowing of funds, or any other purposes it considers appropriate to carry out the purposes of this chapter;

(7) participate with any financial institution in the purchase or guarantee of any loan or obligation;

(8) issue bond anticipation notes or any other anticipatory financial obligations to secure funding of eligible facilities;

(9) enter into agreements or make advance commitments to ~~insure~~ *ensure* repayments required by loan agreements made by a lender. These agreements are subject to terms and conditions established by the authority.

(10) establish programs to make, sell, purchase, or insure loans to finance the costs of eligible facilities from any funds;

(11) accept gifts, grants, or loans from a federal agency, an agency or instrumentality of the state, a municipality, or any other source;

(12) enter into contracts or other transactions with a federal agency, an agency or instrumentality of the state, a municipality, a private organization, or any other entity consistent with the exercise of any power under this chapter;

(13) with regard to property:

(a) acquire real or personal property or any right, interest, or easement in real or personal property by gift, purchase, transfer, foreclosure, lease, or otherwise;

(b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose of property;

(c) hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or custody;

(d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption;

(e) make any disposition by public or private sale, with or without public bidding;

(f) commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement;

(g) bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and

(h) operate, manage, lease, dispose of, and otherwise deal with property in any manner necessary or desirable to protect its interests or the holders of its bonds or notes if that action is consistent with any agreement with the holders;

(14) service, contract, and pay for the servicing of loans;

(15) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of eligible facilities whenever considered appropriate;

(16) consent, whenever it considers necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, or payment of any installment of principal, interest, or security or any other term of any contract, lease agreement, loan agreement, mortgage, mortgage loan, mortgage loan

commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(17) collect reasonable interest, fees, and charges from participating institutions in connection with making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments, and other evidences of indebtedness. Except as provided in 17-6-308, the interest, fees, and charges must be deposited to an enterprise fund to the credit of the authority. Interest, fees, and charges are limited to the amounts required to pay the costs of the authority, including operating and administrative expenses, reasonable allowances for losses that may be incurred, and bond financing costs, and to provide funds to make loans to finance the costs of eligible facilities *or to make grants for the purposes described in 90-7-211(2)(e).*

(18) make loans pursuant to 17-6-308;

(19) establish program parameters for loan or grant approval by authority staff; and

~~(19)~~*(20)* perform any other acts necessary and convenient to carry out the purposes of this chapter."

Section 10. Section 90-7-211, MCA, is amended to read:

"**90-7-211. Necessary expenses — fees.** (1) All expenses of the authority incurred in carrying out the provisions of this chapter are payable solely from funds provided under the authority of this chapter. Liability may not be incurred by the authority beyond the extent to which money has been provided under this chapter, except for the purposes of meeting the necessary expenses of initial organization and operation and until the date that the authority derives money from funds provided under this chapter. The authority may borrow money for necessary expenses of organization and operation. The borrowed money must be repaid within a reasonable time after the authority receives funds provided for under this chapter.

(2) When an application is made to the authority by any participating institution for financial assistance to provide for its *eligible* facilities, the application may be accompanied by an initial planning service fee in an amount determined by the authority. The initial planning service fee may be included in the cost of the *eligible* facilities to be financed. In addition to the initial fee, an annual planning service fee may be paid to the authority by each participating institution in an amount determined by the authority. The annual planning service fee may be paid on the dates or in installments that are satisfactory to the authority. The fees must be used for:

(a) necessary expenses to determine the need for *eligible* facilities in the area concerned, and to that end, the authority may ~~utilize~~ *use* recognized voluntary and official health planning organizations and agencies at local, regional, and state levels;

(b) necessary administrative, operating, and financing expenses;

(c) reserves for anticipated future expenses or loan losses; ~~and~~

(d) loans to finance the costs of eligible facilities~~.~~*; and*

(e) grants to institutions to assist in determining eligibility for or compliance with government programs.

(3) The authority may, for a negotiated fee, retain the services of any other public or private person, firm, partnership, association, or corporation for the furnishing of services and data for use by the authority in determining the need for and location of any eligible facility for which application is being made or for other services or surveys that the authority considers necessary to carry out the purposes of this chapter."

Section 11. Section 90-7-213, MCA, is amended to read:

"90-7-213. Loan limitation. A loan made by the authority may not exceed the total cost ~~or appraised value~~ of the eligible facility being financed as the cost ~~or appraised value~~ is determined by the participating institution and approved by the authority."

Section 12. Section 90-7-214, MCA, is amended to read:

"90-7-214. Restriction on operating facility — leases. (1) The authority may not operate an eligible facility as a business other than as a lessee or lessor. The lease must provide for rentals adequate to pay the principal and interest due on bonds and to create and maintain reserves and accounts for depreciation as the authority determines necessary.

(2) The lease may contain terms and conditions that the authority considers proper. The lease may be terminated upon failure of the participating institution to comply with any obligation under the lease. The lease may include a renewal or an option to purchase provision upon terms or conditions ~~as~~ *that* the authority considers desirable.

(3) Upon payment of all indebtedness incurred by the authority for financing ~~a~~ *an eligible* facility, the authority may convey any ~~or all~~ of the *eligible* facility to the lessee, with or without consideration."

Section 13. Section 90-7-220, MCA, is amended to read:

"90-7-220. Montana developmental center loan. (1) The department of public health and human services may enter into a loan agreement with the Montana ~~health~~ facility *finance* authority for the purpose of financing the costs of acquiring, constructing, and equipping facilities for persons with developmental disabilities at the Montana developmental center in Boulder, including the establishment of reserves and the payment of costs of the financing. The maximum principal amount of the loan may not exceed $10.5 million for construction and related costs, plus the necessary amounts for capitalized interest, debt service reserves, and financing costs, and the loan must be payable over a term ~~of~~ not to exceed 30 years and must bear interest and contain other terms and provisions with respect to prepayment or otherwise as are not inconsistent with this section and as the department approves. Investment earnings on the authority's bonds or on funds held for the bonds must be used to pay the principal and interest on the loan as provided in the loan agreement.

(2) The loan may be secured by a mortgage on the Montana developmental center facility, including the land on which it is located. The loan constitutes a special limited obligation of the department, and the principal and interest payments required by that agreement are payable solely from the facility ~~revenues~~ *revenue* obtained by the department from the ownership and operation of and the provision of services at the Montana developmental center, including payments or reimbursements from private users, insurers, and the federal government. All facility ~~revenues~~ *revenue* obtained from services provided by the

Montana developmental center must be deposited in a special revenue fund and must be applied to the payment of the principal and interest payments as due under the loan agreement. Whenever ~~the foregoing~~ facility ~~revenues exceed~~ *revenue exceeds* the amount and terms specified and required to repay the loan and maintain required reserves, the excess must be deposited to the general fund. As long as the loan remains outstanding and the department provides services for persons with developmental disabilities, the department shall use the Montana developmental center for those purposes or for other purposes as permitted by the loan agreement and state law, except when foreclosure occurs under the agreement or the mortgage. Notwithstanding 77-2-302(1) and upon foreclosure of a mortgage given to secure the loan agreement, there must be paid to the board of land commissioners as a first and prior claim against the mortgaged land an amount equal to the full market value of the land as determined by the board prior to the execution of the mortgage and after appraisal by a qualified land appraiser. The loan agreement may contain other provisions or agreements that the department determines are necessary and that are not inconsistent with the provisions of ~~Title 90,~~ *this* chapter ~~7~~.

(3) The obligations of the department under the agreement are special limited obligations payable solely from the facility ~~revenues~~ *revenue* and do not constitute a debt of the state or obligate the state to appropriate or apply any funds or ~~revenues~~ *revenue* of the state, except the facility ~~revenues~~ *revenue* as provided in this section."

Section 14. Section 90-7-301, MCA, is amended to read:

"90-7-301. Notes. The authority is authorized from time to time to issue its negotiable notes for any corporate purpose, including the payment of all or any part of the cost of any *eligible* facility, and *to* renew from time to time any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose. The notes may be authorized, sold, executed, and delivered in the same manner as bonds. Any resolution authorizing notes of the authority or any issue ~~thereof~~ *of notes* may contain any provisions ~~which~~ *that* the authority is authorized to include in any resolution authorizing bonds of the authority. The authority may include in its notes any terms, covenants, or conditions that it is authorized to include in any bonds. All notes must be payable from the proceeds of bonds, renewal notes, the ~~revenues~~ *revenue* of the authority, or other *available* money ~~available therefor and~~ not otherwise pledged, subject only to any contractual rights of the holders of any of its notes or other obligations then outstanding."

Section 15. Section 90-7-302, MCA, is amended to read:

"90-7-302. Bonds and notes of ~~the~~ authority. (1) The authority may in each biennium borrow money and issue bonds and notes in an aggregate principal amount not to exceed $250 million, exclusive of bonds or notes issued to refund outstanding bonds or notes.

(2) Bonds must be authorized. The authority may specify that the bonds must be dated and must mature, except that a bond may not mature more than 40 years from the date of its issue. Bonds must:

(a) bear interest at a rate or rates;

(b) be in denominations;

(c) be in the proper registered or bearer form;

(d) be executed in a manner;

(e) be payable in a medium of payment and at a place or places; and

(f) be subject to terms of redemption that the authority may provide.

(3) All bonds, regardless of form or character, are negotiable instruments for all purposes of the Uniform Commercial Code, subject to requirements as to registration.

(4) All bonds may be sold at public or private sale in the manner, for the price or prices, and at the time or times that the authority may determine.

(5) Before the issuance of any bonds, the authority shall make provisions, by lease or other agreement, regarding the *eligible* facility or facilities being financed by the issue of the bonds, for rentals or other considerations sufficient, in the judgment of the authority, to:

(a) pay the principal of and interest on the bonds as they become due;

(b) create and maintain the reserves for payment of the principal and interest;

(c) meet all obligations in connection with the lease or other agreement; and

(d) meet all costs necessary to service the bonds unless the lease or agreement provides that the obligations are to be met or costs are to be paid by a party other than the authority.

(6) The authority, before issuing any bonds, shall certify that an applicant has submitted a statement that indicates that any contract let for a *public* project costing more than $25,000 and financed from the proceeds of bonds issued under this part ~~on or after July 1, 1993,~~ will contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(7) The authority may combine, for the purposes of a single offering, bonds financing more than one *eligible* facility under this chapter."

Section 16. Section 90-7-303, MCA, is amended to read:

"**90-7-303. Procedure for issuance of bonds.** (1) The authority may not ~~undertake to~~ finance any eligible facility unless, prior to the issuance of any bonds or notes, the members find that the facility *is an eligible facility and* will be operated by a ~~health~~ *an* institution for the purpose of ~~fulfilling its obligation to provide health care facilities or by a prerelease center for the purpose of preparing persons to reenter society~~ *providing services contemplated by this chapter.*

(2) The authority may not allow the proceeds of any bonds or notes to be expended for any *eligible facility that is a* health care facility unless the facility has been reviewed and approved by the appropriate regional and state health planning boards and has received any approval required by Title 50, chapter 5, part 3.

(3) The authority may not allow the proceeds of any bonds or notes to be expended for any *eligible* facility ~~until it has been shown~~ *unless the institution provides evidence* that the *eligible* facility is financially feasible and that *the*

institution reasonably expects that it will generate ~~there will be~~ sufficient ~~revenues~~ *revenue* to ~~ensure that~~ *pay* principal and interest payments ~~are made~~ when they become due.

~~(4) The authority may not allow the proceeds of any bonds or notes to be expended for any facility until it has considered the ability of the institution to operate the facility based on the institution's experience and expertise.~~

~~(5) The authority shall ensure that its financings consistently provide fair and realistic terms and covenants sufficient to protect the position of the lenders or bondholders.~~"

Section 17. Section 90-7-304, MCA, is amended to read:

"90-7-304. Security of bondholders. (1) The payment of the principal of and interest on any bonds issued under this chapter must be secured by a pledge of the ~~revenues~~ *revenue* out of which the bonds are made payable.

(2) The principal of and interest on any bonds issued under the authority of this part may be secured by:

(a) a mortgage covering all or any part of the *property of the* participating institution;

(b) a pledge of the lease or loan agreement relating to the *eligible* facility; or

(c) another security device that is considered most advantageous by the authority.

(3) The proceedings under which the bonds are authorized to be issued under the provisions of this chapter and any mortgage given to secure the bonds, including a mortgage given by the borrower or lessee, may contain any agreements and provisions customarily contained in instruments securing bonds, as the authority considers advisable. The provisions may not be in conflict with the provisions of this chapter, including without limitation provisions relating to:

(a) fixing and collection of rents or payments under any lease or loan agreement concerning the *eligible* facility covered by the proceedings or mortgage;

(b) terms to be incorporated in the lease or loan agreement;

(c) maintenance and insurance of the *eligible* facility;

(d) creation and maintenance of special funds from the ~~revenues~~ *revenue* of the *eligible* facility; and

(e) rights and remedies available in the event of a default to the bondholders or to the trustee under a mortgage.

(4) The proceedings authorizing any bonds under the provisions of this chapter and any mortgage, including a mortgage given by the lessee or borrower, securing bonds may provide that in the event of a default in the payment of the principal of or the interest on the bonds or in the performance of any agreement contained in the proceedings or mortgage, the payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the ~~revenues~~ *revenue* from the project in accordance with the proceedings or the provisions of the mortgage.

(5) Any mortgage made by the authority, lessee, or borrower to secure these bonds may provide that, in the event of a default in the payment of the bonds or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and the project sold under proceedings in equity or in any other manner permitted by law. The mortgage may also provide that any trustee under the mortgage or the holder of any of the bonds secured by the mortgage may become the purchaser at any foreclosure sale if the trustee is the highest bidder. A breach of an agreement may not impose any pecuniary liability upon the authority."

Section 18. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 19. Effective date. [This act] is effective July 1, 2001.

Approved March 28, 2001

CHAPTER NO. 138

[SB 97]

AN ACT REQUIRING THAT AN INSURER, PURSUANT TO ADMINISTRATIVE RULES ADOPTED BY THE DEPARTMENT OF LABOR AND INDUSTRY, REIMBURSE A WORKER FOR REASONABLE TRAVEL, LODGING, MEALS, AND MISCELLANEOUS EXPENSES INCURRED IN TRAVEL TO A MEDICAL PROVIDER FOR TREATMENT OF AN INJURY; PROVIDING EXCEPTIONS FROM REIMBURSEMENT; EXEMPTING INSURERS FROM LIABILITY FOR INJURIES SUFFERED BY THE CLAIMANT RESULTING FROM AN ACCIDENT THAT OCCURS DURING TRAVEL OR TREATMENT; MAINTAINING INSURER LIABILITY FOR COMPENSABLE INJURIES FOR WHICH TRAVEL AND TREATMENT WAS REQUIRED; AMENDING SECTION 39-71-704, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-704, MCA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation. (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

(b) The insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) *(i)* The insurer shall reimburse a worker for reasonable travel, *lodging, meals, and miscellaneous* expenses incurred in travel to a medical provider for treatment of an injury ~~only if the travel is incurred at the request of the insurer~~ *pursuant to rules adopted by the department.* Reimbursement must be at the rates allowed for reimbursement ~~of travel by~~ *for* state employees.

(ii) Rules adopted under subsection (1)(d)(i) must provide for submission of claims, within 90 days from the date of travel, following notification to the claimant of reimbursement rules, must provide procedures for reimbursement receipts, and must require the use of the least costly form of travel unless the travel is not suitable for the worker's medical condition. The rules must exclude from reimbursement:

(A) 100 miles of automobile travel for each calendar month unless the travel is requested or required by the insurer pursuant to 39-71-605;

(B) travel to a medical provider within the community in which the worker resides;

(C) travel outside the community in which the worker resides if comparable medical treatment is available within the community in which the worker resides, unless the travel is requested by the insurer; and

(D) travel for unauthorized treatment or disallowed procedures.

(iii) An insurer is not liable for injuries or conditions that result from an accident that occurs during travel or treatment, except that the insurer retains liability for the compensable injuries and conditions for which the travel and treatment was required.

(e) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

(f) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition;

(ii) when necessary to monitor the status of a prosthetic device; or

(iii) when the worker's treating physician believes that the care that would otherwise not be compensable under subsection (1)(f) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment. A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.

(g) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) The department shall annually establish a schedule of fees for medical services not provided at a hospital that are necessary for the treatment of injured workers. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule.

(3) (a) The department shall establish rates for hospital services necessary for the treatment of injured workers.

(b) Except as provided in subsection (3)(g), rates for services provided at a hospital must be the greater of:

(i) 69% of the hospital's January 1, 1997, usual and customary charges; or

(ii) the discount factor established by the department that was in effect on June 30, 1997, for the hospital. The discount factor for a hospital formed by the merger of two or more existing hospitals is computed by using the weighted average of the discount factors in effect at the time of the merger.

(c) Except as provided in subsection (3)(g), ~~beginning July 1, 1998,~~ the department shall adjust hospital discount factors so that the rate of payment does not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(d) The department may establish a fee schedule for hospital outpatient services rendered ~~on or after July 1, 1998~~. The fee schedule must, in the aggregate, provide for fees that are equal to the statewide average discount factors paid to hospitals to provide the same or equivalent procedure to workers' compensation hospital outpatients.

(e) The discount factors established by the department pursuant to this subsection (3) may not be less than medicaid reimbursement rates.

(f) For services available in Montana, insurers are not required to pay facilities located outside Montana rates that are greater than those allowed for services delivered in Montana.

(g) For a hospital licensed as a medical assistance facility pursuant to Title 50, chapter 5, the rate for services is the hospital's usual and customary charge. Fees paid to a hospital licensed as a medical assistance facility are not subject to the limitation provided in subsection (4).

(4) The percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(5) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

(6) Disputes between an insurer and a medical service provider regarding the amount of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.

(7) (a) After the initial visit, the worker is responsible for 20%, but not to exceed $10, of the cost of each subsequent visit to a medical service provider for treatment relating to a compensable injury or occupational disease, unless the visit is to a medical service provider in a managed care organization as requested by the insurer or is a visit to a preferred provider as requested by the insurer.

(b) After the initial visit, the worker is responsible for $25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

(c) "Visit", as used in subsections (7)(a) and (7)(b), means each time that the worker obtains services relating to a compensable injury or occupational disease from:

(i) a treating physician;

(ii) a physical therapist;

(iii) a psychologist; or

(iv) hospital outpatient services available in a nonhospital setting.

(d) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if the visit is an examination requested by an insurer pursuant to 39-71-605."

Section 2. Effective date — applicability. [This act] is effective July 1, 2001, and applies to a claim for benefits for an injury occurring on or after July 1, 2001.

Approved March 28, 2001

CHAPTER NO. 139

[SB 102]

AN ACT AUTHORIZING THE EXCHANGE OF STATE TRUST LANDS FOR STATE GOVERNMENT AND LOCAL GOVERNMENT LANDS; AMENDING SECTIONS 77-2-203 AND 77-2-205, MCA; REPEALING SECTION 77-2-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2-203, MCA, is amended to read:

"77-2-203. Exchange for ~~private~~ *nongovernment, state government, and other state and local public entity* land. (1) ~~The~~ *Subject to subsection (2), the* board is authorized to exchange state land for ~~private land~~ *land owned by:*

(a) the state or an agency of the state;

(b) a political subdivision of the state, including a county, city, town, public corporation, or district created pursuant to state law;

(c) any other public body of the state; or

(d) a nongovernmental entity, including but not limited to an individual, association, partnership, or corporation.

(2) The board may exchange the land described in subsection (1) if ~~provided that~~ the ~~private~~ land is of equal or greater value, as determined by the board after appraisal by a qualified land appraiser, than the state land and as closely as possible equal in area. The contents of the appraisal must be made available to any person who makes a written request to the board. The board shall place priority on exchanges ~~which~~ *that* result in consolidation of state lands into more compact bodies. This section does not apply to exchanges undertaken under 76-12-107.

~~(2)~~*(3)* If the requirements of ~~subsection~~ *77-2-204 and subsections* (1) *and (2) of this section* ~~and 77-2-204~~ are met, state lands bordering on navigable lakes and streams or other bodies of water with significant public use value may be exchanged for ~~private~~ *nongovernment-owned* land if the ~~private~~ *nongovernment-owned* land borders on similar navigable lakes, streams, or other bodies of water."

Section 2. Section 77-2-205, MCA, is amended to read:

"**77-2-205. Restriction on exchange for ~~private~~ *nongovernment-owned* land.** ~~No~~ *An* exchange *for nongovernment-owned land* under 77-2-203 ~~shall~~ *may not* be made ~~which~~ *that* will induce or encourage large-scale commercial, industrial, or residential development unless the *development* value ~~of such development~~ is considered in determining the fair market value and unless the proposed development will not adversely affect the resources of the existing state tracts or those tracts ~~which~~ *that* the state would receive under the proposed exchange."

Section 3. Repealer. Section 77-2-202, MCA, is repealed.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 28, 2001

CHAPTER NO. 140

[SB 106]

AN ACT PROVIDING THAT AN ACTION MAY NOT BE BROUGHT AGAINST A REGULATED LENDER BASED ON A PROMISE OR COMMITMENT WITH RESPECT TO A COMMERCIAL LOAN IN EXCESS OF $100,000 UNLESS THE PROMISE OR COMMITMENT IS IN WRITING; AND AMENDING SECTION 31-1-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Commercial loans — when written agreement required. (1) With respect to a commercial loan, a contract action or a breach of contract action may not be brought against a regulated lender on a promise or commitment that is not in writing where the promise or commitment is to:

(a) lend money or to extend credit;

(b) alter, amend, renew, extend, or otherwise modify an existing promise, commitment, or agreement to lend money or extend credit; or

(c) make a financial accommodation.

(2) For the purposes of this section, "commercial loan" means money loaned or credit extended primarily for commercial or business purposes, in excess of $100,000, and does not include money lent or credit extended for personal, family, or household purposes and also does not include charge or credit card accounts, personal lines of credit, personal overdraft accounts, or other consumer accounts.

Section 2. Section 31-1-111, MCA, is amended to read:

"**31-1-111. Definition of regulated lender.** The term "regulated ~~lenders~~ *lender*", as used in 31-1-112 *and [section 1],* means:

(1) a bank, building and loan association, savings and loan association, trust company, credit union, credit association, consumer loan licensee, development corporation, bank holding company, or a mutual or stock insurance company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by:

(a) an agency of the state of Montana; or

(b) an agency of the federal government;

(2) a subsidiary of an entity described in subsection (1);

(3) a Montana state agency or a federal agency that is authorized to lend money;

(4) a corporation or other entity established by congress or the state of Montana that is owned, in whole or in part, by the United States or the state of Montana and that is authorized to lend money."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 31, chapter 1, part 1, and the provisions of Title 31, chapter 1, part 1, apply to [section 1].

Approved March 28, 2001

CHAPTER NO. 141

[SB 143]

AN ACT INCREASING THE ANNUAL PESTICIDE REGISTRATION FEE TO $90; PROVIDING FOR AN ANNUAL FEE FOR AN EMERGENCY EXEMPTION REGISTRATION; INCREASING THE FEE FOR A SPECIAL LOCAL NEED REGISTRATION OR FOR AN EXPERIMENTAL-USE PERMIT REGISTRATION TO $90 AND CHANGING THE FEE TO AN ANNUAL FEE INSTEAD OF A ONE-TIME FEE; REMOVING EXEMPTION OF A REGISTRATION FEE IF THE EXPERIMENTAL USE PERMIT IS FEDERALLY APPROVED; INCREASING THE SPECIAL AGRICULTURAL CHEMICAL GROUND WATER PROTECTION FEE TO $95; AND AMENDING SECTIONS 80-8-201 AND 80-15-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-8-201, MCA, is amended to read:

"80-8-201. Registration. (1) Each pesticide distributed, sold, or offered for sale within the state or delivered for transportation or transported in intrastate commerce or between points within the state must be registered with the department. The registration must be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all federally approved pesticides, and those registered are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated.

(2) The applicant for registration shall file with the department a statement that includes:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) a complete copy of the label of the pesticide, the United States environmental protection agency registration number if the pesticide is registered, and a statement of all claims to be made for it, including directions for use;

(c) the trade and chemical name of the pesticide;

(d) if requested by the department, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement is required only for information that is different from that furnished when the pesticide was registered or last reregistered.

(3) A pesticide imported into the state that is subject to and has been registered under the provisions of a federal act providing for the registration of pesticides must be registered in the state. However, the state may restrict the sale or use and application of the pesticide by type of dealer, applicator, time, and place and may establish special registrations of pesticides as outlined in 80-8-105(3) and in subsection (8) of this section. The annual registration fee must also be paid, and registration information required by the department must be provided.

(4) The applicant shall pay an annual fee of ~~$70~~ *$90* for each pesticide registered. ~~A registration fee is not required to register a federally approved experimental use permit.~~ *The applicant shall pay an annual fee of $90 for:*

(a) each emergency exemption requested by the state as provided in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136p;

(b) a special local need registration, as provided in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136v(c)(1); or

(c) for an experimental-use permit registration, as provided in 7 U.S.C. 136c.

(5) The department may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department that the composition of the pesticide warrants the proposed claims for it and if the pesticide, its labeling, and other material required to be submitted comply with the requirements of 80-8-202, the department shall register the pesticide.

(6) If it does not appear to the department that the pesticide warrants the proposed claims for it or if the pesticide, its labeling, and other material required to be submitted do not comply with this chapter, the department shall notify the applicant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with the chapter to provide the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the pesticide. The department may suspend or cancel the registration of a pesticide whenever it does not appear that the pesticide or its labeling comply with this chapter or whenever scientific evidence proves that the pesticide endangers humans or the general environment afforded protection under 80-8-105(3)(a). When an application for registration is refused or the department proposes to suspend or cancel a registration, the registrant may pursue administrative remedies under the Montana Administrative Procedure Act and rules of the department.

(7) Registration is not required in the case of a pesticide shipped from one plant in the state to another plant in the state by the same person.

(8) (a) The department, the department of public health and human services, and the department of fish, wildlife, and parks shall review all applications for

registration of an experimental-use permit or a registration for special local needs. ~~The applicant shall pay a one-time fee of $70 for a special local need or experimental-use permit registration.~~ The departments shall use the same requirements and standards for reviewing registrations established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted under the act. The department shall provide the departments of public health and human services and fish, wildlife, and parks with a complete copy of the application, related correspondence, and a statement of the department's proposed action on the application. The department, the department of public health and human services, and the department of fish, wildlife, and parks shall approve or disapprove the application within 10 days after the receipt of the application. If the department, the department of public health and human services, and the department of fish, wildlife, and parks are in agreement with the proposed registration, the department shall issue the registration.

(b) The department shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide or device. If two of the departments approve the proposed registration, the department shall issue the registration.

(c) The registrant applying for registration must be notified as to proposed changes in registration. If the departments cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, public health and human services, and fish, wildlife, and parks.

(d) Following the interagency conference and, if requested, the administrative hearing, if the proposed registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory council as outlined in 80-8-108 to resolve by majority vote the registration of any pesticide. The advisory council's recommendations on the registration must be accepted by the departments and implemented by the department of agriculture.

(9) (a) Pesticides registered under any federal law when canceled for sale and use in total or in part by a federal agency responsible for registration are considered canceled in total or in part for sale and use in Montana. The cancellation is effective on the final date of sale or use allowed under the federal law and rules or orders of the federal agency. Except as provided in subsection (9)(b), if the federal cancellation allows existing stock to be used past the final date of cancellation, the sale or use in this state may not exceed 2 years. The department shall provide technical assistance to any person in possession of the products to ensure their proper disposal, relabeling, or removal.

(b) Pesticide products canceled under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136a-1(i)(5) may be sold and used according to environmental protection agency labeling requirements or other requirements for a period not to exceed 6 years from the date that distribution from the registrant, manufacturer, formulator, or distributor is terminated."

Section 2. Section 80-15-302, MCA, is amended to read:

"80-15-302. Special funding. (1) A fee of ~~$80~~ *$95* is assessed for the registration of pesticides in addition to the fee imposed by 80-8-201(4).

(2) The money collected from the registration fee established by subsection (1) must be deposited in the state special revenue fund as follows:

(a) Each of the following state agencies must be credited $15,000 for purposes of administering or assisting the department in administering this chapter:

(i) department of environmental quality; and

(ii) Montana state university-Bozeman extension service.

(b) The department must be credited with the remainder of the registration fee money to use in administering this chapter.

(3) A fee of $10 is assessed for the registration of fertilizers in addition to the fee imposed by 80-10-201(1). The additional fee must be used for the ground water protection responsibilities of the department relating to fertilizers. Revenues collected from this fee must be credited to the commercial fertilizer agricultural chemical ground water account within the state special revenue fund for the administration of this chapter.

(4) The department may direct the board of investments to invest the portion of the money collected under this section that is credited to the department pursuant to the provisions of 17-6-201. The income from the investments must be deposited in the state special revenue fund and credited to the department."

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved March 28, 2001

CHAPTER NO. 142

[HB 127]

AN ACT REVISING THE ISSUANCE OF GASOLINE AND SPECIAL FUEL DISTRIBUTOR LICENSES; REQUIRING A MINIMUM SECURITY IN THE AMOUNT OF $25,000 FROM LICENSED DISTRIBUTORS WHO EXPORT OR IMPORT GASOLINE OR SPECIAL FUEL; PROVIDING FOR DENIAL OR REVOCATION OF A GASOLINE OR SPECIAL FUEL DISTRIBUTOR LICENSE; AMENDING SECTIONS 15-70-202 AND 15-70-341, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-202, MCA, is amended to read:

"15-70-202. License and security of gasoline distributors — ***denial or revocation of license.*** (1) (a) ~~All~~ *Each* gasoline ~~distributors~~ *distributor*, including ~~exporters~~ *an exporter and importer*, as *those terms are* defined in 15-70-201, ~~and a person who imports, as defined in 15-70-201,~~ prior to the commencement of doing business, shall file:

(i) an application for a license with the department ~~of transportation~~ on forms prescribed and furnished by the department setting forth the information ~~as~~ *that* may be requested by the department; and

(ii) security with the department in an amount to be determined by the department.

(b) (i) ~~The~~ *Except as provided in subsection (1)(b)(ii), the* required amount of security may not exceed twice the estimated amount of gasoline taxes *that* the distributor will pay to this state each month.

(ii) The minimum required security for a distributor who imports or exports gasoline, or both, is $25,000.

~~(b)~~*(c)* Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or canceled.

(2) The department may deny the issuance of a gasoline distributor license or revoke a gasoline distributor license if it determines that the applicant or distributor:

(a) has violated any provision of Title 15, chapter 70, or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the gasoline license tax.

(3) If an application for a gasoline distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.

~~(2)~~*(4)* ~~"Security"~~ *As used in this section "security"* means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) a deposit made by the distributor with the department, under *the* conditions ~~as~~ *that* the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

~~(3)~~*(5)* Failure to obtain a gasoline distributor license as required in this section subjects the distributor to the provisions of 15-70-233 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

(6) The owner of a commercial motor vehicle that is engaged in transporting fuel for a distributor is not subject to the provisions of this section."

Section 2. Section 15-70-341, MCA, is amended to read:

"**15-70-341. License~~, reissuance fee,~~ and security of special fuel distributors** ***— denial or revocation of license — reissuance fee.*** (1) (a) ~~All~~ *Each* special fuel ~~distributors~~ *distributor*, including ~~importers~~ *an exporter* and ~~exporters~~ *importer*, as *those terms are* defined in 15-70-301, prior to the commencement of doing business, shall file:

(i) an application for a license with the department, on forms prescribed and furnished by the department, setting forth the information that may be requested by the department; and

(ii) security with the department in an amount to be determined by the department.

(b) *(i)* ~~The~~ *Except as provided in subsection (1)(b)(ii), the* required amount of security may not exceed twice the estimated amount of special fuel taxes the distributor will pay to this state each month.

(ii) The minimum required security for a distributor who imports or exports special fuel, or both, is $25,000.

(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that ~~continues~~ *is* in force until surrendered or revoked.

(2) The department may deny the issuance of a special fuel distributor license or revoke a special fuel distributor license if it determines that the applicant or distributor:

(a) has violated any provision of Title 15, chapter 70, or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the special fuel license tax.

(3) If an application for a special fuel distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.

~~(2)~~*(4)* If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of $100.

~~(3)~~*(5)* Failure to obtain a special fuel distributor license as required in this section subjects the distributor to the provisions of 15-70-357 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

~~(4)~~*(6)* As used in this section, "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or

(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(7) The owner of a commercial motor vehicle that is engaged in transporting special fuel for a distributor is not subject to the provisions of this section."

Section 3. Effective date. [This act] is effective July 1, 2001.

Approved March 29, 2001

CHAPTER NO. 143

[HB 143]

AN ACT GENERALLY REVISING AND CLARIFYING THE REPORTING OF S. CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, AND OTHER PASS-THROUGH ENTITY INCOME; DEFINING MONTANA SOURCE INCOME FOR THE PURPOSES OF INDIVIDUAL INCOME TAXES; PROVIDING FOR COMPOSITE RETURNS AND BACKUP WITHHOLDING FOR NONRESIDENTS; PROVIDING A PENALTY FOR A PASS-THROUGH ENTITY'S FAILURE TO FILE INFORMATION RETURNS; PROVIDING A RESIDENT SHAREHOLDER CREDIT FOR CERTAIN STATE TAXES PAID BY AN S. CORPORATION; CLARIFYING THAT SHELL AND PASSIVE PASS-THROUGH ENTITIES DO NOT QUALIFY FOR THE QUALIFIED ENDOWMENT CREDIT; REQUIRING THE DEPARTMENT OF REVENUE TO REVIEW THE TAXATION OF PASS-THROUGH ENTITIES AND REPORT TO THE REVENUE AND TAXATION INTERIM COMMITTEE; AMENDING SECTIONS 13-37-218, 15-30-101, 15-30-105, 15-30-124, 15-30-133, 15-30-241, 15-31-101, 15-31-162, 15-31-201, AND 15-31-603, MCA; REPEALING SECTIONS 15-31-202 AND 15-31-209, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-218, MCA, is amended to read:

"**13-37-218. Limitations on receipts from political committees.** A candidate for the state senate may receive no more than $1,000 in total combined monetary contributions from all political committees contributing to ~~his~~ *the candidate's* campaign, and a candidate for the state house of representatives may receive no more than $600 in total combined monetary contributions from all political committees contributing to ~~his~~ *the candidate's* campaign. The ~~foregoing~~ limitations ~~shall~~ *in this section must* be multiplied by the inflation factor as defined in 15-30-101~~(8)~~ for the year in which general elections are held ~~after 1984;~~. ~~the~~ *The* resulting figure ~~shall~~ *must* be rounded off to the nearest $50 increment. The commissioner ~~of political practices~~ shall publish the revised limitations as a rule. In-kind contributions must be included in computing these limitation totals. The limitation provided in this section does not apply to contributions made by a political party eligible for a primary election under 13-10-601."

Section 2. Section 15-30-101, MCA, is amended to read:

"**15-30-101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

(a) that is treated as an association for federal income tax purposes;

(b) for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is not in effect; and

(c) that is not a disregarded entity.

~~(3)~~*(4)* "Department" means the department of revenue.

(5) "Disregarded entity" means a business entity:

(a) that is disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as those regulations may be labeled or amended; or

(b) that is a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided in section 1361(b)(3) of the Internal Revenue Code (26 U.S.C. 1361(b)(3)).

~~(4)~~*(6)* "Dividend" means*:*

(a) any distribution made by a *C.* corporation out of its earnings ~~or~~ *and* profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends*; and*

(b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

~~(5)~~*(7)* "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

~~(6)~~*(8)* "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

~~(7)~~*(9)* "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code ~~of 1954~~ (26 U.S.C. 61) or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code ~~of 1954~~ (26 U.S.C. 85) as amended.

~~(8)~~*(10)* "Inflation factor" means a number determined for each ~~taxable~~ *tax* year by dividing the consumer price index for June of the ~~taxable~~ *tax* year by the consumer price index for June 1980.

~~(9)~~*(11)* "Information agents" includes all individuals~~, corporations, associations, and partnerships,~~ *and entities* acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(12) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

~~(10)~~*(13)* "Knowingly" is as defined in 45-2-101.

(14) "Limited liability company" means a limited liability company, domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.

(15) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

~~(11)~~*(16)* ~~"Montana lottery~~ *"Lottery* winnings" means income paid either in lump sum or in ~~annual~~ *periodic* payments to:

(a) a resident taxpayer on a lottery ticket; or

(b) a nonresident taxpayer on a lottery ticket purchased in Montana.

(17) (a) "Montana source income" means:

(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;

(ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation carried on in the state;

(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;

(iv) interest received or accrued while a resident of the state or from an installment sale of real property or tangible commercial or business personal property located in the state;

(v) dividends received or accrued while a resident of the state;

(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;

(vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;

(viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;

(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.

(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;

(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;

(xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiv) social security benefits received or accrued while a resident of the state;

(xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state; and

(xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

(ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

~~(12)~~*(18)* "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(19) "Nonresident" means a natural person who is not a resident.

~~(13)~~*(20)* "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(21) "Partner" means a member of a partnership or a manager or member of any other entity, if treated as a partner for federal income tax purposes.

(22) "Partnership" means a general or limited partnership, limited liability partnership, limited liability company, or other entity, if treated as a partnership for federal income tax purposes.

(23) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

~~(14)~~*(24)* "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code (26 U.S.C. 401), or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code (26 U.S.C. 401 through 408) to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

~~(15)~~*(25)* "Purposely" is as defined in 45-2-101.

~~(16)~~*(26)* "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(17)~~*(27)* "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

(28) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is in effect.

~~(18)~~*(29)* "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

~~(19)~~*(30)* "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

~~(20)~~*(31)* "Taxable year" or "tax year" means the taxpayer's taxable year for federal income tax purposes.

~~(21)~~*(32)* "Taxpayer" includes any person, *entity,* or fiduciary, resident or nonresident, subject to a tax *or other obligation* imposed by this chapter and *unless otherwise specifically provided* does not include ~~corporations~~ *a C. corporation.*"

Section 3. Taxation of partners, shareholders, managers, and members. (1) A partner of a partnership that has Montana source income and a resident who is a partner of a partnership during any part of the tax year shall, in computing net income, include the partner's distributive share of partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit as determined pursuant to section 704 of the Internal Revenue Code (26 U.S.C. 704) and shall furnish a copy of the partner's federal schedule of the partner's share of income, deductions, and credits when filing the Montana tax return.

(2) A shareholder of an S. corporation that has Montana source income and a resident who is a shareholder of an S. corporation during any part of the tax year shall, in computing net income, include the shareholder's pro rata share of separately and nonseparately stated S. corporation income, loss, deduction, or credit as determined pursuant to sections 1366 and 1377 of the Internal Revenue Code (26 U.S.C. 1366 and 1377) and shall furnish a copy of the shareholder's federal schedule of the shareholder's share of income, deductions, and credits when filing the Montana tax return.

(3) A partner, shareholder, manager, member, or other owner of a disregarded entity that has Montana source income and a resident who is a partner, shareholder, manager, member, or other owner of a disregarded entity during any part of the tax year shall, in computing net income, include the disregarded entity's income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit.

Section 4. Composite returns and tax. (1) A partnership or S. corporation may elect to file a composite return and pay a composite tax on behalf of participants. A participant is a partner, shareholder, manager, or member who:

(a) is a nonresident individual whose only Montana source income for the tax year is from the entity and other partnerships or S. corporations electing to file the composite return and pay the composite tax on behalf of that partner, shareholder, manager, or member; and

(b) consents to be included in the filing.

(2) (a) Each participant's composite tax liability is the product obtained by:

(i) determining the tax that would be imposed, using the rates specified in 15-30-103, on the sum obtained by subtracting the allowable standard deduction for a single individual and one exemption allowance from the participant's share of the entity's income from all sources as determined for federal income tax purposes; and

(ii) multiplying that amount by the ratio of the entity's Montana source income to the entity's income from all sources for federal income tax purposes.

(b) A participant's share of the entity's income is the aggregate of the participant's share of the entity's income, gain, loss, or deduction or item of income, gain, loss, or deduction.

(3) The composite tax is the sum of each participant's composite tax liability.

(4) The electing entity:

(a) shall remit the composite tax to the department;

(b) must be responsible for any assessments of additional tax, penalties, and interest, which additional assessments must be based on the total liability reflected in the composite return;

(c) shall represent the participants in any appeals, claims for refund, hearing, or court proceeding in any matters relating to the filing of the composite return;

(d) shall make quarterly estimated tax payments as prescribed by 15-30-241 computed separately for each participant included in the filing of a composite return; and

(e) shall retain powers of attorney executed by each participant included in the composite return, authorizing the entity to file the composite return and to act on behalf of each participant.

(5) The composite return must be made on forms the department prescribes and filed on or before the due date, including extensions, for filing the entity information return. The composite return is in lieu of an individual income tax return required under 15-30-142 and 15-30-144.

(6) The composite tax is in lieu of the tax imposed under 15-30-103 and 15-30-105.

(7) The department may adopt rules that are necessary to implement and administer this section.

Section 5. Consent or withholding — notice. (1) A pass-through entity required to file an information return provided in 15-30-133 that has a partner, shareholder, manager, member, or other owner who is a nonresident individual shall:

(a) on or before the due date, including extensions, for the information return:

(i) file a composite return with respect to the individual nonresident; or

(ii) file an agreement of the individual nonresident to:

(A) file a return in accordance with the provisions of 15-30-142;

(B) timely pay all taxes imposed with respect to income of the pass-through entity; and

(C) be subject to the personal jurisdiction of the state for the collection of income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; and

(b) within the later of 180 days after the due date, including extensions, for the information return or the date the notice is sent as provided in subsection (2), remit an amount equal to the highest marginal tax rate in effect under 15-30-103 multiplied by the share of Montana source income reflected on the pass-through entity's information return of each nonresident individual for whom a composite return or agreement provided in subsection (1)(a) was not filed.

(2) As soon as practical, but not later than 60 days after the due date, including extensions, for the information return, the department shall send notice to the pass-through entity of the need to comply with subsection (1) and that the pass-through entity may be subject to penalties under 15-30-133. If the department does not send notice, the pass-through entity is not subject to withholding.

(3) Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to subsection (1)(b) must be considered as a payment on the account of the nonresident individual for the income tax imposed on the nonresident individual for the tax year pursuant to 15-30-105.

(4) A pass-through entity is entitled to recover a payment made pursuant to subsection (1)(b) from the partner, shareholder, manager, member, or other owner on whose behalf the payment was made.

Section 6. Consent or withholding. (1) A pass-through entity that is required to file an information return as provided in 15-30-133 and that has a partner, shareholder, manager, member, or other owner who is a nonresident individual shall, on or before the due date, including extensions, for the information return:

(a) file a composite return with respect to the individual nonresident;

(b) file an agreement of the individual nonresident to:

(i) file a return in accordance with the provisions of 15-30-142;

(ii) timely pay all taxes imposed with respect to income of the pass-through entity; and

(iii) be subject to the personal jurisdiction of the state for the collection of income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

(c) remit an amount equal to the highest marginal tax rate in effect under 15-30-103 multiplied by the nonresident individual's share of Montana source income reflected on the pass-through entity's information return.

(2) Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to subsection (1)(c) must be considered as a payment on the account of the nonresident individual for the income tax imposed on the nonresident individual for the tax year pursuant to 15-30-105.

(3) A pass-through entity is entitled to recover a payment made pursuant to subsection (1)(c) from the partner, shareholder, manager, member, or other owner on whose behalf the payment was made.

Section 7. Section 15-30-105, MCA, is amended to read:

"**15-30-105. Tax on nonresident.** (1) *(a)* A tax ~~on income earned in Montana~~ is imposed upon each ~~person not a resident of this state. The tax must be levied, collected, and paid annually at the rates specified in 15-30-103 with respect to the nonresident's entire net income. After calculating the tax imposed, the tax due and payable must be determined based upon the ratio of income earned in Montana to total income. Interest income from installment sales of real or tangible commercial or business property located in Montana is considered~~

~~income earned in Montana. Income derived from Montana lottery winnings is considered income earned in Montana~~ *nonresident equal to the tax computed under 15-30-103 as if the nonresident were a resident during the entire tax year, multiplied by the ratio of Montana source income to total income from all sources.*

(b) This subsection (1) does not permit any items of income, gain, loss, deduction, expense, or credit to be counted more than once in determining the amount of Montana source income, and the department may adopt rules that are reasonably necessary to prevent duplication or to provide for allocation of particular items of income, gain, loss, deduction, expense, or credit.

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, each nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. The tax is in lieu of the tax imposed under 15-30-103 *and subsection (1)(a) of this section*. The gross volume of sales made in Montana during the tax year must be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact."

Section 8. Section 15-30-124, MCA, is amended to read:

"**15-30-124. Credit allowed resident taxpayers for income taxes imposed by foreign states *or countries*.** *(1)* Subject to the ~~following~~ conditions *provided in subsections (2) through (5)*, ~~residents~~ *a resident* of this state ~~shall be~~ *is* allowed a credit against the taxes imposed by this chapter for*:*

(a) income taxes imposed by and paid to another state or country on income taxable under this chapter~~.~~*; and*

(b) the resident's pro rata share of any income tax imposed by and paid to another state or country by an S. corporation of which the resident is a shareholder.

~~(1)~~*(2)* The credit ~~shall be~~ *is* allowed only for taxes paid to ~~such other~~ *another* state *or country* on income derived from sources within ~~such~~ *the other* state *or country* ~~which~~ *that* is taxable under the laws of ~~such~~ *the other* state or country ~~irrespective~~ *regardless* of the residence or domicile of the ~~recipient~~ *taxpayer*.

~~(2)~~*(3)* The credit ~~shall~~ *is* not ~~be~~ allowed if ~~such~~ *the* other state or country allows residents of this state a credit against the taxes imposed by ~~such~~ *the other* state *or country* for taxes paid or payable under this chapter.

~~(3)~~*(4)* The allowable credit ~~shall~~ *must* be computed by *a* formula ~~to be~~ prescribed by the department.

(5) For the purposes of the credit under subsection (1)(b):

(a) "income tax" has the same meaning as provided in Article II of 15-1-601;

(b) the S. corporation must have made and have in effect on the last day of its tax year a valid election under subchapter S. of Chapter 1 of the Internal Revenue Code; and

(c) the credit applies only to taxes paid by the S. corporation on income taxable under this chapter."

Section 9. Section 15-30-133, MCA, is amended to read:

"15-30-133. Income *or license* tax involving ~~partnership~~ *pass-through entities* — ~~partnership statements~~ *information returns* required. *(1)* ~~Individuals carrying on a business in~~ *Except as otherwise provided:*

(a) a partnership ~~shall be liable for income tax only in their individual capacity~~ *is not subject to taxes imposed in Title 15, chapter 30 or 31;* ~~. There shall be included, in computing the net income of each partner, his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or if his net income for such taxable year is computed upon the basis of a period different from that upon the basis for which the net income of the partnership is computed, then there shall be included his distributive share of the net income of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which the partner's net income is computed. Taxpayers who are members of partnerships are required by the department to furnish a copy of their federal partnership return.~~

(b) an S. corporation is not subject to the taxes imposed in Title 15, chapter 30 or 31; and

(c) a disregarded entity is not subject to the taxes imposed in Title 15, chapter 30 or 31.

(2) Except as otherwise provided, each partner of a partnership described in subsection (1)(a), each shareholder of an S. corporation described in subsection (1)(b), and each partner, shareholder, manager, member, or other owner of an entity described in subsection (1)(c) is subject to the taxes provided in Title 15, chapter 30, if an individual, and to the taxes provided in Title 15, chapter 31, if a C. corporation.

(3) Income realized for federal income tax purposes by a financial institution that has elected to be treated as an S. corporation under subchapter S. of Chapter 1 of the Internal Revenue Code and by its shareholders that is attributable to the financial institution's change from the bad debt reserve method of accounting provided in section 585 of the Internal Revenue Code, 26 U.S.C. 585, is not taxable under Title 15, chapter 30 or 31, to the extent that the aggregate deductions allowed for federal income tax purposes under 26 U.S.C. 585 exceeded the aggregate deductions that the financial institution is allowed under 15-31-114(1)(b)(i).

(4) (a) A partnership that has Montana source income shall on or before the 15th day of the 4th month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal partnership return. The return must include:

(i) the name, address, and social security or federal identification number of each partner;

(ii) the partnership's Montana source income;

(iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iv) each partner's distributive share of income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(v) any other information the department prescribes.

(b) An S. corporation that has Montana source income shall on or before the 15th day of the 3rd month following the close of its annual accounting period file

an information return on forms prescribed by the department and a copy of its federal S. corporation return. The return must include:

(i) the name, address, and social security or federal identification number of each shareholder;

(ii) the S. corporation's Montana source income and each shareholder's pro rata share of separately and nonseparately stated Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iii) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(iv) any other information the department prescribes.

(c) A disregarded entity that has Montana source income shall furnish the information and file the returns the department prescribes. The return must include:

(i) the name, address, and social security or federal identification number of each manager, member, or other owner during the tax year;

(ii) the entity's Montana source income; and

(iii) any other information the department prescribes.

(d) (i) Except as provided in subsection (4)(d)(ii), a pass-through entity that fails to file an information return required by this section by the due date, including any extension, must be assessed a late filing penalty of $10 multiplied by the number of the entity's partners, shareholders, managers, members, or other owners at the close of the tax year for each month or fraction of a month, not to exceed 5 months, that the entity fails to file the information return. The department may waive the penalty imposed by this subsection (4)(d)(i) as provided in 15-1-206.

(ii) The penalty imposed under subsection (4)(d)(i) may not be imposed on a pass-through entity that has 10 or fewer partners, shareholders, managers, members, or other owners each of whom:

(A) is an individual, an estate of a deceased individual, or a C. corporation;

(B) has filed any required return or other report with the department by the due date, including any extension of time, for the return or report; and

(C) has paid all taxes when due."

Section 10. Section 15-30-241, MCA, is amended to read:

"**15-30-241. Estimated tax — payment — exceptions — interest.** (1) (a) Each individual subject to tax under this chapter, except farmers or ranchers as defined in subsection (6), shall pay for the tax year, through employer withholding, as provided in 15-30-202, through payment of estimated tax in four installments, as provided in subsection (2) of this section, or through a combination of employer withholding and estimated tax payments, at least:

(i) 90% of the tax for the current tax year, less tax credits and withholding allowed the taxpayer; or

(ii) an amount equal to 100% of the individual's tax liability for the preceding tax year, if the preceding tax year was a period of 12 months and if the individual filed a return for the tax year.

(b) Payment of estimated taxes under this section is not required if:

(i) the combined tax liability of employer withholding and estimated tax for the current year is less than $500 after reductions for credits and withholding;

(ii) the individual did not have any tax liability for the preceding tax year, which was a tax year of 12 months, and if the individual was a citizen or resident of the United States throughout that tax year;

(iii) the underpayment was caused by reason of casualty, disaster, or other unusual circumstances that the department determines to constitute good cause; or

(iv) the individual retired in the tax year after having attained the age of 62 or if the individual became disabled in the tax year. In addition, payment of estimated taxes under this section is not required in the tax year following the tax year in which the individual retired or became disabled.

(2) Estimated taxes must be paid in four installments according to one of the following schedules:

(a) For each taxpayer whose tax year begins on January 1, estimated tax payments are due on the following dates:

Installment	Date
First	April 15
Second	June 15
Third	September 15
Fourth	January 15 of the following tax year

(b) For each taxpayer whose tax year begins on a date other than January 1, estimated tax payments are due on the following dates:

Installment	Date
First	15th day of the 4th month following the beginning of the tax year
Second	15th day of the 6th month following the beginning of the tax year
Third	15th day of the 9th month following the beginning of the tax year
Fourth	15th day of the month following the close of the tax year

(3) (a) Except as provided in subsection (4), each installment must be 25% of the required annual payment determined pursuant to subsection (1). If the taxpayer's tax situation changes, each succeeding installment must be proportionally changed so that the balance of the required annual payment is paid in equal installments over the remaining period of time.

(b) If the taxpayer's tax situation changes after the date for the first installment or any subsequent installment, as specified in subsection (2)(a) or (2)(b), so that the taxpayer is required to pay estimated taxes, the taxpayer shall pay 25% for each succeeding installment except for the first one in which a payment is required. For estimated taxes required to be paid beginning with the second installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 50% for that installment and 25% for the third and fourth installments, respectively. For estimated taxes required to be paid beginning with the third installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 75% for that installment and 25% for the fourth installment.

(4) (a) If for any required installment the taxpayer determines that the installment payment is less than the amount determined under subsection (3)(a), the lower amount may be paid as an annualized income installment.

(b) For any required installment, the annualized income installment is the applicable percentage described in subsection (4)(c) applied to the tax computed on the basis of annualized taxable income in the tax year for the months ending before the due date for the installment less the total amount of any prior required installments for the tax year.

(c) For the purposes of this subsection (4), the applicable percentage is determined according to the following schedule:

Required Installment	Applicable Percentage
First	22.5%
Second	45%
Third	67.5%
Fourth	90%

(d) A reduction in a required installment resulting from the application of an annualized income installment must be recaptured by increasing the amount of the next required installment, determined under subsection (3)(a), by the amount of the reduction. Any subsequent installment must be increased by the amount of the reduction until the amount has been recaptured.

(5) (a) If an estimated tax, an employer withholding tax, or a combination of estimated tax and employer withholding tax is underpaid, there must be added to the amount due under this chapter interest equal to 12% a year on the amount of the underpayment. The interest is computed on the amount of the underpayment, as determined in subsection (5)(b), for the period from the time the payment was due to the date payment was made or to the 15th day of the 4th month of the year following the tax year in which the payment was to be made, whichever is earlier.

(b) For the purpose of determining the amount of interest due in subsection (5)(a), the amount of the underpayment is the required installment amount less the installment amount paid, if any, on or before the due date for the installment.

(c) For the purpose of determining the amount of interest due in subsection (5)(a), an estimated payment must be credited against unpaid required installments in the order in which those installments are required to be paid.

(d) For each married taxpayer filing separately on the same form, the interest provided for in subsection (5)(a) must be computed on the combined tax liability after reductions for credits and withholding, as shown on the taxpayer's return.

(e) Interest may not be charged with respect to any underpayment of the fourth installment of estimated taxes if:

(i) the taxpayer pays in full the amount computed on the return as payable; and

(ii) the taxpayer files a return on or before the last day of the month following the close of the tax year referred to in subsection (2)(a) or (2)(b).

(6) For the purposes of this section, "farmer or rancher" means a taxpayer who derives at least 66 2/3% of the taxpayer's gross income, as defined in 15-30-101~~(7)~~, from farming or ranching operations, or both.

(7) The department shall promulgate rules governing reasonable extensions of time for paying the estimated tax. An extension may not be for more than 6 months."

Section 11. Section 15-31-101, MCA, is amended to read:

"**15-31-101. Organizations subject to tax.** (1) The term "corporation" includes ~~associations~~ *an association*, joint-stock ~~companies~~ *company*, common-law ~~trusts and~~ *trust or* business ~~trusts~~ *trust* ~~which do~~ *that does* business in an organized capacity, ~~and~~ all other corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States, *and any limited liability company, limited liability partnership, partnership, or other entity that is treated as an association for federal income tax purposes and that is not a disregarded entity.*

(2) The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(3) Except as provided in 15-31-103 or 33-2-705(4) or as may be otherwise specifically provided, every corporation engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state the percentage or percentages of its total net income for the preceding taxable year at the rate set forth in this chapter. In the case of corporations having income from business activity which is taxable both within and outside of this state, the license fee must be measured by the net income derived from or attributable to Montana sources as determined under part 3. Except as provided in 15-31-502, this tax is due and payable on the 15th day of the 5th month following the close of the taxable year of the corporation. However, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

(4) Every bank organized under the laws of the state of Montana, of any other state, or of the United States and every savings and loan association organized under the laws of this state or of the United States is subject to the Montana corporation license tax provided for under this chapter. A foreign capital depository chartered under the laws of Montana is not subject to the Montana corporation license tax provided for under this chapter until October 1, 2012. For taxable years beginning on and after January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."

Section 12. Section 15-31-162, MCA, is amended to read:

"**15-31-162. (Temporary) Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment.** A contribution to a qualified endowment, as defined in 15-30-165, by a small business corporation, as defined in 15-31-201, a partnership, or a limited liability company, as defined in 35-8-102, *if carrying on any trade or business for which deductions would be allowed under section 162 of the Internal*

Revenue Code (26 U.S.C. 162) qualifies for the credit provided in 15-31-161. The credit must be attributed to shareholders, partners, or members or managers of a limited liability company in the same proportion used to report the corporation's, partnership's, or limited liability company's income or loss for Montana income tax purposes. The maximum credit that a shareholder of a small business corporation, a partner of a partnership, or a member or manager of a limited liability company may claim in a year is $10,000, subject to the limitations in 15-30-166(2). The credit allowed under this section may not exceed the taxpayer's income tax liability. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. (Terminates December 31, 2001—sec. 9, Ch. 537, L. 1997.)"

Section 13. Section 15-31-201, MCA, is amended to read:

"15-31-201. Definition of "small business corporation". (1) Except as provided in subsection (2), the term "small business corporation" *is synonymous with "S. corporation" as defined in 15-30-101 and* means a corporation ~~that has made a valid election under subchapter S. of Chapter 1 of the Internal Revenue Code~~ *for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is in effect.* ~~A small business corporation shall attach a copy of the approved federal election with the Montana return filed for the first taxable year the federal election is effective.~~

(2) A corporation that would otherwise be a small business corporation may continue to be subject to the taxes imposed by Title 15, chapter 31, if all of the following conditions are met:

(a) on December 31, 1991, the corporation was doing business in Montana and had a valid subchapter S. corporation election but had not elected to be taxed as a Montana small business corporation;

(b) after December 31, 1991, the corporation has not filed as a Montana small business corporation; and

(c) the corporation files a corporate license tax return, as required by 15-31-111, reporting all income or loss as determined under Title 15, chapter 31, and attaches a copy of the federal subchapter S. corporate tax return."

Section 14. Section 15-31-603, MCA, is amended to read:

"15-31-603. List of ~~corporations~~ *entities* furnished by secretary of state. ~~The~~ *On or before December 31 of each year, the* secretary of state shall direct a list of all corporations, *limited partnerships, limited liability companies, and limited liability partnerships,* foreign and domestic, subject to the terms of Title 35, ~~chapter~~ *chapters* 1, *4, 5, 8, 9, 10, and 12,* to the department of revenue. The list ~~shall~~ *must* include the following information:

(1) the name of the ~~corporation~~ *entity*;

(2) the principal office of the ~~corporation~~ *entity*;

(3) the name and address of the registered agent of the ~~corporation~~ *entity* in Montana, *if applicable*; and

(4) ~~such~~ other information ~~as~~ *that* the director of the department of revenue may require."

Section 15. Review of pass-through entity taxation by department. (1) The department shall review, with the assistance of interested parties, the reporting and taxation of income that is flowing through pass-through entities and the method of reporting and taxation of this income in states other than Montana and shall consider recommendations concerning the methodology that Montana should use to ensure fair and equitable taxation of income that flows through pass-through entities to other entities.

(2) The department shall report to the revenue and taxation interim committee at least once each year on the findings and recommendations of the review conducted under subsection (1).

Section 16. Codification instruction — code commissioner instruction. (1) (a) [Sections 3 through 6] are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 3 through 6].

(b) The code commissioner shall codify [sections 5 and 6] as the same section number. [Section 5] is a temporary section and terminates as provided in [section 20], and [section 6] is a permanent section that is effective as provided in [section 18(3)].

(2) Sections 15-31-201 and 15-31-203 are intended to be renumbered and codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to sections 15-31-201 and 15-31-203.

(3) Section 15-30-133 is intended to be renumbered and codified in the same part as [sections 3 through 6], 15-31-201, and 15-31-203.

Section 17. Repealer. Sections 15-31-202 and 15-31-209, MCA, are repealed.

Section 18. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective October 1, 2001.

(2) [Section 8 and this section] are effective on passage and approval.

(3) [Section 6] is effective January 1, 2003.

Section 19. Applicability. (1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] applies to tax years beginning after December 31, 2002.

Section 20. Termination. [Section 5] terminates December 31, 2002.

Approved March 29, 2001

CHAPTER NO. 144

[HB 157]

AN ACT INCREASING THE PENALTY FOR TRANSFER OF AN ILLEGAL ARTICLE, OTHER THAN A WEAPON OR DANGEROUS DRUG, TO A PERSON INCARCERATED IN A STATE PRISON; MAKING THE OFFENSE A FELONY; AMENDING SECTION 45-7-307, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-7-307, MCA, is amended to read:

"45-7-307. Transferring illegal articles ~~or~~ — unauthorized communication. (1) (a) A person commits the offense of transferring illegal articles if ~~he~~ *the person* knowingly or purposely transfers any illegal article or ~~thing~~ *weapon* to a person subject to official detention or is transferred any illegal article or ~~thing~~ *weapon* by a person subject to official detention.

(b) A person convicted of transferring illegal articles *or a weapon* shall be:

(i) imprisoned in ~~the~~ *a* state prison for a term not to exceed 20 years, if ~~he conveys~~ *the item transferred is* a weapon ~~to a person subject to official detention~~;

(ii) imprisoned in ~~the~~ *a* state prison for a term not to exceed 10 years, if ~~he conveys~~ *the illegal article is* a dangerous drug, as defined in 50-32-101~~, to a person subject to official detention~~; or

(iii) *imprisoned in a state prison for a term not to exceed 13 months or be fined an amount not more than $1,500, or both, if the illegal article, other than a weapon or dangerous drug, is transferred to or from a person incarcerated in a state prison, as defined in 53-30-101(3)(c), or be* fined *an amount* not ~~to exceed~~ *more than* $100 or *be* imprisoned in the county jail for any term not to exceed 10 days, or both, if ~~he conveys any other~~ *the* illegal article ~~or thing~~, *other than a weapon or dangerous drug, is transferred* to *or from* a person ~~subject to official detention~~ *incarcerated in a place other than a state prison*.

(c) Subsection (1)(b)(iii) does not apply unless the offender knew or was given sufficient notice so that ~~he~~ *the offender* reasonably should have known that the article ~~or thing~~ ~~he~~ conveyed was an illegal article.

(2) (a) A person commits the offense of unauthorized communication if ~~he~~ *the person* knowingly or purposely communicates with a person subject to official detention without the consent of the person in charge of ~~such~~ *the* official detention.

(b) A person convicted of the offense of unauthorized communication shall be fined *an amount* not to exceed $100 or imprisoned in the county jail for any term not to exceed 10 days, or both."

Section 2. Effective date. [This act] is effective July 1, 2001.

Approved March 29, 2001

CHAPTER NO. 145

[HB 160]

AN ACT REVISING THE SPECIAL EDUCATION FUNDING FORMULA TO ESTABLISH FIXED LIMITS FOR DISTRIBUTION OF THE STATE'S TOTAL SPECIAL EDUCATION ALLOCATION; LIMITING DISTRIBUTION OF THE TOTAL ALLOCATION TO 52.5 PERCENT FOR INSTRUCTIONAL BLOCK GRANTS, 25 PERCENT FOR REIMBURSEMENT OF DISTRICTS WHOSE SPECIAL EDUCATION COSTS EXCEED THE RELATED SERVICES BLOCK GRANT PLUS THE REQUIRED DISTRICT MATCH, 17.5 PERCENT TO RELATED SERVICES BLOCK GRANTS, AND 5 PERCENT FOR SPECIAL EDUCATION COOPERATIVE AND JOINT BOARD ADMINISTRATION AND TRAVEL; ELIMINATING THE REQUIREMENT TO DISTRIBUTE TO DISTRICTS PRO RATA SHARES OF AVAILABLE SPECIAL EDUCATION APPROPRIATIONS WHEN TOTAL SPECIAL EDUCATION COSTS EXCEED

LEGISLATIVE APPROPRIATIONS; AMENDING SECTIONS 20-7-431 AND 20-9-321, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, state funding for special education has not kept pace with school districts' required special education expenditures, which has caused a financial shift under the formula from providing districts with block grants to reimbursing districts for disproportionate special education costs; and

WHEREAS, this financial shift has made a school district's funding level less predictable, and those districts receiving reimbursements for disproportionate costs have not been adequately compensated for extraordinarily high special education costs; and

WHEREAS, a revision of the current special education funding formula is necessary to stabilize the proportion of the state appropriation for special education that is distributed through block grants and for special education cooperative administration and travel.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-431, MCA, is amended to read:

"20-7-431. Allowable cost schedule for special programs — superintendent to make rules — annual accounting. (1) For the purpose of determining the allowable cost payment amount for special education as defined in 20-9-321, the following allowable costs and reports must be reviewed by the superintendent of public instruction for the purposes of determining the amount of the allowable cost payment for special education payments and a district's special education expenditures:

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses, including:

(i) the cost of salaries and benefits of special program teachers, regular program teachers, and teacher aides, corresponding to the working time that each person devotes to the special program;

(ii) the total cost of teaching supplies and textbooks for special programs;

(iii) the purchase, rental, repair, and maintenance of instructional equipment required to implement a student's individualized education program;

(iv) activities associated with teacher assistance teams that provide prereferral intervention;

(v) the cost of contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies;

(vi) transportation costs for special education instructional personnel who travel on an itinerant basis from school to school or district to district or to in-state child study team meetings or in-state individualized education program meetings;

(b) related services, including:

(i) the cost of salaries and benefits of professional supportive personnel, corresponding to the working time that each person devotes to the special program. Professional supportive personnel may include special education supervisors, speech-language pathologists, audiologists, counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) the cost of salaries and benefits of clerical personnel who assist professional personnel in supportive services, corresponding to the working time that each person devotes to the special program;

(iii) the cost of supplies for special programs;

(iv) activities associated with teacher assistance teams that provide prereferral interventions;

(v) the cost of contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies;

(vi) transportation costs for special ~~education related~~ *education-related* services personnel who travel on an itinerant basis from school to school or district to district or to in-state child study team meetings or in-state individualized education program meetings;

(vii) equipment purchase, rental, repair, and maintenance required to implement a student's individualized education program;

(viii) the additional cost of special education cooperatives or joint boards, including operation and maintenance, travel, recruitment, and administration.

(2) The superintendent of public instruction shall adopt rules in accordance with the policies of the board of public education for keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs.

(3) An annual accounting of all expenditures of school district general fund money for special education must be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for the accounting.

(4) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, *or* the federal social security system~~,~~ or the costs for unemployment compensation insurance.

(5) ~~(a)~~ Notwithstanding other provisions of the law, the superintendent of public instruction may not approve an allowable cost payment amount for special education that exceeds legislative appropriations~~; however,~~. *However,* any unexpended balance from the first year of a biennial appropriation may be spent in the second year of the biennium in addition to the second year appropriation.

~~(b) If the total special education allowable cost payment, as determined in 20-9-321, exceeds legislative appropriations available for special education, each district shall receive a pro rata share of the available appropriations.~~"

Section 2. Section 20-9-321, MCA, is amended to read:

"**20-9-321. Allowable cost payment for special education.** (1) For the purpose of establishing the allowable cost payment for a current year special education program for a school district, the superintendent of public instruction shall determine the total special education payment to a school district, cooperative, or joint board for special education services formed under 20-3-361 prior to July 1, 1992, using the following factors:

(a) the district ANB student count as established pursuant to 20-9-311 and 20-9-313;

(b) a per-ANB amount for the special education instructional block grant;

(c) a per-ANB amount for the special ~~education related~~ *education-related* services block grant;

(d) ~~weighted cost factors~~ *an amount* for cooperatives or joint boards meeting the requirements of 20-7-457, to compensate for the additional costs of operations and maintenance, travel, supportive services, recruitment, and administration; *and*

(e) ~~district and cooperative expenditure reports; and~~

~~(f)~~ any other data required by the superintendent of public instruction to administer the provisions of this section.

(2) *(a) The total special education allocation must be distributed according to the following formula:*

(i) 52.5% through instructional block grants;

(ii) 17.5% through related services block grants;

(iii) 25% to reimbursement of local districts; and

(iv) 5% to special education cooperatives and joint board for administration and travel.

(b) Special education allowable cost payments *outlined in subsection (2)(a)* must be granted to each school district and cooperative with a special education program as follows:

~~(a)~~*(i)* ~~An~~ *The* instructional block grant *limit prescribed in subsection (2)(a)(i)* must be awarded to each school district, based on the district ANB and the per-ANB special education instructional amount.

~~(b)~~*(ii)* ~~A~~ *The* special ~~education related~~ *education-related* services block grant *limit prescribed in subsection (2)(a)(ii)* must be awarded to each school district that is not a cooperative member, based on the district ANB and the per-ANB special ~~education related~~ *education-related* services amount, *or to a cooperative or joint board that meets the requirements of 20-7-457*. The special ~~education related~~ *education-related* services block grant amount for districts that are members of approved cooperatives or a joint board must be awarded to the cooperatives or joint board. ~~If a cooperative or joint board meets the requirements of 20-7-457, the special education related services block grant must be weighted for the factors in subsection (1)(d).~~

~~(3) The superintendent of public instruction shall annually determine the per-ANB special education instructional and special education related services block grant amounts based on the prior years' trustees' expenditure data for special education instruction and related services.~~

(iii) If a district's allowable costs of special education exceed the total of the special education instructional and special education-related services block grant plus the required district match required by subsection (4), the district is eligible to receive at least a 40% reimbursement of the additional costs. To ensure that the total of reimbursements to all districts does not exceed 25% of the total special education allocation limit established in subsection (2)(a)(iii), reimbursement must be made to districts for amounts that exceed a threshold level calculated

annually by the office of public instruction. The threshold level is calculated as a percentage amount above the sum of the district's block grants plus the required district match.

(iv) Of the amount distributed under subsection (2)(a)(iv), three-fifths must be distributed based on the ANB count of the school districts that are members of the special education cooperative or joint board and two-fifths must be distributed based on distances, population density, and the number of itinerant personnel under rules adopted by the superintendent of public instruction.

~~(4)~~*(3)* The superintendent of public instruction shall adopt rules necessary to implement this section.

~~(5)~~*(4)* A district shall provide a 25% local contribution for special education, matching every $3 of state special education instructional and special ~~education related~~ *education-related* services block grants with at least one local dollar. A district that is a cooperative member is required to provide the 25% match of the special ~~education related~~ *education-related* services grant amount to the special education cooperative~~, but the district is not required to match the weighted funding factors~~.

~~(6)~~*(5)* The superintendent of public instruction shall determine the actual district match based on the trustees' reports. Any unmatched portion reverts to the state and must be subtracted from the district's ensuing year's special education allowable cost payment.

~~(7) If a district's allowable costs of special education, as verified by the trustees' reports, exceed by at least 10% the total of the special education instructional and special education related services block grant plus the required district match, the district is eligible for a 65% reimbursement of the costs that exceed the additional 10%.~~

(6) A district that demonstrates severe economic hardship because of exceptional special education costs may apply to the superintendent of public instruction for an advance on the reimbursement for the year in which the actual costs will be incurred."

Section 3. Effective date — applicability. [This act] is effective July 1, 2001, and applies to school budgets for fiscal school years beginning on or after July 1, 2001.

Approved March 29, 2001

CHAPTER NO. 146

[HB 164]

AN ACT REVISING A SCHOOL DISTRICT'S GENERAL FUND BUDGET LIMITATIONS; ELIMINATING THE PROVISION PROHIBITING THE TRUSTEES OF A DISTRICT FROM ADOPTING A GENERAL FUND BUDGET THAT EXCEEDS THE GREATER OF 104 PERCENT OF THE PREVIOUS YEAR'S GENERAL FUND BUDGET OR 104 PERCENT OF THE PREVIOUS YEAR'S GENERAL FUND BUDGET PER-ANB MULTIPLIED BY THE CURRENT YEAR'S ANB FOR BUDGETING PURPOSES; AMENDING SECTION 20-9-308, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-308, MCA, is amended to read:

"**20-9-308. BASE budgets and maximum general fund budgets.** (1) The trustees of a district shall adopt a general fund budget that is at least equal to the BASE budget established for the district and, except as provided in subsection (3) ~~of this section~~, does not exceed the maximum general fund budget established for the district.

(2) ~~(a)~~ Whenever the trustees of a district adopt a general fund budget that exceeds the BASE budget for the district but does not exceed the maximum general fund budget for the district, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353.

~~(b) A general fund budget adopted under this subsection (2) may not exceed the greater of:~~

~~(i) 104% of the previous year's general fund budget; or~~

~~(ii) 104% of the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes.~~

(3) (a) (i) Except as provided in ~~subsections~~ *subsection* (3)(a)(ii), the trustees of a school district whose previous year's general fund budget exceeds the current year's maximum general fund budget amount may adopt a general fund budget up to the maximum general fund budget amount or up to 94% of the previous year's general fund budget, whichever is greater. A school district may adopt a budget under the criteria of this subsection (3)(a)(i) for a maximum of 5 consecutive years. A school district whose adopted general fund budget for the previous year exceeds the maximum general fund budget for the current year and whose ANB for the previous year exceeds the ANB for the current year by 30% or more shall reduce its adopted budget by:

(A) in the first year, 20% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(B) in the second year, 25% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(C) in the third year, 33.3% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(D) in the fourth year, 50% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year; and

(E) in the fifth year, the remainder of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year.

(ii) The trustees of a district whose general fund budget was above the maximum general fund budget established by Chapter 38, Special Laws of November 1993, and whose general fund budget has continued to exceed the district's maximum general fund budget in each school fiscal year after school fiscal year 1993 may continue to adopt a general fund budget that exceeds the maximum general fund budget. However, the budget adopted for the current year may not exceed the lesser of:

(A) the adopted budget for the previous year; or

(B) the district's maximum general fund budget for the current year plus the over maximum budget amount adopted for the previous year.

(b) The trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353.

(4) The BASE budget for the district must be financed by the following sources of revenue:

(a) state equalization aid, as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue, as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

(5) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district, as provided in 20-9-141."

Section 2. Effective date — applicability. [This act] is effective July 1, 2001, and applies to school budgets for the school fiscal year beginning on or after July 1, 2001.

Approved March 29, 2001

CHAPTER NO. 147

[HB 263]

AN ACT REMOVING THE OPTION OF A PERSON WHOSE DRIVER'S LICENSE WAS SUSPENDED FOR REFUSAL TO SUBMIT TO AN ALCOHOL OR DRUG TEST TO CHALLENGE THE SUSPENSION IN THE COUNTY OF THE PERSON'S RESIDENCE; REQUIRING THE CHALLENGE TO BE MADE IN THE COUNTY IN WHICH THE ARREST OCCURRED; AMENDING SECTION 61-8-403, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-403, MCA, is amended to read:

"61-8-403. Right of appeal to court. (1) Within 30 days after notice of the right to a hearing has been given by a peace officer, a person may file a petition to challenge the license suspension or revocation in the district court in the county where the ~~person resides or in the county where the~~ arrest was made.

(2) The court has jurisdiction and shall set the matter for hearing. The court shall give at least 10 days' written notice of the hearing to the county attorney of the county where the ~~appeal is filed~~ *arrest was made* and to the city attorney if the incident leading to the suspension or revocation resulted in a charge filed in a city or municipal court. The county attorney or city attorney may represent the state. If the county attorney and the city attorney cannot agree on who will represent the state, the county attorney shall represent the state.

(3) Upon request of the petitioner, the court may order the department to return the seized license or issue a stay of the suspension or revocation action pending the hearing.

(4) (a) The court shall take testimony and examine the facts of the case, except that the issues are limited to whether:

(i) a peace officer had reasonable grounds to believe that the person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person was placed under arrest for violation of 61-8-401;

(ii) the person is under ~~the age of~~ 21 *years of age* and was placed under arrest for a violation of 61-8-410;

(iii) the officer had probable cause to believe that the person was driving or in actual physical control of a vehicle in violation of 61-8-401 and the person was involved in a motor vehicle accident or collision resulting in property damage, bodily injury, or death; and

(iv) the person refused to submit to one or more tests designated by the officer.

(b) Based on the ~~above~~ issues *in subsection (4)(a)* and no others, the court shall determine whether the petitioner is entitled to a license or whether the petitioner's license is subject to suspension or revocation.

(5) This section does not grant a right of appeal to a state court if a driver's license is initially seized, suspended, or revoked pursuant to a tribal law or regulation that requires alcohol or drug testing of motor vehicle operators."

Section 2. Applicability. [This act] applies to implied consent tests refused after [the effective date of this act].

Approved March 28, 2001

CHAPTER NO. 148

[HB 267]

AN ACT AUTHORIZING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO DISTRIBUTE ADULT EDUCATION FUNDS FOR THE SUPPORT OF AN ADULT EDUCATION PROGRAM OPERATED BY AN ACCREDITED TRIBAL COLLEGE IN MONTANA; AMENDING SECTION 20-7-712, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-712, MCA, is amended to read:

"20-7-712. Adult basic education fund and its distribution. (1) To encourage adult basic education, the legislature may appropriate funds to the superintendent of public instruction for the support of adult basic education programs in any school ~~or~~, community college district, *or accredited tribal college located in Montana*.

(2) The superintendent of public instruction shall direct the distribution of funds appropriated by the legislature for adult basic education. The trustees of any district *or tribal college* may apply to the superintendent for funds for its adult basic education courses. The financial administration and accounting of adult basic education funds ~~shall~~ *must* be the same as that of adult education."

Section 2. Notification to tribal governments and tribal colleges. The secretary of state shall send a copy of [this act] to each tribal government and to the president of each tribal college located on the seven Montana reservations.

Section 3. Effective date. [This act] is effective July 1, 2001.

Approved March 29, 2001

CHAPTER NO. 149

[HB 294]

AN ACT RELATING TO PUBLIC EMPLOYEE RETIREMENT SYSTEM BENEFITS; AMENDING DEFINITIONS; PROVIDING FOR A PURCHASING POWER ADJUSTMENT IN BENEFITS PAID BY THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; REQUIRING AN INCREASE IN THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT FOR MEMBERS OF CERTAIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS; PROVIDING AN ELECTION BETWEEN THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT AND OTHER ADJUSTMENTS IN RETIREMENT BENEFIT FOR MEMBERS OF CERTAIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS; INCREASING THE MINIMUM MONTHLY BENEFIT ALLOWANCE FOR RETIREES AND BENEFICIARIES OF THE TEACHERS' RETIREMENT SYSTEM; AUTHORIZING UPON CERTAIN CONDITIONS AN INCREASE IN THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT FOR THE TEACHERS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-2-303, 19-3-108, 19-3-1605, 19-5-901, 19-6-101, 19-6-710, 19-7-101, 19-7-711, 19-8-101, 19-8-1105, 19-9-1009, 19-9-1010, 19-13-1010, 19-20-622, AND 19-20-719, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-2-303, MCA, is amended to read:

"19-2-303. (Temporary) Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a system, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the ~~1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually~~ *mortality table and interest rate assumptions adopted by the board.*

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a retirement system over the present value of future normal costs in that retirement system.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member to purchase various types of optional service credit as allowed by the applicable retirement system.

(8) "Annuity" means equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement system and as such are not benefits paid by a retirement system and are not subject to periodic or one-time increases.

(9) "Benefit" means the service or disability retirement or survivorship benefit payment provided by a retirement system.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(12) "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement system and that are used to calculate service or disability retirement or survivorship benefits under a retirement system.

(13) "Department" means the department of administration.

(14) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits or lump-sum payments upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(15) "Disability" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(16) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer.

(17) "Employer" means a governmental entity participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees.

(18) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

(19) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(20) "Inactive member" means a member who is not an active or retired member.

(21) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999.

(22) "Member" means any person with accumulated contributions and service credited with a retirement system or receiving a retirement benefit on account of the person's previous service credited in a retirement system.

(23) "Membership service" or "years of service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(24) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a retirement system during any year in the future. Normal cost does not include any portion of the supplemental costs of a retirement system.

(25) "Pension" means benefit payments for life derived from contributions to a system made from state- or employer-controlled funds.

(26) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system in public trust.

(27) "Regular contributions" means contributions required from members under a retirement system.

(28) "Regular interest" means interest at the rate set from time to time by the board.

(29) "Retirement" or "retired" means the status of a member who has been terminated from service for at least 30 days and has received and accepted a retirement benefit from a retirement system.

(30) "Retirement benefit" means the periodic benefit payable as a result of service, early, or disability retirement under a retirement system. An annuity is not a retirement benefit.

(31) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(32) "Service" means employment of an employee in a position covered by a retirement system.

(33) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(34) "Supplemental cost" means an element of the total actuarial cost of a retirement system arising from benefits payable for service performed prior to the inception of the retirement system or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement system.

(35) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a retirement system.

(36) "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

(37) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a retirement system's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(38) "Vested member" or "vested" means a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under a retirement system.

(39) "Written application" means a written instrument, specified by the board, properly executed, and filed with the board, that contains all the information required by the board, including documentation that the board considers necessary.

19-2-303. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Account balance" means all contributions, income, and other assets in a retirement account that have, pursuant to 19-3-2116, vested to a member of the defined contribution plan.

(2) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(3) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(4) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(5) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the ~~1971 Group Annuity Mortality Table, with ages set back 4~~

~~years and an interest rate of 8% compounded annually~~ *mortality table and interest rate assumptions adopted by the board.*

(6) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(7) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(8) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(9) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(10) "Benefit" means:

(a) the service or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

(11) "Board" means the public employees' retirement board provided for in 2-15-1009.

(12) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(13) "Covered employment" means employment in a covered position.

(14) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(15) "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate service or disability retirement or survivorship benefits under a defined benefit retirement plan.

(16) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(17) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

(18) "Department" means the department of administration.

(19) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or

benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(20) "Disability" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(21) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer.

(22) "Employer" means a governmental entity participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees.

(23) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

(24) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(25) "Inactive member" means a member who is not an active or retired member.

(26) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999.

(27) "Member" means either:

(a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

(b) a person with a retirement account in the defined contribution plan.

(28) "Membership service" or "years of service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(29) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future. Normal cost does not include any portion of the supplemental costs of a retirement plan.

(30) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(31) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(32) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a

defined benefit plan resulting from member selection of the defined contribution plan.

(33) "Regular contributions" means contributions required from members under a retirement plan.

(34) "Regular interest" means interest at the rate set from time to time by the board.

(35) "Retirement" or "retired" means the status of a member who has been terminated from service for at least 30 days and has received and accepted a retirement benefit from a retirement plan.

(36) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and employee contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

(37) "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service, early, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (10)(b).

(38) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(39) "Service" means employment of an employee in a position covered by a retirement system.

(40) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(41) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

(42) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

(43) "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

(44) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(45) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under the retirement plan; or

(b) with respect to the defined contribution plan, a member or the status of a member who, pursuant to 19-3-2116, is entitled to employer contributions and income on those contributions in the member's retirement account.

(46) "Written application" means a written instrument, specified by the board, properly executed, and filed with the board, that contains all the information required by the board, including documentation that the board considers necessary."

Section 2. Section 19-3-108, MCA, is amended to read:

"19-3-108. (Temporary) Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) *(a)* "Compensation" means remuneration paid out of funds controlled by an employer *in payment for the member's services, or for time during which the member is excused from work because of a holiday or because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence,* before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include*:*

(i) the payments or contributions made in lieu of wages for an individual subject to 19-3-403(4)(a)*;*

(ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;

(iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related services;

(iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704; and

(v) lump-sum payments for compensatory leave, sick leave, or annual leave paid without termination of employment.

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer, except that a nonprofit mental health corporation established pursuant to 53-21-204 may not be an employer with regard to employees hired after June 30, 1999.

(4) "Employer contributions" means payments to the pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(5) "Final average salary" means a member's highest average monthly compensation during any 36 consecutive months of membership service.

Lump-sum payments for severance pay, *including compensatory leave,* sick leave, and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

19-3-108. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) *(a)* "Compensation" means remuneration paid out of funds controlled by an employer *in payment for the member's services, or for time during which the member is excused from work because of a holiday or because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence,* before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include*:*

(i) the payments or contributions made in lieu of wages for an individual subject to 19-3-403(4)(a)*;*

(ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;

(iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related services;

(iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704; and

(v) lump-sum payments for compensatory leave, sick leave, or annual leave paid without termination of employment.

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Defined benefit plan" means the plan within the public employees' retirement system established in 19-3-103 that is not the defined contribution plan.

(4) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer, except that a nonprofit mental health corporation established pursuant to 53-21-204 may not be an employer with regard to employees hired after June 30, 1999.

(5) "Employer contributions" means payments to a pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(6) "Final average salary" means a member's highest average monthly compensation during any 36 consecutive months of membership service. Lump-sum payments for severance pay, *including payment for compensatory leave,* sick leave, and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

(7) "System" or "retirement system" means the public employees' retirement system established in 19-3-103."

Section 3. Section 19-3-1605, MCA, is amended to read:

"19-3-1605. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by ~~1.5%~~ *3%*.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a ~~1.5%~~ *3%* annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of ~~1.5%~~ *3%* in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a ~~1.5%~~ *3%* annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to ~~1.5%~~ *3%* more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the benefit recipient is not an active member of a public retirement system covered by this title.

(4) The board shall adopt rules to administer the provisions of this section."

Section 4. Purchasing power adjustment. Beginning with the July 2001 benefit, the board shall provide an ad hoc benefit increase to retired members and beneficiaries of the retirement system receiving a monthly retirement benefit. The ad hoc benefit increase must be calculated by the board actuary and approved by the board. The benefit increase must be designed to bring the benefit recipient's current benefit up to a level estimated to be no less than 75% of the purchasing power of the original recipient's initial monthly benefit. Purchasing power must be calculated considering the date that the first benefit was paid to the original benefit recipient, applicable benefit increases since that date, and a comparison with the consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor since the date the first benefit was paid to the original benefit recipient.

Section 5. Section 19-5-901, MCA, is amended to read:

"19-5-901. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by ~~1.5%~~ *3%*.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a ~~1.5%~~ *3%* annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of ~~1.5%~~ *3%* in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a ~~1.5%~~ *3%* annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to ~~1.5%~~ *3%* more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made;

(b) the benefit recipient is not an active member of a public retirement system covered by this title; and

(c) the member or benefit recipient either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998.

(4) The board shall adopt rules to administer the provisions of this section."

Section 6. Election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 2001; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-5-901 remains valid. The decision of a member who elected not to participate under 19-5-901 may be reversed under this section.

Section 7. Section 19-6-101, MCA, is amended to read:

"**19-6-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code have been made and exclusive of maintenance, allowances, and expenses.

(2) "Dependent child" means an unmarried child of a deceased retired member, who is:

(a) under 18 years of age; or

(b) under 24 years of age and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(3) "Final average salary" means the average monthly compensation received by a member for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for severance pay, *including payment for compensatory leave,* sick leave, and annual leave, paid to an employee upon termination of service may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

(4) "Surviving spouse" means the spouse married to a retired member at the time of the retired member's death.

(5) "Survivor" means a surviving spouse or dependent child of a member."

Section 8. Section 19-6-710, MCA, is amended to read:

"**19-6-710. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by ~~1.5%~~ *3%*.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a ~~1.5%~~ *3%* annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of ~~1.5%~~ *3%* in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a ~~1.5%~~ *3%* annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made;

(b) the benefit recipient is not an active member of a public retirement system covered by this title; and

(c) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section."

Section 9. Election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 2001; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-6-710 remains valid. The decision of a member who elected not to participate under 19-6-710 may be reversed under this section.

Section 10. Section 19-7-101, MCA, is amended to read:

"**19-7-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code are made and exclusive of maintenance, allowances, and expenses.

(2) "Final average salary" means the average monthly compensation received by a member for any 3 years of continuous service from which contributions were deducted or, in the event that a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for *severance pay, including payment for compensatory leave,* sick leave, and annual leave, paid to an employee upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

(3) "Investigator" means a person who is employed as a criminal investigator or as a gambling investigator for the department of justice.

(4) "Sheriff" means any elected or appointed county sheriff or undersheriff or any appointed, lawfully trained, appropriately salaried, and regularly acting deputy sheriff. The board shall adopt rules incorporating both the peace officers standards and training council's current law enforcement training requirements and the legislatively authorized salary requirements as effective for deputy sheriffs who are eligible for membership in this retirement system."

Section 11. Section 19-7-711, MCA, is amended to read:

"**19-7-711. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by ~~1.5%~~ *3%*.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a ~~1.5%~~ *3%* annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of ~~1.5%~~ *3%* in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a ~~1.5%~~ *3%* annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to ~~1.5%~~ *3%* more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the benefit recipient is not an active member of a public retirement system covered by this title.

(4) The board shall adopt rules to administer the provisions of this section."

Section 12. Section 19-8-101, MCA, is amended to read:

"19-8-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code are made and exclusive of maintenance, allowances, and expenses.

(2) "Final average salary" means the average monthly compensation received by a member for any 3 years of continuous service upon which contributions were made or, in the event a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for severance pay, *including payment for compensatory leave,* sick leave, and annual leave, paid to an employee upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

(3) "Game warden" means a state fish and game warden hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks money.

(4) "Motor carrier officer" means an employee of the department of transportation appointed as a peace officer pursuant to 61-12-201.

(5) "Peace officer" or "state peace officer" means a person who by virtue of the person's employment with the state is vested by law with a duty to maintain public order or make arrests for offenses while acting within the scope of the person's authority or who is charged with specific law enforcement responsibilities on behalf of the state."

Section 13. Section 19-8-1105, MCA, is amended to read:

"19-8-1105. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by ~~1.5%~~ *3%*.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a ~~1.5%~~ *3%* annualized increase, then the

recipient's benefit must be adjusted by an amount that will provide a total annualized increase of ~~1.5%~~ *3%* in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a ~~1.5%~~ *3%* annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to ~~1.5%~~ *3%* more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the benefit recipient is not an active member of a public retirement system covered by this title.

(4) The board shall adopt rules to administer the provisions of this section."

Section 14. Section 19-9-1009, MCA, is amended to read:

"**19-9-1009. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by ~~1.5%~~ *3%*.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a ~~1.5%~~ *3%* annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of ~~1.5%~~ *3%* in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a ~~1.5%~~ *3%* annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made;

(b) the benefit recipient is not an active member of a public retirement system covered by this title; and

(c) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section."

Section 15. Section 19-9-1010, MCA, is amended to read:

"**19-9-1010. Election — guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by ~~1.5%~~ *3%*.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a ~~1.5%~~ *3%* annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of ~~1.5%~~ *3%* in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a ~~1.5%~~ *3%* annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 1999; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2000, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-9-1009 remains valid. The decision of a member who elected not to participate under 19-9-1009 may be reversed under this section."

Section 16. Election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 2001; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-9-1009 or 19-9-1010 remains valid. The decision of a member who elected not to participate under 19-9-1009 and 19-9-1010 may be reversed under this section.

Section 17. Section 19-13-1010, MCA, is amended to read:

"**19-13-1010. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by ~~1.5%~~ *3%*.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a ~~1.5%~~ *3%* annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of ~~1.5%~~ *3%* in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a ~~1.5%~~ *3%* annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made;

(b) the benefit recipient is not an active member of a public retirement system covered by this title; and

(c) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section."

Section 18. Election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 2001; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-13-1010 remains valid. The decision of a member who elected not to participate under 19-13-1010 may be reversed under this section.

Section 19. Section 19-20-622, MCA, is amended to read:

"**19-20-622. Minimum monthly benefit allowance.** (1) A retired member of the retirement system who on July 1, ~~1999~~ *2001*, is receiving a service or disability retirement allowance that is less than ~~$500~~ *$600* is eligible to receive a minimum monthly benefit allowance of ~~$500~~ *$600* if the member at the time of retirement had 25 years or more of creditable service.

(2) A beneficiary or beneficiaries of a deceased retired member who on July 1, ~~1999~~ *2001*, are receiving an optional service, disability, or survivorship allowance that when added together are less than ~~$500~~ *$600* are eligible to receive a proportional share of a minimum monthly benefit allowance of ~~$500~~ *$600* if the retired member at the time of retirement had 25 years or more of creditable service.

(3) If on July 1, ~~1999~~ *2001*, multiple beneficiaries are receiving benefits under a retired member's account, the minimum monthly benefit must be divided in the same proportion as was the initial service, disability, or survivorship allowance."

Section 20. Section 19-20-719, MCA, is amended to read:

"**19-20-719. Guaranteed annual benefit adjustment — rulemaking.** (1) ~~On~~ *Subject to subsection (3), on* January 1 of each year, the retirement allowance payable to each recipient who is eligible under subsection (2) must be increased by 1.5%.

(2) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the retiree's most recent retirement effective date is at least 36 months prior to January 1 of the year in which the adjustment is to be made.

(3) *On January 1, 2002, and January 1 of each year following the system's biennial valuation, the board may increase the annual benefit adjustment provided in subsection (1) until a maximum of 3% is guaranteed if:*

(a) the period required to amortize the system's actuarial unfunded liability, as determined by the most recent biennial valuation, adjusted for any benefit enhancement enacted by the legislature since the most recent biennial valuation, is less than 25 years;

(b) sufficient funds are available to increase the guaranteed annual benefit adjustment by at least 0.1%; and

(c) the increase granted by the board would not cause the amortization period, as of the most recent valuation, to exceed 25 years.

(4) The board shall adopt rules to administer the provisions of this section."

Section 21. Codification instruction. (1) [Section 4] is intended to be codified as an integral part of Title 19, chapter 3, part 16, and the provisions of Title 19, chapter 3, part 16, apply to [section 4].

(2) [Section 6] is intended to be codified as an integral part of Title 19, chapter 5, part 9, and the provisions of Title 19, chapter 5, part 9, apply to [section 6].

(3) [Section 9] is intended to be codified as an integral part of Title 19, chapter 6, part 7, and the provisions of Title 19, chapter 6, part 7, apply to [section 9].

(4) [Section 16] is intended to be codified as an integral part of Title 19, chapter 9, part 10, and the provisions of Title 19, chapter 9, part 10, apply to [section 16].

(5) [Section 18] is intended to be codified as an integral part of Title 19, chapter 13, part 10, and the provisions of Title 19, chapter 13, part 10, apply to [section 18].

Section 22. Effective date. [This act] is effective on passage and approval.

Approved March 29, 2001

CHAPTER NO. 150

[HB 298]

AN ACT ALLOWING LOCAL GOVERNMENTS TO ADOPT STATE-APPROVED BUILDING CODES BY AN ORDINANCE AUTHORIZING THE ADOPTION BY AN ADMINISTRATIVE ACTION; AMENDING SECTION 50-60-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-60-301, MCA, is amended to read:

"**50-60-301. Municipal and county building codes authorized — health care facility and public health center doors — fee adjustment for model plans.** (1) The local legislative body of a municipality or county may adopt a building code ~~by ordinance~~ to apply to the municipal or county jurisdictional area *by an ordinance:*

(a) adopting a building code; or

(b) authorizing the adoption of a building code by administrative action.

(2) A municipal or county building code may include only codes adopted by the department.

(3) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities, as defined in 50-5-101, or to a public health center, as defined in 7-34-2102.

(4) (a) When the same single-family dwelling plan is constructed at more than one site, the municipality or county shall, after the first examination of the plan, adjust the required plan fee to reflect only the cost of reviewing requirements pertaining to the review of:

(i) zoning;

(ii) footings, foundations, and basements;

(iii) curbs;

(iv) gutters;

(v) landscaping;

(vi) utility connections;

(vii) street requirements;

(viii) sidewalks; and

(ix) other requirements related specifically to the exterior of the building.

(b) If a building contractor alters the single-family dwelling plan referred to in subsection (4)(a) in a fashion that substantially affects the building code requirements, the municipality or county may impose the full examination fee permitted under 50-60-106."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 28, 2001

CHAPTER NO. 151

[HB 321]

AN ACT PROVIDING A SECOND ALTERNATIVE METHOD OF ELECTING MEMBERS TO A HIGH SCHOOL DISTRICT BOARD OF TRUSTEES WHEN MORE THAN HALF OF THE ELECTORS OF THE HIGH SCHOOL DISTRICT RESIDE OUTSIDE OF THE TERRITORY OF THE ELEMENTARY SCHOOL DISTRICT IN WHICH THE HIGH SCHOOL DISTRICT BUILDINGS ARE LOCATED; AND AMENDING SECTION 20-3-352, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-352, MCA, is amended to read:

"20-3-352. Request and determination of number of high school district additional trustee positions — nonvoting trustee. (1) As provided in 20-3-351(1)(b), a high school district, except a county high school district, may have additional trustee positions when the trustees of a majority of the elementary districts with territory located in the high school district, but without equitable representation on the high school district trustees under the provision of 20-3-351(1)(a), request the establishment of additional trustee positions under the provisions of subsection (2) or when the electors approve an alternative method of electing members of the board of trustees under the provisions of subsection (3).

(2) A request for additional trustee positions must be made to the county superintendent by a resolution of the trustees of each elementary district. When a resolution has been received from a majority of the elementary districts without representation on the high school district trustees, the county superintendent shall determine the number of additional trustee positions for the affected high school district in accordance with the following procedure:

(a) The taxable valuation of the elementary district that has its trustees placed on the high school trustees must be divided by the number of positions on the trustees of the elementary district to determine the taxable valuation per trustee position.

(b) The taxable valuation used for the calculation in subsection (2)(a) must be subtracted from the taxable valuation of the high school district to determine the taxable valuation of the territory of the high school district without representation on the high school district trustees.

(c) The taxable valuation determined in subsection (2)(b) must be divided by the taxable valuation per trustee position calculated in subsection (2)(a). The resulting quotient must be rounded off to the nearest whole number, except that when the quotient is less than 0.5, at least one nonvoting trustee position must be established for the territory without representation on the high school district board of trustees under the provision of 20-3-351(1)(a).

(d) Except for a nonvoting trustee position, the number determined in subsection (2)(c) must be the number of additional trustee positions, except that the number of additional trustee positions may not exceed four in a first- or second-class high school district or two in a third-class high school district except when two-thirds or more of the high school enrollment of the high school district and two-thirds or more of the taxable valuation of the high school district are located outside of the elementary district that has its trustees placed on the high school district trustees. When this situation exists, three additional trustees must be elected from the elementary school districts in which the high school is not located and one additional trustee must be elected at large in the high school district.

(3) (a) If more than half of the electors of the high school district reside outside the territory of the elementary school district in which the high school district buildings are located, at least 10% of the electors of the high school district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent, requesting an election to consider a proposition on the question of establishing *one of* the following alternative ~~method~~ *methods* of electing the members of the high school district board of trustees:

(i) one trustee ~~to~~ *must* be elected from each elementary school district with territory included in the high school district~~;~~ and

~~(ii)~~ two or three trustees ~~to~~ *must* be elected at large in the high school district, whichever number results in an odd number of members on the board of trustees; *or*

(ii) the county superintendent shall establish four trustee nominating districts within the high school district but outside the territory of the elementary school district in which the high school buildings are located. One trustee must be elected from each trustee nominating district and three trustees must be elected from the elementary district in which the high school buildings are located, for a total of seven trustees on the high school district board of trustees. Trustees elected from the elementary district in which the high school buildings are located shall serve on both the high school district board of trustees and on the elementary school district board of trustees.

(b) (i) When the county superintendent receives a valid petition, the county superintendent shall order the trustees of the high school district to conduct an election on the next regular school election day on the proposition allowed under the provisions of subsection (3)(a).

(ii) If the electors of the district approve a proposition to establish the alternative method of electing the high school *district* board of trustees, the county superintendent shall order that the members of the board of trustees be elected according to subsection (3)(a) at the next regular school election.

(c) Whenever the trustees are elected at one regular election under subsection (3)(b), the members who are elected shall draw by lot to determine their terms of office. The terms of office by trustee position must be divided as equally as practicable among 1-, 2-, and 3-year terms.

(d) A petition to call an election for the purposes of subsection (3) may not be submitted to the county superintendent more than one time in each 5-year period."

Approved March 28, 2001

CHAPTER NO. 152

[HB 329]

AN ACT CLARIFYING THAT THE REGISTRATION REQUIREMENTS FOR SEXUAL OFFENDERS AND VIOLENT OFFENDERS APPLY TO

OFFENDERS SENTENCED IN ANOTHER STATE AND TO OFFENDERS WHO ARE UNDER THE SUPERVISION OF AN ENTITY IN ANOTHER STATE WHEN THOSE OFFENDERS ARE IN MONTANA; AMENDING SECTION 18, CHAPTER 375, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18, Chapter 375, Laws of 1997, is amended to read:

"**Section 18.** ~~**Applicability**~~ ***Retroactive applicability.*** The provisions of *Title 46, chapter 23, part 5, and of* [this act] relating to registration apply *retroactively, within the meaning of 1-2-109,* to:

(1) sexual offenders ~~who are sentenced or who are in the custody or under the supervision of the department of corrections~~ *who are sentenced by a state or federal court in any state on or after July 1, 1989, or who as a result of a sentence are under the supervision of a county, state, or federal agency in any state* on or after July 1, 1989; and

(2) violent offenders ~~who are sentenced or who are in the custody or under the supervision of the department of corrections~~ *who are sentenced by a state or federal court in any state on or after October 1, 1995, or who as a result of a sentence are under the supervision of a county, state, or federal agency in any state* on or after October 1, 1995."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 29, 2001

CHAPTER NO. 153

[HB 336]

AN ACT CLARIFYING THAT THERE IS NO COST ASSOCIATED WITH SERVICE OF ORDERS OF PROTECTION; AND AMENDING SECTION 40-15-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-15-204, MCA, is amended to read:

"**40-15-204. Written orders of protection.** (1) The court may, on the basis of the respondent's history of violence, the severity of the offense at issue, and the evidence presented at the hearing, determine that to avoid further injury or harm, the petitioner needs permanent protection. The court may order that the order of protection remain in effect permanently.

(2) In a dissolution proceeding, the district court may, upon request, issue either an order of protection for an appropriate period of time or a permanent order of protection.

(3) An order of protection may include all of the relief listed in 40-15-201, when appropriate.

(4) An order of protection may include restraining the respondent from any other named family member who is a minor. If this restriction is included, the respondent must be restrained from having contact with the minor for an

appropriate time period as directed by the court or permanently if the court finds that the minor was a victim of abuse, a witness to abuse, or endangered by the environment of abuse.

(5) An order of protection issued under this section may continue for an appropriate time period as directed by the court or be made permanent under subsection (1), (2), or (4). The order may be terminated upon the petitioner's request that the order be dismissed.

(6) An order of protection must include a section that indicates whether there are any other civil or criminal actions pending involving the parties, a brief description of the action, and the court in which the action is filed.

(7) An amendment to a temporary order of protection or to an order of protection is effective only after it has been served in writing on the opposing party.

(8) There is no cost to file a petition for an order of protection or for service of an order of protection *whether served inside or outside the jurisdiction of the court issuing the order.*

(9) Any temporary order of protection or order of protection must conspicuously bear the following:

"Violation of this order is a criminal offense under 45-5-220 or 45-5-626 and may carry penalties of up to $10,000 in fines and up to a 5-year jail sentence.

This order is issued by the court, and the respondent is forbidden to do any act listed in the order, even if invited by the petitioner or another person. This order may be amended only by further order of this court or another court that assumes jurisdiction over this matter.""

Approved March 29, 2001

CHAPTER NO. 154

[HB 354]

AN ACT AMENDING THE COMPOSITION OF THE DEVELOPMENTAL DISABILITIES PLANNING AND ADVISORY COUNCIL; AMENDING SECTION 2-15-2204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2204, MCA, is amended to read:

"2-15-2204. Developmental disabilities planning and advisory council. (1) The governor shall appoint a developmental disabilities planning and advisory council in accordance with ~~the provisions of this section~~ *the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402.*

(2) The council is composed of ~~at least 23 but no more than 25~~ *29* members and ~~consists of~~ *includes* the following:

(a) six persons with developmental disabilities;

(b) six persons who are:

(i) parents or guardians of a child with developmental disabilities; or

(ii) immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves;

(c) six persons who may be:

(i) a person with a developmental disability;

(ii) a person who is the parent or guardian of a child with a developmental disability; or

(iii) a person who is an immediate relative or guardian of an adult with mentally impairing developmental disabilities who cannot self-advocate;

~~(a)~~*(d)* a representative of the program of services provided under the authority of the Rehabilitation Act of 1973, 29 U.S.C. 701, et seq.;

~~(b)~~*(e)* a representative of the program of services provided under the authority of the Older Americans Act of 1965, 42 U.S.C. 3001, et seq.;

(f) a representative of the program of services provided under the authority of Title V of the Social Security Act, 42 U.S.C. 701, et seq.;

~~(c)~~*(g)* a representative of the ~~program~~ *programs* of services ~~for persons with developmental disabilities~~ provided under the authority of Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq.;

~~(d)~~*(h)* a representative of the program of services provided under the authority of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.;

~~(e) two recognized professionals, one each in the disciplines of medicine and law;~~

~~(f)~~*(i)* one member of the state senate;

~~(g)~~*(j)* one member of the state house of representatives;

~~(h) 12 persons, each of whom has a developmental disability or who is an immediate family member or guardian of a person with a developmental disability;~~

~~(i)~~*(k)* ~~the director~~ *a representative* of the university-affiliated or satellite program on developmental disabilities~~,~~ created pursuant to 42 U.S.C. 6061~~, or a designee of the director~~;

~~(j)~~*(l)* ~~the director~~ *a representative* of the state protection and advocacy system~~,~~ created pursuant to 42 U.S.C. 6041~~, or a designee of the director~~; and

~~(k)~~*(m)* ~~a representative~~ *two representatives* of ~~a statewide developmental disabilities service provider organization whose member agencies provide direct~~ *nongovernmental in-state entities that are concerned with the provision of* services to persons with developmental disabilities.

(3) ~~(a) Each member who serves on the council pursuant to subsection (2)(a), (2)(b), (2)(c), or (2)(d) shall serve for a term concurrent with the respective term of the director of the agency that administers the program that the member represents. Upon the removal of an agency director from office, the representative's term as a member of the council is automatically terminated.~~

~~(b) Each member who serves on the council pursuant to subsection (2)(f) or (2)(g) must be appointed or reappointed annually by the governor.~~

~~(e) Eight~~ *Nine* of the members ~~serving on~~ *appointed to* the council pursuant to ~~subsection (2)(e), (2)(h), (2)(k), or (3)(d)~~ *subsections (2)(a) through (2)(c)* must be appointed by the governor to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining members serving on the council pursuant to ~~subsection (2)(e), (2)(h), (2)(k), or (3)(d)~~ *subsections (2)(a) through (2)(c)* must be appointed by the governor to serve for terms ending on January 1 of the third year of the succeeding gubernatorial term and until their successors are appointed.

(4) Members appointed to the council to fulfill representation requirements of subsections (2)(d) through (2)(m) serve 1-year terms.

(5) At least one member appointed to the council pursuant to subsections (2)(a) through (2)(c) must be either:

(a) a person with a developmental disability who resides or previously resided in an institution; or

(b) an immediate relative or guardian of a person with a developmental disability who resides or previously resided in an institution.

~~(d)~~*(6)* ~~Representatives~~ *Members* ~~named~~ *appointed* to the council pursuant to ~~this section, in addition to fulfilling the requirements listed in~~ subsections (2)(a) through ~~(2)(k)~~ *(2)(c)*~~,~~ may also be selected to represent the ~~following areas: psychology, social work, special education, and minority groups, including Native Americans with developmental disabilities. A minimum of one member of the council must represent each of these areas. In the event that the persons listed in subsections (2)(a) through (2)(k) do not represent all of the areas of psychology, social work, special education, and minority groups, including Native Americans with developmental disabilities, up to two representatives may be added to the membership of the council to represent not more than two of these groups.~~ *geographical regions and the racial and ethnic composition of the state, including American Indians.*

~~(4)~~*(7)* The council is allocated to the department for administrative purposes only and, unless inconsistent with the provisions of 53-20-206 and this section, the provisions of 2-15-121 apply."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 29, 2001

CHAPTER NO. 155

[HB 365]

AN ACT DESIGNATING THE MOURNING CLOAK AS THE OFFICIAL STATE BUTTERFLY.

Be it enacted by the Legislature of the State of Montana:

Section 1. State butterfly. The mourning cloak, Nymphalis antiopa, is the official Montana state butterfly.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 5, and the provisions of Title 1, chapter 1, part 5, apply to [section 1].

Approved March 28, 2001

CHAPTER NO. 156

[HB 383]

AN ACT REVISING THE KIND OF INFORMATION THAT A COUNTY CLERK MAY PROVIDE TO AN APPLICANT FROM THE CLERK'S RECORDS; ELIMINATING THE PROVISION THAT A COUNTY CLERK MAY BE PUNISHED FOR NEGLECTING OR REFUSING TO MAKE PROPERTY RECORD SEARCHES OR FOR PROVIDING INCOMPLETE INFORMATION FROM THOSE RECORDS; AND AMENDING SECTIONS 7-4-2621 AND 7-4-2623, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2621, MCA, is amended to read:

"**7-4-2621. Search of records.** Upon the application of any person and upon the payment ~~or tender~~ of the *applicable* fees ~~therefor~~, the county clerk may:

(1) make searches for conveyances, mortgages, and all other instruments~~, papers, or notices~~ recorded or filed in ~~his~~ *the county clerk's* office; and

(2) furnish a certificate ~~thereof,~~ stating the names of the parties to ~~such~~ *the* instruments~~, papers, and notices~~; the dates ~~thereof~~ *of the instruments*; the year, month, day, hour, and minute they were recorded or filed; ~~the extent to which they purport to affect the property to which they relate;~~ and the book and pages where they are recorded."

Section 2. Section 7-4-2623, MCA, is amended to read:

"**7-4-2623. Liability of clerk relating to duties as recorder.** A county clerk is liable to the party aggrieved for three times the amount of the damages ~~which~~ *that* may ~~be occasioned thereby~~ *result* and is punishable as provided in this code if the county clerk~~, as ex officio recorder~~ to whom an instrument~~, proved or acknowledged according to law, or any paper or notice which may be recorded by law~~ is delivered for record:

(1) neglects or refuses to record ~~such~~ *the* instrument~~, paper, or notice~~ within reasonable time after ~~receiving the same~~ *receipt*;

(2) *falsely* records ~~any instruments, papers, or notices untruly~~ *an instrument* or *records an instrument* in any other manner than as ~~hereinbefore~~ directed *in this part*;

(3) neglects or refuses to keep in ~~his~~ *the clerk's* office ~~such~~ indexes ~~as~~ *that* are required by this part or to make the proper entries ~~therein~~ *in the indexes*; *or*

~~(4) neglects or refuses to make the searches and to give the certificates required by this part or if such searches or certificates are incomplete or defective when such incompleteness or defect is due to his direct responsibility particularly affecting the property in respect to which it is requested;~~

~~(5)~~*(4)* alters, changes, or obliterates any records deposited in ~~his~~ *the clerk's* office or inserts any new matter ~~therein~~ *in the records.*"

Approved March 29, 2001

CHAPTER NO. 157

[HB 391]

AN ACT REQUIRING THAT A VEHICLE APPROACHING A STATIONARY EMERGENCY VEHICLE MOVE TO ANOTHER LANE OF THE HIGHWAY IF POSSIBLE AND SAFE; REQUIRING THAT THE OPERATOR OF A VEHICLE APPROACHING A STATIONARY EMERGENCY VEHICLE DRIVE AT A REDUCED SPEED; AND AMENDING SECTION 61-8-346, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-346, MCA, is amended to read:

"**61-8-346. Operation of vehicles on approach of police vehicles or authorized emergency vehicles — *approaching stationary emergency vehicles*.** (1) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of 61-9-402 or of a police vehicle properly and lawfully making use of an audible signal only, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in ~~such~~ *that* position until the police vehicle or authorized emergency vehicle has passed, except when otherwise directed by a police officer or highway patrol officer.

(2) This section ~~shall not operate to~~ *does not* relieve the driver of a police vehicle or authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(3) Upon approaching a stationary authorized emergency vehicle that is displaying visible signals of flashing or rotating amber, blue, red, or green lights, the driver of the approaching vehicle shall:

(a) reduce the vehicle's speed, proceed with caution, and if possible considering safety and traffic conditions, move to a lane that is not adjacent to the lane in which the authorized emergency vehicle is located or move as far away from the authorized emergency vehicle as possible; or

(b) if changing lanes is not possible or is determined to be unsafe, reduce the vehicle's speed, proceed with caution, and maintain a reduced speed, appropriate to the road and the conditions, through the area where the authorized emergency vehicle is stopped."

Approved March 29, 2001

CHAPTER NO. 158

[HB 392]

AN ACT INCREASING THE AMOUNT OF GASOLINE AND VEHICLE FUEL TAX PROCEEDS ALLOCATED TO THE LOCAL TECHNICAL ASSISTANCE

TRANSPORTATION PROGRAM AND REDISTRIBUTING THE REMAINING AMOUNT TO COUNTIES AND CITIES; AMENDING SECTION 15-70-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-101, MCA, is amended to read:

"**15-70-101. Disposition of funds.** (1) All taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be placed in a highway revenue account in the state special revenue fund to the credit of the department of transportation. ~~Beginning July 1, 2001, all~~ *All* interest and income earned on the account must be deposited to the credit of the account and any unexpended balance in the account must remain in the account. Those funds allocated to cities, towns, counties, and consolidated city-county governments in this section must, in accordance with the provisions of 15-1-501, be paid by the department of transportation from the state special revenue fund to the cities, towns, counties, and consolidated city-county governments.

(2) The amount of $16,766,000 of the taxes collected under this chapter is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis to the counties, incorporated cities and towns, and consolidated city-county governments in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (2)(a) through (2)(c):

(a) The amount of ~~$54,000~~ *$100,000* must be designated for the purposes and functions of the Montana local technical assistance transportation program in Bozeman.

(b) The amount of ~~$6,323,000~~ *$6,306,000* must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the national highway system and the primary system, bears to the total rural road mileage in the state, exclusive of the national highway system and the primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state.

(c) The amount of ~~$10,389,000~~ *$10,360,000* must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the national highway system and the primary system, within corporate limits bears to the total street and alley mileage, exclusive of the national highway system and primary system, within the corporate limits of all cities and towns in Montana.

(3) (a) For the purpose of allocating the funds in subsections (2)(b) and (2)(c) to a consolidated city-county government, each entity must be considered to have separate city and county boundaries. The city limit boundaries are the last official city limit boundaries for the former city unless revised boundaries based on the location of the urban area have been approved by the department of transportation and must be used to determine city and county populations and road mileages in the following manner:

(i) Percentage factors must be calculated to determine separate populations for the city and rural county by using the last official decennial federal census population figures that recognized an incorporated city and the rural county. The factors must be based on the ratio of the city to the rural county population, considering the total population in the county minus the population of any other incorporated city or town in the county.

(ii) The city and county populations must be calculated by multiplying the total county population, as determined by the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census, minus the population of any other incorporated city or town in that county, by the factors established in subsection (3)(a)(i).

(b) The amount allocated by this method for the city and the county must be combined, and single monthly payments must be made to the consolidated city-county government.

(4) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, county, or consolidated city-county government might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the primary or secondary highway system or urban extensions to those systems. The governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.

(5) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.

(6) For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined annually for counties and biennially for cities according to the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(7) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, counties, and consolidated city-county governments to furnish to the department of transportation a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

(8) Except by a town or third-class city as provided in subsection (4), the funds authorized by this section may not be used for the purchase of capital equipment.

(9) Funds authorized by this section must be used for construction and maintenance programs."

Section 2. Effective date. [This act] is effective July 1, 2001.

Approved March 29, 2001

CHAPTER NO. 159

[HB 393]

AN ACT ALLOWING A PROBABLE CAUSE HEARING FOR A YOUTH TAKEN INTO CUSTODY FOR QUESTIONING TO BE BY VIDEOCONFERENCE; AND AMENDING SECTION 41-5-332, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-332, MCA, is amended to read:

"**41-5-332. Custody — hearing for probable cause.** (1) When a youth is taken into custody for questioning, a hearing to determine whether there is probable cause to believe the youth is a delinquent youth or a youth in need of intervention must be held within 24 hours, excluding weekends and legal holidays. A hearing is not required if the youth is released prior to the time of the required hearing.

(2) When a youth is taken into custody for a violation of placement under a home arrest program, a hearing to determine whether a violation occurred must be held within 24 hours, excluding weekends and holidays.

(3) The probable cause hearing required under subsection (1) may be held *in person or by videoconference* by the youth court, a justice of the peace, a municipal or city judge, or a magistrate having jurisdiction in the case as provided in 41-5-203. If the probable cause hearing is held by a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing must be made by a court reporter or by a tape recording of the hearing *or by an audio-video tape if the hearing is held by videoconference*.

(4) A probable cause hearing may be conducted by telephone if other means of conducting the hearing are impractical. All written orders and findings of the court in a hearing conducted by telephone must bear the name of the judge or magistrate presiding in the case and the hour and date the order or findings were issued.

(5) A hearing is not required for a youth placed in detention for an alleged parole violation."

Approved March 29, 2001

CHAPTER NO. 160

[HB 402]

AN ACT EXTENDING THE EXEMPTION FOR JUVENILE DETENTION OFFICERS WHO ARE EMPLOYED IN A JUVENILE DETENTION CENTER

FROM BASIC DETENTION OFFICER TRAINING FOR 2 YEARS UNDER CERTAIN CONDITIONS; REQUIRING BASIC TRAINING OR TRAINING UNDER THE EXEMPTION; REQUIRING THE BOARD OF CRIME CONTROL TO CONDUCT A STUDY OF JUVENILE DETENTION TRAINING; AMENDING SECTION 44-4-303, MCA, AND SECTION 5, CHAPTER 469, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-4-303, MCA, is amended to read:

"44-4-303. (Temporary) Temporary exemption for juvenile detention officers. (1) *Except as provided in subsection (2), a juvenile detention officer shall in the first year of employment complete a 120-hour basic training course as required in 44-4-301.*

(2) A juvenile detention officer employed by a juvenile detention center is exempt from the requirements for certification and basic detention officer training provided for in 44-4-301 on the following conditions:

(a) The juvenile detention officer shall *in the first year of employment* satisfactorily complete ~~the~~ *a 120-hour* training ~~provided for in this section~~ *program that was developed by a juvenile detention center prior to January 1, 2001, based on training approved by a nationally recognized professional association for juvenile detention officers.*

~~(b) The juvenile detention center that employs the juvenile detention officer shall develop and conduct a training program based on training approved by a nationally recognized professional association for juvenile detention officers. The training program must include goals, objectives, a curriculum outline, and a budget. If more than one juvenile detention center chooses to develop and conduct a training program, those centers shall work cooperatively to develop one curriculum for the purposes of this section.~~

~~(c)~~*(b)* The jurisdiction that administers and operates the juvenile detention center shall assume the responsibility and cost for administering a training program for the juvenile detention officers employed in a juvenile detention facility and any associated liability related to the training.

~~(d)~~*(c)* The juvenile detention center shall submit quarterly reports on the ~~progress of the development and~~ implementation of a training program provided for in subsection ~~(1)(b)~~ *(2)(a)* to the board of crime control~~, peace officer standards and training council, youth justice council, and Montana law enforcement academy~~.

~~(e) The juvenile detention center shall present a final report to the board of crime control, peace officer standards and training council, youth justice council, and Montana law enforcement academy by October 1, 2000, that includes the goals, objectives, curriculum, and budget and any findings, recommendations, and suggested legislation.~~

~~(f)~~*(d)* The jurisdiction that operates and administers a juvenile detention center *training program* shall ~~agree to allow the board of crime control, peace officer standards and training council, and youth justice council to contract, at the expense of the board of crime control, for an evaluation of the curriculum and training program by an outside party who has both adult and juvenile detention~~

~~experience and to cooperate with the evaluation process.~~ *cooperate with the study and evaluation process conducted by the board of crime control.*

~~(2) The board of crime control, peace officers standards and training council, and youth justice council shall present a report of its findings, recommendations, and suggested legislation regarding training for juvenile detention officers who are employed in juvenile detention centers to the 57th legislature.~~

(3) A county that complies with this section is eligible for reimbursement through the state grants for youth detention services provided for in Title 41, chapter 5, part 19, to the same extent that training received pursuant to 44-4-301 is reimbursable. (Terminates June 30, 2001—sec. 5, Ch. 469, L. 1999.)"

Section 2. Board to conduct study. The board of crime control shall:

(1) appoint a nine-member study task force that is composed of:

(a) two members of the board of crime control, one of whom must be designated by the board's presiding officer to serve as the study task force presiding officer;

(b) a member of the peace officers standards and advisory training council;

(c) a member of the youth justice council;

(d) two juvenile detention center administrators who represent different geographical areas of the state;

(e) the administrator of the Montana law enforcement academy;

(f) a representative from the department of corrections; and

(g) a representative of the Montana juvenile probation officers association;

(2) assist the study task force in conducting a study of juvenile detention training issues in Montana that includes but is not limited to the following topics:

(a) the general background and current practices of juvenile detention training in Montana;

(b) the general background and current practices related to juvenile detention training in other states;

(c) an examination and analysis of the similarities and differences between the curriculum of offerings of the Montana law enforcement academy related to juvenile detention officer training and the Yellowstone County youth services center pilot program as it existed on June 30, 2001;

(d) an analysis of the various alternatives available for the delivery of quality, cost-effective training for juvenile detention officers; and

(e) an analysis of the administrative and fiscal impacts of the alternatives to delivering juvenile detention officer training; and

(3) present a report of its findings, recommendations, and suggested legislation regarding training for juvenile detention officers who are employed in juvenile detention centers to the appropriate interim committee by August 15, 2002, and to the 58th legislature.

Section 3. Section 5, Chapter 469, Laws of 1999, is amended to read:

"**Section 5. Termination.** [This act] terminates June 30, ~~2001~~ *2003.*"

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Termination. [This act] terminates June 30, 2003.

Approved March 29, 2001

CHAPTER NO. 161

[HB 443]

AN ACT GENERALLY REVISING STATUTES APPLYING TO NOTARIES PUBLIC; CLARIFYING DURATIONAL RESIDENCY REQUIREMENTS FOR NOTARIES PUBLIC; PROHIBITING A PERSON FROM HOLDING MORE THAN ONE COMMISSION AS A MONTANA NOTARY PUBLIC; REQUIRING A COUNTY ATTORNEY TO PROSECUTE VIOLATIONS OF LAWS APPLYING TO NOTARIES PUBLIC; REVISING THE STATUTE GOVERNING AN APPLICATION TO BECOME A NOTARY PUBLIC; ALLOWING THE SECRETARY OF STATE TO CHARGE FEES FOR CHANGES MADE BY THE SECRETARY OF STATE TO THE COMMISSIONS OF NOTARIES PUBLIC; REQUIRING CERTAIN INFORMATION TO BE FILED BY A NOTARY PUBLIC WITH THE SECRETARY OF STATE; CLARIFYING STATUTES REGARDING CHANGES TO A NOTARY PUBLIC'S COMMISSION; APPLYING CONDITIONS AND CLARIFYING ACTIONS PERTAINING TO CERTAIN NOTARIAL ACTS; PROHIBITING A NOTARY PUBLIC FROM ACTING IN CERTAIN CASES IN WHICH THE NOTARY MAY HAVE A CONFLICT OF INTEREST; CLARIFYING THE STATUTE GOVERNING FEES CHARGED BY NOTARIES PUBLIC; AUTHORIZING A NOTARY PUBLIC TO CHARGE FOR CERTAIN EXPENSES; PROVIDING A PENALTY; AND AMENDING SECTIONS 1-5-402, 1-5-403, 1-5-404, 1-5-405, 1-5-408, 1-5-409, 1-5-416, 1-5-417, 1-5-418, 1-5-603, 1-5-609, AND 1-5-610, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-5-402, MCA, is amended to read:

"**1-5-402. Qualifications — residence.** A person appointed as notary public may not, at the time of appointment, be a convicted felon. Each person appointed as a notary public must be a ~~citizen of the United States and of the state~~ *resident* of Montana for at least 1 year *immediately* preceding appointment~~;~~ and must continue to reside within the state of Montana. Removal from the state or conviction of a felony vacates the office and is equivalent to resignation."

Section 2. Section 1-5-403, MCA, is amended to read:

"**1-5-403. Term of office —** ***limit on commissions.*** *(1)* The term of office of a notary public is 4 years from ~~and after~~ the date of commissioning.

(2) A person may not have more than one Montana notary public commission in effect at one time."

Section 3. Section 1-5-404, MCA, is amended to read:

"1-5-404. ~~Revocation~~ *Penalties — revocation* of commission — *prosecution for violation of law.* *(1)* Upon 10 days' notice, the secretary of state may revoke the commission of ~~any~~ *a* notary public for just cause.

(2) The county attorney of a county in which a violation of this chapter or another law applicable to notaries public or notarial acts occurs shall prosecute the violation."

Section 4. Section 1-5-405, MCA, is amended to read:

"1-5-405. Bond and commission — *dates — fees and documents.* *(1)* Each notary public shall submit an application, *a signed oath of office,* and ~~give~~ an official bond in the ~~sum~~ *amount* of ~~$5,000~~ *$10,000 for each 4-year term of office.* The *application and* bond must be approved by the secretary of state. Upon the approval of the *application and the* bond, the payment of fees, and the filing in the office of the secretary of state of the official oath of the notary public, the secretary of state may issue a commission.

(2) The effective date of the surety bond and the notary commission must be the same.

(3) All required fees and required and properly completed documents must be submitted to the office of the secretary of state within 30 days before or by the effective date of the surety bond."

Section 5. Section 1-5-408, MCA, is amended to read:

"1-5-408. Fees for filing *or amending* commission and issuing certificates. The secretary of state shall set by rule the fees for filing or issuing, *in the manner provided for in 1-5-407,* certificates. *The secretary may charge a fee for changes made in the commission of a notary public, during the term of that commission, regarding the notary's name, residential address, business address, or residential or business telephone number.* The fees must be commensurate with costs. The secretary of state shall use application forms soliciting the information required by this part. The county clerk of any county in this state ~~shall~~ *must* receive a fee, as provided in 7-4-2631, for filing a copy of the commission and certifying to the official character."

Section 6. Section 1-5-409, MCA, is amended to read:

"1-5-409. Information to be filed — *amendments to commission.* *(1)* A person appointed as a notary public shall file ~~his address~~ *the person's business, if any, and residential addresses* and telephone ~~number~~ *numbers* with the office of the secretary of state. If the notary public changes ~~his~~ *the notary's* address or telephone number during ~~his~~ *the notary's* term of commission, ~~he~~ *the notary* shall notify the office of the ~~change~~ *secretary of state in writing and shall sign the writing using the same signature that is used for notarial acts.*

(2) A notary public wishing to change the notary's name during the notary's term of commission shall file with the secretary of state a rider or other document from the notary's surety company showing the change of name. The notary public shall also file with the secretary of state a written example of the notary's new official signature."

Section 7. Section 1-5-416, MCA, is amended to read:

"1-5-416. Powers and duties. (1) A notary public shall:

(a) subject to subsection (2), take the acknowledgment or proof of any power of attorney, mortgage, deed, grant, transfer, or other instrument executed by any person and give a certificate of the proof or acknowledgment, endorsed on or attached to the instrument;

(b) take depositions and affidavits, *if the notary is knowledgeable of the applicable legal requirements,* and administer oaths and affirmations in all matters incident to the duties of the notary public's office or to be used before any court, judge, officer, or board in this state;

(c) whenever requested and upon payment of the required fees, make and give a certified copy of any record *kept or that originated* in the notary public's ~~office~~ *place of employment*;

(d) provide and keep an official *crimper-type or ink stamp* seal, upon which must be engraved the name of the state of Montana and the words "Notarial Seal", with the ~~surname~~ *name* of the notary public ~~and at least the initials of the notary public's given name~~ *exactly as that name appears on the notary's certificate of commission issued by the secretary of state*;

(e) authenticate with the notary public's official seal, *and the notary's original signature as it appears on the notary's certificate of commission,* all official acts. Whenever the notary public signs officially as a notary public, the notary public shall add to the signature the words "Notary Public for the State of Montana, residing at.... (stating the name of the notary public's post office)" and shall endorse upon the instrument the date, *showing the month, day, and four-digit year,* of the expiration of the notary public's commission.

(f) on every document on which the notary's seal of office is used, type, stamp, or legibly print the notary's name, as shown on the notary's certificate of commission, after or below the original signature of the notary.

(2) ~~The~~ *A* notary public may not*:*

(a) notarize the notary's own signature*;*

(b) notarize a document in which the notary is individually named or has an interest from which the notary will directly benefit by a transaction involving the document; or

(c) certify a document issued by a public entity, such as a birth, death, or marriage certificate, unless the notary is employed by the entity issuing or holding the original version of that document."

Section 8. Section 1-5-417, MCA, is amended to read:

"**1-5-417. Authority of notaries who are stockholders, officers, or employees of *banks or other* corporations.** ~~It shall be lawful for any~~ *(1) Except as provided in this section, a* notary public who is a stockholder, director, officer, or employee of a bank or other corporation ~~to~~ *may:*

(a) take the acknowledgment of ~~any~~ *a* party to ~~any~~ *a* written instrument executed to or by ~~such~~ *that bank or* corporation~~, to~~*;*

(b) administer an oath to any other stockholder, director, officer, employee, or agent of ~~such~~ *that bank or* corporation~~, or to~~*; or*

(c) protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes, and other negotiable instruments ~~which~~ *that* may be owned or held for collection by ~~such~~ *that* bank or other corporation~~; provided, it shall be unlawful for any~~.

(2) A notary public ~~to~~ *who is a stockholder, director, officer, or employee of a bank or other corporation and is individually named in an instrument or signs an instrument as a representative of the bank or other corporation may not:*

(a) take the acknowledgment of ~~an~~ *that* instrument by or to ~~a~~ *that* bank or other corporation ~~of which he is a stockholder, director, officer, or employee where such notary is a party individually to such instrument or signs the instrument as a representative of such bank or other corporation or to~~*; or*

(b) protest ~~any~~ *a* negotiable instrument owned or held for collection by ~~such~~ *that* bank or other corporation ~~where such notary is individually a party to such instrument~~.

(3) A notary public who violates this section is guilty of a misdemeanor and upon conviction must be punished as provided by law."

Section 9. Section 1-5-418, MCA, is amended to read:

"**1-5-418. ~~Fees~~ *Maximum fees* of notaries.** ~~Fees~~ *Maximum fees* of notaries public are as follows:

(1) for drawing an affidavit, deposition, or other paper for which ~~provision is not herein made~~ *a maximum fee is not otherwise specified*, ~~$2.50~~ *$3.50* ~~per~~ *a* page;

(2) for taking an acknowledgment or proof of a deed or other instrument, ~~to include~~ *including* the seal and the writing of the certificate, for the first signature, ~~$1~~ *$5*;

(3) for each additional signature *of the same person as referred to in subsection (1)*, ~~50 cents~~ *$1*;

(4) for administering an oath or affirmation, ~~$1~~ *$5*;

(5) for certifying an affidavit, with or without seal, including oath, ~~$1~~ *$5; and*

(6) for mileage or other charge to travel to or from or to and from the place of the notarial act, the amount provided by law for state employees when using the same mode of travel and traveling on state business."

Section 10. Section 1-5-603, MCA, is amended to read:

"**1-5-603. Notarial acts.** (1) In taking an acknowledgment, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

(2) In taking a verification upon oath or affirmation, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.

(3) In witnessing or attesting a signature, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named in the instrument.

(4) In certifying or attesting a copy of a document or other item, the notarial officer shall determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which was copied.

(5) (a) In making or noting a protest of a negotiable instrument, the notarial officer shall identify the instrument and certify either:

(i) that due presentment has been made; or

(ii) the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

(b) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(6) A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person is:

(a) personally known to the notarial officer;

(b) identified upon the oath or affirmation of a credible witness personally known to the notarial officer; or

(c) identified on the basis of *a current* identification *document or* documents *that show a photograph and signature of the person*."

Section 11. Section 1-5-609, MCA, is amended to read:

"**1-5-609. Certificate of notarial acts.** (1) A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is performed, *the date on which the notarial act is performed, the type of notarial act being performed,* and the title of the office of the notarial officer and must include the official seal of office. If the officer is a *Montana* notary public, the certificate must also indicate the *place of the notarial officer's residence and the* date of expiration~~, if any,~~ of the commission of office, but omission of ~~that information~~ *that place or date* may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, it must also include the officer's rank.

(2) A certificate of a notarial act is sufficient if it meets the requirements of subsection (1) and it:

(a) is in the short form set forth in 1-5-610;

(b) is in a form otherwise prescribed by the law of this state;

(c) is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or

(d) sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

(3) By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by 1-5-603."

Section 12. Section 1-5-610, MCA, is amended to read:

"**1-5-610. Short forms.** The following short-form certificates of notarial acts are sufficient for the purposes indicated if they are completed with the information required by *1-5-416 and* 1-5-609(1):

(1) For an acknowledgment in an individual capacity:

State of________________________________

(County) of_____________________________

This instrument was acknowledged before me on (date) by (name(s) of person(s))

____

____

(Signature of notarial officer)

(Seal, if any)

____

Title (and Rank)

____

(Residing at)

[My commission expires: _______]

(2) For an acknowledgment in a representative capacity:

State of______________________________

(County) of___________________________

This instrument was acknowledged before me on __(date)__ by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).

____

(Signature of notarial officer)

(Seal, if any)

____

Title (and Rank)

____

(Residing at)

[My commission expires: _______]

(3) For a verification upon oath or affirmation:

State of______________________________

(County) of___________________________

Signed and sworn to (or affirmed) before me on __(date)__ by (name(s) of person(s) making statement)~~.~~

____

____

(Signature of notarial officer)

(Seal, if any)

____

Title (and Rank)

____

(Residing at)

[My commission expires: _______]

(4) For witnessing or attesting a signature:

State of____________________________

(County) of____________________________

Signed or attested before me on __(date)__ by (name(s) of person(s)).

____

____

(Signature of notarial officer)

(Seal, if any)

____

Title (and Rank)

____

(Residing at)

[My commission expires: ________]

(5) For attestation of a copy of a document:

State of____________________________

(County) of____________________________

I certify that this is a true and correct copy of a document in the possession of____________________________.

Dated __________________

____

(Signature of notarial officer)

(Seal, if any)

____

Title (and Rank)

____

(Residing at)

[My commission expires: ________]"

Section 13. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before October 1, 2001.

Approved March 28, 2001

CHAPTER NO. 162

[HB 479]

AN ACT AUTHORIZING SPECIAL IMPROVEMENT DISTRICT BONDS AND RURAL SPECIAL IMPROVEMENT DISTRICT BONDS TO BEAR INTEREST AT A VARIABLE RATE; PROVIDING ADJUSTMENTS IN THE INTEREST RATES ON SPECIAL ASSESSMENTS SECURING VARIABLE RATE BONDS;

PROVIDING THAT VARIABLE RATE BONDS MAY BE SOLD AT A PRIVATE NEGOTIATED SALE IF THE PRINCIPAL AMOUNT IS LESS THAN $500,000 AND THE BOARD OF COUNTY COMMISSIONERS OR THE GOVERNING BODY OF A MUNICIPALITY OBTAINS A MARKETABILITY OPINION; PROVIDING THAT THE BOARD OF INVESTMENTS REVIEW ITS PARTICIPATION IN VARIABLE RATE BONDS AND RECOMMEND ACTION TO THE 58TH LEGISLATURE; AMENDING SECTIONS 7-12-2171, 7-12-2176, 7-12-2183, 7-12-2184, 7-12-2193, 7-12-4189, 7-12-4194, 7-12-4203, 7-12-4223, AND 7-12-4224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2171, MCA, is amended to read:

"7-12-2171. Details relating to rural improvement district bonds and warrants — definitions of bond forms. (1) *(a)* The bonds and warrants must be drawn against either the construction or maintenance fund created for the special improvement district and must bear interest from the date of registration until called for redemption or paid in full. *Bonds or warrants sold at a private, negotiated sale may bear interest at a rate varying periodically at the time or times and on the terms determined by the board of county commissioners. The terms determined by the board of county commissioners may include the establishment of a maximum rate of interest or the convertibility to a fixed rate of interest.*

(b) Variable rate bonds may be sold at a private negotiated sale if the principal amount of the bonds is $500,000 or less and the board of county commissioners obtains separate written opinions from underwriters of Montana rural improvement district bonds stating the bonds are not marketable through a competitive bond sale. Bonds sold in principal amounts below $250,000 do not require a marketability opinion.

(c) The interest must be payable annually or semiannually, at the discretion of the board of county commissioners, on the dates that the board prescribes. The warrants or bonds must bear the signatures of the presiding officer of the board and the county clerk and ~~must~~ *may* bear the corporate seal of the county. ~~They~~ *The warrants or bonds* must be registered in the office of the county clerk and the county treasurer, and if interest coupons are attached to the warrants or bonds, they must also be registered and shall bear the signatures of the ~~chairman~~ *presiding officer* of the board and the county clerk. The coupons may bear the facsimile signatures of the officers in the discretion of the board.

(2) The bonds must be in denominations of $100 or fractions or multiples of $100, may be issued in installments, and may extend over a period not to exceed 30 years. However, if federal loans are available for improvements, repayment may extend over a period not to exceed 40 years. For the purposes of this subsection, the term of a bond issue commences on July 1 of the fiscal year in which the county first levies to pay principal and interest on the bonds.

(3) As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Amortization bonds" means the form of bonds *that bear interest at a fixed rate and* on which:

(i) a part of the principal must be paid each time that interest becomes payable;

(ii) the part payment of principal increases at each installment in the same amount that the interest decreases;

(iii) the combined interest and principal due on each due date remains the same until the bonds are paid;

(iv) the final payment may vary from prior payments in the amount resulting from disregarding fractional costs in prior payments; and

(v) the initial payment may be larger than subsequent payments if the increase represents interest accrued over an additional period not greater than 6 months.

(b) "Serial bonds" means a bond issue payable in *semiannual or* annual installments commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing in each installment not exceeding five times the principal amount of the bonds maturing in the immediately preceding installment."

Section 2. Section 7-12-2176, MCA, is amended to read:

"7-12-2176. Interest rate on unpaid assessments. (1) ~~The~~ *Except as provided in subsection (3), the* installments of assessments remaining unpaid bear simple interest at an annual rate equal to the sum of:

(a) 1/2 of 1% a year; plus

(b) the average interest rate payable on the outstanding bonds or warrants of the rural special improvement district *at the time the assessment is levied each fiscal year*; plus

(c) at the option of the board of county commissioners, up to an additional 1/2 of 1% a year.

(2) The board of county commissioners may subsequently reduce or eliminate the additional interest rate allowed under subsection (1)(c). If the additional interest rate is reduced or eliminated, it may not be subsequently increased or reimposed.

(3) If and so long as the bonds or warrants secured by the assessments bear interest at a variable rate, the installments of assessments remaining unpaid must bear simple interest at an annual rate equal to the sum of:

(a) 1% a year; plus

(b) the interest rate payable on the outstanding bonds or warrants of the rural special improvement district at the time the assessment is levied each fiscal year; plus

(c) to the extent that the interest rate on the bonds or warrants is then less than the maximum rate prescribed for the bonds or warrants or if there is no prescribed maximum rate, up to an additional 1% a year, as may be prescribed by the board of county commissioners in the resolution authorizing the issuance or sale of the bonds or warrants."

Section 3. Section 7-12-2183, MCA, is amended to read:

"7-12-2183. Loan from revolving fund to meet payments on bonds and warrants or to make emergency repairs. (1) During the period described in 7-12-2185(2), when any rural special improvement district bond or warrant secured by the revolving fund or any interest on the bond or warrant becomes due and payable and there is either no money or insufficient money in the appropriate district fund after a transfer from the appropriate district reserve account, if established, with which to pay the bond, warrant, or interest, an amount sufficient to make up the deficiency must be loaned by the revolving fund to the district fund. The bond, warrant, or interest must be paid from the money loaned and money available in the district fund. *The loan must be made even if, in the case of bonds or warrants bearing interest at a variable rate, the interest rate on the special assessments at the time the loan is made is less than or later becomes less than the interest rate on the bonds or warrants.*

(2) If there is insufficient money in the rural special improvement district maintenance fund to pay the cost of emergency repairs, the board of county commissioners, by order or resolution, may loan money from the revolving fund to the district maintenance fund. The loan must be repaid in annual installments in not more than 3 years. The loans may not cause a default in the payments of the principal of the bonds or warrants or the interest on the bonds or warrants. The loan must be repaid by an assessment as provided by 7-12-2120 if other funds are not available. If there are insufficient funds in the revolving fund to make the loans without causing a default in the payment of the principal of the bonds or warrants or the interest on the bonds or warrants secured by the revolving fund, then the loans may not be made."

Section 4. Section 7-12-2184, MCA, is amended to read:

"**7-12-2184. Lien arising due to loan from revolving fund.** (1) Whenever ~~any~~ *a* loan is made to any rural special improvement district fund from the revolving fund, the revolving fund ~~shall have~~ *has* a lien ~~therefor~~ *for the amount of the loan* on the land within the district ~~which is delinquent in the payment of its~~ *for which payments of* assessments *are delinquent* and on all unpaid assessments and installments of assessments on ~~such~~ *the* district, ~~(~~whether delinquent or not~~)~~. ~~and on~~ *The lien also applies to* all money ~~thereafter~~ coming into ~~such~~ *the* district fund~~;~~ *up* to the amount of ~~such~~ *the* loan, together with interest ~~thereon~~ *on the loan* from the time it was made, at the *interest* rate ~~or percentage~~ *that is* borne by the bond or warrant for ~~payment of which, or of interest thereon, such~~ *which the* loan was made *and that was determined at the time the loan was made, even if the interest rate on the bond or warrant subsequently changes.*

(2) If, after all the bonds and warrants issued on any rural special improvement district have been fully paid and all ~~moneys~~ *money* remaining in ~~such~~ *the* district fund ~~have~~ *has* been transferred to the revolving fund, there still remains a debt from the district to the revolving fund, the board of county commissioners may foreclose the lien upon property within the district ~~owing~~ *for which* unpaid assessments *are owed* to the district for the purpose of paying off ~~said~~ *the* loan to the revolving fund."

Section 5. Section 7-12-2193, MCA, is amended to read:

"**7-12-2193. Refunding bonds.** (1) A county may issue special improvement district bonds for the purpose of providing the money needed to pay principal of and interest on outstanding special improvement district bonds. To issue bonds for that purpose, the board of county commissioners, at a regular meeting or a duly called special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be refunded;

(b) the reasons for issuing refunding bonds; and

(c) the term and details of the refunding bonds.

(2) If the refunding bonds are proposed to be issued in an amount greater than the amount of outstanding bonds to be refunded, the board may not authorize the issuance of the bonds until it has conducted a public hearing on the desirability of issuing the bonds, after published and mailed notice as provided in 7-12-2105(2), and found by resolution that the issuance of refunding bonds is in the best interest of the special improvement district.

(3) After the adoption of the required resolution or resolutions, the board may:

(a) sell the refunding bonds at a private negotiated sale; or

(b) at its option, give notice of the sale and sell the refunding bonds in the same manner that other special improvement district bonds are sold.

(4) Bonds may not be refunded by the issuance of refunding bonds unless:

(a) the rate of interest offered on the refunding bonds is at least 1/2 of 1% a year less than the rate of interest on the bonds to be refunded *or, if the bonds to be refunded bear interest at a variable rate, the board determines that the issuance of fixed rate refunding bonds is in the best interest of the owners of property in the district and the county or the board determines that the issuance of variable rate refunding bonds based on a different index or formula than that of the refunded bonds is reasonably expected to result over the remaining term of the bonds to be refunded in an interest rate at least 1/2 of 1% a year less than the rate of interest on the refunded bonds*;

(b) there is, or will be on the next payment date, default in the payment of bond principal or interest; or

(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.

(5) (a) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, but the proceeds of the refunding bonds, less any accrued interest or premium received from their sale, must be deposited with other funds appropriated for the payment of the outstanding bonds in escrow with a suitable banking institution or trust company, which may be located either in or out of the state.

(b) Deposited funds must be invested in securities that are general obligations of the United States or securities the principal of and interest on which are guaranteed by the United States. The securities must mature or be callable at the option of the holder on the dates and bear interest at the rates and be payable on the dates as may be required to provide funds sufficient, with any cash deposited in the escrow account, to pay when due:

(i) the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption;

(ii) the principal on each refunded bond at maturity or upon the redemption date; and

(iii) any redemption premium.

(c) The escrow account must be irrevocably appropriated to the payment of the principal of an interest and redemption premium, if any, on the refunded bonds.

(d) Funds to the credit of the debt service fund for the payment of the refunded bonds and not required for the payment of principal or interest due prior to issuance of the refunding bonds may be appropriated by the board to the escrow account.

(e) The county may pay the reasonable costs and expenses of issuing the refunding bonds and of establishing and maintaining the escrow account.

(6) Refunding bonds may be issued under this section to pay principal of or interest on special improvement district bonds outstanding on April 30, 1985, only if:

(a) the proceeds of the refunding bonds do not redeem the outstanding bonds until one-third or more of the term for which the bonds were issued has expired;

(b) there is a deficiency in the bond account or interest account of the special improvement district fund from which the bonds are payable; or

(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year."

Section 6. Section 7-12-4189, MCA, is amended to read:

"**7-12-4189. Simple interest on assessments.** (1) ~~Upon~~ *Except as provided in subsection (3), simple interest must be charged on* all special assessments and taxes levied and assessed in accordance with any of the provisions of this part~~,~~. *The* simple interest must be charged at an annual rate equal to the sum of:

(a) 1/2 of 1% a year; plus

(b) the average interest rate payable on the outstanding bonds or warrants of the special improvement district *at the time the assessment is levied each fiscal year*; plus

(c) at the option of the city or town council, up to an additional 1/2 of 1% a year.

(2) The city or town council may subsequently reduce or eliminate the additional interest rate allowed under subsection (1)(c). If the additional interest rate is reduced or eliminated, it may not be subsequently increased or reimposed.

(3) If and so long as the bonds or warrants secured by the assessments bear interest at a variable rate, the installments of assessments remaining unpaid must bear simple interest at an annual rate equal to the sum of:

(a) 1% a year; plus

(b) the interest rate payable on the outstanding bonds or warrants of the rural special improvement district at the time the assessment is levied each fiscal year; plus

(c) to the extent that the interest rate on the bonds or warrants is then less than the maximum rate prescribed for the bonds or warrants or if there is no prescribed maximum rate, up to an additional 1% a year, as may be prescribed by the board of

county commissioners in the resolution authorizing the issuance or sale of the bonds or warrants.

~~(3)~~*(4)* The treasurer, in collecting the special assessment taxes if the taxes are payable in one installment, shall collect the interest ~~as may be~~ shown to be due on the taxes by the resolution levying the assessment. If the assessment is payable in installments, the treasurer shall, at the time of collecting the first installment, collect the interest ~~as may be~~ shown to be due on the assessment by the resolution levying the assessment, and the treasurer shall collect with each subsequent installment interest on the amount remaining unpaid."

Section 7. Section 7-12-4194, MCA, is amended to read:

"**7-12-4194. Refunding bonds.** (1) A city may issue special improvement district bonds for the purpose of providing the money needed to pay principal of and interest on outstanding special improvement district bonds. To issue bonds for that purpose, the city council, at a regular meeting or a duly called special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be refunded;

(b) the reasons for issuing refunding bonds; and

(c) the term and details of the refunding bonds.

(2) If the refunding bonds are proposed to be issued in an amount greater than the amount of outstanding bonds to be refunded, the city council may not authorize the issuance of the bonds until it has conducted a public hearing on the desirability of issuing the bonds, after published and mailed notice as provided in 7-12-4106(2), and found by resolution that the issuance of refunding bonds is in the best interest of the special improvement district.

(3) After the adoption of the required resolution or resolutions, the council may:

(a) sell the refunding bonds at a private negotiated sale; or

(b) at its option, give notice of the sale and sell the refunding bonds in the same manner that other special improvement district bonds are sold.

(4) Bonds may not be refunded by the issuance of refunding bonds unless:

(a) the rate of interest offered on the refunding bonds is at least 1/2 of 1% a year less than the rate of interest on the bonds to be refunded *or, if the bonds to be refunded bear interest at a variable rate, the council determines that the issuance of fixed rate refunding bonds is in the best interest of the owners of property in the district and the city or the council determines that the issuance of variable rate refunding bonds based on a different index or formula than that of the refunded bonds is reasonably expected to result over the remaining term of the bonds to be refunded in an interest rate at least 1/2 of 1% a year less than the rate of interest on the refunded bonds*;

(b) there is, or will be on the next payment date, default in the payment of bond principal or interest; or

(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.

(5) (a) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which the bonds mature or

are subject to redemption, but the proceeds of the refunding bonds, less any accrued interest or premium received from their sale, must be deposited with other funds appropriated for the payment of the outstanding bonds in escrow with a suitable banking institution or trust company, which may be located either in or out of the state.

(b) Deposited funds must be invested in securities that are general obligations of the United States or securities the principal of and interest on which are guaranteed by the United States. The securities must mature or be callable at the option of the holder on the dates and bear interest at the rates and be payable on the dates as may be required to provide funds sufficient, with any cash deposited in the escrow account, to pay when due:

(i) the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption;

(ii) the principal on each refunded bond at maturity or upon the redemption date; and

(iii) any redemption premium.

(c) The escrow account must be irrevocably appropriated to the payment of the principal of an interest and redemption premium, if any, on the refunded bonds.

(d) Funds to the credit of the debt service fund for the payment of the refunded bonds and not required for the payment of principal or interest due prior to issuance of the refunding bonds may be appropriated by the council to the escrow account.

(e) The city may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account.

(6) Refunding bonds may be issued under this section to pay principal of or interest on special improvement district bonds outstanding on April 30, 1985, only if:

(a) the proceeds of the refunding bonds do not redeem the outstanding bonds until one-third or more of the term for which the bonds were issued has expired;

(b) there is a deficiency in the bond account or interest account of the special improvement district fund from which the bonds are payable that will not be satisfied by a loan from the revolving fund; or

(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year."

Section 8. Section 7-12-4203, MCA, is amended to read:

"7-12-4203. Details relating to special improvement district bonds and warrants — definitions of bond forms. (1) *(a)* The bonds and warrants must be drawn against the special improvement district fund created for the district and must bear interest from the date of registration until called for redemption or paid in full. *Bonds or warrants sold at a private, negotiated sale may bear interest at a rate varying periodically at the time or times and on the terms determined by the governing body of the municipality. The terms determined by the governing body of the municipality may include the establishment of a maximum rate of interest or the convertibility to a fixed rate of interest.*

(b) Variable rate bonds may be sold at a private negotiated sale if the principal amount of the bonds is $500,000 or less and the governing body of the municipality obtains separate written opinions from underwriters of Montana special improvement district bonds stating the bonds are not marketable through a competitive bond sale. Bonds sold in principal amounts below $250,000 do not require a marketability opinion.

(c) The interest must be payable annually or semiannually, at the discretion of the governing body of the municipality, on the dates that the governing body prescribes. The warrants or bonds must bear the signatures of the mayor and clerk and ~~must~~ *may* bear the corporate seal of the city. The warrants or bonds must be registered in the office of the clerk and treasurer, and if interest coupons are attached to the warrants or bonds, they must also be registered and bear the signatures of the mayor and clerk.

(2) The bonds must be in denominations of $100 or fractions or multiples of $100, may be issued in installments, and may extend over a period not to exceed 20 years or, if refunding bonds are issued pursuant to 7-12-4194, over a period ending not later than 30 years after the date that the bonds to be refunded were issued. For the purposes of this subsection, the term of a bond issue commences on July 1 of the fiscal year in which the city first levies assessments to pay principal and interest on the bonds.

(3) As used in part 41 and this part, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Amortization bonds" means the form of bonds *that bear interest at a fixed rate and* on which:

(i) a part of the principal must be paid each time that interest becomes payable;

(ii) the part payment of principal increases at each installment in the same amount that the interest decreases;

(iii) the combined interest and principal due on each due date remains the same until the bonds are paid;

(iv) the final payment may vary from prior payments in the amount resulting from disregarding fractional costs in prior payments; and

(v) the initial payment may be larger than subsequent payments if the increase represents interest accrued over an additional period not greater than 6 months.

(b) "Serial bonds" means a bond issue payable in *semiannual or* annual installments commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing in each installment not exceeding five times the principal amount of the bonds maturing in the immediately preceding installment."

Section 9. Section 7-12-4223, MCA, is amended to read:

"**7-12-4223. Loans from revolving fund to meet payments on bonds and warrants.** During the period described in 7-12-4225(2), when any special improvement district bond or sidewalk, curb, and alley approach warrants that are secured by the revolving fund or any interest on the bond or warrants becomes due and payable and there is either no money or insufficient money in the appropriate district fund after a transfer from the appropriate district reserve account, if established, with which to pay the bond, warrant, or interest, an amount sufficient to make up the deficiency must be loaned by the revolving fund to the district fund. The bond, warrant, or interest must be paid from the money loaned or from the money loaned and money available in the district fund. *The loan must be made even if, in the case of bonds or warrants bearing interest at a variable rate, the interest rate on the special assessments at the time the loan is made is less than or later becomes less than the interest rate on the bonds or warrants.*"

Section 10. Section 7-12-4224, MCA, is amended to read:

"**7-12-4224. Lien arising due to loan from revolving fund.** Whenever any loan is made to any special improvement district fund or sidewalk, curb, and alley approach warrants from the revolving fund, the revolving fund ~~shall have~~ *has* a lien ~~therefor~~ *for the amount of the loan* on all unpaid assessments and installments of assessments on ~~such~~ *the* district, ~~(~~whether delinquent or not~~)~~. ~~and on~~ *The lien also applies to* all money ~~thereafter~~ coming into ~~such~~ *the* district fund~~;~~ *up* to the amount of ~~such~~ *the* loan, together with interest ~~thereon~~ *on the loan* from the time it was made, at the *interest* rate ~~or percentage~~ *that is* borne by the bond or warrant for ~~payment of~~ which *the loan was made*~~, or of interest thereon, such loan was made~~ *and that was determined at the time the loan was made, even if the interest rate on the bond or warrant subsequently changes.*"

Section 11. Board of investment participation in bonding — review. The board of investments shall review their participation in issuing rural improvement district bonds and special improvement district bonds and provide a report to the 58th legislature with recommendations to increase or decrease the limit under which a marketability opinion is necessary as provided for in 7-12-2171 and 7-12-4203.

Section 12. Effective date. [This act] is effective on passage and approval.

Approved March 28, 2001

CHAPTER NO. 163

[HB 493]

AN ACT PROVIDING FOR THE LICENSURE OF MONTANA WINERIES; AUTHORIZING SMALL MONTANA WINERIES TO SELL TO LICENSED RETAILERS; ALLOWING SHIPMENT OF SMALL WINERIES' WINE BY COMMON CARRIER TO LICENSED RETAILERS AND WINE DISTRIBUTORS; REQUIRING WINERIES TO MAINTAIN RECORDS; GOVERNING DOCK SALES BY DOMESTIC WINERIES TO A HOLDER OF CERTAIN RETAIL ALCOHOLIC BEVERAGE LICENSES; AMENDING SECTIONS 16-3-411, 16-3-418, 16-4-107, 16-4-406, 16-4-407, AND 16-4-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-411, MCA, is amended to read:

"**16-3-411. Domestic winery.** *(1)* A winery located in Montana and ~~registered~~ *licensed* pursuant to 16-4-107 may:

~~(1)~~*(a)* import in bulk, bottle, produce, blend, store, transport, or export wine it produces;

~~(2)~~*(b)* sell wine it produces at wholesale to wine distributors;

~~(3)~~*(c)* sell wine it produces at retail at the winery directly to the consumer for consumption on or off the premises;

~~(4)~~*(d)* provide, without charge, wine it produces for consumption at the winery;

~~(5)~~*(e)* purchase from the department or its licensees brandy or other distilled spirits for fortifying wine it produces; ~~or~~

~~(6)~~*(f)* obtain a special event permit under 16-4-301*; or*

(g) perform those operations and cellar treatments that are permitted for bonded winery premises under applicable regulations of the United States department of the treasury.

(2) (a) A winery that is located in Montana and licensed pursuant to 16-4-107 and that has an annual production of 25,000 gallons or less of wine may sell wine to retail licensees that are licensed to sell wine under this code. A winery making sales to retail licensees under the provisions of this subsection (2) is considered a table wine distributor for the purposes of collecting taxes on table wine, as provided in 16-1-411.

(b) The winery may use a common carrier for delivery of the wine to licensed wine distributors and retailers. A shipment by common carrier is subject to the provisions of 16-3-106 and must be:

(i) in boxes that are marked with the words: "Wine Shipment From Montana Licensee to Montana Licensee";

(ii) made to the premises of a Montana-licensed wine distributor or retailer licensed by the state and who is in good standing; and

(iii) signed for by the wine distributor or retailer or its employee or agent.

(c) In addition to any records required to be maintained under 16-4-107, a winery that distributes wine within the state under this subsection (2) shall maintain records of all sales and shipments. The winery shall furnish monthly and other reports concerning quantities and prices of table wine that it ships in the state, names and addresses of consignees, and other information that the department may determine to be necessary to ensure that distribution of table wines within this state conforms to the requirements of this code."

Section 2. Section 16-3-418, MCA, is amended to read:

"16-3-418. Dual appointments — equal support — alternate supplier — *dock sales*. (1) (a) A supplier may appoint one or more table wine distributors to distribute its table wines in a specified territory. If the supplier appoints two or more table wine distributors to sell its table wines in the same or overlapping territories, the supplier shall offer the same prices, delivery, terms, and promotional support to each table wine distributor.

(b) A supplier may not appoint more than one table wine distributor to distribute its hard cider in a specified territory.

(c) For the purposes of this subsection (1), "table wine" has the meaning assigned in 16-1-106, but does not include hard cider.

(2) *(a)* The holder of an all-beverages license under chapter 4, part 2, may, upon presentation of the license or a photocopy of the license, personally obtain

from any distributor's warehouse a quantity of table wine that the licensee may agree to buy and that the distributor may agree to sell.

(b) The holder of a license that permits on-premises consumption of alcoholic beverages under 16-4-401(2) may, upon presentation of the license or a photocopy of the license, personally or through an employee, obtain from any winery described in 16-3-411(2)(a) a quantity of table wine that the licensee may agree to buy and that the winery may agree to sell."

Section 3. Section 16-4-107, MCA, is amended to read:

"16-4-107. ~~Winery~~ *Domestic winery license — winery* and importer registration. *(1) (a) Wine, other than for personal consumption in conformity with federal exemptions from holding a basic permit as a bonded winery, may be manufactured within the state only by a licensed domestic winery. An application for a domestic winery licensed must be accompanied by a fee of $400, which constitutes the first annual license fee, and a licensee shall in each succeeding year pay an annual fee as provided in 16-4-501. Domestic winery licensees shall hold the appropriate basic permit required by the United States department of the treasury and be qualified for a license in accordance with the provisions of 16-4-401(4).*

(b) A domestic winery licensed to do business in the state shall, each quarter and in the manner and form prescribed by the department, report to the department the amount of wine manufactured or imported by the winery in the previous quarter and the winery's inventory. The department may at any time examine a winery's books.

(2) ~~Any~~ *A* winery *that is not located in the state* or *an* importer of table wines ~~which~~ *that* holds the appropriate license from the United States of America and ~~which~~ *that* desires to distribute its table wines within this state shall apply to the department of revenue for registration on forms to be prepared and furnished by the department. Each winery will furnish the department with a copy of each container label currently used by the winery on its products imported into Montana. The department shall require ~~such~~ *the* winery or importer to agree to furnish monthly and other reports concerning quantities and prices of table wine it ships into the state, names and addresses of consignees, and ~~such~~ *any* other information ~~as~~ *that* the department may determine to be necessary to ~~assure~~ *ensure* that importation and distribution of table wines within this state conform to the requirements of this ~~title~~ *code.* ~~No~~ *A* winery or importer of table wines ~~shall~~ *may not* ship table wines into this state until ~~such~~ *the* registration is granted by the department~~;—and such~~. *The* registration may be ~~cancelled~~ *canceled* or suspended by the department upon a finding after notice and hearing that the registrant has not complied with the terms of its registration."

Section 4. Section 16-4-406, MCA, is amended to read:

"16-4-406. Renewal — suspension or revocation — penalty. (1) The department may upon its own motion and shall upon a written, verified complaint of a person request that the department of justice investigate the action and operation of a brewer, *winery,* wholesaler, or retailer licensed under this code.

(2) Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if the department, after receiving the results of the department of justice's investigation, has reasonable cause to believe that a

licensee has violated a provision of this code or a rule of the department, it may, in its discretion and in addition to the other penalties prescribed:

(a) reprimand a licensee;

(b) proceed to revoke the license of the licensee;

(c) suspend the license for a period of not more than 3 months;

(d) refuse to grant a renewal of the license after its expiration; or

(e) impose a civil penalty not to exceed $1,500.

(3) If the department, after receiving the results of the department of justice's investigation, has reasonable cause to believe that a licensee does not meet the eligibility criteria established by this code or rules of the department or that the premises are not suitable pursuant to the provisions of this code or rules of the department, it may, in its discretion, proceed to revoke the license of the licensee or it may refuse to grant renewal of the license subject to the opportunity of the licensee to contest the action at a hearing under the Montana Administrative Procedure Act."

Section 5. Section 16-4-407, MCA, is amended to read:

"**16-4-407. Suspension or revocation of licenses.** Each July 1 or, when applicable, on the licensee's anniversary date, the department shall issue licenses to brewers, *wineries,* beer importers, wholesalers, or retailers or for the retail sale of alcoholic beverages on an annual basis ~~and with~~ *upon payment of* the fees prescribed by law~~,~~. ~~and the~~ *The* licenses are subject to suspension or revocation under 16-4-406 after midnight of June 30 of the succeeding year or 1 year after the anniversary if the annual renewal fees required by 16-4-501 are not paid. The department shall notify each applicant for an original license or renewal that it is the applicant's responsibility to determine if applicable provisions of federal law require the applicant to obtain a permit from a federal agency."

Section 6. Section 16-4-501, MCA, is amended to read:

"**16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee as follows:

(a) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, $500; for each storage depot, $400;

(b) each beer wholesaler, $400; *each domestic winery producing more than 25,000 gallons of wine, $400; each domestic winery producing 25,000 gallons or less of wine, $200;* each table wine distributor, $400; each subwarehouse, $400;

(c) each beer retailer, $200;

(d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license; for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the rate of $10 a day for each day that beer and table wine are sold at those events lasting 2 or more days, but the fee may not exceed $300 for a series of scheduled sporting events.

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer and table wine only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is $200.

(6) The annual renewal fee for resort retail all-beverages licenses within a given resort area is $2,000 for each license.

(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as provided in this section, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $250 for a unit of a nationally chartered veterans' organization and $400 for all other licensees;

(b) except as provided in this section, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $350 for a unit of a nationally chartered veterans' organization and $500 for all other licensees;

(c) except as provided in this section, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $500 for a unit of a nationally chartered veterans' organization and $650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $650 for a unit of a nationally chartered veterans' organization and $800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsections (6) and (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a $20,000 license fee. A successful applicant shall pay a one-time original license fee of $20,000 for a license issued. The one-time license fee of $20,000 may not apply to any transfer or renewal of a license issued prior to July 1, 1974. All licenses, however, are subject to the specified annual renewal fees.

(8) The fee for one all-beverages license to a public airport is $800. This license is nontransferable.

(9) The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is $250.

(10) The license fees provided in this section are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

(11) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's anniversary date, 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month after the licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal year or 1 year and 2 months after the licensee's anniversary date.

(12) All license and permit fees collected under this section must be deposited as provided in 16-2-108."

Section 7. Effective date. [This act] is effective on passage and approval.

Approved March 28, 2001

CHAPTER NO. 164

[HB 515]

AN ACT ALLOWING RETIRED VOLUNTEER FIREFIGHTERS TO RETURN TO ACTIVE SERVICE WITH A FIRE COMPANY UNDER CERTAIN CIRCUMSTANCES WITHOUT LOSS OF PENSION BENEFITS PAID UNDER THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; AMENDING SECTION 19-17-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-17-401, MCA, is amended to read:

"**19-17-401. Eligibility for pension and disability benefits.** (1) To qualify for pension and disability benefits under this chapter, a member shall meet the requirements of subsections (2) or (3) and (4).

(2) (a) For full pension benefits, a member must have completed at least 20 years' service and must have attained 55 years of age, but need not be an active member of a fire company when 55 years of age is reached.

(b) A member who is prevented from completing at least 20 years' service may qualify for partial pension benefits if the member has completed at least 10 years' service and has attained 60 years of age, but need not be an active member of any fire company when 60 years of age is reached.

(3) An active member of a fire company whose duty-related injury results in permanent total disability is eligible, regardless of age or service, to receive a disability benefit.

(4) ~~To~~ *Except as provided in subsection (5):*

(a) to receive pension or disability benefits, a volunteer firefighter may not be an active member of any fire company~~. A~~; *and*

(b) a volunteer firefighter who receives pension or disability benefits under this chapter may not become an active member of any fire company.

(5) In the event of a declared national, state, or local emergency affecting Montana, a retired volunteer firefighter who is not receiving a disability benefit under this chapter may return to active service with a fire company for the duration of the declared emergency without becoming an active member of the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan and without loss of previously earned benefits. Only the fire chief of the fire company may determine who may return to active service. The fire chief shall prescribe the duties of any retired volunteer firefighter returning to active service."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 29, 2001

CHAPTER NO. 165

[SB 207]

AN ACT REMOVING THE REQUIREMENT THAT THE FORMER FORENSIC UNIT AT WARM SPRINGS BE A STATE CORRECTIONAL FACILITY; CLARIFYING THE PURPOSE FOR WHICH IT MAY BE USED; AMENDING SECTION 53-1-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-202, MCA, is amended to read:

"**53-1-202. (Temporary) Department of corrections.** (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following correctional facilities or programs:

(a) the prisons listed in 53-30-101;

(b) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs; and

(c) the boot camp authorized by 53-30-403.

(3) Youth correctional services consist of the following correctional facilities or programs to provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in need of intervention pursuant to Title 52, chapter 5:

(a) Pine Hills youth correctional facility or other state youth correctional facility; and

(b) any other facility or program that provides custody and services for delinquent youth.

(4) A state institution or facility may not be moved, discontinued, or abandoned without the consent of the legislature.

53-1-202. (Effective on occurrence of contingency) Department of corrections. (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following correctional facilities or programs:

(a) the prisons listed in 53-30-101;

(b) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs; *and*

(c) the boot camp authorized by 53-30-403~~; and~~

~~(d) the forensic unit at Warm Springs~~.

(3) Youth correctional services consist of the following correctional facilities or programs to provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in need of intervention pursuant to Title 52, chapter 5:

(a) Pine Hills youth correctional facility or other state youth correctional facility; and

(b) any other facility or program that provides custody and services for delinquent youth.

(4) A state institution or correctional facility may not be moved, discontinued, or abandoned without the consent of the legislature."

Section 2. Allowed purpose. The former forensic unit at Warm Springs is the property of the department of corrections, and the building may be used only for treatment of inmates with chemical dependency or other mental or physical health-related problems.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 53, chapter 1, part 2, and the provisions of Title 53, chapter 1, part 2, apply to [section 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 29, 2001

CHAPTER NO. 166

[HB 582]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PROVIDE A FEASIBILITY REPORT TO THE

LEGISLATURE ON THE DEVELOPMENT OF A CHRONIC DISEASE REGISTRY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Department study of chronic disease registry. (1) The department of public health and human services shall present to the 58th legislature a feasibility report, as provided for in 5-11-210, concerning the development of a comprehensive chronic disease registry that must, at a minimum, address:

(a) an assessment of current chronic disease-related data collection systems, including an analysis of data elements, confidentiality requirements, data sets, and the potential of integration and coordination of the existing tumor registry with a comprehensive chronic disease registry;

(b) the purpose of having a chronic disease registry, including the use of its data;

(c) a definition of chronic diseases and the prioritization of which diseases should be included in a chronic disease registry;

(d) the estimated costs of developing a chronic disease registry;

(e) the methods by which health care facilities, health care practitioners, and others would provide data to a chronic disease registry;

(f) statutory modifications necessary to implement a chronic disease registry;

(g) the potential electronic linkages of a chronic disease registry to other data sources;

(h) measures to ensure the confidentiality of data provided to and extracted from a chronic disease registry;

(i) which data elements, data definitions, and data sets are necessary to implement a chronic disease registry; and

(j) the recommendations of the Pew environmental health commission, the centers for disease control and prevention, the national institute for occupational safety and health, and other pertinent organizations and agencies.

(2) The department may convene a task force of health care professionals, environmental professionals, epidemiologists, state agencies, legislators, citizens, and others to guide the development of the feasibility report required under subsection (1).

(3) The department shall pursue funding and other assistance from federal and state agencies and private organizations to assist in the development of the feasibility study and to conduct pilot programs of a chronic disease registry, if necessary.

Approved March 30, 2001

CHAPTER NO. 167

[SB 53]

AN ACT ALLOWING A 100 PERCENT DISABLED VETERAN TO REGISTER FOR A FEE OF $5 ONE MOTOR VEHICLE THAT IS NOT USED FOR

COMMERCIAL PURPOSES; AMENDING SECTIONS 61-3-332 AND 61-3-453, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-332, MCA, is amended to read:

"**61-3-332. Number plates.** (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bears the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bears the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bears the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bears the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bears the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned to the dealer, in the position that the department designates.

(2) (a) All number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(b) For light vehicles that are permanently registered as provided in 61-3-527 or 61-3-562, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.

(3) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate

preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45;

Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of $10. The additional fee must be distributed in accordance with the provisions of subsection (10)(f)(iii) and (10)(f)(iv).

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) ~~A~~ *Subject to the limitation in 61-3-453, a* resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued:

(A) a special license plate under this section with a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a ~~passenger vehicle or a truck with a GVW rated capacity of 1 ton or less~~ *motor vehicle, as defined in 61-1-102, that is not used for commercial purposes* is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(iii) Special license plates issued to a disabled veteran are not transferable to another person.

(iv) A disabled veteran is not entitled to a special disabled veteran's license plate for more than one vehicle.

(v) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(i) Fees required under 61-3-321(1) and (5) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).

(ii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iii) An ex-prisoner of war is exempt from the light vehicle ~~taxes~~ *registration fees* imposed under ~~61-3-504~~ *61-3-560 through 61-3-562* for one vehicle that displays a set of ex-prisoner of war license plates.

(iv) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.

(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue account established in 10-2-603 for administration, construction, operation, and maintenance of the state veterans' cemeteries.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.

(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 2. Section 61-3-453, MCA, is amended to read:

"61-3-453. Disabled veterans' plates limited ~~to one automobile or truck~~ — personalized plates. (1) A disabled veteran is ~~not~~ entitled to special license plates for disabled veterans under 61-3-332(10)(c)(i)(A) or 61-3-426(2) for ~~more than~~ *only* one ~~passenger automobile or one truck up to and including 1-ton GVW-rated capacity~~ *motor vehicle, as defined in 61-1-102, as long as that vehicle is not used for commercial purposes.*

(2) Upon submitting the application provided for in 61-3-405 and payment of the $25 fee provided for in 61-3-406, a disabled veteran must receive personalized disabled veteran license plates."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to an original or renewal registration of a motor vehicle pursuant to 61-3-332(10)(c) after [the effective date of this act].

Approved March 30, 2001

CHAPTER NO. 168

[SB 55]

AN ACT DEFINING "BAILMENT" AND CLARIFYING THAT BAILMENT TRANSACTIONS ARE COMMODITY DEALER TRANSACTIONS FOR WHICH LICENSING AND BONDING ARE REQUIRED; AMENDING SECTIONS 80-4-402, 80-4-429, AND 80-4-526, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-4-402, MCA, is amended to read:

"80-4-402. Definitions. As used in parts 4 through 7 of this chapter, the following definitions apply:

(1) "Agent" means a person who contracts for or solicits any agricultural commodities from a producer or warehouse operator or negotiates the consignment or purchase of any agricultural commodity on behalf of a commodity dealer.

(2) "Agricultural commodity" means any grain, oil seed crops, seed, or other crops designated by rule of the department.

(3) "Bailment" means the transfer, by written or verbal contract, of an agricultural commodity by an owner of a commodity to a producer for the purpose of obtaining the producer's services in planting, growing, harvesting, or delivering back to the owner the agricultural commodity. The term includes any one or all of the enumerated transactions, whether title passes or not.

~~(3)~~*(4)* "Bond" means the bond required to be filed by part 5 or 6 of this chapter and includes any equivalent established by department rule, as provided in 80-4-504 and 80-4-604.

~~(4)~~*(5) (a)* "Commodity dealer" means a person who engages in a business involving or, as part of the business, participates in buying, exchanging, negotiating, or soliciting the sale, resale, exchange, *bailment,* or transfer of any agricultural commodity in the state of Montana.

(b) The term does not include:

~~(a)~~*(i)* a person engaged solely in storing, shipping, or handling agricultural commodities for hire;

~~(b)~~*(ii)* a person who buys agricultural commodities from a licensed commodity dealer;

~~(c)~~*(iii)* a person who does not purchase more than $30,000 worth of agricultural commodities from producers during a licensing year; however, once a person exceeds the $30,000 exemption, the person shall obtain a license and is not eligible for the exemption for the succeeding year;

~~(d)~~*(iv)* a person who is the producer of agricultural commodities that the person actually plants, nurtures, and harvests;

~~(e)~~*(v)* a person whose trading in agricultural commodities is limited to trading in commodity futures on a recognized futures exchange; or

~~(f)~~*(vi)* a person who buys agricultural commodities used exclusively for the feeding of livestock and not for resale.

~~(5)~~*(6)* "Delayed payment contract" means a written contract for the sale of an agricultural commodity when the purchase price is to be paid at a date after delivery of the agricultural commodity to the buyer and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, no-price-established contracts, or price-later contracts. A delayed payment contract does not include those contracts in which the parties intend payment to be made immediately upon determination of weights and grades.

~~(6)~~*(7)* "Department" means the department of agriculture provided for in 2-15-3001.

~~(7)~~*(8)* "Depositor" means a person who delivers an agricultural commodity to a commodity dealer for sale, who deposits an agricultural commodity in a warehouse for storage, processing, handling, or shipment, who is the owner or legal holder of an outstanding warehouse receipt, or who is lawfully entitled to possession of the agricultural commodity.

~~(8)~~*(9)* "Director" means the director of the department of agriculture.

~~(9)~~*(10)* "FGIS" means the federal grain inspection service, a program administered by the federal grain inspection, packers, and stockyards administration (GIPSA).

~~(10)~~*(11)* "Grain" means all grains for which standards have been established under the Grain Standards Act and all other agricultural commodities, such as mustard, oil seed crops, or other crops, that may be designated by rule of the department.

~~(11)~~*(12)* "Grain standards" means the official standards of quality and condition of grain that establish the grades defined by the Grain Standards Act or those standards adopted by department rule.

~~(12)~~*(13)* "Grain Standards Act" means the United States Grain Standards Act, 7 U.S.C. 71 through 87.

~~(13)~~*(14)* "Inspector" means a person designated by the director to assist in the administration of parts 4 through 7 of this chapter. The term includes warehouse auditors or examiners.

~~(14)~~*(15)* "Official agricultural commodity inspectors" means official personnel who perform or supervise the performance of official inspection services and certify the results of inspections, including the grade of agricultural commodities.

~~(15)~~*(16)* "Official agricultural commodity samplers" or "samplers" means official personnel who perform or supervise the performance of official sampling services and certify the results of the sampling.

~~(16)~~*(17)* "Official agricultural commodity weighers" means official personnel who perform or supervise the performance of class X or class Y weighing services and certify the results of the services, including the weight of the agricultural commodity.

~~(17)~~*(18)* "Person" means an individual, firm, association, corporation, partnership, or any other form of business enterprise.

~~(18)~~*(19)* "Producer" means the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of agricultural commodities produced on that land.

~~(19)~~*(20)* "Public warehouse" or "warehouse" means an elevator, mill, warehouse, subterminal grain warehouse, public warehouse, or other structure or facility in which, for compensation, agricultural commodities are received for storage, handling, processing, or shipment. The term includes facilities that commingle commodities belonging to different lots of agricultural commodities.

~~(20)~~*(21)* "Purchase contract" means a delayed payment contract or other written contract for the purchase of agricultural commodities by a commodity dealer.

~~(21)~~*(22)* "Purchase price" means the final price after premiums and discounts are assessed.

~~(22)~~*(23)* "Receipt" means a warehouse receipt.

~~(23)~~*(24)* "Scale weight ticket" means a load slip or other evidence of delivery, other than a receipt, given to a depositor by a warehouse operator licensed under the provisions of part 5 of this chapter upon initial delivery of the agricultural commodity to the warehouse.

~~(24)~~*(25)* "Station" means a warehouse located more than 3 miles from the central office of the warehouse.

~~(25)~~*(26)* "Subterminal warehouse" means a warehouse where an intermediate function is performed in which agricultural commodities are customarily received from dealers or producers and where the commodities are accumulated prior to shipment.

~~(26)~~*(27)* "Terminal grain warehouse" means a warehouse authorized by a grain exchange to receive or disburse grain on consignment as presented by the rules and regulations of a grain exchange.

~~(27)~~*(28)* "Warehouse operator" means a person operating or controlling a public warehouse.

~~(28)~~*(29)* "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued under part 5 of this chapter by a warehouse operator, except scale weight tickets."

Section 2. Section 80-4-429, MCA, is amended to read:

"80-4-429. Penalty. (1) Except as otherwise provided, a person who violates any provision of parts 4 through 7 of this chapter or rules promulgated under parts 4 through 7 or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the director or an authorized representative in the performance of a duty under parts 4 through 7 of this chapter is guilty of a misdemeanor.

(2) A person who refuses to permit inspection of licensed premises, books, accounts, records, or other documents required by parts 4 through 7 of this chapter or who uses a scale weight ticket or purchase contract that fails to satisfy the requirements of parts 4 through 7 of this chapter is guilty of a misdemeanor.

(3) A person acting as a commodity dealer or warehouse operator who knowingly sells warehouse-receipted agricultural commodities that the person is not authorized to sell or who fails to pay for purchased agricultural commodities is guilty of a felony.

(4) A person exempted from licensure as a commodity dealer under the provisions of ~~80-4-402(4)(f)~~ *80-4-402(5)(b)(vi)* who fails to pay in full all amounts due to a producer for the sale of agricultural commodities is guilty of a felony and is also subject to any additional administrative penalty authorized by this chapter.

(5) A person is guilty of a felony if that person knowingly delivers to a commodity dealer or warehouse operator or upon the exercise of reasonable diligence should have known of the delivery to that person of an agricultural commodity that contains:

(a) a nitrogen fertilizer added to harvested grain;

(b) a poisonous, deleterious, or other substance not registered or approved by federal or state statutes, regulations, or rules; or

(c) a registered or approved substance that has not been used or applied according to label directions or other government standards."

Section 3. Section 80-4-526, MCA, is amended to read:

"80-4-526. Warehouse receipts — written terms. (1) Warehouse receipts under this part must contain in written terms:

(a) a statement that the warehouse is operated under a license issued by the department;

(b) a statement showing whether it is an original, duplicate, triplicate, or other copy;

(c) a statement showing the name of the warehouse;

(d) a statement showing the name of the city or town where the warehouse is located;

(e) the date the warehouse receipt is issued;

(f) the number of the warehouse receipt. All receipts must be numbered consecutively.

(g) a statement that the grain is "received in store" from the person named;

(h) a statement of gross weight, dockage, and net weight and the sample report used for grade and protein analysis;

(i) a statement of encumbrances, such as cash or other advances;

(j) a statement that, upon the return of the receipt properly endorsed by the person to whom the order was issued and the payment of the proper charges for storing and handling, delivery will be made in accordance with this part;

(k) a statement that the grain is properly insured for the benefit of the owner; and

(l) the name of the manager or agent of the warehouse.

(2) The face of the warehouse receipt may also provide for other statements, such as:

(a) the scale weight ticket numbers or the assembly sheet number;

(b) the grade; and

(c) the protein certificate used.

(3) The back of the warehouse receipt may include printed statements, such as:

(a) delivery provisions;

(b) actual-delivery-of-grain provisions;

(c) bailment provisions *provided for in Title 30, chapter 7, part 2, that do not conflict with this part*;

(d) act-of-God provisions;

(e) nonnegotiable provisions; and

(f) endorsements and other statements pertinent to bookkeeping data whenever ~~such~~ *the* statements do not conflict with any state or federal law pertaining to public warehousing or the grading or testing of grain.

(4) A copy of the warehouse receipt issued by the warehouse operator must accompany each application for a warehouse operator's license."

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2001

CHAPTER NO. 169

[SB 91]

AN ACT ALLOWING THE FINANCING OF WATER-RELATED PROJECTS THAT IMPROVE WATER QUALITY, INCLUDING LIVESTOCK CONTAINMENT FACILITIES, FROM THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AMENDING SECTION 85-1-602, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-1-602, MCA, is amended to read:

"**85-1-602. Objectives.** (1) The department shall administer a renewable resource grant and loan program to enhance Montana's renewable resources through projects that measurably conserve, develop, manage, or preserve resources. Either grants or loans may be provided to fund the following:

(a) feasibility, design, research, and resource assessment studies;

(b) preparation of construction, rehabilitation, or production plans; and

(c) construction, rehabilitation, production, education, or other implementation efforts.

(2) Projects that may enhance renewable resources in Montana include but are not limited to:

(a) development of natural resource-based recreation;

(b) development of offstream and tributary storage;

(c) improvement of water use efficiency, including development of new, efficient water systems, rehabilitation of older, less efficient water systems, and acquisition and installation of measuring devices required under 85-2-113; and development of state, tribal, and federal water projects; ~~and~~

(d) water-related projects that improve water quality, including livestock containment facility projects; and

~~(d)~~*(e)* advancement of farming practices that reduce agricultural chemical use.

(3) The renewable resource grant and loan program is the key implementation portion of the state water plan and must be administered to encourage grant and loan applications for projects designed to accomplish the objectives of the plan."

Section 2. Effective date. [This act] is effective July 1, 2001.

Approved March 30, 2001

CHAPTER NO. 170

[SB 161]

AN ACT REVISING AND CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE BOARD OF ENVIRONMENTAL REVIEW TO ESTABLISH AND ASSESS FEES RELATED TO SOLID WASTE; AUTHORIZING THE DEPARTMENT TO ASSESS PENALTIES FOR LATE OR NONPAYMENT OF ALL SOLID WASTE MANAGEMENT FEES; REPEALING THE QUARTERLY SOLID WASTE MANAGEMENT FEE OF $5 PER TON ON THE IN-STATE DISPOSAL OR INCINERATION OF OUT-OF-STATE WASTE; REPEALING THE MORATORIUM ON CERTAIN INTERSTATE TRANSPORT OF SOLID WASTE; AMENDING SECTIONS 7-13-231, 75-10-104, 75-10-105, 75-10-106, 75-10-115, 75-10-116, 75-10-117, 75-10-204, 75-10-206, AND 75-10-221, MCA; REPEALING SECTIONS 75-10-118 AND 75-10-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-231, MCA, is amended to read:

"7-13-231. Authorization for charges for services. (1) To defray the cost of maintenance and operation of a solid waste management district, the board shall establish a fee for service, with approval of the county commissioners, provided that a public hearing has been held if written protest has been made as provided in 7-13-211. An increase in fees may not be approved and implemented unless notice of the increase is given as provided in 7-13-208(1) and (2) and an opportunity for protest is allowed as provided in 7-13-209 and 7-13-211.

(2) This fee must be assessed to all units in the district that are receiving a service, for the purpose of maintenance and operation of the district.

(3) An opportunity for protest or hearing is not required to increase fees for the purpose of paying fees ~~imposed~~ *collected* by the department of environmental quality under 75-10-115. Notice must be provided to all units of the rate or portion of any rate that is directly attributable to the fee imposed.

(4) In order to aid in the determination of rates for service charges under 7-13-232, the department of revenue shall assist the board by providing the board with information pertaining to new construction, demolition, remodeling that changes the use of a building, and the location of mobile homes within the district boundaries."

Section 2. Section 75-10-104, MCA, is amended to read:

"75-10-104. Duties of department. The department shall:

(1) prepare a state solid waste management and resource recovery plan as required by 75-10-807 for submission to the board;

(2) prepare rules necessary for the implementation of this part for submission to the board, including but not limited to rules:

(a) governing the submission of plans for a solid waste management system;

(b) governing procedures to be followed in applying for and making loans;

(c) governing agreements between a local government and the department for grants or loans under this part;

(d) establishing, for the purpose of determining the *tonnage or volume-based* solid waste management fee ~~to which~~ *that* a facility is subject *to* under ~~75-10-118~~ *75-10-115(1)(c)*, methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility;

(e) establishing the license application fee that a facility is subject to under 75-10-115(1)(a);

(f) establishing the flat annual license renewal fee that a facility is subject to under 75-10-115(1)(b);

(g) establishing the tonnage or volume-based annual renewal fee that a facility is subject to under 75-10-115(1)(c);

~~(e)~~*(h)* providing procedures for the quarterly collection of the solid waste management fee provided for in ~~75-10-118~~ *75-10-204(6)*; and

~~(f)~~*(i)* providing guidelines for integrated waste management;

(3) provide financial assistance to local governments for front-end planning activities for a proposed solid waste management system ~~which~~ *that* is compatible with the state plan whenever financial assistance is available;

(4) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating:

(a) a solid waste management system in order to ensure that the system conforms to the state plan;

(b) integrated waste management programs; and

(c) collection, disposal, reduction, and educational programs for household hazardous waste and conditionally exempt small quantities of hazardous waste as defined in ARM 16.44.402;

(5) provide front-end organizational loans for the implementation of an approved solid waste management system whenever funds for loans are available;

(6) enforce and administer the provisions of this part;

(7) administer loans made by the state under the provisions of this part;

(8) approve plans for a proposed solid waste management system submitted by a local government; and

(9) serve as a clearinghouse for information on waste reduction and reuse, recycling technology and markets, composting, and household hazardous waste disposal, including chemical compatibility."

Section 3. Section 75-10-105, MCA, is amended to read:

"**75-10-105. Powers of department.** The department may:

(1) accept loans and grants from the federal government and other sources to carry out the provisions of this part;

(2) make loans to a local government for the planning, design, and implementation of a solid waste management system;

(3) make grants for a local government for planning or implementation of a solid waste management system; and

(4) collect the solid waste management ~~fee~~ *fees* provided for in ~~75-10-118~~ *75-10-115*."

Section 4. Section 75-10-106, MCA, is amended to read:

"**75-10-106. Duties of board.** The board shall:

(1) adopt a state solid waste management and resource recovery plan after complying with the procedures outlined in 75-10-111; and

(2) adopt rules necessary for the implementation of this part, including but not limited to rules governing the following:

(a) submission of plans for a solid waste management system;

(b) the procedures to be followed in applying for and making loans and grants;

(c) the requirements for eligibility for grants; ~~and~~

(d) the agreements between the local government and the department for grants and loans under this part*; and*

(e) the application fee, flat annual license renewal fee, and tonnage or volume-based renewal fee for solid waste management systems prepared by the department pursuant to 75-10-104 and 75-10-115."

Section 5. Section 75-10-115, MCA, is amended to read:

"**75-10-115. Solid waste management fee.** (1) The department may ~~establish and collect~~ *prepare rules for adoption by the board, pursuant to 75-10-104 and 75-10-106, that set* fees for the management and regulation of solid waste ~~disposal~~ *at facilities subject to regulation pursuant to part 2 of this chapter. Upon adoption by the board, the department may collect the fees.* These fees may include:

(a) a license application fee that reflects the cost of reviewing a new solid waste management system or a substantial change to an existing facility;

(b) ~~an~~ *a flat* annual license renewal fee that reflects a minimal base fee related to the fixed costs of an annual inspection and license renewal and *that is* based upon the ~~following formula:~~ *categorization of solid waste management systems into separate classes identified by the following criteria:*

(i) the quantity of solid waste received by the solid waste management system;

(ii) the nature of the solid waste received; and

(iii) the nature of the waste management occurring within the solid waste management system;

~~(i) for a major facility with a planned capacity of more than 25,000 tons of solid waste a year, $3,500;~~

~~(ii) for an intermediate facility with a planned capacity of more than 5,000 tons a year but not more than 25,000 tons a year, $3,000;~~

~~(iii) for a minor facility with a planned capacity of not more than 5,000 tons a year, $2,500;~~ and

(c) a *tonnage or* volume-based fee on solid waste disposal.

(2) All fees collected must be deposited in the solid waste management account provided for in 75-10-117."

Section 6. Section 75-10-116, MCA, is amended to read:

"**75-10-116. Penalties for failure to pay fee.** A person who owns a solid waste disposal facility *that is* subject to ~~a fee~~ *the fees* under ~~75-10-118~~ *75-10-115* and *who* fails to pay the fee in the manner provided by department rule is subject to a fine of not more than $2,000 or imprisonment not to exceed 6 months, or both, and shall reimburse the department for the amount of the fee owed and interest calculated at a rate equal to the previous fiscal year's average rate of return on the board of investments' short-term investment pool."

Section 7. Section 75-10-117, MCA, is amended to read:

"**75-10-117. Solid waste management account.** (1) There is a solid waste management account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue from the solid waste management ~~fee~~ *fees* provided for in ~~75-10-118~~ *75-10-115*; and

(b) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source~~,~~ *that is* intended to be used for the purposes of the account.

(3) The account may be used by the department only for the administration of ~~part 2, this part, and~~ 75-2-215, *part 2 of this chapter, and this part.*"

Section 8. Section 75-10-204, MCA, is amended to read:

"**75-10-204. Powers and duties of department.** The department shall, subject to the provisions of 75-10-107, adopt rules governing solid waste management systems that must include but are not limited to:

(1) requirements for the plan of operation and maintenance that must be submitted with an application under this part;

(2) the classification of disposal sites according to the physical capabilities of the site to contain the type of solid waste to be disposed of;

(3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;

(4) the suitability of the site from a public health standpoint when hydrology, geology, and climatology are considered;

(5) requirements relating to ground water monitoring, including but not limited to:

(a) information that owners and operators of municipal solid waste landfills and other disposal sites specified in 75-10-207 ~~must~~ *are required to* submit to the department to enable the department to prepare the priority compliance list authorized by 75-10-207(3);

(b) the content of plans for the design, construction, operation, and maintenance of monitoring wells and monitoring systems; and

(c) recordkeeping and reporting;

(6) ~~fees related to the review of solid waste management system license applications;~~

~~(7) the renewal of solid waste management system licenses and related fees;~~

~~(8)~~ *the imposition of* a quarterly fee based on the justifiable direct and indirect costs to the state of administering Title 75, chapter 10, parts 1 and 2, for solid waste generated outside Montana and disposed of or incinerated within Montana;

~~(9)~~*(7)* requirements to maintain financial assurance payable to the state of Montana with a surety satisfactory to the department in an amount sufficient to provide for waste tire treatment, removal, transportation, *and* disposal, fire suppression, or other measures necessary to protect the environment and the health, safety, and welfare of the public;

~~(10)~~*(8)* any other factors relating to the sanitary disposal or management of solid wastes."

Section 9. Section 75-10-206, MCA, is amended to read:

"**75-10-206. Variance.** (1) ~~Any~~ *A* person may apply to the board for a variance from rules adopted by the department pursuant to 75-10-204, except for rules adopted pursuant to 75-10-204~~(8)~~*(6)*. The board may grant a variance if it finds that:

(a) failure to comply with the rules does not result in a danger to public health or safety; or

(b) compliance with the rules from which a variance is sought would produce hardship without producing benefits to the health and safety of the public that outweigh the hardship.

(2) ~~No~~ *A* variance may *not* be granted pursuant to this section except after a hearing pursuant to the Montana Administrative Procedure Act and consideration by the board of the relative interests of the applicant and owners of the property likely to be affected by the waste disposal system under consideration.

(3) ~~Nothing in this~~ *This* section may *not* be construed as relieving the board from the obligation to comply with the Resource Conservation and Recovery Act of 1976, as amended, or as allowing the board to grant a variance less restrictive than that act."

Section 10. Section 75-10-221, MCA, is amended to read:

"**75-10-221. License required — application.** (1) Except as provided in 75-10-214, ~~no~~ *a* person may *not* dispose of solid waste or operate a solid waste management system without a license from the department.

(2) The department shall provide application forms for a license as provided in this part.

(3) The application ~~shall~~ *must* contain the name and business address of the applicant, the location of the proposed solid waste management system, a plan of operation and maintenance, and ~~such~~ other information ~~as~~ *that* the department may by rule require.

(4) The license provided for in this section is for a period not to exceed 12 months unless renewed by the department. ~~The department may provide exceptions to the 12-month requirement for a 2-year period following July 1, 1991.~~

(5) The department may require submission of a new application if the department determines that the plan of operation, the management of the solid waste system, or the geological or ground water conditions have changed since the license was initially approved.

(6) In *preparing rules for board adoption that establish* ~~establishing~~ fees for licenses and the review of applications *pursuant to 75-10-104(2)*, the department shall consider the *tonnage or* volume of waste to be managed and the size of the proposed solid waste management system. The fees *adopted by the board* must encourage reduction in the *tonnage or* volume of waste to be managed and cover the costs to the department of initially reviewing and annually licensing the solid waste management system."

Section 11. Repealer. Sections 75-10-118 and 75-10-209, MCA, are repealed.

Section 12. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2001

CHAPTER NO. 171

[SB 165]

AN ACT GENERALLY REVISING THE LAWS GOVERNING THE MONTANA GROWTH THROUGH AGRICULTURE ACT; CLARIFYING THE COMPENSATION FOR COUNCIL MEMBERS; CLARIFYING CONFLICT OF INTEREST PROVISIONS FOR COUNCIL MEMBERS; CLARIFYING THE USE OF INVESTMENTS FOR MARKETING AND BUSINESS

DEVELOPMENT; PROVIDING PRIORITY FOR INVESTMENTS IN PROJECTS USING INNOVATIVE AGRICULTURAL TECHNOLOGY; PROVIDING FOR PARTNERSHIPS WITH CONVENTIONAL LENDING SOURCES; AMENDING SECTIONS 90-9-103, 90-9-201, 90-9-202, 90-9-203, 90-9-301, 90-9-303, 90-9-306, 90-9-311, 90-9-312, 90-9-313, AND 90-9-316, MCA; REPEALING SECTION 90-9-318, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-9-103, MCA, is amended to read:

"**90-9-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Act" means the Montana Growth Through Agriculture Act.

(2) "Agricultural business" means an enterprise engaged in the production, processing, marketing, distribution, or exporting of agricultural products. The term includes any related business the primary function of which is providing goods or services to an agricultural enterprise.

(3) "Agricultural development project" means ~~either~~ a *marketing, agribusiness development,* seed capital, *or research and development* ~~or research and development~~ project designed to discover, develop, transfer, *market,* use, or commercialize existing or new agricultural products or processes in order to strengthen and enhance agricultural economic development in the state.

~~(4) "Agricultural development project loan agreement" or "loan" means an agreement entered into between the council and the loan recipient of a seed capital project loan or a research and development project loan that:~~

~~(a) creates a debt relationship between the parties;~~

~~(b) provides for a financial return to the council;~~

~~(c) provides economic development potential to the state; and~~

~~(d) contains various provisions and terms as required by the act.~~

(4) "Agricultural development project loan agreement" or "loan" means an agreement entered into between the council and the loan recipient of a seed capital project loan or a research and development project loan that:

(a) creates a debt relationship between the parties;

(b) provides for a financial return to the council;

(c) provides economic development potential to the state; and

(d) contains various provisions and terms as required by the act.

~~(5)~~*(5)* "Company" means a natural person, firm, partnership, corporation, association, or other entity authorized to conduct business in the state.

~~(6)~~*(6)* "Convertible debenture" means a debenture convertible into stock under certain conditions by an individual or company, but not by the council.

~~(7)~~*(7)* "Council" means the Montana agriculture development council established in 2-15-3015.

~~(8)~~*(8)* "Debenture" or "note" means a writing or certificate issued as evidence of debt.

~~(9)~~*(9)* "Department" means the department of agriculture established in 2-15-3001.

~~(10) "Expansion capital project" means an agricultural technology development project undertaken to enable an individual or a company to expand its manufacturing and marketing activities in order to move its agricultural products or services into new markets or to expand existing markets.~~

~~(11)~~*(10)* "Innovative agricultural technology" means the involvement of an agricultural product or process that embodies the use of implements, machinery, equipment, chemical formulations, resources, materials, methods, or other items in a manner that departs from previous commercial developments, practices, or applications.

~~(12)~~*(11)* "Investment" means an award of money, with or without repayment requirements, for the purposes provided for in ~~90-9-401~~ *this chapter.*

~~(13)~~*(12) (a)* "Matching funds" means the funds received ~~in cash~~ by the agricultural development project loan *or investment* recipient from ~~nonstate appropriated sources~~ *private, federal, state, or commodity checkoff funds* and contributed by the loan *or investment* recipient to the project in an amount that is at least equal to the funds ~~loaned~~ *disbursed* to the recipient by the council for use in the agricultural development project.

(b) Matching funds may not include other state grants.

~~(14)~~*(13)* "Portfolio company" means a startup or expansion stage company that has received a seed capital project loan from the council.

~~(15)~~*(14)* "Private sector" means any entity or individual, not principally a part of or associated with a governmental unit~~, that is associated with or involved in commercial activity~~.

~~(16) "Research and development project" means an agricultural development project that falls into the category of applied technology research or agricultural technology transfer and assistance.~~

~~(17) "Research and development project loan" means an agricultural development project loan agreement entered into between the council and a loan recipient for a research and development project.~~

(15) "Research and development project" means an agricultural development project that falls into the category of applied technology research or agricultural technology transfer and assistance.

(16) "Research and development project loan" means an agricultural development project loan agreement entered into between the council and a loan recipient for a research and development project.

~~(18)~~*(17) (a)* "Seed capital project" means ~~a~~ *an agricultural development project loan entered into between the council and a loan recipient for the purposes of providing the recipient with* startup or expansion capital ~~project~~.

(b) The term does not include an investment.

~~(19) "Seed capital project loan" means an agricultural development project loan entered into between the council and a loan recipient for a seed capital project.~~

~~(20)~~*(18)* "State" means the state of Montana.

~~(21) "Technology transfer and assistance project" means an agricultural development project that:~~

~~(a) transfers technology research from the laboratory to the marketplace; or~~

~~(b) provides better access and exposure to business development assistance or information for researchers or early-stage agricultural businesses that commercialize agricultural technology products.~~

~~(22)~~*(19)* "Warrant" means an instrument issued by a corporation giving a holder other than the council the right to purchase stock of a corporation at a fixed price, either for a limited time or perpetually."

Section 2. Section 90-9-201, MCA, is amended to read:

"90-9-201. Council organization — meetings. (1) The members of the council shall select a member as ~~chairman~~ *presiding officer*. ~~In addition to the chairmanship, the~~ *The* council may establish other offices and select council members to fill these offices.

(2) The council shall meet quarterly and at other times as determined by the ~~chairman~~ *presiding officer* or a majority of the council.

(3) Each committee member, except the director of the department and the director of the department of commerce, is entitled to:

(a) $50 compensation for each day that the member is engaged in the transaction of official business, including travel to and from official business; and

(b) necessary travel expenses as provided for in 2-18-501 through 2-18-503."

Section 3. Section 90-9-202, MCA, is amended to read:

"90-9-202. Powers and duties of ~~the~~ council. The council shall:

(1) establish policies and priorities to enhance the future development of agriculture in Montana[, including the Indian reservations in the state];

(2) make investments or loans in agricultural development projects that have a short- or long-term ability to stimulate agriculture development and diversification in [rural, urban, and tribal settings in] Montana, including but not limited to:

(a) seed capital ~~loans~~ *projects* for development and commercialization of new products and processes;

~~(b) agricultural business incubators;~~

~~(c)~~*(b)* foreign and domestic market development activities;

(c) applied technological research;

~~(d)~~*(d)* ~~applied technological research~~ *agricultural development projects*; and

~~(e)~~*(e)* agricultural technology assistance and transfer; and

(3) accept grants or receive devises of money or property for use in making the investments or loans authorized by this chapter. (Bracketed language terminates June 30, 2001—sec. 19, Ch. 512, L. 1999.)"

Section 4. Section 90-9-203, MCA, is amended to read:

"90-9-203. Rulemaking. The council shall adopt rules necessary to implement the provisions of this chapter, including but not limited to rules:

(1) governing the conduct of council business;

(2) establishing application procedures that, at a minimum, require the submittal of an executive summary for an agricultural development project loan *or investment*, a business plan for a seed capital project ~~loan~~, *a research and development project proposal for a research and development project loan,* ~~a research and development project proposal for a research and development project loan,~~ and other documents necessary to meet the criteria established in the act;

(3) establishing procedures to be followed by the council in its review process prior to making an agricultural development project loan *or investment*;

(4) establishing postdisbursement activities that describe the ongoing involvement or follow-along management of the council that may be required in an agricultural development project loan *or investment* agreement."

Section 5. Section 90-9-301, MCA, is amended to read:

"**90-9-301. Agriculture seed capital account — matching funds.** (1) There is an agriculture seed capital account administered by the council.

(2) The council may loan *or invest* money from the agriculture seed capital account to support *agricultural development projects and* research relating to innovative organizational improvements in agricultural businesses and to the commercialization and marketing of new agricultural products or agricultural production processes.

(3) The council may not make a loan *or investment* to an agricultural development project ~~for which the~~ *unless the recipient provides* matching funds ~~have not been received~~. Matching funds are required prior to any expenditure of state funds ~~for research and development or seed capital projects~~. The council may accept as matching funds those funds received by the loan recipient within 1 year prior to the execution of the loan agreement."

Section 6. Section 90-9-303, MCA, is amended to read:

"**90-9-303. Return-on-investment agreements.** The council ~~shall~~ *may* enter into return-on-investment agreements for those products or processes that are to be developed and commercialized as a result of an investment under this chapter. As a part of ~~such~~ an agreement, the council shall require payment of a return that it considers commensurate with the risk of its original investment."

Section 7. Section 90-9-306, MCA, is amended to read:

"**90-9-306. Appropriation authority and funding — prohibited investments.** (1) The council ~~has authority to~~ *may* accept and expend all funds received by it as grants, donations, or other private or public income, including amounts repaid as principal and interest on investments made by the council. These funds are statutorily appropriated to the council, as provided in 17-7-502, for the purposes of this chapter, except that expenditures for actual and necessary expenses required for the efficient administration of this chapter must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(2) Council members may not personally apply for or receive council funds. If an organization with which a member is affiliated applies for council funds, the member ~~must~~ *shall* disclose the nature of the affiliation and, *if the council*

member is a board member or officer of the organization, may not participate in the decision of the council regarding the application."

Section 8. Section 90-9-311, MCA, is amended to read:

"**90-9-311. General criteria underlying agricultural development project loans *and investments.*** The council may make an agricultural development project loan *or investment* only upon a favorable determination that the proposed agricultural development project:

(1) is consistent with the findings and purposes of the act because it *adds value to Montana's agricultural products. Priority must be given to projects that* ~~incorporates~~ *incorporate* innovative agricultural technology~~;~~*.*

(2) has prospects for collaboration between the public and private sectors of the state's economy;

(3) has prospects for achieving commercial success and for creating new jobs in the state;

(4) has potential for commercial success related to the specific product, process, or business development methodology proposed;

(5) can provide matching funds;

(6) has potential to benefit existing agricultural business;

(7) can be reasonably expected to provide an economic return within a reasonable period of time;

(8) involves processing or adding value to agricultural products produced in the state; and

(9) has a management structure that allows ongoing postdisbursement involvement by the council."

Section 9. Section 90-9-312, MCA, is amended to read:

"**90-9-312. Seed capital projects — program goals.** (1) The council may make a ~~seed capital project~~ loan to a seed capital project if it determines that the project*:*

(a) meets the loan criteria established in 90-9-311 and 90-9-313*;* ~~and further determines that the project~~

(b) meets the goals established in subsection (2)*; and*

(c) involves development and commercialization of innovative agricultural products or processes.

(2) The goals of this program are:

(a) to ~~assist in the development of innovative technology in the state by providing~~ *provide* a source of capital to the *value-added* agricultural-based sector of the state's economy;

(b) to provide financing and follow-along management support for agricultural businesses in the state that are attempting to develop agricultural products or processes based on innovative technologies; and

(c) to provide a liaison between agricultural businesses in the state and investors in an effort to enhance the pool of capital available to agricultural businesses in the state.

(3) On approval of a seed capital project, a loan agreement must be entered into between the council and the loan recipient that:

(a) creates a debt relationship between the parties;

(b) provides for a financial return to the council;

(c) provides economic development potential to the state; and

(d) contains various provisions and terms as required by this chapter."

Section 10. Section 90-9-313, MCA, is amended to read:

"**90-9-313. Specific criteria for seed capital project loans.** The council may make a seed capital project loan only if it determines that the proposed project complies with the criteria and goals set forth in 90-9-311 and 90-9-312 and further determines that:

(1) the project *adds value to Montana's agricultural products. Priority must be given to projects that* ~~develops~~ *develop* or ~~employs~~ *employ* innovative agricultural products or processes that promise a significant competitive advantage~~;~~.

(2) the project requires financing that*:*

(a) is not available from conventional lending sources*; or*

(b) will be made in partnership with conventional lending sources;

(3) the project provides an opportunity to preserve the principal of the loan amount and to earn a monetary return;

(4) the company is located or preparing to locate within the state;

(5) the project demonstrates a capacity to diversify or add value to the state's agricultural businesses;

(6) the company's management team possesses sufficient agricultural business experience;

(7) the company has potential for creating and retaining jobs and stimulating tax revenue growth in the state;

(8) the company's agricultural product or process is targeted for a commercial market;

(9) the company's product or process is of sufficient quality to significantly impact the target market; and

(10) if applicable, the company's business plan is designed to provide financing, marketing, and production milestones to accomplish the proposed commercialization."

Section 11. Section 90-9-316, MCA, is amended to read:

"**90-9-316. Agricultural development project loan *or investment* agreement — contents — council decisions final.** (1) If the council determines that an agricultural development project meets the criteria established in this chapter and has complied with the applicable procedures and review processes established by the council, the council may enter into an agricultural development project loan *or investment* agreement with the company and authorize the disbursement of funds to the company.

(2) The loan *or investment* agreement, at a minimum, must contain the following provisions, *when applicable*:

(a) the project budget;

(b) the financing, marketing, and production milestones for the project that describe project tasks to be achieved at designated times in each area;

(c) the reporting requirements, including but not limited to:

(i) financial statements to be submitted on at least an annual basis as determined by the council;

(ii) quarterly commercialization progress reports;

(iii) annual reports; and

(iv) reports on any significant project transactions;

(d) the disbursement schedule for the loan *or investment*;

(e) the payback to the council;

(f) the causes for loan *or investment* revocation, suspension, or termination; and

(g) the intellectual property provisions.

(3) All decisions of the council are final and are not subject to the contested case provisions of Title 2, chapter 4."

Section 12. Repealer. Section 90-9-318, MCA, is repealed.

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 15. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2001

CHAPTER NO. 172

[SB 209]

AN ACT CLARIFYING THAT THE CONSTITUTIONAL BALANCING TEST OF DETERMINING WHETHER A RIGHT OF INDIVIDUAL PRIVACY CLEARLY EXCEEDS THE MERITS OF PUBLIC DISCLOSURE APPLIES TO THE DISCLOSURE OF THE TERMS OF A COMPROMISE OR SETTLEMENT OF A CLAIM AGAINST THE STATE OR A POLITICAL SUBDIVISION; AMENDING SECTIONS 2-9-303 AND 2-9-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-303, MCA, is amended to read:

"2-9-303. Compromise or settlement of claim against state. (1) The department of administration may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any. A settlement from the self-insurance reserve fund or deductible reserve fund exceeding $10,000 must be approved by the district court of the first judicial district except when suit has been filed in another judicial district, in which case the presiding judge ~~must~~ *shall* approve the compromise settlement.

(2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into or approved pursuant to subsection (1) are public records available for public inspection *unless a right of individual privacy clearly exceeds the merits of public disclosure.*"

Section 2. Section 2-9-304, MCA, is amended to read:

"2-9-304. Compromise or settlement of claim against political subdivision. (1) The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any.

(2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into pursuant to subsection (1) are public records available for public inspection *unless a right of individual privacy clearly exceeds the merits of public disclosure.*"

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to the compromise or settlement of claims entered into prior to [the effective date of this act].

Approved March 30, 2001

CHAPTER NO. 173

[SB 234]

AN ACT PROVIDING FOR THE DUTIES OF TRUSTEES AND OFFICERS OF A RURAL COOPERATIVE UTILITY; ESTABLISHING WHEN A TRUSTEE OR OFFICER HAS A CONFLICT OF INTEREST; PROVIDING THAT RURAL COOPERATIVE UTILITIES MAY INDEMNIFY TRUSTEES AND OFFICERS; PROVIDING CERTAIN CONDITIONS UNDER WHICH TRUSTEES AND OFFICERS ARE NOT PERSONALLY LIABLE TO THE RURAL COOPERATIVE UTILITY; AMENDING SECTION 35-18-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Duties of trustees and officers. (1) A trustee or officer shall discharge the duties of the office, including the trustee's or officer's duties as a member of any committee:

(a) in good faith;

(b) with the care that an ordinarily prudent person in a similar position would exercise under similar circumstances: and

(c) in a manner that the trustee or officer reasonably believes to be in the best interest of the cooperative.

(2) In discharging duties, a trustee or officer is entitled to rely on factual information, opinions, reports, or statements, including but not limited to financial statements and other financial information, if prepared and presented by:

(a) one or more officers or employees of the cooperative whom the trustee or officer reasonably believes to be reliable and competent in the subject matter presented;

(b) attorneys, public accountants, engineers, or other persons with regard to subject matters that the trustee or officer reasonably believes are within the person's professional or expert competence; or

(c) a committee of the board of trustees or officers of which the trustee or officer is not a member if the trustee or officer reasonably believes that the committee merits confidence.

(3) A trustee or officer is not acting in good faith if the trustee or officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A trustee or officer is not liable for any action taken as a trustee or officer or for any failure to take any action if the trustee or officer performs the duties of the office in compliance with this section.

Section 2. Trustee or officer conflict of interest. (1) A conflict of interest transaction is a transaction with the cooperative in which a trustee of the cooperative has a direct or indirect interest. A conflict of interest transaction is not voidable and may not be the basis for imposing liability on the trustee or officer if the transaction was fair at the time the transaction was entered into.

(2) If a trustee or officer has a conflict of interest relating to a transaction, the trustee or officer:

(a) shall disclose to the trustees or members voting on the transaction the existence and nature of the conflict of interest and all facts known to the trustee with respect to the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction; and

(b) may not participate, directly or indirectly, in the vote on the transaction.

(3) For the purposes of this section, a trustee or officer of a cooperative has an indirect interest in a transaction if:

(a) another entity in which the trustee or officer has a material interest or in which the trustee or officer is a general partner is a party to the transaction; or

(b) another entity, other than a cooperative or corporation of which the cooperative is a member or shareholder, of which the trustee or officer is a director, officer, or trustee is a party to the transaction.

(4) (a) Except as provided in subsection (4)(b), a conflict of interest transaction is authorized, approved, or ratified if the transaction receives the affirmative vote of a majority of the trustees or officers on the board or committee who do not have a direct or indirect interest in the transaction.

(b) A transaction may not be authorized, approved, or ratified by a single trustee or officer.

(c) If a majority of the trustees or officers on the board or committee who do not have a direct or indirect conflict of interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action on the transaction.

(d) The presence of or vote cast by a trustee with a direct or indirect interest in the transaction does not affect the validity of any action taken under this section if the transaction is authorized, approved, or ratified as provided in this section.

(5) The articles or bylaws of the cooperative may impose additional requirements on conflict of interest transactions.

Section 3. Definitions. As used in [sections 3 through 9], the following definitions apply:

(1) "Liability" means the obligation to pay a judgment, settlement, penalty, or fine, including an excise tax assessed with respect to an employee benefit plan, or to pay reasonable expenses incurred with respect to a proceeding.

(2) (a) "Official capacity" means the office of trustee or officer in a cooperative.

(b) The term does not include service for any other domestic cooperative or any partnership, joint venture, trust, or other enterprise.

(3) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(4) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

(5) (a) "Trustee or officer" means an individual who is or was a trustee or officer of a cooperative or an individual who, while a trustee or officer of a cooperative, is or was serving at the cooperative's request as a director, officer, partner, trustee, employee, or agent of another domestic cooperative, partnership, joint venture, trust, or other enterprise.

(b) The term includes, unless the context requires otherwise, the estate or personal representative of a trustee or officer.

Section 4. Authority to indemnify. (1) Except as provided in subsection (4), an individual who is made a party to a proceeding because the individual is or was a trustee or officer may be indemnified against liability incurred in the proceeding if:

(a) the individual conducted business in good faith;

(b) the individual reasonably believed:

(i) in the case of conduct in the individual's official capacity with the cooperative, that the individual's conduct was in the cooperative's best interests; and

(ii) in all other cases, that the individual's conduct was at least not opposed to the cooperative's best interests; and

(c) in the case of any criminal proceeding, the individual had no reasonable cause to believe that the conduct was unlawful.

(2) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, a determination that the trustee or officer did not meet the standard of conduct described in this section.

(3) A cooperative may not indemnify a trustee or officer under this section:

(a) in connection with a proceeding by or in the right of the cooperative in which the trustee or officer was adjudged liable to the cooperative; or

(b) in connection with any other proceeding charging improper personal benefit to the trustee or officer, whether or not involving action in the trustee's or officer's official capacity, in which the trustee or officer was adjudged liable on the basis that personal benefit was improperly received by the trustee or officer.

(4) Indemnification permitted under this section in connection with a proceeding by or in the right of the cooperative is limited to reasonable expenses incurred in connection with the proceeding.

Section 5. Mandatory indemnification. Unless limited by its articles of incorporation, a cooperative shall indemnify a trustee or officer who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the trustee or officer was a party because the trustee or officer is or was a trustee or officer of the cooperative against reasonable expenses incurred by the trustee or officer in connection with the proceeding.

Section 6. Court-ordered indemnification. Unless a cooperative's articles of incorporation provide otherwise, a trustee or officer of the cooperative who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice that the court considers necessary, may order indemnification if it determines that the trustee or officer:

(1) is entitled to mandatory indemnification under [section 5], in which case the court shall also order the cooperative to pay the trustee's reasonable expenses incurred in obtaining court-ordered indemnification; or

(2) is fairly and reasonably entitled to indemnification in view of all the relevant circumstances. If the trustee or officer was adjudged liable as described in [section 4(3)], the trustee's or officer's indemnification is limited to reasonable expenses incurred.

Section 7. Determination and authorization of indemnification. (1) A cooperative may not indemnify a trustee or officer under [section 4] unless authorized in the specific case after a determination has been made that indemnification of the trustee or officer is permissible in the circumstances because the trustee or officer has met the standard of conduct set forth in [section 4].

(2) The determination must be made:

(a) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(b) if a quorum cannot be obtained under subsection (2)(a), by majority vote of a committee designated by the board of directors, in which designated directors who are parties may participate;

(c) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in subsection (2)(a) or (2)(b); or

(ii) if a quorum of the board of directors cannot be obtained under subsection (2)(a) and a committee cannot be designated under subsection (2)(b), selected by majority vote of the full board of directors in which selected directors who are parties may participate; or

(d) by the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(3) Authorization of indemnification and evaluation as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses must be made by those entitled under subsection (2)(c) to select counsel.

Section 8. Insurance. A cooperative may purchase and maintain insurance on behalf of an individual who is or was a director, trustee, officer, employee, or agent of the cooperative or who, while a director, trustee, officer, employee, or agent of the cooperative, is or was serving at the request of the cooperative as a director, trustee, officer, partner, employee, or agent of another domestic cooperative, partnership, joint venture, trust, or other enterprise, against liability asserted against or incurred by the individual in that capacity or arising from an individual's status as a director, trustee, officer, employee, or agent, whether or not the cooperative would have power to indemnify the individual against the same liability under [section 4 or 5].

Section 9. Application. (1) A provision treating a cooperative's indemnification of trustees or officers that is contained in its articles of incorporation, its bylaws, a resolution of its shareholders or board of directors, a contract, or other instrument is valid only if and to the extent that the provision is consistent with [sections 3 through 9]. If articles of incorporation limit indemnification, indemnification is valid only to the extent that it is consistent with the articles of incorporation.

(2) [Sections 3 through 9] do not limit a cooperative's power to pay or reimburse expenses incurred by a trustee or officer in connection with the trustee's or officer's appearance as a witness in a proceeding at a time when the trustee or officer has not been made a named defendant or respondent to the proceeding.

Section 10. Section 35-18-302, MCA, is amended to read:

"**35-18-302. Nonliability of members, *trustees, and officers* for debts of cooperative.** *(1)* The private property of the members of a cooperative ~~shall be~~ *is* exempt from execution for the debts of the cooperative, and ~~no~~ *a* member ~~shall be~~ *is not* liable or responsible for any debts *or obligations* of the cooperative.

(2) A trustee or officer of a cooperative or acting for a cooperative is not personally liable to the cooperative or its members for any actions taken or a failure to take action as a trustee or officer unless:

(a) the trustee or officer fails to perform the trustee's or officer's responsibilities, including those provided in [sections 1 and 2]; and

(b) the failure to perform constitutes willful misconduct or recklessness."

Section 11. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 35, chapter 18, part 3, and the provisions of Title 35, chapter 18, part 3, apply to [sections 1 through 9].

Section 12. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2001

CHAPTER NO. 174

[SB 252]

AN ACT CLARIFYING THE CRITERIA REQUIRED BEFORE AN INSURER MAY CONVERT A CLAIMANT'S TEMPORARY TOTAL DISABILITY BENEFITS OR TEMPORARY PARTIAL DISABILITY BENEFITS TO PERMANENT PARTIAL DISABILITY BENEFITS; AMENDING SECTION 39-71-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-609, MCA, is amended to read:

"39-71-609. Denial of claim after payments made or termination of all benefits or reduction to partial benefits by insurer — fourteen days' notice required — ~~exception~~ *criteria for conversion of benefits*. (1) Except as provided in subsection (2), if an insurer determines to deny a claim on which payments have been made under 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates all biweekly compensation benefits, it may do so only after 14 days' written notice to the claimant, the claimant's authorized representative, if any, and the department. For injuries occurring prior to July 1, 1987, an insurer ~~must~~ *shall* give 14 days' written notice to the claimant before reducing benefits from total to partial. However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may be terminated as of the time the claimant returned to work.

(2) ~~Temporary total disability benefits may be terminated on the date that the worker has been released to return to work in some capacity~~ *Temporary total disability benefits may be terminated on the date that the worker has been released to return to work in some capacity. Unless the claimant is found, at maximum healing, to be without a permanent physical impairment from the injury, the insurer, prior to converting temporary total disability benefits or temporary partial disability benefits to permanent partial disability benefits:*

(a) must have a physician's determination that the claimant has reached medical stability;

(b) must have a physician's determination of the claimant's physical restrictions resulting from the industrial injury;

(c) must have a physician's determination, based on the physician's knowledge of the claimant's job analysis prepared by a rehabilitation provider, that the claimant can return to work, with or without restrictions, on the job on which the claimant was injured or on another job for which the claimant is suited by age, education, work experience, and physical condition;

(d) shall give notice to the claimant of the insurer's receipt of the report of the physician's determinations required pursuant to subsections (2)(a) through (2)(c). The notice must be attached to a copy of the report."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2001

CHAPTER NO. 175

[SB 269]

AN ACT REVISING CERTAIN DATES FOR TRANSITION TO CUSTOMER CHOICE FOR ELECTRICITY SUPPLY; AMENDING SECTION 69-8-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-8-201, MCA, is amended to read:

"**69-8-201. Public utility — transition to customer choice — waiver.** (1) A public utility shall, except as provided in this section, adhere to the following deadlines:

(a) ~~On or before July 1, 1998, all~~ *All* customers with individual loads greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts or greater must have the opportunity to choose an electricity supplier.

(b) Subject to subsection (2), and as soon as is administratively feasible but before July 1, 2002, all other public utility customers must have the opportunity to choose an electricity supplier.

(2) (a) Except as provided for in subsection (4), the commission may determine that additional time is necessary for customers identified in subsection (1)(b); however, the implementation of full customer choice may not be delayed beyond July 1, 2004.

(b) A determination by the commission that additional time is necessary for subsection (1)(b) customers must be made at least 60 days in advance of the scheduled date and must be based on one or more of the following considerations:

(i) implementation would not be administratively feasible;

(ii) implementation would materially affect the reliability of the electric system; or

(iii) Montana customers or electricity suppliers would be disadvantaged due to lack of a competitive electricity supply market.

(3) The commission shall designate the public utility or one or more default suppliers to provide regulated default service for those small customers of a public utility that are not being served by a competitive electricity supplier. The transition advisory committee shall review and address the need for continued default supply service and make recommendation to the 57th legislature.

(4) Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, and 69-8-402, a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, may~~:~~

~~(a)~~ defer compliance with this chapter until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory~~, except that the public utility shall file a transition plan pursuant to 69-8-202 to provide transition to customer choice on or before July 1, 2002, and must have completed the transition period to customer choice by July 1, 2006; and~~

~~(b) petition the commission to delay the public utility's transition plan filing until July 1, 2004~~.

(5) Upon a request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of 69-8-104, 69-8-202 through 69-8-204, 69-8-208 through 69-8-211, 69-8-402, and this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2001

CHAPTER NO. 176

[SB 370]

AN ACT REVISING ELIGIBILITY FOR RETIREMENT BENEFITS IN THE JUDGES' RETIREMENT SYSTEM; AMENDING SECTION 19-5-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-5-501, MCA, is amended to read:

"**19-5-501. Eligibility for service retirement.** (1) ~~Any~~ *A* member who has at least 5 years of membership service and has reached the age of ~~65~~ *60* may retire and receive the proportional retirement benefits provided in 19-5-502.

(2) Retirement benefits may not be approved by the board while the member is drawing full compensation as a judge or justice. However, benefits may not be withheld for receiving compensation as a judge pro tempore."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2001

CHAPTER NO. 177

[SB 421]

AN ACT REQUIRING WHOLESALERS, MANUFACTURERS, OR DISTRIBUTORS THAT TERMINATE, CANCEL, DO NOT RENEW, OR REFUSE TO CONTINUE A DEALERSHIP CONTRACT TO REIMBURSE A RETAILER FOR, OR REPURCHASE FROM A RETAILER, SIGNS, SPECIAL EQUIPMENT, AND SPECIAL TOOLS ACQUIRED BY THE RETAILER AT THE RECOMMENDATION OR REQUIREMENT OF THE WHOLESALER, MANUFACTURER, OR DISTRIBUTOR; PROHIBITING THE UNREASONABLE WITHHOLDING OF CONSENT TO A DEALER'S SALE, TRANSFER, OR EXCHANGE OF THE DEALER'S FRANCHISE BY A MANUFACTURER OF NEW MOTOR VEHICLES, A FACTORY BRANCH, A DISTRIBUTOR, A DISTRIBUTOR BRANCH, AN IMPORTER, A FIELD

REPRESENTATIVE, AN OFFICER, AN AGENT, OR ANY REPRESENTATIVE; REQUIRING A RESPONSE TO A DEALER'S REQUEST FOR CONSENT TO THE SALE, TRANSFER, OR EXCHANGE OF THE DEALER'S FRANCHISE WITHIN 60 DAYS OF RECEIPT OF THE REQUEST; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Reimbursement for or repurchase of signs, special equipment, and special tools. Upon the termination, cancellation, nonrenewal, or refusal to continue a dealership contract by a wholesaler, manufacturer, or distributor, the wholesaler, manufacturer, or distributor shall pay the retailer:

(1) the original cost, adjusted for the remaining useful life, of each sign owned by the retailer that bears a common name, trade name, or trademark of the wholesaler, manufacturer, or distributor, if the acquisition of the sign was recommended or required by the wholesaler, manufacturer, or distributor;

(2) (a) the original cost, adjusted for the remaining useful life, of all special equipment and special tools purchased or leased by the retailer that were acquired from the wholesaler, manufacturer, or distributor or sources approved by the wholesaler, manufacturer, or distributor and that were recommended or required by the wholesaler, manufacturer, or distributor; or

(b) if the special equipment has a service agreement or the special tools are leased by the retailer, the amounts that are required to terminate the service agreement or the lease under the terms of the service or lease agreement; and

(3) the cost of transporting, handling, packing, and loading the signs, special equipment, and special tools.

Section 2. Sale, transfer, or exchange of dealership — notice — response to notice. (1) A manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of the persons or entities listed in this subsection may not unreasonably withhold consent to the sale, transfer, or exchange of a franchise to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state who meets the state's statutory requirements for appointment as a dealer.

(2) (a) A manufacturer or distributor shall respond to a dealer in writing within 60 days of receipt of the dealer's request, delivered by certified mail to the manufacturer or distributor, for consent to the sale, transfer, or exchange of the dealer's franchise submitted by the dealer to the manufacturer or distributor pursuant to the provisions of subsection (1).

(b) The manufacturer shall acknowledge, in writing delivered by certified mail to the dealer and the buyer designated in the dealer's request for consent, receipt of the request. Failure to respond within the 60-day period established in subsection (2)(a) is approval of the request.

(c) If the manufacturer or distributor requires additional information to complete its review, the manufacturer or distributor shall notify the buyer in writing delivered by certified mail within 15 business days of receipt of the dealer's request. If the manufacturer or distributor requests additional information, the 60-day time period for approval runs from the time of the receipt of the requested supplemental information. The manufacturer or dealer may request additional information only one time.

Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 30, chapter 11, part 7, and the provisions of Title 30, chapter 11, part 7, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 61, chapter 4, and the provisions of Title 61, chapter 4, apply to [section 2].

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2001

CHAPTER NO. 178

[HB 374]

AN ACT REVISING THE LAWS RELATING TO THE LEGISLATIVE POLICY AND DUTIES OF THE OFFICE OF STATE COORDINATOR OF INDIAN AFFAIRS; AMENDING SECTIONS 90-11-101 AND 90-11-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-11-101, MCA, is amended to read:

"90-11-101. Legislative policy. *The legislature finds and declares that:*

(1) ~~Whereas,~~ a considerable portion of the citizens of the state of Montana are ~~members of the Indian race~~ *American Indians*; ~~and~~

(2) ~~Whereas, in the course of the past 80 years~~ *since statehood,* ~~these~~ Indian citizens of the state of Montana have ~~been driven from their native valleys and plains and are at present living and residing~~ *lived* ~~upon~~ *on* reservations set apart for ~~such~~ *those* purposes by the United States of America, and by virtue of ~~that isolation~~ *their isolation* and ~~of~~ supervision by the federal government, great problems of economic and social significance have arisen and presently exist~~, and no suitable progress has been made to solve such problems by reason of the fact that the Indians and those who are attempting to aid them in the solution of their problems have never been able to present a coordinated and united effort in solving such problems~~; ~~and~~

(3) ~~Whereas, it is hereby declared that it is the legislative policy of this state that~~ the best interests of ~~the Indians~~ *Montana Indian tribes* will be served by ~~the fostering of a program which is~~ *engaging in government-to-government relationships* designed to ~~establish and place our Indian citizens in a position to take their rightful place in our society and assume the~~ *recognize the* rights, duties, and privileges of full citizenship ~~and as~~ *that* Indians~~;~~ *are entitled to as citizens of this state* ~~it is therefore necessary that a state office of the coordinator of Indian affairs be established so that the problems of the Indians of Montana can be approached and reconciled from a state level in cooperation with the United States of America~~: ~~and~~

(4) ~~Whereas,~~ *because the tribes are domestic dependent nations,* agencies of the federal government retain jurisdiction ~~on Indian reservations in~~ *and a fiduciary duty throughout* the state of Montana ~~of~~ *for* the administration of economic, social, health, education, and welfare programs for Indians; ~~and~~

~~(5) Whereas, Indians who reside off reservations generally qualify for participation in federal programs but are often prohibited from voting on tribal affairs and for tribal officers; and~~

(5) unique differences exist between the tribes, their reservations, customs, and treaties, and their respective relationships with the federal government, all of which influence the relationships among tribes and between the tribes and the state;

(6) ~~Whereas,~~ there are sizeable numbers of off-reservation *enrolled and unenrolled* Indians residing in our state ~~of both enrolled and unofficial tribal descent (landless)~~ whose needs for *social,* environmental, *educational, and economic* assistance are borne *in part* by state and local agencies~~, and these needs are derived from problems shared by all Indians, whether they reside on reservations or not, and in consideration of their desire for official voice and representation in seeking solutions to their problems~~; ~~and~~

(7) ~~Whereas,~~ programs of the state of Montana should not duplicate those supported by agencies of the federal government *or tribal governments* ~~as regards~~ *with regard to* jurisdiction of Indian people, ~~and since~~ *because* state responsibility ~~is effected~~ *includes* ~~with~~ off-reservation Indians and ~~since~~ *because* those Indians require assistance to coordinate their affairs with various tribal groups and federal agencies where they have no official recognition;

(8) the state and the tribes working together in a government-to-government relationship and engaging in compacts and other cooperative agreements for the benefit of Indian and non-Indian residents will promote economic development, environmental protection, education, social services support, and enduring good will;

~~(8)~~*(9)* ~~Then therefore, let it be resolved that~~ *to facilitate the discussion and resolution of issues and concerns that Indian tribes have in relation to the state, the federal government, and among themselves,* the coordinator of Indian affairs ~~should~~ *shall:*

(a) maintain effective tribal-state communications;

(b) assess ~~the problems of all Indians to include those who reside off known reservations and who~~ *tribal and individual Indian concerns and interests to* seek ways and means of communicating ~~their opinions and needs~~ *these concerns and interests* to *relevant state* agencies ~~of responsibility~~ *and to the legislature* and ~~that the coordinator should~~ actively assist ~~them~~ in organizing ~~their~~ *these* efforts*;* and ~~that he~~

(c) act as ~~representative and spokesman~~ *a liaison* for ~~organized bodies of~~ *tribes and* Indian people, whether ~~reservation or off-reservation classification~~ *the Indian people reside on or off reservations,* whenever ~~his~~ assistance is required*;*

(10) the coordinator of Indian affairs shall endeavor to assist tribes to seek agreements between the state and tribes and to work toward a consensus among the tribes and other parties on shared goals and principles."

Section 2. Section 90-11-102, MCA, is amended to read:

"90-11-102. (Temporary) Duties and assistance. (1) It is the duty of the state coordinator of Indian affairs to carry out the legislative policy set forth in 90-11-101.

(2) The state coordinator shall:

(a) *meet at least quarterly with tribal governments and* become acquainted with the problems confronting the Indians of Montana;

(b) meet with executive branch directors on issues arising between Montana's Indian citizens, tribes, and state agency personnel and programs;

(c) report to the governor's cabinet meeting concerning issues confronting Indian people and tribal governments;

~~(b)~~*(d)* advise the legislative and executive branches of the state of Montana of those problems *and issues*;

~~(c)~~*(e)* make recommendations for the alleviation of those problems *and issues*;

~~(d)~~*(f)* serve the Montana delegation in the federal congress as an adviser and intermediary in the field of Indian affairs;

~~(e)~~*(g)* act ~~on behalf of~~ *as a liaison for* representative Indian organizations and groups, public and private, whenever the state coordinator's support is solicited by tribal *governmental* entities;

~~(f)~~*(h)* serve on the state-tribal economic development commission established in 90-1-131;

~~(g)~~*(i)* report in detail at every meeting of the interim committee of the legislature having jurisdiction over the office of the coordinator those actions taken by the state-tribal economic development commission established by 90-1-131 to carry out its duties; and

~~(h)~~*(j)* hire, with the concurrence of the other members of the state-tribal economic development commission, a tribal business center coordinator and a federal grants coordinator, and subsequently provide administrative support for both positions.

(3) All executive and legislative agencies of state government may within the area of their expertise and authority provide assistance to tribal councils or their official designees requesting assistance on any matter relating to ~~coal~~ *education, health, natural resources, and economic* development on Indian reservation lands ~~and may make an appropriate charge for that assistance~~. (Terminates June 30, 2001—sec. 19, Ch. 512, L. 1999.)

90-11-102. (Effective July 1, 2001) Duties and assistance. (1) It ~~shall be~~ *is* the duty of the state coordinator of Indian affairs to carry out the legislative policy set forth in 90-11-101.

(2) ~~He~~ *The state coordinator* shall ~~acquaint himself~~:

(a) meet at least quarterly with tribal governments and become acquainted with the problems confronting the Indians of Montana~~, and he shall~~*;*

(b) meet with executive branch directors on issues arising between Montana's Indian citizens, tribes, and state agency personnel and programs;

(c) report to the governor's cabinet meeting concerning issues confronting Indian people and tribal governments;

(d) advise the legislative and executive branches of the state of Montana of those problems *and issues* ~~and shall~~*;*

(e) make recommendations for the alleviation ~~thereof~~ *of those problems and issues;*~~. He shall also~~

(f) serve the Montana delegation in the federal congress as an adviser and intermediary in the field of Indian affairs*;* and ~~shall~~

(g) act ~~as spokesman for~~ *as a liaison for* representative Indian organizations and groups, public and private, whenever ~~his~~ *the state coordinator's* support is solicited *by tribal governmental entities.*

(3) All executive and legislative agencies of state government may within the area of their expertise and authority provide assistance to tribal councils or their official designees requesting ~~such~~ assistance on any matter relating to ~~coal~~ *education, health, natural resources, and economic* development on Indian reservation lands ~~and may make an appropriate charge therefor~~."

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 2, 2001

CHAPTER NO. 179

[SB 23]

AN ACT GENERALLY REVISING THE SECURED TRANSACTION CHAPTER OF THE UNIFORM COMMERCIAL CODE TO ADOPT ERRATA AND REVISIONS TO THE MOST RECENT VERSION OF THE SECURED TRANSACTION LAWS; AMENDING SECTIONS 30-1-105, 30-1-201, 30-9-122, 30-9-124, 30-9-129, 30-9-220, 30-9-331, 30-9-337, 30-9-343, 30-9-351, 30-9-356, 30-9-446, 30-9-447, 30-9-448, 30-9-449, 30-9-529, 30-9-533, 30-9-545, 30-9-608, 30-9-613, 30-9-615, AND 30-9-625, MCA, AND SECTION 164, CHAPTER 305, LAWS OF 1999; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-1-105, MCA, is amended to read:

"30-1-105. (Temporary) Territorial application of ~~the~~ code — parties' power to choose applicable law. (1) Except as provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of the other state or nation shall govern their rights and duties. Failing agreement, this code applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. 30-2-402.

Applicability of the Chapter on Leases. 30-2A-105 and 30-2A-106.

Applicability of the Chapter on Bank Deposits and Collections. 30-4-102.

Governing law in the Chapter on Funds Transfers. 30-4A-507.

Letters of Credit. 30-5-136.

Applicability of the Chapter on Investment Securities. 30-8-120.

Perfection provisions of the Chapter on Secured Transactions. 30-9-103.

30-1-105. (Effective July 1, 2001) Territorial application of code — parties' power to choose applicable law. (1) Except as provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of the other state or nation governs their rights and duties. Failing agreement, this code applies to transactions bearing an appropriate relation to this state.

(2) When one of the following provisions of this code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. 30-2-402.

Applicability of the Chapter on Leases. 30-2A-105 and 30-2A-106.

Applicability of the Chapter on Bank Deposits and Collections. 30-4-102.

Governing law in the Chapter on Funds Transfers. 30-4A-507.

Letters of Credit. 30-5-136.

Applicability of the Chapter on Investment Securities. 30-8-120.

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interest *and agricultural liens*. 30-9-321 through 30-9-327."

Section 2. Section 30-1-201, MCA, is amended to read:

"30-1-201. (Temporary) General definitions. Subject to additional definitions contained in the subsequent chapters of this code which are applicable to specific chapters or parts thereof, and unless the context otherwise requires, in this code:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance as provided in this code (30-1-205 and 30-2-208). Whether an agreement has legal consequences is determined by the provisions of this code, if applicable; otherwise by the law of contracts (30-1-103).

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be considered to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: Non-Negotiable Bill of Lading) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this code and any other applicable rules of law.

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this code to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder", with respect to a:

(a) negotiable instrument, means the person in possession if the instrument is payable to bearer or to the person in possession;

(b) certified security, means the person in possession is the registered owner, the security has been indorsed to the person in possession by the registered owner, or the security is in bearer form; or

(c) document of title, means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government or intergovernmental organization.

(25) A person has "notice" of a fact when:

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this code.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party" as distinct from "third party" means a person who has engaged in a transaction or made an agreement within this code.

(30) "Person" includes an individual or an organization.

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) (a) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (30-2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper that is subject to chapter 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under 30-2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with chapter 9. Unless a consignment is intended as security, reservation of title thereunder is not a "security interest", but a consignment in any event is subject to the provisions on consignment sales (30-2-326). Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee and:

(i) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(ii) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(iii) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(iv) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(b) A transaction does not create a security interest merely because it provides that:

(i) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(ii) the lessee assumes risk of loss of the goods or agrees to pay taxes, insurance, filing, recording, or registration fees or service or maintenance costs with respect to the goods;

(iii) the lessee has an option to renew the lease or to become the owner of the goods;

(iv) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market value for the use of the goods for the term of the renewal at the time the option is to be performed; or

(v) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(c) For purposes of this subsection (37):

(i) additional consideration is not nominal if:

(A) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(B) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed;

(ii) additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(iii) "reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(iv) "present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed, and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature means one made without actual, implied, or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (30-3-303, 30-4-208, and 30-4-209), a person gives "value" for rights if he acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a preexisting contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form.

30-1-201. (Effective July 1, 2001) General definitions. Subject to additional definitions contained in the subsequent chapters of this code that are applicable to specific chapters or parts thereof, and unless the context otherwise requires, in this code:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance as provided in this code (30-1-205 and 30-2-208). Whether an agreement has legal consequences is determined by the provisions of this code, if applicable; otherwise by the law of contracts (30-1-103).

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods, in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other mineral at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under chapter 2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: Non-Negotiable Bill of Lading) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this code and any other applicable rules of law.

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this code to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder", with respect to a:

(a) negotiable instrument, means the person in possession if the instrument is payable to bearer or to the person in possession;

(b) certified security, means the person in possession is the registered owner, the security has been indorsed to the person in possession by the registered owner, or the security is in bearer form; or

(c) document of title, means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government or intergovernmental organization.

(25) A person has "notice" of a fact when:

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this code.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines.

Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party" as distinct from "third party" means a person who has engaged in a transaction or made an agreement within this code.

(30) "Person" includes an individual or an organization.

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) *(a)* "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to chapter 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under 30-2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with chapter 9. Except as otherwise provided in 30-2-505, the right of a seller or lessor of goods under chapter 2 or 2A to retain or acquire possession of the goods in not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with chapter 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (30-2-401) is limited in effect to a reservation of a "security interest". *Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee and:*

(i) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(ii) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(iii) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(iv) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(b) A transaction does not create a security interest merely because it provides that:

(i) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(ii) the lessee assumes risk of loss of the goods or agrees to pay taxes, insurance, filing, recording, or registration fees or service or maintenance costs with respect to the goods;

(iii) the lessee has an option to renew the lease or to become the owner of the goods;

(iv) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market value for the use of the goods for the term of the renewal at the time the option is to be performed; or

(v) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(c) For purposes of this subsection (37):

(i) additional consideration is not nominal if:

(A) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(B) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed;

(ii) additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(iii) "reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(iv) "present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed, and in the case of an instrument to an address specified thereon or otherwise agreed, or if

there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature means one made without actual, implied, or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (30-3-303, 30-4-208, and 30-4-209), a person gives "value" for rights if he acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a preexisting contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form."

Section 3. Section 30-9-122, MCA, is amended to read:

"30-9-122. (Effective July *1*, 2001) Definitions and index of definitions. (1) As used in this chapter, the following definitions apply:

(a) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(b) (i) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance:

(A) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;

(B) for services rendered or to be rendered;

(C) for a policy of insurance issued or to be issued;

(D) for a secondary obligation incurred or to be incurred;

(E) for energy provided or to be provided;

(F) for the use or hire of a vessel under a charter or other contract;

(G) arising out of the use of a credit or charge card or information contained on or for use with the card: or

(H) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state.

(ii) The term includes a health-care-insurance receivable.

(iii) The term does not include:

(A) a right to payment evidenced by chattel paper or an instrument;

(B) a commercial tort claim;

(C) a deposit account;

(D) investment property;

(E) a letter-of-credit right; or

(F) a right to payment for money or funds advanced or sold, other than a right arising out of the use of a credit or charge card or information contained on or for use with the card.

(c) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include a person obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(d) "Accounting", except as used in "accounting for", means a record:

(i) authenticated by a secured party;

(ii) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(iii) identifying the components of the obligations in reasonable detail.

(e) "Agricultural lien" means an interest, other than a security interest, in farm products:

(i) that secures payment or performance of an obligation for:

(A) goods or services furnished in connection with a debtor's farming operation; or

(B) rent on real property leased by a debtor in connection with its farming operation;

(ii) that is created by statute in favor of a person that:

(A) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(B) leased real property to a debtor in connection with the debtor's farming operation; and

(iii) whose effectiveness does not depend on the person's possession of the personal property.

(f) "As-extracted collateral" means:

(i) oil, gas, or other minerals that are subject to a security interest that:

(A) is created by a debtor having an interest in the minerals before extraction; and

(B) attaches to the minerals as extracted: or

(ii) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(g) "Authenticate" means to:

(i) sign; or

(ii) execute or adopt a symbol, or encrypt a record in whole or in part, with present intent to:

(A) identify the authenticating party; and

(B) adopt, accept, or establish the authenticity of a record or term.

(h) "Bank" means an organization that is engaged in the business of banking. The term includes a savings bank, savings and loan association, credit union, and trust company.

(i) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(j) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(k) (i) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in ~~or a lease of~~ specific goods, ~~or of~~ *a security interest in* specific goods and software used in the goods, *a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subsection (1)(k)(i), "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods.*

(ii) *(A)* The term does not include*:*

(I) ~~a charter~~ *charters* or other ~~contract~~ *contracts* involving the use or hire of a vessel*; or*

(II) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(B) If a transaction is evidenced ~~both~~ by ~~a security agreement or lease and by~~ *records that include* an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(l) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(i) proceeds to which a security interest attaches under 30-9-335;

(ii) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(iii) goods that are the subject of a consignment.

(m) "Commercial tort claim" means a claim arising in tort if:

(i) the claimant is an organization; or

(ii) the claimant is an individual and the claim:

(A) arose in the course of the claimant's business or profession; and

(B) does not include damages arising out of personal injury to or the death of an individual.

(n) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(o) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(i) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(ii) traded on a foreign commodity board of trade, exchange, or market and is carried on the books of a commodity intermediary for a commodity customer.

(p) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(q) "Commodity intermediary" means a person that:

(i) is registered as a futures commission merchant under federal commodities law; or

(ii) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(r) "Communicate" means:

(i) to send a written or other tangible record;

(ii) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(iii) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(s) "Consignee" means a merchant to which goods are delivered in a consignment.

(t) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(i) the merchant:

(A) deals in goods of that kind under a name other than the name of the person making delivery;

(B) is not an auctioneer; and

(C) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(ii) with respect to each delivery, the aggregate value of the goods is $1,000 or more at the time of delivery;

(iii) the goods are not consumer goods immediately before delivery; and

(iv) the transaction does not create a security interest that secures an obligation.

(u) "Consignor" means a person that delivers goods to a consignee in a consignment.

(v) "Consumer debtor" means a debtor in a consumer transaction.

(w) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(x) "Consumer-goods transaction" means a transaction to the extent that:

(i) an individual incurs an obligation primarily for personal, family, or household purposes; and

(ii) a security interest in consumer goods or in consumer goods and software that is used, licensed, or bought for use primarily for personal, family, or household purposes secures the obligation.

(y) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(z) "Consumer transaction" means a transaction to the extent that:

(i) an individual incurs an obligation primarily for personal, family, or household purposes;

(ii) a security interest secures the obligation; and

(iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes a consumer-goods transaction.

(aa) "Continuation statement" means an amendment of a financing statement that:

(i) identifies, by its file number, the initial financing statement to which it relates; and

(ii) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(bb) "Debtor" means:

(i) a person having a property interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(ii) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(iii) a consignee.

(cc) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or an account evidenced by an instrument.

(dd) "Document" means a document of title or a receipt of the type described in 30-7-201(2).

(ee) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(ff) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes a mortgage and other lien on real property.

(gg) "Equipment" means goods other than inventory, farm products, or consumer goods.

(hh) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and that are:

(i) crops grown, growing, or to be grown, including:

(A) crops produced on trees, vines, and bushes; and

(B) aquatic goods produced in aquacultural operations;

(ii) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(iii) supplies used or produced in a farming operation; or

(iv) products of crops or livestock in their unmanufactured states.

(ii) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(jj) "File number" means the number assigned to an initial financing statement pursuant to 30-9-539(1).

(kk) "Filing office" means an office designated in 30-9-521 as the place to file a financing statement.

(ll) "Filing-office rule" means a rule adopted pursuant to 30-9-546.

(mm) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(nn) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying the requirements of 30-9-522(1) and (2). The term includes the filing of a financing statement covering goods of a transmitting utility that are or are to become fixtures.

(oo) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(pp) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes a payment intangible and software.

(qq) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(rr) (i) "Goods" means all things that are movable when a security interest attaches. The term includes:

(A) fixtures;

(B) standing timber that is to be cut and removed under a conveyance or contract for sale;

(C) the unborn young of animals;

(D) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes; and

(E) manufactured homes.

(ii) The term also includes a computer program structurally integrated with goods, any informational content included in the program, and any supporting information provided in connection with a transaction relating to the program or informational content if:

(A) the program is associated with the goods in such a manner that it customarily is considered part of the goods; or

(B) by becoming the owner of the goods, a person would acquire a right to use the program in connection with the goods.

(iii) The term does not include a program integrated with goods that consist solely of the medium with which the program is integrated. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(ss) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization with a separate corporate existence only if the organization is eligible to issue debt obligations on which interest is exempt from income taxation under the laws of the United States.

(tt) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance that is a right to payment of a monetary obligation for health care goods or services provided.

(uu) (i) "Instrument" means:

(A) a negotiable instrument; or

(B) any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment.

(ii) The term does not include:

(A) investment property;

(B) a letter of credit; or

(C) a writing that evidences a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(vv) "Inventory" means goods, other than farm products, that:

(i) are leased by a person as lessor;

(ii) are held by a person for sale or lease or to be furnished under contracts of service;

(iii) are furnished by a person under a contract of service; or

(iv) consist of raw materials, work in process, or materials used or consumed in a business.

(ww) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(xx) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(yy) (i) "Letter-of-credit right" means a right to payment and performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance.

(ii) The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(zz) "Lien creditor" means:

(i) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(ii) an assignee for benefit of creditors from the time of assignment;

(iii) a trustee in bankruptcy from the date of the filing of the petition; and

(iv) a receiver in equity from the time of appointment.

(aaa) "Manufactured home" means a structure, transportable in one or more sections, that in the traveling mode is 8 body feet or more in width or 40 body feet or more in length or that when erected on site is 320 or more square feet and that is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States Code.

(bbb) "Manufactured-home transaction" means a secured transaction:

(i) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(ii) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(ccc) "Mortgage" means a consensual interest in real property, including fixtures, that is created by a mortgage, trust deed, or similar transaction.

(ddd) "New debtor" means a person that becomes bound as debtor under 30-9-213(4) by a security agreement previously entered into by another person.

(eee) (i) "New value" means:

(A) money;

(B) money's worth in property, services, or new credit; or

(C) release by a transferee of an interest in property previously transferred to the transferee.

(ii) The term does not include an obligation substituted for another obligation.

(fff) "Noncash proceeds" means proceeds other than cash proceeds.

(ggg) (i) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:

(A) owes payment or other performance of the obligation;

(B) has provided property other than the collateral to secure payment or other performance of the obligation; or

(C) is otherwise accountable in whole or in part for payment or other performance of the obligation.

(ii) The term does not include an issuer or a nominated person under a letter of credit.

(hhh) "Original debtor", *except as used in 30-9-330(3),* means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under 30-9-213(4).

(iii) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(jjj) "Person related to", with respect to an individual, means:

(i) the spouse of the individual;

(ii) a brother, brother-in-law, sister, or sister-in-law of the individual;

(iii) an ancestor or lineal descendant of the individual or the individual's spouse; and

(iv) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(kkk) "Person related to", with respect to an organization, means:

(i) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(ii) an officer or director of, or a person performing similar functions with respect to, the organization;

(iii) an officer or director of, or a person performing similar functions with respect to, a person described in subsection (1)(kkk)(i);

(iv) the spouse of an individual described in subsection (1)(kkk)(i), (1)(kkk)(ii), or (1)(kkk)(iii); or

(v) an individual who is related by blood or marriage to an individual described in subsections (1)(kkk)(i), (1)(kkk)(ii), (1)(kkk)(iii), or (1)(kkk)(iv) and shares the same home with the individual.

(lll) "Proceeds", *except as used in 30-9-609(2),* means the following property:

(i) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(ii) whatever is collected on, or distributed on account of, collateral;

(iii) rights arising out of collateral;

(iv) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the collateral; and

(v) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects in, or damage to the collateral.

(mmm) "Promissory note" means an instrument that:

(i) evidences a promise to pay a monetary obligation;

(ii) does not evidence an order to pay; and

(iii) does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(nnn) "Proposal" means a record authenticated by a secured party and including the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to 30-9-620 through 30-9-622.

(ooo) "Public-finance transaction" means a secured transaction in connection with which:

(i) bonds, debentures, certificates of participation, or similar debt securities are issued;

(ii) all or a portion of the securities issued have an initial stated maturity of at least 20 years; and

(iii) the debtor, the obligor, the secured party, the account debtor or other person obligated on collateral, the assignor or assignee of a secured obligation, or the assignor or assignee of a security interest is a state or a governmental unit of a state.

(ppp) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(qqq) "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(rrr) "Registered organization" means an organization organized solely under the law of one state or the United States and as to which the state or the United States is required to maintain a public record showing the organization to have been organized.

(sss) "Secondary obligor" means an obligor to the extent that:

(i) the obligor's obligation is secondary; or

(ii) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(ttt) "Secured party" means:

(i) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(ii) a person that holds an agricultural lien;

(iii) a consignor;

(iv) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(v) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(vi) a person that holds a security interest arising under 30-2-401, 30-2-505, 30-2-711(3), 30-2A-508(5), 30-4-208, or 30-5-118.

(uuu) "Security agreement" means an agreement that creates or provides for a security interest.

(vvv) "Send", in connection with a record or notification, means to:

(i) deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(ii) cause the record or notification to be received within the time that it would have been received if properly sent under subsection (1)(vvv)(i).

(www) (i) "Software" means a computer program, any informational content included in the program, and any supporting information provided in connection with a transaction relating to the computer program or informational content.

(ii) The term does not include a computer program that is contained in goods unless the goods are a computer or computer peripheral.

(xxx) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(yyy) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, document, general intangible, instrument, or investment property.

(zzz) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(aaaa) "Termination statement" means an amendment of a financing statement that:

(i) identifies, by its file number, the initial financing statement to which it relates; and

(ii) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(bbbb) "Transmitting utility" means a person primarily engaged in the business of:

(i) operating a railroad, subway, street railway, or trolley bus;

(ii) transmitting electric or electronic communications;

(iii) transmitting goods by pipeline or sewer; or

(iv) transmitting or producing and transmitting electricity, steam, gas, or water.

(2) The following definitions in other chapters apply to this chapter:

"Applicant" 30-5-122.

"Beneficiary" 30-5-122.

"Broker" 30-8-112.

"Certificated security" 30-8-112.

"Check" 30-3-104.

"Clearing corporation" 30-8-112.

"Contract for sale" 30-2-106.

"Customer" 30-4-104.

"Entitlement holder" 30-8-112.

"Financial asset" 30-8-112.

"Holder in due course" 30-3-302.

"Issuer" (with respect to a letter of credit or letter-of-credit right) 30-5-122.

"Issuer" (with respect to a security) 30-8-211.

"Lease" 30-2A-103.

"Lease agreement" 30-2A-103.

"Lease contract" 30-2A-103.

"Leasehold interest" 30-2A-103.

"Lessee" 30-2A-103.

"Lessee in ordinary course of business" 30-2A-103.

"Lessor" 30-2A-103.

"Lessor's residual interest" 30-2A-103.

"Letter of credit" 30-5-122.

"Merchant" 30-2-104.

"Negotiable instrument" 30-3-104.

"Nominated person" 30-5-122.

"Note" 30-3-104.

"Proceeds of a letter of credit" 30-5-134.

"Prove" 30-3-102.

"Sale" 30-2-106.

"Securities account" 30-8-501.

"Securities intermediary" 30-8-112.

"Security" 30-8-112.

"Security certificate" 30-8-112.

"Security entitlement" 30-8-112.

"Uncertificated security" 30-8-112.

(3) Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 4. Section 30-9-124, MCA, is amended to read:

"30-9-124. (Effective July 1, 2001) Control of deposit account. (1) A secured party has control of a deposit account if:

(a) the secured party is the bank with which the deposit account is maintained;

(b) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the *deposit* account without further consent by the debtor; or

(c) the secured party becomes the bank's customer with respect to the deposit account.

(2) A secured party that has satisfied the requirements of subsection (1) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account."

Section 5. Section 30-9-129, MCA, is amended to read:

"**30-9-129. (Effective July 1, 2001) Scope.** (1) Except as otherwise provided in subsections (3) and (4), this chapter applies to:

(a) any transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(b) an agricultural lien;

(c) a sale of an account, chattel paper, payment intangible, or promissory note;

(d) a consignment;

(e) a security interest arising under 30-2-401, 30-2-505, 30-2-711(3), or 30-2A-508(5), to the extent provided in 30-9-130; and

(f) a security interest arising under 30-4-208 or 30-5-118.

(2) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

(3) This chapter does not apply to the extent that:

(a) a statute, regulation, or treaty of the United States preempts this chapter;

(b) another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state;

(c) a statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

(d) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under 30-5-134.

(4) This chapter does not apply to:

(a) a landlord's lien, other than an agricultural lien;

(b) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but 30-9-353 applies with respect to priority of the lien;

(c) an assignment of a claim for wages, salary, or other compensation of an employee;

(d) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(e) an assignment of accounts, chattel paper, payment intangibles, or promissory notes that is for the purpose of collection only;

(f) an assignment of a right to payment under a contract to an assignee that is also obliged to perform under the contract;

(g) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(h) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but 30-9-335 and 30-9-342 apply with respect to proceeds and priorities in proceeds;

(i) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(j) a right of recoupment or setoff, but:

(i) 30-9-360 applies with respect to the effectiveness of rights of recoupment or setoff against deposit accounts; and

(ii) 30-9-444 applies with respect to defenses or claims of an account debtor;

(k) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(i) liens on real property in 30-9-213 and 30-9-328;

(ii) fixtures in 30-9-354;

(iii) fixture filings in 30-9-521, 30-9-522, 30-9-532, 30-9-536, and 30-9-539; and

(iv) security agreements covering personal and real property in 30-9-604;

(l) an assignment of a claim arising in tort, other than a commercial tort claim, but 30-9-335 and 30-9-342 apply with respect to proceeds and priorities in proceeds; ~~or~~

(m) a transfer by a government or governmental subdivision or agency; or

~~(m)~~*(n)* an assignment of a deposit account in a consumer transaction, except that 30-9-335 and 30-9-342 apply with respect to proceeds and priorities in proceeds."

Section 6. Section 30-9-220, MCA, is amended to read:

"**30-9-220. (Effective July 1, 2001) Request for accounting — request regarding list of collateral or statement of account.** (1) In this section, the following definitions apply:

(a) "Request" means a record of a type described in subsection (1)(b), (1)(c), or (1)(d).

(b) "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(c) "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(d) "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(2) Subject to subsections (3), (4), (5), and (6), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor shall comply with a request within 14 days after receipt:

(a) in the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(b) in the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(3) A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within 14 days after receipt.

(4) A person that receives a request regarding a list of collateral, that claims no interest in the collateral when it receives the request, and that claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(a) disclaiming any interest in the collateral; and

(b) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's ~~security~~ interest in the collateral.

(5) A person that receives a request for an accounting or a request regarding a statement of account, that claims no interest in the obligations when it receives the request, and that claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(a) disclaiming any interest in the obligations; and

(b) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(6) A debtor is entitled without charge to one response to a request under this section during any 6-month period. The secured party may require payment of a charge not exceeding $25 for each additional response."

Section 7. Section 30-9-331, MCA, is amended to read:

"30-9-331. (Effective July 1, 2001) Perfection of security interests in property subject to certain statutes, regulations, and treaties. (1) Except as otherwise provided in subsection (4), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(a) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt 30-9-330(1);

(b) the certificate of ownership provisions of Title 23 or Title 61; or

(c) a certificate of title statute of another jurisdiction that provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(2) Compliance with the requirements of a statute, regulation, or treaty described in subsection (1) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this chapter. Except as otherwise provided in 30-9-333 and 30-9-336(4) and (5) and subsection (4) of this section for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (1) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(3) Except as otherwise provided in 30-9-336(4) and (5) and subsection (4) of this section, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (1) are governed by the statute, regulation, or treaty. In other respects the security interest is subject to this chapter.

(4) During any period in which collateral *subject to a statute specified in subsection (1)(b)* is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling ~~or leasing~~ goods of that kind, this section does not apply to a security interest in that collateral created by that person ~~as debtor~~."

Section 8. Section 30-9-337, MCA, is amended to read:

"**30-9-337. (Effective July 1, 2001) Interests that take priority over or take free of ~~unperfected~~ security interest or agricultural lien.** (1) ~~An unperfected~~ *A* security interest or agricultural lien is subordinate to the rights of:

(a) a person entitled to priority under 30-9-342; and

(b) *except as otherwise provided in subsection (5),* a person that becomes a lien creditor before the earlier of the time*:*

(i) the security interest or agricultural lien is perfected*;* or

(ii) one of the conditions specified in 30-9-213(2)(c) is met and a financing statement covering the collateral is filed.

(2) Except as otherwise provided in subsection (5), a buyer, other than a secured party, of chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(3) Except as otherwise provided in subsection (5), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(4) A licensee of a general intangible or a buyer, other than a secured party, of accounts, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(5) Except as otherwise provided in 30-9-340 and 30-9-341, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor that arise between the time the security interest attaches and the time of filing."

Section 9. Section 30-9-343, MCA, is amended to read:

"30-9-343. (Effective July 1, 2001) Future advances. (1) Except as otherwise provided in subsection (3), for purposes of determining the priority of a perfected security interest under 30-9-342(1)(a), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(a) is made while the security interest is perfected only:

(i) under 30-9-329 when it attaches; or

(ii) temporarily under 30-9-332(5), (6), or (7); and

(b) is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under 30-9-329 or 30-9-332(5), (6), or (7).

(2) Except as otherwise provided in subsection (3), a security interest is subordinate to the rights of a person that becomes a lien creditor ~~while the security interest is perfected only~~ to the extent that ~~it~~ *the security interest* secures ~~advances~~ *an advance* made more than 45 days after the person becomes a lien creditor unless the advance is made:

(a) without knowledge of the lien; or

(b) pursuant to a commitment entered into without knowledge of the lien.

(3) Subsections (1) and (2) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(4) Except as otherwise provided in subsection (5), a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(a) the time the secured party acquires knowledge of the buyer's purchase; or

(b) 45 days after the purchase.

(5) Subsection (4) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

(6) Except as otherwise provided in subsection (7), a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(a) the time the secured party acquires knowledge of the lease; or

(b) 45 days after the lease contract becomes enforceable.

(7) Subsection (6) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period."

Section 10. Section 30-9-351, MCA, is amended to read:

"30-9-351. (Effective July 1, 2001) Priority of rights of purchasers of instruments, documents, and securities under other chapters — priority of interests in financial assets and security entitlements under chapter 8. (1) This chapter does not limit the rights of a holder in due course of a negotiable instrument, a holder to whom a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in chapters 3, 7, and 8.

(2) This chapter does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of ~~an adverse~~ *a* claim under chapter 8.

(3) Filing under this chapter does not constitute notice of a claim or defense to the holders, purchasers, or persons mentioned in subsections (1) and (2)."

Section 11. Section 30-9-356, MCA, is amended to read:

"30-9-356. (Effective July 1, 2001) Commingled goods. (1) In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(2) A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(3) If collateral becomes commingled goods, a security interest attaches to the product or mass.

(4) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (3) is perfected.

(5) Except as otherwise provided in subsection (6), the other provisions of this part, as applicable, determine the priority of a security interest that attaches to the product or mass under subsection (3).

(6) If more than one security interest attaches to the product or mass under subsection (3), the following rules determine priority:

(a) A security interest that is perfected under subsection (4) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(b) If more than one security interest is perfected under subsection (4), the security interests rank equally in proportion to *the* value of the collateral at the time it became commingled goods."

Section 12. Section 30-9-446, MCA, is amended to read:

"30-9-446. (Effective July 1, 2001) Discharge of account debtor — notification of assignment — identification and proof of assignment — ~~term prohibiting~~ *restrictions on* assignment *of accounts, chattel paper, payment intangibles, and promissory notes* ineffective. (1) Subject to subsections (2) through ~~(8)~~ *(9)*, an account debtor on an account, chattel paper, or payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(2) Subject to subsection ~~(7)~~ *(8)*, notification is ineffective under subsection (1):

(a) if it does not reasonably identify the rights assigned;

(b) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or

(c) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(i) only a portion of the account, chattel paper, or ~~general~~ *payment* intangible has been assigned to that assignee;

(ii) a portion has been assigned to another assignee; or

(iii) the account debtor knows that the assignment to that assignee is limited.

(3) Subject to subsection ~~(7)~~ *(8)*, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (1).

(4) Except as otherwise provided in 30-2A-303, 30-9-447, and subsection (5) of this section, and subject to subsection ~~(7)~~ *(8)* of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(a) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, ~~an~~ *the* account, chattel paper, payment intangible, or promissory note; or

(b) provides that the *assignment or transfer or the* creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(5) Subsection (4) does not apply to*:*

(a) the assignment or transfer or the creation, attachment, perfection, or enforcement of a security interest in:

(i) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. 104(a)(2); or

(ii) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. 1396p(d)(4); or

(b) the sale of a payment intangible or promissory note.

(6) Except as otherwise provided in 30-2A-303 and 30-9-447 and subject to subsections (8) and (9), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(a) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(b) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

~~(6)~~*(7)* Subject to subsection ~~(7)~~ *(8)*, an account debtor may not waive or vary its option under subsection (2)(c).

~~(7)~~*(8)* This section is subject to law other than this chapter that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

~~(8)~~*(9)* This section does not apply to an assignment of a health-care-insurance receivable."

Section 13. Section 30-9-447, MCA, is amended to read:

"30-9-447. (Effective July 1, 2001) Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest. (1) Except as otherwise provided in subsection (2), a term in a lease agreement is ineffective to the extent that it:

(a) prohibits, restricts, or requires the consent of a party to the lease to the *assignment or transfer of, or the* creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(b) provides that the *assignment or transfer or the* creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(2) Except as otherwise provided in 30-2A-303(7), a term described in subsection (1)(b) is effective to the extent that there is:

(a) a transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(b) a delegation of a material performance of either party to the lease contract in violation of the term.

(3) The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the lessee within 30-2A-303(4). This subsection does not apply to the extent that enforcement results in a delegation of a material performance of the lessor."

Section 14. Section 30-9-448, MCA, is amended to read:

"30-9-448. (Effective July 1, 2001) Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective. (1) Except as otherwise provided in subsection (2), a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and that prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or the creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible is ineffective to the extent that the term:

(a) would impair the creation, attachment, or perfection of a security interest; or

(b) provides that the *assignment or transfer or the* creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(2) Subsection (1) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(3) A rule of law, including a provision in a statute or governmental rule or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(a) would impair the creation, attachment, or perfection of a security interest; or

(b) provides that the *assignment or transfer or the* creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(4) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or general intangible or a rule of law described in subsection (3) would be effective under law other than this chapter but is ineffective under subsection (1) or (3), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(a) is not enforceable against the person obligated on the promissory note or the account debtor;

(b) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(c) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(d) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(e) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(f) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(5) Subsections (1) and (3) do not apply to the assignment or transfer or the creation, attachment, or perfection of a security interest in:

(a) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. 104(a)(2);

(b) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. 1396p(d)(4).

~~(5)~~*(6)* This section prevails over any inconsistent provisions of other statutes or rules."

Section 15. Section 30-9-449, MCA, is amended to read:

"30-9-449. (Effective July 1, 2001) Restrictions on assignment of letter-of-credit rights ineffective. (1) A term in a letter of credit or a rule of law, including a provision in a statute or governmental rule or regulation, custom, or practice applicable to the letter of credit that prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, custom, or practice:

(a) would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(b) provides that the *assignment or the* creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(2) To the extent that a term in a letter of credit is ineffective under subsection (1) but would be effective under law other than this chapter or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(a) is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(b) imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(c) does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party."

Section 16. Section 30-9-529, MCA, is amended to read:

"30-9-529. (Effective July 1, 2001) Persons entitled to file record. (1) A person may file an initial financing statement, an amendment that adds collateral covered by a financing statement, or an amendment that adds a debtor to a financing statement only if:

(a) the debtor authorizes the filing in an authenticated record *or pursuant to subsection (2) or (3)*; or

(b) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(2) By authenticating a security agreement, a debtor authorizes the filing of an initial financing statement and an amendment covering:

(a) the collateral described in the security agreement; and

(b) property that becomes collateral under 30-9-335(1)(b), whether or not the security agreement expressly covers proceeds.

(3) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(a) the secured party of record authorizes the filing; or

(b) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by 30-9-533(1) or (3), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(4) If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (3)."

Section 17. Section 30-9-533, MCA, is amended to read:

"30-9-533. (Effective July 1, 2001) Termination statement. (1) A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(a) there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(b) the debtor did not authorize the filing of the initial financing statement.

(2) To comply with subsection (1), a secured party shall cause the secured party of record to file the termination statement:

(a) within 1 month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(b) if earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

(3) In cases not governed by subsection (1), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a

termination statement for the financing statement or file the termination statement in the filing office if:

(a) except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(b) the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(c) the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(d) the debtor did not authorize the filing of the initial financing statement.

(4) Except as otherwise provided in 30-9-530, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. *Except as otherwise provided in 30-9-530, for purposes of 30-9-539(7), 30-9-542(1), and 30-9-543(3), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.*"

Section 18. Section 30-9-545, MCA, is amended to read:

"**30-9-545. (Effective July 1, 2001) Fees.** (1) Except as otherwise provided in subsection (5), the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in ~~30-9-522(3)~~ *subsection (2)*, must be commensurate with costs and must be established by rule.

(2) Except as otherwise provided in subsection (5), the fee for filing and indexing an initial financing statement ~~of the kind described in 30-9-522(3)~~ *filed in connection with a public-finance transaction or a manufactured-home transaction* must be commensurate with costs and must be established by rule.

(3) The number of names required to be indexed does not affect the amount of the fees in subsections (1) and (2).

(4) The fee for responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor, must be commensurate with costs and must be established by rule.

(5) This section does not require a fee with respect to a record of mortgage that is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under 30-9-522(3). However, the recording and satisfaction fees that otherwise would be applicable to the record of mortgage apply."

Section 19. Section 30-9-608, MCA, is amended to read:

"**30-9-608. (Effective July 1, 2001) Application of proceeds of collection or enforcement — liability for deficiency and right to surplus.** (1) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(a) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under ~~this section~~ *30-9-607* in the following order to:

(i) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorneys fees and legal expenses incurred by the secured party;

(ii) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(iii) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under subsection (1)(a)(iii).

(c) A secured party need not apply or pay over for application the noncash proceeds of collection and enforcement under ~~this section~~ *30-9-607* unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(2) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus and the obligor is not liable for any deficiency."

Section 20. Section 30-9-613, MCA, is amended to read:

"30-9-613. (Effective July 1, 2001) Contents and form of notification before disposition of collateral — general. (1) Except in a consumer-goods transaction, the following rules apply:

(a) The contents of a notification of disposition are sufficient if the notification:

(i) describes the debtor and the secured party;

(ii) describes the collateral that is the subject of the intended disposition;

(iii) states the method of intended disposition;

(iv) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(v) states the time and place of a public ~~sale~~ *disposition* or the time after which any other disposition is to be made.

(b) Whether the contents of a notification that lacks any of the information set forth in subsection (1) are nevertheless sufficient is a question of fact.

(c) The contents of a notification providing substantially the information specified in subsection (1) are sufficient, even if the notification includes:

(i) information not specified by that subsection; or

(ii) minor errors that are not seriously misleading.

(d) A particular phrasing of the notification is not required.

(2) The following form of notification and the form appearing in 30-9-614(3), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: [Name of debtor, obligor, or other person to which the notification is sent]

From: [Name, address, and telephone number of secured party]

Name of Debtor(s): [Include only if debtor(s) are not an addressee]

[For a public disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] [to the highest qualified bidder] in public as follows:

Day and Date: ____________

Time: ____________

Place: ____________

[For a private disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] privately sometime after [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of $____]. You may request an accounting by calling us at [telephone number]

[End of Form]"

Section 21. Section 30-9-615, MCA, is amended to read:

"30-9-615. (Effective July 1, 2001) Application of proceeds of disposition — liability for deficiency and right to surplus. (1) A secured party shall apply or pay over for application the cash proceeds of disposition *under 30-9-610* in the following order to:

(a) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and to the extent provided for by agreement and not prohibited by law, reasonable attorneys fees and legal expenses incurred by the secured party;

(b) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(c) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral if:

(i) the secured party receives from the holder of the subordinate security interest an authenticated demand for proceeds before distribution of the proceeds is completed; and

(ii) if a consignor has an interest in the collateral, the subordinate security interest or lien is senior to the interest of the consignor; and

(d) a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (1)(c).

(3) A secured party need not apply or pay over for application noncash proceeds of disposition under ~~this section~~ *30-9-610* unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (1) and permitted by subsection (3):

(a) unless subsection (1)(d) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(b) the obligor is liable for any deficiency.

(5) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(a) the debtor is not entitled to any surplus; and

(b) the obligor is not liable for any deficiency.

(6) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with the requirements of this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(a) the transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(b) the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(7) A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(a) takes the cash proceeds free of the security interest or other lien;

(b) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(c) is not obligated to account to or pay the holder of the security interest or other lien for any surplus."

Section 22. Section 30-9-625, MCA, is amended to read:

"30-9-625. (Effective July 1, 2001) Remedies for secured party's failure to comply with chapter. (1) If it is established that a secured party is not proceeding in accordance with this chapter, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(2) Subject to subsections (3), (4), and (6), a ~~secured party~~ *person* is liable for damages in the amount of any loss caused by a failure to comply with this chapter. Loss caused by a failure to comply ~~with a request under 30-9-220~~ may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(3) Except as otherwise provided in 30-9-628:

(a) a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (2) for its loss; and

(b) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10% of the principal amount of the obligation or the time-price differential plus 10% of the cash price.

(4) A debtor whose deficiency is eliminated under 30-9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under 30-9-626 may not otherwise recover under subsection (2) of this section for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(5) In addition to any damages recoverable under subsection (2), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover $500 in each case from:

(a) a secured party that fails to comply with 30-9-218;

(b) a secured party that fails to comply with 30-9-219;

(c) a person that files a record that the person is not entitled to file under 30-9-529(1);

(d) a secured party that fails to cause the secured party of record to file or send a termination statement as required by 30-9-533(1) or (3);

(e) a secured party that fails to comply with 30-9-616(2)(a) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(f) a secured party that fails to comply with 30-9-616(2)(b).

(6) A debtor or consumer obligor may recover damages under subsection (2) and, in addition, $500 in each case from a person that, without reasonable cause, fails to comply with a request under 30-9-220. A recipient of a request under 30-9-220 that never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(7) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under 30-9-220, the secured party may claim a security interest only as shown in the *list or* statement included in the request as against a person that is reasonably misled by the failure."

Section 23. Section 164, Chapter 305, Laws of 1999, is amended to read:

"**Section 164. Effectiveness of action taken before effective date of act.** (1) If action other than the filing of a financing statement is taken before [this act] takes effect and the action would have resulted in priority of a security interest over the rights of a lien creditor had the security interest become enforceable before [this act] takes effect, the action is sufficient to perfect a security interest that attaches under [this act] within 1 year after [this act] takes effect. An attached security interest becomes unperfected 1 year after [this act] takes effect unless the security interest becomes a perfected security interest under [this act] before the expiration of that period.

(2) The filing of a financing statement before [this act] takes effect is sufficient to perfect a security interest that attaches after [this act] takes effect to the extent the filing would satisfy the applicable requirements for perfection under [this act].

(3) [This act] does not render ineffective an effective financing statement that is filed before [this act] takes effect in accordance with the law of the jurisdiction governing perfection as provided in [former 30-9-103]. However, except as otherwise provided in subsection (4):

(a) the financing statement ceases to be effective at the earlier of:

(i) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(ii) 5 years after [this act] takes effect; and

(b) a continuation statement filed after [this act] takes effect does not continue the effectiveness of the financing statement.

(4) A continuation statement filed after [this act] takes effect and in accordance with the law of the jurisdiction governing perfection as provided in [sections 20 through 61] is effective to continue the effectiveness of a financing statement filed in that jurisdiction before [this act] takes effect.

(5) Subsection (3)(b) applies to a financing statement that, before [this act] takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in [former 30-9-103] only to the extent that Title 30, chapter 9, part 3, provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

~~(5)~~*(6)* [This act] does not render ineffective an effective financing statement that was filed before [this act] takes effect and in the office specified in [former 30-9-401]. However, except as otherwise provided in subsection ~~(6)~~ *(7)*:

(a) the financing statement ceases to be effective at the earlier of:

(i) the time the financing statement would have ceased to be effective under [former chapter 9]; or

(ii) 5 years after [this act] takes effect; and

(b) a continuation statement filed after [this act] takes effect does not continue the effectiveness of the financing statement.

~~(6)~~*(7)* A continuation statement filed after [this act] takes effect and in the office specified in [section 71] is effective to continue the effectiveness of a financing statement filed in that office before [this act] takes effect.

~~(7)~~*(8)* A financing statement that includes a financing statement filed before [this act] takes effect and a continuation statement filed after [this act] takes effect is effective only to the extent that it satisfies the requirements of [sections 71 through 97] for an initial financing statement."

Section 24. Amendment of pre-effective-date financing statement. (1) In this section, "pre-effective-date financing statement" means a financing statement filed before [this act] and Chapter 305, Laws of 1999, take effect.

(2) After [this act] and Chapter 305, Laws of 1999, take effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Title 30, chapter 9, part 3. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(3) Except as otherwise provided in subsection (4), if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after [this act] and Chapter 305, Laws of 1999, take effect only if:

(a) the pre-effective-date financing statement and an amendment are filed in the office specified in 30-9-521;

(b) an amendment is filed in the office specified in 30-9-521 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 164(3), Chapter 305, Laws of 1999; or

(c) an initial financing statement that provides the information as amended and satisfies section 164(3), Chapter 305, Laws of 1999, is filed in the office specified in 30-9-521.

(4) If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under section 164(4) and (5) or section 165, Chapter 305, Laws of 1999.

(5) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after [this act] and Chapter 305, Laws of 1999, take effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies section 164(3), Chapter 305, Laws of 1999, has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Title 30, chapter 9, part 3, as the office in which to file a financing statement.

Section 25. Codification instruction. [Section 24] and sections 161 through 167, Chapter 305, Laws of 1999, are intended to be codified as an integral part of Title 30, chapter 9, and the provisions of Title 30, chapter 9, apply to [section 24] and sections 161 through 167, Chapter 305, Laws of 1999.

Section 26. Effective date. [This act] is effective July 1, 2001.

Approved April 2, 2001

CHAPTER NO. 180

[SB 74]

AN ACT REGULATING THE TERMINATION, CANCELLATION, NONRENEWAL, SUBSTANTIAL ALTERATION, OR TRANSFER OF CONSTRUCTION EQUIPMENT DEALERSHIP AGREEMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 9] the following definitions apply:

(1) "Community of interest" means a continuing financial interest that the grantor and grantee have in common.

(2) "Construction equipment" means any vehicle, machine, or attachment designed or adapted and used in construction, heavy construction, highway construction, and remodeling work.

(3) "Dealer" means a person who is a grantee of a construction equipment dealership situated in this state.

(4) "Dealership" means a contract or agreement, expressed or implied, whether oral or written, including a franchise as defined in 61-4-201, by which a person is granted the right to sell or distribute construction equipment, in which there is a community of interest in the business of offering, selling, or distributing construction equipment.

(5) "Department" means the department of commerce established in 2-15-1801.

(6) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer.

(7) "Designated successor" means a person designated in writing by the retiring dealer to succeed in the dealership or, in the case of an incapacitated dealer, a person appointed by a court as the legal representative of the dealer's property or the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(8) (a) "Good cause", when used in [sections 2, 3, and 9], means:

(i) failure by a dealer to comply substantially with essential and reasonable requirements imposed upon the dealer by the grantor or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers either by the terms of the requirements or in the manner of their enforcement; or

(ii) bad faith by the dealer in carrying out the terms of the dealership.

(b) Good cause, when used in [sections 4 through 8], means a showing that succession to a dealership would be detrimental to the public interest or to the representation of the grantor.

(9) "Grantor" means a person who grants a dealership.

(10) "Person" means any individual, partnership, association, corporation, or other entity.

Section 2. Cancellation and alteration of dealerships. A grantor may not, directly or indirectly, terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor.

Section 3. Notice of termination or change in dealership. (1) Except as provided in subsections (2) and (3), a grantor shall provide a dealer at least 90 days' prior written notice by certified mail of termination, cancellation, nonrenewal, or substantial change in competitive circumstances. The notice must state all the reasons for termination, cancellation, nonrenewal, or substantial change in competitive circumstances and must provide that the dealer has 60 days from receipt of the notice in which to rectify any claimed deficiency. If the deficiency is rectified within 60 days, the notice is void.

(2) If the reason for termination, cancellation, nonrenewal, or substantial change in competitive circumstances is nonpayment of sums due under the dealership, the dealer is entitled to 10 days' prior written notice by certified mail. If the dealer does not remedy the default within 10 days after receipt of the notice, the notice is effective according to its terms.

(3) The notice provisions of this section do not apply if the reason for termination, cancellation, or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.

Section 4. Transfer. A grantor may not unreasonably withhold consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership to a designated family member, to the principal owner of the dealership, or to a person whom the dealer wishes to designate as a designated successor. The grantor may require that the designated successor or designated family member meet the reasonable requirements of the grantor. The requirements must be specified and made available to any dealer upon request but may not extend beyond business, financial, character, and experience qualifications. If a grantor determines that a proposed transferee does not meet the requirements, the grantor shall give the dealer written notice stating the specific reasons for withholding consent.

Section 5. Refusal to honor succession to ownership — notice required. (1) If a grantor believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a designated family member or by a designated successor under the existing franchise agreement, the grantor may, within 30 days of receipt of notice of the designated family member's or designated successor's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member or designated successor and the department notice of the grantor's refusal to honor the succession and of the grantor's intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and the intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the designated family member or designated successor and the department or if the department rules in favor of the complainant in a hearing held pursuant to [section 6], the franchise agreement must continue in effect subject to termination only as otherwise permitted by law.

Section 6. Procedure to determine right to succeed. (1) A designated family member or designated successor who receives notice of the grantor's refusal to honor succession to the ownership and operation of the dealership may, within the 60-day period provided for in [section 5], file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The grantor shall establish good cause for refusal to honor the succession to ownership.

(3) The franchise agreement must continue in effect until the final determination of the issues raised in the complaint.

(4) If the grantor prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7.

Section 7. Written designation of succession unaffected. [Sections 4 through 8] do not preclude a dealer from designating any person as the dealer's successor by written instrument filed with the grantor.

Section 8. Civil damages. A dealer suffering pecuniary loss due to a violation of [sections 4 through 8] who prevails in a civil action for the loss is entitled to damages equal to the pecuniary loss, together with court costs and reasonable attorney fees.

Section 9. Action for damages and injunctive relief. If any grantor violates [sections 1 through 9], a dealer may bring an action against the grantor in any court of competent jurisdiction for damages sustained as a consequence of the grantor's violation, together with the actual costs of the action, including reasonable attorney fees, and the dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or substantial change of competitive circumstances.

Section 10. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 30, chapter 11, and the provisions of Title 30, chapter 11, apply to [sections 1 through 9].

Approved April 2, 2001

CHAPTER NO. 181

[SB 90]

AN ACT GENERALLY REVISING GOVERNMENT CONTRACTING LAWS; EXPANDING THE GENERAL APPLICATION OF THE PROCUREMENT LAWS; CLARIFYING EMPLOYEE AND FORMER EMPLOYEE CONTRACT INVOLVEMENT RESTRICTIONS; PROVIDING THAT MOTOR VEHICLE PURCHASE REQUISITIONS MAY BE SUBMITTED IN THE MANNER SPECIFIED BY THE DEPARTMENT OF ADMINISTRATION; ABOLISHING THE REQUIREMENT THAT POLITICAL SUBDIVISIONS APPLY A RESIDENT BIDDER PREFERENCE FOR THE PROCUREMENT OF GOODS; CLARIFYING THE INTEREST RATE ON OVERDUE PAYMENTS; MAKING THE RESIDENT BIDDER PREFERENCE FOR STATE GOVERNMENT PROCUREMENT OF GOODS RECIPROCAL; ABOLISHING THE MONTANA-MADE GOODS PREFERENCE; EXEMPTING CERTAIN PURCHASES FROM THE GENERAL REQUIREMENTS OF THE LAW; ALLOWING ALTERNATIVE PURCHASING METHODS; REVISING SOLE SOURCE PURCHASE CRITERIA; CLARIFYING THE DURATION OF

CERTAIN CONTRACTS; AMENDING SECTIONS 2-2-201, 2-17-403, 7-5-2309, 7-14-2404, 7-14-2406, 7-14-2716, 17-8-244, 18-1-101, 18-1-102, 18-1-103, 18-1-111, 18-1-404, 18-2-306, 18-4-123, 18-4-132, 18-4-133, 18-4-141, 18-4-301, 18-4-302, 18-4-306, 18-4-313, 18-5-308, 18-7-107, AND 60-2-112, MCA; REPEALING SECTION 18-1-112, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-201, MCA, is amended to read:

"2-2-201. Public officers, employees, and former employees not to have interest in contracts ~~— local government waiver~~. (1) Members of the legislature; state, county, city, town, or township officers; or any ~~deputy~~ *deputies* or ~~employee~~ *employees* of an enumerated governmental entity may not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees *if they are directly involved with the contract*. A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which the former employee was directly involved during employment.

(2) In this section, the term:

(a) "be interested in" does not include holding a minority interest in a corporation;

(b) "contract" does not include:

(i) contracts awarded ~~to the lowest responsible bidder or proposer~~ based on competitive ~~bidding~~ *procurement* procedures *conducted after the date of employment termination*;

(ii) merchandise sold to the highest bidder at public auctions;

(iii) investments or deposits in financial institutions that are in the business of loaning or receiving money;

(iv) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It is presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(c) "directly involved" means the person directly monitors a contract, extends or amends a contract, audits a contractor, is responsible for conducting the procurement or for evaluating proposals or vendor responsibility, or renders legal advice concerning the contract;

~~(c)~~*(d)* "former employee" does not include a person whose employment with the state was involuntarily terminated ~~due to~~ *because of* a reduction in force or other involuntary termination not involving violation of the provisions of this chapter.

~~(2) The governing body of a city, town, or county may waive the application of the prohibition contained in subsection (1) for a present or former city, town, or county officer or employee who in an official capacity does not influence the decisionmaking process or supervise a function regarding the contract in~~

~~question. A governing body may grant a waiver under this subsection only after publicly disclosing the nature of the conflict at an advertised public hearing held for that purpose. In determining whether to grant a waiver, the governing body shall consider the following factors, where applicable:~~

~~(a) whether the waiver would provide to a program or project a significant benefit or an essential skill or expertise that would otherwise not be available;~~

~~(b) whether an opportunity was provided for open competitive bidding or negotiation;~~

~~(c) whether the person affected is a member of a clearly identified group of persons that is the intended beneficiary of the program or project involved in the contract; and~~

~~(d) whether the hardship imposed on the affected person or the governmental entity by prohibiting the conflict will outweigh the public interest served by avoiding the conflict.~~"

Section 2. Section 2-17-403, MCA, is amended to read:

"**2-17-403. Requisitions for purchases.** All requisitions for motor vehicle purchases ~~shall~~ *must* be submitted to the department of administration ~~twice yearly at the times~~ *in the manner* that ~~it~~ *the department* specifies. ~~Other requisitions for automobile purchases may not be accepted by it unless the governor considers the purchase to be an emergency necessity.~~"

Section 3. Section 7-5-2309, MCA, is amended to read:

"**7-5-2309. Optional bidding preference for county resident.** (1) If there are no out-of-state bidders for a contract subject to competitive bid under this part, the contract may be awarded to the lowest and best responsible bidder that is a county resident and that makes a bid that is no more than $500 or 3% higher, whichever is less, than the bid of the lowest responsible bidder that is not a county resident.

(2) If there is one or more out-of-state bidders for a contract *for construction, repair, or maintenance of a building, road, or bridge that is in excess of $50,000 and that is* subject to competitive bid under this part, the state resident bid preference provided in 18-1-102*(1)(a)* applies.

(3) For the purposes of this section, "county resident" means a person, corporation, business, or other entity whose principal business location is within the county."

Section 4. Section 7-14-2404, MCA, is amended to read:

"**7-14-2404. Competitive bids for county road contracts.** Each bidder shall comply with the requirements of Title 18, chapter 1, part 2. The contract ~~shall~~ *must* be awarded to the lowest responsible bidder in accordance with the requirements of 18-1-102~~, 18-1-112,~~ and Title 18, chapter 2, part 4, and the board may reserve the right to reject any ~~and all~~ bids. ~~When~~ *If* there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract."

Section 5. Section 7-14-2406, MCA, is amended to read:

"**7-14-2406. Contracts for bridges.** (1) All bids for construction or repair of bridges ~~shall~~ *must* meet ~~these~~ *the following* requirements:

(a) If the department of transportation has adopted or established a standard plan and specifications, the bids must be submitted ~~thereon~~ *on the standard plan and specifications.*

(b) All bids must be sealed. Each bidder ~~shall~~ *must* meet the requirements of Title 18, chapter 1, part 2.

(2) The board may reject any ~~and all~~ bids. If a contract is awarded, the board shall ~~do so~~ *award the contract* in accordance with the requirements of 18-1-102~~,~~ ~~18-1-112,~~ and Title 18, chapter 2, part 4. ~~When~~ *If* there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of the members of the board.

(3) Before entering upon performance of the work, the contractor shall comply with the requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the board, a contract ~~shall~~ *may* not be completed until the board, while formally convened, affirmatively accepts all of the work ~~thereunder~~ *under the contract.*"

Section 6. Section 7-14-2716, MCA, is amended to read:

"**7-14-2716. Award of contract by local improvement district.** (1) If the committee awards a contract, it shall ~~do so~~ *award the contract* in accordance with the requirements of 18-1-102~~, 18-1-112,~~ and Title 18, chapter 2, part 4. ~~When~~ *If* there is no prevailing rate of wages set by collective bargaining, the committee shall determine the prevailing rate to be stated in the contract.

(2) Partial payments may be provided for in the contract and paid when certified by the county surveyor and committee."

Section 7. Section 17-8-244, MCA, is amended to read:

"**17-8-244. Exemptions.** Section 17-8-242 does not apply to the following:

(1) interagency or intergovernmental transactions;

(2) claims subject to a good faith dispute~~;~~ *brought before a government agency or before a court. Interest in a proceeding subject to this subsection is governed by 18-1-404.*

(3) delinquencies ~~due to~~ *because of* natural disasters, disruptions in postal or delivery service, work stoppage ~~due to~~ *because of* labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the payer agency;

(4) ~~contracts entered into before October 1, 1983;~~

~~(5)~~ wages due and payable to state employees or payments from any state retirement system created pursuant to Title 19; or

~~(6)~~*(5)* claims submitted to the state or to its fiscal intermediary by providers of supplies or services under the Montana medicaid or workers' compensation program if reasonable cause for nonpayment exists."

Section 8. Section 18-1-101, MCA, is amended to read:

"**18-1-101. Definitions.** (1) Unless the context requires otherwise, in this title, "department" means the department of administration provided for in Title 2, chapter 15, part 10.

(2) Unless the context requires otherwise, in this part, the following definitions apply:

(a) "Goods" means supplies, equipment, materials, commodities, and specially manufactured products.

(b) ~~"Montana-made" means manufactured or produced in this state and made with the:~~

~~(i) use of parts, materials, or supplies of which 50% or more were manufactured or produced in this state; or~~

~~(ii) employment of persons of whom 50% or more are bona fide residents of Montana as defined in 18-2-401.~~

~~(c)~~ "Nonresident bidder" means a bidder whose residence is not in this state as determined under 18-1-103.

~~(d)~~*(c)* *(i)* "Public agency" means a department, commission, council, board, bureau, committee, institution, agency, government corporation, or other entity, instrumentality, or official of the legislative, executive, or judicial branch of this state and its political subdivisions, including the board of regents and the Montana university system.

(ii) Public agency does not include a political subdivision for purposes of 18-1-102(1)(b).

~~(e)~~*(d)* "Resident bidder" means a bidder whose residence is in this state as determined under 18-1-103.

~~(f)~~*(e)* "Written" means that whenever written or in-writing determinations or documents are required, the public agency responsible for the procurement may specify an appropriate visual medium, such as by computer transmission or by facsimile machine transmission, in the specifications, contract, or rules of the public agency."

Section 9. Section 18-1-102, MCA, is amended to read:

"**18-1-102. State contracts to lowest bidder — reciprocity.** (1) ~~(a) Except as provided in subsection (1)(b), in~~ *In* order to provide for an orderly administration of the business of the state of Montana in awarding public contracts for the purchase of goods and for construction, repair, and public works of all kinds, a public agency shall award:

~~(i)~~*(a)* a public contract for construction, repair, or public works to the lowest responsible bidder without regard to residency. However, a resident bidder must be allowed a preference on a contract against the bid of ~~any~~ *a* nonresident bidder from any state or country that enforces a preference for resident bidders. The preference given to resident bidders of this state must be equal to the preference given in the other state or country.

~~(ii)~~*(b)* a public contract for the purchase of goods~~, if the goods are comparable in quality and performance,~~ to the lowest responsible ~~resident~~ bidder ~~whose:~~

~~(A) bid is not more than 3% higher than that of the lowest responsible nonresident bidder;~~

~~(B) offered goods are Montana-made and whose bid is not more than 5% higher than that of the lowest responsible nonresident bidder; or~~

~~(C) offered goods are Montana-made and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered goods are not Montana-made.~~

~~(b) The transportation commission or the department of transportation may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:~~

~~(i) the foreign country in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country; and~~

~~(ii) the department of transportation has entered into a reciprocity agreement with the foreign country that addresses:~~

~~(A) the equal and fair treatment of bids originating in the United States and in the foreign country;~~

~~(B) specific ownership requirements and tax policies in the United States and in the foreign country that may result in the unequal treatment of all bids received, regardless of their origin;~~

~~(C) the means by which contractors from both the United States and the foreign country are notified of highway projects and construction projects available for bid; and~~

~~(D) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country for projects located in either the United States or the foreign country.~~

~~(c) (i) If both subsections (1)(a)(ii)(B) and (1)(a)(ii)(C) are applicable to bids for a contract, the contract must be awarded to the resident bidder whose offered goods are Montana-made if the bid is:~~

~~(A) not more than 3% higher than that of a resident bidder whose offered goods are not Montana-made; and~~

~~(B) not more than 5% higher than that of the nonresident bidder.~~

~~(ii) However, a combination of preferences under this subsection (1)(c) may not exceed 5%~~ *without regard to residency. However, a resident must be allowed a preference on a contract against the bid of a nonresident if the state or country of the nonresident enforces a preference for residents. The preference must be equal to the preference given in the other state or country.*

(2) The preferences in this section apply:

(a) whether the law requires advertisement for bids or does not require advertisement for bids; and

(b) to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant to federal laws."

Section 10. Section 18-1-103, MCA, is amended to read:

"**18-1-103. Resident defined.** (1) For the purpose of 18-1-102~~, 18-1-111,~~ and this section, the word "resident" includes actual residence of an individual within this state for a period of more than 1 year immediately prior to bidding.

(2) In a partnership enterprise, *limited liability company,* or ~~an~~ association, the majority of all partners or ~~association~~ members must have been actual residents of the state of Montana for more than 1 year immediately prior to bidding.

(3) Domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents, but this qualification may be set aside and a successful bid disallowed when it is shown to the satisfaction of the board, commission, officer, or individual charged with the responsibility for the execution of the contract that the corporation is a wholly owned subsidiary of a foreign corporation or that the corporation was formed for the purpose of circumventing the provisions relating to residence.

~~(4) Notwithstanding the foregoing, any bidder on a contract for the purchase of goods, whether an individual, partnership, or corporation, foreign or domestic and regardless of ownership thereof, whose offered goods are Montana-made is a resident for the purpose of 18-1-102, 18-1-111, and this section.~~"

Section 11. Section 18-1-111, MCA, is amended to read:

"**18-1-111. Impartiality to be shown in letting contracts — ~~preference to residents.~~** The department may not show any partiality or favoritism *not provided for by law* in making awards or contracts ~~and shall be absolutely fair and impartial. Where both the bids and quality of goods offered are the same, preference shall be given to articles of local and domestic production and manufacture, and where both the bids and the quality of goods offered are the same, preference shall be given to resident bidders as defined in 18-1-103 over nonresident bidders.~~"

Section 12. Section 18-1-404, MCA, is amended to read:

"**18-1-404. Liability of state — *interest* — costs.** (1) (a) The state of Montana is liable in respect to any contract entered into in the same manner and to the same extent as a private individual under like circumstances, except the state of Montana is not liable for punitive damages.

(b) The state of Montana is liable for interest from the date on which the payment on the contract became due. This liability is retroactive, within the meaning of 1-2-109, and applies to any contract in effect or an action pending on a contract on or after May 1, 1997. ~~For purposes of this section~~ *If the contract is subject to a good faith dispute brought before a government agency or before a court,* the interest rate is 10% simple interest each year, whether due before or after a ~~judgment~~ *decision by the government agency or court.* If the contract does not specify when interest is payable before a ~~judgment~~ *decision,* interest must be paid at the time provided in 17-8-242(2). *If the contract is not subject to a good faith dispute brought before a government agency or before a court, the interest rate is governed by 17-8-242.*

(2) Costs may be allowed as provided in 25-10-711. In all other cases, costs must be allowed in all courts to the successful claimant to the same extent as if the state of Montana were a private litigant. The costs must include attorney fees. The liability for attorney fees is retroactive, within the meaning of 1-2-109, and applies to any contract in effect or an action pending on a contract on or after May 1, 1997.

(3) This section does not apply to a contract governed by Title 19."

Section 13. Section 18-2-306, MCA, is amended to read:

"18-2-306. Time of final acceptance and final payment on construction contracts — interest. (1) A government entity that enters into a contract for the construction of a building shall, unless otherwise provided by law or the contract and within 10 days after a request by the construction contractor for final acceptance, decide whether or not to make final acceptance. Within 30 days after final acceptance by the government entity, the government entity shall make the final payment of the contract price specified in the contract to the other party to the contract.

(2) Except as provided by law or the contract, a government entity that fails to complete the payment of the contract price at the time required by subsection (1) shall pay to the other party to the contract interest at the rate specified in *17-8-242 or* 18-1-404, *as applicable*. Collection of interest pursuant to this section does not preclude any other legal remedy.

(3) The following definitions apply to this section:

(a) "Building" has the meaning provided in 18-2-101.

(b) "Construction" has the meaning provided in 18-2-101.

(c) "Final acceptance" means the government entity's acceptance of the construction of a building by the contractor upon certification by the architect, project engineer, or other representative of the government entity of final completion of the building.

(d) "Final completion" means that the building has been completed in accordance with the terms and conditions of the contract documents.

(e) "Government entity" means a department, agency, commission, board, authority, institution, or office of the state, including the board of regents and the Montana university system, a municipality, county, consolidated municipal-county government, school district, or other special district."

Section 14. Section 18-4-123, MCA, is amended to read:

"18-4-123. Definitions. In this chapter, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) "Business" means a corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

(2) "Change order" means a written order, signed by an authorized department representative, directing the contractor to make changes ~~which~~ *that* the changes clause of the contract authorizes the department to order without the consent of the contractor.

(3) "Contract" means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies or services.

(4) "Contract modification" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract.

(5) "Contractor" means a person having a contract with a governmental body.

(6) "Data" means recorded information, regardless of form or characteristic.

(7) "Department" means the department of administration.

(8) "Designee" means an authorized representative of a person holding a superior position.

(9) "Director" means the director of the department of administration.

(10) "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for a governmental body.

(11) "Governmental body" means a department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other entity, instrumentality, or official of the executive, legislative, or judicial branch of this state, including the board of regents and the Montana university system.

(12) *(a)* "Grant" means the furnishing by the federal government of assistance, whether financial or otherwise, to a person or agency to support a program authorized by law.

(b) ~~It~~ *Grant* does not include an award whose primary purpose is to procure an end product, whether in the form of supplies or services. A contract resulting from an award is not a grant but a procurement contract.

(13) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

(14) *(a)* "Printing" means the reproduction of an image from a printing surface generally made by a contact impression that causes a transfer of ink or the reproduction of an impression by a photographic process and includes graphic arts, typesetting, binding, and other operations necessary to produce a finished printed product.

(b) Printing does not include rebinding or repair by a library or an office, department, board, or commission of books, journals, pamphlets, magazines, and literary articles held as a part of its library collection.

(15) *(a)* "Procurement" means *acquisition with or without cost,* buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. ~~It also~~ *The term* includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(b) Procurement does not include the acquiring of supplies or services by gift.

(16) "Procurement officer" means any person authorized to enter into and administer contracts and make written determinations with respect to contracts. The term ~~also~~ includes an authorized representative acting within the limits of the representative's authority.

(17) "Purchasing agency" means any governmental body, other than the department, that is authorized by this chapter or its implementing rules or by way of delegation from the director to enter into contracts.

(18) *(a)* "Services" means the furnishing of labor, time, or effort by a contractor.

(b) ~~The term~~ *Services* does not include employment agreements or collective bargaining agreements, the provision of human services administered by the

department of public health and human services, or services related to construction contracts.

(19) "Supplies" means all property except as otherwise provided by law, including but not limited to equipment, materials, printing, and commodities, and excluding land or any interest in land.

(20) "Using agency" means any governmental body of the state that uses any supplies or services procured under this chapter.

(21) "Vendor" means a person who offers or may offer supplies or services to a public agency."

Section 15. Section 18-4-132, MCA, is amended to read:

"**18-4-132. Application.** (1) This chapter applies to *the* expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body~~, as defined in 18-4-123,~~ under any contract, *except a contract exempted from this chapter by this section or by a statute that provides that this chapter does not apply to the contract. This chapter applies to a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state.* This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(2) This chapter does not apply to construction contracts.

(3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

(4) This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than $250,000.

(5) This chapter does not apply to contracts entered into by the state compensation insurance fund to procure insurance-related services.

(6) This chapter does not apply to employment of:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(d) consulting actuaries;

(e) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(f) a private consultant employed by the Montana state lottery;

(g) a private investigator licensed by any jurisdiction; or

(h) a claims adjuster.

(7) (a) This chapter does not apply to electric energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201.

(b) Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure."

Section 16. Section 18-4-133, MCA, is amended to read:

"**18-4-133. Purchases exempt from general requirements.** (1) When immediate delivery of articles or performance of service is required by the public exigencies, the articles or service required may be procured by open purchase or contract at the place and in the manner in which the articles are usually bought and sold or the services engaged between individuals but under the direction of the department.

(2) *(a)* The department may exempt the department of corrections and the department of public health and human services from the provisions of this chapter for the purchase of suitable clothing by the department of corrections and the department of public health and human services for residents of its institutions and community-based programs.

~~(3)~~*(b)* As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community.

(3) When none of the bids or proposals received in response to a valid solicitation are from a responsible bidder or offeror or responsive bidder or offeror, as defined in 18-4-301, the procurement officer may:

(a) cancel and reissue the solicitation. If the procurement officer reissues the solicitation, the procurement officer shall attempt to increase the number of potential vendors and may modify any specification in the original solicitation.

(b) directly negotiate with a vendor if the procurement officer determines that a second or subsequent solicitation would also be unsuccessful.

(4) The department shall adopt rules describing the conditions under which a procurement officer may negotiate directly with a vendor. The rules must reflect the purposes described in 18-4-122.

(5) When a state department, agency, or official administers a grant of public funds and contracts with a landowner to carry out a recreational or environmental remediation, reclamation, or conservation project that benefits the state, the department may exempt the landowner from the provisions of chapter 1 and this chapter if the landowner conducts the work or conducts a form of competitive procurement allowed by the terms of the contract."

Section 17. Section 18-4-141, MCA, is amended to read:

"**18-4-141. Contract transfers and collusion prohibited — violations and penalty.** (1) A contract or order or any interest in a contract or order may not be transferred, assigned, or subcontracted by the party to whom the contract or order is given to any other party without the express written approval of the state, and the state may declare void any unapproved transfer, assignment, or subcontract.

(2) Collusion or secret agreements between ~~bidders~~ *vendors* for the purpose of securing any advantage to the ~~bidders~~ *vendors* as against the state in the awarding of contracts ~~is~~ *are* prohibited. The state may declare the contract void if the department finds sufficient evidence after a contract has been let that the contract was obtained by a ~~bidder~~ *vendor* or ~~bidders~~ *vendors* by reason of collusive or secret agreement among the ~~bidders~~ *vendors* to the disadvantage of the state.

(3) All rights of action for a breach of a contract by the contracting parties are reserved to the state.

(4) A person who violates the provisions of 2-2-201 or this section, or both, is guilty of a misdemeanor and shall be fined *an amount of* not less than $500 or more than $5,000, and the state of Montana may at its option declare any contract in violation of the provisions of 2-2-201 or this section, or both, void ab initio."

Section 18. Section 18-4-301, MCA, is amended to read:

"**18-4-301. Definitions.** As used in this part, the following definitions apply:

(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs ~~which~~ *that* are allowable and allocable in accordance with the contract terms and the provisions of this chapter~~,~~ and a fee, if any.

(2) *(a)* "Displacement" means the layoff, demotion, or involuntary transfer of a state employee.

(b) ~~The term~~ *Displacement* does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

(3) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(4) "Invitation for bids" means all documents, whether attached or incorporated by reference, ~~utilized~~ *used* for soliciting bids.

(5) "Office supply" means an item included under the office supply commodity class codes maintained by the department.

(6) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

(7) "Request for proposals" means all documents, whether attached or incorporated by reference, ~~utilized~~ *used* for soliciting proposals.

(8) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability ~~which~~ *that* will ~~assure~~ *ensure* good faith performance.

(9) "Responsive bidder *or offeror*" means a person who has submitted a bid ~~which~~ *or proposal that* conforms in all material respects to the invitation for bids *or request for proposals.*

(10) "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time."

Section 19. Section 18-4-301, MCA, is amended to read:

"18-4-301. Definitions. As used in this part, the following definitions apply:

(1) "Alternative procurement method" means a method of procuring supplies or services in a manner not specifically described in this chapter, but instead authorized by the department under 18-4-302.

~~(1)~~*(2)* "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs ~~which~~ *that* are allowable and allocable in accordance with the contract terms and the provisions of this chapter~~,~~ and a fee, if any.

~~(2)~~*(3) (a)* "Displacement" means the layoff, demotion, or involuntary transfer of a state employee.

(b) ~~The term~~ *Displacement* does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

~~(3)~~*(4)* "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

~~(4)~~*(5)* "Invitation for bids" means all documents, whether attached or incorporated by reference, ~~utilized~~ *used* for soliciting bids.

~~(5)~~*(6)* "Office supply" means an item included under the office supply commodity class codes maintained by the department.

~~(6)~~*(7)* "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

~~(7)~~*(8)* "Request for proposals" means all documents, whether attached or incorporated by reference, ~~utilized~~ *used* for soliciting proposals.

~~(8)~~*(9)* "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability ~~which~~ *that* will ~~assure~~ *ensure* good faith performance.

~~(9)~~*(10)* "Responsive bidder" means a person who has submitted a bid ~~which~~ *that* conforms in all material respects to the invitation for bids.

~~(10)~~*(11)* "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time."

Section 20. Section 18-4-302, MCA, is amended to read:

"18-4-302. Methods of source selection — *authorization for alternative procurement methods*. (1) Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by a source selection method provided for in this title. Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

(2) ~~At the time that~~ *When* the department or another agency opens bids or proposals, if a supplier's current publicly advertised or established catalog price is received at or before the time that the bids or proposals are opened and is less than the bid of the lowest responsible and responsive bidder or offeror or improves upon the conditions for the best proposal received using the same factors and weights included in the proposal, the department or agency may reject all bids and purchase the supply from that supplier without meeting the requirements of 18-4-303 through 18-4-306.

(3) An office supply procured by the department's central stores program may be purchased by an agency, without meeting the requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised price, established catalog price, or discount price offered to the agency is less than the price offered by the central stores program if the office supply conforms in all material respects to the terms, conditions, and quality offered by the central stores program. A state office supply term contract must include a provision by which the contracting parties acknowledge and agree to the provisions of this subsection.

(4) (a) Under rules adopted by the department, an agency may request from the department authorization for an alternative procurement method.

(b) A request for authorization must specify:

(i) the problem to be solved;

(ii) the proposed alternative procurement method;

(iii) the reasons why the alternative procurement method may be more appropriate than a method authorized by law; and

(iv) how competition and fairness will be achieved by the alternative procurement method.

(c) Within 30 days after receiving the request, the department shall:

(i) evaluate the request;

(ii) approve or deny the request; and

(iii) issue a written statement providing the reasons for its decision.

(d) Whenever the department approves a request submitted under this section, the department:

(i) may authorize the alternative procurement method on a trial basis; and

(ii) if the alternative procurement method is employed, shall make a written determination as to the success of the method.

(e) If the department determines that the alternative procurement method is successful and should be an alternative that is generally available, it shall promulgate rules that establish the use of the alternative procurement method as an additional source selection method. The rules promulgated by the department under this subsection must reflect the purposes described in 18-4-122."

Section 21. Section 18-4-306, MCA, is amended to read:

"18-4-306. Sole source procurement — records. (1) A contract may be awarded for a supply or service item without competition when, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that*:*

(a) there is only one source for the ~~required~~ supply or service item*;*

(b) only one source is acceptable or suitable for the supply or service item; or

(c) the supply or service item must be compatible with current supplies or services.

(2) The department may require the submission of cost or pricing data in connection with an award under this section.

~~(2)~~*(3)* The department shall maintain or shall require the head of a purchasing agency to maintain a record listing all contracts made under this section for a minimum of 4 years. The record must contain:

(a) each contractor's name;

(b) the amount and type of each contract; and

(c) a listing of the supplies or services procured under each contract.

~~(3)~~*(4)* The record must be available for public inspection."

Section 22. Section 18-4-313, MCA, is amended to read:

"18-4-313. Contracts — terms, extensions, and time limits. (1) Unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a period of more than 7 years. However, the department may contract for the lease or purchase of *hardware, software, or services for* telecommunications ~~equipment and systems,~~ *or* data processing, ~~equipment,~~ the department of revenue liquor agencies, and the department of public health and human services medicaid management information system (MMIS) for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period at the time of the agreement, and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(2) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled."

Section 23. Section 18-5-308, MCA, is amended to read:

"18-5-308. (Temporary) Construction with other sections. Procurement from small businesses under this part is subject to all other statutes governing state procurement and all rules promulgated ~~thereunder, as now or hereafter amended~~ *under those statutes*, except that in case of conflict, this part governs and the provisions set forth in 18-1-102~~, 18-1-111, and 18-1-112 shall~~ *do* not apply. (Repealed effective June 30, 2003—secs. 4(2), 5(2), Ch. 271, L. 1999.)"

Section 24. Section 18-7-107, MCA, is amended to read:

"**18-7-107. State printing, binding, and stationery work.** All printing, binding, and stationery work for the state of Montana ~~must be printed in the state of Montana by the lowest responsible bidder if the bid, including the cost of delivery, does not exceed the lowest bid by a nonresident printer by more than 8%. If there is no responsible in-state bidder, the work may be performed by the lowest responsible bidder outside the state~~ *is subject to the preference in 18-1-102(1)(b).* Federal exemptions as specified in 18-1-102(2)(b) apply."

Section 25. Section 60-2-112, MCA, is amended to read:

"**60-2-112. Competitive bidding — reciprocity.** (1) Except as provided in subsections (2) through (5), ~~when~~ *if* the estimated cost of any work exceeds $50,000, the commission shall ~~let~~ *award* the contract by competitive bidding to the lowest responsible and responsive bidder. ~~Award~~ *The award* must be made upon the notice and terms that the commission prescribes by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102 ~~and 18-1-112~~.

(2) The commission may ~~let~~ *award* a contract by means other than competitive bidding if it determines that special circumstances so require. The commission shall specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to the project.

(4) The commission may delegate to the department the authority to enter, without competitive bidding, agreed-upon price contracts for projects costing $50,000 or less.

(5) The commission or the department may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:

(a) the foreign country, *or province or other political subdivision of that country,* in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country, *or province or other political subdivision of that country*; and

(b) the department has entered into a reciprocity agreement with *or has exchanged letters of information with* the foreign country, *or province or other political subdivision of that country,* that addresses:

(i) the equal and fair treatment of bids originating in the United States and in the foreign country, *or province or other political subdivision of that country*;

(ii) specific ownership requirements and tax policies in the United States and in the foreign country, *or province or other political subdivision of that country,* that may result in the unequal treatment of all bids received, regardless of their origin;

(iii) the means by which contractors from both the United States and the foreign country, *or province or other political subdivision of that country,* are notified of highway projects and construction projects available for bid; and

(iv) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country, *or province or other political subdivision of that country,* for projects located in either the United States or the foreign country, *or province or other political subdivision of that country.*

(6) For the purposes of subsection (5), "construction" has the ~~same~~ meaning ~~as is~~ provided in 18-2-101."

Section 26. Repealer. Section 18-1-112, MCA, is repealed.

Section 27. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2001.

(2) [Section 18] is effective July 1, 2005.

Section 28. Applicability. [This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001.

Section 29. Termination. [Sections 19 and 20] terminate June 30, 2005.

Approved April 2, 2001

CHAPTER NO. 182

[HB 386]

AN ACT ALLOWING THE SALE OF FIREWORKS FROM JUNE 24 THROUGH JULY 5 AND FROM DECEMBER 29 THROUGH DECEMBER 31; AMENDING SECTION 50-37-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-37-106, MCA, is amended to read:

"50-37-106. Sale of fireworks restricted to certain dates. ~~No~~ *A* person, firm, or corporation may offer fireworks of any kind for sale at retail *only during the following periods:*

(1) ~~before~~ June 24 ~~and after~~ *through* July 5*; and*

(2) December 29 through December 31."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2001

CHAPTER NO. 183

[HB 440]

AN ACT REVISING RESIDENCY REQUIREMENTS FOR ELECTION TO THE COUNTY COMMISSION TO MAKE THEM CONSISTENT WITH THE RESIDENCY REQUIREMENTS FOR FILLING COUNTY COMMISSION VACANCIES; AMENDING SECTION 7-4-2104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2104, MCA, is amended to read:

"7-4-2104. Commissioners to be elected by district. (1) At each general election, the member or members of the board of county commissioners to be elected ~~shall~~ *must* be selected from the residents and electors of the district or districts in which the vacancy occurs, but the election of ~~such~~ *the* member or members of the board ~~shall~~ *must* be submitted to the entire electorate of the county.

(2) ~~No one shall~~ *A person may not* be elected as a member of ~~said~~ *a* board *of county commissioners* ~~who~~ *unless the person* has ~~not~~ resided in the county *and the district* for at least 2 years ~~next~~ preceding the ~~time when he shall become a candidate for said office and was not a resident of the district at the time of filing for the primary~~ *general* election."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2001

CHAPTER NO. 184

[HB 542]

AN ACT TRANSFERRING THE COLLECTION OF THE STAMPING FEE FOR SURPLUS LINES TO THE COMMISSIONER OF INSURANCE IF THE SURPLUS LINES INSURANCE PRODUCER ORGANIZATION IS NOT PERFORMING ITS DESIGNATED FUNCTIONS; AND AMENDING SECTION 33-2-321, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-321, MCA, is amended to read:

"33-2-321. Surplus lines advisory organizations — examination by commissioner — stamping fee. (1) A surplus lines advisory organization of surplus lines insurance producers may be formed to:

(a) facilitate and encourage compliance by its members with the laws of this state and the rules of the commissioner relative to surplus lines insurance;

(b) provide means for the confidential examination of all surplus lines insurance written by its members to determine whether the surplus lines insurance complies with this part;

(c) communicate with organizations of authorized insurers with respect to the proper use of the surplus lines insurance market; and

(d) receive and disseminate to its members information relative to surplus lines insurance.

(2) The surplus lines advisory organization shall file with the commissioner:

(a) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation;

(b) a copy of its bylaws, rules, and regulations governing its activities;

(c) a current list of its members;

(d) the name and address of a resident of this state upon whom notices or orders of the commissioner or processes issued at ~~his~~ *the commissioner's* direction may be served; and

(e) an agreement that the commissioner may examine the advisory organization under the provisions of subsection (3).

(3) The commissioner may make or cause to be made an examination of the surplus lines advisory organization. The surplus lines advisory organization shall pay the reasonable cost of an examination upon presentation to it by the commissioner of a detailed account of the cost. The officers, managers, insurance producers, and employees of the surplus lines advisory organization may be examined at any time, under oath, and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. The commissioner shall furnish two copies of the examination report to the examined surplus lines advisory organization and shall notify the surplus lines advisory organization that it may, within 20 days of receipt of the report, request a hearing on the report or on any facts or recommendations contained in it. If the commissioner finds the surplus lines advisory organization or any of its members to be in violation of this part, ~~he~~ *the commissioner* may issue an order requiring the discontinuance of the violation.

(4) The commissioner may by order compel a surplus lines insurance producer to join the surplus lines advisory organization as a condition of continued licensure under this part.

(5) *(a) If a* ~~The~~ surplus lines advisory organization *is performing functions as provided in subsection (1), it* may collect a stamping fee not to exceed 1% of the premium payable for surplus lines insurance transacted by its members in this state. The commissioner shall establish the stamping fee by rule. The surplus lines advisory organization shall use the stamping fees it collects to pay its expenses *in connection with performing the functions set forth in subsection (1).*

(b) If a surplus lines advisory organization is not operating as set forth in this section, the stamping fee may be collected by the commissioner and placed in a state special revenue account for the expenses of regulating surplus lines."

Approved April 3, 2001

CHAPTER NO. 185

[SB 8]

AN ACT ALLOWING ADMINISTRATIVE RULEMAKING AUTHORITY FOR LAWS NOT YET EFFECTIVE; AND PROVIDING THAT A RULE IS NOT EFFECTIVE UNTIL THE LAW IS EFFECTIVE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Rulemaking authority for laws not yet effective — rule not effective until law effective. Unless otherwise provided in the statute, an agency may proceed with rulemaking under this chapter after the enactment of a statute to be implemented by rule, but a rule may not become effective prior to the effective date of the statute.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 4, and the provisions of Title 2, chapter 4, apply to [section 1].

Approved April 3, 2001

CHAPTER NO. 186

[SB 33]

AN ACT CLARIFYING EXISTING LAW TO REQUIRE THAT NEW ISSUES RELATING TO THE ADEQUACY OR CONTENT OF AN ENVIRONMENTAL REVIEW DOCUMENT NOT FIRST PRESENTED TO A STATE AGENCY IN AN ACTION CHALLENGING A DECISION UNDER THE MONTANA ENVIRONMENTAL POLICY ACT MUST BE REMANDED BY THE DISTRICT COURT TO THE AGENCY FOR ITS CONSIDERATION; AND AMENDING SECTION 75-1-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions — environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except the legislature and except as provided in subsection (2), shall:

(i) use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment;

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action;

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity; and

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(v) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

(vi) recognize the national and long-range character of environmental problems and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved. The responsible state official shall also consult with and obtain comments from any state agency with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the

decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue *relating to the adequacy or content of the agency's environmental review document* or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law.

(b) When new, material, and significant evidence ~~is~~ *or issues relating to the adequacy or content of the agency's environmental review document are* presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence *or issue relating to the adequacy or content of the agency's environmental review document* back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court considers the evidence *or issue relating to the adequacy or content of the agency's environmental review document* within the administrative record under review. Immaterial or insignificant evidence *or issues relating to the adequacy or content of the agency's environmental review document* may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review."

Approved April 3, 2001

CHAPTER NO. 187

[SB 42]

AN ACT CLARIFYING THE CONSUMPTIVE USE DATA IN THE UNITED STATES FISH AND WILDLIFE SERVICE, RED ROCK LAKES-MONTANA COMPACT; AMENDING SECTION 85-20-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-20-801, MCA, is amended to read:

"**85-20-801. United States Fish and Wildlife Service, Red Rock Lakes-Montana compact ratified.** The compact entered into by the State of Montana and the United States Fish and Wildlife Service and filed with the secretary of state of the State of Montana under the provisions of 85-2-702 on April 20, 1999, is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

UNITED STATES OF AMERICA, FISH AND WILDLIFE SERVICE

This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims existing on the effective date of the Compact to water for Red Rock Lakes National Wildlife Refuge and Wilderness Area ("Refuge") administered by the U.S. Fish and Wildlife Service (FWS) within the State of Montana.

RECITALS

WHEREAS, the State of Montana, in 1979, pursuant to Title 85, Chapter 2 of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-703, MCA, provides that the state may negotiate compacts concerning the equitable division and apportionment of water between the state and its people and the federal government with claims to non-Indian reserved water rights within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of Red Rock Lakes National Wildlife Refuge and Wilderness Area, in the State of Montana;

WHEREAS, the United States, in quantifying its water rights recognizes the need to accommodate the interests of the State and its citizens by providing for the development and use of water in the vicinity of the Fish and Wildlife Service Refuges to the extent that it is possible to do so without materially affecting the rights and interests of the United States;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-17 (1968);

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. 1457 (1986, Supp. 1992);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE I - DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

1. "Abstract" means the copy of the document entitled "Abstract of U.S. Fish and Wildlife Service Water Rights" referenced in this Compact as Appendix 1.

2. "Consumptive" when referring to a water right recognized under state law means a use of water which removes water from the source of supply such that the quality or quantity is reduced or the timing of return delayed, making it unusable or unavailable for use by others, and includes evaporative loss from impoundments or natural lakes.

3. "Department" means the Montana Department of Natural Resources and Conservation or its successor.

4. "Developed spring" means any diversion from a spring for beneficial use under state law and does not require augmentation of flow.

5. "Effective date of this Compact" means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever is latest.

6. "Groundwater" means water that is beneath the ground surface.

7. "Minimum flow" means the flow of water in a stream measured in cubic feet per second at the point designated in Article II of the Compact, at or below which the United States has the right to seek curtailment of junior water rights upstream from the Refuge.

8. "Natural flow" means the water that the parties agree shall remain in the stream in satisfaction of the United States' water right for the purposes of the federal reservation.

9. "Non-consumptive" see "consumptive"

10. "Parties" means the State of Montana and the United States.

11. "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

12. "Recognized under state law" when referring to a water right or use means a water right or use protected by state law, but does not include state recognition of a federal or tribal reserved water right arising under federal law.

13. "Red Rock Lakes National Wildlife Refuge" means those lands located in Montana that were withdrawn and reserved by Executive Orders No. 7023 of April 22, 1935, and 7172 of September 4, 1935, and all lands acquired by the United States Fish and Wildlife Service within the boundaries established by Executive Orders 7023 and 7172.

14. "Red Rock Lakes Wilderness Area" means those lands within Red Rock Lakes National Wildlife Refuge designated as wilderness by Public Law 94-557 of October 19, 1976, 16 USC 1132.

15. "Refuge" means both the Red Rock Lakes National Wildlife Refuge and the Red Rock Lakes Wilderness Area.

16. "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "state" means the Director of the Montana Department of Natural Resources and Conservation or his or her designee.

17. "United States" means the federal government and all officers, agencies, departments and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of the Interior, or his or her designees.

ARTICLE II - WATER RIGHT

The parties agree that the following water rights are in settlement of all of the United States' water rights for the Refuge, including federal reserved and state-based water rights acquired with the purchase of land. The parties to this agreement recognize that the water rights described in this Compact are junior to any tribal water rights with a priority date before the effective date of the Compact, including aboriginal rights, if any, in the basins affected. All water rights described in this Article are subject to Article IV.A. of this Compact.

A. **Quantification:** The United States shall have the right to water from the following sources where they occur on the Refuge:

1. **Consumptive Use:**

~~Red Rock Lakes National Wildlife Refuge — Consumptive Use~~

	~~Legal Description of impoundment or POD~~				~~Elev. of Dam~~	~~Surface Acres~~	~~Acre Feet Capacity~~	~~Future Acre Feet~~	~~Natural or Manmade~~	~~Canal~~	~~Diversion Rate~~	~~Source of Diverted Water~~
	~~Qtr~~	~~Sec.~~	~~Twnshp~~	~~Range~~							~~CFS~~	
~~McDonald Pond~~	~~NW~~	~~6~~	~~14 S~~	~~1 E~~	~~6629.63~~	~~13~~	~~44~~		~~NWS~~	~~Mallard~~	~~10~~	~~Culver Springs~~
~~Widgeon Pond~~	~~NW~~	~~6~~	~~14 S~~	~~1 E~~	~~6636.3~~	~~88~~	~~585~~		~~NWS~~	~~Hacket Cr~~	~~20~~	~~Culver Springs~~
~~Culver Pond~~	~~NW~~	~~8~~	~~14 S~~	~~1 E~~	~~6651.7~~	~~27~~	~~110~~		~~NWS~~			~~Culver Springs~~
~~East Pintail Ditch Pnd~~	~~N~~	~~1~~	~~14 S~~	~~1 W~~		~~3~~	~~3~~		~~M~~	~~Mallard~~	~~10~~	~~Elk Creek~~
~~Pintail Ditch Pond~~	~~SW~~	~~34~~	~~13 S~~	~~1 W~~		~~21~~	~~24~~		~~M~~	~~Mallard~~	~~10~~	~~Elk Creek~~
~~Swan Lake~~[1]	~~N~~	~~9~~	~~14 S~~	~~1 W~~		~~649~~	~~1168~~		~~N~~			~~Elk Creek~~
~~Buck Pond~~[3]	~~NE~~	~~4~~	~~14 S~~	~~1 W~~		~~11~~	~~16~~		~~N~~	~~Mallard~~	~~10~~	~~Groundwater~~
~~East Swan lake~~[1]	~~SW~~	~~3~~	~~14 S~~	~~1 W~~		~~65~~	~~78~~		~~N~~			~~Groundwater~~
~~Sora Pond~~[2]	~~E~~	~~33~~	~~13 S~~	~~1 W~~		~~1~~	~~2~~		~~N~~			~~Groundwater~~
~~Antelope Pond~~	~~N~~	~~4~~	~~14 S~~	~~1 W~~		~~10~~	~~12~~		~~N~~			~~Groundwater~~
~~Campground Spring~~	~~SWSWSE~~	~~21~~	~~14 S~~	~~1 W~~			~~8~~		~~M~~		~~10 gpm~~	~~Groundwater~~
~~Shambow Pond~~[4]	~~S~~	~~20~~	~~14 S~~	~~1 W~~		~~7~~	~~26~~		~~N~~			~~Groundwater~~
~~Rail Pond~~[2]	~~NW~~	~~3~~	~~14 S~~	~~1 W~~		~~6~~	~~9~~		~~N~~	~~Mallard~~	~~10~~	~~Groundwater~~
~~Irrigation~~	~~SWSW~~	~~30~~	~~14 S~~	~~1 W~~				~~3000~~	~~M~~		~~25~~	~~Odell Creek~~
~~Sparrow Slough Dam~~[1]	~~N~~	~~13~~	~~14 S~~	~~2 W~~	~~6627~~	~~63~~	~~190~~		~~M~~			~~Odell Creek~~
~~Sparrow Slough Pond~~[1]	~~SW~~	~~13~~	~~14 S~~	~~2 W~~	~~6629.3~~	~~21~~	~~34~~		~~NWS~~	~~ditch~~	~~17.5~~	~~Odell Creek~~
~~Upper Red Rock Lake~~	~~W~~	~~8~~	~~14 S~~	~~1 W~~		~~3467~~			~~N~~			~~Red Rock Creek~~
~~Lower Red Rock Lake~~	~~NE~~	~~6~~	~~14 S~~	~~2 W~~	~~6607.5~~	~~5492~~	~~89582~~		~~NWS~~			~~Red Rock Creek~~
~~Tuck Slough South~~	~~SW~~	~~7~~	~~14 S~~	~~1 E~~		~~29~~	~~63~~		~~M~~	~~Harlequin~~	~~30~~	~~Red Rock Creek~~

~~Tuck Slough North~~	~~N~~	~~7~~	~~14 S~~	~~1 E~~		~~108~~	~~2003~~		~~M~~	~~Harlequin~~	~~30~~	~~Red Rock Creek~~
~~Shoveler Pond~~[2]	~~W~~	~~7~~	~~14 S~~	~~1 E~~		~~6~~	~~9~~		~~N~~	~~Harlequin~~	~~30~~	~~Red Rock Creek~~
~~Refuge HQ domestic~~	~~SESENW~~	~~23~~	~~14 S~~	~~2 W~~			~~8~~	~~8~~	~~M~~			~~Groundwater~~
~~Irr. of Refuge HQ~~	~~NESW~~	~~23~~	~~14 S~~	~~2 W~~					~~M~~	~~ditch~~	~~0.5~~	~~Shambow Creek~~
~~Irr. of Bunkhse grnds~~	~~E2W2E2~~	~~23~~	~~14 S~~	~~2 W~~					~~M~~	~~ditch~~	~~1~~	~~Shambow Creek~~

~~Bold letters denote data taken from the dam safety reports, all other data is derived from topographic maps and Refuge staff estimates.~~

~~POD = Point of Diversion N = Natural lake NWS = Natural lake with manmade structure M = Manmade lake~~

~~[1] = Estimated average depth 2 feet [3] = Estimated average depth 3 feet~~

~~[2] = Estimated average depth 2.5 feet [4] = Estimated average depth 6 feet~~

Red Rock Lakes National Wildlife Refuge — Consumptive Use

	Legal Description of impoundment or POD				Elev. of Dam	Surface Acres	Acre-Feet Capacity	Future Acre-Feet	Natural or Manmade	Canal	Diversion Rate	Source of Diverted Water
	Qtr	Sec.	Twnshp	Range							CFS	
McDonald Pond	NW	6	14 S	1 E	**6629.63**	14	44		NWS	Mallard	10	Culver Springs
Widgeon Pond	NW	6	14 S	1 E	**6636.3**	150	585		NWS	Hacket Cr	20	Culver Springs
Culver Pond	NW	8	14 S	1 E	**6651.7**	65	110		NWS			Culver Springs
East Pintail Ditch Pnd	N2	1	14 S	1 W		3	3		M	Mallard	10	Culver Springs Groundwater
Pintail Ditch Pond	SW	34	13 S	1 W		21	24		M	Mallard	10	Culver Springs Groundwater
Swan Lake[3]	N2	9	14 S	1 W		649	1168		N			Elk Creek Groundwater
Buck Pond[2]	NE	4	14 S	1 W		11	16		N			Groundwater

East Swan Lake[1]	*SW*	*3*	*14 S*	*1 W*		*65*	*78*		*N*			*Groundwater*
Sora Pond[2]	*E2*	*33*	*13 S*	*1 W*		*1*	*2*		*N*			*Groundwater*
Antelope Pond	*N2*	*4*	*14 S*	*1 W*		*10*	*12*		*N*			*Groundwater*
Campground Spring	*SWSWSE*	*21*	*14 S*	*1 W*			*8*		*M*		*10 gpm*	*Groundwater*
Shambow Pond[4]	*S2*	*20*	*14 S*	*1 W*		*7*	*26*		*N*			*Groundwater*
Rail Pond[2]	*NW*	*3*	*14 S*	*1 W*		*6*	*9*		*N*			*Groundwater*
Well	*SESESE*	*28*	*13 S*	*1 W*					*M*		*40 gpm*	*Groundwater*
Well	*SESESE*	*28*	*13 S*	*1 W*					*M*		*15 gpm*	*Groundwater*
Well	*SWSESE*	*28*	*13 S*	*1 W*					*M*		*15 gpm*	*Groundwater*
Well	*NWSWNW*	*28*	*13 S*	*1 W*					*M*		*3 gpm*	*Groundwater*
Well	*NESESE*	*28*	*13 S*	*1 W*					*M*		*20 gpm*	*Groundwater*
Irrigation	*SWSW*	*30*	*14 S*	*1 W*				*3000*	*M*		*25*	*Odell Creek*
Sparrow Slough Pond	*N2*	*13*	*14 S*	*2 W*	*6627*	*63*	*190*		*M*			*Odell Creek*
Sparrow Pond	*SW*	*13*	*14 S*	*2 W*	*6629.3*	*21*	*34*		*NWS*	*ditch*	*17.5*	*Odell Creek*
Upper Red Rock Lake	*W2*	*8*	*14 S*	*1 W*		*3467*			*N*			*Red Rock Creek*
Lower Red Rock Lake	*NE*	*6*	*14 S*	*2 W*	*6612.5*	*5492*	*89582*		*NWS*			*Red Rock Creek*
Tuck Slough South	*SE*	*7*	*14 S*	*1 W*		*29*	*63*		*M*	*Harlequin*	*30*	*Red Rock Creek*
Tuck Slough North	*N2*	*7*	*14 S*	*1 W*		*103*	*200*		*M*	*Harlequin*	*30*	*Red Rock Creek*
Shoveler Pond[2]	*W2*	*7*	*14 S*	*1 W*		*6*	*9*		*N*	*Harlequin*	*30*	*Red Rock Creek*
												Groundwater
Refuge HQ domestic Well	*SESENW*	*23*	*14 S*	*2 W*			*8*	*8*	*M*			*Groundwater*
Irr. of Refuge HQ grnds	*SWNESW*	*23*	*14 S*	*2 W*					*M*	*pipeline*	*0.5*	*Shambow Creek*

Irr. of Bunkhse grnds	*SWNESW*	*23*	*14 S*	*2 W*	*M*	*pipeline*	*0.2*	*Shambow Creek*
Irr. of Bunkhouse Pasture	*SWSWNE*	*23*	*14 S*	*2 W*	*M*	*ditch*	*1.6*	*Shambow Creek*

Bold letters denote data taken from the dam safety reports, all other data is derived from topographic maps and Refuge staff estimates.

POD = Point of Diversion

N = Natural lake

NWS = Natural lake with manmade structure

M = Manmade lake

[1] *= Estimated average depth 2 feet*

[2] *= Estimated average depth 2.5 feet*

[3] *= Estimated average depth 3 feet*

[4] *= Estimated average depth 6 feet*

2. **Natural Flow:** The United States has a water right to the natural flow in all the tributaries entering the Refuge above the most downstream point on the Refuge at the point the tributary enters the Refuge in the amount of the natural flow remaining after satisfaction of the following water rights:

a. all rights recognized under state law upstream from the Refuge with a priority date prior to the effective date of this Compact; and

b. any rights exempt from the basin closure set forth in Article III.A. of this Compact.

3. **Minimum Flow:** Subject to the provisions of Article III.C.1., the United States has a water right for minimum flows on Red Rock, Tom and Odell Creeks as follows:

a. Red Rock Creek: 15 cfs, measured at NE SE NW Sec. 17, T14S, R1E;

b. Tom Creek: 1.4 cfs, measured at the county road in SW NE NE Sec. 25, T14S, R1W;

c. Odell Creek: 11 cfs, measured at the county road in SW SW SE Sec. 24, T14S, R2W.

4. **Lake Level:** The United States has the right to maintain the natural lake level of Lower Red Rocks Lake at an elevation of ~~6607.5~~ *6607.5* feet. The United States may store additional water only to the extent consistent with the Memorandum of Understanding of February 4, 1987, between the United States and the Water Users Irrigation Company (Lima Reservoir) and East Bench Irrigation District *and state water right permit number 65254-S41A.*

5. **Emergency Fire Suppression:** The use of water for emergency fire suppression benefits the public, and is necessary for the purposes of the Refuge. The United States may, as part of its water right, divert water for fire suppression at the Refuge as needed and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be considered an exercise of the United States' water rights for consumptive use or a violation of its water rights for natural or minimum flow.

B. **Relative Priority:**

1. **Priority Date:**

a. Consumptive Use and Natural Flow: Subject to the subordination provisions of Article II.B.2.a., the United States has a priority date of April 22, 1935, for the water rights for consumptive use and natural flow described in Article II.A.1. and 2. of this Compact.

b. Minimum Flow: Subject to the provisions of Article III.C.1. setting forth the means to satisfy the minimum flow rights for the Refuge and the subordination provisions of Article II.B.2.b., the United States has a priority date of October 30, 1888, for the 15 cfs minimum flow on Red Rock Creek; June 15, 1894, for the 1.4 cfs minimum flow on Tom Creek; and June 28, 1889, for the 11 cfs minimum flow on Odell Creek.

2. **Subordination:**

a. Consumptive Use Natural Flow and Lake Levels: The water rights for consumptive use set forth in Article II.A.1. and natural flow set forth in Article II.A.2. and lake levels set forth in Article II.A.4. are subordinate to the following rights upstream from the most downstream point on the Refuge:

(1) any right recognized under state law with a priority date before the effective date of this Compact; and

(2) any right exempt from the basin closure set forth in Article III.A. of this Compact.

b. Minimum Flow: The water rights for minimum flows on Red Rock, Tom and Odell Creeks set forth in Article II.A.3. of this Compact are subordinate to the following rights upstream from the Refuge:

(1) any right for the purpose of domestic use;

(2) any right for the purpose of instream stockwatering; and

(3) any change in use of a water right for the purpose of instream stockwatering to off-stream stockwatering that does not result in an increase in the historic consumptive use of water.

C. **Period of Use:**

1. **Natural Flow/Consumptive Use:** The period of use of the United States' water rights for natural flow and consumptive use set forth in Article II.A.1. and 2. shall be from January 1 through December 31 of each year.

2. **Minimum Flow:** The period of use of the United States' water rights for minimum flows set forth in Article II.A.3. shall be from April 1 through November 30 of each year.

D. **Points and Means of Diversion/Location of Natural and Minimum Flow Rights:**

1. **Consumptive Use:** See Table at Article II.A.1.

2. **Natural Flow:** The United States' water rights for natural flow apply to the portion of the streams specified in this Compact that flow over or form the boundary of land administered by the Fish and Wildlife Service.

3. **Minimum Flow:** The United States' water rights for minimum flow are measured at the points set forth in Article II.A.3.

E. **Purposes:** The United States' rights to water may be used for the following purposes:

1. **Consumptive Use:** The United States' water rights for consumptive use shall be used for the purposes of the Refuge including wildlife habitat maintenance and enhancement. Subject to the limitations set forth in Article III.E., the United States may change the use of water identified for consumptive use in Article II.A.1.

2. **Natural and Minimum Flows:** The United States' water rights to natural and minimum flows shall be used on the Refuge for wildlife habitat maintenance and enhancement. The United States' water rights to natural flow set forth in Article II.A.2. and to minimum flows set forth in Article II.A.3. shall be used only for the purpose of instream flow and shall not be changed or diverted for any other use, except for fire suppression as set forth in Article II.A.5.

ARTICLE III - IMPLEMENTATION

A. **Basin Closure:**

1. In the drainage basins upstream of the most downstream point on the Refuge, the Department shall not process or grant an application for a permit to

appropriate or to reserve water for consumptive use after the effective date of this Compact, provided that, the following appropriations are exempt from this closure:

a. certificates of water right for appropriation of groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year;

b. permits for appropriation of groundwater by means of a well or developed spring with an appropriation of greater than 35 gallons per minute or a total appropriation in excess of 10 acre-feet per year, if the Department determines by a preponderance of the evidence based on information provided by the applicant or information from any other source available to the Department that the groundwater is not hydrologically connected to surface water upstream from or on the Refuge;

c. permits or changes in water right for appropriation of groundwater for irrigation purposes when the number of acres to be irrigated from groundwater under the permit or change in water right will be accompanied by a corresponding decrease in the number of acres irrigated from surface water sources upstream from the Refuge;

d. permits for stock watering ponds with a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream;

e. permits for domestic use;

f. permits for nonconsumptive use; and

g. temporary emergency appropriations.

2. If a temporary or permanent basin closure is enacted under state law for a drainage basin or subbasin for which future consumptive water use is limited under this Compact, the most restrictive measures applicable to consumptive use of surface or groundwater shall control.

3. Within 180 days following the effective date of this Compact, the Department shall mail notice of the basin closure to every person or public agency of record with a claim of water right or permit in the portion of the drainage basins subject to closure.

B. **Lake Levels:** The United States agrees to continue efforts to coordinate lake water level management with Water Users Irrigation Company (Lima Reservoir) and East Bench Irrigation District or their successors in interest. It is not intended that this Compact affect in any way the Memorandum of Understanding between the United States and the Irrigation Company and Irrigation District listed above, or the ability of the parties to modify that agreement.

C. **Enforcement of Water Right:**

1. **Minimum flow:**

a. Minimum flow rights set forth in Article II.A.3. may be satisfied through cooperative agreements entered into by the FWS and any person holding a water right with a point of diversion on Red Rock, Tom or Odell Creeks or their tributaries upstream of the Refuge. The FWS may, on agreement with the parties to a cooperative agreement, modify an existing agreement. The FWS may enter into additional cooperative agreements after the effective date of the Compact.

Modification of a cooperative agreement or entry into a new cooperative agreement shall not be considered a modification of the Compact. As between the FWS and signatories to cooperative agreements, the FWS will use its best efforts to seek satisfaction of the minimum flow rights pursuant to the cooperative agreements prior to resorting to remedies set forth in Article III.C.2.

b. Prior to seeking satisfaction of the minimum flow, the FWS shall cease its own diversions, if any, from:

(1) Red Rock Creek and its tributaries upstream from the point of measurement when measured flow is approximately 25 cfs;

(2) Odell Creek and its tributaries upstream from the point of measurement when measured flow is approximately 20 cfs; and

(3) Tom Creek and its tributaries upstream from the point of measurement when measured flow is approximately 5 cfs.

c. On acquisition by or transfer to the FWS of any water right subject to a cooperative agreement, the FWS will continue to exercise the water right in a manner that satisfies the minimum flow at least to the degree set forth in the cooperative agreement, and the provisions of Article III.C.1.b. requiring curtailment of FWS diversions shall apply.

d. In the absence of a cooperative agreement, the FWS may seek curtailment of a water use to satisfy the minimum flow by resort to a court of competent jurisdiction pursuant to Article III.C.2. In any proceeding before a court of competent jurisdiction, the FWS will not seek curtailment of any water right which, based on the experience and observation of the FWS, does not cause a measured or cumulative reduction in flow of Red Rock, Tom, or Odell Creeks at the point of measurement set forth in Article II.A.3., and will limit the period for which curtailment is sought to that necessary to maintain the minimum flow.

2. The United States, the State, or a holder of a water right recognized under state law, may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' reserved water rights described by this Compact, and a holder of a water right recognized under state law. Resolution of the controversy shall be governed by the terms of this Compact where applicable or, to the extent not applicable, by appropriate state or federal law.

3. The United States agrees that a water commissioner appointed by a state or federal court of competent jurisdiction, or other official authorized by future changes in law, may enter the Refuge for the purpose of data collection, including the collection of information necessary for water distribution on or off the Refuge, and to inspect structures for the diversion and measurement of water described in this Compact for consumptive use and for the measurement of natural and minimum flow. The terms of entry shall be as specified in an order of a state or federal court of competent jurisdiction.

4. The Department may enter the Refuge, at a reasonable hour of the day, for the purposes of data collection on water diversion and stream flow or inspection of devices maintained by the United States pursuant to this Compact. The Department shall notify the United States by certified mail or in person, at least 24 hours prior to entry.

5. The United States may request an investigation by the Department of a diversion located upstream of the portion of a stream for which a water right is

described in this Compact. The Department may investigate. If an investigation occurs, the United States may accompany the Department.

6. The United States shall maintain structures, including wellhead equipment and casing, for the diversion and measurement of water authorized for consumptive use by this Compact. The United States shall maintain the devices it considers necessary for enforcement of its reserved water right for natural and minimum flow described in this Compact.

7. A person who violates or refuses or neglects to comply with the provisions of this Compact or an order of the Department pursuant to this Compact is subject to the penalties provided by state law.

D. **Use of Water Right:** The rights of the United States described in this agreement are federal water rights. Non-use of all or a part of the federal water rights described in this Compact shall not constitute abandonment or forfeiture of those rights. The federal water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the Refuge.

E. **Change in Use:**

1. **Natural and Minimum Flow:** Water rights specified in this Compact for natural and minimum flow shall not be subject to change to any other use, provided that: the emergency use of water for fire suppression as provided for in Article II.A.5. shall not be considered a change or alteration in use, or violation of a water right for natural or minimum flow.

2. **Consumptive Uses:**

a. The United States may make a change in the use of its consumptive use water rights, provided that:

(1) the action shall be in fulfillment of the purposes of the Refuge described in Article II.E. rather than with reference to a beneficial use as defined by state law;

(2) the total use shall not exceed the amount described in this Compact; and

(3) the action shall not adversely affect a water right that is recognized under state law.

b. With the exception of the purpose for which the water right is used, the United States, in making the change, shall comply with the provisions of Title 85, Chapter 2, Montana Code Annotated, applicable to change in appropriative right at the time of the change. The United States may appeal any decision by the Department to a state or federal court of competent jurisdiction.

ARTICLE IV - GENERAL PROVISIONS

A. **No Effect on Tribal Rights or Other Federal Reserved Water Rights:**

1. The relationship between the water rights of the United States described herein and any rights to water of an Indian Tribe, or of any federally derived water right of an individual, or of the United States on behalf of such tribe or individual shall be determined by the rule of priority. The parties to this agreement recognize that the water rights described in this Compact are junior to any tribal water rights with a priority date before the effective date of the Compact, including aboriginal rights, if any, in the basins affected.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the Fish and Wildlife Service at the Refuge.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of any Indian Tribes and tribal members.

4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian Tribe regarding boundaries or property interests.

B. **State Water Rights:** Nothing in this Compact limits the exclusive authority of the State, including the authority of a water commissioner authorized by state law, to administer all current and future water rights recognized under state law within and upstream of the Refuge, provided that in administration of those water rights in which the United States has an interest, such authority is limited to that not in conflict with federal law.

C. **Abstract:** Concurrent with this Compact, the parties have prepared an Abstract, a copy of which is referenced as Appendix 1, which is a specific listing of all of the United States' water rights for the Refuge, that are described in this Compact and quantified in accordance with this Compact. The parties prepared the Abstract to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstract are subject to the terms of this Compact. In the event of a discrepancy between a right listed in the Abstract and that same right as quantified in accordance with Articles II and III of this Compact, the parties intend that the quantification in accordance with Articles II and III of this Compact shall govern and shall be reflected in a final decree.

D. **General Disclaimers:** Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State; or of the United States and any other state;

2. except as agreed to in cooperative agreements authorized by Article III.C.1. of this Compact, as a waiver by the United States on behalf of the FWS of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact; or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. to establish a precedent for other agreements between the State and the United States or an Indian tribe;

5. to determine the relative rights, *inter sese*, of persons using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this Compact;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the effective date of this Compact;

8. to affect the right of the State to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;

9. to affect in any manner the entitlement to or quantification of other federal water rights;

10. to be binding on the United States with regard to the water rights of the United States for any area other than the Refuge;

11. to affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;

12. to prevent the United States from constructing or modifying an outlet to an impoundment at the Refuge in compliance with all applicable laws;

13. to prevent the United States from seeking a permit to appropriate water under state law from a source not closed to new permits by this Compact or any other law.

E. **Reservation of Rights:** The parties expressly reserve all rights not granted, described or relinquished in this Compact.

F. **Severability:** The provisions of this Compact are not severable.

G. **Multiple Originals:** This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

H. **Notice:** Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. **State:** Upon the Director of the Department and such other officials as he or she may designate in writing.

2. **United States:** Upon the Secretary of the Interior and such other officials as he or she may designate in writing.

ARTICLE V - FINALITY OF COMPACT

A. **Binding Effect:**

1. The effective date of this Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on the parties.

2. Following the effective date, this Compact shall not be modified without the consent of both parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction. Any attempt unilaterally to modify this Compact by either party shall render this Compact voidable at the election of the other party.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described

herein, this Compact and such rights are binding on all persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-702(3), MCA, this Compact shall be voidable by action of and without prejudice to either party.

B. **Disposition of Actions:** Subject to the following stipulations and within one hundred eighty (180) days of the effective date of this Compact, the parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666, for approval in accordance with state law and for the incorporation of the water rights described in this Compact into a decree or decrees entered therein. The parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

1. **Dismissal of Filed Claims:** At the time the state courts approve the water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all of the water right claims specified in Appendix 2 to this Compact. If this Compact is not approved or a water right described herein is not confirmed, the specified claims shall not be dismissed.

2. **Federal Court:** This Compact may be filed as a consent decree in federal court only if it is finally determined in a judgment binding on the State of Montana that the state courts lack jurisdiction over some or all of the water rights described in this Compact. Within one year of such judgment the United States agrees to commence such additional proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the water rights described herein.

3. **Continuation of Negotiations:** The parties were unable to finalize agreement on quantification of the water rights for: the National Bison Range; Bowdoin National Wildlife Refuge; and Charles M. Russell and UL Bend National Wildlife Refuges and UL Bend Wilderness Area, prior to the effective date of this Compact. The parties agree to continue to pursue, in good faith, quantification of water rights for these areas. In the event the parties are unable to agree on quantification, the United States retains its right to have the quantity of any reserved water rights for these areas adjudicated in a state or federal court of competent jurisdiction.

C. **Settlement of Claims:** The parties intend that the water rights described in this Compact are in full and final settlement of the water right claims for the Refuge land described in this Compact and administered by the Fish and Wildlife Service in Montana on the effective date of this Compact. On the effective date of this Compact, the United States hereby and in full settlement of any and all claims to water filed by the United States or which could have been filed by the United States for Red Rock Lakes National Wildlife Refuge and Wilderness Area, relinquishes forever all said claims to water within the State of Montana for Red Rock Lakes National Wildlife Refuge and Wilderness Area. The state agrees to recognize the water rights described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the state.

D. The parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the ____ day of ____________, 19__."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2001

CHAPTER NO. 188

[SB 56]

AN ACT CLARIFYING THAT UTILITIES AND LARGE CUSTOMERS MAY RECEIVE CREDIT FOR UNIVERSAL SYSTEM BENEFITS PROGRAMS THAT INCLUDE AMORTIZED OR NONAMORTIZED PORTIONS OF EXPENDITURES; AMENDING SECTION 69-8-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-8-402, MCA, is amended to read:

"69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance during the transition period and into the future.

(2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits programs. To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives. Except as provided in subsection (7), these universal system benefits charge rates must remain in effect until July 1, 2003.

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) Utilities must receive credit toward annual funding requirements for a utility's internal programs or activities that qualify as universal system benefits programs, including those *amortized or nonamortized* portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance, and for large customers' programs or activities as provided in subsection (7). The department of revenue shall review claimed credits of the utilities and large customers pursuant to 69-8-414.

(c) A utility's distribution services provider at which the sale of power for final end use occurs is the utility that receives credit for the universal system benefits programs expenditure.

(d) A customer's distribution services provider shall collect universal system benefits funds less any allowable credits.

(e) For a utility to receive credit for low-income related expenditures, the activity must have taken place in Montana.

(f) If a utility's or a large customer's credit for internal activities does not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund established in 69-8-412 for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.

(4) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) A utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) $500,000, less the large customer credits provided for in this subsection (7); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection (7);

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those *amortized or nonamortized* portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Large customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that large customer's universal system benefits charges.

(8) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission, the department of revenue, and the transition advisory committee provided for in 69-8-501. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the transition advisory committee. The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of revenue and to the transition advisory committee. The annual report of a public utility or of the statewide cooperative utility office must include but is not limited to:

(a) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

(b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

(9) A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

(10) (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the department of revenue or the utility is not required, except as provided in subsection (10)(b).

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility approves the large customer credit, the utility may be financially responsible for any subsequent disallowance."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to those amortized or nonamortized portions of a utility's expenditures claimed in a universal system benefits programs reporting period, for the purchase of power that is for the acquisition or support of internal programs that qualify as universal system benefits programs, made either prior to or after January 1, 1999, for which payments continue beyond January 1, 1999.

Approved April 3, 2001

CHAPTER NO. 189

[SB 81]

AN ACT TRANSFERRING THE ALLOCATION OF THE MONTANA AGRICULTURAL HERITAGE COMMISSION FOR ADMINISTRATIVE PURPOSES FROM THE DEPARTMENT OF AGRICULTURE TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTION 2-15-3313, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3313, MCA, is amended to read:

"**2-15-3313. (Temporary) Definitions.** As used in 2-15-3312 through 2-15-3322, the following definitions apply:

(1) "Agricultural easement" means a conservation easement, as defined in 76-6-104, that is created to satisfy the core values established in 2-15-3315.

(2) "Commission" means the Montana agricultural heritage commission.

(3) "Department" means the department of ~~agriculture~~ *natural resources and conservation* provided for in *2-15-3301* ~~2-15-3001~~.

(4) "Native wild species" means the diversity of native wild plant and animal species and the ecological and management processes that sustain them.

(5) "Qualified easement holder" means a private, nonprofit organization, land trust, or state agency. (Terminates July 1, 2003—sec. 15, Ch. 456, L. 1999.)"

Section 2. Effective date. [This act] is effective July 1, 2001.

Approved April 3, 2001

CHAPTER NO. 190

[SB 166]

AN ACT GENERALLY REVISING TUBERCULOSIS CONTROL STATUTES; UPDATING THE DEFINITION OF TUBERCULOSIS; CLARIFYING WHAT A COMMITMENT ORDER MAY PROVIDE; ALLOWING COMMITMENT FOR TREATMENT AT A LOCATION OTHER THAN A HOSPITAL; AMENDING THE PROVISION GOVERNING RELEASE FROM A HOSPITAL OR TREATMENT LOCATION; AUTHORIZING DETAINMENT OF A PERSON FOR TUBERCULOSIS TESTING WHETHER OR NOT THE TUBERCULOSIS IS SUSPECTED TO BE COMMUNICABLE; AMENDING SECTIONS 50-17-102, 50-17-105, 50-17-107, 50-17-108, 50-17-109, 50-17-110, 50-17-111, 50-17-113, 50-17-114, AND 50-17-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-17-102, MCA, is amended to read:

"50-17-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Approved course of treatment" means a course of treatment for tuberculosis that includes medical treatment prescribed by a physician and consistent with accepted medical standards, as well as appropriate followup to ensure public health and safety as set out in the rules of the department.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Hospital" has the meaning provided in 50-5-101.

~~(3)~~*(4)* "Local board" means a city, county, city-county, or district board of health.

(5) "Treatment location" or "location" means a hospital or other place designated by a local health officer where the person must remain to be available for an approved course of treatment.

~~(4)~~*(6) (a)* "Tuberculosis" means a disease caused by mycobacterium tuberculosis *or mycobacterium tuberculosis complex.*

(b) The term does not include infection by mycobacterium bovis in a nonpulmonary site that is a result of instillation of bacille calmette-guerin as part of cancer therapy."

Section 2. Section 50-17-105, MCA, is amended to read:

"50-17-105. Application to require examination or treatment for tuberculosis. (1) The department or a local board may apply for an order from the district court if a person is reasonably suspected to have or to have been exposed to tuberculosis, upon request of:

(a) a physician legally authorized to practice medicine in the state;

(b) the department; or

(c) a local health officer.

(2) The application ~~shall~~ *must* request that the person be ordered to:

(a) submit to an examination for tuberculosis and, if ~~he~~ *the person* is found to have tuberculosis, to complete an approved course of treatment; or

(b) enter or return to a ~~hospital for~~ *treatment location to complete an approved course of* treatment ~~or follow an approved course of treatment outside of a hospital~~.

(3) The application for an order provided for in subsections (1) and (2) of this section ~~shall~~ *must* allege that the person:

(a) is suspected of having tuberculosis or has been exposed to tuberculosis and has refused to be examined for tuberculosis as required by rules adopted by the department; or

(b) has tuberculosis and has refused to be treated or to complete an approved course of treatment.

(4) The application ~~shall~~ *must* state the names of witnesses by which facts alleged may be proved. At least one witness must be a physician."

Section 3. Section 50-17-107, MCA, is amended to read:

"**50-17-107. Adjudication of application.** Following the hearing, the court shall find that the allegations of the application are:

(1) true and order the person to enter or return to a ~~hospital~~ *treatment location* for treatment ~~or to follow an approved course of treatment outside of a hospital~~;

(2) true and order the person to submit to an examination for tuberculosis *at a hospital* within a specified time and to complete an approved course of treatment *if the person is found to have tuberculosis*; or

(3) not true and order the person discharged."

Section 4. Section 50-17-108, MCA, is amended to read:

"**50-17-108. Commitment ~~to hospital~~ on noncompliance with order *to be examined or treated.*** *(1)* If a person fails to comply with an order *issued pursuant to 50-17-107* to submit to an examination for tuberculosis within the time set ~~or to complete an approved course of treatment~~, the court shall order ~~him~~ *the person* committed to a hospital *to determine if the person has tuberculosis and, if so, whether the person is infectious.*

(2) If a person fails to comply with an order issued pursuant to 50-17-107 to complete an approved course of treatment, the court shall order the person to be restricted to a treatment location to complete an approved course of treatment under the supervision of a local health officer, the officer's designee, or a physician or other health care professional designated by the department."

Section 5. Section 50-17-109, MCA, is amended to read:

"**50-17-109. Order of commitment — warrant for transportation.** ~~The~~ *If a person is committed pursuant to 50-17-108 to a hospital for examination or to a treatment location for treatment, the* court shall*:*

(1) send certified copies of an order of commitment to*:*

(a) the hospital *at which the person is to be examined; or*

(b) the person who will supervise the course of treatment at the treatment location; and

(c) the department ~~or~~ *and* local board of health*;* and

(2) issue a warrant directed to the sheriff to transport the person to the designated hospital *or treatment location.*"

Section 6. Section 50-17-110, MCA, is amended to read:

"**50-17-110. Confinement in hospital *or treatment location* — submission to treatment.** (1) A person committed under 50-17-107 or 50-17-108 shall remain at the hospital *or treatment location* until discharged under 50-17-112 or 50-17-113~~, but he~~. *However, the person* is not required to submit to medical or surgical treatment without ~~his~~ *the person's* written consent, the consent of ~~his~~ *the person's* next of kin or guardian if the person is incompetent, or the consent of ~~his~~ *the person's* parent or guardian if the person is a minor.

(2) The person in charge of the hospital *or the person supervising an approved course of treatment for a person at a treatment location* may use reasonable means to ~~insure~~ *ensure* that the person committed remains at the hospital *or location.*"

Section 7. Section 50-17-111, MCA, is amended to read:

"50-17-111. Transfer of person to another ~~hospital~~ *treatment location*. If it is in ~~his~~ *the* best interest *of a person committed to a treatment location*, ~~a~~ *the* person may be transferred from the ~~hospital~~ *location* to which ~~he~~ *the person* was committed to another ~~hospital~~ *location* approved by the department. The person in charge of the ~~hospital~~ *approved course of treatment at the location* to which the person was committed shall notify the court that ordered commitment, and the department or local board that requested commitment, of the transfer."

Section 8. Section 50-17-113, MCA, is amended to read:

"50-17-113. Voluntary release. (1) If the ~~person in charge of~~ *physician for the person at* the hospital *or treatment location where the person has been committed* and the department or local board that requested commitment concur that a person either does not have tuberculosis or has ~~submitted to~~ *completed* an approved course of treatment, the person ~~shall~~ *must* be released from the hospital *or treatment location*.

(2) The ~~person in charge of the hospital~~ *department or local board of health that requested commitment* shall file a notice of date of release with the court that ordered commitment."

Section 9. Section 50-17-114, MCA, is amended to read:

"50-17-114. Payment of costs, expenses, and fees. (1) Court costs, expenses, and all fees ~~shall~~ *must* be paid by the treasurer of the county from which a person is committed.

(2) Expenses and fees ~~shall~~ *must* be paid as follows:

(a) to sheriffs and their deputies, the same fees allowed for similar services in district court;

(b) to physicians, not to exceed two, fees as set by the court;

(c) to witnesses, the same fees and mileage provided for attendance in district court;

(d) to persons other than the sheriff or ~~his~~ *the sheriff's* deputies who transport a person to or from a hospital *or treatment location*, witness fees and expenses as verified by the court.

(3) Expenses of transporting a person to a hospital *or treatment location* for commitment ~~shall~~ *must* be paid from the general fund of the county from which the person is committed."

Section 10. Section 50-17-115, MCA, is amended to read:

"50-17-115. Emergency detainment — petition — detention. (1) If a physician, the department, or a local health officer reasonably believes that a person has ~~communicable~~ tuberculosis and that ~~he~~ *the person* is likely to attempt to leave the jurisdiction to avoid a hearing on commitment ~~to a hospital~~, the physician, department, or local health officer shall notify the sheriff of the county in which the person is found, who shall cause the person to be detained in a hospital. At least by the next regular business day, the physician, department, or local health officer shall petition for an order from the district court of the county in which the person is found for continued detention of the person and to require examination or treatment for tuberculosis pursuant to 50-17-105. The sheriff must serve the summons required by 50-17-106 on the person the same day the petition is filed.

(2) Immediately after the petition is filed the court will decide whether further emergency detention is required and may order continued hospital detention of the person for no more than 7 days if it finds that the person is an unacceptable danger to the public health and safety in that ~~he~~ *the person* probably has ~~communicable~~ tuberculosis and unless detained will probably leave the jurisdiction to avoid a hearing pursuant to this part.

(3) The district court of the county in which the person is found has jurisdiction over the person for the purposes of this section. The district court may, in the interests of justice, order that jurisdiction over further proceedings be transferred to the district court of the county of the person's residence."

Section 11. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 12. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2001

CHAPTER NO. 191

[SB 175]

AN ACT GENERALLY REVISING LIGHT VEHICLE REGISTRATION FEES AND OTHER MOTOR VEHICLE LAWS; CLARIFYING CERTAIN PROVISIONS RELATED TO LIGHT VEHICLE REGISTRATION FEES APPROVED BY THE ELECTORATE ON NOVEMBER 7, 2000, AND TO OTHER MOTOR VEHICLE LEGISLATION ENACTED BY THE 56TH LEGISLATURE; CLARIFYING THAT THE MOTOR VEHICLE TAX APPEAL PROCEDURE FOR LIGHT VEHICLES APPLIES ONLY TO THE LOCAL OPTION VEHICLE TAX; CLARIFYING THE PAYMENT OF MOTOR VEHICLE REGISTRATION FEES TO THE HIGHWAY PATROL PENSION TRUST FUND; ALLOWING A LIGHT VEHICLE THAT IS REGISTERED FOR A 24-MONTH PERIOD OR THAT IS PERMANENTLY REGISTERED TO DISPLAY NUMBER PLATES IN EFFECT AT THE TIME OF REGISTRATION; PROVIDING THAT AN EX-PRISONER OF WAR OR SURVIVING SPOUSE IS EXEMPT FROM THE LIGHT VEHICLE REGISTRATION FEE; REMOVING LANGUAGE RELATED TO THE MOTOR VEHICLE SUSPENSE FUND; CLARIFYING THE DISTRIBUTION OF MOTOR VEHICLE FEES; CLARIFYING THE DISTRIBUTION OF THE LOCAL OPTION VEHICLE TAX OR FEE; AMENDING SECTIONS 15-10-420, 15-15-201, 15-16-202, 19-6-709, 20-9-141, 20-9-331, 20-9-333, 23-2-616, 61-3-321, 61-3-332, 61-3-457, 61-3-463, 61-3-501, 61-3-507, 61-3-509, 61-3-537, 61-3-560, 61-3-562, 61-3-736, 61-3-737, AND 61-3-738, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-10-420, MCA, is amended to read:

"**15-10-420. Procedure for calculating levy.** (1) A governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year, even if that levy is greater than the levy established by law. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the value of newly taxable property.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1) plus any additional levies authorized by the voters to all property in the governmental unit, including newly taxable property.

(3) For purposes of this section, newly taxable property includes:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) transfer of property from tax-exempt to taxable status; and

(g) revaluations caused by expansion, addition, replacement, or remodeling of improvements.

(4) Subsection (1) does not apply to school district general fund levies and the school district levy for tuition obligations established in 20-5-324(5).

(5) For purposes of subsection (1), taxes imposed:

(a) include registration fees ~~imposed~~ *collected* on light vehicles under ~~61-3-561~~ *61-3-560 through 61-3-562* and distributed under 61-3-509~~(2)~~*(1)(b)*; and

(b) do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(6) In determining the maximum number of mills in subsection (1), the governmental entity shall take into account any change from the prior year in the amount of statutory reimbursements for changes in the property tax laws. The amount of motor vehicle disposition under 61-3-509(2), as that section read on December 31, 2000, is an increased statutory reimbursement. It may increase the number of mills to account for a decrease in reimbursements and shall decrease the number of mills to fully account for any increase in reimbursements.

(7) The department shall calculate the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, 20-25-439, and 53-2-813. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections.

(8) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Section 2. Section 15-15-201, MCA, is amended to read:

"15-15-201. Motor vehicle tax appeals — payment and protest of *local option* taxes or fees in lieu of tax on motor vehicles. (1) (a) A taxpayer who seeks to appeal the imposition of *local option* taxes *on light vehicles* or fees in lieu of tax assessed against a motor vehicle and imposed by the department of justice under authority of 15-8-202 shall file a written application for the appeal not later than 30 days after the anniversary date for reregistration, as determined by 61-3-315, of the vehicle that is the subject of the appeal. The application must be on a form prescribed by the department of justice in consultation with the state tax appeal board.

(b) The application must include a specific explanation of the basis for the taxpayer's appeal. The basis for appeal must be related to the factors to be considered and applied by the department of justice under ~~61-3-502 through 61-3-504~~ *61-3-503*, 61-3-506, 61-3-528, and 61-3-529.

(2) (a) The treasurer of the county or municipality is not required to deposit ~~property~~ *local option vehicle* taxes or fees in lieu of tax on a motor vehicle paid under protest in the special fund designated as a protest fund as required for property taxes under 15-1-402. The taxes or fees paid under protest may be reported and distributed in the same manner as those received without protest.

(b) If a refund is payable as a result of the taxpayer prevailing in a tax appeal or court proceeding concerning the protested motor vehicle taxes or fees, a refund may be made in accordance with 15-16-603.

(3) (a) A motor vehicle tax appeal may be heard by the county tax appeal board during its next regularly scheduled session if the application for the appeal was filed by December 1. If during its current session, a county tax appeal board refuses or fails to hear a taxpayer's application that was timely filed by December 1, then the taxpayer's application is considered to be granted on the day following the board's final meeting for that year.

(b) A motor vehicle tax appeal filed after December 1 may be held over by the board to a session in the following year. If a taxpayer's application that was timely filed after December 1 of the current session of the county tax appeal board is held over to a session in the following year and if the county tax appeal board refuses or fails to hear the application during the following session, then the application is considered to be granted on the day following the board's final meeting for that year."

Section 3. Section 15-16-202, MCA, is amended to read:

"15-16-202. Boats, snowmobiles, and motor vehicles — payment of current and back ~~taxes and~~ fees. (1) The fee in lieu of personal property taxes assessed against a boat for the year in which application for decals is made and the immediately previous year must be paid before license decals may be issued pursuant to 23-2-515.

(2) The fee in lieu of tax imposed on a snowmobile for the year in which application for registration is made and the immediately previous year must be paid before a snowmobile may be registered pursuant to 23-2-616.

(3) Except for mobile homes and manufactured homes as defined in 15-1-101, the ~~new motor vehicle sales tax and the motor vehicle tax~~ *light vehicle registration fee* or fee in lieu of tax imposed or assessed against a motor vehicle for the current year and the immediately previous year must be paid before a motor vehicle may be registered or reregistered pursuant to 61-3-303.

(4) The provisions of subsections (1) through (3) do not require payment of the immediately previous year's ~~taxes or~~ fees if the ~~taxes or~~ fees have already been paid."

Section 4. Section 19-6-709, MCA, is amended to read:

"19-6-709. (Temporary) Supplemental benefits for certain retirees. (1) In addition to any retirement benefit payable under this chapter, a retired member or a survivor determined by the board to be eligible under subsection (2) must receive an annual lump-sum benefit payment beginning in September 1991 and each succeeding year as long as the member remains eligible.

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, may not be covered by 19-6-710, and must be:

(a) a retired member who is 55 years of age or older and who has been receiving a service retirement benefit for at least 5 years prior to the date of distribution;

(b) a survivor of a member who would have been eligible under subsection (2)(a); or

(c) a recipient of a disability or survivorship benefit under 19-6-601 or 19-6-901.

(3) A retired member otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19 is ineligible to receive any lump-sum benefit payments provided for in this section until the member's service in the covered position is terminated. Upon termination of the member's covered service, the retired member becomes eligible in the next fiscal year succeeding the member's termination.

(4) (a) ~~An amount equal to 25 cents~~ *The amount* of each motor vehicle registration fee ~~provided for in~~ *referred to in* 61-3-321(5)*(b) and (5)(c) and the fees collected under 61-3-527(4)(b) and 61-3-562(1)(b)* must be paid from the general fund to the pension trust fund at the end of each fiscal year. The payment is statutorily appropriated, as provided in 17-7-502, to the pension fund for payment of benefits to eligible recipients. The total funds must be distributed by the board in lump-sum payments to eligible recipients along with their normal retirement benefit payment.

(b) The lump-sum payment must be distributed proportionally to all eligible recipients based on service credit at the time of retirement, subject to the following:

(i) a recipient under subsection (2)(c) is considered to have 20 years of service for the purposes of the distributions;

(ii) any recipient of a service retirement benefit exceeding the maximum monthly benefit under 19-6-707(2)(a) must have the recipient's service credit reduced 25% for the purposes of the distributions;

(iii) the maximum annual increase in the amount of supplemental benefits paid to each individual under this section is the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency.

(c) Any amount deposited in the pension trust fund under subsection (4)(a) for the payment of supplemental benefits under this section that exceeds the limitation of subsection (4)(b)(iii) must be used to amortize unfunded liabilities of the retirement system.

(5) Every 10 years following July 1, 1991, the board shall review the ~~size of the additional fee collected under 61-3-321(5) and~~ *amount* paid to the pension trust fund in accordance with subsection (4)(a) and recommend to each legislature following the board's review any legislation necessary to reduce the ~~fee~~ *fees* to the minimum amount necessary to provide the supplemental benefits provided by this section. (Terminates upon death of last eligible recipient—sec. 1, Ch. 567, L. 1991.)"

Section 5. Section 20-9-141, MCA, is amended to read:

"20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353, including any additional funding for a general fund budget that exceeds the maximum general fund budget.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) 98% of actual amounts received in fiscal year 1999 for light vehicle taxes under 61-3-504, *as that section read on December 31, 1998*;

(iii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) revenue from taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, *61-3-537*, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204;

(B) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(C) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid;

(iv) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2);

(v) anticipated oil and natural gas production taxes;

(vi) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703 and property tax reimbursements under 15-1-111, 15-1-112, and section 167, Chapter 584, Laws of 1999; and

(vii) anticipated revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703 and property tax reimbursements under 15-1-111, 15-1-112, and section 167, Chapter 584, Laws of 1999."

Section 6. Section 20-9-331, MCA, is amended to read:

"20-9-331. Basic county tax for elementary equalization and other revenue for county equalization of elementary BASE funding program. (1) Subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204, for the purposes of elementary equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the elementary BASE funding programs of the school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection

(2) must be subtracted from the total of the BASE funding programs of all elementary districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be used for the equalization of the elementary BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the elementary county equalization fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703;

(g) oil and natural gas production taxes; and

(h) anticipated revenue from ~~property taxes and~~ fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-529, ~~61-3-537, 61-3-570,~~ and 67-3-204."

Section 7. Section 20-9-333, MCA, is amended to read:

"20-9-333. Basic county tax for high school equalization and other revenue for county equalization of high school BASE funding program. (1) Subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204, for the purposes of high school equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the BASE funding programs of high school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation and the total of the BASE funding programs of all high school districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be used for the equalization of the high school BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(c) gross proceeds taxes from coal under 15-23-703;

(d) oil and natural gas production taxes; and

(e) anticipated revenue from ~~property taxes and~~ fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-529, ~~61-3-537, 61-3-570,~~ and 67-3-204."

Section 8. Section 23-2-616, MCA, is amended to read:

"23-2-616. Registration and decals — application and issuance — use of certain fees. (1) Except for a snowmobile registered under 23-2-621, a snowmobile may not be operated on public lands by any person in Montana unless it has been registered and there is displayed in a conspicuous place on both sides of the cowl a decal as visual proof that the fee in lieu of property tax has been paid on it for the current year and the immediately previous year as required by 15-16-202.

(2) Application for registration must be made to the county treasurer upon forms to be furnished by the department of justice for this purpose, which may be obtained at the county treasurer's office in the county where the owner resides. The application ~~shall~~ *must* contain the following information:

(a) the name and address of the owner;

(b) the certificate of ownership number;

(c) the make of the snowmobile;

(d) the model name of the snowmobile;

(e) the year of manufacture;

(f) a statement evidencing payment of the fee in lieu of property tax as required by 15-16-202; and

(g) other information as the department of justice may require.

(3) The application must be accompanied by a decal fee of $5, a registration fee of 50 cents, and, if the snowmobile has previously been registered, by the registration certificate for the most recent year in which the snowmobile was registered. The treasurer shall sign the application and issue a registration receipt that must contain information considered necessary by the department of justice and a listing of fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(4) The county treasurer shall forward the signed application to the department of justice and shall issue to the applicant a decal in the style and design prescribed by the department of justice and of a different color than the preceding year, numbered in sequence.

(5) The county treasurer may not accept any application under this section until the applicant has paid the decal and registration fees and the fee in lieu of property tax on the snowmobile for the current year and the immediately previous year as required by 15-16-202.

(6) All money collected from payment of the decal fees and all interest accruing from use of this money must be forwarded to the state treasurer and placed in the state special revenue fund to the credit of the department, with $2.50 designated for use in enforcing the purposes of 23-2-601 through 23-2-644 and $2.50 designated for use in the development, maintenance, and operation of snowmobile facilities. All money collected from payment of the registration fee must be forwarded to the state treasurer and deposited in the general fund.

(7) The county treasurer shall ~~credit~~ *distribute* all fees in lieu of tax collected on snowmobiles ~~to the county motor vehicle suspense fund~~ *in the same manner as* provided ~~for~~ in 61-3-509*(1)(b)*."

Section 9. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles — certain vehicles exempt from license or registration fees — disposition of fees. (1) Registration or license fees must be paid upon registration or reregistration of motor vehicles, trailers, housetrailers, and semitrailers, in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under (other than ~~motortrucks~~ *trucks*), $5;

(b) motor vehicles weighing over 2,850 pounds (other than ~~motortrucks~~ *trucks*), $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles and quadricycles, $2;

(e) tractors or trucks, $10;

(f) buses, which are classed as ~~motortrucks~~ *trucks*, licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds declared weight and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 *and* up to 6,000 pounds declared weight (except housetrailers), $5;

(i) trailers and semitrailers over 6,000 pounds declared weight, $10, except trailers and semitrailers registered in other jurisdictions through a proportional registration agreement;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or bridge materials, new and secondhand, $15 annually, regardless of size or capacity.

(2) All rates are 25% higher for motor vehicles, trailers, and semitrailers that are not equipped with pneumatic tires.

(3) "Tractor", as specified in this section, means any motor vehicle, except a passenger car, that is used for towing a trailer or semitrailer.

(4) If a motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee except for trailers or semitrailers registered as provided in 61-3-721(6).

(5) *(a)* An additional fee of $5.25 a year for each registration of a vehicle, except trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, must be collected as a registration fee. Revenue from this fee must be forwarded by the respective county treasurers to the state treasurer for deposit in the general fund.

(b) ~~The~~ *Except as provided in subsection (5)(c), the* department shall pay ~~an amount equal to~~ 25 cents ~~from each motor vehicle registration~~ *of the* fee *collected under subsection (5)(a)* from the general fund to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(c) The department shall pay 50 cents of the fee collected under subsection (5)(a) for a vehicle registered for a 24-month period under 61-3-560(3) from the general fund to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(6) A fee of $2 for each set of new number plates must be collected when number plates provided for under 61-3-332~~(3)~~*(4)* are issued. Revenue from this fee must be deposited as provided in subsection (5)*(a)*.

(7) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

(8) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.

(9) A person qualifying under 61-3-332(10)(d) or ~~61-3-504~~ *61-3-560(2)(c)* is exempt from the fees required under subsections (1) and (5) of this section. (See compiler's comments for contingent termination of certain text.)"

Section 10. Section 61-3-332, MCA, is amended to read:

"**61-3-332. Number plates.** (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle. ~~The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bears the distinctive letters~~

~~"MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bears the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bears the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bears the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bears the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned to the dealer, in the position that the department designates.~~

(2) In addition to special license plates and collegiate license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:

(a) passenger vehicles, including automobiles, vans, and sport utility vehicles;

(b) motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";

(c) trucks, bearing the letter "T" or the word "TRUCK";

(d) trailers, bearing the letters "TR" or the word "TRAILER";

(e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";

(f) dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";

(g) dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";

(h) dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word "DEALER"; and

(i) dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER".

~~(2)~~*(3)* (a) ~~All~~ *Except as provided in subsections (4)(c) and (4)(d), all* number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(b) For *motorcycles, quadricycles, and* light vehicles that are permanently registered as provided in 61-3-527 or *61-3-315 and* 61-3-562, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.

~~(3)~~*(4)* (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.

(c) A light vehicle that is registered for a 24-month period, as provided in 61-3-315 and 61-3-560, may display the number plate and plate design in effect at the time of registration for the entire 24-month registration period.

(d) A motorcycle, quadricycle, or light vehicle that is permanently registered, as provided in 61-3-527 or 61-3-315 and 61-3-562, may display the number plate and plate design in effect at the time of registration for the entire period that the vehicle is permanently registered.

~~(4)~~*(5)* In the case of ~~motorcars~~ *passenger vehicles* and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

~~(5)~~*(6)* The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

~~(6)~~*(7)* For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

~~(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear~~

~~the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.~~

(8) Number plates issued to a passenger ~~car~~ *vehicle*, truck, trailer, ~~or vehicle of the~~ motorcycle, or quadricycle ~~type~~ may be transferred only to a replacement passenger ~~car~~ *vehicle*, truck, trailer, ~~or motorcycle- or quadricycle-type vehicle~~ *motorcycle, or quadricycle.* A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection ~~(5)~~ *(6)*, except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of $10. The additional fee must be distributed in accordance with the provisions of subsection (10)(f)(iii) and (10)(f)(iv).

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued:

(A) a special license plate under this section with a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(iii) Special license plates issued to a disabled veteran are not transferable to another person.

(iv) A disabled veteran is not entitled to a special disabled veteran's license plate for more than one vehicle.

(v) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) *(i)* A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

~~(i)~~*(ii)* Fees required under 61-3-321(1) and (5) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).

~~(ii)~~*(iii)* A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).

~~(iii)~~*(iv)* An ex-prisoner of war is exempt from the ~~light vehicle taxes~~ *registration fees* imposed under ~~61-3-504~~ *61-3-560 through 61-3-562* for one vehicle that displays a set of ex-prisoner of war license plates.

~~(iv)~~*(v)* A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.

(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue account established in 10-2-603 for administration, construction, operation, and maintenance of the state veterans' cemeteries.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.

(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 11. Section 61-3-457, MCA, is amended to read:

"61-3-457. Ex-prisoner of war license plates transferable to spouse — conditions. Upon the death of an ex-prisoner of war and providing that the surviving spouse does not remarry, the spouse of an ex-prisoner of war may retain and renew the one set of special license plates issued under 61-3-332(10)(d) and is not liable for light vehicle ~~taxes under 61-3-504~~ *registration fees under 61-3-560 through 61-3-562*, for the fees required under 61-3-321(1) and (5), or for the special license plate fees required under 61-3-332."

Section 12. Section 61-3-463, MCA, is amended to read:

"61-3-463. Collegiate license plates. (1) Subject to the provisions of 61-3-332~~(3)~~*(4)* and the requirement that collegiate license plates must have a white reflectorized background, the department shall design, cause to be manufactured, and issue collegiate license plates as provided in 61-3-464 through 61-3-466.

(2) After consultation with each institution, the department shall prescribe the color and insignia to be displayed on the collegiate license plates for each institution.

(3) In addition to each institution's distinctive color and insignia provided in subsection (2), each collegiate license plate must:

(a) be imprinted consecutively with distinctive numerals from 1 through 99999, capital letters A through Z, or a combination of numerals and letters; and

(b) bear a nonremovable sticker denoting the correct county designation under 61-3-332.

(4) The department shall determine the minimum and maximum number of characters, including both numerals and letters, on the collegiate license plates.

(5) An issue of collegiate license plates may not be ordered or manufactured for any individual institution unless at least 400 sets of plates are ordered and prepaid."

Section 13. Section 61-3-501, MCA, is amended to read:

"61-3-501. When vehicle taxes and fees are due. (1) ~~Motor~~ *Light vehicle registration fees, local option* vehicle taxes *or fees*, fees in lieu of tax, ~~new car taxes,~~

and *other* fees must be paid on the date of registration or reregistration of the vehicle.

(2) (a) If the anniversary date for reregistration of a vehicle passes while the vehicle is owned and held for sale by a licensed new or used car dealer, *light vehicle registration fees,* ~~motor~~ *local option* vehicle taxes *or fees,* or fees in lieu of tax abate on the vehicle properly reported with the county treasurer until the vehicle is the subject of a retail sale. After the sale, the purchaser shall pay the pro rata balance of the *light vehicle registration fees, local option vehicle* taxes *or fees,* or fees in lieu of tax due and owing on the vehicle.

(b) For the purposes of this subsection (2), a retail sale does not include a transfer between any of the following:

(i) a licensed new motor vehicle or used motor vehicle dealer;

(ii) another licensed new motor vehicle or used motor vehicle dealer;

(iii) a licensed wholesaler; or

(iv) a licensed auto auction.

(3) In the event that a vehicle's registration period is changed under 61-3-315, all *light vehicle registration fees, local option vehicle* taxes *or fees,* ~~or~~ fees in lieu of tax, and other fees due must be prorated and paid from the last day of the old period until the first day of the new period in which the vehicle is registered. The *light vehicle registration fees, local option vehicle* taxes *or fees,* ~~or~~ fees in lieu of tax, and other fees must be paid from the first day of the new period for a minimum period of 1 year. When the change is to a later registration period, *light vehicle registration fees, local option vehicle* taxes *or fees,* and *other* fees must be prorated and paid based on the same tax year as the original registration period. Thereafter, during the appropriate anniversary registration period, each vehicle must again be registered or reregistered and all *light vehicle registration fees, local option vehicle* taxes *or fees,* and *other* fees must be paid for a 12-month period."

Section 14. Section 61-3-507, MCA, is amended to read:

"61-3-507. Exemption. A vehicle that is exempt from taxation *and registration fees* under 15-6-215 or subject to the provisions of 61-3-520 is exempt from all other taxes and fees generally imposed on a vehicle by this part."

Section 15. Section 61-3-509, MCA, is amended to read:

"61-3-509. Disposition of ~~taxes~~ *fees*. ~~(1) All registration fees imposed by 61-3-561 from light vehicles, all registration fees imposed by 61-3-522 from motor homes, all fees in lieu of tax imposed by 61-3-527 from motorcycles and quadricycles, and all fees imposed by 61-3-529 from buses, motor vehicles having a manufacturer's rated capacity of more than 1 ton, and truck tractors, for which a license is sought and an original application for title that includes a manufacturer's statement of origin is made, must be remitted to the state treasurer every 30 days. The state treasurer shall credit the payments to the highway restricted state special revenue account.~~

~~(2)~~*(1)* *(a)* ~~Except as provided in~~ *After deducting the amounts under* subsections ~~(1)~~ *(2)* and (3), *every 30 days* the county treasurer shall~~, after deducting the district court fee, credit all taxes on motor vehicles,~~ *distribute* registration fees on light vehicles *collected under 61-3-560 through 61-3-562*~~;~~ and fees in lieu of tax on motorcycles, quadricycles, motor homes, travel trailers, campers, trailers, pole trailers, semitrailers, buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors collected under 61-3-521, 61-3-527, *and* 61-3-529~~, 61-3-537, and 61-3-560 through 61-3-562 to a motor vehicle suspense fund. At some time between March 1 and March 10 of each year and every 60 days after that date, the county treasurer shall distribute the money in the motor vehicle suspense fund~~ *as provided in subsections (1)(b) and (1)(c).*

(b) Except ~~for registration fees collected under 61-3-560 through 61-3-562~~ *as provided in subsection (1)(c),* the county treasurer shall distribute ~~the money in the fund~~ *registration fees collected under 61-3-560 through 61-3-562 and fees in lieu of tax collected under 61-3-521, 61-3-527, and 61-3-529* in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(c) For money ~~in the fund~~ collected under 61-3-527 and 61-3-560 through 61-3-562, the county treasurer shall disregard the statewide mills levied for the university system *under 20-25-423, the mills levied for* county elementary and high school equalization under 20-9-331 and 20-9-333, the mills levied for state equalization aid under 20-9-360, and the mills levied for state assumption of public assistance under 53-2-813 in determining distribution proportions of the money and may not distribute money collected under 61-3-527 and 61-3-560 through 61-3-562 to the state for those levies.

(2) (a) Except as provided in subsection (2)(b), all registration fees collected under 61-3-560 and 61-3-561 from light vehicles, all fees in lieu of tax collected under 61-3-522 from motor homes, all fees in lieu of tax collected under 61-3-527 from motorcycles and quadricycles, and all fees in lieu of tax collected under 61-3-529 from buses, motor vehicles having a manufacturer's rated capacity of more than 1 ton, and truck tractors, for which registration is sought and that is accompanied by an original application for title that includes a manufacturer's statement of origin, must be remitted to the state treasurer every 30 days. The state treasurer shall credit the payments to the highway restricted state special revenue account.

(b) Subsection (2)(a) does not apply to registration fees collected for the second 12-month period from a vehicle that is registered for a 24-month period.

(3) ~~The~~ *Except for the registration fees remitted to the state under subsection (2), the* county treasurer shall deduct as a district court fee 10% of the ~~amount of the~~ *remaining* registration ~~fee~~ *fees* collected on light vehicles under 61-3-560 through 61-3-562~~. The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward~~ *and remit* the amount ~~in the account~~ to the state treasurer at the time that ~~the county treasurer distributes~~ money ~~from the motor vehicle suspense fund~~ *is distributed under subsection (1).* The state treasurer shall credit ~~amounts received under this subsection~~ *the payments* to the state special revenue fund to be used for purposes of state funding of district court expenses as provided in 3-5-901."

Section 16. Section 61-3-537, MCA, is amended to read:

"61-3-537. (Temporary) Local option vehicle tax. (1) A county may impose a local vehicle tax on vehicles subject to the registration fee imposed under 61-3-560 through 61-3-562 at a rate of up to 0.7% of the value determined under 61-3-503 or a local flat fee, in addition to the fee imposed under 61-3-560 through 61-3-562.

(2) A local vehicle tax or flat fee is payable at the same time and in the same manner as the fee imposed under 61-3-560 through 61-3-562. The first priority of the local vehicle tax or flat fee is for district court funding, and the tax or fee is distributed as follows:

(a) 50% to the county; and

(b) the remaining 50% to the county and the incorporated cities and towns within the county, apportioned on the basis of population. The distribution to a city or town is determined by multiplying the amount of money available by the ratio of the population of the city or town to the total county population. The distribution to the county is determined by multiplying the amount of money available by the ratio of the population of unincorporated areas within the county to the total county population.

(3) The governing body of a county may impose, revise, or revoke a local vehicle tax or flat fee if the imposition, revision, or revocation of the tax or fee is approved by the electorate of the county. The imposition, revision, or revocation of the tax or fee is effective on January 1 following its approval by the electorate. The county governing body by resolution may provide for the distribution of the local vehicle tax or flat fee. (Terminates June 30, 2005—sec. 2, 3, Ch. 217, L. 1995.)

61-3-537. (Effective July 1, 2005) Local option vehicle tax. (1) A county may impose a local vehicle tax on vehicles subject to the registration fee imposed under 61-3-560 through 61-3-562 at a rate of up to 0.7% of the value determined under 61-3-503, in addition to the fee imposed under 61-3-560 through 61-3-562.

(2) A local vehicle tax or flat fee is payable at the same time and in the same manner as the fee imposed under 61-3-560 through 61-3-562 and is distributed in the same manner *as provided in 61-3-509(1)(b)*, based on the registration address of the owner of the motor vehicle.

(3) The governing body of a county may impose, revise, or revoke a local vehicle tax if the imposition, revision, or revocation of the tax is approved by the electorate of the county. The imposition, revision, or revocation of the tax is effective on January 1 following its approval by the electorate."

Section 17. Section 61-3-560, MCA, is amended to read:

"61-3-560. Light vehicle registration fee — exemptions — 24-month registration. (1) Except as provided in ~~subsection~~ *subsections* (2) *and (3)*, there is a registration fee imposed on light vehicles. The registration fee is in addition to other annual registration fees.

(2) *The following vehicles are exempt from the fee imposed in subsection (1):*

(a) ~~Light~~ *light* vehicles that meet the description of property exempt from taxation under 15-6-201(1)(a), (1)(c) through (1)(e), (1)(g), (1)(m), (1)(o), (1)(q), or (1)(w), 15-6-203, or 15-6-215, except as provided in 61-3-520~~, are exempt from the fee imposed in subsection (1).~~*;*

(b) ~~A motor~~ *a light* vehicle owned by a disabled veteran qualifying for *one set of* special license plates under 61-3-332(10)*(c)* or *61-3-426;*

(c) a light vehicle owned by an ex-prisoner of war qualifying for one set of special plates under 61-3-332(10)(d) or a surviving spouse of an ex-prisoner of war under 61-3-457; and

(d) a ~~motor~~ *light* vehicle registered under 61-3-456 ~~is exempt from the fee imposed by this section~~.

~~(e)~~*(3)* A dealer for light vehicles is not required to pay the registration fee for light vehicles that constitute inventory of the dealership and that are reported under 61-3-501.

~~(3)~~*(4)* The owner of a ~~motor~~ *light* vehicle subject to the provisions of 61-3-313 through 61-3-316 may register the light vehicle for a period not to exceed 24 months. The application for registration or reregistration must be accompanied by the registration fee and all other fees required in this chapter for each 12-month period of the 24-month period. However, the registration fees required under 61-3-321(1)(a) or (1)(b) paid at the time of registration or reregistration apply for the entire 24-month registration period."

Section 18. Section 61-3-562, MCA, is amended to read:

"61-3-562. Permanent registration — transfer of vehicle ownership — rules. (1) (a) The owner of a light vehicle 11 years old or older subject to the registration fee, as provided in 61-3-561, may permanently register the vehicle upon payment of a $50 registration fee, the applicable registration and license fees under 61-3-321, and an amount equal to five times the applicable fees imposed for each of the following:

(i) junk vehicle disposal fees under 61-3-508;

(ii) weed control fees under 61-3-510;

(iii) county motor vehicle computer fees under 61-3-511;

(iv) the local option vehicle tax or flat fee on vehicles under 61-3-537;

(v) if applicable, license plate fees under 61-3-332 and renewal fees for personalized plates under 61-3-406;

(vi) if applicable, the amateur radio operator license plate fee under 61-3-422; and

(vii) if applicable, the annual scholarship donation fee under 61-3-465.

(b) A person who permanently registers a vehicle as provided in subsection (1)(a) shall pay an additional $2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the $2 fee collected under this subsection (1)(b) from each motor vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(2) In addition to the fees described in subsection (1), an owner of a truck with a manufacturer's rated capacity of 1 ton or less that is permanently registered shall pay five times the applicable fees imposed under 61-10-201.

(3) The owner of a vehicle that is permanently registered under this section is not subject to additional fees under 61-3-561 or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle.

(4) The county treasurer shall:

(a) ~~disburse~~ *distribute* the $50 registration fee collected under this section as provided in 61-3-509;

(b) once each month, remit to the state treasurer the amounts collected under this section for the purposes of ~~61-3-121(5)~~ *61-3-321(5)*, 61-3-508, 61-3-510, 61-3-511, and 61-10-201.

(5) (a) The permanent registration of a vehicle allowed by this section may not be transferred to a new owner. If the vehicle is transferred to a new owner, the department shall cancel the vehicle's permanent registration.

(b) Upon transfer of a vehicle registered under this section to a new owner, the new owner shall apply for a certificate of ownership under 61-3-201 and file an application for registration under 61-3-303."

Section 19. Section 61-3-736, MCA, is amended to read:

"**61-3-736. Assessment of proportionally registered interstate motor vehicle fleets — payment of ~~fee in lieu of tax~~ *fees* required for registration.** (1) (a) The department of transportation shall determine the fee for the purpose of imposing the fee in lieu of tax as provided in 61-3-528 and 61-3-529 *on buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors* and the *light vehicle* registration fee under 61-3-560 and 61-3-561 on light vehicles~~, buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors,~~ in interstate motor vehicle fleets that are proportionally registered under the provisions of 61-3-711 through 61-3-733. The fee must be apportioned on the ratio of total miles traveled to in-state miles traveled as prescribed by 61-3-721. The fee in lieu of tax or registration fee on interstate motor vehicle fleets is imposed upon application for proportional registration and must be paid by the persons who own or claim the fleet or in whose possession or control the fleet is at the time of the application.

(b) With respect to an original application for a fleet that has a situs in Montana for the purpose of the fee in lieu of tax *or registration fee* under this part or any other provision of the laws of Montana, the fee in lieu of tax or registration fee on fleet vehicles must be prorated according to the ratio that the remaining number of months in the year bears to the total number of months in the year.

(c) Vehicles ~~taxed~~ *subject to the light vehicle registration fee* as part of a fleet under this subsection ~~(2)~~ *(1)* are not subject to the local option tax or flat fee imposed under 61-3-537 or 61-3-570.

(2) With respect to a renewal application for a fleet, the fee in lieu of tax ~~is~~ *and the light vehicle registration fee are* imposed for a full year.

(3) Vehicles contained in a fleet for which current fees have been assessed and paid may not be assessed or charged fees under this section upon presentation to the department of proof of payment of fees for the current registration year. The payment of fleet vehicle fees in lieu of tax, *light vehicle registration fees,* and license fees is a condition precedent to proportional registration or reregistration of an interstate motor vehicle fleet.

(4) All fees collected on motor vehicle fleets under this chapter must be deposited and distributed as provided in 61-3-738."

Section 20. Section 61-3-737, MCA, is amended to read:

"**61-3-737. Situs in state of proportionally registered fleets — collection of fees.** (1) For the purposes of this part, any vehicle previously registered or that has had application for registration made under the provisions of 61-3-711 through 61-3-733 has a situs in Montana for the purposes of *the light vehicle registration fee or* the fee in lieu of tax.

(2) The department of transportation shall collect the fleet vehicle *registration fees,* fees in lieu of tax, and license fees prescribed in this part."

Section 21. Section 61-3-738, MCA, is amended to read:

"**61-3-738. Deposit and distribution of fees on proportionally registered fleets.** The *light vehicle registration fees,* fees in lieu of tax, and license fees collected under this part must be deposited with the state treasurer for distribution to the general fund of each county on the following basis:

(1) for fleet vehicle *registration fees and* fees in lieu of tax, according to the ratio of the taxable valuation of each county to the total state taxable valuation; and

(2) for fleet vehicle license fees, according to the ratio of vehicle license fees, other than fees derived from interstate motor vehicle fleets, collected in each county to the sum of all fleet vehicle fees collected in all the counties."

Section 22. Effective date. [This act] is effective on passage and approval.

Section 23. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000.

Section 24. Termination. The provisions of 61-3-321(5)(b) and (5)(c), 61-3-527(4)(b), and 61-3-562(1)(b) terminate upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709.

Approved April 3, 2001

CHAPTER NO. 192

[SB 194]

AN ACT REQUIRING THE LICENSURE OF CRITICAL ACCESS HOSPITALS; PROVIDING DEFINITIONS; REQUIRING DESIGNATION OF CRITICAL ACCESS HOSPITALS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; REQUIRING THE ADOPTION OF RULES BY THE DEPARTMENT; AMENDING SECTIONS 7-34-2201, 33-36-103, 39-71-704, 50-5-101, AND 50-6-401, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-34-2201, MCA, is amended to read:

"**7-34-2201. Erection and management of county health care facilities — definition — provision of health care services.** (1) The board of county commissioners has jurisdiction and power, under the limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, and maintain health care facilities and to provide health care services in those facilities as permitted by law.

(2) The board of county commissioners of a county that has or may acquire title to a site and building or buildings suitable for county health care purposes has jurisdiction and power, under the limitations and restrictions prescribed by

law, to erect, furnish, equip, expand, improve, maintain, and operate the building or buildings for health care purposes as provided by this section.

(3) As used in parts 21 and 23 through 25 and this part, unless the context clearly requires otherwise, the term "health care facility" means a hospital, a medical assistance facility, *a critical access hospital,* a hospice, an end-stage renal dialysis facility, an outpatient center for surgical services, an outpatient center for primary care, a rehabilitation facility, a long-term care facility, or an adult day-care center, as defined in 50-5-101, a public health center, as defined in 7-34-2102, or any combination and related medical facilities, including offices for physicians or other health care professionals providing outpatient, rehabilitative, emergency, nursing, or preventive care."

Section 2. Section 33-36-103, MCA, is amended to read:

"33-36-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Closed plan" means a managed care plan that requires covered persons to use only participating providers under the terms of the managed care plan.

(2) "Combination plan" means an open plan with a closed component.

(3) "Covered benefits" means those health care services to which a covered person is entitled under the terms of a health benefit plan.

(4) "Covered person" means a policyholder, subscriber, or enrollee or other individual participating in a health benefit plan.

(5) "Department" means the department of public health and human services established in 2-15-2201.

(6) "Emergency medical condition" means a condition manifesting itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in any of the following:

(a) the covered person's health would be in serious jeopardy;

(b) the covered person's bodily functions would be seriously impaired; or

(c) a bodily organ or part would be seriously damaged.

(7) "Emergency services" means health care items and services furnished or required to evaluate and treat an emergency medical condition.

(8) "Facility" means an institution providing health care services or a health care setting, including but not limited to a hospital, medical assistance facility, *or critical access hospital,* as defined in 50-5-101, or other licensed inpatient center, an ambulatory surgical or treatment center, a skilled nursing center, a residential treatment center, a diagnostic, laboratory, ~~or~~ *an* imaging center, or a rehabilitation or other therapeutic health setting.

(9) "Health benefit plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(10) "Health care professional" means a physician or other health care practitioner licensed, accredited, or certified pursuant to the laws of this state to perform specified health care services consistent with state law.

(11) "Health care provider" or "provider" means a health care professional or a facility.

(12) "Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(13) "Health carrier" means an entity subject to the insurance laws and rules of this state that contracts, offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a disability insurer, health maintenance organization, or health service corporation or another entity providing a health benefit plan.

(14) "Intermediary" means a person authorized to negotiate, execute, and be a party to a contract between a health carrier and a provider or between a health carrier and a network.

(15) "Managed care plan" means a health benefit plan that either requires or creates incentives, including financial incentives, for a covered person to use health care providers managed, owned, under contract with, or employed by a health carrier, but not preferred provider organizations or other provider networks operated in a fee-for-service indemnity environment.

(16) "Medically necessary" means services, medicines, or supplies that are necessary and appropriate for the diagnosis or treatment of a covered person's illness, injury, or medical condition according to accepted standards of medical practice and that are not provided only as a convenience.

(17) "Network" means the group of participating providers that provides health care services to a managed care plan.

(18) "Open plan" means a managed care plan other than a closed plan that provides incentives, including financial incentives, for covered persons to use participating providers under the terms of the managed care plan.

(19) "Participating provider" means a provider who, under a contract with a health carrier or with the health carrier's contractor, subcontractor, or intermediary, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly from the health carrier.

(20) "Primary care professional" means a participating health care professional designated by the health carrier to supervise, coordinate, or provide initial care or continuing care to a covered person and who may be required by the health carrier to initiate a referral for specialty care and to maintain supervision of health care services rendered to the covered person.

(21) "Quality assessment" means the measurement and evaluation of the quality and outcomes of medical care provided to individuals, groups, or populations.

(22) "Quality assurance" means quality assessment and quality improvement.

(23) "Quality improvement" means an effort to improve the processes and outcomes related to the provision of health care services within a health plan."

Section 3. Section 39-71-704, MCA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation. (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

(b) The insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury only if the travel is incurred at the request of the insurer. Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

(e) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

(f) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition;

(ii) when necessary to monitor the status of a prosthetic device; or

(iii) when the worker's treating physician believes that the care that would otherwise not be compensable under subsection (1)(f) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment. A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.

(g) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) The department shall annually establish a schedule of fees for medical services not provided at a hospital that are necessary for the treatment of injured workers. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule.

(3) (a) The department shall establish rates for hospital services necessary for the treatment of injured workers.

(b) Except as provided in subsection (3)(g), rates for services provided at a hospital must be the greater of:

(i) 69% of the hospital's January 1, 1997, usual and customary charges; or

(ii) the discount factor established by the department that was in effect on June 30, 1997, for the hospital. The discount factor for a hospital formed by the merger of two or more existing hospitals is computed by using the weighted average of the discount factors in effect at the time of the merger.

(c) Except as provided in subsection (3)(g), beginning July 1, 1998, the department shall adjust hospital discount factors so that the rate of payment does not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(d) The department may establish a fee schedule for hospital outpatient services rendered on or after July 1, 1998. The fee schedule must, in the aggregate, provide for fees that are equal to the statewide average discount factors paid to hospitals to provide the same or equivalent procedure to workers' compensation hospital outpatients.

(e) The discount factors established by the department pursuant to this subsection (3) may not be less than medicaid reimbursement rates.

(f) For services available in Montana, insurers are not required to pay facilities located outside Montana rates that are greater than those allowed for services delivered in Montana.

(g) For a hospital licensed as a medical assistance facility *or a critical access hospital* pursuant to Title 50, chapter 5, the rate for services is the hospital's usual and customary charge. Fees paid to a hospital licensed as a medical assistance facility are not subject to the limitation provided in subsection (4).

(4) The percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(5) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

(6) Disputes between an insurer and a medical service provider regarding the amount of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.

(7) (a) After the initial visit, the worker is responsible for 20%, but not to exceed $10, of the cost of each subsequent visit to a medical service provider for treatment relating to a compensable injury or occupational disease, unless the visit is to a medical service provider in a managed care organization as requested by the insurer or is a visit to a preferred provider as requested by the insurer.

(b) After the initial visit, the worker is responsible for $25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

(c) "Visit", as used in subsections (7)(a) and (7)(b), means each time that the worker obtains services relating to a compensable injury or occupational disease from:

(i) a treating physician;

(ii) a physical therapist;

(iii) a psychologist; or

(iv) hospital outpatient services available in a nonhospital setting.

(d) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if the visit is an examination requested by an insurer pursuant to 39-71-605."

Section 4. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 4 *3* of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(3) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (3), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration. The term does not include the administration of prescriptive medications.

(4) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(5) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(6) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(7) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(8) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(9) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(10) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(11) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(12) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(13) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to [section 5].

~~(13)~~*(14)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(14)~~*(15)* "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

~~(15)~~*(16)* "Federal acts" means federal statutes for the construction of health care facilities.

~~(16)~~*(17)* "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

~~(17)~~*(18)* "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including chemical dependency counselors. The term includes chemical dependency facilities, *critical access hospitals,* end-stage renal dialysis facilities, health maintenance organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

~~(18)~~*(19)* "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

~~(19)~~*(20)* "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(20)~~*(21)* "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

~~(21)~~*(22)* "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

~~(22)~~*(23)* "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

~~(23)~~*(24)* "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients, *but does not include critical access hospitals.*

~~(24)~~*(25)* "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

~~(25)~~*(26)* "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102, or for individuals with related problems.

~~(26)~~*(27)* "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

~~(27)~~*(28)* "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

~~(28)~~*(29)* (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

~~(29)~~*(30)* "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

~~(30)~~*(31)* "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

~~(31)~~*(32)* "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(32)~~*(33)* "Observation bed" means a bed occupied by a patient recovering from surgery or other treatment.

~~(33)~~*(34)* "Offer" means the representation by a health care facility that it can provide specific health services.

~~(34)~~*(35)* "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

~~(35)~~*(36)* "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include observation beds.

~~(36)~~*(37)* "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(37)~~*(38)* "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(38)~~*(39)* "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

~~(39)~~*(40)* "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

~~(40)~~*(41)* "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(41)~~*(42)* "Resident" means an individual who is in a long-term care facility or in a residential care facility.

~~(42)~~*(43)* "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

~~(43)~~*(44)* "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(44)~~*(45)* "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

~~(45)~~*(46)* "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

~~(46)~~*(47)* "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

~~(47)~~*(48)* "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

(49) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient."

Section 5. Designation of critical access hospitals — adoption of rules. (1) The department may designate as a critical access hospital a facility that:

(a) is:

(i) located more than 35 road miles or, in the case of a facility located in mountainous terrain or where only secondary roads exist, more than 15 road miles from a hospital or another critical access hospital; or

(ii) a necessary provider of health care services to residents of the area where the facility is located;

(b) provides 24-hour emergency care that is necessary for ensuring access to emergency care services in the area served by the facility;

(c) has no more than 15 acute care inpatient beds or, in the case of a facility with swing beds, 25 acute care inpatient beds, of which no more than 15 are used for acute care at any one time, for providing inpatient care for a period not exceeding 96 hours, as determined on an average, annual basis for each patient;

(d) complies with the staffing requirements of 42 U.S.C. 1395i-4(c)(2)(B)(iv); and

(e) operates a quality assessment and performance improvement program and follows appropriate procedures for review of utilization of services as specified in 42 U.S.C. 1395x(aa)(2)(I).

(2) The department shall adopt rules to implement this section, including the following:

(a) standards for determining whether the facility qualifies as a necessary provider pursuant to subsection (1)(a)(ii);

(b) standards for determining whether the 24-hour emergency care provided is necessary to ensure that the area served by the facility has adequate access to emergency care services; and

(c) procedures for applying for and receiving designation as a critical access hospital.

Section 6. Section 50-6-401, MCA, is amended to read:

"50-6-401. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(2) "Emergency medical service" means an emergency medical service as defined by 50-6-302.

(3) "Health care facility" or "facility" means a hospital, *critical access hospital,* or medical assistance facility as defined in 50-5-101.

(4) "Hospital trauma register" means patient-specific trauma data that is maintained by a health care facility, in a format prescribed by department rule, and that has the primary purpose of facilitating peer review and quality improvement at the health care facility.

(5) "Quality improvement" means the process of defining trauma care system performance standards, collecting data against which the standards may be

applied, using the data to determine compliance with the standards, and using the data and compliance information in a nonpunitive manner, including peer review, that will continuously improve performance and facilitate compliance with the standards.

(6) "State trauma register" means trauma data relating to a specific patient or health care facility that is maintained by the department in an electronic format and that has the primary purpose of facilitating peer review and quality improvement for a health care facility or a trauma care system.

(7) "Trauma" means a severe, abrupt injury to the human body that is caused by mechanical, environmental, thermal, or other physical force.

(8) "Trauma care committee" means the trauma care committee created in 2-15-2216.

(9) "Trauma care system" means a state or regional system for the prevention of trauma and the provision of optimal medical care to trauma victims that includes both provision of appropriate health care services and provision of emergency medical care, equipment, and personnel for effective and coordinated prehospital, hospital, interhospital, and rehabilitative care for trauma patients.

(10) "Trauma facility" means a health care facility designated by the department pursuant to 50-6-410 as providing a specialized program in trauma care with appropriately trained personnel, equipment, and other facility resources that are specifically organized to provide optimal care to a trauma patient at the facility.

(11) "Trauma region" means a geographic area, designated by department rule pursuant to 50-6-402, within which trauma services are coordinated and evaluated through a regional trauma care system."

Section 7. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 50, chapter 5, part 2, and the provisions of Title 50, chapter 5, part 2, apply to [section 5].

Section 8. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2001.

(2) [Sections 5(2) and 7 and this section] are effective on passage and approval.

Approved April 3, 2001

CHAPTER NO. 193

[SB 228]

AN ACT PROVIDING THAT ALL MEMBERS OF THE HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM ARE ELIGIBLE FOR A FULL SERVICE RETIREMENT AFTER 20 YEARS OF SERVICE REGARDLESS OF AGE; AMENDING SECTION 19-6-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-6-501, MCA, is amended to read:

"**19-6-501. Eligibility for service retirement benefit.** ~~(1)~~ A member ~~first employed by the Montana highway patrol on or before July 1, 1985,~~ is eligible to receive a service retirement benefit after completing 20 years or more of membership service and terminating service.

~~(2) A member first employed by the Montana highway patrol after July 1, 1985, is eligible to receive a service retirement benefit when the member has reached age 50, completed 20 years or more of membership service, and terminated service.~~"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2001

CHAPTER NO. 194

[SB 257]

AN ACT PROVIDING FOR PROTECTION OF ABANDONED CHILDREN; SPECIFICALLY INCLUDING ABANDONMENT AS A BASIS FOR ABUSE OR NEGLECT PROCEEDINGS AND A DETERMINATION THAT A CHILD IS A YOUTH IN NEED OF CARE; AMENDING DEFINITIONS; PROVIDING THAT CERTAIN CARETAKERS OF A CHILD MAY PARTICIPATE AS PARTIES IN ABUSE AND NEGLECT PROCEEDINGS INVOLVING THAT CHILD; REQUIRING A COURT TO RECEIVE CERTAIN EVIDENCE AT A HEARING ON AN ABUSE OR NEGLECT PETITION; PROVIDING THAT EXTENDED FAMILY MEMBERS HAVE PRIORITY FOR PURPOSES OF TEMPORARY OR PERMANENT LEGAL CUSTODY OR GUARDIANSHIP OF AN ABANDONED CHILD; AMENDING SECTIONS 41-3-102, 41-3-401, 41-3-404, 41-3-406, AND 41-3-421, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-102, MCA, is amended to read:

"**41-3-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Abandon", "abandoned", and "abandonment" mean:

(a) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(b) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(c) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual harm to a child's health or welfare; ~~or~~

(ii) substantial risk of harm to a child's health or welfare*; or*

(iii) abandonment.

(b) The term includes actual harm or substantial risk of harm by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute harm to a child's health or welfare.

(8) "Department" means the department of public health and human services provided for in 2-15-2201.

(9) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or psychological abuse or neglect;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(f) abandons the child.

(10) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(11) "Parent" means a biological or adoptive parent or stepparent.

(12) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(13) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(14) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.

(15) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(16) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(17) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(18) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(19) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

(20) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(21) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(22) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (22), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(23) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused ~~or~~, neglected, *or abandoned*."

Section 2. Section 41-3-401, MCA, is amended to read:

"**41-3-401. Abuse and neglect petitions.** (1) The county attorney, attorney general, or an attorney hired by the county is responsible for filing all petitions under this chapter. The petition must be accompanied by an affidavit by the department alleging that the child appears to have been abused~~,~~ *or* neglected~~,~~ ~~or abandoned~~ and stating the basis for the allegation.

(2) Upon receipt of a petition, except a petition for temporary investigative authority, the court shall set a date for an adjudicatory hearing on the petition. The petitions must be given preference by the court in setting hearing dates.

(3) A petition alleging abuse or neglect is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure apply except as

modified in this part. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, must be served personally with a copy of the petition and summons at least 5 working days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(7) *(a)* Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-404(3), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-404 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(8) Except when the proceeding is instituted or commenced at the request of the department, a citation must be issued and served upon a representative of the department before the court hearing.

(9) The petition must:

(a) state the nature of the alleged abuse or neglect;

(b) state the full name, age, and address of the youth and the name and address of the youth's parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services, as provided in 41-3-402;

(b) temporary legal custody, as provided in 41-3-406;

(c) appointment of a guardian pursuant to 41-3-421;

(d) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right to consent to adoption, as provided in 41-3-607; or

(ii) appointment of a guardian; or

(e) any combination of the provisions of subsections (10)(a) through (10)(d) or any other relief that may be required for the best interests of the child.

(11) A request for a determination that reunification services need not be provided pursuant to 41-3-403 may be made in conjunction with the filing of a petition requesting relief, as provided for in subsection (10) of this section.

(12) The petition may be modified for different relief at any time within the discretion of the court.

(13) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party."

Section 3. Section 41-3-404, MCA, is amended to read:

"**41-3-404. Adjudicatory hearing — temporary disposition.** (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine by a preponderance of the evidence whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth.

(3) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing pursuant to 41-3-401(7)(a) or (7)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person; and

(ii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

~~(3)~~*(4)* In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

~~(4)~~*(5)* (a) If the court determines that the youth is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-403 must be vacated.

(b) If the youth is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(6)."

Section 4. Section 41-3-406, MCA, is amended to read:

"**41-3-406. Dispositional hearing — temporary legal custody.** (1) If a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with the youth's parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a youth who is 16 years of age or older, as provided in 41-3-408;

(c) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the youth;

(d) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(e) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-411.

(2) To grant temporary legal custody, the court shall make a finding that:

(a) dismissing the petition would create a substantial risk of harm to the child or detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-403, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(3) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member; and

(iii) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (3)(a), the court may award custody to the extended family member who can best meet the child's needs.

~~(3)~~*(4)* If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(4)~~*(5)* If the court finds that reasonable efforts are not necessary pursuant to subsection (2) or ~~(3)~~ *(4)*, a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(5)~~*(6)* An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody, not to exceed a total of 6 months, upon a showing that additional time is necessary for the parent or guardian to successfully complete a treatment plan;

(b) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right of adoption; or

(ii) appointment of a guardian pursuant to 41-3-607;

(c) long-term custody pursuant to 41-3-412;

(d) appointment of a guardian pursuant to 41-3-421; or

(e) dismissal.

~~(6)~~*(7)* The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection ~~(5)~~ *(6)*.

~~(7)~~*(8)* If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home.

~~(8)~~*(9)* If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 5. Section 41-3-421, MCA, is amended to read:

"41-3-421. Abuse and neglect proceedings — appointment of guardian — financial subsidies. (1) The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-406, 41-3-412, or 41-3-607. The guardianship may be subsidized by the department under subsection ~~(8)~~ *(9)* if the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

(2) The court may appoint a guardian for a child pursuant to this section if the following facts are found by the court:

(a) the department has given its written consent to the appointment of the guardian, whether the guardianship is to be subsidized or not;

(b) if the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies pursuant to subsection ~~(8)~~ *(9)*;

(c) the child has been adjudicated a youth in need of care;

(d) the department has made reasonable efforts to reunite the parent and child, further efforts to reunite the parent and child by the department would likely be unproductive, and reunification of the parent and child would be contrary to the best interests of the child;

(e) the child is at least 12 years ~~old~~ *of age* or the child is in a group of siblings, at least one of whom is at least 12 years ~~old~~ *of age*, and the guardianship is in the best interests of the siblings;

(f) the child has lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child;

(g) it is in the best interests of the child to remain or be placed with the potential guardian;

(h) either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests; and

(i) if the child concerning whom the petition for guardianship has been filed is an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the child's tribe has received notification from the state of the initiation of the proceedings.

(3) In the case of an abandoned child, the court may give priority to a member of the abandoned child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if placement with the extended family member is in the best interests of the child. If more than one extended family member has requested to be appointed as guardian, the court may determine which extended family member to appoint in the same manner provided for in 41-3-406(3).

~~(3)~~*(4)* The entry of a decree of guardianship pursuant to this section terminates the custody of the department and the involvement of the department with the child and the child's parents except a provision of a financial subsidy, if any, pursuant to subsection ~~(8)~~ *(9)*.

~~(4)~~*(5)* A guardian appointed under this section may exercise the powers and has the duties provided in 72-5-231.

~~(5)~~*(6)* The court may revoke a guardianship ordered pursuant to this section if the court finds, after hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian, the department, any court appointed guardian ad litem, the child's parent if the rights of the parent have not been terminated, and other persons directly interested in the welfare of the child.

~~(6)~~*(7)* A guardian may petition the court for permission to resign the guardianship. A petition may include a request for appointment of a successor guardian.

~~(7)~~*(8)* After notice and hearing on a petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary legal custody to the department pursuant to 41-3-406.

~~(8)~~*(9)* The department may provide a financial subsidy to a guardian appointed pursuant to this section if the guardianship meets the department's criteria and if the department determines that a subsidy is in the best interests of the child. The amount of the subsidy must be determined by the department.

~~(9)~~*(10)* This section does not apply to guardians appointed pursuant to Title 72, chapter 5."

Section 6. Department to give placement priority to extended family member of an abandoned child. (1) If the department has received temporary legal custody of an abandoned child pursuant to 41-3-406 or permanent legal custody pursuant to 41-3-607, the department shall give priority to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, in determining the person or persons with whom the abandoned child should be placed if:

(a) placement with the extended family member is in the best interests of the abandoned child;

(b) the extended family member has requested that the abandoned child be placed with the family member; and

(c) the department has determined that the extended family member is qualified to receive and care for the abandoned child.

(2) If more than one extended family member of the abandoned child has requested that the child be placed with the family member and all are qualified to receive and care for the child, the department may determine which extended family member to place the abandoned child with in the same manner as provided for in 41-3-406(3).

(3) This part does not affect the department's ability to assess the appropriateness of placement of the child with a noncustodial parent when abandonment has been found against only one parent.

Section 7. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [section 6].

Section 8. Applicability. [This act] applies to proceedings on petitions filed pursuant to 41-3-401 after October 1, 2001.

Approved April 3, 2001

CHAPTER NO. 195

[SB 268]

AN ACT ALLOWING A NONPROFIT CONVENTION AND VISITORS BUREAU LOCATED IN A RESORT AREA OR RESORT AREA DISTRICT TO RECEIVE A PORTION OF LODGING FACILITY USE TAX FUNDS IN THE SAME MANNER THAT A NONPROFIT CONVENTION AND VISITORS BUREAU LOCATED IN A CITY OR CONSOLIDATED CITY-COUNTY MAY RECEIVE FUNDS; AMENDING SECTIONS 15-65-101, 15-65-121, AND 15-65-122, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-65-101, MCA, is amended to read:

"**15-65-101. Definitions.** For purposes of this part, the following definitions apply:

(1) "Accommodation charge" means the fee charged by the owner or operator of a facility for use of the facility for lodging, including bath house facilities, but excluding charges for meals, transportation, entertainment, or any other similar charges.

(2) *(a)* "Campground" means a place, publicly or privately owned, used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.

(b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more.

(3) "Council" means the tourism advisory council established in 2-15-1816.

(4) *(a)* "Facility" means a building containing individual sleeping rooms or suites, providing overnight lodging facilities for periods of less than 30 days to the general public for compensation. The term includes a facility represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, or bed and breakfast facility.

(b) The term does not include any health care facility, as defined in 50-5-101, any facility owned by a corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under the age of 18 years for camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under 2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

(5) "Nonprofit convention and visitors bureau" means a nonprofit corporation organized under Montana law and recognized by a majority of the governing body in the city, ~~or~~ consolidated city-county, *resort area, or resort area district* in which the bureau is located.

(6) "Regional nonprofit tourism corporation" means a nonprofit corporation organized under Montana law and recognized by the council as the entity for promoting tourism within one of several regions established by executive order of the governor.

(7) "Resort area" means an area established pursuant to 7-6-1508.

(8) "Resort area district" has the meaning provided in 7-6-1531."

Section 2. Section 15-65-121, MCA, is amended to read:

"15-65-121. (Temporary) Distribution of tax proceeds. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The amount of $400,000 each year must be deposited in the Montana heritage preservation and development account provided for in 22-3-1004. On July 1, 1997, the amount of $45,000 is transferred to the department of commerce for purposes of a grant to the Fort Peck interpretive center. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies or in the Montana heritage preservation and development account is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, ~~or~~ consolidated city-county, *resort area, or resort area district* exceeds $35,000, 50%

of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, ~~or~~ consolidated city-county, *resort area, or resort area district* is located, to be distributed to the nonprofit convention and visitors bureau in that city, ~~or~~ consolidated city-county, *resort area, or resort area district.*

(2) If a city, ~~or~~ consolidated city-county, *resort area, or resort area district* qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, ~~or~~ consolidated city-county, *resort area, or resort area district* is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials. (Terminates July 1, 2001—sec. 23(3), Ch. 469, L. 1997.)

15-65-121. (Effective July 1, 2001) Distribution of tax proceeds. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, ~~or~~ consolidated city-county, *resort area, or resort area district* exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, ~~or~~ consolidated city-county, *resort area, or resort area district* is located, to be distributed to the nonprofit convention and visitors bureau in that city, ~~or~~ consolidated city-county, *resort area, or resort area district.*

(2) If a city, ~~or~~ consolidated city-county, *resort area, or resort area district* qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, ~~or~~ consolidated city-county, *resort area, or resort area district* is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials."

Section 3. Section 15-65-122, MCA, is amended to read:

"**15-65-122. Qualification of nonprofit entities for receipt of funds — limitation on administrative costs.** (1) The department of revenue shall provide the council with quarterly reports of regional tax proceeds and tax proceeds of cities, ~~and~~ consolidated city-counties, *resort areas, and resort area districts* that qualify for disbursement of funds under 15-65-121.

(2) ~~No funds~~ *Funds* may *not* be disbursed to a regional nonprofit tourism corporation or nonprofit convention and visitors bureau until that entity has submitted an annual marketing plan to the council and that plan has been approved by the council.

(3) A maximum of 20% of the funds received by a regional nonprofit tourism corporation or nonprofit convention and visitors bureau may be used for administrative purposes as defined by the council."

Section 4. Effective date. [This act] is effective July 1, 2001.

Approved April 3, 2001

CHAPTER NO. 196

[HB 292]

AN ACT CREATING THE FISHING ACCESS ENHANCEMENT PROGRAM TO PROVIDE INCENTIVES TO LANDOWNERS WHO PROVIDE ACCESS TO OR ACROSS PRIVATE LAND FOR PUBLIC FISHING; INCLUDING FISHING ACCESS ENHANCEMENT WITHIN THE SCOPE OF ISSUES THAT MAY BE CONSIDERED BY THE GOVERNOR'S REVIEW COMMITTEE ON PRIVATE LANDS AND PUBLIC WILDLIFE; AMENDING SECTION 87-1-269, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Fishing access enhancement program created — private landowner assistance to promote public fishing access — rules. (1) The department may establish programs of landowner assistance that encourage public access to and across private lands for purposes of fishing and may adopt rules to carry out program purposes. Rules may address but are not limited to incentives for private landowners who allow public fishing access on or across their lands, where legal access does not presently exist. Participation in the fishing access enhancement program is established through a cooperative agreement between a landowner and the department, including other resource management agencies when appropriate, that allows access for public fishing with certain restrictions or use rules.

(2) The department may also develop similar voluntary programs that are designed to promote public access across private lands for fishing purposes.

(3) Participation in a program established under subsection (1) is voluntary. Programs may not be structured in a manner that provides assistance to a private landowner who charges a fee for fishing access to private land that is enrolled in the program or who does not provide reasonable public fishing access to private land that is enrolled in the program. The commission shall develop criteria by which tangible benefits are allocated to participating landowners, and the department may distribute the benefits to participating landowners.

(4) Funds from the account established pursuant to 87-1-605 may be used to purchase or lease public fishing access at county road bridge crossings or for necessary parking facilities, trails, or ramps to facilitate fishing access to public waters at bridge crossings.

Section 2. Fishing access enhancement program — benefits for providing fishing access — cooperative agreement — factors for determining benefits earned — restriction on landowner liability. (1) As provided in [section 1], the department may establish and administer a voluntary program to enhance fishing access. The program must be designed to provide tangible benefits to participating private landowners who grant access to or across their land for public fishing.

(2) A contract for participation in the fishing access enhancement program is established through a cooperative agreement between the landowner and the department that will guarantee reasonable access for public fishing, which may include leases, easements, or rights-of-way to rivers, streams, ponds, or lakes on the landowner's property and leases or easements for access along the banks or shorelines of rivers, streams, ponds, or lakes on the property. Landowners may also form a voluntary association when development of a unified cooperative agreement is advantageous. A cooperative agreement must contain a detailed description of the plan developed by the landowner and the department and may include but is not limited to:

(a) fishing access management, which may include off-road parking, foot trails, and vehicle access roads;

(b) services to be provided to the public;

(c) landowner property rules and other restrictions;

(d) any other management information to be gathered, which must be made available to the public; and

(e) notice to adjacent landowners.

(3) If the department determines that the plan referred to in subsection (2) may adversely influence fish management decisions or fishing habitat on public lands, then other public land agencies, interested sportspersons, and affected landowners must be consulted. An affected landowner's management goals and personal observations regarding fish populations and habitat use must be considered in developing the plan.

(4) The commission shall develop rules for determining tangible benefits to be provided to a landowner for providing public fishing access. Benefits will be provided to offset potential impacts associated with public fishing access, including but not limited to those associated with general property maintenance, conservation efforts, weed control, fire protection, liability insurance, roads, fences, and parking area maintenance. Program priority must be given to properties that provide the greatest fishing access for the lowest costs. Factors used in determining benefits may include but are not limited to:

(a) the number of days of public fishing provided by a participating landowner;

(b) fish habitat provided; and

(c) access provided to adjacent public lands.

(5) Benefits earned by a landowner under this section may be applied in, but application is not limited to, the following manner:

(a) A landowner may receive direct monetary compensation for providing fishing access.

(b) A landowner may direct weed control payments to be made directly to the county weed control board or may elect to receive payments directly.

(c) A landowner may direct fire protection payments to be made directly to the local fire district or the county where the landowner resides or may elect to receive payments directly.

(d) A landowner may receive direct payment to offset insurance costs incurred for allowing public fishing access.

(e) The department may provide assistance in the construction and maintenance of roads, fencing, gates, and parking facilities and in the signing of property.

(6) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the fishing access enhancement program.

Section 3. Section 87-1-269, MCA, is amended to read:

"**87-1-269. (Temporary) Report required — review committee.** (1) The governor shall appoint a committee of persons interested in issues related to hunters, *anglers,* landowners, and outfitters, including but not limited to the hunting access enhancement program, *the fishing access enhancement program,* landowner-hunter relations, outfitting industry issues, and other issues related to private lands and public wildlife. The committee must have broad representation of landowners, outfitters, and sportspersons. The department may provide administrative assistance as necessary to assist the review committee.

(2) *(a)* The review committee shall report to the governor and to the ~~57th~~ *58th* legislature regarding the success of various elements of the hunting access

enhancement program, including a report of annual landowner participation, the number of acres annually enrolled in the program, hunter harvest success on enrolled lands, the number of qualified applicants who were denied enrollment because of a shortfall in funding, and an accounting of program expenditures, and make suggestions for funding, modification, or improvement needed to achieve the objectives of the program.

(b) The review committee shall report to the governor and to the 58th legislature regarding the success of the fishing access enhancement program and make suggestions for funding, modification, or improvement needed to achieve the objectives of the program.

(3) The director may appoint additional advisory committees that are considered necessary to assist in the implementation of the hunting access enhancement program *and the fishing access enhancement program* and to advise the commission regarding the development of rules implementing the hunting access enhancement program *and the fishing access enhancement program*. (Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999.)"

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [sections 1 and 2].

Section 5. Effective date. [This act] is effective March 1, 2002.

Section 6. Termination. [This act] terminates March 1, 2006.

Approved April 5, 2001

CHAPTER NO. 197

[HB 439]

AN ACT REVISING THE APPOINTMENT PROCESS FOR HOUSING AUTHORITY COMMISSIONERS; REQUIRING THAT TWO COMMISSIONERS BE INDIVIDUALS WHO ARE DIRECTLY ASSISTED BY THE HOUSING AUTHORITY; ELIMINATING THE REQUIREMENT THAT HOUSING AUTHORITY COMMISSIONERS REPRESENT FAMILY TENANTS, ELDERLY TENANTS, AND TENANTS WITH DISABILITIES; ELIMINATING THE REQUIREMENT THAT NOMINEES TO THE COMMISSION PRESENT A PETITION SIGNED BY A CERTAIN NUMBER OF TENANTS; REQUIRING THE STAFF OF THE HOUSING AUTHORITY TO NOTIFY HOUSEHOLDS ASSISTED BY THE AUTHORITY OF CERTAIN VACANCIES ON THE COMMISSION; AND AMENDING SECTIONS 7-15-4431, 7-15-4432, AND 7-15-4435, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4431, MCA, is amended to read:

"7-15-4431. Appointment of commissioners. (1) An authority consists of seven commissioners appointed by the mayor. The mayor shall designate the first presiding officer. A commissioner may not be a city official.

(2) Two of the commissioners must be ~~tenants of~~ *directly assisted by* the housing authority *and are known as resident commissioners.* ~~One tenant commissioner shall represent family tenants, and one tenant commissioner shall~~

~~represent elderly tenants and tenants with disabilities. Nominees for tenant commissioner shall submit to the city clerk a petition signed by not less than 25 adult tenants of the authority or 25% of the adult tenants of the authority, whichever is greater. The city clerk shall submit a list of the tenant nominees to the mayor for appointment to the housing authority.~~ The staff of the housing authority may not involve itself in the nomination or appointment of ~~tenant~~ *resident* commissioners, *except that the housing authority shall notify all of the households directly assisted by the housing authority when a resident commissioner position is vacant.*

(3) The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner, and the certificate is conclusive evidence of the proper appointment of the commissioner."

Section 2. Section 7-15-4432, MCA, is amended to read:

"**7-15-4432. Term of office.** (1) ~~The~~ *Subject to subsection (2), the* commissioners who are first appointed must be designated by the mayor to serve for terms of 1, 2, 3, 4, and 5 years, respectively, from the date of their appointment. ~~Thereafter~~ *After the initial appointments,* the term of office is 5 years.

(2) The ~~tenant~~ *resident* commissioners who are first appointed shall serve for terms of 1 and 2 years, respectively, from the date of their appointment. ~~Thereafter~~ *After the initial appointments,* the term of office is 2 years.

(3) A commissioner shall hold office until ~~his~~ *the commissioner's* successor has been appointed and qualified."

Section 3. Section 7-15-4435, MCA, is amended to read:

"**7-15-4435. Control of conflict of interest.** (1) ~~Except as provided in 7-15-4431, a~~ *A* commissioner or employee of an authority may not acquire any interest, direct or indirect, in ~~any~~ *a* housing project or in any property included or planned to be included in ~~any~~ *a* project. A commissioner may not have any interest, direct or indirect, in ~~any~~ *a* contract or proposed contract for materials or services to be furnished or used in connection with ~~any~~ *a* housing project.

(2) (a) If a commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in ~~any~~ *a* housing project, ~~he~~ *the commissioner* shall immediately disclose the interest in writing to the authority, and the disclosure must be entered upon the minutes of the authority.

(b) Failure to disclose an interest constitutes misconduct in office."

Approved April 5, 2001

CHAPTER NO. 198

[HB 519]

AN ACT REVISING THE ELIGIBILITY FOR THE VIDEO GAMBLING MACHINE TAX CREDIT BY EXTENDING FOR 1 YEAR THE DEADLINE FOR A VIDEO GAMBLING MACHINE PERMIT AND THE DEADLINE FOR CONVERTING A VIDEO GAMBLING MACHINE TO THE DEPARTMENT OF JUSTICE'S AUTOMATED ACCOUNTING AND REPORTING SYSTEM:

AMENDING SECTION 23-5-610, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-610, MCA, is amended to read:

"23-5-610. (Temporary) Video gambling machine gross income tax — *credit* — records — distribution — quarterly statement and payment. (1) A licensed machine owner shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine issued a permit under this part. A licensed machine owner may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

(2) (a) A licensed machine owner is entitled to a tax credit for each video gambling machine for which a permit has been issued under this part if:

(i) the permit was active for the video gambling machine ~~on~~ *during the 12-month period ending* December 31, ~~2000~~ *2001*;

(ii) the department determines that the video gambling machine is incapable, in the form in which it was approved by the department, of communicating with the automated accounting and reporting system authorized by 23-5-637; and

(iii) the licensed machine owner participates in the automated accounting and reporting system and incurs actual hardware or software costs prior to ~~December 31, 2003~~ *January 1, 2005*, for conversion of the video gambling machine to make it compatible with the automated system.

(b) The amount of the tax credit allowed under subsection (2)(a) is $250 for each video gambling machine or the actual hardware and software cost necessary for conversion of the video gambling machine to the automated accounting and reporting system, whichever is less.

(3) If a tax credit is claimed under subsection (2)(a), the credit is deducted from the tax due for the quarter or quarters that begin after the video gambling machine for which the tax credit is claimed is connected to the automated accounting and reporting system authorized by 23-5-637.

(4) A licensed machine owner shall keep a record of the gross income from each video gambling machine issued a permit under this part in the form the department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(5) (a) For each video gambling machine issued a permit under this part but not connected to the department's automated accounting and reporting system, a licensed machine owner shall, within 15 days after the end of each quarter and in the manner prescribed by the department, complete and deliver to the department a statement showing the total gross income, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information that the department requires.

(b) For each video gambling machine issued a permit under this part that is connected to the department's automated accounting and reporting system, the department shall, within 5 working days after the end of each quarter, complete and deliver to the licensed machine owner (with a copy sent to the licensed operator, if different from the licensed machine owner, on whose premises the machine is placed) a statement showing the total gross income from the video gambling machine, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The licensed machine owner shall remit the total amount due the state under this subsection within 25 days after the end of each quarter.

(6) (a) Except as provided in subsection (7), the department shall, in accordance with the provisions of 15-1-501, forward one-third of the tax collected under subsection (5) to the general fund.

(b) The department shall, in accordance with the provisions of 15-1-501, forward the remaining two-thirds of the tax collected under subsection (5) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video gambling machines located in incorporated cities and towns. The two-thirds local government portion of tax collected under subsection (5) is statutorily appropriated, as provided in 17-7-502, to the department for deposit to the county or municipal treasury.

(7) Receipts from the state's share of taxes collected under this section are pledged and dedicated to guarantee repayment of loans participated in under 23-5-638 in an amount sufficient to meet the prepayment obligation for the fiscal year during which the loans are made. The amount of taxes pledged by this subsection is the dollar amount of loan participation under 23-5-638 and must be allocated to a separate account in the short-term investment pool. The board of investments is not entitled to use the proceeds from taxes collected under this section to repay a loan made under 23-5-638 unless the board certifies that all other commercially available means of collection on the loan have been exhausted. (Terminates December 31, 2005—sec. 10, Ch. 424, L. 1999.)

23-5-610. (Effective January 1, 2006) Video gambling machine gross income tax — *credit* — records — distribution — quarterly statement and payment. (1) A licensed machine owner shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine issued a permit under this part. A licensed machine owner may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

(2) (a) A licensed machine owner is entitled to a tax credit for each video gambling machine for which a permit has been issued under this part if:

(i) the permit was active for the video gambling machine ~~on~~ *during the 12-month period ending* December 31, ~~2000~~ *2001*;

(ii) the department determines that the video gambling machine is incapable, in the form in which it was approved by the department, of communicating with the automated accounting and reporting system authorized by 23-5-637; and

(iii) the licensed machine owner participates in the automated accounting and reporting system and incurs actual hardware or software costs prior to ~~December~~

~~31, 2003~~ *January 1, 2005*, for conversion of the video gambling machine to make it compatible with the automated system.

(b) The amount of the tax credit allowed under subsection (2)(a) is $250 for each video gambling machine or the actual hardware and software cost necessary for conversion of the video gambling machine to the automated accounting and reporting system, whichever is less.

(3) If a tax credit is claimed under subsection (2)(a), the credit is deducted from the tax due for the quarter or quarters that begin after the video gambling machine for which the tax credit is claimed is connected to the automated accounting and reporting system authorized by 23-5-637.

(4) A licensed machine owner shall keep a record of the gross income from each video gambling machine issued a permit under this part in the form the department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(5) (a) For each video gambling machine issued a permit under this part but not connected to the department's automated accounting and reporting system, a licensed machine owner shall, within 15 days after the end of each quarter and in the manner prescribed by the department, complete and deliver to the department a statement showing the total gross income, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information that the department requires.

(b) For each video gambling machine issued a permit under this part that is connected to the department's automated accounting and reporting system, the department shall, within 5 working days after the end of each quarter, complete and deliver to the licensed machine owner (with a copy sent to the licensed operator, if different from the licensed machine owner, on whose premises the machine is placed) a statement showing the total gross income from the video gambling machine, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The licensed machine owner shall remit the total amount due the state under this subsection within 25 days after the end of each quarter.

(6) (a) The department shall, in accordance with the provisions of 15-1-501, forward one-third of the tax collected under subsection (5) to the general fund.

(b) The department shall, in accordance with the provisions of 15-1-501, forward the remaining two-thirds of the tax collected under subsection (5) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video gambling machines located in incorporated cities and towns. The two-thirds local government portion of tax collected under subsection (5) is statutorily appropriated, as provided in 17-7-502, to the department for deposit to the county or municipal treasury."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to video gambling machine permits that were active after December 31, 2000.

Approved April 5, 2001

CHAPTER NO. 199

[HB 548]

AN ACT REQUIRING THE DEPARTMENT OF REVENUE TO INCLUDE THE EFFECTIVE TAX RATES OF TAXABLE PROPERTY IN EACH CLASS OF PROPERTY IN ITS BIENNIAL REPORT TO THE GOVERNOR AND THE MONTANA LEGISLATURE; AND AMENDING SECTION 15-1-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-205, MCA, is amended to read:

"**15-1-205. Biennial report — contents.** (1) The department shall transmit to the governor 20 days before the meeting of the legislature and make available to the legislature a report of the department showing all the taxable property of the state, counties, and cities and its value. The department shall follow the provisions of 5-11-210 in preparing the report.

(2) The report must also include the statewide average effective tax rate of taxable property in each class of property. The department may determine whether an appropriate effective tax rate may be derived for net proceeds, gross proceeds, agricultural land, and forest land.

~~(2)~~*(3)* The report or supplements to the report may also include:

(a) the gross dollar amount of revenue loss attributable to:

(i) personal income and corporation license tax exemptions;

(ii) property tax exemptions for which application to the department is necessary;

(iii) deferral of income;

(iv) credits allowed against Montana personal income tax or Montana corporation license tax, reported separately;

(v) deductions from income; and

(vi) any other identifiable preferential treatment of income or property;

(b) any change in tax revenue of the state or any unit of local government attributable to a change in federal tax law; and

(c) any change in the revenue of any unit of local government attributable to a change in state tax law.

~~(3)~~*(4)* The data described in subsection ~~(2)~~ *(3)*, if reported, must be related to the income and age of the taxpayer whenever the information is available.

~~(4)~~*(5)* (a) When reporting the data described in subsection ~~(2)(a)~~ *(3)(a)*, the department shall identify any known purpose of the preferential treatment.

(b) Based upon the purpose of the preferential treatment, the department shall outline the available data necessary to determine the effectiveness of the preferential treatment.

~~(5)~~*(6)* In reporting the data described in subsection ~~(2)~~ *(3)*, the department shall report any comparable data, if available, from Wyoming, Idaho, North Dakota, and South Dakota and from any other state the department may choose.

~~(6)~~*(7)* The department shall identify in a separate section of the report any changes that have been made or that are contemplated in property appraisal or assessment.

~~(7)~~*(8)* The department may include a report, prepared by the department of transportation, showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures."

Approved April 5, 2001

CHAPTER NO. 200

[HB 579]

AN ACT REVISING THE UNEMPLOYMENT INSURANCE LAWS TO CONFORM WITH FEDERAL REQUIREMENTS RELATED TO EMPLOYMENT BY AN EMPLOYER THAT IS AN INDIAN TRIBE; AMENDING SECTIONS 39-51-201, 39-51-204, 39-51-1103, 39-51-1124, AND 39-51-1126, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, on December 21, 2000, federal law changed regarding state law treatment of employment by recognized Indian tribes for the purposes of state unemployment insurance programs by mandating the formerly optional state unemployment insurance coverage of employment by those Indian tribes; and

WHEREAS, as of December 21, 2000, federal law now requires states in which recognized Indian tribes exist to offer to those tribes a choice of experience-rating or direct reimbursable unemployment insurance accounts; and

WHEREAS, Montana's unemployment laws do not conform to the new federal requirements, and nonconformity of the state's unemployment insurance laws with the new federal provisions will jeopardize the ability of all Montana employers to take credit on federal taxes for the amounts paid to Montana's unemployment insurance program and will further depress Montana's economy; and

WHEREAS, the Legislature finds that it is the best interests of all the people of Montana that Montana's unemployment insurance laws conform to those December 21, 2000, federal law changes with respect to the treatment of Indian tribes for unemployment insurance purposes.

Be it enacted by the Legislature of the State of Montana:

Section 1. Liability of tribal units — cancellation for failure to make payments. (1) Each tribal unit of an Indian tribe is jointly and severally liable for all contributions or payments in lieu of contributions, including those under subsection (2), owed by any other tribal unit of the same Indian tribe.

(2) (a) An Indian tribe and its tribal units that make contributions are liable for reimbursing the department for 50% of any extended benefits paid pursuant to Title 39, chapter 51, part 24, that are chargeable to the account of the Indian tribe or one of its tribal units.

(b) An Indian tribe and its tribal units that elect to make payments in lieu of contributions are liable for reimbursing the department for 100% of any extended benefits paid pursuant to Title 39, chapter 51, part 24, that are chargeable to the account of the Indian tribe or one of its tribal units.

(3) (a) The failure of an Indian tribe or any of its tribal units to make the required payments under this chapter within 90 days of being given notice that the Indian tribe or tribal unit is delinquent in payment cancels the participation of the Indian tribe and all of its tribal units in the unemployment insurance program provided by this chapter and removes service provided to the Indian tribe and all of its tribal units from being considered as employment, within the meaning 39-51-203.

(b) Payment in full of amounts that have been delinquent for more than 90 days reinstate the participation of the Indian tribe and its tribal units in Montana's unemployment insurance system, and service to the Indian tribe and its tribal units once again is considered to be employment within the meaning of 39-51-203. However, upon reinstatement, the Indian tribe and all of its tribal units no longer have the option of electing to make payments in lieu of contributions and, pursuant to 39-51-1126, are required to make contributions as provided in this chapter.

Section 2. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the base period means the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which the individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization (including the state government and any of its political subdivisions or instrumentalities *or an Indian tribe or tribal unit*), partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person that has or had in its employ one or more individuals performing services for it within this state, except as provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under a contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

~~(16)~~*(17)* (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding subsection ~~(16)(a)~~ *(17)(a)*, all universities in this state are institutions of higher education for purposes of this part.

~~(17)~~*(18)* "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

~~(18)~~*(19)* "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(20) "Tribal unit" means an Indian tribe and any subdivision, subsidiary, or business enterprise that is wholly owned by that tribe.

~~(19)~~*(21)* "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

~~(20)~~*(22)* (a) "Wages", unless specifically exempted under subsection ~~(20)(b)~~ *(22)(b)*, means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pav made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term ~~"wages"~~ does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family; or

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules.

~~(21)~~*(23)* "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

~~(22)~~*(24)* An individual's "weekly benefit amount" means the amount of benefits that the individual would be entitled to receive for 1 week of total unemployment."

Section 3. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) service performed as a real estate broker or salesperson who is licensed pursuant to Title 37, chapter 51;

(e) service performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined in 37-30-101, which contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the cosmetology salon or barbershop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership, members of a member-managed limited liability company that has filed with the secretary of state, or partners in a limited liability partnership that has filed with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency ~~or~~, any agency of a state or political subdivision of the state, *or an Indian tribe* by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(u) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States; ~~or~~

(w) service performed by an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act~~.~~*; or*

(x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873.

(2) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(3) This section does not apply to a state or local governmental entity, *an Indian tribe or tribal unit,* or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment ~~as defined in~~ *for purposes of* the Federal Unemployment Tax Act."

Section 4. Section 39-51-1103, MCA, is amended to read:

"**39-51-1103. Contributions by employers required — payments in lieu ~~thereof~~ *of contributions* authorized for certain employers.** (1) Contributions ~~shall~~ accrue and become payable by each employer for each calendar year in which ~~he~~ *the employer* is subject to this chapter with respect to wages, as defined in 39-51-201, paid for employment, as defined in this chapter, occurring during ~~such~~ *the* calendar year.

(2) ~~Such~~ *The* contributions ~~shall~~ become due and *must* be paid by each employer to the department for the fund in accordance with ~~such regulations as~~ *rules adopted by* the department ~~may prescribe~~ and ~~shall~~ *may* not be deducted in whole or in part from the wages of individuals ~~in his employ~~ *employed by the employer*.

(3) In the payment of any contributions, a fractional part of a cent ~~shall~~ *must* be disregarded unless it amounts to one-half cent or more, in which case it ~~shall~~ *must* be increased to 1 cent.

(4) Nonprofit organizations, defined in section 501(c)(3) of the ~~federal~~ Internal Revenue Code and ~~which~~ *that* are exempt from tax under section 501(a) of ~~such code~~ *the Internal Revenue Code,* may elect to make payments in lieu of contributions.

(5) The state and its political subdivisions~~, effective January 1, 1977,~~ may elect to make payments in lieu of contributions or pay under a special contributions plan established for governmental entities only.

(6) An Indian tribe may make a separate election to make payments in lieu of contributions for each tribal unit and may elect to combine all or some tribal units into group reimbursement accounts."

Section 5. Section 39-51-1124, MCA, is amended to read:

"**39-51-1124. Procedure for election to make payments in lieu of contributions.** (1) Any nonprofit organization defined in 39-51-1103, *tribal unit,* or governmental entity electing to become liable for payments in lieu of contributions ~~must~~ *shall* file a written notice of its election with the department not later than 30 days immediately following the date of the determination of subjectivity to this chapter. This election ~~shall~~ *must* be for a period of not less than 2 years.

(2) Any nonprofit organization defined in 39-51-1103, *tribal unit,* or governmental entity ~~which~~ *that* has been paying contributions for at least 2 ~~taxable~~ *tax* years may change to payments in lieu of contributions by filing a written notice to that effect with the department within 30 days before the beginning of the ~~taxable~~ *tax* year for which the change is effective."

Section 6. Section 39-51-1126, MCA, is amended to read:

"**39-51-1126. Termination of election to make payments in lieu of contributions.** (1) Any nonprofit organization, *tribal unit,* or governmental entity may terminate its election to make payments in lieu of contributions after 2 years from the effective date of ~~such~~ *an* election by filing a written notice with the department not later than 30 days prior to the beginning of the ~~taxable~~ *tax* year for which the termination is effective.

(2) If a nonprofit organization, *tribal unit,* or governmental entity is delinquent in making payments in lieu of contributions, the department may terminate the election to make payments in lieu of contributions as of the beginning of the next ~~taxable~~ *tax* year, and the termination is effective for that and the next ~~taxable~~ *tax* year."

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 39, chapter 51, part 11, and the provisions of Title 39, chapter 51, part 11, apply to [section 1].

Section 8. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 9. Effective date — retroactive applicability. [This act] is effective July 1, 2001, and applies retroactively, within the meaning of 1-2-109, to employment by recognized Indian tribes occurring on or after December 21, 2000.

Approved April 5, 2001

CHAPTER NO. 201

[HB 551]

AN ACT INCREASING THE BOND FROM $25,000 TO $35,000 FOR NEW MOTOR VEHICLE DEALERS, USED MOTOR VEHICLE DEALERS, NEW OR USED RECREATIONAL VEHICLE DEALERS, TRAILER DEALERS, AUTO AUCTION LICENSEES, AND WHOLESALERS OF USED MOTOR VEHICLES, USED RECREATIONAL VEHICLES, TRAILERS, MOTORCYCLES, QUADRICYCLES, OR SPECIAL MOBILE EQUIPMENT; AND AMENDING SECTIONS 61-4-101, 61-4-120, AND 61-4-125, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-4-101, MCA, is amended to read:

"61-4-101. Dealer's license — types of licenses and terms — plates — bonds — zoning. (1) Except as provided in 61-4-125, a person may not engage in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker of a new motor vehicle or used motor vehicle, new or used recreational vehicle, trailer, motorcycle, quadricycle, or special mobile equipment for which a certificate of ownership has not been issued and that is not registered in the person's name, unless the person is the holder of a dealer's license issued by the department under this part.

(2) (a) The department is authorized to issue a dealer's license for one or more specified vehicle types to any person that it determines is qualified to hold a license under the provisions of this section. A dealer's license may be issued for, and restricted to, one or more of the following vehicle types:

(i) new motor vehicle;

(ii) used motor vehicle;

(iii) new recreational vehicle;

(iv) used recreational vehicle;

(v) trailer of any size~~,~~ or special mobile equipment; or

(vi) motorcycle or quadricycle.

(b) For each type of dealer's license authorized, the department shall design and issue dealer and demonstrator plates as provided in 61-4-102 and 61-4-129.

(c) With the exception of a licensed new motor vehicle dealer, a dealer licensed for a particular type of vehicle may sell, trade, or accept on consignment only vehicles of the type for which the license is authorized, unless the dealer's license specifically refers to more than one vehicle type, such as a motorcycle or quadricycle license. A new motor vehicle dealer is authorized to sell, trade, or accept on consignment new motor vehicles or used motor vehicles.

(d) Regardless of vehicle type, a dealer's license issued by the department has a term of 1 calendar year, commencing on or after January 1 in the year of issue and expiring on December 31 of the same year.

(3) (a) An applicant for a dealer's license shall submit a written application for a dealer's license to the department, specifying the type or types of dealer's license sought. The application must be signed by the applicant and contain a verification by the applicant, under penalty of law, that the information contained in the application is true and correct. Any information provided in the

license application process is subject to independent verification by the department or a duly authorized representative of the department.

(b) After examining a license application and conducting *an* investigation necessary to verify the information contained in the application and if the department is satisfied that the applicant qualifies for the issuance of a license under the provisions of this chapter, the department may issue the license. The department may refuse, after examination and investigation, to issue a license to an applicant who is not qualified for licensure or whose prior financial or other activities or criminal record, as determined by the department:

(i) ~~pose~~ *poses* a threat to the effective regulation of dealers, wholesalers, or auto auctions;

(ii) ~~pose~~ *poses* a threat to the public interest of the state; or

(iii) ~~create~~ *creates* a danger of illegal or deceptive practices being used in the conduct of the proposed dealership, wholesaler, or auto auction.

(4) To be qualified for licensure as a dealer, an applicant shall provide to the department the following:

(a) the name under which the applicant intends to conduct business and the name, address, date of birth, and social security number of any person who possesses or will possess an ownership interest in the business for which the license is sought. If the applicant is a corporation, the personal information required in this subsection (4)(a) must be provided for each corporate officer and the person designated by the corporation to manage or oversee the dealership.

(b) for each person subject to the provisions of subsection (4)(a), whether the person has:

(i) an ownership interest in a vehicle dealership or a wholesaler business in Montana or another jurisdiction and if so, the name and address of each dealership or wholesaler; and

(ii) been found guilty of, or pleaded guilty to, a felony in this or any other jurisdiction and if so, provide a summary of the conduct resulting in the felony charge, including the dates of the conduct and any court proceedings pertaining to the conduct and the name and address of any court in which the matter was heard;

(c) the name, address, and telephone number of the insurance carrier from whom the applicant has acquired garage keepers liability insurance and the name, address, and telephone number of the local insurance agent for the carrier and the applicant's policy number. The insurance must cover any vehicle bearing dealer or demonstrator license plates that is offered for demonstration or loan to, or otherwise operated by, a customer in the regular course of the applicant's business;

(d) the geographic location of the physical lot or lots upon which vehicles will be displayed for sale and a permanent nonresidential building will be maintained to store the actual physical or electronic records resulting from the purchase, sale, trade, or consignment of vehicles for which licensure is sought. An applicant may use more than one location to display vehicles for sale~~, provided~~ *if* the maximum distance between each display lot does not exceed 200 feet and the distance between a display lot and the building in which vehicle sales records are stored does not exceed 1.000 feet.

(e) for each geographic location specified in the application, evidence of the applicant's compliance with applicable local land use planning, zoning, and business permitting requirements, if any. Evidence of compliance may be documented by means of a written verification of compliance signed by the authorized representative of the local land use planning or zoning board or the local business permitting agency.

(f) a diagram or plat showing the geographic location, lot dimensions, and building and sign placement for the applicant's proposed established place of business, along with two or more photographs of the geographic location, building premises, and sign, as prescribed by the department;

(g) a certification by the applicant that the applicant is a bona fide dealer in new motor vehicles, used motor vehicles, used recreational vehicles, trailers, motorcycles, quadricycles, or special mobile equipment;

(h) if the applicant is seeking a new motor vehicle dealer's license:

(i) the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement and the name and make of all motor vehicles to be handled by the applicant;

(ii) the geographic location or locations, specified in writing, upon which the applicant will provide and maintain a permanent building to display and sell new motor vehicles and offer and maintain a bona fide service department for the repair, service, and maintenance of the motor vehicles;

(iii) otherwise meet the requirements of part 2 of this chapter; and

(iv) if the applicant is applying for a new recreational vehicle dealer's license, certification that the person is recognized by a manufacturer, importer, or distributor as a dealer in new recreational vehicles.

(5) If an applicant for a new motor vehicle or used motor vehicle, new or used recreational vehicle, or trailer dealer's license wants to maintain more than one established place of business, the applicant shall file a separate license application for each proposed ~~established~~ place of business and otherwise qualify for licensure at each place separately.

(6) Each application under this section must be accompanied by an application fee of $5 and one or more of the following license fees based on the type of dealer's license being sought:

(a) $25 for a new motor vehicle dealer's license;

(b) $25 for a used motor vehicle dealer's license;

(c) $25 for a new or used recreational vehicle dealer's license; or

(d) $25 for a motorcycle or trailer dealer's license.

(7) The applicant for a dealer's license shall also file with the application a bond of ~~$25,000~~ *$35,000* for a license as a new motor vehicle dealer, a used motor vehicle dealer, a new or used recreational vehicle dealer, or a trailer dealer. Applicants for a motorcycle dealer's license shall file a bond in the sum of $10,000. All bonds must be conditioned that the applicant shall conduct the business in accordance with the requirements of the law. The bond may extend to any other type of dealer license issued to the applicant at the same geographic location, provided that all types of licenses are indicated on the face of the bond. All bonds

must be approved by the department, must be filed in its office, and must be renewed annually."

Section 2. Section 61-4-120, MCA, is amended to read:

"**61-4-120. Application for auto auction license — general regulations.** (1) A person, firm, association, or corporation that takes possession of a motor vehicle owned by another person through consignment, bailment, or any other arrangement for the purpose of selling the motor vehicle to the highest bidder when all buyers are licensed motor vehicle dealers, wholesalers, or wrecking facilities shall file by mail or otherwise in the office of the department a verified application for licensure as an auto auction. The application must be made in the following manner:

(a) Each application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose. The application must provide the following information:

(i) the name in which the business is to be conducted and the location of premises, including street address, city, county, and state, where records are kept, sales are made, and motor vehicle stock is displayed as an established place of business that displays a sign indicating the firm name and that vehicles are offered for sale. The letters on the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(ii) the name and address of all owners or persons having an interest in the business. In the case of a corporation, the names and addresses of the president and secretary are sufficient.

(iii) a statement that the applicant is authorized to auction used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, and quadricycles under one license. A licensed auto auction may not auction a new motor vehicle except when authorized by a new motor vehicle manufacturer, importer, distributor, or representative, for the purpose of conducting a closed-factory fleet sale to dispose of new motor vehicles by the franchisor (manufacturer, distributor, or importer) to franchisee purchasers when the purchasers are licensed new motor vehicle dealers purchasing new motor vehicle line-makes authorized by their respective franchise, sales, or distributor agreements. An auto auction licensed under the provisions of this section shall notify and update the department with current fleet sale agreements between the auto auction and franchisor. An auto auction may not conduct a factory fleet sale unless authorized or appointed by a franchisor licensed under part 2 of this chapter.

(b) Each application must be accompanied by a bond of ~~$25,000~~ *$35,000* and must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(2) An auto auction's license must be renewed and paid for annually to the department, and an application for relicensure must be filed by January 1 of each year. The fee required for each first-time applicant is $500 and for subsequent renewal applications is $100 each year. Upon receipt of a properly completed application, fee, and bond, the department shall issue the auto auction license and assign an auto auction license number for each applicant in a manner determined

by the department. Auto auctions dealing in motor vehicles may sell only to licensed dealers and wholesalers.

(3) Auto auctions that are licensed under this section and that hold a current license number may issue temporary permits, which may be displayed and used by a buyer to operate an unregistered vehicle purchased from the auto auction. The temporary permit is valid for a period of 72 hours from the time of purchase and may be used only for the purpose of driving or transporting a vehicle from the auction premises to the purchaser's established place of business or point of destination. Temporary permits must be on a form prescribed by the department and must contain the name, address, and license number of the purchaser, *the* date of sale, *the* name, address, license number, and authorized signature of the auto auction, and a description of the vehicle, including its serial number. The department shall collect a fee of $10 from the auto auction for each temporary permit, and the auto auction may charge a vehicle purchaser no more than $10 for the issuance of each permit to offset the cost of the permit. It is unlawful for the auto auction to issue more than one temporary permit per vehicle sale.

(4) A licensed auto auction may apply for and may be authorized by the department to purchase and use license plates of a type and amount approved by the department, upon payment of a fee to the department to offset the cost of production. Licensed auto auctions may use the license plates to transport inventory vehicles from a point of storage or a point of delivery in this state to the auto auction's place of business, for road testing authorized vehicles, or for moving vehicles for purposes of repairing, painting, upholstering, polishing, and related activities. One license plate is required to be conspicuously displayed on the rear of the vehicle. Auto auctions may appoint designated persons, partnerships, corporations, service stations, or repair garages to use the license plate only when conducting work for the auto auction involving repairing, painting, upholstering, polishing, or performing similar types of work upon a vehicle. Upon application for an auto auction license, the applicant, if requesting the license plates, shall submit a sworn affidavit on a form prescribed by the department, listing each authorized person designated by the auction to use the license plates. The auto auction is responsible for reporting any changes to the affidavit within 72 hours after the amendment has occurred. An auto auction licensed under the provisions of this section is liable for the proper use of the license plates, which may not be used for private purposes. The department may revoke an auto auction's 72-hour temporary permit and license plate privileges if an auction issues, authorizes the use of, or uses a temporary permit or the license plate in violation of the provisions of this section.

(5) (a) Each auto auction shall keep a book or record, in a form and manner subject to approval by the department, of the purchases, sales, or exchanges or the receipts for the purpose of sale of any motor vehicle, a properly completed copy of a temporary permit issued to a vehicle purchaser, the date of title transfer, and a description of the motor vehicle, together with the name and address of the seller, the purchaser, and the alleged owner or other person from whom the motor vehicle was purchased or received or to whom it was sold or delivered. The description in the case of a motor vehicle must include:

(i) the vehicle identification number and engine number, if any; and

(ii) a statement that a number has been obliterated, defaced, or changed, if it has.

(b) An auto auction licensed under this section shall validate the sale of a motor vehicle through its auction by stamping its name and license number upon the certificate of ownership at a location on the front or back of the certificate, at the margin in the assignment section as executed between the transferor and transferee. An auto auction's stamp must be legible and may not interfere with the information recorded on the certificate between the transferor and transferee. If the certificate of ownership lacks adequate space for the auto auction to place its stamp, the auction may provide the transferee a copy of the auction invoice bearing the:

(i) name and license number of the auction, along with an indication of the vehicle year, make, model, and identification number;

(ii) name, address, and signature of the transferor;

(iii) name, license number, and signature of the transferee; and

(iv) date the vehicle was sold through the auction.

(c) The invoice must be attached to the certificate of ownership and must be presented to the department with any application for title.

(d) An auto auction shall retain, for 5 years, odometer disclosure information, including the name of the owner on the date the auto auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number, and the odometer reading on the date the auto auction took possession of the motor vehicle. The odometer information may be retained in any way that is systematically retrievable and is not required to be maintained on any special disclosure form. The information may be part of the auction receipt or invoice or be maintained as a portion of a computer database or manual file. An auto auction that executes a transfer of ownership as an agent on behalf of a seller or buyer is liable for providing an odometer disclosure statement for the seller or an odometer disclosure acknowledgment for the buyer under the provisions of 61-3-206."

Section 3. Section 61-4-125, MCA, is amended to read:

"61-4-125. Wholesaler's license. (1) (a) The department is authorized to issue a wholesaler's license to any person that it determines is qualified to hold a license under the provisions of this section.

(b) A wholesaler is authorized to sell used motor vehicles, used recreational vehicles, trailers, motorcycles, quadricycles, or special mobile equipment. However, a wholesaler may sell a vehicle only to a dealer, an auto auction, or another wholesaler. Retail sale of vehicles by a wholesaler is not allowed.

(c) A wholesaler's license issued by the department has a term of 1 calendar year, commencing on or after January 1 in the year of issue and expiring on December 31 of the same year.

(d) The department shall design and issue wholesaler demonstrator plates of a similar sequence to demonstrator plates issued to dealers but that conspicuously display the term "wholesaler" or the abbreviation "W".

(2) To qualify for a wholesaler's license, an applicant shall submit a completed application, in a form prescribed by the department, that provides the following:

(a) the name under which the applicant intends to conduct business and the name, address, date of birth, and social security number of any person who possesses or will possess an ownership interest in the business for which the license is sought. If the applicant is a corporation, the personal information required in this subsection (2)(a) must be provided for each corporate officer and the person designated by the corporation to manage or oversee the dealership.

(b) for each person subject to the provisions of subsection (2)(a) whether the person has:

(i) an ownership interest in a vehicle dealership or wholesaler business in Montana or another jurisdiction and if so, the name and address of each dealership or wholesaler; and

(ii) been found guilty of, or pleaded guilty to, a felony in this or any other jurisdiction, and if so, provide a summary of the conduct giving rise to the felony charge, including the dates of the conduct and any judicial proceeding pertaining to the conduct, and the name and address of any court in which the matter was heard;

(c) the name, address, and telephone number of the insurance carrier from whom the applicant has acquired garage keepers liability insurance and the name, address, and telephone number of the local insurance agent for the carrier and the applicant's policy number. The insurance must cover any vehicle bearing a wholesaler demonstrator plate that is offered for demonstration or loan to, or otherwise operated by, a customer in the regular course of the applicant's business.

(d) the street address of the permanent nonresidential building or office where business records will be kept and available for inspection by the department; and

(e) a bond of ~~$25,000~~ *$35,000* filed with the department on behalf of the applicant. The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must be approved by the department and subject to annual renewal.

(3) The application fee for a wholesaler's license is $5, and the license fee is $25. Both fees must accompany an original or renewal wholesaler's license application.

(4) Wholesalers may not be issued or use dealer plates, as provided in 61-4-102. However, a wholesaler may be issued and is authorized to display and use a wholesaler demonstrator plate on any type of vehicle that a wholesaler is authorized to sell. The fee for a wholesaler demonstrator plate is $3. To the extent not inconsistent with this section, use of wholesaler demonstrator plates is otherwise governed by 61-4-129.

(5) (a) A wholesaler's license must be renewed annually, and application for renewal must be filed on or before December 31 of the expiring license term.

(b) To qualify for renewal of a wholesaler's license, a wholesaler must submit a completed application, in a form prescribed by the department, updating prior submitted information, as originally supplied under subsection (2).

(c) Additionally, the wholesaler shall certify, under penalty of law, that 12 or more vehicles of the type authorized under the license were sold by the wholesaler to a dealer, auto auction, or another wholesaler during the expiring license term. A wholesaler who was licensed for less than a full calendar year in the expiring term shall certify, under penalty of law, to the sale of an average of at least one vehicle a calendar month, or portion of a calendar month, during which the expiring license was in effect.

(d) A wholesaler who fails to meet the sales requirements for license renewal under this section is not eligible for license renewal and may not submit an application for another wholesaler's license or a used motor vehicle dealer's license for a period of 12 months from the expiration of the wholesaler's most recent license term.

(6) A wholesaler whose completed renewal application has been received by the department on or before December 31 of the expiring license term may, if necessary, operate the business and display wholesaler demonstrator plates under the expired license through February 15 of the following year."

Approved April 5, 2001

CHAPTER NO. 202

[SB 52]

AN ACT GRANTING IMMUNITY TO MORTUARIES AND VETERANS' SERVICE ORGANIZATIONS FOR SIMPLE NEGLIGENCE IN THE INTERMENT OF CERTAIN REMAINS OF MILITARY VETERANS; PROVIDING CONDITIONS; REQUIRING NOTICE; AND PROVIDING DEFINITIONS.

WHEREAS, there are remains of military service veterans lying unclaimed in Montana mortuaries, funeral homes, or other establishments authorized to dispose of those remains; and

WHEREAS, the remains of those veterans are entitled to a decent and honorable final disposition in a manner that conforms with law; and

WHEREAS, there are state veterans' service organizations that are willing to dispose of those remains in a manner that honors the military service of those deceased veterans; and

WHEREAS, concerns regarding liability of the mortuaries or veterans' service organizations, or both, may impede the lawful and honorable final disposition of those remains; and

WHEREAS, it is appropriate that the Legislature act to relieve mortuaries and veterans' service organizations of liability for simple negligence in the final disposition of those remains.

Be it enacted by the Legislature of the State of Montana:

Section 1. Disposal of unclaimed veterans' remains — limits on liability of mortuaries and veterans' service organizations — notice — definitions. (1) A mortuary is not liable for simple negligence in the disposition of the human remains or cremated remains of a veteran to a veterans' service organization for the purposes of interment by that organization if:

(a) the remains have been in the possession of the mortuary for a period of at least 20 years, all or any part of which period may occur or may have occurred before or after October 1, 2001;

(b) the mortuary has given notice, as provided in subsection (2)(a) or (2)(b), to the veteran's next of kin of the matters provided in subsection (3); and

(c) the remains have not been claimed by the next of kin of the veteran within the period of time provided for in subsection (3) following notice to the next of kin.

(2) In order for the immunity provided in subsection (1) to apply, a mortuary shall take the following action, alone or in conjunction with a veterans' service organization, to provide notice to the next of kin of the deceased veteran:

(a) give written notice by mail to the next of kin of the veteran for whom the address of the next of kin is known or can reasonably be ascertained by the mortuary giving the notice; or

(b) if the address of the next of kin is not known or cannot reasonably be ascertained, give notice to the next of kin by publication once each week for 3 successive weeks in a newspaper of general circulation:

(i) in the county of the veteran's residence; or

(ii) if the residence of the veteran is unknown, in the county in which the veteran died; or

(iii) if the county in which the veteran died is unknown, in the county in which the mortuary giving notice is located.

(3) The notice required by subsection (2) must include a statement to the effect that the remains of the veteran must be claimed by the veteran's next of kin within 30 days after the date of mailing of the written notice provided for in subsection (2)(a) or within 4 months of the date of the first publication of the notice provided for in subsection (2)(b), as applicable, and that if the remains are not claimed, the remains may be given to a veterans' service organization for interment.

(4) A veterans' service organization receiving human remains or cremated remains of a veteran from a mortuary for the purposes of interment is not liable for simple negligence in the custody or interment of the remains if the veterans' service organization inters and does not scatter the remains and does not know and has no reason to know that the remains do not satisfy the requirements of subsection (1)(a) or (1)(c) or that the mortuary has not complied with the notice requirements of subsection (2)(a) or (2)(b), as applicable.

(5) By accepting the remains of a veteran for interment, a veterans' service organization does not agree to pay storage or other charges applied by the mortuary for the keeping or preservation of the remains.

(6) A veterans' service organization accepting remains pursuant to this section shall take all reasonable steps to inter the remains in a veterans' cemetery. However, the organization is not liable for any additional expense for interment in a veterans' cemetery and interment in a veterans' cemetery is not a condition for immunity under this section.

(7) (a) As used in this section, the following definitions apply:

(i) "Mortuary" includes a mortuary as defined in 37-19-101, a funeral home, a funeral director, a mortician, an undertaker, or an employee of any of the individuals or entities.

(ii) "Veterans' service organization" means an association or other entity organized for the benefit of veterans that has been recognized or chartered by the United States congress, including the disabled American veterans, veterans of foreign wars, the American legion, the legion of honor, and the Vietnam veterans of America. The term includes a member or employee of any of those associations or entities.

(b) Terms not defined in this subsection (7) have the meaning given them in 37-19-101.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 10, chapter 2, and the provisions of Title 10, chapter 2, apply to [section 1].

Approved April 5, 2001

CHAPTER NO. 203

[SB 199]

AN ACT AUTHORIZING THE USE OF INMATE LABOR THROUGH A COUNTY JAIL WORK PROGRAM FOR MANAGEMENT OF NOXIOUS WEEDS AND FOR OTHER MAINTENANCE PROJECTS AUTHORIZED BY COUNTY COMMISSIONERS; ALLOWING A DISTRICT WEED BOARD TO ENTER INTO AGREEMENTS WITH A COUNTY SHERIFF FOR THE USE OF INMATE LABOR; AND AMENDING SECTIONS 7-22-2109 AND 7-32-2226, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-22-2109, MCA, is amended to read:

"**7-22-2109. Powers and duties of board** — ***use of inmates in county jail work program.*** (1) In addition to any powers or duties established in the resolution creating a district weed board, the board may:

(a) employ a supervisor and other employees as necessary and provide for their compensation;

(b) purchase chemicals, materials, and equipment and pay other operational costs as it determines necessary for implementing an effective weed management program. The costs must be paid from the noxious weed fund.

(c) determine what chemicals, materials, or equipment may be made available to persons controlling weeds on their own land. The cost for the chemicals, materials, or equipment must be paid by the person and collected as provided in this part.

(d) enter into agreements with the department for the control and eradication of any new exotic plant species not previously established in the state ~~which~~ *that* may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial use if the plant species spreads or threatens to spread into the state; ~~and~~

(e) enter into agreements with the county sheriff for the use of inmate labor for weed management under this part through a county jail work program that is authorized under 7-32-2225 through 7-32-2227; and

~~(e)~~*(f)* perform other activities relating to weed management.

(2) The board shall:

(a) administer the district's noxious weed program;

(b) establish management criteria for noxious weeds on all land within the district; *and*

(c) make all reasonable efforts to develop and implement a noxious weed program covering all land within the district owned or administered by a federal agency."

Section 2. Section 7-32-2226, MCA, is amended to read:

"**7-32-2226. Operation of county jail work program.** (1) If a county establishes a county jail work program, it must be authorized by the board of county commissioners and supervised by the county sheriff. The sheriff may permit persons eligible under the provisions of 7-32-2227 to work on county projects or for county departments as designated by the board of county commissioners. A person participating in a county jail work program may not:

(a) have ~~his~~ *the person's* labor or other work contracted out to a private party;

(b) be required to do labor or other work that furthers the private interests of a government employee or official;

(c) be permitted or required to do labor or other work that relates to anything other than public projects, public services, or other public matters;

(d) be used to displace any regular county employee;

(e) perform the duties of any vacant county position; or

(f) work on any construction or reconstruction project.

(2) ~~No~~ *A* county may *not* reduce its current workforce in order to transfer the duties of ~~such~~ a reduction to persons participating in a county jail work program.

(3) A person participating in a county work program may not be physically confined in the county jail during the course of ~~his~~ *the person's* participation. The person may not be required to perform county work in excess of 8 hours each calendar day. Each calendar day in which a person has participated in a county jail work program is 1 day of incarceration for the purposes of serving a sentence of imprisonment.

(4) The sheriff, in conjunction with the board of county commissioners, shall establish a written policy on how jail inmates may volunteer for participation in the county work program and what criteria the sheriff shall use to choose volunteers if there are more eligible persons volunteering than are needed in the program.

(5) In order to ensure public safety, the sheriff may ~~in his discretion~~ deny a person permission to participate in the program and may revoke a person's permission to participate at any time.

(6) A person participating in a program is under official detention as that term is used in defining the crime of escape in 45-7-306. Failure to appear for work at a time and place scheduled for participation in a program constitutes the offense of escape.

(7) Weed management, as defined in 7-22-2101, whether on public or private land, and other maintenance projects authorized by a board of county commissioners are county projects for purposes of 7-32-2225 through 7-32-2227."

Approved April 5, 2001

CHAPTER NO. 204

[SB 259]

AN ACT ALLOWING A SECONDARY ROAD THAT PASSES THROUGH OPEN RANGE IN A COUNTY PARK TO REMAIN UNFENCED PROVIDED THAT CERTAIN CRITERIA ARE MET TO MITIGATE SAFETY HAZARDS PRESENTED BY LIVESTOCK; AND AMENDING SECTIONS 60-7-102, 60-7-103, AND 60-7-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-7-102, MCA, is amended to read:

"60-7-102. Definitions. As used in 60-2-208 and 60-7-101 through 60-7-103, the following definitions apply:

(1) A "high-hazard area" is a segment of the primary *or secondary* highway system passing through open range where livestock ~~moves~~ *move* on or across the highway often enough, in enough numbers, and with enough ease of access that ~~such~~ *the* animals create a significant traffic safety hazard. Evidence bearing on whether animals on the highway pose a significant hazard includes, without limitation, past accident records, the opinions of persons qualified by experience to evaluate the relative safety of road conditions, and the terrain around the road.

(2) "Livestock" means cattle, sheep, swine, horses, mules, and goats.

(3) A "low-hazard area" is a segment of the primary *or secondary* highway system passing through open range ~~which~~ *that* is not a high-hazard area.

(4) "Open range" means those areas of the state where livestock ~~is~~ *are* raised and maintained in sufficient numbers ~~as~~ to constitute a significant part of the local or county economy and where ~~such animals~~ *livestock* graze and move about generally unrestrained by fences."

Section 2. Section 60-7-103, MCA, is amended to read:

"60-7-103. Department to fence right-of-way through open range — *exception.* (1) ~~The~~ *Except as provided in subsection (3), the* department shall fence the right-of-way of any part of ~~the state highway system~~ *a primary or secondary highway or a county road or bridge* that is constructed or reconstructed after July 1, 1969, through open range where livestock present a hazard to the safety of the motorist. ~~Where~~ *When* a fence is constructed, adequate stock gates or stock passes, as necessary, ~~shall~~ *must* be provided to make land on either side of the highway usable for livestock purposes.

(2) The department shall erect a *right-of-way* fence in ~~every~~ *the* high-hazard ~~area~~ *areas where fencing is warranted* as promptly as possible, and the cost of ~~such~~ *the fence* construction is an expenditure for the enforcement of federal-aid highway safety programs. ~~Gates~~ *Even if a right-of-way fence is determined to be unwarranted pursuant to subsection (3), gates,* stock underpasses, water facilities, and cattle guards may be installed where necessary *to enhance safety and* to make the land on either side of the highway usable for livestock purposes or where a public right-of-way intersects the state highway.

(3) The department is not required to fence the right-of-way of a secondary highway through open range that passes through a county park, provided that:

(a) the department and the board of county commissioners:

(i) agree that the criteria listed in this subsection (3) have been adequately met; and

(ii) cooperate in developing an accident mitigation plan for the portion of the highway that will remain unfenced. The plan may include the speed limit established as provided in 61-8-309 or 61-8-310, how the criteria listed in this subsection (3) have been met, how the plan will be implemented, and any other issues related to minimizing accidents involving livestock and motor vehicles where a fence has not been erected.

(b) livestock grazing does not occur from Memorial Day to Labor Day;

(c) the speed limit established as provided in 61-8-309 or 61-8-310 is clearly posted and enforceable;

(d) warning signs indicating that livestock may be on the road are posted at regular intervals along the road and maintained during the months that livestock grazing occurs;

(e) livestock management practices, such as locating water and administering dietary supplements away from the road and developing grazing and herding plans that minimize the amount of time that livestock are on or near the road, are employed; and

(f) the unfenced portion of the road does not exceed 20 miles in length."

Section 3. Section 60-7-202, MCA, is amended to read:

"**60-7-202. Exclusions.** Section 60-7-201 does not apply to the following:

(1) livestock on state highways under the charge of one or more herders;

(2) the parts of fenced highways adjacent to open range where a highway device has not been installed to exclude range livestock;

(3) the parts of a state highway or a part of the federal-aid primary system ~~which~~ *that* the department of transportation designates as being impracticable to exclude livestock. These portions of the highway ~~shall~~ *must* be marked by proper signs in accordance with the department's manual and specifications for a uniform system of traffic-control devices.

(4) the parts of the secondary highway system that pass through county parks and that meet the criteria established in 60-7-103(3)."

Approved April 5, 2001

CHAPTER NO. 205

[SB 260]

AN ACT AUTHORIZING TRUSTEES OF A SCHOOL DISTRICT TO ESTABLISH AND TEMPORARILY TRANSFER DISTRICT FUNDS INTO INDEPENDENT INVESTMENT ACCOUNTS TO INCREASE SCHOOL BOARD CONTROL OVER INVESTMENTS; ESTABLISHING GUIDELINES FOR DISTRICT EXPENDITURES FOR INVESTMENT ACCOUNTS; AUTHORIZING A DISTRICT TO INVEST MONEY IN INVESTMENTS AUTHORIZED BY THE BOARD OF INVESTMENTS UNDER TITLE 17, CHAPTER 6, MCA; REQUIRING A DISTRICT TO COMPLY WITH THE REQUIREMENTS OF TITLE 17, CHAPTER 6, PART 1, FOR DEPOSITS IN

EXCESS OF THE AMOUNT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR THE NATIONAL CREDIT UNION ADMINISTRATION; REQUIRING A DISTRICT TO PAY THE AUTOMATED CLEARINGHOUSE SYSTEM CHARGES FOR ALL TRANSFERS MADE BY THE OFFICE OF PUBLIC INSTRUCTION; AMENDING SECTIONS 20-9-213 AND 20-9-346, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Authorization for school district investment account. (1) The trustees of a school district may establish investment accounts and may temporarily transfer into the accounts all or a portion of any of its budgeted or nonbudgeted funds. The trustees shall establish a separate account for each fund from which transfers are made.

(2) Money transferred into investment accounts established under this section may be expended from a subsidiary checking account under the conditions specified in subsection (3)(b).

(3) The district may either:

(a) establish and use the accounts as nonspending accounts to ensure that district funds remain in an interest-bearing status until money is reverted to the budgeted or nonbudgeted fund of original deposit as necessary for use by the county treasurer to pay claims against the district. The district shall ensure that sufficient money is reverted to the district's budgeted and nonbudgeted funds maintained by the county treasurer in sufficient time to pay all claims presented against the applicable funds of the district. The county treasurer shall accept all money that is reverted upon tendered transfer of the district.

(b) establish a subsidiary checking account for expenditures from the investment accounts. The district may write checks on or provide electronic payments from the account if:

(i) the payments made from the accounts representing budgeted funds are in compliance with the budget adopted by the trustees;

(ii) the accounts are subject to the audit of district finances completed for compliance with 2-7-503 and 20-9-503; and

(iii) the district complies with all accounting system requirements required by the superintendent of public instruction.

(4) (a) A district that chooses to establish a school district investment account described in this section shall enter into a written agreement with the county treasurer. The agreement must:

(i) establish specific procedures and reporting dates to comply with the requirements of subsection (3);

(ii) be binding upon the district and the county treasurer for a period of not less than 5 years;

(iii) be signed by the presiding officer of the board of trustees and the county treasurer; and

(iv) except as provided in subsection (4)(b), coincide with fiscal years beginning on July 1 and ending on June 30.

(b) An agreement that establishes a school district investment account for fiscal year 2002 must be entered into no later than October 1, 2001.

(c) The district and the county treasurer may renew an agreement, including terms and conditions on which they agree, provided that the terms and conditions comply with the provisions of this section.

(5) Except for electronic transfers of BASE aid and state advances for county equalization sent directly to a participating district's investment account under 20-9-346(3), the county treasurer shall, as required by law, continue to collect money and report to the districts that elect to establish a school district investment account.

(6) The trustees shall implement an accounting system for the investment account pursuant to rules adopted by the superintendent of public instruction. The rules for the accounting system must include but are not limited to:

(a) providing for the internal control of deposits into and transfers between a district's investment accounts and budgeted and nonbudgeted funds of the district;

(b) requiring that the principal and interest earned on the principal is allocated to the budgeted or nonbudgeted fund from which the deposit was originally made; and

(c) ensuring that other proper accounting principles are followed.

(7) All interest earned on the district's general fund deposits must be allocated for district property tax reduction as required by 20-9-141.

(8) In making deposits to investment accounts under this section, a district shall comply with the requirements of Title 17, chapter 6, part 1, with respect to deposits in excess of the amount insured by the federal deposit insurance corporation or the national credit union administration, as applicable.

(9) A district establishing investment accounts under the section shall pay the automated clearinghouse system charges for all automated clearinghouse transfers made by the office of public instruction to the district's accounts.

Section 2. Section 20-9-213, MCA, is amended to read:

"**20-9-213. Duties of trustees.** The trustees of each district have the authority to transact all fiscal business and execute all contracts in the name of the district. A person other than the trustees acting as a governing board may not expend money of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school money for each fund *and account* maintained by the district in accordance with generally accepted accounting principles and the rules prescribed by the superintendent of public instruction. The record of the accounting must be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district money and cause warrants *or checks, as applicable,* to be issued for the payment of lawful obligations;

(3) issue warrants *or checks, as applicable,* on any budgeted fund in anticipation of budgeted revenue, except that the expenditures may not exceed the amount budgeted for the fund;

(4) invest any money of the district, whenever in the judgment of the trustees the investment would be advantageous to the district, ~~by~~ either *by* directing the county treasurer to invest any money of the district or by directly investing the

money of the district in eligible securities, as identified in 7-6-202, in savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC or NCUA located in the state, or in a repurchase agreement that meets the criteria provided for in 7-6-213. All interest collected on the deposits or investments must be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds must be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer is not subject to ratable distribution laws and must be done in accordance with the directive from the board of trustees. A district may invest money under the state unified investment program established in Title 17, chapter 6, or in a unified investment program with the county treasurer, with other school districts, or with any other political subdivision if the unified investment program is limited to investments that meet the requirements of this subsection (4), *including those investments authorized by the board of investments under Title 17, chapter 6*. A school district that enters into a unified investment program with another school district or political subdivision other than the state shall do so under the auspices of and by complying with the provisions governing interlocal cooperative agreements authorized under Title 7, chapter 11, and educational cooperative agreements authorized under Title 20, chapter 9, part 7. A school district ~~shall~~ either *shall* contract for investment services with any company ~~licensed to do business in Montana under~~ *complying with* the provisions of Title 30, chapter 10, or shall contract with the state board of investments for investment services.

(5) cause the district to record each transaction in the appropriate account before the accounts are closed at the end of the fiscal year in order to properly report the receipt, use, and disposition of all money and property for which the district is accountable;

(6) report annually to the county superintendent, not later than August 15, the financial activities of each fund maintained by the district during the last-completed school fiscal year, on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts must be submitted not later than September 1 to the county superintendent of each county in which part of the joint district is situated.

(7) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(8) cause the accounting records of the district to be audited as required by 2-7-503; and

(9) perform, in the manner permitted by law, other fiscal duties that are in the best interests of the district."

Section 3. Section 20-9-346, MCA, is amended to read:

"20-9-346. Duties of superintendent of public instruction for state and county equalization aid distribution. The superintendent of public instruction shall administer the distribution of the state and county equalization aid by:

(1) establishing the annual entitlement of each district and county to state and county equalization aid, based on the data reported in the retirement, general fund, and debt service fund budgets for each district that have been

adopted for the current school fiscal year and verified by the superintendent of public instruction;

(2) for the purposes of state advances and reimbursements for school facilities, limiting the distribution to no more than the amount appropriated for the school fiscal year to the districts that are eligible under the provisions of 20-9-366 through 20-9-371 by:

(a) determining the debt service payment obligation in each district for debt service on bonds that were sold as provided in 20-9-370(3) that qualify for a state advance or reimbursement for school facilities under the provisions of 20-9-366 through 20-9-369 and 20-9-370;

(b) based on the limitation of state equalization aid appropriated for debt service purposes, determining the state advance for school facilities and the proportionate share of state reimbursement for school facilities that each eligible district must receive for the school fiscal year; and

(c) distributing that amount by May 31 of each school fiscal year to each eligible district for reducing the property tax for the debt service fund for the ensuing school fiscal year~~.~~;

(3) distributing by electronic transfer the BASE aid and state advances for county equalization, for each district or county entitled to the aid, to the county treasurer of the respective county for county equalization or to the county treasurer of the county where the district is located *or to the investment account identified by the applicable district* for BASE aid, in accordance with the distribution ordered by the board of public education;

(4) keeping a record of the full and complete data concerning money available for state equalization aid, state advances for county equalization, and the entitlements for BASE aid of the districts of the state;

(5) reporting to the board of public education the estimated amount that will be available for state equalization aid; and

(6) reporting to the office of budget and program planning, as provided in 17-7-111:

(a) the figures and data available concerning distributions of state and county equalization aid during the preceding 2 school fiscal years;

(b) the amount of state equalization aid then available;

(c) the apportionment made of the available money but not yet distributed;

(d) the latest estimate of accruals of money available for state equalization aid; and

(e) the amount of state advances and repayment for county equalization."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 9, part 2, and the provisions of Title 20, chapter 9, part 2, apply to [section 1].

Section 5. Effective date — applicability. [This act] is effective on passage and approval and applies to the transfer of funds on or after [the effective date of this act].

Approved April 5, 2001

CHAPTER NO. 206

[HB 131]

AN ACT ALLOWING THE DEPARTMENT OF TRANSPORTATION TO STOP AND INSPECT DIESEL-POWERED MOTOR VEHICLES FOR THE PRESENCE OF NONTAXED, DYED DIESEL FUEL IN THEIR SUPPLY TANKS; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO REPORT TO THE REVENUE AND TAXATION INTERIM COMMITTEE; AMENDING SECTION 61-10-141, MCA; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-141, MCA, is amended to read:

"61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads — enforcement of motor carrier safety standards — duty to obtain bills of lading for agricultural seeds — ***authority to inspect diesel-powered vehicles.*** (1) A peace officer, officer of the highway patrol, or employee of the department of transportation may weigh any vehicle regulated by 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110, except recreational vehicles as defined in 61-1-132, by means of either portable or stationary scales~~;~~ and may require that the vehicle be driven to the nearest scales if those scales are within 2 miles. That person may then require the driver to unload at a designated facility that portion of the load necessary to decrease the weight of the vehicle to conform to the maximum allowable weights specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110. If the excess weight does not exceed 10,000 pounds, an excess weight permit may be issued in accordance with 61-10-121. The permit authorizes the driver of the excess weight load to proceed to a designated facility where the load can be safely reduced to legal limits.

(2) Commodities and material unloaded as required by this section must be cared for by the owner or operator of the vehicle at the risk of that owner or operator. Commodities or material unloaded as required by this section may not be left on the highway right-of-way.

(3) The department of transportation may establish, maintain, and operate weigh stations, either intermittently or on a continuous schedule, and may require vehicles, except passenger cars and pickup trucks under 14,000 pounds GVW and recreational vehicles as defined in 61-1-132 (that are not new or used recreational vehicles traveling into or through Montana for delivery to a distributor or a dealer), to enter for the purpose of weighing and inspection for compliance with all laws pertaining to their operation and safety requirements. The department may require vehicles over 10,000 pounds to be inspected and weighed by portable scale crews.

(4) The department of transportation shall work with the highway patrol in the enforcement of safety standards adopted pursuant to 44-1-1005. For the purposes of the joint enforcement, the highway patrol is designated as the lead agency. The highway patrol and the department of transportation shall cooperate to ensure minimum duplication and maximum coordination of enforcement effort.

(5) In order to enforce compliance with safety standards adopted pursuant to 44-1-1005, the department of transportation shall designate employees as peace

officers. The designated employees must be employed in the administration of the motor carrier services functions of the department of transportation. Each employee designated as a peace officer may:

(a) issue citations and make arrests in connection with violations of safety standards adopted under 44-1-1005;

(b) issue summons;

(c) accept bail;

(d) serve warrants for arrest;

(e) make reasonable inspections of cargo carried by commercial motor vehicles;

(f) make reasonable safety inspections of commercial motor vehicles used by motor carriers; and

(g) require production of documents relating to the cargo, driver, routing, or ownership of the commercial motor vehicles.

(6) In addition to other enforcement duties assigned under this section, an employee of the department of transportation *who is appointed pursuant to 61-12-201* has:

(a) the same authority to enforce provisions of the motor carriers law as that granted the public service commission under 69-12-203; ~~and~~

(b) the duty to secure or make copies, or both, of all bills of lading or other evidence of delivery for shipment of agricultural seeds as defined in 80-5-120 that have been sold or are intended for sale in Montana and to forward the copies to the department of agriculture within 24 hours of the date the bill of lading was obtained*; and*

(c) the authority, if probable cause exists, to stop and inspect a supply tank connected to the engine of any diesel-powered motor vehicle operating on the public highways of this state in order to determine compliance with Title 15, chapter 70, part 3.

(7) The department of transportation shall report to the revenue and taxation interim committee at least once each year on its enforcement, pursuant to the authority provided in subsection (6)(c), of the provisions of Title 15, chapter 70, part 3, and on any impacts that enforcement has had on the state special revenue fund."

Section 2. Termination. [This act] terminates July 1, 2003.

Approved April 6, 2001

CHAPTER NO. 207

[HB 363]

AN ACT REVISING THE LAWS RELATING TO MOTOR VEHICLES AND MOTOR CARRIER SAFETY; CONFORMING MOTOR CARRIER SAFETY STANDARDS TO FEDERAL REGULATIONS; CLARIFYING THE ENFORCEMENT AUTHORITY OF THE HIGHWAY PATROL REGARDING MOTOR CARRIER SAFETY; REQUIRING A COURT TO REPORT CONVICTIONS OF VIOLATIONS OF MOTOR CARRIER SAFETY

STANDARDS TO THE DEPARTMENT OF JUSTICE; DEFINING "FOR-HIRE MOTOR CARRIER", "GROSS COMBINATION WEIGHT RATING", "GROSS VEHICLE WEIGHT RATING", AND "PRIVATE MOTOR CARRIER"; PROHIBITING THE DEPARTMENT OF JUSTICE FROM ISSUING A RESTRICTED PROBATIONARY LICENSE UNDER CERTAIN CIRCUMSTANCES; CLARIFYING THE LICENSE EXEMPTION FOR A NONRESIDENT COMMERCIAL MOTOR VEHICLE OPERATOR; CLARIFYING THE SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE; REQUIRING THE DEPARTMENT OF JUSTICE TO CONDUCT A FEDERAL RECORDS CHECK BEFORE EXAMINING AN APPLICANT FOR A DRIVER'S LICENSE; REQUIRING THE DEPARTMENT OF JUSTICE TO CONDUCT A FEDERAL RECORDS CHECK BEFORE RENEWING A DRIVER'S LICENSE; PROHIBITING THE DEPARTMENT OF JUSTICE FROM RENEWING A DRIVER'S LICENSE BY MAIL IF A FEDERAL RECORDS CHECK SHOWS AN INELIGIBLE LICENSE STATUS FOR THE APPLICANT; PROHIBITING A PERSON WITH A REVOKED OR SUSPENDED LICENSE FROM HAVING A LICENSE RESTORED BEFORE THE REVOCATION OR SUSPENSION PERIOD IS COMPLETED; AMENDING THE PER SE OFFENSE TO INCLUDE OPERATING A COMMERCIAL MOTOR VEHICLE WITH AN ALCOHOL CONCENTRATION OF 0.04 OR MORE; CONFORMING COMMERCIAL DRIVER LICENSING LAWS TO FEDERAL LAWS; SPECIFYING THE TIME PERIODS FOR WHICH A COMMERCIAL DRIVER'S LICENSE MUST BE SUSPENDED; SPECIFYING VIOLATIONS FOR WHICH A COMMERCIAL DRIVER'S LICENSE MUST BE SUSPENDED; EXPANDING THE DEFINITION OF "SERIOUS TRAFFIC VIOLATION" TO INCLUDE VIOLATIONS OF COMMERCIAL DRIVER'S LICENSE LAWS; REQUIRING A PERSON TO SURRENDER A COMMERCIAL DRIVER'S LICENSE AFTER CONVICTION FOR CERTAIN VIOLATIONS OF COMMERCIAL MOTOR VEHICLE SAFETY LAWS; CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF JUSTICE REGARDING SUSPENSION AND REVOCATION OF DRIVERS' LICENSES; AMENDING SECTIONS 44-1-1005, 61-1-134, 61-2-302, 61-5-104, 61-5-105, 61-5-110, 61-5-111, 61-5-208, 61-8-406, 61-8-801, 61-8-802, 61-8-803, 61-8-805, 61-8-811, AND 61-11-101, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-1-1005, MCA, is amended to read:

"**44-1-1005. Motor carriers safety — enforcement — violations.** (1) The department of justice shall~~:~~

~~(a)~~ adopt, by rule, standards for safety of operations of*:*

(a) any for-hire motor carrier or any private motor ~~carriers, each of whom is considered to consent impliedly to reasonable safety inspections of its motor vehicles used in furtherance of its business as a motor~~ carrier;

(b) ~~provide standards for the safe operation of all~~ *any* motor ~~vehicles~~ *vehicle or vehicle combination* used in *interstate* commerce that ~~exceed 26,000 pounds~~ *has a gross vehicle weight rating, gross combination weight rating,* gross vehicle weight, *or gross combination weight, whichever is greater, of 10,001 pounds or more;*

(c) any motor vehicle or vehicle combination used in intrastate commerce that has a gross vehicle weight rating, gross combination weight rating, gross vehicle

weight, or gross combination weight, whichever is greater, of 26,001 pounds or more and that is not a ~~except~~ farm ~~vehicles~~ *vehicle operating solely in Montana*; ~~and~~

~~(c) provide for the safe operation of vehicles of less than 26,000 pounds gross vehicle weight~~

(d) any motor vehicle that ~~are~~ *is* designed *or used* to transport ~~more than 15~~ *at least 16* passengers, including the driver, *and is not used to transport passengers for compensation;*

(e) any motor vehicle that is designed or used to transport at least nine passengers, including the driver, for compensation; or

(f) any motor vehicle that ~~are~~ *is* used to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with ~~rules adopted by the department~~ *federal hazardous materials regulations in 49 CFR, part 172.*

(2) Standards of safety adopted ~~pursuant to subsections (1)(b) and (1)(c) must be the same as prescribed for motor carriers, and the same inspection standards and procedures apply~~ *under this section must substantially comply, within allowed tolerance guidelines, to the federal motor carrier safety regulations and the federal hazardous material regulations as applied to motor carriers and vehicles transporting passengers or property in commerce.*

(3) The highway patrol has responsibility for enforcement of standards adopted pursuant to ~~subsection (1)(a)~~ *this section*. Inspection of a vehicle based in Montana may, at the request of the carrier, be made at the place of business or domicile of the vehicle owner or, if that is not a practicable inspection site, at a designated location and at a mutually agreeable time. After inspection, a vehicle found to conform to the standards adopted pursuant to ~~subsection (1)(a)~~ *this section* is entitled to certification and identification to exempt it from further safety inspection until the next required periodic inspection or until a nonconformity with standards is apparent. ~~Nothing in this~~ *This* section ~~prohibits~~ *does not prohibit* the inspection of a motor vehicle, as provided for by ~~subsection (1)(a)~~ *this section,* at a safe location on a public road.

(4) The department shall cooperate with the department of transportation to ensure minimum duplication and maximum coordination of enforcement effort.

(5) The department may designate and train civilian employees as inspectors within the motor carrier safety assistance program. Each civilian inspector is a peace officer whose jurisdiction is limited to enforcement of violations of Title 61, chapters 5 and 9, and any standards adopted pursuant to ~~subsections (1) and (2) of~~ this section. Each employee designated as a peace officer may:

(a) issue citations and make arrests;

(b) issue summonses;

(c) accept bail;

(d) serve warrants of arrest;

(e) make reasonable inspections of cargo carried by commercial motor vehicles;

(f) make reasonable safety inspections of commercial motor vehicles; and

(g) require production of documents relating to the cargo, driver, routing, maintenance, or ownership of commercial motor vehicles.

(6) Violations of the standards adopted pursuant to ~~subsection (1)~~ *this section* are punishable as provided in 61-9-512, *and the court, upon conviction or forfeiture of bail that is not vacated, shall forward a record of conviction or forfeiture to the department within 5 days in accordance with 61-11-101.*

(7) As used in this section, the terms "for-hire motor carrier", "private motor carrier", "gross vehicle weight rating", and "gross combination weight rating" have the same meaning as provided in 49 CFR 390.5."

Section 2. Section 61-1-134, MCA, is amended to read:

"**61-1-134. Commercial motor vehicle defined — exceptions.** (1) Except as provided in subsection (2), "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(a) has a gross combination weight rating or~~, in the absence of a gross combination weight rating,~~ a ~~declared~~ *gross combination* weight of 26,001 pounds or more, *whichever is greater,* inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(b) has a gross vehicle weight *rating* or ~~manufacturer's rated capacity~~ *a gross vehicle weight* of 26,001 pounds or more, *whichever is greater*;

(c) is designed ~~or used~~ to transport *at least* 16 passengers ~~or more~~, including the driver;

(d) is a school bus as defined in 20-10-101; or

(e) is of any size and is used to transport any quantity or form of hazardous material required to be placarded pursuant to Title 49, Code of Federal Regulations.

(2) The following vehicles are not commercial motor vehicles:

(a) a vehicle exempt from taxation, used for firefighting, and bearing Montana tax-exempt plates;

(b) a police emergency response vehicle; or

(c) a vehicle:

(i) controlled and operated by a farmer or person employed by a farmer;

(ii) used to transport farm products, farm machinery, or farm supplies within Montana or within 150 miles of the farm headquarters; and

(iii) not used to transport goods for compensation or hire.

(3) For purposes of this section~~,~~*:*

(a) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person*;*

(b) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle; and

(c) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle."

Section 3. Section 61-2-302, MCA, is amended to read:

"61-2-302. Establishment of driver rehabilitation and improvement program — participation by offending drivers. (1) The department may establish by administrative rules a driver rehabilitation and improvement program or programs that may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

(2) Official participation in the driver rehabilitation and improvement program is limited to those persons whose license to operate a motor vehicle in the state of Montana is:

(a) subject to suspension or revocation as a result of a violation of the traffic laws of this state or, unless otherwise provided by the sentencing court, a violation of 45-5-624; or

(b) revoked and they have:

(i) completed at least 3 months of a 1-year revocation or, if revocation is for a second or subsequent violation of 61-8-401 or 61-8-406, have provided the department with proof of compliance with the ignition interlock device restriction imposed under 61-5-208; or

(ii) completed 1 year of a 3-year revocation; and

(iii) met the requirements for reobtaining a Montana driver's license.

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver improvement program and meets the eligibility requirements of subsection (2).

(4) In the event that a person's driver's license has been surrendered before the person's selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation order must be terminated and the order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) This part does not create a right to be included in any program established under this part.

(7) The department may establish a schedule of fees that may be charged those persons participating in the driver improvement and rehabilitation program. The fees must be used to help defray costs of maintaining the program.

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.

(9) *(a)* ~~The~~ *Except as provided in subsection (9)(b), the* department may issue a restricted probationary license to any person who enrolls and participates in the

driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

(b) The department may not issue a restricted probationary license that would permit an individual to drive a commercial motor vehicle during a period in which:

(i) the individual is disqualified from operating a commercial motor vehicle under state or federal law; or

(ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

(10) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to the person under this section."

Section 4. Section 61-5-104, MCA, is amended to read:

"**61-5-104. Exemptions.** (1) The following persons are exempt from licensure under this chapter:

(a) a person who is a member of the armed forces of the United States while operating a motor vehicle owned by or leased to the United States government and being operated on official business;

(b) a person who is a member of the armed forces of the United States on active duty in Montana who holds a valid license issued by another state and the spouse of the person who holds a valid license issued by another state and who is not employed in Montana, except as a member of the armed forces. If a spouse of a member of the armed forces becomes gainfully employed in Montana, the spouse must be licensed, as required by 61-5-102, within 90 days of becoming employed.

(c) a person on active duty in the armed forces of the United States and in immediate possession of a valid license issued to that person in a foreign country by the armed forces of the United States, for a period of 45 days from the date of the person's return to the United States;

(d) a person who temporarily drives, operates, or moves a road machine, farm tractor, or implement of husbandry for use in intrastate commerce on a highway;

(e) a person who is a locomotive engineer, assistant engineer, conductor, ~~brakeman~~ *brake tender*, railroad utility person, or other member of the crew of a railroad locomotive or train being operated upon rails, including operation on a railroad crossing a public street, road, or highway. A person employed as described in this subsection is not required to display a driver's license to a law enforcement officer in connection with the operation of a railroad locomotive or train within Montana.

(f) a person who temporarily drives, operates, or moves an off-highway vehicle, as defined in 23-2-801, on a forest development road in this state, as defined in 61-8-110, that has been designated and approved for off-highway vehicle use by the United States forest service if the person:

(i) is under 16 years of age but at least 12 years of age; and

(ii) at the time of driving, operating, or moving the off-highway vehicle, has in the person's possession a certificate showing the successful completion of an off-highway vehicle safety education course approved by the department of fish, wildlife, and parks and is in the physical presence of a person who possesses a license issued under this chapter.

(2) A nonresident who is at least 15 years of age and who is in immediate possession of a valid operator's license issued to the nonresident by the nonresident's home state or country may operate a motor vehicle, except a commercial motor vehicle, in this state.

(3) A nonresident ~~not otherwise exempt from the licensing requirements of 49 CFR, part 383, and~~ *who is* in immediate possession of a valid commercial driver's license issued to the nonresident by the nonresident's home ~~state or country~~ *jurisdiction, in accordance with the licensing and testing standards of 49 CFR, part 383,* may operate a commercial motor vehicle in this state.

(4) A nonresident who is at least 18 years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than 90 days in any calendar year, if the motor vehicle is registered in the home state or country of the nonresident.

(5) A driver's license issued under this chapter to a person who enters the United States armed forces, if valid and in effect at the time that the person enters the service, continues in effect so long as the service continues, unless the license is suspended, revoked, or canceled for a cause as provided by law, and for up to 30 days following the date on which the licensee is honorably separated from the service. During the 30-day period, the license is valid only when the license and the licensee's discharge, separation, leave, or furlough papers are in the licensee's immediate possession."

Section 5. Section 61-5-105, MCA, is amended to read:

"**61-5-105. Who may not be licensed.** The department may not issue a license under this chapter to a person:

(1) who is under 16 years of age unless:

(a) the person is at least 15 years of age and has passed a driver's education course approved by the department and the superintendent of public instruction; or

(b) the person is at least 13 years of age and, because of individual hardship, to be determined by the department, needs a restricted license;

(2) whose license or driving privilege is currently suspended or revoked in this or any state, *as evidenced by an ineligible status report from the national driver register, established under 49 U.S.C. 30302, or from the commercial driver's license information system, established under 49 U.S.C. 31309*;

(3) who is addicted to the use of alcohol or narcotic drugs;

(4) who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who, at the time of application, has not been restored to competency by the methods provided by law;

(5) who is required by this chapter to take an examination;

(6) who has not deposited proof of financial responsibility when required under the provisions of chapter 6 of this title;

(7) who has any condition characterized by lapse of consciousness or control, either temporary or prolonged, that is or may become chronic. However, the department may in its discretion issue a license to an otherwise qualified person

suffering from a condition if the afflicted person's attending physician attests in writing that the person's condition has stabilized and would not be likely to interfere with that person's ability to operate a motor vehicle safely and, if a commercial driver's license is involved, the person is physically qualified to operate a commercial motor vehicle under applicable state or federal regulations; or

(8) who lacks the functional ability, due to a physical or mental disability or limitation, to safely operate a motor vehicle on the highway."

Section 6. Section 61-5-110, MCA, is amended to read:

"**61-5-110. ~~Examination~~ *Records check* of applicants — *examination of applicants* — cooperative driver testing programs.** (1) *Prior to examining an applicant for a driver's license, the department shall conduct a check of the applicant's driving record by querying the national driver register, established under 49 U.S.C. 30302, or the commercial driver's license information system, established under 49 U.S.C. 31309.*

(2) The department shall examine each applicant for a driver's license or motorcycle endorsement, except as otherwise provided in this section. The examination must include a test of the applicant's eyesight, a knowledge test examining the applicant's ability to read and understand highway signs and the applicant's knowledge of the traffic laws of this state, and, except as provided in 61-5-118, a road test or a skills test demonstrating the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle, quadricycle, or motorcycle. The knowledge test or road test, or both, may be waived by the department upon certification of the applicant's successful completion of the test by a certified cooperative driver testing program, as provided in subsection ~~(2)~~ *(3)*.

~~(2)~~*(3)* The department is authorized to certify as a cooperative driver testing program any state-approved high school traffic education course offered by or in cooperation with a school district that employs an approved instructor who has current endorsement from the superintendent of public instruction as a teacher of traffic education or any motorcycle safety training course approved by the board of regents and that employs an approved instructor of motorcycle safety training and who agrees to:

(a) administer standardized knowledge and road tests required by the department to students participating in the district's high school traffic education courses or motorcycle safety training courses approved by the board of regents;

(b) certify the test results to the department; and

(c) comply with regulations of the department, the superintendent of public instruction, and the board of regents.

~~(3)~~*(4)* (a) Except as otherwise provided by law, a resident who has a valid driver's license issued by another jurisdiction may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees and successful completion of a vision examination. In addition, a resident surrendering a commercial driver's license issued by another jurisdiction shall successfully complete any examination required by federal regulations before being issued a commercial driver's license by the department.

(b) The department may require an applicant who surrenders a valid driver's license issued by another jurisdiction to submit to a knowledge and skills test if:

(i) the applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the surrendered license does not include readily discernible adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify a restriction imposed on the surrendered license.

(c) When a license from another jurisdiction is surrendered, the department shall notify the issuing agency from the other jurisdiction that the applicant has surrendered the license. If the applicant wants to retain the license from another jurisdiction for identification or other nondriving purposes, the department shall place a distinctive mark on the license, indicating that the license may be used for nondriving purposes only, and return the marked license to the applicant."

Section 7. Section 61-5-111, MCA, is amended to read:

"**61-5-111. Contents of a driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration.** (1) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing sales. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may, in its discretion, appoint an agent to sell receipts.

(2) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain a full-face photograph of the licensee in the size and form prescribed by the department; a distinguishing number issued to the licensee; the full legal name, date of birth, Montana mailing address, and a brief description of the licensee; and either the licensee's customary signature or a digital reproduction of the licensee's customary signature. The department may not use the licensee's social security number as the distinguishing number unless the licensee expressly authorizes the use. A license is not valid until it is signed by the licensee.

(3) (a) When a person applies for renewal of a driver's license, the department shall *conduct a records check in accordance with 61-5-110(1) to determine the applicant's eligibility status and shall* test the applicant's eyesight. The department may also require the applicant to submit to a knowledge and skills test if:

(i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) A person may renew a driver's license by mail if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license.

(ii) An applicant who renews a driver's license by mail shall submit to the department an approved vision examination and a medical evaluation from a licensed physician in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph or signature record of the renewal applicant from the expiring license, then the department may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department.

(iv) The term of a license renewed by mail is 4 years, and a person may not renew by mail for consecutive license terms.

(v) The department may not renew a license by mail if the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant.

(e) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a commercial driver's license if the licensee has previously submitted a written request for the notice, either at the time of initial application or of renewal of the license.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first. ~~The department may adopt rules to stagger the implementation of the conversion to an 8-year license cycle over a 4-year period.~~

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(5) Whenever the department issues an original license to a person under the age of 18 years, the license must be designated and clearly marked as a "provisional license". Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months when its records disclose that the licensee, subsequent to the issuance of the license, has been guilty of careless or negligent driving.

(6) Fees for driver's licenses are:

(a) driver's license, except a commercial driver's license — $4 a year or fraction of a year;

(b) motorcycle endorsement — 50 cents a year or fraction of a year;

(c) commercial driver's license:

(i) interstate — $5 a year or fraction of a year;

(ii) intrastate — $3.50 a year or fraction of a year.

(7) Upon receipt of notice from another jurisdiction that a person licensed under this chapter has surrendered a Montana driver's license to that jurisdiction, the department shall change the license status on the person's official driver record to "inactive". If the person returns to Montana prior to the expiration of the previously surrendered license, the department may reactivate the license for the remainder of the license term."

Section 8. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation — probationary license — ignition interlock device required on second or subsequent offense. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise permitted by law.

(2) (a) ~~A~~ *Except as provided in 61-2-302, a* person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored ~~unless the revocation was for a cause that has been removed. After the~~ *until* ~~expiration of the period of~~ the revocation or suspension *period has been completed*~~, the person may apply for a new license or endorsement as provided by law, but the department may not issue a new license or endorsement unless it is satisfied, after investigation of the driving ability of the person and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in Montana~~.

(b) When a person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a period of 1 year and, upon issuance of any restricted probationary license during the period of revocation, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device. If the 1-year period passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both, are completed.

(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

(3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license

suspension of a person who has been convicted of a violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension has expired and any required chemical dependency education course, treatment, or both, have been completed.

(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court-imposed ignition interlock restriction by, including but not limited to operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder of the time period. The department may not issue a probationary driver's license to a person whose license suspension has been reinstated because of violation of an ignition interlock restriction.

(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).

(5) The period of revocation for a person convicted of any offense that makes mandatory the revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(6) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in ~~61-8-811 and subsection (2) of this section~~ *61-8-802*."

Section 9. Section 61-8-406, MCA, is amended to read:

"**61-8-406. Operation of *noncommercial* vehicle by a person with alcohol concentration of 0.10 or more — *operation of commercial vehicle by person with alcohol concentration of 0.04 or more*.** *(1)* It is unlawful and punishable as provided in 61-8-442, 61-8-722, 61-8-723, and 61-8-731 through 61-8-734 for any person to drive or be in actual physical control of:

(a) a *noncommercial* vehicle upon the ways of this state open to the public while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or urine, is 0.10 or more; *or*

(b) a commercial motor vehicle upon the ways of this state open to the public while the person's alcohol concentration, as shown by analysis of the person's blood or breath, is 0.04 or more.

(2) Absolute liability, as provided in 45-2-104, will be imposed for a violation of this section."

Section 10. Section 61-8-801, MCA, is amended to read:

"**61-8-801. Purpose.** (1) The purpose of this part is to reduce the number of commercial motor vehicle accidents in Montana, to provide greater safety to the motoring public and others by establishing stringent criteria governing the operation of commercial motor vehicles, and to deny the privilege of operating commercial motor vehicles upon the public streets and highways to those commercial motor vehicle operators who are ~~determined to be~~ not qualified.

(2) To fulfill this purpose, the legislature intends that this part:

(a) establish criteria and procedures for the operation of commercial motor vehicles that require safety practices commensurate with the danger inherent to their operation;

(b) provide for increased administrative punishment for commercial motor vehicle operators who use alcohol while operating commercial motor vehicles;

(c) provide greater control of commercial motor vehicle operators using the streets and highways; and

(d) conform Montana's laws on commercial ~~motor vehicle operator's endorsements~~ *driver licensing* with federal regulations based on the Commercial Motor Vehicle Safety Act of 1986, Public Law 99-570, *as amended*."

Section 11. Section 61-8-802, MCA, is amended to read:

"**61-8-802. Suspension of commercial driver's license — disqualification.** (1) ~~The~~ *Except as provided in subsection (3), if the department receives notice from a court or from another licensing jurisdiction that a person holding a commercial driver's license has been convicted of any offense or conduct requiring driver disqualification under 49 U.S.C. 31310 or 49 CFR 383.51, the* department shall suspend the *person's* commercial driver's license ~~of any commercial operator if the department's records or information received from federal authorities shows that the person is disqualified under federal law~~*:*

(a) upon notice of a first conviction, for 1 year, except that if the offense occurred while operating a commercial motor vehicle transporting placardable hazardous material, the suspension must be for 3 years; or

(b) upon notice of a second conviction of the same offense or conduct, for life, subject to federal rules allowing for license reinstatement, if otherwise eligible, upon completion of a minimum suspension period of 10 years.

(2) ~~A commercial driver's license suspended pursuant to this section remains suspended for the duration of the period of disqualification under federal regulations~~ *The department is required by federal law to suspend a person's commercial driver's license upon the report of a conviction of any of the following offenses or conduct:*

(a) operating a commercial motor vehicle under the influence of alcohol or a controlled substance;

(b) leaving the scene of an accident involving a commercial motor vehicle operated by the person;

(c) using a commercial motor vehicle in the commission of a felony, other than a felony under 61-8-804;

(d) operating a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled or the person is disqualified from operating a commercial motor vehicle;

(e) causing a fatality through negligent or criminal operation of a commercial motor vehicle; or

(f) committing one of the following railroad grade crossing violations:

(i) for drivers who are not required to always stop:

(A) failing to slow down and check that the tracks are clear of an approaching train; or

(B) failing to stop before reaching the crossing if the tracks are not clear;

(ii) for drivers who are always required to stop, failing to stop before driving onto the crossing;

(iii) for all drivers:

(A) failing to have sufficient space to drive completely through the crossing without stopping;

(B) failing to obey a traffic control device or the directions of an enforcement official at the crossing; or

(C) failing to negotiate a crossing because of insufficient undercarriage clearance.

(3) *The department shall suspend the commercial driver's license of a person who is convicted of a railroad grade crossing violation for:*

(a) 60 days upon a first conviction;

(b) 120 days upon a second conviction within a 3-year period; or

(c) 1 year upon a third or subsequent conviction within a 3-year period.

(4) A person whose commercial driver's license is suspended under this section ~~due to disqualification~~:

(a) ~~may appeal the suspension as provided in 61-5-211~~ *is not eligible for a restricted probationary driver's license*; and

(b) may not operate a commercial *motor* vehicle until the suspension is lifted and the person's commercial driver's license is restored."

Section 12. Section 61-8-803, MCA, is amended to read:

"61-8-803. Suspension of commercial driver's license — serious traffic violations. (1) If the department receives notice from a court or another licensing jurisdiction that a person holding a commercial driver's license has been convicted of more than one serious traffic violation in separate incidents within a 3-year period, the department shall suspend the person's commercial driver's license:

(a) for 60 days upon receipt of notice of the second conviction; or

(b) for 120 days upon receipt of notice of the third or subsequent conviction.

(2) For purposes of this section, "serious traffic violation" means conviction, when operating a commercial motor vehicle, of:

(a) speeding in excess of 15 miles an hour above a posted speed limit;

(b) reckless driving;

(c) improper or erratic traffic lane changes;

(d) following too closely; ~~or~~

(e) a violation of a state law or local ordinance relating to the operation of a motor vehicle, excluding a parking, weight, or equipment violation, that arises in connection with a fatal accident*;*

(f) operating a commercial motor vehicle without a commercial driver's license;

(g) operating a commercial motor vehicle without a commercial driver's license in one's possession or refusing to display a commercial driver's license upon request; or

(h) operating a commercial motor vehicle when the minimum testing standards for the class of vehicle operated or the type of cargo carried have not been satisfied by the individual."

Section 13. Section 61-8-805, MCA, is amended to read:

"61-8-805. Suspension for operating commercial vehicle with alcohol concentration of 0.04 or more — hearing. (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in actual physical control of a commercial motor vehicle is subject to the suspension of the person's commercial driver's license. The peace officer who determines that the person is operating a commercial motor vehicle with an alcohol concentration of 0.04 or more shall immediately seize the person's commercial driver's license and, on behalf of the department, give the person written notice of the license suspension and the right to a hearing under 61-8-808. Upon receipt of a report certified under penalty of law from the peace officer that the person was operating a commercial motor vehicle with an alcohol concentration of 0.04 or more, the department shall suspend the license, with no provision for a restricted probationary commercial license, for:

(a) 1 year, upon receipt of the first report of a 0.04 or more alcohol concentration violation, except that if the violation occurred in a commercial motor vehicle transporting placardable hazardous materials, the suspension must be for 3 years; and

(b) life, upon receipt of a second or subsequent 0.04 or more alcohol concentration violation report at any time as determined from the records of the department, subject to federal rules allowing for driver rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

(2) A peace officer who determines that a commercial motor vehicle operator has a measured amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

(3) The fact that a person charged with a violation of the provisions of subsection (1) is entitled to use alcohol under the laws of Montana is not a defense against a charge of violating the provisions of subsection (1).

(4) For purposes of this section, a conviction for violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle must be treated as a prior report of a 0.04 or more alcohol concentration violation and must be used in determining the length of the license suspension under subsection (1)."

Section 14. Section 61-8-811, MCA, is amended to read:

"61-8-811. Suspension of commercial driver's license — duration — second or subsequent offense. Upon receiving notice pursuant to ~~61-5-208,~~ 61-8-809~~,~~ or 61-8-810, the department shall suspend ~~an operator's~~ *a person's* commercial driver's license, as follows:

(1) upon notice of a first conviction, for 1 year, with no provision for a probationary license, except that if the offense occurred while operating a commercial motor vehicle transporting hazardous material, the suspension must be for 3 years;

(2) upon notice of a second conviction, as determined from the records of the department, for life, with no provision for a restricted license unless allowed by federal rules governing commercial drivers; and

(3) upon notice of a third conviction, an operator's commercial driver's license must be suspended for life and the operator is ineligible for reinstatement."

Section 15. Section 61-11-101, MCA, is amended to read:

"**61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses.** (1) If a person is convicted of an offense for which chapter 5 *or chapter 8, part 8,* makes mandatory the suspension or revocation of the driver's license *or commercial driver's license* of the person by the department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses then held by the convicted person. The court shall, within 5 days, forward the license and a record of the conviction to the department. If the person does not possess a driver's license, the court shall indicate that fact in its report to the department.

(2) A court having jurisdiction over offenses committed under a statute of this state or a municipal ordinance regulating the operation of motor vehicles on highways shall forward a record of the conviction or forfeiture to the department within 5 days after a conviction or a forfeiture of bail that is not vacated, except for a conviction or a forfeiture of bail for a standing or parking statute or ordinance~~, and may recommend the suspension of the driver's license of the convicted person~~. The court may ~~also~~ recommend that the department issue a restricted probationary license on the condition that the individual comply with the requirement that the person attend and complete a chemical dependency education course, treatment, or both, as ordered by the court under 61-8-732. ~~The department shall issue a restricted probationary license unless the person is not entitled to a Montana driver's license. Upon issuance of a probationary license, the licensee is subject to the restrictions and may not operate a vehicle in violation of the restrictions.~~

(3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department."

Section 16. Applicability. [This act] applies to driver's licenses issued or renewed and to offenses committed after September 30, 2001.

Approved April 6, 2001

CHAPTER NO. 208

[HB 378]

AN ACT PROVIDING FUNDING FOR AN ENGINEERING AND OPERATING STUDY OF AN AMTRAK ROUTE ACROSS SOUTHERN MONTANA; CREATING A SOUTHERN AMTRAK ROUTE ACCOUNT; ALLOWING THE DEPARTMENT OF TRANSPORTATION TO ACCEPT GIFTS, GRANTS, OR DONATIONS FOR THE ACCOUNT; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Southern amtrak route account. (1) There is a southern amtrak route account in the state special revenue fund. Money deposited in the account must be used for an engineering and operating study by amtrak of a rail passenger route across southern Montana. The department of transportation shall administer the account.

(2) The department may accept gifts, grants, or donations for the engineering and operating study.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 11, part 2, and the provisions of Title 60, chapter 11, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2001.

Approved April 6, 2001

CHAPTER NO. 209

[HB 523]

AN ACT INCREASING THE BENEFIT PAYABLE TO A RETIRED VOLUNTEER FIREFIGHTER COVERED BY THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; AMENDING SECTION 19-17-404, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-17-404, MCA, is amended to read:

"**19-17-404. Amount of pension and disability benefits.** (1) (a) Each eligible member must receive pension and disability benefits as provided in this section.

(b) The base pension benefit is ~~$100~~ *$150* per month for members who are eligible for full pension benefits.

(c) Partial pension benefits are calculated by multiplying the full pension benefit ~~of $100~~ *in subsection (1)(b)* by a fraction, the numerator of which is the member's years of service and the denominator of which is 20.

(2) The disability benefit paid to eligible members is calculated in the same manner as partial pension benefits described in subsection (1)(c), except that the numerator may not be less than 10."

Section 2. Effective date. [This act] is effective July 1, 2001.

Approved April 6, 2001

CHAPTER NO. 210

[SB 10]

AN ACT GENERALLY REVISING THE LAWS GOVERNING INTERIM COMMITTEES AND INTERIM COMMITTEE FUNCTIONS; PROVIDING FOR COMMITTEE REVIEW OF STATEMENTS OF REASONABLE NECESSITY FOR ADMINISTRATIVE RULES; CLARIFYING THE

ADOPTION DATE FOR AN ADMINISTRATIVE RULE; CREATING THE STATE-TRIBAL RELATIONS COMMITTEE; ASSIGNING LOCAL GOVERNMENT LIAISON RESPONSIBILITY; ASSIGNING RESPONSIBILITY FOR REVIEWING DRAFT LEGISLATION; REVISING COMMITTEE NAMES; CLARIFYING THE PROCESS FOR ASSIGNING INTERIM STUDIES; REVISING THE METHOD OF REPORTING TO THE LEGISLATURE; AMENDING SECTIONS 2-4-110, 2-4-302, 2-4-305, 2-4-306, 5-5-202, 5-5-211, 5-5-215, 5-5-216, 5-5-217, 5-5-223, 5-5-224, 5-5-225, 5-5-226, 5-5-227, 5-5-228, 5-11-106, 5-11-210, AND 75-1-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-110, MCA, is amended to read:

"**2-4-110. Departmental review of rule notices.** (1) The head of each department of the executive branch shall appoint an existing attorney, paralegal, or other qualified person from that department to review each departmental rule proposal notice, adoption notice, or other notice relating to administrative rulemaking. Notice of the name of the person appointed under this subsection and of any successor must be given to the secretary of state and the appropriate administrative rule review committee within 10 days of the appointment.

(2) The person appointed under subsection (1) shall review each notice by any division, bureau, or other unit of the department, including units attached to the department for administrative purposes only under 2-15-121, for compliance with this chapter before the notice is filed with the secretary of state. The reviewer shall pay particular attention to 2-4-302 and 2-4-305. The review must include but is not limited to consideration of:

(a) the adequacy of the ~~rationale~~ *statement of reasonable necessity* for the intended action and whether the intended action is reasonably necessary to effectuate the purpose of the code section or sections implemented;

(b) whether the proper statutory authority for the rule is cited;

(c) whether the citation of the code section or sections implemented is correct; and

(d) whether the intended action is contrary to the code section or sections implemented or to other law.

(3) The person appointed under subsection (1) shall sign each notice for which this section requires a review. The act of signing is an affirmation that the review required by this section has been performed to the best of the reviewer's ability. The secretary of state may not accept for filing a notice that does not have the signature required by this section."

Section 2. Section 2-4-302, MCA, is amended to read:

"**2-4-302. Notice, hearing, and submission of views.** (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the ~~rationale~~ *reasonable necessity* for the intended action, and the time when, place where, and manner in which interested persons may present their views on the intended action. The ~~rationale~~ *reasonable necessity* must be written in plain, easily understood language. If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

(a) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and

(b) the number of persons affected.

(2) (a) The notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312, and mailed within 3 days of publication to the sponsor of the legislative bill that enacted the section that is cited as implemented in the notice if the notice is the initial proposal to implement the section, to interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the appropriate administrative rule review committee when the request has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(b) The appropriate administrative rule review committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to the agencies that the committee oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The notice required by subsections (1) and (2)(a) must be published and mailed at least 30 days in advance of the agency's intended action. In addition to publishing and mailing the notice under subsection (2)(a), the agency shall post the notice on a state electronic access system or other electronic communications system available to the public.

(d) The agency shall also, at the time that its personnel begin to work on the substantive content and the wording of the initial rule proposal to implement one or more statutes, notify the sponsor of the legislative bill that enacted the section.

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate administrative rule review committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative Rule Review Committee" appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.

(8) For purposes of notifying sponsors under subsections (2)(a) and (2)(d) who are no longer members of the legislature, a former legislator who wishes to receive notice may keep the former legislator's name, address, and telephone number on file with the secretary of state. An agency proposing rules shall consult the register when providing sponsor notice."

Section 3. Section 2-4-305, MCA, is amended to read:

"**2-4-305. Requisites for validity — authority and statement of reasons.** (1) The agency shall fully consider written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement. A substantive rule may not be proposed or adopted unless:

(a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter of the rule as a subject upon which the agency shall or may adopt rules; or

(b) the rule implements and relates to a subject matter or an agency function that is clearly and specifically included in a statute to which the grant of rulemaking authority extends.

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency. *A statement that merely explains what the rule provides is not a statement of the reasonable necessity for the rule.*

(7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in citations of authority for rules and in citations of sections implemented by rules. An agency may use an amended proposal notice but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a statement of reasonable necessity.

(9) If a majority of the members of the appropriate administrative rule review committee notify the committee presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to the proposal notice and will address the objections at the next committee meeting. Following notice by the committee to the agency, the proposal notice may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period during which the adoption notice must be published, unless prior to that time, the committee meets and does not make the same objection. A copy of the committee's notification to the agency must be included in the committee's records."

Section 4. Section 2-4-306, MCA, is amended to read:

"2-4-306. Filing, format, and *adoption and* effective ~~date~~ *dates* — dissemination of emergency rules. (1) Each agency shall file with the secretary of state a copy of each rule adopted by it *or a reference to the rule as contained in the proposal notice. A rule is adopted on the date that the adoption notice is filed with the secretary of state and is effective on the date referred to in subsection (4), except that if the secretary of state requests corrections to the adoption notice, the rule is adopted on the date that the revised notice is filed with the secretary of state.*

(2) The secretary of state may prescribe a format, style, and arrangement for notices and rules that are filed pursuant to this chapter and may refuse to accept the filing of any notice or rule that is not in compliance with this chapter. The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing copies.

(3) In the event that the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be published with the rule.

(4) Each rule is effective after publication in the register, as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date is the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and

(ii) an emergency rule is effective at a stated date following publication in the register or immediately upon filing with the secretary of state if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons for the finding must be filed with the rule. The agency shall, in addition to the required publication in the register, take appropriate and extraordinary measures to make emergency rules known to each person who may be affected by them.

(c) if, following written administrative rule review committee notification to an agency under 2-4-305(9), the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the rule is adopted, the rule or portion of the rule objected to is not effective until the day after final adjournment of the regular session of the legislature that begins after the notice proposing the rule was published by the secretary of state, unless, following the committee's objection under 2-4-406(1):

(i) the committee withdraws its objection under 2-4-406 before the rule is adopted; or

(ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the committee members, as communicated in writing to the committee presiding officer and staff, make it comply with the committee's objection and concerns."

Section 5. Section 5-5-202, MCA, is amended to read:

"5-5-202. Interim committees. (1) During an interim when the legislature is not in session, the committees listed in subsection (2) are the interim committees of the legislature. They are empowered to sit as committees and may act in their respective areas of responsibility. The functions of the legislative council, legislative audit committee, legislative finance committee, ~~and~~ environmental quality council, *and state-tribal relations committee* are provided for in the statutes governing those committees.

(2) The following are the interim committees of the legislature:

(a) ~~business and labor~~ *economic affairs* committee;

(b) education *and local government* committee;

(c) children, families, health, and human services committee;

(d) law~~,~~ *and* justice~~, and Indian affairs~~ committee;

(e) revenue and ~~taxation~~ *transportation* committee; and

(f) state administration~~, public retirement systems,~~ and veterans' affairs committee.

(3) An interim committee or the environmental quality council may refer an issue to another committee that the referring committee determines to be more appropriate for the consideration of the issue. Upon the acceptance of the referred issue, the accepting committee shall consider the issue as if the issue were originally within its jurisdiction. If the committee that is referred an issue declines to accept the issue, the original committee retains jurisdiction.

(4) If there is a dispute between committees as to which committee has proper jurisdiction over a subject, the legislative council shall determine the most appropriate committee and assign the subject to that committee."

Section 6. Section 5-5-211, MCA, is amended to read:

"5-5-211. Appointment and composition of interim committees. (1) Senate interim committee members must be appointed by the committee on committees.

(2) House interim committee members must be appointed by the speaker of the house.

(3) Appointments to interim committees must be made by the time of adjournment of the legislative session.

(4) A legislator may not serve on more than two interim committees unless no other legislator is available or is willing to serve.

(5) (a) Subject to subsection (5)(b), the composition of each interim committee must be as follows:

(i) four members of the house, no more than two of whom may be of one political party; and

(ii) four members of the senate, no more than two of whom may be of one political party.

(b) If the committee workload requires, the legislative council may request the appointing authority to appoint one or two additional interim committee members from each political party.

(6) The membership of the interim committees must be provided for by legislative rules. The rules must identify the committees from which members are selected, and the appointing authority shall attempt to select not less than 50% of the members from the standing committees that consider issues within the jurisdiction of the interim committee. In making the appointments, the appointing authority shall take into account term limits of members so that committee members will be available to follow through on committee activities and recommendations in the next legislative session.

(7) An interim committee may~~, with the approval of the legislative council,~~ create subcommittees. Nonlegislative members may serve on a subcommittee. Unless the person is a full-time salaried officer or employee of the state or a political subdivision of the state, a nonlegislative member appointed to a subcommittee is entitled to salary and expenses to the same extent as a legislative member. If the appointee is a full-time salaried officer or employee of the state or of a political subdivision of the state, the appointee is entitled to reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503."

Section 7. Section 5-5-215, MCA, is amended to read:

"**5-5-215. Duties of interim committees.** (1) Each interim committee shall:

(a) review administrative rules within its jurisdiction;

(b) *subject to 5-5-217(3),* conduct interim studies as assigned;

(c) monitor the operation of assigned executive branch agencies with specific attention to the following:

(i) identification of issues likely to require future legislative attention;

(ii) opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and

(iii) experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action; ~~and~~

(d) review proposed legislation of assigned agencies or entities as provided in the joint legislative rules; and

~~(d)~~*(e)* accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work.

(2) Each interim committee shall prepare bills and resolutions that, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.

(3) The legislative services division shall keep accurate records of the activities and proceedings of each interim committee."

Section 8. Section 5-5-216, MCA, is amended to read:

"**5-5-216. Recommendations of ~~subcommittees~~ *committees.*** A ~~subcommittee~~ *An interim committee or a statutory committee* ~~appointed for the purpose of~~ making a study designated by the legislative council may make recommendations for legislation. These recommendations and ~~the study~~ *a* report, *if one is written,* ~~shall~~ *must* be submitted to the legislature as provided in 5-11-210."

Section 9. Section 5-5-217, MCA, is amended to read:

"**5-5-217. Selection and assignment of interim studies.** (1) Immediately following adjournment sine die, the legislative services division shall prepare a list of study requests adopted. A copy of the list must be distributed to each legislator with a request that the legislator rank the study requests in the order of importance that the legislator ascribes to them. The lists, with the priorities assigned, must be returned to the legislative services division.

(2) The legislative council shall review the priority lists returned by legislators, review estimated costs and staff assistance associated with the requested studies, and designate those studies to be assigned. In designating studies, the legislative council may combine requests as one study when the subject matter of those requests is closely related. The legislative council ~~shall group related studies together and~~ shall designate the ~~number of subcommittees~~ *interim committees and statutory committees* to be assigned *the* studies *and shall assign related studies to the same committee.*

(3) The legislative services division shall inform the ~~committee on~~ *interim* committees and *statutory committees* ~~speaker of the house~~ of those studies that have been selected and to which ~~joint subcommittee~~ *interim committee or statutory committee* each study has been assigned. ~~The committee on committees and speaker shall then proceed under 5-5-211 to appoint the subcommittees.~~ *An interim committee or a statutory committee may recommend to the legislative council that an interim study assigned to that committee should be reassigned to another interim committee or statutory committee or should not be conducted. The legislative council may adopt, reject, or modify the interim committee recommendation.*"

Section 10. Section 5-5-223, MCA, is amended to read:

"**5-5-223. ~~Business and labor~~ *Economic affairs* interim committee.** The ~~business and labor~~ *economic affairs* interim committee has administrative rule review, *draft legislation review,* program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

(1) department of agriculture;

(2) department of commerce;

(3) department of labor and industry;

(4) department of livestock;

(5) department of public service regulation; and

(6) office of the state auditor and insurance commissioner."

Section 11. Section 5-5-224, MCA, is amended to read:

"**5-5-224. Education *and local government* interim committee.** (1) *The education and local government interim committee shall act as a liaison with local governments.* The education *and local government* interim committee has administrative rule review, *draft legislation review,* program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

(a) state board of education;

(b) board of public education;

(c) board of regents of higher education; and

(d) office of public instruction.

(2) The committee shall:

(a) provide information to the board of regents in the following areas:

(i) annual budget allocations;

(ii) annual goal statement development;

(iii) long-range planning;

(iv) outcome assessment programs; and

(v) any other area that the committee considers to have significant educational or fiscal policy impact;

(b) periodically review the success or failure of the university system in meeting its annual goals and long-range plans;

(c) periodically review the results of outcome assessment programs;

(d) develop mechanisms to ensure strict accountability of the ~~revenues~~ *revenue* and expenditures of the university system;

(e) study and report to the legislature on the advisability of adjustments to the mechanisms used to determine funding for the university system, including criteria for determining appropriate levels of funding;

(f) act as a liaison between both the legislative and executive branches and the board of regents; ~~and~~

(g) encourage cooperation between the legislative and executive branches and the board of regents*;*

(h) promote and strengthen local government through recognition of the principle that strong communities, with effective, democratic governmental institutions, are one of the best assurances of a strong Montana;

(i) bring together representatives of state and local government for consideration of common problems;

(j) provide a forum for discussing state oversight of local functions, realistic local autonomy, and intergovernmental cooperation;

(k) identify and promote the most desirable allocation of state and local government functions, responsibilities, and revenue;

(l) promote concise, consistent, and uniform regulation for local government;

(m) coordinate and simplify laws, rules, and administrative practices in order to achieve more orderly and less competitive fiscal and administrative relationships between and among state and local governments;

(n) review state mandates to local governments that are subject to 1-2-112 and 1-2-114 through 1-2-116;

(o) make recommendations to the legislature, executive branch agencies, and local governing bodies concerning:

(i) changes in statutes, rules, ordinances, and resolutions that will provide concise, consistent, and uniform guidance and regulations for local government;

(ii) changes in tax laws that will achieve more orderly and less competitive fiscal relationships between levels of government;

(iii) methods of coordinating and simplifying competitive practices to achieve more orderly administrative relationships among levels of government; and

(iv) training programs and technical assistance for local government officers and employees that will promote effectiveness and efficiency in local government; and

(p) conduct interim studies as assigned."

Section 12. Section 5-5-225, MCA, is amended to read:

"**5-5-225. Children, families, health, and human services interim committee.** The children, families, health, and human services interim committee has administrative rule review, *draft legislation review,* program evaluation, and monitoring functions for the department of public health and human services and the entities attached to the department for administrative purposes."

Section 13. Section 5-5-226, MCA, is amended to read:

"**5-5-226. Law~~,~~ *and* justice~~, and Indian affairs~~ interim committee.** The law~~,~~ *and* justice~~, and Indian affairs~~ interim committee has administrative rule review, *draft legislation review,* program evaluation, and monitoring functions for the department of corrections and the department of justice and the entities attached to the departments for administrative purposes. The committee shall act as a liaison with the judiciary ~~and shall act as a liaison and forum for state and tribal relations~~."

Section 14. Section 5-5-227, MCA, is amended to read:

"**5-5-227. Revenue and ~~taxation~~ *transportation* interim committee.** The revenue and ~~taxation~~ *transportation* interim committee has administrative rule review, *draft legislation review,* program evaluation, and monitoring functions for the department of revenue and the department of transportation and the entities attached to the departments for administrative purposes."

Section 15. Section 5-5-228, MCA, is amended to read:

"**5-5-228. State administration~~, public retirement systems,~~ and veterans' affairs interim committee.** The state administration~~, public retirement systems,~~ and veterans' affairs interim committee has administrative rule review, *draft legislation review,* program evaluation, and monitoring functions *for the public employee retirement plans and* for the following executive branch agencies and the entities attached to the agencies for administrative purposes:

(1) department of administration;

(2) department of military affairs; and

(3) office of the secretary of state."

Section 16. State-tribal relations committee. There is a state-tribal relations committee. The committee is treated as an interim committee for the purposes of 5-5-211 through 5-5-214. The committee shall:

(1) act as a liaison with tribal governments;

(2) encourage state-tribal and local government-tribal cooperation;

(3) conduct interim studies as assigned pursuant to 5-5-217; and

(4) report its activities, findings, recommendations, and any proposed legislation as provided in 5-11-210.

Section 17. Section 5-11-106, MCA, is amended to read:

"**5-11-106. Authority to investigate and examine.** The legislative services division, on behalf of standing *committees,* ~~and~~ select committees, *or interim committees* and *any* subcommittees *of those committees*, may investigate and examine state governmental activities and may examine and inspect all records, books, and files of any department, agency, commission, board, or institution of the state of Montana."

Section 18. Section 5-11-210, MCA, is amended to read:

"**5-11-210. Clearinghouse for reports to legislature.** (1) For the purposes of this section, "report" means a report required by law to be given to or filed with the legislature.

(2) On or before September 1 of each year preceding the convening of a regular session of the legislature, an entity required to report to the legislature shall provide, in writing, to the ~~executive director of the legislative services division~~ *appropriate interim or statutory committee*:

(a) the final title of the report;

(b) an abstract or description of the contents of the report, not to exceed 100 words;

(c) a recommendation on how many copies of the report should be provided to the legislature;

(d) the reasons why the number of copies recommended is, in the opinion of the reporting entity, the appropriate number of copies; and

(e) an estimated cost for each copy of the report.

(3) After considering all of the information available about the report, including the number of legislators requesting copies of the report pursuant to subsection (7), the ~~legislative council or the executive director~~ *appropriate interim or statutory committee* shall, in writing, direct the reporting entity to provide a specific number of copies. The number of copies required is at the sole discretion of the ~~legislative council~~ *appropriate interim or statutory committee.* The ~~legislative council or the executive director~~ *appropriate interim or statutory committee* may require the reporting entity to mail the copies of the report.

(4) The ~~legislative council~~ *appropriate interim or statutory committee* may require that the report be submitted in an electronic format usable on the legislature's current computer hardware, in a microform, such as microfilm or microfiche, or in a CD-ROM format, meaning compact disc read-only memory.

(5) Costs of preparing and distributing a report to the legislature, including writing, printing, postage, distribution, and all other costs, accrue to the reporting agency. Costs incurred in meeting the requirements of this section may not accrue to the legislative services division.

(6) The executive director of the legislative services division shall cause to be prepared a list of all reports required to be presented to the legislature from the list of titles received under subsection (2).

(7) The executive director shall, as soon as possible following a general election, mail to each holdover senator, senator-elect, and representative-elect a list of the titles of the reports, along with the abstracts prepared pursuant to subsection (2)(b). The list must include a form on which each member or member-elect receiving the list may indicate the report or reports that the member or member-elect would like to receive.

(8) The executive director of the legislative services division shall make copies of reports requested pursuant to subsection (7) available to those members or members-elect by either requiring that copies be mailed pursuant to subsection (3) or by delivering copies of the reports during the first week of the legislative session.

(9) The executive director of the legislative services division may keep as many copies of a report as are necessary and discard the rest.

(10) The procedure outlined in this section may also be used for a report required to be made to the legislature under the Multistate Tax Compact contained in 15-1-601, the Vehicle Equipment Safety Compact contained in 61-2-201, the Multistate Highway Transportation Agreement contained in 61-10-1101, or the Western Interstate Nuclear Compact contained in 90-5-201."

Section 19. Section 75-1-324, MCA, is amended to read:

"**75-1-324. Duties of environmental quality council.** The environmental quality council shall:

(1) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret the information for the purpose of determining whether the conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to the conditions and trends;

(2) review and appraise the various programs and activities of the state agencies, in the light of the policy set forth in 75-1-103, for the purpose of determining the extent to which the programs and activities are contributing to the achievement of the policy and make recommendations to the governor and the legislature with respect to the policy;

(3) develop and recommend to the governor and the legislature state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

(4) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(5) document and define changes in the natural environment, including the plant and animal systems, and accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(6) make and furnish studies, reports on studies, and recommendations with respect to matters of policy and legislation as the legislature requests;

(7) analyze legislative proposals in clearly environmental areas and in other fields in which legislation might have environmental consequences and assist in

preparation of reports for use by legislative committees, administrative agencies, and the public;

(8) consult with and assist legislators who are preparing environmental legislation to clarify any deficiencies or potential conflicts with an overall ecologic plan;

(9) review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among the activities and with a general ecologic perspective, and suggest legislation to remedy the situations; and

(10) perform the administrative rule review, *draft legislation review*, program evaluation, and monitoring functions of an interim committee for the:

(a) department of environmental quality;

(b) department of fish, wildlife, and parks; and

(c) department of natural resources and conservation."

Section 20. Codification instruction. [Section 16] is intended to be codified as an integral part of Title 5, chapter 5, part 2, and the provisions of Title 5, chapter 5, part 2, apply to [section 16].

Section 21. Coordination instruction. *If [this act] and Senate Bill No. 137 are both passed and approved, Senate Bill No. 137 is void.*

Section 22. Effective date. [This act] is effective on passage and approval.

Approved April 6, 2001

CHAPTER NO. 211

[SB 38]

AN ACT GENERALLY REVISING THE MEDICAL SUPPORT REFORM ACT TO COMPLY WITH FEDERAL LAW REGARDING ISSUANCE OF A MEDICAL SUPPORT NOTICE; AND AMENDING SECTIONS 40-5-804, 40-5-806, AND 40-5-810, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-5-804, MCA, is amended to read:

"**40-5-804. Definitions.** For purposes of this part, the following definitions apply:

(1) "Child" means an individual, whether over or under 18 years of age, to whom or on whose behalf a legal duty of support is owed by a parent. The term includes but is not limited to a child enrolled or eligible for enrollment under a health benefit plan or individual insurance policy.

(2) "Child support guidelines" means guidelines adopted under the provisions of 40-5-209.

(3) "COBRA" means the federal Consolidated Omnibus Budget Reconciliation Act of 1985, under which dependent children of employees may continue to receive, for a limited time under specific circumstances, health plan coverage after termination of employment.

(4) "Department" means the department of public health and human services as provided for in 2-15-2201.

(5) "Health benefit plan" or "plan" means a group health benefit plan or combination of plans, other than public assistance programs, that provides medical care or benefits for a child. The term includes but is not limited to a health maintenance organization, self-funded group, *state or local government group health plan, church group plan,* medical or health service corporation, or similar plan.

(6) "Individual insurance" means health or medical insurance coverage other than a group health benefit plan or public assistance that is or may be provided individually for a child.

(7) "Medical care" means diagnosis, cure, mitigation, treatment, or prevention of disease, illness, or injury, including well baby checkups, periodic examinations, and any other undertaking for the purpose of affecting any structure or function of the body.

(8) "Medical support order" means a judgment, decree, or order, including approval of a settlement agreement issued by a tribunal of competent jurisdiction, that provides for the medical care of a child and that complies with the requirements of this part.

(9) "Obligated parent" means the parent who is required by a medical support order to provide for the medical care of a child. The obligated parent is not necessarily the same as an obligor for child support.

(10) "Parent" means a father or mother and includes a child's guardian or other adult caretaker having lawful charge of the child.

(11) "Payor" or "payor of income" means a person, firm, corporation, association, union, employer, trustee, political subdivision, state agency, or any agent thereof who pays income to a parent on a periodic basis, who has or provides individual insurance or a health benefit plan, and who is subject to the jurisdiction of this state under Rule 4B of the Montana Rules of Civil Procedure *or any employer under the Uniform Interstate Family Support Act.*

(12) "Plan administrator" means the person or entity, *including but not limited to a state or local government or church,* that assesses and collects premiums, accepts and processes claims, and pays benefits.

(13) "Primary parent" means the parent with whom the child resides for the most 24-hour periods in a plan year.

(14) "Qualified medical child support order" means an order that meets the requirements of 29 U.S.C. 1169.

(15) "Third-party custodian" means an agency or person other than a parent who:

(a) is authorized by legal process to have physical custody of a child;

(b) has actual physical custody of a child with the written consent of the parent or parents having legal custody of the child; or

(c) has actual physical custody of a child because of the parents' neglect, failure, or inability to provide for the child's support, medical care, and other needs.

(16) "Tribunal" means a court of competent jurisdiction or the department."

Section 2. Section 40-5-806, MCA, is amended to read:

"**40-5-806. Contents of medical support order.** (1) A medical support order may specify terms for individual insurance coverage and, to the extent of options within an available health benefit plan, the terms for plan coverage, including:

(a) minimum required policy limits;

(b) minimum required coverage;

(c) maximum terms for deductibles or required copayments; and

(d) other significant terms.

(2) If a child is already covered by individual insurance or a health benefit plan, if the child does not have existing coverage but coverage can be obtained under a health benefit plan that is available to the primary parent, or if the child does not have existing coverage and coverage for the child under a plan is available to the other parent, then the medical support order must require participation in that plan unless:

(a) the cost of continuing coverage or the cost of the health benefit plan is not reasonable or cost-beneficial; or

(b) another plan or individual insurance is available that will better serve the interests of the parties.

(3) If health benefit plans are available to both parents at a combined cost that is reasonable or cost-beneficial and with benefits that are complementary or compatible as primary and secondary coverage, the medical support order must require both parents to provide coverage for the child.

(4) If, at the time of the medical support order, coverage for the child in a health benefit plan is not available to either parent, the parent other than the primary parent must be required to obtain individual insurance coverage for the child. If the cost of individual insurance is not reasonable or cost-effective, the parent other than the primary parent must be required to obtain individual insurance or a health benefit plan at such time in the future that it becomes available to that parent at reasonable cost. The requirements in this subsection (4) to obtain a plan are not enforceable if:

(a) the primary parent has obtained individual insurance or a health benefit plan for the child and both parents have agreed in writing to share the costs of maintaining the coverage; or

(b) the other parent persuades the tribunal that the cost of available health benefit plans is not reasonable or cost-beneficial.

(5) If the department is providing child support enforcement services, the department shall ensure that a parent required by a medical support order to obtain a health benefit plan or individual insurance for a child is informed of any state group health benefit plan, such as the state children's health insurance plan, for which a child may be eligible. If a medical support order requiring enrollment is issued by the department or the court and a determination is made that insurance is not available at a reasonable cost, the tribunal shall notify the primary parent of the determination and of any state group health benefit plan for which a child may be eligible and may order the primary parent to submit an application to the department for enrollment of the child in a state group health benefit plan, such as the state children's health insurance plan. If the department

determines that the child is eligible, it shall enroll the child in the program pursuant to standard enrollment procedures.

~~(5)~~*(6)* This section also applies when a child is placed with a third-party custodian, unless a parent has obtained individual insurance or a plan for the child and both parents have agreed in writing to share the costs of maintaining the coverage or a parent persuades the tribunal that the cost of available individual insurance and plans is not reasonable or cost-beneficial. For purposes of this subsection, the primary parent is considered to be the parent with whom the child resided for the most 24-hour periods in the 12 months prior to placement with the third-party custodian.

~~(6)~~*(7)* The medical support order must also provide that the cost of individual insurance or the health benefit plan, any copayments and deductibles required under the coverage, and all medical expenses for the child that are not covered by individual insurance or the plan must be shared between parents in accordance with the child support guidelines. If the order fails to designate each parent's share, each parent is liable for 50% of the costs and expenses.

~~(7)~~*(8)* The costs of providing individual insurance or a health benefit plan may not be used as a direct offset to the child support obligation. However, as provided by the child support guidelines, the costs may be considered in making or modifying a child support order.

~~(8) (a) Individual insurance or a health benefit plan is presumed to be available at reasonable cost if:~~

~~(i) an amount payable for individual insurance or health benefit plan premiums does not exceed 25% of the obligated parent's total parental child support obligation when calculated under the child support guidelines without credit for the medical support obligation; or~~

~~(ii) a health benefit plan is available through an employer or other group organization for which the premium is partially or entirely paid by the employer or other group organization.~~

~~(b) The presumption under subsection (8)(a) may be rebutted by clear and convincing evidence, and the tribunal has the discretion to:~~

~~(i) order individual insurance or health benefit plan coverage when the amount of the premium may be greater than the presumptive amount; or~~

~~(ii) not order coverage when the amount of the premium is less than the presumptive amount.~~

(9) The department shall adopt rules establishing guidelines to determine whether individual insurance or a health benefit plan is presumed to be available at a reasonable cost and under what conditions the presumption may be rebutted. The rules must apply in any proceeding to establish or enforce a medical support order."

Section 3. Section 40-5-810, MCA, is amended to read:

"**40-5-810. ~~Authorization~~ *Notice of intent to enroll — order to enroll — authorization* to enroll and participate in health benefit plan — *rules*.** *(1) When a parent is required by a medical support order to obtain a health benefit plan for a child, the parent may be served with a notice of intent to enroll the child in any plan available to that parent. The notice may be issued separately or may be combined with any other notice issued under this part.*

(2) The notice must contain a statement of the:

(a) procedures to follow if the parent wishes to contest enrollment of a child in the plan;

(b) conditions under which enrollment will occur and that enrollment applies to all current and subsequent plans; and

(c) period of time within which the parent may file a request for a hearing to contest the enrollment.

(3) For notices issued by the department under this section, hearings must be contested cases under Title 2, chapter 4.

(4) The notice must be served upon the parent by certified mail or personally, including by acknowledgment of service.

(5) An order requiring enrollment of a child in a plan may be issued:

(a) at any time after the parent's time for filing a request for a hearing on the notice of intent to enroll has lapsed;

(b) as a result of a hearing that authorizes an order to enroll;

(c) upon identifying a plan that is available to the parent; or

(d) upon determining that the cost of the plan available to the parent is reasonable.

(6) An order requiring enrollment in a plan may be served on a plan administrator, an employer, or another individual or entity by certified mail or personally, including by acknowledgment of service.

~~(1)~~*(7)* A plan administrator shall enroll a child when given a medical support order *or an order to enroll the child issued under this section,* even if ~~the obligated~~ *a* parent fails to execute documents required by the plan. The parents, the department, and a third-party custodian may release to a plan provider, employer, union, or other group any information necessary to obtain or enforce medical support or to facilitate the preparation, submission, processing, verification, or payment of claims.

~~(2)~~*(8)* The signature of either parent, of an authorized representative of the department, or of a third-party custodian *or the receipt of an order to enroll the child issued under this section* authorizes the plan to receive and process claims and exercise any available options for the continuation or extension.

(9) (a) The order to enroll the child must instruct the employer to:

(i) transfer the notice and order to the plan administrator within 20 days of service or by another date specified in the order;

(ii) notify the entity issuing the order of any lapse in insurance coverage or employment;

(iii) notify the entity issuing the order when the child is enrolled;

(iv) withhold any premiums from the parent's income and transfer the premiums to the plan; and

(v) not disenroll the child except in situations specified in the order.

(b) The order to enroll the child must instruct the plan administrator to, within 40 days of receipt of the order:

(i) take steps to cover the child, to notify the employer, and to provide verification of enrollment and a plan description to the department, parents, and any third-party custodian of the child; or

(ii) provide information to the entity issuing the order concerning why coverage is not available.

(10) The department may adopt rules in conformity with federal law establishing the priority of withholdings for financial support and medical support. Regardless of the priority of withholdings, the maximum amount withheld from the parent's wages or salary, including fees, may not exceed the maximum amount permitted under the federal Consumer Credit Protection Act, 15 U.S.C. 1673.

(11) An order to enroll may be modified or replaced at any time to add a child to or remove a child from a plan, consistent with the parent's medical support obligation.

(12) The department may terminate an order to enroll issued by the department when the department is no longer authorized to enforce the parent's medical support obligation, when the parent's medical support obligation is terminated, or when the department determines that the cost of the plan to the parent is not reasonable."

Approved April 6, 2001

CHAPTER NO. 212

[SB 107]

AN ACT ALLOWING THE USE OF TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION IN MENTAL ILLNESS PROCEEDINGS AT THE DISCRETION OF THE COURT; PROVIDING FOR COSTS; AND AMENDING SECTION 53-21-132, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Use of two-way electronic audio-video communication. (1) For purposes of this chapter, a hearing that is conducted by the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard by all present, is considered to be a hearing in open court.

(2) Whenever the law requires that a respondent or patient in any of the hearings provided for in subsection (3) be present before a court, this requirement may, in the discretion of the court, be satisfied either by the respondent's or patient's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the respondent or patient, and the respondent's or patient's counsel, and the judge can see each other simultaneously and converse with each other, so that the respondent or patient and the respondent's or patient's counsel can communicate privately, and so that the respondent or patient and counsel are both present during the two-way electronic audio-video communication. A respondent or patient may request that counsel from the board of visitors be present, for consulting purposes only, if the respondent or patient is located at the state hospital.

(3) At the discretion of the court, the following hearings may be conducted through two-way electronic audio-video communication:

(a) the initial hearing provided for in 53-21-122;

(b) the detention hearing provided for in 53-21-124;

(c) the trial or hearing on a petition provided for in 53-21-126;

(d) a hearing on posttrial disposition as provided for in 53-21-127;

(e) a hearing on the extension of a commitment period as provided for in 53-21-128;

(f) a hearing on rehospitalization of a person conditionally released from an inpatient treatment facility as provided for in 53-21-197;

(g) a hearing on an extension of the conditions of release as provided for in 53-21-198.

(4) This section does not abrogate a person's rights under 53-21-115, 53-21-116, or 53-21-117. A respondent or patient, the respondent's or patient's counsel, and a friend of the respondent or patient, if any, must be informed of these rights prior to a hearing by two-way electronic audio-video communication in lieu of a hearing in person. A respondent or patient or the respondent's or patient's counsel and a friend of the respondent or patient, acting together, may waive any of the rights, as provided under 53-21-119.

(5) If a respondent or patient, the respondent's or patient's counsel, or the professional person object to two-way electronic audio-video communication in lieu of a hearing in person, the court may not allow a two-way electronic audio-video communication.

Section 2. Section 53-21-132, MCA, is amended to read:

"**53-21-132. Cost of examination and commitment.** (1) The cost of precommitment examination, detention, treatment, and taking a person who is suffering from a mental disorder and who requires commitment to a mental health facility must be paid by the county in which the person resides at the time that the person is committed. The sheriff must be allowed the actual expenses incurred in taking a committed person to the facility, as provided by 7-32-2144.

(2) The county of residence shall also pay all precommitment expenses, including transportation to a mental health facility, incurred in connection with the detention, examination, and precommitment custody of the respondent. However, the county of residence is not required to pay costs of treatment and custody of the respondent after the respondent is committed pursuant to this part. *Precommitment costs related to the use of two-way electronic audio-video communication in the county of commitment must be paid by the county in which the person resides at the time that the person is committed. The costs of the use of two-way electronic audio-video communication from the state hospital for a patient who is under a voluntary or involuntary commitment to the state hospital must be paid by the state.* The fact that a person is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to this part does not relieve a third party from a contractual obligation to pay for the cost of the examination, hospitalization, or treatment.

(3) The adult respondent or the parent or guardian of a minor shall pay the cost of treatment and custody ordered pursuant to 53-21-127, except to the extent that the adult or minor is eligible for public mental health program funds.

(4) A community service provider that is a private, nonpublic provider may not be required to treat or treat without compensation a person who has been committed."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to [section 1].

Approved April 6, 2001

CHAPTER NO. 213

[SB 146]

AN ACT CLARIFYING REQUIREMENTS FOR WATER AND WASTEWATER OPERATOR CERTIFICATION; AMENDING SECTION 37-42-102, MCA; REPEALING SECTION 37-42-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, section 37-42-102(8), MCA, currently contains three elements in the definition of a "wastewater treatment plant" and defines it as a plant that treats wastewater, that discharges an effluent directly into state waters, and that is either an industrial waste discharge system or a public sewage system as defined in section 75-6-102, MCA; and

WHEREAS, section 75-6-102(9), MCA, already defines "industrial waste discharge system" as a system that discharges industrial waste into state waters; and

WHEREAS, the current definition of "wastewater treatment plant" in section 37-42-102(8), MCA, which includes only systems that discharge directly to state waters, may restrict regulation more than is desired so that some public sewage systems might not be required to have a certified operator; and

WHEREAS, the Legislature wishes to require public sewage systems, whether or not they discharge to state waters, and systems that process industrial waste water and discharge to state waters to be operated by certified operators; and

WHEREAS, removing the requirement that a discharge to state waters is necessary from the definition of a "wastewater treatment plant" would clarify that intent; and

WHEREAS, section 37-42-103, MCA, exempts public water supplies and sewage systems serving fewer than 15 or more service connections or 25 or more people for at least 60 days of the calendar year from the requirement of having a certified operator in responsible charge; and

WHEREAS, a water supply or sewage system that does not serve 15 service connections or 25 or more people for at least 60 days of the calendar year is already excluded from the definition of a "public sewage system" and the definition of a "public water supply system" under section 75-6-102(15) and (16), MCA, and is therefore not required to have a certified operator; and

WHEREAS, industrial waste discharge systems generally do not serve 15 or more service connections or 25 or more people for at least 60 days of the calendar year, and the exemption in section 37-42-103, MCA, might be interpreted to exempt industrial waste discharge systems from needing to have certified operators; and

WHEREAS, repeal of section 37-42-103, MCA, would clarify that industrial waste discharge systems that discharge an effluent to state waters require certified operators.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-42-102, MCA, is amended to read:

"37-42-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Certificate" means a certificate of competency issued by the department, stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(2) "Community water system" means ~~the term as defined in 75-6-102~~ *a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.*

(3) "Council" means the water and wastewater operators' advisory council provided for in 2-15-2105.

(4) "Department" means the department of environmental quality provided for in 2-15-3501.

(5) "Nontransient noncommunity water system" means a public water system, as defined in 75-6-202, that is not a community system and that regularly serves at least 25 of the same persons for at least 6 months a year.

(6) "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or wastewater treatment plant.

(7) "State waters" means the term as defined in 75-6-102.

(8) "Wastewater treatment plant" means a facility that:

(a) is designed to remove solids, bacteria, or other harmful constituents of sewage, industrial wastes, or other wastes;

~~(b) discharges an effluent directly into state waters;~~ and

~~(c)~~*(b)* is part of either an industrial waste discharge system or a public sewage system as defined in 75-6-102.

(9) "Water distribution system" means that portion of the water supply system that conveys water from the water treatment plant or other supply source to the premises of the consumer and that is part of a community water system or a nontransient noncommunity water system.

(10) "Water supply system" means a system of pipes, structures, and facilities through which water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and that is part of a community water system or a nontransient noncommunity water system.

(11) "Water treatment plant" means that portion of the water supply system that alters either the physical, chemical, or bacteriological quality of the water and renders it safe and palatable for human use."

Section 2. Repealer. Section 37-42-103, MCA, is repealed.

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 6, 2001

CHAPTER NO. 214

[SB 164]

AN ACT REVISING CERTAIN PROVISIONS OF THE UNEMPLOYMENT INSURANCE LAW, THE WORKERS' COMPENSATION ACT, THE OCCUPATIONAL DISEASE ACT, AND SILICOSIS BENEFITS LAW; CLARIFYING THE BURDEN OF PROOF IN WORKERS' COMPENSATION INSURANCE COVERAGE DISPUTES WITH THE DEPARTMENT OF LABOR AND INDUSTRY; RESTORING THE EXEMPTION FROM ATTACHMENT OF UNEMPLOYMENT INSURANCE, WORKERS' COMPENSATION, OCCUPATIONAL DISEASE, AND SILICOSIS BENEFITS; REQUIRING WORKERS' COMPENSATION CLAIMS TO BE ADJUSTED BY AN IN-STATE ADJUSTER; CLARIFYING WORKERS' COMPENSATION INSURANCE COVERAGE REQUIREMENTS FOR TRUCK DRIVERS; REVISING THE WORKERS' COMPENSATION ASSESSMENT METHODOLOGY; RESTORING DISTRICT COURT JURISDICTION IN CASES INVOLVING THE FAILURE OF AN EMPLOYER TO PRODUCE BOOKS AND RECORDS; REQUIRING INSURERS TO FILE REPORTS OF MISCELLANEOUS CLAIM EXPENSES; SPECIFYING THE APPEAL PROCEDURE FOR CASES APPEALED FROM THE INDEPENDENT CONTRACTOR CENTRAL UNIT AND PROVIDING AN APPEAL TIME; CLARIFYING THAT THE WORKERS' COMPENSATION ASSESSMENT IS COMPUTED WITHOUT CONSIDERATION OF A DEDUCTIBLE; CLARIFYING THAT AN APPEAL OF A DEPARTMENT ORDER TO PAY INTERIM BENEFITS IS A NEW PROCEEDING IN THE WORKERS' COMPENSATION COURT; IDENTIFYING THE CURRENT STANDARD FOR MEASURING OCCUPATIONAL DEAFNESS; CLARIFYING THE TIME FOR CERTIFYING A CURRENT EMPLOYEE AS BEING VOCATIONALLY DISABLED; REVISING THE SUBSEQUENT INJURY FUND ASSESSMENT METHODOLOGY; ALLOWING ADDITIONAL ORGANIZATIONS TO BE DESIGNATED AS AUTHORIZED TO REPORT NOTICE OF COVERAGE; REQUIRING THE STATE FUND TO PROVIDE NOTICE OF CANCELLATION TO THE DEPARTMENT 20 DAYS PRIOR TO CANCELLATION; PROVIDING AN ADJUSTMENT IN SILICOSIS BENEFITS THAT IS CONSISTENT WITH THE APPROPRIATION LEVEL; AMENDING SECTIONS 30-9-129, 39-71-107, 39-71-117, 39-71-201, 39-71-304, 39-71-306, 39-71-415, 39-71-435, 39-71-610, 39-71-805, 39-71-906, 39-71-915, 39-71-2204, 39-71-2205, 39-71-2337, 39-71-2339, 39-72-606, 39-72-608, 39-73-103, 39-73-107, AND 39-73-109, MCA; REPEALING SECTION 39-72-605, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Burden of proof — insurance coverage. (1) In a proceeding brought by the department or an employer to resolve the issue of the existence of workers' compensation insurance coverage for that employer, the initial burden of proof is on the department to demonstrate that:

(a) the employer is required to have workers' compensation insurance coverage; and

(b) either:

(i) that the database of the recognized agent providing proof of coverage indicates that no coverage is reported by an insurer to cover the employer's Montana operations; or

(ii) that the department confirms with the insurer that reported coverage for the employer that the policy previously covering the employer's Montana operations has been canceled by that insurer.

(2) The burden then shifts to the employer to demonstrate that the employer is not required either to have workers' compensation insurance coverage or to produce a valid workers' compensation insurance policy covering the employer's Montana operations during the period of time in question. A valid workers' compensation insurance policy is one acknowledged by the insurer to be valid or adjudged to be valid by a court of competent jurisdiction.

Section 2. Section 30-9-129, MCA, is amended to read:

"**30-9-129. (Effective July 1, 2001) Scope.** (1) Except as otherwise provided in subsections (3) and (4), this chapter applies to:

(a) any transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(b) an agricultural lien;

(c) a sale of an account, chattel paper, payment intangible, or promissory note;

(d) a consignment;

(e) a security interest arising under 30-2-401, 30-2-505, 30-2-711(3), or 30-2A-508(5), to the extent provided in 30-9-130; and

(f) a security interest arising under 30-4-208 or 30-5-118.

(2) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

(3) This chapter does not apply to the extent that:

(a) a statute, regulation, or treaty of the United States preempts this chapter;

(b) another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state;

(c) a statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

(d) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under 30-5-134.

(4) This chapter does not apply to:

(a) a landlord's lien, other than an agricultural lien;

(b) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but 30-9-353 applies with respect to priority of the lien;

(c) an assignment of a claim for wages, salary, or other compensation of an employee;

(d) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(e) an assignment of accounts, chattel paper, payment intangibles, or promissory notes that is for the purpose of collection only;

(f) an assignment of a right to payment under a contract to an assignee that is also obliged to perform under the contract;

(g) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(h) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but 30-9-335 and 30-9-342 apply with respect to proceeds and priorities in proceeds;

(i) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(j) a right of recoupment or setoff, but:

(i) 30-9-360 applies with respect to the effectiveness of rights of recoupment or setoff against deposit accounts; and

(ii) 30-9-444 applies with respect to defenses or claims of an account debtor;

(k) the creation or transfer of an interest in or lien on real property, including a lease or rents ~~thereunder~~ *under the interest in real property*, except to the extent that provision is made for:

(i) liens on real property in 30-9-213 and 30-9-328;

(ii) fixtures in 30-9-354;

(iii) fixture filings in 30-9-521, 30-9-522, 30-9-532, 30-9-536, and 30-9-539; and

(iv) security agreements covering personal and real property in 30-9-604;

(l) an assignment of a claim arising in tort, other than a commercial tort claim, but 30-9-335 and 30-9-342 apply with respect to proceeds and priorities in proceeds; ~~or~~

(m) an assignment of a deposit account in a consumer transaction, except that 30-9-335 and 30-9-342 apply with respect to proceeds and priorities in proceeds*; or*

(n) an assignment of payments made to or on behalf of claimants pursuant to Title 39, chapter 51, 71, 72, or 73."

Section 3. Section 39-71-107, MCA, is amended to read:

"**39-71-107. Insurers to act promptly on claims — *in-state adjusters.*** (1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.

(2) All workers' compensation and occupational disease claims filed pursuant to the Workers' Compensation Act and the Occupational Disease Act of Montana must be adjusted by a person in Montana. For a claim to be considered as adjusted by a person in Montana, the person adjusting the claim is required to determine the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the claim, maintain an office located in Montana, and adjust Montana claims from that office. Use of a mailbox or maildrop in Montana does not constitute maintaining an office in Montana.

(3) An insurer shall maintain the documents related to each claim filed with the insurer under the Workers' Compensation Act and the Occupational Disease Act of Montana at the Montana office of the person adjusting the claim in Montana until the claim is settled. The documents may be either original documents or duplicates of the original documents and must be maintained in a manner that allows the documents to be retrieved from that office and copied at the request of the claimant or the department. Settled claim files stored outside of the adjuster's office must be made available within 48 hours of a request for the file. Electronic or optically imaged documents are permitted.

~~(2)~~*(4)* An insurer shall provide to the claimant:

(a) a written statement of the reasons that a claim is being denied at the time of denial;

(b) whenever benefits requested by a claimant are denied, a written explanation of how the claimant may appeal an insurer's decision; and

(c) a written explanation of the amount of wage loss benefits being paid to the claimant, along with an explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the initial payment of the benefit.

~~(3)~~*(5)* An insurer shall:

(a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying benefits and specifies the information needed; and

(b) pay settlements within 30 days of the date the department issues an order approving the settlement.

~~(4)~~*(6)* An insurer may not make payments pursuant to 39-71-608 or any other reservation of rights for more than 90 days without:

(a) written consent of the claimant; or

(b) approval of the department.

~~(5)~~*(7)* The department may adopt rules to implement this section.

(8) For purposes of this section, "settled claim" means a department-approved or court-ordered compromise of benefits between a claimant and an insurer or a

claim that was paid in full. The term does not include a claim in which there has been only a lump-sum advance of benefits."

Section 4. Section 39-71-117, MCA, is amended to read:

"**39-71-117. Employer defined.** (1) "Employer" means:

(a) the state and each county, city and county, city school district, and irrigation district; all other districts established by law; all public corporations and quasi-public corporations and public agencies; each person; each prime contractor; each firm, voluntary association, limited liability company, limited liability partnership, and private corporation, including any public service corporation and including an independent contractor who has a person in service under an appointment or contract of hire, expressed or implied, oral or written; and the legal representative of any deceased employer or the receiver or trustee of the deceased employer;

(b) any association, corporation, limited liability company, limited liability partnership, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association, limited liability company, limited liability partnership, or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as described in 39-71-118(1)(e), with nonprofit organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) Except as provided in chapter 8 of this title, an employer defined in subsection (1) who uses the services of a worker furnished by another person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) An interstate or intrastate common or contract motor carrier ~~doing business~~ *that maintains a place of business* in this state ~~who~~ *and* uses ~~drivers~~ *an employee or worker* in this state is considered the employer *of that employee*, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the ~~driver~~ *worker* in this state is certified as an independent contractor as provided in 39-71-401(3); or

(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation furnishing ~~drivers~~ *employees or workers* in this state to a motor carrier has obtained *Montana* workers' compensation insurance on the ~~drivers~~ *employees or workers* in Montana both at the inception of employment and during all phases of the work performed."

Section 5. Section 39-71-201, MCA, is amended to read:

"**39-71-201. Administration fund.** (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts the department is required to administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation ~~administrative~~ *administration* fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment ~~on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund~~ *of 3% of paid losses, plus administrative fines and interest provided by this section.* ~~The assessments must be 3% of the following~~

(2) For the purposes of this section, paid losses include the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act and the Occupational Disease Act *of Montana* without regard to the application of any deductible whether the employer or the insurer pays the losses:

~~(i)~~*(a)* total compensation benefits paid; and

~~(ii)~~*(b)* except for medical benefits in excess of $200,000 ~~per~~ *for each* occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

~~(2)~~*(3)* Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 1 in the form and containing the information required by the department a report of paid losses pursuant to subsection ~~(1)(b)~~ *(2).*

~~(3) An assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than $500. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to an initial assessment equal to the minimum assessment against plan No. 1 employers and plan No. 2 insurers.~~

~~(4) Payment of the assessment required by this section must be submitted by the employer or insurer under plan No. 1, plan No. 2, or plan No. 3 in:~~

~~(a) one installment made on or before July 1; or~~

~~(b) two equal installments made on or before July 1 and December 31 of each year. If an employer or insurer fails to pay the assessment required under this~~

~~section, the department may impose a fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%.~~

~~(5) (a) Beginning July 1, 2000, each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from the insurer's policyholders an amount equal to the insurer's assessment through a surcharge based on premium. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers.~~

~~(b) The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". Each assessment surcharge must be shown as a percentage of the total workers' compensation policyholder premium.~~

~~(c) The portion of the plan No. 2 assessment identified as a premium surcharge for an individual plan No. 2 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 2 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 2 insured employers during the preceding calendar year.~~

~~(d) The portion of the plan No. 3 assessment identified as a premium surcharge for an individual plan No. 3 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 3 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 3 insured employers during the preceding fiscal year.~~

~~(e) On or before March 31, 2000, and each March 31 thereafter, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the insurer assessment identified as the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.~~

~~(f) The assessment provided for in subsection (1)(b), which will be identified as a premium surcharge, must be collected at the same time and in the same manner that the premium for the coverage is collected. This premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.~~

(4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3, the state fund, shall pay a proportionate share of all costs of administering and regulating the Workers' Compensation Act and the Occupational Disease Act of Montana and the statutory occupational safety acts that the department is required to administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund. In addition, compensation plan No. 3, the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before July 1, 1990.

(5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the plan No. 1 employer or $500, whichever is greater. Any entity, other than the department, that assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the purposes of this section.

(b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled under compensation plan No. 1.

(c) Payment of the assessment provided for by this subsection (5) must be paid by the employer in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(d) If an employer fails to timely pay to the department the assessment under this section, the department may impose on the employer an administrative fine of $500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative and regulatory costs attributable to claims arising before July 1, 1990. The assessment is equal to 3% of the paid losses paid in the preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the assessment for administrative and regulatory costs that is attributable to claims arising before July 1, 1990.

(b) Payment of the assessment must be paid in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(c) If the state fund fails to timely pay to the department the assessment under this section, the department may impose on the state fund an administrative fine of $500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall pay a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be collected by each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures. The premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers'

compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon insured employers.

(b) The amount to be funded by the premium surcharge is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and 3% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in the next fiscal year.

(c) On or before April 30, 2001, and on each succeeding April 30, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge collected under this section, the department may impose on the insurer an administrative fine of $500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(e) If an employer fails to remit to an insurer the total amount due for the premium and premium surcharge, the amount received by the insurer must be applied to the premium surcharge first and the remaining amount applied to the premium due.

(f) The amount actually collected as a premium surcharge in a given year must be compared to the 3% of paid losses paid in the preceding year. Any amount collected in excess of the 3% must be deducted from the amount to be collected as a premium surcharge in the following year. The amount collected that is less than the 3% must be added to the amount to be collected as a premium surcharge in the following year.

(8) On or before April 30, 2001, and on each succeeding April 30, upon a determination by the department, an insurer under compensation plan No. 2 that pays benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment equal to 3% of paid losses paid in the preceding calendar year, subject to a minimum assessment of $500, that is due on July 1.

(9) An employer that makes a first-time application for permission to enroll under compensation plan No. 1 shall pay an assessment of $500 within 15 days of being granted permission by the department to enroll under compensation plan No. 1.

(10) The department shall deposit all funds received pursuant to this section in the state treasury, as provided in this section.

~~(6)~~*(11)* The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, ~~as amended,~~ incurred while on the business of the department either within or without the state.

~~(7)~~*(12)* Disbursements from the administration money must be made after being approved by the department upon claim for disbursement.

(13) The department may assess and collect the workers' compensation regulatory assessment surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage requirements of the Workers' Compensation Act and the Occupational Disease Act of Montana. Any amounts collected by the department pursuant to this subsection must be deposited in the workers' compensation administration fund."

Section 6. Section 39-71-304, MCA, is amended to read:

"**39-71-304. Books, records, and payrolls to be open to inspection — penalty for refusal — subpoenas.** (1) The books, records, and payrolls of an employer pertinent to the administration of this chapter must always be open to inspection by the department or any authorized employee of the department for the purpose of ascertaining the correctness of the payroll, the number of workers employed, and other information that may be necessary for the department and its management under this chapter. Refusal on the part of an employer to submit the books, records, and payrolls for inspection will subject the offending employer to a penalty not exceeding $500 for each offense, to be collected through a ~~workers' compensation court~~ *civil* action in the name of the state and paid into the state treasury.

(2) In addition to the remedy provided in subsection (1), the department may issue subpoenas and compel testimony for the production of evidence, including books, records, papers, documents, and other objects ~~as~~ *that* may be necessary and proper in regard to any investigation or proceeding under this chapter. In the case of disobedience of a subpoena issued and served or the refusal of a witness to testify as to any matter for which the witness may be interrogated in a proceeding before the department, the department may apply to ~~the workers' compensation~~ *a district* court for an order to compel compliance with the subpoena or testimony. Disobedience of the court's order constitutes contempt of court."

Section 7. Section 39-71-306, MCA, is amended to read:

"**39-71-306. Insurers to file summary reports of benefits paid for injuries, *miscellaneous expenses*, and statements of medical expenditures.** *(1)* ~~Every~~ *Each* insurer shall, on or before the 15th day after each state government fiscal quarter *ends*, file with the department:

~~(1)~~*(a)* summary reports of benefits for all compensation payments made during the previous state fiscal quarter to injured workers or their beneficiaries or dependents; ~~and~~

~~(2)~~*(b)* statements showing the amounts expended during the previous state fiscal quarter for all medical services for injured workers~~.~~*; and*

(c) statements showing all miscellaneous amounts, other than compensation and medical expenditures, paid during the previous state fiscal quarter to or on behalf of injured workers or their beneficiaries or dependents and not otherwise

reported as an expenditure for the workers' compensation administration assessment provided for in 39-71-201.

(2) An insurer that fails to file the summary report after a 5-day grace period after the date on which the report is due may be assessed a penalty in an amount of not less than $250 or more than $1,000 to be deposited in the workers' compensation administration fund."

Section 8. Section 39-71-415, MCA, is amended to read:

"**39-71-415. Procedure for resolving disputes regarding independent contractor status.** (1) If an individual, employer, or insurer has a dispute as to whether an individual is an independent contractor or an employee, as defined in this chapter, any party may, after mediation pursuant to department rules, petition the workers' compensation court for resolution of the dispute.

(2) If a claimant and insurer have a dispute over benefits and the dispute involves an issue of whether the claimant is an independent contractor or employee, as defined in this chapter, and after mediating pursuant to department rule, either party may petition the workers' compensation judge for resolution of the dispute in accordance with 39-71-2905.

(3) A dispute between an employer and the department involving the issue of whether a worker is an independent contractor or an employee, but not involving workers' compensation benefits, must be brought before the independent contractor central unit of the department for resolution. A decision of the independent contractor central unit is final unless a party dissatisfied with the decision appeals by filing a petition for mediation within 10 days of service of the decision. A party may petition the workers' compensation court for resolution of the dispute within 45 days of the mailing of the mediator's report. An appeal from the independent contractor central unit to the workers' compensation court brought pursuant to this part is a new proceeding.

~~(3)~~*(4)* Notwithstanding the provisions of subsection (1), an individual may apply to the department for an exemption from the Workers' Compensation Act in accordance with 39-71-401."

Section 9. Section 39-71-435, MCA, is amended to read:

"**39-71-435. Workers' compensation and employers' liability insurance — optional deductibles.** (1) An insurer issuing a workers' compensation or an employer's liability insurance policy may offer to the policyholder, as part of the policy or by endorsement, optional deductibles for benefits payable under the policy consistent with the standards contained in subsection (3).

(2) The advisory organization designated under 33-16-1023 may develop and file a deductible plan or plans on behalf of its members consistent with the standards contained in subsection (3).

(3) The commissioner of insurance shall approve a deductible plan that is in accordance with the following standards:

(a) Claimants' rights are properly protected and claimants' benefits are paid without regard to the deductible.

(b) Premium reductions reflect the type and level of the deductible, consistent with accepted actuarial standards.

(c) Premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount.

(d) Recognition is given to policyholder characteristics, including but not limited to size, financial capabilities, nature of activities, and number of employees.

(e) The policyholder is liable to the insurer for the deductible amount in regard to benefits paid for compensable claims.

(f) The insurer pays all of the deductible amount applicable to a compensable claim to the person or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable deductible amount.

(g) Failure by the policyholder to reimburse deductible amounts to the insurer is treated under the policy as nonpayment of premium.

(h) Losses subject to the deductible must be reported and recorded as losses for purposes of calculating rates for a policyholder on the same basis as losses under policies providing first dollar coverage.

(4) The state compensation insurance fund, plan No. 3, may adopt the plan filed by the designated advisory organization or adopt an optional deductible plan that meets the requirements of this section.

(5) For purposes of 39-71-201 *and 39-71-915*, liability for assessments must be ascertained ~~based on premiums collected, in the case of policies written under plan No. 2, or on the assessment levied, in the case of policies written under plan No. 3, for which the policyholder would have been obligated without the deductible~~ *without regard to application of any deductible, whether the employer or the insurer pays the losses*. For all other taxes and assessments based on premium, the amount of premium or assessment must be determined after application of the deductible."

Section 10. Section 39-71-610, MCA, is amended to read:

"**39-71-610. Termination of benefits by insurer — department order to pay disputed benefits prior to hearing or mediation — limitation on order — right of reimbursement.** If an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant, the department may, upon written request, order an insurer to pay additional biweekly compensation benefits prior to a hearing before the workers' compensation court or prior to mediation, but ~~in no event may~~ the biweekly compensation benefits *may not* be ordered to be paid under this section for a period exceeding 49 days or for any period subsequent to the date of the hearing or mediation. A party may appeal this order to the workers' compensation court. *A proceeding in the workers' compensation court brought pursuant to this section is a new proceeding and is not subject to mediation.* If after a hearing before the workers' compensation court it is held that the insurer was not liable for the compensation payments ordered by the department, the insurer has the right to be reimbursed for the payments by the claimant."

Section 11. Section 39-71-805, MCA, is amended to read:

"**39-71-805. Determining percent of hearing loss.** (1) The percent of hearing loss, for purposes of the determination of compensation claims for occupational deafness, ~~shall~~ *must* be calculated as the average in decibels of the thresholds of hearing for the frequencies of 500, 1,000, and 2,000 cycles ~~per~~ *a* second. Pure tone air conduction audiometric instruments, approved by nationally recognized authorities in this field, ~~shall~~ *must* be used for measuring hearing loss. If the losses of hearing average 25 decibels or less in the three frequencies, as measured under ~~ISO Standard 1964~~ *American national standards institute ANSI/S3.6, 1996*, ~~such~~ *the* losses of hearing ~~shall~~ *may* not then constitute any compensable hearing disability. If the losses of hearing average 92 decibels or more in the three frequencies, as measured under ~~ISO Standard 1964~~ *ANSI/S3.6, 1996*, then ~~the same shall~~ *those losses* constitute ~~and be~~ total or 100% compensable hearing loss.

(2) In measuring hearing impairment, the lowest measured losses in each of the three frequencies ~~shall~~ *must* be added together and divided by three to determine the average decibel loss. For every decibel of loss exceeding 25 decibels, an allowance of 1 1/2% ~~shall~~ *must* be made, up to the maximum of 100%, which is reached at 92 decibels.

(3) In determining the binaural percentage of loss, the percentage of impairment in the better ear ~~shall~~ *must* be multiplied by five. The resulting figure ~~shall~~ *must* be added to the percentage of impairment in the poorer ear and the sum of the two divided by six. The final percentage ~~shall~~ *must* be representative of the binaural hearing impairment.

(4) Before determining the percentage of hearing impairment, in order to allow for the average amount of hearing loss from nonoccupational causes found in the population at any given age, ~~there shall be deducted from the total average decibel loss~~ one-half decibel for each year of the employee's age over 40 at the time of last exposure to industrial noise *must be deducted from the total average decibel loss.*

(5) ~~No consideration shall~~ *Consideration may not* be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid."

Section 12. Section 39-71-906, MCA, is amended to read:

"**39-71-906. Employer hiring or retaining certified person with a disability to file information with department — effect of failure to file.** Upon commencement of employment or retention in employment of a certified person with a disability, the employer shall submit to the department, on forms furnished by the department, all pertinent information requested by the department. The department shall acknowledge receipt of the information. Failure to file the required information with the department within 60 days after the first day of the person's employment or ~~retention in employment~~ *within 60 days of a current employee's certification as an individual with a disability* precludes the employer from the protection and benefits of this part unless the information is filed before an injury for which benefits are payable under this part."

Section 13. Section 39-71-915, MCA, is amended to read:

"**39-71-915. Assessment of ~~insurers~~ *insurer — employers* — definition — *collection*.** (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Montana Workers' Compensation Act *and the Occupational Disease Act of Montana* without regard to the application of any deductible, regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of $200,000 ~~per~~ *for each* occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each *employer insured by a* plan No. 2 insurer, *plan No. 3, the state fund, with respect to claims arising before July 1, 1990,* and *each employer insured by* plan No. 3, the state fund. The assessment amount is the total amount of paid losses reimbursed from the fund in the preceding calendar year and the expenses of administration less other income. The total assessment amount *to be* collected must be allocated among plan No. 1 employers, plan No. 2 ~~insurers~~ *employers,* ~~and~~ plan No. 3, the state fund, *and plan No. 3 employers,* based on *a proportionate share of* paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before ~~March 31~~ *April 30* each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed ~~against the employer, plan No. 2 insurer, or the state fund~~ for ~~that calendar~~ *the ensuing fiscal* year. *The amount to be assessed against the state fund must separately identify the amount attributed to claims arising before July 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990.* On or before ~~March 31~~ *April 30* each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

~~(5) The portion of the plan No. 2 assessment subject to premium surcharge for an individual plan No. 2 insured employer is a proportionate amount of total plan No. 2 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 2 insured employer bore to the total paid losses of all plan No. 2 insurers during the preceding calendar year.~~

~~(6) The portion of the state fund assessment subject to premium surcharge for a state fund insured employer is a proportionate amount of total state fund paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual state fund insured employer bore to the total paid losses of state fund insured employers during the preceding calendar year.~~

(5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund assessment that is attributable to claims arising before July 1, 1990.

(6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).

~~(7) Payment of assessments due must be made to the department semiannually on June 30 and December 31 of the year following the calendar year on which the assessment is based.~~

~~(8)~~*(7)* Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from its policyholders the assessment *premium surcharge provided for* in subsection ~~(2)~~ *(6)*. When collected, ~~assessments~~ *the assessment premium surcharge* may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment *premium surcharge* must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment *premium surcharge* must be shown as a percentage of the total workers' compensation policyholder premium. This *assessment* premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The *assessment* premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the *assessment* premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium. *If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge first and the remaining amount applied to the premium due.*

~~(9)~~*(8) (a)* All assessments paid to the department must be deposited in the fund.

(b) Each plan No. 1 employer shall pay its assessment by July 1.

(c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter by not later than 20 days following the end of the quarter.

(d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1, 1990, by July 1.

(e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the fund.

(9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7) must be compared each year to the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or

overcollected in any given year must be used as an adjustment to the numerator provided for by subsection (6) for the following year's assessment premium surcharge."

Section 14. Section 39-71-2204, MCA, is amended to read:

"**39-71-2204. Insurer to submit notice of coverage within thirty days — penalty for failure.** (1) The insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and other information that may be required by the department.

(2) The department ~~may~~:

(a) *may* recognize the advisory organization designated under 33-16-1023 *or recognize other organizations* as ~~an agent~~ *agents* for authorized workers' compensation insurers in Montana; and

(b) *shall,* under terms and conditions acceptable to the department, accept notice of coverage received from the ~~advisory organization designated under 33-16-1023~~ *agents recognized under subsection (2)(a)* as the insurer's notice of coverage.

(3) The department may, in its discretion, assess a penalty of no more than $200 against an insurer that as a general business practice does not comply with the 30-day notice requirement set forth in subsection (1)."

Section 15. Section 39-71-2205, MCA, is amended to read:

"**39-71-2205. Policy in effect until canceled or replaced — twenty-day notification of cancellation required — penalty.** (1) The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the department at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

(2) The department ~~may~~:

(a) *may* recognize the advisory organization designated under 33-16-1023 *or recognize other organizations* as ~~an agent~~ *agents* for authorized workers' compensation insurers in Montana; and

(b) *shall,* under terms and conditions acceptable to the department, accept notice of cancellation received from the ~~advisory organization designated under 33-16-1023~~ *agents recognized under subsection (2)(a)* as the insurer's notice of cancellation.

(3) (a) The department may assess a penalty of up to $200 against an insurer that does not comply with the notice requirement in subsection (1).

(b) An insurer may contest the penalty assessment in a hearing conducted according to department rules."

Section 16. Section 39-71-2337, MCA, is amended to read:

"**39-71-2337. State fund to submit notice of coverage within thirty days — penalty for failure.** (1) The state fund shall, within 30 days after the issuance of an insurance policy, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and other information the department requires.

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for the state fund; and

(b) shall, under terms and conditions acceptable to the department, accept notice of coverage received from the agents recognized under subsection (2)(a) as the state fund's notice of coverage.

~~(2)~~*(3)* The department may assess a penalty of no more than $200 against the state fund if, as a general business practice, the state fund does not comply with the 30-day notice requirement."

Section 17. Section 39-71-2339, MCA, is amended to read:

"**39-71-2339. Cancellation of coverage — twenty days' notice required.** *(1)* The state fund may cancel an employer's coverage under this part for failure to report payroll or pay the premiums due or for another cause provided in the insurance policy. Cancellation may take effect only by written notice to the named insured *and the department* at least 20 days prior to the date of cancellation or, in cases of nonreporting of payroll or nonpayment of a premium, by failure of the employer to submit payroll reports or pay a premium within 20 days after the due date. The state fund shall notify the department of the names and effective dates of all policies canceled. However, the policy terminates on the effective date of a replacement or succeeding insurance policy issued to the insured. This section does not prevent the state fund from canceling an insurance policy before a replacement policy is issued to the insured. After the cancellation date, the employer has the same status as an employer who is not enrolled under the Workers' Compensation Act unless a replacement or succeeding insurance policy has been issued.

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for the state fund; and

(b) shall, under terms and conditions acceptable to the department, accept notice of cancellation received from the agents recognized under subsection (2)(a) as the state fund's notice of cancellation.

(3) (a) The department may assess a penalty of up to $200 against the state fund if it does not comply with the notice requirement in subsection (1).

(b) The state fund may contest the penalty assessment in a hearing conducted according to department rules."

Section 18. Section 39-72-606, MCA, is amended to read:

"**39-72-606. Autopsy.** Upon the filing of a claim for compensation for death caused by an occupational disease if an autopsy is necessary to determine the cause of death, an autopsy ~~shall~~ *must* be ordered by the department. The autopsy ~~shall~~ *must* be made under the supervision of the county coroner or a medical examiner. The department may designate a ~~duly~~ licensed physician who is a specialist in ~~such~~ *these* examinations to perform or attend the autopsies and to certify ~~his~~ findings ~~thereon~~ *on the autopsies*. The findings ~~shall~~ *must* be examined by the ~~physicians~~ *evaluator* submitting a report under ~~39-72-605~~ *39-72-602* before the final report under that section is submitted to the department."

Section 19. Section 39-72-608, MCA, is amended to read:

"**39-72-608. Payment of medical examination, report, and autopsy expenses.** The expense of the medical examination and report, as provided in 39-72-602, must be paid by the insurer. The expense of the periodic medical examinations and reports, as provided in 39-72-607, must be paid by the party requesting the periodic medical examination. The expense of the autopsy, as provided for in 39-72-606, must be paid by the party requesting the autopsy. ~~The expense of any examinations and reports, as provided in 39-72-605, must be paid by the party requesting the examination.~~"

Section 20. Section 39-73-103, MCA, is amended to read:

"**39-73-103. Conformity with acts of federal government.** If ~~and when~~ the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, ~~as herein defined,~~ the department of labor and industry is ~~hereby~~ authorized to administer ~~in the state of Montana such~~ *the* grants-in-aid and payments in addition to grants made by this chapter. The total payments to any individual under this chapter ~~shall~~ *may* not exceed ~~$200~~ *$250* ~~per~~ *a* month, exclusive of any grants made by congress."

Section 21. Section 39-73-107, MCA, is amended to read:

"**39-73-107. Amount of payments.** Subject to the provisions of this chapter and the deductions ~~herein~~ provided *in this chapter*, any person who has silicosis~~,~~ ~~as defined in this chapter,~~ and who has, subject to the regulations and standards of the department of labor and industry, been determined by the department to be entitled payment under this chapter for silicosis ~~shall~~ *must* be granted a payment by the department of ~~$200~~ *$250* ~~per~~ *a* month, subject to ~~such~~ *any additional* appropriations ~~as may from time to time be made~~. If ~~he~~ *the person* is receiving payments under ~~The~~ *the* Occupational Disease Act of Montana, as provided by chapter 72 of this title, ~~which~~ *that* are less in the aggregate than $200, then ~~he~~ *the person* is entitled to a payment under this chapter of the difference between the amount received under ~~The~~ *the* Occupational Disease Act of Montana, as provided by chapter 72 of this title, and ~~$200~~ *$250* ~~per~~ *a* month. The legislature shall authorize ~~such~~ additional appropriations ~~as~~ *that* may be necessary to make the increased monthly payments provided ~~herein~~ *in this section*."

Section 22. Section 39-73-109, MCA, is amended to read:

"**39-73-109. Payment of benefits to surviving spouse.** (1) Upon the death of a person receiving payments for silicosis under 39-73-104 or 39-73-108, the surviving spouse, as long as ~~such~~ *the* spouse remains unmarried, is entitled to receive the payments granted the deceased spouse.

(2) A person who otherwise is qualified to receive payments under subsection (1) ~~of this section~~ but whose spouse died prior to March 14, 1974, is ~~hereby made~~ eligible to begin receiving ~~one-half of those payments; provided, however,~~ *$150 a month. However,* a person is not eligible for these payments if ~~such~~ *the* spouse's taxable income is $6,800 or more ~~per~~ *a* year."

Section 23. Repealer. Section 39-72-605, MCA, is repealed.

Section 24. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 5, and the provisions of Title 39, chapter 71, part 5, apply to [section 1].

Section 25. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 26. Effective date — retroactive applicability. (1) [This act] is effective July 1, 2001.

(2) [Sections 5(7)(c) and (8) and 13(3)] apply retroactively, within the meaning of 1-2-109, to assessments and assessment premium surcharges calculated by the department of labor and industry before March 30, 2001.

Approved April 6, 2001

CHAPTER NO. 215

[SB 184]

AN ACT EXPANDING THE MEMBERSHIP OF THE INTERAGENCY COORDINATING COUNCIL FOR STATE PREVENTION PROGRAMS; AND AMENDING SECTION 2-15-225, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-225, MCA, is amended to read:

"2-15-225. Interagency coordinating council for state prevention programs. (1) There is an interagency coordinating council for state prevention programs consisting of the following members:

(a) the attorney general provided for in 2-15-501;

(b) the director of the department of public health and human services provided for in 2-15-2201;

(c) the superintendent of public instruction provided for in 2-15-701;

(d) the presiding officer of the Montana children's trust fund board;

(e) two persons appointed by the governor who have experiences related to the private or nonprofit provision of prevention programs and services;

(f) the administrator of the board of crime control provided for in 2-15-2006;

(g) the commissioner of labor and industry provided for in 2-15-1701;

(h) the director of the department of corrections provided for in 2-15-2301; ~~and~~

(i) the state coordinator of Indian affairs provided for in 2-15-217*;*

(j) the adjutant general of the department of military affairs provided for in 2-15-1202;

(k) the director of the department of transportation provided for in 2-15-2501,

(l) the commissioner of higher education provided for in 2-15-1506; and

(m) the designated representative of a state agency desiring to participate who is accepted as a member by a majority of the current coordinating council members.

(2) The coordinating council shall perform the following duties:

(a) develop, through interagency planning efforts, a comprehensive and coordinated prevention program delivery system that will strengthen the healthy development, well-being, and safety of children, families, individuals, and communities;

(b) develop appropriate interagency prevention programs and services that address the problems of at-risk children and families and that can be provided in a flexible manner to meet the needs of those children and families;

(c) study various financing options for prevention programs and services;

(d) ensure that a balanced and comprehensive range of prevention services is available to children and families with specific or multiagency needs;

(e) assist in development of cooperative partnerships among state agencies and community-based public and private providers of prevention programs;

(f) prepare and present to the legislature and to the appropriate standing and interim legislative committees a unified budget for state prevention programs, which must be published in the governor's executive budget; and

(g) develop, maintain, and implement benchmarks for state prevention programs. As used in this subsection, "benchmark" means a specified reference point in the future that is used to measure the state of affairs at that point in time and to determine progress toward or the attainment of an ultimate goal, which is an outcome reflecting the desired state of affairs.

(3) The coordinating council shall cooperate with and report to any standing or interim legislative committee that is assigned to study the policies and funding for prevention programs or other state programs and policies related to children and families.

(4) The coordinating council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.

(5) The coordinating council is attached for administrative purposes only to the governor's office, which may assist the council by providing staff and budgetary, administrative, and clerical services that the council or its presiding officer requests.

(6) Staffing and other resources may be provided to the coordinating council only from state and nonstate resources donated to the council and from direct appropriations by each legislature."

Approved April 6, 2001

CHAPTER NO. 216

[SB 285]

AN ACT MODIFYING FUNDING OF THE HUNTER MANAGEMENT AND HUNTING ACCESS ENHANCEMENT PROGRAMS BY CREATING RESIDENT AND NONRESIDENT WILDLIFE CONSERVATION HUNTING ACCESS ENHANCEMENT FEES, TO BE USED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ENCOURAGE ENHANCED HUNTING ACCESS TO PRIVATE AND PUBLIC LANDS THROUGH VOLUNTARY PROGRAMS; PROVIDING THAT THE HUNTING ACCESS ENHANCEMENT FEE IS CHARGEABLE ONLY ONCE EACH LICENSE

YEAR; INCREASING FROM $8,000 TO $12,000 THE INCENTIVE AMOUNT THAT MAY BE PAID TO LANDOWNERS PARTICIPATING IN THE HUNTER MANAGEMENT PROGRAM OR HUNTING ACCESS ENHANCEMENT PROGRAM; AMENDING SECTIONS 87-1-265, 87-1-267, 87-1-270, 87-2-202, 87-2-505, 87-2-510, AND 87-2-711, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the Private Land/Public Wildlife Advisory Council is charged with the responsibility to make suggestions for funding, modification, or improvement of the hunting access enhancement program; and

WHEREAS, although the hunting access enhancement program has enjoyed considerable success to date in providing greater opportunities for Montana hunters, the Private Land/Public Wildlife Advisory Council recognizes the potential to increase hunting access through expansion of the program; and

WHEREAS, increasing the size of the current program through a once-a-season hunting access enhancement fee on resident and most nonresident hunters would provide revenue to allow greater landowner incentives, improve hunting access to private and public lands, improve program management and services, increase upland bird hunting opportunities, and provide for future increased program costs because of inflation.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-265, MCA, is amended to read:

"87-1-265. (Temporary) Hunter management and hunting access enhancement programs created — private landowner assistance to promote public hunting access — rules. (1) The department may establish within the block management program established by administrative rule pursuant to authority contained in 87-1-301 and 87-1-303 programs of landowner assistance that encourage public access to private *and public* lands for purposes of hunting and may adopt rules to carry out program purposes. Rules may address but are not limited to incentives provided under:

(a) a hunter management program as set out in 87-1-266, consisting of a cooperative agreement between a landowner and the department and including other resource management agencies when appropriate, that allows public hunting with certain restrictions or use rules; and

(b) a hunting access enhancement program as set out in 87-1-267, consisting of incentives for private landowners who allow public hunting access on their lands.

(2) The department may also develop similar efforts outside the scope of the block management program that are designed to promote public access to private lands for hunting purposes.

(3) Participation in a program established under ~~subsection (1)~~ *this section* is voluntary. *A lease, acquisition, or other arrangement for public access across private property that is initiated through a program established under this part must be negotiated on a cooperative basis and may only be initiated with the voluntary participation of private landowners.*

(4) Programs may not be structured in a manner that provides assistance to a private landowner who charges a fee for hunting access to private land that is enrolled in the program or who does not provide reasonable public hunting access

to private land that is enrolled in the program. The commission shall develop criteria by which tangible benefits are allocated to participating landowners, and the department may distribute the benefits to participating landowners. The department may by rule limit the number of licenses that can be provided as incentives. (Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999.)"

Section 2. Section 87-1-267, MCA, is amended to read:

"87-1-267. (Temporary) Hunting access enhancement program — benefits for providing hunting access — cooperative agreement — factors for determining benefits earned — restriction on landowner liability. (1) As provided in 87-1-265, the department may establish and administer a voluntary program to enhance the block management program, to be known as the hunting access enhancement program. The program must be designed to provide tangible benefits to participating private landowners who grant access to their land for public hunting.

(2) Land is not eligible for inclusion in the hunting access enhancement program if outfitting or commercial hunting restricts public hunting opportunities.

(3) A contract for participation in the hunting access enhancement program is established through a cooperative agreement between the landowner and the department that will guarantee reasonable access for public hunting. Landowners may also form a voluntary association when development of a unified cooperative agreement is advantageous. A cooperative agreement must contain a detailed description of the plan developed by the landowner and the department and may include but is not limited to:

(a) hunting access management;

(b) services to be provided to the public;

(c) ranch rules and other restrictions; and

(d) any other management information to be gathered, which must be made available to the public.

(4) If the department determines that the plan referred to in subsection (3) may adversely influence game management decisions or wildlife habitat on public lands outside the block management area, then other public land agencies, interested sportspersons, and affected landowners must be consulted. An affected landowner's management goals and personal observations regarding game populations and habitat use must be considered in developing the plan.

(5) The commission shall develop rules for determining tangible benefits to be provided to a landowner for providing public hunting access. Benefits will be provided to offset potential impacts associated with public hunting access, including but not limited to those associated with general ranch maintenance, conservation efforts, weed control, fire protection, liability insurance, roads, fences, and parking area maintenance. Factors used in determining benefits may include but are not limited to:

(a) the number of days of public hunting provided by a participating landowner;

(b) wildlife habitat provided;

(c) resident game populations;

(d) number, sex, and species of animals taken; and

(e) access provided to adjacent public lands.

(6) Benefits earned by a landowner under this section may be applied in, but application is not limited to, the following manner:

(a) A landowner may direct weed control payments to be made directly to the county weed control board or may elect to receive payments directly.

(b) A landowner may direct fire protection payments to be made to the local fire district or the county where the landowner resides or may elect to receive payments directly.

(c) A landowner may receive direct payment to offset insurance costs incurred for allowing public hunting access.

(d) The department may provide assistance in the construction and maintenance of roads, gates, and parking facilities and in the signing of property.

(7) The commission may provide a total of not more than ~~$8,000~~ *$12,000* a year to a landowner who participates in the hunter management program or hunting access enhancement program, or both, subject to the conditions set out in 87-1-266(4).

(8) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the hunting access enhancement program. (Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999.)"

Section 3. Section 87-1-270, MCA, is amended to read:

"**87-1-270. (Temporary) Allocation of license ~~fee~~ *fees* to hunting access enhancement program.** *(1)* The amount of $55 from the sale of each Class B-1 nonresident upland game bird license must be used by the department to encourage public access to private lands for hunting purposes in accordance with 87-1-265 through 87-1-267.

(2) The resident hunting access enhancement fee in 87-2-202(3)(c) and the nonresident hunting access enhancement fee in 87-2-202(3)(d) must be used by the department to encourage public access to private and public lands for hunting purposes in accordance with 87-1-265 through 87-1-267. (Terminates March 1, 2006—sec. 8, Ch. 544, L. 1999.)"

Section 4. Section 87-2-202, MCA, is amended to read:

"**87-2-202. Application — fee — expiration.** (1) A wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, social security number, occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license. It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of $4.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of $5.

(c) In addition to the fee in subsection (3)(a), the first time in any license year that a resident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of $2 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The resident hunting access enhancement fee is chargeable only once during any license year.

(d) In addition to the fee in subsection (3)(b), the first time in any license year that a nonresident uses the wildlife conservation license as a prerequisite to purchase a hunting license, except a variably priced outfitter-sponsored Class B-10 or Class B-11 license issued under 87-1-268, an additional hunting access enhancement fee of $10 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The nonresident hunting access enhancement fee is chargeable only once during any license year.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.

(6) The department shall delete the applicant's social security number in any electronic database 5 years after the date that application is made for the most recent license."

Section 5. Section 87-2-505, MCA, is amended to read:

"87-2-505. (Temporary) Class B-10—nonresident big game combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of the fee of $475 plus the nonresident hunting access enhancement fee in 87-2-202(3)(d), or upon payment of the fee established as provided in 87-1-268 if the license is one of the licenses reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license that entitles a holder who is 12 years of age or older to all the privileges of Class B, Class B-1, and Class B-7 licenses and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 11,500 unreserved Class B-10 licenses may be sold in any 1 license year.

(2) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-10 big game combination license drawing may pay a fee of $25 to participate in a preference system for deer and elk permits established by the commission. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993; sec. 6, Ch. 544, L. 1999.)

87-2-505. (Effective March 1, 2006) Class B-10—nonresident big game combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of the fee of $398 or upon payment of the fee of $408 if the license is one of the 5,600 licenses reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license which shall entitle a holder who is 12 years of age or older to all the privileges of Class B, Class B-1, and Class B-7 licenses, and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 17,000 Class B-10 licenses may be sold in any one license year.

(2) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-10 big game combination license drawing may pay a fee of $25 to participate in a preference system for deer and elk permits established by the commission."

Section 6. Section 87-2-510, MCA, is amended to read:

"87-2-510. (Temporary) Class B-11—nonresident deer combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of $245 *plus the nonresident hunting access enhancement fee in 87-2-202(3)(d),* or upon payment of the fee established as provided in 87-1-268 if the license is one of those reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter, or upon payment of the fee of $250 *plus the nonresident hunting access enhancement fee in 87-2-202(3)(d),* if the license is one of those reserved pursuant to 87-2-511 for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles a holder who is 12 years of age or older to all the privileges of the Class B, Class B-1, and Class B-7 licenses. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(2) Not more than 2,300 unreserved Class B-11 licenses may be sold in any 1 license year.

(3) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-11 deer combination license drawing may pay a fee of $25 to participate in a preference system for deer and elk permits established by the

commission. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993; sec. 6, Ch. 544, L. 1999.)

87-2-510. (Effective March 1, 2006) Class B-11—nonresident deer combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of $220 or upon payment of the fee of $225 if the license is one of the 4,000 reserved pursuant to 87-2-511 for applicants indicating their intent either to use the services of a licensed outfitter or to hunt with a resident sponsor on land owned by that sponsor and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles a holder who is 12 years of age or older to all the privileges of the Class B, Class B-1, and Class B-7 licenses. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(2) Six thousand Class B-11 licenses are authorized for sale each license year.

(3) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-11 deer combination license drawing may pay a fee of $25 to participate in a preference system for deer and elk permits established by the commission."

Section 7. Section 87-2-711, MCA, is amended to read:

"**87-2-711. Class AAA—combination sports license.** (1) A resident, as defined by 87-2-102, who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued is entitled to:

(a) upon payment of the sum of $54, *plus the resident hunting access enhancement fee in 87-2-202(3)(c),* a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted to holders of Class A, A-1, A-3, A-5, and resident conservation licenses as prescribed in 87-2-202; or

(b) upon payment of the sum of $64, *plus the resident hunting access enhancement fee in 87-2-202(3)(c),* a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted in subsection (1)(a) and the additional rights granted to holders of a Class A-6 license.

(2) The department may furnish each holder of a combination sports license an appropriate decal."

Section 8. Effective date. [This act] is effective March 1, 2002.

Section 9. Termination. [This act] terminates March 1, 2006.

Approved April 6, 2001

CHAPTER NO. 217

[SB 306]

AN ACT INCREASING THE SERVICE AND DISABILITY RETIREMENT BENEFITS FOR MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM WHO HAVE AT LEAST 25 YEARS OF MEMBERSHIP SERVICE;

AMENDING SECTIONS 19-3-904, 19-3-1002, AND 19-3-1008, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-904, MCA, is amended to read:

"**19-3-904. Amount of service retirement benefit.** ~~The~~ *(1) Except as provided in subsection (2), the* monthly amount of retirement benefit payable to a member following service retirement is the greater of subsection (1) or (2) as follows:

~~(1)~~*(a)* one fifty-sixth of the member's final average salary multiplied by the number of years of the member's total service credit; or

~~(2)~~*(b)* a monthly benefit that is the actuarial equivalent of double the member's regular contributions plus regular interest.

(2) The monthly amount of retirement benefit payable to a member who has at least 25 years of membership service is equal to one-fiftieth of the member's highest average compensation multiplied by the number of years of the member's total service credit."

Section 2. Section 19-3-1002, MCA, is amended to read:

"**19-3-1002. Eligibility for disability retirement.** (1) Except as provided in subsections (2) and (3), a member entering service prior to February 24, 1991, who is not eligible for service or early retirement but has at least 5 years of membership service and has become disabled while an active member is eligible for disability retirement, as provided in 19-3-1008(1).

(2) An active member age 60 or older who has completed 5 years of membership service and has had a duty-related accident forcing the member to terminate employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-related accident may conditionally waive the member's eligibility for a service retirement in order to be eligible for disability retirement. The waiver is effective only upon approval by the board of the member's application for disability retirement. The board shall determine whether a member has become disabled. The board may request any information on file with the state compensation insurance fund concerning any duty-related accident. If information is not available, the board may request and the state fund shall provide an investigative report on the disabling accident.

(3) (a) A member in service on February 24, 1991, has a one-time election to be covered for disability purposes under the provisions of 19-3-1008(2). This election is irrevocable and must be made in writing by the member no later than December 31, 1991. Coverage under the provisions of 19-3-1008(2) commences on the date the completed election form is received by the board or its designated representative. To be eligible for disability benefits under the provisions of this part, a member must have completed 5 years of membership service and must have become disabled while an active member.

(b) An individual becoming a member after February 24, 1991, who has completed 5 years of membership service and has become disabled while an active member is covered for disability purposes under the provisions of 19-3-1008(2) *or (3).*"

Section 3. Section 19-3-1008, MCA, is amended to read:

"**19-3-1008. Benefit for disability.** (1) The monthly amount of the retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(1) is the greater of subsection (1)(a) or (1)(b) as follows:

(a) 90% of one fifty-sixth of the member's final average salary multiplied by the member's years of service credit, including any additional service purchased under 19-3-513; or

(b) a retirement benefit equal to 25% of the member's final average salary.

(2) ~~The~~ *Except as provided in subsection (3), the* monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) is a retirement benefit equal to one fifty-sixth of the member's final average salary multiplied by the member's years of service credit, including any additional service purchased under 19-3-513.

(3) The monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) who has at least 25 years of membership service is a retirement benefit equal to one-fiftieth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service purchased under 19-3-513.

~~(3)~~*(4)* Subject to the provisions of part 11 of this chapter, a retired member receiving a disability retirement benefit on February 24, 1991, who has previously been granted a disability retirement benefit under the provisions of this section will continue to receive the monthly disability retirement benefit as calculated prior to February 24, 1991, subject to any postretirement or cost-of-living increases granted by the legislature."

Section 4. Effective date. [This act] is effective July 1, 2001.

Approved April 6, 2001

CHAPTER NO. 218

[SB 334]

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO ESTABLISH BY ADMINISTRATIVE RULE A DRIVER REHABILITATION AND IMPROVEMENT PROGRAM; REQUIRING THAT THE RULES PROVIDE FOR THE DEPARTMENT TO CONTRACT WITH QUALIFIED PRIVATE ENTITIES FOR OPERATION OF THE PROGRAM COURSES; ALLOWING THE DEPARTMENT TO COLLECT FEES FROM PARTICIPANTS IN THE PROGRAM COURSES TO OFFSET EXPENSES INCURRED BY THE DEPARTMENT IN ADMINISTERING THE PROGRAM AND CONTRACTING WITH PRIVATE ENTITIES; ALLOWING THE DEPARTMENT TO SUSPEND THE DRIVER'S LICENSE OF A PERSON WHO FAILS TO COMPLY WITH CERTAIN DRIVER REHABILITATION AND IMPROVEMENT COURSE REQUIREMENTS; DEFINING "DRIVER IN NEED OF REHABILITATION AND IMPROVEMENT"; REQUIRING THE DEPARTMENT TO NOTIFY A PERSON WHO HAS BEEN DECLARED A DRIVER IN NEED OF REHABILITATION AND IMPROVEMENT; AMENDING SECTIONS 61-2-302, 61-5-206, 61-11-203, 61-11-204, AND 61-13-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-2-302, MCA, is amended to read:

"61-2-302. Establishment of driver rehabilitation and improvement program — *department to contract with private entities* — participation by offending drivers. (1) *(a)* The department ~~may~~ *shall* establish by administrative rules a driver rehabilitation and improvement program or programs that may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

(b) The rules must:

(i) provide for the local program courses to be operated by private entities;

(ii) develop a procedure for certifying private entities as driver rehabilitation and improvement course providers;

(iii) establish the criteria that private entities must meet in order to be certified by the department; and

(iv) provide for an alternative driver rehabilitation and improvement procedure for drivers who live in areas where a course is not offered.

(2) Official participation in the driver rehabilitation and improvement program is limited to those persons whose license to operate a motor vehicle in the state of Montana is:

(a) subject to suspension or revocation as a result of a violation of the traffic laws of this state or, unless otherwise provided by the sentencing court, a violation of 45-5-624; ~~or~~

(b) revoked and they have:

(i) completed at least 3 months of a 1-year revocation or, if revocation is for a second or subsequent violation of 61-8-401 or 61-8-406, have provided the department with proof of compliance with the ignition interlock device restriction imposed under 61-5-208; or

(ii) completed 1 year of a 3-year revocation; and

(iii) met the requirements for reobtaining a Montana driver's license~~.~~*; or*

(c) subject to suspension as provided in 61-11-204(3).

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver *rehabilitation and* improvement program and meets the eligibility requirements of subsection (2).

(4) In the event that a person's driver's license has been surrendered before the person's selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation order must be terminated and the order of suspension or revocation enforced if a person

declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) This part does not create a right to be included in any program established under this part.

(7) The department *and the entity with which the department contracts under subsection (1)(b)* ~~may~~ *shall* establish ~~a schedule of fees~~ *separate fee schedules* that may be charged *to* those persons participating in the driver improvement and rehabilitation program. The fees must *be collected separately by the department and by the entity with which the department contracts under subsection (1)(b).*

(8) The fees collected by the department under subsection (7) must be used to help defray costs ~~of maintaining the program~~ *incurred by the department in administering the program and in contracting with private entities as provided in subsection (1). The department may not use the fees collected under subsection (7) for any other purpose.*

~~(8)~~*(9)* A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.

~~(9)~~*(10)* The department may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

~~(10)~~*(11)* It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to the person under this section."

Section 2. Section 61-5-206, MCA, is amended to read:

"61-5-206. Authority of department to suspend license or driving privilege or issue probationary license. (1) The department may suspend the driver's license or driving privilege of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

(a) has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage;

(b) has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(c) is ~~an~~ *a* habitually reckless or negligent driver of a motor vehicle;

(d) is incompetent to drive a motor vehicle;

(e) has committed or permitted an unlawful or fraudulent use of the license as specified in 61-5-302;

(f) has committed an offense in another state ~~which~~ *that* if committed in this state would be grounds for suspension or revocation;

(g) has falsified the licensee's date of birth on the application for a driver's license;

(h) is under 21 years of age and has altered the licensee's or another's driver's license or identification card to obtain alcohol; ~~or~~

(i) has authorized another to use the licensee's driver's license or identification card to obtain alcohol*; or*

(j) has been declared a driver in need of rehabilitation and improvement, as defined in 61-11-203, and has failed to enroll in or successfully complete, within 90 days of notice, a driver rehabilitation and improvement course or other appropriate course determined by the department as provided in 61-11-204.

(2) However, the department may, ~~in its discretion and~~ in lieu of suspending the license or driving privilege, issue a probationary license to a driver, without preliminary hearing, upon a showing by its records or other sufficient evidence that the licensee's driving record ~~is such as~~ would authorize suspension as provided in subsection (1). Upon issuance of a probationary license, the licensee is subject to the restrictions set forth in the probationary license. The licensee's driving privilege may be suspended upon conviction or forfeiture of bail not vacated of any traffic violation during the period of probation. The licensee shall surrender to the department all driver's licenses that have been issued to the licensee before the probationary license may be issued. The licensee's refusal or neglect to surrender the licenses upon demand is grounds for suspending all licenses. Probationary licenses may be issued for a period not to exceed 12 months.

(3) Upon suspending the license of any person or upon placing the person on probation, as authorized in this section, the department shall immediately notify the licensee in writing and upon the licensee's request shall afford the licensee an opportunity for a hearing as early as practical, within ~~not to exceed~~ 20 days after receipt of the request, in the county in which the licensee resides unless the department and the licensee agree that the hearing may be held in some other county. At the hearing, the department through its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. At the hearing, the department shall either rescind its order of suspension or probation~~,~~ or, for good cause, may affirm, reduce, or extend the period of probation or suspension of the license."

Section 3. Section 61-11-203, MCA, is amended to read:

"**61-11-203. Definitions.** As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty or nolo contendere, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle that is prohibited by law, ordinance, or administrative order.

(2) "Driver in need of rehabilitation and improvement" means a person who within a 2-year period accumulates 18 or more conviction points according to the schedule specified in subsection (3).

~~(2)~~*(3)* "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

(e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of $250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;

(k) operating a motor vehicle without a license to do so, 2 points (this subsection (k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(l) speeding, except as provided in 61-8-725(2), 3 points;

(m) all other moving violations, 2 points.

~~(3)~~*(4)* There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.

~~(4)~~*(5)* "License" means any type of license or permit to operate a motor vehicle.

~~(5)~~*(6)* "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway, as the term is defined in 61-1-201.

~~(6)~~*(7)* A traffic regulation includes any provision governing motor vehicle operation, equipment, safety, size, weight, and load restrictions or driver licensing. A traffic regulation does not include provisions governing vehicle registration or local parking."

Section 4. Section 61-11-204, MCA, is amended to read:

"**61-11-204. Department's duties.** (1) If the records maintained by the department show that a person's driving record brings the person within the definition of a habitual traffic offender, the department shall:

(a) declare the person a habitual traffic offender;

(b) revoke the person's driver's license or driving privileges as provided in 61-11-211; and

(c) notify the person in writing of the declaration and revocation.

(2) The notice must be sent by first-class mail to the most current address on record with the department. The notice must include a certified reproduction of the person's driving record as contained in the computer storage device used by the department for recordkeeping. The notice must inform the person of the right under 61-11-210 to appeal the declaration and revocation. Service of the notice is complete upon mailing.

(3) If the records maintained by the department show that a person's driving record brings the person within the definition of a driver in need of rehabilitation and improvement, the department shall:

(a) declare the person a driver in need of rehabilitation and improvement;

(b) notify the person that unless the person enrolls in and successfully completes, within 90 days of notification, a certified driver rehabilitation and improvement course, as provided in 61-2-302, the person's driver's license will be suspended for a period not to exceed 6 months or until the person has successfully completed the course, whichever occurs first;

(c) provide the person with a list of certified driver rehabilitation and improvement courses and information about how the person may comply with the provisions of this subsection (3) if a driver rehabilitation and improvement program does not exist near the person's residence; and

(d) send the notice as provided in subsection (2).

(4) If the person fails to enroll in a certified driver rehabilitation and improvement program or fails to successfully complete the program or an appropriate substitute within 90 days, the department may suspend the person's driver's license as provided in 61-5-206 for a period not to exceed 6 months or until the person has successfully completed the course, whichever occurs first."

Section 5. Section 61-13-104, MCA, is amended to read:

"**61-13-104. Penalty — no record permitted.** (1) A driver who violates 61-13-103 ~~must~~ *shall* be fined $20, but the violation is not a misdemeanor pursuant to 45-2-101, 46-18-236, 61-8-104, or 61-8-711. A violation of 61-13-103 may not be counted as a moving violation for purposes of suspending a driver's license under 61-11-203~~(2)(m)~~*(3)(m)*. Bond for this offense is $20, and ~~no~~ *a* jail sentence may *not* be imposed.

(2) ~~No~~ *A* violation of 61-13-103 may *not* be recorded or charged against the driver's record of a person violating 61-13-103~~;~~. ~~and no~~

(3) An insurance company ~~shall~~ *may not* hold a violation of 61-13-103 against the insured~~, and there may be no~~ *or* increase ~~in~~ *the insured's* premiums due to a violation of 61-13-103."

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 6, 2001

CHAPTER NO. 219

[HB 281]

AN ACT ADOPTING THE GOVERNMENTAL INTERNET INFORMATION PRIVACY ACT; REQUIRING GOVERNMENTAL ENTITIES THAT PROVIDE AN INTERNET WEBSITE TO PROVIDE NOTICE OF THE ENTITIES' INFORMATION PRACTICES; AND PROHIBITING THE COLLECTION OF PERSONALLY IDENTIFIABLE INFORMATION UNLESS THE WEBSITE OPERATOR COMPLIES WITH CERTAIN PROVISIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 4] may be cited as the "Governmental Internet Information Privacy Act".

Section 2. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) "Collect" means the gathering of personally identifiable information about a user of an internet service, online service, or website by or on behalf of the provider or operator of that service or website by any means, direct or indirect, active or passive, including:

(a) an online request for the information by the provider or operator, regardless of how the information is transmitted to the provider or operator;

(b) the use of an online service to gather the information; or

(c) tracking or use of any identifying code linked to a user of a service or website, including the use of cookies.

(2) "Governmental entity" means the state and political subdivisions of the state.

(3) "Government website operator" or "operator" means a governmental entity that operates a website located on the internet or an online service and that collects or maintains personal information from or about the users of or visitors to the website or online service or on whose behalf information is collected or maintained.

(4) "Internet" means, collectively, the myriad of computer and telecommunications facilities, including equipment and operating software, that comprise the interconnected worldwide network of networks that use the transmission control protocol/internet protocol or any predecessor or successor protocols to communicate information of all kinds by wire or radio.

(5) "Online" means any activity regulated by [sections 1 through 4] that is effected by active or passive use of an internet connection, regardless of the medium by or through which the connection is established.

(6) "Personally identifiable information" means individually identifiable information about an individual collected online, including:

(a) a first and last name;

(b) a residence or other physical address, including a street name and name of a city or town;

(c) an e-mail address;

(d) a telephone number;

(e) a social security number; or

(f) unique identifying information that an internet service provider or a government website operator collects and combines with any information described in subsections (6)(a) through (6)(e).

(7) "Political subdivision" means any county, city, municipal corporation, school district, or other political subdivision or public corporation.

(8) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

Section 3. Collection of personally identifiable information — requirements. (1) A government website operator may not collect personally identifiable information online from a website user unless the operator complies with the provisions of this section.

(2) A government website operator shall ensure that the website:

(a) identifies who operates the website;

(b) provides the address and telephone number at which the operator may be contacted as well as an electronic means for contacting the operator; and

(c) generally describes the operator's information practices, including policies to protect the privacy of the user and the steps taken to protect the security of the collected information.

(3) In addition to the requirements of subsection (2), if the personally identifiable information may be used for a purpose other than the express purpose of the website or may be given or sold to a third party, except as required by law, then the operator shall ensure that the website includes:

(a) a clear and conspicuous notice to the user that the information collected could be used for other than the purposes of the website;

(b) a general description of the types of third parties that may obtain the information; and

(c) a clear, conspicuous, and easily understood online procedure requiring an affirmative expression of the user's permission before the information is collected.

Section 4. No change of privacy right or public right to know. [Sections 1 through 4] are not intended to expand or restrict the individual right of privacy or the public right to know or to change the rights and obligations of persons, state agencies, or local governments that are otherwise provided by law.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 2, chapter 17, part 3, and the provisions of Title 2, chapter 17, part 3, apply to [sections 1 through 4].

Approved March 20, 2001

CHAPTER NO. 220

[SB 117]

AN ACT EXEMPTING ALL SCHOOL DISTRICT LEVIES FROM PROPERTY TAX MILL LEVY LIMITATIONS; INCREASING THE MILL LEVY LIMIT FOR ADULT EDUCATION; AMENDING SECTIONS 15-10-420, 20-3-205, 20-7-705, AND 20-10-147, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) A governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year, even if that levy is greater than the levy established by law. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the value of newly taxable property.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1) plus any additional levies authorized by the voters to all property in the governmental unit, including newly taxable property.

(3) For purposes of this section, newly taxable property includes:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) transfer of property from tax-exempt to taxable status; and

(g) revaluations caused by expansion, addition, replacement, or remodeling of improvements.

(4) ~~Subsection~~ *Subject to subsection (7), subsection* (1) does not apply to school district ~~general fund~~ levies ~~and the school district levy for tuition obligations~~ established in ~~20-5-324(5)~~ *Title 20.*

(5) For purposes of subsection (1), taxes imposed:

(a) include registration fees imposed on light vehicles under 61-3-561 and distributed under 61-3-509(2); and

(b) do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(6) In determining the maximum number of mills in subsection (1), the governmental entity shall take into account any change from the prior year in the amount of statutory reimbursements for changes in the property tax laws. The amount of motor vehicle disposition under 61-3-509(2), as that section read on December 31, 2000, is an increased statutory reimbursement. It may increase the number of mills to account for a decrease in reimbursements and shall decrease the number of mills to fully account for any increase in reimbursements.

(7) The department shall calculate the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, 20-25-439, and 53-2-813. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections.

(8) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Section 2. Section 20-3-205, MCA, is amended to read:

"**20-3-205. Powers and duties.** The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards of trustees of the districts in the county in accordance with the provisions of 20-3-307;

(3) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(4) act on each tuition and transportation obligation submitted in accordance with the provisions of 20-5-323 and 20-5-324;

(5) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(6) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(7) keep a transcript and reconcile the district boundaries of the county in accordance with the provisions of 20-6-103;

(8) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(9) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(10) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(11) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(12) complete the budgets, compute the budgeted revenue and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned under the provisions of this title regulating school budgeting systems;

(13) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(14) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-335, 20-9-347, 20-10-145, or 20-10-146;

(15) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(16) calculate the estimated budgeted general fund sources of revenue in accordance with the general fund revenue provisions of the general fund part of this title;

(17) compute the revenue and~~, subject to 15-10-420,~~ compute the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(18) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(19) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(20) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(21) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(22) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(23) administer the oath of office to trustees without the receipt of pay for administering the oath;

(24) keep a record of official acts, preserve all reports submitted to the superintendent under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to the next superintendent;

(25) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(26) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed."

Section 3. Section 20-7-705, MCA, is amended to read:

"20-7-705. Adult education fund. (1) A separate adult education fund must be established when an adult education program is operated by a district or community college district. The financial administration of the fund must comply with the budgeting, financing, and expenditure provisions of the laws governing the schools.

(2) Whenever the trustees of a district establish an adult education program under the provisions of 20-7-702, they shall establish an adult education fund under the provisions of this section. The adult education fund is the depository for all district money received by the district in support of the adult education program. Federal and state adult education program money must be deposited in the miscellaneous programs fund.

(3) ~~Subject to 15-10-420, the~~ *The* trustees of a district may authorize the levy of a tax of not more than ~~1 mill~~ *1.1 mills* on the district, except that trustees of a county high school district may, whether or not the county high school district is unified with an elementary district under the provisions of 20-6-312, authorize a levy of not more than ~~2~~ *2.2* mills on the district and a K-12 school district formed under the provisions of 20-6-701 may authorize a levy of not more than ~~3~~ *3.3* mills on the district, for the operation of an adult education program.

(4) Whenever the trustees of a district decide to offer an adult education program during the ensuing school fiscal year, they shall budget for the cost of the program in the adult education fund of the final budget. Any expenditures in support of the adult education program under the final adult education budget must be made in accordance with the financial administration provisions of this title for a budgeted fund.

(5) When a tax levy for an adult education program is included as a revenue item on the final adult education budget, the county superintendent shall report the levy requirement to the county commissioners on the fourth Monday of August and a levy on the district must be made by the county commissioners in accordance with 20-9-142."

Section 4. Section 20-10-147, MCA, is amended to read:

"20-10-147. Bus depreciation reserve *fund*. (1) The trustees of a district owning a bus or a two-way radio used for purposes of transportation, as defined in 20-10-101, or for purposes of conveying pupils to and from school functions or activities may establish a bus depreciation reserve fund to be used for the conversion, remodeling, or rebuilding of a bus or for the replacement of a bus or radio. The trustees of a district may also use the bus depreciation reserve fund to purchase an additional bus for purposes of transportation, as defined in 20-10-101.

(2) Whenever a bus depreciation reserve fund is established, the trustees may include in the district's budget, in accordance with the school budgeting provisions of this title, an amount each year that does not exceed 20% of the original cost of a bus or a two-way radio. The amount budgeted may not, over time, exceed 150% of the original cost of a bus or two-way radio. The annual revenue requirement for each district's bus depreciation reserve fund, determined within the limitations of this section, must be reported by the county superintendent to the county commissioners on the fourth Monday of August as the bus depreciation reserve fund levy requirement for that district, and ~~subject to 15-10-420,~~ a levy must be made by the county commissioners in accordance with 20-9-142.

(3) Any expenditure of bus depreciation reserve fund money must be within the limitations of the district's final bus depreciation reserve fund budget and the school financial administration provisions of this title and may be made only to convert, remodel, or rebuild buses, to replace the buses or radios, or for the purchase of an additional bus as provided in subsection (1), for which the bus depreciation reserve fund was created.

(4) Whenever the trustees of a district maintaining a bus depreciation reserve fund sell all of the district's buses and consider it to be in the best interest of the district to transfer any portion or all of the bus depreciation reserve fund balance to any other fund maintained by the district, the trustees shall submit the proposition to the electors of the district. The electors qualified to vote at the election shall qualify under 20-20-301, and the election must be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer is approved and the trustees shall immediately order the county treasurer to make the approved transfer."

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Applicability. [This act] applies to school district budgets for the fiscal year beginning July 1, 2001.

Approved April 11, 2001

CHAPTER NO. 221

[HB 30]

AN ACT CLARIFYING THAT THE DEPARTMENT OF CORRECTIONS MUST DESIGNATE A PLACE WITHIN THE STATE TO RECEIVE CUSTODY OF A COMMITTED YOUTH; CLARIFYING THAT A COUNTY IS RESPONSIBLE FOR PAYING FOR THE TRANSPORTATION OF A COMMITTED YOUTH ONLY WITHIN THE STATE; AND AMENDING SECTION 52-5-109, MCA.

WHEREAS, in In the Matter of J.A., 1999 MT 148, 295 Mont. 46, 983 P.2d 327 (1999), the Montana Supreme Court held that the plain meaning of section 52-5-109, MCA, limits counties to paying for the transportation of committed youth only within the state.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-5-109, MCA, is amended to read:

"**52-5-109. Commitment expenses — arrangement for transportation.** The expenses of committing a youth to the Pine Hills youth correctional facility, *the Riverside correctional facility,* or the department of corrections and transporting the youth to the Pine Hills youth correctional facility, *the Riverside correctional facility,* or the place designated by the department for it to receive custody *within the state*, as well as the expense of returning the youth to the county of residence, must be borne by the county of residence. The district judge shall arrange for transportation of the youth to the place where the department has directed that it will receive custody of the youth *within the state.*"

Approved April 12, 2001

CHAPTER NO. 222

[HB 109]

AN ACT PROVIDING THAT THE DEPARTMENT OF JUSTICE SHALL DEVELOP A STATEWIDE COMMUNITY EDUCATION CURRICULUM REGARDING RELEASE OF SEXUAL OR VIOLENT OFFENDERS INTO A COMMUNITY; ENABLING STATE AND LOCAL LAW ENFORCEMENT AGENCIES TO PUBLISH SEXUAL AND VIOLENT OFFENDER REGISTRATION ON THE INTERNET; AMENDING SECTION 46-23-508, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Sexual or violent offender community education curriculum. (1) The department of justice shall develop a statewide community education curriculum regarding release of sexual or violent offenders into a community.

(2) The curriculum developed under subsection (1) must contain information:

(a) for communities and neighborhoods regarding the provisions of this part as it relates to sexual or violent offenders, including the rights of residents of a community into which a sexual or violent offender is released and the duties and roles under this part of the department, law enforcement agencies, and the offender; and

(b) for families and children regarding personal safety, including potential warning signs that may help to avoid victimization.

(3) The curriculum developed under this section must be made available to law enforcement agencies, school districts, local governments, and other entities determined by the department of justice to be in a position to educate the public on the subject of the release of a sexual or violent offender into a community. The curriculum may be disseminated by any appropriate means, written or electronic, including by the internet.

Section 2. Section 46-23-508, MCA, is amended to read:

"**46-23-508. Dissemination of information.** (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name and address of a registered sexual or violent offender are public criminal justice information, as defined in 44-5-103; and

(b) a law enforcement agency shall release any offender registration information relevant to the public if the agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information may protect the public and, at a minimum:

(i) if an offender was given a level 1 designation under 46-23-509, the agency with which the offender is registered shall notify the agency in whose jurisdiction the offense occurred of the registration;

(ii) if an offender was given a level 2 designation under 46-23-509, the agency with which the offender is registered may disseminate the offender's name to the public with the notation that the offender is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or group serving persons who have characteristics similar to those of a previous victim of the offender of:

(A) the offender's address;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offenses for which the offender is required to register under this part; and

(E) any conditions imposed by the court upon the offender for the safety of the public; and

(iii) if an offender was given a level 3 designation under 46-23-509, the agency shall give the victim and the public notification that includes the information contained in subsection (1)(b)(ii). The agency shall also include the date of the offender's release from confinement or if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and shall include the community in which the offense occurred.

(c) Prior to release of information under subsection (1)(b), a law enforcement agency may, in its sole discretion, request an in camera review by a district court of the determination by the law enforcement agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a law enforcement agency without the permission of the victim.

(3) A state or local law enforcement agency may use the internet to disseminate the information allowed by this section to the public."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46, chapter 23, part 5, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2001.

Approved April 12, 2001

CHAPTER NO. 223

[HB 213]

AN ACT ADOPTING THE UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT; PROVIDING FOR THE ENFORCEMENT OF FOREIGN ORDERS OF PROTECTION INCLUDING CUSTODY AND VISITATION ORDERS; PROVIDING FOR JUDICIAL AND NONJUDICIAL ENFORCEMENT OF ORDERS OF PROTECTION; PROVIDING FOR REGISTRATION OF FOREIGN ORDERS OF PROTECTION; PROVIDING IMMUNITY FOR GOVERNMENTAL ENTITIES AND EMPLOYEES ENFORCING FOREIGN ORDERS OF PROTECTION; AMENDING SECTIONS 40-4-125 AND 40-15-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 8] may be cited as the "Uniform Interstate Enforcement of Domestic Violence Protection Orders Act".

Section 2. Definitions. As used in [sections 1 through 8], the following definitions apply:

(1) "Foreign protection order" means a protection order issued by a court of another state.

(2) "Issuing state" means the state whose court issues a protection order.

(3) "Mutual foreign protection order" means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.

(4) "Protected individual" means an individual protected by a protection order.

(5) "Protection order" means an injunction or other order issued by a court under the domestic violence or family violence laws of the issuing state to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to another individual.

(6) "Respondent" means the individual against whom enforcement of a protection order is sought.

(7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue protection orders.

Section 3. Judicial enforcement of order. (1) A person authorized by the law of this state to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a court of this state. The court shall enforce the terms of the order, including terms that provide relief that a court of this state would lack power to provide but for this section. The court shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the court shall follow the procedures of this state for the enforcement of protection orders.

(2) A court of this state may not enforce a foreign protection order issued by a court of a state that does not recognize the standing of a protected individual to seek enforcement of the order.

(3) A court of this state shall enforce the provisions of a valid foreign protection order that govern custody and visitation if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.

(4) A court of this state may not enforce under [sections 1 through 8] a provision of a foreign protection order with respect to support.

(5) A foreign protection order is valid if it:

(a) identifies the protected individual and the respondent;

(b) is currently in effect;

(c) was issued by a court that had jurisdiction over the parties and subject matter under the law of the issuing state; and

(d) was issued after the respondent was given reasonable notice and had an opportunity to be heard before the court issued the order or, in the case of an order ex parte, the respondent was given notice and had an opportunity to be heard within a reasonable time after the order was issued, consistent with the rights of the respondent to due process.

(6) A foreign protection order valid on its face is prima facie evidence of its validity.

(7) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(8) A court of this state may enforce provisions of a mutual foreign protection order that favor a respondent only if:

(a) the respondent filed a written pleading seeking a protection order from the court of the issuing state; and

(b) the court of the issuing state made specific findings in favor of the respondent.

Section 4. Nonjudicial enforcement of order. (1) A law enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a court of this state. Presentation of a protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.

(2) If a foreign protection order is not presented, a law enforcement officer of this state may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

(3) If a law enforcement officer of this state determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent, and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

(4) Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order pursuant to [sections 1 through 8].

Section 5. Registration of order. (1) Any individual may register a foreign protection order in this state. To register a foreign protection order, an individual shall:

(a) present a certified copy of the order to the department of justice; or

(b) present a certified copy of the order to a clerk of any court or to any local law enforcement agency and request that the order be registered with the department of justice.

(2) Upon receipt of a foreign protection order, the department of justice shall register the order in accordance with this section. After the order is registered, the department of justice shall furnish to the individual registering the order a certified copy of the registered order.

(3) The department of justice shall register an order upon presentation of a copy of a protection order that has been certified by the issuing state. A registered foreign protection order that is inaccurate or is not currently in effect must be corrected or removed from the registry in accordance with the law of this state.

(4) An individual registering a foreign protection order shall file an affidavit by the protected individual stating that, to the best of the protected individual's knowledge, the order is currently in effect.

(5) A foreign protection order registered under [sections 1 through 8] must be entered into the database of the national crime information center of the United States department of justice and may be entered in any existing state or other federal registry of protection orders, in accordance with applicable law.

(6) A fee may not be charged for the registration of a foreign protection order.

Section 6. Immunity. This state or a local governmental agency or a law enforcement officer, prosecuting attorney, clerk of court, or any state or local governmental official acting in an official capacity is immune from civil liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission was done in good faith in an effort to comply with [sections 1 through 8].

Section 7. Other remedies. A protected individual who pursues remedies under [sections 1 through 8] is not precluded from pursuing other legal or equitable remedies against the respondent.

Section 8. Uniformity of application and construction. In applying and construing [sections 1 through 8], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 9. Section 40-4-125, MCA, is amended to read:

"**40-4-125. Registration of orders.** (1) The clerk of court, justice of the peace, municipal court judge, or city court judge shall, within 24 hours of receiving proof of service of an order under 40-4-121, mail a copy of the order or any extension, modification, or termination ~~thereof~~ *of the order* along with a copy of the proof of service to the appropriate law enforcement agencies designated in the order, *which shall, within 24 hours after receipt of the order, enter the order into the database of the national crime information center of the United States department of justice and may enter the order into any existing state or other federal registry of protection orders, in accordance with applicable law.*

(2) Law enforcement agencies shall establish procedures, using an existing system for warrant verification *and the database of the national crime information center of the United States department of justice*, to ensure that peace officers at the scene of an alleged violation of a protective order are informed of the existence and terms of ~~such~~ *the* order."

Section 10. Section 40-15-303, MCA, is amended to read:

"40-15-303. Registration of orders. (1) The clerk of court, justice of the peace, municipal court judge, or city court judge shall, within 24 hours of receiving proof of service of an order under 40-15-201, 40-15-204, or 40-15-301, mail a copy of the order or any extension, modification, or termination of the order, along with a copy of the proof of service, to the appropriate law enforcement agencies designated in the order, *which shall, within 24 hours after receipt of the order, enter the order into the database of the national crime information center of the United States department of justice and may enter the order into any existing state or other federal registry of protection orders, in accordance with applicable law.*

(2) Law enforcement agencies shall establish procedures, using an existing system for warrant verification *and the database of the national crime information center of the United States department of justice*, to ensure that peace officers at the scene of an alleged violation of an order of protection are informed of the existence and terms of the order."

Section 11. Transitional provisions. [Sections 1 through 8] apply to protection orders issued before [the effective date of this act] and to continuing actions for enforcement of foreign protection orders commenced before [the effective date of this act]. A request for enforcement of a foreign protection order made on or after [the effective date of this act] for violations of a foreign protection order occurring before [the effective date of this act] is governed by [sections 1 through 8].

Section 12. Two-thirds vote required — contingent voidness. (1) Because [section 6] limits governmental liability, Article II, section 18, of the Montana constitution requires a two-thirds vote of the members of each house of the legislature for passage.

(2) If [this act] does not receive a two-thirds vote of the members of each house of the legislature, then [section 6] is void.

Section 13. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 40, chapter 15, and the provisions of Title 40, chapter 15, apply to [sections 1 through 8].

Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 16. Effective date. [This act] is effective on passage and approval.

Approved April 12, 2001

CHAPTER NO. 224

[HB 219]

AN ACT PROVIDING FOR THE SUSPENSION OF THE LICENSE OF A DRIVER WHO STEALS FUEL FROM A RETAIL ESTABLISHMENT AT

WHICH MOTOR VEHICLES ARE FUELED; AND AMENDING SECTIONS 61-5-205 AND 61-8-734, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-205, MCA, is amended to read:

"61-5-205. Mandatory revocation *or suspension* of license upon proper authority. *(1)* The department upon proper authority shall revoke the driver's license or the operating privilege of ~~any~~ *a* driver upon receiving a record of the driver's conviction *of* or forfeiture of bail not vacated ~~of~~ *for* any of the following offenses, when the conviction or forfeiture has become final:

~~(1)~~*(a)* negligent homicide resulting from the operation of a motor vehicle;

~~(2)~~*(b)* driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more;

~~(3)~~*(c)* any felony in the commission of which a motor vehicle is used;

~~(4)~~*(d)* failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

~~(5)~~*(e)* perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

~~(6)~~*(f)* conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months; or

~~(7)~~*(g)* negligent vehicular assault as defined in 45-5-205.

(2) The department upon proper authority shall suspend the driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for a theft offense under 45-6-301 when the conviction or forfeiture has become final if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense. The suspension must be for 30 days for a first offense, 6 months for a second offense, and 1 year for a third or subsequent offense."

Section 2. Section 61-8-734, MCA, is amended to read:

"61-8-734. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — conviction defined — place of imprisonment — home arrest — exceptions — deferral of sentence not allowed. (1) (a) For the purpose of determining the number of convictions under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, "conviction" means a final conviction, as defined in 45-2-101, in this state; conviction for a violation of a similar statute or regulation in another state, or a federally recognized Indian reservation; or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state, another state, or a federally recognized Indian reservation, which forfeiture has not been vacated.

(b) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes.

(c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or 61-8-406.

(2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under 61-8-714 or 61-8-722 be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(3) Subject to the limitations set forth in 61-8-714 and 61-8-722 concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under either section be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under 61-8-714, 61-8-722, or 61-8-731.

(5) The provisions of 61-2-107, 61-2-302, 61-5-205~~(2)~~*(1)(b)*, and 61-5-208(2), relating to suspension and revocation of driver's licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406."

Approved April 12, 2001

CHAPTER NO. 225

[HB 346]

AN ACT ELIMINATING THE REQUIREMENT THAT A RETAIL EGG DEALER MUST HAVE A LICENSE TO SELL EGGS; AMENDING SECTION 81-20-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-20-201, MCA, is amended to read:

"81-20-201. ~~Egg~~ *Wholesale egg* dealer's and egg grader's licenses — *exemptions* — fee. (1) A person may not buy, sell, or deal in eggs without first obtaining a *wholesale egg dealer's* license from the department ~~of livestock~~ for each establishment at which business is conducted. ~~A licensee shall send to the department the reports that are requested by the department.~~

(2) The department shall establish a license fee for dealers ~~buying eggs for sale at retail and for dealers~~ buying eggs for resale at wholesale. All licenses must be posted in a conspicuous place in each place of business. ~~Licenses expire each year on the anniversary date established by rule by the board of review established in 30-16-302.~~

~~(2)~~*(3) (a)* A person buying, selling, or dealing in eggs, a major portion of which are produced by the person's own fowl~~;~~ or in amounts less than an average of 25 cases ~~per~~ *a* month *over a 12-month period*, is exempt from the requirements of this section.

(b) A person buying eggs for sale at retail is not required to obtain a license from the department.

~~(3)~~*(4)* Wholesale and retail dealers who handle more than *an average of* 25 cases of eggs ~~per~~ *a* month *over a 12-month period and who are* supplying eggs to consumers ~~must, when selling candled eggs,~~ *shall* sell only eggs candled by or under the supervision of experienced and licensed graders.

(5) The department shall establish a fee for a grader's license. All candlers and graders ~~must~~ *shall* pass an examination required by the department.

(6) A person licensed under this section shall send to the department any information or reports that the department requires.

(7) The ~~license~~ *licenses provided for in this section* ~~expires~~ *expire* each year on the anniversary date established by rule by the board of review established in 30-16-302."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 12, 2001

CHAPTER NO. 226

[HB 377]

AN ACT REVISING THE TAX CREDIT FOR CONTRIBUTIONS TO QUALIFIED ENDOWMENTS; ESTABLISHING LIMITATIONS FOR CERTAIN TECHNIQUES USED FOR PLANNED GIFTS TO QUALIFIED ENDOWMENTS; REDUCING THE AMOUNT OF THE CREDIT FOR PLANNED GIFTS AND FOR CHARITABLE GIFTS; EXTENDING THE TERMINATION DATE FOR 6 YEARS; AMENDING SECTIONS 15-30-165, 15-30-166, 15-31-161, AND 15-31-162, MCA, AND SECTION 9, CHAPTER 537, LAWS OF 1997; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-165, MCA, is amended to read:

"15-30-165. (Temporary) Qualified endowments credit — definitions — *rules*. For the purposes of 15-30-166, the following definitions apply:

(1) ~~"Planned gift"~~ *Subject to subsection (3), "planned gift"* means an irrevocable contribution to a permanent endowment held by a tax-exempt organization, or for a tax-exempt organization, when the contribution uses any of the following techniques that are authorized under the Internal Revenue Code:

(a) charitable remainder unitrusts, as defined by 26 U.S.C. 664;

(b) charitable remainder annuity trusts, as defined by 26 U.S.C. 664;

(c) pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);

(d) charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);

(e) charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);

(f) charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(g) deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(h) charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B);

(i) paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

(2) "Qualified endowment" means a permanent, irrevocable fund that is held by a Montana incorporated or established organization that:

(a) is a tax-exempt organization under 26 U.S.C. 501(c)(3); or

(b) is a bank or trust company, as defined in Title 32, chapter 1, part 1, that is holding the fund on behalf of a tax-exempt organization.

(3) (a) A contribution using a technique described in subsection (1)(a) or (1)(b) is not a planned gift unless the trust agreement provides that the trust may not terminate and the beneficiaries' interest in the trust may not be assigned or contributed to the qualified endowment sooner than the earlier of:

(i) the date of death of the beneficiaries; or

(ii) 5 years from the date of the contribution.

(b) A contribution using the technique described in subsection (1)(g) is not a planned gift unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables adopted by rule by the department in effect on the date of the contribution.

(c) A contribution using a technique described in subsection (1)(f) or (1)(g) is not a planned gift unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the qualified endowment sooner than the earlier of:

(i) the date of death of the annuitant or annuitants; or

(ii) 5 years after the date of the contribution.

(4) The department shall adopt rules to prepare life expectancy tables that are derived from the actuarial tables contained in the most recent Publication 1457 by the internal revenue service. (Terminates December 31, ~~2001~~ *2007*—sec. 9, Ch. 537, L. 1997.)"

Section 2. Section 15-30-166, MCA, is amended to read:

"15-30-166. (Temporary) Credit for contributions to qualified endowment. (1) A taxpayer is allowed a tax credit against the taxes imposed by 15-30-103 or 15-31-101 in an amount equal to ~~50%~~ *40%* of the present value of the aggregate amount of the charitable gift portion of a planned gift made by the taxpayer during the year to any qualified endowment. The maximum credit that may be claimed by a taxpayer for contributions made from all sources in a year is $10,000. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) The credit allowed under this section may not be claimed by an individual taxpayer if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-30-121(1) or 15-30-136(2).

(3) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. (Terminates December 31, ~~2001~~ *2007*—sec. 9, Ch. 537, L. 1997.)"

Section 3. Section 15-31-161, MCA, is amended to read:

"**15-31-161. (Temporary) Credit for contribution by corporations to qualified endowment.** A corporation is allowed a credit in an amount equal to ~~50%~~ *20%* of a charitable gift against the taxes otherwise due under 15-31-101 for charitable contributions made to a qualified endowment, as defined in 15-30-165. The maximum credit that may be claimed by a corporation for contributions made from all sources in a year under this section is $10,000. The credit allowed under this section may not exceed the corporate taxpayer's income tax liability. The credit allowed under this section may not be claimed by a corporation if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-31-114. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. (Terminates December 31, ~~2001~~ *2007*—sec. 9, Ch. 537, L. 1997.)"

Section 4. Section 15-31-162, MCA, is amended to read:

"**15-31-162. (Temporary) Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment.** A contribution to a qualified endowment, as defined in 15-30-165, by a small business corporation, as defined in 15-31-201, a partnership, or a limited liability company, as defined in 35-8-102, *carrying on any trade or business for which deductions would be allowed under section 162 of the Internal Revenue Code, 26 U.S.C. 162, or carrying on any rental activity* qualifies for the credit provided in 15-31-161. The credit must be attributed to shareholders, partners, or members or managers of a limited liability company in the same proportion used to report the corporation's, partnership's, or limited liability company's income or loss for Montana income tax purposes. The maximum credit that a shareholder of a small business corporation, a partner of a partnership, or a member or manager of a limited liability company may claim in a year is $10,000, subject to the limitations in 15-30-166(2). The credit allowed under this section may not exceed the taxpayer's income tax liability. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. (Terminates December 31, ~~2001~~ *2007*—sec. 9, Ch. 537, L. 1997.)"

Section 5. Section 9, Chapter 537, Laws of 1997, is amended to read:

"**Section 9. Termination.** [This act] terminates December 31, ~~2001~~ *2007*."

Section 6. Coordination instruction. If House Bill No. 143 and [this act] are both passed and approved and if House Bill No. 143 includes a section that amends 15-31-162, then [section 12] of House Bill No. 143, amending 15-31-162, is void.

Section 7. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2001.

(2) For the purposes of promulgating administrative rules, [section 1(4) and this section] are effective on passage and approval.

Section 8. Applicability. [This act] applies to tax years beginning after December 31, 2001, and to contributions to qualified endowments made after December 31, 2001.

Approved April 12, 2001

CHAPTER NO. 227

[HB 504]

AN ACT GENERALLY REVISING THE INSURANCE LAWS; PROVIDING THAT PHARMACY, OPTICAL, AND DENTAL DISCOUNT CARDS MUST STATE THAT THE DISCOUNT IS NOT INSURANCE; PROVIDING THAT THE COMMISSIONER OF INSURANCE MAY REQUEST BIOGRAPHICAL INFORMATION FROM OFFICERS OF FARM MUTUAL ASSOCIATIONS, RECIPROCAL INSURERS, HEALTH SERVICE CORPORATIONS, AND HEALTH MAINTENANCE ORGANIZATIONS; REQUIRING HEALTH SERVICE ORGANIZATIONS TO FILE A COPY OF ARTICLES OF AMENDMENT WITH THE COMMISSIONER; PROVIDING FOR A STATUTORY TIME LIMIT FOR ACTING ON VIOLATIONS; PROHIBITING INSURANCE PRODUCERS CONNECTED TO LONG-TERM CARE FACILITIES FROM SELLING LIFE OR DISABILITY POLICIES TO RESIDENTS; EXEMPTING SERVICE CONTRACTS FROM THE INSURANCE CODE; PROVIDING THAT MECHANICAL BREAKDOWN INSURANCE, PREPAID LEGAL INSURANCE, INVOLUNTARY UNEMPLOYMENT INSURANCE, AND GAP INSURANCE ARE TYPES OF CASUALTY INSURANCE; REVISING THE PRIORITY OF THE DISTRIBUTION OF CLAIMS; INCREASING THE AMOUNT OF SURPLUS FUNDS PROVIDED FOR CERTAIN INSURERS; REQUIRING THE COMMISSIONER TO EXAMINE HEALTH MAINTENANCE ORGANIZATIONS OPERATED BY INSURERS OR HEALTH SERVICE CORPORATIONS AT LEAST ONCE EVERY 5 YEARS; AMENDING SECTIONS 17-2-121, 33-1-102, 33-1-206, 33-1-214, 33-1-215, 33-1-216, 33-1-217, 33-1-311, 33-1-313, 33-1-314, 33-1-315, 33-1-316, 33-1-601, 33-1-701, 33-1-711, 33-2-307, 33-2-313, 33-2-316, 33-2-708, 33-2-1363, 33-2-1371, 33-2-1388, 33-3-203, 33-3-302, 33-3-303, 33-4-101, 33-4-407, 33-5-401, 33-10-102, 33-12-103, 33-12-202, 33-12-203, 33-12-212, 33-14-202, 33-15-414, 33-16-102, 33-16-403, 33-17-502, 33-17-1001, 33-17-1103, 33-17-1204, 33-19-406, 33-20-1201, 33-20-1209, 33-20-1210, 33-20-1211, 33-20-1212, 33-22-508, 33-22-701, 33-22-702, 33-22-703, 33-22-704, 33-22-1002, 33-22-1003, 33-22-1810, 33-25-301, 33-30-102, 33-30-107, 33-30-108, 33-31-111, 33-31-211, 33-31-311, 33-31-401, 45-6-301, 61-12-310, AND 61-12-315, MCA; AND REPEALING SECTIONS 33-1-213, 33-1-702, 33-1-703, 33-1-704, 33-1-706, 33-2-706, 33-4-405, 33-11-106, 33-17-221, 33-17-404, 33-17-1107, 33-17-1111, 33-17-1112, 33-17-1113, 33-17-1114, AND 33-23-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Pharmacy, optical, or dental discount cards. (1) A person may not sell, market, promote, advertise, or otherwise distribute any pharmacy, optical, or dental discount card or other purchasing mechanism or device that is not insurance that purports to offer discounts or access to discounts when the card or other purchasing mechanism or device does not expressly state in bold and prominent type, prominently placed, that the discount is not insurance.

(2) A person violating subsection (1) is subject to a fine pursuant to 33-1-317.

Section 2. Commissioner's request of biographical information. (1) The commissioner may request from domestic insurers biographical information from officers, directors, and persons in a position to control the activity of the following entities:

(a) insurers provided for in Title 33, chapter 3;

(b) farm mutual insurers provided for in Title 33, chapter 4;

(c) reciprocal insurers provided for in Title 33, chapter 5;

(d) health service corporations provided for in Title 33, chapter 30; and

(e) health maintenance organizations provided for in Title 33, chapter 31.

(2) Officers, directors, or other persons in a position to control the activity of the entities listed in subsection (1) shall submit biographical information on a form prescribed by the commissioner.

Section 3. Health service corporation amended articles. A health service corporation shall submit a copy of any articles of amendment to the commissioner within 5 business days after the articles have been filed with the office of the secretary of state.

Section 4. Statute of limitations. (1) Unless otherwise provided by law, the department shall commence an action for a violation of the insurance code within 2 years of the date of the violation or within 2 years after the department discovers the violation or, through the use of reasonable diligence, should have discovered the violation, whichever occurs later.

(2) Regardless of when the department discovers a violation or should have discovered a violation through the use of reasonable diligence, the department may not commence an action unless it is brought within 5 years of the date of the violation.

Section 5. Prohibited relations with long-term care facility. An insurance producer that owns, manages, supervises, operates, maintains, or works in a long-term care facility, as defined in 37-9-101, may not solicit, negotiate with, or sell a life or disability policy or certificate of insurance to a resident of a long-term care facility.

Section 6. Service of process. (1) For viatical settlement providers, the provisions of Title 33, chapter 1, part 6, apply.

(2) For viatical settlement brokers, the provisions of 33-17-405 apply.

Section 7. Section 17-2-121, MCA, is amended to read:

"**17-2-121. Deposits by insurance commissioner.** Except as provided in 33-2-708, all fees, miscellaneous and examination charges, fines, penalties, and those amounts received pursuant to 33-2-311, 33-2-705, ~~33-2-706,~~ or 50-3-109 collected by the insurance commissioner pursuant to Title 33 and the rules adopted to implement Title 33 must be deposited in the general fund."

Section 8. Section 33-1-102, MCA, is amended to read:

"**33-1-102. Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs — *service contracts*.** (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations or to managed care community networks, as defined in 53-6-702, to the extent that the existence and operations of those organizations are governed by chapter 31 or to the extent that the existence and operations of those networks are governed by Title 53, chapter 6, part 7. The department of public health and human services is responsible to protect the interests of consumers by providing complaint, appeal, and grievance procedures relating to managed care community networks and health maintenance organizations under contract to provide services under Title 53, chapter 6.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making of, proposal to make, and administration of a service contract.

(b) A "service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in

materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling. A service contract does not include motor club service as defined in 61-12-301."

Section 9. Section 33-1-206, MCA, is amended to read:

"**33-1-206. Casualty insurance.** (1) Casualty insurance includes:

(a) vehicle insurance, which is insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained ~~therein~~ *in* or ~~thereon~~ *on* or being loaded or unloaded ~~therein~~ *in* or ~~therefrom~~ *from a land vehicle, aircraft, or animal* from any hazard or cause and against any loss, liability, or expense resulting from or incidental to ownership, maintenance, or use of any ~~such~~ *land* vehicle, aircraft, or animal, together with insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, *or* repairing~~, cranking,~~ or *when* caused by being struck by a *land* vehicle, aircraft, or draft or riding animal, if ~~such~~ *the* insurance is issued as an incidental part of insurance on the *land* vehicle, aircraft, or draft or riding animal;

(b) liability insurance, which is insurance against legal liability for the death, injury, or disability of any human being or for damage to property and *the* provision of medical, hospital, surgical, and disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;

(c) workers' compensation and employer's liability, which is insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees;

(d) *(i)* burglary and theft, which is insurance against loss or damage by burglary, theft, robbery, forgery, fraud, deceptive practices, vandalism, criminal mischief, confiscation, or wrongful conversion, disposal, or concealment or from any attempt at any of the foregoing, including supplemental coverage for medical, hospital, surgical, and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery, or theft by another; ~~also~~ *and*

(ii) insurance against loss of or damage to ~~moneys~~ *money*, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents, resulting from any cause;

(e) personal property floater, which is insurance upon personal effects against loss or damage from any cause under a personal property floater;

(f) glass, which is insurance against loss or damage to glass, including its lettering, ornamentation, and fittings;

(g) boiler and machinery, which is insurance against any liability and loss or damage to property or interest resulting from accident to or explosions of boilers, pipes, pressure containers, machinery, or apparatus and from making inspection of and issuing certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured;

(h) leakage and fire extinguishing equipment, which is insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus, water pipes, or containers or by water entering through leaks or openings in buildings and insurance against loss or damage to ~~such~~ *the* sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus;

(i) credit, which is insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured;

(j) malpractice, which is insurance against legal liability of the insured and against loss, damage, or expense incidental to a claim of ~~such~~ liability, including medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury, or disablement of any person or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary, or professional service;

(k) elevator, which is insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance, or use of elevators, except loss or damage by fire and from making inspection of and issuing certificates of inspection upon elevators;

(l) livestock, which is insurance against loss or damage to livestock and for services of a ~~veterinary~~ *veterinarian* for ~~such animals~~ *livestock*;

(m) entertainments, which is insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment, or similar production, event, or exhibition against loss from interruption, postponement, or cancellation ~~thereof due to~~ *because of* death, accidental injury, or sickness of performers, participants, directors, or other principals;

(n) mechanical breakdown pursuant to 33-1-214;

(o) prepaid legal pursuant to 33-1-215;

(p) involuntary unemployment pursuant to 33-1-216;

(q) gap pursuant to 33-1-217;

~~(n)~~*(r)* miscellaneous, which is insurance against any other kind of loss, damage, or liability properly a subject of insurance and not within any other kind of insurance as defined in this part, if ~~such~~ *the* insurance is not disapproved by the commissioner as being contrary to law or public policy.

(2) Provision of medical, hospital, surgical, and funeral benefits and of coverage against accidental death or injury as incidental to and part of other insurance as stated under subsections *(1)*(a) (vehicle), *(1)*(b) (liability), *(1)*(d) (burglary), and *(1)*(j) (malpractice) ~~of subsection (1) shall~~ *must* for all purposes be considered to be the same kind of insurance to which it is ~~so~~ incidental and ~~shall~~ *is* not ~~be~~ subject to provisions of this code applicable to life or disability insurances."

Section 10. Section 33-1-214, MCA, is amended to read:

"**33-1-214. Mechanical breakdown insurance.** (1) Mechanical breakdown insurance means a policy, contract, or agreement issued by an authorized insurer that provides for the repair, replacement, or service for the operational or structural failure of the property because of a defect in materials or workmanship or because of normal wear and tear.

(2) The term does not include motor club services, as defined in 61-12-301~~, or vehicle casualty insurance, as defined in 33-1-206~~.

(3) Mechanical breakdown insurance is a type of casualty insurance provided for in 33-1-206."

Section 11. Section 33-1-215, MCA, is amended to read:

"**33-1-215. Prepaid legal ~~plan~~ *insurance*.** (1) For the purposes of this section, prepaid legal ~~plan~~ *insurance* means the assumption of a contractual obligation that is to be spread, directly or indirectly, among a group of persons to provide specified legal services or reimbursement for legal expenses in consideration of a specified payment for an interval of time, regardless of whether the payment is made by the beneficiary or by a third person on behalf of the beneficiary.

(2) ~~A prepaid~~ *Prepaid* legal ~~plan~~ *insurance* does not include the provision of or reimbursement for legal services that are incidental to other insurance coverage. The following are not prepaid legal ~~plans~~ *insurance*:

(a) retainer contracts made with individual clients with fees based on estimates of the nature and amount of services that will be required;

(b) contracts made with a group of clients involved in the same or closely related legal matters;

(c) plans providing only a referral service or a discount card for legal services;

(d) legal services provided by unions or employee associations to members pertaining to employment or occupation; or

(e) legal services provided by an agency of state or federal government to employees.

(3) Prepaid legal insurance is a type of casualty insurance provided for in 33-1-206."

Section 12. Section 33-1-216, MCA, is amended to read:

"**33-1-216. Involuntary unemployment insurance.** *(1)* Involuntary unemployment insurance means insurance providing the insured borrower with coverage for consumer credit replacement obligations for a period or periods during which the borrower is involuntarily unemployed. Involuntary unemployment insurance must at least provide benefits for the loss of employment income caused by individual or mass layoff, a general strike, termination by an employer, a dispute involving organized labor, and a lockout.

(2) Involuntary unemployment insurance is a type of casualty insurance provided for in 33-1-206."

Section 13. Section 33-1-217, MCA, is amended to read:

"**33-1-217. Gap amount — gap insurance.** (1) As used in this section, gap amount means the difference between the amount owed by the lessee or borrower under the purchase or lease agreement in the event of total loss of the personal property prior to the expiration of the agreement by theft or physical damage and the actual cash value or portion received by the lessor or creditor from insurance proceeds or from any other person on account of the total loss or destruction of the personal property.

(2) Gap insurance means insurance covering the gap amount that is payable upon the total loss of personal property, which is the subject of a lease or a loan or another credit transaction, occasioned by the theft of or physical damage to the property.

(3) Gap insurance is a type of casualty insurance provided for in 33-1-206."

Section 14. Section 33-1-311, MCA, is amended to read:

"**33-1-311. General powers and duties.** (1) The commissioner shall enforce the applicable provisions of the laws of this state and shall execute the duties imposed on the commissioner by the laws of this state.

(2) The commissioner has the powers and authority expressly conferred upon the commissioner by or reasonably implied from the provisions of the laws of this state.

(3) The commissioner shall administer the department to ensure that the interests of insurance consumers are protected.

(4) The commissioner may conduct examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as the commissioner considers proper, to determine whether any person has violated any provision of the laws of this state or to secure information useful in the lawful administration of any provision. The cost of additional examinations and investigations must be borne by the state.

(5) The commissioner shall maintain as confidential any information or document received from:

(a) the national association of insurance commissioners; or

(b) an insurance department from another state *or federal agency* that treats the same information or document as confidential. The commissioner may provide information or documents, including information or documents that are confidential, to the national association of insurance commissioners, a state or federal law enforcement agency, *a federal agency,* or an insurance department in another state, if the recipient agrees to maintain the confidentiality of the information or documents.

(6) The department is a criminal justice agency as defined in 44-5-103."

Section 15. Section 33-1-313, MCA, is amended to read:

"**33-1-313. Rules ~~— notice, hearing, and penalty~~.** ~~(1)~~ The commissioner may make reasonable rules necessary for or as an aid to ~~effectuation~~ *the effective administration* of any provision of this code. ~~No such rule shall extend, modify, or conflict with any law of this state or the reasonable implications thereof. Any such rule affecting persons or matters other than the personnel or the internal affairs of the commissioner's office shall be made or amended only after a hearing thereon of which notice was given as required by 33-1-703. If reasonably possible the commissioner shall set forth the proposed rule or amendment in or with the notice of hearing. No such rule or amendment as to which a hearing is required shall be effective until it has been on file as a public record in the commissioner's office for at least 10 days.~~

~~(2) In addition to any other penalty provided, willful violation of any such rule shall subject the violator to such administrative penalties as may be applicable under this code as for violation of the provision as to which such rule relates.~~"

Section 16. Section 33-1-314, MCA, is amended to read:

"**33-1-314. Orders and notices.** (1) Orders and notices of the commissioner ~~shall~~ *are* not ~~be~~ effective unless in writing, signed by ~~him~~ *the commissioner* or by ~~his~~ *the commissioner's* authority.

(2) ~~Every such~~ *Each* order ~~shall~~ *must* state its effective date and ~~shall~~ *must* concisely state:

(a) its intent or purpose;

(b) the grounds on which *the order is* based;

(c) the provisions of this code pursuant to ~~which~~ *the* action ~~is so~~ taken or proposed to be taken, but failure to ~~so~~ designate a particular provision ~~shall~~ *does* not deprive the commissioner of the right to rely ~~thereon~~ *on a particular provision.*

(3) ~~Except as may be provided in this code respecting particular procedures, an order or notice may be given by delivery to the person to be ordered or notified or by mailing it, postage prepaid, addressed to him at his principal place of business as last of record in the commissioner's office. Such order or notice shall be deemed to have been given when so mailed.~~ *The commissioner may effect service of process of an order or notice by mailing it, postage prepaid, addressed to the person affected by the order or notice, to the person's principal place of business as recorded in the commissioner's office. The commissioner's order is effective when mailed. If the commissioner does not have a record of the person's principal place of business, the commissioner may effect service of process of an order or notice upon a person by mailing it, postage prepaid, to the address as listed on the person's driver's license, as ascertained by the commissioner through the motor vehicle division of the department of justice, or, if a partnership, corporation, or similar entity, as ascertained from documentation filed in the office of the secretary of state.*

(4) The commissioner may have a person served pursuant to Rule 4D of the Montana Rules of Civil Procedure."

Section 17. Section 33-1-315, MCA, is amended to read:

"**33-1-315. Witnesses — production of records — subpoena — failure to respond ~~— perjury~~.** (1) With respect to the subject of any examination~~,~~ *or* investigation~~, or hearing~~ being conducted by ~~him,~~ the commissioner, or ~~his examiner~~ *the commissioner's designee*~~,~~ if general written authority has been given the ~~examiner~~ *designee* by the commissioner, *the commissioner or the designee* may subpoena witnesses and administer oaths or affirmations and examine any individual under oath and may require and compel the production of records, books, papers, contracts, and other documents by attachments, if necessary. ~~If in connection with any examination of an insurer the commissioner desires to examine any officer, director, or manager thereof who is then outside this state, the commissioner may conduct and enforce by all appropriate and available means any such examination under oath in any other state or territory of the United States in which such officer, director, or manager may then presently be, to the full extent permitted by the laws of such other state or~~

~~territory, this special authorization considered.~~ *Subpoenas of witnesses must be served in the same manner as if issued from a district court.*

(2) If in connection with any examination of an insurer the commissioner desires to examine an officer, director, or manager who is outside this state, the commissioner may conduct and enforce by all appropriate and available means any examination under oath in any other state or territory of the United States in which an officer, director, or manager may then presently be, to the full extent permitted by the laws of another state or territory.

(3) If a witness fails to obey a subpoena to appear before the commissioner or the commissioner's designee or refuses to testify or answer any material question or to produce records, books, papers, contracts, or documents when required to do so, the commissioner or the commissioner's designee shall institute proceedings in the district court to compel obedience to the subpoena or other order or to punish the witness for neglect or refusal to obey the summons or other order.

~~(2)~~*(4)* Witness fees and mileage, if claimed, ~~shall~~ *must* be allowed the same as for testimony in a district court. Witness fees, mileage, and the actual expenses necessarily incurred in securing attendance of witnesses and their testimony ~~shall~~ *must* be itemized and ~~shall be~~ paid by the person being examined if ~~such~~ *the* person is found to have been in violation of the law as to the matter with respect to which ~~such~~ *the* witness was subpoenaed ~~or by the person, if other than the commissioner, at whose request the hearing is held~~.

~~(3) Subpoenas of witnesses shall be served in the same manner as if issued from a district court. If any individual fails to obey a subpoena lawfully served, the commissioner shall report such disobedience, together with a copy of the subpoena and proof of service thereof, to the district court for the county in which the individual was required to appear. Such court shall cause such individual to be produced and shall impose penalties as though he had disobeyed a subpoena issued out of such court.~~

~~(4) Any person knowingly failing to attend, answer, or produce records, documents, or other evidence requested by the commissioner or who knowingly fails to give the commissioner full and truthful information and answer in writing to any material written inquiry of the commissioner, relative to the subject of any such examination, investigation, or hearing, or knowingly fails to appear and testify under oath before the commissioner is guilty of a misdemeanor.~~

~~(5) Any person knowingly testifying falsely under oath as to any matter material to any such examination, investigation, or hearing is guilty of perjury, and upon conviction shall be punished according to 45-7-201.~~"

Section 18. Section 33-1-316, MCA, is amended to read:

"33-1-316. Testimony compelled — immunity from prosecution. *(1)* A person may not be excused from attending and testifying or producing any evidence ~~upon~~ *in* any examination~~,~~ *or* investigation~~, or hearing~~ conducted by or under authority of the commissioner on the ground that the person's testimony or the evidence required may tend to incriminate or subject the person to a penalty or forfeiture. However, testimony or evidence compelled following a claim of privilege against self-incrimination or any information directly or indirectly derived from compelled testimony or evidence may not be used against the person in a criminal prosecution.

(2) The commissioner may grant immunity from prosecution for or on account of any act, occurrence, transaction, matter, or other thing concerning which a person testifies if the commissioner determines that the ends of justice would be served by granting the additional immunity.

(3) Immunity does not extend to prosecution or punishment for false statements by the person that are contained in testimony or evidence given under this part."

Section 19. Section 33-1-601, MCA, is amended to read:

"**33-1-601. Commissioner — attorney for service of process.** (1) Each insurer applying for authority to transact insurance in this state shall appoint the commissioner ~~and his successors in office~~ as its attorney to receive service of legal process issued against it in Montana. *Service of legal process under this section means a summons and a complaint.* The appointment ~~shall~~ *must* be made on a form ~~as~~ designated and furnished by the commissioner. The appointment ~~shall be~~ *is* irrevocable, ~~shall bind~~ *binds* the insurer and any successor in interest or to the assets or liabilities of the insurer, and ~~shall remain~~ *remains* in effect as long as there is in force in Montana any contract made by the insurer or obligations arising ~~therefrom~~ *from a contract.*

(2) Each insurer at *the* time of application for a certificate of authority shall file with the commissioner ~~designation of~~ the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change ~~such~~ *the* designation by a new filing."

Section 20. Section 33-1-701, MCA, is amended to read:

"**33-1-701. Hearings — discretion — written demand — ~~limitations on actions~~ *procedure*.** (1) The commissioner may hold hearings for any purpose within the scope of this code considered necessary. *Hearing procedures contained in Title 33, chapter 1, apply only to Title 33, except as otherwise provided.*

~~(2) The commissioner shall hold a hearing if required by any provision or upon written demand by a person aggrieved by any act, threatened act, or failure to act or by any report, rule, or order by the commissioner, other than an order for holding a hearing, an order on a hearing, or an order pursuant to a hearing. The person's demand must specify the grounds relied upon as a basis for the relief sought at the hearing, and unless postponed by mutual consent, the hearing must be held within 30 days after receipt by the commissioner of the demand for a hearing.~~

~~(3) If within the 30-day period the commissioner does not either grant the hearing or issue an order refusing to set the hearing, then the hearing must be considered to have been refused.~~

~~(4) Unless otherwise provided by law, the department shall commence an action for a violation of the insurance code within 2 years of the date of the violation or within 2 years after the department discovers the violation or through the use of reasonable diligence should have discovered the violation, whichever occurs last. Regardless of when the department discovers a violation or should have discovered a violation through the use of reasonable diligence, an action may not be commenced by the department unless it is brought within 5 years of the date of the violation.~~

(2) A person may provide the commissioner with a written demand for a hearing. A written demand must specify the grounds relied upon as a basis for the relief sought at the hearing. If the commissioner does not issue an order granting a person's request for a hearing within 30 days of receiving a request, the hearing is considered refused.

(3) All hearings must be conducted pursuant to the Montana Administrative Procedure Act, as provided in Title 2, chapter 4, part 6. Any supplemental hearing procedures may be adopted by administrative rule. The commissioner shall hold a hearing within 45 days of receipt of a request for a hearing unless postponed by mutual consent of the person requesting the hearing and the commissioner."

Section 21. Section 33-1-711, MCA, is amended to read:

"33-1-711. Appeals ~~from the commissioner~~ ***of commissioner's order — stays — exceptions.*** ~~(1) An appeal from the commissioner may be taken only from an order on hearing or with respect to a matter as to which the commissioner has refused a hearing. Any person who was a party to the hearing or whose pecuniary interests are directly and immediately affected by any order or refusal and who is aggrieved by an order or refusal may, within 30 days after the order has been mailed or delivered to the persons entitled to receive the same, the commissioner's order denying rehearing or reargument has been so mailed or delivered, or the commissioner's refusal to grant a hearing, appeal from the order on hearing or the refusal of a hearing. Any request for a stay of the commissioner's order must be made within 60 days, to run concurrently with the 30 days for appeal. The appeal must be taken to the district court of Lewis and Clark County by filing written notice of appeal in the court and by filing a copy of the notice with the commissioner, except that in appeals from the suspension or revocation of the certificate of authority of a domestic insurer or of the license of an insurance producer or surplus lines insurance producer, the person taking the appeal may at his option, in lieu of the district court of Lewis and Clark County, take the appeal to the district court of the county of Montana in which the insurer has its principal place of business or the licensee resides.~~

~~(2) Upon filing of the notice of appeal, the court has full jurisdiction and shall determine whether the filing operates as a stay of the order or action appealed from.~~

~~(3) Within 20 days after filing of the copy of the notice of appeal in his office, the commissioner shall make and return to the court in which the appeal is pending a copy of his order appealed from and a full and complete transcript, duly certified by the commissioner, of his record of the hearing upon which the order was issued, together with all exhibits and documentary evidence introduced at the hearing. If the appeal is from an action of the commissioner with respect to which a hearing was refused, the commissioner shall, within the 20-day period, make and return to the court a full and complete transcript, duly certified by him, of all documents on file in his office directly relating to the matter as to which the appeal is taken.~~

~~(4) Upon receipt of the transcripts and evidence, the court shall hear the matter as soon as reasonably possible thereafter. Upon the hearing of the appeal, the court shall consider the evidence contained in the transcript, exhibits, and documents filed by the commissioner, together with additional proper evidence as may be offered by any party to the appeal.~~

~~(5) After hearing the appeal, the court may affirm, modify, or reverse the order or action of the commissioner, in whole or in part, or remand the action to the commissioner for further proceedings in accordance with the court's direction.~~

~~(6) Costs must be awarded as in civil actions.~~

~~(7) Appeal may be taken to the supreme court from the judgment of the district court as in other civil cases to which the state is a party. A stay of the effectiveness of any judgment may be made only by order of the supreme court upon the giving of security as that court considers proper.~~ *(1) Except as provided in subsection (2), an appeal of the commissioner's order must be filed with the district court in Lewis and Clark County pursuant to the procedures provided for in Title 2, chapter 4, part 7.*

(2) Appeals from the suspension or revocation of the certificate of authority of a domestic insurer or of the license of an insurance producer or surplus lines insurance producer may be filed in the district court of the county of Montana that the insurer or producer has its principal place of business or the licensee resides.

(3) Any request for a stay of the commissioner's order must be made within 30 days of filing an appeal in district court.

(4) Costs must be awarded as in civil actions.

~~(8)~~*(5)* This section does not apply to appeals ~~as to~~ *for* matters covered by *Title 33,* chapter 16."

Section 22. Section 33-2-307, MCA, is amended to read:

"**33-2-307. Requirements for eligible surplus lines insurers.** (1) A surplus lines insurance producer may not place insurance with an unauthorized insurer unless, at the time of placement, the unauthorized insurer:

(a) has established satisfactory evidence of good reputation and financial integrity; and

(b) is qualified under one of the following subsections:

(i) the insurer maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals the greater of:

(A) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

(B) ~~$7~~ *$10* million. An insurer possessing less than ~~$7~~ *$10* million capital and surplus may satisfy the requirements of this subsection upon an affirmative finding of acceptability by the commissioner. The commissioner's finding must be based upon ~~such~~ factors ~~as~~ *of the* quality of management, capital, and surplus of a parent company; company underwriting profit and investment income trends; and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than $7 million.

(ii) in the case of Lloyd's or another similar group including incorporated and unincorporated alien insurers, the insurer maintains a trust fund of not less than $50 million as security to the full amount of capital and surplus for all policyholders and creditors in the United States of each member of the group. The incorporated members of the group may not engage in any business other than underwriting as a member of the group and ~~must be~~ *are* subject to the same level of solvency regulation and control by the groups of domiciliary regulators as are the unincorporated members. The trust must comply with the terms and conditions established in subsection (1)(b)(iv) for alien insurers.

(iii) in the case of an insurance exchange created by the laws of individual states, the insurer maintains capital and surplus, or their substantial equivalent, of not less than $15 million in the aggregate. For an insurance exchange that maintains funds for the protection of each insurance exchange policyholder, each individual syndicate shall maintain minimum capital and surplus, or their substantial equivalent, of not less than $1.5 million. If the insurance exchange does not maintain funds for the protection of each insurance exchange policyholder, each individual syndicate shall meet the minimum capital and surplus requirements of subsection (1)(b)(i).

(iv) in the case of an alien insurer, the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system, in an amount not less than $1.5 million, for the protection of all its policyholders in the United States and the trust fund consists of cash, securities, or letters of credit or of investments of substantially the same character and quality as those ~~which~~ *that* are eligible investments for the capital and statutory reserves of insurers authorized to write like kinds of insurance in this state. The trust fund, which must be included in any calculation of capital and surplus or its equivalent, must have an expiration date that may not at any time be less than 5 years. In addition, the alien insurer must appear on the national association of insurance commissioners' Non-Admitted Insurers Quarterly Listing.

(c) has provided the commissioner a copy of its current annual statement, certified by the insurer not more than 6 months after the close of the period reported upon, or quarterly if considered necessary by the commissioner, and ~~which~~ *that* is either:

(i) filed with and approved by the regulatory authority in the state of domicile of the unauthorized insurer; or

(ii) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's state of domicile.

(2) In the case of an insurance exchange, the statement required by subsection (1)(c) may be an aggregate combined statement of all underwriting syndicates operating during the period reported.

(3) In addition to meeting the requirements in subsection (1), an insurer is an eligible surplus lines insurer only if it appears on the most recent list of eligible surplus lines insurers published at least semiannually by the commissioner. This subsection does not require the commissioner to place or maintain the name of any unauthorized insurer on the list of eligible surplus lines insurers. An action may not lie against the commissioner or an employee of the commissioner for anything said in issuing the list of eligible surplus lines insurers referred to in this subsection.

(4) (a) The commissioner may declare an eligible surplus lines insurer ineligible if at any time the commissioner has reason to believe that it:

(i) is in unsound financial condition;

(ii) is no longer eligible under subsections (1) through (3);

(iii) has willfully violated the laws of this state; or

(iv) does not make reasonably prompt payment of just losses and claims in this state or elsewhere.

(b) The commissioner shall promptly mail notice of all declarations to each surplus lines insurance producer.

(5) As used in this section, the following definitions apply:

(a) "Capital", as used in the financial requirements of this section, means funds invested in for stocks or other evidences of ownership.

(b) "Surplus", as used in the financial requirements of this section, means funds over and above liabilities and capital of the insurer for the protection of policyholders."

Section 23. Section 33-2-313, MCA, is amended to read:

"**33-2-313. Revocation or suspension of producer license.** (1) The commissioner shall revoke or suspend any surplus lines insurance producer license, together with any license as an insurance producer:

(a) if the insurance producer fails to file an annual statement or to remit the tax as required by law;

(b) if the insurance producer fails to keep the records or to allow the commissioner to examine the records, as required by law;

(c) if the insurance producer falsifies the affidavit required by 33-2-310(3);

(d) if the insurance producer closes the surplus lines insurance producer office for a period of more than 30 business days, unless the commissioner grants permission otherwise;

(e) if the insurance producer violates any provision of this part; or

(f) for any of the causes for which an insurance producer's license may be revoked.

(2) The procedures provided by 33-17-1001 for the suspension, ~~or~~ revocation, *or refusal to license or renew a license or for imposing a fine on an* ~~of~~ insurance producer *or applicant* ~~licenses~~ apply to *the* suspension, ~~or~~ revocation, *or refusal to license or renew a license or to imposing a fine on* ~~of~~ a surplus lines insurance producer ~~license~~ *or applicant.*

(3) An insurance producer whose license has been revoked or suspended may not again be licensed within 1 year after revocation or suspension or until the insurance producer pays all penalties and delinquent taxes that are owed."

Section 24. Section 33-2-316, MCA, is amended to read:

"**33-2-316. Rules.** ~~(1)~~ The commissioner shall make reasonable rules, consistent with this part, for any of the following purposes:

~~(a)~~*(1)* effectuation of The Surplus Lines Insurance Law;

~~(b)~~*(2)* establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement with a surplus lines insurer or insurers; and

~~(c)~~*(3)* establishment, procedures, and operations of the surplus lines advisory organization formed pursuant to 33-2-321 or others designed to assist a surplus lines insurance producer to comply with The Surplus Lines Insurance Law.

~~(2) The rules adopted pursuant to subsection (1) are subject to the procedures and carry the penalty provided by 33-1-313.~~"

Section 25. Section 33-2-708, MCA, is amended to read:

"**33-2-708. Fees and licenses.** (1) (a) Except as provided in 33-17-212(2), the commissioner shall collect a fee of $1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer's license:

(A) application for original license, including issuance of license, if issued 100.00

(B) annual renewal of license 10.00

(ii) surplus lines insurance producer license:

(A) application for original license and for issuance of license, if issued 50.00

(B) annual renewal of license 50.00

(iii) 50 cents for each page for copies of documents on file in the commissioner's office.

(2) (a) The commissioner shall charge a fee of $75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than $1,500 to a sponsoring organization submitting courses or programs for review in any biennium.

(b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).

(3) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311~~,~~ *and* 33-2-705~~, and 33-2-706~~. All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.

(4) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded."

Section 26. Section 33-2-1363, MCA, is amended to read:

"**33-2-1363. Domiciliary liquidator's proposal to distribute assets.** (1) Within 120 days of a final determination of insolvency of an insurer by a court of competent jurisdiction of this state, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshalled assets, from time to time as ~~such~~ assets become available, to a guaranty association or foreign guaranty association having obligations because of ~~such~~ *the* insolvency. If the liquidator determines that there are insufficient assets to disburse, the application required by this section ~~shall~~ *must* be considered satisfied by a filing by the liquidator stating the reasons for this determination.

(2) The proposal ~~shall~~ *must* at least include provisions for:

(a) reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors, to the extent of the value of the security held, and claims falling within the priorities established in 33-2-1371, ~~classes~~ *class* 1 ~~and 2~~;

(b) disbursement of the assets marshalled to date and subsequent disbursement of assets as they become available;

(c) equitable allocation of disbursements to each of the guaranty associations and foreign guaranty associations entitled ~~thereto~~ *to a disbursement*;

(d) the securing by the liquidator from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the liquidator ~~such~~ assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in 33-2-1371 in accordance with ~~such~~ *the* priorities. ~~(no~~ *A* bond may *not* be required of ~~any such~~ *the* association~~); and~~.

(e) a full report to be made by each association to the liquidator accounting for all assets ~~so~~ disbursed to the association, all disbursements made ~~therefrom~~ *from the assets*, any interest earned by the association on ~~such~~ *the* assets, and any other matter ~~as~~ *that* the court may direct.

(3) The liquidator's proposal ~~shall~~ *must* provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made ~~thereby~~ *by the associations* for which ~~such~~ *the* associations could assert a claim against the liquidator and ~~shall further~~ *must* provide that if the assets available for disbursement from time to time do not equal or exceed the amount of ~~such~~ claim payments made or to be made by the association, then disbursements ~~shall~~ *must* be in the amount of available assets.

(4) The liquidator's proposal ~~shall~~ *must*, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to any guaranty association or any foreign guaranty association covering life or health insurance or annuities or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the acts creating ~~such~~ *the* associations.

(5) Notice of ~~such~~ *the* application ~~shall~~ *must* be given to the association in *each of the states* and to the commissioners of insurance of each of the states. Any notice ~~shall~~ *must* be considered to have been given when deposited in the United States certified ~~mails~~ *mail*, first-class postage prepaid, at least 30 days prior to submission of ~~such~~ *the* application to the court. Action on the application may be taken by the court ~~provided~~ *if* the ~~above~~ required notice has been given and ~~provided further that~~ *if* the liquidator's proposal complies with subsections (2)(a) and (2)(b)."

Section 27. Section 33-2-1371, MCA, is amended to read:

"**33-2-1371. Priority of distribution.** The priority of distribution of claims from the insurer's estate ~~shall be~~ *is* in accordance with the order in which each class of claims is ~~herein~~ set forth *in this section*. Every claim in each class ~~shall~~ *must* be paid in full or adequate funds retained for ~~such~~ *the* payment before the members of the next class receive any payment. ~~No subclasses shall~~ *Subclasses may not* be established within any class. The order of distribution of claims ~~shall be~~ *is* as follows:

(1) Class 1—the costs and expenses of administration, including but not limited to the following:

(a) the actual and necessary costs of preserving or recovering the assets of the insurer;

(b) compensation for all services rendered in the liquidation;

(c) any necessary filing fees;

(d) the fees and mileage payable to witnesses;

(e) reasonable ~~attorney's~~ *attorney* fees;

(f) the reasonable expenses of a guaranty association or foreign guaranty association in handling claims.

(2) Class 2~~—debts due to employees for services performed to the extent that they do not exceed $1,000 and represent payment for services performed within 1 year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. Such priority is in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.~~

~~(3) Class 3—~~all claims under policies for losses incurred, including third-party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property ~~which~~ *that* are not under policies, and all claims of a guaranty association or foreign guaranty association *for payment of covered claims or covered obligations of the insurer*. All claims under life *and health* insurance and annuity policies, whether for death proceeds, *health benefits,* annuity proceeds, or investment values, ~~shall~~ *must* be treated as loss claims. ~~That~~ *The* portion of any loss, indemnification ~~for which~~ *that* is provided by other benefits, or advantages recovered by the claimant~~, shall~~ *may* not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance or as gratuities. ~~No~~ *A* payment by an employer to ~~his~~ *an* employee may *not* be treated as a gratuity.

(3) Class 3—claims of the federal government.

(4) Class 4~~—claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors.~~ *debts due to employees for services performed to the extent that they do not exceed $1,000 and represent payment for services performed within 1 year before the filing of the complaint for liquidation. Officers and directors may not be entitled to the benefit of this priority. The priority must be in lieu of any other similar priority that may be authorized by law as to wages or compensation of employees.*

(5) Class 5—claims of ~~the federal or any state or local government. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subsection (8)~~ *general creditors.*

(6) Class 6—claims ~~filed late or any other claims other than claims under subsections (7) and (8)~~ *of any state or local government. Claims, including those of any state or local government for a penalty or forfeiture, may be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or*

proceeding out of which the penalty or forfeiture arose, along with reasonable and actual costs. The remainder of the claims must be postponed to the class of claims under subsection (9).

(7) Class 7~~—surplus or contribution notes or similar obligations and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law~~ *claims filed late or any other claims other than claims under subsections (8) and (9).*

(8) Class 8~~—the claims of shareholders or other owners~~ *surplus or contribution notes or similar obligations and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies are limited in accordance with law.*

(9) Class 9—the claims of shareholders or other owners."

Section 28. Section 33-2-1388, MCA, is amended to read:

"**33-2-1388. Subordination of claims for noncooperation of ancillary receiver.** If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state any assets within ~~his~~ *the ancillary receiver's* control, other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, ~~shall~~ *must* be placed in the class of claims under 33-2-1371~~(7)~~*(8)*."

Section 29. Section 33-3-203, MCA, is amended to read:

"**33-3-203. Amendment of articles of incorporation — grounds for disapproval.** (1) A domestic stock insurer may amend its articles of incorporation for any lawful purpose by written authorization of the holders of a majority of the voting power of its outstanding capital stock or by affirmative vote of a majority voting at a lawful meeting of stockholders of which the notice given to stockholders included notice of the proposal to amend.

(2) A domestic mutual insurer may amend its articles of incorporation for any lawful purpose by affirmative vote of a majority of those of its members present or represented by proxy at a lawful meeting of its members of which the notice given members included notice of the proposal to amend.

(3) Upon adoption of an amendment, the insurer shall make in ~~quadruplicate~~ *triplicate* under its corporate seal a certificate ~~(~~, sometimes referred to as "articles of amendment"~~)~~, setting forth the amendment and the date and manner of the amendment's adoption. The certificate must be executed by the insurer's president or vice president and secretary or assistant secretary and acknowledged by them before an officer authorized by law to take acknowledgments of deeds. The insurer shall deliver to the commissioner the ~~quadruplicate~~ *triplicate* originals of the certificate. If the commissioner finds that the certificate and amendments comply with law, the commissioner shall approve in writing each of the ~~quadruplicate~~ *triplicate* originals and return them to the insurer. The insurer shall subsequently file one set of endorsed articles of amendment with the secretary of state, *shall file* one set with the commissioner, bearing the certification of the secretary of state, ~~and one set with the county clerk of the county in which the insurer's principal place of business will be located~~ and shall retain the remaining set in the corporate records. The amendment is effective when the filings have been completed.

(4) If the commissioner finds that the proposed amendment or certificate does not comply with the law, the commissioner may not approve the amendment or certificate and shall return the ~~quadruplicate~~ *triplicate* certificate of amendment to the insurer, together with a written statement of reasons for nonapproval. The filing fee is not returnable.

(5) If an amendment of articles of incorporation would reduce the authorized capital stock of a stock insurer below the amount then outstanding, the commissioner may not approve the amendment if the commissioner has reason to believe that the interests of policyholders or creditors of the insurer would be materially prejudiced by the reduction. If a reduction of capital stock is ~~effectuated~~ *realized*, the insurer may require *the* return of the original certificates of stock held by each stockholder for exchange for new certificates for the number of shares as the stockholder is then entitled in the proportion that the reduced capital bears to the amount of capital stock outstanding as of immediately prior to the effective date of the reduction."

Section 30. Section 33-3-302, MCA, is amended to read:

"**33-3-302. Bylaws of stock insurer — modification.** *(1)* ~~Any~~ *A* bylaw ~~so~~ adopted at any meeting of stockholders of a domestic insurer ~~shall~~ *may* not be modified or revoked except by the stockholders at a subsequent meeting unless the bylaws as adopted or amended by the stockholders grant authority to the board of directors to revoke or modify bylaw provisions~~;~~. ~~but the~~ *The* board of directors ~~shall~~ *may* not ~~so~~ revoke or modify any bylaw relating to the qualifications, election, terms, or compensation of directors or to the calling or notice of meetings of stockholders. ~~Any~~ *A* revocation or modification of bylaws made by the directors under this provision ~~shall~~ *must* be presented at the next following meeting of stockholders for the information of the stockholders.

(2) The insurer shall promptly file with the commissioner a copy, certified by the insurer's secretary, of its bylaws and amended bylaws. The commissioner may disapprove any bylaw provision considered by the commissioner to be unlawful. The insurer may not, after receiving written notice of the commissioner's disapproval, enact any disapproved bylaw provision."

Section 31. Section 33-3-303, MCA, is amended to read:

"**33-3-303. Meetings of stockholders or members.** (1) *Except with the commissioner's consent,* ~~Meetings~~ *meetings* of stockholders or members of a domestic insurer must be held in the city or town of its principal office or place of business in this state.

(2) A meeting of stockholders or members may not amend the insurer's articles of incorporation unless the proposal to amend was included in the notice of the meeting.

(3) Except with the commissioner's consent, each insurer shall, during the first 6 months of each calendar year, hold the annual meeting of its stockholders or members to fill vacancies existing or occurring in the board of directors, must receive and shall consider reports of the insurer's officers as to its affairs, and shall transact other business properly brought before it. Not less than 20 days' notice must be given of the meeting in the manner provided in the bylaws, except when notice of the annual meeting of a mutual insurer is contained in its policies.

(4) Special meetings of the stockholders or members may be called at any time for any purpose by the board of directors upon not less than 10 days' notice, with

notice given as provided in the bylaws. The notice must state the purpose of the meeting, and business for which notice was not given may not be transacted at the meeting.

(5) If more than 15 months ~~are allowed to elapse~~ *elapse* without an annual stockholders' or members' meeting being held, any stockholder or member may call for an annual meeting to be held. At any time, upon written request of any director or of any stockholders or members holding in the aggregate one-fifth of the voting power of all stockholders or members, it is the duty of the secretary to call a special meeting of stockholders or members to be held at the time that the secretary may fix, not less than 10 or more than 30 days after the receipt of the request. If the secretary fails to issue a call, the director, stockholders, or members making the request may do so.

(6) A stockholders' or members' meeting duly held may be organized for the transaction of business whenever a quorum is present. Except as otherwise provided by law or the articles of incorporation:

(a) the presence, in person or by proxy, of the holders of a majority of the voting power of all stockholders or of all members constitutes a quorum;

(b) the stockholders or members present at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders or members to leave less than a quorum;

(c) if any necessary officer fails to attend a meeting, any stockholder or member present may be elected to act temporarily in lieu of the absent officer;

(d) if a meeting cannot be held because a quorum is not present, those present may adjourn the meeting to a time that they determine, but in the case of any meeting called for the election of any director, the adjournment must be to the next day and those who attend the second meeting, although less than a quorum as fixed in this section or in the articles of incorporation, constitute a quorum for the purpose of electing any director; and

(e) an annual or special meeting of stockholders or members may be adjourned to another date without new notice being given."

Section 32. Section 33-4-101, MCA, is amended to read:

"33-4-101. Scope of chapter — provisions applicable. (1) The chapter applies to:

(a) all domestic mutual hail, fire, and other casualty insurers of farm property and stock and rural buildings formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1501 through 40-1517 of the Revised Codes of Montana, 1947;

(b) all domestic mutual rural insurers formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1601 through 40-1625 of the Revised Codes of Montana, 1947;

(c) all insurers formed under this chapter.

(2) The insurance laws of this state do not apply to or govern, either directly or indirectly, domestic farm mutual insurers except as provided in this chapter.

(3) The following chapters and sections of this title apply to farm mutual insurers to the extent applicable and not inconsistent with the express provisions of this chapter and the reasonable implications of the express provisions of this

chapter: chapter 1, parts 1 through 4, 7, 12, and 13; 33-2-112; 33-2-501; 33-2-502; 33-2-532 through 33-2-535; 33-2-708; 33-2-1212; chapter 2, parts 13 and 16; *33-2-1501; 33-2-1517(2);* 33-3-218; 33-3-308; 33-3-309; 33-3-401; 33-3-402; 33-3-431; 33-3-436; and chapter 18."

Section 33. Section 33-4-407, MCA, is amended to read:

"**33-4-407. Profits or dividends.** ~~No~~ *An* insurer ~~shall~~ *may not* accumulate any profits ~~as such~~ or pay any dividends. This provision ~~shall not be deemed to~~ *does not* prohibit an insurer from accumulating and maintaining surplus funds as required to be maintained by ~~it~~ *the insurer* under this chapter ~~or a safety fund as authorized under 33-4-405~~ or from accumulating and maintaining other voluntary reserves for ~~such~~ purposes and in ~~such~~ amounts ~~as~~ *that* may be reasonable. Limitations ~~upon~~ *on* any ~~such~~ accumulations and the purposes ~~thereof~~ *of the accumulations* may be provided for in the insurer's bylaws."

Section 34. Section 33-5-401, MCA, is amended to read:

"**33-5-401. Surplus funds required.** (1) A domestic reciprocal insurer subject to this part, if it has otherwise complied with the applicable provisions of this code, may be authorized to transact insurance if it has and maintains surplus funds as follows:

(a) to transact property insurance, surplus funds of not less than ~~$400,000~~ *$500,000*;

(b) to transact casualty insurance:

(i) including authority for workers' compensation insurance, surplus funds of not less than ~~$600,000~~ *$750,000*; or

(ii) excluding authority for workers' compensation insurance, surplus funds of not less than ~~$400,000~~ *$500,000.*

(2) In addition to surplus funds required to be maintained under subsection (1), the insurer must have, when first authorized, expendable surplus in the same amount as required of a like foreign reciprocal insurer under 33-2-110.

(3) A domestic reciprocal insurer may be authorized to transact additional kinds of insurance if it has otherwise complied with the provisions of this code for the additional kinds of insurance and maintains surplus funds in an amount equal to the minimum capital stock required of a stock insurer for authority to transact a like combination of kinds of insurance."

Section 35. Section 33-10-102, MCA, is amended to read:

"**33-10-102. Definitions.** As used in this part, the following definitions apply:

(1) "Association" means the Montana insurance guaranty association created under 33-10-103.

(2) (a) "Covered claim" means an unpaid claim, including one for unearned premiums, that arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this part applies issued by an insurer, if the insurer becomes an insolvent insurer after July 1, 1971, and:

(i) the claimant or insured is a resident of this state at the time of the insured event; or

(ii) the property from which the claim arises is permanently located in this state.

(b) Covered claim does not include any amount:

(i) awarded as punitive or exemplary damages;

(ii) sought as a return of premium under a retrospective rating plan; or

(iii) due a reinsurer, insurer, insurance pool, or underwriting association as subrogation recoveries, reinsurance recoveries, contribution, or indemnification. ~~If insolvent, a~~ *A* reinsurer, insurer, insurance pool, or underwriting association may not assert a claim ~~in~~ *for* any amount against ~~an~~ *the* insured *of the insolvent insurer other than* ~~except~~ to the extent that the claim exceeds the policy limits of the ~~insured's~~ *insolvent insurer's* policy.

(3) "Insolvent insurer" means an insurer:

(a) authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred; and

(b) determined to be insolvent by a court of competent jurisdiction.

(4) "Member insurer" means a person who:

(a) writes any kind of insurance to which this part applies under 33-10-101(3), including the exchange of reciprocal or interinsurance contracts; and

(b) is licensed to transact insurance in this state.

(5) (a) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this part applies, less return premiums on the policies and dividends paid or credited to policyholders of policies to which this part applies.

(b) Net direct written premiums does not include premiums on contracts between insurers or reinsurers.

(6) "Person" means any individual, corporation, partnership, association, or voluntary organization."

Section 36. Section 33-12-103, MCA, is amended to read:

"33-12-103. General investment qualifications. (1) Insurers may acquire, hold, or invest in investments or engage in investment practices as set forth in this chapter. Investments not conforming to this chapter may not be admitted assets. Affiliate investments under ~~33-2-1113~~ *33-2-1103*, other than those investments made by or on behalf of domestic insurers, are not subject to this provision.

(2) Subject to subsection (3), an insurer may not acquire or hold an investment as an admitted asset unless at the time of acquisition it is:

(a) (i) eligible for the payment or accrual of interest or discount, whether in cash or other securities;

(ii) eligible to receive dividends or other distributions; or

(iii) otherwise income-producing; or

(b) acquired under 33-12-207(3), 33-12-208, 33-12-210, 33-12-212, 33-12-307(3), 33-12-308, 33-12-310, or 33-12-311 or under the authority of sections of Montana law other than this chapter.

(3) An insurer may acquire or hold as admitted assets investments that do not otherwise qualify as provided in this chapter if the insurer has not acquired them for the purpose of circumventing any limitations contained in this chapter and if the insurer complies with the provisions of 33-12-105 and 33-12-108 and acquires the investments in the following circumstances:

(a) as payment on account of existing indebtedness or in connection with the refinancing, restructuring, or workout of existing indebtedness if taken to protect the insurer's interest in that investment;

(b) as realization on collateral for an obligation;

(c) in connection with an otherwise qualified investment or investment practice, as interest on or a dividend or other distribution related to the investment or investment practice, or in connection with the refinancing of the investment, in each case for no additional or only nominal consideration;

(d) under a lawful and bona fide agreement of recapitalization or voluntary or involuntary reorganization in connection with an investment held by the insurer; or

(e) under a bulk reinsurance, merger, or consolidation transaction approved by the commissioner if the assets constitute admissible investments for the ceding, merged, or consolidated companies.

(4) An investment or portion of an investment acquired by an insurer under subsection (3) must become a nonadmitted asset 3 years, or 5 years in the case of mortgage loans and real estate, from the date of its acquisition, unless within that period the investment has become a qualified investment under a provision of this chapter other than subsection (3). However, an investment acquired under an agreement of bulk reinsurance, merger, or consolidation may be qualified for a longer period if provided for in the plan for reinsurance, merger, or consolidation as approved by the commissioner. Upon application by the insurer and a showing that the nonadmission of an asset held under subsection (3) would materially injure the interests of the insurer, the commissioner may extend the period for admissibility for an additional reasonable period of time.

(5) Except as provided in subsections (6) and (8), an investment must qualify under this chapter if, on the date the insurer committed to acquire the investment or on the date of its acquisition, it would have qualified under this chapter. For the purposes of determining limitations contained in this chapter, an insurer shall give appropriate recognition to any commitments to acquire investments.

(6) (a) An investment held as an admitted asset by an insurer on July 1, 1999, that qualified under former law remains qualified as an admitted asset under this chapter.

(b) Each specific transaction constituting an investment practice of the type described in this chapter that was lawfully entered into by an insurer and was in effect on July 1, 1999, continues to be permitted under this chapter until its expiration or termination under its terms.

(7) Unless otherwise specified, an investment limitation computed on the basis of an insurer's admitted assets or capital and surplus relates to the amount required to be shown on the most recent statutory balance sheet of the insurer required to be filed with the commissioner. For purposes of computing any limitation based upon admitted assets, the insurer shall deduct from the amount

of its admitted assets the amount of the liability recorded on its statutory balance sheet for:

(a) the return of acceptable collateral received in a reverse repurchase transaction or a securities lending transaction;

(b) cash received in a dollar roll transaction; and

(c) the amount reported as borrowed money in the most recently filed financial statement to the extent not included in subsections (7)(a) and (7)(b).

(8) An investment qualified, in whole or in part, for acquisition or holding as an admitted asset may be qualified or requalified at the time of acquisition or a later date, in whole or in part, under any other section if the relevant conditions contained in the other section are satisfied at the time of qualification or requalification.

(9) An insurer shall maintain documentation demonstrating that investments were acquired in accordance with this chapter.

(10) An insurer may not enter into an agreement to purchase securities in advance of their issuance for resale to the public as part of a distribution of the securities by the issuer or otherwise guarantee the distribution, except that an insurer may acquire privately placed securities with registration rights.

(11) Notwithstanding the provisions of this chapter, the commissioner, for good cause, may under the Montana Administrative Procedure Act order an insurer to nonadmit, limit, dispose of, withdraw from, or discontinue an investment or investment practice. The authority of the commissioner under this subsection is in addition to any other authority of the commissioner.

(12) Insurance futures and insurance futures options are not considered investments or investment practices for purposes of this chapter."

Section 37. Section 33-12-202, MCA, is amended to read:

"33-12-202. General ~~three~~ *five* percent diversification — medium-grade and lower-grade investments — Canadian investments. (1) (a) Except as otherwise specified in this chapter, an insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under this chapter if, as a result of and after giving effect to the investment, the insurer would hold more than ~~3%~~ *5%* of its admitted assets in investments of all kinds issued, assumed, accepted, insured, or guaranteed by a single person.

(b) The ~~3%~~ *5%* limitation does not apply to the aggregate amounts insured by a single financial guaranty insurer with the highest generic rating issued by a nationally recognized statistical rating organization.

(c) Asset-backed securities are subject to the limitations of subsection (1)(a). However, an insurer may not acquire an asset-backed security if, as a result of and after giving effect to the investment, the aggregate amount of asset-backed securities secured by or evidencing an interest in a single asset or single pool of assets held by a trust or other business entity then held by the insurer would exceed ~~3%~~ *5%* of its admitted assets.

(2) (a) An insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under 33-12-203, 33-12-206, or 33-12-209 or counterparty exposure under 33-12-210(4) if, as a result of and after giving effect to the investment:

(i) the aggregate amount of medium-grade and lower-grade investments then held by the insurer would exceed 20% of its admitted assets;

(ii) the aggregate amount of lower-grade investments then held by the insurer would exceed 10% of its admitted assets;

(iii) the aggregate amount of investments rated 5 or 6 by the SVO then held by the insurer would exceed 3% of its admitted assets;

(iv) the aggregate amount of investments rated 6 by the SVO then held by the insurer would exceed 1% of its admitted assets; or

(v) the aggregate amount of medium-grade and lower-grade investments then held by the insurer that receive as cash income less than the equivalent yield for treasury issues with a comparative average life would exceed 1% of its admitted assets.

(b) An insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under 33-12-203, 33-12-206, or 33-12-209 or counterparty exposure under 33-12-210(4) if, as a result of and after giving effect to the investment:

(i) the aggregate amount of medium-grade and lower-grade investments issued, assumed, guaranteed, accepted, or insured by any one person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed 1% of its admitted assets; or

(ii) the aggregate amount of lower-grade investments issued, assumed, guaranteed, accepted, or insured by any one person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed 0.5% of its admitted assets.

(c) If an insurer attains or exceeds the limit of any one rating category referred to in this subsection (2), the insurer is precluded from acquiring investments in other rating categories subject to the specific and multicategory limits applicable to those investments.

(3) (a) An insurer may not acquire, directly or indirectly through an investment subsidiary, a Canadian investment authorized by this chapter if, as a result of and after giving effect to the investment, the aggregate amount of these investments then held by the insurer would exceed 40% of its admitted assets or if the aggregate amount of Canadian investments not acquired under 33-12-203(3) then held by the insurer would exceed 25% of its admitted assets.

(b) However, as to an insurer that is authorized to do business in Canada or that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in Canada and denominated in Canadian currency, the limitations of subsection (3)(a) must be increased by the greater of:

(i) the amount the insurer is required by Canadian law to invest in Canada or to be denominated in Canadian currency; or

(ii) 115% of the amount of the insurer's reserves and other obligations under contracts on lives or risks resident or located in Canada."

Section 38. Section 33-12-203, MCA, is amended to read:

"**33-12-203. Rated credit instruments.** (1) Subject to the limitations of subsection (7), an insurer may acquire rated credit instruments in accordance with this section.

(2) Subject to the limitations of 33-12-202(2), an insurer may acquire rated credit instruments issued, assumed, guaranteed, or insured by:

(a) the United States; or

(b) a government-sponsored enterprise of the United States, if the instruments of the government sponsored enterprise are assumed, guaranteed, or insured by the United States or are otherwise backed or supported by the full faith and credit of the United States.

(3) (a) Subject to the limitations of 33-12-202(2), an insurer may acquire rated credit instruments issued, assumed, guaranteed, or insured by:

(i) Canada; or

(ii) a government-sponsored enterprise of Canada, if the instruments of the government sponsored enterprise are assumed, guaranteed, or insured by Canada or are otherwise backed or supported by the full faith and credit of Canada.

(b) An insurer may not acquire an instrument under this subsection (3) if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this subsection (3) would exceed 40% of its admitted assets.

(4) (a) Subject to the limitations of 33-12-202(2), an insurer may acquire rated credit instruments, excluding asset-backed securities:

(i) issued by a government money market mutual fund, a class one money market mutual fund, or a class one bond mutual fund;

(ii) issued, assumed, guaranteed, or insured by a government sponsored enterprise of the United States other than those eligible under subsection (2);

(iii) issued, assumed, guaranteed, or insured by a state, if the instruments are general obligations of the state; or

(iv) issued by a multilateral development bank.

(b) However, an insurer may not acquire an instrument of any one fund, enterprise, entity, or state under this subsection (4) if, as a result of and after giving effect to the investment, the aggregate amount of investments then held in any one fund, enterprise, entity, or state under this subsection (4) would exceed 10% of its admitted assets.

(5) Subject to the limitations of 33-12-202, an insurer may acquire preferred stocks that are not foreign investments and that meet the requirements of rated credit instruments if, as a result of and after giving effect to the investment:

(a) the aggregate amount of preferred stocks then held by the insurer under this subsection (5) does not exceed 20% of its admitted assets; and

(b) the aggregate amount of preferred stocks then held by the insurer under this subsection (5) that are not sinking fund stocks or rated P-1 or P-2 by the SVO does not exceed 10% of its admitted assets.

(6) Subject to the limitations of 33-12-202, in addition to those investments eligible under subsections (2) through (5) of this section, an insurer may acquire rated credit instruments that are not foreign investments.

(7) An insurer may not acquire special rated credit instruments under this section if, as a result of and after giving effect to the investment, the aggregate

amount of special rated credit instruments then held by the insurer would exceed 5% of its admitted assets.

(8) The provisions of subsections (2) through (4) are not subject to the limitation provided in 33-12-202(1)."

Section 39. Section 33-12-212, MCA, is amended to read:

"**33-12-212. Additional investment authority.** (1) Under this subsection (1), an insurer may acquire an investment or may engage in investment practices described in 33-12-208 solely for the purpose of acquiring investments that exceed the quantitative limitations of 33-12-202 through 33-12-209. However, an insurer may not acquire an investment or engage in investment practices described in 33-12-208 under this subsection (1) if, as a result of and after giving effect to the transaction:

(a) the aggregate amount of investments then held by an insurer under this subsection (1) would exceed ~~3%~~ *5%* of its admitted assets; or

(b) the aggregate amount of investments as to a limitation in 33-12-202 through 33-12-209 then held by the insurer under this subsection (1) would exceed 1% of its admitted assets.

(2) (a) In addition to the authority provided under subsection (1), an insurer may acquire under this subsection (2) an investment of any kind or engage in investment practices described in 33-12-208 that are not specifically prohibited by this chapter without regard to the categories, conditions, standards, or other limitations of 33-12-202 through 33-12-209 if, as a result of and after giving effect to the transaction, the aggregate amount of investments then held under this subsection (2) would not exceed the lesser of:

(i) 10% of its admitted assets; or

(ii) 75% of its capital and surplus.

(b) However, an insurer may not acquire any investment or engage in any investment practice under this subsection (2) if, as a result of and after giving effect to the transaction, the aggregate amount of all investments in any one person then held by the insurer under this subsection (2) would exceed ~~3%~~ *5%* of its admitted assets.

(3) In addition to the investments acquired under subsections (1) and (2), an insurer may acquire under this subsection (3) an investment of any kind or engage in investment practices described in 33-12-208 that are not specifically prohibited by this chapter without regard to any limitations of 33-12-202 through 33-12-209 if:

(a) the commissioner grants prior approval;

(b) the insurer demonstrates that its investments are being made in a prudent manner and that the additional amounts will be invested in a prudent manner; and

(c) as a result of and after giving effect to the transaction, the aggregate amount of investments then held by the insurer under this subsection (3) does not exceed the greater of:

(i) 25% of its capital and surplus; or

(ii) 100% of capital and surplus less 10% of its admitted assets.

(4) An investment prohibited under 33-12-105 that is not permitted under 33-12-210 or additional derivative instruments acquired under 33-12-210 may not be acquired under this section."

Section 40. Section 33-14-202, MCA, is amended to read:

"**33-14-202.** ~~**Investigation of applicant —**~~ ***Applicant*** **qualifications — hearing.** (1) Upon the filing of an application and the payment of the license fee, the commissioner ~~shall~~ *may* make ~~an investigation~~ *a background examination* of each applicant and shall issue a premium finance company license if the applicant is qualified in accordance with this chapter. ~~If the commissioner does not so find, he shall within 30 days after he has received the application, at the request of the applicant, give the applicant a full hearing~~ *If the commissioner denies the application, the applicant may file a written demand for a hearing pursuant to the provisions of 33-1-701.*

(2) The commissioner shall issue or renew a license ~~as may be applied for~~ when ~~he~~ *the commissioner* is satisfied that the person to be licensed:

(a) is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;

(b) has a good business reputation and has had experience, training, or education ~~so as to be qualified~~ *that qualifies the applicant* in the business for which the license is applied; and

(c) if a corporation, is a corporation incorporated under the laws of the state or *is* a foreign corporation authorized to transact business in the state."

Section 41. Section 33-15-414, MCA, is amended to read:

"**33-15-414. Assignment.** (1) A policy or group certificate issued ~~thereunder~~ *under a policy* may be assignable or not assignable, as provided by its terms.

(2) Subject to its terms relating to the assignability, any life or disability policy or group certificate under either, ~~whether heretofore or hereafter issued,~~ under the terms of which the beneficiary may be changed upon the sole request of the insured or owner, may be assigned either by pledge or *by* transfer of title, by an assignment executed by the insured or owner, alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer.

(3) An assignment valid ~~hereunder~~ *under this section* may transfer to the assignee all the rights, privileges, and incidents of ownership of the assignor in the policy or group certificate, including but not limited to the rights to designate beneficiaries and of a group certificate holder to have an individual policy issued in accordance with 33-20-1209 and 33-20-1210. Any ~~such~~ assignment ~~shall entitle~~ *entitles* the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment until the insurer has received at its home office written notice of termination of the assignment or pledge or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment~~;~~. ~~provided, however~~ *However,* ~~that~~ the insurer ~~shall~~ *may* not be prejudiced by any payment made or action taken inconsistent with the terms of any assignment before the insurer has received and had reasonable time to act on written notice of ~~such~~ *the* assignment.

(4) This section acknowledges, declares, and codifies the existing right of assignment of interests under insurance policies. An assignment otherwise valid ~~shall~~ *is* not ~~be~~ invalid because it was made prior to July 1, 1971.

(5) An insurance producer may not have an ownership interest in any policy, by assignment or otherwise, unless the insurance producer has an insurable interest, as defined in 33-15-201, in the life of the insured, except with permission of the commissioner."

Section 42. Section 33-16-102, MCA, is amended to read:

"33-16-102. Definitions. In this chapter, the following definitions apply:

(1) "Advisory organization" means each person, other than an admitted insurer, whether located within or outside this state, who prepares policy forms or makes underwriting rules incident to but not including the making of rates, rating plans, or rating systems or who collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a ratemaking, capacity. A licensed attorney, acting in the usual course of the profession, may not be considered an advisory organization.

(2) "Dividend" means:

(a) a noncontractual and nonrecoverable payment or credit declared by an insurer's board of directors and paid out or credited out of earned surplus to policyholders, members, or subscribers; or

(b) in the absence of earned surplus, a noncontractual and nonrecoverable payment or credit declared by an insurer's board of directors and paid to policyholders, members, or subscribers with the written permission of the commissioner. The commissioner may grant permission only if the payment of the dividend or credit will not reduce the insurer's capital *and surplus* below an amount three times the minimum capital required under 33-2-109.

(3) "Member" means an insurer who participates in or is entitled to participate in the management of a rating, advisory, or other organization.

(4) "Rating organization" means each person, other than an admitted insurer, whether located within or outside this state, with the object or purpose of making rates, rating plans, or rating systems. Two or more admitted insurers who act in concert for the purpose of making rates, rating plans, or rating systems and who do not operate within the specific authorizations contained in 33-16-105, 33-16-302, 33-16-304, 33-16-305, and 33-16-307 must be considered a rating organization. A single insurer may not be considered a rating organization.

(5) "Subscriber" means an insurer who is furnished at its request with rates and rating manuals by a rating organization of which the insurer is not a member or with advisory services by an advisory organization of which it is not a member.

(6) "Willful" or "willfully", in relation to an act or omission that constitutes a violation of this chapter, means with actual knowledge or belief that the act or omission constitutes a violation and with specific intent to commit the violation."

Section 43. Section 33-16-403, MCA, is amended to read:

"33-16-403. Examination of application and investigation of applicant — issuance of license — fee. (1) The commissioner shall examine each application for *a* license to act as a rating *or advisory* organization pursuant to this part or a workers' compensation advisory organization pursuant to part 10 and the documents filed with the application and may make ~~such~~ *a* further investigation of the applicant, its affairs, and its proposed plan of business as the commissioner considers ~~desirable~~ *appropriate.*

(2) The commissioner shall issue the license applied for within 60 days of its filing if, from the examination and investigation, the commissioner is satisfied that:

(a) the business reputation of the applicant and its officers is good;

(b) the facilities of the applicant are adequate to enable it to furnish the services it proposes to furnish; *and*

(c) the applicant and its proposed plan of operation conform to the requirements of this chapter.

(3) Otherwise, but only after *a* hearing upon notice, the commissioner shall, in writing, deny the application and notify the applicant of the decision and the reasons ~~therefor~~ *for the denial*.

(4) The commissioner may grant an application in part only and issue a license to act as a rating, *advisory*, or workers' compensation advisory organization for one or more of the classes of insurance or subdivisions ~~thereof~~ *of the classes of insurance* or class of risk, or a part or combination ~~thereof~~ *of a class of risk* as are specified in the application, if the applicant qualifies for only a portion of the classes applied for.

(5) (a) Except as provided in subsection (5)(b), licenses issued pursuant to this section remain in effect until revoked as provided in this chapter. The fee for the license is $100 annually and must be deposited in the general fund.

(b) Each workers' compensation advisory organization is required to renew its license annually."

Section 44. Section 33-17-502, MCA, is amended to read:

"**33-17-502. Prohibition on holding out as consultant — receiving fee.** (1) A person not licensed as an insurance consultant in this state who identifies or ~~holds himself out to be~~ *represents to the public that the person is* an insurance consultant without having been licensed as an insurance consultant under this part or a person who uses any other designation or title that is likely to mislead the public and ~~holds himself out in any manner as having~~ *represents to the public that the person has* particular insurance qualifications other than those for which ~~he~~ *the person* may be otherwise licensed or otherwise qualified is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(2) A person not licensed as an insurance consultant with respect to the relevant kinds of insurance who receives a fee for examining, appraising, reviewing, or evaluating any insurance policy, annuity or pension contract, plan, or program or who makes recommendations or gives advice with regard to any ~~of the above~~ *insurance policy, annuity or pension contract, plan, or program* without first having been licensed by the commissioner as an insurance consultant is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(3) ~~Nothing in this~~ *This* part ~~applies~~ *does not apply* to:

(a) licensed attorneys at law in this state acting in their professional capacity; or

(b) an actuary or a certified public accountant who provides information, recommendations, advice, or services in ~~his~~ *a* professional capacity if neither ~~he~~ *the actuary nor the certified public accountant* ~~nor~~ *or* ~~his~~ *the actuary's or certified public accountant's* employer receives any compensation directly or indirectly on account of any insurance, bond, annuity or pension contract that results in whole or part from that information, recommendation, advice, or services."

Section 45. Section 33-17-1001, MCA, is amended to read:

"**33-17-1001. Suspension, revocation, or refusal of license.** (1) ~~Except as provided in 33-17-411, after a hearing, which must be held no less than 10 days after advance notice by certified mail, on charges given under 33-1-314(3), the commissioner may suspend for up to 5 years, revoke, refuse to continue, or deny a license issued under this chapter if the commissioner finds that the licensee or applicant has:~~ *The commissioner may suspend, revoke, refuse to renew, or refuse to issue an insurance producer's license or may levy a civil penalty in accordance with 33-1-317, or choose any combination of actions, when an insurance producer or applicant for an insurance producer's license has:*

(a) engaged or is about to engage in an act or practice for which issuance of the license could have been refused;

(b) obtained or attempted to obtain a license through misrepresentation or fraud;

(c) violated or failed to comply with a provision of this code or has violated a rule, subpoena, or order of the commissioner or of the commissioner of any other state;

(d) improperly withheld, misappropriated, or converted to the licensee's or applicant's own use money or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of business under the license;

(e) been convicted of a felony;

(f) in the conduct of the affairs under the license, used fraudulent, coercive, or dishonest practices or the licensee or applicant is incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public;

(g) made a materially untrue statement in the license application or in the continuing education affidavit;

(h) misrepresented the terms of an actual or proposed insurance contract;

(i) been found guilty of an unfair trade practice or fraud prohibited by Title 33, chapter 18;

(j) had a similar license suspended or revoked in any other state;

(k) forged another's name to an application for insurance;

(l) cheated on an examination for a license; or

(m) knowingly accepted insurance business from a person who is not licensed.

(2) The license of a partnership or corporation may be suspended, revoked, refused, or denied if a reason listed in subsection (1) applies to an individual designated in the license to exercise its powers.

(3) The commissioner may suspend, revoke, or refuse to continue a license under subsection (1)(e) without conducting an investigation pursuant to 37-1-203 or making a written finding pursuant to 37-1-204."

Section 46. Section 33-17-1103, MCA, is amended to read:

"**33-17-1103. Accepting and paying commissions, fees, or consideration — restriction.** (1) An insurer or insurance producer may not pay, directly or indirectly, a commission, service fee, brokerage fee, or other valuable consideration to a person for services as an insurance producer unless the person performing the service holds a valid license with regard to the kind or kinds of insurance for which the service was rendered at the time the service was performed. A person not properly licensed in accordance with this chapter at the time ~~he~~ *the person* performs the service as an insurance producer may not accept a commission, service fee, brokerage fee, or other valuable consideration for the service. This section does not prevent payment or receipt of renewal or other deferred commissions to or by a person entitled to receive the payment under this section.

(2) An insurance producer may not directly or indirectly share ~~his~~ *the insurance producer's* commissions or other compensation received or to be received by ~~him~~ *the insurance producer* on account of a transaction under ~~his~~ *the insurance producer's* license with any person not also licensed under this chapter as to the same kind or kinds of insurance involved in the transactions~~, except as provided in 33-17-1113~~. This provision does not affect payment of the regular salaries due employees of the licensee, the distribution in regular course of business of compensation and profits among members or stockholders if the licensee is a partnership or corporation, or use of funds for family or personal purposes.

(3) This section does not apply to those transactions with surplus lines insurance producers that are lawful under 33-2-306."

Section 47. Section 33-17-1204, MCA, is amended to read:

"**33-17-1204. Review and approval of continuing education courses by commissioner — advisory council.** (1) The commissioner shall, after review by and at the recommendations of the advisory council established under subsection (2), approve only those continuing education courses, lectures, seminars, and instructional programs that the commissioner determines would improve the product knowledge, management, ethics, or marketing capability of the licensee. Course content, instructors, material, instructional format, and the sponsoring organization must be approved and periodically reviewed by the commissioner. The fee for approval of a course, lecture, seminar, or instructional program is listed in 33-2-708(2). The commissioner shall also determine the number of credit hours to be awarded for completion of an approved continuing education activity.

(2) The commissioner shall appoint an advisory council, pursuant to 2-15-122, consisting of *at least* one representative of the independent insurance agents of Montana, one representative of the ~~Montana association of life underwriters~~ *national association of insurance and financial advisors-Montana*, one representative of the professional insurance agents of Montana, *one title insurance producer,* two public members who are not directly employed by the insurance industry, one insurance producer or consultant not affiliated with any of the three listed organizations, and a nonvoting presiding officer from the department who will be appointed by the commissioner as a representative of the department. The members of the council shall serve a term of 2 years, except that the initial term of the representative from each organization is 3 years. The commissioner shall consult with the council in formulating rules and standards for the approval of continuing education activities and prior to approving specific education activities. The provisions of 2-15-122(9) and (10) do not apply to this council.

(3) In conducting periodic review of course content, instructors, material, instructional format, or a sponsoring organization, the commissioner may exercise any investigative power of the commissioner provided for in 33-1-311 or 33-1-315.

(4) If after review or investigation the commissioner determines an approved continuing education activity is not being operated in compliance with the standards established under this section, the commissioner may revoke approval, place the activity under probationary approval, or issue a cease and desist order under 33-1-318."

Section 48. Section 33-19-406, MCA, is amended to read:

"**33-19-406. Judicial review of orders and reports.** ~~Any~~ *A* person subject to an order of the commissioner ~~under 33-1-706 or 33-19-405~~ or ~~any~~ *a* person whose rights under this chapter were allegedly violated may obtain a review of any order or report of the commissioner as provided by 33-1-711."

Section 49. Section 33-20-1201, MCA, is amended to read:

"**33-20-1201. Provisions required in group contracts.** A policy of group life insurance *or a certificate* may not be delivered in this state unless it contains in substance the provisions set forth in this part or provisions that in the opinion of the commissioner are more favorable to the persons insured or at least as favorable to the persons insured and more favorable to the policyholder~~, however~~. *A provision may be omitted from a certificate if the commissioner has determined that the provision is not appropriate in a certificate. However*:

(1) 33-20-1207 through 33-20-1211 do not apply to policies issued to a creditor to insure debtors of the creditor;

(2) the standard provisions required for individual life insurance policies do not apply to group life insurance policies; and

(3) if the group life insurance policy is on a plan of insurance other than the term plan, it must contain a nonforfeiture provision or provisions that in the opinion of the commissioner is or are equitable to the insured persons and to the policyholder~~;~~. ~~but nothing in~~ *However,* this subsection may *not* be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies."

Section 50. Section 33-20-1209, MCA, is amended to read:

"**33-20-1209. Conversion on termination of eligibility.** (1) The group life insurance policy *or certificate* ~~shall~~ *must* contain a provision that if the insurance or any portion of it on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, ~~such~~ *the* person ~~shall be~~ *is* entitled to have issued to ~~him~~ *the person* by the insurer, without evidence of insurability, an individual policy of life insurance~~, provided~~ *if the* application for the individual policy ~~shall be~~ *is* made and the first premium *is* paid to the insurer within 31 days after ~~such~~ termination~~;~~ and provided ~~further~~ that:

(a) the individual policy ~~shall~~ *must,* at the option of ~~such~~ *the* person, be on any one of the forms, including but not limited to term insurance, if the group policy ~~so~~ provides *for term insurance*, then customarily issued by the insurer at the age and for the amount applied for, and ~~shall offer~~ *must offer* benefits at least equal to those under the group coverage;

(b) the individual policy ~~shall~~ *must*, at the option of the insured, be in an amount not in excess of the amount of life insurance ~~which~~ *that* ceases because of ~~such~~ *the* termination, less the amount of any life insurance for which ~~such~~ *the* person is insured under any other group policy within 31 days after ~~such~~ *the* termination, provided that any amount of insurance ~~which shall have~~ *that has* matured on or before the date of ~~such~~ *the* termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, ~~shall~~ *may* not, for the purposes of this provision, be included in the amount ~~which~~ *that* is considered to cease because of ~~such~~ *the* termination; and

(c) the premium on the individual policy ~~shall be at~~ *is* the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk ~~to which such~~ *that the* person ~~then~~ belongs, and to ~~his~~ *the person's* age attained on the effective date of the individual policy.

(2) With the consent of the employer, a person covered under a group life insurance policy issued to an employer or to the trustees of a fund established by an employer under 33-20-1101 may continue ~~his~~ *the person's* coverage under the group policy during ~~his~~ *the person's* employment notwithstanding *a* reduction of ~~his~~ *the person's* regular work schedule to less than the minimum number of hours required for eligibility for membership. The premium charged for the continued coverage ~~shall~~ *must* be equal to that charged other members of the group. ~~Such~~ *The* person's coverage under the group will cease if ~~he~~ *the person* subsequently becomes eligible for coverage under another group policy because of employment elsewhere."

Section 51. Section 33-20-1210, MCA, is amended to read:

"**33-20-1210. Conversion on termination of policy.** The group life insurance policy *or certificate* ~~shall~~ *must* contain a provision that if the group policy *or certificate* terminates or is amended ~~so as~~ to terminate the insurance of any class of insured persons, every person insured ~~thereunder~~ *under the group policy or certificate* at the date of ~~such~~ *the* termination whose insurance terminates and who has been ~~so~~ insured for at least 3 years prior to ~~such~~ *the* termination date ~~shall be~~ *is* entitled to have issued to ~~him~~ *the person* by the insurer an individual policy of life insurance, subject to the same conditions and limitations ~~as~~ *that* are provided by 33-20-1209, except that the group policy *or certificate* may provide that the amount of ~~such~~ *the* individual policy may not exceed the smaller of:

(1) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy *or certificate*, less the amount of any life insurance for which ~~he~~ *the person* is or becomes eligible under any group policy issued or reinstated by the same or another insurer within 31 days after ~~such~~ *the* termination; or

(2) $10,000."

Section 52. Section 33-20-1211, MCA, is amended to read:

"**33-20-1211. Death pending conversion.** The group life insurance policy *or certificate* ~~shall~~ *must* contain a provision that if a person insured under the policy *or certificate* dies during the period ~~within which he~~ *that the person* would have been entitled to have an individual policy issued to ~~him~~ *the person* in accordance with 33-20-1209 or 33-20-1210 and before ~~such~~ an individual policy ~~shall have become~~ *becomes* effective, the amount of life insurance ~~which he~~ *that the person* would have been entitled to have issued to ~~him~~ *the person* under ~~such~~

an individual policy ~~shall be~~ *is* payable as a claim under the group policy *or certificate*, whether or not application for the individual policy or the payment of the first premium ~~therefor~~ has been made."

Section 53. Section 33-20-1212, MCA, is amended to read:

"**33-20-1212. Notice as to conversion right.** If ~~any~~ *an* individual insured under a group life insurance policy *or certificate* ~~hereafter~~ delivered in this state becomes entitled under the terms of ~~such~~ *the* policy *or certificate* to have an individual policy of life insurance issued to ~~him~~ *the individual* without evidence of insurability, subject to making ~~of~~ *an* application and payment of the first premium within the period specified in ~~such~~ *the* policy and if ~~such~~ *an* individual is not given notice of the existence of ~~such~~ *the* right at least 15 days prior to the expiration date of ~~such~~ *the* period, then ~~in such event~~ the individual ~~shall~~ *must* have an additional period ~~within which~~ to exercise ~~such~~ *the* right, but ~~nothing herein contained~~ *this section* ~~shall~~ *may not* be construed to continue any insurance beyond the period provided in ~~such~~ *the* policy. ~~This~~ *The* additional period ~~shall expire~~ *expires* 15 days ~~next~~ after the individual is given ~~such~~ *the* notice, but ~~in no event shall such~~ *an* additional period *may not* extend beyond 60 days ~~next~~ after the expiration date of the period provided in ~~such~~ *the* policy. Written notice presented to the individual or mailed by the policyholder to the ~~last known~~ *last-known* address of the individual or mailed by the insurer to the ~~last known~~ *last-known* address of the individual as furnished by the policyholder ~~shall constitute~~ *constitutes* notice for the purpose of this section."

Section 54. Section 33-22-508, MCA, is amended to read:

"**33-22-508. Conversion on termination of eligibility.** (1) A group disability insurance policy or certificate of insurance delivered or issued for delivery or renewed after October 1, 1981, must contain a provision that if the insurance or any portion of it on a person or the person's dependents or family members covered under the policy ceases because of termination *of the person's membership in a group eligible for coverage under the policy, because of termination* of the person's employment, ~~or of the person's membership in the class or classes eligible for coverage under the policy~~ or as a result of a person's employer discontinuing the employer's business or as a result of a person's employer discontinuing the group disability insurance policy and not providing for any other group disability insurance or plan and if the person had been insured for a period of 3 months and the person is not insured under another major medical disability insurance policy or plan, the person is entitled to have issued to the person by the insurer, without evidence of insurability, group *disability* coverage or an individual *disability* policy or, in the absence of an individual *disability* policy issued by the insurer, a group *disability* policy issued by the insurer~~, of hospital or medical service insurance~~ on the person or the person's dependents or family members if application for the individual policy is made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(2) A group insurer may meet the requirements of this section by contracting with another insurer to issue conversion policies as described in subsections (5) and (6). The conversion carrier must be authorized to act as an insurer in this state, and the commissioner shall approve the conversion policies pursuant to 33-1-501.

~~(2)~~*(3)* The individual policy or group policy, at the option of the insured, may be on any form then customarily issued by the insurer to individual or group policyholders, with the exception of a policy the eligibility for which is determined by affiliation other than by employment with a common entity. In addition, the insurer *or conversion carrier* shall make available a conversion policy as required by subsection ~~(4)~~ *(6).*

~~(3)~~*(4)* The premium ~~on~~ *for* the individual policy or group policy must be at no more than 200% of the insurer's ~~then~~ customary rate applicable to the ~~coverage of the individual or~~ group policy *being terminated at the time of the conversion*. If the person entitled to conversion under this section has been insured for more than 3 years, the premium may not be more than 150% of the customary rate *of the policy being terminated at the time of the conversion*. The customary rate is that rate that is normally issued for medically underwritten policies without discount for healthy lifestyles.

(5) A conversion carrier shall offer an individual or group conversion policy that provides the same schedule of benefits and covers the same eligible expenses as those being terminated. The premium for the policy must be calculated as described in subsection (4).

~~(4)~~*(6)* The insurer *or conversion carrier* shall also make available a conversion policy, certificate, or membership contract that provides at least the level of benefits provided by the insurer's lowest cost basic health benefit plan, as defined in 33-22-1803. If the insurer is not a small employer carrier under part 18, the insurer shall make available a conversion policy, certificate, or membership contract that provides equivalent benefits to a basic health benefit plan. The conversion rate may not exceed 150% of the highest rate charged for that plan.

(7) The effective date and time of the conversion policy must be established to ensure that there is no break in coverage between the termination of the group policy coverage and the inception of the conversion policy."

Section 55. Section 33-22-701, MCA, is amended to read:

"**33-22-701. Scope of part — purpose — exception.** Except as provided in 33-22-706, the provisions of this part apply to all group policies *and certificates* of accident and health insurance and group subscriber contracts for the care and treatment of mental illness, alcoholism, and drug addiction offered to Montana residents by insurers, health service corporations, and all employees' health and welfare funds that provide accident and health insurance benefits to residents of this state. It is the purpose of this part to preserve the rights of the consumer to have this coverage according to the consumer's medical and economic needs."

Section 56. Section 33-22-702, MCA, is amended to read:

"**33-22-702. Definitions.** For purposes of this part, the following definitions apply:

(1) "Chemical dependency treatment center" means a treatment facility that:

(a) provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment plan approved and monitored by a physician or chemical dependency counselor certified by the state; ~~and~~ *and*

(b) is licensed or approved as a treatment center by the department of public health and human services under 53-24-208~~.~~*; or is licensed or approved by the state where the facility is located.*

(2) "Inpatient benefits" are as set forth in 33-22-705.

(3) "Mental health treatment center" means a treatment facility organized to provide care and treatment for mental illness through multiple modalities or techniques pursuant to a written treatment plan approved and monitored by an interdisciplinary team, including a licensed physician, psychiatric social worker, and psychologist, and a treatment facility that is:

(a) licensed as a mental health treatment center by the state;

(b) funded or eligible for funding under federal or state law; or

(c) affiliated with a hospital under a contractual agreement with an established system for patient referral.

(4) (a) "Mental illness" means a clinically significant behavioral or psychological syndrome or pattern that occurs in a person and that is associated with:

(i) present distress or a painful symptom;

(ii) a disability or impairment in one or more areas of functioning; or

(iii) a significantly increased risk of suffering death, pain, disability, or an important loss of freedom.

(b) Mental illness must be considered as a manifestation of a behavioral, psychological, or biological dysfunction in a person.

(c) Mental illness does not include:

(i) a developmental disorder;

(ii) a speech disorder;

(iii) a psychoactive substance use disorder;

(iv) an eating disorder, except for bulimia and anorexia nervosa;

(v) an impulse control disorder, except for intermittent explosive disorder and trichotillomania; or

(vi) a severe mental illness as provided in 33-22-706.

(5) "Outpatient benefits" are as set forth in 33-22-705."

Section 57. Section 33-22-703, MCA, is amended to read:

"**33-22-703. (Temporary) Coverage for mental illness, alcoholism, and drug addiction.** (1) A group health plan or a health insurance issuer that provides group health insurance coverage shall provide for Montana residents covered by the plan at least the following level of benefits for the necessary care and treatment of mental illness, alcoholism, and drug addiction:

(a) under basic inpatient expense policies or contracts, inpatient hospital benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(i) inpatient treatment for mental illness is subject to a maximum yearly benefit of 21 days;

(ii) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the

American association for partial hospitalization if the program is operated by a hospital;

(iii) inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, is subject to a maximum benefit of $6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000; and

(iv) costs for medical detoxification treatment must be paid the same as any other sickness or illness under the terms of the contract and are not subject to the annual and lifetime limits in subsection (1)(a)(iii);

(b) under major medical policies or contracts, inpatient benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(i) inpatient treatment for mental illness is subject to a maximum yearly benefit of 21 days;

(ii) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the American association for partial hospitalization if the program is operated by a hospital;

(iii) inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, may be subject to a maximum benefit of $6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000;

(iv) costs for medical detoxification treatment, which must be paid the same as any other illness under the terms of the contract and are not subject to the annual and lifetime benefits in subsection (1)(b)(iii) and;

(v) outpatient treatment for mental illness may be subject to a maximum yearly benefit of no less than $2,000, but this subsection (1)(b)(v) does not apply to benefits for services furnished before September 30, 2001, unless the group health plan or group health insurance coverage is exempt from the requirements of subsection (2) pursuant to subsection (3) or (4).

(2) A group health plan or group health insurance coverage offered in connection with a group health plan may not impose an aggregate dollar limit on an annual or lifetime basis more restrictively for mental health benefits than for medical and surgical benefits covered by the plans. In the case of a plan that has different aggregate lifetime limits and different annual limits on various categories of medical and surgical benefits, the commissioner shall establish rules for determining a weighted average aggregate lifetime limit and weighted average annual limit to apply to mental health benefits. This subsection does not apply to benefits for services furnished on or after September 30, 2001.

(3) Subsection (2) does not apply to a group health plan or health insurance coverage offered in connection with a group health plan in the small group market.

(4) Subsection (2) does not apply to a group health plan or health insurance coverage offered in connection with a group health plan if the application of subsection (2) results in an increase in the cost under the group health plan or for coverage of at least 1%. This subsection applies separately to each benefit package

option in the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the group health plan. (Terminates September 30, 2001—sec. 54, Ch. 416, L. 1997.)

33-22-703. (Effective October 1, 2001) Coverage for mental illness, alcoholism, and drug addiction. A group health plan or a health insurance issuer that provides group health insurance coverage shall provide for Montana residents covered by the plan at least the following level of benefits for the necessary care and treatment of mental illness, alcoholism, and drug addiction:

(1) under basic inpatient expense policies or contracts, inpatient hospital benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient treatment for mental illness is subject to a maximum yearly benefit of 21 days;

(b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the American association for partial hospitalization if the program is operated by a hospital;

(c) inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, is subject to a maximum benefit of $6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000 and;

(d) costs for medical detoxification treatment must be paid the same as any other illness under the terms of the contract and are not subject to the annual and lifetime limits in subsection (1)(c);

(2) under major medical policies or contracts, inpatient benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient treatment for mental illness~~, alcoholism, and drug addiction~~ is subject to a maximum yearly benefit of 21 days;

(b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the American association for partial hospitalization if the program is operated by a hospital;

(c) inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, may be subject to a maximum benefit of $6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000;

(d) costs for medical detoxification treatment must be paid the same as any other illness under the terms of the contract and are not subject to the annual and lifetime benefits in subsection (2)(c) and;

(e) outpatient treatment for mental illness may be subject to a maximum yearly benefit of no less than $2,000, but this subsection (2)(e) does not apply to benefits for services furnished before September 30, 2001."

Section 58. Section 33-22-704, MCA, is amended to read:

"**33-22-704. Applicability.** Except as provided in 33-22-706, this part applies to policies, *certificates,* contracts, or any employees' health and welfare fund that provides accident and health insurance benefits, established, delivered, issued for delivery, or renewed after September 30, 1987, but does not apply to blanket, short-term travel, accident-only, limited or specified disease, individual conversion policies or contracts, or to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as medicare, or any other similar coverage under state or federal governmental plans."

Section 59. Section 33-22-1002, MCA, is amended to read:

"**33-22-1002. Availability of coverage for home health care.** Insurers and health services corporations transacting health insurance business in this state ~~must~~ *shall* make available, under group insurance policies *or certificates* and under group hospital and medical service plan contracts, benefits for home health care. Applicants for a group policy, *certificate,* or contract may select any level of benefits ~~as~~ *that* may be offered by the insurer or service plan corporation."

Section 60. Section 33-22-1003, MCA, is amended to read:

"**33-22-1003. Applicability.** This part applies to policies, *certificates,* or contracts delivered or issued for delivery in this state after January 29, 1981, but does not apply to blanket, short-term travel, accident-only, limited or specified disease, or individual conversion policies or contracts, ~~or~~ to policies or contracts designed for coverage under Title XVIII of the Social Security Act, known as Medicare, or *to* any other similar coverage under federal governmental plans."

Section 61. Section 33-22-1810, MCA, is amended to read:

"**33-22-1810. Renewability of coverage.** (1) A health benefit plan subject to the provisions of this part is renewable with respect to all eligible employees or their dependents, at the option of the small employer, except in any of the following cases:

(a) nonpayment of the required premium;

(b) fraud or misrepresentation of the small employer or with respect to coverage of individual insureds or their representatives;

(c) noncompliance with the carrier's minimum participation requirements;

(d) noncompliance with the carrier's employer contribution requirements;

(e) repeated misuse of a restricted network provision;

(f) election by the small employer carrier to not renew all of its health benefit plans delivered or issued for delivery to small employers in this state, in which case the small employer carrier shall:

(i) provide advance notice of this decision under this subsection (1)(f) to the commissioner in each state in which it is licensed; and

(ii) at least 180 days prior to the nonrenewal of ~~any~~ *all small employer* health benefit plans by the carrier, provide notice of the decision not to renew coverage to all affected small employers and to the commissioner in each state in which an affected insured individual is known to reside. Notice to the commissioner under this subsection (1)(f) must be provided at least 3 working days prior to the notice to the affected small employers.

(g) the commissioner finds that the continuation of the coverage would:

(i) not be in the best interests of the policyholders or certificate holders; or

(ii) impair the carrier's ability to meet its contractual obligations.

(2) If the commissioner makes a finding under subsection (1)(g), the commissioner shall assist affected small employers in finding replacement coverage.

(3) *(a)* A small employer carrier that elects not to renew ~~a~~ *all of its* health benefit ~~plan~~*plans* under subsection (1)(f) is prohibited from writing new business in the small employer market in this state for a period of 5 years from the date of notice to the commissioner.

(b) The provisions of 33-22-524(3) apply to a small employer carrier that elects to renew only a portion, but not all, of its small employer health benefit plans.

(4) In the case of a small employer carrier doing business in one established geographic service area of the state, the rules set forth in this section apply only to the carrier's operations in that service area."

Section 62. Section 33-25-301, MCA, is amended to read:

"**33-25-301. Refusal, suspension, or revocation of title insurance producer's license.** (1) In addition to the causes provided in 33-17-1001, the commissioner may refuse to license *an applicant or renew the license of* a person as a title insurance producer or may suspend or revoke a title insurance producer's license *or may fine a title insurance producer or applicant, after notice and opportunity for a hearing,* if~~, after a hearing held after notice as required in 33-17-1001, he~~ *the commissioner* finds that the license applicant or licensee has:

(a) made a material misstatement in an application for a title insurance producer license;

(b) commingled funds belonging to applicants, escrow participants, or others;

(c) intentionally misrepresented the terms of a title insurance policy to an applicant or policyholder or has misrepresented material facts to, concealed material facts from, or made false statements to a party to an escrow, settlement, or closing transaction;

(d) in ~~the conduct of his~~ *conducting* affairs ~~under his~~ *as a* title insurance ~~producer's license~~ *producer*, used coercive practices or ~~shown himself to be financially irresponsible~~ *demonstrated financial irresponsibility*;

(e) aided, abetted, or assisted another person in violating the provisions of this title or a rule adopted by the commissioner.

(2) The commissioner may impose any other appropriate penalty provided for in this title.

(3) The commissioner may refuse, suspend, or revoke the license of a person licensed as a title insurance producer for the actions described in subsection (1) ~~of~~ *committed by* any individual designated in the license ~~to exercise its powers~~."

Section 63. Section 33-30-102, MCA, is amended to read:

"**33-30-102. Application of this chapter — construction of other related laws.** (1) All health service corporations are subject to the provisions of this chapter. In addition to the provisions contained in this chapter, other chapters and provisions of this title apply to health service corporations as follows: *33-2-1212; 33-3-307;* 33-3-308; *33-3-431;* 33-3-701 through 33-3-704; 33-17-101; Title 33, chapter 17, parts 2 and 10 through 12; and Title 33, chapters 1, 15, 18, 19, and 22, except 33-22-111.

(2) A law of this state other than the provisions of this chapter applicable to health service corporations must be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict, the provisions of this chapter prevail."

Section 64. Section 33-30-107, MCA, is amended to read:

"**33-30-107. Annual statement.** (1) On or before March 1 of each year, each health service corporation shall file an annual statement for the preceding year on the ~~N.A.I.C.~~ *national association of insurance commissioners'* health blank form with the commissioner of insurance. This annual statement must be completed in accordance with *the annual statement instructions and the Accounting Practices and Procedures Manual of* the national association of insurance ~~commissioners' annual statement instructions~~ *commissioners*. The statement must be accompanied by an actuarial opinion attesting to the insurer's reserves.

(2) The health service corporation shall file a statement containing any other information concerning its financial affairs that may be reasonably requested by the commissioner.

(3) (a) Each health service corporation shall file electronic versions of its annual and quarterly financial statements with the national association of insurance commissioners. The date for submission of the annual statement electronic filing is March 1. The dates for submission of the quarterly statement electronic filing are as follows:

(i) the first quarter filing is due May 15;

(ii) the second quarter filing is due August 15; and

(iii) the third quarter filing is due November 15.

(b) The commissioner may exempt health service corporations operating only in Montana from these filing requirements.

(4) The commissioner may, after notice and hearing, suspend or revoke a health service corporation's license or impose a fine not to exceed $100 a day and not to exceed $1,000 upon a health service corporation that fails to file an annual statement as required by this part."

Section 65. Section 33-30-108, MCA, is amended to read:

"**33-30-108. License required.** (1) A person may not act as a health service corporation and a health service corporation may not conduct business in this state except as authorized by a license issued by the commissioner.

(2) ~~A license may be issued by the commissioner only after the person has complied with the applicable provisions of this title~~ *The commissioner may issue a license after the person has complied with the applicable provisions of this title and has submitted an application on a form prescribed by the commissioner.*

(3) A health service corporation is entitled to a continuation of its license upon payment of the annual continuation fee specified in 33-30-204 on or before March 1 of each year and upon continued compliance with the provisions of this title.

(4) ~~A license issued or continued under this section may be revoked or suspended by the commissioner for violation of this title~~ *The commissioner may revoke or suspend any license issued under this section for violations of this title.*"

Section 66. Section 33-31-111, MCA, is amended to read:

"**33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Chapter 1, parts 12 and 13, of this title, *33-2-1114, 33-2-1211, 33-2-1212, 33-3-422,* 33-3-431, 33-15-308, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-246, 33-22-247, 33-22-514, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations."

Section 67. Section 33-31-211, MCA, is amended to read:

"**33-31-211. Annual statements — revocation for failure to file — penalty for false swearing.** (1) Unless it is operated by an insurer or a health service corporation as a plan, each authorized health maintenance organization shall annually on or before March 1 file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the preceding December 31. The statement must be in the general form and content required by the commissioner. ~~and~~ *The statement* must be completed in accordance with the national association of insurance commissioners' annual statement instructions *and the Accounting Practices and Procedures Manual of the national association of insurance commissioners*. The statement must be verified by the oath of at least two principal officers of the health maintenance organization. The commissioner may waive any verification under oath. In addition, a health maintenance organization shall, unless it is operated by an insurer or a health service corporation as a plan, annually file on or before June 1 an audited financial statement. A health maintenance organization's audited financial statement must comply with rules adopted by the commissioner concerning audited financial statements.

(2) At the time of filing the annual statement required by March 1, the health maintenance organization shall pay the commissioner the fee for filing the statement as prescribed in 33-31-212. The commissioner may refuse to accept the fee for continuance of the insurer's certificate of authority, as provided in 33-31-212, may impose a penalty of $100, or may suspend or revoke the certificate of authority of a health maintenance organization that fails to file an annual statement when due. Each day that the insurer fails to file its annual statement constitutes a separate violation. The total penalty may not exceed $1,000.

(3) The commissioner may, after notice and hearing, impose a fine not to exceed $5,000 for each violation upon a director, officer, partner, member, insurance producer, or employee of a health maintenance organization who knowingly subscribes to or concurs in making or publishing an annual statement required by law that contains a material statement that is false.

(4) The commissioner may require reports considered reasonably necessary and appropriate to enable the commissioner to carry out the duties required of the commissioner under this chapter, including but not limited to a statement of operations, transactions, and affairs of a health maintenance organization operated by an insurer or a health service corporation as a plan."

Section 68. Section 33-31-311, MCA, is amended to read:

"**33-31-311. Insurance producer license required — application, issuance, renewal, fees — penalty.** (1) An individual, partnership, or corporation may not act as or represent to the public that the individual, partnership, or corporation is an insurance producer of a health maintenance organization unless the individual, partnership, or corporation is:

(a) licensed as a disability insurance producer by the commissioner pursuant to chapter 17, parts 1, 2, and 4 of this title or licensed as an insurance producer as provided in 33-30-311; and

(b) appointed or authorized by the health maintenance organization to solicit health care service agreements on its behalf.

(2) Application, appointment, and qualification for a health maintenance organization insurance producer license, fees applicable to and the issuance of a health maintenance organization insurance producer license, and renewal of a health maintenance organization insurance producer license must be in accordance with the provisions of chapter 17 that apply to a disability insurance producer.

(3) An individual, partnership, or corporation ~~who~~ *that* holds a disability insurance producer license on October 1, 1987, need not requalify by an

examination to be licensed as a health maintenance organization insurance producer.

(4) The commissioner may, in accordance with ~~33-1-313,~~ 33-1-317, 33-17-411, and chapter 17, part 10, suspend, revoke, refuse to issue or renew a health maintenance organization insurance producer ~~license,~~ license or impose a fine upon the licensee."

Section 69. Section 33-31-401, MCA, is amended to read:

"**33-31-401. Examination.** (1) The commissioner may examine the affairs of a health maintenance organization as often as is reasonably necessary to protect the interests of the people of this state. The commissioner shall make an examination at least once every 3 years. *The commissioner shall examine a health maintenance organization operated by an insurer or health service corporation as a plan at least once every 5 years.* The provisions of 33-1-408 and 33-1-409 apply to examinations under this section.

(2) Each authorized health maintenance organization and provider shall submit its relevant books and records for the examinations and in every way facilitate the examinations. For the purpose of examination, the commissioner may administer oaths to and examine the officers and insurance producers of the health maintenance organization and the principals of the providers concerning their business.

(3) (a) Upon presentation of a detailed account of the charges and expenses of examinations by the commissioner, the health maintenance organization being examined shall pay to the examiner as necessarily incurred on account of the examination the actual travel expenses, a reasonable living-expense allowance, and a per diem, all at reasonable rates customary therefor and as established or adopted by the commissioner. The commissioner may present an account periodically during the course of the examination or at the termination of the examination as the commissioner considers proper. A person may not pay and an examiner may not accept any additional emolument on account of any examination.

(b) If a health maintenance organization fails to pay the charges and expenses as referred to in subsection (3)(a), the commissioner shall pay them out of the funds of the commissioner in the same manner as other disbursements of funds. The amount paid is a lien upon all of the person's assets and property in this state and may be recovered by suit by the attorney general on behalf of the state and restored to the appropriate fund.

(4) In lieu of an examination, the commissioner may accept the report of an examination made by the commissioner of another state."

Section 70. Section 45-6-301, MCA, is amended to read:

"**45-6-301. Theft.** (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter 71 or 72, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) A person commits the offense of theft when the person purposely or knowingly commits insurance fraud as provided in 33-1-1202 *or 33-1-1302*.

(7) (a) A person convicted of the offense of theft of property not exceeding $1,000 in value shall be fined not to exceed $1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense shall be fined $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) A person convicted of the offense of theft of property exceeding $1,000 in value or theft of any commonly domesticated hoofed animal shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(8) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Section 71. Section 61-12-310, MCA, is amended to read:

"**61-12-310. Form of contract.** ~~No~~ *A motor club* service contract ~~shall~~ *may not* be executed, issued, or delivered in this state unless it contains the following:

(1) the ~~exact corporate or other~~ name of the *motor club service* company;

(2) the ~~exact~~ location of its home office ~~and of its usual place of business in this state~~, giving street number, ~~and~~ city, *and state*;

(3) a provision that the contract may be canceled at any time by either the company or the holder~~,~~ and that the holder ~~shall~~ *is*, if ~~he~~ *the holder* has actually paid the consideration, ~~thereupon be~~ entitled to the unused portion of the consideration paid for ~~such~~ *the* contract, calculated on a pro rata basis without any deductions;

(4) a provision plainly specifying the services promised and that the holder ~~shall not be~~ *is not* required to pay any sum for any services specified in the contract in addition to the amount specified in the contract~~,~~ and further specifying the territory ~~wherein such~~ *where the* services are to be rendered~~,~~ and the date when ~~such~~ *the* service ~~shall commence~~ *commences*."

Section 72. Section 61-12-315, MCA, is amended to read:

"**61-12-315. Penalty for violation.** ~~If any~~ *A* person ~~shall violate~~ *violating* the provisions of this part~~, such person shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $500 or by imprisonment in the county jail for not more than 6 months or by both such fine and imprisonment~~ *is liable pursuant to 33-1-317*."

Section 73. Repealer. Sections 33-1-213, 33-1-702, 33-1-703, 33-1-704, 33-1-706, 33-2-706, 33-4-405, 33-11-106, 33-17-221, 33-17-404, 33-17-1107, 33-17-1111, 33-17-1112, 33-17-1113, 33-17-1114, and 33-23-311, MCA, are repealed.

Section 74. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 33, chapter 1, part 1, and the provisions of Title 33, chapter 1, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 33, chapter 3, and the provisions of Title 33, chapter 3, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 33, chapter 30, and the provisions of Title 33, chapter 30, apply to [section 3].

(4) [Section 4] is intended to be codified as an integral part of Title 33, chapter 1, part 7, and the provisions of Title 33, chapter 1, part 7, apply to [section 4].

(5) [Section 5] is intended to be codified as an integral part of Title 33, chapter 18, and the provisions of Title 33, chapter 18 apply to [section 5].

(6) [Section 6] is intended to be codified as an integral part of Title 33, chapter 20, part 13, and the provisions of Title 33, chapter 20, part 13, apply to [section 6].

Approved April 12, 2001

CHAPTER NO. 228

[HB 537]

AN ACT ALLOWING A COUNTY MUTUAL INSURER TO CHANGE ITS STATUS TO THAT OF A STATE MUTUAL INSURER BY AMENDING ITS ARTICLES OF INCORPORATION; PROVIDING THAT A COUNTY MUTUAL INSURER THAT CHANGES ITS STATUS TO THAT OF A STATE MUTUAL INSURER IS SUBJECT TO THE REQUIREMENTS FOR STATE MUTUAL INSURERS PROVIDED IN TITLE 33, CHAPTER 4, MCA; INCREASING THE REQUIRED SURPLUS FUNDS; AMENDING SECTIONS 33-4-204, 33-4-206, 33-4-401, AND 33-4-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-4-204, MCA, is amended to read:

"**33-4-204. Amendment of articles** — ***change from county mutual insurer to state mutual insurer.*** *(1)* A farm mutual insurer may, by a vote of two-thirds of its members present at any annual meeting or at any special meeting called for that purpose, amend its articles of incorporation to extend its corporate duration or any other particular within the scope of this chapter by causing amended articles to be filed in the same form and manner as required for original articles of incorporation.

(2) (a) A county mutual insurer may change its status to that of a state mutual insurer by amending its articles of incorporation pursuant to the requirements of this section.

(b) A county mutual insurer that changes its status to that of a state mutual insurer shall conform with all requirements for a state mutual insurer under this chapter upon its articles of amendment being certified by the commissioner, including the requirements of 33-4-206(2) and 33-4-401(1).

(3) The commissioner shall review the amended articles for compliance with this title. The amended articles of incorporation may be signed only by the president and secretary of the corporation and attested by the corporate seal. Notice of the proposed amendment must be contained in the notice of the annual or special meeting."

Section 2. Section 33-4-206, MCA, is amended to read:

"**33-4-206. Initial qualifications.** When applying for an original certificate of authority as an insurer newly organized in this state, *or for an amended certificate of authority in the case of a county mutual insurer that is changing its status to that of a state mutual insurer pursuant to 33-4-204,* the insurer must have surplus as required by 33-4-401~~,~~ *and* be otherwise qualified ~~therefor~~ under this ~~code~~ *chapter*, and:

(1) if a county mutual insurer, it must have received acceptable bona fide written applications from 25 separate persons for substantial insurance of the kinds of insurance proposed to be transacted, aggregating at least $100,000. ~~Such~~ *The* applicants must have given to the insurer the obligations referred to in 33-4-508 or paid the premium required ~~therefor~~ *for the insurance*, subject to the insurer qualifying to transact the kinds of insurance ~~so~~ *for which it has* applied ~~for~~.

(2) if a state mutual insurer, *or a county mutual insurer that has changed its status to that of a state mutual insurer pursuant to 33-4-204*, it must have received acceptable bona fide written applications from 100 separate persons, each for substantial insurance, aggregating at least $500,000 of the kinds of insurance proposed to be transacted. ~~Such~~ *The* applicants must have given to the insurer the obligations referred to in 33-4-508 or paid the premium required ~~therefor~~ *for the insurance*, subject to the insurer qualifying to transact the kinds of insurance ~~so~~ *for which it has* applied ~~for~~.

(3) if to insure growing crops against loss or damage by hail, it must have received applications for ~~such~~ hail insurance from not less than 100 persons ~~resident~~ *residing* in Montana *and* owning in the aggregate not less than 5,000 acres of grain. Each ~~such~~ applicant must have given to the insurer the obligations referred to in 33-4-508 or paid the premium required ~~therefor~~ *for the insurance*, subject to the insurer qualifying to transact *hail* insurance."

Section 3. Section 33-4-401, MCA, is amended to read:

"33-4-401. Surplus funds required. A domestic farm mutual insurer ~~may hereafter be~~ *is* authorized to transact insurance if *it is* otherwise in compliance with the applicable provisions of this chapter~~;~~ *and* if it ~~has and thereafter~~ maintains surplus funds as follows:

(1) if a state mutual insurer, *or a county mutual insurer that has changed its status to that of a state mutual insurer pursuant to the provisions of 33-4-204*, surplus of not less than ~~$100,000~~ *$200,000*; *or*

(2) if a county mutual insurer, surplus of not less than ~~$20,000~~ *$50,000*~~; or~~.

~~(3) if to insure growing crops against hail or other hazards, surplus in the amount of 150% of the amount otherwise required under this section. This provision (3) shall not apply as to any domestic insurer first authorized as such prior to January 1, 1956, which transacts business on the pro rata, nonassessable plan, under which plan a pro rata portion only of insured losses is paid in event advance premiums collected are inadequate to pay all such losses in full.~~"

Section 4. Section 33-4-501, MCA, is amended to read:

"33-4-501. Insuring powers in general. (1) In respect to property insurance as defined in 33-1-210, a farm mutual insurer shall insure against loss or damage by fire or other casualty only:

(a) rural dwellings and buildings, including the usual contents, farm livestock, machinery, vehicles, growing crops, and other forms of farm property owned by a member of the insurer or by the member's spouse;

(b) residential dwellings, appurtenant structures, and personal property owned by a member of the insurer or by the member's spouse ~~and located:~~

~~(i) outside the boundaries of an incorporated city or town; or~~

~~(ii) in an incorporated city or town with a population of less than 15,000~~;

(c) dwellings and related buildings designed for occupancy by not over ~~two~~ *four* families, together with the usual contents~~, situated in an incorporated city or town with a population of 15,000 or more, but only if the property is owned by a member of the insurer or by the member's spouse and the member has other insurance of rural property with the insurer~~;

(d) rural schoolhouses and buildings used in connection with the schoolhouse, rural community houses, rural churches, or other rural public buildings.

(2) A farm mutual insurer may insure against the liability risks provided in 33-1-206(1)(b)*:*

(a) only to the extent of the limit of risks provided in 33-4-502(3)*;* and ~~only~~

(b) if *contingent liability exists, provided that* every policy ~~bears on its face in boldface type~~ *contains* a statement that each member of the farm mutual insurer is subject to a contingent liability under 33-3-411.

~~(3) Except as provided in subsection (1)(d), an insurer may not insure any property not owned by a member or by the member's spouse.~~

~~(4) An insurer may not insure any property situated within the limits of an incorporated city or town except as provided in subsections (1)(b)(ii), (1)(c), and (5) and may not insure the property unless it has and maintains the surplus funds as required under 33-4-401.~~

~~(5) An insurer may continue to insure property situated within the limits of an incorporated city or town with a population of 15,000 or more if the insured obtained coverage when the incorporated city or town had a population of less than 15,000.~~"

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 12, 2001

CHAPTER NO. 229

[SB 323]

AN ACT AMENDING THE EXCLUSIVE REMEDY PROVISION IN THE WORKERS' COMPENSATION ACT TO PROVIDE AN INJURED EMPLOYEE WITH A CAUSE OF ACTION FOR DAMAGES AGAINST AN EMPLOYER OR A FELLOW EMPLOYEE WHO CAUSES INTENTIONAL INJURY; DEFINING "INTENTIONAL INJURY"; AMENDING SECTION 39-71-413, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, Montana's workers' compensation law is the exclusive remedy for an employee injured or killed in the scope of employment, as included in Article II, section 16, of the Montana Constitution and implemented by the Legislature in section 39-71-411, MCA; and

WHEREAS, the exclusive remedy provision of workers' compensation can be described as a quid pro quo exchange of rights and remedies, which is intended to relieve an injured employee of the responsibility of undertaking lengthy and expensive legal action to recover compensation for job-related injuries by proving an employer's negligence while relieving the employer of the burden of defending against work-related claims through the traditional common-law defenses of contributory negligence, assumption of risk, and the fellow servant rule to defeat the employee's claim; and

WHEREAS, in 1973, the Montana Legislature enacted section 39-71-413, MCA, which allowed an injured employee to sue a servant or employee of the employer when the injury was the result of an intentional or malicious act by the servant or employee of the injured employee's employer; and

WHEREAS, in a 2000 decision, Sherner v. Conoco, Inc., 2000 MT 50, 298 Mont. 401 (2000), the Montana Supreme Court revisited the standard used for determining whether an employer's act or omission was protected under the exclusive remedy; and

WHEREAS, the court applied section 39-71-413, MCA, to employers and held that actual malice, as described in section 27-1-221, MCA, which provides that a person acts with malice if an employer has knowledge of facts or intentionally disregards facts that create a high probability of injury and deliberately acts with conscious or intentional disregard or indifference to that high probability, would be the standard applied; and

WHEREAS, the exclusive remedy provision in the Workers' Compensation Act should provide that an injured employee has a cause of action for damages against an employer or the employer's employee only if the employer or fellow employee causes an intentional injury.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-413, MCA, is amended to read:

"39-71-413. Liability of *employer or* fellow employee for intentional ~~and malicious~~ *and deliberate* acts ~~or omissions~~ — additional cause of action — *intentional injury defined.* *(1)* If an employee ~~receives an injury~~ *is intentionally injured by an intentional and deliberate act of the employee's employer or by the intentional and deliberate act of a fellow employee* while performing the duties of ~~his~~ employment ~~and the injury or injuries so received by the employee are caused by the intentional and malicious act or omission of a servant or employee of his employer, then~~, the employee or in case of ~~his~~ death ~~his~~ *the employee's* heirs or personal representatives ~~shall~~, in addition to the right to receive compensation under the Workers' Compensation Act, ~~have a right to prosecute any~~ *have a* cause of action ~~he may have~~ for damages against the ~~servants or employees of his employer causing the injury~~ *person whose intentional and deliberate act caused the intentional injury.*

(2) An employer is not vicariously liable under this section for the intentional and deliberate acts of an employee.

(3) As used in this section, "intentional injury" means an injury caused by an intentional and deliberate act that is specifically and actually intended to cause injury to the employee injured and there is actual knowledge that an injury is certain to occur."

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to injuries that occur on or after [the effective date of this act].

Approved April 12, 2001

CHAPTER NO. 230

[SB 159]

AN ACT AUTHORIZING THE BOARD OF LAND COMMISSIONERS TO GRANT EASEMENTS FOR SPECIFIC USES IN STATE LANDS: AMENDING

SECTION 77-2-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2-101, MCA, is amended to read:

"77-2-101. Easements for ~~public~~ *specific* uses. ~~(1) The board may grant easements in state lands for schoolhouse sites and grounds, public parks, community buildings, cemeteries,, *environmental control purposes*, and other public uses upon proper applications accompanied by accurate and duly verified plats from the lawfully constituted authorities having charge of those properties.~~ *(1) Upon proper application as provided in 77-2-102, the board may grant easements on state lands for the following purposes:*

(a) schoolhouse sites and grounds;

(b) public parks;

(c) community buildings;

(d) cemeteries;

(e) conservation purposes:

(i) to the department of fish, wildlife, and parks for parcels that are surrounded by or adjacent to land owned by the department of fish, wildlife, and parks as of January 1, 2001;

(ii) to a nonprofit corporation for parcels that are surrounded by or adjacent to land owned by that same nonprofit corporation as of January 1, 2001; and

(iii) to a nonprofit corporation for the Owen Sowerwine natural area located within section 16, township 28 north, range 21 west, in Flathead County; and

(f) for other public uses.

(2) The board may grant ~~an easement~~ *easements on state lands* for *the following purposes:*

(a) right-of-way across or upon any portion of state lands for any public highway or street, any ditch, reservoir, railroad, private road, *or* telegraph or telephone line, or any other public use as defined in 70-30-102~~. This subsection shall not be construed to grant authority to convey any such land, except for the purposes above set forth~~*; or*

(b) any private building or private sewage system that encroaches on state lands."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 12, 2001

CHAPTER NO. 231

[SB 94]

AN ACT AMENDING THE DEFINITION OF "BASE AID" TO INCLUDE 40 PERCENT OF THE SPECIAL EDUCATION ALLOWABLE COST PAYMENT; AMENDING THE DEFINITION OF "BASE BUDGET" TO INCLUDE 140 PERCENT OF THE SPECIAL EDUCATIONAL ALLOWABLE COST

PAYMENT; AMENDING THE DEFINITION OF "MAXIMUM GENERAL FUND BUDGET" TO INCREASE THE SPECIAL EDUCATION ALLOWABLE COST PAYMENT COMPONENT FROM 153 PERCENT TO 175 PERCENT FOR SCHOOL FISCAL YEAR 2002; AMENDING THE DEFINITION OF "MAXIMUM GENERAL FUND BUDGET" FOR SCHOOL FISCAL YEAR 2003 AND SUCCEEDING YEARS TO INCLUDE THE GREATER OF 175 PERCENT OF THE SPECIAL EDUCATION ALLOWABLE COST PAYMENT OR THE RATIO, NOT TO EXCEED 200 PERCENT, OF THE DISTRICT'S SPECIAL EDUCATION ALLOWABLE COST EXPENDITURES TO THE SPECIAL EDUCATION ALLOWABLE COST PAYMENT FOR THE FISCAL YEAR THAT IS 2 YEARS PREVIOUS; AMENDING SECTION 20-9-306, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-306, MCA, is amended to read:

"**20-9-306. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district; and

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and ~~up to~~ 40% of the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and ~~up to~~ 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) $206,000 for each high school district;

(b) $18,540 for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:

(i) $18,540 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) $206,000 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(8) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and ~~up to 153%~~ *175%* of special education allowable cost payments.

(9) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(10) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations:

(a) for a high school district or a K-12 district high school program, a maximum rate of $5,015 for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of $3,763 for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of $3,763 for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of $5,015 for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB."

Section 2. Section 20-9-306, MCA, is amended to read:

"**20-9-306. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district; and

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and up to 40% of the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and up to 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) $206,000 for each high school district;

(b) $18,540 for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:

(i) $18,540 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) $206,000 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(8) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and ~~up to 153%~~ *the greater of:*

(a) 175% of special education allowable cost payments*; or*

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

(9) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(10) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations:

(a) for a high school district or a K-12 district high school program, a maximum rate of $5,015 for the first ANB is decreased at the rate of 50 cents per

ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of $3,763 for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of $3,763 for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of $5,015 for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB."

Section 3. Effective dates — applicability. (1) Except as provided in subsection (2), [this act] is effective July 1, 2001, and applies to school budgets for the school fiscal year beginning July 1, 2001.

(2) [Section 2] is effective July 1, 2002, and applies to school budgets for school fiscal years beginning on or after July 1, 2002.

Section 4. Termination. [Section 1] terminates June 30, 2002.

Approved April 12, 2001

CHAPTER NO. 232

[HB 7]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AMENDING SECTION 2, CHAPTER 419, LAWS OF 1999; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations for reclamation and development grants. (1) The amount of $4,100,000 is appropriated to the department of natural resources and conservation from the reclamation and development grants special revenue account from funds allocated for appropriation from the interest income of the resource indemnity trust fund set forth in Title 15, chapter 38.

(2) The funds appropriated in this section must be awarded by the department to the entities listed in [section 2] for the prescribed purposes and in the prescribed grant amounts, subject to the conditions provided in [sections 2 through 4].

Section 2. Approved grant projects. (1) The legislature approves the grants listed in subsection (2), to be made in the order of priority as indicated within the following list of projects and activities. If the conditions in [sections 3 and 4] are met, funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted by grantees or funds not used by higher-ranked projects and activities must be provided for projects and activities lower on the priority list that would otherwise not receive funding. Descriptions of the various projects and activities and specific conditions established for each project and activity are contained within the department of natural resources and conservation's reclamation and development grants program report to the 57th legislature for the 2003 biennium.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
BOARD OF OIL AND GAS CONSERVATION*	$300,000
2001 Eastern District Orphaned Well Plug & Abandonment & Site Restoration	
BOARD OF OIL AND GAS CONSERVATION*	300,000
2001 Northern District Orphaned Well Plug & Abandonment & Site Restoration	
DEPARTMENT OF ENVIRONMENTAL QUALITY	300,000
Development of Trust Fund to Ensure Long-Term Water Treatment at Zortman-Landusky	
POWELL COUNTY*	300,000
Ontario Wet Tailings Reclamation	
CITY OF LEWISTOWN*	297,740
Reclamation of Brewery Flats on Big Spring Creek	
DEPARTMENT OF ENVIRONMENTAL QUALITY*	291,191
CMC Pony Mill Site Reclamation Project (completion phase)	
BROADWATER CONSERVATION DISTRICT*	145,380
Big Belt Mine Reclamation Projects	
CITY OF DEER LODGE*	140,000
Former Chicago Milwaukee Railroad Passenger Fueling Area, Deer Lodge, Montana	
BUTTE-SILVER BOW COUNTY	49,272
Upper Clark Fork Basin; Superfund Technical Assistance	
BOARD OF OIL AND GAS CONSERVATION	250,000
2001 Southern District Orphaned Well Plug & Abandonment & Site Restoration	
CUSTER COUNTY CONSERVATION DISTRICT*	299,977
Yellowstone River Resource Conservation Project	

CASCADE COUNTY / WEED AND MOSQUITO MANAGEMENT	218,466
Fort Shaw Weed Shop Soil Contamination Remediation	
DEPARTMENT OF ENVIRONMENTAL QUALITY*	300,000
Organic Soil Amendments	
DEPARTMENT OF ENVIRONMENTAL QUALITY*	300,000
Zortman Mine - Ruby Gulch Tailings Removal	

The state grant is subject to receipt of federal funds to complete tailings removal and stream channel restoration above, within, and below the Zortman townsite.

DEPARTMENT OF ENVIRONMENTAL QUALITY	250,000
Coal Bed Methane Gas EIS	
GLACIER COUNTY*	150,000
2000 Glacier County Plugging & Abandonment	
PONDERA COUNTY*	100,000
Pondera County Oil & Gas Well Plug & Abandonment Project	
LIBERTY COUNTY*	50,000
Abandonment Aid Program for Small Independent Operators in Liberty, Hill, Blaine, & Chouteau Counties	
DEPARTMENT OF ENVIRONMENTAL QUALITY*	300,000
Gregory Mine Reclamation Project	
SHERIDAN COUNTY CONSERVATION DISTRICT	299,950
Protecting Natural Resources by Reclaiming Oilfield Brine Contaminated Soils	
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	272,500
DNRC Environmental Hazard Sites on State Land	
FLATHEAD COUNTY	167,821
Assessment of Aggregate Resources for Long-Term Planning in Flathead & Missoula Counties	

(3) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2003 biennium pursuant to 17-7-302.

(4) The funding provided to the grant projects in this section and identified by an asterisk (*) following the applicant's name is eligible for and may be designated for use as a nonfederal match for the federal funding acquired for the nonpoint source pollution control program administered by the department of environmental quality.

Section 3. Coordination of fund sources for grants program projects. A sponsor of a grants program project who has applied for a grant for that project under both the reclamation and development grants program and the renewable resource grant and loan program may not receive duplicate funding.

Section 4. Condition of grants. Disbursement of grant funds under [sections 1 through 5] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Reduction in a scope of work or budget may not affect priority activities or improvements.

(2) Other funds required for project completion must have been committed, and the commitment must be documented.

(3) The project sponsor shall show satisfactory completion of conditions described in the recommendation section of the project narrative of the reclamation and development grants program report to the legislature for the 2003 biennium.

(4) An agreement between the department and the project sponsor must be executed in a timely manner, taking into consideration any changed conditions or circumstances that govern the administration and disbursement of funds.

(5) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or as defined by the legislature.

Section 5. Other appropriations. There is appropriated to any entity of state government that receives a grant under [sections 1 through 4] the amount of the grant upon award of the grant by the department of natural resources and conservation. Grants to state entities from a prior biennium are reauthorized for completion of contract work.

Section 6. Section 2(2), Chapter 419, Laws of 1999, is amended to read:

"Section 2. Approved grant projects.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
MONTANA BOARD OF OIL AND GAS CONSERVATION*	
1999 "A" Orphaned Well Plug and Abandonment and Site Restoration	$300,000
MONTANA BOARD OF OIL AND GAS CONSERVATION*	
1999 "B" Orphaned Well Plug and Abandonment and Site Restoration	300,000
~~ENVIRONMENTAL QUALITY, DEPARTMENT OF*~~	
~~Toston Smelter Reclamation Project~~	~~300,000~~
~~ENVIRONMENTAL QUALITY, DEPARTMENT OF*~~	
~~Frohner Mine Reclamation Project~~	~~300,000~~
~~ENVIRONMENTAL QUALITY, DEPARTMENT OF*~~	
~~Great Republic Smelter Reclamation Project~~	~~300,000~~
PARK CONSERVATION DISTRICT*	
Upper Yellowstone River Cumulative Effects Investigation	299,940

TOOLE COUNTY*	
Toole County Plugging and Abandonment, Aid to Independent Small Oil Operators	300,000
BUTTE-SILVER BOW LOCAL GOVERNMENT	
Upper Clark Fork Basin: Superfund Technical Assistance	95,236
FERGUS COUNTY CONSERVATION DISTRICT*	
Central Montana Artesian Basin Ground Water Project	150,000
TOOLE COUNTY	
North Toole County Reclamation Project	150,000
BUTTE-SILVER BOW LOCAL GOVERNMENT	
Mining City Mineyard Preservation and Enhancement	297,104
TOWNSEND, CITY OF	
East Pacific Mine Reclamation	202,500
MONTANA TECH OF THE UNIVERSITY OF MONTANA	
Champion International Gravel Pit Reclamation Project	57,494
LEWISTOWN, CITY OF	
Source Location of Hazardous Organic Contaminants Spring Creek Drainage	50,000
GLASGOW IRRIGATION DISTRICT	
St. Mary Diversion Repairs	110,818
MONTANA BOARD OF OIL AND GAS CONSERVATION	
Oil Well Abandonment	20,105

The board of oil and gas conservation is authorized to expend remaining funds from grants to the board in this subsection (2) and remaining funds from grants previously awarded to the board to pay for the proper plugging of additional abandoned oil and gas wells. In determining which wells to plug, abandoned wells that represent the greatest threat to the environment and public health and safety should be given priority over all others."

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. Effective date. [This act] is effective July 1, 2001.

Approved April 13, 2001

CHAPTER NO. 233

[HB 190]

AN ACT ALLOWING UP TO 25 PERCENT OF THE LOCAL MATCHING FUNDS REQUIRED FOR THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM TO BE IN THE FORM OF DEBT THAT WAS

INCURRED BY LOCAL GOVERNMENT ENTITIES INCLUDED IN THE REGIONAL WATER SYSTEM TO CONSTRUCT INDIVIDUAL DRINKING WATER SYSTEMS BEFORE THE INDIVIDUAL SYSTEMS WERE CONNECTED TO THE REGIONAL SYSTEM; LIMITING THE AMOUNT OF AN INDIVIDUAL ENTITY'S DEBT THAT MAY BE USED FOR MATCHING FUNDS; AMENDING SECTION 90-6-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-715, MCA, is amended to read:

"**90-6-715. (Temporary) Special revenue account — use.** (1) The treasure state endowment regional water system special revenue account may be used to provide matching funds to plan and construct regional drinking water systems in Montana. Each state dollar must be matched equally by local funds. Federal and state grants may not be used as a local match.

(2) Up to 25% of the local matching funds required under subsection (1) for the treasure state endowment regional water system may be in the form of debt that was incurred by local government entities included in the regional water system to construct individual drinking water systems before the individual systems were connected to the regional system. However, the amount of an individual entity's debt that may be used for matching funds is limited to the amount necessary to allow the entity to maintain its water service charges below the hardship standard established by the department through administrative rules adopted under 90-6-710(4).

~~(2)~~*(3)* The funds in the account are further restricted to be used to finance regional drinking water systems, such as projects in north central Montana, from the waters of the Tiber reservoir, that will provide water for domestic use, industrial use, and stockwater for communities and rural residences that lie south of the Canadian border, west of Havre, north of Dutton, and east of Cut Bank and in northeastern Montana, from the waters of the Missouri River, that will provide water for domestic use, industrial use, and stockwater for communities and rural residences that lie south of the Canadian border, west of the North Dakota border, north of the Missouri River, and east of range 39.

~~(3)~~*(4)* The funds must be administered by the department of commerce for eligible projects. (Terminates June 30, 2013—sec. 6, Ch. 495, L. 1999.)"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 13, 2001

CHAPTER NO. 234

[HB 599]

AN ACT DEFINING "MINIMUM SLASH HAZARD"; PROVIDING AN EXEMPTION FROM THE FIRE HAZARD REDUCTION AGREEMENT AND BOND UNLESS THE PERSON CLAIMING TO HAVE CREATED A MINIMUM SLASH HAZARD FAILS TO COMPLY WITH THE PROVISIONS RELATING TO MINIMUM SLASH HAZARDS; AND AMENDING SECTIONS 76-13-401, 76-13-408, AND 76-13-410, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-401, MCA, is amended to read:

"76-13-401. Definitions. As used in this part, the following definitions apply:

(1) "Certificate of clearance" means a certificate issued by the department acknowledging that the fire hazard has been reduced or managed in accordance with this part and the fire hazard reduction agreement or agreements.

(2) "Contractor" means the person who executes the fire hazard reduction agreement and is responsible to fulfill the obligations established by the agreement.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Exemption certificate" means an exemption from the provisions of this part that must be granted by the department for the harvest of merchantable trees within the boundaries of an incorporated city or town.

(5) "Fire hazard" means slash and debris resulting from timber cutting, timber stand improvement, or right-of-way clearing operations that produce a cover of flammable material in which fire could spread through a cutting or adjacent area.

(6) "Fire hazard reduction agreement" means a contract made to ensure compliance with this part and with the rules adopted under 76-13-403 for fire hazard reduction or management on private forest lands.

(7) "Fire hazard reduction or management" means the abatement of a fire hazard on private forest lands by methods that include but are not limited to separation, removal, scattering, lopping, crushing, piling and burning, broadcast burning, burying, or chipping.

(8) "Forest product" means trees or their component parts, including but not limited to logs, poles, branches, or bark.

(9) "Master fire hazard reduction agreement" means a fire hazard reduction agreement between the department and persons engaged in continuing cutting operations of sufficient number and size to warrant covering these operations under a single agreement and a single bond.

(10) "Minimum slash hazard" means an amount of slash and debris generated by noncommercial activities, which may include but are not limited to weeding, pruning, or clearing on private land within the state.

~~(10)~~*(11)* "Person" means an individual, association, partnership, corporation, estate, or any other entity.

~~(11)~~*(12)* "Private forest lands" means all lands of whatever character containing merchantable timber that are not owned by the state, a political subdivision of the state, the United States, any agency of the United States, or an Indian tribe.

~~(12)~~*(13)* "Purchaser" means a person who purchases or contracts to purchase any forest products cut from private forest lands within the state. The term includes persons who purchase products manufactured on the cutting area."

Section 2. Section 76-13-408, MCA, is amended to read:

"76-13-408. Fire hazard reduction agreement and bond — bond release and penalty — *exemption*. (1) Before cutting any forest product, constructing or reconstructing any road in contemplation of cutting any forest product, or conducting timber stand improvement, such as but not limited to precommercial thinning, weeding, or pruning, upon private forest lands within the state, the person conducting the work must be issued an exemption certificate by the department or shall provide for the reduction or management of the fire hazard to be created, *except where a minimum slash hazard would exist*, by entering into a fire hazard reduction agreement or a master fire hazard reduction agreement with the department, providing for the full and faithful compliance with all requirements under this part and the faithful reduction or management of the fire hazard in the manner prescribed by law and by rules adopted under this part.

(2) Either the person conducting the work or the purchaser, as provided in 76-13-409(2), shall post a bond to the state in a form and for an amount as may be prescribed by the department, but the amount may not exceed $6 for each 1,000 board feet (log scale) or the equivalent if forest products other than logs are cut. Bond amounts for master fire hazard reduction agreements are calculated to cover the potential cost to the department for fire hazard abatement in case of default and are based on the average annual volume of uncompleted abatement. Master fire hazard reduction agreement bonds are to be administered as nonsite-specific umbrella bonds, for which the entire bond or any portion of the bond may be collected to pay for unabated fire hazards on any or all sites covered by the bond. The department shall review master fire hazard reduction agreement bond amounts at least annually. The bonds must be adjusted according to the volume of timber harvested and the level of compliance of the bond provider.

(3) The agreement must provide that:

(a) all fire hazard reduction or management work comprising nonburning methods and preparations for burning must be completed within 18 months of commencement of cutting in the area covered by the agreement; and

(b) all burning work must be completed as specified in the agreement and in compliance with rules adopted under this part.

(4) The bond must be released upon the issuance of the certificate of clearance. At the request of the fire hazard reduction agreement holder, cash bonds for fire hazard reduction agreements exceeding 200,000 board feet, or the equivalent, must be partially released upon satisfactory completion of slash piling if the fire hazard reduction agreement holder has a record of compliance with the provisions of 76-13-407 or this section. The department may inspect the sites for which release or partial release is being requested, or it may rely on the submittal of a signed affidavit and relevant site photographs provided by the person posting the bond. A person that submits a fraudulent affidavit or photographs is subject to the penalty provisions of 45-7-202, may have other fire hazard reduction agreements revoked, or may be denied the issuance of fire hazard reduction agreements in the future.

(5) If a minimum slash hazard will be created, the activity is exempt from the provisions of this part."

Section 3. Section 76-13-410, MCA, is amended to read:

"76-13-410. Failure to comply. (1) If a person fails, refuses, or neglects to properly reduce or manage the fire hazard in accordance with the requirements of 76-13-407 and 76-13-408, the person may be enjoined from further cutting, clearing, and construction operations until the department has found the person to be in compliance with 76-13-407 and 76-13-408. The department may initiate the proceedings and may obtain a temporary restraining order, injunction, or writ of mandate. The proceedings must be conducted in the district court of the county where the land is located.

(2) If a person claims to have a minimum slash hazard but the department's inspection determines otherwise, the hazard reduction requirements of this part apply.

~~(2)~~*(3)* If a person fails to comply with 76-13-407 or 76-13-408 and fails to comply within 30 days after being notified to do so by the department, the department may complete, direct, or authorize the fire hazard reduction or management at the expense of the contractor or of the owner of the timber or other forest products cut or produced from the land upon which the unabated fire hazard remains.

~~(3)~~*(4)* The cost and expense of the fire hazard reduction or management work, plus 20% of the cost and expense of the work as a penalty, constitute a lien upon the forest products cut or produced from the land and upon the real and personal property of the contractor. If payment of the sum demanded is not made to the department within 15 days of its written demand, the performance bond required by 76-13-408 and 76-13-409, upon notice to the contractor, must be automatically forfeited to the extent needed to cover the cost and expenses of reducing or managing the fire hazard, plus a penalty of 20% of the cost and expenses. If the bond is insufficient to cover the cost, expenses, and penalty, the department may bring legal action on behalf of the state to recover the cost, expenses, and penalty.

~~(4)~~*(5)* In addition to other remedies provided in this part, the department may, after notice, require a person to show cause why the department should not withhold the issuance of any further fire hazard reduction agreement or exemption certificate to a person that:

(a) harvests timber without a valid fire hazard reduction agreement; or

(b) has forfeited the performance bond on a fire hazard reduction agreement within the 2 preceding years and fails, refuses, or neglects to properly reduce or manage the fire hazard in accordance with 76-13-407 or 76-13-408 within 30 days after being notified by the department.

~~(5)~~*(6)* If the person fails to show sufficient cause as required by subsection ~~(4)~~ *(5)*, the department may withhold the issuance of any further fire hazard reduction agreement or exemption certificate for a period not to exceed 3 years."

Approved April 13, 2001

CHAPTER NO. 235

[SB 321]

AN ACT ADDING PHYSICAL THERAPISTS TO THE HEALTH CARE PROVIDERS FOR WHICH FREEDOM OF CHOICE IN SELECTION MUST BE PROVIDED UNDER DISABILITY INSURANCE POLICIES OR

CERTIFICATES; REQUIRING HEALTH SERVICE CORPORATIONS TO COVER SERVICES PROVIDED BY PHYSICAL THERAPISTS; AMENDING SECTION 33-22-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-111, MCA, is amended to read:

"**33-22-111. Policies and certificates to provide for freedom of choice of practitioners — professional practice not enlarged.** (1) All policies or certificates of disability insurance, including individual, group, and blanket policies or certificates, must provide that the insured has full freedom of choice in the selection of any licensed physician, physician assistant-certified, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, licensed professional counselor, acupuncturist, naturopathic physician, *physical therapist,* or advanced practice registered nurse as specifically listed in 37-8-202 for treatment of any illness or injury within the scope and limitations of the person's practice. Whenever the policies or certificates insure against the expense of drugs, the insured has full freedom of choice in the selection of any licensed and registered pharmacist.

(2) This section may not be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1). This section may not be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals."

Section 2. Coverage required for services provided by physical therapist. A health service corporation shall provide, in group and individual insurance contracts or certificates, coverage for health services provided by a physical therapist licensed pursuant to Title 37, chapter 11, if the health care services that physical therapists are licensed to perform are covered by the contracts or certificates.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 33, chapter 30, part 10, and the provisions of Title 33, chapter 30, part 10, apply to [section 2].

Section 4. Effective date. [This act] is effective January 1, 2002.

Approved April 13, 2001

CHAPTER NO. 236

[SB 361]

AN ACT PROVIDING THAT A PHYSICIAN, NURSE, PHYSICAL THERAPIST, OCCUPATIONAL THERAPIST, CHIROPRACTOR, PERSON PRACTICING DENTISTRY, HOSPITAL, PSYCHOLOGIST, LICENSED SOCIAL WORKER, OR LICENSED PROFESSIONAL COUNSELOR CLAIMING A LIEN FOR SERVICES OR PRODUCTS PROVIDED TO A PERSON INJURED BY ANOTHER IS NOT LIABLE FOR ATTORNEY FEES AND COSTS INCURRED IN CONNECTION WITH OBTAINING PAYMENTS OR BENEFITS SUBJECT TO THE LIEN; AND AMENDING SECTION 71-3-1114, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-1114, MCA, is amended to read:

"**71-3-1114. Liens of physicians, nurses, physical therapists, occupational therapists, chiropractors, persons practicing dentistry, and hospitals and liens of psychologists, licensed social workers, and licensed professional counselors.** (1) (a) Upon the required notice of a lien being given, there is a lien as provided in subsection (1)(b) whenever:

(i) a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital renders services or provides products for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor renders services or provides products; and

(iii) the services rendered or products provided under subsection (1)(a)(i) or (1)(a)(ii) are rendered or provided to a person injured through the fault or neglect of another.

(b) The physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, hospital, psychologist, licensed social worker, or licensed professional counselor has a lien for the value of services rendered or products provided on:

(i) any claim or cause of action that the injured person or the injured person's estate or successors may have for injury, disease, or death;

(ii) any judgment that the injured person or the estate or successors may obtain for injury, disease, or death; and

(iii) all money paid in satisfaction of the judgment or in settlement of the claim or cause of action.

(2) (a) If a person is an insured or a beneficiary under insurance that provides coverage in the event of injury or disease, there is a lien as provided in subsection (2)(b) upon required notice of a lien being given by:

(i) a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital for the value of services rendered or products provided for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor for services rendered or products provided.

(b) The lien is on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) ~~The lien is subject to the lien of an attorney provided in 37-61-420.~~ *A physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, hospital, psychologist, licensed social worker, or licensed professional counselor claiming a lien under this part is not liable for attorney fees and costs incurred by the injured person, the injured person's estate or successors, or a beneficiary in connection with obtaining payments or benefits subject to a lien under this part. The lien of an attorney provided for in 37-61-420 has priority over a lien created by this part.*"

Section 2. Coordination instruction. If House Bill No. 309 and [this act] are both passed and approved, then subsection (3) in 71-3-1114 must read as follows:

"(3) ~~The lien is subject to the lien of an attorney provided in 37-61-420.~~ *A physician, nurse, physical therapist, occupational therapist, chiropractor, dentist, hospital, ambulatory surgical facility, psychologist, licensed social worker, or licensed professional counselor claiming a lien under this part is not liable for attorney fees and costs incurred by the injured person, the injured person's estate or successors, or a beneficiary in connection with obtaining payments or benefits subject to a lien under this part. The lien of an attorney provided for in 37-61-420 has priority over a lien created by this part.*"

Approved April 13, 2001

CHAPTER NO. 237

[SB 390]

AN ACT REVISING THE SCHOOL FINANCE LAWS; ESTABLISHING A SCHOOL FLEXIBILITY PROGRAM FOR K-12 PUBLIC SCHOOLS; REQUIRING VOTER APPROVAL FOR A LEVY TO INCREASE A DISTRICT'S FUNDS TO SUPPORT THE FLEXIBILITY PROGRAM; CLARIFYING THE REQUIREMENT THAT A SCHOOL DISTRICT OPERATE FOR BOTH THE MINIMUM NUMBER OF PUPIL INSTRUCTION DAYS AND THE MINIMUM NUMBER OF HOURS; CLARIFYING THE DUTY OF THE COUNTY SUPERINTENDENT REGARDING THE APPORTIONMENT OF COUNTY EQUALIZATION MONEY; PROHIBITING A CHANGE IN SCHOOL DISTRICT BOUNDARIES UNTIL A DISTRICT'S MILL LEVIES HAVE BEEN SET; CLARIFYING THAT THE OPENING OR REOPENING OF AN ELEMENTARY SCHOOL IS EFFECTIVE AT THE START OF THE FOLLOWING SCHOOL YEAR; CLARIFYING THE TRANSMITTAL OF FEES INTO THE TRAFFIC EDUCATION ACCOUNT; ELIMINATING REFERENCES TO CONSOLIDATION BONUS PAYMENTS; REQUIRING PAYMENT FROM A DISTRICT'S TUITION FUND FOR THE EDUCATION OF STUDENTS IN A YOUTH DETENTION FACILITY; CLARIFYING THE DUTY OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION REGARDING A BUDGET AMENDMENT FOR AN ENROLLMENT INCREASE; EXEMPTING AN EMERGENCY BUDGET AMENDMENT TAX LEVY FROM CERTAIN TAX RESTRICTIONS; AUTHORIZING A SCHOOL DISTRICT WHOSE CURRENT YEAR GENERAL FUND BUDGET EXCEEDS THE ENSUING YEAR'S MAXIMUM GENERAL FUND BUDGET TO ADOPT A GENERAL FUND BUDGET FOR THE ENSUING YEAR UP TO THE CURRENT YEAR'S GENERAL FUND BUDGET FOR A MAXIMUM OF 5 YEARS; REQUIRING THE TRUSTEES TO GRADUALLY REDUCE THE GENERAL FUND BUDGET BY THE END OF THE 5-YEAR PERIOD; CHANGING THE DEADLINE FOR AN APPLICATION FOR AN UNUSUAL ENROLLMENT INCREASE; REVISING THE DEFINITION OF "STATE EQUALIZATION AID"; REQUIRING VOTER APPROVAL FOR A LEVY TO FUND TRANSITION COSTS WHEN A SCHOOL DISTRICT OPENS OR CLOSES A SCHOOL OR REPLACES A SCHOOL BUILDING OR WHEN A SCHOOL DISTRICT CONSOLIDATES WITH OR ANNEXES ANOTHER SCHOOL DISTRICT; CLARIFYING THE MINIMUM STANDARDS FOR SCHOOL BUSES; CHANGING THE TYPE OF FUND USED FOR THE ADMINISTRATION OF THE FEDERAL SCHOOL FOOD SERVICES PROGRAM; AMENDING SECTIONS 20-1-301, 20-3-205, 20-6-202, 20-6-314, 20-6-502, 20-7-504, 20-9-104, 20-9-130, 20-9-163, 20-9-168, 20-9-308, 20-9-314, 20-9-343, 20-9-502, 20-10-111, AND 20-10-201, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [section 2] and this section, the following definitions apply:

(1) "Average student amount" means the amount calculated by:

(a) multiplying the money available in the school flexibility account, provided for in [section 2], by 40%; and

(b) dividing the amount calculated in subsection (1)(a) by the total statewide ANB in the previous fiscal year when averaged with the total statewide ANB for the previous 4 fiscal years.

(2) "Current student amount" means the amount calculated by:

(a) multiplying the money available in the school flexibility account, provided for in [section 2], by 20%; and

(b) dividing the amount calculated in subsection (2)(a) by the total statewide ANB in the previous fiscal year.

(3) "District K-12 public school funding amount" means the K-12 public schools amount multiplied by the number of K-12 public schools in the school district in the fiscal year in which the funding is distributed.

(4) "District large K-12 public school funding amount" means the large K-12 public schools amount multiplied by the number of K-12 public schools with an enrollment of at least 250 students in the school district in the fiscal year in which the funding is distributed.

(5) "District student funding amount" means the current student amount multiplied by a district's ANB for the previous fiscal year plus the average student amount multiplied by a district's ANB for the previous fiscal year when averaged with the district's ANB for the 4 previous fiscal years.

(6) "K-12 public schools amount" means the amount calculated by:

(a) multiplying the money available in the school flexibility account, provided for in [section 2], by 15%; and

(b) dividing the amount calculated in subsection (6)(a) by the number of K-12 public schools that anticipate having students in the fiscal year in which the funding is distributed.

(7) "Large K-12 public schools amount" means the amount calculated by:

(a) multiplying the money available in the school flexibility account, provided for in [section 2], by 25%; and

(b) dividing the amount calculated in subsection (7)(a) by the number of K-12 public schools with an enrollment of at least 250 students that anticipate having students in the fiscal year in which the funding is distributed.

Section 2. School flexibility account — distribution of funds. (1) There is a school flexibility account in the state special revenue fund. The superintendent of public instruction shall allocate the money in the account, including any interest earned on money allocated to the account, to each school district. Each school district's total allocation is the sum of the district K-12 public school funding amount, the district large K-12 public school funding amount, and the district student funding amount.

(2) In addition to funds allocated or appropriated to the school flexibility account, all money saved by the state if the actual statewide ANB in a given fiscal year is less than the statewide ANB projected by the legislature during the preceding legislative session must be deposited in the school flexibility account.

Section 3. School flexibility fund — uses. (1) (a) The trustees of a district shall establish a school flexibility fund and may use the fund, in their discretion, for school district expenditures incurred for:

(i) technological equipment enhancements and expansions considered by the trustees to support enhanced educational programs in the classroom;

(ii) facility expansion and remodeling considered by the trustees to support the delivery of educational programs or the removal and replacement of obsolete facilities;

(iii) supplies and materials considered by the trustees to support the delivery of enhanced educational programs;

(iv) student assessment and evaluation;

(v) the development of curriculum materials;

(vi) training for classroom staff considered by the trustees to support the delivery of enhanced educational programs;

(vii) purchase, lease, or rental of real property that must be used to provide free or reduced price housing for classroom teachers;

(viii) salaries, benefits, bonuses, and other incentives for the recruitment and retention of classroom teachers and other certified staff, subject to collective bargaining when applicable; or

(ix) increases in energy costs caused by an increase in energy rates from the rates paid by the district in fiscal year 2001 or from increased use of energy as a result of the expansion of facilities, equipment, or other resources of the district.

(b) If the district's ANB calculated for the current fiscal year is less than the ANB for the current fiscal year when averaged with the 4 previous fiscal years, the district may use money from the school flexibility fund to phase in over a 5-year period the spending reductions necessary because of the reduction in ANB.

(2) The trustees of a district shall fund the school flexibility fund with the money allocated under [section 2] and with the money raised by the levy under [section 4].

(3) The financial administration of the school flexibility fund must be in accordance with the financial administration provisions of this title for a budgeted fund.

Section 4. District school flexibility fund levy. (1) In addition to the money allocated in [section 2] for a district's school flexibility fund, the trustees of a school district may submit a proposition to the qualified electors of the district to approve a levy in an amount not to exceed 25% of the district's allocation in [section 2] to fund the school flexibility fund authorized under [section 3]. An election called pursuant to this section must be called and conducted in the manner prescribed by this title for school elections. The ballot for a proposition must provide "FOR" and "AGAINST" provisions, stating whether the district is authorized to impose a levy of (state the dollars) dollars and (state the approximate number of mills) mills to fund the school flexibility fund in the school district. The school flexibility fund proposition is approved if a majority of those electors voting at the election approve the levy.

(2) Money collected from the levy must be deposited in the district's school flexibility fund and spent in accordance with [section 3].

Section 5. Section 20-1-301, MCA, is amended to read:

"**20-1-301. School fiscal year.** (1) The school fiscal year begins on July 1 and ends on June 30. At least 180 school days of pupil instruction and the minimum aggregate hours defined in subsection (2) must be conducted during each school fiscal year, except that 175 days and 1,050 aggregate hours of pupil instruction for graduating seniors may be sufficient~~, as provided in 20-9-313,~~ or a minimum of 90 days and 360 aggregate hours of pupil instruction must be conducted for a kindergarten program, as provided in 20-7-117.

(2) The minimum aggregate hours required by grade are:

(a) 720 hours for grades 1 through 3; and

(b) 1,080 hours for grades 4 through 12.

(3) To calculate the number of *equivalent* school days of pupil instruction *when providing less than the minimum number of hours of instruction provided in subsections (1) and (2)*, a school district shall:

(a) determine the aggregate hours of pupil instruction by grade level;

(b) divide the aggregate hours of pupil instruction for each grade level by the minimum hours a day for that grade level provided in 20-1-302; and

(c) round the result down to the nearest whole number.

(4) For any elementary or high school district that fails to provide for at least 180 school days of pupil instruction and the minimum aggregate hours, as defined in ~~subsection~~ *subsections (1) and* (2), the superintendent of public instruction shall reduce the direct state aid for the district for that school year by 1/90th for each school day less than 180 school days as calculated in subsection (3) *or by 1/90th for each calendar day less than the minimum school days required by subsection (1), whichever is greater.*"

Section 6. Section 20-3-205, MCA, is amended to read:

"**20-3-205. Powers and duties.** The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards of trustees of the districts in the county in accordance with the provisions of 20-3-307;

(3) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(4) act on each tuition and transportation obligation submitted in accordance with the provisions of 20-5-323 and 20-5-324;

(5) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(6) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(7) keep a transcript and reconcile the district boundaries of the county in accordance with the provisions of 20-6-103;

(8) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(9) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(10) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(11) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(12) complete the budgets, compute the budgeted revenue and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned under the provisions of this title regulating school budgeting systems;

(13) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(14) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, ~~20-9-335,~~ 20-9-347, 20-10-145, or 20-10-146;

(15) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(16) calculate the estimated budgeted general fund sources of revenue in accordance with the general fund revenue provisions of the general fund part of this title;

(17) compute the revenue and, subject to 15-10-420, compute the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(18) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(19) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(20) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(21) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(22) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(23) administer the oath of office to trustees without the receipt of pay for administering the oath;

(24) keep a record of official acts, preserve all reports submitted to the superintendent under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to the next superintendent;

(25) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(26) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed."

Section 7. Section 20-6-202, MCA, is amended to read:

"**20-6-202. Time limitation for boundary changes.** ~~No~~ *An* elementary district ~~shall~~ *may not* be created ~~nor shall any~~ *and* elementary district boundaries *may not* be changed between the first day of January and the ~~second~~ *fourth* Monday of August of any calendar year except when:

(1) the entire territory of a district is annexed or attached to another district;

(2) the entire territory of the portion of a joint district located in one county is annexed or attached to another district; or

(3) two or more districts are consolidated in their entirety."

Section 8. Section 20-6-314, MCA, is amended to read:

"**20-6-314. Time limitations for boundary changes.** A high school district may not be created and a high school district boundary may not be changed between the first day of January and the ~~second~~ *fourth* Monday of August of any calendar year except when:

(1) the entire territory of a high school district is annexed or attached to another high school district;

(2) the entire territory or portion of a joint high school district located in one county is annexed or attached to another high school district; or

(3) two or more districts are consolidated in their entirety."

Section 9. Section 20-6-502, MCA, is amended to read:

"**20-6-502. Opening or reopening of elementary school.** The trustees of any elementary district may open or reopen an elementary school of the district when ~~such~~ *the* opening or reopening has been approved in accordance with the following procedure:

(1) The parents of at least three pupils who would attend the opened or reopened school petition the trustees of the district to open or reopen a school during the ensuing school fiscal year. ~~Such~~ *The* petition ~~shall~~ *must* identify the school, state the reasons for requesting the opening or reopening, and give the names of the children who would attend ~~such~~ *the* school.

(2) If the trustees approve the opening or reopening of a school, they shall send the petition with a copy of their approval resolution to the county superintendent. The county superintendent shall review the petition to determine if the average number belonging (ANB) of ~~such~~ *the* school would be five or more.

(3) The county superintendent shall present the petition, *the* trustees' approval, and ~~his~~ *the county superintendent's* findings on the probable ANB to the board of county commissioners (budget board) for their consideration. The budget board shall deny the opening or reopening of any school if the county superintendent's enrollment estimate for ~~such~~ *the* school is less than five ANB. In all other cases, the budget board may approve or disapprove the requested opening or reopening of the elementary school.

(4) If the budget board approves a school opening or reopening, the county superintendent shall send a copy of ~~such~~ *the* approval, along with the petition, *the* trustees' approval, and ~~his~~ *the county superintendent's* estimate of the probable ANB, to the superintendent of public instruction. *The trustees shall apply to the superintendent of public instruction for approval to open or reopen the school by June 1 prior to the beginning of the school year in which they intend to open or reopen the elementary school.* The superintendent of public instruction shall approve or disapprove the requested opening or reopening of the elementary school *by the fourth Monday of June.* If the opening or reopening is approved, the superintendent of public instruction shall approve or adjust the ANB estimate of the county superintendent for ~~such~~ *the* school and ~~such~~ *the* ANB amount ~~shall~~ *must* be used for budgeting and BASE funding program purposes during the ensuing school fiscal year. ~~No~~ *An* ANB amount ~~shall~~ *may not* be approved for the ensuing school fiscal year for an opening or reopening school when the request for ~~such~~ *the* school has not been received by the superintendent of public instruction ~~before the fourth Monday of~~ *by* June *1*."

Section 10. Section 20-7-504, MCA, is amended to read:

"**20-7-504. State traffic education account — proceeds earmarked for account — transmittal.** (1) There is a traffic education account in the treasury of the state of Montana.

(2) When a ~~court~~ *county* is required to transmit fees directly to the state treasurer, the gross proceeds, including the portion of the fees to be credited to the traffic education account, must be transmitted to the state treasurer and the appropriate portion must be deposited in the traffic education account."

Section 11. Section 20-9-104, MCA, is amended to read:

"**20-9-104. General fund operating reserve.** (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (5) and (6), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (5) may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b).

(5) The limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount:

(a) ~~(i)~~ received in settlement of tax payments protested in a prior school fiscal year;

~~(ii)~~*(b)* received in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; *or*

~~(iii)~~*(c)* received in delinquent taxes from a prior school fiscal year~~; or~~

~~(b) a district was entitled to as a general bonus payment prior to July 1, 1994~~.

(6) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is $10,000 or less."

Section 12. Section 20-9-130, MCA, is amended to read:

"**20-9-130. District obligation for students in youth detention facility.** A school district is responsible for providing funding for the education of students of the district who are detained in a youth detention facility. The school district's obligation must be funded from the district's ~~general~~ *tuition* fund."

Section 13. Section 20-9-163, MCA, is amended to read:

"**20-9-163. Resolution for budget amendment — petition to superintendent of public instruction.** (1) Whenever the trustees of a district decide that a budget amendment is necessary because of an enrollment increase, they may petition the superintendent of public instruction to adopt a resolution for the budget amendment. The petition must be signed by a majority of the trustees.

(2) The petition must state the facts constituting the need for the budget amendment, the estimated amount of money required to fund the budget amendment, the funds affected by the budget amendment, the anticipated source of financing for the budget amendment, and the current year enrollment.

(3) The superintendent of public instruction shall promptly approve or disapprove the petition requesting approval to adopt a resolution for a budget amendment because of increased enrollment. ~~If the petition is for a budget amendment for an enrollment increase as provided in 20-9-161(1), the~~ *The* superintendent of public instruction shall adjust the district's maximum general

fund budget based on the approved enrollment increase. Upon approval, a district may not adopt a budget amendment if the amount will cause the district to exceed the district's adjusted maximum general fund budget. If the petition is approved, the trustees may adopt a resolution for a budget amendment and take all other steps required for the adoption of a budget amendment. Approval of a petition by the superintendent of public instruction authorizes the board of trustees to initiate a budget amendment by resolution and does not relieve the trustees of the necessity of complying with the requirements of the school budgeting laws. Approval of the petition may not be construed as approval of any subsequent application for increased state aid on account of the budget amendment."

Section 14. Section 20-9-168, MCA, is amended to read:

"**20-9-168. Emergency budget amendment tax levy.** When a budget amendment has been adopted by the board of trustees under 20-9-161(2) and a district does not have sufficient funds, including insurance proceeds and reserves, to finance the budget amendment, the district may~~, subject to 15-10-420,~~ levy a tax in the ensuing school year to fund the expenditures authorized by the budget amendment. The amount levied may not exceed the unfunded amount of the budget amendment."

Section 15. Section 20-9-308, MCA, is amended to read:

"**20-9-308. BASE budgets and maximum general fund budgets.** (1) The trustees of a district shall adopt a general fund budget that is at least equal to the BASE budget established for the district and, except as provided in subsection (3) ~~of this section~~, does not exceed the maximum general fund budget established for the district.

(2) (a) Whenever the trustees of a district adopt a general fund budget that exceeds the BASE budget for the district but does not exceed the maximum general fund budget for the district, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353.

(b) A general fund budget adopted under this subsection (2) may not exceed the greater of:

(i) 104% of the previous year's general fund budget; or

(ii) 104% of the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes.

(3) (a) (i) Except as provided in ~~subsections~~ *subsection* (3)(a)(ii), the trustees of a school district whose previous year's general fund budget exceeds the current year's maximum general fund budget amount may adopt a general fund budget up to the maximum general fund budget amount or ~~up to 94% of~~ the previous year's general fund budget, whichever is greater. A school district may adopt a budget under the criteria of this subsection (3)(a)(i) for a maximum of 5 consecutive years, *but the trustees shall adopt a plan to reach the maximum general fund budget by no later than the end of the 5-year period*. A school district whose adopted general fund budget for the previous year exceeds the maximum general fund budget for the current year and whose ANB for the previous year exceeds the ANB for the current year by 30% or more shall reduce its adopted budget *by*:

(A) in the first year, 20% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(B) in the second year, 25% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(C) in the third year, 33.3% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(D) in the fourth year, 50% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year; and

(E) in the fifth year, the remainder of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year.

(ii) The trustees of a district whose general fund budget was above the maximum general fund budget established by Chapter 38, Special Laws of November 1993, and whose general fund budget has continued to exceed the district's maximum general fund budget in each school fiscal year after school fiscal year 1993 may continue to adopt a general fund budget that exceeds the maximum general fund budget. However, the budget adopted for the current year may not exceed the lesser of:

(A) the adopted budget for the previous year; or

(B) the district's maximum general fund budget for the current year plus the over maximum budget amount adopted for the previous year.

(b) The trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353.

(4) The BASE budget for the district must be financed by the following sources of revenue:

(a) state equalization aid as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

(5) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district as provided in 20-9-141."

Section 16. Section 20-9-314, MCA, is amended to read:

"**20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase.** A district that anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in 20-9-313(4), may increase its basic entitlement and total per-ANB entitlement for the ensuing school fiscal year in accordance with the following provisions:

(1) Prior to ~~May 10~~ *June 1*, the district shall estimate the elementary or high school enrollment to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(2) No later than ~~May 10~~ *June 1*, the district shall submit its application for an unusual enrollment increase by elementary or high school level to the superintendent of public instruction. The application must include:

(a) the enrollment for the current school fiscal year;

(b) the average number belonging used to calculate the basic entitlement and total per-ANB entitlement for the current school fiscal year;

(c) the average number belonging that will be used to calculate the basic entitlement and total per-ANB entitlement for the ensuing school fiscal year;

(d) the estimated enrollment, including the factual information on which the estimate is based, as provided in subsection (1); and

(e) any other information or data that may be requested by the superintendent of public instruction.

(3) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the estimated average number belonging for the ensuing ANB calculation period. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage increase ~~that~~ *by which* the estimated enrollment increase ~~is over~~ *exceeds* the current enrollment; and

(b) approve an increase of the average number belonging used to establish the ensuing year's basic entitlement and total per-ANB entitlement in accordance with subsection (5) if the increase in subsection (3)(a) is at least 6%.

(4) The superintendent of public instruction shall notify the district of the decision by the fourth Monday in June.

(5) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the average number belonging used to establish the basic entitlement and total per-ANB entitlement for the ensuing ANB calculation period is the difference between the enrollment for the ensuing school fiscal year and 106% of the current enrollment. The amount determined is the maximum allowable increase added to the average number belonging for the purpose of establishing the ensuing year's basic entitlement and total per-ANB entitlement.

(6) Any entitlement increases resulting from provisions of this section must be reviewed at the end of the ensuing school fiscal year. If the actual enrollment is less than the average number belonging used for BASE funding program and entitlement calculations, the superintendent of public instruction shall revise the total per-ANB entitlement and basic entitlement calculations using the actual average number belonging. All total per-ANB entitlements received by the district in excess of the revised entitlements are overpayments subject to the refund provisions of 20-9-344(4)."

Section 17. Section 20-9-343, MCA, is amended to read:

"**20-9-343. Definition of and revenue for state equalization aid.** (1) As used in this title, the term "state equalization aid" means revenue as required in this section for:

(a) distribution to the public schools for ~~the purposes of payment of systems development and other related costs resulting from the enactment of legislation that requires changes to the automated system used to administer the BASE funding program,~~ guaranteed tax base aid, BASE aid, state reimbursement for school facilities, ~~matching funds for the systemic initiative for Montana mathematics and science grant,~~ and grants for school technology purchases; *and*

(b) negotiated payments authorized under 20-7-420(3) up to $500,000 per biennium~~; and~~

~~(c) the Montana educational telecommunications network as provided in 20-32-101~~.

(2) The superintendent of public instruction may spend throughout the biennium funds appropriated for the purposes of ~~systems development and other related costs resulting from the enactment of legislation that requires changes to the automated system used to administer the BASE funding program,~~ guaranteed tax base aid, BASE aid for the BASE funding program, state reimbursement for school facilities, negotiated payments authorized under 20-7-420(3), ~~the Montana educational telecommunications network,~~ and school technology purchases.

(3) The following must be paid into the state general fund for the public schools of the state:

(a) (i) subject to subsection (3)(a)(ii), interest and income money described in 20-9-341 and 20-9-342; and

(ii) an amount of money equal to the income money attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year to be appropriated for purposes of 20-9-533;

(b) investment income earned by investing interest and income money described in 20-9-341 and 20-9-342."

Section 18. Section 20-9-502, MCA, is amended to read:

"**20-9-502. Purpose and authorization of a building reserve fund by an election — *levy for school transition costs*.** (1) The trustees of any district, with the approval of the qualified electors of the district, may establish a building reserve for the purpose of raising money for the future construction, equipping, or enlarging of school buildings, ~~or~~ for the purpose of purchasing land needed for school purposes in the district, *or for the purpose of funding school transition costs as provided in subsection (5)*. In order to submit to the qualified electors of the district a building reserve proposition for the establishment of or addition to a building reserve, the trustees shall pass a resolution that specifies:

(a) the purpose or purposes for which the new or addition to the building reserve will be used;

(b) the duration of time over which the new or addition to the building reserve will be raised in annual, equal installments;

(c) the total amount of money that will be raised during the duration of time specified in subsection (1)(b); and

(d) any other requirements under 20-20-201 for the calling of an election.

(2) The total amount of building reserve, *less the amount provided for in subsection (5),* when added to the outstanding indebtedness of the district may not be more than the limitations provided in 20-9-406. A *Except as provided in subsection (5)(b), a* building reserve tax authorization may not be for more than 20 years.

(3) The election must be conducted in accordance with the school election laws of this title, and the electors qualified to vote in the election must be qualified under the provisions of 20-20-301. The ballot for a building reserve proposition must be substantially in the following form:

OFFICIAL BALLOT

SCHOOL DISTRICT BUILDING RESERVE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BUILDING RESERVE—YES" if you wish to vote for the establishment of a building reserve (addition to the building reserve); if you are opposed to the establishment of a building reserve (addition to the building reserve) make an X or similar mark in the square before the words "BUILDING RESERVE—NO".

Shall the trustees be authorized to impose an additional levy each year for .... years to establish a building reserve (add to the building reserve) of this school district to raise a total amount of .... dollars ($....), for the purpose(s) .... (here state the purpose or purposes for which the building reserve will be used)?

☐ BUILDING RESERVE—YES.

☐ BUILDING RESERVE—NO.

(4) The building reserve proposition is approved if a majority of those electors voting at the election approve the establishment of or addition to the building reserve. The annual budgeting and taxation authority of the trustees for a building reserve is computed by dividing the total authorized amount by the specified number of years. The authority of the trustees to budget and impose the taxation for the annual amount to be raised for the building reserve lapses when, at a later time, a bond issue is approved by the qualified electors of the district for the same purpose or purposes for which the building reserve fund of the district was established. Whenever a subsequent bond issue is made for the same purpose or purposes of a building reserve, the money in the building reserve must be used for such purpose or purposes before any money realized by the bond issue is used.

(5) (a) The trustees may submit a proposition to the qualified electors of the district for a levy to provide funding for transition costs incurred when the trustees:

(i) open a new school under the provisions of Title 20, chapter 6;

(ii) close a school;

(iii) replace a school building; or

(iv) consolidate with or annex another district under the provisions of Title 20, chapter 6.

(b) Except as provided in subsection (5)(c), the total amount the trustees may submit to the electorate for transition costs may not exceed the number of years specified in the proposition times the greater of 5% of the district's maximum general fund budget for the current year or $250 per ANB for the current year. The duration of the levy for transition costs may not exceed 6 years.

(c) If the levy for transition costs is for consolidation or annexation:

(i) the limitation on the amount levied is calculated using the ANB and the maximum general fund budget for the districts that are being combined; and

(ii) the proposition must be submitted to the qualified electors in the combined district.

(d) The levy for transition costs may not be considered as outstanding indebtedness for the purpose of calculating the limitation in 20-9-406."

Section 19. Section 20-10-111, MCA, is amended to read:

"**20-10-111. Duties of board of public education.** (1) The board of public education, with the advice of the Montana department of justice and the superintendent of public instruction, shall adopt and enforce policies, not inconsistent with the motor vehicle laws, to provide uniform standards and regulations for the design, construction, and operation of school buses in the state of Montana. The policies must:

(a) prescribe minimum standards for the design ~~and~~, construction, *and operation* of school buses ~~not inconsistent~~ *consistent* with:

(i) ~~minimum standards~~ *the recommendations* adopted by the national conference on school transportation; ~~or~~ *and*

(ii) ~~minimum standards adopted by the national highway traffic safety administration~~ *the federal motor vehicle safety standards*;

(b) prescribe standards and specifications for the lighting equipment and special warning devices to be carried by school buses in conformity with:

(i) current specifications approved by the society of automobile engineers;

(ii) motor vehicle laws; and

(iii) the requirement that all school buses have an alternately flashing prewarning lighting system of four amber signal lamps to be used while preparing to stop and an alternately flashing warning lighting system of four red signal lamps to be used while stopped in accordance with 61-9-402;

(c) establish other driver qualifications considered necessary in addition to the qualifications required in 20-10-103;

(d) prescribe criteria for the establishment of transportation service areas for school bus purposes by the county transportation committee that shall allow for the establishment of service areas without regard to the district boundary lines within the county;

(e) prescribe other criteria for the determination of the residence of a pupil that may be considered necessary in addition to the criteria established in 20-10-105; *and*

(f) ~~prescribe other policies for the operation of school buses that are not inconsistent with:~~

~~(i) motor vehicle laws;~~

~~(ii) minimum standards adopted for school bus operation by the national conference on school transportation;~~

~~(iii) highway safety standards; and~~

~~(iv) the transportation provisions of this title;~~

~~(g)~~ prescribe standards for the measurement of the child seating capacity of school buses, to be known as the rated capacity.

(2) The board of public education shall prescribe other ~~policy~~ *policies* necessary for the proper administration and operation of individual transportation programs that are ~~not inconsistent~~ *consistent* with the transportation provisions of this title."

Section 20. Section 20-10-201, MCA, is amended to read:

"**20-10-201. Acceptance, expenditure, and administration of federal school food services ~~moneys~~ *money*.** (1) The superintendent of public instruction is authorized to accept and direct the disbursement of funds appropriated by act of congress and apportioned to the state for use in financing school food services. This authorization ~~shall apply~~ *applies* to federal funds available for school food services under the National School Lunch Act (Public Law 396, 79th congress, chapter 281, 2nd session), Child Nutrition Act of 1966 (Public Law 642, 89th Congress), any amendments to these public laws, and any other public laws enacted to provide assistance for school food services.

(2) The superintendent of public instruction shall deposit all federal funds for school food services with the state treasurer who shall credit ~~such~~ *the* funds to the ~~agency~~ *federal special revenue* fund. Any disbursement of the federal school food services funds ~~shall~~ *must* be directed by the superintendent of public instruction.

(3) The superintendent of public instruction may:

(a) enter into agreements and cooperate with any federal agency, district, or other agency or person, prescribe ~~such~~ regulations, employ ~~such~~ personnel, and take ~~such~~ *any* other action ~~as he~~ *that the superintendent of public instruction* may ~~deem~~ *consider* necessary to:

(i) provide for the establishment, operation, and expansion of school food services; and

(ii) disburse federal and state funds according to the requirements of federal and state law;

(b) give technical advice and assistance to any district establishing or operating school food services and assist in the training of personnel for ~~such~~ *the* services;

(c) accept any gift for use in providing school food services;

(d) conduct studies of methods of improving and expanding school food services and appraise the nutritive benefits of school food services.

(4) The superintendent of public instruction shall report annually to the board of public education on the financial, administrative, and operational phases of school food services."

Section 21. Coordination instruction. *If House Bill No. 358 and [this act] are both passed and approved, then [section 9 of this act], amending 20-6-502, is void and [section 1] of House Bill No. 284 must read as follows:*

"**Section 1.** Section 20-6-502, MCA, is amended to read:

"**20-6-502. Opening or reopening of elementary school.** The trustees of any elementary district may open or reopen an elementary school of the district when ~~such~~ *the* opening or reopening has been approved in accordance with the following procedure:

(1) The parents of at least ~~three~~ *two* pupils who would attend the opened or reopened school petition the trustees of the district to open or reopen a school ~~during the ensuing school fiscal year~~. ~~Such~~ *The* petition ~~shall~~ *must* identify the school, state the reasons for requesting the opening or reopening, and give the names of the children who would attend ~~such~~ *the* school.

(2) If the trustees approve the opening or reopening of a school, they shall send the petition with a copy of their approval resolution to the county superintendent. The county superintendent shall review the petition to determine if the average number belonging (ANB) of ~~such~~ *the* school would be ~~five~~ *two* or more. *If the trustees plan to open or reopen the school during the current school fiscal year, the trustees shall include the proposed opening date in the approval resolution and shall request that the process outlined in this section be expedited.*

(3) The county superintendent shall present the petition, *the* trustees' approval, and ~~his~~ *the county superintendent's* findings on the probable ANB to the board of county commissioners ~~(budget board)~~ for their consideration. The ~~budget~~ board shall deny the opening or reopening of any school if the county superintendent's enrollment estimate for ~~such~~ *the* school is less than ~~five~~ *two* ANB. In all other cases, the ~~budget~~ board may approve or disapprove the requested opening or reopening of the elementary school.

(4) *(a)* If the ~~budget~~ board approves a school opening or reopening, the county superintendent shall send a copy of ~~such~~ *the* approval, along with the petition, *the* trustees' approval, and ~~his~~ *the county superintendent's* estimate of the probable ANB, to the superintendent of public instruction. *Except under the circumstances described in subsection (4)(b), the trustees shall apply to the superintendent of public instruction for approval to open or reopen the school by June 1 prior to the beginning of the school year in which they intend to open or reopen the elementary school.* The superintendent of public instruction shall approve or disapprove the requested opening or reopening of the elementary school *by the fourth Monday of June*. If the opening or reopening is approved, the superintendent of public instruction shall approve or adjust the ANB estimate of the county superintendent for ~~such~~ *the* school and ~~such~~ *the* ANB amount ~~shall~~ *must* be used for budgeting and BASE funding program purposes during the ensuing school fiscal year. ~~No~~ *An* ANB amount ~~shall~~ *may not* be approved for the ensuing school fiscal year for an opening or reopening school when the request for ~~such~~ *the* school has not been received by the superintendent of public instruction ~~before the fourth Monday of~~ *by* June *1*.

(b) (i) If the opening or reopening is approved and the trustees want to open or reopen the school during the current school fiscal year, the trustees shall submit a budget request to the superintendent of public instruction for that portion of the fiscal year in which the school will be in operation prior to the ensuing school fiscal year. The superintendent of public instruction shall approve or adjust the budget request and shall fund the budget for the portion of the school year in which the school will be in operation.

(ii) Before a school may open or reopen during the current school fiscal year, the school must be classified as an isolated school in accordance with the provisions of

20-9-302, except that the dates in that section for the submission and approval of the application for classification do not apply and the application must be made at the same time that the application for opening or reopening the school is made."

Section 22. Extension of 2001 deadlines relating to school elections. In order to allow for the orderly and efficient conduct of the regular school elections scheduled for May 8, 2001, it may not be possible to comply with certain statutory deadlines relating to a school election. Therefore, for the regular school election scheduled for May 8, 2001, all statutory deadlines falling on or before April 13 are extended to April 20, 2001, except that the deadline for making the absentee ballots available is extended to April 25, 2001, and the timeline for posting the election notice is changed to April 20, 2001, through April 30, 2001.

Section 23. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

(2) [Sections 22 and 24 and this section] are effective on passage and approval.

Section 24. Retroactive applicability. [Section 22] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 29, 2001.

Approved April 13, 2001

CHAPTER NO. 238

[SB 482]

AN ACT PROVIDING THE METHOD TO BE USED IN ESTABLISHING THE RATE FOR ELECTED WORKERS' COMPENSATION COVERAGE FOR SELF-EMPLOYED VOLUNTEER FIREFIGHTERS; AMENDING SECTIONS 39-71-118 AND 39-71-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined. (1) The term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in this chapter, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as defined in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-1-301;

(g) a person who is an enrolled member of a volunteer fire department, as described in 7-33-4109, or a person who provides ambulance services under Title 7, chapter 34, part 1; and

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704 is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for participants in the FAIM project who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's FAIM participants and may only be for the duration of each participant's training in the FAIM project under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(d) serving as a foster parent, licensed as a foster care provider in accordance with 41-3-1141, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include

as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect not less than $200 a week and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d)."

Section 2. Section 39-71-123, MCA, is amended to read:

"39-71-123. Wages defined. (1) "Wages" means all remuneration paid for services performed by an employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium other than cash. The term includes but is not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) backpay or any similar pay made for or in regards to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan;

(c) tips or other gratuities received by the employee, to the extent that tips or gratuities are documented by the employee to the employer for tax purposes;

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration;

(e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(f) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) The term "wages" does not include any of the following:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) the amount of the payment made by the employer for employees, if the payment was made for:

(i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(ii) sickness or accident disability under a workers' compensation policy;

(iii) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family;

(iv) death, including life insurance for the employee or the employee's immediate family;

(c) vacation or sick leave benefits accrued but not paid;

(d) special rewards for individual invention or discovery; or

(e) monetary and other benefits paid to a person as part of public assistance provided through the FAIM project, as defined in 53-4-702.

(3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the term of employment for the same employer is less than four pay periods, the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work.

(b) For good cause shown, if the use of the last four pay periods does not accurately reflect the claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including periods of idleness or seasonal fluctuations.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3). As used in this subsection, "concurrent employment" means employment in which the employee was actually employed at the time of the injury and would have continued to be employed without a break in the term of employment if not for the injury.

(b) ~~The~~ *Except as provided in 39-71-118(7)(c), the* compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except for the wages earned by individuals while engaged in the employments outlined in 39-71-401(3)(a) who elected not to be covered, from which the employee is disabled by the injury incurred."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 13, 2001

CHAPTER NO. 239

[HB 10]

AN ACT APPROPRIATING OIL OVERCHARGE MONEY FOR PROGRAMS ADMINISTERED BY THE STATE OF MONTANA; AMENDING SECTION 4, CHAPTER 49, LAWS OF 1999; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Policy. [Sections 1 through 12] implement the policy stated in 90-4-210.

Section 2. Definitions. As used in [sections 1 through 12], the following definitions apply:

(1) "Carryover" means unspent oil overcharge funds previously appropriated and incorporated into an approved program plan for one of the federal energy conservation programs, but not included in unspent project funds.

(2) "Cities service payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana pursuant to the consent agreement between cities service oil and gas and the U.S. department of energy, as affirmed by the federal energy regulatory commission, and any interest accrued on the payments.

(3) "Diamond shamrock payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana as the result of the final settlement agreement in the U.S. district court for the southern district of Ohio eastern division in Civil Action No. C2-84-1432 and any interest accrued on the payments.

(4) "Exxon payments" means the oil overcharge payments made by the exxon corporation to the U.S. treasury for distribution to the state of Montana pursuant to the order of the U.S. district court for the District of Columbia in Civil Action No. 78-1035 and any interest accrued on the payments.

(5) "Getty oil payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana pursuant to the order of disbursement issued in Civil Action No. 77-347 (MMS) in the U.S. district court for the district of Delaware and any interest accrued on the payments.

(6) "Stripper well payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana as the result of the final settlement agreement in the U.S. district court for the district of Kansas, Cause No. M.D.L. 378, and any interest accrued on the payments. The term also includes but is not limited to cities service payments, getty oil payments, texaco payments, and any unspent project funds.

(7) "Texaco payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana pursuant to the texaco final consent order, 53 Fed. Reg. 32929, August 29, 1988, and any interest accrued on the payments.

(8) "Unspent project funds" means stripper well payments that were not expended or otherwise legally obligated during the 2001 biennium but were appropriated for the 2001 biennium in sections 4 through 11, Chapter 49, Laws of 1999.

Section 3. Deposit of oil overcharge revenue. All funds from stripper well and exxon payments must be deposited by the state treasurer in the federal special revenue fund. All interest earned on any of these funds or payments also must be deposited in the federal special revenue fund.

Section 4. Food bank network transportation — appropriation. There is appropriated $15,000 from the stripper well payments contained in the federal special revenue fund to the department of public health and human services for use in assisting the Montana food bank network with coordinated energy-efficient transportation of food to drop sites and local food banks statewide.

Section 5. Efficient energy — appropriation. There is appropriated $3,000 from the stripper well payments contained in the federal special revenue fund to the department of environmental quality to provide a grant to the ethanol producers and consumers for use in developing a cooperative with assistance from Montana state university-northern.

Section 6. Transportation to nutrition sites — appropriation. There is appropriated $11,000 from the stripper well payments contained in the federal special revenue fund to the department of public health and human services for grants to the area agencies on aging to provide transportation for seniors to nutrition sites. The area agencies on aging shall apply to the department of public health and human services for these funds.

Section 7. Promoting use of energy and water savings technologies on Montana farms and ranches — appropriation. There is appropriated $5,000 from the stripper well payments contained in the federal special revenue fund to the department of environmental quality to provide a grant to the national center for appropriate technology to promote the use of soil moisture monitors on irrigated land.

Section 8. Low-income weatherization — appropriation. There is appropriated $229,000 from the stripper well payments contained in the federal special revenue fund to the department of public health and human services for use in the home weatherization program created in 90-4-201.

Section 9. Low-income weatherization and energy assistance — appropriation. (1) There is appropriated $300,000 from the stripper well payments contained in the federal special revenue fund to the department of public health and human services for the purpose described in subsection (2).

(2) Of the amount appropriated in subsection (1), the department is directed to contract up to $90,000 for a grant to energy share, inc. to be used to address home heating emergencies encountered by households with incomes between 0% and 150% of federal poverty guidelines that are not eligible for federal low-income energy assistance or that have not received federal low-income energy assistance in the current program year. There is appropriated $210,000 to the department of public health and human services for use in the home weatherization program created in 90-4-201. The department will be responsible for allocating the funds, as they become available, between energy share, inc., and the department with 30% to energy share, inc. and 70% to the home weatherization program.

Section 10. Carryover — reappropriation. There is reappropriated $20,000 from the stripper well payments and $70,000 from the diamond shamrock payments contained in the federal special revenue fund to the department of environmental quality to fund the state energy program administered by the department pursuant to 10 CFR 420.

Section 11. Conditions applied to appropriations. (1) The appropriations made in [sections 4 through 9] are biennial appropriations. One-half of the total amount appropriated to each program in [sections 4 through 9] is appropriated in fiscal year 2002, and the remainder is appropriated in fiscal year 2003. As biennial appropriations, the unexpended funds appropriated in fiscal year 2002 may be carried forward within each program to fiscal year 2003, subject to the specific language conditions governing each appropriation.

(2) The appropriations in [section 10] are limited to available funds. Expenditures of carryover funds may not exceed the actual amount of unspent funds available.

Section 12. Appropriations prioritized. (1) The appropriations in [sections 4 through 9] are approved in the order of priority that they appear in [sections 4 through 9], with the appropriation in [section 4] having the highest priority and the appropriation in [section 9] having the lowest priority. If the U.S. department of energy does not approve one or more of the programs that are funded by [sections 4 through 9], any stripper well payments that are not used to fund the higher priority program must be provided to the lower-ranked program up to the amounts appropriated in [sections 4 through 9].

(2) If stripper well payments are insufficient to fully fund the appropriations made in [sections 4 through 9], allocations to the lowest ranking program must be reduced until the deficiency is eliminated. If the deficiency is in excess of the appropriation to the lowest ranking program, the next lowest ranking program must have its appropriation reduced until the deficiency is eliminated and so forth as the programs are prioritized. These priorities must be applied to one-half of the total amount appropriated in [sections 4 through 9] for fiscal year 2002 and to the remaining appropriation for fiscal year 2003.

(3) In order to provide continuity for the programs when establishing the appropriations for each fiscal year of the 2003 biennium, anticipated stripper well payments that will be received under terms of the stripper well agreement during the biennium may be considered as available to fund the activities.

(4) The expenditure of money appropriated by [sections 4 through 9] may not exceed the amount of the stripper well payments available in the biennium.

Section 13. Section 4, Chapter 49, Laws of 1999, is amended to read:

"**Section 4. Matching funds for low-income energy assistance — appropriation.** (1) There is appropriated $300,000 from the stripper well payments contained in the federal special revenue fund to the department of public health and human services for the purpose described in subsection (2) and under the restrictions contained in subsection (3).

(2) The department of public health and human services shall match private contributions to energy share, inc. to be used to address home heating emergencies encountered by households with incomes between 0% and 150% of federal poverty guidelines who are not eligible for federal low-income energy assistance or who have not received federal low-income energy assistance in the current program year. All of the funds appropriated to the department for this purpose under subsection (1) must be used for clients' emergency energy needs.

~~(3) In the event a combination of the oil overcharge funds appropriated in subsection (1) and universal system benefits funds designated to energy share, inc. exceeds $400,000 in fiscal year 2000 or in fiscal year 2001, the excess amount must be subtracted from the appropriation of oil overcharge funds provided in subsection (1) for that fiscal year and a like amount shall be added to the oil overcharge funds appropriated in [section 5] for low-income home weatherization, except that the biennial appropriation for low-income home weatherization provided in [section 5] shall not exceed $695,000 under any condition.~~"

Section 14. Coordination instruction. If House Bill No. 12 is passed and approved, the stripper well payments appropriated in House Bill No. 12 have a higher priority than any appropriation of stripper well payments in [sections 4 through 10].

Section 15. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2001.

(2) [Section 13 and this section] are effective on passage and approval.

Approved April 16, 2001

CHAPTER NO. 240

[HB 12]

AN ACT AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE STATE BUILDING ENERGY CONSERVATION PROGRAM; APPROVING ENERGY CONSERVATION PROJECTS FOR FISCAL YEARS 2002 AND 2003; APPROPRIATING BOND PROCEEDS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PLEDGING THE CREDIT OF THE STATE OF MONTANA TO SECURE THE BONDS TO BE ISSUED; REAPPROPRIATING STRIPPER-WELL PAYMENTS CONTAINED IN THE FEDERAL SPECIAL REVENUE FUND; REVISING THE PROCEDURE FOR IDENTIFYING BUILDINGS THAT HAVE A POTENTIAL FOR ENERGY SAVINGS; AMENDING SECTIONS 90-4-605 AND 90-4-606, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-605, MCA, is amended to read:

"90-4-605. Preparation of energy conservation program. (1) The department shall work with state agencies to identify buildings that have a potential for energy savings, based on age, energy use, function, and condition of the building.

(2) Based on the criteria in subsection (1) and on the feasibility of leveraging other funds, such as federal and utility energy conservation program money, the department shall select certain facilities for indepth energy analyses to identify the technical and financial feasibility of making energy conservation improvements to the facilities.

~~(3) During the energy analyses, the department shall consult with the utilities that serve the selected facilities to discuss potential impacts on the utilities and their customers of making energy conservation improvements to these facilities.~~

~~(4)~~*(3)* Upon completion of the energy analyses, the department shall ~~submit to the governor its findings and a list of projects recommended for funding under the energy conservation program. The department shall~~ identify estimated costs and savings to the state based on these analyses. *If the estimated savings are determined to be greater than the bond payment costs for a particular project, the department shall notify the department of administration. Upon receipt of the notification, the department of administration shall implement a design and construction project using bond proceeds for the costs of the project.*

~~(5)~~*(4)* The department shall compile a report that must include the following:

(a) a listing of contacts between the department and other state agencies;

(b) a summary of the department's review of agency requests and a selection of projects for indepth analysis;

(c) a summary of the energy analyses conducted by the department, including the estimated cost of each proposed project and the estimated energy cost savings of each proposed project; *and*

(d) a ~~description of measures taken by the department to address the issues that were raised in the consultation with the affected utilities; and~~

~~(e) if a fuel switching measure is proposed, an analysis of the costs to the affected utility and its customers and of the benefits to the state~~ *listing of additional projects under consideration, for which energy analyses have not been conducted.*

~~(6) If a fuel switching measure is proposed, the department shall demonstrate through the analysis required by subsection (5)(e) that the benefits to the state exceed the costs to the utility and its customers.~~

~~(7)~~*(5)* The department shall submit the report required by subsection ~~(5)~~ *(4)* to the governor before September 1 of each even-numbered year."

Section 2. Section 90-4-606, MCA, is amended to read:

"**90-4-606. Program report and recommendations.** The governor shall submit the *projects* proposed ~~projects~~ to be funded by the energy conservation program for the next biennium as a part of the budget required by 17-7-123. The governor shall make available, as provided by 17-7-124:

(1) the report prepared by the department; *and*

~~(2) a description of the improvements to be financed;~~

~~(3) the estimated cost of each project and the total cost of the program; and~~

~~(4)~~*(2)* the proposed method of financing the improvement. If energy conservation program bonds are proposed to be issued to finance the program improvements, the governor shall include within the report a written statement by the department that the estimated annual energy savings to be derived from the installation of the energy saving equipment or improvements, upon completion, are expected to equal or exceed the annual debt service to be paid on the energy conservation program bonds proposed to be issued to fund the costs of ~~such~~ *the* equipment or improvements."

Section 3. Stripper-well payments — reappropriation — definition — priority. (1) There is reappropriated from the stripper-well payments contained in the federal special revenue fund to the department of environmental quality $100,000 to fulfill the duties imposed by 90-4-605 and 90-4-607. The original appropriation was contained in section 9, Chapter 597, Laws of 1989. The reappropriation is a biennial appropriation.

(2) (a) "Stripper-well payments" means the oil overcharge payments made to the United States treasury for distribution to the state of Montana as the result of the final settlement agreement in Cause No. M.D.L. 378, United States district court for the district of Kansas, and any interest accrued on the payments.

(b) Stripper-well payments do not include payments that have been expended or legally obligated or that have been incorporated into any of the existing federal energy programs as the result of prior appropriations by the legislature.

(3) The stripper-well payments reappropriated in this section have a higher priority than any other appropriation of stripper-well payments by the legislature for fiscal years 2002 and 2003.

Section 4. Appropriation of bond proceeds. There is appropriated from bond proceeds authorized by Chapter 571, Laws of 1991, Chapter 350, Laws of 1993, Chapter 61, Laws of 1995, Chapter 81, Laws of 1997, Chapter 50, Laws of 1999, and [section 6], $450,000 to the department of environmental quality to fulfill its duties under 90-4-605 and 90-4-607. This appropriation is a biennial appropriation.

Section 5. Approval of energy conservation projects — definition. (1) Pursuant to Title 90, chapter 4, part 6, the legislature approves for fiscal years 2002 and 2003 the energy conservation projects listed in the report to the governor as required in 90-4-605 and presented to the legislature as required in 90-4-606.

(2) In addition to the energy conservation projects referred to in subsection (1), the department of environmental quality may expend funds appropriated under [section 6] to respond to energy saving opportunities. Energy saving opportunities include coordination of energy improvement projects with the long-range building program capital improvement projects.

(3) For purposes of this section, an "energy saving opportunity" means an opportunity to improve energy use that will provide significant energy and cost savings to the state and that will be technically infeasible or uneconomical if the department of environmental quality is delayed in providing the necessary funds until specific legislative approval can be obtained.

(4) If the costs of the projects authorized in subsections (1) and (2) are substantially below the bond amount authorized in [section 6], the department of environmental quality may fund projects that would be proposed as part of the state building energy conservation package for fiscal years 2004 and 2005.

Section 6. Bond authorization — appropriation of bond proceeds. (1) The board of examiners may, pursuant to 90-4-611, issue and sell bonds of the state in an aggregate principal amount not to exceed $3 million for fiscal years 2002 and 2003 for the projects approved in [section 5] and to fulfill the duties imposed by 90-4-605 and 90-4-607, as provided in [section 4]. The bonds are general obligations for which the full faith and credit and taxing powers of the state are pledged for payment of the principal and interest on the bonds. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premiums and accrued interest received, must be deposited in the energy conservation program account established by 90-4-612. Premiums and accrued interest must be deposited in the debt service fund established in 17-2-102. Proceeds of bonds deposited in the energy conservation program account may be used to pay the costs of issuing the bonds, to fulfill the duties imposed by 90-4-605 and 90-4-607, and to fund the projects approved in [section 5]. For the purposes of 17-5-803 and 17-5-804, the energy conservation program account constitutes a capital projects account. The bond proceeds must be available to the department of environmental quality and may be used for the purposes authorized in this section without further budgetary authorization.

Section 7. Requirement for approval of state debt. Because [section 6] authorizes the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for enactment of [section 6].

Section 8. Effective date. [This act] is effective July 1, 2001.

Approved April 16, 2001

CHAPTER NO. 241

[HB 29]

AN ACT ELIMINATING CONFLICTS IN THE LAW AND CLARIFYING THE RIGHTS AND DUTIES OF A LANDLORD AND TENANT WITH REGARD TO THE RETURN OF THE SECURITY DEPOSIT OF A DEPARTING TENANT; AND AMENDING SECTIONS 70-25-202 AND 70-25-205, MCA.

WHEREAS, section 70-25-205, MCA, contains two statements that are in direct conflict with one another; and

WHEREAS, in 1993, the Legislature eliminated the double damages penalty for wrongful withholding of a security deposit; and

WHEREAS, before that penalty was removed, section 70-25-205, MCA, provided that if a tenant failed to furnish a new address, then the landlord was not liable for the double damages, but was still required to pay the tenant the actual amount owed; and

WHEREAS, the 1993 legislation amended that section in a way that both relieved a landlord of liability to pay damages while at the same time provided that a tenant could not be barred from recovering those damages; and

WHEREAS, section 70-25-204, MCA, provides that a tenant is entitled to recover damages.

THEREFORE, section 70-25-205, MCA, as it was amended in 1993, is redundant as well as conflicting.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-25-202, MCA, is amended to read:

"70-25-202. List of damages and refund — delivery to departing tenant. (1) Every landlord, within 30 days subsequent to the termination of a tenancy or within 30 days subsequent to a surrender and acceptance of the leasehold premises, whichever occurs first, shall provide the departing tenant with a written list of any rent due and any damage and cleaning charges, brought after the provisions of 70-25-201 have been followed, *with regard* to the leasehold premises that the landlord alleges are the responsibility of the tenant. Delivery of ~~such~~ *the* list ~~shall~~ *must* be accompanied by payment of the difference, if any, between the security deposit and the permitted charges set forth in 70-25-201. Delivery ~~shall~~ *must* be accomplished by mailing the list and refund to ~~the tenant's last-known address or~~ the new address provided by the tenant *or, if a new address is not provided, to the tenant's last-known address.*

(2) If after inspection there are no damages to the premises, no cleaning required, and no rent unpaid and if the tenant can demonstrate that no utilities are unpaid by the tenant, the landlord shall return the security deposit within 10 days *by mailing it to the new address provided by the tenant or, if a new address is not provided, to the tenant's last-known address.*

(3) It is not a wrongful withholding of security deposit funds if the landlord mails the funds to the last-known address of a tenant who has departed and the tenant does not receive the funds because the tenant has not given the landlord the tenant's new address, but the landlord remains liable to the tenant for the amount due the tenant."

Section 2. Section 70-25-205, MCA, is amended to read:

"**70-25-205. Failure of departing tenant to furnish new address.** ~~Failure~~ *Failure* by the departing tenant to provide the landlord with a new address in writing upon termination of the tenancy or upon surrender and acceptance of the leasehold premises, whichever occurs first, ~~relieves the landlord from liability as imposed by 70-25-204. The failure may not, however,~~ *does not* bar the tenant from recovering the ~~actual~~ amount owing to the tenant by the landlord."

Approved April 16, 2001

CHAPTER NO. 242

[HB 38]

AN ACT PROVIDING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY PURCHASE SURPLUS MOTOR VEHICLES FOR PURCHASE BY PARTICIPANTS IN STATE PROGRAMS FUNDED BY TEMPORARY ASSISTANCE FOR NEEDY FAMILIES; PROVIDING CRITERIA FOR THE PARTICIPANTS TO PURCHASE THE VEHICLES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purchase of surplus motor vehicles for recipients of temporary assistance for needy families funds — criteria for recipient purchase program. (1) Within appropriated funds, the department may purchase surplus motor vehicles from the department of administration at the current residual value for the purpose of allowing participants in state programs funded by temporary assistance for needy families to purchase the motor vehicles through local nonprofit agencies contracted with by the department for that purpose.

(2) An individual purchasing a motor vehicle:

(a) (i) must be a participant in a state program funded by temporary assistance for needy families; or

(ii) must have been a participant in a state program funded by temporary assistance for needy families within the last 3 months, must still be eligible for participation in a state program funded by temporary assistance for needy families, and must be able to show that the individual would have to again request participation in a state program funded by temporary assistance for needy families because a lack of transportation has jeopardized continuing employment;

(b) must be currently employed, be actively working on becoming employed, or be employed within 30 days of receipt of the vehicle;

(c) shall continue employment or employment activities throughout the life of the vehicle purchase agreement with the local nonprofit agency or, if the individual becomes unemployed, continue to make a car payment or donation or the lien process will occur;

(d) shall share in the cost and ownership of the vehicle by making car payments or donations to the local nonprofit agency handling the program; and

(e) shall buy and maintain an auto liability insurance policy that may not exclude or restrict coverage when the individual or another working adult within the household is the driver and shall buy comprehensive vehicle collision coverage that may not exclude or restrict coverage when the individual or another working adult within the household is the driver. The vehicle coverage may only be for the individual or other working adults within the household, and only the individual and other covered working adults within the household may be allowed to drive the vehicle during the term of a vehicle purchase agreement.

(3) Money received as a car payment or donation must be used by the local nonprofit agency to assist other eligible individuals in meeting transportation needs.

(4) A lien must be placed on each vehicle that is sold by the local nonprofit agency until payment is made in full by the participant.

(5) Failure to make a payment or donation, to follow employment activities or plans, or to continue employment must result in repossession of the vehicle. Each local nonprofit agency shall establish guidelines for repossession.

(6) The state and the local nonprofit agency make no express or implied warranty of safety, merchantability, or condition with respect to any of these vehicles. There is no warranty that the vehicle is fit for a particular purpose.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 4, part 2, and the provisions of Title 53, chapter 4, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2001.

Approved April 16, 2001

CHAPTER NO. 243

[HB 195]

AN ACT ADDING CRIMINAL POSSESSION OF DANGEROUS DRUGS AND CRIMINAL POSSESSION WITH INTENT TO DISTRIBUTE TO THE LIST OF CRIMES THAT, IF COMMITTED BY A YOUTH 16 YEARS OF AGE OR OLDER, ARE TRANSFERABLE FROM YOUTH COURT TO DISTRICT COURT; CLARIFYING APPLICATION OF ATTEMPT OR ACCOUNTABILITY TO TRANSFERABLE CRIMES; AND AMENDING SECTION 41-5-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-206, MCA, is amended to read:

"**41-5-206. Filing in district court prior to formal proceedings in youth court.** (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103;

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) assault with a weapon as defined in 45-5-213;

(v) robbery as defined in 45-5-401;

(vi) burglary or aggravated burglary as defined in 45-6-204;

(vii) aggravated kidnapping as defined in 45-5-303;

(viii) possession of explosives as defined in 45-8-335;

(ix) criminal distribution of dangerous drugs as defined in 45-9-101;

(x) criminal possession of dangerous drugs as defined in 45-9-102 (4) and (5);

(xi) criminal possession with intent to distribute as defined in 45-9-103(1);

~~(x)~~*(xii)* criminal production or manufacture of dangerous drugs as defined in 45-9-110;

~~(xi)~~*(xiii)* attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through ~~(1)(b)(iii)~~ *(1)(b)(xii)* and ~~(1)(b)(v) through (1)(b)(xii)~~ *(1)(b)(xiv)*;

~~(xii)~~*(xiv)* use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership, as defined in 45-8-403;

~~(xiii)~~*(xv)* escape as defined in 45-7-306.

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court if the district court finds, by a preponderance of the evidence, that a youth court proceeding and disposition will not serve the interests of community protection and the best interests of the youth, and that,

considering the seriousness of the offense, the case should remain in the district court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) A youth whose case is filed in the district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of the youth's case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical separation as well as sight and sound separation from adults accused or convicted of criminal offenses."

Approved April 16, 2001

CHAPTER NO. 244

[HB 332]

AN ACT REVISING THE INSPECTION PROVISIONS OF THE MONTANA UNDERGROUND STORAGE TANK ACT; AMENDING SECTION 75-11-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-11-509, MCA, is amended to read:

"75-11-509. Inspections — permits. (1) The owner or operator of an underground storage tank must have the tank inspected for compliance with this part by January 1, 2002, and at least once every 3 years thereafter by an inspector who is licensed pursuant to Title 75, chapter 11, part 2, to perform underground storage tank inspections. The inspector may not be:

(a) the owner or operator of the tank;

(b) an employee of the owner or operator; or

(c) for the first inspection required by this subsection (1) *and for a period of 3 years* after the installation or modification of the tank *was completed*,~~:~~

~~(i)~~ the installer who installed or modified the tank *and whose name or signature was on the permit required by 75-11-212.*~~;~~

~~(ii) an employee of the installer who installed or modified the tank;~~

~~(iii) an employee of the person whose employee installed or modified the tank; or~~

~~(iv) if the person that installed or modified the tank through an installer employee is a corporation or other artificial person, a person that owns or is owned by that artificial person.~~

(2) The department shall by rule provide requirements for the scope and timing of inspections.

(3) The inspector shall provide the owner or operator with an inspection report that meets the requirements of rules adopted by the department to ensure compliance with this part and rules adopted pursuant to this part.

(4) The owner or operator shall retain the original inspection report and mail a copy to the department.

(5) If the inspection report indicates violations, the owner or operator shall correct the violations and obtain a followup inspection. Followup inspection reports must be provided to the owner or operator and to the department.

(6) A person may not place a regulated substance in an underground storage tank unless the owner or operator has been issued a valid permit from the department for the tank. Permits must be issued for a term of 3 years. The department may not issue or renew a permit unless the owner or operator has filed with the department an inspection report by a licensed inspector who certifies that the operation and maintenance of the tank was in compliance with this part and rules adopted pursuant to this part on the date of inspection."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2001

CHAPTER NO. 245

[HB 408]

AN ACT CLARIFYING WHAT CONSTITUTES AN OBSTRUCTION THAT A BOARD OF COUNTY COMMISSIONERS IS REQUIRED TO REMOVE FROM A COUNTY ROAD; AMENDING SECTION 7-14-2133, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-2133, MCA, is amended to read:

"7-14-2133. Removal of obstructions on county roads. (1) ~~Whenever any~~ *When a* county road becomes obstructed, the board of county commissioners, or the county surveyor if ~~he~~ *the surveyor* is in charge, shall remove the obstruction upon being notified ~~thereof~~ *of the obstruction.*

(2) ~~Nothing in this section shall be construed as holding~~ *This section does not hold* the board or any member responsible or liable for anything other than willful, intentional neglect or failure to act.

(3) For the purposes of this section, "obstruction" means an obstacle, such as a rock or a fallen tree, that, if not removed, would remain in the road indefinitely. The word does not mean snow, ice, or any other obstacle that will melt or dissipate on its own accord."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2001

CHAPTER NO. 246

[HB 419]

AN ACT CREATING IN THE OFFICE OF THE ATTORNEY GENERAL A PROGRAM FOR THE INVESTIGATION AND PROSECUTION OF VIOLATIONS OF FISH, WILDLIFE, AND PARKS LAWS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Fish, wildlife, and parks enforcement program. There is a fish, wildlife, and parks enforcement program in the department of justice, which must be administered by the entity in the department that assists county attorneys with prosecutions. The program staff may investigate and may prosecute criminal cases concerning the violation of the laws administered by the department of fish, wildlife, and parks. The program is under the supervision and control of the attorney general and consists of a half-time attorney licensed to practice law in Montana who may prosecute, or assist county attorneys and the department in the prosecution of, criminal violations of Title 87.

Approved April 16, 2001

CHAPTER NO. 247

[HB 444]

AN ACT APPROPRIATING MONEY FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT OF JUSTICE FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE ASSESSMENT AND LITIGATION IN THE CLARK FORK RIVER BASIN; REQUIRING REPAYMENT OF THE EXPENDED AMOUNTS FROM ANY RECOVERY IN THE LITIGATION; REQUIRING A THREE-FOURTHS VOTE; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Natural resource damage program appropriation. There is appropriated to the department of justice from the coal severance tax permanent fund a loan in the amount of $990,000 for the biennium ending June 30, 2003, for the purpose of conducting the natural resource damage assessment and litigation and pursuing the state of Montana's remaining natural resource damage claims and any appeals against the atlantic richfield company through the natural resource damage litigation program. Any recovery in the litigation for assessment, litigation, and enforcement costs, up to the amount expended pursuant to this section, must be deposited in the coal severance tax permanent fund.

Section 2. Loan agreement. In order to make the loan authorized in [section 1], the board of investments shall enter into a contract with the department of justice pledging the amount recovered in the litigation to the repayment of the loan to the fullest extent allowable under the law. The contract must provide that the loan repayment must be deposited in the coal severance tax permanent fund. To the extent possible, the board shall make the loan from the portion of the coal severance tax permanent fund invested in the short-term investment pool. The loan authorized in [section 1] may not be made until the contract required by this section has become effective.

Section 3. Three-fourths vote. Because [section 1] appropriates money from the coal severance tax permanent fund, Article IX, section 5, of the Montana constitution requires a vote of three-fourths of the members of each house of the legislature for passage.

Section 4. Effective dates. (1) [Sections 2 and 3 and this section] are effective on passage and approval.

(2) [Section 1] is effective July 1, 2001.

Approved April 16, 2001

CHAPTER NO. 248

[HB 451]

AN ACT REVISING THE REGULATION OF HUNTING BY A PERSON WITH A DISABILITY; CLARIFYING THAT TURKEYS ARE NOT A GAME BIRD SPECIES THAT MAY BE HUNTED BY A DISABLED HUNTER WITH ONLY A CONSERVATION LICENSE; PROVIDING THAT A PERSON WHO WAS GRANTED A PERMIT TO HUNT FROM A VEHICLE DURING THE 2000 LICENSE YEAR OR A SUBSEQUENT LICENSE YEAR IS CONSIDERED ELIGIBLE FOR THE PERMIT DURING SUBSEQUENT LICENSE YEARS UNLESS PERMIT CRITERIA CHANGE; CLARIFYING THE CRITERIA FOR WHICH A DISABLED PERSON MAY BE GRANTED A PERMIT TO HUNT FROM A VEHICLE; AMENDING SECTION 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-803, MCA, is amended to read:

"87-2-803. Persons with disabilities — definitions. (1) Persons with disabilities are entitled to fish and to hunt game birds, *not including turkeys,* with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule. A person who has purchased a conservation license and a resident fishing license or game bird license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the fishing license or game bird license previously purchased for that license year. *A person who is certified as disabled pursuant to subsection (3) and who was issued a permit to hunt from a vehicle for license year 2000 or a subsequent license year is automatically entitled to a permit to hunt from a vehicle for subsequent license years if the criteria for obtaining a permit does not change.*

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase regular resident deer and elk licenses at one-half the fee paid by a resident who is 15 years of age or older and who is under 62 years of age. A person who has purchased a conservation license and a resident deer license or resident elk license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the deer license or elk license previously purchased and reissuance of the license for that license year at the rate established in this subsection.

(3) ~~A resident or nonresident person with a disability who is certified as disabled by the department and who is not residing in an institution may carry a permit on a form prescribed by the department. A person with a disability who is issued a permit under this subsection is entitled to have the department stamp the permit with "Permission to Hunt From a Vehicle" if the person establishes to the satisfaction of the department that the person has substantially impaired mobility.~~ *A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person establishes one or more of the disabilities pursuant to subsection (8).* The department shall adopt rules to establish a voluntary board or boards of review to resolve any disputes over whether a person meets the criteria established in ~~this~~ subsection *(8)*. Each board must have at least one Montana-licensed physician as a member.

(4) A person with a disability carrying a permit ~~as required in subsection (3), upon which is stamped "Permission to Hunt From a Vehicle",~~ *to hunt from a vehicle, referred to in this subsection as a permitholder,* may hunt by shooting a firearm from the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-202, except a state or federal highway, or may hunt by shooting a firearm from within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted. This subsection does not allow a ~~person with a disability~~ *permitholder* to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner. A ~~person with a disability who hunts as authorized in this subsection~~ *permitholder* must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the ~~person with a disability~~ *permitholder* by hunting a game animal that has been wounded by the ~~person with a disability~~ *permitholder* when the ~~person with a disability~~ *permitholder* is unable to pursue and kill the wounded game animal. Any vehicle from which a ~~person with a disability~~ *permitholder* is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle*, or as prescribed by the department*.

(5) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of $10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by

department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure.

(b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses in the manner provided in subsection (2), and must be accompanied by a companion, as provided in subsection (4).

(6) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.

(7) As used in this section~~:~~,

~~(a)~~ "disabled person" ~~or,~~ ~~"person with disabilities"~~ *"person with a disability", or "disabled"* means *or refers to* a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability~~;~~

~~(b) "permanently physically handicapped person" means a disabled person as defined in subsection (7)(a) except for a person with a disability that is due to mental retardation or mental illness;~~

~~(c) "substantially impaired mobility" means, with respect to a disabled person, that the person is nonambulatory or virtually unable to move on foot. The board or boards of review established pursuant to subsection (3) shall resolve any disputes regarding whether a person meets the criteria for having substantially impaired mobility~~.

(8) A person is entitled to a permit to hunt from a vehicle if the person:

(a) is certified by a licensed physician to be dependent on an oxygen device or dependent on a wheelchair, crutch, or cane for mobility;

(b) is an amputee above the wrist or ankle; or

(c) is certified by a licensed physician to be unable to walk, unassisted, 600 yards over rough and broken ground while carrying 15 pounds within 1 hour and to be unable to handle and maneuver up to 25 pounds.

(9) Certification by a licensed physician under subsection (8) must be on a form provided by the department.

(10) A person who disagrees with a determination of eligibility for a permit to hunt from a vehicle may request a review by a voluntary board of review pursuant to subsection (3)."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2001

CHAPTER NO. 249

[HB 461]

AN ACT ALLOWING AN ACTIVE MEMBER OF THE MILITARY TO PURCHASE VETERANS' LICENSE PLATES; AMENDING SECTION 61-3-332, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-332, MCA, is amended to read:

"**61-3-332. Number plates.** (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bears the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bears the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bears the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bears the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bears the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned to the dealer, in the position that the department designates.

(2) (a) All number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(b) For light vehicles that are permanently registered as provided in 61-3-527 or 61-3-562, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.

(3) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of

plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of $10. The additional fee must be distributed in accordance with the provisions of subsection (10)(f)(iii) and (10)(f)(iv).

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued:

(A) a special license plate under this section with a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(iii) Special license plates issued to a disabled veteran are not transferable to another person.

(iv) A disabled veteran is not entitled to a special disabled veteran's license plate for more than one vehicle.

(v) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(i) Fees required under 61-3-321(1) and (5) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).

(ii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iii) An ex-prisoner of war is exempt from the ~~light vehicle taxes imposed under 61-3-504~~ *registration fees imposed under 61-3-560 through 61-3-562* for one vehicle that displays a set of ex-prisoner of war license plates.

(iv) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.

(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue account established in 10-2-603 for administration, construction, operation, and maintenance of the state veterans' cemeteries.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.

(i) An active member of the armed forces of the United States who is a resident of the state or who is stationed outside of Montana may be issued special license plates inscribed as provided in subsection (10)(f)(i)(A). The member's commanding officer may issue a certificate or some other relevant document to show the applicant's qualification and authorizing the issuance of the special license plates in sets of two with a different number on each set. The member is liable for payment of all taxes and fees required by this chapter, except as provided in 61-3-456.

(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 2. Effective date — applicability. [This act] is effective January 1, 2002, and applies to registrations of motor vehicles occurring after December 31, 2001.

Approved April 16, 2001

CHAPTER NO. 250

[HB 468]

AN ACT PROVIDING FOR A UNIVERSAL NEWBORN HEARING SCREENING PROGRAM; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO IMPLEMENT AN EDUCATION AND REPORTING PROGRAM; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR A TASK FORCE ON HEARING LOSS IN NEWBORN INFANTS; REQUIRING HOSPITALS, HEALTH CARE FACILITIES, AND HEALTH CARE PROVIDERS THAT PROVIDE OBSTETRIC SERVICES TO PROVIDE EDUCATION AND SUBMIT QUARTERLY REPORTS; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purposes of [sections 1 through 4] are:

(1) to provide early detection of hearing loss in newborn infants as soon after birth as possible to enable children, their families, and primary health care providers to obtain any necessary multidisciplinary evaluation, audiologic assessment, treatment, and intervention services at the earliest opportunity and to prevent or mitigate the developmental delays and academic failures associated with late identification of hearing loss; and

(2) to provide the state with the necessary information to effectively plan, establish, and evaluate a comprehensive system of appropriate services for newborn infants who have a hearing loss or who are deaf.

Section 2. Statewide universal newborn hearing screening, tracking, and intervention program. (1) There is a universal newborn hearing screening program in the department of public health and human services. The department shall implement the program to encourage a hearing screening test for all newborn infants to undergo for identification of newborn infant hearing loss. The department shall encourage newborn infant hearing tests to be completed before discharge from a hospital or no later than 3 months after birth.

(2) The department shall adopt rules to:

(a) determine the volume of births that would allow a hospital or health care facility to be exempt from providing newborn infant hearing screenings onsite before discharge;

(b) develop information for and procedures by which health care providers, local health departments, health care clinics, school districts, and other appropriate resources may promote the importance of the screening of newborn infants' hearing and provide information regarding locations where screenings may be accessed for those newborn infants either not born in a hospital or who do not receive a screening in a hospital; and

(c) determine any additional reporting requirements that are related to newborn infant hearing screening, evaluation, audiologic assessment, treatment, and intervention services.

(3) The department shall assist hospitals in developing systems for reporting and in accessing funds to purchase hearing screening equipment by providing information on funding sources known to the department.

(4) The department may accept contributions, gifts, grants, or endowments from public or private sources for the use and benefit of this program.

Section 3. Task force. (1) There is a task force on hearing loss in newborn infants for the purpose of advising the department of public health and human services on the collection and reporting of information from the hospitals and other sources and providing recommendations to the department, hospitals, other health care providers, and the public concerning but not limited to:

(a) appropriate methodologies to be implemented for hearing screening of newborn infants that must be objective and physiologically based;

(b) the number of births sufficient to qualify a hospital or health care facility for exemption from screening and procedures to inform persons how to arrange for hearing screening outside of the hospital or health care facility; and

(c) guidelines for reporting and the means to ensure that identified newborn infants receive referral and appropriate audiologic assessment, evaluation, and followup services.

(2) The task force may consist of at least 7 and not more than 12 members who must be appointed by the department director and must include the coordinator of part C services pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. 1437, and a representative of a parenting organization. Members appointed to the task force must have training, experience, or interest in the area of hearing conditions in children. The members of the task force may be compensated as provided in 2-18-501 through 2-18-503 as funds allow.

Section 4. Required education — screening. (1) Each licensed hospital, health care facility, or health care provider that provides obstetric services shall provide education to parents of infants born in the hospital or health care facility of the importance of screening the hearing of newborn infants and followup care. Education is not considered a substitute for the hearing screening.

(2) Every licensed hospital, health care facility, or health care provider that provides obstetric services shall report quarterly to the department of public health and human services and to the task force the following information and any other information required by rule:

(a) the number of infants born in the hospital;

(b) the number of infants screened;

(c) the number of infants who passed the screening, if administered;

(d) the number of infants who did not pass the screening, if administered;

(e) the number of infants who received followup care; and

(f) the number of infants with hearing impairment.

Section 5. Appropriation. There is appropriated up to $100,000 for the biennium beginning July 1, 2001, and ending June 30, 2003, from the state special revenue account, provided for in 53-19-310, to the department of public health and human services to be used for the purchase of newborn hearing screening equipment.

Section 6. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 53, chapter 19, and the provisions of Title 53, chapter 19, apply to [sections 1 through 4].

Section 7. Effective date. [This act] is effective July 1, 2001.

Approved April 16, 2001

CHAPTER NO. 251

[HB 477]

AN ACT PROHIBITING THE USE OF AN APPLICANT'S PROPERTY OR ASSETS IN THE CALCULATION OF FEES ASSESSED FOR THE PRODUCTION OF AN ENVIRONMENTAL IMPACT STATEMENT; AMENDING SECTION 75-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-1-203, MCA, is amended to read:

"**75-1-203. Fee schedule — maximums.** (1) In prescribing fees to be assessed against applicants for a lease, permit, contract, license, or certificate as specified in 75-1-202, an agency may adopt a fee schedule ~~which~~ *that* may be adjusted depending upon the size and complexity of the proposed project. A fee may not be assessed unless the application for a lease, permit, contract, license, or certificate will result in the agency incurring expenses in excess of $2,500 to compile an environmental impact statement.

(2) The maximum fee that may be imposed by an agency may not exceed 2% of any estimated cost up to $1 million, plus 1% of any estimated cost over $1 million and up to $20 million, plus 1/2 of 1% of any estimated cost over $20 million and up to $100 million, plus 1/4 of 1% of any estimated cost over $100 million and up to $300 million, plus 1/8 of 1% of any estimated cost in excess of $300 million.

(3) If an application consists of two or more facilities, the filing fee must be based on the total estimated cost of the combined facilities. The estimated cost must be determined by the agency and the applicant at the time the application is filed.

(4) Each agency shall review and revise its rules imposing fees as authorized by this part at least every 2 years.

(5) In calculating fees under this section, the agency may not include in the estimated project cost the project sponsor's property or other interests already owned by the project sponsor at the time the application is submitted. Any fee assessed may be based only on the projected cost of acquiring all of the information and data needed for the environmental impact statement."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2001

CHAPTER NO. 252

[HB 488]

AN ACT ALLOWING SCHOOL DISTRICTS THAT CONSOLIDATE TO EACH RETAIN THEIR BASIC ENTITLEMENT FOR 6 YEARS; RETAINING 100 PERCENT OF THE ENTITLEMENT FOR THE FIRST 3 YEARS; REDUCING THE ENTITLEMENT OVER THE NEXT 3 YEARS BY 25 PERCENT EACH YEAR; AMENDING SECTION 20-9-311, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-311, MCA, is amended to read:

"20-9-311. Calculation of average number belonging (ANB). (1) Average number belonging (ANB) must be computed as follows:

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the next school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of the pupil-instruction and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than 180 school days under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be counted as enrollment for one-half day.

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment at a regular session of the program for at least 2 hours of either a morning or an afternoon session must be counted as one-half pupil for ANB purposes. The ANB for a kindergarten student may not exceed one-half for each kindergarten pupil.

(6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of prekindergarten pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more elementary districts consolidate or annex under the provisions of 20-6-203, 20-6-205, or 20-6-208~~;~~, two or more high school districts consolidate or annex under the provisions of 20-6-315 or 20-6-317~~;~~, or two or more K-12 districts consolidate or annex under Title 20, chapter 6, part 4, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation~~;~~. *Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:*

(A) 75% of the basic entitlement for the fourth year;

(B) 50% of the basic entitlement for the fifth year; and

(C) 25% of the basic entitlement for the sixth year.

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent."

Section 2. Effective date. [This act] is effective July 1, 2001.

Approved April 16, 2001

CHAPTER NO. 253

[HB 505]

AN ACT ALLOWING THE USE OF THE PRIOR 3-YEAR AVERAGE ENROLLMENT TO CALCULATE REVERSIONS FOR FUNDED RESIDENT ENROLLMENT GROWTH IN THE MONTANA UNIVERSITY SYSTEM.

Be it enacted by the Legislature of the State of Montana:

Section 1. Calculation of reversions for funded resident enrollment growth in Montana university system. (1) The reversion calculation in this section is effective only in those years when the legislature funds resident enrollment growth based upon resident enrollment projections and requires a reversion by the Montana university system if the resident enrollment projections are not met.

(2) The reversion must be calculated based upon the marginal funding for each resident FTE identified in the general appropriations act.

(3) The total reversion is calculated based upon the difference between the FTE resident enrollment projection and the actual FTE resident enrollment or the FTE resident enrollment projection and the prior 3-year average FTE resident enrollment, whichever is lower.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 17, chapter 7, part 1, and the provisions of Title 17, chapter 7, part 1, apply to [section 1].

Approved April 16, 2001

CHAPTER NO. 254

[HB 529]

AN ACT REVISING OVERWEIGHT VEHICLE TOLERANCE STANDARDS; INCREASING FROM 7 PERCENT TO 10 PERCENT THE AMOUNT BY WHICH CERTAIN VEHICLES MAY EXCEED WEIGHT LIMITS WITHOUT INCURRING PENALTIES; INCREASING FROM 50 MILES TO 100 MILES THE DISTANCE THAT AN OVERWEIGHT FARM VEHICLE MAY TRAVEL FROM THE HARVESTED FIELD WITHOUT INCURRING PENALTIES; ELIMINATING THE REQUIREMENT THAT AN OVERWEIGHT FARM VEHICLE MAY NOT EXCEED 40 MILES AN HOUR; AND AMENDING SECTION 61-10-144, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-144, MCA, is amended to read:

"61-10-144. Violation of standards — tolerance. (1) It is a misdemeanor for a person, firm, or corporation to violate any provision of 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110.

(2) The operator of a vehicle or combination of vehicles may move over the highways to the first open state scale, permanent or portable, without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable total gross weight limitations by more than ~~7%, or~~ 10% ~~for garbage trucks,~~ and if the weight carried by any axle or combination of axles does not exceed the allowable axle weight limitations by more than ~~7%, or~~ 10% ~~for garbage trucks~~. If the vehicle or combination of vehicles is not in excess of the allowable total gross or axle weight limitations by more than ~~7%, or~~ 10% ~~for garbage trucks~~, the department may issue a single trip permit for the fee of $10, allowing the vehicle or combination of vehicles to move over the highways to the first facility where its load can be safely adjusted or to its destination. Violations of total gross or axle weight limitations in excess of ~~7%, or~~ 10% ~~for garbage trucks,~~ are subject to the fines provided in 61-10-145, and all loads in excess of ~~7%, or~~ 10% ~~for garbage trucks,~~ of the total gross or axle weight limitations:

(a) may be required to be adjusted or reduced to conform to the size and weight limitations before the vehicle or combination of vehicles is moved from the point of weighing; or

(b) may be issued a permit as authorized by 61-10-141.

(3) Farm vehicles transporting agricultural products from a harvesting combine or other harvesting machinery may move over a highway, except any highway that is part of the federal-aid interstate system, within a ~~50-mile~~ *100-mile* radius of the harvested field to the point of first unloading without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the farm vehicle or combination of vehicles does not exceed allowable weight limitations by more than 20% for each axle, but the maximum load for each inch of tire width may not exceed 670 pounds. ~~The farm vehicle or combination of vehicles may not exceed 40 miles an hour.~~ A single trip permit, as required in subsection (2), is not applicable to the farm vehicle or combination of vehicles. When a farm vehicle or combination of vehicles violates any of the provisions of this subsection, the fine or penalty imposed applies to that portion of the load above the legal limit.

~~(4) For the purposes of this section, a garbage truck means only a motor vehicle operated by a Class D motor carrier, as determined and regulated by the public service commission pursuant to 69-12-301(5).~~"

Approved April 16, 2001

CHAPTER NO. 255

[HB 533]

AN ACT CLARIFYING THAT OPERATING BUDGETS AND FUND TRANSFERS MUST CONFORM TO CONDITIONS CONTAINED IN THE GENERAL APPROPRIATIONS ACT; CLARIFYING THAT THE LEGISLATURE MAY RESTRICT THE USE OF FUNDS APPROPRIATED FOR PERSONAL SERVICES TO ALLOW USE ONLY FOR THE PURPOSE OF THE APPROPRIATION; CLARIFYING THAT CHANGES MUST BE APPROVED IN WRITING; AMENDING SECTIONS 2-15-112, 17-7-138, AND 17-7-139, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-112, MCA, is amended to read:

"**2-15-112. Duties and powers of department heads.** (1) Except as otherwise provided by law, each department head shall:

(a) supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this chapter or other law;

(b) establish the policy to be followed by the department and employees;

(c) compile and submit reports and budgets for the department as required by law or requested by the governor;

(d) provide the governor with any information that the governor requests at any time on the operation of the department;

(e) represent the department in communications with the governor;

(f) *(i)* prescribe rules, consistent with law and rules established by the governor, for the*:*

(A) administration of the department;

(B) ~~the~~ conduct of the employees;

(C) ~~the~~ distribution and performance of business; and

(D) ~~the~~ custody, use, and preservation of the records, documents, and property pertaining to department business.

(ii) The lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction may prescribe their own rules for their departments or offices, and the governor may not prescribe rules for them.

(iii) The rules described in this subsection *(1)(f)* are limited to statements concerning only the internal management of the agency and not affecting private rights or procedures available to the public. This section does not authorize the adoption of any rule as rules are defined in the Montana Administrative Procedure Act.

(g) subject to the approval of the governor, establish the internal organizational structure of the department and allocate the functions of the department to units to promote the economic and efficient administration and operation of the department. The internal structure of the department must be established in accordance with 2-15-104(2).

(h) subject to law, establish and make appointments to necessary subordinate positions and abolish unnecessary positions;

(i) maintain a central office in Helena for the department and maintain other facilities throughout the state as may be required for the effective and efficient operation of the department.

(2) Except as otherwise provided by law, each department head may:

(a) subject to law, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department;

(b) delegate any of the functions vested in the department head to subordinate employees;

(c) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other source in administering the department's functions;

(d) enter into agreements with federal, state, and local agencies necessary to carry out the department's functions; and

(e) eliminate positions within the department. If the salary for an eliminated position is not redistributed as provided for under 2-18-1107, the office of budget and program planning shall increase the department's appropriation in the second year of the biennium by an amount equal to one-half of the savings resulting from the elimination of a position. The increased appropriation in the second year of the biennium may be expended at the discretion of the department head, provided that the expenditure is consistent with the goals and objectives of the department. The remaining one-half must revert to the original funding source. This subsection ~~(e)~~ *(2)(e)* does not apply to an agency allocated to a department in either year of the 2 years of the biennium for administrative purposes, as provided in 2-15-121. ~~Section 17-7-138 does not apply to this subsection (e).~~"

Section 2. Section 17-7-138, MCA, is amended to read:

"**17-7-138. Operating budget.** (1) (a) Expenditures by a state agency must be made in substantial compliance with the budget approved by the legislature.

Substantial compliance may be determined by conformity to *the conditions contained in the general appropriations act and to* legislative intent as established in the narrative accompanying the general appropriations act. An explanation of any significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. *A significant change may not conflict with a condition contained in the general appropriations act.* If the approving authority certifies that a change is time-sensitive, the approving authority may approve the change prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee. Except as provided in subsection (2), the expenditure of money appropriated in the general appropriations act is contingent upon approval of an operating budget by August 1 of each fiscal year. An approved original operating budget must comply with state law *and conditions contained in the general appropriations act.*

(b) For the purposes of this subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:

(i) the expenditure change exceeds $1 million; or

(ii) the expenditure change exceeds 25% of a budget category and the change is greater than $25,000. If there have been other changes to the budget category in the current fiscal year, all the changes, including the change under consideration, must be used in determining the 25% and $25,000 threshold.

(2) The expenditure of money appropriated in the general appropriations act to the university system units, as defined in 17-7-102, is contingent upon approval of an operating budget by October 1 of each fiscal year. All other requirements in this section apply to the university system.

(3) The operating budget for money appropriated by the general appropriations act must be separate from the operating budget for money appropriated by another law except a law appropriating money for the state pay plan or any portion of the state pay plan. *The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation.* Each operating budget must include expenditures for each agency program, detailed at least by first-level categories as provided in 17-1-102(3). Each agency shall record its operating budget and any approved changes on the statewide budget and accounting system. Forms used for changing an operating budget must reference the current, complete, and approved operating budget, show the proposed changes to the operating budget, and reference any other pending documents to change the operating budget. *The forms must be signed.*"

Section 3. Section 17-7-139, MCA, is amended to read:

"**17-7-139. Program transfers.** (1) Unless prohibited by law *or a condition contained in the general appropriations act*, the approving authority may approve agency requests to transfer appropriations between programs within each fund type within each fiscal year. *The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation.* An explanation of any transfer that involves a significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. If the approving authority certifies that a request for a transfer representing a significant change in agency or program scope, objectives, activities, or expenditures is time-sensitive, the approving authority may approve the transfer prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee. All program transfers must be completed within the same fund from which the transfer originated. A request for a transfer accompanied by a justification explaining the reason for the transfer must be submitted by the requesting agency to the approving authority and the office of budget and program planning. Upon approval of the transfer *in writing*, the approving authority shall inform the legislative fiscal analyst of the approved transfer and the justification for the transfer. If money appropriated for a fiscal year is transferred to another fiscal year, the money may not be retransferred.

(2) For the purposes of subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:

(a) the budget transfer exceeds $1 million; or

(b) the budget transfer exceeds 25% of a program's total operating plan and the transfer is greater than $25,000. If there have been other transfers to or from the program in the current fiscal year, all the transfers, including the transfer under consideration, must be used in determining the 25% and $25,000 threshold."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2001

CHAPTER NO. 256

[HB 626]

AN ACT RATIFYING THE COMPACT ENTERED INTO BY THE STATE OF MONTANA AND THE FORT BELKNAP INDIAN COMMUNITY OF THE FORT BELKNAP RESERVATION; ESTABLISHING A MITIGATION TRUST ACCOUNT; ESTABLISHING THE MILK RIVER WATERSHED IMPROVEMENT TRUSTS FUND ACCOUNTS; PROVIDING A STRUCTURE FOR THE ISSUANCE OF GRANTS AND LOANS; ESTABLISHING THE PEOPLES CREEK MINIMUM FLOW ACCOUNT; PROVIDING FOR THE FACILITATION OF THE DEVELOPMENT OF AN ECONOMIC DEVELOPMENT PLAN; AND APPROPRIATING FUNDS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Fort Belknap-Montana compact ratified. The Compact entered into by the State of Montana and the Fort Belknap Indian Community of the Fort Belknap Reservation and filed with the Secretary of State of the State of Montana under the provisions of 85-2-702, MCA, on [date of filing] is ratified. The Compact is as follows:

WATER RIGHTS COMPACT ENTERED INTO BY
THE STATE OF MONTANA,
THE FORT BELKNAP INDIAN COMMUNITY
OF THE FORT BELKNAP RESERVATION,
AND THE UNITED STATES OF AMERICA

This Compact is entered into by and among the State of Montana, the Fort Belknap Indian Community of the Fort Belknap Reservation, and the United States of America for the purpose of settling all existing water rights claims of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation in the State of Montana. The Compact is not effective until approved by the Tribes, the Montana Legislature, and the United States Congress. The participation of the United States in each relevant section of the Compact is not valid until the Compact is ratified by Congress.

ARTICLE I - RECITALS

WHEREAS, pursuant to the Treaty of 1855, 11 Stat. 657 and the Acts of Congress of 1874, 18 Stat. 28, and 1888, 25 Stat. 113, a Reservation was established in Montana for the Gros Ventre and Assiniboine Tribes; and

WHEREAS, pursuant to said Treaty and Acts of Congress, the Gros Ventre and Assiniboine Tribes claim reserved water rights to fulfill the purposes of the Treaty, the Acts of Congress, and Winters v. United States, 207 U.S. 564 (1908); and

WHEREAS, in 1979, the United States, on behalf of the Gros Ventre and Assiniboine Tribes of the Fort Belknap Reservation, brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribes' water rights claims, see United States v. Aageson, No. CIV-79-21-GF (filed April 5, 1979); and

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America in trust for the Tribes; see "the McCarran Amendment," 43 U.S.C. §666(a)(1) (1952); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes Gros Ventre and Assiniboine tribal water rights; and

WHEREAS, the Montana Reserved Water Rights Compact Commission, under §85-2-702(1), MCA, is authorized to negotiate settlement of water rights claims filed by Indian tribes and/or on their behalf by the United States claiming reserved waters within the State of Montana: and

WHEREAS, the federal district court litigation was stayed in 1983 pending the outcome of Montana state court water adjudication proceedings, see Northern Cheyenne v. Adsit, 721 F.2d 1187 (9th Cir., 1983); and

WHEREAS, the adjudication of the Gros Ventre and Assiniboine tribal water rights in the state court proceedings has been suspended pursuant to §85-2-217, MCA, while negotiations are proceeding to conclude a compact resolving all water rights claims of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation within the State of Montana; and

WHEREAS, the Fort Belknap Community Council, or its duly designated representatives, have authority to negotiate this Compact pursuant to Resolution No. 19-81 of the Fort Belknap Community Council, February 17, 1981, as amended; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§516-17 (1993); and

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. §1457 (1986), inter alia; and

WHEREAS, the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation, the State of Montana, and the United States agree that the Tribal Water Right, water development, and water management described in this Compact are in satisfaction of the water rights claims of the Tribes, Tribal members, and Allottees, and of the United States on behalf of the Tribes and their members and Allottees within the State of Montana; and

WHEREAS, the Parties agree that it is in the best interest of all Parties that the water rights claims of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation be settled through agreement between and among the Tribes, the State of Montana, and the United States.

NOW THEREFORE, the Parties agree to enter into this Compact for the purpose of settling the water rights claims of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community, Tribal members, and Allottees of the Fort Belknap Reservation within the State of Montana.

ARTICLE II - DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

1. "Acre-feet per year" or "AFY" means an annual quantity of water measured in acre-feet over a period of a year.

2. "Acre-foot" or "Acre-feet" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.

3. "Adverse Effect" or "Adversely Affect" means an actual interference with the reasonable exercise of a water right resulting in a material injury.

4. "Allottee" or "Allottees" means any individual or individuals who own or hold a trust allotment or interest in a trust allotment on the Fort Belknap Reservation under the authority of the General Allotment Act and subject to the terms and conditions of that Act.

5. "Arising Under Federal Law" means, as applied to a water right, a water right created or defined under federal law.

6. "Arising Under State Law" means, as applied to a water right, a water right created under Montana law and does not include water rights Arising Under Federal Law.

7. "Beaver Creek Basin" means Montana Water Court Basin 40M, consisting of the mainstem of Beaver Creek and its tributaries, including Big Warm Creek and Little Warm Creek, to its confluence with the Milk River, as shown in Appendix 2.

8. "Board" means the Fort Belknap - Montana Compact Board established by Section D. of Article IV of this Compact.

9. "Calculated Undepleted Flow of the Milk River" means the flow available for the Tribal Water Right determined pursuant to Section E.2. of Article IV, and represents the calculated United States' Share of the Natural Flow of the Milk River at the diversion point on the Reservation.

10. "Cfs" means cubic feet per second.

11. "Change in Use" means, as applied to the Tribal Water Right, a change in the point of diversion, the place of use, the purpose of use, or the place or means of storage.

12. "Combined Development" means, in reference to small wells and springs, a use or proposed use of water for the same purpose.

13. "Compact" means the water rights settlement entered into by the State of Montana, the Fort Belknap Indian Community of the Fort Belknap Reservation, and the United States of America.

14. "Depletion" means the amount of water consumptively used, or the difference between the amount of water diverted and returned to the source of supply.

15. "Direct Use" means diversion of water from the source to be used for a designated purpose without intermediate storage.

16. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

17. "Eastern Crossing" means the most downstream location at which the mainstem of the Milk River crosses the 49th parallel to re-enter the United States from Canada.

18. "Effective Date" means the date on which the Compact is finally approved by a referendum vote by the eligible members of the Fort Belknap Indian Community and ratified by the Fort Belknap Indian Community Council, by the Montana Legislature, and by the Congress of the United States, whichever date is latest.

19. "Exempt New Development" means new development of the Tribal Water Right that is exempt from review pursuant to Section A.4. of Article IV.

20. "Fort Belknap Indian Irrigation Project" means the irrigation projects authorized by federal law for development on the Reservation in the Milk River and Peoples Creek Basins.

21. "Groundwater" means any water that is beneath the ground surface.

22. "Hydrologically Connected" means the interconnection of groundwater and surface water such that they constitute one water supply and use of either results in an impact to both.

23. "Milk River Coordinating Committee" or "MRCC" means the basin organization established pursuant to Section C.1. of Article IV.

24. "Milk River Basin" means the mainstem of the Milk River and its tributaries from its headwaters to the confluence with the Missouri River and consists of: Montana Water Court Basins 40F, 40G, 40H, 40I, 40J, 40K, 40L, 40M, 40N, and 40O; and the portion of the Milk River and its tributaries flowing through the Provinces of Alberta and Saskatchewan in Canada.

25. "Milk River Basin 40J" or "Basin 40J" means the portion of the Milk River Basin, including the tributaries of Threemile Creek, White Bear Creek and Fifteenmile Creek, constituting Water Court Basin 40J, as shown in Appendix 2.

26. "Milk River Project" means the Reclamation project on the Milk and St. Mary Rivers in Montana authorized by the Reclamation Act of 1902, 32 Stat. 388; 43 U.S.C. 391.

27. "Missouri River Basin 40EJ" or "Basin 40EJ" means the portion of the Missouri River Basin including the tributaries of Suction, Rattlesnake, Tin Cup, Little Suction, and Cow Creeks constituting Water Court Basin 40EJ, as shown in Appendix 2.

28. "Non-Exempt New Development" means new development of the Tribal Water Right that is subject to review pursuant to Section A.5. of Article IV.

29. "Parties" means the Fort Belknap Indian Community of the Fort Belknap Reservation, the State of Montana, and the United States of America.

30. "Peoples Creek Basin" means Water Court Basin 40I, consisting of the mainstem of Peoples Creek to its confluence with the Milk River, and its tributaries including: Duck Creek; the South Fork of Peoples Creek; Little Peoples Creek; Jim Brown Creek; Lodge Pole Creek; Lone Tree Coulee; and Mud Creek, as shown in Appendix 2.

31. "Perennial Flowing Stream" means a stream that historically flowed and is currently flowing continuously during all seasons of the year including dry as well as wet years.

32. "Person(s)" means an individual or individuals or any other entity, public or private, including the State, the Tribes, and the government of the United States and all officers, agents, and departments thereof.

33. "Reservation" means the Fort Belknap Reservation and includes all lands and interests in lands which are now and in the future held in trust by the United States for the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation within the boundary established by the Treaty ratified by Congress on May 1, 1888, 25 Stat. 113, as modified by: The Grinnell Agreement of October 9, 1895 and ratified by Congress in 1896, 29 Stat. 350; and the Fort Belknap Allotment Act of March 3, 1921, 41 Stat. 1355.

34. "Same Source" means the same aquifer in reference to wells and developed springs of 35 gallons per minute or less that do not exceed a use of 10 Acre-feet per year.

35. "Secretary" means the Secretary of the United States Department of the Interior, or his or her duly authorized representative.

36. "Seniority of the Water Rights Set Forth in Sections B.1.a. and d. of this Article III Shall not be Asserted Over" means the senior water rights specified in Sections B.1.a. and d. of Article III shall be administered as subordinate to the junior water rights specified and referenced in Section B.2.a of Article III.

37. "State" means the State of Montana and all officers, agencies, departments, and political subdivisions thereof.

38. "Transfer" means, as applied to the Tribal Water Right, to authorize a Person or Persons to use all or any part of the Tribal Water Right through a service contract, lease, or other similar agreement of limited duration.

39. "Tribal Water Resources Department" or "TWRD" means the Fort Belknap Tribal Water Resources Department, or any successor agency.

40. "Tribal Water Right" means the right of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community, Tribal members, and Allottees within the Fort Belknap Reservation, to divert, use, or store water as described by Article III of this Compact.

41. "Tribes" means the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation and all officers, agencies, and departments thereof.

42. "Undepleted Flow" means the stream flow in a watershed without the effects of diminishment by water uses for specific beneficial purposes including, but not limited to, irrigation, municipal, domestic, mining, commercial, industrial, stockwatering, recreational, and environmental concerns.

43. "United States" means the federal government and all officers, agencies, and departments thereof.

44. "United States' Share of the Natural Flow of the Milk River" means the allocation to the United States of water in the Milk River and its tributaries pursuant to Article VI of the "Treaty Between the United States and Great Britain Relating to Boundary Waters, and Questions Arising Between the United States and Canada," January 11, 1909, and ratified by the Senate on May 13, 1910, 36 Stat. 2455, and the Order of the International Joint Commission on October 4, 1921, pertaining to "In the matter of the Measurement and Apportionment of the Waters of the St. Mary and Milk Rivers and their Tributaries in the State of Montana and the Provinces of Alberta and Saskatchewan."

45. "Water Bank" means a water purchasing mechanism whereby willing sellers are paid to forego use of a portion of their supplies in a year of water shortage, and purchased water is either stored or reallocated to meet specified needs.

46. "Western Crossing" means the most upstream location at which the mainstem of the Milk River crosses the 49th parallel to enter Canada from the United States.

ARTICLE III - TRIBAL WATER RIGHT

The Tribal Water Right set forth in this Article III shall be the water allocation in settlement of the claims including Winters reserved water rights claims of the Tribes, Tribal members, and Allottees, and the United States on behalf of the Tribes, Tribal members, and Allottees within the Fort Belknap Reservation, to water within the State of Montana, as those claims exist on the Effective Date of the Compact, and shall be held in trust by the United States for the benefit of the Tribes, Tribal members, and Allottees within the Fort Belknap Reservation. Non-use of all or any of the Tribal Water Right does not constitute a relinquishment, forfeiture, or abandonment of such rights.

A. **Basin 40J: Milk River Basin 40J.**

1. **Quantification.**

a. The Tribes have the right to divert up to 645 cubic feet per second "Cfs" of the United States' Share of the Natural Flow of the Milk River and its tributaries upstream from the diversion point on the Reservation as calculated pursuant to Section E.2. of Article IV. The right to divert 645 Cfs is in addition to allocation to the Tribes of storage in Fresno Reservoir pursuant to the Memorandum of Agreement between the Bureau of Reclamation and the Office of Indian Affairs (BIA) Milk River Project Montana, I-1-Ind. 18725, July 8, 1946.

(1) Of the right to divert 645 Cfs, up to 125 Cfs may be diverted for Direct Use to a maximum of 10,425 irrigated acres within the Fort Belknap Indian Irrigation Project. This water right is intended to preserve the historic water use protected in Winters v. United States, 207 U.S. 564 (1908). Irrigation of the Fort Belknap Indian Irrigation Project pursuant to this paragraph may be on land within the external boundaries of the Project on the Effective Date of the Compact or as modified pursuant to applicable federal law.

(2) Of the right to divert 645 Cfs and in addition to the 125 Cfs water right quantified in Section A.1.a.(1) of this Article III, up to 520 Cfs may be diverted for Direct Use or to off-stream storage, or both, for subsequent use for both of the following: use on an additional 19,390 present and future irrigated acres (including land irrigated historically within the Milk River Basin 40J); and up to 4000 AFY of use for non-irrigation purposes. The off-stream storage pursuant to this Section A.1.a.(2) of Article III is limited to a maximum combined capacity of 60,000 Acre-feet. Irrigation by diversion to Direct Use pursuant to this paragraph may be accomplished through expansion or modification of the Fort Belknap Indian Irrigation Project pursuant to applicable federal law.

b. In addition to the water rights set forth in Section A.1.a. of this Article III, the Tribes have the right to divert surface flow from tributaries to the Milk River on the Reservation in Basin 40J to irrigate the acreage identified in Section A.1.a.(1) and (2) of this Article III.

c. In addition to the water rights set forth in Sections A.1.a. and b. of this Article III, the Tribes have the right to develop surface water in the Milk River Basin 40J within the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream. The cumulative development of stock impoundments pursuant to this Section A.1.c., of Article III following the Effective Date of this Compact may not exceed a storage capacity of fifteen Acre-feet times the number of square miles in Basin 40J on the

Reservation. This capacity limit does not apply to the water right quantified in Sections A.1.a., b., and d. of this Article III.

d. In addition to the water rights set forth in Sections A.1.a., b., and c. of this Article III, the Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact in the Milk River Basin 40J within the Reservation, provided that, any portion of this water right diverted from the mainstem of the Milk River shall be part of the 4000 AFY non-irrigation water right set forth in Section A.1.a.(2) of this Article III. These water uses are subject to the reporting requirements of Section A.7. of Article IV.

2. **Priority Date/Administrative Priority.**

a. For purposes of this Compact only, the priority date of the water rights set forth in Sections A.1.a., b., and d. of this Article III is October 17, 1855. The Parties agree that the senior water right quantified in Section A.1.a. of this Article III, shall be satisfied in the following manner:

(1) In the event that the water available for use by the Tribes at the diversion point on the Reservation is less than the amount to which the Tribes are entitled to pursuant to Section A.1.a. of this Article III and Section E.1.b.(2) of Article IV, the Tribes shall seek delivery of the difference between what they are entitled to and what is available solely from release or bypass of water from or through Fresno Dam by the Milk River Project. The Milk River Project shall, pursuant to Section E. of Article IV and applicable federal law, release or bypass the additional water necessary to fulfill the water right of the Tribes.

(2) The allocation between and relative priority of satisfaction of the water rights set forth in Section A.1.a. of this Article III and the water right of the Blackfeet Tribe in the Milk River Basin shall be resolved among the Fort Belknap Indian Community of the Fort Belknap Reservation, the Blackfeet Tribe, and the United States, or in the event an agreement is not reached, as ultimately decreed by the Montana Water Court or other court of competent jurisdiction, and shall not be prejudiced by this Compact including any agreement on priority date. The amount of the United States' Share of the Natural Flow of the Milk River available to the Tribes as calculated pursuant to Section E.2. of Article IV shall be modified to reflect any adjudication of the water rights of the Blackfeet Tribe or agreement between the Blackfeet Tribe and the Fort Belknap Indian Community of the Fort Belknap Reservation to the extent such agreement or adjudication affects the Calculated Undepleted Flow of the Milk River. The Milk River Project will not be required to provide any exchange water to the Tribes for diversion of the Blackfeet tribal water right.

b. The priority date of the water rights set forth in Section A.1.c. of this Article III for stock impoundments shall be the date of development of the right.

3. **Period of Use.** The period of use of the water rights set forth in Section A.1. of this Article III is:

a. March 1 through October 31 of each year for the 125 Cfs diversion set forth in Section A.1.a.(1) of this Article III.

b. January 1 through December 31 of each year for the 520 Cfs right set forth in Section A.1.a.(2) of this Article III.

c. March 1 through October 31 for water diverted from tributaries set forth in Section A.1.b. of this Article III.

d. January 1 through December 31 of each year for the water rights set forth in Section A.1.c. and d. of this Article III.

4. **Points and Means of Diversion.**

a. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section A.1.a. of this Article III may be diverted from the mainstem of the Milk River in the Milk River Basin 40J, or from Groundwater beneath the Reservation that is Hydrologically Connected to the surface water from any place and by any means in the Milk River Basin 40J.

b. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section A.1.b. of this Article III may be diverted for Direct Use from any place and by any means from tributaries to the Milk River in Basin 40J on the Reservation.

c. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section A.1.c. of this Article III may be developed from a surface water source anywhere within the Milk River Basin 40J within the Reservation, provided that, the development may not be on a Perennial Flowing Stream.

d. Subject to the terms and conditions set forth in Article IV, the water rights set forth in Section A.1.d. of this Article III may be diverted from any place and by any means in Basin 40J from surface water or Groundwater that is Hydrologically Connected to surface water, within the Reservation in Basin 40J.

5. **Place of Use.**

a. Subject to the terms and conditions set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Sections A.1.a. and b. of this Article III any place within the Reservation.

b. Subject to the terms and conditions of Article IV, the Tribes may transfer water developed (pursuant to Section A.1.a. of this Article III) prior to the date of application for a Change in Use or Transfer or stored (pursuant to Section A.1.a.(2) of this Article III) prior to the date of application for a Change in Use or Transfer for use off the Reservation within the Missouri River Basin.

c. The Tribes may use or authorize the use of the water rights set forth in Sections A.1.c. and d. of this Article III any place within the Reservation.

6. **Purposes.**

a. The water rights set forth in Sections A.1.a. and b. of this Article III may be used within the Reservation for any purpose allowed by Tribal and federal law, including fish and wildlife purposes, provided that, Non-Exempt New Development, Change in Use, or Transfer of any portion of the Tribal Water Right, is subject to the terms and conditions of Section A. of Article IV

b. The water rights set forth in Section A.1.c. of this Article III may be used for the purpose of watering stock and may not be changed to any other use.

c. The water rights set forth in Section A.1.d. of this Article III may be used within the Reservation in Basin 40J for any non-irrigation purposes.

B. **Basin 40I: Peoples Creek Basin.**

1. **Quantification.**

a. The Tribes have the right to the surface water and Groundwater that is Hydrologically Connected to surface water that remains in the Peoples Creek

Basin within the Reservation after satisfaction of water rights Arising Under State Law set forth in Appendix 3. The Tribes have the right to store water within the Peoples Creek Basin pursuant to this water right. The reservoir or reservoirs must be entirely within the Reservation unless otherwise agreed to with affected landowners off the Reservation.

b. In addition to the water rights set forth in Section B.1.a. of this Article III, the Tribes' right to use water in the Peoples Creek Basin includes the right to use water conveyed from the Missouri River Basin 40EJ pursuant to Section E.1.b. of this Article III. The Tribes have the right to store water within the Peoples Creek Basin pursuant to this water right. The reservoir or reservoirs must be entirely within the Reservation unless otherwise agreed to with affected landowners off the Reservation.

c. In addition to the water rights set forth in Sections B.1.a. and b. of this Article III, the Tribes have the right to develop surface water in the Peoples Creek Basin within the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream. The cumulative development of stock impoundments pursuant to this Section B.1.c., of this Article III following the Effective Date of this Compact may not exceed a storage capacity of fifteen Acre-feet times the number of square miles in Basin 40I on the Reservation. This capacity limit does not apply to the water right quantified in Sections B.1.a., b., and d. of this Article III.

d. In addition to the water rights set forth in Sections B.1.a., b., and c. of this Article III, the Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact in the Peoples Creek Basin within the Reservation. These water uses are subject to the reporting requirements of Section A.7. of Article IV.

2. **Priority Date/Administrative Priority.**

a. For purposes of this Compact, the priority date of the water rights set forth in Sections B.1.a. and d. of this Article III is October 17, 1855. For the purposes of providing a more reliable water right and simplification of administration, the Parties agree that this senior water right shall be satisfied in the following manner:

(1) Subject to the terms of Section B.2.a.(2) of this Article III, the Seniority of the Water Rights Set Forth in Sections B.1.a. and d. of this Article III Shall Not be Asserted Over non-irrigation water rights Arising Under State Law upstream from the Reservation in the Peoples Creek Basin with a priority date before the Effective Date of the Compact, and irrigation water rights set forth in Appendix 3, provided that water rights numbers W017296, W166075, and C016704 are not protected by this agreement. The Tribes may assert the senior priority of water rights and storage that have been actually developed over water rights Arising Under State Law that are developed after the Effective Date of this Compact, and over any water rights Arising Under State Law not set forth in Appendix 3.

(2) The agreement set forth in Section B.2.a.(1) of this Article III is not effective until completion of construction of a reservoir or reservoirs of a minimum capacity of 3000 AF on the Reservation in upper Peoples Creek for use by the Tribes. Prior to construction of the reservoir, the Tribes may only assert the senior priority of water rights actually developed.

b. The priority date of the water right set forth in Section B.1.b. of this Article III shall be as set forth in Section E.2.b. of this Article III.

c. The priority date of the water rights set forth in Section B.1.c. of this Article III for stock impoundments shall be the date of development of the right.

3. **Period of Use.** The period of use of the water rights set forth in Section B.1. of this Article III is January 1 through December 31 of each year.

4. **Points and Means of Diversion.**

a. The water right set forth in Sections B.1.a. and d. of this Article III may be diverted for Direct Use or storage from surface water or from Groundwater that is Hydrologically Connected to surface water from any place and by any means within the Peoples Creek Basin within the Reservation.

b. The point and means of diversion of the water right set forth in Section B.1.b. of this Article III shall be as set forth in Section E.4.b. of this Article III.

c. The water right set forth in Section B.1.c. of this Article III may be developed on a surface water source anywhere within the Peoples Creek Basin within the Reservation, provided that, the development may not be on a Perennial Flowing Stream.

5. **Place of Use.**

a. The Tribes may use or authorize the use of the water rights set forth in Sections B.1.a. and b. of this Article III for use any place within the Reservation within the Peoples Creek Basin. Subject to the terms and conditions set forth in Article IV, the Tribes may Transfer water stored pursuant to Sections B.1.a. and b. of this Article III for use off the Reservation within the Milk River Basin.

b. The Tribes may use or authorize the use of the water rights set forth in Sections B.1.c., and d. of this Article III for use any place within the Reservation.

6. **Purposes.**

a. The water rights set forth in Sections B.1.a. and b. of this Article III may be used for any purpose allowed by Tribal and federal law, including fish and wildlife purposes, provided that, any Transfer of the water rights stored pursuant to Sections B.1.a. and b. of this Article III off the Reservation, after the Effective Date of the Compact is subject to the terms and conditions of Section A. of Article IV.

b. The water rights set forth in Section B.1.c. of this Article III may be used for the purpose of watering stock and may not be changed to any other use.

c. The water rights set forth in Section B.1.d. of this Article III may be used within the Reservation in Basin 40I for any non-irrigation purposes.

C. **Basin 40M: Beaver Creek Basin.**

1. **Quantification.**

a. The Tribes have the right to divert 8,024 AFY for irrigation of 2,241 acres from surface flow, or from Groundwater that is Hydrologically Connected to surface flow, within the Reservation in the Beaver Creek Basin. The Tribes agree to use their best efforts to bypass a minimum flow when naturally available.

b. In addition to the water rights set forth in Section C.1.a. of this Article III, the Tribes have the right to develop surface water in the Beaver Creek Basin within the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream. The cumulative development of stock impoundments pursuant to this Section C.1.b., of this Article III following the Effective Date of this Compact may not exceed a storage capacity of 15 Acre-feet times the number of square miles in Basin 40M on the Reservation. This capacity limit does not apply to the water right quantified in Sections C.1.a. and c. of this Article III.

c. In addition to the water rights set forth in Sections C.1.a. and b. of this Article III, the Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact in the Beaver Creek Basin within the Reservation. These water uses are subject to the reporting requirements of Section A.7. of Article IV.

2. **Priority Date/Administrative Priority.**

a. For purposes of this Compact, the priority date of the water rights set forth in Sections C.1.a. and c. of this Article III is October 17, 1855.

b. The priority date of the water rights set forth in Section C.1.b. of this Article III for stock impoundments shall be the date of development of the right.

3. **Period of Use.** The period of use of the water rights set forth in Section C.1. of this Article III is:

a. March 1 through October 31 for the 8,024 AFY water right set forth in Section C.1.a. of this Article III.

b. January 1 through December 31 of each year for the water rights set forth in Sections C.1.b. and c. of this Article III.

4. **Points and Means of Diversion.**

a. Subject to the terms and conditions set forth in Article IV, the Tribes may divert or authorize the diversion of the water rights set forth in Sections C.1.a. and c. of this Article III from any place and by any means from surface water or Groundwater that is Hydrologically Connected to surface water in the Beaver Creek Basin within the Reservation. When constructing diversion facilities, the Tribes agree to use their best efforts to allow bypass of a minimum flow, when naturally available.

b. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section C.1.b. of this Article III may be developed on a surface water source anywhere within the Beaver Creek Basin within the Reservation, provided that, the development may not be on a Perennial Flowing Stream.

5. **Place of Use.** Subject to the terms and conditions set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Sections C.1.a., b., and c. of this Article III any place within the Reservation within the Beaver Creek Basin.

6. **Purposes.**

a. The Tribes may use or authorize the use of the water rights set forth in Section C.1.a. of this Article III within the Reservation for any purpose allowed by Tribal and federal law, including fish and wildlife purposes, provided that, use of the water rights set forth in Section C.1.a. of this Article III, for any purpose other than irrigation is subject to the terms and conditions of Section A. of Article IV.

b. The water rights set forth in Section C.1.b. of this Article III may be used for the purpose of watering stock and may not be changed to any other use.

c. The water rights set forth in Section C.1.c. of this Article III may be used within the Reservation in the Beaver Creek Basin for any non-irrigation purposes.

D. **Reservation Portion of Missouri River Basin 40EJ.**

1. **Quantification.**

a. The Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact in Basin 40EJ within the Reservation. These water uses are subject to the reporting requirements of Section A.7. of Article IV.

b. In addition to the water rights set forth in Section D.1.a. of this Article III, the Tribes have the right to develop surface water in Basin 40EJ within the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream.

2. **Priority Date/Administrative Priority.**

a. For purposes of this Compact, the priority date of the water rights set forth in Section D.1.a. of this Article III is October 17, 1855.

b. The priority date of the water rights set forth in Section D.1.b. of this Article III for stock impoundments shall be the date of development of the right.

3. **Period of Use.** The period of use of the water rights set forth in Section D.1. of this Article III is January 1 through December 31 of each year.

4. **Points and Means of Diversion.**

a. Subject to the terms and conditions set forth in Article IV, the Tribes may continue to divert or authorize the diversion of the water rights set forth in Section D.1.a. of this Article III from any place and by any means from surface water or Groundwater that is Hydrologically Connected to surface water, within the Reservation in Basin 40EJ.

b. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section D.1.b. of this Article III may be developed on a surface water source anywhere within Basin 40EJ within the Reservation, provided that, the development may not be on a Perennial Flowing Stream.

5. **Place of Use.** Subject to the terms and conditions set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Section D.1. of this Article III on any place within the Reservation within Basin 40EJ.

6. **Purposes.**

a. The Tribes may use or authorize the use of the water rights set forth in Section D.1.a. of this Article III for any non-irrigation purposes.

b. The water rights set forth in Section D.1.b. of this Article III may be used for the purpose of watering stock and may not be changed to any other use.

E. **Off-Reservation Tribal Fee and Trust Lands - Missouri Basin 40EJ and Peoples Creek Basin 40I.** The Tribes have the following water rights on trust and fee land off the Reservation in Missouri Basin 40EJ and Peoples Creek

Basin 40I. Unless Congress acts to modify the Reservation boundary to include the Tribal trust and fee land, the rights shall not be considered part of the Tribal Water Right for purposes of administration pursuant to Article IV. The water rights set forth in this Section E. of Article III shall be administered by the State pursuant to Section B.1.b. of Article IV, except that non-use of all or any of the rights shall not constitute a relinquishment, forfeiture, or abandonment of such rights.

1. **Quantification.**

a. The Tribes have the right to divert up to 1135 AFY for irrigation of:

(1) 297 acres of land historically irrigated in Basin 40EJ; and

(2) 18 acres of land in Basin 40EJ developed after the Effective Date of the Compact.

b. In addition to the water rights set forth in Section E.1.a. of this Article III, the Tribes have the right to divert up to 1290 AFY for conveyance to the Peoples Creek Basin.

c. In addition to the water rights set forth in Sections E.1.a. and b. of this Article III, the Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact on Tribal fee and trust land off the Reservation in Basin 40EJ and Basin 40I. These water uses are subject to the reporting requirements of Section A.7. of Article IV.

d. In addition to the water rights set forth in Sections E.1.a., b., and c. of this Article III, the Tribes have the right to develop surface and Groundwater in Basin 40EJ and Basin 40I on Tribal fee and trust land off the Reservation pursuant to State law.

e. In addition to the water rights set forth in Sections E.1.a., b., c., and d. of this Article III, the Tribes have the right, pursuant to State law, to develop surface water in Basin 40EJ and Basin 40I on Tribal fee and trust land off the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream.

2. **Priority Date/Administrative Priority.**

a. The priority date of the water rights set forth in Section E.1.a. of this Article III is:

(1) July 24, 1893 for the water right set forth in Section E.1.a.(1) of this Article III.

(2) The date of development for the 18 acres set forth in Section E.1.a.(2) of this Article III.

b. The priority date of the water right set forth in Section E.1.b. of this Article III is January 1, 1935.

c. The priority dates of the water rights set forth in Section E.1.c. of this Article III are the date on which the water was developed for stock and domestic purposes. The priority date of these rights is subject to the reporting requirements of Section A.7. of Article IV.

d. The priority date of the water rights set forth in Sections E.1.d., and e. of this Article III shall be as provided by State law.

3. **Period of Use.** The period of use of the water rights set forth in Section E.1. of this Article III is:

a. March 1 through October 31 of each year for the irrigation water rights set forth in Section E.1.a. of this Article III.

b. January 1 through December 31 of each year for diversion of the water right set forth in Section E.1.b. of this Article III.

c. January 1 through December 31 of each year for the water rights set forth in Section E.1.c. of this Article III.

d. As provided by State law for the water rights set forth in Sections E.1.d., and e. of this Article III.

4. **Points and Means of Diversion.**

a. The points and means of diversion for the water rights set forth in Section E.1.a. of this Article III are as follows:

(1) The water right set forth in Section E.1.a.(1) of this Article III may be diverted from any point by any means on Tribal trust or fee land within Section 30, T28N, R22E and the SW 1/4 of Section 18, T27N, R22E;

(2) The water right set forth in Section E.1.a.(2) of this Article III may be diverted from any point by any means on Tribal trust or fee land within Section 19, T27N, R22E.

b. The water right set forth in Section E.1.b. of this Article III may be diverted from any point by any means on Tribal trust or fee land in the SWSESW, Section 9, T26N, R22E.

c. The water rights set forth in Section E.1.c. of this Article III may be diverted from the place and by the means in use prior to the Effective Date of the Compact, on Tribal fee or trust land in Basin 40EJ and Basin 40I. Subject to the terms and conditions of Section B. of Article IV, the Tribes may change the point and means of diversion of a water right set forth in Section E.1.c. of this Article III to any place and any means from surface or Groundwater that is Hydrologically Connected to surface water, on Tribal fee or trust land in Basin 40EJ or Basin 40I.

d. The water right set forth in Sections E.1.d. and e. of this Article III may be diverted from any point by any means on Tribal fee or trust land in Basin 40EJ and Basin 40I, pursuant to State law.

5. **Place of Use.**

a. The Tribes may use the water rights set forth in Section E.1.a.(1) of this Article III on Tribal trust or fee land in Sections 29, 30, 31, and 32, T28N, R22E, and on the W1/2 of the SE1/2 and the E1/2 of the W 1/2 of Section 19, T27N, R22E. The Tribes may use the water rights set forth in Section E.1.a.(2) of this Article III on Tribal trust or fee land in Sections 19 and 30, T27N, R22E.

b. The water rights set forth in Section E.1.b. of this Article III may be used any place authorized in Section B.5.a. of this Article III, and shall be administered as part of the Tribal Water Right.

c. Subject to the requirements of State law, the water rights set forth in Section E.1.c. of this Article III may be used any place on Tribal fee or trust land in Basin 40EJ and Basin 40I on which the water has been used prior to the Effective Date of the Compact.

d. The water rights set forth in Sections E.1.d. and e. of this Article III may be used on any Tribal fee and trust land in Basin 40EJ and Basin 40I, pursuant to State law.

6. **Purposes.**

a. The water rights set forth in Section E.1.a. of this Article III may be used for irrigation. Subject to the terms and conditions of Section B. of Article IV, the Tribes may change the use of the water rights set forth in Section E.1.a. of this Article III to any other purpose allowed by State law.

b. The water rights set forth in Section E.1.b. of this Article III may be used for any purpose allowed by federal and Tribal law.

c. The water rights set forth in Section E.1.c. of this Article III may continue to be used for stock and domestic purposes according to their purpose on the Effective Date of the Compact. Subject to the terms and conditions of Section B. of Article IV, the Tribes may change the use of the water rights set forth in Section E.1.c. of this Article III to any other purpose allowed by State law.

d. The water rights set forth in Sections E.1.d., and e. of this Article III may be used for any purpose allowed by State law.

F. **Temporary Emergency Appropriations.** The Tribes or the United States on behalf of the Tribes may divert water from sources on the Reservation for use on or off the Reservation for temporary emergency use necessary for public health and safety. Temporary emergency use of water from a source for which a water right is quantified in this Article III of this Compact shall not be considered an exercise of that right.

G. **Groundwater.**

1. **Groundwater that is Hydrologically Connected to Surface Water.** The Tribes have the right to develop Groundwater that is Hydrologically Connected to surface water within the quantification limits for surface water provided in Sections A., B., C., D., and E. of this Article III. The attributes of the water right are as set forth in Sections A., B, C., D., and E. of this Article III.

2. **Existing Groundwater Development.**

a. **Quantification.**

The Tribes have the right to the use of Groundwater developed before the Effective Date of the Compact within the Reservation as provided in Sections A.1.d., B.1.d., C.1.c., and D.1.a. of this Article III. These Groundwater uses are subject to the reporting requirements of Section A.7. of Article IV.

3. **New Development of Small Groundwater Wells and Springs.**

a. **Quantification.**

In addition to the water rights set forth in Sections A., B., C., and D., of this Article III, the Tribes have the right to develop Groundwater within the Reservation by means of wells or developed springs if the maximum flow of each well or developed spring is 35 gallons per minute or less and does not exceed a use of 10 Acre-feet per year. This size limitation includes a Combined Development from the Same Source from two or more wells or developed springs.

b. **Priority Date/Administrative Priority.**

The priority date of the water rights set forth in Section G.3.a. of this Article III shall be the date of development of the right.

c. **Period of Use.** The period of use of the water rights set forth in Section G.3.a. of this Article III is January 1 through December 31 of each year.

d. **Points and Means of Diversion.** Subject to the terms and conditions set forth in Article IV, the water right set forth in Section G.3.a. of this Article III may be diverted from Groundwater from any point by any means within the Reservation.

e. **Place of Use.** Subject to the terms and conditions set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Section G.3.a. of this Article III any place within the Reservation.

f. **Purposes.** Subject to the terms and conditions set forth in Article IV, the water rights set forth in Section G.3.a. of this Article III may be used for any purpose authorized by Tribal or federal law.

4. **New Groundwater Development not Hydrologically Connected to Surface Water.**

a. **Quantification.** In addition to the water rights set forth in Sections A., B., C., D., and E. of this Article III, the Tribes have the right to develop or authorize the development of Groundwater within the Reservation that is not Hydrologically Connected to surface water subject to the following conditions:

(1) The development of Groundwater that is not Hydrologically Connected to surface water must comply with the provisions of Sections A.5. and 6. of Article IV for determination of Adverse Effect. Pursuant to Section A.5.a. of Article IV, the Tribal Water Resources Department and the DNRC may jointly agree to exempt certain development of Groundwater from a showing of no Adverse Effect due to location, size, or other agreed upon parameter.

(2) If a conflict arises between use of the water right set forth in this Section G.4. of Article III and a water right Arising Under State Law, DNRC and TWRD shall attempt to resolve the controversy. In attempting to resolve the controversy, DNRC and TWRD may establish controlled Groundwater areas off and on the Reservation and may manage them cooperatively pursuant to Sections A.2.d. and B.2. of Article IV. If DNRC and TWRD are unable to resolve the controversy, the Tribes, State or the Person whose water use is affected may seek relief from the Compact Board. Among the remedies the Compact Board may order is imposition of a controlled Groundwater area that includes Groundwater use both on and off the Reservation pursuant to Sections A.2.d. and B.2. of Article IV. The controlled Groundwater area is to be administered by the TWRD on the Reservation and the DNRC off the Reservation pursuant to Article IV and Tribal and State law.

b. **Priority Date.** The priority date of the water rights set forth in Section G.4.a. of this Article III for new Groundwater development shall be the date of development of the right.

c. **Period of Use.** The period of use of the water rights set forth in Section G.4.a. of this Article III for new Groundwater development is January 1 through December 31 of each year.

d. **Points and Means of Diversion.** Subject to the requirements set forth in Article IV, the water rights set forth in Section G.4.a. of this Article III may be diverted from Groundwater that is not Hydrologically Connected to surface water at any point by any means within the Reservation.

e. **Place of Use.** Subject to the requirements set forth in Article IV, the water rights set forth in Section G.4.a. of this Article III may be used on any place within the Reservation.

f. **Purpose.** Subject to the requirements set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Section G.4.a. of this Article III for any purpose allowed by Tribal and federal law.

H. **Additional Water.** As a part of the Tribal Water Right, the Tribes shall be entitled to an allocation of stored water in Lake Elwell as agreed to by the Parties and as provided by Congress, measured at the dam, for use or disposition by the Tribes for any beneficial purpose, either on or off the Reservation, pursuant to the terms of this Compact; provided that, such allocation shall be in accordance with the terms and conditions of any Act of Congress ratifying this Compact. This allocation is subject to the prior reserved water rights, if any, of any other Indian tribe, or persons holding such reserved water rights through that tribe or through the United States. Any use or disposition of water from Lake Elwell off the Reservation by the Tribes is subject to the specific provisions relating to such use or disposition in any Act of Congress ratifying this Compact. The United States shall have no responsibility or obligation to provide any facility for the transport of the water allocated under this Section H. of Article III. to the Fort Belknap Reservation or to any other location.

I. **Basin Closures.**

1. The following closure does not apply to development of the Tribal Water Right as provided for in this Compact. In the Milk River Basin from the Eastern Crossing to the confluence between the Milk River and the Missouri River comprised of Basins 40F, 40G, 40H, 40I, 40J, 40K, 40L, 40M, 40N, and 40O both above the Western Crossing and below the Eastern Crossing, DNRC shall not process or grant an application for an appropriation pursuant to State law after this Compact has been ratified by the Montana legislature, provided that, after compliance by the applicant with all applicable provisions of State and federal law, DNRC may issue a certificate of water right or permit for:

a. An appropriation for municipal use of surface or Groundwater that is Hydrologically Connected to surface water. In addition to compliance with applicable State law, the application shall be treated as a change in use for the purposes of Section B. of Article IV, if the point of diversion is located upstream from any point on the Reservation. For purposes of compliance with State law other than this Compact, the appropriation shall be treated as a new use.

b. An appropriation of Groundwater that is not Hydrologically Connected to surface water. In addition to compliance with applicable State law, the application shall be treated as a change in use for the purposes of Section B. of Article IV, if the point of diversion is within an aquifer that might extend onto the Reservation. For purposes of compliance with State law other than this Compact, the appropriation shall be treated as a new use.

c. An appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a use of 10 Acre-feet per year. This size limitation includes a Combined Development from the Same Source from two or more wells or developed springs. This exemption includes development on fee land on the Reservation.

d. An appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 Acre-feet and the appropriation is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream. This exemption includes development on fee land on the Reservation. With the exception of Peoples Creek Basin 40I, the cumulative development of stock impoundments pursuant to this exemption following the Effective Date of this Compact may not exceed a storage capacity of 15 Acre-feet times the number of square miles in the Water Court basin in which the new impoundment is located. In the Peoples Creek Basin 40I, development of stock impoundments pursuant to this exemption following the Effective Date of this Compact must be constructed with the ability to bypass inflow.

e. An appropriation for instream use of water by livestock.

f. Temporary emergency appropriations as provided in §85-2-113(3), MCA.

g. An appropriation necessary for the purposes of new storage of imported water or modification and replacement of existing storage as set forth in Section I.4. of this Article III.

h. An appropriation necessary for new storage off the Reservation approved by the Milk River Coordinating Committee pursuant to Section C.3.g. of Article IV.

i. An appropriation for a nonconsumptive use as defined under State law.

j. With the exception of applications for appropriations in Basin 40I upstream from the Reservation, an appropriation of water for an impoundment of any size for use for fish and wildlife purposes if the cumulative development under this provision and Section I.1.d. of this Article III, does not exceed 15 Acre-feet times the number of square miles owned by the applicant in the Water Court basin in which the new impoundment is located.

2. The basin closure is not a limit on change of use or transfer of any water right Arising Under State Law, provided that, applicable provisions of State and federal law and this Compact are followed. For purposes of this Compact, any change in a water right for the purpose of moving instream stockwatering to off-stream stockwatering that does not result in an increase in the historic consumptive use of water shall be considered a change in use, and is not a new use subject to the basin closure.

3. Due to the shortage of water in the Milk River Basin, water salvaged through efficiency measures may not be used to expand irrigation from a water right Arising Under State Law with a point of diversion in the United States' portion of the Milk River Basin under the following circumstances:

a. the efficiency measures are funded in whole or in part by the State, United States, Tribes, or water users as part of the implementation of this Compact; or

b. the salvaged water may be used to alleviate water shortage in the Milk River Basin. Pursuant to Section B.3. of Article IV, DNRC may promulgate rules to implement this provision.

4. The basin closure is not a limit on: the modification or replacement of existing storage when there is no enlargement of that storage; the modification or development of storage pursuant to this Compact and the federal legislation that ratifies this Compact; or the development of storage to impound water imported to the Milk River Basin from another basin.

5. Within 120 days of the date this Compact is ratified by the Montana Legislature, DNRC shall publish notice of the basin closures set forth in Section I.

of this Article III once in newspapers of general circulation in the area of the sources.

ARTICLE IV - IMPLEMENTATION OF COMPACT

A. Tribal Administration.

1. Tribal Authority Over Tribal Water Right.

a. The Tribes have the right, subject to the limits imposed by this Compact (including Sections C., D., and E. of this Article IV, and Section B.3. of Article VII), and federal law (including 25 U.S.C. §381), to administer the use of the Tribal Water Right.

b. Once the Tribal Water Right is diverted to the facilities of the Fort Belknap Indian Irrigation Project on units held by the United States, distribution shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs or its successor in accordance with applicable federal laws. Operation and maintenance of the Fort Belknap Indian Irrigation Project shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs or its successor in accordance with applicable federal laws.

c. Once the Tribal Water Right is diverted to the facilities of the Ereaux Unit, and any other unit previously part of the Fort Belknap Indian Irrigation Project which has been subsequently quit claimed by the United States to specific irrigation companies, distribution shall be conducted by the irrigation companies. Administration of the Tribal Water Right to the points of diversion of the listed irrigation projects shall be conducted by the Tribes on Peoples Creek and other tributaries to the Milk River on the Reservation, and pursuant to Sections C., D., and E., of this Article IV, and Section B.3. of Article VII on the mainstem of the Milk River.

d. Owners of fee land within the Reservation may apply to the Tribes to continue their historic use of water in the manner and to the extent existing on the Effective Date of the Compact on fee land within the Reservation as determined by the TWRD pursuant to the Tribal water code as part of the Tribal Water Right if no claim was filed by the landowner in the state adjudication, or may continue their use pursuant to state law and as decreed by state court if a claim was filed.

2. **Tribal Water Code.** Administration of the Tribal Water Right by the Tribes shall be pursuant to a comprehensive Tribal water code governing the Tribal Water Right set forth in this Compact. Pending the adoption of the Tribal water code, the administration of the Tribal Water Right shall be by the Secretary of the Interior. The Tribal water code shall be developed and adopted by the Tribes with approval by the Secretary within two (2) years following the Effective Date of this Compact and shall include:

a. A process by which any Tribal member or Allottee may request and be provided with an equitable distribution of water for use on his or her trust lands.

b. A process for notice and a right to be heard for the consideration and determination of any request by a Tribal member or Allottee for an equitable distribution of water, including a process for formal review of denied or disputed distributions and for resolution of contested administrative decisions.

c. A process by which an owner of fee land within the boundaries of the Reservation may apply for use of a portion of the Tribal Water Right.

d. A process for establishment of a controlled Groundwater area and for management of such Area in cooperation with establishment of a contiguous controlled Groundwater area off the Reservation established pursuant to Section B.2. of this Article IV and State law.

3. **Persons Authorized to Use the Tribal Water Right.** The Tribal Water Right may be used by the Tribes, or Persons authorized by the Tribes (including Tribal members, Allottees, and holders of fee land within the boundaries of the Fort Belknap Reservation).

4. **Authorization for New Development of the Tribal Water Right.** Subject to Article III and the following conditions, the Tribes may use or authorize the use of the Tribal Water Right within the Reservation for any purpose allowed by this Compact and Tribal and federal law:

a. Impact of new development of the Tribal Water Right within the Reservation for the purposes of irrigation and non-irrigation use as expressly identified under the quantification in Article III, and new development for any purpose within the Reservation within the Peoples Creek Basin, have been accounted for in design of mitigation and administration in the Compact. Thus, new development for the purposes expressly identified in Article III within the Reservation and all new development within the Reservation within the Peoples Creek Basin are exempt from any review by DNRC under the process set forth in Sections A.5. and 6. of this Article IV. All such development will be referred to as "Exempt New Development." Specifically, Exempt New-Development is as follows:

(1) Use of the Tribal Water Right for purposes of irrigation with the place of use on the Reservation and as set forth in Article III.

(2) Use of up to 4000 AFY of water diverted from the Milk River pursuant to Section A.1.a.(2) of Article III for non-irrigation purposes on the Reservation.

(3) Use of the Tribal Water Right quantified for the Peoples Creek Basin within the Reservation for any purpose allowed by Tribal or federal law.

(4) Use of the Tribal Water Right for stockwatering on the Reservation if the maximum capacity of the impoundment or pit is less than 15 Acre-feet and the appropriation is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream.

(5) Use of Groundwater on the Reservation that is Hydrologically Connected to surface water by means of a well or developed spring with an appropriation of 35 gallons per minute or less, and a use that does not exceed 10 Acre-feet per year. This size limitation includes a Combined Development from the Same Source from two or more wells or developed springs.

b. Any Tribal authorization for the development of Groundwater that is not Hydrologically Connected to surface water by means of a well or developed spring with an appropriation of greater than 35 gallons per minute, or in excess of 10 Acre-feet per year, developed after the Effective Date of this Compact, shall not have an Adverse Effect on water rights Arising Under State Law with a priority date before the date of the application for Groundwater development. The development is considered a Non-Exempt New Development and is subject to the procedures set forth in Sections A.5. and 6. of this Article IV.

5. **Non-Exempt New Development, Change in Use, or Transfer of the Tribal Water Right.** Subject to the following conditions, the Tribes may make

or authorize a Non-Exempt New Development, Change in Use, or Transfer of the Tribal Water Right.

a. A Non-Exempt New Development, Change in Use, or Transfer of the Tribal Water Right on or off the Reservation may not Adversely Affect a water right Arising Under State Law with a priority date before the date of the application to the TWRD for the Non-Exempt New Development, Change in Use, or Transfer. Determination of Adverse Effect for the purposes of this Section shall be pursuant to the procedures set forth in Section A.6. of this Article IV and Appendix 5. In addition, the TWRD and DNRC may jointly agree to exempt certain Change in Use, Transfer or Non-Exempt New Development from a showing of no Adverse Effect due to location, size, or other agreed upon parameter.

b. Off Reservation Change in Use or Transfer of the Tribal Water Right is limited as follows:

(1) Off Reservation use of the Tribal Water Right on non-Tribal land shall be limited to the following portion of the Tribal Water Right developed or stored prior to the date of application for Change in Use or Transfer:

(a) Water developed by Direct Use prior to the date of the application for Change in Use or Transfer from the Milk River pursuant to Section A.1.a. of Article III; or

(b) Water stored from the Milk River pursuant to Section A.1.a.(2) of Article III.

(c) Water stored from Peoples Creek pursuant to Sections B.1.a., and b. of Article III.

(2) The off-Reservation new development, Change in Use, or Transfer of the transferable portion of the Tribal Water Right set forth in Section A.1.a. of Article III is limited to a place of use within the Missouri River Basin.

(a) If the Tribes receive a good faith offer from a Person for Transfer of a portion of the Tribal Water Right outside the Milk River Basin, the Tribes shall allow water users receiving water from the Milk River Project the first opportunity, and other water users in the Milk River Basin the second opportunity, to acquire use of such rights at a price consistent with the market value of water within the Milk River Basin at the time of the offer.

(b) The Tribes are not required to offer the first or second right to use a portion of the Tribal Water Right to any water user in the Milk River Basin who is currently marketing a portion of their own water right.

(3) The off-Reservation new development, Change in Use, or Transfer of the transferable portion of the Tribal Water Right set forth in Sections B.1.a., and b. of Article III is limited to a place of use within the Milk River Basin.

(4) The off-Reservation new development, Change in Use, or Transfer of the portion of the Tribal Water Right set forth in Section H. of Article III is limited to a place of use in the Missouri River Basin.

(5) Any off-Reservation Change in Use or Transfer of a portion of the Tribal Water Right may not exceed a term of 100 years, but may include provisions authorizing renewal for an additional term not to exceed 100 years.

(6) No off-Reservation Change in Use or Transfer of a portion of the Tribal Water Right may permanently alienate the water right.

(7) The development or use of the Tribal Water Right pursuant to an off-Reservation new development, Change in Use, or Transfer must comply with State law, provided that, approval of an application for a change in water right by DNRC shall be conditioned on a valid Tribal approval for such use, Change in Use or Transfer. Due to this requirement of compliance with State law, the off-Reservation Change in Use or Transfer shall be exempt from the process set forth in Section A.6. of this Article IV. Any diversion of the Tribal Water Right located off the Reservation for use on the Reservation shall not be considered an off-Reservation use for purposes of this provision.

(8) The Tribes or any Person using diversion or transportation facilities located off the Reservation in connection with a use of the Tribal Water Right shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water, prior to exercising a use of the Tribal Water Right off the Reservation.

6. Administrative Procedure for Determination of Adverse Effect for Non-Exempt New Development, Change in Use, or Transfer, Within the Reservation.

a. The procedures set forth in Sections A.6.b. through i. of this Article IV apply to determine whether the following actions will Adversely Affect a water right Arising Under State Law and must be followed before a Person may seek relief from the Compact Board:

(1) A Change in Use or Transfer of the Tribal Water Right; and

(2) A Non-Exempt New Development of the Tribal Water Right.

b. The proposal for a Non-Exempt New Development, Change in Use, or Transfer of a portion of the Tribal Water Right after the Effective Date of this Compact shall be made to TWRD.

c. TWRD shall review the proposal and make a determination of whether it will Adversely Affect a water right Arising Under State Law with a priority date before the date of the proposal for the Non-Exempt New Development, Change in Use, or Transfer.

(1) Upon request, DNRC shall provide to TWRD information on water rights Arising Under State Law as recorded in the DNRC database.

(2) For purposes of determining whether a Non-Exempt New Development of surface water Adversely Affects a water right Arising Under State Law, the existing use shall be deemed to be the use for which the water right is quantified explicitly in Article III of this Compact.

(3) If TWRD determines that the Non-Exempt New Development, Change in Use, or Transfer will Adversely Affect a water right Arising Under State Law with a priority date before the date of the proposal for the Non-Exempt New Development, Change in Use, or Transfer, TWRD shall deny the proposal, provided that, the Tribal water code may allow the applicant to modify the proposal to eliminate Adverse Affect.

(4) If TWRD determines that the Non-Exempt New Development, Change in Use, or Transfer will not Adversely Affect a water right Arising Under State Law with a priority date before the date of the proposal for the Non-Exempt New

Development, Change in Use, or Transfer, TWRD shall forward the proposal with its determination to DNRC by certified mail with return receipt requested.

d. Upon receipt of notice from the TWRD, DNRC shall publish notice of the proposed Non-Exempt New Development, Change in Use, or Transfer, once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any holder of a water right Arising Under State Law who, according to the records of the DNRC, has a water right with a priority date before the date of the proposal that may be affected by the proposed Non-Exempt New Development, Change in Use, or Transfer. DNRC shall notify TWRD of the date of publication of notice.

e. A holder of a water right Arising Under State Law who objects to the proposed Non-Exempt New Development, Change in Use, or Transfer on the basis that it will Adversely Affect the exercise of their water right may notify DNRC, and must do so within thirty (30) days of the publication of notice.

f. DNRC shall review the proposal and the determination by TWRD of no Adverse Effect and any objections raised pursuant to Section A.6.e. of this Article IV. In its review, DNRC shall apply the same principles used in a determination of adverse effect or adverse affect pursuant to the Water Use Act, Title 85, Chapter 2, MCA, and Appendix 5. Any Non-Exempt New Development, Change in Use, or Transfer of the Tribal Water Right to a place of use and point of diversion within the Reservation that is within the minimum depletions set forth in Appendix 5 shall be presumed by DNRC to have no Adverse Effect. The TWRD may provide information that the Adverse Effect will be less than that predicted by application of Appendix 5 and DNRC may use the new information in its evaluation.

g. DNRC shall notify TWRD of the outcome of its review within thirty (30) days after the end of the time period for objection set forth in Section A.6.e. of this Article IV. If TWRD is not notified by DNRC within sixty (60) days of publication of notice by DNRC, TWRD may authorize the proposal pursuant to Tribal law.

h. DNRC and TWRD shall attempt to resolve objections or disagreement on TWRD's determination of no Adverse Effect on a cooperative basis. Measures to resolve objections may include agreement to release water from storage.

i. If resolution of an objection or disagreement is not achieved, DNRC or an objector may seek relief from the Compact Board established in Section D. of this Article IV.

7. **Reporting Requirements.**

a. Upon request by DNRC, on no more than an annual basis, the TWRD shall provide the MRCC, State and the United States with a listing of: all Non-Exempt New Development and Exempt New Development of the Tribal Water Right and any temporary emergency use or diversion of water on the Reservation.

b. The Tribes or the United States on behalf of the Tribes shall inventory the use of water rights for water developed before the Effective Date of the Compact set forth in Sections A.1.d., B.1.d. C.1.c., D.1.a., E.1.c., and G.2.a. of Article III, and shall report the inventory to DNRC within one year of the decree of the Tribal Water Right. Developments of Groundwater by means of a well or developed spring if the maximum flow of each well or developed spring is 35 gallons per minute or less and does not exceed a use of 10 Acre-feet per year are not required to be included in the inventory. This size limitation includes a

Combined Development from the Same Source from two or more wells or developed springs.

B. State Administration.

1. State Authority.

a. Except as provided in Section C., D., and E., of this Article IV and Section B.3. of Article VII, the State shall administer and enforce all water rights Arising Under State Law to the use of surface water and Groundwater.

b. The State shall administer and enforce water rights set forth in Section E. of Article III on Tribal trust and fee land for use in the portion of the Missouri Basin 40EJ and Peoples Creek Basin 40I off the Reservation unless Congress acts to modify the Reservation boundary to include the Tribal trust and fee land. In administering the Tribal water rights on trust and fee land off the Reservation in Basins 40EJ and 40I, the State shall treat the Tribal rights as water rights Arising Under State Law except that non-use of all or any of the Tribal water rights off the Reservation in Basins 40EJ and 40I shall not constitute a relinquishment, forfeiture, or abandonment of such rights.

2. Cooperative Management of a Controlled Groundwater Area.

a. DNRC may designate or modify a controlled Groundwater area adjacent to the Reservation under the following circumstances:

(1) Pursuant to the requirements of §85-2-506, MCA; or

(2) In cooperation with designation or modification by TWRD of a similar area on contiguous land within the Reservation; or

(3) Under order of the Compact Board as set forth in Section G.4.a.(2) of Article III.

b. The following procedures apply to designation or modification of a controlled Groundwater area pursuant to Section B.2.a. of this Article IV:

(1) Designation or modification of a controlled Groundwater area pursuant to Section B.2.a.(1) of this Article IV, or in the portion of an area off the Reservation pursuant to Section B.2.a.(2) of this Article IV, shall be governed by procedures set forth in §85-2-506, MCA.

(2) Designation or modification of a portion of a controlled Groundwater area off the Reservation pursuant to Section B.2.a.(3) of this Article IV shall be with substitution of the following procedures for those set forth in §§85-2-506(3) and (4), MCA:

(a) DNRC shall hold a meeting to inform the public of the designation or modification of a controlled Groundwater area as ordered by the Compact Board.

(b) The DNRC shall publish notice of the time and place of the meeting to inform the public of the designation or modification of a controlled Groundwater area. The notice shall include the description by legal subdivision of all lands included in the area, and shall be published at least once in each week for 3 successive weeks not less than 30 days before the date of the meeting in a newspaper of general circulation in the county or counties in which the controlled Groundwater area is located.

c. Management within the portion of a controlled Groundwater area adjacent to the Reservation shall be as follows:

(1) Management within a controlled Groundwater area established pursuant to Section B.2.a.(1) of this Article IV shall be pursuant to §§85-2-501 to 520, MCA.

(2) Management within the portion of a controlled Groundwater area off the Reservation established pursuant to Sections B.2.a.(2) and (3) of this Article IV shall be pursuant to §§85-2-501 to 520, MCA, and in cooperation with the TWRD.

3. **New Development and Change in a Water Right Arising Under State Law.**

a. Any Person making a new development or change in a water right or portion of a water right Arising Under State Law, including a change in water right for the Milk River Project, must comply with State law, provided that, DNRC may not approve a change in water right for expansion of irrigation through use of salvaged water pursuant to §85-2-402(2)(e), MCA, within the Milk River Basin under the following circumstances:

(1) the efficiency measures are funded in whole or in part by the State, United States, Tribes, or water users as part of the implementation of this Compact; or

(2) the salvaged water may be used to alleviate water shortage in the Milk River Basin. DNRC may promulgate rules to implement this provision.

b. Change in a water right Arising Under State Law upstream from any point on the Reservation, new development of water due to new storage approved by the Milk River Coordinating Committee, new development of water for municipal purposes upstream from any point on the Reservation, and new development of Groundwater that is not Hydrologically Connected to surface water within the Milk River Basin may not Adversely Affect a use of the Tribal Water Right developed before the date of the change. Determination of Adverse Effect for the purposes of this Section shall be pursuant to the procedures set forth in Section B.4. of this Article IV. The TWRD and DNRC may jointly agree to exempt certain changes in water rights from a showing of no Adverse Effect to the Tribal Water Right due to location, size, or other agreed upon parameter.

4. **Administrative Procedure for Preventing Adverse Effect Resulting from New Development or Change in a Water Right Arising Under State Law.** Except for changes exempt by agreement pursuant to Section B.3.b. of this Article IV and new development of stock impoundments or small wells exempt from the basin closure pursuant to Sections I.1.c. and d. of Article III, the following procedure for determining whether a new development or change in a water right Arising Under State Law within the Milk River Basin (including all tributary basins) upstream from the Reservation and below the Eastern Crossing, must be followed in addition to procedures set forth under state law, prior to a Person seeking relief from the Compact Board:

a. Application for a permit for new development or for a change in a water right Arising Under State Law shall be made to DNRC pursuant to State law.

b. DNRC shall review any application for a permit for new development or for a change in a water right and make a determination of whether it will Adversely Affect any use of the Tribal Water Right developed before the date of the application. In its review, DNRC shall apply the same principles used in a determination of adverse effect or adverse affect pursuant to the Water Use Act, Title 85, Chapter 2, MCA.

(1) Upon request, TWRD shall provide to DNRC information on uses of the Tribal Water Right.

(2) If DNRC determines that the new development or change will Adversely Affect a use of the Tribal Water Right developed before the date of the change, DNRC shall deny the application.

(3) If DNRC determines that the new development or change will not Adversely Affect a use of the Tribal Water Right developed before the date of the change, DNRC shall forward the application with its determination to TWRD by certified mail with return receipt requested.

c. Upon receipt of notice from DNRC, TWRD shall follow any requirements set forth in the Tribal Water Code for notification and objection of Persons authorized to use the Tribal Water Right. TWRD shall notify DNRC of the date of any notice to Persons authorized to use the Tribal Water Right.

d. TWRD may allow up to thirty (30) days after notification to Persons authorized to use the Tribal Water Right for objection by Persons authorized to use the Tribal Water Right. Any objection shall be made to TWRD.

e. TWRD shall review the application and the determination by DNRC of no Adverse Effect and any objections raised pursuant to Section B.4.d. of this Article IV.

f. TWRD shall notify DNRC of the outcome of its review within thirty (30) days of the end of the time period for objections set forth in Section B.4.d. of this Article IV. If DNRC is not notified by TWRD within sixty (60) days of notice by TWRD to Persons authorized to use the Tribal Water Right, DNRC may proceed with the application process.

g. DNRC and TWRD shall attempt to resolve objections or disagreement on DNRC's determination of no Adverse Effect on a cooperative basis.

h. If resolution of an objection or disagreement is not achieved, TWRD or an objector may seek relief from the Compact Board established in Section D. of this Article IV.

5. **Reporting Requirements.** Upon request by TWRD on no more than an annual basis, the DNRC shall provide the MRCC, Tribes, and the United States with a listing of all new development of water rights Arising Under State Law and any temporary emergency use or diversion of water, for the off-Reservation portion of the Milk River Basin upstream from any point of diversion or place of use of the Tribal Water Right.

6. **Peoples Creek Administration**

a. The DNRC shall develop a database covering water use upstream from the Reservation in Peoples Creek Basin 40I. The database shall include, at a minimum: identification of acreage irrigated on an annual basis; and any change in the use of a water right or storage facility.

b. If the Tribes or a Person authorized to use a portion of the Tribal Water Right within the Peoples Creek Basin 40I disputes a use or uses of water upstream from the Reservation in Basin 40I because the use or uses are in excess of a water right Arising Under State Law, or if the Tribes or Person authorized to use a portion of the Tribal Water Right believes that depletions in excess of water rights Arising Under State Law are occurring upstream from the Reservation but cannot identify the illegal use, the Tribes or Person shall contact the TWRD. The TWRD shall contact the DNRC concerning the dispute or excess depletion. If requested, the DNRC shall, within a reasonable time, investigate the disputed water use, or uses, or excess depletion and a representative of the TWRD may accompany DNRC on the investigation. If DNRC finds that the disputed water use or uses or excess depletion is in excess of a water right Arising Under State Law, DNRC may order any owner or operator of the diversion or storage facilities to curtail the use to within the water right. If any owner or operator does not comply with the order by DNRC or repeats the infraction, DNRC may: impose penalties pursuant to §85-2-122, MCA; and may require any owner or operator of the appropriation facility to install and maintain suitable controlling and measuring devices to allow the DNRC to track compliance with the water right. Disputes unresolved by the process set forth in this Section may be brought before the Compact Board established pursuant to Section D. of this Article IV.

C. **Milk River Coordinating Committee.** A basin-wide coordinating committee is necessary to improve the coordination of storage operations and to provide for the coordination of releases of water from storage within or for the diversion to the Milk River Basin. A coordinating committee is also necessary to improve the management of diversions from the Milk River and to establish priorities for a grant and loan program to improve water supply conditions in the basin.

1. **Establishment of Milk River Coordinating Committee.** There is hereby established the Milk River Coordinating Committee ("MRCC.").

2. **Membership.**

a. The MRCC consists of the following nine (9) voting members and four advisory members. Six (6) voting members of the MRCC constitutes a quorum and decisions shall be by a majority of the membership of the MRCC present, except as provided in Sections C.3.a. and C.5.c. of this Article IV. On the addition of members pursuant to Section C.3.a. of this Article IV, the quorum shall increase by one (1) for every two (2) members added to the original nine (9).

(1) Two (2) representatives of the Tribes;

(2) Three (3) representatives of the Joint Board of Control of the Milk River irrigation districts;

(3) One (1) representative of DNRC;

(4) One (1) representative of the Bureau of Reclamation;

(5) One (1) representative of the Bureau of Indian Affairs;

(6) One (1) representative selected at large by the other 8 members;

(7) One (1) advisory, non-voting, member from the United States Geological Survey;

(8) One (1) advisory, non-voting, member from the United States Fish and Wildlife Service;

(9) One (1) advisory, non-voting, member from the United States Bureau of Land Management; and

(10) One (1) advisory, non-voting, member from the Montana Department of Fish, Wildlife, and Parks.

b. All members shall be appointed by their respective agencies within six (6) months of the Effective Date of this Compact and within thirty (30) days of the date any vacancy occurs. Should the eight appointed members fail to agree, by a majority of a quorum as provided in Section C.2. of this Article IV, on the selection of a ninth member within sixty (60) days of the date of appointment of the eighth member, or within thirty (30) days after a vacancy in the ninth position occurs, the following procedure shall be utilized:

(1) Within five (5) days thereafter, each member shall nominate one person to serve as a member of the MRCC;

(2) Within five (5) days thereafter, the eight nominees shall be submitted to the chief judge of the United States District Court for the District of Montana for selection of the ninth member of the MRCC. If the chief judge declines for any reason to select the ninth member, the chief justice of the Montana Supreme Court shall make the selection from the eight nominees.

c. Each member shall serve a five-year term and shall be eligible for reappointment. The initial terms of each voting member shall be staggered with three members serving a five-year term, three members a four-year term, and three members a three-year term. The initial term of each voting member shall be chosen by lot. The initial term of the advisory members shall be five years. A member seeking to resign prior to expiration of a term must provide written notice to the remaining MRCC members thirty (30) days prior to withdrawal.

d. The MRCC shall select a chair from the voting members within six (6) months of the initial selection of the ninth member and shall rotate the chairmanship on a yearly basis among the voting members.

e. The MRCC shall provide published notice of the time, place, and purpose of its meetings, or other proceedings, and shall hold such proceedings in a forum open to the public unless compelled to close certain portions of a proceeding to protect an individual right to privacy.

f. The MRCC shall adopt necessary rules, pursuant to the Montana Administrative Procedure Act §§ 2-4-101 et. seq. (MCA), to carry out its responsibilities within six (6) months of the initial selection of the ninth member. The MRCC may amend and repeal rules as necessary to carry out the purposes of this Article IV.

g. Costs and compensation for State, federal, and Tribal members of the MRCC shall be covered by their respective entities.

h. Subject to the availability of funds, the MRCC may compensate any MRCC member not compensated by the entity they represent for time and travel devoted to MRCC business. Compensation shall be based on the average hourly compensation of the other MRCC members.

3. **Authority and Duties of the MRCC.** Notwithstanding any other provision of State, Tribal, and, if this Compact is approved by Congress, federal law, the MRCC shall have the following authority and duties:

a. The initial authority of the MRCC is restricted to the mainstem of the Milk River downstream from the Eastern Crossing. The MRCC has the authority to expand the boundaries of its area by a unanimous vote of the MRCC, including the area within which it may levy a tax, to include tributaries to the Milk River or the portion of the Milk River Basin upstream from the Western Crossing. Such expansion shall require the agreement of Persons holding a majority of the water rights by amount on the source added pursuant to the following procedure:

(1) Any Person or Persons owning 10% or more of the water rights by rate or volume on any tributary to the Milk River within the United States or on the mainstem of the Milk River upstream from the Western Crossing may petition

the MRCC for addition to the area covered by the MRCC and for representation on the MRCC.

(2) On receipt of a petition, the MRCC shall notify DNRC and provide a copy of the petition.

(3) Within 60 days of receipt of the petition, DNRC shall hold a hearing in or near the area proposed for addition. DNRC shall publish notice of the hearing once in a newspaper of general circulation in the proposed area and serve notice by first-class mail on any holder of a water right Arising Under State Law and any holder of an adjudicated federal or Indian water right who, according to the records of the DNRC, has a water right within the area proposed for addition with a priority date before the date of the petition.

(4) The MRCC shall preside over the hearing. If the MRCC determines, based on the facts presented at the hearing and other relevant facts and information as may be available, and in the interest of improving water supply or allocation, that there is a need for addition of the area, the MRCC will notify the DNRC.

(5) On receipt of notice for the addition of an area to the MRCC, the DNRC shall send a ballot by first-class mail, with a 30-day deadline for its return, providing for a vote on the proposed addition, to any holder of a water right Arising Under State Law and any holder of an adjudicated federal or Indian water right who, according to the records of the DNRC, has a water right with a priority date before the date of the petition.

(6) Following expiration of the 30 day deadline for receipt of ballots, the DNRC shall count the votes and notify the MRCC of the results.

(7) The area proposed for inclusion in the MRCC shall be added to the MRCC with a representative if a majority of those voting are in favor of the addition.

b. Members of the MRCC may seek technical support from their respective agencies to facilitate the activities of the MRCC. To this end, the Parties agree to seek any necessary authorization to provide technical support to the MRCC. In addition, the MRCC shall have the following authority:

(1) The MRCC may employ a secretary and such other officers, agents, and employees, permanent and temporary, as it may require and shall determine their qualifications, duties, and compensation.

(2) The MRCC shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

(3) The MRCC may call upon the county attorney of any county in which the MRCC has authority or the attorney general of the state for any legal services it may require, or it may employ their own counsel and legal staff.

c. The MRCC shall hold a meeting on an annual basis with, at a minimum, the Bureau of Reclamation, the Bureau of Indian Affairs, the Tribes, the Milk River Joint Board of Control, DNRC, and Hill County to coordinate reservoir storage.

d. The MRCC shall coordinate the establishment and yearly update of a common database and associated maps on actual water use of water diverted from the mainstem of the Milk River downstream from the Eastern Crossing between: DNRC; the Bureau of Reclamation; the Bureau of Indian Affairs; the irrigation districts within the Milk River Project; and the Tribes. At a minimum, each entity will maintain a database and share information on daily diversions, yearly number of acres irrigated, and yearly changes in use. The MRCC role is one of coordination. The BOR, BIA, TWRD and irrigation districts will continue to maintain the portion of the database covering their own water distribution. The DNRC will continue to maintain its database covering water rights and diversions from the water sources.

(1) The MRCC shall make the database and associated maps available to any water commissioner appointed by a court to enforce water rights in the Milk River Basin.

(2) The DNRC and TWRD shall offer assistance as may be appropriate to the MRCC to update, maintain, and provide training for use of the database.

e. The MRCC shall consult with the Bureau of Reclamation in the Bureau's development of operating criteria pursuant to Section C.11. of this Article IV, for coordination of storage and release of water from storage facilities within the portion of the Milk River Basin in the United States and contributing to the water supply of the Milk River Basin, provided that, except as explicitly provided for in this Compact or by Congress, allocations in the federal and future Tribal reservoirs within the Milk River Basin or contributing to the water supply of the Milk River Basin shall remain unchanged and the right of the owner of a storage facility to exercise discretion in the daily operation and use of its facilities shall not be preempted.

f. Notwithstanding the rights to the use of water existing on the date of a determination by the BOR of excess water flow pursuant to Section C.11.f. of this Article IV, the MRCC may permit the owner of storage in the Milk River Basin to store water regardless of priority if capacity exists and the water would otherwise be lost to the Milk River Basin. Water stored pursuant to this provision may be used to satisfy water rights served by the entity storing the excess flow.

g. The MRCC shall review applications for new storage in the Milk River Basin below the Eastern Crossing.

(1) Any Person or Persons, including the Tribes, seeking to develop or enlarge storage in the United States' portion of the Milk River Basin below the Eastern Crossing, other than new or enlarged storage agreed to in the Compact or pursuant to the federal Act ratifying this Compact, must comply with each of the following criteria:

(a) Application describing the project shall be made to the MRCC; and

(b) The applicant must prove by a preponderance of the evidence that the project will result in a net increase in available water supply within the Milk River Basin below the Eastern Crossing.

(2) The MRCC shall issue a report on its findings and determination.

(3) If the MRCC determines that the application for new storage does not meet the criteria in Section C.3.g.(1)(b) of this Article IV, the determination is final, subject to the right of appeal under the following subsection (4).

(4) Appeal of decisions by the MRCC concerning new storage may be sought in a court of competent jurisdiction. Any appeal heard by a court of competent jurisdiction shall be a trial de novo.

(5) Any applicant that the MRCC determines meets the criteria in Section C.3.g.(1)(b) of this Article IV must further comply with all other applicable State, federal, and Tribal law. The determination of the MRCC or any final appeal is binding on the Tribes, the State, and the United States in consideration of any application for development of new storage.

h. The MRCC does not have the authority to coordinate storage or storage releases in a manner that is inconsistent with any applicable provisions of State, Tribal, and federal law, and the decrees of the Water Court. The responsibility for storage and storage releases in the Milk River Project facilities rests solely with the Bureau of Reclamation, its successors or assigns; provided that, if approved by Congress, the BOR shall participate in efforts at coordination as a member of the MRCC.

i. The MRCC shall have the authority to review applications for grants and loans from the Milk River Watershed Improvement Trusts and to determine prioritization for receipt of grants and loans pursuant to this Compact and [section 6] and C. 6., 7., 8., 9., and 10. of this Article IV. The DNRC shall offer assistance as may be appropriate to the MRCC for review of applications for grants and loans. The Milk River Watershed Improvement Trusts are permanent accounts established by this Compact and [section 5] to provide interest for grants for purchase of water for a Water Bank in times of significant short term water shortage, and for loans for long term improvements within the Milk River Basin.

4. **Legal Status of MRCC - Immunity.**

a. The MRCC may make and execute agreements necessary to perform its responsibilities as provided in this Compact.

b. The MRCC may apply for State and federal grants and loans available to governmental entities or watershed organizations.

c. The MRCC may sue and be sued to enforce agreements entered into pursuant to this Section C.4. of Article IV in the name of the MRCC. The MRCC, an MRCC member, or MRCC employee is immune from suit for any liability that might otherwise be incurred or imposed for an act or omission committed while engaging in MRCC activities pursuant to this Article IV, unless the act or omission constitutes criminal behavior, gross negligence, was committed in bad faith, or was committed with malicious purposes. Nothing in this provision is intended to waive immunity that is applicable to the United States or any federal employee, to the State or any State employee, or to the Tribes or any Tribal employee.

5. **MRCC Finance.**

a. The MRCC may request up to 15% per year of the interest on the Milk River Watershed Improvement Trusts to cover administrative costs, including but not limited to: the cost of review of applications for grants and loans; and the cost of compensation for MRCC members pursuant to Section C.2.h. of this Article IV.

b. The MRCC may apply for grants and loans from applicable State, Federal, and Tribal programs.

c. Subject to §15-10-420, MCA, the MRCC may, on unanimous vote of all voting members, levy taxes on water use pursuant to a water right Arising Under State Law from the mainstem of the Milk River, including, water use under contract with the Bureau of Reclamation, to pay any obligation of the MRCC and to fulfill its duties established by this Compact.

(1) The assessment shall be limited to land irrigated by water from the Milk River, and other non-irrigation water use from the Milk River Project.

(2) The assessment in any one year may not exceed: 0.5% of the assessed value of irrigated land; 0.5% of the taxable portion of the assessed value of a household, and 0.5% of the taxable portion of the assessed value of industrial or commercial land where water is used, with such assessments as determined by the Montana Department of Revenue, without the consent of the majority of the water users subject to the assessment.

(3) Subject to §15-10-420, MCA, the board of county commissioners of each county in which the MRCC imposes an assessment may, annually at the time of levying county taxes, levy an assessment on the applicable water use. The levy must be known as the "Milk River Coordinating Committee regular assessment." The assessment must be certified to the Department of Revenue and entered on the property tax record of each county.

(4) Any special assessment levied pursuant to this Section shall constitute a lien against the property upon which such assessment is levied from the date of such levy. This lien can only be extinguished by payment of such assessment with all penalties, costs, and interest.

d. The Parties agree to seek funding to cover a Tribal contribution to the MRCC. Any Tribal participation in contribution shall be equivalent to assessments associated with lands and uses off the Reservation.

e. On an annual basis, the MRCC shall make a report of its expenditures available to the public.

6. **Milk River Watershed Improvement Trusts.**

a. The Milk River Watershed Improvement Trusts established pursuant to this Compact and [section 5] are permanent trusts for the generation of interest on the Trusts' principal for the allocation of grants and loans to improve conditions of water supply, water quality, and habitat in the Milk River basin.

b. The MRCC shall review and rank in order of priority, pursuant to the criteria in Sections C. 6., 7., 8., 9., and 10. of this Article IV, applications for grants and loans from the Milk River Watershed Improvement Trusts. The MRCC may seek technical assistance from the Department of Natural Resources and Conservation, the TWRD, and the United States Bureau of Reclamation for review of applications for grants and loans.

c. Allocation of funds from the Milk River Watershed Improvement Trusts shall be managed by the Department of Natural Resources and Conservation. Disbursement of grants and loans from interest on the Milk River Watershed Improvement Trusts by DNRC must be pursuant to prioritization provided by the MRCC.

d. The DNRC shall adopt rules:

(1) prescribing the form and content of applications for grants and loans from the Milk River Watershed Improvement Trusts;

(2) providing for the servicing of loans, including arrangements for obtaining security interests and the establishment of reasonable fees or charges;

(3) providing for the confidentiality of financial statements submitted;

(4) prescribing the conditions for making grants and loans;

(5) establishing the interest rate for the loans; and

(6) determining the type and amount of security interest in real estate that will be accepted and any conditions to be made upon the security interest.

e. At the request of the MRCC, the DNRC may allocate up to 15% of the annual interest from the Milk River Watershed Improvement Trusts to cover capital and administrative costs of the MRCC.

7. **Milk River Watershed Improvement Trusts - Applications for Grants and Loans for Watershed Improvements.**

a. An application for a grant or loan from the Milk River Watershed Improvement Trusts established by this Compact and [section 5] must be in the form prescribed by the DNRC and contain or be accompanied by any information necessary to adequately describe the proposed project and provide for evaluation under Sections C.8., and 9., and 10. of this Article IV.

b. Application for a grant or loan from the Milk River Watershed Improvement Trusts may be made by Persons, including but not limited to:

(1) individuals holding water rights Arising Under State Law;

(2) tribes;

(3) persons authorized to use water by a tribe;

(4) municipalities;

(5) irrigation districts; and

(6) conservation districts.

8. **Milk River Watershed Improvement Trusts - Establishment of Water Bank.** The purpose of this Section is to establish a water bank for implementation in years of significant short term water shortage. The bank is not intended to alleviate normal water shortage within the Milk River Basin.

a. By March 1 of each year and on a monthly basis through October 31, the BOR shall notify the MRCC, DNRC, the Tribes, the U.S. and the Milk River irrigation districts, if it expects, based on current information, water deliveries to be restricted during the current irrigation season due to a critical water shortage. Water shortage may be caused by factors which include, but are not limited to:

(1) low precipitation;

(2) requirements for fish and wildlife species of special concern; or

(3) temporary delivery system outage caused by an unexpected failure or a natural disaster.

b. Following notice by the BOR of expected restrictions in water delivery, the MRCC shall publish notice in newspapers of general circulation within the Milk River Basin of the availability of grants to purchase water for the purpose of alleviating shortage.

c. The MRCC may offer the grants at a fixed price per Acre-foot or may seek bids. For any applicant banking water received from the Milk River Project, the grant must be sufficient to cover payments to the Project, including any assessments or fees paid to an irrigation district.

d. The MRCC may allocate banked water to storage, or may market or allocate banked water to alleviate shortage. Any fees obtained by the MRCC through marketing of banked water must be returned to the Trust as part of the expendable interest. Banked water may be marketed or allocated: on a pro rata basis; to alleviate critical shortages; to meet critical environmental or water quality needs; for irrigation needs; or may be allocated to storage.

e. Grants obtained for the temporary retirement of Milk River Project water must first be used by the applicant to cover payments to the Milk River Project, including any assessments or fees paid to an irrigation district.

f. Nothing within this Section C.8. of Article IV is intended to preclude a more comprehensive water marketing system within the Milk River Basin.

9. Milk River Watershed Improvement Trusts - Eligibility for Grants for Water Banking or Water Transfers.

a. The Milk River Coordinating Committee shall apply the following criteria in ranking applications for grants:

(1) the need for temporary retirement of irrigation or conversion to low water-use crops for the purpose of banking water to alleviate a critical shortage of water in a particular year;

(2) the extent to which the proposed water banking will alleviate significant short term water shortage in the Milk River Basin as set forth in Section C.8. of this Article IV;

(3) the proposed retirement of irrigation involves lands irrigated the year prior to the declaration of a critical water shortage in the Milk River Basin and involves a valid water right;

(4) the feasibility and practicality of the proposed irrigation retirement or conversion;

(5) the number of related resources that will benefit, including but not limited to: water quality, fisheries habitat, wildlife habitat, and recreation;

(6) preference for an applicant in an area identified by the MRCC as beneficial for temporary irrigation retirement, or if no specific area has been identified for preference, the MRCC shall attempt to rank applicants in a manner that distributes temporary irrigation retirement equally among the counties in the Milk River Basin; and

(7) any additional factor that, in the judgment of the MRCC, is important to the evaluation of land retirement in light of the purposes of the Milk River Watershed Improvement Trusts.

b. The MRCC shall not recommend grants for acreage in excess of that necessary to save sufficient water to alleviate the temporary water shortage. The MRCC shall not recommend grants in excess of the interest available from the Milk River Watershed Improvement Trusts.

c. The DNRC may award a grant to an applicant ranked by the MRCC for the purpose of water banking only if the DNRC finds, based on the application, the investigation and evaluation of the proposal by members of the MRCC, and the technical review by DNRC, TWRD, and BOR, that the primary purpose of the application is:

(1) the temporary retirement of the right to irrigate land irrigated in the year prior to the declaration of a critical water shortage in the Milk River Basin; or

(2) the irrigation proposed for temporary retirement or crop conversion is subject to a valid water right pursuant to State, federal, or Tribal law, and the applicant has the legal right to transfer the water.

(3) the criteria set forth in Sections C.9.a. and b. of this Article IV have been met.

10. **Milk River Watershed Improvement Trusts - Eligibility for a Loan.**

a. The Milk River Coordinating Committee shall apply the following criteria in ranking applications for loans:

(1) the extent to which the project will alleviate water shortage in the Milk River Basin;

(2) the engineering feasibility and practicality of the project;

(3) the number of related benefits, including but not limited to improvements in: water quality; fish habitat; wildlife habitat; conservation; recreation; water use efficiency; water management; and water right measurement;

(4) any additional factor that, in the judgment of the MRCC, is relevant to the purposes of the Milk River Watershed Improvement Trusts, including reducing the ranking due to the fact that the application is for a project in a portion of the Milk River Basin that is not a part of the Milk River Coordinating Committee regular assessment.

b. The DNRC may award a loan to an applicant ranked by the MRCC, if the DNRC finds, based on the application, the investigation and evaluation of the proposal by members of the MRCC, and the technical review by DNRC, TWRD, and BOR, that:

(1) the criteria in Section C.10.a. of this Article IV have been met;

(2) the proposal will be economically feasible;

(3) the proposal will comply with statutory and regulatory standards protecting the quality of resources such as air, water, land, fish, wildlife, and recreational opportunities;

(4) the applicant has adequate financial resources to construct, operate, develop, and maintain the project; and

(5) the applicant is credit-worthy and is able and willing to enter into a contract with the DNRC for loan repayment and for construction, operation, development, and maintenance of the proposed project.

11. **Coordination of Storage and Release Within the Portion of the Milk River Basin in the United States and New Storage.** Subject to the applicable provisions of State, Tribal, and federal law, the MRCC shall, within five (5) years of the Effective Date of the Compact, consult with the Bureau of Reclamation on development of operating criteria for coordination of storage and release of water from storage facilities within the portion of the Milk River Basin in the United States. Except as explicitly provided for in this Compact or by Congress, allocations in the federal and future Tribal reservoirs within the Milk River Basin or contributing to the water supply of the Milk River Basin, shall be

unchanged. The operating criteria may be modified as necessary and such modification shall not be considered a modification of the Compact.

a. At a minimum, the operating criteria shall include coordination of storage among: Sherburne, Fresno, and Nelson Reservoirs and Hill County Reservoir near Havre, any new storage on the Reservation filled by diversion from the Milk River or Peoples Creek, and any new storage developed pursuant to Section C.3.g. of Article IV.

b. The Bureau of Reclamation shall take comment on development of the operating criteria from, at a minimum, any entity or individual owning, benefiting from, or operating storage within the Milk River Project, or operating storage within the Milk River Basin below the Eastern Crossing. The process for such comment may be pursuant to existing federal and State law.

c. In developing the operating criteria, the Bureau of Reclamation shall make all reasonable efforts to maximize the amount of water stored through coordination of storage and release within the Milk River Basin as a whole without regard to the priority date of water rights associated with a particular storage facility. The purpose of coordination shall be to provide the maximum use of storage possible for the Milk River Basin, including providing flexibility on a temporary basis.

d. The coordination of storage and release to maximize the amount of water stored shall not modify the storage right of any Person in any storage facility or alter the obligations of any Person to pay construction, operation, maintenance and replacement costs for a facility, or alter the right and discretion of the owner of a storage facility to use or release water to satisfy water rights under its jurisdiction.

e. The operating criteria shall include, at a minimum: a method for accounting for water stored in various storage facilities in the Milk River Basin; a method for coordination of fill and release from storage facilities in the Milk River Basin on a yearly basis; and a method for notification of Persons with the right to divert water from the mainstem of the Milk River below the Eastern Crossing of the predictions for water availability on a yearly basis.

f. As part of the process to develop operating criteria, the BOR will establish criteria for determining the existence of a critical shortage or excess water flows.

g. The Bureau of Reclamation in consultation with the MRCC shall modify the operating criteria as necessary to address changes in the Milk River Basin including the addition, modification, or reduction of storage. The operating criteria is required by, but is not in substance, a part of or enforceable under the Compact. Its modification is not a modification of the Compact.

D. Compact Enforcement: Fort Belknap - Montana Compact Board

1. **Establishment of Board.** There is hereby established the Fort Belknap - Montana Compact Board.

2. **Membership.**

a. The Board consists of three members: a member selected by the Governor of the State of Montana from up to four nominees, one nominated by the Commissioners of each of the following counties: Hill, Blaine, Phillips, and Valley; a Tribal member selected by the Fort Belknap Community Council Tribal Chair; and one member selected by the other two members.

b. All members shall be appointed within six (6) months of the Effective Date of this Compact and within thirty (30) days of the date any vacancy occurs. If an appointment is not timely made by the Governor, the Director of DNRC or his/her designee shall fill the State's position. If an appointment is not timely made by the Tribes, the Director of the TWRD or his/her designee shall fill the Tribes' position.

c. Should the two appointed members fail to agree on the selection of a third member within sixty (60) days of the date of appointment of the second member, or within thirty (30) days after a vacancy in the third position occurs, the following procedure shall be utilized:

(1) Within five (5) days thereafter, each member shall nominate two persons to serve as a member of the Board;

(2) Within fifteen (15) days thereafter, each member shall reject one of the persons nominated by the other member;

(3) Within five (5) days thereafter, the remaining two nominees shall be submitted to the chief judge of the United States District Court for the District of Montana for selection of the third member of the Board. If the chief judge declines for any reason to select the third member, the chief justice of the Montana Supreme Court shall make the selection from the remaining two nominees.

d. Each member shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. A member seeking to resign prior to expiration of a term must provide written notice to the remaining Board members thirty (30) days prior to withdrawal.

e. The Board shall provide reasonable notice of the time, place, and purpose of any meeting, hearing, or other proceeding to each of its members. Two members of the Board shall constitute a quorum.

f. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six (6) months after its first meeting.

3. **Jurisdiction of the Board.** The Fort Belknap-Montana Compact Board shall have the jurisdiction to resolve controversies over the right to the use of water between Persons authorized to use any portion of the Tribal Water Right and Persons holding any water rights Arising Under State Law. Controversies under the jurisdiction of the Compact Board may include disputes concerning the meaning of this Compact. The jurisdiction of the Compact Board does not extend to controversies within the scope of the order appointing a water commissioner or commissioners to distribute water from the mainstem of the Milk River pursuant to Section B.3. of Article VII. Such controversies shall be resolved by the court appointing the water commissioner or commissioners.

4. **Administrative Remedy Prior to Board Action.**

a. **Change in Use, Transfer, or Non-Exempt New Development of the Tribal Water Right:** Any Person with a water right Arising Under State Law objecting to a Change in Use, Transfer, or Non-Exempt New Development of the Tribal Water Right, shall comply with the administrative procedures set forth in Section A.6. of this Article IV for review of applications for Change in Use, Transfer, or Non-Exempt New Development prior to seeking relief from the Compact Board.

b. **Change in water rights Arising Under State Law:** The Tribes or any Person authorized to use a portion of the Tribal Water Right objecting to a change in water right, or new development of a water right Arising Under State Law, shall comply with the administrative procedures set forth in Section B.3. of this Article IV for review of applications for change in appropriative right, prior to seeking relief from the Compact Board.

5. **Funding of the Board.** Expenses of the members of the Board appointed by the State and the Tribe shall be the responsibility of the entity appointing the member, subject to the availability of funds. The expenses of the third member and all other expenses, including the cost of notice, shall be shared equally by the Tribe and the State, subject to the availability of funds.

6. **Hearings Before the Board.**

a. In proceedings before it, the Board shall issue notice and hold hearings. The Board may seek the assistance of DNRC and TWRD in issuing notice.

b. In proceedings before it, the Board shall have the power to administer oaths, take evidence, and issue subpoenas to compel attendance of witnesses or production of documents or other evidence. The Board may apply to a state or federal district court, or Tribal court to compel compliance with subpoenas or the giving of testimony. The Tribes and the State shall enforce the subpoenas in the same manner as prescribed by the laws of the Tribes and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action.

c. The Board may appoint technical experts.

d. The parties to the controversy may present evidence and cross examine any witnesses.

e. The Board shall determine the controversy and order any appropriate relief, including the installation of measuring devices and temporary relief, provided that, the Board shall have no power to award money damages or attorneys fees. The Board may assess costs, provided that, the Board may not assess costs against the Tribes or the State, or against the United States.

f. All Board decisions shall be by a majority of the Board, shall be in writing, and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board and on the Parties to this Compact.

g. All records of the Board shall be open to public inspection, except as otherwise ordered by the Board to protect matters of individual privacy.

h. **Waiver of Immunity.** The Tribes and the State waive their respective immunities from suit, including for the appeal or judicial enforcement of Board decisions, to permit the resolution of disputes by the Fort Belknap - Montana Compact Board. Such waiver of immunity by the Tribes or the State shall not extend to any action for money damages, costs, or attorneys' fees.

i. **Review and Enforcement of Board Decisions.**

(1) Decisions by the Board are effective immediately, unless stayed by the Board. Unless otherwise provided by Congress, only parties to the proceedings before the Board or the United States may appeal any final decision by the Board to a court of competent jurisdiction within thirty (30) days of service of such decision. The hearing on appeal by any party except the United States (unless

otherwise provided by Congress) shall be on the record. The United States may seek a trial de novo on appeal. The notice of appeal shall be filed with the Board and served personally or by registered mail on all parties to the proceeding before the Board.

(2) Unless appeal is filed within thirty (30) days of a final decision of the Board, the decision shall be recognized and enforced by any court of competent jurisdiction on petition of: the Board; any party before the Board in the proceeding in which the decision was made; the State; the Tribes, or the United States.

(3) A court of competent jurisdiction in which a timely appeal is filed or in which a petition to confirm or enforce a decision by the Board is filed, may order such temporary or permanent relief as it determines to be appropriate.

(4) Any appeal may be taken from a decision of the court in which an appeal from a Board decision is filed or in which a petition to confirm or enforce a decision of the Board is filed, in the manner and to the same extent as from orders of judgments of the court in a civil action.

(5) In any appeal from a Board decision or petition to confirm or enforce a Board decision, the Board shall file with the court the record of the proceedings before the Board within sixty (60) days of the filing of the appeal or petition.

E. Administration of the Milk River to Satisfy the Tribal Water Right.

1. Operation of the Milk River to Satisfy the Tribal Water Right.

a. Delivery of water on the mainstem of the Milk River shall include measures necessary to assure satisfaction of the Tribal Water Right.

b. To satisfy the Tribal Water Right, including to replace water depleted on tributaries to the Milk River excluding Peoples Creek, and water depleted on the mainstem of the Milk River upstream from the Western Crossing through exercise of water rights Arising Under State Law, the Milk River Project storage facilities shall be operated to release or bypass the water necessary to assure satisfaction of the water right set forth in Section A.1.a. of Article III, subject to the following conditions:

(1) The Tribes shall notify the Bureau of Reclamation or its successor as operator of the Milk River Project and any water commissioner appointed following petition by the Parties pursuant to Section B.3. of Article VII, or any other person or entity, when the Tribes seek release or bypass of water to satisfy the water right set forth in Section A.1.a. of Article III. The obligation of the Bureau of Reclamation ends with the release or bypass. Enforcement necessary to deliver the water to the Reservation shall be pursuant to this Compact.

(2) The amount of water released or bypassed to satisfy the water right set forth in Section A.1.a. of Article III shall not exceed the lesser of:

i. 645 Cfs; or

ii. the Calculated Undepleted Flow of the Milk River calculated pursuant to Section E.2. of this Article IV, modified to reflect any agreement or adjudication between the Blackfeet Tribe and the Fort Belknap Indian Community of the Fort Belknap Reservation on allocation of water from the Milk River to the Blackfeet Tribe, to the extent such agreement or adjudication affects the Calculated Undepleted Flow of the Milk River; or

iii. the amount and flow rate of water the Tribes can actually divert for use, storage, or diversion under an agreement for Transfer at the time of their notice to the Bureau of Reclamation and any water commissioner.

(3) In assuring satisfaction of the Tribal Water Right, the operators of the Milk River Project storage facilities shall use their best efforts to operate those facilities consistent with the criteria developed pursuant to Section C.11. of this Article IV. Provided, however, that any effort to maximize the amount of storage within the Milk River Basin or to comply with the operating criteria developed pursuant to Section C.11. of this Article IV shall not diminish or alter the obligations contained in Sections E.1.a. and b. of this Article IV to assure satisfaction of the Tribal Water Right.

2. Calculated Undepleted Flow of the Milk River.

a. The determination of the Calculated Undepleted Flow of the Milk River at the point where the Milk River intersects the diversion point on the Reservation shall be done by the United States Bureau of Reclamation, in consultation with DNRC and TWRD, with review by the U.S.G.S. pursuant to the formula set forth in Appendix 4.

b. The amount of the United States' Share of the Natural Flow of the Milk River available for the Tribes shall be modified as necessary to reflect any agreement between the Blackfeet Tribe and the Fort Belknap Indian Community of the Fort Belknap Reservation on allocation of water from the Milk River, or adjudication of the Blackfeet Tribe's reserved water rights.

c. The Calculated Undepleted Flow of the Milk River may be modified pursuant to Appendix 4. and such modification shall not be considered a modification of the Compact.

ARTICLE V - DISCLAIMERS AND RESERVATION OF RIGHTS

A. No Effect on Other Tribal Rights or Federal Reserved Water Rights.

1. Except as provided in Sections A.2.a. of Article III, the relationship between the Tribal Water Rights of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community, Tribal members, and Allottees on the Fort Belknap Reservation described in this Compact and any rights to water of any other Indian tribe, tribal member, or Indian owner of trust lands claiming water under federal or tribal law, or of the United States on behalf of such tribe, tribal member, or Indian owner of trust lands, shall be determined by the rule of priority unless otherwise agreed to by such tribe, tribal member, or Indian owner of trust lands, or the United States on behalf of such tribe, tribal member, or Indian owner of trust lands.

2. Nothing in this Compact may be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribes, tribal members, or Indian owner of trust land of other Indian tribes outside of the Fort Belknap Reservation.

3. Except as provided in Sections C., D., and E. of Article IV and Section B.3. of Article VII pertaining to administration in the Milk River Basin, nothing in this Compact is otherwise intended to affect a right or claim of an Indian Tribe other than the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation.

4. Except as provided in Sections C., D. and E, of Article IV and Section B.3. of Article VII pertaining to administration in the Milk River Basin, nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of the United States on federal lands outside the Fort Belknap Reservation.

B. **General Disclaimers.** Nothing in this Compact may be construed or interpreted:

1. As a precedent for the litigation of reserved water rights;

2. As a precedent for the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;

3. Except as provided in Section I. of Article III closing certain basins to new appropriations under State law, to preclude the acquisition or exercise of a right Arising Under State Law to the use of water by any Allottee or member of the Tribes outside the Reservation by purchase of such right or by application to the State in accordance with state law;

4. To determine the relative rights inter sese of Persons using water under the authority of the State or the Tribes;

5. To limit in any way the rights of the Parties or any other Person to litigate any issues or questions not resolved by this Compact;

6. To authorize the taking of a water right which is vested under State or federal law;

7. To create or deny substantive rights through headings or captions used in this Compact;

8. To prejudge how, in any interstate apportionment, the Tribal Water Right shall be counted;

9. To constitute a waiver of sovereign immunity by the Tribes or State except as is expressly set forth in this Compact;

10. To constitute a waiver of sovereign immunity by the United States except as expressly set forth in 43 U.S.C. §666 (1952);

11. To prohibit the Tribes, Tribal members, or Allottees, or the United States on behalf of the Tribes, Tribal members, or Allottees except as agreed to in Appendix 3, or the United States in any other capacity from objecting in any general stream adjudication in Montana Water Court to any claims to water rights;

12. Except as provided by Congress, to prevent the Tribes, or the United States on behalf of the Tribes, from filing an action in a court of competent jurisdiction to prevent any Person or Party from interfering with the Tribes in the enjoyment of the Tribal Water Right;

13. To affect or determine the applicability of any state or federal law, including, without limitation, environmental and public safety laws, on activities of the Tribe, Tribal members, or Allottees, or the State or state water right holders, or the United States or the United States Bureau of Reclamation;

14. To modify any portion of Article VI of the "Treaty Between the United States and Great Britain Relating to Boundary Waters, and Questions Arising Between the United States and Canada," January 11 1909, and ratified by the

Senate on May 13, 1910, 36 Stat. 2455, and the Order of the International Joint Commission on October 4, 1921 pertaining to "In the matter of the Measurement and Apportionment of the Waters of the St. Mary and Milk Rivers and their Tributaries in the State of Montana and the Provinces of Alberta and Saskatchewan;"

15. To prevent the Tribes from participating in any project to import water to, or improve storage in the Milk River Basin; or

16. To modify or prevent modification of the Memorandum of Agreement between the Bureau of Reclamation and the Office of Indian Affairs Milk River Project Montana, I-1-Ind. 18725, July 8, 1946.

17. To prevent the water court from adjudicating claims to water rights Arising Under State Law on fee land within the Reservation.

18. Except as expressly provided herein, to modify the obligation of any agency of the United States pursuant to federal law.

19. To limit the ability of the State, the Tribes, or the United States to enforce any state, tribal, or federal laws or any common law rights relating to the protection of the environment.

20. To limit any existing, present, or future claims of the Tribes or the United States on behalf of the Tribes concerning water quality.

C. **Obligations of the United States Contingent.**

1. Notwithstanding any other language in this Compact, except as authorized under other provisions of federal law, the obligations of the United States under this Compact shall be contingent on ratification and necessary authorization by Congress.

2. The expenditure or advance of any money or the performance of any work by the United States or the Tribes pursuant to this Compact which may require appropriation of money by Congress or allotment of funds is contingent on such appropriation or allotment being made.

3. The State and the Tribes recognize that this Compact has not been approved by the United States or any agency thereof and ratification by the Montana legislature or ratification by the Tribal Council in no manner binds or restricts the discretion of the United States in the negotiation of all related matters.

D. **Obligations of the State Contingent.** The expenditure or advance of any money or the performance of any work by the State pursuant to this Compact which may require appropriation of money by the Montana Legislature or allotment of funds shall be contingent on such appropriation or allotment being made.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

A. **St. Mary Diversion Facilities.** The Parties agree that the delivery of water through the facilities of the Milk River Project at least at its existing or design capacities, and especially the St. Mary Diversion Facilities for diversion of water to the Milk River and use downstream from the Eastern Crossing, is essential to the permanent success of the Compact and the finality of the reserved water rights settlement and to the continued irrigation of lands in the Milk River Project. The Parties further understand and agree that the facilities of the Milk

River Project, especially the St. Mary Diversion Facilities, are old and are in need of repair, rehabilitation, and to the extent feasible, restoration to their original design capacities. In recognition of the essential nature of the Milk River Project facilities, especially the St. Mary Diversion Facilities, the Parties agree to work with the United States, the Blackfeet Tribe, and the Milk River Project water users to obtain the necessary authorization and funding for the repair, rehabilitation, and restoration of the St. Mary Diversion facilities. The Parties agree that this Compact and its federal legislation may or may not be the appropriate means to fund this project. The Parties further agree that any discussion of the repair, rehabilitation, and restoration of the St. Mary Diversion facilities as part of the negotiation of the federal legislation ratifying this Compact shall be preceded by an invitation to the Blackfeet Tribe to participate as a party in such discussions.

B. Mitigation of Impacts on the Milk River Project.

1. The Parties agree that, as a result of development and use of the Tribal Water Right and protection of water use on tributaries, the Milk River Project and its water users will, at times, be adversely affected if no change is made to the Milk River System. The Parties agree that hydrologic and engineering analyses have identified the impacts and have demonstrated that such impacts can be mitigated through a number of alternatives. The Parties agree that such alternatives, together with such other alternatives as may be identified by the Parties or any other person or entity and by the Bureau of Reclamation, are currently included or will be included in the Bureau of Reclamation's Milk River Basin Regional Feasibility Study, authorized by Congress in Public Law 106-163, and will receive appropriate environmental analyses in that Study. The Parties further agree that funding for water efficiency improvements (Watershed Improvements) and water banking will be included in the total funding for the Compact. In addition to funding for voluntary efficiency improvements and for water banking, mitigation measures authorized and funded as a part of the Compact must mitigate at least to the level of 35,000 Acre-feet Per Year, or a larger amount on agreement by the Parties if information or improved modeling available at the time of completion of the Milk River Basin Regional Feasibility Study indicates that more is necessary for mitigation based on full development of the Tribal Water Right on the Milk River and tributary protection as contemplated in Section A.1. of Article III. The Parties agree to seek establishment of a fund and a schedule for incremental development of mitigation measures to assure that such measures are in place when needed to prevent impact from development of the Tribal Water Right. Mitigation measures identified by the Parties to be studied in the Feasibility Study include the following:

a. Pumped storage from the Milk River to Nelson Reservoir;

b. Enlargement of the storage capacity of Nelson Reservoir through the construction of a secondary dam or dike dividing the Reservoir into two separate controllable storage facilities;

c. Rehabilitation and restoration of the St. Mary Diversion Facilities;

d. Enlargement of Fresno Dam and Reservoir to restore storage capacity lost by siltation and obtain additional storage capacity;

e. Construction of a dam and reservoir on lower Peoples Creek on the Reservation and on other tributaries to the Milk River, including Thirtymile Creek:

f. Construction of new facilities to import water to the Milk River Basin, including but not limited to: the Virgelle diversion, direct importation from Lake Elwell; and importation from the Missouri River or Fort Peck Reservoir to Vandalia via Duck Creek;

g. Construction of facilities to improve the water quality of the Fish and Wildlife Service's Bowdoin National Wildlife Refuge and to allow the use of Bowdoin as a storage facility for mitigation of impacts of the Compact;

h. Such other mitigation alternatives which the Parties may identify to be included in the Bureau of Reclamation's Milk River Basin Regional Feasibility Study, or additional studies agreed to by the Parties.

2. On completion of the Milk River Basin Regional Feasibility Study, the Bureau of Reclamation, in consultation with the irrigation districts and the Parties, shall select the appropriate mitigation measures.

C. **Upper Peoples Creek Dam and Reservoir.** The Parties agree that, as a result of the protections provided to the Upper Peoples Creek water users in the Compact and the variable natural water supply in the Peoples Creek Basin, the water supply available for development of the Tribal Water Right in Peoples Creek may be limited. The Parties agree that such impacts can and shall be mitigated, in whole or in part, through the construction of a dam and reservoir for the benefit of the Tribes in the upper Peoples Creek Basin, if a dam and reservoir is determined to be feasible from an engineering, geologic, and environmental analysis. Accordingly, the Parties agree to seek authorization of appropriations, appropriations, and a schedule for development of a dam and reservoir on Peoples Creek for the benefit of the Tribes.

D. **State Contribution to Settlement.** The Parties agree that the State contribution to settlement shall be negotiated by the State, the Tribes, and the United States as part of the negotiations on the Federal legislation. The agreement to, expenditure, or advance of any State contribution which may require authorization and appropriation of money by the Montana Legislature or allotment of funds is contingent on such appropriation or allotment being made. Any local contribution to cost share shall be allocated to all Persons that benefit from the protections provided by the Compact.

E. **Federal Contribution to Settlement.** The Parties agree that the federal contribution to settlement shall be negotiated by the State, the Tribes, and the United States as part of the negotiations on the Federal legislation.

F. **State Lands on the Reservation.** The Parties agree to work together in the future to obtain the authorization necessary to exchange State lands on the Reservation for federal lands off the Reservation, and that any State lands acquired by the United States in an exchange shall be held in trust for the Tribes.

G. **Project Lands.** The Parties agree to work together to facilitate land classification and reclassification in the Milk River Project.

ARTICLE VII - FINALITY

A. Ratification and Effectiveness of Compact.

1. This Compact becomes Effective on the latest of the dates it is ratified by the Tribes, the State and by Congress. Following the first ratification by any party, the terms of this Compact may not be modified without the consent of the Parties. In the event of permanent or long term loss of the continued operation of

the St. Mary Diversion facilities for diversion of water to the Milk River and use downstream from the Eastern Crossing, either due to loss, or to reallocation of water on agreement by the Parties, the Parties agree to enter negotiations on alternative remedies to supply water to portions of the Reservation served from the Milk River and to water rights Arising Under State Law within the Milk River Project. Minor loss or reallocation of water from the St. Mary Diversion facilities shall not be considered a permanent or long term loss. Until satisfactory completion of the above referenced negotiation or litigation and construction of water supply facilities to remedy the long term loss of the continued operation of the St. Mary Diversion facilities, the Tribes' diversion right from the Milk River shall be the amount developed for diversion at the time of the failure. All other provisions of the Compact shall remain in place. Should the Parties fail to reach agreement on alternative remedies within five (5) years of the permanent or long term loss of the continued operation of the St. Mary Diversion facilities, the Parties may seek a remedy in court for opening of the decree and adjudication of the portion of the Tribal Water Right in the Milk River Basin 40J. In opening the decree, there shall be no question of the validity of the Tribes' right to water currently developed.

2. Notwithstanding any other provision in this Compact, the Tribes reserve the right to withdraw as a party if:

a. Congress has not ratified this Compact and authorized appropriations within five (5) years from the date the Compact is ratified by the State;

b. The Tribes and United States do not reach agreement on the federal contribution to settlement; or

c. Appropriations are not made in the manner contemplated by the federal legislation ratifying this Compact.

d. The Parties do not reach agreement on the State contribution to settlement.

e. The State has not authorized appropriations within three (3) years from the date the Compact is ratified by the United States.

f. Appropriations are not made by the State in the manner contemplated by any agreement for contributions to settlement made pursuant to Section D. of Article VI of this Compact.

3. The Tribes may exercise their right to withdraw from the Compact under Section A.2. of Article VII of the Compact by sending to the Governor of Montana and to the Secretary of the Interior by certified mail a resolution of the Fort Belknap Community Council stating the Tribes' intent to withdraw and specifying a withdrawal date not sooner than thirty (30) days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, this Compact shall become null and void without further action by any party.

4. Improvements to the Milk River Project to mitigate the impact of potential development of the Tribal Water Right and of tributary protection is essential to the agreement of the State to this Compact. Thus, notwithstanding any other provision in this Compact, the State reserves the right to withdraw as a party if:

a. The Tribes and Congress have not ratified this Compact within five (5) years from the date the Compact is ratified by the State;

b. Congress requires a State contribution to settlement that exceeds the contribution authorized by the Montana Legislature or the contribution agreed to by the Parties if Congressional authorization precedes authorization by the Montana Legislature without the agreement of the State; or

c. Congress does not authorize and appropriate the federal share of funding for the modifications to the Milk River Project or other alternatives necessary to mitigate the impact of development of the Tribal Water Right as outlined generally in Section B. of Article VI, as enacted in the federal legislation ratifying this Compact and such modifications or other alternatives are not constructed

5. The State may exercise its right to withdraw from the Compact under Section A.4. of this Article VII of the Compact by sending to the Fort Belknap Tribal Chair and to the Secretary of the Interior by certified mail a letter from the Governor of Montana stating the intent of the State to withdraw and specifying a withdrawal date not sooner than thirty (30) days from the date of the letter. In considering exercise of the right to withdraw, the Governor shall consult with Persons affected by this Compact including the Milk River Joint Board of Control. On the date designated in the letter for State withdrawal, this Compact shall become null and void without further action by any party.

B. Incorporation into Decrees.

1. Within one hundred eighty (180) days of the date this Compact is ratified by the Tribes, the State, and Congress, whichever is latest, the Tribes, and/or the State, and/or the United States shall file, in the general stream adjudication initiated by the State pursuant to the provisions of §85-2-702(3), MCA, a motion for entry of the proposed decree set forth in Appendix 1 as the decree of the water rights held by the United States in trust for the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community and Tribal members of the Fort Belknap Reservation. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of §85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666 or other provisions of federal law.

2. Consistent with §3-7-224, MCA, and for the purposes of §85-2-702(3), MCA, the review by the Montana Water Court shall be limited to Article III, and Appendix 1, and may extend to other Sections of the Compact only to the extent that they relate to the determination of existing water rights. The final decree shall consist of Article III as displayed in Appendix 1, and such other information as may be required by §85-2-234, MCA. Nevertheless, pursuant to §85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.

3. Concurrent with filing of the motion for entry of the proposed decree, the Parties shall seek appointment of a water commissioner or commissioners pursuant to Title 85, Chapter 2, Parts 1-3 of the Montana Code Annotated in the appropriate state district court pursuant to §85-2-406, MCA, and as set forth in Appendix 1, to enforce water use pursuant to decrees of the Water Court, permits issued by DNRC, contracts issued by the BOR, and use pursuant to Tribal law, from the mainstem of the Milk River downstream from the Eastern Crossing pursuant to this Compact, federal, Tribal, and State law, and the final decrees. The Parties shall ask the district court to stay the appointment pending issuance of preliminary decrees on the Milk River Basin downstream from the Eastern Crossing. The request for appointment of a water commissioner by the Parties shall be sufficient to meet the requirements of §85-5-101, MCA pertaining to the persons who may request appointment of a water commissioner.

Notwithstanding the requirement of yearly appointment of a water commissioner under state law, the Parties shall seek, and the district court may appoint, a permanent water commissioner or commissioners. The petition by the Parties does not preclude the right of any Person to seek appointment of a water commissioner or enforcement of water rights pursuant to applicable law.

4. The Parties agree to seek a mechanism for funding the Tribal share of the cost of the water commissioner or commissioners in the federal legislation ratifying the Compact.

5. Water users with rights to divert water from the mainstem of the Milk River downstream from the Eastern Crossing under authority of State, federal or Tribal law, shall notify the water commissioner within a reasonable period in advance of a need to divert water.

6. Any Person authorized to use water from the mainstem of the Milk River Basin downstream from the Eastern Crossing objecting to the distribution of water by the water commissioner, or to a use of water by another Person, may use the remedies provided by § 85-5-301, MCA.

7. In the distribution of water, the water commissioner or commissioners shall be bound by the decrees of the water court, however, the commissioner or commissioners may use the databases developed pursuant to Section C.3.d. of Article IV to facilitate understanding of the distribution of water within a particular water right.

8. Nothing in this Compact shall prevent the holders of water rights Arising Under State Law or Tribal Water Rights with a source on the mainstem of the Milk River below the Eastern Crossing from agreeing to an alternative water distribution plan that allows sharing of shortages, distribution of shortage, operation of storage, or exchange of storage in a manner other than priority. Such agreement shall be enforced by the court appointing the water commissioner.

C. **Disposition of Federal Suit.**

1. On issuance of a final decree by the Montana Water Court or its successor, and the completion of any direct appeals therefrom, or on expiration of the time for filing any such appeal, the United States, the Tribes, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed.R.Civ.P., to dismiss without prejudice the claims of the Tribes, Tribal members, and Allottees and any claims made by the United States for benefit of the Tribes, Tribal members, and Allottees in United States v. Aageson, No. CIV-79-21-GF (filed April 5, 1979). The case may only be resumed if the State or Tribes exercise their rights under Section A. of this Article VII.

2. The Decree shall be filed by the Parties as a consent decree in Aageson, or in federal court as a new proceeding after the dismissal of Aageson conditional on agreement by the Parties to seek the necessary State, Tribal, and federal legislation to implement the remaining provisions of the Compact, if it is finally determined in a judgment binding on the State of Montana that the state courts lack jurisdiction over, or that the state court proceedings are inadequate to adjudicate some or all of the water rights asserted in Aageson.

D. **Settlement of Tribal Water Right Claims.**

1. The water rights and other benefits confirmed to the Tribes in this Compact are in full and final satisfaction of and are intended to be in replacement

of and substitution for all claims to water or to the use of water by the Tribes, Tribal members, and Allottees and the United States on behalf of the Tribes, Tribal members, and Allottees existing on the Effective Date of this Compact, including federal reserved water rights claims based on or recognized in Winters v. United States, 207 U.S. 564 (1908), within the State of Montana.

2. In consideration of the rights confirmed to the Tribes, Tribal members, and Allottees in this Compact, and of performance by the State and the United States of all actions required by this Compact, and on entry of a final order issuing the decree of the Tribal Water Right held in trust by the United States as quantified in this Compact and displayed in Appendix 1, and except for water rights, benefits and uses confirmed in this Compact, the Tribes and the United States as trustee for the Tribes, Tribal members, and Allottees hereby waive, release, and relinquish any and all claims to water rights or to the use of water within the State existing on the Effective Date of this Compact.

3. Any claim to water by the Tribes, Tribal members, or Allottees within the Reservation shall be satisfied out of the Tribal Water Right confirmed by this Compact.

E. **Settlement of Tribal Claims Against the United States.** Waiver of claims against the United States, by the Tribes and Tribal members shall be as provided by Congress.

F. **Binding Effect.** After the Effective Date of this Compact and entry of a final decree, its terms shall be binding on:

1. The State and any Person or entity using, claiming or in any manner asserting any right under the authority of the State to the use of water in Montana; provided that, the validity of consent, ratification, or authorization by the State is to be determined by Montana law;

2. The Tribes and any Person or entity using, claiming or in any manner asserting any right to the use of the Tribal Water Right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribes or Tribal members, or any rights arising under tribal law; provided that, the validity of consent, ratification or authorization by the Tribes is to be determined by Tribal law; and

3. The United States and any Person or entity using, claiming or in any manner asserting any right under the authority of the United States to the use of water in Montana; provided that, the validity of consent, ratification or authorization by the United States is to be determined by federal law;

ARTICLE VIII - LEGISLATION/DEFENSE OF COMPACT

A. **State Legislation.** The State and Tribes agree to seek ratification of the Compact by the Montana Legislature and any additional state legislation necessary to effectuate the Compact.

B. **Federal Legislation.** The State and Tribes agree to seek ratification of the Compact by Congress and any additional federal legislation necessary to effectuate the Compact.

C. **Tribal Legislation.** The State and Tribes agree to seek ratification of the Compact by the Fort Belknap Community Council and any Tribal legislation necessary to effectuate the Compact.

D. **Defense of the Compact.** The Parties agree to defend the Compact from all challenges and attacks and in all proceedings pursuant to Sections B. and C. of Article VII, and agree that no provision of the Compact shall be modified as to substance except as may be provided in the Compact, or by agreement among the Parties.

IN WITNESS WHEREOF the representatives of the State of Montana, the Fort Belknap Indian Community of the Fort Belknap Reservation, and the United States, have signed this Compact on the ____ day of ________, 20__.

Section 2. Findings and purpose. (1) It is the policy of the state to seek negotiated settlements of federal and Indian reserved water rights claims in Montana under Title 85, chapter 2, part 7.

(2) Pursuant to this policy, the reserved water rights compact commission commenced negotiations with the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation and the United States.

(3) A compact, [section 1], has been agreed to between the state of Montana and the Fort Belknap Indian Community of the Fort Belknap Reservation that, among other things, provides an allocation of water to the tribes in settlement of their water right claims and provides protection for certain water rights arising under state law. Approval of the compact by the United States requires ratification by congress.

(4) (a) For purposes of implementing the compact, [sections 2 through 8]:

(i) establish accounts necessary to meet certain obligations agreed to in the compact;

(ii) provide a structure for the issuance of grants and loans; and

(iii) provide for the facilitation of the development of an economic development plan.

(b) Funding for the accounts established under [sections 4, 5, and 7] is subject to state and federal cost-share negotiations, approval of state cost-share by the legislature, and approval of federal cost-share by the United States congress.

(5) The state's obligation to provide funding to implement the compact and to satisfy the state's cost-share, once approved by the legislature, must be conditioned on:

(a) final court approval of a decree of the water rights of the tribes as set forth in Article VII, sections B. through D., of the compact; and

(b) validity of the compact under Article VII, section A., of the compact.

(6) Funds appropriated to accounts established under [sections 4, 5, and 7] and interest on appropriated funds are not available for expenditure unless the conditions, provided in subsection (5), are met.

(7) If a court does not approve a final decree, if the compact becomes null and void, or if one of the parties withdraws from the compact, the funds appropriated by the state to accounts established in [sections 4, 5, and 7] must revert to the general fund and any federal funds must be returned to the United States treasury. If a portion of the funding or interest on funding provided in [sections 4, 5, and 7] has been expended prior to the return of funds to the general fund, any claim against the state by the tribes or by the United States on behalf of the tribes

for adjudication of the water rights of the tribes must be offset by the amount of the expenditures of state funds or interest on state funds.

Section 3. Definitions. The definitions provided for in [section 1] apply to [sections 2 through 8]. The absence of capitalization of defined terms in [sections 2 through 8] does not affect the meaning or application of a defined term.

Section 4. Mitigation account. (1) An expendable trust account, called the mitigation account, is established, as provided for in 17-2-102, for deposit of funds and interest on funds appropriated by the state for mitigation measures required by Article VI of the compact.

(2) On approval of a final decree pursuant to Article VII of the compact, the funds and interest on funds in the mitigation account must be made available to the United States bureau of reclamation to cover the state's cost-share for construction of mitigation measures chosen on completion of a feasibility study and appropriate state and federal environmental review by the bureau of reclamation and on consideration of the economic development plan authorized by [section 8].

Section 5. Watershed improvement trusts. (1) A nonexpendable trust fund account, called the state Milk River watershed improvement trust, is established, as provided for in 17-2-102, for deposit of funds appropriated pursuant to the compact for a permanent trust. Interest income may be used by the Milk River coordinating committee established pursuant to the compact for the purpose of allocating grants and loans.

(2) A nonexpendable trust fund account, called the federal Milk River watershed improvement trust, is established, as provided for in 17-2-102, for receipt of federal funds appropriated for a permanent trust. Interest income may be used by the Milk River coordinating committee established pursuant to the compact for the purpose of allocating grants and loans.

(3) The state and federal Milk River watershed improvement trusts must be collectively referred to as the Milk River watershed improvement trusts.

Section 6. Terms and conditions of loan. A Milk River watershed improvement trusts loan is subject to the following terms and conditions:

(1) Except for loan agreements with an Indian tribe, the DNRC shall obtain a security interest in real estate that would be obtained by a reasonable, careful, and prudent lender.

(2) A current appraisal of real estate offered as security and a commitment for title insurance on that land must be secured by the borrower at the borrower's expense. All costs incident to the loan and loan closing must be paid by the borrower.

(3) For a loan agreement with an Indian tribe, security must be pursuant to the appropriate federal authority to secure a loan on trust land, and with an allottee, security must be pursuant to 25 U.S.C. 483A.

(4) The term of the loan may not be greater than the life of the project and may not exceed 30 years.

Section 7. Peoples Creek minimum flow account. (1) An expendable trust account, called the Peoples Creek minimum flow account, is established, as provided for in 17-2-102, for deposit of funds and interest on funds appropriated by the state for efficiency improvements and bypass structures for irrigation upstream from the Fort Belknap Reservation in the Peoples Creek Basin 40I and for a reservoir on the Reservation for the purpose of improving minimum stream flow.

(2) On approval of a final decree pursuant to Article VII of the compact, the funds and interest on funds in the Peoples Creek minimum flow account must be made available to the water users and the tribes to cover the cost of construction of improvements as agreed to in the state and federal cost-share negotiations.

Section 8. Economic development plan. (1) The DNRC is directed to facilitate development of an economic development plan focused on future use of water and currently irrigated land, including but not limited to use of water and irrigated land for irrigation, industrial, recreational, fisheries, and habitat purposes in the Milk River basin.

(2) The Milk River regional feasibility study examines alternative measures for mitigation of impacts of development of the tribal water right for the purpose of determining feasibility and environmental impact. The purpose of the economic development plan is to supplement the federal studies and provide information to assist in choosing mitigation measures by examining the long-term economic potential of water use in the Milk River basin.

(3) At a minimum, the DNRC shall include irrigation districts, individual irrigators, conservation districts, county governments, and municipalities in the development of the economic development plan.

Section 9. Appropriation of funds for economic development plan. There is appropriated to the department of natural resources and conservation from the general fund $50,000 in the 2003 biennium for the purpose of facilitating the development of the economic development plan provided for in [section 8].

Section 10. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [sections 1 through 9].

Approved April 16, 2001

CHAPTER NO. 257

[SB 144]

AN ACT TRANSFERRING FROM THE DEPARTMENT OF ADMINISTRATION TO THE DEPARTMENT OF REVENUE CERTAIN FINANCIAL RESPONSIBILITIES; REQUIRING COUNTY TREASURERS TO REMIT MONEY BELONGING TO THE STATE THAT WAS COLLECTED BY COUNTY TREASURERS AND TO SUBMIT THE COUNTY COLLECTIONS REPORTS TO THE DEPARTMENT OF REVENUE; REQUIRING THAT CERTAIN COURT FINES, FEES, FORFEITURES, LICENSE FEES, AND OTHER MONEY BELONGING TO THE STATE BE REMITTED TO THE DEPARTMENT OF REVENUE; AMENDING SECTIONS 3-1-317, 3-10-601, 7-6-2421, 10-2-501, 15-1-116, 15-1-504, 15-24-925, 15-36-324, 20-9-212, 20-9-331, 20-9-333, 20-9-334, 20-9-360, 20-25-1007, 23-2-507, 23-2-512, 23-2-615, 23-2-616, 23-2-644, 23-2-804, 23-2-807, 23-2-814, 45-9-130, 50-52-105, 61-3-321, 61-3-465, 61-3-467, 61-3-509, 61-3-511, 61-5-121, 61-10-126, 61-10-148, 61-10-225, 61-12-701, 67-1-303, 72-16-912, 72-16-920, 75-10-532, 76-13-114, 77-1-117, 80-2-230, 80-7-704, 81-7-118, 87-1-114, 87-1-601, AND 87-4-808, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-317, MCA, is amended to read:

"**3-1-317. (Temporary) User surcharge for court information technology — exception.** (1) Except as provided in subsection (2), all courts of original jurisdiction shall impose:

(a) on a defendant in criminal cases, a $5 user surcharge upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail;

(b) on the initiating party in civil and probate cases, a $5 user surcharge at the commencement of each action, proceeding, or filing; and

(c) on each defendant or respondent in civil cases, a $5 user surcharge upon appearance.

(2) If a court determines that a defendant in a criminal case or determines pursuant to 25-10-404 that a party in a civil case is unable to pay the surcharge, the court may waive payment of the surcharge imposed by this section.

(3) The surcharge imposed by this section is not a fee or fine and must be imposed in addition to other taxable court costs, fees, or fines. The surcharge may not be used in determining the jurisdiction of any court.

(4) The amounts collected under this section must be forwarded to the ~~state treasurer and deposited~~ *department of revenue for deposit* in the account established in 3-5-904 for state funding of court information technology. (Terminates June 30, 2003—sec. 1, Ch. 71, L. 1999.)"

Section 2. Section 3-10-601, MCA, is amended to read:

"**3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees.** (1) Each justice of the peace shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county in which the justice of the peace holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) All fines, penalties, and forfeitures that are required to be imposed, collected, or paid in a justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

(3) The county treasurer shall, ~~in the manner~~ *as* provided in 15-1-504, distribute money received under subsection (2) as follows:

(a) 50% to the ~~state treasurer~~ *department of revenue* for deposit in the state general fund; and

(b) 50% to the county general fund."

Section 3. Section 7-6-2421, MCA, is amended to read:

"**7-6-2421. Presentation of claims against county.** (1) ~~No~~ *An* account may *not* be allowed by the board unless the ~~same~~ *account* is made out in separate items, with the nature of each item stated. If the claim is for official services for which ~~no~~ specified fees are *not* fixed by law, the time actually and necessarily devoted to ~~such~~ *the* services must be stated. ~~No~~ *An* account ~~must~~ *may not* be ~~necessarily~~ passed upon by the board unless made out as prescribed in this section and filed by the clerk prior to the session at which it is asked to be heard.

(2) ~~Every~~ *Each* claim against the county, except claims arising from injury to a person or property, ~~which~~ *that* are limited under provisions of Title 2, chapter 9, parts 1 through 3, ~~as amended,~~ must be presented within 1 year after the last item accrued.

(3) ~~No~~ *A* county officer may *not*, except for ~~his~~ *the officer's* own service, present any claim, account, or demand for allowance against the county or in any way advocate the relief asked on the claim or demand made by another.

~~(4) Money deposited in the county treasury pursuant to former section 16-2616, R.C.M. 1947, and not otherwise disposed of shall be transferred by the county treasurer to the state treasurer for deposit in the agency fund provided for in Title 72, chapter 14, part 2. The county treasurer may deduct the fees and expenses of the coroner and the county prior to transferring the money.~~"

Section 4. Section 10-2-501, MCA, is amended to read:

"**10-2-501. Interment allowance for veterans — payment by county of residence — veterans' interment supervisor — definitions.** (1) The board of commissioners of each county in this state shall designate a person in the county, preferably a veteran, as veterans' interment supervisor.

(2) The veterans' interment supervisor shall cause to be decently interred the body or cremated remains of any veteran who was a resident of the state of Montana at the time of death. In performing this duty, the veterans' interment supervisor shall ensure that the desires of the veteran's personal representative or heirs are not violated. The veterans' interment supervisor may not receive any compensation for duties performed in compliance with this part.

(3) The interment may not be made in a burial ground or cemetery or in a portion of a burial ground or cemetery used exclusively for the interment of pauper dead.

(4) A sum not to exceed $250 to defer interment expenses must be paid by the veteran's county of residence.

(5) The interment benefits are not available in the case of a veteran whose personal representative or heirs waive the benefits.

(6) Whenever interment is of a resident of a Montana veterans' home, a sum not to exceed $250 to defer interment expenses must be paid by the veteran's county of residence.

(7) If a veteran dies while temporarily absent from the state or county of residence, the provisions of this section apply and the interment expenses not exceeding the amount specified in this section must be paid in the same manner as provided in this section.

(8) When a veteran dies at an institution of the state of Montana, other than a Montana veterans' home, at a federal institution, or at a private facility and interment for any cause is not made in the veteran's county of residence, the officers of the institution or facility shall provide the proper interment prescribed in this section. The reimbursement for the expense of each interment may not exceed $250. The expense must be paid by the veteran's county of residence.

(9) An interment may not be covered by any special or standing contract under which the cost of interment is reduced below the maximum amount fixed in this section, to the disparagement of proper interment.

(10) The veterans' interment supervisor shall, upon request of the deceased veteran's personal representative or heirs, assist in applying to the proper authority for a suitable headstone, as provided by act of congress, and in placing the headstone on the veteran's grave. The reimbursement costs for the shipping and raising of the headstone may not exceed $70 and must be paid by the veteran's county of residence at the time of death. The expense must be audited and paid as provided in this section for interment expenses.

(11) After payment of the first $30 from county funds, the county treasurer may withhold an amount of the county total monthly remittance to the ~~state treasurer~~ *department of revenue* equal to the actual cost paid, up to $40, for the shipping and raising of each headstone.

(12) As used in this part, the following definitions apply:

(a) "Interment" has the meaning provided in 37-19-101.

(b) "Residence" is determined as provided in 13-1-112. If the intent of the veteran regarding residence cannot be determined under 13-1-112, the costs of interment must be paid by the veteran's county of residence at the time of admittance into a Montana veterans' home, a state or federal institution, or a private facility."

Section 5. Section 15-1-116, MCA, is amended to read:

"15-1-116. Manufactured home considered as improvement to real property — requirements. (1) A manufactured home will be considered for tax purposes an improvement to real property if:

(a) the running gear is removed; and

(b) the manufactured home is attached to a permanent foundation on land that is owned or being purchased by the owner of the manufactured home or, if the land is owned by another person, with the permission of the landowner.

(2) To eliminate the certificate of ownership of a manufactured home, an owner may file a statement of intent on a form furnished by the department of justice.

(3) The statement of intent must include:

(a) the serial number of the manufactured home;

(b) the legal description of the real property to which the manufactured home has been permanently attached;

(c) a description of any security interests in the manufactured home; and

(d) approval from all lienholders of the intent to eliminate the title.

(4) The owner shall present the statement of intent to the county treasurer of the county in which the manufactured home is located and shall surrender the certificate of ownership. Upon receipt of a titling fee of $5, the county treasurer shall issue the owner a duplicate receipt for the surrendered certificate and forward a copy of the statement of intent, the original receipt, and the surrendered certificate to the department of justice. The county treasurer may

not issue the receipt unless all taxes, interest, and penalties on the manufactured home have been paid in full. The county treasurer shall:

(a) deposit $1.50 of the titling fee in the county general fund; and

(b) remit $3.50 of the titling fee to the ~~state treasurer~~ *department* for deposit in the state general fund.

(5) Upon the recording of the statement of intent and the receipt of surrender, the manufactured home may not be physically removed without the consent of all persons who have an interest in the manufactured home.

(6) A manufactured home that has been declared an improvement to real property in accordance with this section must be treated by the department and by lending institutions in the same manner as any other residence that is classified as an improvement."

Section 6. Section 15-1-504, MCA, is amended to read:

"15-1-504. Settlement of county treasurer with ~~state treasurer~~ *department*. (1) Except as provided in subsection (2), the county treasurer, between the 1st and 20th days of each month, shall remit to the ~~state treasurer~~ *department* all money belonging to the state that was collected by the county treasurer during the preceding month. The remittance must be accompanied by a detailed report upon a form that the ~~state treasurer~~ *department* prescribes. The ~~state treasurer~~ *department* may assess counties an interest charge of 10% a year on all money not remitted within 5 days from the time required by this section.

(2) By June 20 of each year, the county treasurer shall remit to the ~~state treasurer~~ *department* an estimate of all money belonging to the state that was collected by the county treasurer by June 15, in addition to the amount collected during the preceding month. In July, the county treasurer shall remit all money belonging to the state that was collected by the county treasurer during the remainder of June."

Section 7. Section 15-24-925, MCA, is amended to read:

"15-24-925. Reimbursement to county — transmission of taxes from county to ~~state treasurer~~ *department*. (1) The county treasurer may withhold 2% of the money received under 15-24-921 as reimbursement to the county for the collection of the levy on livestock.

(2) Except for the amount withheld under subsection (1), the taxes levied and the money collected pursuant to the provisions of 15-24-922 must be transmitted to the ~~state treasury~~ *department* by the county treasurer of each county, as provided in 15-1-504, but not later than July 1 following assessment. The county treasurer shall designate the amount received from the tax levied on sheep and the amount received from the tax levied on all other livestock and shall specify the separate amounts in the report to the ~~state treasurer~~ *department*. The money, when received by the ~~state treasurer~~ *department*, must be deposited in an account in the special revenue fund to the credit of the department of livestock. The money in the account must be kept separate from other funds received by the department of livestock."

Section 8. Section 15-36-324, MCA, is amended to read:

"15-36-324. Distribution of taxes — rules. (1) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) Except as provided in subsections (3) through (5), oil production taxes must be distributed as follows:

(a) The amount equal to 39.3% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (9).

(b) The remaining 60.7% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on qualifying production occurring during the first 12 months of production must be distributed as provided in subsection (10).

(4) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(b) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (9).

(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the first 10 barrels of stripper oil production wells must be distributed as provided in subsection (10).

(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper well exemption production from ~~pre-1985~~ *pre-1999* wells and ~~post-1985~~ *post-1999* wells must be distributed as provided in subsection (10).

(6) Except as provided in subsections (7) and (8), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (11).

(b) The remaining 86% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (6)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(7) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from wells occurring during the first 12 months of production must be distributed as provided in subsection (10).

(8) The amount equal to 100% of natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(9) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil production taxes specified in subsections (2)(a) and (4)(b), including late payment interest and penalty collected, as follows:

(a) 86.21% to the state general fund;

(b) 5.17% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 8.62% to be distributed as provided in 15-38-106(2).

(10) The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3), (4)(a), (5)(a), (5)(c), (7), and (8), including late payment interest and penalty collected, as follows:

(a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(b) 62.5% to be distributed as provided in 15-38-106(2).

(11) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:

(a) 76.8% to the state general fund;

(b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 14.5% to be distributed as provided in 15-38-106(2).

(12) (a) By the dates referred to in subsection (13), the department shall, except as provided in subsection (12)(b), calculate and distribute oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) to each eligible county in proportion to the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) that are attributable to production in that county.

(b) The department shall distribute 5% of the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) from pre-1999 wells to eligible counties in proportion to the underfunding that would have occurred from the tax liability distribution of pre-1985 oil and natural gas production taxes for production in calendar year 1997.

(c) Except as provided in subsection (12)(d), the county treasurer shall distribute the money received under subsection (12)(b) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(d) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (12)(c), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (12)(d)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(e) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (12)(e)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(f) The county treasurer shall distribute oil and natural gas production taxes received under subsection (12)(a) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The allocation to the county in subsection (12)(f) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(h) The money distributed in subsection (12)(f) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(i) The oil and natural gas production taxes distributed under subsection (12)(c) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the ~~state treasurer~~ *department.*

(j) The oil and natural gas production taxes distributed under subsection (12)(f) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the ~~state treasurer~~ *department.*

(k) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (12)(i) and (12)(j) is for the exclusive use and benefit of the county and school taxing units.

(13) The department shall remit the amounts to be distributed in subsection (12) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(14) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes and for county bonding purposes.

(15) (a) In the event that the board of oil and gas conservation revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board of oil and gas conservation for the expenses of the board.

(b) Before the department adopts a rule pursuant to subsection (15)(a), it shall present the proposed rule to the appropriate administrative rule review committee.

(16) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502."

Section 9. Section 20-9-212, MCA, is amended to read:

"**20-9-212. Duties of county treasurer.** The county treasurer of each county ~~shall~~:

(1) *must* receive and *shall* hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts that are entitled to a portion of the money according to the apportionments ordered by the county superintendent or by the superintendent of public instruction. A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax for elementary equalization;

(b) the basic county tax for high school equalization;

(c) the county tax in support of the transportation schedules;

(d) the county tax in support of the elementary and high school district retirement obligations; and

(e) any other county tax for schools, including the community colleges, that may be authorized by law and levied by the county commissioners.

(2) whenever requested, *shall* notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent or the superintendent of public instruction;

(3) *shall* keep a separate accounting of the receipts, expenditures, and cash balances for each fund;

(4) except as otherwise limited by law, *shall* pay all warrants properly drawn on the county or district school money;

(5) *must* receive all revenue collected by and for each district and *shall* deposit these receipts in the fund designated by law or by the district if a fund is not designated by law. Interest and penalties on delinquent school taxes must be credited to the same fund and district for which the original taxes were levied.

(6) *shall* send all revenue received for a joint district, part of which is situated in the county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months after that date until the end of the school fiscal year;

(7) at the direction of the trustees of a district, *shall* assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(8) *shall* register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(9) when directed by the trustees of a district, *shall* invest the money of the district within 3 working days of the direction;

(10) each month, *shall* give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, registered warrants, interest distribution, amounts and types of revenue received, and the cash balance;

(11) *shall* remit promptly to the ~~state treasurer~~ *department of revenue* receipts for the county tax for a vocational-technical program within a unit of the university system when levied by the board of county commissioners under the provisions of 20-25-439;

(12) *shall* invest the money received from the basic county taxes for elementary and high school equalization, the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation schedules within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to

account for the taxes received for the purposes specified in subsections (1)(a) through (1)(d).

(13) *shall* remit on a monthly basis to the ~~state treasurer~~ *department of revenue as provided* in ~~accordance with the provisions of~~ 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333, including all interest earned and excluding any amount required for high school out-of-county tuition under the provisions of 20-9-334, in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must be used as required in 20-9-331(1)(b) and 20-9-333(1)(b)."

Section 10. Section 20-9-331, MCA, is amended to read:

"20-9-331. Basic county tax for elementary equalization and other revenue for county equalization of elementary BASE funding program. (1) Subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204, for the purposes of elementary equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the elementary BASE funding programs of the school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the BASE funding programs of all elementary districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the ~~state treasurer~~ *department of revenue, as provided in 15-1-504,* for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be used for the equalization of the elementary BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the elementary county equalization fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703;

(g) oil and natural gas production taxes; and

(h) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-529, 61-3-537, 61-3-570, and 67-3-204."

Section 11. Section 20-9-333, MCA, is amended to read:

"20-9-333. Basic county tax for high school equalization and other revenue for county equalization of high school BASE funding program. (1) Subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204, for the purposes of high school equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the BASE funding programs of high school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation and the total of the BASE funding programs of all high school districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the ~~state treasurer~~ *department of revenue, as provided in 15-1-504,* for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be used for the equalization of the high school BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(c) gross proceeds taxes from coal under 15-23-703;

(d) oil and natural gas production taxes; and

(e) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-529, 61-3-537, 61-3-570, and 67-3-204."

Section 12. Section 20-9-334, MCA, is amended to read:

"**20-9-334. Out-of-county tuition obligations.** The county superintendent shall direct the county treasurer to deduct from the revenue available in the elementary and high school county equalization funds, prior to remittance of the funds to the ~~state treasurer~~ *department of revenue* under the provisions of 15-1-504 and 20-9-212, the amount required for the month to pay the county's obligation for elementary and high school out-of-county tuition under 20-5-324."

Section 13. Section 20-9-360, MCA, is amended to read:

"**20-9-360. State equalization aid levy.** Subject to 15-10-420, there is a levy of 40 mills imposed by the county commissioners of each county on all taxable property within the state, except property for which a tax or fee is required under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204. Proceeds of the levy must be remitted to the ~~state treasurer~~ *department of revenue, as provided in 15-1-504,* and must be deposited to the credit of the state general fund for state equalization aid to the public schools of Montana."

Section 14. Section 20-25-1007, MCA, is amended to read:

"**20-25-1007. Motorcycle registration fee — exemptions.** (1) A motorcycle safety training fee of $5 must be assessed on each motorcycle required by 61-3-301 to be registered for licensing.

(2) The county treasurer shall collect the fee and remit the fee to the ~~state treasurer~~ *department of revenue, as provided in 15-1-504,* for deposit in the state motorcycle safety account, as provided in 20-25-1002.

(3) Exempt from payment of the fee specified in subsection (1) are vehicles:

(a) leased or owned by the state or a county or municipality;

(b) used for transportation by a nonresident or migratory worker temporarily employed in agricultural work in this state; or

(c) displaying dealer or wholesaler plates, as provided in 61-4-102 and 61-4-125, while owned by a dealer or wholesaler."

Section 15. Section 23-2-507, MCA, is amended to read:

"**23-2-507. Penalty.** (1) Violations of any section of this part, except 23-2-526(3), unless otherwise specified, are a misdemeanor and shall be punishable by a fine of not less than $15 or more than $500 or *by* imprisonment *for a term* up to 6 months, or both. All fine and bond forfeitures, except those paid to a justice's court, must be transmitted to the ~~state treasurer, who shall deposit the fines and forfeitures~~ *department of revenue for deposit* in the general fund.

(2) If 23-2-525(4) is violated, 46-18-241 through 46-18-249 apply, except that the sentencing court shall order restitution and shall do so regardless of the court's disposition of the violator."

Section 16. Section 23-2-512, MCA, is amended to read:

"**23-2-512. Identification number.** (1) The owner of each motorboat, sailboat, or personal watercraft requiring numbering by this state shall file an application for number in the office of the county treasurer *in the county* where the motorboat, sailboat, or personal watercraft is owned, on forms prepared and furnished by the department of justice. The application must be signed by the owner of the motorboat, sailboat, or personal watercraft and be accompanied by a fee of $2.50. Any alteration, change, or false statement contained in the application will render the certificate of number void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the department of justice, stating the number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner.

(2) The applicant, upon the filing of the application, shall pay to the county treasurer the fee in lieu of tax required for a motorboat 10 feet in length or longer, a sailboat 12 feet in length or longer, or a personal watercraft for the current year of certification before the application for certification or recertification may be accepted by the county treasurer.

(3) ~~Should~~ *If* the ownership of a motorboat, sailboat, or personal watercraft ~~change~~ *changes*, a new application form with the certification fee must be filed within a reasonable time with the county treasurer and a new certificate of number assigned in the same manner as provided for in an original assignment of number.

(4) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this part by the department of justice must be in conformity.

(5) Every certificate of number and the license decals assigned under this part ~~continues~~ *continue* in effect for a period not to exceed 1 year unless terminated or discontinued in accordance with the provisions of this part. Certificates of number and license decals must show the date of expiration and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.

(6) Certificates of number expire on December 31 of each year and may not be in effect unless renewed under this part.

(7) In *the* event of transfer of ownership, the purchaser shall furnish the county treasurer notice within a reasonable time of the acquisition of all or any part of the purchaser's interest, other than the creation of a security interest, in a motorboat, sailboat, or personal watercraft numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat, sailboat, or personal watercraft. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat, sailboat, or personal watercraft. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat, sailboat, or personal watercraft does not terminate the certificate of number.

(8) A holder of a certificate of number shall notify the county treasurer within *a* reasonable time if the holder's address no longer conforms to the address appearing on the certificate and shall furnish the county treasurer with the new address. The department of justice may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(9) (a) The number assigned must be painted on or attached to each outboard side of the forward half of the motorboat, sailboat, or personal watercraft or, if there are no sides, at a corresponding location on both outboard sides of the foredeck of the motorboat, sailboat, or personal watercraft. The number assigned must read from left to right in Arabic numerals and block characters of good proportion at least 3 inches tall, excluding border or trim of a color that contrasts with the color of the background, and be so maintained as to be clearly visible and legible. The number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore. Numerals, letters, or devices, other than those used in connection with the identifying number issued, may not be placed in the proximity of the identifying number. Numerals, letters, or devices that might interfere with the ready identification of the motorboat, sailboat, or personal watercraft by its identifying number may not be carried in a manner that interferes with the motorboat's, sailboat's, or personal watercraft's identification. A number other than the number and license decal assigned to a motorboat, sailboat, or personal watercraft or granted reciprocity under this part may not be painted, attached, or otherwise displayed on either side of the forward half of the motorboat, sailboat, or personal watercraft.

(b) The certificate of number must be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat, sailboat, or personal watercraft whenever the motorboat, sailboat, or personal watercraft is on waters of this state.

(c) Boat liveries are not required to have the certificate of number on board each motorboat, sailboat, or personal watercraft, but a rental agreement must be carried on board livery motorboats, sailboats, or personal watercraft in place of the certificate of number.

(10) (a) Except as provided in subsection (10)(b), fees, other than the fee in lieu of tax, collected under this section must be transmitted to the ~~state treasurer, who shall~~ *department of revenue, as provided in 15-1-504, for* deposit ~~the fees~~ in the motorboat or sailboat certificate identification account of the state special revenue fund. ~~These~~ *The* fees must be used ~~only~~ for the administration and enforcement of this part~~, as amended~~.

(b) Of the fee collected under the provisions of subsection (1), 20% must be deposited by the ~~state treasurer~~ *department of revenue* in an account in the state special revenue fund to the credit of the department to be used to acquire and maintain marine sewage pumpout equipment and other boat facilities.

(11) An owner of a motorboat, sailboat, or personal watercraft ~~must~~ *shall* within a reasonable time notify the department of justice, giving the motorboat's, sailboat's, or personal watercraft's identifying number and the owner's name when the motorboat, sailboat, or personal watercraft is transferred, lost, destroyed, abandoned, or frauded or within 60 days after *a* change of *the* state of principal use or if a motorboat becomes documented as a vessel of the United States."

Section 17. Section 23-2-615, MCA, is amended to read:

"**23-2-615. Nonresident temporary-use permits — use of fees.** (1) The requirements pertaining to the nonresident temporary-snowmobile-use permit are as follows:

(a) Application for the issuance of the permit must be made at locations and upon forms prescribed by the department. The forms must include but are not limited to:

(i) the applicant's name and permanent address;

(ii) the make, model, year, and serial number of the snowmobile; and

(iii) an affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of $6, a nonresident temporary-snowmobile-use sticker must be issued. The sticker must be displayed in a conspicuous manner on the snowmobile.

(2) The temporary permit is valid for a consecutive 30-day period as designated by the permit.

(3) The permit is not proof of ownership, and a certificate of ownership may not be issued.

(4) A nonresident temporary-snowmobile-use permit is not required for a snowmobile that qualifies as a racing snowmobile under 23-2-622.

(5) All money collected by payment of fees under this section must be ~~turned over~~ *remitted* to the ~~state treasurer~~ *department of revenue* and placed in the state special revenue fund to the credit of the department ~~of fish, wildlife, and parks~~, with one-half to be used in administering this section and one-half to be used in the development, maintenance, and operation of snowmobile facilities.

(6) The failure to display the permit as required by this section or the making of false statements in obtaining the permit is a misdemeanor, punishable by a fine of not less than $25 or more than $100."

Section 18. Section 23-2-616, MCA, is amended to read:

"**23-2-616. Registration and decals — application and issuance — use of certain fees.** (1) Except for a snowmobile registered under 23-2-621, a snowmobile may not be operated on public lands by any person in Montana unless it has been registered and there is displayed in a conspicuous place on both sides of the cowl a decal as visual proof that the fee in lieu of property tax has been paid on it for the current year and the immediately previous year as required by 15-16-202.

(2) Application for registration must be made to the county treasurer upon forms to be furnished by the department of justice for this purpose, which may be obtained at the county treasurer's office in the county where the owner resides. The application ~~shall~~ *must* contain the following information:

(a) the name and address of the owner;

(b) the certificate of ownership number;

(c) the make of the snowmobile;

(d) the model name of the snowmobile;

(e) the year of manufacture;

(f) a statement evidencing payment of the fee in lieu of property tax as required by 15-16-202; and

(g) other information ~~as~~ *that* the department of justice may require.

(3) The application must be accompanied by a decal fee of $5, *by* a registration fee of 50 cents, and, if the snowmobile has previously been registered, by the registration certificate for the most recent year in which the snowmobile was registered. The treasurer shall sign the application and issue a registration receipt that must contain information considered necessary by the department of justice and a listing of fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(4) The county treasurer shall forward the signed application to the department of justice and shall issue to the applicant a decal in the style and design prescribed by the department of justice and of a different color than the preceding year, numbered in sequence.

(5) The county treasurer may not accept any application under this section until the applicant has paid the decal and registration fees and the fee in lieu of property tax on the snowmobile for the current year and the immediately previous year as required by 15-16-202.

(6) *(a)* All money collected from payment of the decal fees and all interest accruing from use of this money must be forwarded to the ~~state treasurer and placed~~ *department of revenue, as provided in 15-1-504, for deposit* in the state special revenue fund to the credit of the department, with $2.50 designated for use in enforcing the purposes of 23-2-601 through 23-2-644 and $2.50 designated for use in the development, maintenance, and operation of snowmobile facilities.

(b) All money collected from payment of the registration fee must be forwarded to the ~~state treasurer and deposited~~ *department of revenue, as provided in 15-1-504, for deposit* in the general fund.

(7) The county treasurer shall credit all fees in lieu of tax collected on snowmobiles to the county motor vehicle suspense fund provided for in 61-3-509."

Section 19. Section 23-2-644, MCA, is amended to read:

"**23-2-644. Deposit of funds from fines and forfeitures.** All fines and forfeitures collected under 23-2-601 through 23-2-644 relating to snowmobiles, except those collected by a justice's court, must be transmitted to the ~~state treasurer, who shall~~ *department of revenue for* deposit ~~the fines and forfeitures~~ in the state general fund."

Section 20. Section 23-2-804, MCA, is amended to read:

"**23-2-804. Decal required — fee — disposition.** (1) Except as provided in 23-2-802, an off-highway vehicle may not be operated by any person for off-road recreation on public lands in Montana unless there is displayed in a conspicuous place a decal, in a form prescribed by the department of justice and issued by the county treasurer, as visual proof that the following fees have been paid for the current year:

(a) (i) the fee in lieu of tax provided for in 23-2-803; and

(ii) the registration fee provided for in 23-2-817; or

(b) when the vehicle will be used as provided in this section, the registration and taxation fees for motorcycles and quadricycles subject to licensure under

61-3-321, as evidenced by presentation of an owner's certificate of registration and payment receipt; and

(c) the off-highway decal fee provided for in this section.

(2) The decal ~~will~~ *must* be serially numbered and have the expiration date of December 31 of the appropriate year printed ~~thereon~~ *on the decal.*

(3) The off-highway decal fee is $5~~,~~. ~~which the~~ *The* county treasurer shall collect and transmit *the fee* to the ~~state treasurer, who shall~~ *department of revenue, as provided in 15-1-504, for* deposit ~~the money~~ in an interest-bearing account in the state special revenue fund to the credit of the department of fish, wildlife, and parks. The decal fee and the interest and income to the account must be spent as follows:

(a) 40% must be used to enforce the provisions of this section; and

(b) 60% must be spent to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreation use ~~except that:~~

~~(i) no money may be spent for this purpose before January 1, 1991; and~~

~~(ii) evaluation for development of a program plan must begin January 1, 1991~~."

Section 21. Section 23-2-807, MCA, is amended to read:

"**23-2-807. Penalty — disposition.** (1) The failure to display a current decal indicating that the fee in lieu of tax, registration fees, decal fees, and, when applicable, taxes on licensed vehicles have been paid on the off-highway vehicle for the current year, as provided in 23-2-804, is a misdemeanor punishable by a fine of $50.

(2) All fines collected under this section must be transmitted to the ~~state treasurer, who shall~~ *department of revenue for* deposit ~~the money~~ in the state general fund."

Section 22. Section 23-2-814, MCA, is amended to read:

"**23-2-814. Nonresident temporary-use permits — use of fees.** (1) An off-highway vehicle that is owned by a nonresident and that is not registered in another state of the United States or in another country may not be operated by a person in Montana unless a nonresident temporary-use permit is obtained.

(2) The requirements pertaining to a nonresident temporary-use permit for an off-highway vehicle are as follows:

(a) Application for the issuance of the permit must be made at locations and upon forms prescribed by the department of fish, wildlife, and parks. The forms must include but are not limited to:

(i) the applicant's name and permanent address;

(ii) the make, model, year, and serial number of the off-highway vehicle; and

(iii) an affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of $5, a nonresident off-highway vehicle temporary-use sticker must be issued. The sticker must be displayed in a conspicuous manner on the off-highway vehicle. The sticker is the temporary-use permit.

(3) The temporary-use permit is valid for the calendar year designated on the permit.

(4) The permit is not proof of ownership, and a certificate of ownership may not be issued.

(5) All money collected by payment of fees under this section must be transmitted to the ~~state treasurer, who shall~~ *department of revenue for* deposit ~~the money~~ in the account created under 23-2-804(3). The money collected by payment of fees under this section must be spent as follows:

(a) 40% to be used in administering this section; and

(b) 60% to be used to plan, develop, and implement a comprehensive program for appropriate off-highway vehicle recreation use.

(6) Failure to display the permit as required by this section or making false statements in obtaining the permit is a misdemeanor and is punishable by a fine of not less than $25 or more than $100. All fines collected under this section must be transmitted to the ~~state treasurer, who shall~~ *department of revenue for* deposit ~~the money~~ in the account created under 23-2-804(3). Fifty percent of this money and the interest earned on it must be used for off-highway vehicle safety and education. The remaining 50% of the money and the interest earned on it must be used for enforcement."

Section 23. Section 45-9-130, MCA, is amended to read:

"**45-9-130. Mandatory fine for possession and storage of dangerous drugs — disposition of proceeds.** (1) In addition to the punishments and fines set forth in this part, the court shall fine each person found to have possessed or stored dangerous drugs 35% of the market value of the drugs as determined by the court.

(2) The fines collected pursuant to subsection (1) during each calendar year must be transmitted by the clerk of court to the ~~state treasurer~~ *department of revenue* no later than 10 days following the end of the calendar year. The ~~state treasurer~~ *department* shall deposit the fines in the state general fund."

Section 24. Section 50-52-105, MCA, is amended to read:

"**50-52-105. Violation of chapter a misdemeanor.** (1) A person violating a provision of this chapter or a rule made under it ~~shall be~~ *is* guilty of a misdemeanor and upon conviction shall be fined *an amount* not less than $50 or more than $100 for the first offense and *an amount* not less than $75 or more than $200 for the second offense, and for the third and subsequent offenses, ~~he shall~~ *the person shall* be punished by a fine of not less than $200 and *by* imprisonment in the county jail *for a term* not to exceed 90 days.

(2) Fines, except justice's court fines, ~~shall~~ *must* be paid to the county treasurer of the county in which the establishment is located. The county treasurer shall send all fines collected to the ~~state treasurer~~ *department of revenue, as provided in 15-1-504,* for deposit in the state general fund."

Section 25. Section 61-3-321, MCA, is amended to read:

"**61-3-321. Registration fees of vehicles — certain vehicles exempt from license or registration fees — disposition of fees.** (1) Registration or license fees must be paid upon registration or reregistration of motor vehicles, trailers, housetrailers, and semitrailers, in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under (other than motortrucks), $5;

(b) motor vehicles weighing over 2,850 pounds (other than motortrucks), $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles and quadricycles, $2;

(e) tractors or trucks, $10;

(f) buses, which are classed as motortrucks, licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds declared weight and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds declared weight (except housetrailers), $5;

(i) trailers and semitrailers over 6,000 pounds declared weight, $10, except trailers and semitrailers registered in other jurisdictions through a proportional registration agreement;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or bridge materials, new and secondhand, $15 annually, regardless of size or capacity.

(2) All rates are 25% higher for motor vehicles, trailers, and semitrailers that are not equipped with pneumatic tires.

(3) "Tractor", as specified in this section, means any motor vehicle, except a passenger car, that is used for towing a trailer or semitrailer.

(4) If a motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee except for trailers or semitrailers registered as provided in 61-3-721(6).

(5) An additional fee of $5.25 a year for each registration of a vehicle, except trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, must be collected as a registration fee. ~~Revenue from this fee must be forwarded by the respective~~ *The* county ~~treasurers~~ *treasurer shall forward the fee* to the ~~state treasurer~~ *department of revenue, as provided in 15-1-504,* for deposit in the general fund. The department shall pay an amount equal to 25 cents from each motor vehicle registration fee from the general fund to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(6) A fee of $2 for each set of new number plates must be collected when number plates provided for under 61-3-332(3) are issued. Revenue from this fee must be deposited as provided in subsection (5).

(7) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

(8) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.

(9) A person qualifying under 61-3-332(10)(d) or 61-3-504 is exempt from the fees required under subsections (1) and (5) of this section. (See compiler's comments for contingent termination of certain text.)"

Section 26. Section 61-3-465, MCA, is amended to read:

"61-3-465. Issuance — application — additional fee — disposition. (1) The department shall issue or renew collegiate license plates upon receipt of an application that shows:

(a) compliance with 61-3-303, 61-3-311, and 61-3-312; and

(b) payment to the county treasurer of:

(i) an initial application and manufacturing fee of $2.50, when required; and

(ii) an annual scholarship donation of $20 for the benefit of the institution named in the application.

(2) Once each month, the county treasurer shall, *as provided in 15-1-504,* transfer to the ~~state treasurer~~ *department of revenue* the total of the amounts collected for:

(a) the initial application and manufacturing fee for deposit in the Montana state prison industries account in the proprietary fund for appropriation by the legislature to pay the cost of manufacturing collegiate license plates; and

(b) scholarship donations provided for in subsection (1)(b)(ii), along with a schedule showing the number of collegiate license plates issued and the total donations received for the benefit of each institution.

(3) Once each month, the ~~state treasurer~~ *department of revenue* shall distribute to the student academic scholarship fund or foundation of each institution an amount equal to the total donations credited to that institution and transferred to the ~~state treasurer~~ *department of revenue* by the county treasurers during the preceding month."

Section 27. Section 61-3-467, MCA, is amended to read:

"61-3-467. Authorization to receive and transmit donations. As provided in 61-3-465 and notwithstanding any other provisions of Title 7, Title 17, or this title:

(1) the county treasurer ~~shall~~ *must* receive the annual scholarship donations provided for in 61-3-465 and once each month transmit, *as provided in 15-1-504,* those donations to the ~~state treasurer~~ *department of revenue*; and

(2) the ~~state treasurer~~ *department of revenue* shall accept the annual scholarship donations and once each month distribute the accumulated proceeds to the beneficiary institutions specified by and according to the totals contained in the county treasurers' reports."

Section 28. Section 61-3-509, MCA, is amended to read:

"61-3-509. Disposition of ~~taxes~~ *fees*. (1) All registration fees imposed by 61-3-561 from light vehicles, all registration fees imposed by 61-3-522 from motor homes, all fees in lieu of tax imposed by 61-3-527 from motorcycles and quadricycles, and all fees imposed by 61-3-529 from buses, motor vehicles having a manufacturer's rated capacity of more than 1 ton, and truck tractors, for which a license is sought and an original application for title that includes a manufacturer's statement of origin is made, must be remitted to the ~~state~~

~~treasurer~~ *department of revenue* every 30 days. The ~~state treasurer~~ *department of revenue* shall credit the payments to the highway restricted state special revenue account.

(2) Except as provided in subsections (1) and (3), the county treasurer shall, after deducting the district court fee, credit all taxes on motor vehicles, registration fees on light vehicles, and fees in lieu of tax on motorcycles, quadricycles, motor homes, travel trailers, campers, trailers, pole trailers, semitrailers, buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors collected under 61-3-521, 61-3-527, 61-3-529, 61-3-537, and 61-3-560 through 61-3-562 to a motor vehicle suspense fund. At some time between March 1 and March 10 of each year and every 60 days after that date, the county treasurer shall distribute the money in the motor vehicle suspense fund. Except for registration fees collected under 61-3-560 through 61-3-562, the county treasurer shall distribute the money in the fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed. For money in the fund collected under 61-3-527 and 61-3-560 through 61-3-562, the county treasurer shall disregard the statewide mills levied for the university system, county elementary and high school equalization under 20-9-331 and 20-9-333, the mills levied for state equalization aid under 20-9-360, and the mills levied for state assumption of public assistance under 53-2-813 in determining distribution proportions of the money and may not distribute money collected under 61-3-527 and 61-3-560 through 61-3-562 to the state for those levies.

(3) The county treasurer shall deduct as a district court fee 10% of the amount of the registration fee collected on light vehicles under 61-3-560 through 61-3-562. The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward the amount in the account to the ~~state treasurer~~ *department of revenue* at the time that the county treasurer distributes money from the motor vehicle suspense fund. The ~~state treasurer~~ *department of revenue* shall credit amounts received under this subsection to the state special revenue fund to be used for purposes of state funding of district court expenses as provided in 3-5-901."

Section 29. Section 61-3-511, MCA, is amended to read:

"**61-3-511. County motor vehicle computer fee.** (1) A county motor vehicle computer fee of $1 must be assessed on the annual registration or reregistration for each of the following:

(a) motor vehicles subject to registration or reregistration under Title 61, chapter 3;

(b) boats subject to registration or reregistration under Title 23, chapter 2, part 5;

(c) snowmobiles subject to registration or reregistration under Title 23, chapter 2, part 6; and

(d) off-highway vehicles subject to registration or reregistration under Title 23, chapter 2, part 8.

(2) The fee must be collected by the county treasurer and forwarded to the ~~state treasurer~~ *department of revenue, as provided in 15-1-504,* for deposit in the state general fund."

Section 30. Section 61-5-121, MCA, is amended to read:

"**61-5-121. Disposition of fees.** (1) The disposition of the fees from driver's licenses, motorcycle endorsements, commercial driver's licenses, and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 16.7% of each driver's license fee and 25% of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 2.5% of each driver's license fee and 3.75% of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state general fund.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 3.34% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state general fund.

(d) The amount of 26.25% of each driver's license fee and 8.75% of each duplicate driver's license fee must be deposited into the state traffic education account.

(e) In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), the amount of 54.55% of each driver's license fee and 62.5% of each duplicate driver's license fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 2.5% of each commercial driver's license fee must be deposited into the county general fund, otherwise all of the fee must be deposited into the state general fund.

(g) The amount of 63.46% of each motorcycle endorsement fee must be deposited into the state motorcycle safety account in the state special revenue fund, and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. The county treasurer or agent shall then remit to the ~~state treasurer~~ *department of revenue* all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund, as provided in subsection (1)(a), and the state general fund. The ~~state treasurer~~ *department of revenue*, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the ~~state treasurer~~ *department of revenue*, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, and the state general fund. The ~~state treasurer~~ *department of* *revenue*, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g)."

Section 31. Section 61-10-126, MCA, is amended to read:

"**61-10-126. Deposit of fees.** All fees collected under 61-10-101 through 61-10-104 and 61-10-106 through 61-10-125 must be forwarded to the ~~state treasurer~~ *department of revenue* for deposit in the highway nonrestricted account in the state special revenue fund."

Section 32. Section 61-10-148, MCA, is amended to read:

"**61-10-148. Disposition of fines and forfeited bonds.** (1) Except as provided in 61-12-701 and subsection (2) of this section, one-half of all the money collected as fines and forfeited bonds for violations of Title 61, chapter 10, must be remitted monthly by the county treasurer to the ~~state treasurer~~ *department of revenue, as provided in 15-1-504,* for deposit in the state general fund. The remaining half, less the deductions required by law, must be deposited in the county road fund. This subsection does not apply to fines and forfeited bonds paid to justices' courts.

(2) If the apprehension or arrest was for a violation of Title 61, chapter 10, and if the offense occurred on a road or highway not included under the provisions of 60-2-128 and 60-2-203, all money collected as fines and forfeited bonds must be distributed to the county treasurer for deposit in the county road fund."

Section 33. Section 61-10-225, MCA, is amended to read:

"**61-10-225. Disposition of fees collected by county treasurer.** At the time of collecting the fees provided for in 61-10-222, each county treasurer shall retain 5% of the fees for the cost of administration and for deposit in the general fund of the county. The remaining 95% must be remitted monthly to the ~~state treasurer~~ *department of revenue, as provided in 15-1-504,* for deposit to the credit of the department of transportation in the highway revenue account. The remittance must be made on forms furnished to the county treasurer by the department *of transportation*."

Section 34. Section 61-12-701, MCA, is amended to read:

"**61-12-701. Disposition of fines and forfeitures.** Except as provided in 61-10-148(2), all fines and forfeitures collected in any court, except a justice's court, for violation of the laws and regulations relating to the use of state highways and the operation of vehicles ~~thereon~~ *on state highways*, if the apprehension or arrest was by a highway patrol officer, must be paid to the ~~state treasurer and by him credited~~ *department of revenue for credit* to the *state* general fund ~~of the state~~ or, if the apprehension or arrest was by a sheriff or deputy sheriff, must be paid to the county treasurer for deposit in the county general fund, except for that portion of the fines otherwise allocated by law, which must be paid into the appropriate accounts in the state special revenue fund."

Section 35. Section 67-1-303, MCA, is amended to read:

"**67-1-303. Airline property tax — state airports.** (1) Within 30 days of receipt, the county treasurer shall transmit to the ~~state treasury~~ *department of revenue* 90% of the property tax collected on property of airline companies by reason of a state airport being located in the county.

(2) The ~~state treasurer~~ *department of revenue* shall place the money in the state special revenue fund to the credit of the department of transportation for the purposes provided for in 67-1-301(4)(a)(i)."

Section 36. Section 72-16-912, MCA, is amended to read:

"**72-16-912. Collection and deposit of tax.** The tax imposed ~~herein shall~~ *under 72-16-904 must* be collected by the ~~several~~ county ~~treasurers~~ *treasurer for payment, as provided under 72-16-920,* or the *tax must be collected by the* department of revenue. ~~for deposit with the state treasurer~~ *The department shall deposit all taxes and interest in the state general fund.*"

Section 37. Section 72-16-920, MCA, is amended to read:

"**72-16-920. County treasurer — monthly report — payment of collections to ~~state treasurer~~ *department* — interest on unpaid amounts.** Between the 1st and 20th days of each month, each county treasurer shall make a report under oath to the department of revenue, listing all payments received under the estate tax laws during the preceding month and stating for what estate, by whom *paid,* and when paid. The form of the report must be prescribed by the department. The county treasurer shall at the same time pay the ~~state treasurer~~ *department* all the payments received under the estate tax laws and not previously paid to the ~~state treasurer~~ *department.* For payments collected but not paid to the ~~state treasurer~~ *department* within 5 days from the time required, the county treasurer shall pay interest at the rate of 10% a year."

Section 38. Section 75-10-532, MCA, is amended to read:

"**75-10-532. Disposition of money collected.** All money received from the sale of the junk vehicles or from recycling of the material and all motor vehicle wrecking facility license fees and fees collected as motor vehicle disposal fees must be ~~deposited with~~ *remitted to* the ~~state treasurer~~ *department of revenue, as provided in 15-1-504. The money* ~~to~~ *must* be used for the control, collection, recycling, and disposal of junk vehicles and component parts and, to the extent the legislature appropriates funds expressly and solely for this purpose, for the removal of abandoned vehicles."

Section 39. Section 76-13-114, MCA, is amended to read:

"**76-13-114. Disposition of fines.** Fines collected in a court of the state under ~~this part or~~ part 2 *or this part,* except those collected in a justice's court, must be transferred to the ~~state treasurer~~ *department of revenue* for deposit in the state special revenue fund. ~~Whenever~~ *When* a person is convicted in any court of a violation of ~~this part or~~ part 2 *or this part,* the court may levy and collect as costs in the case the amount necessary to compensate the county for the expenditures made in and for the prosecution of the offender. These costs when collected, except those collected in a justice's court, must be deposited by the court with the proper county treasurer for the benefit of the county."

Section 40. Section 77-1-117, MCA, is amended to read:

"**77-1-117. Disposition of fines.** Unless otherwise provided, all money received as fines, fees, and forfeitures under this title or as penalties for the violation of any of the land laws of this state, except money received by a justice's court, ~~shall~~ *must* be paid to the ~~state treasurer and by him deposited to the credit of~~ *department of revenue for deposit in* the general fund."

Section 41. Section 80-2-230, MCA, is amended to read:

"**80-2-230. Collection of levies — release of lien.** (1) ~~The~~ *Subject to subsection (2), each* county treasurer ~~in each county in the state~~ shall collect all levies made under this part in the same manner as other property taxes are collected and shall keep all ~~moneys~~ *money* collected ~~by him or for him~~ for hail insurance in a separate ~~fund to be known as the~~ hail insurance fund. ~~and~~ *The county treasurer shall* remit ~~the same to the state treasurer in the same manner~~ *money in the fund to the department of revenue,* as provided ~~by law for the remittance of other moneys due to the state~~ *under 15-1-504.* ~~All county treasurers shall use due diligence in making the collections of the levies provided herein. Also the~~ *The* board may ~~furnish assistance needed~~ *assist the county treasurer* at any time in making collections or may take over the collection of any levy at any time, depositing any collections ~~therefrom~~ with the *county* treasurer of the county where the levy ~~therefor~~ was made.

(2) All insurance levies, whether levied against land or in the form of special assessments secured by crop liens, ~~shall be~~ *are* payable in full, and not in semiannual payments, on or before November 30 of each year in which ~~such~~ *the* levies are made.

(3) ~~Whenever~~ *When* the amount due on any hail insurance secured by a crop lien is paid, the *county* treasurer shall promptly endorse on the lien on file in the office of the county clerk and recorder the amount paid ~~thereon~~ *on the lien* with the date of payment. ~~and such~~ *The* endorsement ~~shall be~~ *is considered* a satisfaction and release of ~~such~~ *the* lien."

Section 42. Section 80-7-704, MCA, is amended to read:

"**80-7-704. Disposition of fines and inspection fees.** All fines levied as provided in 80-7-703, except fines paid to a justice's court, and all fees collected from inspections ~~shall~~ *must* be deposited with the ~~state treasurer~~ *department of revenue* to the credit of the state special revenue fund for the use of the department for the purpose of administering and enforcing 80-7-701 through 80-7-704."

Section 43. Section 81-7-118, MCA, is amended to read:

"**81-7-118. (Temporary) Levy of tax for purpose of paying bounty claims — limitation on levy.** The department of revenue shall annually prescribe the levy recommended by the department to be made against livestock of all classes for paying for the destruction of wild animals killed in this state. The tax in any 1 year may not exceed 7.5 mills on the taxable value of the livestock. The money received must be used only for the payment of claims approved by the department for the destruction of wild animals and for the administration of 81-7-111 through 81-7-118 and 81-7-120 through 81-7-122. The money received for the taxes levied must be sent annually with other taxes to the ~~state treasurer~~ *department of revenue* by the county treasurer of each county. When the money is received by the ~~state treasurer~~ *department of revenue*, it must be placed in the state special revenue fund and may then be paid out on claims approved under the law governing the payment of claims.

81-7-118. (Effective on occurrence of contingency) Levy of tax for purpose of paying bounty claims — limitation on levy. The department of revenue shall annually prescribe the levy recommended by the department to be made against livestock of all classes for paying for the destruction of predatory animals killed in this state. The tax in any 1 year may not exceed 7.5 mills on the taxable value of the livestock. The money received must be used only for the payment of claims approved by the department for the destruction of predatory animals and for the administration of 81-7-111 through 81-7-118 and 81-7-120 through 81-7-122. The money received for the taxes levied must be sent annually with other taxes to the ~~state treasurer~~ *department of revenue* by the county treasurer of each county. When the money is received by the ~~state treasurer~~ *department of revenue*, it must be placed in the state special revenue fund and may then be paid out on claims approved under the law governing the payment of claims."

Section 44. Section 87-1-114, MCA, is amended to read:

"87-1-114. Disposition of proceeds. (1) Except as provided in subsection (2), all money collected by a court pursuant to 87-1-111 through 87-1-113 and 87-1-115 must be remitted to the ~~state treasurer~~ *department of revenue* for deposit in the state special revenue fund account to the credit of the department for hunter education purposes or for enforcement.

(2) Money collected pursuant to subsection (1) in excess of $60,000 annually must be remitted to the ~~state treasurer~~ *department of revenue* for deposit in the state general fund."

Section 45. Section 87-1-601, MCA, is amended to read:

"87-1-601. Use of fish and game money. (1) (a) Except as provided in subsection (7), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must be turned over to the ~~state treasurer~~ *department of revenue* and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-412, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) The money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the ~~state treasurer~~ *department of revenue* and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) Money received by the department from the sale of surplus real property; from exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and from leases of interests in department real property not contemplated at the time of acquisition must be deposited in an account within the nonexpendable trust fund of the state treasury. The interest derived from the fund, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt.

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(8) The ~~state treasurer~~ *department of revenue* shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102."

Section 46. Section 87-4-808, MCA, is amended to read:

"**87-4-808. Fines, bonds, penalties, and fees.** Fines, bonds, or penalties, except those obtained by a justice's court, shall be administered and disposed of in accordance with the provisions of 87-1-601. Fees obtained under this part ~~shall~~ *must* be deposited with the ~~state treasurer~~ *department of revenue* and credited to the state special revenue fund, fish and game account."

Section 47. Code commissioner instruction. In legislation enacted by the 2001 legislature, the code commissioner is instructed to change any reference to the state treasurer in regard to money belonging to the state and remitted to the state by county treasurers or by any other local entity to an appropriate reference to the department of revenue.

Section 48. Effective date. [This act] is effective July 1, 2001.

Section 49. Applicability. [This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001.

Approved April 16, 2001

CHAPTER NO. 258

[SB 290]

AN ACT ALLOWING CERTIFIED ADVANCED PRACTICE REGISTERED NURSES TO PROVIDE MEDICAL CERTIFICATION OF A CAUSE OF DEATH ON A DEATH CERTIFICATE; AND AMENDING SECTIONS 50-15-101, 50-15-403, 50-15-404, AND 50-15-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-15-101, MCA, is amended to read:

"**50-15-101. Definitions.** Unless the context requires otherwise, in parts 1 through 4, the following definitions apply:

(1) "Advanced practice registered nurse" means an individual who has been certified as an advanced practice registered nurse as provided in 37-8-202.

~~(1)~~*(2)* "Dead body" means a human body or parts of a human body from which it reasonably may be concluded that death occurred.

~~(2)~~*(3)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(3)~~*(4)* "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

~~(4)~~*(5)* "Fetal death" means death of the fetus prior to the complete expulsion or extraction from its mother as a product of conception, notwithstanding the duration of pregnancy. The death is indicated by the fact that after expulsion or extraction, the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

~~(5)~~*(6)* "Final disposition" means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

~~(6)~~*(7)* "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in 40-1-402.

~~(7)~~*(8)* "Live birth" means the complete expulsion or extraction from the mother as a product of conception, notwithstanding the duration of pregnancy. The birth is indicated by the fact that after expulsion or extraction, the child breathes or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

~~(8)~~*(9)* "Local registrar" means a person appointed by the department to act as its agent in administering this chapter in the area set forth in the letter of appointment.

~~(9)~~*(10)* "Person in charge of disposition of a dead body" means a person who places or causes a dead body or the ashes after cremation to be placed in a grave, vault, urn, or other receptacle or otherwise disposes of the body or fetus and who is a funeral director licensed under Title 37, chapter 19, an employee acting for a funeral director, or a person who first assumes custody of a dead body or fetus.

~~(10)~~*(11)* "Physician" means a person legally authorized to practice medicine in this state.

~~(11)~~*(12)* "Registration" means the process by which vital records are completed, filed, and incorporated into the official records of the department.

~~(12)~~*(13)* "Research" means a systematic investigation designed primarily to develop or contribute to generalizable knowledge.

~~(13)~~*(14)* "System of vital statistics" means the registration, collection, preservation, amendment, and certification of vital records. The term includes the collection of reports required by this chapter and related activities, including the tabulation, analysis, publication, and dissemination of vital statistics.

~~(14)~~*(15)* "Vital records" means certificates or reports of birth, death, fetal death, marriage, and dissolution of marriage and related reports.

~~(15)~~*(16)* "Vital statistics" means the data derived from certificates or reports of birth, death, fetal death, induced termination of pregnancy, marriage, and dissolution of marriage and related reports."

Section 2. Section 50-15-403, MCA, is amended to read:

"**50-15-403. Preparation and filing of death or fetal death certificate.** (1) A person in charge of disposition of a dead body or fetus that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of gestation at death shall obtain personal data on the deceased[, including the deceased's social security number, if any,] or, in the case of a fetal death, on the parents that is required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate.

(2) The person in charge of disposition of the dead body or fetus shall present the death certificate to the certifying physician, *the certifying advanced practice registered nurse,* or the coroner having jurisdiction for medical certification of the cause of death. The medical certification must be completed by the physician, *the advanced practice registered nurse,* or the coroner within the timeframe established by the department by rule. The person in charge of disposition shall obtain the completed certification of the cause of death from the physician, *the advanced practice registered nurse,* or the coroner and shall, within the time that the department may prescribe by rule, file the death or fetal death certificate with the local registrar in the registration area where the death occurred or, if the place of death is unknown, where the dead body was discovered.

(3) If a dead body is found in this state but the place of death is unknown, the place where the body is found must be shown as the place of death on the death certificate. If the date of death is unknown, then the approximate date must be entered on the certificate. If the date cannot be approximated, the date that the body was found must be entered as the date of death, and the certificate must indicate that fact.

(4) When a death occurs in a moving vehicle, as defined in 45-2-101, in the United States and the body is first removed from the vehicle in this state, the death must be registered in this state and the place where the body is first removed is considered the place of death. When a death occurs in a moving vehicle while in international air space or in a foreign country or its air space and the body is first removed from the vehicle in this state, the death must be registered in this state, but the actual place of death, insofar as it can be determined, must be entered on the death certificate. (Bracketed language terminates on occurrence of contingency—sec. 3(2), Ch. 27, L. 1999.)"

Section 3. Section 50-15-404, MCA, is amended to read:

"**50-15-404. Preparation of certificate when death not medically attended.** (1) If the death or fetal death occurred without medical attendance or the physician *or advanced practice registered nurse* last in attendance failed to sign the death certificate, the local registrar may complete the certificate on the basis of information received from persons having knowledge of the facts.

(2) If it appears the death or fetal death resulted from other than natural causes, the local registrar shall notify the coroner and the state medical examiner for investigation and certification."

Section 4. Section 50-15-405, MCA, is amended to read:

"50-15-405. Authorization for removal of body from place of death. (1) Except as provided in subsection (2), a dead body may be removed from the place of death only upon the written authorization or oral authorization, which must be reduced to writing within 24 hours, of the physician in attendance at death or the physician's designee, *the advanced practice registered nurse in attendance at death,* the coroner having jurisdiction, or a mortician licensed under 37-19-302.

(2) If the death requires inquiry under 46-4-122, the written authorization may only be granted by the coroner having jurisdiction or the coroner's designee or by the state medical examiner if the coroner fails to act. However, when the only reason for inquiry under 46-4-122 is that the body is to be cremated, the coroner may grant oral authorization for cremation of the body, which must be reduced to writing as specified under subsection (1) by the coroner.

(3) The written authorization to move a dead body or, when applicable, to cremate a dead body must be made in quadruplicate on a form provided by the department. The person in charge of disposition of the dead body, the coroner having jurisdiction, and the local registrar must each be provided with and retain a copy of the authorization. A fourth copy may accompany the body to final disposition, as necessary.

(4) A written authorization issued under this section permits removal, transportation, and final disposition of a dead body."

Approved April 16, 2001

CHAPTER NO. 259

[SB 354]

AN ACT PROHIBITING THE STATE BOARD OF LAND COMMISSIONERS AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM DESIGNATING, TREATING, OR DISPOSING OF ANY INTEREST IN STATE FOREST LANDS FOR PRESERVATION PURPOSES PRIOR TO OBTAINING THE FULL MARKET VALUE OF THE FOREGONE USES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, no interest in state trust lands or proceeds may be diverted from the trust without payment of the full market value of that use to the trust pursuant to section 11 of the state's Enabling Act and Article X, sections 3 and 11, of the Montana Constitution; and

WHEREAS, the Montana Supreme Court, in Montanans for the Responsible Use of the School Trust v. State, 296 Mont. 402, 989 P.2d 800 (1999), held that state trust land could not be held idle without the production of revenue pending the arbitration of lease improvements and referenced an earlier Supreme Court ruling that declared that a "trustee must act with the utmost good faith towards the beneficiary, and may not act in his own interest, or in the interest of a third person"; and

WHEREAS, Attorney General Robert Woodahl, in an opinion issued on July 7, 1976, 36 A.G. Op. 92, held that in order for the state to avoid a breach of trust under the Enabling Act and the Montana Constitution, the state is required to actually compensate the state school trust with funds for the full appraised value of any state trust lands designated or exchanged for natural areas pursuant to the Montana Natural Areas Act of 1974.

Be it enacted by the Legislature of the State of Montana:

Section 1. State forest lands — deferral of management prohibited. The board and the department are prohibited from designating, treating, or disposing of any interest in state forest lands for the preservation or nonuse of these lands prior to obtaining funds for the affected beneficiary equal to the full market value of that designation, treatment, or disposition. Unless the full market value of the property interest or of the revenue foregone is obtained, the board and the department are prohibited from either temporarily or permanently designating, treating, or disposing of any interest in any state forest lands for the following purposes:

(1) as a natural area pursuant to Title 76, chapter 12, part 1, or as otherwise provided for by law;

(2) as open-space land as defined in 76-6-104;

(3) for old growth timber preservation; and

(4) as a wildlife management area.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 77, chapter 5, part 1, and the provisions of Title 77, chapter 5, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2001

CHAPTER NO. 260

[HB 261]

AN ACT CREATING THE OFFENSE OF OPERATION OF AN UNLAWFUL CLANDESTINE LABORATORY FOR THE CRIMINAL PRODUCTION OR MANUFACTURE OF DANGEROUS DRUGS; PROVIDING PENALTIES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 and 2], the following definitions apply:

(1) "Booby trap" means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of a person making contact with the device. "Booby trap" includes:

(a) guns, ammunition, or explosive devices that are attached to trip wires or other triggering mechanisms;

(b) sharpened stakes, nails, spikes, electrical devices, lines, or wires with hooks attached; and

(c) devices for the production of toxic fumes or gases.

(2) "Equipment" or "laboratory equipment" means all products, components, or materials of any kind when used, intended for use, or designed for use in the manufacture, preparation, production, compounding, conversion, or processing of a dangerous drug as defined in 50-32-101. "Equipment" or "laboratory equipment" includes but is not limited to:

(a) a reaction vessel;

(b) a separatory funnel or its equivalent;

(c) a glass condensor;

(d) an analytical balance or scale; or

(e) a heating mantle or other heat source.

(3) "Precursor to dangerous drugs" means any material, compound, mixture, or preparation that contains any combination of the items listed in 45-9-107(1), except as exempted by 45-9-108.

Section 2. Operation of unlawful clandestine laboratory — penalties. (1) A person commits the offense of operation of an unlawful clandestine laboratory if the person purposely or knowingly engages in:

(a) the procurement, possession, or use of chemicals, precursors to dangerous drugs, supplies, equipment, or a laboratory location for the criminal production or manufacture of dangerous drugs as prohibited by 45-9-110;

(b) the transportation of or arranging for the transportation of chemicals, precursors to dangerous drugs, supplies, or equipment for the criminal production or manufacture of dangerous drugs as prohibited by 45-9-110; or

(c) the setting up of equipment or supplies in preparation for the criminal production or manufacture of dangerous drugs as prohibited by 45-9-110.

(2) Except as provided in subsections (3) and (4), a person convicted of operation of an unlawful clandestine laboratory shall be fined an amount not to exceed $25,000, be imprisoned in a state prison for a term not to exceed 20 years, or both.

(3) A person convicted of operation of an unlawful clandestine laboratory shall be fined an amount not to exceed $50,000, be imprisoned in a state prison for a term not to exceed 25 years, or both, if [section 1 of House Bill No. 521] is complied with and the operation of an unlawful clandestine laboratory or any phase of the operation:

(a) created a substantial risk of death of or serious bodily injury to another;

(b) took place within 500 feet of a residence, business, church, or school; or

(c) took place in the presence of a person less than 18 years of age.

(4) A person convicted of operation of an unlawful clandestine laboratory shall be fined an amount not to exceed $100,000, be imprisoned in a state prison for a term not to exceed 40 years, or both, if [section 1 of House Bill No. 521] is complied with and the operation of an unlawful clandestine laboratory or any phase of the operation involved the use of a firearm or booby trap.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 45, chapter 9, part 1, and the provisions of Title 45 apply to [sections 1 and 2].

Section 4. Coordination instruction. If House Bill No. 521 is not passed and approved, then the words"[section 1 of House Bill No. 521] is complied with and" must be deleted from subsections (3) and (4) of [section 2 of this act].

Section 5. Effective date. [This act] is effective July 1, 2001.

Approved April 19, 2001

CHAPTER NO. 261

[HB 319]

AN ACT REQUIRING A PERSON SELLING A VEHICLE OR TRADING A VEHICLE TO A DEALER TO DISCLOSE WHETHER TAXES OR FEES IN LIEU OF TAX ARE DUE OR PAST DUE AT THE TIME OF TRANSFER; REQUIRING THAT TAXES OR FEES IN LIEU OF TAXES DUE ON A VEHICLE SOLD OR TRADED TO A NEW OR USED CAR DEALER BE PAID BY THE SELLER OF THE VEHICLE UNLESS THE PERSON WHO PURCHASES THAT VEHICLE FROM THE DEALER AGREES IN WRITING TO ASSUME THE PAYMENT OF THOSE TAXES OR FEES; AMENDING SECTION 61-3-501, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-501, MCA, is amended to read:

"**61-3-501. When vehicle taxes and fees are due.** (1) Motor vehicle taxes, fees in lieu of tax, new car taxes, and fees must be paid on the date of registration or reregistration of the vehicle.

(2) (a) If the anniversary date for reregistration of a vehicle passes while the vehicle is owned and held for sale by a licensed new or used car dealer, motor vehicle taxes or fees in lieu of tax abate on the vehicle properly reported with the county treasurer until the vehicle is the subject of a retail sale. After the sale, the purchaser shall pay the pro rata balance of the taxes or fees in lieu of tax due and owing on the vehicle.

(b) A person selling a vehicle or trading a vehicle to a dealer shall disclose to the purchaser any amount of taxes or fees in lieu of tax that are due or past due on the vehicle at the time the person sells a vehicle or trades a vehicle to a dealer. If the disclosure is not made, the person selling the vehicle or trading the vehicle to the dealer shall pay the taxes or fees. Taxes or fees in lieu of tax that are due or past due on a vehicle at the time that a person sells or trades the vehicle to a dealer must be paid by the person who sold or traded the vehicle to the dealer, unless the person who purchases the vehicle from the dealer agrees in writing to assume the payment of those taxes or fees. This subsection (2)(b) does not apply to fleet vehicles, leased vehicles, or rental return vehicles.

~~(b)~~*(c)* For the purposes of this subsection (2), a retail sale does not include a transfer between any of the following:

(i) a licensed new motor vehicle or used motor vehicle dealer;

(ii) another licensed new motor vehicle or used motor vehicle dealer:

(iii) a licensed wholesaler; or

(iv) a licensed auto auction.

(3) In the event that a vehicle's registration period is changed under 61-3-315, all taxes or fees in lieu of tax and other fees due must be prorated and paid from the last day of the old period until the first day of the new period in which the vehicle is registered. The taxes or fees in lieu of tax and other fees must be paid from the first day of the new period for a minimum period of 1 year. When the change is to a later registration period, taxes and fees must be prorated and paid based on the same tax year as the original registration period. Thereafter, during the appropriate anniversary registration period, each vehicle must again be registered or reregistered and all taxes and fees must be paid for a 12-month period."

Section 2. Applicability. [This act] applies to a motor vehicle sold or traded to a new or used car dealer on or after October 1, 2001.

Approved April 19, 2001

CHAPTER NO. 262

[SB 245]

AN ACT CREATING THE MONTANA FARM AND RANCH RISK MANAGEMENT ACT; PROVIDING FOR THE CREATION OF FARM AND RANCH RISK MANAGEMENT ACCOUNTS BY ELIGIBLE INDIVIDUALS OR FAMILY FARM CORPORATIONS IN AN ELIGIBLE AGRICULTURAL BUSINESS; ALLOWING DEPOSITS NOT TO EXCEED, DURING A TAX YEAR, $20,000 OR 20% OF THE DEPOSITOR'S INCOME FROM AGRICULTURAL BUSINESS; PROVIDING AN EXCLUSION FROM TAXABLE INCOME FOR THE AMOUNT DEPOSITED INTO THE ACCOUNT; PROVIDING THAT A DEPOSIT MAY NOT REMAIN IN AN ACCOUNT MORE THAN 5 YEARS; PROVIDING THAT DISTRIBUTIONS FROM THE ACCOUNT ARE TAXABLE; PROVIDING FOR PENALTIES FOR DEPOSITS THAT ARE NOT DISTRIBUTED WITHIN 5 YEARS; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN APPLICABILITY DATE AND A CONTINGENT TERMINATION PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 5] may be cited as the "Montana Farm and Ranch Risk Management Act".

Section 2. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "Account" means a Montana farm and ranch risk management account.

(2) "Disqualification period" means any period of 2 consecutive tax years in which the taxpayer is not engaged in an eligible agricultural business.

(3) (a) "Eligible agricultural business" means the business of agricultural production, as agricultural is defined in 15-1-101, including silviculture, conducted by an individual or family farm corporation that files net farm income reports for tax purposes as required by the United States internal revenue service.

(b) The term does not mean the business of processing, transporting, or marketing agricultural products.

(4) "Family farm corporation" means a corporation that consists of immediate family members.

(5) "Immediate family members" means family members that are within the second degree of consanguinity or affinity.

(6) "Individual" means a human being and does not include an estate or trust.

Section 3. Montana farm and ranch risk management account — deposits — exclusion from income. (1) An individual or a family farm corporation engaged in an eligible agricultural business may create a Montana farm and ranch risk management account as provided in [sections 1 through 5] to use as a risk management tool for the individual's or family farm corporation's agricultural business. The number of risk management accounts that may be created is limited to one for each individual or family farm corporation.

(2) Deposits to the account may be excluded from adjusted gross income as provided in 15-30-111 in an amount not to exceed the lesser of 20% of the taxpayer's net income attributable to agricultural business included in federal adjusted gross income or $20,000 a year. For the purposes of this section, a taxpayer is considered to have made a deposit to an account if the deposit is made:

(a) during the tax year; or

(b) for a specific tax year if it is made within 3 1/2 months after the close of the tax year.

(3) A deposit not distributed within 5 years is considered to have been distributed to the taxpayer as provided in [section 5].

(4) A portion of a deposit distributed within 6 months of the date deposited is income in the year for which an exclusion was taken. The taxpayer shall file a return or amended return as necessary to report the income in the appropriate year.

Section 4. Montana farm and ranch risk management account — creation — administration. (1) A Montana farm and ranch risk management account is a trust created or organized in the state for the exclusive benefit of the taxpayer. The account trustee must be a financial institution, as defined in 15-62-103, supervised by the United States or by the state of Montana. The trust must be created by written instrument.

(2) The trustee may not accept any deposit for any tax year in excess of the amount allowed as a deduction under [section 3].

(3) The trustee shall report to the department if a portion of a deposit is distributed within 6 months of the date of deposit.

(4) The assets of the trust must consist entirely of cash or of obligations that have adequate stated interest and that pay the interest at least annually.

(5) All income of the trust must be distributed currently to the grantor.

(6) The assets of the trust may not be commingled with other property except in a common trust fund or common investment fund.

Section 5. Montana farm and ranch risk management account — distributions. (1) Distributions from the account may be used for any purpose the taxpayer chooses.

(2) Distributions from an account:

(a) are first attributable to income and then to other deposits; and

(b) must be considered to be made from deposits in the order in which the deposits were made, beginning with the earliest deposits. Income is considered to be deposited on the date the income is received by the account.

(3) All distributions from the account are taxable unless:

(a) the deposit, or that portion of the deposit to which the distribution is attributable, was not excluded from adjusted gross income for the tax year the deposit was made; or

(b) the distribution has already been taxed because it was considered a distribution as provided in subsection (4).

(4) (a) (i) Amounts that are not distributed within the 5-year eligibility period established in subsection (4)(a)(ii) are considered to be distributed to the taxpayer on the last day of the tax year in which the fifth anniversary of the deposit occurs. The distribution is taxable, and a penalty equal to 10% of the tax due on the distributed amount is added to the tax as a penalty.

(ii) The 5-year eligibility period for withdrawal of a deposit without penalty is the due date, including extensions, for the filing of a tax return required by this chapter or, if the taxpayer files earlier, the date the taxpayer files the return for the tax year in which the fifth anniversary of the deposit occurs.

(b) At the end of the first disqualification period after a period in which the taxpayer was engaged in eligible agricultural business, the balance of the account is considered to be distributed to the taxpayer and is taxable to the taxpayer.

Section 6. Section 15-30-111, MCA, is amended to read:

"**15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted; and

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, a county, municipality, or district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) money, not exceeding $3,000 for each taxpayer, contributed to a family education savings program account established in accordance with 15-62-201;

(m) principal withdrawn from an account for qualified higher education expenses, as defined in 15-62-103, for a designated beneficiary of the taxpayer;

(n) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(o) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period; ~~and~~

(p) deposits, not exceeding the amount set forth in [section 3], deposited in a Montana farm and ranch risk management account as provided in [sections 1 through 5] in any tax year for which a deduction is not provided for federal income tax purposes; and

~~(p)~~*(q)* income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1

railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"

Section 7. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 1 through 5].

Section 8. Applicability. [This act] applies to tax years beginning after December 31, 2001.

Section 9. Contingent termination. [This act] terminates on certification by the director of the department of revenue to the governor of the passage and approval of a similar program and deduction at the federal level. The director shall provide a copy of the certification to the secretary of state and the code commissioner.

Approved April 19, 2001

CHAPTER NO. 263

[SB 253]

AN ACT CREATING THE MONTANA RENTAL-PURCHASE AGREEMENT ACT; REQUIRING THE DISCLOSURE OF CERTAIN INFORMATION FOR EACH RENTAL-PURCHASE AGREEMENT; PROHIBITING CERTAIN PROVISIONS IN RENTAL-PURCHASE AGREEMENTS; PROVIDING THAT A RENTAL-PURCHASE AGREEMENT MAY BE REINSTATED; REQUIRING WRITTEN RECEIPTS WHEN PAYMENT IS MADE BY CASH OR MONEY ORDER; PROVIDING FOR THE RENEGOTIATION OR EXTENSION OF A RENTAL-PURCHASE AGREEMENT; REQUIRING THAT CERTAIN INFORMATION BE INCLUDED IN ANY ADVERTISING OF PROPERTY

SUBJECT TO A RENTAL-PURCHASE AGREEMENT; PROVIDING ENFORCEMENT PROVISIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 12] may be cited as the "Montana Rental-Purchase Agreement Act".

Section 2. Purpose. (1) The legislature finds that the rental-purchase industry is unique in its structure of providing a service to Montana consumers, in that the business transaction involved is not a credit transaction, does not create a debt or a security interest, and is not a simple rental or lease. As a result, rental-purchase agreements deserve their own regulatory scheme.

(2) The purpose of [sections 1 through 12] is to protect consumers and businesses engaged in the rental-purchase of consumer goods against unfair or deceptive acts and practices and to provide certainty and regularity in the conduct of rental-purchase transactions.

Section 3. Definitions. As used in [sections 1 through 12], the following definitions apply:

(1) "Advertisement" means a commercial message in any medium that aids, promotes, or assists, directly or indirectly, a rental-purchase agreement but does not include price tags, window signs, or other in-store merchandising aids.

(2) "Cash price" means the price at which the lessor would have sold the property to the consumer for cash on the date of the rental-purchase agreement.

(3) "Consumer" means a person who rents personal property under a rental-purchase agreement to be used primarily for personal, family, or household purposes.

(4) "Consummation" means the time that a consumer becomes contractually obligated by signing a rental-purchase agreement.

(5) "Lessor" means a person who regularly provides the use of property through rental-purchase agreements and to whom rent payments are initially payable on the face of the rental-purchase agreement.

(6) "Rental-purchase agreement" or "agreement" means an agreement between a lessor and a consumer that has the following characteristics:

(a) the agreement governs the use of personal property by a person primarily for personal, family, or household purposes;

(b) the agreement is entered into for an initial period of 4 months or less and is automatically renewable with each payment after the initial period;

(c) the agreement does not obligate or require the consumer to continue renting or using the property beyond the initial period; and

(d) the agreement permits the consumer to become the owner of the property.

Section 4. Exemptions of applicability. (1) The provisions of [sections 1 through 12] are not subject to laws relating to:

(a) retail installment sales contracts as defined in 31-1-202;

(b) security interests regulated by the provisions of Title 30, chapters 1 through 9;

(c) leases regulated by the provisions of Title 30, chapter 2A;

(d) personal solicitation sales defined in 30-14-502; and

(e) interest rates or loans on money as provided for in Title 31, chapter 1.

(2) The provisions of [sections 1 through 12] do not apply to:

(a) a lease-purchase agreement primarily for business, commercial, or agricultural purposes or agreements made with governmental agencies, political subdivisions, or organizations;

(b) a lease or bailment of personal property that is incidental to the lease of real property and that provides the consumer with no option to purchase the leased property; or

(c) the lease of a motor vehicle.

Section 5. Disclosure of information. (1) A lessor shall disclose to the consumer the information provided for in [section 6].

(2) The disclosure must be made at or before consummation of the rental-purchase agreement.

(3) The disclosure must be made clearly and conspicuously in writing and a copy of the rental-purchase agreement must be provided to the consumer.

(4) The disclosure information required under [section 6] must be provided for on the face of the contract above the line provided for the consumer's signature.

(5) If a disclosure becomes inaccurate as a result of any act, occurrence, or agreement by the consumer after the delivery of the required disclosure, the resulting inaccuracy is not in violation of [sections 1 through 12].

Section 6. Information required in disclosure. For each rental-purchase agreement, the lessor shall disclose the following items in the agreement:

(1) the total number, the amount, and the timing of all rental payments necessary to acquire ownership of the property;

(2) a statement that the consumer will not have an ownership interest in the property until the consumer has made the total number of rental payments necessary to acquire ownership;

(3) a statement that the consumer is responsible for the fair market value of the property if the property is lost, stolen, damaged, or destroyed;

(4) a brief description of the rented property sufficient to identify the property to the consumer and the lessor. The description of the rented property may include an identification number and must include a statement indicating whether the property is new or used. A lessor is not liable for a statement that inadvertently describes property as being used if the property is new.

(5) a brief description of any existing damage to the rental property;

(6) a statement of the cash price of the property. If the agreement involves the rental of more than one item as a set, in one agreement, a statement of the combined cash price of the items in the set may be stated.

(7) the total of the initial payments paid or required at or before consummation of the rental-purchase agreement or delivery of the property, whichever is later;

(8) (a) a statement that the total amount of the rental payment does not include taxes or other charges and fees, including but not limited to:

(i) late payment;

(ii) processing;

(iii) default;

(iv) pickup;

(v) liability damage waiver;

(vi) insurance; or

(vii) other charges or fees that are necessary and appropriate; and

(b) the charges and fees identified in subsection (8)(a), itemized separately;

(9) a statement informing the consumer that the consumer has the right to exercise an early purchase option;

(10) (a) a statement identifying the party responsible and a description of the responsibility for maintaining or servicing the property while it is being rented; and

(b) if the property is covered by a manufacturer's warranty, a notice that the warranty is transferred to the consumer if the consumer acquires ownership of the property and if the manufacturer's warranty allows for the transfer;

(11) the date of the transaction and the identities of the consumer and the lessor;

(12) a statement that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair, except for ordinary wear and tear, on the expiration of any rental term agreement along with any past-due rent payments, if any; and

(13) notice of the right to reinstate an agreement as provided in [section 8].

Section 7. Provisions prohibited in agreements. A rental-purchase agreement may not contain:

(1) a confession of judgment;

(2) a negotiable instrument;

(3) a security interest or any other claim of property interest in any property except the property delivered by the lessor pursuant to the rental-purchase agreement;

(4) a wage assignment;

(5) a waiver of claims or defenses by the consumer; and

(6) a provision authorizing the lessor or any person acting on the lessor's behalf to enter the consumer's premises or to commit any breach of the peace in the repossession of property.

Section 8. Reinstatement of agreement — repossession. (1) A consumer who fails to make a timely rent payment may reinstate the agreement, without losing any rights or options that existed in the original agreement, by paying:

(a) all past-due rent payments;

(b) the next rent payment;

(c) reasonable pick-up and redelivery costs if the property was picked up by the lessor; and

(d) any applicable late fees.

(2) A consumer exercising the reinstatement option provided for in subsection (1) must provide the applicable payments to the lessor within:

(a) 5 days of the renewal date if the agreement specified a monthly payment schedule; or

(b) 2 days of the renewal date if the agreement specified a semimonthly payment schedule.

(3) If a consumer has not made two-thirds of the total payments necessary to acquire ownership of the property and has returned or voluntarily surrendered the property during the applicable reinstatement period established in this section, the consumer may reinstate the agreement during a period of not less than 21 days after the date of the return of the property.

(4) If a consumer has made two-thirds or more of the total payments necessary to acquire ownership of the property and has returned or voluntarily surrendered the property during the applicable reinstatement period established in this section, the consumer may reinstate the agreement during a period of not less than 45 days after the date of the return of the property.

(5) The provisions of subsections (3) and (4) do not apply to instances when the consumer returned or surrendered the property on an order from a court.

(6) This section does not prevent a lessor from attempting to repossess property during the reinstatement period, but the repossession does not affect the consumer's right to reinstate the agreement. If the agreement is reinstated, the lessor shall provide the consumer with the same property or substitute property of comparable quality and condition.

Section 9. Written receipt for cash or money order. A lessor shall provide the consumer, at the consumer's request, a written receipt for any payment made by cash or money order.

Section 10. Renegotiation of rental-purchase agreement — extension not considered renegotiation. (1) A renegotiation of an agreement must occur when an existing agreement is satisfied and replaced by a new agreement between the lessor and the consumer. A renegotiation is considered a new agreement and requires new disclosures as provided for in [section 6]. The following events may not be treated as a renegotiation:

(a) the addition or return of property in a multiple-item agreement or in the substitution of the rental property, if in either case the average payment allocable to a payment period is not changed by more than 25%;

(b) a deferral or extension of one or more periodic payments or portions of a periodic payment;

(c) a reduction in charges in the agreement; or

(d) an agreement involved in a court proceeding.

(2) An extension of an agreement is not a renegotiation.

Section 11. Advertisement of rental-purchase agreement. (1) An advertisement for an agreement that refers to or states the monetary amount of any payment and the right to acquire ownership of property must clearly and conspicuously state:

(a) that the transaction advertised is a rental-purchase agreement;

(b) the total payments necessary to acquire ownership of any specific item; and

(c) that the consumer acquires no ownership interest if the total amount necessary to acquire the property is not paid.

(2) An owner or employee of an advertising enterprise preparing or providing advertising to an entity offering rental-purchase agreements is not liable for omissions or errors in advertisements.

Section 12. Enforcement — bona fide errors. (1) Except when inconsistent with the provisions of [sections 1 through 12], a violation of [sections 1 through 12] is a violation of Title 30, chapter 14, part 1.

(2) (a) A lessor may not be held liable for a violation of the provisions of [sections 1 through 12] if the lessor proves by a preponderance of evidence that the violation was not intentional and resulted from bona fide error despite the lessor's maintenance of procedures reasonably intended to avoid the error.

(b) (i) For the purposes of this section, a bona fide error includes but is not limited to clerical, calculation, computer malfunction, programming, and printing error.

(ii) An error of legal judgment with respect to a person's obligations under [sections 1 through 12] is not a bona fide error.

Section 13. Codification instruction. [Sections 1 through 12] are intended to be codified as an integral part of Title 30, and the provisions of Title 30 apply to [sections 1 through 12].

Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. Effective date. [This act] is effective on passage and approval.

Section 16. Applicability. [This act] applies to rental-purchase agreements that are entered into on or after [the effective date of this act].

Approved April 19, 2001

CHAPTER NO. 264

[SB 286]

AN ACT ALLOWING CERTAIN MODIFICATIONS TO HEADWATERS STATE PARK IN ANTICIPATION OF THE LEWIS AND CLARK BICENTENNIAL; AMENDING SECTION 23-1-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the bicentennial celebration of the Lewis and Clark Expedition in 2005 will make Montana a national destination; and

WHEREAS, Headwaters State Park, which marks the confluence of the Jefferson, Madison, and Gallatin Rivers into the Missouri River, was a primary destination of the Expedition and will also be a destination of many visitors during the bicentennial; and

WHEREAS, Headwaters State Park, with its particular historical and cultural significance, extensive and rich Native American history, and natural beauty, will provide an opportunity for visitors to engage in the history of the Lewis and Clark Expedition in a setting that remains mostly primitive, allowing people to see the area in much the same way that it was viewed by the Corps of Discovery; and

WHEREAS, some limited modifications to the park are advisable for purposes of public education, safety, and convenience, given the anticipated influx of visitors, while still retaining the primitive character of the remainder of the park in keeping with the spirit of the Montana Primitive Parks Act.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-1-117, MCA, is amended to read:

"23-1-117. Limit on development of primitive parks. (1) ~~As of October 1, 1993~~ *Except as permitted in Headwaters state park for the limited purposes provided in subsections (3) through (5),* the only development allowed in primitive parks designated in 23-1-116 is:

(a) necessary improvements required to meet minimum public health standards regarding sanitation, which may include necessary access to outhouses, vaults, and water;

(b) improvements necessary to ensure the safe public use of existing boat ramps;

(c) addition of gravel to existing unpaved roads and the resurfacing of paved roads when necessary to ensure safe public access;

(d) establishment of new hiking trails or improvement of existing hiking trails; and

(e) installation of minimal signage indicating that the park is a designated primitive park in which development has been limited and encouraging the public to help in maintaining the park's primitive character by packing out trash.

(2) The following development of designated primitive parks is prohibited:

(a) installation of electric lines or facilities, except when necessary to comply with subsection (1)(a);

(b) installation of recreational vehicle sanitary dumpsites where they do not presently exist; and

(c) creation of new roads and paving of existing but previously unpaved roads.

(3) The orientation area at Headwaters state park may be rebuilt and expanded in order to prepare for and manage increased visitation expected for the Lewis and Clark bicentennial, to include:

(a) an unstaffed information kiosk;

(b) sanitation facilities;

(c) additional parking; and

(d) additional signage to inform visitors about the history and uses of the park and services in the surrounding area.

(4) The existing parking area at the confluence of the Madison and Jefferson Rivers in the Headwaters state park may be improved, but not enlarged, using parking features that can be removed. Low-profile interpretive signs may be installed in place of existing signage.

(5) Interpretive and directional signage may be installed at Headwaters state park to educate visitors about the history and significance of the site and to orient visitors to the features of the park and the surrounding area."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Termination. [This act] terminates December 31, 2003.

Approved April 19, 2001

CHAPTER NO. 265

[SB 405]

AN ACT PROVIDING FOR THE DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT OF ADMINISTRATION WITH REGARD TO ELECTRONIC GOVERNMENT SERVICES; PROVIDING DEFINITIONS; AUTHORIZING CONVENIENCE FEES FOR ELECTRONIC GOVERNMENT SERVICES; AUTHORIZING THE DEPARTMENT TO ADOPT RULES; PROVIDING FOR AN ADVISORY COUNCIL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, dramatic changes in technology clearly point to a future where the state of Montana will need to conduct business electronically; and

WHEREAS, Montana's citizens and businesses are expecting state government to deliver more of its services and information through the Internet; and

WHEREAS, the offering of government services through electronic means can make businesses more effective and profitable and provide for greater convenience for citizens; and

WHEREAS, traditional means of obtaining government services will continue to be offered; and

WHEREAS, an optional method of providing government services can be established electronically; and

WHEREAS, the state of Montana is committed to offering government services electronically to its citizens and businesses.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 5] may be cited as the "Montana Electronic Government Services Act".

Section 2. Definitions. As used in [sections 1 through 5], unless the context requires otherwise, the following definitions apply:

(1) "Advisory council" means the electronic government advisory council established in [section 5].

(2) "Convenience fee" means a fee charged to recover the costs of providing electronic government services.

(3) "Costs" means the overall costs that the department may incur to provide electronic government services, including the costs of contracts entered into with private entities to assist in providing electronic government services.

(4) "Department" means the department of administration provided for in 2-15-1001.

(5) "Infrastructure" means the underlying technology necessary to provide electronic government services.

Section 3. Responsibilities of department for electronic government. (1) The department shall:

(a) provide the ability for state agencies to offer electronic government services by providing a reasonable and secure infrastructure;

(b) provide a point of entry for electronic government services to achieve a single face of government;

(c) encourage a common look and feel for all electronic government services for the benefit of the customers of the services;

(d) set technological standards for electronic government services;

(e) use technology that enables the greatest number of customers to obtain access to electronic government services;

(f) promote the benefits of electronic government services through educational, marketing, and outreach initiatives;

(g) share and coordinate information with political subdivisions whenever possible.

(2) To fulfill the responsibilities in subsection (1), the department may contract with private entities. The department may charge convenience fees and may allow private entities to collect the convenience fees on selected electronic government services in order to provided funding for the support and furtherance of electronic government services. The advisory council may advise the department on the amount of fees and the services on which to charge fees.

(3) The department or a private entity under a contract as provided in subsection (2) may not use any data associated with providing electronic government services for any purpose that is not provided for by law.

Section 4. Rulemaking. The department may adopt rules to implement [sections 1 through 5].

Section 5. Electronic government advisory council. (1) There is an electronic government advisory council. The council consists of the following members:

(a) the director of the department, who serves as presiding officer;

(b) the secretary of state or the secretary of state's designee;

(c) the attorney general or the attorney general's designee;

(d) the director of the department of commerce or the director's designee;

(e) the director of the department of revenue or the director's designee;

(f) the state librarian or the state librarian's designee;

(g) a member of the house of representatives, appointed by the speaker of the house:

(h) a member of the senate, appointed by the president of the senate;

(i) an elected local government official, appointed by the governor;

(j) two representatives from state agencies that are not represented on the council, appointed by the governor;

(k) two members of the public, appointed by the governor; and

(l) the administrator of the information services division of the department.

(2) The advisory council shall:

(a) advise the department with regard to the creation, management, and administration of electronic government services and information on the internet;

(b) advise the department with regard to the administration of any electronic government services contract;

(c) advise the department on the priority of government services to be provided electronically;

(d) advise the department on convenience fees, if needed, for any electronic government service;

(e) review and advise the department on financial reports, management reports, or other data as requested by the department;

(f) prepare reports upon the request of the governor or the legislature regarding the growth, performance, and use of electronic government services and other measurements that the advisory council considers necessary to implement and enhance the functioning of electronic government services;

(g) assist in identifying, evaluating, and prioritizing potential departmental and interagency electronic government services;

(h) serve as a central coordination point for electronic government services provided by the department or other state agencies; and

(i) study, propose, develop, or coordinate any other activity in furtherance of electronic government services as requested by the governor or the legislature.

(3) Each member of the advisory council shall serve a 2-year term and may be reappointed.

(4) Vacancies on the advisory council must be filled in the same manner as the original appointment, and the person appointed to fill the vacancy is appointed for the remainder of the unexpired term.

(5) Members of the advisory council who are not state employees are reimbursed and compensated as provided in 2-15-124. Members who are state employees are not entitled to compensation but are entitled to be reimbursed for expenses as provided in Title 2, chapter 18, part 5. Legislative members of the advisory council are reimbursed and compensated as provided in 5-2-302. The department shall provide support to and pay the expenses of the advisory council.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 2, chapter 17, and the provisions of Title 2, chapter 17, apply to [sections 1 through 5].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 19, 2001

CHAPTER NO. 266

[HB 8]

AN ACT APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 56TH LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Approval of renewable resource projects and authorization to provide loans. (1) The legislature finds that the renewable resource projects listed in this section meet the provisions of 17-5-702. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed in this section in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) GROUP A: The interest rate for the projects in this group must be at the rate at which the state bonds are sold for the anticipated 20-year term of the loan. If a grant is authorized under House Bill No. 6 but available grant funds are insufficient, the applicant must be offered the opportunity to receive a loan for up to the amount of the authorized grant approved in House Bill No. 6.

Loan	Amount
YELLOWSTONE COUNTY	
Shiloh Road Bridge Replacement	$620,000

(3) GROUP B: The interest rate for the projects in this group is as follows:

Loan	Amount
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	
Bair Dam Rehabilitation	$988,772

The interest rate will be 4.5% on the first $250,000, 2.25% on the next increment of the loan up to $500,000, and 0% on the amount of the loan over $500,000. The department of natural resources and conservation will then determine an average rate for the full term of the loan, which may be up to 20 years.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	
Nevada Creek Dam Rehabilitation	494,041

The interest rate will be 2.25% for up to 20 years.

LOWER WILLOW CREEK DRAINAGE DISTRICT	
Lower Willow Creek Dam Rehabilitation	1.350.000

The interest rate will be 4.5% on the first $250,000, 2.25% on the next increment of the loan up to $500,000, and 0% on the amount of the loan over $500,000. The department of natural resources and conservation will then determine an average rate for the full term of the loan, which may be up to 20 years.

HELENA VALLEY IRRIGATION DISTRICT	
Gate Replacement at Canyon Ferry Dam	188,400

The interest rate will be 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

(4) GROUP C: The interest rate for the projects in this group may be 2% below the long-term bond rate at which the state bonds are sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bonds are sold for the remaining 15 years.

Loan	Amount
LOCKWOOD WATER AND SEWER DISTRICT	
Wastewater Collection and Treatment Works	$3,300,000

Section 2. Projects not completing requirements — projects reauthorized. (1) The legislature finds that the renewable resource projects listed in this section that were approved by the 56th legislature in Chapter 255, Laws of 1999, may not complete the requirements necessary to obtain the loan funds prior to June 30, 2001. The projects described in this section are reauthorized. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed below in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) GROUP A: The interest rate for the projects in this group must be at the rate at which the state bonds are sold for the anticipated 20-year term of the loan.

Loan	Amount
DALY DITCHES IRRIGATION DISTRICT	
Republican Canal Diversion Dam Replacement	$730,691
HEBGEN BASIN/WEST YELLOWSTONE REFUSE DISTRICT	
Composting Facility for Municipal Solid Waste	2,080,000

(3) GROUP B: The interest rate for the projects in this group may be 2% below the long-term bond rate at which the state bonds are sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bonds are sold for the remaining 15 years.

Loan	Amount
HILL COUNTY WATER DISTRICT	
Water Treatment Plant	$400,000

(4) GROUP C: The interest rate for the project in this group is 3.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan	Amount
HUNTLEY PROJECT IRRIGATION DISTRICT	
Irrigation System Improvements	$3,200,440

(5) GROUP D: The interest rate for the projects in this group is as follows:

Loan	Amount
MALTA IRRIGATION DISTRICT	
Repair and Modification of Dodson Diversion Dam	$2,274,950

The interest rate will be 4.5% on the first $250,000, 2.25% on the next increment of the loan up to $500,000, and 0% on the amount of the loan over $500,000. The department of natural resources and conservation will then determine an average rate for the full term of the loan, which may be up to 20 years.

(6) GROUP E: The interest rate for the project in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan	Amount
CANYON CREEK IRRIGATION DISTRICT	
Canyon Lake Dam and Wyant Lake Dam Restoration Project	$300,000

Section 3. Coal severance tax bonds authorized. (1) The legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific approved renewable resource projects as part of the state renewable resource grant and loan program. Available funds from previous sales of coal severance tax bonds, plus any additional principal amount on bonds as may be necessary, pursuant to the conditions in 85-1-605, to fund emergency loans, as authorized and approved in accordance with 85-1-605(4), also may be used for the projects approved in [sections 1 and 2]. The board of examiners is authorized to issue coal severance tax bonds in an amount not to exceed $18,956,102 of which $15,927,294 is to be used to finance the projects approved in [sections 1 and 2], $1,305,526 is to be used to finance additional loans in lieu of grants for projects listed in [section 1] if grant funds are not sufficient, and up to $1,723,282 is to be used to establish a reserve for the bonds. Proceeds of the bonds are appropriated to the department of natural resources and conservation for financing the projects identified in [sections 1 and 2] and may be used as authorized in 85-1-605(4). Loans made under 85-1-605(4) must bear interest at the rate borne by the state bonds unless the legislature in a subsequent session provides for a lower interest rate, in which case the rate must be reduced to the rate specified by the legislature.

(2) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds when due from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(3) Earnings on bond proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the renewable resource grant and loan state special revenue account.

(4) Loan repayments from loans financed with coal severance tax bonds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

Section 4. Conditions of loans. (1) Disbursement of funds under [sections 1 through 7] for loans is subject to the following conditions that must be met by project sponsors:

(a) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(b) documented commitment of other funds required for project completion;

(c) satisfactory completion of conditions described in the recommendations section of the project narrative in the renewable resource grant and loan program project evaluations and recommendations report for the biennium;

(d) execution of a loan agreement with the department; and

(e) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the loan as evidenced from the application to the department or from the proposal to the legislature.

(2) Each project sponsor authorized for a loan from coal severance tax bond proceeds may be required to pay to the department a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

Section 5. Private and discount purchase of loans. Loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence of the loans may be made, purchased by, and sold to the department of natural resources and conservation at a discount and at a private negotiated sale, notwithstanding the provisions of any other law applicable to political subdivisions or local government entities.

Section 6. Appropriations established. For any entity of state government that receives a loan under [sections 1 through 5], an appropriation is established for the amount of the loan upon award of the loan by the department of natural resources and conservation.

Section 7. Creation of state debt — appropriation of coal severance tax — bonding provisions. (1) Because [section 3] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 3].

(2) The legislature, through the enactment of [sections 1 through 7] by a vote of three-fourths of the members of each house of the legislature, as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond fund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [section 3] to be issued pursuant to Title 17, chapter 5, part 7, and pursuant to the provisions of [sections 1 through 7] and the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective July 1, 2001.

Approved April 20, 2001

CHAPTER NO. 267

[HB 459]

AN ACT REVISING THE MONTANA ENVIRONMENTAL POLICY ACT; PROVIDING CRITERIA FOR THE ANALYSIS OF PROJECT ALTERNATIVES; PROVIDING DEFINITIONS; AND AMENDING SECTION 75-1-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions — environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except the legislature and except as provided in subsection (2), shall:

(i) use a systematic, interdisciplinary approach that will ensure*:*

(A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment*; and*

(B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsections (1)(b)(iv)(C)(I) through (1)(b)(iv)(C)(III) and, if requested by the project sponsor or if determined by the agency to be necessary, subsection (1)(b)(iv)(C)(IV);

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action~~;~~. *An analysis of any alternative included in the environmental review must comply with the following criteria:*

(I) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;

(II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding the proposed alternative;

(III) if the project sponsor believes that an alternative is not reasonable as provided in subsection (1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the agency's determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project sponsor for any of its activities associated with any review under this section. [The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in [section 1 of Senate Bill No. 377]].

(IV) the agency shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion.

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity; ~~and~~

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented; *and*

(G) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

(v) *in accordance with the criteria set forth in subsection (1)(b)(iv)(C),* study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

(vi) recognize the national and long-range character of environmental problems and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved. The responsible state official shall also consult with and obtain comments from any state agency with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law.

(b) When new, material, and significant evidence is presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court considers the evidence within the administrative record under review. Immaterial or insignificant evidence may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.

(4) To the extent that the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) are inconsistent with federal requirements, the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) do not apply to an environmental review that is being prepared by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that is being prepared by a state agency to comply with the requirements of the National Environmental Policy Act."

Section 2. Definitions. For the purposes of this part, the following definitions apply:

(1) "Appropriate board" means, for administrative action taken under this part by the:

(a) department of environmental quality, the board of environmental review, as provided for in 2-15-3502;

(b) department of fish, wildlife, and parks, the fish, wildlife, and parks commission, as provided for in 2-15-3402;

(c) department of transportation, the transportation commission, as provided for in 2-15-2502;

(d) department of natural resources and conservation for state trust land issues, the board of land commissioners, as provided for in Article X, section 4, of the Montana constitution;

(e) department of natural resources and conservation for oil and gas issues, the board of oil and gas conservation, as provided for in 2-15-3303; and

(f) department of livestock, the board of livestock, as provided for in 2-15-3102.

(2) "Environmental review" means any environmental assessment, environmental impact statement, or other written analysis by a state agency of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment as required under this part.

(3) "Project sponsor" means any applicant, owner, operator, state agency, or other entity that is proposing an action that requires an environmental review. If the action involves state trust lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 328).

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 75, chapter 1, part 2, and the provisions of Title 75, chapter 1, part 2, apply to [section 2].

Section 4. Coordination instruction. (1) If Senate Bill No. 377 is not passed and approved, then the bracketed language in [section 1(1) of this act] that amends 75-1-201 is void.

(2) If Senate Bill No. 377 is passed and approved and if it does not establish time limits for environmental review, then the bracketed language in [section 1(1) of this act] that amends 75-1-201 is void.

Approved April 20, 2001

CHAPTER NO. 268

[HB 473]

AN ACT CLARIFYING THAT CERTAIN ACTIONS SUBJECT TO THE MONTANA ENVIRONMENTAL POLICY ACT MAY NOT BE CONDITIONED BEYOND STATUTORY OR REGULATORY REQUIREMENTS; PROVIDING DEFINITIONS; AMENDING SECTION 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions — environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except the legislature and except as provided in subsection (2), shall:

(i) use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment;

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action;

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity; and

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(v) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

(vi) recognize the national and long-range character of environmental problems and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved. The responsible state official shall also consult with and obtain comments from any state agency with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law.

(b) When new, material, and significant evidence is presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court considers the evidence within the administrative record under review. Immaterial or insignificant evidence may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.

(4) (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection (4) prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action."

Section 2. Definitions. For the purpose of this part, the following definitions apply:

(1) "Appropriate board" means for administrative actions taken under this part by the:

(a) department of environmental quality, the board of environmental review, provided for in 2-15-3502;

(b) department of fish, wildlife, and parks, the fish, wildlife, and parks commission, provided for in 2-15-3402;

(c) department of transportation, the transportation commission, provided for in 2-15-2502;

(d) department of natural resources and conservation for state trust land issues, the board of land commissioners, provided for in Article X, section 4, of the Montana constitution;

(e) department of natural resources and conservation for oil and gas issues, the board of oil and gas conservation, provided for in 2-15-3303; and

(f) department of livestock, the board of livestock, provided for in 2-15-3102.

(2) "Environmental review" means any environmental assessment, environmental impact statement, or other written analysis by a state agency of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment as required under this part.

(3) "Project sponsor" means any applicant, owner, operator, state agency, or other entity that is proposing an action that requires an environmental review. If the action involves state trust lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 328).

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 75, chapter 1, part 2, and the provisions of Title 75, chapter 1, part 2, apply to [section 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2001

CHAPTER NO. 269

[SB 3]

AN ACT DIRECTING THE DEPARTMENT OF TRANSPORTATION TO CONSTRUCT A FOUR-LANE HIGHWAY GENERALLY ALONG THE PRESENT ROUTE OF U.S. HIGHWAY 2; NOTIFYING THE TRIBAL GOVERNMENTS ON THE FORT PECK, FORT BELKNAP, BLACKFEET, AND FLATHEAD INDIAN RESERVATIONS; AMENDING SECTION 60-2-110, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. U.S. highway 2 — planning — funding. (1) The commission shall direct the department to construct a four-lane highway generally along the present route of U.S. highway 2 from the North Dakota border to the Idaho border in order to increase tourism and to bring economic development to Montana. Planning for the U.S. highway 2 project must be included in any future fiscal plan developed by the department.

(2) The department shall seek additional federal funding that does not require a state funding match for the U.S. highway 2 project.

(3) The department may not expend any resources on the U.S. highway 2 project that would jeopardize any future highway projects.

Section 2. Section 60-2-110, MCA, is amended to read:

"**60-2-110. Setting priorities and selecting projects.** (1) ~~The~~ *Except as provided in [section 1], the* commission shall establish priorities and select and designate segments for construction and reconstruction on the national highway system, the primary highway system, the secondary highway system, the urban highway system, and state highways.

(2) The commission shall consult with the board of county commissioners of the county in which a highway is located when establishing priorities and when selecting and designating segments on the secondary highway system for construction and reconstruction.

(3) The commission shall consult with the appropriate local government authorities when establishing priorities and selecting and designating segments on the urban highway system for construction and reconstruction.

(4) The commission shall use information gathered or discovered by and documents prepared by the department, and department officials and employees shall provide assistance and advice.

(5) The commission shall establish and determine priorities and projects for rail and transit programs and, to the extent possible, coordinate intermodal transportation within the state.

(6) In carrying out the requirements of this section, the department shall:

(a) make recommendations to the commission;

(b) establish the requirements and procedures for administering this section; and

(c) take all reasonable steps to ensure the integrity and viability of agricultural and rural transportation and related needs."

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the Fort Peck reservation, the Fort Belknap reservation, the Blackfeet reservation, and the Flathead reservation.

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 2, part 1, and the provisions of Title 60, chapter 2, part 1, apply to [section 1].

Section 5. Effective date. [This act] is effective July 1, 2001.

Approved April 20, 2001

CHAPTER NO. 270

[SB 31]

AN ACT GENERALLY REVISING THE LAWS GOVERNING STATE TRUST LAND; AUTHORIZING THE USE OF HISTORIC RIGHT-OF-WAY EASEMENTS FOR EXISTING UTILITIES; EXTENDING THE DEADLINE FOR FILING AN APPLICATION FOR A HISTORIC RIGHT-OF-WAY DEED; CLARIFYING THAT FULL FAIR MARKET VALUE MUST BE OBTAINED

FOR THE USE OF SCHOOL TRUST LANDS; EXTENDING THE EFFECTIVE PERIOD FOR HISTORIC RIGHT-OF-WAY DEEDS AND EASEMENTS; AMENDING SECTIONS 77-1-130, 77-1-208, 77-2-206, 77-2-325, AND 77-6-302, MCA, AND SECTION 5, CHAPTER 461, LAWS OF 1997; REPEALING SECTIONS 77-5-211, 77-6-304, AND 77-6-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-1-130, MCA, is amended to read:

"77-1-130. (Temporary) Recognition of historic right-of-way — criteria for right-of-way deed — conditions — fees. (1) A person or a county may apply to the department for a historic right-of-way deed to provide access to the applicant's private property, ~~or~~ to provide continuation of a county road, *or to provide for authorization of existing utilities* by filing an application with the department by October 1, ~~2001~~ *2006*, on a form prescribed by the department. An application must be accompanied by:

(a) an application fee of $50;

(b) a notarized affidavit:

(i) demonstrating that the applicant or the applicant's predecessor in interest used the right-of-way applied for before ~~1973~~ *1997* and that the use has continued to the present;

(ii) describing the purpose for which the right-of-way was used before ~~1973~~ *1997*; and

(iii) demonstrating that the historic right-of-way applied for is the right-of-way demonstrated in the evidence provided in subsection (1)(c); and

(c) (i) aerial photographs taken by an agency of the United States demonstrating use of the right-of-way applied for; or

(ii) other evidence of the use of the right-of-way applied for.

(2) The department shall review an application and other evidence submitted pursuant to subsection (1) and shall issue a historic right-of-way deed in the name of the applicant if:

(a) the applicant pays the application fee provided in subsection (1)(a) and the fair market value of the historic right-of-way as provided in subsection (4);

(b) the applicant has shown by substantial evidence the matters required in subsections (1)(b) and (1)(c)(i) or (1)(c)(ii);

(c) the department has, if necessary, made a field inspection of the right-of-way applied for; and

(d) the deed is approved by the board.

(3) A historic right-of-way deed issued in the name of the applicant must contain the description of the property of the applicant to which it is appurtenant as provided in the application, and the right-of-way must thereafter be considered appurtenant to that dominant estate. A deed may be assigned by the applicant to the applicant's successor in interest with the approval of the department. The department ~~may not require a fee for the approval of an assignment and~~ may not withhold approval for any reason other than that the use of the historic right-of-way is contrary to subsection (5).

(4) (a) At the time of issuing the historic right-of-way deed, the department shall collect from the applicant the full market value of the acreage of the historic right-of-way ~~based on the following classifications of land:~~

~~(i) $37.50 per acre for state land classified as grazing land;~~

~~(ii) $275 per acre for state land classified as timber land;~~

~~(iii) $100 per acre for state land classified as crop land; and~~

~~(iv) $100 per acre for other land~~.

(b) ~~Amounts~~ *The amount* collected pursuant to subsection (4)(a) must be deposited in the appropriate trust fund established for receipt of income from the land over which a historic right-of-way is granted.

(5) If application is made in accordance with this section, a historic right-of-way deed must be issued by the department, subject to the approval of the board, on the following terms:

(a) the right-of-way is only for the minimum width necessary, as negotiated by the department and the applicant; and

(b) the right-of-way is only for the physical condition of the road *or utility facilities* existing on the date the historic right-of-way deed is issued by the department.

(6) Issuance of a historic right-of-way deed pursuant to this section is exempt from the requirements of *Title 22, chapter 3, part 4, and* Title 75, chapter 1, parts 1 and 2~~, and Title 22, chapter 3, part 4~~.

(7) The survey requirements of 77-2-102 may be waived by the department for the issuance of a historic right-of-way deed if the department determines *that* there is sufficient information available to define the boundaries of the right-of-way for the purposes of recording the easement.

(8) The department may attach conditions to a historic right-of-way deed necessary to ensure compliance with this chapter. ~~However, the department may not require reversion of the right-of-way to the state.~~

(9) For the purposes of this section, "historic right-of-way deed" means a document issued by the department granting to the applicant a nonexclusive easement over state land. (Terminates October 1, ~~2003—sec. 5, Ch. 461, L. 1997~~ *2011.*)"

Section 2. Section 77-1-208, MCA, is amended to read:

"**77-1-208. Cabin site licenses and leases — method of establishing value.** (1) The board shall set the annual fee based on full market value for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. The fee must attain full market value based on appraisal of the cabin site value as determined by the department of revenue. The licensee or lessee has the option to pay the entire fee on March 1 or to divide the fee into two equal payments due March 1 and September 1. The value may be increased or decreased as a result of the statewide periodic revaluation of property pursuant to 15-7-111 without any adjustments as a result of phasing in values. An appeal of a cabin site value determined by the department of revenue must be conducted pursuant to Title 15, chapter 2.

(2) The board shall set the fee of each initial cabin site license or lease or each current cabin site license or lease of a person who does not choose to retain the

license or lease. The initial fee must be based upon a system of competitive bidding. The fee for a person who wishes to retain that license or lease must be determined under the method provided for in subsection (1).

(3) The board shall follow the procedures set forth in 77-6-302, *77-6-303, and* ~~through~~ 77-6-306 for the disposal or valuation of any fixtures or improvements placed upon the property by the then-current licensee or lessee and shall require the subsequent licensee or lessee whose bid is accepted by the board to purchase those fixtures or improvements in the manner required by the board."

Section 3. Section 77-2-206, MCA, is amended to read:

"**77-2-206. Settlement for improvements.** If any state land is exchanged on which there are improvements belonging to a lessee and some person other than the lessee is the transferee, that person shall settle with the lessee for all improvements on the land belonging to the lessee before the exchange is completed. The provisions of 77-6-301 through *77-6-303 and* 77-6-306 relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee apply to the settlement between a lessee and the transferee in an exchange. If settlement is not reached within 6 months of *the* date of exchange, all improvements become the property of the state unless the department for good cause shown grants both parties additional time in which to exhaust arbitration."

Section 4. Section 77-2-325, MCA, is amended to read:

"**77-2-325. Settlement for improvements.** If any state land is sold on which there are improvements belonging to a lessee and some person other than the lessee is the purchaser, that person shall settle with the lessee for all improvements on the land belonging to the lessee before the issuance of the certificate of purchase. The provisions of 77-6-301 through *77-6-303 and* 77-6-306 relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee apply to the settlement between a lessee and the purchaser. If settlement is not reached within 6 months of *the* date of sale, all improvements become the property of the state unless the department for good cause shown grants both parties additional time in which to exhaust arbitration."

Section 5. Section 77-6-302, MCA, is amended to read:

"**77-6-302. Compensation for improvements — actual costs.** (1) When another person becomes the lessee of the lands, the person shall pay to the former lessee the reasonable value of ~~these~~ *the* improvements ~~at the time the new lessee takes possession~~. The reasonable value may not be less than the full market value of the improvements.

(2) If the former lessee is unable to produce records establishing the reasonable value or if the former lessee and the new lessee are unable to agree on the reasonable value of the improvements, the value must be ascertained and fixed as provided in 77-6-306. *The former lessee shall initiate this process within 60 days of notification from the department that there is a new lessee. Failure to initiate the process within this time period results in all improvements becoming the property of the state.*

(3) Upon the termination of a lease, the department may grant a license to the former lessee to remove the movable improvements from the land. Upon authorization, the movable improvements must be removed within 60 days or they become the property of the state unless the department for good cause grants

additional time for the removal. The department shall charge the former lessee for the period of time that the improvements remain on the land after the termination of the lease."

Section 6. Section 5, Chapter 461, Laws of 1997, is amended to read:

"**Section 5. Termination.** [This act] terminates October 1, ~~2003~~ *2011.*"

Section 7. Repealer. Sections 77-5-211, 77-6-304, and 77-6-305, MCA, are repealed.

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2001

CHAPTER NO. 271

[SB 50]

AN ACT REQUIRING THAT ALL STATE-OWNED AND STATE-OCCUPIED BUILDINGS AND ALL BUILDINGS LEASED AND OCCUPIED ONLY BY THE STATE BE SMOKE-FREE BY CERTAIN DATES; REQUIRING THAT IN BUILDINGS LEASED AND OCCUPIED PARTIALLY BY THE STATE, AGENCY HEADS MAKE THE PORTIONS OCCUPIED BY THE STATE SMOKE-FREE BY A CERTAIN DATE; ENCOURAGING THAT STATE AGENCIES WORK TO MAKE THE BUILDINGS SMOKE-FREE; PROVIDING STATE POLICY; REVISING DEFINITIONS; AMENDING SECTIONS 50-40-202 AND 50-40-203, MCA; REPEALING SECTIONS 50-40-204, 50-40-205, AND 50-40-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-40-202, MCA, is amended to read:

"**50-40-202. Public policy.** In recognition of the increased health hazards of passive smoke on the nonsmoker~~,~~ *and in recognition of recent studies showing that secondhand smoke is more injurious to nonsmokers than it was thought to be in the past,* it is the declared public policy of the state of Montana that ~~certain~~ buildings both owned and occupied by the state ~~may~~ *and buildings leased and occupied only by the state* be smoke-free *by the dates provided in [section 3].* ~~It is further the policy of the state that designated smoking areas be established in certain other state buildings pursuant to 50-40-204.~~"

Section 2. Section 50-40-203, MCA, is amended to read:

"**50-40-203. Definitions.** As used in 50-40-202 ~~through 50-40-205,~~ *[section 3], and this section,* the following definitions apply:

(1) "Agency head" means a director, commissioner, or constitutional officer in charge of an executive, legislative, or judicial branch agency or of an agency of the Montana university system.

~~(2) "Designated smoking area" means an enclosed, comfortable area that maintains adequate ventilation to minimize the circulation of smoke to surrounding areas and that has been designated as a smoking area under 50-40-204.~~

~~(3)~~*(2)* ~~"Smoking~~ *"Smoke"* means ~~any~~ *smoke from a* lighted cigar, cigarette, or pipe or any other lighted tobacco product."

Section 3. State buildings to be smoke-free. Buildings owned and occupied by the state must be smoke-free on [the effective date of this act]. Buildings leased and occupied only by the state must be smoke-free as soon as practicable but no later than July 1, 2001. In buildings leased and occupied by the state and another entity, agency heads shall make the portions of the buildings occupied by the state smoke-free as soon as practicable but no later than July 1, 2001, and are encouraged to work with building owners and other tenants to make the buildings smoke-free.

Section 4. Repealer. Sections 50-40-204, 50-40-205, and 50-40-206, MCA, are repealed.

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2001

CHAPTER NO. 272

[SB 51]

AN ACT REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ESTABLISH AN EMPLOYEE WELFARE BENEFIT PLAN CONSISTING OF INDIVIDUAL HEALTH CARE EXPENSE TRUST ACCOUNTS FOR PUBLIC EMPLOYEES; PROVIDING FOR PROGRAM ADMINISTRATION; PROVIDING THAT CONVERSION OF UNUSED SICK LEAVE TO EMPLOYER CONTRIBUTIONS TO THE PLAN MAY BE USED AS A FUNDING SOURCE; PROVIDING A TAX EXEMPTION FOR CONTRIBUTIONS, EARNINGS, AND PAYMENTS; PROVIDING DEATH BENEFITS; REQUIRING THAT THE BENEFIT PLAN BE SUBMITTED TO THE COMMISSIONER OF INTERNAL REVENUE FOR A LETTER OF DETERMINATION TO ENSURE THAT THE PLAN IS FEDERALLY TAX-QUALIFIED; AUTHORIZING A LOAN FROM THE BOARD OF INVESTMENTS; CREATING A STATE DEBT; AMENDING SECTIONS 2-18-618 AND 15-30-111, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 10] may be cited as the "Voluntary Employees' Beneficiary Association Act".

Section 2. Purpose and intent. The legislature finds that escalating health care expenses, particularly the increasing cost of medical treatment and health insurance, constitute a substantial financial burden during and after an employee's working career. The purpose of [sections 1 through 10] is to provide a means by which public employers may contribute to a plan established under a qualified tax-exempt trust organization to assist public employees, their dependents, and their beneficiaries with paying for qualified health care expenses. Under the plan, employer contributions, investment earnings, and payments for qualified health care expenses are tax-exempt. The legislature also finds that centralized statewide administration offers a consistent approach and is more cost-effective, especially for smaller employers. However, the legislature does not intend to prohibit an employer from establishing a similar program as an alternative or in addition to participation in the statewide program provided for in [sections 1 through 10]. Additionally, the legislature intends to facilitate a grassroots process to determine plan participation.

Section 3. Definitions. As used in [sections 1 through 10], unless the context requires otherwise, the following definitions apply:

(1) "Common association" means an association of employees established pursuant to [section 7] for the purposes of employer and employee participation in the plan.

(2) "Contracting employer" means an employer who, pursuant to [section 7], has contracted with the department to participate in the plan.

(3) "Department" means the department of administration established in 2-15-1001.

(4) "Employee" means a person employed by an employer but does not include an independent contractor or person hired by the employer under a personal services contract.

(5) "Employer" means a legally constituted department, board, or commission of the state, a county, an incorporated city or town, or any political subdivision of the state, including a school district or a unit of the university system.

(6) "Health care expense trust account" or "account" means an account established for the payment of qualified health care expenses under the plan.

(7) "Member" means an employee who belongs to a voluntary employees' beneficiary association established under [section 7].

(8) "Plan" means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to [section 4].

(9) "Qualified health care expenses" means expenses paid by a member for medical care, as defined by 26 U.S.C. 213(d), for the member or the member's dependent as defined by 26 U.S.C. 152.

Section 4. Statewide employee welfare benefit plan established — health care expense trust accounts — investment of funds — account access — administrative expenses. (1) The department shall establish, through contracted services, a plan under a tax-exempt entity that qualifies as a voluntary employees' beneficiary association trust pursuant to section 501(c)(9), of the Internal Revenue Code, 26 U.S.C. 501(c)(9). The plan must provide members with individual health care expense trust accounts to pay the qualified health care expenses of members, their dependents, and their beneficiaries.

(2) The department shall determine what investment vehicles will be offered to plan members. Each plan member is entitled to direct the investment of funds in the member's account among the investment vehicles offered. The department shall provide for a default investment vehicle if a member fails to direct how funds are to be invested.

(3) At any time after a member's account has been established, the member may access funds in the account in a manner prescribed by the department. The funds may be accessed only for the payment of qualified health care expenses and until the funds have been exhausted.

(4) Administrative expenses must be paid by the plan in a manner prescribed by the department.

Section 5. Rulemaking authority. The department shall adopt rules to implement the provisions of [sections 1 through 10]. The rules must be designed to allow the plan to conform to federal law.

Section 6. Administration of plan — content of plan document. (1) The department shall provide for the administration of the plan in the manner required to satisfy applicable tax qualification requirements of the Internal Revenue Code. If a statutory provision of [sections 1 through 10] conflicts with a qualification requirement of the Internal Revenue Code and any consequent federal regulations, the provision is either ineffective or must be interpreted to conform with the federal qualification requirements.

(2) For purposes of qualification pursuant to section 501(c)(9) of the Internal Revenue Code, 26 U.S.C. 501(c)(9), and any other applicable internal revenue service laws and regulations, the plan document is composed of [sections 1 through 10] and the rules adopted by the department to implement [sections 1 through 10].

Section 7. Plan membership election — contract for employer participation. (1) At the request of at least 25% of its employees, an employer may facilitate an election by all the employer's employees or by a specified group of the employer's employees to determine whether those employees will form an association for the purpose of participating in the plan. An election among employees on whether to form an association may also be initiated by the employer.

(2) If a majority of the employees voting on the question vote to become plan members, then, in a manner prescribed by the department:

(a) all of the employees that were eligible to vote on the question and any employees subsequently hired into the positions covered under the terms and conditions of the election must be formed as a common association for the purpose of plan membership and the employees must become plan members; and

(b) the employer shall enter into a contract with the department to participate in the plan and must become a contracting employer.

(3) A common association shall operate in a manner prescribed by the department unless the association is disbanded in a manner prescribed by the department.

(4) A contracting employer shall provide to the department, or the appropriate administering entity, the information necessary for the plan's operation. The department, in partnership with a contracting employer, shall provide to plan members the information necessary to actively participate in the plan.

Section 8. Contributions of unused sick leave — other contributions not prohibited. (1) In a manner prescribed by the department, a contracting employer shall provide for a plan member to annually designate how many hours, if any, of the member's sick leave will be automatically converted to an employer contribution to the member's account each pay period as provided for in this section.

(2) (a) Except as provided in subsection (2)(b), a member may annually convert only the sick leave hours in excess of 240 hours and no more than the maximum prescribed by the contracting employer.

(b) When the member's employment is terminated, the member's entire unused sick leave balance must be automatically converted to an employer contribution to the member's account pursuant to this section and may not be paid as a lump sum under 2-18-618(6).

(3) The amount of the employer contribution to a member's account for hours converted under this section must be equal to one-fourth of the pay attributed to the accumulated sick leave. The attributable pay must be computed on the basis of the employee's salary or wage at the time that the sick leave is converted. A member may not later receive as sick leave credit or as a lump-sum payment amounts contributed to the member's account pursuant to this section.

(4) This section does not prohibit an employer from entering into an agreement with a member for employer contributions to a member account in addition to the contributions provided for under this section.

Section 9. Tax exemption. Employer contributions into an account, the accumulation of interest or other earnings in an account, and payments from an account for qualified health care expenses are tax-exempt, as provided in 15-30-111 and under applicable federal laws and regulations to the extent that the plan is qualified under applicable sections of the Internal Revenue Code.

Section 10. Beneficiaries — death benefits. (1) A member may designate as a beneficiary an individual, charitable organization, or trust. The designation must be in a manner prescribed by the department.

(2) Upon proof of a member's death, if the deceased member's account retains funds, the member's designated beneficiary is entitled to use the account for qualified health care expenses or, to the extent allowable under applicable Internal Revenue Code sections, to receive a taxable lump-sum payment of the deceased member's account balance. The department shall prescribe by rule the disposition of a deceased member's account if the member failed to designate a beneficiary or has no surviving designated beneficiary.

Section 11. Section 2-18-618, MCA, is amended to read:

"2-18-618. Sick leave. (1) A permanent full-time employee earns sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year. Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) A short-term worker may not earn sick leave credits.

(6) ~~An~~ *Except as otherwise provided in [section 8], an* employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on the basis of the

employee's salary or wage at the time the employee terminates employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any sick leave rights or benefits accrued prior to July 1, 1971. However, when an employee transfers between agencies within the same jurisdiction, the employee is not entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(7) An employee who receives a lump-sum payment pursuant to this section *or who, pursuant to [section 8], converts unused sick leave to employer contributions to a health care expense trust account* and who is again employed by any agency may not be credited with sick leave for which the employee has previously been compensated *or for which the employee has received an employer contribution to the health care expense trust account.*

(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

(9) An employee *of a state agency* may contribute any portion of the employee's accumulated sick leave to a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an extensive illness or accident exhausts the employee's accumulated sick leave, *irrespective of the employee's membership or nonmembership in the employee welfare benefit plan established pursuant to [section 4].* The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

(10) A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave."

Section 12. Section 15-30-111, MCA, is amended to read:

"**15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted; and

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, a county, municipality, or district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) money, not exceeding $3,000 for each taxpayer, contributed to a family education savings program account established in accordance with 15-62-201;

(m) principal withdrawn from an account for qualified higher education expenses, as defined in 15-62-103, for a designated beneficiary of the taxpayer;

(n) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(o) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period; ~~and~~

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) principal and income deposited in a health care expense trust account, as defined in [section 3], or withdrawn from the account for payment of qualified health care expenses as defined in [section 3].

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement

benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"

Section 13. Department to seek commissioner's determination — certification to secretary of state. The department of administration shall, as soon as practicable, request in writing a determination from the commissioner of internal revenue as to whether the employee welfare benefit plan created under [sections 1 through 10] is a qualified plan pursuant to section 501(c)(9) of the Internal Revenue Code. If the commissioner determines that the plan is qualified for a tax exemption, the department shall immediately certify that fact to the secretary of state and shall notify the code commissioner of the certification.

Section 14. Loan from board of investments. To pay the startup costs of the plan established under the Voluntary Employees' Beneficiary Association Act, the department of administration is authorized to receive a loan from the intercap revolving loan program adopted by the board of investments pursuant to 17-5-1605.

Section 15. Implementation. In implementing and administering the provisions of [sections 1 through 10]:

(1) the department shall provide for the conversion of unused sick leave accrued in excess of the minimum established in [section 8]; or

(2) if conversion of sick leave in accordance with subsection (1) conflicts with applicable federal law, then the department shall provide for contributions to the health care expense accounts in lieu of sick leave accrual in excess of the minimum established in [section 8].

Section 16. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 2, chapter 18, and the provisions of Title 2, chapter 18, apply to [sections 1 through 10].

Section 17. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 18. Two-thirds vote required. Because [section 14] authorizes the creation of a state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 19. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 7 through 12] are effective on the date that the secretary of state receives certification from the department of administration pursuant to [section 13] that the commissioner of internal revenue has determined that the plan established pursuant to [sections 1 through 10] is qualified for a tax exemption pursuant to section 501(c)(9) of the Internal Revenue Code.

Approved April 20, 2001

CHAPTER NO. 273

[SB 60]

AN ACT APPROVING THE COMPACT FOR EDUCATION ESTABLISHED BY THE EDUCATION COMMISSION OF THE STATES; PROVIDING FOR THE APPOINTMENT OF SEVEN COMMISSIONERS FOR MONTANA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Compact for Education approved. The Compact for Education established by the education commission of the states is enacted into law and entered into with all other jurisdictions legally joining in the compact, in the form substantially as follows:

THE COMPACT FOR EDUCATION

ARTICLE I

PURPOSE AND POLICY

(1) It is the purpose of this compact to:

(a) establish and maintain close cooperation and understanding among executive, legislative, professional educational, and lay leadership on a nationwide basis at the state and local levels;

(b) provide a forum for the discussion, development, crystallization, and recommendation of public policy alternatives in the field of education;

(c) provide a clearinghouse of information on matters relating to education problems and how they are being met in different places throughout the nation; and

(d) facilitate the improvement of state and local education systems.

(2) It is the policy of this compact to encourage and promote local and state initiative in the development, maintenance, improvement, and administration of education systems and institutions.

(3) The states that have entered into this compact recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own education systems and institutions.

ARTICLE II

STATE DEFINED

As used in this compact, "state" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

ARTICLE III

THE COMMISSION

(1) The education commission of the states (commission) is hereby established. The commission consists of seven members representing each state that has entered into the compact. One of the state members must be the governor, two must be members of the legislature selected by its respective houses and serving in a manner as the legislature may determine, one must be the state superintendent of public instruction, and three must be appointed by and serve at the pleasure of the governor. The guiding principle for the composition of the membership on the commission from each party state must be that the members representing the state shall, by virtue of their training, experience, knowledge, or affiliations, reflect broadly the interests of the state government, higher education, the state education system, local education, and public and nonpublic educational leadership. In addition to the members of the commission representing the party states, there may be no more than 10 nonvoting commissioners selected by the steering committee for terms of 1 year. The commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

(2) The members of the commission are entitled to one vote each on the commission. Any action of the commission is not binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor of the action. Any action of the commission must be taken only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to any directions and limitations as may be contained in the bylaws, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV, and adoption of the annual report pursuant to Article III(10).

(3) The commission must have a seal.

(4) The commission shall elect annually, from among its members, a presiding officer, who must be a governor; a vice presiding officer; and a treasurer. The commission shall appoint an executive director. The executive director shall serve at the pleasure of the commission and, together with the

treasurer and other personnel as the commission may consider appropriate, must be bonded in an amount determined by the commission. The executive director shall serve as secretary.

(5) The executive director, subject to the approval of the steering committee, shall appoint, remove, or discharge any personnel as may be necessary for the performance of the functions of the commission. The executive director shall fix the duties and compensation of the personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

(6) The commission may borrow, accept, or contract for the services of personnel.

(7) The commission may accept for any of its purposes and functions under this compact any donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation and may receive, utilize, and dispose of any gifts and grants. Any donation or grant accepted by the commission pursuant to this section or services borrowed pursuant to section (6) of this article must be reported in the annual report of the commission. The report must include the nature, amount, and conditions, if any, of the donation, grant, or services borrowed and the identity of the donor or lender.

(8) The commission may establish and maintain any facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest in property.

(9) The commission shall adopt bylaws for the conduct of its business and may amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy of its bylaws and any amendments with the appropriate agency or officer in each state that has entered into this compact.

(10) The commission annually shall make and provide to the governor and legislature of each state that has entered into the compact a report covering the activities of the commission for the preceding year. The commission may make any additional reports as it considers desirable.

ARTICLE IV

POWERS

In addition to any authority conferred on the commission by other provisions of the compact, the commission may:

(1) collect, correlate, analyze, and interpret information and data concerning educational needs and resources;

(2) encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public education systems;

(3) develop proposals for adequate financing of education as a whole and at each of its many levels;

(4) conduct or participate in research in any instance where it finds that the research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional

organizations for higher education, and other agencies and institutions, both public and private;

(5) formulate suggested policies and plans for the improvement of public education as a whole, or for any segment of public education, and make recommendations with respect to public education available to the appropriate governmental units, agencies, and public officers; and

(6) do other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to the compact.

ARTICLE V

COOPERATION WITH FEDERAL GOVERNMENT

(1) If the laws of the United States specifically provide, or if administrative provision is made within the federal government, the United States may be represented on the commission by not more than 10 representatives. A representative of the United States must be appointed and serve in the manner as may be provided by federal law and may be drawn from any one or more branches of the federal government. A representative of the United States may not have a vote on the commission.

(2) The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states and may confer with any federal agencies or officers concerning any matter of mutual interest.

ARTICLE VI

COMMITTEES

(1) To assist in the conduct of its business when the full commission is not meeting, the commission shall elect a steering committee that, subject to the provisions of this compact and consistent with the policies of the commission, is constituted and functions as provided in the bylaws of the commission. One-fourth of the voting membership of the steering committee must consist of governors, one-fourth must consist of legislators, and the remainder must consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but may not vote. The voting members of the steering committee shall serve a term of 2 years. The presiding officer, vice presiding officer, and treasurer of the commission must be members of the steering committee and, notwithstanding anything in this section to the contrary, shall serve during their continuance in these offices. Vacancies on the steering committee do not affect its authority to act, but the commission at its next regular meeting following the occurrence of any vacancy shall fill it for the unexpired term. A person may not serve more than two terms as a member of the steering committee, provided that service for a partial term of 1 year or less may not be counted toward the limitation.

(2) The commission may establish advisory and technical committees composed of state, local, or federal officers and private persons to advise it with respect to any one or more of its functions. An advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to two or more of the states that have entered into this compact.

(3) The commission may establish any additional committees as its bylaws may provide.

ARTICLE VII

FINANCE

(1) The commission shall advise the governor or designated officer of each state that has entered into this compact of its budget and estimated expenditures for any period as may be required by the laws of that state. Each of the commission's budgets of estimated expenditures must contain specific recommendations of the amount to be appropriated by each of the states.

(2) The total amount of appropriation requests under any budget must be apportioned among the states. In making the apportionment, the commission shall devise and employ a formula that takes equitable account of the population and per capita levels of income of the states.

(3) The commission may not pledge the credit of any state. The commission may meet any of its obligations in whole or in part with money available to it pursuant to Article III of this compact, provided that the commission takes specific action setting aside the money before incurring an obligation to be met in whole or in part in that manner. Except when the commission makes use of money available to it pursuant to Article III, the commission may not incur any obligation before receiving an allotment of money from the states that is adequate to meet the obligation.

(4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the procedures for audit and accounting established by its bylaws. However, all receipts and disbursements of money handled by the commission must be audited yearly by a qualified public accountant. The report of the audit must be included in and become part of the annual report of the commission.

(5) The accounts of the commission must be open at any reasonable time for inspection by officers of the states that have entered into this compact and by any other persons authorized by the commission.

(6) The provisions in this compact may not prohibit compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VIII

ELIGIBLE PARTIES—ENTRY INTO AND WITHDRAWAL

(1) This compact has as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. With respect to any jurisdiction not having a governor, the term "governor", as used in this compact, means the closest equivalent officer of the jurisdiction.

(2) Any state or other eligible jurisdiction may enter into this compact and it becomes binding when it is adopted by that state or jurisdiction, except that in order to enter into initial effect, adoption by at least 10 eligible jurisdictions is required.

(3) Any state may withdraw from this compact by enacting a statute repealing the compact, but withdrawal may not take effect until 1 year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other states that have entered into this compact. Withdrawal does not affect any liability already incurred by or chargeable to a state before its withdrawal.

ARTICLE IX

AMENDMENTS TO THE COMPACT

This compact may be amended by a vote of two-thirds of the members of the commission present and voting when ratified by the legislatures of two-thirds of the states that have entered into this compact.

ARTICLE X

CONSTRUCTION AND SEVERABILITY

This compact must be liberally construed so as to accomplish its purposes. The provisions of this compact are severable, and if any phrase, clause, sentence, or provision of this compact is declared to be unconstitutional, or the application of the compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact may not be affected. If this compact is held to be contrary to the constitution of any state participating in the compact, the compact remains in effect as to the state affected as to all severable matters.

Section 2. Appointment of commissioners to the education commission of the states. (1) The seven members of the education commission of the states representing Montana are:

(a) the governor;

(b) one senator appointed by the committee on committees;

(c) one representative appointed by the speaker of the house;

(d) the superintendent of public instruction; and

(e) three persons appointed by the governor, including:

(i) one educator engaged in the field of higher education; and

(ii) two educators engaged in the field of K-12 education.

(2) The term of each commissioner appointed by the legislature is 4 years, and legislators shall serve until the expiration of their appointments, even though their legislative terms may have ended. The commissioners appointed by the governor shall serve at the pleasure of the governor.

Section 3. State obligations or rights under compact not altered. The provisions of [sections 1 through 5] may not be construed to alter any of the obligations or restrict or impair any rights that this state may have under the compact.

Section 4. Bylaws filed. Pursuant to Article III(9) of [section 1], the commission shall file a copy of its bylaws and amendments to the bylaws with the secretary of state.

Section 5. Limitation on power — adoption of rules. (1) The provisions of [sections 1 through 5] may not be construed to bind or obligate the state of Montana to enact any new legislation or to amend any current laws pertaining to the administration and financing of education in Montana.

(2) The superintendent of public instruction may adopt rules that incorporate by reference the bylaws and any amendments to the bylaws provided for in Article III(9) of [section 1].

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 20, and the provisions of Title 20 apply to [sections 1 through 5].

Section 7. Effective date. [This act] is effective July 1, 2001.

Approved April 20, 2001

CHAPTER NO. 274

[SB 96]

AN ACT REDUCING THE WAITING PERIOD FOR RECEIVING TEMPORARY TOTAL DISABILITY BENEFITS FROM 6 DAYS TO 5 DAYS; AMENDING SECTION 39-71-736, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-736, MCA, is amended to read:

"**39-71-736. Compensation — from what ~~date~~ *dates* paid.** (1) (a) ~~No compensation~~ *Compensation* may *not* be paid for the first ~~48~~ *40* hours or ~~6~~ *5* days' loss of wages, whichever is less, that the claimant is totally disabled and unable to work due to an injury. A claimant is eligible for compensation starting with the ~~7th~~ *6th* day.

~~(b)~~*(b)* ~~However, separate~~ *Separate* benefits of medical and hospital services must be furnished from the date of injury.

(2) For the purpose of this section, except as provided in subsection (3), an injured worker is not considered to be entitled to compensation benefits if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the ~~6-day~~ *5-day* waiting period.

(3) Augmentation of temporary total disability benefits with sick leave by an employer pursuant to a collective bargaining agreement may not disqualify a worker from receiving temporary total disability benefits.

(4) Receipt of vacation leave by an injured worker may not affect the worker's eligibility for temporary total disability benefits."

Section 2. Effective date — applicability. [This act] is effective July 1, 2001, and applies to a claim for benefits for an injury occurring on or after July 1, 2001.

Approved April 20, 2001

CHAPTER NO. 275

[SB 104]

AN ACT GENERALLY REVISING FISH AND WILDLIFE ENFORCEMENT STATUTES; CLARIFYING THE FORFEITURE OF PRIVILEGES PENALTY FOR WASTE OF GAME; CLARIFYING THE AUTHORITY OF A PEACE OFFICER, GAME WARDEN, OR OTHER AUTHORIZED PERSON TO DESTROY A DOG THAT CHASES, STALKS, OR PURSUES A HOOVED

GAME ANIMAL AND PROVIDING AN OPTIONAL CRIMINAL PENALTY FOR THE DOG OWNER; CLARIFYING THE OFFENSE OF PROVIDING SUPPLEMENTAL FEED ATTRACTANTS TO GAME ANIMALS AND ADDING AN OFFENSE OF FEEDING OR ALLOWING BEARS TO FEED; REVISING TRAP TAGGING REQUIREMENTS TO INCLUDE TRAPS USED FOR ANY ANIMAL AND ALLOWING USE OF THE TRAPPER'S WILDLIFE CONSERVATION LICENSE NUMBER ON TRAP TAGS; AMENDING SECTIONS 87-3-102, 87-3-124, 87-3-130, AND 87-3-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-102, MCA, is amended to read:

"**87-3-102. Waste of fish or game.** (1) A person who is responsible for the death of a mountain lion commits the offense of waste of game if the person abandons the head or hide in the field.

(2) A person who is responsible for the death of a grizzly bear commits the offense of waste of game if the person abandons the head or hide or any parts required by department or commission regulation for scientific purposes. All parts of a grizzly bear required by department or commission regulation for scientific purposes must be delivered to an officer or employee of the department for inspection as soon as possible after removal, and the department shall return to the licensee any bone structure and skull within 1 year upon written request. The hide must be returned immediately.

(3) A person responsible for the death of any game animal, except a mountain lion, commits the offense of waste of game if the person *purposely or knowingly*:

(a) detaches or removes from the carcass only the head, hide, antlers, tusks, or teeth or any or all *of* these parts;

(b) wastes any part of any game animal, game bird, or game fish suitable for food by transporting, hanging, or storing the carcass in a manner that renders it unfit for human consumption; or

(c) abandons in the field the carcass of any game animal or any portion of the carcass suitable for food.

(4) A person in possession of a game animal or game animal parts, *a* game bird, or *a* game fish suitable for food commits the offense of waste of game if the person *purposely or knowingly*:

(a) ~~purposely or knowingly~~ transports, stores, or hangs the animal, bird, or fish in a manner that renders it unfit for human consumption; or

(b) disposes of or abandons any portion of a game animal, game bird, or game fish that is suitable for food.

(5) For the purposes of this section, the meat of a grizzly or a black bear that is found to be infected with trichinosis is not considered to be suitable for food.

(6) A person convicted of waste of game may be fined not less than $50 or more than $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both. *In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. If the court imposes forfeiture of the person's license and privilege to hunt,*

fish, or trap, the department shall notify the person of the forfeiture and loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days of notification."

Section 2. Section 87-3-124, MCA, is amended to read:

"**87-3-124.** ~~**Restrictions on hunting with dogs**~~ ***Dogs — restrictions on hunting — penalty for chasing hooved game animals.*** (1) (a) Except as provided in 87-3-127 and ~~subsection~~ *subsections* (2) *and (3)* of this section, a person may not chase with ~~dogs~~ *a dog* any of the game or fur-bearing animals as defined by the fish and game laws of this state.

(b) A person may take game birds during the appropriate open season with the aid of a dog ~~or dogs~~. Any person or association organized for the protection of game may run field trials at any time upon obtaining written permission from the director.

(c) ~~Any~~ *Except as provided in subsection (2), any* peace officer, game warden, or other person authorized to enforce the Montana fish and game laws who witnesses ~~any~~ *a* dog *chasing, stalking, pursuing,* attacking, or killing hooved game animals may destroy that dog, *on public land or on private land at the request of the landowner,* without criminal or civil liability.

(d) Except as provided in subsection (2), a person who purposely, knowingly, or negligently permits a dog to chase, stalk, pursue, attack, or kill hooved game animals is guilty of a misdemeanor and is subject to the penalty in 87-1-102(1). If the dog is not under the control of an adult at the time of the violation, the owner of the dog is personally responsible. A defense that the dog was allowed to run at large by another person is not allowable, unless it is shown that at the time of the violation the dog was running at large without the consent of the owner and that the owner took reasonable precautions to prevent the dog from running at large.

(2) A person may use trained or controlled dogs to chase or herd away game animals or fur-bearing animals to protect humans, lawns, gardens, livestock, or agricultural products, including growing crops and stored hay and grain. The dog may not be destroyed pursuant to subsection (1)(c).

~~(2)~~*(3)* The commission has authority to allow and regulate the use of dogs for hunting and chasing mountain lion and bobcat."

Section 3. Section 87-3-130, MCA, is amended to read:

"**87-3-130. Taking of wildlife to protect persons or livestock.** (1) This chapter may not be construed to impose, by implication or otherwise, criminal liability for the taking of wildlife protected by this ~~chapter~~ *title* if the wildlife is molesting, assaulting, killing, or threatening to kill a person or livestock. A person who ~~so~~, *under this subsection,* takes wildlife protected by this ~~chapter~~ *title* shall, *within 72 hours,* notify the department ~~within 72 hours~~ *and surrender or arrange to surrender the wildlife to the department.*

(2) A person may not ~~intentionally~~ provide supplemental feed *attractants* to game animals *by:*

(a) purposely or knowingly attracting bears with supplemental feed attractants;

(b) after having received a previous warning, negligently failing to properly store supplemental feed attractants and allowing bears access to the supplemental feed attractants; or

(c) purposely or knowingly providing supplemental feed attractants in a manner that results in an artificial concentration of game animals that may potentially contribute to the transmission of disease *or that constitutes a threat to public safety.*

(3) A person who is engaged in the normal feeding of livestock, in a normal agricultural practice, in cultivation of a lawn or garden, or in the commercial processing of garbage is not subject to civil or criminal liability under this section.

(4) A person who violates ~~this~~ subsection *(2)* is guilty of a misdemeanor and is subject to the penalty provided in 87-1-102(1). This ~~subsection~~ *section* does not apply to supplemental feeding activities conducted by the department for disease control purposes.

~~(3)~~*(5)* As used in this section~~,~~*:*

(a) "livestock" includes ostriches, rheas, and emus*; and*

(b) "supplemental feed attractant" means any food, garbage, or other attractant for game animals."

Section 4. Section 87-3-504, MCA, is amended to read:

"**87-3-504. Metal tags required on traps.** ~~Any~~ *A* person trapping fur-bearing animals, ~~or~~ predatory animals, *or any other animals* ~~for their pelts~~ shall fasten a metal tag to all ~~such~~ traps bearing in legible English the name and address *or wildlife conservation license number* of the trapper, except that ~~no~~ *a* tag ~~shall be~~ *is not* required on traps used by landowners trapping ~~with permit~~ on their own land ~~and~~ *or on an* irrigation ditch right-of-way contiguous to the land."

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2001

CHAPTER NO. 276

[SB 130]

AN ACT AUTHORIZING THE TRUSTEES OF A SCHOOL DISTRICT TO EXCHANGE CERTAIN DISTRICT PROPERTY WITH A PUBLIC OR PRIVATE ENTITY UPON RECEIPT OF A BINDING WRITTEN AGREEMENT THAT USE OF THE PROPERTY WILL BENEFIT THE SCHOOL DISTRICT AND UPON APPROVAL OF THE ELECTORATE; REQUIRING THE DEED FOR THE LAND EXCHANGE TO CONTAIN REVERSIONARY CLAUSES TO ALLOW FOR RETURN OF THE LAND TO SCHOOL DISTRICT OWNERSHIP IF THE WRITTEN AGREEMENT IS NOT COMPLIED WITH; AMENDING SECTION 20-6-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-6-603, MCA, is amended to read:

"**20-6-603. Trustees' authority to acquire or dispose of sites and buildings — when election required.** (1) The trustees of a district may purchase, build, exchange, or otherwise acquire, sell, or dispose of sites and buildings of the district. Action may not be taken by the trustees without the approval of the qualified electors of the district at an election called for the purpose of approval unless:

(a) a bond issue has been authorized for the purpose of constructing, purchasing, or acquiring the site or building;

(b) an additional levy under the provisions of 20-9-353 has been approved for the purpose of constructing, purchasing, or acquiring the site or building;

(c) the cost of constructing, purchasing, or acquiring the site or building is financed without exceeding the maximum general fund budget amount for the district and, in the case of a site purchase, the site has been approved under the provisions of 20-6-621; or

(d) money is otherwise available under the provisions of this title and the ballot for the site approval for the building incorporated a description of the building to be located on the site.

(2) Except for land that is granted to or held by the state in trust or land acquired by conditional deed under the provisions of 20-6-605, the trustees may, upon approval by the electorate, accept as partial or total consideration for the exchange of the land a binding written agreement by a public or private entity seeking the exchange to use the property to provide a service that benefits the school district. The deed for the exchange of land must contain reversionary clauses that allow for the return of the land to school district ownership if the binding written agreement is not complied with.

~~(2)~~*(3)* When an election is conducted under the provisions of this section, it must be called under the provisions of 20-20-201 and must be conducted in the manner prescribed by this title for school elections. An elector qualified to vote under the provisions of 20-20-301 may vote in the election. If a majority of those electors voting at the election approve the proposed action, the trustees may take the proposed action."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2001

CHAPTER NO. 277

[SB 132]

AN ACT PROVIDING FOR A SAFE HAVEN FOR ABANDONED NEWBORNS; PROVIDING FOR SURRENDER OF A NEWBORN TO AN EMERGENCY SERVICES PROVIDER; DEFINING TERMS; PROVIDING FOR NOTIFICATION OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING THAT THE DEPARTMENT ASSUME CARE, CUSTODY, AND CONTROL OF A SURRENDERED NEWBORN; PROVIDING IMMUNITY TO THOSE TO WHOM A NEWBORN IS SURRENDERED; PROHIBITING CRIMINAL CHARGES OF ABANDONMENT IF A NEWBORN IS SURRENDERED WITHOUT INTENTIONALLY INFLICTED INJURY IN ACCORDANCE WITH THIS ACT; PROVIDING FOR A CUSTODY ACTION BY A BIOLOGICAL PARENT WITHIN 60 DAYS OF SURRENDER; REQUIRING THE DEPARTMENT TO ESTABLISH A SAFE DELIVERY PROGRAM; AMENDING SECTIONS 40-4-211 AND 41-3-102, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, Montana and the nation have experienced sorrow in the knowledge that newborn infants are sometimes abandoned in life-threatening situations and that some of these children have been harmed or have died as a consequence; and

WHEREAS, the parents of these newborn infants may be under severe emotional stress and may need a safe haven available to them and their child; and

WHEREAS, anonymity, confidentiality, and freedom from prosecution may encourage the parent to leave an infant safely and save the life of the infant; and

WHEREAS, Texas, Minnesota, Louisiana, Colorado, Connecticut, Florida, Indiana, Michigan, New Jersey, New York, South Carolina, and West Virginia have enacted similar laws in 1999 and 2000, and an additional 12 states have legislation under consideration; and

WHEREAS, infants at risk may be served by having this legislation in place, and this legislation is worthwhile if it saves even one infant's life.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 14] may be cited as the "Montana Safe Haven Newborn Protection Act".

Section 2. Definitions. As used in [sections 1 through 14], the following definitions apply:

(1) "Child-placing agency" means an agency licensed under Title 42, chapter 8, part 1.

(2) "Court" means a court of record in a competent jurisdiction and, in Montana, means a district court or a tribal court.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Emergency services provider" means:

(a) a uniformed or otherwise identifiable employee of a fire department, hospital, or law enforcement agency when the individual is on duty inside the premises of the fire department, hospital, or law enforcement agency; or

(b) any law enforcement officer, as defined in 7-32-201, who is in uniform or is otherwise identifiable.

(5) "Fire department" means a fire department organized by a city, town, or city-county consolidated local government under Title 7, chapter 33.

(6) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

(7) "Guardian ad litem" means a person appointed to represent a newborn under Title 41, chapter 3.

(8) "Hospital" has the meaning provided in 50-5-101.

(9) "Law enforcement agency" means a police or sheriff's department, a detention center as defined in 7-32-2241, or a correctional institution as defined in 45-2-101.

(10) "Newborn" means an infant who a physician reasonably believes to be no more than 30 days old.

(11) "Surrender" means to leave a newborn with an emergency services provider without expressing an intent to return for the newborn.

Section 3. Court jurisdiction — hospital immunity. (1) The court has jurisdiction over a newborn who is surrendered to an emergency services provider as provided in [section 5]. The court may appoint a guardian ad litem to represent a newborn in proceedings under [sections 1 through 14].

(2) Except as provided in [section 6], the reporting requirements of 41-3-201 do not apply regarding a newborn who is surrendered to an emergency services provider as provided in [section 5].

(3) A hospital and the agents and employees of the hospital are immune in a civil action for damages for an act or omission in accepting or transferring a newborn under [sections 1 through 14], except for an act or omission constituting gross negligence or willful or wanton misconduct.

Section 4. Immunity for fire department and law enforcement agency. A fire department or law enforcement agency and the agents and employees of a fire department or law enforcement agency are immune in a civil action for damages for an act or omission in accepting or transferring a newborn under [sections 1 through 14], except for an act or omission constituting gross negligence or willful or wanton misconduct.

Section 5. Surrender of newborn to emergency services provider — temporary protective custody. (1) If a parent surrenders an infant who may be a newborn to an emergency services provider, the emergency services provider shall comply with the requirements of this section under the assumption that the infant is a newborn. The emergency services provider shall, without a court order, immediately accept the newborn, taking the newborn into temporary protective custody, and shall take action necessary to protect the physical health and safety of the newborn.

(2) The emergency services provider shall make a reasonable effort to do all of the following:

(a) if possible, inform the parent that by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption according to law;

(b) if possible, inform the parent that the parent has 60 days to petition the court to regain custody of the newborn;

(c) if possible, ascertain whether the newborn has a tribal affiliation, and if so, ascertain relevant information pertaining to any Indian heritage of the newborn;

(d) provide the parent with written material approved by or produced by the department, which includes but is not limited to all of the following statements:

(i) by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption and the department shall initiate court proceedings according to law to place the newborn for adoption, including proceedings to terminate parental rights;

(ii) the parent has 60 days after surrendering the newborn to petition the court to regain custody of the newborn;

(iii) the parent may not receive personal notice of the court proceedings begun by the department;

(iv) information that the parent provides to an emergency services provider will not be made public;

(v) a parent may contact the safe delivery line established under [section 12] for more information and counseling; and

(vi) any Indian heritage of the newborn brings the newborn within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.

(3) After providing a parent with the information described in subsection (1), if possible, an emergency services provider shall make a reasonable effort to:

(a) encourage the parent to provide any relevant family or medical information, including information regarding any tribal affiliation;

(b) provide the parent with the pamphlet produced under [section 12] and inform the parent that the parent may receive counseling or medical attention;

(c) inform the parent that information that the parent provides will not be made public;

(d) ask the parent for the parent's name;

(e) inform the parent that in order to place the newborn for adoption, the state is required to make a reasonable attempt to identify the other parent and to obtain relevant medical family history and then ask the parent to identify the other parent;

(f) inform the parent that the department can provide confidential services to the parent; and

(g) inform the parent that the parent may sign a relinquishment for the newborn to be used at a hearing to terminate parental rights.

Section 6. Medical care — report of abuse or neglect — report to department. (1) An emergency services provider that is not a hospital and that takes a newborn into temporary protective custody under [section 5] shall transfer the newborn to a hospital. The hospital shall accept a newborn transferred to the hospital by an emergency services provider in compliance with [sections 1 through 14] and shall take the newborn into temporary protective custody.

(2) A hospital that takes a newborn into temporary protective custody under [sections 1 through 14] shall have the newborn examined by a physician. If a physician who examines the newborn either determines that there is reason to suspect the newborn has experienced abuse or neglect, other than being surrendered to an emergency services provider under [section 5], or comes to a reasonable belief that the infant is not a newborn, the physician shall immediately report to the department as required under 41-3-201. If the actual date of birth of the infant is not known, the physician shall determine a birth date based on the physician's examination of the infant.

(3) If a physician is not required to report to the department under subsection (2), the hospital shall, no later than the first business day after taking possession of the newborn, notify the department that the hospital has taken a newborn into temporary protective custody under [sections 1 through 14].

Section 7. Assumption of care, custody, and control by department — placement of child — presumptions — Montana birth certificate. (1) Upon receipt of notice under [section 6], the department shall:

(a) immediately assume the care, control, and temporary protective custody of the newborn;

(b) if a parent is known and willing, immediately meet with the parent;

(c) make a temporary placement of the newborn;

(d) immediately request assistance from law enforcement officials to investigate and determine, through the national center for missing and exploited children and any other national and state missing children information programs, whether the newborn is a missing child;

(e) not later than 48 hours after assuming the care, control, and temporary protective custody of the newborn, file a petition with the court under the provisions of Title 41, chapter 3, part 4, requesting appropriate relief with the goal of achieving permanent placement for the newborn at the earliest possible date; and

(f) within 30 days, make reasonable efforts to identify and locate a parent who did not surrender the newborn. If the identity and address of that parent are unknown, the department shall provide notice by publication in a newspaper of general circulation in the county where the newborn was surrendered.

(2) The department, after assuming the care, custody, and control of a newborn under subsection (1), is not required to attempt to reunify the newborn with the newborn's parents. The department is not required to search for relatives of the newborn as a placement or permanency option or to implement other placement requirements that give preference to relatives if the department does not have information as to the identity of the newborn or either of the newborn's parents. The department shall place the newborn with prospective adoptive parents as soon as possible. The adoptive parents must be allowed access to information regarding the newborn's medical history, date of birth, or age if the department has that information.

(3) A newborn surrendered under [section 5] is presumed to have been born in Montana unless the biological parent otherwise informs the department or the emergency services provider to whom the newborn is surrendered.

(4) A Montana birth certificate may be issued based on the presumption of birth in Montana as provided in subsection (3). A birth certificate issued to a newborn surrendered under [section 5] must provide a date of birth based on either the actual date of birth, if known, or on the date of birth determined by the physician who performs the medical examination of the newborn under [section 6].

Section 8. Rights of parents — custody action. (1) Any person alleging to be the biological parent of a newborn who was surrendered to an emergency services provider under [section 5] may, within 60 days of the date of surrender of the newborn, file an action with the court for custody pursuant to 40-4-211.

(2) Before making a custody decision, the court shall determine whether the individual filing the custody action is the newborn's biological parent under the provisions of part 1 of this chapter. A determination of the existence or nonexistence of the child-parent relationship is determinative as provided in 40-6-116.

(3) The putative father registry provisions under Title 42, chapter 2, part 2, apply to any court proceeding under [sections 1 through 14].

Section 9. Custody action — newborn's best interest. In a custody action under [section 8], the court shall determine custody of the newborn based on the newborn's best interest as provided in 40-4-212. The court shall determine the newborn's best interest with the goal of achieving permanent placement for the newborn at the earliest possible date.

Section 10. Custody action — order. Based on the court's finding of the newborn's best interest under [section 9], the court may issue an order:

(1) granting legal or physical custody, or both, of the newborn to the parent and either retaining or relinquishing jurisdiction; or

(2) denying custody of the newborn to the parent and referring the matter to the department or county attorney for proceedings under Title 41, chapter 3.

Section 11. Presumption of waiver of parental rights — department to file petition. (1) A parent who surrenders a newborn under [section 5] and who does not file a custody action under [section 8] is presumed to have knowingly waived the parent's parental rights to the newborn.

(2) If a custody action is not filed under [section 8] or if the parent is denied custody of the newborn under [section 10], the department shall file a petition under Title 41, chapter 3, part 4, requesting appropriate relief with the goal of achieving permanent placement for the newborn at the earliest possible date.

Section 12. Surrendered newborns — safe delivery program. The department shall establish a safe delivery program. The safe delivery program:

(1) must include but is not limited to a toll-free, 24-hour telephone line, which must be a component of the department's existing child abuse toll-free telephone line. The information provided with this telephone line must include but is not limited to the following:

(a) information on prenatal care and the delivery of a newborn;

(b) names of health agencies that can assist in obtaining services and support that provide for the pregnancy-related health of the mother and the health of the newborn;

(c) information on adoption options and the name and telephone number of a child-placing agency that can assist a parent or expecting parent in obtaining adoption services;

(d) information that, in order to safely provide for the health of the mother and the newborn, the best place for the delivery of an infant is in a hospital;

(e) an explanation that, to the extent of the law, prenatal care and delivery services are routinely confidential within the health care system if requested by the mother;

(f) information that a hospital will take into protective custody a newborn that is surrendered as provided for in [sections 1 through 14] and, if needed, provide emergency medical assistance to the mother, the newborn, or both;

(g) information regarding legal and procedural requirements related to the voluntary surrender of a newborn as provided for in [sections 1 through 14];

(h) information regarding the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., if the newborn has any Indian heritage;

(i) information regarding the legal consequences for endangering a child, including child protective services investigations and potential criminal penalties;

(j) information that surrendering a newborn for adoption as provided in [sections 1 through 14] is an affirmative defense to charges of abandonment; and

(k) information about resources for counseling and assistance with crisis management; and

(2) must include but is not limited to a pamphlet that provides information to the public concerning the safe delivery program. The department shall publish and distribute the pamphlet. The pamphlet must be distributed and the safe delivery program publicized in a manner designed to reach females of childbearing age, including delivery of the pamphlet to high schools for use in health courses. The pamphlet must prominently display the toll-free telephone number provided for in subsection (1), if available, and must include the information prescribed in subsections (1)(a) through (1)(k).

Section 13. Reimbursement of medical expenses. The department shall reimburse a hospital for the actual expenses incurred by the hospital in accepting and caring for a newborn who is surrendered under [section 5].

Section 14. Immunity from criminal prosecution. (1) Except when there is intentional infliction of injury to the abandoned infant, a criminal prosecution may not be initiated involving the abandonment of an infant that was not more than 30 days old and was surrendered to an emergency services provider under [section 5].

(2) A criminal investigation may not be initiated solely on the basis of a newborn being surrendered to an emergency services provider under [sections 1 through 14] in the absence of reasonable suspicion of actual abuse or neglect.

Section 15. Section 40-4-211, MCA, is amended to read:

"40-4-211. Jurisdiction — commencement of parenting proceedings. (1) A court of this state competent to decide parenting matters has jurisdiction to make a parenting determination by initial or amended decree if:

(a) this state:

(i) is the home state of the child at the time of commencement of the proceedings; or

(ii) had been the child's home state within 6 months before commencement of the proceedings and the child is absent from this state because of the child's removal or retention by any person and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because:

(i) the child and the parents or the child and at least one contestant have a significant connection with this state; and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and:

(i) has been abandoned, *including being surrendered to an emergency services provider as provided in [section 5]*; or

(ii) it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with subsection (1)(a), (1)(b), or (1)(c) or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine parenting of the child; and

(ii) it is in the child's best interest that the court assume jurisdiction.

(2) Except under subsections (1)(c) and (1)(d), physical presence in this state of the child or of the child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make a parenting determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine parenting of the child.

(4) A parenting plan proceeding is commenced in the district court:

(a) by a parent, by filing a petition:

(i) for dissolution or legal separation; ~~or~~

(ii) for parenting in the county in which the child is permanently resident or found; or

(iii) for custody under [section 8]; or

(b) by a person other than a parent if the person has established a child-parent relationship with the child, by filing a petition for parenting in the county in which the child resides or is found.

(5) Notice of a parenting proceeding must be given to the child's parent, guardian, caretaker, those persons with whom the child is physically residing, and all other contestants, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties.

(6) For purposes of subsection (4)(b), "child-parent relationship" means a relationship that exists or did exist, in whole or in part, preceding the filing of an action under this section, in which a person provides or provided for the physical needs of a child by supplying food, shelter, and clothing and provides or provided the child with necessary care, education, and discipline and which relationship continues or existed on a day-to-day basis through interaction, companionship, interplay, and mutuality that fulfill the child's psychological needs for a parent as well as the child's physical needs.

(7) A custody proceeding under [section 8] is commenced in the district court by a parent by filing in one of the following counties:

(a) the county where the newborn is located if the parent knows where the newborn is;

(b) the county where the emergency services provider to whom the newborn was surrendered is located if subsection (7)(a) does not apply; or

(c) the county where the biological parent is located if neither subsection (7)(a) or (7)(b) applies."

Section 16. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Abandon", "abandoned", and "abandonment" mean:

(a) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(b) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; ~~or~~

(c) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed*; or*

(d) the voluntary surrender, as defined in [section 2], by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in [section 2].

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual harm to a child's health or welfare; or

(ii) substantial risk of harm to a child's health or welfare.

(b) The term includes actual harm or substantial risk of harm by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute harm to a child's health or welfare.

(8) "Department" means the department of public health and human services provided for in 2-15-2201.

(9) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or psychological abuse or neglect;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(f) abandons the child.

(10) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(11) "Parent" means a biological or adoptive parent or stepparent.

(12) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(13) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(14) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.

(15) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(16) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(17) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(18) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(19) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

(20) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(21) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(22) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (22), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(23) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused or neglected."

Section 17. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 18. Codification instruction. [Sections 1 through 14] are intended to be codified as a new part in Title 40, chapter 6, and the provisions of Title 40, chapter 6, apply to [sections 1 through 14].

Section 19. Two-thirds vote required — contingent voidness. (1) Because [section 4] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

(2) If [this act] does not receive a vote of two-thirds of the members of each house of the legislature, [section 4] is void.

Section 20. Effective date. [This act] is effective July 1, 2001.

Section 21. Termination. [Section 12] terminates June 30, 2004.

Approved April 20, 2001

CHAPTER NO. 278

[SB 138]

AN ACT GENERALLY REVISING THE LAWS RELATING TO LOCAL GOVERNMENT ACCOUNTING, BUDGETING, AND FINANCIAL MATTERS; AMENDING SECTIONS 2-7-501, 2-7-503, 2-7-504, 2-7-505, 2-7-513, 2-9-316, 2-9-804, 3-5-602, 3-5-901, 7-1-114, 7-3-4432, 7-6-204, 7-6-2111, 7-4-2514, 7-6-2113, 7-6-2202, 7-6-2521, 7-6-2524, 7-6-2601, 7-6-2602, 7-6-2607, 7-6-4302, 7-6-4501, 7-12-4181, 7-12-4183, 50-60-302, 53-2-322, AND 85-3-423, MCA; REPEALING SECTIONS 7-6-601, 7-6-603, 7-6-604, 7-6-2112, 7-6-2201, 7-6-2203, 7-6-2211, 7-6-2212, 7-6-2213, 7-6-2214, 7-6-2218, 7-6-2219, 7-6-2220, 7-6-2221, 7-6-2301, 7-6-2302, 7-6-2303, 7-6-2311, 7-6-2312, 7-6-2313, 7-6-2314, 7-6-2315, 7-6-2316, 7-6-2317, 7-6-2318, 7-6-2319, 7-6-2320, 7-6-2321, 7-6-2322, 7-6-2323, 7-6-2324, 7-6-2325, 7-6-2326, 7-6-2327, 7-6-2328, 7-6-2329, 7-6-2330, 7-6-2331, 7-6-2335, 7-6-2341, 7-6-2342, 7-6-2343, 7-6-2345, 7-6-2348, 7-6-2351, 7-6-2352, 7-6-2502, 7-6-2525, 7-6-2702, 7-6-4101, 7-6-4104, 7-6-4121, 7-6-4123, 7-6-4124, 7-6-4134, 7-6-4135, 7-6-4140, 7-6-4141, 7-6-4201, 7-6-4202, 7-6-4203, 7-6-4205, 7-6-4206, 7-6-4207, 7-6-4208, 7-6-4209, 7-6-4232, 7-6-4234, 7-6-4237, 7-6-4238, 7-6-4240, 7-6-4259, 7-6-4260, 7-6-4261, 7-6-4262, 7-6-4263, 7-6-4264, 7-6-4265, 7-6-4266, 7-6-4267, 7-6-4270, 7-6-4271, 7-6-4272, 7-6-4407, AND 7-6-4408, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Declaration of policy. (1) It is the policy of the state of Montana that all governmental accounting systems be established and maintained in accordance with generally accepted accounting principles that are nationally recognized as set forth by the governmental accounting standards board or its generally recognized successor.

(2) The codifications, pronouncements, and interpretations of the governmental accounting standards board or its generally recognized successor must be recognized as the primary authoritative reference for governmental accounting.

Section 2. Fiscal year for local governments. The fiscal year of local governments commences on July 1 of each calendar year and ends on June 30 of the following calendar year.

Section 3. Role of department of commerce. (1) The department of commerce shall prescribe for all local governments:

(a) general methods and details of accounting in accordance with generally accepted accounting principles as provided in 2-7-504;

(b) uniform internal and interim reporting systems as part of the uniform reporting systems provided for in 2-7-503;

(c) the form of the annual financial report as provided in 2-7-503; and

(d) general methods and details of accounting for the annual financial report as provided in 2-7-513.

(2) Local governments shall file with the department of commerce:

(a) an annual financial report within 6 months of the fiscal yearend; and

(b) an audit report within 12 months of the end of the audited period.

(3) The governing body of each county or municipality shall notify the department of commerce in writing, on a form prescribed by the department of commerce, of the creation, dissolution, combination, or other legal alteration of any special purpose district within the county or municipality.

(4) Each special purpose district shall obtain a permanent mailing address and notify the department of commerce of the address and of any subsequent changes of the district's address.

Section 4. Additional records and reports. (1) The chief executive or governing body of a county or municipality may require any elected or appointed local government official or employee to:

(a) maintain new or additional financial records;

(b) perform new or additional financial reconciliations; and

(c) submit new or additional financial reports.

(2) This part does not provide for the consolidation or reassignment, but does not prohibit delegation by mutual agreement, of any duties of elected county officials. Continuing county duties include but are not limited to the following:

(a) The county treasurer shall make a detailed monthly report to the governing body of the county of all receipts, disbursements, debt, and other proceedings of the treasurer's office.

(b) The county clerk shall compile and present to the governing body of the county the annual financial report provided for in [section 3(2)(a)].

(3) The designated county or municipal treasurer shall:

(a) receive, disburse, and serve as the custodian of all public money;

(b) provide for accountability of all local government cash receipts and for deposits and investments of all departments, offices, and boards;

(c) pay out, in the order registered, all warrants presented for payment when there are funds in the treasury to pay the warrants; and

(d) require periodic departmental reports of money receipts and their disposition on forms that the designated county or municipal treasurer prescribes.

(4) All local governments:

(a) shall deposit all public money with the county or municipal treasurer within a month of receipt unless otherwise specifically authorized by law;

(b) may not maintain separate bank accounts unless specifically authorized by the county or municipal governing body;

(c) may not maintain separate investments.

(5) The provisions of subsections (3) and (4) apply to local governments that are not subject to an independent audit pursuant to 2-7-503 and are in addition to laws specifically applying to those local governments.

(6) The governing body of a county or municipality shall direct the county or municipal treasurer to open separate accounts for the receipt of money for the governing body. Only the county or municipal treasurer may open an account for the receipt of local government money.

Section 5. Procedure to transfer funds. Money may not be transferred from one fund to another except by resolution of a county or municipal governing body unless the transfer is:

(1) previously authorized by a budget resolution;

(2) provided for by [section 6];

(3) made in the usual course of county or municipal business for:

(a) school transfers;

(b) tax increment finance districts;

(c) specialized tax situations;

(d) the purpose of distributing refunds, protested taxes, or interest charges for interest in lieu of registered warrants;

(e) bond sinking fund transfers;

(f) residual equity transfers;

(g) transfers of investments; or

(h) corrections of errors; or

(4) otherwise authorized by statute.

Section 6. Procedure to close inactive funds. A county or municipal governing body may transfer balances from inactive funds and close the inactive funds.

Section 7. Authorization to maintain petty cash fund. (1) A county or municipal governing body may set aside a sum out of the general fund, which must be known as a petty cash fund. The petty cash fund must be used for the purpose of paying incidental expenses, such as freight charges, express charges, postage, and other similar expenses that must be immediately paid in cash.

(2) In counties that have a county auditor, the county auditor is responsible for expenditures from the petty cash fund. In counties that do not have a county auditor, the county clerk is responsible for expenditures from the petty cash fund.

Section 8. Capital improvement program. A county or municipal governing body may provide for a capital improvement program for the replacement, improvement, and acquisition of property, facilities, or equipment that costs in excess of $5,000 and that has a life expectancy of 5 years or more. The capital improvement program must be formally adopted by the county or municipal governing body. The capital improvement program may receive funds from up to 10% of one or more property tax levies and may receive funds from any source.

Section 9. Short title — applicability. (1) [Sections 9 through 32] may be referred to as the "Local Government Budget Act".

(2) [Sections 9 through 32] apply to all local governments.

Section 10. Definitions. As used in [sections 9 through 32], unless the context requires otherwise, the following definitions apply:

(1) "Governing body" means the elected body responsible for the administration of a local government.

(2) "Local government" has the meaning provided in 7-6-602.

(3) "Municipality" means an incorporated city or town.

(4) "Working capital" means the current assets of a fund minus the current liabilities and designated reserves of a fund.

Section 11. Budget and levies supplied to department of commerce. (1) A local government shall submit a complete copy of the final budget together with a statement of tax levies to the department of commerce by the later of October 1 or 60 days after receipt of taxable values from the department of revenue. The county clerk and recorder shall make this submission for counties.

(2) The local government shall use standard forms prescribed by the department of commerce or may use an alternative budget format acceptable to the department of commerce.

Section 12. Budget fund structure. Local government budgets must conform to the fund structure prescribed by the department of commerce.

Section 13. Expenditures limited to appropriations. (1) Local government officials may not make a disbursement or an expenditure or incur an obligation in excess of the total appropriations for a fund.

(2) A local government official who violates subsection (1) is liable for the amount of the excess disbursement, expenditure, or obligation personally and upon the official's bond.

(3) The subsequent claims approval process may not be considered as the making of a disbursement or an expenditure or as incurring an obligation and does not otherwise limit or mitigate the local government official's personal liability.

Section 14. Appropriation power — requirements. (1) A governing body may appropriate money and provide for the payment of the debts and expenses of the local government.

(2) Money may not be disbursed, expended, or obligated except pursuant to an appropriation for which working capital is or will be available.

(3) Appropriations may be adjusted according to procedures authorized by the governing body for:

(a) debt service funds for obligations related to debt approved by the governing body;

(b) trust funds for obligations authorized by trust covenants;

(c) any fund for federal, state, local, or private grants and shared revenue accepted and approved by the governing body;

(d) any fund for special assessments approved by the governing body;

(e) the proceeds from the sale of land;

(f) any fund for gifts or donations; and

(g) money borrowed during the fiscal year.

(4) The governing body may amend the budget during the fiscal year by conducting public hearings at regularly scheduled meetings. Budget amendments providing for additional appropriations must identify the fund reserves, unanticipated revenue, or previously unbudgeted revenue that will fund the appropriations.

Section 15. Use of bond proceeds and borrowed money. (1) Except as otherwise provided by law, money borrowed by a local government may be used only for the purpose for which the money was borrowed. Unless restricted by law, surplus borrowed money may be used to redeem the debt for which the money was borrowed.

(2) The authorization of bonds by the electors or the governing body constitutes the appropriation of the bond proceeds for the purpose for which the bonds are authorized.

Section 16. Fee based budgets — adjustable appropriation. (1) In its final budget resolution, the governing body may authorize adjustments to appropriations funded by fees throughout the budget period. Adjustable appropriations are:

(a) proprietary fund appropriations; or

(b) other appropriations specifically identified in the local government's final budget resolution as fee-based appropriations.

(2) Adjustments of fee-based appropriations must be:

(a) based upon the cost of providing the services supported by the fee; and

(b) fully funded by the related fees for services, fund reserves, or nonfee revenue such as interest.

Section 17. Fees for services — hearing and resolution. (1) If a local government has the authority to regulate, establish, and change fees, rates, charges, and classifications that are imposed for services to its inhabitants and other persons served by the local government, the fees, rates, charges, and classifications must be reasonable and related to the cost of providing the service.

(2) Charges for services must comply with Title 17, chapter 2, part 3, and other applicable statutes.

(3) In order to establish or change fees, rates, charges, or classifications imposed for services, the governing body shall order a hearing to be held as provided in 7-1-4131, unless a special hearing process is provided by law. Municipal utility rate hearings must be held as provided in 69-7-112.

(4) Notice of a hearing must be published as provided in 7-1-2121 for a county and as provided in 7-1-4127 and 7-1-4128 for a municipality.

(5) After a hearing, the fees, rates, charges, or classifications must be established by resolution of the governing body.

Section 18. Restriction on tax-financed expenditures if voter approval required. If an expenditure is to be financed from a tax levy required to be authorized and approved at an election, the expenditure may not be made or an obligation may not be incurred against the expenditure until the tax levy is authorized and approved.

Section 19. Payments for judgments. (1) Judgments against a local government that are not covered by insurance may be paid:

(a) from the general fund; or

(b) from the fund or funds supporting the local government operation that incurred the judgment.

(2) Judgments that are to be paid from the general fund:

(a) must be paid in the current fiscal year if there is sufficient money in the general fund to pay both the judgment and the general fund appropriations for the current fiscal year; or

(b) must be paid from additional tax levies made in each of the next 3 years if general fund money is insufficient to pay the judgment in the current fiscal year.

Section 20. Preliminary annual operating budget. (1) A preliminary annual operating budget must be prepared for the local government.

(2) [Sections 9 through 32] do not provide for the consolidation or reassignment, but do not prohibit delegation by mutual agreement, of any duties of elected county officials.

(3) (a) Before June 1 of each year, the county clerk and recorder shall notify the county commission and each board, office, or official that they are required to file preliminary budget proposals for their component of the total county budget.

(b) Component budgets must be submitted to the clerk and recorder before June 10th or on a date designated by the county commission and must be submitted on forms provided by the county clerk and recorder.

(c) The county clerk and recorder shall prepare and submit the county's preliminary annual operating budget.

(d) Component budget responsibilities as provided in this subsection (3) include but are not limited to the following:

(i) The county surveyor or any special engineer shall compute road and bridge component budgets and submit them to the county commission.

(ii) The county commission shall submit road and bridge component budgets.

(iii) The county treasurer shall submit debt service component budgets.

(iv) The county commission shall submit component budgets for construction or improvements to be made from new general obligation debt.

(4) The preliminary annual operating budget for each fund must include, at a minimum:

(a) a listing of all revenue and other resources for the prior budget year, current budget year, and proposed budget year;

(b) a listing of all expenditures for the prior budget year, the current budget year, and the proposed budget year. All expenditures must be classified under one of the following categories:

(i) salaries and wages;

(ii) operations and maintenance;

(iii) capital outlay;

(iv) debt service; or

(v) transfers out.

(c) a projection of changes in fund balances or cash balances available for governmental fund types and a projection of changes in cash balances and working capital for proprietary fund types. This projection must be supported by a summary for each fund or group of funds listing the estimated beginning balance plus estimated revenue, less proposed expenditures, cash reserves, and estimated ending balances.

(d) a detailed list of proposed capital expenditures and a list of proposed major capital projects for the budget year;

(e) financial data on current and future debt obligations;

(f) schedules or summary tables of personnel or position counts for the prior budget year, current budget year, and proposed budget year. The budgeted amounts for personnel services must be supported by a listing of positions, salaries, and benefits for all positions of the local government. The listing of positions, salaries, and benefits is not required to be part of the budget document.

(g) all other estimates that fall under the purview of the budget.

(5) The preliminary annual operating budget for each fund for which the local government will levy an ad valorem property tax must include the estimated amount to be raised by the tax.

Section 21. Notice of preliminary or amended budget. (1) The governing body shall cause a notice of a public hearing on the preliminary or amended budget to be published. The notice must:

(a) provide that the governing body has completed its preliminary annual budget for the ensuing fiscal year or intends to amend its annual budget;

(b) state that the budget or budget amendment has been placed on file and is open to inspection in the county or municipal office designated in the notice;

(c) designate the date, time, and place of the meeting at which the governing body will meet for approving a final budget or amended budget and making appropriations; and

(d) state that any taxpayer or resident may appear at the meeting and be heard for or against any part of the proposed budget or budget amendment.

(2) The publication requirements must conform to the provisions of 7-1-2121 for a county or 7-1-4127 and 7-1-4128 for a municipality.

Section 22. District court budgets. (1) The district court must be provided with copies of the preliminary district court fund budget as soon as the preliminary county budget is prepared pursuant to [section 20].

(2) The district court may recommend changes to any part of the district court fund budget that the court considers to be necessary for it to discharge its obligations under the law. Any recommendations must be made at the hearing on the preliminary budget held pursuant to [section 24].

(3) The district court fund may be used only for district court operations and expenses.

Section 23. State grants to district courts — rules. (1) To the extent funds are available after expenses provided for in 3-5-901 are funded, the state shall make grants to the governing body of a county for the district courts, as provided in this section.

(2) The governing body of a county may apply to the supreme court administrator for a grant by filing a written request on forms provided by the administrator by August 20 for the previous fiscal year unless, upon the request of the county, the administrator grants a time extension. In its request for a grant, a county shall certify that:

(a) all expenditures from the district court fund have been lawfully made;

(b) transfers from the district court fund have not been or will not be made to any other fund; and

(c) expenditures have not been made from the district court fund that are not specifically authorized by [section 22] and 7-6-2511.

(3) To the extent that funds are available, the state shall award a grant if the county's district court expenditures for the previous fiscal year exceeded the sum of:

(a) the product of the maximum mill levy authorized by law for district court purposes, whether or not assessed, multiplied by the previous year's taxable valuation of the county; and

(b) all revenue, except district court grants, required by law to be deposited in the district court fund for the previous fiscal year.

(4) Eligible court expenditures for grant purposes include all costs of the county associated with the operation and maintenance of the district court,

except building costs, costs for capital items, and costs for library maintenance, replacement, and acquisitions.

(5) The supreme court administrator shall notify each eligible county as soon as possible of the state's intention to award a grant to that county and the amount of the award.

(6) The grant received by the county must be placed in the district court fund.

(7) If an audit conducted pursuant to 2-7-503 discloses that the county received a grant in excess of the amount for which it was eligible, the county shall repay the excess to the state. The supreme court administrator shall redistribute any repaid excess amounts to the other counties that received grants from the appropriation from which the overpayment was made, on the same basis as the original awards. A county is not eligible for a district court grant if it owes the state a refund of a prior year's overpayment.

(8) The supreme court administrator, in consultation with the supreme court, shall prescribe rules and forms necessary to effectively administer this section. The administrator may require a county to provide any information considered necessary for the administration of the program.

Section 24. Hearing on preliminary budget. (1) The governing body shall hold a hearing in accordance with the notice given pursuant to [section 21].

(2) Local government officials shall attend the budget hearing to answer questions on their proposed budgets if called upon:

(a) by the governing body; or

(b) by a taxpayer or resident.

(3) The hearing may be continued from day to day and must be concluded and the budget finally approved and adopted by resolution by the later of the second Monday in August or within 45 calendar days of receiving certified taxable values from the department of revenue.

Section 25. Receipt and expenditure of money prior to adoption of final budget. A local government may receive and expend money between July 1 of the fiscal year and the date the final budget resolution is adopted.

Section 26. Final budget — resolution — appropriations. (1) The governing body may amend the preliminary budget after the public hearing and after considering any public comment.

(2) The amended budget constitutes the final budget. The final budget must be balanced so that appropriations do not exceed the projected beginning balance plus the estimated revenue of each fund for the fiscal year.

(3) The governing body shall adopt the final budget by resolution. The resolution must:

(a) authorize appropriations to defray the expenses or liabilities for the fiscal year; and

(b) establish legal spending limits at the level of detail in the resolution.

(4) The effective date of the resolution is July 1 of the fiscal year, even if the resolution is adopted after that date.

Section 27. Budget amendment procedures. (1) The final budget resolution may authorize the governing body or a designated official to transfer appropriations between items within the same fund.

(2) The annual budget appropriations may be amended as provided in [sections 14(3) and 16].

(3) Except as provided in [sections 14 through 16, 19, and 28] or in the case of an emergency under Title 10, chapter 3, a public hearing is required for an overall increase in appropriation authority.

Section 28. Emergency expenditures. (1) Emergency budget appropriations must be adopted by two-thirds of the members of a governing body who are present at a meeting.

(2) Emergency expenditures are limited to and must be charged to the adopted emergency budget appropriations.

(3) The governing body may submit the question of funding emergency warrants at an election as provided by law.

Section 29. Expenditure limitation. Except as provided in [sections 14 through 16, 19, and 28], the governing body, each county or municipal official, and the district courts are limited to the amount of appropriations and by the classifications in the annual appropriation resolution provided for in [section 26] when making disbursements or expenditures or incurring liabilities.

Section 30. Determination of fund requirements — property tax levy. (1) After determining the final budget, the governing body shall determine the property tax levy needed for each fund by:

(a) adding the total amount of the appropriations and authorized expenditures for the budget year;

(b) adding an additional amount, subject to the provisions of subsection (2), as a reserve to meet expenditures made from the fund during the months of July to November of the next fiscal year;

(c) subtracting the working capital; and

(d) subtracting the total estimated revenue, other than the property tax levy, for the budget year.

(2) After deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency warrants, the amount that mav be added as a reserve, as provided in subsection (1)(b), to:

(a) a county's fund may not exceed one-third of the total amount appropriated and authorized to be spent from the fund during the current fiscal year; and

(b) a city's or town's fund may not exceed one-half of the total amount appropriated and authorized to be spent from the fund during the current fiscal year.

Section 31. Tax levies for boards and commissions — bond exemption. (1)The proposed budget and mill levy for each board, commission, or other governing entity are subject to approval by the governing body.

(2) Except for a port authority created under Title 7, chapter 14, part 11, the taxes, revenue, or fees legally pledged for the payment of debt are not subject to approval by the governing body.

(3) Except for judgment levies under 2-9-316 or [section 19], all tax levies are subject to 15-10-420.

Section 32. Fixing tax levy. (1) The governing body shall fix the tax levy for each taxing jurisdiction within the county or municipality:

(a) by the later of the second Monday in August or within 45 calendar days after receiving certified taxable values;

(b) after the approval and adoption of the final budget; and

(c) at levels that will balance the budgets as provided in [section 30].

(2) Each levy:

(a) must be made in the manner provided by 15-10-201; and

(b) except for a judgment levy under 2-9-316 or [section 19], is subject to 15-10-420.

Section 33. Section 2-7-501, MCA, is amended to read:

"2-7-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Audit" means a financial audit and includes financial statement and financial-related audits as defined by government auditing standards as established by the U.S. comptroller general.

(2) "Board" means the Montana board of public accountants provided for in 2-15-1866.

(3) "Department" means the department of commerce.

(4) (a) "Financial assistance" means assistance provided by a federal, state, or local government entity to a local government entity or subrecipient to carry out a program. Financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance. Financial assistance includes awards received directly from federal and state agencies or indirectly when subrecipients receive funds identified as federal or state funds by recipients. The granting agency is responsible for identifying the source of funds awarded to recipients. The recipient is responsible for identifying the source of funds awarded to subrecipients.

(b) Financial assistance does not include direct federal, state, or local government cash assistance to individuals.

(5) "Financial report" means a presentation of *financial statements, including applicable supplemental notes and supplemental* schedules, *that are prepared in a format published by the department using the Budgetary Accounting and Reporting System for Montana Cities, Towns, and Counties Manual and* that reflect a current financial position and the operating results for the 1-year reporting period.

(6) "Independent auditor" means:

(a) a federal, state, or local government auditor who meets the standards specified in the government auditing standards; or

(b) a licensed accountant who meets the standards in subsection (6)(a).

(7) (a) "Local government entity" means a county, city, district, or public corporation that:

(i) has the power to raise *revenue or receive, disburse, or expend local, state, or federal government* revenue for the purpose of serving the general public;

(ii) is governed by a board, commission, or individual elected or appointed by the public or representatives of the public; and

(iii) receives local, state, or federal financial assistance.

(b) Local government entities include but are not limited to:

(i) airport authority districts;

(ii) cemetery districts;

(iii) counties;

(iv) county housing authorities;

(v) county road improvement districts;

(vi) county sewer districts;

(vii) county water districts;

(viii) county weed control districts;

(ix) drainage districts;

(x) fire department relief associations;

(xi) fire districts;

(xii) hospital districts;

(xiii) incorporated cities or towns;

(xiv) irrigation districts;

(xv) mosquito districts;

(xvi) municipal housing authority districts;

(xvii) port authorities;

(xviii) refuse disposal districts;

(xix) rural improvement districts;

(xx) school districts including a district's extracurricular funds;

(xxi) soil conservation districts;

(xxii) special education or other cooperatives;

(xxiii) television districts;

(xxiv) urban transportation districts;

~~(xxv) volunteer fire departments; and~~

~~(xxvi)~~*(xxv)* water conservancy districts~~.~~*; and*

(xxvi) other miscellaneous and special districts.

(8) "Revenues" means all receipts of a local government entity from any source excluding the proceeds from bond issuances."

Section 34. Section 2-7-503, MCA, is amended to read:

"**2-7-503. Financial reports and audits of local government entities — exception.** (1) The governing body or managing or executive officer of a local government entity, other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed by the department, and be completed within 6 months of the end of the reporting period. The local government entity shall submit the financial report to the department for review.

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reporting requirements for school districts.

(3) (a) The governing body or managing or executive officer of each local government entity receiving revenue or financial assistance in the period covered by the financial report in excess of $200,000 shall cause an audit to be made at least every 2 years. The audit must cover the entity's preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to the department for review within 1 year from the close of the last fiscal year covered by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

(4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that a local government is required to conduct under any other state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the information that it requires to carry out its responsibilities under state or federal law or regulation, the state agency shall rely upon and use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.

(5) In addition to the audits required by this section, the department may at any time conduct or contract for a special audit or review of the affairs of any local government entity referred to in this part. The special audit or review must, to the extent practicable, build upon audits performed pursuant to this part.

(6) The fee for the special audit or review must be a charge based upon the costs incurred by the department in relation to the special audit or review. The audit fee must be paid by the local government entity to the state treasurer and must be deposited in the enterprise fund to the credit of the department.

~~(7) Subsections (1) through (3) do not apply to a local government entity that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.~~"

Section 35. Section 2-7-504, MCA, is amended to read:

"2-7-504. Accounting methods ~~— exception~~. (1) Unless otherwise required by law, the department shall prescribe by rule the general methods and details of accounting for the receipt and disbursement of all money belonging to local government entities and shall establish in those offices general methods and details of accounting. All local government entity officers shall conform with the accounting standards prescribed by the department.

(2) ~~This section does not apply to a local government entity that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.~~ *The rules adopted by the department must be in accordance with generally accepted accounting principles established by the governmental accounting standards board or its generally recognized successor.*"

Section 36. Section 2-7-505, MCA, is amended to read:

"2-7-505. Audit scope and standards. (1) Each audit must be a comprehensive audit of the affairs of the local government entity and must be made in accordance with auditing standards and in accordance with federal regulations adopted by the department by rule.

(2) The department, with cooperation from state agencies, shall prepare a local government compliance supplement that contains state and federal regulations applicable to local government entities. *Auditors shall use the compliance supplement adopted pursuant to this section in conjunction with government auditing standards adopted by the department to determine the compliance testing to be performed during an audit.*

(3) When auditing a county or a consolidated government auditors shall perform tests for compliance with state laws relating to receipts and disbursements of agency funds maintained by the entity. Findings related to compliance tests must be reported in accordance with the reporting standards for financial audits prescribed in government auditing standards adopted by the department."

Section 37. Section 2-7-513, MCA, is amended to read:

"2-7-513. Content of audit report and financial report ~~— exception~~. (1) The audit reports must comply with the reporting requirements of government auditing standards issued by the U.S. comptroller general and federal regulations adopted by department rule.

(2) ~~(a)~~ The department shall prescribe general methods and details of accounting for the financial report for local government entities other than schools. The financial report must be submitted in a form required by the department. The superintendent of public instruction shall prescribe the general methods and details of accounting for financial reports for schools.

~~(b) Subsection (2)(a) does not apply to a local government entity that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.~~"

Section 38. Section 2-9-316, MCA, is amended to read:

"2-9-316. Judgments against governmental entities ~~except state~~. ~~Except as provided in 15-1-402, a~~ *A* political subdivision of the state shall satisfy a final judgment or settlement out of funds that may be available from the following sources:

(1) insurance;

(2) the general fund or any other funds legally available to the governing body;

(3) a property tax, otherwise properly authorized by law, collected by a special levy authorized by law, in an amount necessary to pay any unpaid portion of the judgment or settlement~~, except that the levy may not exceed 10 mills~~;

(4) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the payment of the judgment or settlement liability. The governing body of a county, city, or school district may issue bonds pursuant to procedures established by law. Property taxes may be levied to amortize the bonds~~, provided the levy for payment of any bonds, settlements, or judgments may not exceed, in the aggregate, 10 mills annually~~."

Section 39. Section 2-9-804, MCA, is amended to read:

"**2-9-804. Purchase — responsible surety.** (1) The city or town council or commissioners shall purchase all surety bonds for city officers and employees.

(2) ~~The city or town council or commission shall actively solicit offers on a competitive basis from available qualified insurance or surety companies before purchasing the bonds.~~

~~(3)~~ Bonds purchased by the city or town council or commission ~~shall~~ *must* be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in this state."

Section 40. Section 3-5-602, MCA, is amended to read:

"**3-5-602. Salary and expenses — apportionment.** (1) Each reporter is entitled to receive a base annual salary of not less than $28,000 or more than $35,000 and no other compensation, except as provided in 3-5-604, unless the judge decides to solicit bids for the work performed by the reporter, in which case the salary must be for the amount specified in the bid accepted by the judge. The salary must be set by the judge for whom the reporter works. The salary is payable in monthly installments out of the general funds of the counties composing the district for which the reporter is appointed and out of an appropriation made to the supreme court administrator as provided in subsection (2).

(2) The supreme court administrator shall determine the total number of civil and criminal actions commenced in the preceding year in the district court or courts in the judicial district for which a reporter is appointed. The state shall pay its portion of the reporter's salary based on the proportion of the total number of criminal actions commenced in the district court or courts in the district and the amount appropriated for that purpose. Each county shall pay its portion of the remainder of the salary based on its proportion of the total number of civil and criminal actions commenced in the district courts in the district. The judge or judges of the district shall, on January 1 of each year or as soon thereafter as possible, apportion the amount of the salary to be paid by each county in the district on the basis prescribed in this subsection. The portion of the salary payable by a county is a district court expense within the meaning of ~~7-6-2351, 7-6-2352, and~~ 7-6-2511.

(3) In judicial districts comprising more than one county, the reporter is allowed, in addition to the salary and fees provided for in subsection (1), actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, when on official business to a county of the reporter's judicial district

other than the county in which the reporter resides. The expenses must be apportioned and are payable in the same way as the salary."

Section 41. Section 3-5-901, MCA, is amended to read:

"3-5-901. State assumption of certain district court expenses — designation as district court reimbursement program. (1) To the extent that revenue is available under 61-3-509, the state shall fund:

(a) the following district court expenses in criminal cases only:

(i) salaries of court reporters;

(ii) fees for transcripts of proceedings;

(iii) witness fees and necessary expenses;

(iv) juror fees;

(v) expenses for indigent defense; and

(vi) expenses for psychiatric examinations;

(b) the district court expenses, as listed in subsection (1)(a), in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;

(c) the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations; and

(d) the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

(i) transcript fees;

(ii) witness fees;

(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;

(iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth;

(v) expenses for appointed counsel for the youth;

(vi) expenses for appointed counsel for the parent, guardian, or other person having physical or legal custody of the youth; and

(vii) expenses associated with court-ordered alternative dispute resolution.

(2) If revenue received under 61-3-509 exceeds the amount appropriated by the legislature to fund the expenses of the appellate defender program, the excess amount is statutorily appropriated, as provided in 17-7-502, to the supreme court to fund the expenses described in subsections (1)(a) through (1)(d) *of this section*,

the district court grant program as described in subsection (4)(a) *of this section*, and the costs of administering this section.

(3) All revenue disbursed under this section must be deposited in and credited to the district court fund. If a district court fund does not exist, the revenue must be deposited in the county general fund for district court operations.

(4) If money appropriated for the expenses listed in subsection (1):

(a) exceeds the amount necessary to fully fund those expenses, the remaining excess amounts must be used for district court grants as provided in ~~7-6-2352~~ *[section 23]*; or

(b) is insufficient to fully fund those expenses, the county is responsible for payment of the balance."

Section 42. Section 7-1-114, MCA, is amended to read:

"**7-1-114. Mandatory provisions.** (1) A local government with self-government powers is subject to the following provisions:

(a) all state laws providing for the incorporation or disincorporation of cities and towns~~;~~, for the annexation, disannexation, or exclusion of territory from a city or town~~;~~, for the creation, abandonment, or boundary alteration of counties~~;~~, and for city-county consolidation;

(b) Title 7, chapter 3, part 1;

(c) all laws establishing legislative procedures or requirements for units of local government;

(d) all laws regulating the election of local officials;

(e) all laws that require or regulate planning or zoning;

(f) any law directing or requiring a local government or any officer or employee of a local government to carry out any function or provide any service;

(g) *except as provided in subsection (3),* any law regulating the budget, finance, or borrowing procedures and powers of local governments~~, except that the mill levy limits established by 15-10-420 apply~~;

(h) Title 70, chapters 30 and 31.

(2) These provisions are a prohibition on the self-government unit acting other than as provided.

(3) (a) Notwithstanding the provisions of subsection (1)(g) and except as provided in subsection (3)(b), self-governing local government units are not subject to the mill levy limits established by state law.

(b) The provisions of 15-10-420 apply to self-governing local government units."

Section 43. Section 7-3-4432, MCA, is amended to read:

"**7-3-4432. Accounting procedures.** Accounting ~~procedure shall~~ *procedures must* be devised and maintained for the municipality~~,~~ *that are* adequate to record in detail all transactions affecting the acquisition, custodianship, and disposition of values, including cash receipts and disbursements. *The accounting procedures must conform to the methods and standards provided for in 2-7-504 and Title 7, chapter 6, part 6.* The recorded facts ~~shall~~ *must* be presented periodically to officials and to the public in ~~such~~

summaries and analytical schedules in detailed support ~~thereof as~~ *of the summaries that* may be necessary to show the full effect of ~~such~~ *the* transactions for each fiscal year upon the finances of the municipality and in relation to each department of the municipal government, including distinct summaries and schedules for each publicly owned and operated utility."

Section 44. Section 7-6-204, MCA, is amended to read:

"**7-6-204. Crediting of interest.** (1) Unless otherwise provided *by law or by the terms of a gift, grant, or donation*, interest paid and collected on deposits or investments must be credited to the general fund of the county, city, or town to whose credit the funds are deposited.

(2) Interest paid and collected on the deposits or investments of the funds of a volunteer fire district or department organized in an unincorporated area under Title 7, chapter 33, part 21 or 23, must be credited to the account of that fire district or department.

(3) Interest paid and collected on the deposits or investments of the county road fund or county bridge fund may be credited to the county road fund or county bridge fund."

Section 45. Section 7-6-2111, MCA, is amended to read:

"**7-6-2111. Duties of county treasurer.** ~~(1)~~ The county treasurer *shall*:

~~(a)~~*(1)* ~~must~~ receive all money belonging to the county and all other money directed to be paid to the treasurer by law, safely keep the money, ~~and~~ apply and pay the money out, and account for the money as required by law;

~~(b)~~*(2)* ~~shall~~ keep an account of the receipt and expenditures of the money in books provided for the purpose, in which must be entered:

~~(i)~~*(a)* the amount~~,~~ *and* the time when, from whom, and on what account all money was received;

~~(ii)~~*(b)* the amount~~,~~ *and* time when, to whom, and on what account all disbursements were made;

~~(c)~~*(3)* ~~shall~~ keep books so that the amounts received and paid out on account of separate funds or specific appropriations are exhibited in separate and distinct accounts, with the whole receipts and expenditures shown in one general or cash account;

~~(d) may not enter money received for the current year on the treasurer's account with the county for the past fiscal year until after the treasurer's annual settlement for the past year has been made with the county clerk;~~

~~(e)~~*(4)* ~~shall~~ disburse the county money only on county warrants issued by the county clerk, based on orders of the board of county commissioners, or as otherwise provided by law.

~~(2) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.~~"

Section 46. Section 7-4-2514, MCA, is amended to read:

"**7-4-2514. Filing required to receive salary.** The board of county commissioners ~~must~~ *may* not order the payment of the salary of any ~~such~~ officer until ~~he~~ *the officer* has filed the duplicate receipt with the county clerk, properly signed by the treasurer, showing that ~~he~~ *the officer* has made the statement and settlement for that month~~,~~ *as* required in this part~~, and filed the report prescribed in 7-6-2213~~."

Section 47. Section 7-6-2113, MCA, is amended to read:

"**7-6-2113. Effect of failure to make treasurer's report.** If ~~any~~ *a* county treasurer neglects or refuses to settle or report as required in ~~7-6-2112~~ *[section 4]*, ~~he~~ *the county treasurer* forfeits and ~~must~~ *shall* pay to the county the sum of $500 for ~~every such~~ *each* neglect or refusal. The board of county commissioners ~~must~~ *shall* institute suits for the recovery ~~thereof~~ *of the sum*."

Section 48. Section 7-6-2202, MCA, is amended to read:

"**7-6-2202. Duties of county clerk related to finance ~~— exception~~.** (1) The county clerk shall draw warrants on the county treasury in favor of all persons entitled to the warrants in payment:

(a) of all claims and demands chargeable against the county ~~which~~ *that* have been legally examined, allowed, and ordered paid by the board of county commissioners; and

(b) for all debts and demands against the county when the amounts are fixed by law and are not directed to be audited by some other person or tribunal.

(2) The county clerk shall keep accounts current with the treasurer. When any person deposits with the county treasurer any money paid into the treasury, the county clerk must be furnished by the treasurer with a duplicate of the receipt issued to the person. The duplicate receipt must be filed in the office of the county clerk, and the county clerk shall charge the treasurer with the amount of the deposit.

(3) The county clerk shall make the annual statement ~~as prescribed in 7-6-2203~~ *prescribed by the department of commerce.*

~~(4) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.~~"

Section 49. Section 7-6-2521, MCA, is amended to read:

"**7-6-2521. All-purpose levy authorized for counties.** A county may at its option levy an all-purpose levy as provided in 7-6-2521 through *7-6-2524 and* 7-6-2526."

Section 50. Section 7-6-2524, MCA, is amended to read:

"**7-6-2524. Changes from all-purpose levy.** A county adopting the all-purpose levy provided for in 7-6-2521 through *7-6-2524 and* 7-6-2526 is bound by that adoption during the ensuing fiscal year but may abandon the method in succeeding fiscal years."

Section 51. Section 7-6-2601, MCA, is amended to read:

"**7-6-2601. Details related to county warrants — *definition*.** (1) Warrants issued pursuant to 7-6-2202(1) ~~shall~~ *must* be signed by the county clerk and the ~~chairman~~ *presiding officer* of the board of county commissioners, except warrants drawn on the redemption fund.

(2) All warrants issued by the county clerk during each year, commencing with the first Monday in January, must be numbered consecutively. The number, date, and amount of each ~~and~~ *warrant,* the name of the person to whom *it is* payable, and the purpose for which *it is* drawn must be stated ~~thereon;~~ *on the warrant.* ~~and the warrants~~ *Warrants* must, at the time they are issued, be registered by ~~him~~ *the county clerk.*

(3) Warrants drawn by order of the board on the county treasury for the current expenses during each year must specify the liability for which they are drawn and when the liability accrued.

(4) For the purposes of this part, "warrant" includes a check and an electronic funds transfer."

Section 52. Section 7-6-2602, MCA, is amended to read:

"**7-6-2602. Payment of warrants.** ~~(1) When a warrant is presented for payment, if there is money in the treasury for that purpose, the county treasurer must pay the same, write on the face thereof "Paid" and the date of payment, and sign his name thereto. Warrants must be paid in the order of presentation to the treasurer.~~

~~(2)~~ The county treasurer ~~must~~ *may* not pay any order or warrant except to the payee ~~thereof~~ *of the warrant* or to ~~his~~ *the payee's* agent, assignee, or legal representative, whose authority must be in writing and delivered to ~~him~~ *the county treasurer.* ~~and~~ *The written authority* must be returned with ~~such~~ *the* order or warrant, when paid, to the board of county commissioners."

Section 53. Section 7-6-2607, MCA, is amended to read:

"**7-6-2607. ~~Examination and processing~~ *Processing* of warrants.** ~~(1) The board, at its annual March session or more often if necessary, must examine the county warrants returned by the county treasurer by comparing each warrant with the record of warrants issued in the county clerk's office.~~

~~(2)~~*(1)* The board ~~must~~ *shall* cause to be canceled all county warrants that have remained uncalled for 1 year or more in the county clerk's office~~;~~. ~~these~~ *The uncalled* warrants ~~to~~ *must* be canceled in the same manner as other county warrants. At the same time, the county treasurer ~~must~~ *shall* deliver to the board all warrants or vouchers that are in the *county* treasurer's possession for money disbursed by ~~him as~~ *the county* treasurer and the clerk ~~must~~ *shall issue a* receipt for the ~~same~~ *warrants or vouchers.*

~~(3)~~*(2)* The board ~~must~~ *shall* cause to be entered on the record of warrants, opposite to the entry of each warrant issued, the date when the warrant was canceled and ~~must~~ *shall* make a list of the canceled warrants, specifying the number, date, amount, and the person to whom the ~~same~~ *warrant* was payable~~;~~. ~~and must~~ *The board shall* cause the list to be entered on the minutes of the board."

Section 54. Section 7-6-4302, MCA, is amended to read:

"**7-6-4302. Payment of claims by warrant or check.** ~~Except as provided in 7-6-4121, all~~ *All* accounts and demands against a city or town must be submitted to the council and, if found correct, must be allowed and an order must be made that the demand be paid. The demand must be paid in accordance with one of the following options:

(1) The mayor may draw a warrant upon the treasury in favor of the owner, specifying for what purpose and by what authority it is issued and out of what funds it is to be paid. The city treasurer or town clerk ~~must~~ *shall* pay the warrant out of the proper fund.

(2) The city treasurer or town clerk may pay the demand by check when there are sufficient city funds on deposit in an interest-bearing checking account in a bank within the city or town that are available to cover the check."

Section 55. Section 7-6-4501, MCA, is amended to read:

"**7-6-4501. Interest on unpaid warrants — *definition*.** (1) When any warrant drawn upon the treasury of a city or town and pursuant to any ordinance or resolution or direction of the council of the city or town is presented to the city treasurer or town clerk for payment and the ~~same~~ *warrant* is not paid for want of funds, the city treasurer or town clerk ~~must~~ *shall* endorse thereon "Not paid for want of funds", annexing the date of presentation, and signing ~~his~~ *the treasurer's or clerk's* name ~~thereto~~ *to the warrant.*

(2) From the time of the endorsement until the warrant is called for payment, the warrant bears interest at a rate fixed by ordinance, or if the warrant is subject to purchase for investment by a county as provided in 7-6-2701 and is held by a county, the warrant bears interest at a rate fixed by the board of county commissioners under 7-6-2701.

(3) As used in this part, "warrant" includes a check and an electronic funds transfer."

Section 56. Section 7-12-4181, MCA, is amended to read:

"**7-12-4181. Collection of district assessments by county clerk — certification.** (1) Except as provided in 7-12-4183, in each city or town where taxes for general, municipal, and administrative purposes are certified to and collected by the county treasurer ~~in accordance with the provisions of 7-6-4407~~ immediately after the second Monday of August of each year, it is the duty of the city treasurer or town clerk to certify *to the department of revenue*, at the same time that the copy of the resolution determining the annual levy for general taxes is certified by the city or town clerk to the county clerk ~~as required by 7-6-4407~~, ~~to the department of revenue~~ all special assessments and taxes levied and assessed in accordance with any of the provisions of part 42 and this part.

(2) The department of revenue shall enter the special assessments and taxes upon the property tax record for the county. The county treasurer shall collect all taxes and assessments in the same manner and at the same time as taxes for general, municipal, and administrative purposes are collected."

Section 57. Section 7-12-4183, MCA, is amended to read:

"**7-12-4183. Collection of district assessments by city treasurer in cities where county collects taxes.** (1) In any city or town where taxes for general, municipal, and administrative purposes are certified to and collected by the county treasurer in accordance with the provisions of ~~7-6-4407 and~~ 7-6-4423, the city or town may~~, nevertheless,~~ provide by ordinance for the collection by its city treasurer or town clerk of all special assessments and taxes levied and assessed in accordance with any of the provisions of ~~this part and~~ part 42 *and this part* in the same manner and at the same time as taxes for general, municipal, and administrative purposes are collected by the county treasurer. All of the provisions of 7-6-4423 apply to the collection of the special taxes and assessments in the same manner as the provisions apply to the collection of other city or town taxes.

(2) (a) When the payment of any one installment of any special assessment becomes delinquent, all payments of subsequent installments ~~shall~~ *must*, at the option of the city or town council and by appropriate resolution duly adopted, become delinquent. The city or town council may order that all assessments that are delinquent as a result of acceleration be withdrawn.

(b) Delinquent special assessments ~~shall~~ *must* be certified to the county clerk of the county in which the city or town is situated. The county treasurer ~~must~~

shall collect the delinquent special assessments and taxes in the same manner and at the same time ~~as~~ *that* taxes for general, municipal, and administrative purposes are collected ~~by him~~. In case ~~they~~ *the delinquent assessments and taxes* are not paid, the whole property ~~shall~~ *must* be sold in the same manner ~~as~~ *that* other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent."

Section 58. Section 50-60-302, MCA, is amended to read:

"50-60-302. Certification of municipal and county building codes. (1) A county or municipality may not enforce a building code unless:

(a) the code enforcement program has been certified by the department as in compliance with applicable statutes and department certification rules;

(b) the current adopted code, a current list of fees to be imposed, and a current plan for enforcement of the code have been filed with and approved by the department; and

(c) all inspectors inspecting or approving any installations, which if accomplished commercially require state licensure, must themselves be properly and currently state-licensed as journeymen in that craft or occupation or be certified by a nationally recognized entity for testing and certification of inspectors that is approved by the department before being permitted to inspect or approve any installations.

(2) The department shall adopt additional rules and standards governing the certification of municipal and county building code enforcement programs ~~which~~ *that* must include provisions for prompt revocation of certification for refusal or failure to comply with any applicable statute or rule. The department may allow a county or municipality a reasonable amount of time, not to exceed 6 months, to correct identified code enforcement program deficiencies, unless the deficiencies constitute an immediate threat to the public health, safety, or welfare, in which case the department may require immediate correction. Failure to correct deficiencies within the time set by the department constitutes a basis for immediate decertification of the code enforcement program. Continued operation of a county or municipal code enforcement program in violation of a department order to correct deficiencies may be enjoined or subject to a writ of mandamus by a judge of the district court in the jurisdiction in which the county or municipality is located. The rules and standards must include provisions for the department to ensure that all code enforcement program functions are being properly performed.

~~(3) In addition to maintaining the continued compliance oversight required in subsection (1), the department shall require a detailed and fully documented annual report from a local government with a certified code enforcement program to ensure continued local government compliance with all requirements of applicable statutes and rules. If review of the annual report identifies compliance problems, the department shall immediately conduct an onsite evaluation.~~

~~(4)~~*(3)* If the certification of any local government code enforcement program is revoked for any violation or deficiency, the state resumes its original jurisdiction for state building code enforcement within the municipal or county area and the local government retains the responsibility for completion of inspections and issuance of certificates of occupancy on any incomplete construction projects previously permitted by the local government, unless the reason for the decertification is directly related to the protection of health, safety, and welfare of the public.

~~(5)~~*(4)* If a local government voluntarily decertifies its code enforcement program, the department must be given written notification of the intended decertification at least 90 days prior to the date of decertification. The local government retains the responsibility for completion of inspections and issuance of certificates of occupancy on any incomplete construction projects permitted by the local government prior to decertifying its code enforcement program."

Section 59. Section 53-2-322, MCA, is amended to read:

"53-2-322. County to levy taxes, budget, and make expenditures for public assistance activities. (1) Subject to 15-10-420, the board of county commissioners in each county shall levy 13.5 mills for the county poor fund as provided by law or so much of that amount as may be necessary. The board may levy up to an additional 12 mills if approved by the voters in the county. Subject to 15-10-420, a county shall levy sufficient mills to reimburse the state for any administrative or operational costs in excess of the administrative and operational costs for the previous fiscal year. The department of public health and human services shall notify the counties of the number of mills required to be levied. Once an additional levy has been approved, the amount of the approved levy may continue to be levied without voter approval.

(2) The board shall budget and expend so much of the funds in the county poor fund for:

(a) public assistance as necessary to reimburse the department for the county's proportionate share of the administrative costs and of all public assistance costs;

(b) salaries, travel expenses, and indirect costs, as provided in 52-1-110, of protective services employees of the department; and

(c) the county's proportionate share of any other public assistance activity that may be carried on jointly by the state and the county.

(3) The amounts set up in the budget for the reimbursements to the department must be sufficient to make all of these reimbursements in full. The budget must make separate provision for each public assistance activity and for salaries, travel expenses, and indirect costs for protective services activities of the department. Proper accounts must be established for the funds for all the activities.

(4) The department shall submit to the counties, no later than May 10, the most current county participation percentages that are necessary to establish preliminary county budgets. As soon as the county proposed budget ~~provided for in 7-6-2315~~ has been agreed upon, a copy must be mailed to the department, and at any time before the final adoption of the budget, the department shall make recommendations with regard to changes in any part of the budget relating to the county poor fund as considered necessary in order to enable the county to discharge its obligations under the public assistance laws.

(5) The department shall promptly examine the county proposed budget in order to ascertain if the amounts provided for reimbursements to the department are likely to be sufficient and shall notify the county clerk of its findings. The

board shall make changes in the amounts provided for reimbursements, if any are required, in order that the county will be able to make the reimbursements in full.

(6) The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing the department without having first obtained a statement in writing from the department to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

(7) The county poor fund, irrespective of the source of any part of the fund, may not be used directly or indirectly for the erection or improvement of any county building as long as the fund is needed for paying the county's proportionate share of public assistance and protective services, as described in 52-1-110, or its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor, except a county hospital or county nursing home, may be made out of money in the county poor fund, whether the money was produced by the mill levy provided for in subsection (1) or from any additional levy authorized by law. The expenditure may be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for the building by the department and when the expenditure has been approved by the department.

(8) Money in the county poor fund may be used as matching funds for the receipt of federal money."

Section 60. Section 85-3-423, MCA, is amended to read:

"**85-3-423. County budget waived for first appropriation — conditions.** ~~The provisions of 7-6-2342 apply if~~ *If* an emergency condition requiring prompt expenditure occurs immediately after an authority has been created by resolution of the board of county commissioners and after certification of a mill levy by the authority~~. In that case and only for the initial or first appropriation for the authority~~, the county commissioners may appropriate, from money not otherwise appropriated in the general fund, money necessary to carry out the provisions of this part. However, the appropriation may not exceed an amount equal to the amount that would be raised by a 2-mill levy upon the taxable valuation of the property in the county."

Section 61. Repealer. Sections 7-6-601, 7-6-603, 7-6-604, 7-6-2112, 7-6-2201, 7-6-2203, 7-6-2211, 7-6-2212, 7-6-2213, 7-6-2214, 7-6-2218, 7-6-2219, 7-6-2220, 7-6-2221, 7-6-2301, 7-6-2302, 7-6-2303, 7-6-2311, 7-6-2312, 7-6-2313, 7-6-2314, 7-6-2315, 7-6-2316, 7-6-2317, 7-6-2318, 7-6-2319, 7-6-2320, 7-6-2321, 7-6-2322, 7-6-2323, 7-6-2324, 7-6-2325, 7-6-2326, 7-6-2327, 7-6-2328, 7-6-2329, 7-6-2330, 7-6-2331, 7-6-2335, 7-6-2341, 7-6-2342, 7-6-2343, 7-6-2345, 7-6-2348, 7-6-2351, 7-6-2352, 7-6-2502, 7-6-2525, 7-6-2702, 7-6-4101, 7-6-4104, 7-6-4121, 7-6-4123, 7-6-4124, 7-6-4134, 7-6-4135, 7-6-4140, 7-6-4141, 7-6-4201, 7-6-4202, 7-6-4203, 7-6-4205, 7-6-4206, 7-6-4207, 7-6-4208, 7-6-4209, 7-6-4232, 7-6-4234, 7-6-4237, 7-6-4238, 7-6-4240, 7-6-4259, 7-6-4260, 7-6-4261, 7-6-4262, 7-6-4263, 7-6-4264, 7-6-4265, 7-6-4266, 7-6-4267, 7-6-4270, 7-6-4271, 7-6-4272, 7-6-4407, and 7-6-4408, MCA, are repealed.

Section 62. Codification instruction. (1) [Sections 1 through 8] are intended to be codified as an integral part of Title 7, chapter 6, part 6, and the provisions of Title 7, chapter 6, part 6, apply to [sections 1 through 8].

(2) [Sections 9 through 32] are intended to be codified as an integral part of Title 7, chapter 6, and the provisions of Title 7, chapter 6, apply to [sections 9 through 32].

Section 63. Effective date. [This act] is effective July 1, 2001.

Section 64. Applicability. [This act] applies to special purpose districts beginning July 1, 2002.

Approved April 20, 2001

CHAPTER NO. 279

[SB 152]

AN ACT REVISING THE LAWS RELATING TO THE DISPOSITION OF EXCESS LANDS BY THE DEPARTMENT OF TRANSPORTATION; ELIMINATING THE PROVISION THAT AN ORIGINAL OWNER MAY REQUIRE THE DEPARTMENT TO SELL THE LAND INSTEAD OF EXCHANGING IT; REQUIRING THE DEPARTMENT TO OFFER TO SELL TO ADJACENT LANDOWNERS LAND PROPOSED FOR EXCHANGE; RAISING THE MINIMUM VALUE AT WHICH THE DEPARTMENT MUST OFFER THE LAND FOR SALE; ALLOWING THE DEPARTMENT TO SELL LAND TO ANOTHER GOVERNMENTAL ENTITY WITHOUT A PUBLIC AUCTION; RAISING THE MINIMUM VALUE AT WHICH A REAPPRAISAL MUST BE DONE TO DETERMINE FAIR MARKET VALUE; AND AMENDING SECTIONS 60-4-201, 60-4-202, AND 60-4-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-4-201, MCA, is amended to read:

"60-4-201. Exchange of interest in real property. ~~(1)~~*(1)* The department may determine that an interest in real property, however acquired by it, is no longer necessary to the laying out, altering, construction, improvement, or maintenance of a highway. ~~It~~ *The department* may then exchange the interest, either as entire or partial consideration, for any other interest in real property needed for highway purposes. The department may establish the manner and terms and conditions for the exchange.

~~(2) The owner from whom the interest was originally acquired by the state or his successor in interest has the right to require the department to offer the land for sale in the manner set forth in 60-4-202 and 60-4-203. The department shall notify the owner or successor in interest of its intention to exchange the interest. The owner shall make his demand for sale by registered or certified mail to the department within 10 days after receipt of notice from the department.~~

(2) Prior to making the exchange, the department shall notify all landowners whose property is adjacent to the land proposed for exchange. If any of the landowners are interested in buying the land proposed for exchange, the landowners shall notify the department of their interest by registered letter within 30 days of the receipt of the notice of exchange from the department. Upon receipt of a notice of interest, the department shall offer the land proposed for exchange for sale as provided in 60-4-202 and 60-4-203."

Section 2. Section 60-4-202, MCA, is amended to read:

"**60-4-202. Sale of interest in real property.** *(1)* The department may sell an interest in real property if the department determines that the property is not necessary to the laying out, altering, construction, improvement, or maintenance of a highway. ~~If~~ *Except as provided in subsection (2), if* the interest is reasonably of a value in excess of ~~$2,500~~ *$10,000*, sale must be made to the highest bidder at public auction. The sale of an interest at auction must be conducted as provided in 77-2-321.

(2) (a) The department may sell an interest in real property without a public auction directly to:

(i) a federal, state, tribal, or local government;

(ii) an agency of government;

(iii) a school district; or

(iv) a unit of the Montana university system.

(b) The department shall obtain fair market value for the property.

(3) Before the department sells an interest in real property as provided in subsection (2), the department shall notify all landowners whose property is adjacent to the land proposed for sale. If any of the landowners are interested in buying the land proposed for sale, the landowners shall notify the department of their interest by registered letter within 30 days of the receipt of the notice of sale from the department. Upon receipt of a notice of interest, the department shall offer the land for sale as provided in 60-4-203 and this section."

Section 3. Section 60-4-203, MCA, is amended to read:

"**60-4-203. Conduct of sale.** (1) The department shall publish notice of the sale once a week for 4 successive weeks in a newspaper published in the county in which the interest is located. The notice of sale must contain the information required by 77-2-322. Sale must be held in the county where the property is located.

(2) Before the sale of an interest having a value in excess of ~~$2,500~~ *$10,000*, the department must have the interest appraised at a price representing a fair market value. The appraised value must be stated in the published notice.

(3) A sale of an interest may not be made unless it has been appraised within 3 months prior to the date of the sale. A sale may not be made for less than 90% of the appraised value.

(4) Title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department."

Approved April 20, 2001

CHAPTER NO. 280

[SB 167]

AN ACT GENERALLY REVISING THE SANITATION IN SUBDIVISIONS LAWS; AUTHORIZING THE REVIEWING AUTHORITY TO REQUIRE EASEMENTS AND COVENANTS; REQUIRING PURCHASERS TO BE NOTIFIED OF CONDITIONS OF SUBDIVISION APPROVAL; REQUIRING

AS-BUILT INSPECTIONS OF SEWAGE SYSTEMS; AUTHORIZING THE REVIEWING AUTHORITY TO REQUIRE EASEMENTS AND COVENANTS; DEFINING "ADEQUATE MUNICIPAL FACILITIES"; CONFORMING DEFINITIONS TO THOSE IN OTHER ACTS; REQUIRING THE DEPARTMENT TO ADOPT RULES REGARDING CRITERIA FOR GRANTING WAIVERS AND DEVIATIONS AND FOR EASEMENTS, COVENANTS, AGREEMENTS, AND MANAGEMENT ENTITIES; ALLOWING FOR REVIEW OF CERTAIN MAJOR AND MINOR SUBDIVISIONS BY LOCAL DEPARTMENTS AND BOARDS OF HEALTH; REQUIRING THE APPLICANT TO SUBMIT EVIDENCE THAT WATER SUPPLY SYSTEMS ARE IN COMPLIANCE WITH STATE AND LOCAL LAWS AND REGULATIONS; ELIMINATING THE MANDATORY SOIL PERCOLATION TESTING REQUIREMENT; ALLOWING FEES TO BE USED FOR INSPECTION AND ENFORCEMENT ACTIVITIES; CLARIFYING CERTIFICATION REQUIREMENTS FOR SUBDIVISIONS EXEMPT FROM REVIEW BECAUSE ADEQUATE MUNICIPAL FACILITIES AND STORM WATER DRAINAGE WILL BE PROVIDED; REQUIRING A DEVELOPER TO GIVE NOTICE TO A LOCAL BOARD OF HEALTH BEFORE FILING AN APPLICATION FOR CERTIFICATION OF SUBDIVISION APPROVAL; REPEALING CERTAIN PROVISIONS RELATED TO DELEGATION OF REVIEW TO LOCAL GOVERNMENT; REPEALING REDUNDANT PROVISIONS; CLARIFYING PROVISIONS GOVERNING SUBDIVISION ACTIVITIES AND REVIEW AND APPROVAL OF SUBDIVISIONS; AMENDING SECTIONS 76-4-102, 76-4-104, 76-4-105, 76-4-111, 76-4-121, 76-4-122, 76-4-125, 76-4-127, 76-4-130, 76-4-131, AND 76-4-132, MCA; REPEALING SECTIONS 76-4-123, 76-4-124, AND 76-4-128, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Easements and restrictive covenants. (1) The reviewing authority may require the owner of a proposed subdivision to grant an easement or enter into a restrictive covenant pursuant to rules adopted by the department for the purpose of:

(a) ensuring the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities;

(b) protecting state waters; or

(c) prohibiting the placement of water wells within a ground water mixing zone.

(2) An easement or covenant required under this section must run with the land. The easement or covenant may be enforced by the reviewing authority. The easement or covenant may not be terminated without the consent of the reviewing authority.

Section 2. Notification to purchasers. The developer or owner of an approved subdivision shall provide each purchaser of property within the subdivision with a copy of the plat or certificate of survey and the certificate of subdivision approval specifying the approved locations of water supply, storm water drainage, and sewage disposal facilities. Each subsequent seller of property within the subdivision shall include within the instruments of transfer a reference to the conditions of the certificate of subdivision approval. A written verification of notice that is signed by both the seller and the purchaser and is recorded with the county clerk and recorder constitutes conclusive evidence of compliance with this section for that transaction.

Section 3. Installation inspection. A person who owns or controls a parcel of land that has been approved under this chapter for the installation of an individual or multiple-user sewage system shall:

(1) have the system inspected during installation by the local health officer, as defined in 50-2-101, or by the installer or other person designated by the local health officer; and

(2) file with the local board of health a certification by the inspector that the system has been installed in compliance with the certificate of subdivision approval and any conditions of approval.

Section 4. Section 76-4-102, MCA, is amended to read:

"76-4-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following ~~words or phrases have the following meanings~~ *definitions apply*:

(1) "Adequate municipal facilities" means municipally, publicly, or privately owned facilities that supply water, treat sewage, or dispose of solid waste for all or most properties within the boundaries of a municipality and that are operating in compliance with Title 75, chapters 5 and 6.

~~(1)~~*(2)* "Board" means the board of environmental review.

~~(2)~~*(3)* "Department" means the department of environmental quality.

~~(3)~~*(4)* "Extension of *a* public sewage ~~disposal~~ system" means a sewerline that connects two or more sewer service lines to a sewer main.

~~(4)~~*(5)* "Extension of *a* public water supply system" means a waterline that connects two or more water service lines to a water main.

~~(5)~~*(6)* "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(7) "Mixing zone" has the meaning provided in 75-5-103.

(8) "Public sewage system" or "public sewage disposal system" means a public sewage system as defined in 75-6-102.

~~(6)~~*(9)* "Public water supply system" ~~or "public sewage disposal system" means, respectively, a water supply or sewage disposal system that serves 10 or more families or 25 or more persons for at least 60 days out of the calendar year~~ *has the meaning provided in 75-6-102.*

~~(7)~~*(10)* "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

~~(8)~~*(11)* "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

~~(9)~~*(12)* "Reviewing authority" means the department or a local department or board of health certified to conduct a review under 76-4-104.

~~(10)~~*(13)* "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

~~(11)~~*(14)* "Sewer service line" means a sewerline that connects a single building or living unit to a public ~~sewer~~ *sewage* system or *to an* extension of a *public sewage* system.

~~(12)~~*(15)* ~~"Solid wastes" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes~~ *"Solid waste" has the meaning provided in 75-10-103.*

~~(13)~~*(16)* "Subdivision" means a division of land or land so divided that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or area, regardless of size, that provides permanent multiple space for recreational camping vehicles or mobile homes.

~~(14)~~*(17)* "Water service line" means a waterline that connects a single building or living unit to a public water *supply* system or *to an* extension of a *public water supply* system."

Section 5. Section 76-4-104, MCA, is amended to read:

"**76-4-104. Rules for administration and enforcement.** (1) The department shall, subject to the provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards must provide the basis for approving ~~subdivision plats~~ *subdivisions* for various types of *public and private* water *supplies*, sewage *disposal* facilities, *storm water drainage ways,* and solid waste disposal~~, both public and private, and~~. *The rules and standards* must be related to*:*

(a) size of lots;

(b) contour of land;

(c) porosity of soil;

(d) ground water level;

(e) distance from lakes, streams, and wells;

(f) type and construction of private water and sewage facilities; and

(g) other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) *(a)* ~~The~~ *Except as provided in subsection (3)(b), the* rules must provide for the review of ~~the following divisions of land~~ *subdivisions* by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to *conduct the* review. ~~these divisions of land:~~

~~(a) divisions of land containing five or fewer parcels, whenever each parcel will contain individual onsite water and sewage disposal facilities; and~~

(b) *(i) Except as provided in 75-6-121 and subsection (3)(b)(ii) of this section, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.*

(ii) A local department or board of health may be certified to review ~~divisions of land~~ *subdivisions* proposed to connect to existing municipal water and wastewater systems previously approved by the department if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the ~~divisions of land~~ *subdivisions as* described in subsection (3).

(5) The department shall review those ~~divisions of land~~ *subdivisions* described in subsection (3) if:

(a) a proposed ~~division of land~~ *subdivision* lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules must further provide for:

(a) providing the reviewing authority with a copy of the plat *or certificate of survey subject to review under this part* and other documentation showing the layout or plan of development, including:

(i) total development area; *and*

(ii) total number of proposed dwelling units *and structures requiring facilities for water supply or sewage disposal*;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil ~~percolation~~ testing ~~and required percolation rates~~ and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) criteria for granting waivers and deviations from the standards and technical procedures adopted under subsections (6)(e) through (6)(h);

~~(i)~~*(j)* evidence to establish that, if a public *water supply system or a public* sewage ~~disposal~~ system is proposed, provision has been made for the system and, if other methods of *water supply or* sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect at the time of submission of the preliminary or final plan or plat~~.~~*; and*

(k) evidence to demonstrate that appropriate easements, covenants, agreements, and management entities have been established to ensure the protection of human health and state waters and to ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities.

(7) If the reviewing authority is a local department or board of health, it shall~~,~~ ~~upon approval of a division of land under this part,~~ notify the department of ~~the approval and submit to the department a copy of the approval statement~~ *its recommendation for approval or disapproval of the subdivision not later than 50 days from its receipt of the subdivision application. The department shall make a final decision on the subdivision within 10 days after receiving the recommendation of the local reviewing authority, but not later than 60 days after the submission of a complete application, as provided in 76-4-125.*

(8) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect ~~at the time plans and specifications are~~ *when a complete application is* submitted to the ~~department~~ *reviewing authority*, except that in cases in which current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality apply.

(9) The reviewing authority may not deny or condition a ~~certification that a division of land is not subject to sanitary restrictions~~ *certificate of subdivision approval* under this part unless it provides a written statement to the applicant detailing the circumstances of the ~~certification~~ denial or condition imposition. The statement must include:

(a) the reason for the denial or condition imposition;

(b) the evidence that justifies the denial or condition imposition; and

(c) information regarding the appeal process for the denial or condition imposition."

Section 6. Section 76-4-105, MCA, is amended to read:

"76-4-105. ~~Lot~~ *Subdivision* fees — subdivision program funding. (1) The department shall adopt rules setting forth fees that do not exceed actual costs ~~to the department in~~ *for* reviewing plats and subdivisions, *conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108*. The rules must provide for a schedule of fees to be paid by the applicant ~~for plat or subdivision review~~ to the department ~~for deposit in the state special revenue fund~~ or, if applicable, to another reviewing authority for deposit in the general fund of the reviewing authority's jurisdiction. The fees must be used for review of plats and subdivisions, *conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The fees must be* based on the complexity of the subdivision, including but not limited to:

(a) number of lots in the subdivision;

(b) the type of water system to serve the development;

(c) the type of sewage disposal to serve the development; and

(d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of fees to the local ~~governing body, as provided in 76-4-128~~ *reviewing authority for reviews conducted pursuant to 76-4-104, inspections conducted pursuant to 76-4-107, and enforcement activities conducted pursuant to 76-4-108.*

~~(3) A fee as described in this section is not required for the review of subdivisions in which divisions are made for the purpose of relocating common boundary lines unless the division will result in the installation of additional water supply or sewage disposal facilities.~~

~~(4) Fees collected by the department under this section must be deposited in the account in the state special revenue fund provided for in 76-4-132.~~"

Section 7. Section 76-4-111, MCA, is amended to read:

"**76-4-111. Exemption for certain condominiums ~~and subdivisions~~.** (1) Condominiums constructed on land divided in compliance with the Montana Subdivision and Platting Act and this part are exempt from provisions of this part.

(2) Whenever a parcel of land has previously been reviewed under either department requirements or local health requirements and has received approval for a given number of living units for rental or lease, the construction of the same or a fewer number of condominium units on that parcel is not subject to the provisions of this part, provided that no new extension of a public water supply system or *extension of* a public sewage ~~disposal~~ system is required ~~as defined in this part~~.

~~(3) Subdivisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 and first- or second-class municipalities that will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste are not subject to the provisions of this part; except that, if the municipal facilities for water supply or sewage disposal to serve the subdivision constitute either an extension of a public water supply system or a public sewage disposal system, the subdivision must be reviewed in accordance with the provisions of 76-4-105, 76-4-124, and 76-4-127.~~"

Section 8. Section 76-4-121, MCA, is amended to read:

"**76-4-121. Restrictions on subdivision activities.** ~~Until the local governing body has certified that a subdivision is to be provided with municipal facilities for a supply of water and disposal of sewage and solid waste or that the reviewing authority has indicated that the subdivision is subject to no restrictions, a~~ *A* person may not ~~file a subdivision plat with a county clerk and recorder, make disposition~~ *dispose* of any lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or shelter in a subdivision ~~which~~ *that* requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent buildings in a subdivision *until the subdivision plat or certificate of survey subject to review under this part has been accepted for filing by the county clerk and recorder in accordance with 76-4-122 and recorded pursuant to Title 70, chapter 21.*"

Section 9. Section 76-4-122, MCA, is amended to read:

"**76-4-122. Filing or recording of noncomplying ~~map or~~ plat *or certificate of survey* prohibited.** (1) The county clerk and recorder may not file or record any ~~map or~~ plat *or certificate of survey subject to review under this part* showing a subdivision unless it complies with the provisions of this part.

(2) A county clerk and recorder may not accept a subdivision plat *or certificate of survey subject to review under this part* for filing until one of the following conditions has been met:

(a) ~~whenever reviewing authority approval is necessary,~~ the person wishing to file the plat *or certificate of survey* has obtained approval of the local health officer having jurisdiction and has filed the approval with the reviewing authority~~,~~ and ~~the reviewing authority has indicated by stamp or certificate~~ *a certificate of subdivision approval has been issued pursuant to 76-4-125 indicating* that ~~it~~ *the reviewing authority* has approved the ~~plat and plans and specifications~~ *subdivision application* and that the subdivision is not subject to a sanitary restriction; ~~or~~

(b) ~~whenever reviewing authority approval is not necessary,~~ the person wishing to file the plat *or certificate of survey* has obtained a certificate from the governing body *pursuant to 76-4-127* that the subdivision is ~~inside the~~ *within a* jurisdictional area ~~of~~ *that has adopted* a growth policy ~~adopted~~ pursuant to chapter 1 *of this title* or *within* a ~~class 1 or class 2~~ *first-class or second-class* municipality, *as described in 7-1-4111,* and will be provided with *adequate* municipal facilities ~~for the supply of water and disposal of sewage and solid waste~~ *and adequate storm water drainage; or*

(c) the person wishing to file the plat or certificate of survey has placed on the plat or certificate of survey an acknowledged certification that the subdivision is exempt from review under this part. The certification must quote in its entirety the wording of the applicable exemption."

Section 10. Section 76-4-125, MCA, is amended to read:

"**76-4-125. Review of ~~development plans~~ *subdivision application* — land divisions excluded from review.** (1) ~~Plans and specifications of~~ *Except as provided in subsection (2), an application for review of* a subdivision~~, as defined in this part,~~ must be submitted to the reviewing authority~~, and the reviewing authority shall indicate by certificate that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction~~. The ~~plan~~ review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present *a subdivision application* to the reviewing authority. *The application must include* ~~a~~ preliminary ~~plan of~~ *plans and specifications for* the proposed development, whatever information the developer feels necessary for its subsequent review, and information required by the reviewing authority. *Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.*

(b) The ~~reviewing authority shall give final action of~~ *department shall make a final decision on* the proposed ~~plan~~ *subdivision* within 60 days *after the submission of a complete application and payment of fees to the reviewing authority* unless an environmental impact statement is required, at which time this deadline may be increased to 120 days. *The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.*

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that ~~a dwelling or structure requiring~~ water or sewage disposal *facilities* may not be ~~erected~~ *constructed* on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule; ~~and~~

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

~~(d)~~*(e)* subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer~~,~~ if:

(i) the remainder is served by a public or ~~multifamily~~ *multiple-user* sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system that was constructed prior to April 29, 1993, and, if required when installed, was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116(1)(i), a local health officer may require that, prior to the ~~transfer of~~ *filing of a plat or a certificate of survey subject to review under this part for* the parcel to be segregated from the remainder referenced in subsection ~~(2)(d)(ii)~~ *(2)(e)(ii)*, the remainder include acreage or features sufficient to accommodate a replacement drainfield."

Section 11. Section 76-4-127, MCA, is amended to read:

"76-4-127. Notice of certification that ~~water and waste services~~ *adequate storm water drainage and adequate municipal facilities* will be provided ~~by local government~~. (1) ~~When a subdivision is reviewed under the provisions of 76-4-124~~ *To qualify for the exemption from review set out in 76-4-125(2)(d)*, the ~~local~~ governing body, *as defined in 76-3-103*, shall, within 20 days after ~~receiving~~ preliminary plat approval under the Montana Subdivision and Platting Act, send notice of certification to the reviewing authority that a subdivision has been submitted for approval and that *adequate storm water* *drainage and adequate* municipal facilities ~~for the supply of water and disposal of sewage and solid waste~~ will be provided for the subdivision.

(2) The notice of certification must include the following:

(a) the name and address of the applicant;

(b) a copy of the preliminary plat or a final plat when a preliminary plat is not necessary;

(c) the number of proposed parcels in the subdivision;

(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of the sewage disposal and water supply systems or extensions will be financed;

(f) *certification that the subdivision is within a jurisdictional area that has adopted a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and* a copy of the growth policy, when applicable, if one has not yet been submitted to the reviewing authority;

(g) the relative location of the subdivision to the city or town; ~~and~~

(h) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within 1 year after the notice of certification is issued;

(i) if water supply, sewage disposal, or solid waste facilities are not municipally owned, certification from the facility owners that adequate facilities are available; and

(j) certification that the governing body has reviewed and approved plans to ensure adequate storm water drainage."

Section 12. Section 76-4-130, MCA, is amended to read:

"76-4-130. Deviation from plans or specifications. A person may not construct or use a facility ~~which~~ *that* deviates from the ~~plans and specifications filed with the reviewing authority~~ *certificate of subdivision approval* until the reviewing authority has approved the deviation."

Section 13. Section 76-4-131, MCA, is amended to read:

"76-4-131. Applicability of public water supply laws. The exclusions provided for in 76-4-121, ~~through~~ *76-4-122, and 76-4-125* ~~76-4-130 shall~~ *do* not relieve any person of the duty to comply with the requirements of Title 75, chapter 6. *An extension of a public water supply system or an extension of a public sewage system to serve a subdivision must be reviewed in accordance with the provisions of Title 75, chapter 6."*

Section 14. Section 76-4-132, MCA, is amended to read:

"76-4-132. Special revenue account — deposit and ~~disbursement~~ *use* of ~~lot~~ fees. (1) All ~~lot~~ fees collected *by the department* under 76-4-105 must be deposited in an account in the state special revenue fund ~~for implementation of the subdivision review program as provided in this part~~.

(2) Funds in the account established in subsection (1) may be used only ~~to pay department costs of implementation of the subdivision review program~~ as provided in ~~this part~~ *76-4-105."*

Section 15. Repealer. Sections 76-4-123, 76-4-124, and 76-4-128, MCA, are repealed.

Section 16. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 76, chapter 4, part 1, and the provisions of Title 76, chapter 4, part 1, apply to [sections 1 through 3].

Section 17. Effective date. [This act] is effective on passage and approval.

Section 18. Applicability. (1) Except as provided in subsection (2), [this act] applies to subdivision applications submitted to the reviewing authority after [the effective date of this act].

(2) [Section 1] applies to subdivision applications submitted to the reviewing authority after the effective date of the rules implementing [section 1].

Approved April 20, 2001

CHAPTER NO. 281

[SB 170]

AN ACT GENERALLY REVISING THE LAWS RELATED TO CHILD ABUSE AND NEGLECT PROCEEDINGS; ALLOWING SCHOOL DISTRICTS TO DISCLOSE CERTAIN INFORMATION TO THE COURT, THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, AND A CHILD'S LEGAL REPRESENTATIVES; REQUIRING APPOINTMENT OF COUNSEL FOR INDIGENT PARENTS WHEN THE STATE REQUESTS A DETERMINATION THAT PRESERVATION OR REUNIFICATION SERVICES NEED NOT BE PROVIDED; ALLOWING ALTERNATIVE DISPUTE RESOLUTION IN CHILD ABUSE AND NEGLECT CASES; REQUIRING A SHOW CAUSE HEARING TO BE HELD WITHIN 10 DAYS, EXCLUDING WEEKENDS AND HOLIDAYS, OF AN INITIAL PETITION; REQUIRING AN ADJUDICATION TO BE MADE WITHIN 90 DAYS OF A SHOW CAUSE HEARING; REQUIRING A DISPOSITIONAL HEARING TO BE HELD WITHIN 20 DAYS AFTER AN ADJUDICATORY ORDER; AMENDING SECTIONS 41-3-101, 41-3-205, 41-3-301, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-412, 41-3-420, AND 41-3-421, MCA; AND REPEALING SECTIONS 41-3-413 AND 41-3-1014, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-101, MCA, is amended to read:

"**41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

(a) ensure that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possible;

(d) preserve the unity and welfare of the family whenever possible;

(e) ensure that there is no forced removal of a child from the family based solely on an unsubstantiated allegation of abuse or neglect; ~~and~~

(f) recognize that a child is entitled to assert the child's constitutional rights~~.~~;

~~(2) It is the policy of this state to:~~

~~(a) protect, whenever possible, family unity;~~

(g) ensure that all children have a right to a healthy and safe childhood in a nurturing permanent family or in the closest possible substitute;

~~(b)~~*(h)* provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection;

~~(c)~~*(i)* require a department social worker to interview the parents of a child to which a petition pertains, if they are reasonably available, before the state may file a petition for temporary investigative authority ~~and~~ *or a petition for immediate protection and emergency* protective services and to require that a judge may not issue an order granting ~~the~~ *a* petition, except an order for immediate protection of the youth, until the parents, if they are reasonably available, are given the opportunity to appear before the judge or have their statements, if any, presented to the judge for consideration before an order is granted; and

~~(d)~~*(j)* ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

~~(3)~~*(2)* It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

~~(4)~~*(3)* In implementing the policy of this section, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child and when the home is approved by the department, place the child with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, prior to placing the child in an alternative protective or residential facility. Prior to approving a home, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

(4) In implementing the policy of this section, the child's health and safety are of paramount concern."

Section 2. Section 41-3-205, MCA, is amended to read:

"**41-3-205. Confidentiality — disclosure exceptions.** (1) The case records of the department and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections ~~(4)~~ *(6)* and ~~(5)~~ *(7)*, a person who permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group conference for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department~~,~~ if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's court-appointed attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

~~(4)~~*(6)* A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

~~(5)~~*(7)* A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection ~~(4)~~ *(6)* if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

~~(6)~~*(8)* This section is not intended to affect the confidentiality of criminal court records or records of law enforcement agencies.

~~(7)~~*(9)* Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 3. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department ~~of public health and human services~~, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having legal custody of the youth at the time the placement is made or as soon after placement as possible. *Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing.*

(2) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(3) ~~A~~ *An abuse and neglect* petition must be filed within ~~48 hours~~ *2 working days, excluding weekends and holidays,* of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents. *A show cause hearing must be held within 10 days, excluding weekends and holidays, of the filing of the initial petition unless otherwise stipulated by the parties pursuant to [section 14].*

(4) The department ~~of public health and human services~~ shall make the necessary arrangements for the ~~youth's~~ *child's* well-being as are required prior to the court hearing."

Section 4. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse and neglect petitions — *burden of proof.* *(1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:*

(i) immediate protection and emergency protective services, as provided in 41-3-402;

(ii) temporary investigative authority, as provided in [section 7];

(iii) temporary legal custody, as provided in [section 11];

(iv) termination of the parent-child legal relationship, as provided in 41-3-607;

(v) appointment of a guardian pursuant to 41-3-421;

(vi) a determination that preservation or reunification services need not be provided; or

(vii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vi) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

~~(1)~~*(2)* The county attorney, attorney general, or an attorney hired by the county ~~is responsible for filing~~ *shall file* all petitions under this chapter. ~~The~~ *A* petition *filed by the county attorney, attorney general, or an attorney hired by the county* must be accompanied by an affidavit by the department alleging that the child appears to have been abused, neglected, or abandoned and stating the basis for the ~~allegation~~ *petition*.

~~(2)~~*(3)* ~~Upon receipt of a petition, except a petition for temporary investigative authority, the court shall set a date for an adjudicatory hearing on the petition. The~~ *Abuse and neglect* petitions must be given *highest* preference by the court in setting hearing dates.

~~(3)~~*(4)* ~~A~~ *An abuse and neglect* petition ~~alleging abuse or neglect~~ is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure apply except as modified in this part. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) preponderance of the evidence for an order of adjudication or temporary legal custody; or

(iii) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

~~(4)~~*(6)* ~~The~~ *Except as provided in the federal Indian Child Welfare Act, if applicable, the* parents or parent, guardian, or other person or agency having legal custody of the ~~youth~~ *child* named in the petition, if residing in the state, must be served personally with a copy of ~~the petition and summons~~ *all petitions* at least 5 ~~working~~ *working* days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

~~(5)~~*(7)* If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when, in the opinion of the court, the interests of justice require.

~~(6)~~*(8)* If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

~~(7)~~*(9)* Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

~~(8)~~*(10)* Except when the proceeding is instituted or commenced at the request of the department, a citation must be issued and served upon a representative of the department before the court hearing.

~~(9)~~*(11)* ~~The~~ *An abuse and neglect* petition must:

(a) state the nature of the alleged abuse or neglect *and of the relief requested*;

(b) state the full name, age, and address of the ~~youth~~ *child* and the name and address of the ~~youth's~~ *child's* parents or guardian or person having legal custody of the ~~youth~~ *child*;

(c) state the names, addresses, and relationship to the ~~youth~~ *child* of all persons who are necessary parties to the action.

~~(10) The petition may ask for the following relief:~~

~~(a) temporary investigative authority and protective services, as provided in 41-3-402;~~

~~(b) temporary legal custody, as provided in 41-3-406;~~

~~(c) appointment of a guardian pursuant to 41-3-421;~~

~~(d) termination of the parent-child legal relationship and either:~~

~~(i) permanent legal custody with the right to consent to adoption, as provided in 41-3-607; or~~

~~(ii) appointment of a guardian; or~~

~~(e) any combination of the provisions of subsections (10)(a) through (10)(d) or any other relief that may be required for the best interests of the child.~~

~~(11) A request for a determination that reunification services need not be provided pursuant to 41-3-403 may be made in conjunction with the filing of a petition requesting relief, as provided for in subsection (10) of this section.~~

~~(12) The petition may be modified for different relief at any time within the discretion of the court.~~

~~(13)~~*(12)* The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party. *If an indigent parent is not already* *represented by counsel, counsel must be appointed for an indigent parent at the time that a request is made for a determination that preservation or reunification services need not be provided.*

(13) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group conference, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(14) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right to request the appointment of counsel if the person is indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(15) Orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child is in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(16) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 5. Section 41-3-402, MCA, is amended to read:

"**41-3-402. Petition for ~~temporary investigative authority~~ *immediate protection* and *emergency* protective services — *order — service.*** (1) *(a)* In a case in which it appears that a ~~youth~~ *child* is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for ~~temporary investigative authority~~ *immediate protection* and *emergency* protective services. *In implementing the policy of this section, the child's health and safety are of paramount concern.*

~~(2)~~*(b)* A petition for ~~temporary investigative authority~~ *immediate protection* and *emergency* protective services must state the specific authority requested and the facts establishing probable cause that a ~~youth~~ *child* is abused or neglected or is in danger of being abused or neglected.

~~(3)~~*(c)* The petition for ~~temporary investigative authority~~ *immediate protection* and *emergency* protective services must be supported by an affidavit signed by the county attorney, the attorney general, or an attorney hired by the county or must be supported by a department report stating in detail the facts upon which the request is based. The petition, affidavit, or report of the department must contain information regarding statements, if any, made by the parents detailing the parents' statement of the facts of the case. ~~Except as provided in 41-3-403, the~~ *The* parents, *if available in person or by electronic means,* must be given an opportunity to ~~address~~ *present evidence to* the court before the court rules on the petition.

(2) The person filing the petition for immediate protection and emergency protective services has the burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection of the child, except as provided by the federal Indian Child Welfare Act, if applicable. The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause, the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-420:

(a) the right of entry by a peace officer or department worker;

(b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;

(c) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;

(d) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;

(e) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;

(f) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and

(g) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the

court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-401."

Section 6. Show cause hearing — order. (1) (a) A show cause hearing must be conducted within 10 days, excluding weekends and holidays, of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to [section 14] or unless an extension of time is granted by the court.

(b) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel. The court may permit testimony by telephone, audiovisual means, or other electronic means.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment of counsel if indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) The court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-411; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a local citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-404(2) are met. If not made at the show cause hearing, adjudication under 41-3-404 must be made within the time limits required by 41-3-404 unless adjudication occurs earlier by stipulation of the parties pursuant to [section 14] and order of the court.

Section 7. Temporary investigative authority. The department may petition the court for authorization to conduct an investigation into allegations of child abuse, neglect, or abandonment when necessary. An order for temporary investigative authority may not be issued for a period longer than 90 days. The petition must be served as provided in 41-3-401.

Section 8. Section 41-3-403, MCA, is amended to read:

"41-3-403. ~~Order for immediate protection of youth~~ *Reasonable efforts required to prevent removal of child or to return — exemption — findings — permanency plan.* ~~(1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court, after consideration of the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court, may issue an order granting relief that may be required for the immediate protection of the youth.~~

~~(b) The order, along with the petition and supporting documents, must be served pursuant to the Montana Rules of Civil Procedure on the person or persons named in the order. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon after placement as possible.~~

~~(c) The order must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. At the show cause hearing, the court shall provide an opportunity for a parent or guardian, if present, and any other person having relevant knowledge to provide relevant~~

~~testimony. The court may consider all relevant evidence in accordance with the rules of civil procedure as modified by this part, but may in its discretion limit testimony and evidence to only that which is relevant to the issues of removal from the home and the child's need for continued protection. The court may amend the order. Except as otherwise provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2, chapter 4, part 6, that results from adverse licensing action taken by the department.~~

~~(d) If the child is not returned home after the show cause hearing, the person served may request that a local citizen review board, if available pursuant to part 10, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.~~

~~(e) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the youth with the department until further order.~~

~~(2) At the conclusion of a show cause hearing, in an order granting or denying relief, the court shall make a finding regarding the reasonableness of agency efforts to prevent the child's removal from the home or to make it possible to safely return the child to the child's home. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.~~

(1) ~~Reasonable~~ *The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state. Reasonable efforts include but are not limited to development of individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern. The court shall review the services provided by the agency.*

(2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. If an indigent parent is not already represented by counsel, counsel must be appointed by the court at the time that a request is made for a determination under this subsection. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services ~~are not required~~ if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; ~~and~~ *or*

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

~~(4)~~*(5)* If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) *or (3)*, a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(5)~~*(6)* If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home.

~~(6) The court may grant the following kinds of relief:~~

~~(a) right of entry by a peace officer or department worker;~~

~~(b) medical and psychological evaluation of the youth or parents, guardians, or person having physical or legal custody;~~

~~(c) requirement that the youth, parents, guardians, or person having physical or legal custody receive counseling services;~~

~~(d) placement of the youth in a temporary medical facility or a facility for protection of the youth;~~

~~(e) requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate;~~

~~(f) inquiry into the financial ability of the parents, guardian, or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a contribution for those costs pursuant to the requirements of 41-3-411; or~~

~~(g) other temporary disposition that may be required in the best interests of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.~~

~~(7) An order for temporary investigative authority and protective services may not be issued for a period longer than 90 days following the show cause hearing and must be limited to one extension of 90 days. Before the expiration of the time provided for in an order for temporary investigative authority and protective services, the county attorney, the attorney general, or an attorney hired by the county shall file a petition for one of the following:~~

~~(a) limited emancipation;~~

~~(b) temporary legal custody;~~

~~(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption; or~~

~~(d) dismissal.~~

~~(8) Notwithstanding the above time limits, the court may continue an order for temporary investigative authority pending a hearing on a petition provided for in subsection (7).~~

~~(9) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.~~"

Section 9. Section 41-3-404, MCA, is amended to read:

"**41-3-404.** ~~**Adjudicatory hearing**~~ ***Adjudication*** **— temporary disposition —** ***findings*** **—** ***order.*** *(1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under [section 6]. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to [section 14] and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays in the notification of parties, and unforeseen personal emergencies.*

~~(1)~~*(2)* ~~In the adjudicatory hearing~~ *The court may make an adjudication* on a petition under 41-3-401~~,~~ *if* the court ~~shall determine~~ *determines* by a preponderance of the evidence ~~whether~~, *except as provided in the federal Indian Child Welfare Act, if applicable, that* the ~~youth~~ *child* is a youth in need of care and

~~ascertain~~ *ascertains*, as far as possible, the cause. *Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.*

~~(2)~~*(3)* The court shall hear evidence regarding the residence of the ~~youth~~ *child, paternity, if in question,* the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the ~~youth~~ *child.*

~~(3)~~*(4)* In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

~~(4)~~*(5)* (a) If the court determines that the ~~youth~~ *child* is not an abused or neglected child, the petition must be dismissed and any order made pursuant to ~~41-3-403~~ *41-3-402 or [section 6]* must be vacated.

(b) If the ~~youth~~ *child* is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within ~~30~~ *20* days, *as provided in 41-3-406(2),* and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in ~~41-3-403(6)~~ *41-3-402(2).*

(6) (a) Before making an adjudication, the court shall make written findings on issues including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether there is a legal basis for continued court and department intervention; and

(iii) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing;

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents."

Section 10. Section 41-3-406, MCA, is amended to read:

"**41-3-406.** ~~**Dispositional**~~ ***Disposition*** **— hearing** ~~**— temporary legal custody**~~ ***— order.*** *(1) Unless a petition is dismissed or unless otherwise* *stipulated by the parties pursuant to [section 14] or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-404. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays in the notification of parties, and unforeseen personal emergencies.*

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-404. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

~~(1)~~*(3)* If a ~~youth~~ *child* is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following dispositions to protect the welfare of the ~~youth~~ *child*:

(a) permit the ~~youth~~ *child* to remain with the ~~youth's~~ *child's* parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a youth who is 16 years of age or older, as provided in 41-3-408;

(c) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the ~~youth~~ *child* and that is licensed or otherwise authorized by law to receive and provide care of the ~~youth~~ *child*; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the ~~youth~~ *child*;

(d) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(e) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-411.

~~(2) To grant temporary legal custody, the court shall make a finding that:~~

~~(a) dismissing the petition would create a substantial risk of harm to the child or detriment to the child's physical or psychological well-being; and~~

~~(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-403, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.~~

~~(3)~~*(4)* If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(4)~~*(5)* If the court finds that reasonable efforts are not necessary pursuant to *[section 11(1)] or* subsection ~~(2) or (3)~~ *(4) of this section*, a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(5) An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:~~

~~(a) an extension of temporary legal custody, not to exceed a total of 6 months, upon a showing that additional time is necessary for the parent or guardian to successfully complete a treatment plan;~~

~~(b) termination of the parent-child legal relationship and either:~~

~~(i) permanent legal custody with the right of adoption; or~~

~~(ii) appointment of a guardian pursuant to 41-3-607;~~

~~(c) long-term custody pursuant to 41-3-412;~~

~~(d) appointment of a guardian pursuant to 41-3-421; or~~

~~(e) dismissal.~~

~~(6) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (5).~~

~~(7) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home.~~

~~(8)~~*(6)* If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 11. Temporary legal custody. (1) If a child is found to be a youth in need of care under 41-3-404, the court may grant temporary legal custody under 41-3-406 if the court determines by a preponderance of the evidence that:

(a) dismissing the petition would create a substantial risk of harm to the child or would be a detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-403, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(2) An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody, not to exceed a total of 6 months, upon a showing that additional time is necessary for the parent or guardian to successfully complete a treatment plan;

(b) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right of adoption; or

(ii) appointment of a guardian pursuant to 41-3-607;

(c) planned alternative permanent placement pursuant to 41-3-412;

(d) appointment of a guardian pursuant to 41-3-421; or

(e) dismissal.

(3) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (2).

(4) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home and shall specifically find that an extension is in the child's best interests.

(5) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.

(6) In implementing the policy of this section, the child's health and safety are of paramount concern.

(7) A petition requesting temporary legal custody must be served as provided in 41-3-401.

Section 12. Section 41-3-412, MCA, is amended to read:

"**41-3-412. Permanency plan hearing.** (1) *(a) (i)* ~~A~~ *Subject to subsection (1)(b), a* permanency plan hearing must be held by the court*:*

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-403, 41-3-406(5), or [section 11(1)]; and

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first~~, unless the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian~~.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed, the court shall make a

finding whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency plan hearing is not required if the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian.

(c) The permanency plan hearing may be combined with a hearing that is required in other sections of this part if held within the time limits of that section. If a permanency plan hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section.

(2) At least 3 *working* days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report *must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.* ~~must contain the:~~

~~(a) efforts and progress demonstrated by the child's parent or guardian to complete a treatment plan;~~

~~(b) extent to which the parent or guardian cooperated and used the services provided;~~

~~(c) status of the child, including the child's mental, physical, and psychological health; and~~

~~(d) plan for permanency for the child, including specific times for achieving the plan.~~

(3) At least 3 *working* days prior to the permanency plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) *The court's order must be issued within a reasonable time after the permanency plan hearing.* ~~If the~~ *The* court ~~finds that~~ *shall make findings on whether* the permanency plan is in the best interests of the child~~, the~~ *and whether the department has made reasonable efforts to finalize the plan. The* court shall order the department to take whatever *additional* steps are necessary to effectuate the terms of the plan~~, including returning the child safely to the child's home, and shall order the county attorney, the attorney general, or an attorney hired by the county to file any necessary petition to implement the plan with the court within 30 days after the present hearing unless a petition has already been filed~~.

(5) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the ~~provisions~~ *options provided* in subsection (6) and that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(6) ~~If the permanency plan hearing results in a finding that reunification of the child with the child's parent or guardian is not in the best interests of the child, a subsequent petition filed must be one of the following~~ *Permanency options include:*

~~(a) termination of parental rights if the applicable requirements to terminate parental rights have been met;~~

(a) reunification of the child with the child's parent or guardian;

(b) adoption;

~~(b)~~*(c)* appointment of a guardian pursuant to 41-3-421; or

~~(c)~~*(d)* ~~long-term custody~~ *a planned permanent*~~-of~~ *living arrangement for* a child if the evidence demonstrates by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a relative;

~~(i)~~*(ii)* the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

~~(ii)~~*(iii)* the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

~~(iii)~~*(iv)* the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; *or*

~~(iv) the child is in a group of siblings, at least one of whom meets the requirements of subsections (6)(c)(v)(A) through (6)(c)(v)(D), and the best interests of the child will be met by continued placement in the sibling group in long-term foster care; or~~

~~(v)~~*(v)* the child ~~is at least 12 years of age and~~ meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) *there is a judicial finding that other permanent placement* ~~termination of parental rights to the child is not in the child's best interests~~ *options for the child have been considered and found not to be in the child's best interests*; and

(D) the child has been in a placement in which the foster parent *or relative* has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(7) The court may terminate ~~long-term custody~~ *the planned permanent living arrangement* upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

Section 13. Section 41-3-420, MCA, is amended to read:

"**41-3-420. Treatment plan — contents — changes.** (1) ~~Upon the stipulation of the parties or upon a judicial finding that a child is a youth in need of care, the~~ *The* court may order a treatment plan *if:*

(a) the parent or parents admit the allegations of an abuse and neglect petition;

(b) the parent or parents stipulate to the allegations of abuse or neglect pursuant to [section 14]; or

(c) the court has made an adjudication under 41-3-404 that the child is a youth in need of care.

(2) Every treatment plan must contain the following information:

(a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;

(b) the treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the treatment plan must include but is not limited to the conditions or requirements that must be established for the safe return of the child to the family.

(c) the projected time necessary to complete each of the treatment objectives;

(d) the specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the treatment plan; and

(e) the signature of the parent or parents or guardian, unless the plan is ordered by the court.

(3) A treatment plan may include but is not limited to any of the following remedies, requirements, or conditions:

(a) the right of entry into the child's home for the purpose of assessing compliance with the terms and conditions of a treatment plan;

(b) the requirement of either the child or the child's parent or guardian to obtain medical or psychiatric diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;

(c) the requirement of either the child or the child's parent or guardian to obtain psychological treatment or counseling;

(d) the requirement of either the child or the child's parent or guardian to obtain and follow through with alcohol or substance abuse evaluation and counseling, if necessary;

(e) the requirement that either the child or the child's parent or guardian be restricted from associating with or contacting any individual who may be the subject of a department investigation;

(f) the requirement that the child be placed in a temporary medical ~~facility or a facility for protection of the youth~~ *or out-of-home care*;

(g) the requirement that the parent, guardian, or other person having physical or legal custody furnish services that the court may designate.

(4) A treatment plan may not be altered, amended, continued, or terminated without the approval of the parent or parents or guardian pursuant to a stipulation and order or order of the court.

(5) A treatment plan must contain a notice provision advising parents:

(a) of timelines for hearings and determinations required under this chapter;

(b) that the state is required by federal and state laws to hold a permanency plan hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12

months after the first 60 days that the child has been removed from the child's home;

(c) that if a child is in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(d) that completion of a treatment plan does not guarantee the return of a child and that completion of the plan without a change in behavior that caused removal in the first instance may result in termination of parental rights."

Section 14. Stipulations. Subject to approval by the court, a parent may stipulate to any of the following:

(1) the child meets the definition of a youth in need of care by the preponderance of the evidence;

(2) a treatment plan, if the child has been adjudicated a youth in need of care; or

(3) the disposition.

Section 15. Section 41-3-421, MCA, is amended to read:

"41-3-421. Abuse and neglect proceedings — appointment of guardian — financial subsidies. (1) The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-406, 41-3-412, or 41-3-607. The guardianship may be subsidized by the department under subsection (8) if the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

(2) The court may appoint a guardian for a child pursuant to this section if the following facts are found by the court:

(a) the department has given its written consent to the appointment of the guardian, whether the guardianship is to be subsidized or not;

(b) if the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies pursuant to subsection (8);

(c) the child has been adjudicated a youth in need of care;

(d) the department has made reasonable efforts to reunite the parent and child, further efforts to reunite the parent and child by the department would likely be unproductive, and reunification of the parent and child would be contrary to the best interests of the child;

~~(e) the child is at least 12 years old or the child is in a group of siblings, at least one of whom is at least 12 years old, and the guardianship is in the best interests of the siblings;~~

~~(f)~~*(e)* the child has lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child;

~~(g)~~*(f)* it is in the best interests of the child to remain or be placed with the potential guardian;

~~(h)~~*(g)* either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests; and

~~(i)~~*(h)* if the child concerning whom the petition for guardianship has been filed is an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the child's tribe has received notification from the state of the initiation of the proceedings.

(3) The entry of a decree of guardianship pursuant to this section terminates the custody of the department and the involvement of the department with the child and the child's parents except ~~a~~ *for the department's* provision of a financial subsidy, if any, pursuant to subsection (8).

(4) A guardian appointed under this section may exercise the powers and has the duties provided in 72-5-231.

(5) The court may revoke a guardianship ordered pursuant to this section if the court finds, after hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian, the department, any ~~court appointed~~ *court-appointed* guardian ad litem, the child's parent if the rights of the parent have not been terminated, and other persons directly interested in the welfare of the child.

(6) A guardian may petition the court for permission to resign the guardianship. A petition may include a request for appointment of a successor guardian.

(7) After notice and hearing on a petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary legal custody to the department pursuant to 41-3-406.

(8) The department may provide a financial subsidy to a guardian appointed pursuant to this section if the guardianship meets the department's criteria and if the department determines that a subsidy is in the best interests of the child. The amount of the subsidy must be determined by the department.

(9) This section does not apply to guardians appointed pursuant to Title 72, chapter 5."

Section 16. Repealer. Sections 41-3-413 and 41-3-1014, MCA, are repealed.

Section 17. Codification instruction — code commissioner instruction. (1) [Sections 6, 7, 11, and 14] are intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [sections 6, 7, 11, and 14].

(2) The code commissioner is instructed to rearrange and renumber the following sections in Title 41, chapter 3, part 4, in the following order:

41-3-401,

41-3-403,

41-3-402,

[section 6],

[section 7],

[section 14],

41-3-404,

41-3-406,

[section 11],

41-3-420,

41-3-421,

41-3-412,

41-3-411.

(3) The code commissioner is instructed to renumber:

(a) 41-3-303, 41-3-409, 41-3-1115, 41-3-1160, and 41-3-1161 as an integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to the renumbered sections;

(b) 41-3-408 as a new part in Title 41, chapter 1, and to insert "of public health and human services" after "department" in subsection (1) of the renumbered section;

(c) Title 41, chapter 3, part 7, as a new chapter in Title 52;

(d) Title 41, chapter 3, part 11, as a new part in Title 52, chapter 2; and

(e) Title 42, chapter 8, as a new chapter in Title 52.

Section 18. Coordination instruction. (1) If ___ Bill No. ____ [LC 261] and [this act] are both passed and approved, then ____ Bill No. ____ [LC 261] is void.

(2) If House Bill No. 223 and [this act] are both passed and approved, then 41-3-401(6) contained in [this act] must read as follows:

"(6) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of all petitions at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in [sections 1 and 2 of House Bill 223]."

(3) If Senate Bill No. 116 and [this act] are both passed and approved, then the amendments in Senate Bill No. 116 to 41-3-403(6), 41-3-406(7), and 41-3-413 are void.

Section 19. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 20, 2001

CHAPTER NO. 282

[SB 197]

AN ACT REQUIRING A PERSON WHO WILDCRAFTS TO OBTAIN WRITTEN PERMISSION OR A PERMIT PRIOR TO WILDCRAFTING; PROVIDING EXEMPTIONS TO THE REQUIREMENT OF WRITTEN PERMISSION OR A PERMIT; DESCRIBING THE REQUIREMENTS FOR A

BUYER OF WILDCRAFTED PLANT MATERIAL; PROVIDING A RESTRICTION ON THE LIABILITY OF A LANDOWNER THAT ALLOWS WILDCRAFTING ON THE LANDOWNER'S PROPERTY; ESTABLISHING VIOLATIONS; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. (1) The purpose of [sections 1 through 7] is to:

(a) encourage the growth of a statewide sustainable wildcrafting industry that encourages stewardship of the wild plant natural resources of the state by requiring a person who is wildcrafting for commercial purposes to obtain a permit or permission in a written form before the person can wildcraft and by providing enforcement procedures;

(b) require buyers to be accountable for wildcrafted plant material that they purchase by requiring recordkeeping; and

(c) establishing enforcement procedures.

(2) The state recognizes its limited jurisdiction within the Indian reservations in Montana and acknowledges and respects the government-to-government relationship between Montana and the tribes within its borders. It is the legislature's intent that this bill be implemented within current jurisdictional limitations. The tribes are invited to enter into state-tribal cooperative agreements with Montana to provide for broader implementation.

Section 2. Definitions. As used in [sections 1 through 7], the following definitions apply:

(1) "Buyer" means a person who purchases or acquires wildcrafted plant material, other than materials acquired directly from the property owner, for the purposes of resale.

(2) "Commercial purposes" means the harvest of wildcrafted plant material for the purpose of selling, trading, or otherwise exchanging the material for profit.

(3) "Landowner" means a person or entity of any nature, whether private, governmental, or quasi-governmental, and includes the landowner's agent, tenant, lessee, or occupant, a grantee of a conservation easement, a water users' association, an irrigation district, a drainage district, or persons or entities in control of property or with an agreement to use or occupy property.

(4) "Other jurisdictional entity" means the federal government or a tribal government.

(5) "Person" includes an individual, partnership, association, corporation, and any other body or group of persons, whether incorporated or not and regardless of the degree of formal organization.

(6) "Property" means land, roads, water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.

(7) "Seller" means a person who sells wildcrafted plant material.

(8) "Transport" means the physical conveyance of wildcrafted plant material away from the site of wildcrafting and includes but is not limited to transportation by:

(a) a motor vehicle designed for use on improved roadways;

(b) a boat, barge, raft, or other water vessel; or

(c) an airplane, helicopter, balloon, or other aircraft.

(9) (a) "Wildcraft" means to collect, harvest, or separate by cutting, prying, picking, peeling, breaking, pulling, digging, splitting, or otherwise removing uncultivated plants or plant parts from their physical connection or point of contact with the ground or vegetation upon which they are growing or from the place or position where they lay for commercial purposes.

(b) The term does not include the collection of:

(i) plant material used for a campfire; or

(ii) amounts intended for personal consumption.

(10) "Wildcrafted plant material" means any plant or part of any plant species that is not cultivated and that is growing wild on any lands in Montana.

(11) "Wildcrafter" means a person who wildcrafts plants.

Section 3. Written permission or permit to wildcraft required. (1) It is unlawful for any person to wildcraft or transport wildcrafted plant material without having in the person's possession a bill of sale, a signed, written permission form, or a permit from a landowner to wildcraft from the property from which the material is wildcrafted. The written permission or permit must include the following:

(a) the date the permission is given or the permit is issued;

(b) the name, address, telephone number, and signature of the person granting the permission or issuing the permit;

(c) the name, address, and telephone number of the person that is granted the permission or issued the permit;

(d) the common name or scientific name of the plant to be wildcrafted;

(e) the amount and specified part of the plant material to be wildcrafted;

(f) a description of the location on the property from which plant material may be wildcrafted;

(g) the expiration date of the permission or permit; and

(h) the license plate number of the vehicle to be used for the purposes of wildcrafting.

(2) Written permission given or a permit issued to the person supervising a crew of wildcrafters is an acceptable substitute for individual permission or permits.

Section 4. Exemption from written permission or permit requirement. The following are exemptions to the requirements of [section 3]:

(1) A permit issued by a land management agency, another government agency, or any other jurisdictional entity in the state is acceptable in lieu of the written permission if the wildcrafting occurs on land managed by the entity issuing the permit.

(2) A landowner or other jurisdictional entity does not need written permission or a permit to wildcraft on property that the landowner or other jurisdictional entity owns.

(3) Written permission or a permit is not required for the amount of wildcrafted plant material that the landowner or other jurisdictional entity determines is for personal or incidental use.

Section 5. Requirements of buyer. (1) A buyer of wildcrafted plant material shall keep records of purchases or acquisitions of wildcrafted plant material for a period of 3 years from the date of purchase or acquisition.

(2) Copies of the records must be made available to a law enforcement officer upon request.

(3) The records must include:

(a) the date of purchase or acquisition;

(b) the common name or scientific name of the wildcrafted plant material;

(c) the number of the permit, if a number exists, or a copy of the permit or the written permission authorizing the wildcrafting, unless the material came from property owned by the seller;

(d) the name, address, telephone number, and signature of the person from whom the wildcrafted plant material was obtained;

(e) the license plate number of the vehicle that was used to deliver the wildcrafted plant material to the buyer;

(f) the quantity and plant part of wildcrafted plant material purchased or acquired; and

(g) the name, address, and telephone number of the landowner from whose land the wildcrafted plant material was harvested.

Section 6. Restriction on liability of landowner. (1) A person who uses private property for wildcrafting purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct.

(2) A person who uses public property for wildcrafting purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct.

Section 7. Violations — penalties. (1) It is unlawful for a person to:

(a) fail to obtain permission from a landowner to enter property for purposes of wildcrafting;

(b) transport wildcrafted plant material without a bill of sale, a signed, written permission form, or a permit from a landowner as provided in [section 3];

(c) have in the person's possession an amount of wildcrafted plant material that is in excess of the amount granted in the bill of sale, written permission, or permit.

(2) A person who is found to have violated subsection (1) is guilty of a misdemeanor punishable by a fine in an amount not less than $100 or more than $1,000 or by imprisonment in the county jail for a term not to exceed 6 months or not less than 24 hours, or both, for a first offense. An offender convicted of a second offense under this section shall be fined not less than $500 or more than $1,000 or be imprisoned in the county jail for a term not to exceed 1 year or not less than 6 months, or both.

(3) All wildcrafted plant material that is illegally wildcrafted, transported, or in the possession of a person convicted under this section must be impounded.

(4) The incidental disturbance of plants by a lessee or permittee who is lawfully exercising rights granted under the lease or permit is not considered to be in violation of [sections 1 through 7].

Section 8. State-tribal cooperative agreements. The state and tribal governments may enter into cooperative agreements as provided in Title 18, chapter 11.

Section 9. Two-thirds vote required — contingent voidness. Because [section 6(2)] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage. If [section 6(2)] is not approved by at least two-thirds of the members of each house of the legislature, then [section 6(2)] is void.

Section 10. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 76, and the provisions of Title 76 apply to [sections 1 through 7].

Section 11. Effective date. [This act] is effective on passage and approval.

Section 12. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Approved April 20, 2001

CHAPTER NO. 283

[SB 203]

AN ACT REPLACING THE LIMIT ON THE NUMBER OF AXLES ALLOWED ON A COMMERCIAL MOTOR VEHICLE WITH THE FEDERAL GROSS VEHICLE WEIGHT LIMITS; AND AMENDING SECTION 61-10-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-107, MCA, is amended to read:

"61-10-107. Maximum gross weight. (1) An axle may not carry a load in excess of 20,000 pounds, and no two consecutive axles more than 40 inches or less than 96 inches apart may carry a load in excess of 34,000 pounds. An axle load is the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle. For purposes of this section, axles 40 inches or less apart are considered to be a single axle. ~~A vehicle or combination may not have more than nine axles.~~ The maximum gross weight allowed on a vehicle, group of axles, or combination of vehicles must be determined by the formula: $W = 500((LN/(N-1)) + 12N + 36)$in which W equals gross weight, L equals wheel base in feet, and N equals number of axles, except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more. *The maximum gross weight allowed on a vehicle may not exceed the weight limits adopted by the department. The department shall adopt rules for weight limits based upon the most recent version of 23 CFR, part 658, appendix c, for vehicles operating in Montana.*

(2) (a) Notwithstanding a vehicle's conformance with the requirements of subsection (1), except for the steering axle, all axles weighing over 11,000 pounds must have at least four tires or have wide-base tires. The maximum load on an axle, other than a steering axle, equipped with wide-base tires is limited to 500 pounds for each inch of tire width.

(b) The provisions of subsection (2)(a) do not apply to passenger buses.

(c) For the purposes of this section, wide-base tires are tires that are 14 or more inches in nominal width. The maximum tire weight limit is computed for wide-base tires based on the number of inches shown on the tire marking, or if the tire marking is shown by metric size, the tire weight limit is computed by conversion of the metric size.

(3) This section does not apply to highways that are a part of the national system of interstate and defense highways (as referred to in 23 U.S.C. 127) when application of this section would prevent this state from receiving federal funds for highway purposes."

Approved April 20, 2001

CHAPTER NO. 284

[SB 204]

AN ACT CLARIFYING THAT A COURT SENTENCING A CRIMINAL OFFENDER MUST SPECIFY THE TOTAL AMOUNT OF RESTITUTION TO BE PAID TO THE VICTIM; PROVIDING THAT THE TOTAL AMOUNT ORDERED TO BE PAID MAY BE COLLECTED BY THE VICTIM AT ANY TIME, INCLUDING AFTER STATE SUPERVISION OF THE OFFENDER ENDS, USING ANY METHOD ALLOWED BY LAW FOR THE COLLECTION OF A CIVIL JUDGMENT; AMENDING SECTIONS 46-18-244 AND 46-18-249, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-244, MCA, is amended to read:

"**46-18-244. Type and time of payment — defenses.** (1) The court shall specify the *total* amount~~,~~ *to be paid and the* method~~,~~ and time of ~~each~~ payment ~~to the victim~~ and may permit payment in installments.

(2) In determining the amount, method, and time of each *installment* payment, the court shall consider the financial resources and future ability of the offender to pay. The court shall provide for payment to a victim of the full amount

of the pecuniary loss caused by the offense. The offender may assert any defense that the offender could raise in a civil action for the loss sought to be compensated by the restitution order.

(3) ·In addition to other methods of payment, the court may order one or more of the following in order to satisfy the offender's restitution obligation:

(a) forfeiture and sale of the offender's assets under the provisions of Title 25, chapter 13, part 7, unless the court finds, after notice and an opportunity for the offender to be heard, that the assets are reasonably necessary for the offender to sustain a living or support the offender's dependents or unless the state determines that the cost of forfeiture and sale would outweigh the amount available to the victim after sale. If the proceeds of sale exceed the amount of restitution ordered and the costs of forfeiture and sale, any remaining amount must be returned to the offender.

(b) return of any property to the victim;

(c) payment of up to one-third of the offender's prison earnings.

(4) With the consent of the victim and in the discretion of the court, an offender may be ordered to make restitution in services to the victim in lieu of money or to make restitution to a person designated by the victim, if that person provided services to the victim as a result of the offense.

(5) After a prosecution is commenced and upon petition of the prosecutor, the court may grant a restraining order or injunction, require a satisfactory bond, or take other action if the court finds that the restraining order or injunction, bond, or other action is necessary to preserve property or assets that could be used to satisfy an anticipated restitution order. A hearing must be held on the petition, and any person with an interest in the property is entitled to be heard."

Section 2. Section 46-18-249, MCA, is amended to read:

"**46-18-249. Civil actions by victim.** (1) ~~Sections~~ *The total amount that a court orders to be paid to a victim may be treated as a civil judgment against the offender and may be collected by the victim at any time, including after state supervision of the offender ends, using any method allowed by law, including execution upon a judgment, for the collection of a civil judgment. However,* 46-18-241 through ~~46-18-249~~ *46-18-248 and this section* do not limit or impair the right of a victim to sue and recover damages from the offender in a *separate* civil action.

(2) The findings in the sentencing hearing and the fact that restitution was required or paid are not admissible as evidence in a *separate* civil action and have no legal effect on the merits of a *separate* civil action.

(3) Any restitution paid by the offender to the victim *under a restitution order contained in a criminal sentence, including an amount or amounts paid in a civil proceeding to enforce payment of a restitution order contained in a criminal sentence,* must be set off against any pecuniary loss awarded to the victim in a *separate* civil action arising out of the facts or events ~~which~~ *that* were the basis for the restitution. The court trying the *separate* civil action shall determine the amount of any setoff asserted by the defendant under this section."

Section 3. Retroactive applicability. [Section 2] applies retroactively, within the meaning of 1-2-109, to restitution ordered to be paid prior to [the effective date of this act].

Approved April 20, 2001

CHAPTER NO. 285

[SB 210]

AN ACT ALLOWING EMPLOYEES OF COUNTY HOSPITALS AND REST HOMES IN FIRST- AND SECOND-CLASS COUNTIES TO HAVE THE OPTION TO NOT JOIN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AND AMENDING SECTION 19-3-412, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-412, MCA, is amended to read:

"**19-3-412. Optional membership.** (1) The following employees in covered employment may become members of the retirement system at their option by filing an irrevocable, written application with the board within 180 days of commencement of their employment:

(a) elected officials of the state or local governments who are paid on a salary or wage basis rather than on a per diem or other reimbursement basis;

(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes ~~in counties of the third, fourth, fifth, sixth, and seventh class~~.

(2) Employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.

(3) If an employee declines optional membership, the employee shall execute a statement waiving membership and the employer shall retain the statement. An employee who declines optional membership may not receive membership credit or service credit for the employment for which membership was declined.

(4) An employee who declined optional membership but later becomes a member may qualify service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Qualification of service pursuant to this subsection must comply with 19-3-505.

(5) Membership in the retirement system is not optional for an employee who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(6) An employee who declines membership while employed in a position for which membership is optional may not later become a member while still employed in that position. If, after a break in service of 30 days or more an employee who was a member in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership. However, if the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(7) An employee accepting a position that requires membership shall become a member even if the employee previously declined membership and did not have a 30-day break in service.

(8) If an employee or official fails to file with the board an irrevocable, written application within the time allowed in this section, the employee or official waives membership."

Approved April 20, 2001

CHAPTER NO. 286

[SB 221]

AN ACT ELIMINATING THE REQUIREMENT FOR A CERTIFICATE OF NEED FOR CERTAIN HEALTH CARE FACILITIES; AMENDING SECTION 50-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-301, MCA, is amended to read:

"50-5-301. When certificate of need is required — definitions. (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, the person may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure that exceeds $1.5 million, other than to acquire an existing health care facility. The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant with respect to which an expenditure is made must be included in determining if the expenditure exceeds $1.5 million.

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds, if fractional, rounded down to the nearest whole number, whichever figure is smaller, and no beds have been added or relocated during the 2 years prior to the date on which the letter of intent for the proposal is received;

(ii) a letter of intent is submitted to the department; and

(iii) the department determines that the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health care facilities plan;

(c) the addition of a health service that is offered by or on behalf of a health care facility that was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and that will result in additional annual operating and amortization expenses of $150,000 or more;

(d) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:

(i) the person submits the letter of intent required by 50-5-302(2); and

(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

(e) the construction, development, or other establishment of a health care facility that is being replaced or that did not previously exist, by any person, including another type of health care facility;

~~(f) the expansion of the geographical service area of a home health agency;~~

(f) the expansion of the geographical service area of a home health agency;

~~(g)~~*(g)* the use of hospital beds in excess of five to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101; ~~or~~

~~(h)~~*(h)* the provision by a hospital of services for ~~ambulatory surgical care through an outpatient center for surgical services, as defined in subsection (2)(a), home health care,~~ *home health care,* long-term care~~,~~, *or* inpatient chemical dependency treatment~~, or inpatient rehabilitation~~*; or*

(i) the construction, development, or other establishment of a facility for ambulatory surgical care through an outpatient center for surgical services in a county with a population of 20,000 or less according to the most recent federal census or estimate.

(2) For purposes of this part, the following definitions apply:

(a) "Health care facility" or "facility" means a ~~nonfederal home health agency,~~ *nonfederal home health agency, a* long-term care facility~~,~~, *or an* inpatient chemical dependency facility~~, rehabilitation facility with inpatient services, or outpatient center for surgical services that has or is intended to qualify for medicare certification as an ambulatory surgical center pursuant to 42 CFR, part 416~~. The term does not include:

(i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection ~~(1)(h)~~ *(1)(h)*; ~~or~~

(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including chemical dependency counselors~~.~~*; or*

(iii) a rehabilitation facility or an outpatient center for surgical services.

(b) (i) "Long-term care facility" means an entity that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more individuals.

(ii) The term does not include residential care facilities, as defined in 50-5-101; community homes for persons with developmental disabilities, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(3) This section may not be construed to require a health care facility to obtain a certificate of need for a nonreviewable service that would not be subject to a certificate of need if undertaken by a person other than a health care facility."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2001

CHAPTER NO. 287

[SB 229]

AN ACT PROVIDING THAT IT IS NOT MARITAL STATUS DISCRIMINATION FOR AN EMPLOYER TO EMPLOY OR OFFER TO EMPLOY A PERSON WHO IS QUALIFIED FOR THE POSITION AND TO ALSO EMPLOY OR OFFER TO EMPLOY THE PERSON'S SPOUSE; AND AMENDING SECTION 49-2-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-2-303, MCA, is amended to read:

"49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental disability, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental disability, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application that expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications must be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

(4) The application of a hiring preference, as provided for in 2-18-111 and 18-1-110, may not be construed to be a violation of this section.

(5) It is not a violation of the prohibition against marital status discrimination in this section~~.~~*:*

(a) for an employer or labor organization to provide greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents~~.~~*; or*

(b) for an employer to employ or offer to employ a person who is qualified for the position and to also employ or offer to employ the person's spouse."

Approved April 20, 2001

CHAPTER NO. 288

[SB 241]

AN ACT CHANGING THE COMPOSITION OF THE PLANNING AND ZONING COMMISSION; AUTHORIZING COUNTIES TO ENFORCE THE REGULATIONS AND REQUIREMENTS ADOPTED FOR PLANNING AND ZONING DISTRICTS CREATED UPON CITIZEN PETITION; AND AMENDING SECTIONS 76-2-101 AND 76-2-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-2-101, MCA, is amended to read:

"**76-2-101. Planning and zoning commission and district.** (1) Subject to the provisions of subsection (5), whenever the public interest or convenience may require and upon petition of 60% of the *affected* freeholders ~~affected thereby~~, the board of county commissioners ~~is hereby authorized and empowered to order and~~ *may* create a planning and zoning district and ~~to~~ appoint a *planning and zoning* commission consisting of ~~five~~ *seven* members.

(2) ~~No such planning or zoning district may~~ *A planning and zoning district may not* be created in an area ~~which~~ *that* has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" ~~shall mean~~ *means* any area that consists of not less than 40 acres.

(4) Except as provided in subsection (5), an action challenging the creation of a planning and zoning district must ~~be commenced~~ *begin* within 5 years after the date of the order by the board of county commissioners creating the district.

(5) If freeholders representing 50% of the titled property ownership in the district protest the establishment of the district within 30 days of its creation, the board of county commissioners may not create the district. An area included in a district protested under this subsection may not be included in a zoning district petition under this section for a period of 1 year."

Section 2. Section 76-2-102, MCA, is amended to read:

"**76-2-102. Organization and operation of commission.** (1) The planning and zoning commission consists of the three county commissioners, the county surveyor, *two citizen members, each of whom resides in a different planning and zoning district,* and a county official appointed by the county commissioners. *The citizen members must be appointed by the board of county commissioners to 2-year staggered terms, with one member initially appointed to a 2-year term and the remaining member initially appointed to a 1-year term.* Members of the commission shall serve without compensation other than reimbursement for authorized expenses and must be residents of the county in which they serve.

(2) The commission may appoint necessary employees and fix their compensation with the approval of the board of county commissioners, select a presiding officer to serve for 1 year, appoint a secretary to keep permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.

(3) Subject to 15-10-420, the finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the *commission's* members ~~of the board~~ must be paid from a levy of not to exceed 1 mill on the taxable valuation of the real property within the district."

Section 3. Enforcement of zoning provisions. If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if any building, structure, or land is used in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may take any appropriate action or begin proceedings to:

(1) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(2) restrain, correct, or abate a violation;

(3) prevent the occupancy of a building, structure, or land; or

(4) prevent any illegal act, conduct, business, or use in or near the premises.

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 76, chapter 2, part 1, and the provisions of Title 76, chapter 2, part 1, apply to [section 3].

Section 5. Transition. On or before October 1, 2002, the county board of commissioners shall appoint new members to the planning and zoning commission, as provided in [sections 1 and 2], for each planning and zoning district that exists as of [the effective date of this act].

Approved April 20, 2001

CHAPTER NO. 289

[SB 279]

AN ACT AUTHORIZING A 4 PERCENT LOAN RATE FOR THE FIRST 5 YEARS FOR A LOAN TO A BUSINESS CREATING OR RETAINING 10 TO 14 JOBS UNDER THE VALUE-ADDED LOAN PROGRAM; ESTABLISHING THE BOARD OF INVESTMENTS' POSTED RATE AS THE RATE OF INTEREST FOR THE THIRD 5-YEAR PERIOD ON A LOAN; PROVIDING

THAT THE RATE OF INTEREST ON A LOAN IS THE BOARD'S POSTED RATE UNTIL JOB CERTIFICATION REQUIREMENTS HAVE BEEN MET; PROVIDING A MATHEMATICAL NUMERICAL THRESHOLD FOR DETERMINING LOAN PROGRAM ELIGIBILITY; AMENDING SECTION 17-6-317, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-317, MCA, is amended to read:

"**17-6-317. Participation by private financial institutions — rulemaking.** (1) (a) The board may jointly participate with private financial institutions in making loans to a business enterprise if the loan will:

(i) result in the creation of a business estimated to employ at least ~~15~~ *10* people in Montana on a permanent, full-time basis; ~~or~~

(ii) result in the expansion of a business estimated to employ at least an additional ~~15~~ *10* people in Montana on a permanent, full-time basis*; or*

(iii) prevent the elimination of the jobs of at least 10 Montana residents who are permanent, full-time employees of the business.

(b) Loans under this section may be made only to business enterprises that are producing or will produce value-added products or commodities.

(c) ~~a~~ *A* loan made pursuant to this section does not qualify for a job credit interest rate reduction under 17-6-318.

(2) A loan made pursuant to this section may not exceed 1% of the coal severance tax permanent fund and must comply with each of the following requirements:

(a) (i) The business enterprise seeking a loan must have a cash equity position equal to at least 25% of the total loan amount.

(ii) A participating private financial institution may not require~~:~~ *the business to have an equity position greater than 50% of the total loan amount.*

~~(A) the business enterprise to have an equity position greater than 25% of the total loan amount; or~~

~~(B) additional security or guarantees to cover its exposure, but this does not preclude federal guarantees.~~

(iii) If additional security or guarantees, exclusive of federal guarantees, are required to cover a participating private financial institution, then the additional security or guarantees must be proportional to the amount loaned by all participants, including the board of investments.

(b) The board shall provide 75% of the total loan amount.

(c) The term of the loan may not exceed 15 years.

(d) The board shall charge interest at the following *annual* rate:

(i) 2% ~~a year~~ for the first 5 years *if 15 or more jobs are created or retained*;

(ii) 4% for the first 5 years if 10 to 14 jobs are created or retained;

~~(ii)~~*(iii)* 6% ~~a year~~ for the second 5 years; and

~~(iii)~~*(iv) the board's posted interest rate* for the third 5 years, ~~an amount equal to the national prime interest rate, adjusted annually on January 1 of each year,~~ but not to exceed 10% a year.

(e) (i) The interest rates in subsections (2)(d)(i) and (2)(d)(ii) become effective when the board receives certification that the required number of jobs has been created or as provided in subsection (2)(e)(ii). If the board disburses loan proceeds prior to creation of the required jobs, the loan must bear interest at the board's posted rate.

(ii) In establishing interest rates under subsections (2)(d)(i) and (2)(d)(ii) for preventing the elimination of jobs, the board shall require the submission of financial data that allows the board to determine if the loan and interest rate will in fact prevent the elimination of jobs.

(f) If a business, entitled to the interest rate in subsection (2)(d)(i) or (2)(d)(ii), reduces the number of required jobs, the board may apply a graduated scale to increase the interest rate, not to exceed the board's posted rate.

(g) For purposes of calculating job creation or retention requirements, the board shall use the average weekly salary, as defined in 39-71-116, multiplied by the number of jobs required. This calculated number is the minimum aggregate salary threshold that is required to be eligible for a reduced interest rate. If individual jobs created pay less than the average weekly salary, the borrower shall create more jobs to meet the minimum aggregate salary threshold. If fewer jobs are created or retained than required in subsection (2)(d)(i) or (2)(d)(ii) but aggregate salaries meet the minimum aggregate salary threshold, the borrower is eligible for the reduced interest rate. A job paying less than the minimum wage, provided for in 39-3-409, may not be included in the required number of jobs.

~~(e)~~*(h)* (i) A participating private financial institution may charge interest in an amount equal to the national prime interest rate, adjusted on January 1 of each year, but the interest rate may not be less than 6% or greater than 12%.

(ii) At the borrower's discretion, the borrower may request the lead lender to change this prime rate to an adjustable or fixed rate on terms acceptable to the borrower and lender.

~~(ii)~~*(iii)* A participating private financial institution, or lead private financial institution if more than one is participating, may charge a 0.5% annual service fee.

~~(f)~~*(i)* The business enterprise may not be charged a loan prepayment penalty.

~~(g)~~*(j)* The loan agreement must contain provisions providing for pro rata lien priority and pro rata liquidation provisions based upon the loan percentage of the board and each participating private lender.

(3) If a portion of a loan made pursuant to this section is for construction, disbursement of that portion of the loan must be made based upon the percentage of completion to ensure that the construction portion of the loan is advanced prior to completion of the project.

(4) A private financial institution shall participate in a loan made pursuant to this section to the extent of 85% of its lending limit or 25% of the loan, whichever is less. However, the board's participation in the loan must be 75% of the loan amount.

(5) A business enterprise receiving a loan under the provisions of this section may not pay bonuses or dividends to investors until the loan has been paid off, except that incentives may be paid to employees for achieving performance standards or goals.

(6) The board may adopt rules that it considers necessary to implement this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2001

CHAPTER NO. 290

[SB 289]

AN ACT PROVIDING THAT ALL NEW NATIONAL GUARD FIREFIGHTERS MUST BE COVERED BY THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM; AMENDING SECTIONS 19-13-104, 19-13-210, 19-13-212, 19-13-605, 19-13-805, AND 19-13-1007, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-13-104, MCA, is amended to read:

"**19-13-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(2) "Compensation" means:

(a) for a full-paid firefighter, the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid for the firefighter's service as a firefighter out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code have been made;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(3) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under ~~age~~ 18 *years of age*; or

(b) unmarried, under ~~age~~ 24 *years of age*, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means any city that is of the first or second class or that elects to join this retirement system under 19-13-211 *or, with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department of military affairs established in 2-15-1201*.

(5) "Final average compensation" means the monthly compensation of a member averaged over the last 36 months of the member's active service or, if the member has not been a member that long, over the period of the member's service. Lump-sum payments for annual leave paid to the member upon termination of service may be used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of final average compensation.

(6) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

(7) "Full-paid firefighter" means a person appointed as a firefighter under 7-33-4106.

(8) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 5 or more years of membership service.

(9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of $300 a year for service as a firefighter.

(10) "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second class.

(11) "Retirement date" means the date on which the first payment of benefits is payable.

(12) *"Retirement system" means the firefighters' unified retirement system provided for in this chapter.*

(13) "Surviving spouse" means the spouse married to a member at the time of the member's death."

Section 2. Section 19-13-210, MCA, is amended to read:

"**19-13-210. Participation in retirement system ~~by first- and second-class cities~~.** *(1)* Cities of the first and second class that employ full-paid firefighters shall participate in the retirement system. If a city of the first or second class is reduced to a city of the third class or a town under 7-1-4118, it shall continue to participate in the retirement system as long as it has retired firefighters or survivors eligible to receive retirement benefits.

(2) Firefighters hired by the Montana air national guard on or after October 1, 2001, or on or after [the effective date of this act], whichever is later, shall participate in the retirement system."

Section 3. Section 19-13-212, MCA, is amended to read:

"**19-13-212. Termination of participation in retirement system or reduction of employer contributions.** (1) If ~~a city~~ *an employer* voluntarily terminates its contributions in the retirement system or significantly reduces the number of full-paid firefighters it employs to a degree that, in the board's opinion, inadequately funds the accrued or accruing benefits of retirement system members, the board shall request as part of the required actuarial valuation an actuarial investigation of the funding status of the ~~city~~ *employer*.

(2) Based on the actuarial investigation, the board may request and the ~~city~~ *employer* shall pay annually the amount determined to be necessary to provide adequate funding for the liabilities of the ~~city~~ *employer*. This amount must be in addition to any other contributions required by the retirement act.

(3) Six years after the actuarial investigation is conducted, ~~a city~~ *an employer* making payments as provided in subsection (2) may request the board to review the ~~city's~~ *employer's* funding status relative to the annual payments. As a result of the review, the board may adjust the payments."

Section 4. Section 19-13-605, MCA, is amended to read:

"**19-13-605. Employer contribution.** Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official from money available ~~to the city~~ for this purpose. The employer's contribution is 14.36% of the total compensation paid to members. All contributions are payable monthly to the board, which shall, as soon as practicable after their receipt, deposit them in the pension trust fund."

Section 5. Section 19-13-805, MCA, is amended to read:

"**19-13-805. Reinstatement upon termination of benefit.** (1) (a) Except as provided in subsection (1)(c), a member whose disability retirement benefit is canceled as provided in 19-13-804 must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if an appropriate vacancy exists within the member's fire department. The board shall advise the employer that the disability retirement benefit has been canceled and that the inactive member is eligible for reinstatement to duty. The fact that the member was retired for disability may not prejudice any right to reinstatement to duty that the inactive member may have or claim to have.

(b) If an appropriate vacancy does not exist within an inactive member's fire department when the member's disability benefit is canceled under 19-13-804, the member's benefit must be reinstated until a vacancy occurs.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(2) The ~~city~~ *employer* may request a medical or psychological review as to the ability of the member to return to work as a firefighter. If the board's findings are upheld, the ~~city~~ *employer* shall pay the costs of the review.

(3) If the inactive member again becomes an active member by returning to active work for an employer within 30 days following receipt of notice under 19-13-804, the member is considered to have been continuously employed during the term of the member's disability. If the inactive member fails to become an active member by returning to active work for an employer within 30 days following receipt of this notice, the member's termination of employment is considered to have occurred as of the member's disability retirement date and the retirement benefit, if any, to which the member becomes entitled on the member's service retirement must be determined accordingly."

Section 6. Section 19-13-1007, MCA, is amended to read:

"**19-13-1007. Minimum benefit adjustment.** (1) The following applies to a member with 10 or more years of service who has not elected to be covered under 19-13-1010:

(a) For the member or the member's surviving spouse or dependent children, the service retirement benefit provided in 19-13-704, the disability retirement benefit provided in 19-13-803, and the survivorship benefit provided in 19-13-902 may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of ~~a city~~ *the employer* that last employed the member as a firefighter, as provided each year in the budget of that ~~city~~ *employer*.

(b) If after a member retires, the ~~city~~ *employer* that last employed the member no longer employs a full-paid firefighter, the member's or survivor's benefit under subsection (1)(a) must be adjusted on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those ~~cities~~ *employers* that participate in the retirement system and employ a full-paid firefighter.

(2) If the employment of a vested member hired before July 1, 1981, who has not elected to be covered under 19-13-1010 is involuntarily discontinued because of the termination of employment of all full-paid firefighters ~~in~~ *of* the ~~city~~ *employer* that employed the member, the member's service retirement benefit provided in 19-13-704 and the member's spouse's or dependent child's survivorship benefit provided in 19-13-902(1) may not be less than:

(a) if the member has earned 20 years or more of membership service, one-half the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those ~~cities~~ *employers* that participate in the retirement system and employ a full-paid firefighter; or

(b) if the member has earned more than 5 but less than 20 years of membership service, 2.5% of the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those ~~cities~~ *employers* that participate in the retirement system and employ a full-paid firefighter, for each year of the member's service."

Section 7. Contingent effective date. [This act] is effective contingent on the execution of an agreement between the department of military affairs and the public employees' retirement board establishing that employer contributions for all firefighters hired by the Montana air national guard pursuant to [section 2] will be paid with federal funds passed through the department of military affairs and remitted to the firefighters' unified retirement system in a manner prescribed by the public employees' retirement board. The board shall notify the secretary of state and the code commissioner when this contingency is met.

Approved April 20, 2001

CHAPTER NO. 291

[SB 300]

AN ACT ALLOWING THE GOVERNOR TO ISSUE AN EXECUTIVE ORDER TO EXEMPT VEHICLES FROM SIZE AND WEIGHT LIMITS UNDER CERTAIN CIRCUMSTANCES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Governor's authority to exempt vehicles from size and weight limits. (1) The governor may, through executive order, exempt vehicles from the size and weight limits imposed under this part:

(a) upon a request of the director of the department of transportation and any other agency involved in the need to move oversize or overweight vehicles on the highway during emergency circumstances;

(b) for a specified, limited period of time; and

(c) during emergency circumstances and to meet unusual conditions to ensure the general welfare of the public.

(2) The agency director who requests the executive order may specify the areas in which the exemption is in effect, the duration of the exemption, the types of vehicles to be exempted, and any other appropriate conditions of the order.

(3) For the purposes of this section, "emergency circumstances" means conditions brought about by a weather event or a natural or other occurrence for which the movement of vehicles that may exceed size and weight limits is necessary for responding to the event or occurrence or for moving supplies, agricultural or other products, or equipment in a manner that is necessary because of the event or occurrence.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 10, part 1, and the provisions of Title 61, chapter 10, part 1, apply to [section 1].

Approved April 20, 2001

CHAPTER NO. 292

[SB 305]

AN ACT PROVIDING THAT AN INJURED WORKER WITH PHYSICAL RESTRICTIONS WHO HAS NOT REACHED MAXIMUM HEALING MAY, UPON APPROVAL OF THE TREATING PHYSICIAN, RETURN TO AN ALTERNATIVE OR MODIFIED EMPLOYMENT POSITION WITH A DIFFERENT EMPLOYER IF AN ALTERNATIVE OR MODIFIED EMPLOYMENT POSITION IS NOT AVAILABLE WITH THE EMPLOYER THAT WAS THE INJURED WORKER'S EMPLOYER AT THE TIME OF INJURY; AMENDING SECTION 39-71-712, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-712, MCA, is amended to read:

"39-71-712. Temporary partial disability benefits. (1) ~~If~~ *Subject to the provisions of subsection (6), if* prior to maximum healing~~,~~ an injured worker has a physical restriction and is approved to return to a modified or alternative employment that the worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a temporary work restriction, the worker qualifies for temporary partial disability benefits.

(2) An insurer's liability for temporary partial disability must be the difference between the injured worker's average weekly wage received at the time of the injury, subject to a maximum of 40 hours a week, and the actual weekly

wages earned during the period that the claimant is temporarily partially disabled, not to exceed the injured worker's temporary total disability benefit rate.

(3) Temporary partial disability benefits are limited to a total of 26 weeks. The insurer may extend the period of temporary partial disability payments.

(4) A *Except as provided in subsection (6), a* worker is not eligible for temporary partial disability benefits or temporary total disability benefits if:

(a) the worker has been released by the treating physician to return to a modified or alternative position that the individual is able and qualified to perform with the same employer;

(b) the wages payable in the modified or alternative position, when combined with the temporary partial disability benefits, would result in an equivalent or higher wage than the worker received at the time of injury; and

(c) the worker refuses to accept the modified or alternative position. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available to the worker and the worker continues to be temporarily totally disabled as defined in 39-71-116.

(5) Temporary partial disability may not be credited against any permanent partial disability award or settlement under 39-71-703.

(6) Unless a collective bargaining agreement precludes an injured worker from working in a modified or alternative position with a different employer or includes criteria different from those outlined in this subsection (6), an injured worker who has not reached maximum healing and who has a physical restriction may return to a modified or alternative position with a different employer at the same or a lower rate of wages as the rate paid by the employer at the time of injury if:

(a) a modified or alternative employment with the employer at the time of injury is not provided and the injured worker and that employer agree to the modified or alternative position with a different employer;

(b) a written description and all required duties of the modified or alternative position with a different employer are approved by the treating physician;

(c) both the employer at the time of injury and the injured worker agree to the type of alternative work, the alternative employer, and the terms and conditions of employment, including payment of benefits and employment taxes for the modified or alternative position with a different employer;

(d) an employee is not displaced as a result of the injured worker's placement in the modified or alternative position with a different employer; and

(e) the employer at the time of injury, the different employer, and the injured worker agree in writing to the terms and conditions, including payment of benefits, covering the injured worker for subsequent injury, unemployment insurance, employment taxes, and liability and provide a copy of the agreement to the injured employee.

(7) Any additional expenses related to the modified or alternative position, including travel, equipment, or training, must be paid by either the employer at the time of injury or the different employer and may not be charged to or deducted from the wages or benefits of the injured employee.

(8) Notwithstanding a written agreement between the employer at the time of injury and a different employer, the employer at the time of injury is the primary employer if a dispute over wages, benefits, employment taxes, workers' compensation insurance, or other terms or conditions of employment occurs.

(9) The injured worker may refuse to accept a modified or alternative position with an employer other than the employer at the time of injury without penalty. If the injured worker is offered a modified or alternative position with a different employer, the injured worker must be given written notice of the right of refusal from the employer at the time of injury and the insurer prior to beginning work with the different employer."

Section 2. Effective date — applicability. [This act] is effective July 1, 2001, and applies to a claim for benefits for an injury occurring on or after July 1, 2001.

Approved April 20, 2001

CHAPTER NO. 293

[SB 319]

AN ACT GENERALLY REVISING THE MONTANA MAJOR FACILITY SITING ACT; CLARIFYING THE POLICY OF THE MONTANA MAJOR FACILITY SITING ACT; ELIMINATING GENERATION FACILITIES, UNDERGROUND IN SITU GASIFICATION OF COAL, AND OTHER ENERGY-RELATED PROJECTS FROM THE DEFINITION OF "FACILITIES"; MODIFYING THE DEFINITION OF "FACILITIES" AS IT RELATES TO PIPELINES; REDUCING THE TIME REQUIRED FOR THE DEPARTMENT'S NOTIFICATION THAT AN APPLICATION IS OR IS NOT IN COMPLIANCE AND COMPLETE; EXPEDITING DEPARTMENTAL DECISIONS AND ACTIONS CONTAINED IN OTHER LAWS; REDUCING THE TIME REQUIRED FOR THE ISSUANCE OF A DEPARTMENTAL REPORT, THE ISSUANCE OF A CERTIFICATE UNDER EXPEDITED REVIEW, AND THE ISSUANCE OF A FINAL DECISION AND CERTIFICATION; GENERALLY REVISING THE DEPARTMENT'S AND BOARD'S ROLES AND AUTHORITIES; ELIMINATING THE PROVISIONS FOR CERTIFICATE RENEWALS RELATED TO GENERATION FACILITIES; AMENDING SECTIONS 75-20-102, 75-20-104, 75-20-207, 75-20-208, 75-20-211, 75-20-216, 75-20-219, 75-20-223, 75-20-231, 75-20-301, 75-20-303, 75-20-304, AND 75-20-406, MCA; REPEALING SECTIONS 75-20-225 AND 75-20-226, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-102, MCA, is amended to read:

"**75-20-102. Policy and legislative findings.** (1) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environmental life-support system from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

(2) The legislature finds that the construction of additional ~~power or energy conversion~~ *electric transmission facilities, pipeline facilities, or geothermal* facilities may be necessary to meet the increasing need for electricity, energy, and other products and that these facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of ~~power and energy conversion~~ *electric transmission facilities, pipeline facilities, or geothermal* facilities will not produce unacceptable adverse effects on the environment and upon the citizens of this state by providing that a ~~power or energy conversion~~ *electric transmission facility, pipeline facility, or geothermal* facility may not be constructed or operated within this state without a certificate of environmental compatibility acquired pursuant to this chapter.

(3) The legislature also finds that it is the purpose of this chapter to:

(a) ensure protection of the state's environmental resources, including but not limited to air, water, animals, plants, and soils;

(b) ensure consideration of socioeconomic impacts;

(c) provide citizens with the opportunity to participate in facility siting decisions; and

(d) establish a coordinated and efficient method for the processing of all authorizations required for regulated facilities under this chapter."

Section 2. Section 75-20-104, MCA, is amended to read:

"**75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the ~~production or~~ delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line ~~17~~ *25* inches or less in inside diameter.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Certificate" means the certificate of environmental compatibility issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection ~~(8)(c)~~ *(8)(a)* or ~~(8)(d)~~ *(8)(b)*, including upgrading to a design capacity covered by subsection ~~(8)(c)~~ *(8)(a)*, except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

~~(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:~~

~~(i) generating 250 megawatts of electricity or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;~~

~~(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;~~

~~(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;~~

~~(iv) enriching uranium minerals or any addition thereto; or~~

~~(v) for purposes of 75-20-204 only, generating 50 megawatts of hydroelectric power or more or any addition thereto;~~

~~(b) each plant, unit, or other facility and associated facilities generating less than 250 megawatts that would be defined in subsection (8)(a):~~

~~(i) emitting 300 tons a year of particulate matter at 10 microns or less;~~

~~(ii) that is not employing best available control technology pursuant to 42 U.S.C. 7479 or is not employing lowest achievable emission rates as required by Title 75, chapter 2, or rules adopted under Title 75, chapter 2;~~

~~(iii) directly affecting:~~

~~(A) a class I airshed as designated pursuant to 42 U.S.C. 7470, et seq.;~~

~~(B) a class I river or stream as designated pursuant to 33 U.S.C. 1251, et seq.;~~

~~(C) habitat used by a threatened or endangered species of plant or animal as designated pursuant to 16 U.S.C. 1531, et seq.; or~~

~~(D) one of the following exclusion areas:~~

~~(I) national wilderness areas designated pursuant to 16 U.S.C. 1131, et seq.;~~

~~(II) national primitive areas;~~

~~(III) national parks as designated pursuant to 16 U.S.C. 1a-1, et seq.;~~

~~(IV) rivers in the national wild and scenic river system as designated pursuant to 16 U.S.C. 1271, et seq.; or~~

~~(V) national wildlife refuges and ranges as designated pursuant to 16 U.S.C. 668dd, et seq.; or~~

~~(iv) that would require a permanent workforce greater than 300 workers;~~

~~(c)~~*(a)* each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length; and

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

~~(d)~~*(b)(i)* ~~except pipelines within the boundaries of the state that are used exclusively for the irrigation of agricultural crops,~~ each pipeline, whether partially or wholly within the state, greater than ~~17~~ *25* inches in inside diameter and ~~30~~ *50* miles in length, and associated facilities, *except that the term does not include:*

(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or

(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;

~~(e)~~*(c)* any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu's per hour or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant*; or*

(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.~~;~~

~~(f) any underground in situ gasification of coal; or~~

~~(g) an energy-related project for which the department has granted a petition pursuant to 75-20-201(5)~~.

(9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit

protection, or switching necessary for the construction or operation of a proposed transmission line.

(11) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 3. Section 75-20-207, MCA, is amended to read:

"75-20-207. Notice requirement for certain electric transmission lines. Whenever a person plans to construct an electric transmission line or associated facilities under the provisions of ~~75-20-104(8)(c)(ii)~~ *75-20-104(8)(a)(ii)*, it must provide public notice to persons residing in the area in which any portion of the electric transmission facility may be located and to the department. This notice must be made no less than ~~180~~ *60* days prior to the commencement of acquisition of right-of-way by publication of a summary describing the transmission facility and the proposed location of the facility in those newspapers that will substantially inform those persons of the construction and by mailing a summary to the department. The notice must inform the property owners of their rights under this chapter concerning the location of the facility and that more information concerning their rights may be obtained from the department."

Section 4. Section 75-20-208, MCA, is amended to read:

"75-20-208. Certain electric transmission lines — verification of requirements. (1) Prior to constructing a transmission line under ~~75-20-104(8)(c)(ii)~~ *75-20-104(8)(a)(ii)*, the person planning to construct the line shall provide to the department within 36 months of the date of the public notice provided under 75-20-207, unless extended by the department for good cause:

(a) copies of the right-of-way agreements or options for a right-of-way containing sufficient information to establish landowner consent to construct the line; and

(b) sufficient information for the department to verify that the requirements of ~~75-20-104(8)(c)(ii)~~ *75-20-104(8)(a)(ii)* are satisfied.

(2) The provisions of ~~75-20-104(8)(c)(ii)~~ *75-20-104(8)(a)(ii)* do not apply to any facility for which public notice under 75-20-207 has been given but for which the requirements of subsection (1) of this section have not been complied with."

Section 5. Section 75-20-211, MCA, is amended to read:

"75-20-211. Application — filing and contents — proof of service and notice. (1) (a) An applicant shall file with the department an application for a certificate under this chapter and for the permits required under the laws administered by the department in the form that is required under applicable rules, containing the following information:

(i) a description of the proposed location and of the facility to be built;

(ii) a summary of any studies that have been made of the environmental impact of the facility;

(iii) for facilities defined in ~~75-20-104(8)(c)~~ *75-20-104(8)(a)* and ~~(8)(d)~~ *(8)(b)*, a statement explaining the need for the facility, a description of reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(iv) (A) for facilities as defined in ~~75-20-104(8)(e)~~ *75-20-104(8)(a)* and ~~(8)(d)~~ *(8)(b)*, baseline data for the primary and reasonable alternate locations; or

(B) for facilities as defined in ~~75-20-104(8)(a), (8)(b), (8)(c), and (8)(f)~~ *75-20-104(8)(c)*, baseline data for the proposed location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;

(v) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

(vi) other information that the applicant considers relevant or that the department by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) must be filed with the department, if ordered, and must be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination that are physically and directly attached to each other and are operationally a single operating entity.

(3) An application must be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, county commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:

(a) environmental quality council;

(b) department of public service regulation;

(c) department of fish, wildlife, and parks;

(d) department of natural resources and conservation;

(e) department of commerce;

(f) department of transportation.

(4) The copy of the application must be accompanied by a notice specifying the date on or about which the application is to be filed.

(5) An application must also be accompanied by proof that public notice of the application was given to persons residing in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application."

Section 6. Section 75-20-216, MCA, is amended to read:

"**75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies.** (1) After receipt of an application, the department shall within ~~60~~ *30* days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and shall list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within ~~30~~ *15* days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall commence an

intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department shall use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Except as provided for in 75-20-231, the department shall issue within ~~1 year~~ *9 months* following the date of acceptance of an application any decision, opinion, order, certification, or permit required under the laws, other than those contained in this ~~part~~ *chapter*, administered by the department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a preliminary decision by the ~~department~~ *board* and pursuant to rules adopted by the department, the department shall provide an opportunity for public review and comment.

(4) Except as provided in 75-20-231, within ~~1 year~~ *9 months* following acceptance of an application for a facility, the department shall issue a report that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall issue its report within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) For projects subject to joint review by the department and a federal land management agency, the department's certification decision may be timed to correspond to the record of decision issued by the participating federal agency.

(6) The departments of transportation; commerce; fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

Section 7. Section 75-20-219, MCA, is amended to read:

"**75-20-219. Amendments to certificate.** (1) Within 30 days after notice of an amendment to a certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate. If the department determines that the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the ~~board shall hold a hearing in the same manner as a hearing is held on an application for a certificate. After hearing, the board~~ *department* shall grant, deny, or modify the amendment with conditions as it considers appropriate.

(2) In those cases in which the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the ~~board~~ *department* shall automatically grant the amendment either as applied for or upon terms or conditions that the ~~board~~ *department* considers appropriate ~~unless the department's determination is appealed to the board within 15 days after notice of the department's determination is given~~.

~~(3) If the department or the board, under subsection (4), determines that a hearing is required because the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the applicant has the burden of showing by clear and convincing evidence that the amendment should be granted.~~

~~(4) If the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility and a hearing is required because the department's determination is appealed to the board as provided in subsection (2), the appellant has the burden of showing by clear and convincing evidence that the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate.~~

(3) If a hearing is requested under 75-20-223(2), the party requesting the hearing has the burden of showing by clear and convincing evidence that the department's determination is not reasonable.

~~(5)~~*(4)* If an amendment is required to a certificate that would affect, amend, alter, or modify a decision, opinion, order, certification, or air or water quality permit issued by the department or board, the amendment must be processed under the applicable statutes administered by the department or board."

Section 8. Section 75-20-223, MCA, is amended to read:

"**75-20-223. Board review of department decisions.** *(1)* A person aggrieved by the final decision of the department on an application for a certificate~~, the renewal of a certificate,~~ or the issuance of an air or water quality decision, opinion, order, certification, or permit under this chapter may within 30 days appeal the decision to the board under the contested case procedures of Title 2, chapter 4, part 6.

(2) A person aggrieved by the final decision of the department on an application for amendment of a certificate may within 15 days appeal the decision to the board under the contested case procedures of Title 2, chapter 4, part 6."

Section 9. Section 75-20-231, MCA, is amended to read:

"**75-20-231. Expedited review.** (1) The department shall issue a certification decision within ~~180~~ *120* days from the date on which an application is considered complete for a facility that:

(a) is unlikely to result in significant adverse environmental impacts based on the criteria listed in 75-20-232; or

(b) is presently in existence and proposed for upgrade, reconstruction, or relocation and is unlikely to result in significant impacts pursuant to 75-20-232.

(2) A facility that qualifies for expedited review is exempt from undergoing an alternative siting study, except as provided in 75-1-201."

Section 10. Section 75-20-301, MCA, is amended to read:

"**75-20-301. Decision of department — findings necessary for certification.** (1) Within ~~45~~ *30* days after issuance of the report pursuant to 75-20-216~~,~~ for facilities defined in ~~75-20-104(8)(c)~~ *75-20-104(8)(a)* and ~~(8)(d)~~ *(8)(b)*, the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) in the case of an electric, gas, or liquid transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct will be located underground;

(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and

(iii) that the facility will serve the interests of utility system economy and reliability;

(e) that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected government subdivisions;

(f) that the facility will serve the public interest, convenience, and necessity;

(g) that the department or board has issued any necessary air or water quality decision, opinion, order, certification, or permit as required by 75-20-216(3); and

(h) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands.

(2) In determining that the facility will serve the public interest, convenience, and necessity under subsection (1)(f), the department shall consider:

(a) the items listed in subsections (1)(a) and (1)(b);

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(3) Within ~~45~~ *30* days after issuance of the report pursuant to 75-20-216~~,~~ for ~~facilities~~ *a facility* defined in ~~75-20-104(8)(a), (8)(b), and (8)(e) through (8)(g)~~ *75-20-104(8)(c)*, the department shall approve a facility as proposed or as

modified or an alternative to a proposed facility if the department finds and determines:

(a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant environmental impacts; or

(b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary terms, do not pose any threat of serious injury or damage to:

(i) the environment; or

(ii) the social and economic conditions of inhabitants of the affected area; or

(iii) the health, safety, or welfare of area inhabitants.

~~(4) To be considered an alternative to a proposed facility defined in 75-20-104(8)(a) and (8)(b), the alternative must:~~

~~(a) meet the objective of the applicant's proposal;~~

~~(b) be available to the applicant; and~~

~~(c) be reasonable and specific to the applicant's proposed site.~~

~~(5) Consideration of alternatives for facilities defined in 75-20-104(8)(c) and (8)(d) may not be a basis for requiring considerations of alternative sites for facilities defined in 75-20-104(8)(a) and (8)(b).~~

~~(6)~~*(4)* For facilities defined in 77-20-104(8), if the department cannot make the findings required in 75-20-301, it shall deny the certificate."

Section 11. Section 75-20-303, MCA, is amended to read:

"**75-20-303. Opinion issued with decision — contents.** (1) In rendering a decision on an application for a certificate, the department shall issue an opinion stating its reasons for the action taken.

(2) If the department has found that any regional or local law or regulation that would be otherwise applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is unreasonably restrictive.

(3) A certificate issued by the department must include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement must include but is not limited to analysis of the following information:

(i) the environmental impact of the proposed facility; and

(ii) any adverse environmental effects that cannot be avoided by issuance of the certificate;

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified facility site between the time of certification and completion of construction;

(d) a time limit as provided in subsection (4); and

(e) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) (a) The department shall issue as part of the certificate the following time limits:

(i) For a facility as defined in ~~75-20-104(8)(e)~~ *75-20-104(8)(a)* ~~or (8)(d)~~ that is more than 30 miles in length *and for a facility defined in 75-20-104(8)(b)*, construction must be completed within 10 years.

(ii) For a facility as defined in ~~75-20-104(8)(e)~~ *75-20-104(8)(a)* ~~or (8)(d)~~ that is 30 miles or less in length, construction must be completed within 5 years.

~~(iii) For a facility as defined in 75-20-104(8)(a), (8)(b), and (8)(e) through (8)(g), construction must begin within 6 years and continue with due diligence in accordance with preliminary construction plans established in the certificate.~~

(iii) For a facility as defined in 75-20-104(8)(c), construction must begin within 6 years and continue with due diligence in accordance with preliminary construction plans established in the certificate.

(b) Unless extended ~~or renewed~~, a certificate lapses and is void if the facility is not constructed or if construction of the facility is not commenced within the time limits provided in this section.

(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii) ~~or to begin construction under subsection (4)(a)(iii)~~. Under this subsection, a good faith effort includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of a permit or certificate."

Section 12. Section 75-20-304, MCA, is amended to read:

"**75-20-304. Waiver of provisions of certification proceedings.** (1) The department may waive compliance with any of the provisions of 75-20-216 and this part if the applicant makes a clear and convincing showing to the department at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 and this part.

(2) The department may waive compliance with any of the provisions of this chapter upon receipt of notice by a person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

(3) The department shall waive compliance with the requirements of 75-20-301(1)(c), (2)(b), and (2)(c) and the requirements of 75-20-211(1)(a)(iii) and(1)(a)(iv) and 75-20-216(3) relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the department at a public hearing that:

(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations, causing a loss of 250 or more permanent jobs within 2 years at the employer's operations within the preceding 10-year period;

(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution the waiver;

(c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased or been curtailed; and

(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is proposed to be located.

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in ~~75-20-104(8)(c), (8)(d), (8)(e), or (8)(f),~~ *75-20-104(8)(a) or (8)(b) or* for an associated facility defined in 75-20-104(3)~~, or for any portion of or process in a facility defined in 75-20-104(8)(a) or (8)(b) to the extent that the process or portion of the facility is not subject to an air or water quality permit issued by the department~~.

(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection must be credited toward the fee paid under 75-20-215 to the extent that the data or evidence presented at the hearing or the decision of the department under subsection (3) can be used in making a certification decision under this chapter.

(7) The department may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a)."

Section 13. Section 75-20-406, MCA, is amended to read:

"**75-20-406. Judicial review of board decisions.** (1) A person aggrieved by the final decision of the board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction.

(2) The judicial review procedure is the procedure for contested cases under the Montana Administrative Procedure Act.

~~(3) When the applicant is granted a permit or certification, with or without conditions, pursuant to the laws administered by the department and the board and this chapter, the decision may be appealed only in conjunction with the final decision of the board as provided in 75-20-232 and subsections (1) and (2) of this section. If an air or water quality permit or certification is denied by the department or the board, the applicant may:~~

~~(a) appeal the denial under the appellate review procedures provided in the air and water quality laws administered by the department and the board; or~~

~~(b) reserve the right to appeal the denial by the department or the board until after the board has issued a final decision as provided in 75-20-232.~~

~~(4) This section may not be construed to prohibit the board from holding a hearing as provided in this section on all matters that are not the subject of a pending appeal by the applicant under subsection (3)(a).~~"

Section 14. Repealer. Sections 75-20-225 and 75-20-226, MCA, are repealed.

Section 15. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 16. Effective date. [This act] is effective on passage and approval.

Section 17. Applicability. [This act] does not apply to any facility or associated facility under 75-20-104(8)(a), (8)(b), (8)(d), or (8)(f), as those subsections read on the day before [the effective date of this act], that was subject to a certificate of environmental compatibility on [the effective date of this act].

Approved April 20, 2001

CHAPTER NO. 294

[SB 340]

AN ACT PROVIDING GUIDELINES FOR PERSONAL TRANSACTIONS BY REAL ESTATE SALESPERSONS; DEFINING "PERSONAL TRANSACTION"; REVISING REAL ESTATE LAW ON PLACING FUNDS IN A REGISTERED BROKER'S TRUST ACCOUNT BY PROVIDING THAT A SALESPERSON IS NOT REQUIRED TO PLACE MONEY RECEIVED BY A PERSON WITH THE SALESPERSON'S SUPERVISING BROKER IF THE MONEY RECEIVED BY THE SALESPERSON IS PART OF THE SALESPERSON'S PERSONAL TRANSACTION; AMENDING SECTIONS 37-51-309 AND 37-51-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-51-309, MCA, is amended to read:

"37-51-309. Broker owner — broker associate — salesperson — *personal transactions of salesperson* — notice to department of change of association. (1) A salesperson may not be associated with or under contract to more than one licensed broker owner~~, nor may he~~ *or* perform services for a broker other than the one designated on the license issued to the salesperson.

(2) When a licensed salesperson desires to change ~~his~~ association or contractual relationship from one licensed broker to another, ~~he~~ *the salesperson* shall notify the department promptly in writing of these facts, pay the required fee, and return ~~his~~ *the salesperson's* license and pocket card, and a new license and pocket card ~~shall~~ *must* be issued. ~~No~~ *A* salesperson ~~shall~~ *may not* directly or indirectly work for or with a broker owner until ~~he~~ *the salesperson* has been issued a license to work for or with that broker owner. On termination of a salesperson's association or contractual relationship, ~~he~~ *the salesperson* shall surrender ~~his~~ *the salesperson's* license and pocket card to ~~his~~ *the* broker owner who shall return them to the department for cancellation.

(3) Only one license ~~shall~~ *may* be issued to a salesperson to be in effect at one time.

(4) A broker associate may not be associated with more than one broker owner.

(5) (a) The provisions of this chapter do not prohibit a salesperson from engaging in personal transactions, and the provisions of this chapter do not

require a broker to exercise any supervision or provide any training for a salesperson with respect to personal transactions of the salesperson.

(b) A broker is not responsible or liable for the personal transactions of a salesperson.

(c) Prior to entering into a personal transaction, a salesperson shall disclose in writing to the other party that the transaction is a personal transaction with respect to the salesperson and that the transaction does not involve the salesperson's broker or real estate firm.

(6) For the purposes of this part, "personal transaction" includes the following:

(a) the sale, purchase, or exchange of real property owned or acquired by the salesperson; and

(b) the leasing or renting of real property owned by the salesperson."

Section 2. Section 37-51-321, MCA, is amended to read:

"**37-51-321. Revocation or suspension of license — initiation of proceedings — grounds.** (1) The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty by a majority of the board of any of the following practices:

(a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name, the broker does not incorporate the broker's own name or the trade name, if any, by which the office is known in the franchise name or logotype. The board may not adopt advertising standards more stringent than those set forth in this subsection.

(b) making any false promises of a character likely to influence, persuade, or induce;

(c) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(d) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(e) failing to account for or to remit money coming into the broker's or salesperson's possession belonging to others;

(f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to disclose in advertisements for real property the person's dual capacity as broker and principal;

(h) guaranteeing, authorizing, or permitting a person to guarantee future profits that may result from the resale of real property;

(i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(k) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson has an undisclosed interest;

(l) negotiating a sale, exchange, or lease of real property directly with a seller or buyer if the broker or salesperson knows that the seller or buyer has a written, outstanding listing agreement or buyer broker agreement in connection with the property granting an exclusive agency to another broker;

(m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(n) representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(p) paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson under this chapter;

(q) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody of the salesperson's ~~registered~~ *supervising* broker, deposit money or other money entrusted to the salesperson in that capacity by a person, *except if the money received by the salesperson is part of the salesperson's personal transaction*;

(s) demonstrating unworthiness or incompetency to act as a broker or salesperson; or

(t) conviction of a felony.

(2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others, whether by means of printed material, radio, television, or display or by other means, unless the broker or salesperson has a signed listing agreement from the owner of the property. The listing agreement must be valid as of the date of advertisement.

(b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including information on properties listed by other brokers or salespersons who will cooperate with the selling broker or salesperson in materials dispensed to prospective customers.

(c) The license of a broker or salesperson who violates this subsection (2) may be suspended or revoked as provided in subsection (1)."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2001

CHAPTER NO. 295

[SB 357]

AN ACT REQUIRING A VIATICAL DISCLOSURE FORM; DEFINING "VIATICAL SETTLEMENT PURCHASE AGREEMENT" AND "VIATICAL SETTLEMENT PURCHASER"; REQUIRING THAT CERTAIN INFORMATION MUST BE DISCLOSED TO A VIATICAL SETTLEMENT PURCHASER BY A VIATICAL SETTLEMENT PROVIDER; AMENDING SECTIONS 33-1-501, 33-20-1302, AND 33-20-1311, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-501, MCA, is amended to read:

"33-1-501. Filing and approval of forms. (1) (a) An insurance policy or annuity contract form, certificate, enrollment form, application form, *viatical disclosure form,* printed rider or endorsement form, or form of renewal certificate may not be delivered or issued for delivery in Montana unless the form has been filed with and approved by the commissioner and, if required, the regulatory official of the state of domicile of the insurer. This provision does not apply to surety bonds or policies, riders, endorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject or that relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. Forms for use in property, marine, other than ocean marine and foreign trade coverages, casualty, and surety insurance coverages may be filed by a rating organization on behalf of its members and subscribers or by a member or subscriber on its own behalf.

(b) The approval of an insurance policy or annuity contract form, certificate, enrollment form, application form, or other related insurance form by the state of domicile may be waived by the commissioner if the commissioner considers the requirements of subsection (1)(a) unnecessary for the protection of Montana insurance consumers. If the requirement is waived, an insurer shall notify the commissioner in writing within 10 days of disapproval, denial, or withdrawal of approval of a form by the state of domicile.

(2) The filing must be made not less than 60 days in advance of delivery. Approval of a form by the commissioner constitutes a waiver of any unexpired portion of the waiting period. The commissioner may extend by not more than an additional 60 days the period within which the commissioner may approve or disapprove a form by giving notice of the extension before expiration of the initial 60-day period. The commissioner may at any time, after notice and for cause shown, withdraw any approval.

(3) Notice by the commissioner disapproving a form or withdrawing a previous approval must state the grounds for disapproval or withdrawal in sufficient detail to inform the insurer.

(4) The commissioner may exempt from the requirements of this section, for so long as the commissioner considers proper, an insurance document, form, or type of document or form to which, in the commissioner's opinion, this section may not practicably be applied or the filing and approval of which are not desirable or necessary for the protection of the public.

(5) This section applies to a form used by a domestic insurer for delivery in a jurisdiction outside Montana if the insurance supervisory official of the jurisdiction informs the commissioner that the form is not subject to approval or disapproval by the official and upon the commissioner's order requiring the form to be submitted to the commissioner for the purpose. The same standards apply to these forms as apply to forms for domestic use.

(6) This section and 33-1-502 do not apply to:

(a) reinsurance;

(b) policies or contracts not issued for delivery in Montana or delivered in Montana, except as provided in subsection (5);

(c) ocean marine and foreign trade insurances.

(7) Except as provided in chapter 21, group certificates that are delivered or issued for delivery in Montana for group insurance policies effectuated and delivered outside Montana but covering persons resident in Montana must be filed with the commissioner upon request. The certificates must meet the minimum provisions mandated by Montana if Montana law prevails over conflicting provisions of other state law."

Section 2. Section 33-20-1302, MCA, is amended to read:

"**33-20-1302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) (a) "Viatical settlement broker" means an individual who, for a fee, commission, or other consideration:

(i) offers or advertises the availability of viatical settlement contracts;

(ii) introduces holders of life insurance policies or certificates insuring the lives of individuals with a terminal illness or condition to viatical settlement providers; or

(iii) offers or attempts to negotiate viatical settlement contracts between the policyholders or certificate holders and one or more viatical settlement providers.

(b) Viatical settlement broker does not mean an attorney, accountant, or financial planner retained to represent the policyholder or certificate holder unless compensation paid to the attorney, accountant, or consultant is paid by the viatical settlement provider.

(2) "Viatical settlement contract" means a written agreement between a viatical settlement provider and the holder of a group or individual life insurance policy insuring the life of an individual with a terminal illness or condition or between a viatical settlement provider and the certificate holder of a policy in which:

(a) the terms establish that the viatical settlement provider pays something of value in return for the policyholder's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider; and

(b) the policyholder or certificate holder holds an irrevocable right under the policy or certificate to name the beneficiary.

(3) (a) "Viatical settlement provider" means a person who solicits, enters into, or negotiates viatical settlement contracts or offers to enter into or negotiate viatical settlement contracts.

(b) A viatical settlement provider may use the term "life settlement provider" to describe the business transacted under the license and may use the term "life settlement contract" instead of "viatical settlement contract".

(c) Viatical settlement provider does not mean:

(i) a bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy only as collateral for a loan;

(ii) an insurer issuing a life insurance policy providing accelerated benefits pursuant to 33-20-127 or pursuant to the laws of the state to which the policy was subject when issued;

(iii) an individual who enters into a single agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit; or

(iv) any corporation, partnership, or partner that purchases a life insurance contract of an employee or retiree of the corporation or of a partner. The settlement made on any contract exempt under this section must be reasonable and subject to the standards imposed on licensees under 33-20-1304.

(4) (a) "Viatical settlement purchase agreement" means a contract or agreement entered into by a viatical settlement purchaser with a viatical settlement provider to purchase a life insurance policy or an interest in a life insurance policy for the purpose of deriving an economic benefit.

(b) A viatical settlement purchase agreement does not include a viatical settlement contract.

(5) (a) "Viatical settlement purchaser" means a person who, for the purpose of deriving an economic benefit:

(i) gives consideration for a life insurance policy or an interest in the death benefits of a life insurance policy; or

(ii) owns, acquires, or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or that is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract.

(b) A viatical settlement purchaser does not include a licensed viatical settlement provider or licensed viatical settlement broker."

Section 3. Section 33-20-1311, MCA, is amended to read:

"33-20-1311. Disclosure of information to policyholder. A viatical settlement provider shall disclose the information specified in this section to the policyholder or certificate holder entering the viatical settlement contract prior to the date on which the viatical settlement contract is signed by all parties. The disclosure must be in the form ~~prescribed~~ *approved* by the commissioner. The information must include the following:

(1) possible alternatives to viatical settlement contracts for persons with terminal illnesses or conditions, including but not limited to accelerated benefits offered by the issuer of the life insurance policy;

(2) the fact that some or all of the proceeds of the viatical settlement may be taxable and that assistance should be sought from a personal tax adviser. Viatical settlement brokers, viatical settlement providers, or their respective employees or agents may not act as personal tax advisers for purposes of this disclosure requirement.

(3) the fact that the viatical settlement could be subject to the claims of creditors;

(4) the fact that receipt of a viatical settlement may adversely affect the recipient's eligibility for medicaid or other government benefits or entitlement and that advice should be obtained from the appropriate agencies;

(5) the right of a policyholder or certificate holder to rescind a viatical settlement contract as provided in 33-20-1308. The disclosure must state the deadlines for rescission and the return of proceeds received.

(6) the date by which the funds will be available to the policyholder or certificate holder and the source of the funds; and

(7) the fact that the viatical settlement contract is void if the viatical settlement provider or viatical settlement broker fails to tender payment of the proceeds as provided in the viatical settlement contract."

Section 4. Disclosure of information to viatical settlement purchasers. (1) A viatical settlement provider shall disclose the information specified in this section to a viatical settlement purchaser prior to the date on which the parties sign the viatical settlement purchase agreement.

(2) The viatical settlement purchaser shall date and sign the information disclosure. The viatical settlement provider shall provide a copy of the information disclosure to the viatical settlement purchaser.

(3) The information disclosure must include the following:

(a) that the viatical settlement purchaser will not receive payment until the insured dies;

(b) that the actual annual rate of return on a viatical settlement purchase agreement is dependent upon an accurate projection of the insured's life expectancy and the actual date of the insured's death and that an annual guaranteed rate of return is not determinable;

(c) that the viatical insurance contract is not a liquid purchase since it is impossible to predict the exact timing of its maturity, that the funds are probably not available until the death of the insured, and that there is not an established secondary market for the resale of viatical settlement products by the viatical settlement purchaser;

(d) that the viatical settlement purchaser may lose all benefits or may receive substantially reduced benefits if the insurer goes out of business during the term of the viatical settlement investment;

(e) (i) that the viatical settlement purchaser is responsible for payment of the insurance premium or other costs related to the policy, if required by the terms of the viatical purchase agreement, and that these payments may reduce the viatical settlement purchaser's return and may continue beyond the insured's projected life expectancy; and

(ii) if a party other than the viatical settlement purchaser is responsible for the payment, that the name of that party must also be disclosed;

(f) the amount of the premium that a purchaser is required to pay, if applicable;

(g) that the viatical settlement purchaser may be responsible for payment of the insurance premium or other costs related to the policy if the insured returns to health;

(h) the amount of any fees or other expenses to be charged to the viatical settlement purchaser;

(i) whether or not the viatical settlement purchaser is entitled to a refund of all or part of the investment under the viatical settlement purchase agreement if the policy is later determined to be void;

(j) that group policies:

(i) may contain limitations on conversion rights;

(ii) may require additional premiums to be paid if the group policy is converted; and

(iii) may be terminated and replaced by another group policy, with benefits under the new policy that may be substantially less than those in the original coverage;

(k) for group policies, the name of the party responsible for the payment of any additional premiums;

(l) that there are risks associated with policy contestability, including the risk that the viatical settlement purchaser may not have a claim or may have only a partial claim to death benefits if the insurer rescinds the policy within the contestability period;

(m) whether or not the viatical settlement purchaser will be the beneficiary or owner of the policy and, if the viatical settlement purchaser is the beneficiary, the special risks associated with beneficiary status, including the risk that the beneficiary may be changed;

(n) a description of:

(i) the experience and qualifications of the person who has determined the life expectancy of the insured, such as in-house staff, independent physicians, or specialty firms that weigh medical and actuarial data;

(ii) the information on which the projection of life expectancy is based; and

(iii) the relationship of the person who has made the determination of life expectancy to the viatical settlement provider, if any;

(o) all of the life expectancies obtained in the process of determining the price paid to the viator;

(p) a description and amount of any loan or other encumbrance against or in connection with the policy; and

(q) that the viatical settlement purchaser is encouraged to consult with an attorney, accountant, or financial planner who is not affiliated with the viatical settlement broker or viatical settlement provider prior to purchase.

Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 33, chapter 20, part 13, and the provisions of Title 33, chapter 20, part 13, apply to [section 4].

Section 6. Effective date. [This act] is effective January 1, 2002.

Approved April 20, 2001

CHAPTER NO. 296

[SB 358]

AN ACT PROVIDING FOR GENERAL PUBLIC ACCESS TO MOTOR VEHICLE ACCIDENT REPORTS AND SUPPLEMENTAL INFORMATION FOR THE PURPOSE OF RESEARCH INTO THE HISTORY OF VEHICLES; PROHIBITING ACCESS TO INFORMATION IDENTIFYING ANY PERSON OR INSURER NAMED IN THE RECORDS; AND AMENDING SECTION 61-7-114, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-7-114, MCA, is amended to read:

"61-7-114. Accident reports confidential. (1) All required accident reports and supplemental reports must be without prejudice to the individual reporting and must be for the confidential use of the department or other governmental agencies for accident prevention, roadway design, motor carrier safety monitoring purposes, or for the administration of the laws of this state relating to the deposit of security and proof of financial responsibility by persons driving or the owners of motor vehicles. The department may disclose the identity of a person involved in an accident when the identity is not otherwise known or when the person denies being present at the accident.

(2) Except as provided in this section, all accident reports and supplemental information filed as required by this part are confidential and not open to general public inspection. ~~Copying~~ *Except as provided in subsection (2)(e), copying* of lists of reports is not permitted. The report and supplemental information, *including witness statements,* filed by law enforcement personnel, as required by this part, may be examined and copied, without obtaining a court order, by:

(a) a person named in the report or involved in the accident;

(b) the representative of the person referred to in subsection (2)(a), designated in writing, or the insurance carrier of that person;

(c) a party to a civil action arising from the accident; ~~or~~

(d) the executor, the administrator, or the attorney representing the executor or administrator if the person is deceased*; or*

(e) the general public, including commercial entities, for purposes of research into the history of vehicles, but the department may not disclose the name, address, or telephone number of, or other information allowing the identification of, any reporting person, accident victim, peace officer, or other person or any insurer named in a report or supplemental information, including witness statements."

Approved April 20, 2001

CHAPTER NO. 297

[SB 360]

AN ACT GENERALLY REVISING THE LAWS GOVERNING TELECOMMUNICATIONS ACCESS FOR PERSONS WITH DISABILITIES; INCLUDING INDIVIDUALS WITH MOBILITY IMPAIRMENT IN THE PROGRAM; INCLUDING INFANT SCREENING EQUIPMENT IN THE PROGRAM; PROVIDING GUIDELINES FOR A MEANS TEST FOR INDIVIDUAL PARTICIPATION IN THE PROGRAM; PROVIDING FOR THE ADOPTION OF A SLIDING FEE SCALE FOR PROVIDING EQUIPMENT TO CERTAIN INDIVIDUALS; AMENDING SECTIONS 53-19-302, 53-19-306, 53-19-307, AND 53-19-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-19-302, MCA, is amended to read:

"**53-19-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Committee" means the committee on telecommunications access services for persons with disabilities established in 2-15-2212.

(2) "Local exchange company" means a telecommunications company that provides telephone access lines or wireless service to members of the general public who are its customers.

(3) "Mobility-impaired" means the condition of a person with reduced function of the arms and hands making activities related to moving, turning, or pressing objects difficult or impossible. The term includes difficulty in using a wide range of telecommunications equipment.

~~(3)~~*(4)* "Person with a disability" means the condition of a person who is deaf and blind, deaf, hard-of-hearing, ~~or~~ speech-impaired, *or mobility-impaired.*

~~(4)~~*(5)* "Program" means the program established in 53-19-306.

~~(5)~~*(6)* "Specialized telecommunications equipment" means any telecommunications device that enables or assists a person with a disability to communicate with others by means of the conventional telephone network. The term includes but is not limited to text telephones (TTY), amplifiers, signaling devices, puff-blow devices, electronic artificial larynx devices, ~~and~~ telebraille, *equipment for the mobility-impaired, and hearing screening equipment.*

~~(6)~~*(7)* "Telecommunications relay service" means a service that permits full and simultaneous communication between those using specialized telecommunications equipment and those using conventional telephone equipment.

~~(7)~~*(8)* "Telephone access line" means the telephone exchange access line or channel or wireless service that provides the customer of a local exchange company with access to the telecommunications network to effect the transfer of information."

Section 2. Section 53-19-306, MCA, is amended to read:

"**53-19-306. Program established — purpose.** (1) The committee shall establish and administer a program to provide specialized telecommunications equipment and services to persons with disabilities *and to assist appropriate facilities in obtaining hearing screening equipment that determines if infants have a hearing impairment.*

(2) The purpose of the program is to:

(a) furnish specialized telecommunications equipment to meet the needs of persons with disabilities; ~~and~~

(b) provide a telecommunications relay service system to connect persons with disabilities with all phases of public telecommunications service, including telecommunications service to emergency services and public safety agencies as defined in 10-4-101*; and*

(c) determine if infants are hearing-impaired as early as possible in order to reduce long-term costs in providing assistance."

Section 3. Section 53-19-307, MCA, is amended to read:

"**53-19-307. Provision of services.** *(1)* In administering the program established in 53-19-306 *for individuals*, the committee shall:

~~(1)~~*(a)* develop an appropriate means test to determine eligibility for participation in the program *based on family income of less than 250% of the federal poverty level but not more than 400% of the federal poverty level*;

~~(2)~~*(b)* require that participants in the program be residents of Montana and that residency be maintained as a condition of eligibility for continued participation in the program;

~~(3)~~*(c)* require that participants provide satisfactory evidence that they have disabilities and would benefit from the use of specialized telecommunications equipment;

~~(4)~~*(d)* provide specialized telecommunications equipment to participants through loan, lease, cost sharing, or other methods that are determined appropriate by the committee;

~~(5)~~*(e)* determine the type of specialized telecommunications equipment that it considers necessary and economically feasible for use by Montana's persons with disabilities;

~~(6)~~*(f)* purchase or lease all specialized telecommunications equipment through bid by wholesale manufacturers on a competitive basis;

~~(7)~~*(g)* require, as a condition of each equipment purchase or lease, that the original manufacturer provide repair and maintenance service for new and returned equipment;

~~(8)~~*(h)* maintain records of each item of equipment, including the location, serial number, and telephone number of each device;

~~(9)~~*(i)* at the discretion of the committee, require an appropriate security deposit for equipment at the time of delivery that must be refunded without interest when the equipment is returned;

~~(10)~~*(j)* make reasonable efforts to recover equipment from those who become ineligible for continued participation in the program;

~~(11)~~*(k)* provide a telecommunications relay service system that would be available statewide for operation 7 days a week, 24 hours a day, including holidays; and

~~(12)~~*(l)* adopt rules necessary to administer the program.

(2) In adopting rules to implement subsections (1)(a) and (1)(d), the committee may, based upon available funds, provide the specialized telecommunications equipment, without charge, to individuals whose family income is less than 250% of the federal poverty level. For individuals whose family income is more than 250% of the federal poverty level but less than 400% of the federal poverty level, the committee shall develop a sliding fee scale. The sliding fee scale must take into account the amount of funds available after providing the equipment to individuals whose family income is less than 250% of the federal poverty level. The fees must increase progressively based upon the increased percentage of family income.

(3) If a fee is required under the program, the rules must provide that the fee must be received by the program and deposited in the account provided for in 53-19-310, prior to providing the equipment to the individual."

Section 4. Section 53-19-310, MCA, is amended to read:

"**53-19-310. Fund for telecommunications services for persons with disabilities.** (1) There is an account for telecommunications services for persons with disabilities in the state special revenue fund in the state treasury. The account consists of:

(a) all monetary contributions, gifts, and grants received by the committee as provided in 53-19-309; ~~and~~

(b) all charges billed and collected pursuant to 53-19-311*; and*

(c) all fees received pursuant to 53-19-307.

(2) The money in the account is allocated to the committee for purposes of implementing this part.

(3) All expenditures of the committee in administering this part must be paid from money deposited in the account."

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2001

CHAPTER NO. 298

[SB 373]

AN ACT ALLOWING CAPTIVE INSURANCE COMPANIES TO TRANSACT BUSINESS IN THIS STATE; PROVIDING DEFINITIONS; PROVIDING FOR LICENSING; LIMITING THE USE OF NAMES BY CAPTIVE INSURANCE COMPANIES; PROVIDING MINIMUM CAPITAL AND SURPLUS REQUIREMENTS; PROVIDING FOR FORMATION OF CAPTIVE INSURANCE COMPANIES; ESTABLISHING REQUIREMENTS FOR PAYMENT OF DIVIDENDS; PROVIDING FOR REPORTS, EXAMINATIONS, AND INVESTIGATIONS; ESTABLISHING GROUNDS FOR LICENSE SUSPENSION AND REVOCATION; CREATING A TAX ON PREMIUMS COLLECTED TO BE PAID TO THE OFFICE OF THE STATE AUDITOR AND DEPOSITED IN THE GENERAL FUND; AUTHORIZING CERTAIN INVESTMENTS FOR CAPTIVE INSURANCE COMPANIES; PROVIDING FOR REINSURANCE; EXEMPTING CAPTIVE INSURANCE COMPANIES

FROM JOINING RATING ORGANIZATIONS AND CERTAIN COMPULSORY ORGANIZATIONS; PROVIDING RULEMAKING AUTHORITY; ESTABLISHING APPLICABLE LAW; AMENDING SECTION 33-2-708, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 16], unless the context requires otherwise, the following definitions apply:

(1) "Affiliated company" means any company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.

(2) "Association" means any legal association of sole proprietorships, corporations, partnerships, limited liability companies, or associations that has been in continuous existence for at least 1 year, the member organizations of which collectively, or the association itself:

(a) owns, controls, or holds with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; or

(b) has complete voting control over an association captive insurance company incorporated as a mutual insurer.

(3) "Association captive insurance company" means any company that insures risks of the member organizations of an association and their affiliated companies.

(4) "Captive insurance company" means any pure captive insurance company, association captive insurance company, or industrial insured captive insurance company formed or licensed under the provisions of [sections 1 through 16].

(5) "Industrial insured" means an insured:

(a) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer;

(b) whose aggregate annual premiums for insurance on all risks total at least $25,000; and

(c) who has at least 25 full-time employees.

(6) "Industrial insured captive insurance company" means any company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

(7) "Industrial insured group" means any group of industrial insureds that collectively:

(a) owns, controls, or holds with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer; or

(b) has complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer.

(8) "Member organization" means a sole proprietorship, corporation, partnership, or association that belongs to an association.

(9) "Parent" means a corporation, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding voting securities of a pure captive insurance company.

(10) "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies.

Section 2. Licensing — authority. (1) A captive insurance company, when permitted by its articles of incorporation, charter, or other organizational document, may apply to the commissioner for a license to provide property and casualty insurance, except that:

(a) a pure captive insurance company may not insure any risks other than those of its parent and affiliated companies;

(b) an industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

(c) an association captive insurance company may not insure any risks other than those of the member organizations of its association or their affiliated companies; and

(d) a captive insurance company may not:

(i) provide personal lines of insurance, including but not limited to motor vehicle or homeowner's insurance coverage or any component of those coverages;

(ii) accept or cede reinsurance except as provided in [section 12];

(iii) provide health or disability insurance or life insurance; or

(iv) provide workers compensation insurance in any manner or form.

(2) A captive insurance company may not do any insurance business in this state unless:

(a) it first obtains from the commissioner a license authorizing it to do insurance business in this state;

(b) its board of directors holds at least one meeting each year in this state; and

(c) it maintains its principal place of business in this state.

(3) (a) Before receiving a license, a captive insurance company shall:

(i) file with the commissioner a certified copy of its charter and bylaws, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the commissioner; and

(ii) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require.

(b) In the event of any subsequent material change in any item in the description provided for in subsection (3)(a)(ii), the captive insurance company shall submit to the commissioner for approval an appropriate revision and may not offer any additional kinds of insurance until a revision of the description is approved by the commissioner. The captive insurance company shall inform the commissioner of any change in rates within 30 days of the adoption of the change.

(c) In addition to the information required by subsections (3)(a) and (3)(b), each applicant captive insurance company shall file with the commissioner evidence of the following:

(i) the amount and liquidity of its assets relative to the risks to be assumed;

(ii) the adequacy of the expertise, experience, and character of the person or persons who will manage it;

(iii) the overall soundness of its plan of operation;

(iv) the adequacy of the loss prevention programs of its parent, member organizations, or industrial insureds as applicable; and

(v) any other factors considered relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(d) Information submitted pursuant to this subsection (3) must remain confidential and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except that:

(i) the information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that the information sought is relevant to and necessary for the furtherance of the action or case, the information sought is unavailable from other nonconfidential sources, and a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner;

(ii) the commissioner may, in the commissioner's discretion, disclose the information to a public officer having jurisdiction over the regulation of insurance in another state or to a public official of the federal government, as long as the public official agrees in writing to maintain the confidentiality of the information and the laws of the state in which the public official serves, if applicable, require the information to be and to remain confidential.

(4) (a) Each captive insurance company shall pay to the commissioner a nonrefundable fee of $200 for the examining, investigating, and processing of its application for license, and the commissioner is authorized to retain legal, financial, and examination services from outside the department, the reasonable cost of which may be charged to the applicant.

(b) The provisions of Title 33, chapter 1, part 4, apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license fee for the year of registration and a renewal fee for each subsequent year of $300.

(5) If the commissioner is satisfied that the documents and statements that the applicant captive insurance company has filed comply with the provisions of [sections 1 through 16] and applicable provisions of Title 33, the commissioner may grant a license authorizing the company to do insurance business in this state. The license is effective until March 1 of each year and may be renewed upon proper compliance with [sections 1 through 16].

Section 3. Names of captive insurance companies. A captive insurance company may not adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name registered in the state of Montana.

Section 4. Minimum capital surplus — letter of credit. (1) A captive insurance company may not be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of:

(a) in the case of a pure captive insurance company, not less than $250,000;

(b) in the case of an industrial insured captive insurance company, not less than $500,000; and

(c) in the case of an association captive insurance company, not less than $750,000.

(2) The commissioner may require additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

(3) Capital and surplus may be in the form of cash or an irrevocable letter of credit issued by a bank chartered by the state of Montana or a member bank of the federal reserve system and approved by the commissioner.

Section 5. Formation of captive insurance companies. (1) A pure captive insurance company must be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(2) An association captive insurance company or an industrial insured captive insurance company may be:

(a) incorporated as a stock insurer with its capital divided into shares and held by the stockholders; or

(b) incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association or associations.

(3) A captive insurance company incorporated or organized in this state may not have less than three incorporators, at least one of whom must be a resident of this state.

(4) (a) A captive insurance company shall deliver to the commissioner a draft of its proposed articles of incorporation. The commissioner shall examine the proposed articles of incorporation, and if the commissioner finds that the proposed articles comply with [sections 1 through 16] and the applicable provisions of Title 33, the commissioner shall approve, in writing, the draft articles.

(b) If the commissioner finds that the proposed articles of incorporation of the captive insurance company do not meet the requirements of the applicable laws, including but not limited to 33-2-112, the commissioner shall refuse to approve the draft of the articles of incorporation and shall return the draft to the proposed incorporators, together with a written statement explaining the refusal.

(c) The commissioner shall forward an approved draft of articles of incorporation to the proposed incorporators. The incorporators shall prepare two sets of the approved articles of incorporation and shall file one set of articles of incorporation with the secretary of state as required by the applicable law and one set with the commissioner.

(5) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(6) At least one of the members of the board of directors of a captive insurance company must be a resident of this state.

(7) (a) A captive insurance company has the privileges and is subject to the provisions of general corporation law, as well as the applicable provisions contained in [sections 1 through 16].

(b) In the event of conflict between the provisions of general corporation law and [sections 1 through 16], the provisions of [sections 1 through 16] control.

(c) The provisions of Title 33 pertaining to mergers, consolidations, conversions, mutualizations, and redomestications apply in determining the procedures to be followed by captive insurance companies in carrying out any of those transactions.

Section 6. Dividends. (1) A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus in excess of the limitations set forth in 33-2-1114 without the prior approval of the commissioner.

(2) Approval of an ongoing plan for the payment of dividends or other distributions must be conditioned upon retention, at the time of each payment, of capital surplus in excess of the amounts specified by or determined in accordance with formulas approved by the commissioner.

Section 7. Reports and statements. (1) A captive insurance company is not required to make an annual report except as provided in this section.

(2) (a) On or before March 1 of each year, each captive insurance company shall submit to the commissioner a report of its financial condition in a form and manner as required by the commissioner, verified by oath of two of its executive officers.

(b) Each captive insurance company shall report using generally accepted accounting principles, unless the commissioner requires the use of statutory accounting principles, with any necessary or useful modifications or additions required by the commissioner. The commissioner may also require the report to be supplemented by additional information.

Section 8. Examinations and investigations. (1) (a) At least once in 3 years, or more frequently if the commissioner considers it prudent, the commissioner or some competent person appointed by the commissioner shall visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with the provisions of [sections 1 through 16].

(b) The commissioner, upon application and in the commissioner's discretion, may enlarge the 3-year period to 5 years if the captive insurance company is:

(i) subject to a comprehensive annual audit during the 5-year period of a scope satisfactory to the commissioner; and

(ii) the audit is conducted by independent auditors approved by the commissioner.

(c) The expenses and charges of the examination must be paid to the commissioner by the company or companies examined.

(2) The provisions of Title 33, chapter 1, part 4, apply to examinations conducted under this section.

(3) Except as provided in subsection (4), all examination reports, preliminary examination reports or results, working papers, recorded information, documents, and their copies produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential, are not subject to subpoena, and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company or upon court order.

(4) Subsection (3) does not prevent the commissioner from using information obtained pursuant to this section in furtherance of the commissioner's regulatory authority under Title 33. The commissioner may, in the commissioner's discretion, grant access to information obtained pursuant to this section to public officers having jurisdiction over the regulation of insurance in any other state or country or to law enforcement officers of this state or any other state or agency of the federal government at any time, as long as the officers receiving the information agree in writing to hold it in a manner consistent with this section.

Section 9. Suspension or revocation of license. (1) The license of a captive insurance company doing insurance business in this state may be suspended by the commissioner for any of the following reasons:

(a) insolvency or impairment of capital or surplus;

(b) failure to meet and maintain the requirements of [section 4];

(c) refusal or failure to submit an annual report, as required by [section 7], or any other report or statement required by law or by lawful order of the commissioner;

(d) failure to comply with the provisions of its own charter, bylaws, or other organizational document;

(e) failure to submit to examination or to perform any legal obligation as required by [section 8];

(f) use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders;

(g) failure to pay the tax provided for in [section 10]; or

(h) failure otherwise to comply with the laws of this state.

(2) If the commissioner finds, upon examination, hearing, or other evidence, that any captive insurance company has committed any of the acts specified in subsection (1), the commissioner may suspend or revoke the company's license if the commissioner considers it in the best interest of the public or the policyholders of the captive insurance company.

Section 10. Tax on premiums collected. (1) (a) Each captive insurance company shall pay to the commissioner, on or before March 1 of each year, a tax on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company in this state during the year ending December 31, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

(b) The tax on direct premiums collected in this state must be calculated as follows:

(i) 0.4% on the first 20 million dollars;

(ii) 0.3% on the next 20 million dollars;

(iii) 0.2% on the next 20 million dollars; and

(iv) 0.075% on each subsequent dollar collected.

(2) (a) Each captive insurance company shall pay to the commissioner on or before March 1 of each year a tax on assumed reinsurance premiums.

(b) A reinsurance tax does not apply to premiums for risks or portions of risks that are subject to taxation on a direct basis pursuant to subsection (1).

(c) A reinsurance premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer and if the intent of the parties to the transaction is to renew or maintain the business with the captive insurance company.

(d) The amount of the reinsurance tax must be calculated as follows:

(i) 0.225% on the first 20 million dollars of assumed reinsurance premiums;

(ii) 0.150% on the next 20 million dollars of assumed reinsurance premiums; and

(iii) 0.050% on each subsequent dollar of assumed reinsurance premiums.

(3) If the aggregate taxes to be paid by a captive insurance company calculated under subsections (1) and (2) amount to less than $5,000 in any year, the captive insurance company shall pay a tax of $5,000 for that year.

(4) Two or more captive insurance companies under common ownership and control must be taxed as though they were a single captive insurance company.

(5) For the purposes of this section, "common ownership and control" means:

(a) in the case of stock corporations, the direct or indirect ownership of 80% or more of the outstanding voting stock of two or more corporations by the same shareholder or shareholders; and

(b) in the case of mutual corporations, the direct or indirect ownership of 80% or more of the surplus and the voting power of two or more corporations by the same member or members.

Section 11. Legal investments. (1) An industrial insured captive insurance company and an association captive insurance company shall comply with the investment requirements contained in 33-2-532, 33-2-533, Title 33, chapter 12, and the rules promulgated in accordance with these provisions. Notwithstanding any other provision of this title, the commissioner may approve the use of alternative reliable methods of valuation and rating.

(2) A pure captive insurance company is not subject to any restrictions on allowable investments, except that the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the company.

(3) Only a pure captive insurance company may make loans to its parent company or affiliates. Loans to a parent company or any affiliate may not be made

without prior written approval of the commissioner and must be evidenced by a note in a form approved by the commissioner. Loans of minimum capital and surplus funds required by [section 4] are prohibited.

Section 12. Reinsurance. (1) Subject to the prior approval of the commissioner, a captive insurance company may provide reinsurance on risks ceded by any other insurer.

(2) (a) Any captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers complying with the provisions of 33-2-1216 and 33-2-1217.

(b) Prior approval of the commissioner is required for ceding or taking credit for reserves on risks or portions of risks ceded to reinsurers not complying with 33-2-1216 and 33-2-1217.

(3) (a) In addition to the credit allowed to reinsurers in 33-2-1216 and 33-2-1217, a captive insurance company may, if approved by the commissioner, take credit for reserves on risks or portions of risks ceded to a pool, exchange, or association acting as a reinsurer that has been authorized by the commissioner.

(b) The commissioner may require any documents, financial information, or other evidence that a pool, exchange, or association will be able to provide adequate security for its financial obligations.

(c) The commissioner may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange, or association that, in the commissioner's judgment, are necessary and proper to provide adequate security for the ceding captive insurance company and for the protection and consequent benefit of the public at large.

Section 13. Rating organizations. A captive insurance company is not required to join a rating organization.

Section 14. Exemption from compulsory organizations. A captive insurance company may not join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this state, and a captive insurance company, its insureds, its parent, any affiliated company, or any member organization of an association may not receive any benefit from the plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of the captive insurance company.

Section 15. Rules. The commissioner may adopt rules necessary to implement the provisions of [sections 1 through 16]. The rules may include but are not limited to rules relating to forms, payment of fees, licensing, capital and surplus, formation of companies, reports, examinations, investigations, and suspension and revocation of licenses.

Section 16. Applicable laws. (1) The provisions relating to supervision, rehabilitation, and liquidation of insurance companies as provided for in Title 33, chapter 2, part 13, and the provisions of 33-18-201 and 33-18-242 apply to captive insurance companies.

(2) [Sections 1 through 16] may not be construed as exempting a captive insurance company, its parent, or affiliated companies from compliance with the laws governing workers' compensation insurance.

(3) Except as expressly provided in [sections 1 through 16], the provisions of Title 33 do not apply to captive insurance companies.

Section 17. Section 33-2-708, MCA, is amended to read:

"**33-2-708. Fees and licenses.** (1) (a) Except as provided in 33-17-212(2), the commissioner shall collect a fee of $1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer's license:

(A) application for original license, including issuance of license, if issued 100.00

(B) annual renewal of license10.00

(ii) surplus lines insurance producer license:

(A) application for original license and for issuance of license, if issued50.00

(B) annual renewal of license50.00

(iii) 50 cents for each page for copies of documents on file in the commissioner's office.

(2) (a) The commissioner shall charge a fee of $75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than $1,500 to a sponsoring organization submitting courses or programs for review in any biennium.

(b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).

(3) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, ~~and~~ 33-2-706, *and [section 10].* All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.

(4) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded."

Section 18. Codification instruction. [Sections 1 through 16] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 16].

Section 19. Effective date. [This act] is effective July 1, 2001.

Approved April 20, 2001

CHAPTER NO. 299

[SB 377]

AN ACT REVISING THE MONTANA ENVIRONMENTAL POLICY ACT; PROVIDING TIME LIMITS AND PROCEDURES FOR CONDUCTING ENVIRONMENTAL REVIEWS; PROVIDING DEFINITIONS; PROVIDING THAT LEGAL CHALLENGES TO ACTIONS UNDER THE MONTANA ENVIRONMENTAL POLICY ACT MAY ONLY BE BROUGHT IN DISTRICT COURT OR FEDERAL COURT WITHIN 60 DAYS OF A FINAL AGENCY

ACTION; PROVIDING AN EXCEPTION TO PERMITTING TIME LIMITS IF BOARD REVIEW OF CERTAIN AGENCY DECISIONS IS REQUESTED; AMENDING SECTIONS 75-1-201, 75-2-211, 75-2-218, 75-10-922, 75-20-216, 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, AND 82-4-432, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Environmental review procedure. (1) (a) Except as provided in subsection (1)(b), an agency shall comply with this section when completing any environmental review required under this part.

(b) To the extent that the requirements of this section are inconsistent with federal requirements, the requirements of this section do not apply to an environmental review that is being prepared jointly by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that must comply with the requirements of the National Environmental Policy Act.

(2) A project sponsor may, after providing a 30-day notice, appear before the environmental quality council at any regularly scheduled meeting to discuss issues regarding the agency's environmental review of the project. The environmental quality council shall ensure that the appropriate agency personnel are available to answer questions.

(3) If a project sponsor experiences problems in dealing with the agency or any consultant hired by the agency regarding an environmental review, the project sponsor may submit a written request to the agency director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow the agency to prepare for the meeting. If the issues remain unresolved after the meeting with the agency director, the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the agency and the board to prepare for the meeting.

(4) (a) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental review process, an agency is subject to the time limits listed in this subsection (4) unless other time limits are provided by law. All time limits are measured from the date the agency receives a complete application. An agency has:

(i) 60 days to complete a public scoping process, if any;

(ii) 90 days to complete an environmental review unless a detailed statement pursuant to 75-1-201(1)(b)(iv) is required; and

(iii) 180 days to complete a detailed statement pursuant to 75-1-201(1)(b)(iv).

(b) The period of time between the request for a review by a board and the completion of a review by a board under [section 1(5) of Senate Bill No. 408, section 1(1)(b)(iv)(C)(III) of House Bill No. 459,] or subsection (10) of this section may not be included for the purposes of determining compliance with the time limits established for conducting an environmental review under this subsection or the time limits established for permitting in 75-2-211, 75-2-218, 75-10-922, 75-20-216, 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, and 82-4-432.

(5) An agency may extend the time limits in subsection (4) by notifying the project sponsor in writing that an extension is necessary and stating the basis for

the extension. The agency may extend the time limit one time, and the extension may not exceed 50% of the original time period as listed in subsection (4). After one extension, the agency may not extend the time limit unless the agency and the project sponsor mutually agree to the extension.

(6) If the project sponsor disagrees with the need for the extension, the project sponsor may request that the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(7) (a) Except as provided in subsection (7)(b), if an agency has not completed the environmental review by the expiration of the original or extended time period, the agency may not withhold a permit or other authority to act unless the agency makes a written finding that there is a likelihood that permit issuance or other approval to act would result in the violation of a statutory or regulatory requirement.

(b) Subsection (7)(a) does not apply to a permit granted under Title 75, chapter 2, or under Title 82, chapter 4, parts 1 and 2.

(8) Under this part, an agency may only request that information from the project sponsor that is relevant to the environmental review required under this part.

(9) An agency shall ensure that the notification for any public scoping process associated with an environmental review conducted by the agency is presented in an objective and neutral manner and that the notification does not speculate on the potential impacts of the project.

(10) An agency may not require the project sponsor to provide engineering designs in greater detail than that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate board, if any, review an agency's request regarding the level of design detail information that the agency believes is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(11) An agency shall, when appropriate, consider the cumulative impacts of a proposed project. However, related future actions may only be considered when these actions are under concurrent consideration by any agency through preimpact statement studies, separate impact statement evaluations, or permit processing procedures.

Section 2. Definitions. For the purposes of this part, the following definitions apply:

(1) "Appropriate board" means, for administrative actions taken under this part by the:

(a) department of environmental quality, the board of environmental review as provided for in 2-15-3502;

(b) department of fish, wildlife, and parks, the fish, wildlife, and parks commission as provided for in 2-15-3402;

(c) department of transportation, the transportation commission as provided for in 2-15-2502;

(d) department of natural resources and conservation for state trust land issues, the board of land commissioners as provided for in Article X, section 4, of the Montana constitution;

(e) department of natural resources and conservation for oil and gas issues, the board of oil and gas conservation as provided for in 2-15-3303; and

(f) department of livestock, the board of livestock as provided for in 2-15-3102.

(2) "Complete application" means, for the purpose of complying with this part, an application for a permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures required to be included with the application sufficient for the agency to approve the application under the applicable statutes and rules.

(3) "Cumulative impacts" means the collective impacts on the human environment of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type.

(4) "Environmental review" means any environmental assessment, environmental impact statement, or other written analysis required under this part by a state agency of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment as required under this part.

(5) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an action that requires an environmental review. If the action involves state agency-initiated actions on state trust lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 328).

(6) "Public scoping process" means any process to determine the scope of an environmental review.

Section 3. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions — environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) *under this part,* all agencies of the state, except the legislature and except as provided in subsection (2), shall:

(i) use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment;

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations:

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action;

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity; and

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(v) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

(vi) recognize the national and long-range character of environmental problems and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved. The responsible state official shall also consult with and obtain comments from any state agency with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law.

(b) When new, material, and significant evidence is presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court considers the evidence within the administrative record under review. Immaterial or insignificant evidence may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.

(4) (a) A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court or in federal court, whichever is appropriate. Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(b) Any action or proceeding under subsection (4)(a) must take precedence over other cases or matters in the district court unless otherwise provided by law."

Section 4. Section 75-2-211, MCA, is amended to read:

"**75-2-211. Permits for construction, installation, alteration, or use.** (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) ~~Not~~ *Except as provided in [section 1(4)(b)], not* later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) ~~If~~ *Except as provided in [section 1(4)(b)], if* an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application. The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department on request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(c) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall act on the permit application within the time period provided for in 75-2-215(3)(e).

(d) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board."

Section 5. Section 75-2-218, MCA, is amended to read:

"75-2-218. Permits for operation — application completeness — action by department — application shield — review by board. (1) An application for an operating permit or renewal is not considered filed until the department has determined that it is complete. An application is complete if all fees required under 75-2-220 and all information and completed application forms required under 75-2-217 have been submitted. A complete application must contain all of the information required for the department to begin processing the application. If the department fails to notify the applicant in writing within 60 days after submittal of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed on the date of the department's receipt of the application. The department may request additional information after a completeness determination has been made. The department shall adopt rules that contain criteria for use in determining both when an application is complete and when additional information is required after a completeness determination has been made.

(2) Except as provided in *[section 1(4)(b)] and* subsection (3) *of this section*, the department shall, consistent with the procedures established under 75-2-217, approve or disapprove a complete application for an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of filing. Failure of the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(3) The board may by rule provide for a transition schedule for both the submittal to the department of initial applications for operating permits by existing sources and action by the department on these initial permit applications. The board may require that one-third of all operating permit applications required for existing sources be submitted within the first calendar year after the adoption of rules implementing an operating permit program under 75-2-217. Any transition schedule for action by the department must ensure that all permit applications required under 75-2-217 and this subsection for existing sources will be acted upon by the department before November 15, 1997.

(4) If an applicant submits a timely and complete application for an operating permit, the applicant's failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and complete application for an operating permit renewal, the expiration of the applicant's existing operating permit is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The applicant is not entitled to the protection of this subsection if the delay in final action by the department on the application results from the applicant's failure to submit in a timely manner information requested by the department to process the application.

(5) Except as provided in subsection (8), if the department approves or denies an application for an operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any person that participated in the public comment process required under 75-2-217(7) may request a hearing before the board. The request for hearing must be filed within 30 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(6) Except as provided in subsection (8), the department's decision on any application is not final until 30 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

(7) The requirements of subsections (5) and (6) apply to any action initiated by the department to suspend, revoke, modify, or amend an operating permit issued under this section.

(8) The denial by the department of an application under 75-2-217 and this section is not subject to review by the board or judicial review if the basis for denial is the written objection of the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is considered to be in compliance with the requirements of this chapter only if the permit expressly includes those requirements or an express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under 75-2-217."

Section 6. Section 75-10-922, MCA, is amended to read:

"**75-10-922. Study, evaluation, and report on proposed facility.** (1) After receipt of an application, the department shall within 90 days notify the applicant in writing that:

(a) the application is accepted as complete; or

(b) the application is not complete and list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-10-913, 75-10-914, and 75-10-916 through 75-10-922, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-10-929. The department shall use, to the extent it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) ~~Within~~ *Except as provided in [section 1(4)(b)], within* 1 year following acceptance of a complete application for a facility, the department shall make a report to the board that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, Title 75, chapter 1, if applicable."

Section 7. Section 75-20-216, MCA, is amended to read:

"**75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies.** (1) After receipt of an application, the department shall within 60 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and shall list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department shall use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Except as provided ~~for~~ in *[section 1(4)(b)] and* 75-20-231, the department shall issue within 1 year following the date of acceptance of an application any decision, opinion, order, certification, or permit required under the laws, other than those contained in this part, administered by the department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a preliminary decision by the department and pursuant to rules adopted by the department, the department shall provide an opportunity for public review and comment.

(4) Except as provided in *[section 1(4)(b)] and* 75-20-231, within 1 year following acceptance of an application for a facility, the department shall issue a report that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall issue its report within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) For projects subject to joint review by the department and a federal land management agency, the department's certification decision may be timed to correspond to the record of decision issued by the participating federal agency.

(6) The departments of transportation; commerce; fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

Section 8. Section 75-20-231, MCA, is amended to read:

"**75-20-231. Expedited review.** (1) ~~The~~ *Except as provided in [section 1(4)(b)], the* department shall issue a certification decision within 180 days from the date on which an application is considered complete for a facility that:

(a) is unlikely to result in significant adverse environmental impacts based on the criteria listed in 75-20-232; or

(b) is presently in existence and proposed for upgrade, reconstruction, or relocation and is unlikely to result in significant impacts pursuant to 75-20-232.

(2) A facility that qualifies for expedited review is exempt from undergoing an alternative siting study, except as provided in 75-1-201."

Section 9. Section 76-4-125, MCA, is amended to read:

"**76-4-125. Review of development plans — land divisions excluded from review.** (1) Plans and specifications of a subdivision, as defined in this part, must be submitted to the reviewing authority, and the reviewing authority shall indicate by certificate that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction. The plan review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present to the reviewing authority a preliminary plan of the proposed development, whatever information the developer feels necessary for its subsequent review, and information required by the reviewing authority.

(b) ~~The~~ *Except as provided in [section 1(4)(b)], the* reviewing authority shall give final action of the proposed plan within 60 days unless an environmental impact statement is required, at which time this deadline may be increased to 120 days.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that a dwelling or structure requiring water or sewage disposal may not be erected on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule; and

(d) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer, if:

(i) the remainder is served by a public or multifamily sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system that was constructed prior to April 29, 1993, and, if required when installed, was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116(1)(i), a local health officer may require that, prior to the transfer of the parcel to be segregated from the remainder referenced in subsection (2)(d)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."

Section 10. Section 82-4-122, MCA, is amended to read:

"**82-4-122. Application and approval of permit.** (1) A person desiring a mine-site location permit shall file with the department an application ~~which shall~~ *that must* contain a reclamation plan for any preparatory work and ~~such~~ *any* other information the department ~~deems~~ *considers* necessary to determine if the proposed area to be affected by the operation is appropriate for the location of a new strip mine or a new underground mine. The department may require any information included in but not limited to an application for a strip-mining permit or underground-mining permit as required by part 2 of this chapter.

(2) ~~The~~ *Except as provided in [section 1(4)(b)], the* department shall notify the applicant within 365 days of receipt of a complete application if the proposed site is an acceptable location for development of a new strip mine or a new underground mine. If the site is approved, the department shall issue the applicant a mine-site location permit. If the location is not approved, the department shall notify the applicant in writing, setting forth reasons why the location is not acceptable. The department shall also notify the applicant within

365 days of receipt of a complete application whether the proposed reclamation plan is or is not acceptable. If the plan is not acceptable, the department shall set forth the reasons for nonacceptance of the plan. It may propose modifications, delete areas, or reject the entire plan."

Section 11. Section 82-4-231, MCA, is amended to read:

"**82-4-231. Submission of and action on reclamation plan.** (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and a reclamation plan for the area of land affected by the operation. In developing a method of operation and plans of backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, and reclamation, all measures ~~shall~~ *must* be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan ~~shall~~ *must* set forth in detail the manner in which the applicant intends to comply with this section and 82-4-232 through 82-4-234, as amended, and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for permit or major revision of a permit, which ~~shall~~ *must* contain the reclamation plan, ~~shall~~ *must* be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items ~~which~~ *that* the application must address. The application ~~shall be~~ *is* presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, the applicant shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest ~~which~~ *that* is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority ~~shall have the right to~~ *may* file written objections to the proposed initial or revised

application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons ~~therefor~~ *for its decision* within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference ~~shall~~ *may* not preclude the department from proceeding with its review of the application as specified in subsection (8).

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined to be necessary prior to making a permit decision, the department shall complete and publish the final environmental impact statement within 365 days of the date of notice provided pursuant to subsection (5).

(d) ~~Within~~ *Except as provided in [section 1(4)(b)], within* 120 days after it determines that an application is administratively complete, the department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. ~~If~~ *Except as provided in [section 1(4)(b)], if* the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. Any person having an interest that is or may be adversely affected may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons therefor within 10 days of the informal conference.

(f) ~~The~~ *Except as provided in [section 1(4)(b)], the* department shall prepare written findings granting or denying the permit or major revision application in whole or in part no later than 45 days from the date the application is determined acceptable or from the publication of the final environmental impact statement, whichever occurs later. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when ~~such~~ *the* concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall immediately notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by the department's permit decision may within 30 days of that decision submit a written notice requesting a hearing. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing ~~shall~~ *must* be held within 30 days of the request. For purposes of a hearing, the department may order site inspections of the area pertinent to the application. The department shall within 20 days of the hearing notify the person who requested the hearing by certified mail, and all other persons, by regular mail, of the findings and decisions. No person who presided at the informal conference may either preside at the hearing or participate in the decision thereon.

(10) In addition to the method of operation, grading, backfilling, subsidence stabilization, water control, highwall reduction, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1) of this section, shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the department approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant ~~must~~ *is required to* show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health, or constitute a hazard to domestic livestock or to a viable agricultural operation, or violate any other restrictions the department may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in ~~such~~ *a* manner as to prevent or minimize land subsidence. The remaining waste material ~~shall~~ *must* be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of ~~such~~ *those* resources where practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface water and ground water systems both during and after strip- or underground-coal-mining operations and during reclamation by:

(i) avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but ~~in no event shall~~ contributions *may not* be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement of strip- or underground-mining operations, ~~such~~ *with the* structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions:

(v) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(vii) ~~such~~ *any* other actions as the department may prescribe;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except ~~where~~ *when* the department determines that the resulting impoundment of water in ~~such~~ *the* auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in ~~such~~ proximity to ~~such~~ *the* channel so as to seriously alter the normal flow of water;

(q) meet ~~such~~ other criteria as are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

(11) An operator may not throw, dump, pile, or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under 82-4-223, as amended, or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in such a manner as to protect areas outside the permit area."

Section 12. Section 82-4-337, MCA, is amended to read:

"82-4-337. Inspection — issuance of operating permit — modification, amendment, or revision. (1) (a) The department shall review all applications for operating permits for completeness within 60 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b). The department shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within the appropriate review period.

(b) ~~Unless~~ *Except as provided in [section 1(4)(b)], unless* the review period is extended as provided in this section, the department shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the department does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within the time period, the operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond that will be required.

(c) A permit may not be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

(ii) the information and certification have been submitted pursuant to 82-4-335(9); and

(iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341(7).

(d) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible because of extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) ~~If~~ *Except as provided in [section 1(4)(b)], if* the department determines that additional time is needed for analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.

(iii) ~~If~~ *Except as provided in [section 1(4)(b)], if* the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review. The applicant may by written waiver extend this time period.

(iv) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(v) Failure of the department to act upon a complete application within the extension period constitutes approval of the application, and the permit must be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit must be granted for the period required to complete the operation and is valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the department as provided in this part.

(3) The operating permit must provide that the reclamation plan may be modified by the department, upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so that they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

(4) During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

(5) Applications for major amendments must be processed in the same manner as applications for new permits.

(6) Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The board may by rule establish criteria for classification of amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

(7) If the department demonstrates that a revision may result in a significant environmental impact that was not previously and substantially evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. ~~Applications~~ *Except as provided in [section 1(4)(b)], applications* for minor amendments and other revisions must be processed within 30 days of receipt of an application."

Section 13. Section 82-4-432, MCA, is amended to read:

"**82-4-432. Application for permit — contents -- issuance — amendment.** (1) Applications for a permit must be made upon a form furnished by the department. The form must contain the following:

(a) the name of the operator and, if other than the owner of the land, the name and address of the owner;

(b) the type of operation to be conducted;

(c) the volume of earth to be removed, as accurately as the volume may then be estimated, and the volume that has been previously removed, if any;

(d) the location of the operation by legal subdivision, section, township and range, and county;

(e) the date when the operation was or will be commenced; and

(f) a statement that the applicant has the right and power by legal estate owned to mine by opencut mining the lands described.

(2) The application must be accompanied by:

(a) a bond or security meeting the requirements as set out in this part;

(b) a fee of $50 for an application to mine bentonite, clay, scoria, sand, or gravel;

(c) a statement from the local governing body having jurisdiction over the area to be mined certifying that a proposed sand and gravel opencut mine and its operating and reclamation plans comply with applicable local zoning regulations adopted under Title 76, chapter 2; and

(d) the operator's plan of operation and a complete reclamation plan.

(3) If, prior to applying for a permit, a person notifies the department of the intention to submit an application and requests the department to examine the area to be mined, the department shall cause the area to be examined and make recommendations to the person regarding reclamation. The person may request a meeting with the department. The department shall hold a meeting if requested.

(4) ~~Upon~~ *Except as provided in [section 1(4)(b)], upon* receipt of a complete application containing all items listed in subsections (1) and (2), the department shall, within 30 days, notify the person if it has approved or denied the application. The department may for sufficient cause extend its period of review for an additional 30 days if it notifies the person of the extension prior to the end of the original 30-day period. Upon approval of the application, the department shall issue a permit to the operator that entitles the operator to continue or engage in opencut mining on the land described in the application.

(5) An operator desiring to have a permit amended to cover additional contiguous or nearby land may file an amended application with the department. Upon receipt of the amended application and any additional bond as may be required and upon agreement to the terms of the amendment by the parties, the department may issue an amendment to the original permit covering the additional land described in the amended application without the payment of any additional fee.

(6) An operator may withdraw any land covered by a permit, except affected land, by notifying the department of the withdrawal, in which case the penalty of the bond or security filed by the operator pursuant to the provisions of this part must be reduced proportionately."

Section 14. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 75, chapter 1, part 2, and the provisions of Title 75, chapter 1, part 2, apply to [sections 1 and 2].

Section 15. Coordination instruction. (1) If Senate Bill No. 408 is not passed and approved containing language that authorizes a board review of an agency significance determination, then the reference to Senate Bill No. 408 in [section 1(4)(b) of this act] is void.

(2) If House Bill No. 459 is not passed and approved containing language that authorizes a board review of an agency alternative analysis determination, then the reference to House Bill No. 459 in [section 1(4)(b) of this act] is void.

(3) If House Bill No. 473 and [this act] are both passed and approved, then [section 2(3)] of House Bill No. 473, defining "project sponsor", is void.

(4) If House Bill No. 459 and [this act] are both passed and approved, then [section 2(3)] of House Bill No. 459, defining "project sponsor", is void.

Section 16. Applicability. [This act] applies to environmental reviews that are begun after [the effective date of this act].

Approved April 20, 2001

CHAPTER NO. 300

[SB 408]

AN ACT REQUIRING THAT AN AGENCY DETERMINATION OF ENVIRONMENTAL IMPACT SIGNIFICANCE OR RECOMMENDATION THAT A DETERMINATION OF SIGNIFICANCE BE MADE FOR A PROJECT SUBJECT TO THE MONTANA ENVIRONMENTAL POLICY ACT BE ENDORSED BY THE AGENCY DIRECTOR; AUTHORIZING THE PROJECT SPONSOR TO REQUEST A REVIEW OF THE SIGNIFICANCE DETERMINATION OR RECOMMENDATION BY THE APPROPRIATE BOARD; PROVIDING A DEFINITION; AMENDING SECTION 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions — environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except the legislature and except as provided in subsection (2), shall:

(i) use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment;

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action;

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity; and

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(v) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

(vi) recognize the national and long-range character of environmental problems and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved. The responsible state official shall also consult with and obtain comments from any state agency with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law.

(b) When new, material, and significant evidence is presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court considers the evidence within the administrative record under review. Immaterial or insignificant evidence may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.

(4) The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a determination of significance be made.

(5) A project sponsor may request a review of the significance determination or recommendation made under subsection (4) by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. [The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in [section 1 of Senate Bill No. 377]]."

Section 2. Definition. For the purposes of this part, "appropriate board" means, for administrative actions taken under this part by the:

(1) department of environmental quality, the board of environmental review, as provided for in 2-15-3502;

(2) department of fish, wildlife, and parks, the fish, wildlife, and parks commission, as provided for in 2-15-3402;

(3) department of transportation, the transportation commission, as provided for in 2-15-2502;

(4) department of natural resources and conservation for state trust land issues, the board of land commissioners, as provided for in Article X, section 4, of the Montana constitution;

(5) department of natural resources and conservation for oil and gas issues, the board of oil and gas conservation, as provided for in 2-15-3303; and

(6) department of livestock, the board of livestock, as provided for in 2-15-3102.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 75, chapter 1, part 2, and the provisions of Title 75, chapter 1, part 2, apply to [section 2].

Section 4. Coordination instruction. (1) If Senate Bill No. 377 is not passed and approved, then the bracketed language in [section 1(5) of this act] that amends 75-1-201 is void.

(2) If Senate Bill No. 377 is passed and approved and if it does not establish time limits for environmental review, then the bracketed language in [section 1(5) of this act] that amends 75-1-201 is void.

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2001

CHAPTER NO. 301

[SB 431]

AN ACT TO CLARIFY THE LAW REGARDING THE REGULATION OF THE COMMERCIAL COLLECTION OF CERTAIN NONGAME WILDLIFE; DEFINING "COMMERCIAL PURPOSES"; PROVIDING THAT CERTAIN NONGAME WILDLIFE MAY NOT BE TAKEN FOR COMMERCIAL PURPOSES WITHOUT AUTHORIZATION BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; PROVIDING EXCEPTIONS; AND AMENDING SECTION 87-5-102, MCA.

WHEREAS, the Legislature finds it desirable to regulate or manage the collection, harvest, possession, or transportation of nongame wildlife for commercial purposes.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-5-102, MCA, is amended to read:

"**87-5-102. Definitions.** As used in this part, the following definitions apply:

(1) "Account" means the nongame wildlife account established in 87-5-121.

(2) "Commercial purposes" means the collection, harvest, possession, or transportation of a species or subspecies of nongame wildlife from the wild with the intent to barter, offer for sale, ship or transport for eventual sale, or sell the animal or any part of the animal.

~~(2)~~*(3)* "Ecosystem" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life.

~~(3)~~*(4)* "Endangered species" means ~~any~~ *a* species or subspecies of wildlife *that is* actively threatened with extinction due to any of the following factors:

(a) the destruction, drastic modification, or severe curtailment of its habitat;

(b) its overutilization for scientific, commercial, or sporting purposes;

(c) the effect on it of disease, pollution, or predation;

(d) other natural or ~~man-made~~ *artificial* factors affecting its prospects of survival or recruitment within the state; or

(e) any combination of the foregoing factors.

~~(4)~~*(5)* "Management" means the collection and application of biological information for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining ~~such~~ *those* levels. The term includes the entire range of activities that constitute a modern scientific resource program, including but not limited to research, census, law enforcement, habitat improvement, and education. ~~Also included within the term, when and where appropriate, is~~ *The term also includes* the periodic or total protection of species or populations as well as regulated taking.

~~(5)~~*(6)* "Nongame wildlife" means ~~any~~ *a* wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other wild animal not otherwise legally classified by statute or regulation of this state. Animals designated by statute or regulation of this state as predatory in nature are not classified as nongame wildlife for purposes of this part.

~~(6)~~*(7)* "Optimum carrying capacity" means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the habitat to continue that function.

~~(7)~~*(8)* "Person" means ~~any~~ *an* individual, firm, corporation, association, or partnership.

~~(8)~~*(9)* "Take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife.

~~(9)~~*(10)* "Wildlife" means ~~any~~ *a* wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild animal or any part, product, egg, or offspring or the dead body or parts ~~thereof~~ *of the animal.*"

Section 2. Limited taking of certain nongame wildlife for commercial purposes — exceptions. (1) The following nongame wildlife may not be taken for commercial purposes, except as provided in subsections (3) and (4), without prior authorization of the department, subject to regulations adopted by the department:

(a) northern flying squirrel (Glaucomys sabrinus);

(b) pika (Ochotona princeps);

(c) pygmy rabbit (Brachylagus idahoensis);

(d) amphibians native to the state of Montana; and

(e) reptiles native to the state of Montana.

(2) The department may regulate the taking of nongame wildlife for commercial purposes. Regulations may establish limitations related to the taking, possession, transportation, exportation, processing, sale or offer for sale, and shipment of nongame wildlife that are considered necessary to manage nongame wildlife.

(3) The harvest of the prairie rattlesnake (Crotalus viridis) for commercial purposes may not be regulated under this section.

(4) This section does not prohibit:

(a) outfitting for the shooting of nongame wildlife;

(b) payment by a landowner to an individual for shooting or removing nongame wildlife; or

(c) the use of byproducts of nongame wildlife in fishing flies, jewelry, or other handicrafts.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 87, chapter 5, part 1, and the provisions of Title 87, chapter 5, part 1, apply to [section 2].

Approved April 20, 2001

CHAPTER NO. 302

[SB 443]

AN ACT REQUIRING THAT LOCAL GOVERNMENT PUBLIC RECORDS BE OFFERED TO CERTAIN ENTITIES AND TO THE GENERAL PUBLIC BEFORE BEING DESTROYED; EXPANDING THE MEMBERSHIP OF THE LOCAL GOVERNMENT RECORDS COMMITTEE; AND AMENDING SECTION 2-6-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Destruction of local government public records prohibited prior to offering — central registry — notification. (1) A local government public record more than 10-years old may not be destroyed without it first being offered to the Montana historical society, the state archives, Montana public and private universities and colleges, local historical museums, local historical societies, Montana genealogical groups, and the general public.

(2) The availability of a public record to be destroyed must be noticed to the entities listed in subsection (1) at least 180 days prior to disposal.

(3) (a) Claimed records must be given to entities in the order of priority listed in subsection (1).

(b) All expenses for the removal of claimed records must be paid by the entity claiming the records.

(c) The local government records committee, provided for in 2-6-402, shall establish procedures by which public records must be offered and claimed pursuant to this section.

(d) The local government records committee shall develop and maintain a central registry of the entities identified in subsection (1) who are interested in receiving notice of the potential destruction of public records pursuant to this section. The registry must be constructed to allow a local government entity to notify the local government records committee when the entity intends to destroy documents covered under this section and that allows the local government records committee to subsequently notify the entities in the registry. A local government entity's notice to the local government records committee pursuant to this subsection and the record committee's notice to the entities listed on the registry fulfills the notification requirements of this section.

Section 2. Section 2-6-402, MCA, is amended to read:

"2-6-402. Local government records committee — creation. (1) There is a local government records committee.

(2) The committee consists of the following ~~seven~~ *eight* members:

(a) the state archivist;

(b) the state records manager;

(c) a representative of the department of commerce;

(d) two local records custodians, appointed by the director of the Montana historical society; ~~and~~

(e) two additional local records custodians, appointed by the secretary of state*; and* *(f) a citizen representing the Montana state genealogical society, appointed by the secretary of state, who shall serve as a volunteer.*

(3) Committee members subject to appointment shall hold office for a period of 2 years beginning on January 1 of the year following their appointment.

(4) Any vacancies must be filled in the same manner that they were filled originally.

(5) The committee shall elect a presiding officer and a vice presiding officer.

(6) The committee shall meet twice a year upon the call of the secretary of state or the presiding officer.

(7) ~~Members~~ *Except as provided in subsection (2)(f), members* of the committee not serving as part of their compensated government employment must be compensated in accordance with 2-18-501 through 2-18-503 for each day in committee attendance. Members who serve as part of their compensated government employment may not receive additional compensation, but the employing governmental entity shall furnish, in accordance with the prevailing per diem rates, a reasonable allowance for travel and other expenses incurred in attending committee meetings."

Section 3. Codification instruction.

[Section 1] is intended to be codified as an integral part of Title 2, chapter 6, part 4, and the provisions of Title 2, chapter 6, part 4, apply to [section 1].

Approved April 20, 2001

CHAPTER NO. 303

[SB 459]

AN ACT PROVIDING THAT ADVANCED PRACTICE REGISTERED NURSES WITH A CLINICAL SPECIALTY IN PSYCHIATRIC MENTAL HEALTH NURSING ARE ALLOWED TO PERFORM EXAMINATIONS AND TO REPORT AND TESTIFY REGARDING A DEFENDANT'S FITNESS TO PROCEED OR MENTAL CONDITION; AMENDING SECTIONS 46-1-202, 46-14-202, 46-14-204, 46-14-205, 46-14-213, 46-14-302, AND 46-15-323, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-1-202, MCA, is amended to read:

"**46-1-202. Definitions.** As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Advanced practice registered nurse" means an individual certified as an advanced practice registered nurse provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

~~(1)~~*(2)* "Arraignment" means the formal act of calling the defendant into open court to enter a plea answering a charge.

~~(2)~~*(3)* "Arrest" means taking a person into custody in the manner authorized by law.

~~(3)~~*(4)* "Arrest warrant" means a written order from a court directed to a peace officer or to some other person specifically named commanding that officer or person to arrest another. The term includes the original warrant of arrest and a copy certified by the issuing court.

~~(4)~~*(5)* "Bail" means the security given for the primary purpose of ensuring the presence of the defendant in a pending criminal proceeding.

~~(5)~~*(6)* "Charge" means a written statement that accuses a person of the commission of an offense, that is presented to a court, and that is contained in a complaint, information, or indictment.

~~(6)~~*(7)* "Conviction" means a judgment or sentence entered upon a guilty or nolo contendere plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

~~(7)~~*(8)* "Court" means a place where justice is judicially administered and includes the judge of the court.

~~(8)~~*(9)* "Included offense" means an offense that:

(a) is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in the offense charged; or

(c) differs from the offense charged only in the respect that a less serious injury or risk to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

~~(9)~~*(10)* "Judge" means a person who is vested by law with the power to perform judicial functions.

~~(10)~~*(11)* "Judgment" means an adjudication by a court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

~~(11)~~*(12)* "Make available for examination and reproduction" means to make material and information that is subject to disclosure available upon request at a designated place during specified reasonable times and to provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party is required to make copies at its expense, to deliver the materials or information to the other party, or to supply the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent make other or additional arrangements.

~~(12)~~*(13)* "New trial" means a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered.

~~(13)~~*(14)* "Notice to appear" means a written direction that is issued by a peace officer and that requests a person to appear before a court at a stated time and place to answer a charge for the alleged commission of an offense.

~~(14)~~*(15)* "Offense" means a violation of any penal statute of this state or any ordinance of its political subdivisions.

~~(15)~~*(16)* "Parole" means the release to the community of a prisoner by a decision of the board of pardons and parole prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons and parole and the supervision of the department of corrections.

~~(16)~~*(17)* "Peace officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the person's authority.

~~(17)~~*(18)* "Persistent felony offender" means an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to have been previously convicted of a felony if:

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;

(b) less than 5 years have elapsed between the commission of the present offense and either:

(i) the previous felony conviction; or

(ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of a previous felony conviction; and

(c) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside at the postconviction hearing.

~~(18)~~*(19)* "Place of trial" means the geographical location and political subdivision in which the court that will hear the cause is situated.

~~(19)~~*(20)* "Preliminary examination" means a hearing before a judge for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

~~(20)~~*(21)* "Probation" means release by the court without imprisonment of a defendant found guilty of a crime. The release is subject to the supervision of the department of corrections upon direction of the court.

~~(21)~~*(22)* "Prosecutor" means an elected or appointed attorney who is vested by law with the power to initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

~~(22)~~*(23)* "Same transaction" means conduct consisting of a series of acts or omissions that are motivated by:

(a) a purpose to accomplish a criminal objective and that are necessary or incidental to the accomplishment of that objective; or

(b) a common purpose or plan that results in the repeated commission of the same offense or effect upon the same person or the property of the same person.

~~(23)~~*(24)* "Search warrant" means an order that is:

(a) in writing;

(b) in the name of the state;

(c) signed by a judge;

(d) a particular description of the place, object, or person to be searched and the evidence, contraband, or person to be seized; and

(e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or persons.

~~(24)~~*(25)* "Sentence" means the judicial disposition of a criminal proceeding upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty.

~~(25)~~*(26)* "Statement" means:

(a) a writing signed or otherwise adopted or approved by a person;

(b) a video or audio recording of a person's communications or a transcript of the communications; and

(c) a writing containing a summary of a person's oral communications or admissions.

~~(26)~~*(27)* "Summons" means a written order issued by the court that commands a person to appear before a court at a stated time and place to answer a charge for the offense set forth in the order.

~~(27)~~*(28)* "Superseded notes" means handwritten notes, including field notes, that have been substantially incorporated into a statement. The notes may not be considered a statement and are not subject to disclosure except as provided in 46-15-324.

~~(28)~~*(29)* "Temporary road block" means any structure, device, or means used by a peace officer for the purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

~~(29)~~*(30)* "Witness" means a person whose testimony is desired in a proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

~~(30)~~*(31)* "Work product" means legal research, records, correspondence, reports, and memoranda, both written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense counsel, or their staff or investigators."

Section 2. Section 46-14-202, MCA, is amended to read:

"46-14-202. Examination of defendant. (1) If the defendant or the defendant's counsel files a written motion requesting an examination or if the issue of the defendant's fitness to proceed is raised by the district court, prosecution, or defense counsel, the district court shall appoint at least one qualified psychiatrist, ~~or~~ licensed clinical psychologist, *or advanced practice registered nurse* or shall request the superintendent of the Montana state hospital to designate at least one qualified psychiatrist, ~~or~~ licensed clinical psychologist, ~~which designation~~ *or advanced practice registered nurse, who* may be or include the superintendent, to examine and report upon the defendant's mental condition.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding 60 days or a longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist, ~~or~~ licensed clinical psychologist, *or advanced practice registered nurse* retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination, any method may be employed that is accepted by the medical or psychological profession for the examination of those alleged to be suffering from mental disease or defect.

(4) If the defendant is indigent or the examination occurs at the request of the prosecution, the cost of the examination must be paid by the county or the state, or both, according to procedures established under 3-5-902(1)."

Section 3. Section 46-14-204, MCA, is amended to read:

"46-14-204. Prosecution's right to examination. (1) When the defense discloses the report of the examination to the prosecution or files a notice of the intention to rely on a defense of mental disease or defect, the prosecution is entitled to have the defendant examined by a qualified psychiatrist, ~~or~~ licensed clinical psychologist, *or advanced practice registered nurse.*

(2) The report of the examination must be disclosed to the defense within 10 days of its receipt by the prosecution."

Section 4. Section 46-14-205, MCA, is amended to read:

"46-14-205. Access to defendant for examination. If either the defendant or the prosecution wishes the defendant to be examined by a qualified psychiatrist, ~~or~~ licensed clinical psychologist, *or advanced practice registered nurse* selected by the one proposing the examination in order to determine the defendant's fitness to proceed or whether the defendant had, at the time the offense was committed, a particular state of mind that is an essential element of the offense, the examiner ~~shall~~ *must* be permitted to have reasonable access to the defendant for the purpose of the examination."

Section 5. Section 46-14-213, MCA, is amended to read:

"46-14-213. Psychiatric or psychological testimony upon trial. (1) Upon trial, any psychiatrist, ~~or~~ licensed clinical psychologist, *or advanced practice registered nurse* who reported under 46-14-202 or 46-14-206 may be called as a witness by the prosecutor or by the defense. Both the prosecution and the defense may summon any other qualified psychiatrist, ~~or~~ licensed clinical psychologist, *or advanced practice registered nurse* to testify, but ~~no one~~ *only a person* who has ~~not~~ examined the defendant is competent to testify to an expert opinion with respect to the mental condition of the defendant, as distinguished from the validity of the procedure followed by or the general scientific propositions stated by another witness.

(2) When a psychiatrist, ~~or~~ licensed clinical psychologist, *or advanced practice registered nurse* who has examined the defendant testifies concerning the defendant's mental condition, the psychiatrist, ~~or~~ licensed clinical psychologist, *or advanced practice registered nurse* may make a statement as to the nature of the examination and the medical or psychological diagnosis of the mental condition of the defendant. The expert may make any explanation reasonably serving to clarify the expert's examination and diagnosis, and the expert may be cross-examined as to any matter bearing on the expert's competency or credibility or the validity of the expert's examination or medical or psychological diagnosis. A psychiatrist, ~~or~~ licensed clinical psychologist, *or advanced practice registered nurse* may not offer an opinion to the jury on the ultimate issue of whether the defendant did or did not have a particular state of mind that is an element of the offense charged."

Section 6. Section 46-14-302, MCA, is amended to read:

"46-14-302. Discharge or release upon motion of director. (1) If the director of the department of public health and human services believes that a person committed to the director's custody under 46-14-301 may be discharged or released on condition without danger to the person or others because the person no longer suffers from a mental disease or defect that causes the person to present a substantial risk of serious bodily injury or death to the person or others, a substantial risk of an imminent threat of physical injury to the person or others, or a substantial risk of substantial property damage, the director shall make application for the discharge or release of the person in a report to the district court by which the person was committed unless that court transfers jurisdiction to the court in the district in which the person has been placed and shall send a copy of the application and report to the prosecutor of the county from which the person was committed.

(2) Either the director of the department of public health and human services or the person may also make application to the court for discharge or release as part of the person's annual treatment review.

(3) The court shall then appoint at least one person who is ~~either~~ a qualified psychiatrist, ~~or~~ licensed clinical psychologist, *or advanced practice registered nurse* to examine the person and to report as to the person's mental condition within 60 days or a longer period that the court determines to be necessary for the purpose. To facilitate the examinations and the proceedings on the examinations, the court may have the person confined in any mental health facility located near the place where the court sits that may be designated by the director of the department of public health and human services as suitable for the temporary detention of persons suffering from mental disease or defect.

(4) The committed person or the person's attorney may secure a professional person of the committed person's choice to examine the committed person and to testify at the hearing. If the person wishing to secure the testimony of a professional person is unable to do so because of financial reasons, the court shall appoint an additional professional person to perform the examination. Whenever possible, the court shall allow the committed person or the person's attorney a reasonable choice of an available professional person qualified to perform the requested examination. The professional person must be compensated by the department of public health and human services.

(5) If the court is satisfied by the report filed under subsection (1) and the testimony of the reporting psychiatrist, ~~or~~ licensed clinical psychologist, *or advanced practice registered nurse* that the committed person may be discharged or released on condition because the person no longer suffers from a mental disease or defect that causes the person to present a substantial risk of serious bodily injury or death to the person or others, a substantial risk of an imminent threat of physical injury to the person or others, or a substantial risk of substantial property damage, the court shall order the person's discharge.

(6) (a) If the court is not satisfied, it shall promptly order a hearing to determine whether the person may safely be discharged or released on the grounds that the person no longer suffers from a mental disease or defect that causes the person to present a substantial risk of:

(i) serious bodily injury or death to the person or others;

(ii) an imminent threat of physical injury to the person or others; or

(iii) substantial property damage.

(b) A hearing is considered a civil proceeding, and the burden is upon the state to prove by clear and convincing evidence that the person may not be safely discharged or released because the person continues to suffer from a mental disease or defect that causes the person to present a substantial risk of:

(i) serious bodily injury or death to the person or others;

(ii) an imminent threat of physical injury to the person or others; or

(iii) substantial property damage.

(c) According to the determination of the court upon the hearing, the committed person must then be discharged or released on conditions that the court determines to be necessary or must be recommitted to the custody of the director of the department of public health and human services, subject to discharge or release only in accordance with the procedures provided in ~~this section and~~ 46-14-303 *and this section.*"

Section 7. Section 46-15-323, MCA, is amended to read:

"**46-15-323. Disclosure by defendant.** (1) At any time after the filing in district court of an indictment or information, the defendant, in connection with the particular crime charged~~, shall~~ *and* upon written request of the prosecutor and approval of the court:

(a) *shall* appear in a lineup;

(b) *shall* speak for identification by witnesses;

(c) *must* be fingerprinted, palm printed, footprinted, or voiceprinted;

(d) *shall* pose for photographs not involving reenactment of an event;

(e) *shall* try on clothing;

(f) *shall* permit the taking of samples of the defendant's hair, blood, saliva, urine, or other specified materials that *do not* involve ~~no~~ unreasonable bodily intrusions;

(g) *shall* provide handwriting samples; or

(h) *shall* submit to a reasonable physical or medical inspection; however, the inspection does not include psychiatric or psychological examination.

(2) Within 30 days after the arraignment or at a later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force, or mistaken identity.

(3) Within 10 days after receiving a report of the defendant's mental condition from a psychiatrist, ~~or~~ psychologist, *or advanced practice registered nurse* or at a later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of the defense that ~~due to~~ *because of* a mental disease or defect, the defendant did not have a particular state of mind that is an essential element of the offense charged.

(4) The notice must specify for each defense the names and addresses of the persons, other than the defendant, whom the defendant may call as witnesses in support of the defense, together with all written reports or statements made by them, including all reports and statements concerning the results of physical examinations, scientific tests, experiments, or comparisons, except that the defendant need not include a privileged report or statement unless the defendant

intends to use the privileged report or statement, or the witness who made it, at trial.

(5) Prior to trial, the defendant may, upon motion and showing of good cause, add to the list of witnesses the names of any additional witnesses and disclose their reports or statements as required by this section. After the trial commences, no ~~witnesses~~ *witness* may be called by the defendant in support of these defenses unless the name of the witness is included on the list and the witness's report or statement has been disclosed as required by this section, except for good cause shown.

(6) Within 30 days after the arraignment or at a later time as the court may for good cause permit, the defendant shall make available to the prosecutor for testing, examination, or reproduction:

(a) the names, addresses, and statements of all persons, other than the defendant, whom the defendant may call as witnesses in the defense case in chief, together with their statements;

(b) the names and addresses of experts whom the defendant may call at trial, together with the results of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and statements made by these experts in connection with the particular case; and

(c) all papers, documents, photographs, and other tangible objects that the defendant may use at trial.

(7) The defendant's obligation under this section extends to material and information within the possession or control of the defendant, defense counsel, and defense counsel's staff or investigators.

(8) Upon motion of the prosecutor showing that the prosecutor has substantial need in the preparation of the case for additional material or information not otherwise provided for, that the prosecutor is unable, without undue hardship, to obtain the substantial equivalent by other means, and that disclosure of the material or information will not violate the defendant's constitutional rights, the court, in its discretion, may order any person to make the material or information available to the prosecutor. The court may, upon request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive. The defense counsel may not be required to prepare or disclose summaries of witnesses' testimony."

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2001

CHAPTER NO. 304

[HB 447]

AN ACT APPROPRIATING UP TO $1 MILLION FROM THE FEDERAL SPECIAL REVENUE FUND TO PLAN FOR RECONSTRUCTING AND PAVING THE ROAD FROM STATE SECONDARY HIGHWAY 279 TO MARYSVILLE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. (1) Contingent upon receipt of federal funding specifically allocated to the state of Montana for the benefit of the Marysville road, there is appropriated to the department of transportation for the biennium beginning July 1, 2001, an amount equal to the allocation up to $1 million from the federal special revenue fund established in 17-2-102.

(2) The department of transportation shall use the money to plan for reconstructing and paving the road leading from state secondary highway 279 to Marysville.

Section 2. Effective date. [This act] is effective July 1, 2001.

Approved April 21, 2001

CHAPTER NO. 305

[HB 608]

AN ACT PROVIDING A PROCEDURE FOR RECORDING NONMONETARY SETTLEMENTS OF CONTESTED CASES; AMENDING SECTIONS 2-4-603 AND 17-2-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-603, MCA, is amended to read:

"**2-4-603. Informal disposition and hearings — waiver of administrative proceedings — recording and use of settlement proceeds.** (1) *(a)* Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(b) Unless otherwise provided by law, if a stipulation, agreed settlement, consent order, or default results in a *monetary* settlement involving an agency or the state, ~~the~~ settlement proceeds~~, including cash or other assets, whether received by the state or a third party,~~ must be ~~recorded~~ *deposited* in the account or fund in which the penalty, fine, or other payment would be ~~recorded~~ *deposited* if the contested case had proceeded to final decision. If there is no account or fund designated for ~~recording of a~~ *the* fine, penalty, or payment in the type of action, then the settlement must be ~~recorded~~ *deposited* in the general fund. ~~The provisions of this section do not apply to the portions of a settlement negotiated on behalf of or paid to a party other than the state.~~

(c) If a stipulation, agreed settlement, consent order, or default results in a nonmonetary settlement involving an agency or the state, settlement proceeds, whether received by the state or a third party, must be recorded in a nonstate, nonfederal state special revenue account established pursuant to 17-2-102(1)(a)(ii)(A) for the purpose of recording nonmonetary settlements.

(2) Except as otherwise provided, parties to a contested case may jointly waive in writing a formal proceeding under this part. The parties may then utilize informal proceedings under 2-4-604. Parties to contested case proceedings held under Title 37 or under any other provision relating to licensure to pursue a profession or occupation may not waive formal proceedings.

(3) If a contested case does not involve a disputed issue of material fact, parties may jointly stipulate in writing to waive contested case proceedings and may directly petition the district court for judicial review pursuant to 2-4-702.

The petition must contain an agreed statement of facts and a statement of the legal issues or contentions of the parties upon which the court, together with the additions it may consider necessary to fully present the issues, may make its decision."

Section 2. Section 17-2-102, MCA, is amended to read:

"**17-2-102. Fund structure.** (1) For the purpose of ensuring strict accountability for all revenue received and spent, there are in the state treasury only the following fund categories and types:

(a) the governmental fund category, which includes:

(i) the general fund, which accounts for all financial resources except those required to be accounted for in another fund;

(ii) the special revenue fund type, which accounts for the proceeds of specific revenue sources (other than expendable trusts or major capital projects) that are legally restricted to expenditure for specified purposes. The financial activities of the special revenue fund type are subdivided, for operational purposes, into the following funds to serve the purpose indicated:

(A) The state special revenue fund consists of money *and other proceeds* from state and other nonfederal sources deposited in the state treasury that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government and money *and other proceeds* from other nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation.

(B) The federal special revenue fund consists of money deposited in the treasury from federal sources, including trust income, that is used for the operation of state government.

(iii) the capital projects fund type, which accounts for financial resources to be used for the acquisition or construction of major capital facilities, other than those financed by proprietary funds or trust funds; and

(iv) the debt service fund type, which accounts for the accumulation of resources for and the payment of general long-term debt principal and interest;

(b) the proprietary fund category, which includes:

(i) the enterprise fund type, which accounts for operations:

(A) that are financed and operated in a manner similar to private business enterprises whenever the intent of the legislature is that costs (i.e., expenses, including depreciation) of providing goods or services to the general public on a continuing basis are to be financed or recovered primarily through user charges; or

(B) whenever the legislature has decided that periodic determination of revenue earned, expenses incurred, or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes; and

(ii) the internal service fund type, which accounts for the financing of goods or services provided by one department or agency to other departments or agencies of state government or to other governmental entities on a cost-reimbursed basis;

(c) the fiduciary fund category, which includes trust and agency fund types used to account for assets held by state government in a trustee capacity or as an agent for individuals, private organizations, other governmental entities, or other funds. These include the:

(i) expendable trust fund type;

(ii) nonexpendable trust fund type;

(iii) investment trust fund type;

(iv) pension trust fund type; and

(v) agency fund type.

(d) the higher education funds, which include:

(i) the current fund, which accounts for money deposited in the state treasury that is used to pay current operating costs relating to instruction, research, public service, and allied support operations and programs conducted within the Montana university system. The financial activities of the current fund are subdivided, for operational purposes, into the four following subfunds to serve the purpose indicated:

(A) The unrestricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations and is free of externally imposed restrictions, except those imposed by the legislature.

(B) The restricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations but only for purposes imposed by sources external to the board of regents and the legislature.

(C) The designated subfund segregates that portion of the current fund's financial resources that is associated with general operations but is separately classified in order to accumulate costs that are to be recharged as allocated to other funds or subfunds, identifies financial activities related to special organized activities of educational departments in which the activity is fully supported by supplemental assessments, and identifies special supply and facility fees that are approved for collections beyond normal course fees and their disposition.

(D) The auxiliary subfund segregates that portion of the current fund's financial resources that is devoted to providing essential on-campus services primarily to students, faculty, or staff wherein a fee, which is directly related to but does not necessarily equal the cost of the service provided, is charged to the consumer.

(ii) the student loan fund, which accounts for money deposited in the state treasury that may be loaned to students, faculty, or staff for purposes related to education, organized research, or public services by the Montana university system;

(iii) the endowment fund, which accounts for money deposited in the state treasury by the Montana university system wherein the principal portion of the amount received is nonexpendable but is available for investment, thus producing consumable income. Expendable earnings on endowment funds are to be transferred to appropriate operating funds pursuant to prevailing administrative requirements.

(iv) the annuity and life income fund, which accounts for money deposited in the state treasury by the Montana university system under an agreement whereby the money is made available on condition that the receiving unit of the

Montana university system binds itself to pay stipulated amounts periodically to the donor or others designated by the donor over a specified period of time;

(v) the plant fund, which accounts for those financial resources allocated to or received by the Montana university system for capital outlay purposes or to retire long-term debts associated with construction or acquisition of fixed assets and the net accumulative results of these activities; and

(vi) the agency fund, which accounts for money deposited in the state treasury wherein the Montana university system acts in the capacity of a custodian or fiscal agent for individual students, faculty, staff, and qualified organizations.

(2) In addition to the funds provided for in subsection (1), there are in the state treasury the following account groups:

(a) the fixed assets account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's general fixed assets, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v); and

(b) the long-term debt account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's unmatured general long-term liabilities, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v)."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2001

CHAPTER NO. 306

[HB 642]

AN ACT CLARIFYING THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES FOR THE PURPOSES OF THE RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAX AND FOR OTHER PURPOSES; AMENDING SECTIONS 15-1-501, 15-36-324, AND 82-11-135, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-501, MCA, is amended to read:

"**15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

(a) income taxes, interest, and penalties collected under chapter 30;

(b) except as provided in 15-31-702, all taxes, interest, and penalties collected under chapter 31;

(c) oil and natural gas production taxes ~~allocated~~ *distributed to the general fund* under 15-36-324~~(8)(a) and (10)(a)~~;

(d) electrical energy producer's license taxes under chapter 51;

(e) [an amount equal to 25% of] the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;

(f) liquor license taxes under Title 16;

(g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(h) estate taxes under Title 72, chapter 16; and

(i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.

(2) The department shall also deposit to the credit of the state general fund all money received from the collection of license taxes and fees and all net revenue and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded."

Section 2. Section 15-36-324, MCA, is amended to read:

"**15-36-324. Distribution of taxes — rules.** (1) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) Except as provided in subsections (3) through (5), oil production taxes must be distributed as follows:

(a) The amount equal to 39.3% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (9).

(b) The remaining 60.7% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on qualifying production occurring during the first 12 months of production must be distributed as provided in subsection (10).

(4) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(b) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (9).

(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the first 10 barrels of stripper oil production wells must be distributed as provided in subsection (10).

(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper well exemption production from ~~pre-1985~~ *pre-1999* wells and ~~post-1985~~ *post-1999* wells must be distributed as provided in subsection (10).

(6) Except as provided in subsections (7) and (8), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (11).

(b) The remaining 86% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (6)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(7) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from wells occurring during the first 12 months of production must be distributed as provided in subsection (10).

(8) The amount equal to 100% of natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(9) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil production taxes specified in subsections (2)(a) and (4)(b), including late payment interest and penalty collected, as follows:

(a) 86.21% to the state general fund;

(b) 5.17% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 8.62% to be distributed as ~~provided in 15-38-106(2)~~ *follows:*

(i) 50% to the resource indemnity trust fund of the nonexpendable trust fund type;

(ii) 25% to the reclamation and development grants special revenue account established in 90-2-1104; and

(iii) 25% to the orphan share account established in 75-10-743.

(10) The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3), (4)(a), (5)(a), (5)(c), (7), and (8), including late payment interest and penalty collected, as follows:

(a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(b) 62.5% to be distributed as ~~provided in 15-38-106(2)~~ *follows:*

(i) 50% to the resource indemnity trust fund of the nonexpendable trust fund type;

(ii) 25% to the reclamation and development grants special revenue account established by 90-2-1104; and

(iii) 25% to the orphan share account established in 75-10-743.

(11) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:

(a) 76.8% to the state general fund;

(b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 14.5% to be distributed as ~~provided in 15-38-106(2)~~ *follows:*

(i) 50% to the resource indemnity trust fund of the nonexpendable trust fund type;

(ii) 25% to the reclamation and development grants special revenue account established in 90-2-1104; and

(iii) 25% to the orphan share account established in 75-10-743.

(12) (a) By the dates referred to in subsection (13), the department shall, except as provided in subsection (12)(b), calculate and distribute oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) to each eligible county in proportion to the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) that are attributable to production in that county.

(b) The department shall distribute 5% of the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) from pre-1999 wells to eligible counties in proportion to the underfunding that would have occurred from the tax liability distribution of pre-1985 oil and natural gas production taxes for production in calendar year 1997.

(c) Except as provided in subsection (12)(d), the county treasurer shall distribute the money received under subsection (12)(b) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(d) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (12)(c), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (12)(d)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(e) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (12)(e)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(f) The county treasurer shall distribute oil and natural gas production taxes received under subsection (12)(a) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The allocation to the county in subsection (12)(f) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(h) The money distributed in subsection (12)(f) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(i) The oil and natural gas production taxes distributed under subsection (12)(c) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the state treasurer.

(j) The oil and natural gas production taxes distributed under subsection (12)(f) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the state treasurer.

(k) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (12)(i) and (12)(j) is for the exclusive use and benefit of the county and school taxing units.

(13) The department shall remit the amounts to be distributed in subsection (12) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(14) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes and for county bonding purposes.

(15) (a) In the event that the board of oil and gas conservation revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board of oil and gas conservation for the expenses of the board.

(b) Before the department adopts a rule pursuant to subsection (15)(a), it shall present the proposed rule to the appropriate administrative rule review committee.

(16) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502."

Section 3. Section 15-36-324, MCA, is amended to read:

"**15-36-324. Distribution of taxes — rules.** (1) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) Except as provided in subsections (3) through (5), oil production taxes must be distributed as follows:

(a) The amount equal to 39.3% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (9).

(b) The remaining 60.7% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on

qualifying production occurring during the first 12 months of production must be distributed as provided in subsection (10).

(4) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(b) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (9).

(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the first 10 barrels of stripper oil production wells must be distributed as provided in subsection (10).

(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper well exemption production from ~~pre-1985~~ *pre-1999* wells and ~~post-1985~~ *post-1999* wells must be distributed as provided in subsection (10).

(6) Except as provided in subsections (7) and (8), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (11).

(b) The remaining 86% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (6)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(7) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from wells occurring during the first 12 months of production must be distributed as provided in subsection (10).

(8) The amount equal to 100% of natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(9) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil production taxes specified in subsections (2)(a) and (4)(b), including late payment interest and penalty collected, as follows:

(a) 86.21% to the state general fund;

(b) 5.17% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 8.62% to be distributed as ~~provided in 15-38-106(2)~~ *follows:*

(i) 50% to the reclamation and development grants special revenue account established in 90-2-1104; and

(ii) 50% to the orphan share account established in 75-10-743.

(10) The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3), (4)(a), (5)(a), (5)(c), (7), and (8), including late payment interest and penalty collected, as follows:

(a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(b) 62.5% to be distributed as ~~provided in 15-38-106(2)~~ *follows:*

(i) 50% to the reclamation and development grants special revenue account established in 90-2-1104; and

(ii) 50% to the orphan share account established in 75-10-743.

(11) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:

(a) 76.8% to the state general fund;

(b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 14.5% to be distributed as ~~provided in 15-38-106(2)~~ *follows:*

(i) 50% to the reclamation and development grants special revenue account established in 90-2-1104; and

(ii) 50% to the orphan share account established in 75-10-743.

(12) (a) By the dates referred to in subsection (13), the department shall, except as provided in subsection (12)(b), calculate and distribute oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) to each eligible county in proportion to the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) that are attributable to production in that county.

(b) The department shall distribute 5% of the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) from pre-1999 wells to eligible counties in proportion to the underfunding that would have occurred from the tax liability distribution of pre-1985 oil and natural gas production taxes for production in calendar year 1997.

(c) Except as provided in subsection (12)(d), the county treasurer shall distribute the money received under subsection (12)(b) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(d) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (12)(c), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (12)(d)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(e) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (12)(e)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(f) The county treasurer shall distribute oil and natural gas production taxes received under subsection (12)(a) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The allocation to the county in subsection (12)(f) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(h) The money distributed in subsection (12)(f) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(i) The oil and natural gas production taxes distributed under subsection (12)(c) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the state treasurer.

(j) The oil and natural gas production taxes distributed under subsection (12)(f) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the state treasurer.

(k) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (12)(i) and (12)(j) is for the exclusive use and benefit of the county and school taxing units.

(13) The department shall remit the amounts to be distributed in subsection (12) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(14) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes and for county bonding purposes.

(15) (a) In the event that the board of oil and gas conservation revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board of oil and gas conservation for the expenses of the board.

(b) Before the department adopts a rule pursuant to subsection (15)(a), it shall present the proposed rule to the appropriate administrative rule review committee.

(16) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502."

Section 4. Section 82-11-135, MCA, is amended to read:

"**82-11-135. Money earmarked for board expenses.** The state treasurer shall deposit all money ~~collected~~ *distributed to the board* under 15-36-324~~(8)(b), (9), and (10)(b)~~ and *collected* under this chapter in the state special revenue fund. The money must be used for the purpose of paying all expenses of the board and for no other purpose. The board shall use the money subject to biennial appropriations by the legislature. Income and interest from investment of the board's ~~moneys~~ *money* in the state special revenue fund must be credited to the board."

Section 5. Effective dates — contingency. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 3] is effective July 1 of the first year following the date that the governor by executive order certifies to the secretary of state that the resource indemnity trust fund balance has reached $100 million. The secretary of state shall notify the department of revenue, the department of administration, the code commissioner, and the legislative fiscal division of this certification.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to distributions made after June 30, 2000.

Approved April 21, 2001

CHAPTER NO. 307

[HB 650]

AN ACT PROVIDING FOR A CENTRALIZED FINANCIAL ASSISTANCE CENTER WITHIN THE DEPARTMENT OF COMMERCE; ESTABLISHING DUTIES RELATED TO INFORMATION EXCHANGE AND COORDINATION; REQUIRING THE DEPARTMENT OF COMMERCE TO REVIEW THE DEVELOPMENT AND ACTIVITIES OF THE FINANCIAL ASSISTANCE CENTER AND REPORT TO THE 58TH LEGISLATURE WITH RECOMMENDATIONS FOR EXPANDING OR MODIFYING THE PROGRAM; ELIMINATING CERTAIN UNFUNDED OR UNUSED LOAN AND GRANT PROGRAMS; AMENDING SECTIONS 17-6-305, 17-6-308, 20-25-1006, AND 90-6-305, MCA; REPEALING SECTIONS 17-6-501, 17-6-502, 17-6-503, 17-6-504, 17-6-505, 17-6-509, 17-6-510, 17-6-511, 17-6-512, 60-11-1101, 60-11-1102, 60-11-1103, 60-11-1104, 60-11-1105, 60-11-1106, 60-11-1107, 60-11-1108, 60-11-1109, 60-11-1110, 60-11-1111, 60-11-1112, 60-11-1113, 60-11-1201, 60-11-1202, 60-11-1203, 60-11-1204, 60-11-1205, 60-11-1206, 60-11-1207, 60-11-1208, 60-11-1209, 60-11-1210, 60-11-1211, 60-11-1212, 60-11-1213, AND 90-6-306, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 7] may be cited as the "Economic Development Financial Assistance Act".

Section 2. Purposes. The purposes of [sections 1 through 7] are to:

(1) provide a convenient, accessible, and comprehensive clearinghouse for information about available financial assistance offered by the state, including but not limited to loans, grants, and tax credits;

(2) provide financial assistance for the purpose of establishing financing for economic development activities; and

(3) streamline loan applications and maintain a central clearinghouse of information to ensure an effective and timely response to the needs of individuals, the business community, and governmental entities seeking state financial assistance.

Section 3. Definitions. As used in [sections 1 through 7] the following definitions apply:

(1) "Center" means the financial assistance center provided for in [section 4].

(2) "Financial assistance" means loans, grants, and tax credits or incentive programs offered by the state to facilitate economic development activities and infrastructure development, repair, or replacement.

Section 4. Financial assistance center — department responsibilities. (1) There is a financial assistance center within the department of commerce.

(2) The center shall:

(a) compile and include a comprehensive list of all state financial assistance programs, including but not limited to:

(i) eligible recipients;

(ii) conditions required for an award of a loan or grant;

(iii) limits on the amount of funds available;

(iv) application information; and

(v) lending or granting cycles;

(b) maintain and provide information related to nonstate loan and grant programs by cooperating and coordinating with federal loan and grant programs, commercial lenders, and nonprofit economic development lending organizations; and

(c) provide regular opportunities for financial institutions, loan and grant applicants, local economic development organizations, business enterprises, and other federal, state, and local governmental entities to review the center and provide advice and recommendations regarding the expansion or modification of the center.

(3) The department shall:

(a) develop an internet website specifically designed to assist loan and grant applicants in gathering information. The website must, at a minimum, contain the following features:

(i) a prominently placed world wide web link representing the financial assistance programs that allows for multiple methods for website navigation;

(ii) a comprehensive list of the types of loans and grants available from the state, outlined by agency, subject, area, or speciality; and

(iii) an agency-specific loan and grant list with appropriate links to personnel responsible for administering the program;

(b) cooperate with the office of the secretary of state to ensure that rules governing electronic transactions, digital signatures, and digital notary can be applied to electronic loan and grant applications;

(c) provide direct and individual service to interested applicants to ensure that:

(i) adequate information regarding eligibility requirements for financial assistance is received and understood;

(ii) contacts and appointments are made with the various state agencies administering financial assistance programs;

(iii) technical and professional assistance is provided to facilitate the accurate and timely completion of business feasibility plans and financial assistance applications; and

(iv) periodic updates are provided to applicants regarding the status of financial assistance applications and new or emerging financial assistance opportunities;

(d) develop a marketing plan to provide information about the center to individuals, commercial financial institutions, local economic development organizations, business enterprises, and local governments;

(e) coordinate with the department of revenue to provide:

(i) information related to applicable business licensing and registration requirements; and

(ii) relevant information related to tax credits and tax incentive programs for economic development activities;

(f) collect and maintain a supply of loan and grant application forms and information for all state loan and grants and actively assist interested applicants in answering application questions;

(g) collect and maintain a master list of state loan opportunities by type of loan, eligibility requirements, lending cycles, and availability; and

(h) review rules, application forms and processes, and lending cycles of loan and grant programs administered by other state agencies and make recommendations to those agencies related to the development of uniform loan and grant requirements.

(4) The department may gather and disseminate information related to nonstate loan sources and perform other administrative tasks delegated to the department to improve state lending processes and loan and grant program administration.

Section 5. Cooperation between state agencies and department — dissemination of information. (1) State agencies administering financial assistance programs shall cooperate with the department of commerce in providing information for the center.

(2) The department shall include all of the information received from other agencies in the center.

Section 6. Information coordination. (1) The department shall encourage and invite the federal government, local governments, other political subdivisions, local economic development corporations, and private financial institutions to make lending information available to the department of commerce.

(2) The department may, when practical, provide persons with information from other lenders when requested.

Section 7. Rulemaking. The department of commerce may adopt rules to:

(1) provide for uniform loan and grant applications, when appropriate;

(2) coordinate the announcement and marketing of available financial assistance programs that are administered by other state agencies;

(3) provide for the specific requirements necessary to develop useful and logical navigation pathways and cross-references for a financial assistance program internet website and a standard form of internet links and access, consistent with the financial assistance program website, for individual agency websites that administer financial assistance programs; and

(4) develop processes and procedures necessary to effectively implement the provisions of [sections 1 through 7].

Section 8. Section 17-6-305, MCA, is amended to read:

"17-6-305. Investment of up to twenty-five percent of coal tax trust fund in Montana economy — report by board. (1) Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to 25% of the permanent coal tax trust fund established in 17-6-203(6) in the Montana economy, with special emphasis on investments in new or expanding locally owned enterprises. Investments made pursuant to this section do not include investments made pursuant to 17-6-309(2). For purposes of calculating the 25% of the permanent coal tax trust fund, the board shall include all funds listed in 17-5-703(1). The portion of the permanent coal tax trust fund contained in portfolios formerly administered by the Montana board of science and technology development ~~and administered by the department pursuant to part 5 of this chapter~~ is included in the 25% of the trust fund allocated to the board for in-state investment under this section.

(2) In determining the probable income to be derived from investment of this revenue, the long-term benefit to the Montana economy must be considered.

(3) The legislature may provide additional procedures to implement this section.

(4) The board shall include a report on the investments made under this section as a part of the information required by 17-7-111."

Section 9. Section 17-6-308, MCA, is amended to read:

"**17-6-308. Authorized investments.** (1) Except as provided in subsections (2) through (4) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The board shall manage the seed capital and research and development loan portfolios created by the former Montana board of science and technology development. The board shall establish an appropriate repayment schedule for all outstanding research and development loans made to the university system. The board is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research and development loan portfolios, except agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. The board shall administer the agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. ~~Until the department makes a loan pursuant to the provisions of part 5 of this chapter, the $915,000 in funds under its administration must be invested by the board pursuant to the provisions of 17-6-201.~~ As loans made ~~pursuant to part 5 of this chapter~~ *by the former Montana board of science and technology development* are repaid, the board shall deposit the proceeds or loans made from the coal severance tax trust fund in the coal severance tax permanent fund until all investments are paid back with 7% interest.

(4) The board shall allow the Montana health facility authority to administer $15 million of the permanent coal tax trust fund for capital projects. Until the authority makes a loan pursuant to the provisions of Title 90, chapter 7, the funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As loans for capital projects made pursuant to this subsection are repaid, the principal and interest payments on the loans must be

deposited in the coal severance tax permanent fund until all principal and interest have been repaid. The board and the authority shall calculate the amount of the interest charge. Individual loan amounts may not exceed 10% of the amount administered under this subsection.

(5) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations.

(6) All repayments of proceeds pursuant to subsection (3) of investments made from the coal severance tax trust fund must be deposited in the coal severance tax permanent fund."

Section 10. Section 20-25-1006, MCA, is amended to read:

"**20-25-1006. Motorcycle safety training course — tuition.** (1) The board of regents may prescribe tuition rates for the motorcycle safety training courses. The tuition collected must be deposited in the state motorcycle safety account, as provided in 20-25-1002.

(2) The board of regents may delegate authority to a unit of the university system to conduct motorcycle safety training courses and to approve instructors of motorcycle safety training.

(3) State agencies and subdivisions of the state may provide facilities, such as classrooms and outdoor paved areas or other resources, for conducting motorcycle safety training courses.

(4) Subject to the availability of funds, the board of regents may pay for construction, repair, or purchases ~~or award grants~~ from the state motorcycle safety account to provide facilities for motorcycle safety training courses."

Section 11. Section 90-6-305, MCA, is amended to read:

"**90-6-305. Hard-rock mining impact board — general powers.** (1) The board may:

(a) retain professional staff, including its administrative staff, and retain consultants and ~~advisors~~ *advisers,* notwithstanding the provisions of 2-15-121;

(b) adopt rules governing its proceedings, determinations, and administration of this part;

(c) ~~award grants to local government units subject to 90-6-306;~~

~~(d)~~ make payments to local government units from money paid to the hard-rock mining impact account as provided in 90-6-307;

~~(e)~~*(d)* make determinations as provided in 90-6-307, 90-6-311, and 90-6-403(3); and

~~(f)~~*(e)* accept grants and other funds to be used in carrying out this part.

(2) The provisions of the Montana Administrative Procedure Act apply to the proceedings and determinations of the board."

Section 12. Repealer. Sections 17-6-501, 17-6-502, 17-6-503, 17-6-504, 17-6-505, 17-6-509, 17-6-510, 17-6-511, 17-6-512, 60-11-1101, 60-11-1102, 60-11-1103, 60-11-1104, 60-11-1105, 60-11-1106, 60-11-1107, 60-11-1108, 60-11-1109, 60-11-1110, 60-11-1111, 60-11-1112, 60-11-1113, 60-11-1201, 60-11-1202, 60-11-1203, 60-11-1204, 60-11-1205, 60-11-1206, 60-11-1207, 60-11-1208, 60-11-1209, 60-11-1210, 60-11-1211, 60-11-1212, 60-11-1213, and 90-6-306, MCA, are repealed.

Section 13. Department of commerce program review. The department of commerce shall review the activities of the financial assistance center and all financial assistance programs administered by the state and develop recommendations for the 58th legislature identifying options for consolidation of financial assistance programs into a single agency.

Section 14. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 90, chapter 1, part 1, and the provisions of Title 90, chapter 1, part 1, apply to [sections 1 through 7].

Section 15. Effective date. [This act] is effective July 1, 2001.

Approved April 21, 2001

CHAPTER NO. 308

[SB 80]

AN ACT CLARIFYING THE MANAGEMENT RESPONSIBILITIES OF THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION; ADDING THREE MEMBERS TO THE COMMISSION; ALLOWING FOR THE HIRING OF ADDITIONAL COMMISSION STAFF; ALLOWING THE COMMISSION TO CONDUCT BUILDING PRESERVATION, STABILIZATION, OR MAINTENANCE COSTING OVER $200,000 WITHOUT LEGISLATIVE CONSENT UNDER CERTAIN CIRCUMSTANCES; PROVIDING THAT INTEREST ON MONEY IN THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT ACCOUNT BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND TO THE CREDIT OF THE COMMISSION; AND AMENDING SECTIONS 22-3-1001, 22-3-1002, 22-3-1003, AND 22-3-1004, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-3-1001, MCA, is amended to read:

"**22-3-1001. Purpose.** The purpose of this part is to acquire *and manage*, on behalf of the state, properties that possess outstanding historical value, display exceptional qualities worth preserving, are genuinely representative of the state's culture and history, and demonstrate the ability to become economically self-supporting. The Montana heritage preservation and development commission shall achieve this purpose by purchasing fee title interests in real and personal property *and by managing those properties in a manner that protects the properties and encourages economic independence.*"

Section 2. Section 22-3-1002, MCA, is amended to read:

"**22-3-1002. Montana heritage preservation and development commission.** (1) There is a Montana heritage preservation and development commission. The commission is attached to the Montana historical society for administrative purposes. The commission consists of ~~11~~ *14* members. The members shall broadly represent the state. ~~Seven~~ *Nine* members must be appointed by the governor, one member must be appointed by the president of the senate, and one member must be appointed by the speaker of the house. The director of the Montana historical society, ~~and~~ the director of the department of fish, wildlife, and parks, *and the director of the department of commerce* shall serve as members.

(2) Of the members appointed by the governor:

(a) one member must have extensive experience in managing facilities that cater to the needs of tourists;

(b) one member must have experience in community planning;

(c) one member must have experience in historic preservation;

(d) two members must have broad experience in business;

(e) one member must be a member of the tourism advisory council established in 2-15-1816; ~~and~~

(f) one member must be a Montana historian*; and*

(g) two members must be from the public at large.

(3) Except for the initial appointments, members appointed by the governor shall serve 3-year terms. Legislative appointees shall serve 2-year terms. If a vacancy occurs, the appointing authority shall make an appointment for the unexpired portion of the term.

(4) *(a)* The commission may employ*:*

(i) an executive director who has general responsibility for the selection and management of commission staff, developing recommendations for the purchase of property, and overseeing the management of acquired property ~~and~~*;*

(ii) a curator who is responsible for the display and preservation of the acquired property*; and*

(iii) other staff that the commission and the executive director determine are necessary to manage and operate commission properties.

(b) The commission shall prescribe the duties and annual salary of the executive director, ~~and~~ the curator, *and other commission staff*."

Section 3. Section 22-3-1003, MCA, is amended to read:

"**22-3-1003. Powers of commission — contracts — rules.** (1) (a) The Montana heritage preservation and development commission may contract with private organizations to assist in carrying out the purpose of 22-3-1001. The term of a contract may not exceed 20 years.

(b) Notwithstanding the provisions of Title 18, the contracts may be let by direct negotiation. The contracts may be entered into directly with a vendor and are not subject to state procurement laws.

(c) Architectural and engineering review and approval do not apply to the historic renovation projects.

(d) The contracts must provide for the payment of prevailing wages.

(e) A contract for supplies or services, or both, may be negotiated in accordance with commission rules.

(f) Management activities must be undertaken to encourage the profitable operation of properties.

(g) Contracts may include the lease of property managed by the commission. Provisions for the renewal of a contract must be contained in the contract.

(2) *(a)* ~~The~~ *Except as provided in subsection (2)(b), the* commission may not contract for the construction of a building, as defined in 18-2-101, in excess of $200,000 without the consent of the legislature. Building construction must be in conformity with applicable guidelines developed by the national park service of the U.S. department of the interior, the Montana historical society, and the Montana department of fish, wildlife, and parks.

(b) The commission may contract for the preservation, stabilization, or maintenance of existing structures or buildings for an amount that exceeds $200,000 without legislative consent if the commission determines that waiting for legislative consent would cause unnecessary damage to the structures or buildings or would result in a significant increase in cost to conduct those activities in the future.

(3) (a) Subject to subsection (3)(b), the commission, as part of a contract, shall require that a portion of any profit be reinvested in the property and that a portion be used to pay the administrative costs of the property and the commission.

(b) (i) Until the balance in the cultural and aesthetic trust reaches $7,750,000, the commission shall deposit the portion of profits not used for administrative costs and restoration of the properties in the cultural and aesthetic trust.

(ii) Once the balance in the cultural and aesthetic trust reaches $7,750,000, the commission shall deposit the portion of profits not used for administrative costs and restoration of the properties in the general fund.

~~(c) It is the intent of the 55th legislature that no general fund money be provided for the operation and maintenance of Virginia City and Nevada City beyond what has been appropriated by the 55th legislature.~~

(c) It is the intent of the 57th legislature that no general fund money be provided for the operation and maintenance of Virginia City and Nevada City beyond what has been appropriated by the 55th legislature.

(4) The commission may solicit funds from other sources for the purchase, management, and operation of properties.

(5) The commission shall adopt rules establishing a policy for making acquisitions. With respect to each acquisition, the policy must give consideration to:

(a) whether the property represents the state's culture and history;

(b) whether the property can become self-supporting;

(c) whether the property can contribute to the economic and social enrichment of the state;

(d) whether the property lends itself to programs to interpret Montana history;

(e) whether the acquisition will create significant social and economic impacts to affected local governments and the state; and

(f) other matters that the commission considers necessary or appropriate.

(6) Public notice and the opportunity for a hearing must be given in the geographical area of a proposed acquisition before a final decision to acquire a

property is made. The commission shall approve proposals for acquisition and recommend the approved proposal to the board of land commissioners.

(7) Prior to the convening of each regular session, the commission shall report to the governor and the legislature, *as provided in 5-11-210,* concerning financial activities during the prior biennium."

Section 4. Section 22-3-1004, MCA, is amended to read:

"**22-3-1004. Montana heritage preservation and development account.** (1) There is a Montana heritage preservation and development account in the state special revenue fund.

(2) Money deposited in the account must be used for:

(a) the purchase of properties in Virginia City and Nevada City;

(b) restoration, maintenance, and operation of historic properties in Virginia City and Nevada City; and

(c) purchasing, restoring, and maintaining historically significant properties in Montana that are in need of preservation.

(3) The account is statutorily appropriated, as provided in 17-7-502, to the Montana heritage preservation and development commission to be used as provided in this section.

(4) All interest earned on money in the account must be deposited in the state special revenue fund to the credit of the commission."

Approved April 21, 2001

CHAPTER NO. 309

[SB 89]

AN ACT REDUCING THE WAITING PERIOD REQUIRED FOR ELIGIBILITY TO RECEIVE THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM DEFINED BENEFIT PLAN AND IN THE JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; AMENDING SECTIONS 19-3-1605, 19-5-901, 19-6-710, 19-7-711, 19-8-1105, 19-9-1009, 19-9-1010, AND 19-13-1010, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-1605, MCA, is amended to read:

"**19-3-1605. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 1.5% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least ~~36~~ *12* months prior to January 1 of the year in which the adjustment is to be made; and

(b) the benefit recipient is not an active member of a public retirement system covered by this title.

(4) The board shall adopt rules to administer the provisions of this section."

Section 2. Section 19-5-901, MCA, is amended to read:

"**19-5-901. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 1.5% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least ~~36~~ *12* months prior to January 1 of the year in which the adjustment is to be made;

(b) the benefit recipient is not an active member of a public retirement system covered by this title; and

(c) the member or benefit recipient either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998.

(4) The board shall adopt rules to administer the provisions of this section."

Section 3. Section 19-6-710, MCA, is amended to read:

"**19-6-710. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least ~~36~~ *12* months prior to January 1 of the year in which the adjustment is to be made;

(b) the benefit recipient is not an active member of a public retirement system covered by this title; and

(c) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section."

Section 4. Section 19-7-711, MCA, is amended to read:

"**19-7-711. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 1.5% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least ~~36~~ *12* months prior to January 1 of the year in which the adjustment is to be made; and

(b) the benefit recipient is not an active member of a public retirement system covered by this title.

(4) The board shall adopt rules to administer the provisions of this section."

Section 5. Section 19-8-1105, MCA, is amended to read:

"**19-8-1105. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 1.5% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least ~~36~~ *12* months prior to January 1 of the year in which the adjustment is to be made; and

(b) the benefit recipient is not an active member of a public retirement system covered by this title.

(4) The board shall adopt rules to administer the provisions of this section."

Section 6. Section 19-9-1009, MCA, is amended to read:

"**19-9-1009. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least ~~36~~ *12* months prior to January 1 of the year in which the adjustment is to be made;

(b) the benefit recipient is not an active member of a public retirement system covered by this title; and

(c) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section."

Section 7. Section 19-9-1010, MCA, is amended to read:

"**19-9-1010. Election — guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least ~~36~~ *12* months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 1999; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2000, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-9-1009 remains valid. The decision of a member who elected not to participate under 19-9-1009 may be reversed under this section."

Section 8. Section 19-13-1010, MCA, is amended to read:

"**19-13-1010. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least ~~36~~ *12* months prior to January 1 of the year in which the adjustment is to be made;

(b) the benefit recipient is not an active member of a public retirement system covered by this title; and

(c) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section."

Section 9. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2001

CHAPTER NO. 310

[SB 108]

AN ACT DEFINING "MENTAL HEALTH PROFESSIONAL" AND "PROFESSIONAL PERSON" TO INCLUDE ADVANCED PRACTICE REGISTERED NURSES WITH A CLINICAL SPECIALTY IN PSYCHIATRIC MENTAL HEALTH NURSING; PROVIDING THAT ADVANCED PRACTICE REGISTERED NURSES WITH A CLINICAL SPECIALTY IN PSYCHIATRIC MENTAL HEALTH NURSING HAVE RIGHTS REGARDING MEDICATION IN MENTAL HEALTH FACILITIES; AND AMENDING SECTIONS 27-1-1101, 53-21-102, 53-21-145, AND 53-21-165, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-1101, MCA, is amended to read:

"27-1-1101. Definition. As used in this part, "mental health professional" means:

(1) a certified professional person as defined in 53-21-106;

(2) a physician licensed under Title 37, chapter 3;

(3) a professional counselor licensed under Title 37, chapter 23;

(4) a psychologist licensed under Title 37, chapter 17; ~~or~~

(5) a social worker licensed under Title 37, chapter 22*; or*

(6) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing."

Section 2. Section 53-21-102, MCA, is amended to read:

"53-21-102. Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(3) "Court" means any district court of the state of Montana.

(4) "Department" means the department of public health and human services provided for in 2-15-2201.

(5) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

(6) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend

of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

(7) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

(a) addiction to drugs or alcohol;

(b) drug or alcohol intoxication;

(c) mental retardation; or

(d) epilepsy.

(8) "Mental health facility" or "facility" means a public hospital or a licensed private hospital that is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(9) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(10) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(11) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

(12) "Professional person" means:

(a) a medical doctor; ~~or~~

(b) *an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing; or*

(c) a person who has been certified, as provided for in 53-21-106, by the department.

(13) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(14) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

(15) "State hospital" means the Montana state hospital."

Section 3. Section 53-21-145, MCA, is amended to read:

"**53-21-145. Right to be free from unnecessary or excessive medication.** Patients have a right to be free from unnecessary or excessive medication. A medication may not be administered unless at the written order of a physician *or advanced practice registered nurse with a clinical specialty in psychiatric mental health nursing*. The attending physician *or advanced practice registered nurse with a clinical specialty in psychiatric mental health nursing* is responsible for all medication given or administered to a patient. The use of medication may not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication must be kept in the individual's medical records. The department ~~of public health~~

~~and human services~~ shall adopt rules governing attending physician *or advanced practice registered nurse with a clinical specialty in psychiatric mental health nursing* review of the drug regimen of each patient under the physician's *or the advanced practice registered nurse's* care in a mental health facility, except that the drug regimen of inpatients in hospitals must be reviewed no less than weekly. Except in the case of outpatients, all prescriptions must be written with a termination date, which may not exceed 30 days. Medication may not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with the patient's treatment program."

Section 4. Section 53-21-165, MCA, is amended to read:

"**53-21-165. Records to be maintained.** Complete patient records must be kept by the mental health facility for the length of time required by rules established by the department ~~of public health and human services~~. All records kept by the mental health facility must be available to any person authorized by the patient in writing to receive these records and upon approval of the authorization by the board. The records must also be made available to any attorney charged with representing the patient or any professional person charged with evaluating or treating the patient. These records must include:

(1) identification data, including the patient's legal status;

(2) a patient history, including but not limited to:

(a) family data, educational background, and employment record;

(b) prior medical history, both physical and mental, including prior hospitalization;

(3) the chief complaints of the patient and the chief complaints of others regarding the patient;

(4) an evaluation that notes the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functioning, memory functioning, orientation, and an inventory of the patient's assets in descriptive rather than interpretative fashion;

(5) a summary of each physical examination that describes the results of the examination;

(6) a copy of the individual treatment plan and any modifications to the plan;

(7) a detailed summary of the findings made by the reviewing professional person after each periodic review of the treatment plan, required under 53-21-162(4), that analyzes the successes and failures of the treatment program and includes recommendations for appropriate modification of the treatment plan;

(8) a copy of the individualized discharge plan and any modifications to the plan and a summary of the steps that have been taken to implement that plan;

(9) a medication history and status that includes the signed orders of the prescribing physician *or advanced practice registered nurse*. The staff person administering the medication shall indicate by signature that orders have been carried out.

(10) a summary of each significant contact by a professional person with the patient;

(11) documentation of the implementation of the treatment plan;

(12) documentation of all treatment provided to the patient;

(13) chronological documentation of the patient's clinical course;

(14) descriptions of any changes in the patient's condition;

(15) a signed order by a professional person for any restrictions on visitations and communications;

(16) a signed order by a professional person for any physical restraints and isolation;

(17) a detailed summary of any extraordinary incident in the facility involving the patient, to be entered by a staff member noting that the staff member has personal knowledge of the incident or specifying any other source of information. The summary of the incident must be initialed within 24 hours by a professional person.

(18) a summary by the professional person in charge of the facility or by an appointed agent of the determination made after the 30-day review provided for in 53-21-163."

Approved April 21, 2001

CHAPTER NO. 311

[SB 116]

AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD ABUSE AND NEGLECT, YOUTH IN NEED OF CARE, ADOPTION, AND FOSTER CHILDREN; REVISING PROVISIONS RELATING TO PLACEMENT AND DISPOSITION OF ABUSED AND NEGLECTED YOUTH; PROVIDING DEFINITIONS; ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ASSESS REPORTS OF ABUSE OR NEGLECT TO DETERMINE ACTION REQUIRED; PROVIDING THAT THE MONTANA RULES OF EVIDENCE APPLY TO PROCEEDINGS; PROVIDING FOR A BACKGROUND CHECK ON A PERSON SEEKING A YOUTH FOSTER HOME LICENSE; GRANTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES RULEMAKING AUTHORITY FOR PURPOSES OF LAWS RELATING TO ABUSED AND NEGLECTED YOUTH; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-106, 41-3-201, 41-3-202, 41-3-205, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-411, 41-3-412, 41-3-413, 41-3-420, 41-3-604, 41-3-1102, 41-3-1103, 41-3-1115, 41-3-1142, 42-3-202, 42-3-301, 42-4-112, 42-5-101, 42-5-103, 42-8-101, 42-8-103, 42-8-104, AND 42-8-107, MCA; AND REPEALING SECTIONS 41-3-1014, 41-3-1104, AND 41-3-1114, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-101, MCA, is amended to read:

"**41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

(a) ensure that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possible;

(d) preserve the unity and welfare of the family whenever possible;

(e) ensure that there is no forced removal of a child from the family based solely on an unsubstantiated allegation of abuse or neglect; and

(f) recognize that a child is entitled to assert the child's constitutional rights.

(2) It is the policy of this state to:

(a) protect, whenever possible, family unity;

(b) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection;

(c) require a department social worker to interview the parents of a child to which a petition pertains, if they are reasonably available, before the state may file a petition for temporary investigative authority and protective services and to require that a judge may not issue an order granting the petition, except an order for immediate protection of the youth, until the parents, if they are reasonably available, are given the opportunity to appear before the judge or have their statements, if any, presented to the judge for consideration before an order is granted; and

(d) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

(3) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

(4) In implementing ~~the policy of~~ this ~~section~~ *chapter*, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child ~~and when the home is approved by the department, place the child~~, *place the child with the child's noncustodial birth parent or* with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, *when placement with the extended family is approved by the department,* prior to placing the child in an alternative protective or residential facility. Prior to approving a ~~home~~ *placement*, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children."

Section 2. Section 41-3-102, MCA, is amended to read:

"**41-3-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Abandon", "abandoned", and "abandonment" mean:

(a) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(b) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(c) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

~~(b) a person providing care in a day-care facility;~~

(b) a person providing care in a day-care facility;

~~(c)~~*(c)* an employee of a public or private residential institution, facility, home, or agency; or

~~(d)~~*(d)* any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual harm to a child's health or welfare; or

(ii) substantial risk of harm to a child's health or welfare.

(b) The term includes actual harm or substantial risk of harm by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute harm to a child's health or welfare.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

~~(8)~~*(9)* "Department" means the department of public health and human services provided for in 2-15-2201.

(10) "Family group conference" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

~~(9)~~*(11)* "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical *abuse, physical neglect,* or psychological abuse or neglect;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(f) abandons the child.

~~(10)~~*(12)* "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

~~(11)~~*(13)* "Parent" means a biological or adoptive parent or stepparent.

~~(12)~~*(14)* "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(15) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

~~(13)~~*(16)* "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(17) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both.

~~(14)~~*(18)* "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.

~~(15)~~*(19)* "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

~~(16)~~*(20)* "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

~~(17)~~*(21)* (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

~~(18)~~*(22)* "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

~~(19)~~*(23)* "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

~~(20)~~*(24)* "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

~~(21)~~*(25)* "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

~~(22)~~*(26)* (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(22)~~*(26)*, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

~~(23)~~*(27)* "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, ~~or~~ neglected, *or abandoned*."

Section 3. Section 41-3-106, MCA, is amended to read:

"41-3-106. Prosecution of offenders. (1) If the evidence indicates violation of the criminal code, it ~~shall be~~ *is* the responsibility of the county attorney to file appropriate charges against the alleged offender.

(2) The filing of a criminal charge does not toll a proceeding under this chapter.

~~(2)~~*(3)* ~~District~~ *The district* court ~~shall have~~ *has* original jurisdiction under this section."

Section 4. Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of public health and human services or its local affiliate.

(2) Professionals and officials required to report are:

(a) *a* physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science ~~practitioner~~ *practitioners* and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child-care facility;

(f) *a* foster care, residential, or institutional worker;

(g) a peace officer or other law enforcement official;

(h) *a member of the* clergy; ~~or~~

(i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged abuse or neglect*; or*

(j) an employee of an entity that contracts with the department to provide direct services to children.

(3) Any person may make a report under this section if the person knows or has reasonable cause to suspect that a child is abused or neglected.

(4) (a) Except as provided in subsection (4)(b) or (4)(c), a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(b) A ~~clergyperson~~ *member of the clergy* or *a* priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the ~~clergyperson~~ *member of the clergy* or priest in that person's capacity as a ~~clergyperson~~ *member of the clergy* or priest;

(ii) the statement was intended to be a part of a confidential communication between the ~~clergyperson~~ *member of the clergy* or priest and a member of the ~~clergyperson's or priest's~~ church or congregation; and

(iii) the person who made the statement or confession does not consent to the disclosure by the ~~clergyperson~~ *member of the clergy* or priest.

(c) A ~~clergyperson~~ *member of the clergy* or priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

(5) The reports referred to under this section must contain:

(a) the names and addresses of the child and the child's parents or other persons responsible for the child's care;

(b) to the extent known, the child's age and the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible for the injury or neglect; and

(d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

Section 5. Section 41-3-202, MCA, is amended to read:

"41-3-202. Action on reporting. (1) Upon receipt of a report that a child is or has been abused or neglected, *the department shall promptly assess the information contained in the report and make a determination regarding the level of response required and the timeframe within which action must be initiated. If the department determines that an investigation is required,* a social worker, the county attorney, or a peace officer shall ~~promptly~~ *promptly* conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child. The investigation may include an investigation at the home of the child involved, the child's school or day-care facility, or any other place where the child is present and into all other nonfinancial matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance programs or to comply with the provisions of 41-3-411.

(2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report is received. However, the investigation must within 48 hours develop independent, corroborative, and attributable information in order for the investigation to continue. Without the development of independent,

corroborative, and attributable information, a child may not be removed from the home.

(3) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence and has the right of access to relevant hospital and medical records pertaining to the child. If a child interview is considered necessary, the social worker, county attorney, or peace officer may conduct an interview of the child. The interview may be conducted in the presence of the parent or guardian or an employee of the school or day-care facility attended by the child.

(4) Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, an unedited audiotape or videotape with audio track must be made available, upon request, for unencumbered review by the family.

(5) (a) If from the investigation the department has reasonable cause to suspect that the child suffered abuse or neglect, the department may provide protective services to the child pursuant to 41-3-301 and may provide protective services to any other child under the same care. The department shall:

(i) after interviewing the parent or guardian, if reasonably available, document its determination regarding abuse or neglect of a child; and

(ii) notify the child's family of its investigation and determination, unless the notification can reasonably be expected to result in harm to the child or other person.

(b) If from the investigation it is determined that the child has not suffered abuse or neglect and the initial report is determined to be unfounded, the department and the social worker, county attorney, or peace officer who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect shall destroy all of their records concerning the report and the investigation. The destruction must be completed within 30 days of the determination that the child has not suffered abuse or neglect.

(6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department and, upon request, to the family. Subject to subsection (5)(b), the department shall maintain a record system documenting investigations and determinations of child abuse and neglect cases.

(7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the department through its local office."

Section 6. Section 41-3-205, MCA, is amended to read:

"**41-3-205. Confidentiality — disclosure exceptions.** (1) The case records of the department and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (4) and (5), a person who permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group conference for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child:

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, *a member of the United States congress, or a state legislator,* if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department, if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(5) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate

family member under subsection (4) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(6) This section is not intended to affect the confidentiality of criminal court records, ~~or~~ records of law enforcement agencies, *or medical records covered by state or federal disclosure limitations*.

(7) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 7. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse and neglect petitions. (1) The county attorney, attorney general, or an attorney hired by the county is responsible for filing all petitions under this chapter. The petition must be accompanied by an affidavit by the department alleging that the child appears to have been abused, neglected, or abandoned and stating the basis for the allegation.

(2) Upon receipt of a petition, except a petition for temporary investigative authority, the court shall set a date for an adjudicatory hearing on the petition. The petitions must be given preference by the court in setting hearing dates.

(3) A petition alleging abuse or neglect is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure *and the Montana Rules of Evidence* apply except as modified in this ~~part~~ *chapter*. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, must be served personally with a copy of the petition and summons at least 5 working days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(8) ~~Except when the proceeding is instituted or commenced at the request of the department, a citation must be issued and served upon a representative of the department before the court hearing.~~

~~(9)~~ The petition must:

(a) state the nature of the alleged abuse or neglect;

(b) state the full name, age, and address of the youth and the name and address of the youth's parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

~~(10)~~*(9)* The petition may ask for the following relief:

(a) temporary investigative authority and protective services, as provided in 41-3-402;

(b) temporary legal custody, as provided in 41-3-406;

(c) appointment of a guardian pursuant to 41-3-421;

(d) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right to consent to adoption, as provided in 41-3-607; or

(ii) appointment of a guardian; or

(e) any combination of the provisions of subsections ~~(10)(a)~~ *(9)(a)* through ~~(10)(d)~~ *(9)(d)* or any other relief that may be required for the best interests of the child.

~~(11)~~*(10)* A request for a determination that reunification services need not be provided pursuant to 41-3-403 may be made in conjunction with the filing of a petition requesting relief, as provided for in subsection ~~(10)~~ *(9)* of this section.

~~(12)~~*(11)* The petition may be modified for different relief at any time within the discretion of the court.

~~(13)~~*(12)* The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party."

Section 8. Section 41-3-402, MCA, is amended to read:

"**41-3-402. Petition for temporary investigative authority and protective services.** (1) In a case in which it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services must state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services must be supported by an affidavit signed by ~~the county attorney, the attorney general, or an attorney hired by the county or must be supported by a~~ *a representative of the* department ~~report~~ stating in detail the facts upon which the request is based. The petition~~,~~ *or* affidavit~~, or report~~ of the department must contain information regarding statements, if any, made by the parents detailing the parents' statement of the facts of the case. Except as provided in 41-3-403, the parents must be given an opportunity to address the court before the court rules on the petition."

Section 9. Section 41-3-403, MCA, is amended to read:

"**41-3-403. Order for immediate protection of ~~youth~~ *child*.** (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court, after consideration of the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court, may issue an order granting relief that may be required for the immediate protection of the ~~youth~~ *child*.

(b) The order, along with the petition and supporting documents, must be served pursuant to the Montana Rules of Civil Procedure on the person or persons named in the order. When the ~~youth~~ *child* is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the ~~youth~~ *child*, at the time the placement is made or as soon after placement as possible.

(c) The order must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. At the show cause hearing, the court shall provide an opportunity for a parent or guardian, if present, and any other person having relevant knowledge to provide relevant testimony. The court may consider all relevant evidence in accordance with the ~~rules of civil procedure~~ *Montana Rules of Evidence* as modified by this part, but may in its discretion limit testimony and evidence to only that which is relevant to the issues of removal from the home and the child's need for continued protection. The court may amend the order. ~~Except as otherwise provided in this part, the rules of civil procedure apply.~~ Hearsay evidence of statements made by the affected ~~youth~~ *child* is admissible at the hearing or at a contested case proceeding held pursuant to Title 2, chapter 4, part 6, that results from adverse licensing action taken by the department.

(d) If the child is not returned home after the show cause hearing, the person served may request that a local citizen review board, if available pursuant to part 10, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(e) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the ~~youth~~ *child* with the department until further order.

(2) At the conclusion of a show cause hearing, in an order granting or denying relief, the court shall make a finding regarding the reasonableness of agency efforts to prevent the child's removal from the home or to make it possible to safely return the child to the child's home. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern. Reasonable efforts to provide preservation or reunification services are not required if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; and

(ii) recorded on the child's birth certificate as the child's father.

(4) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. *Concurrent planning may be used.*

(6) The court may grant ~~the following kinds of relief~~ *relief under this section, which does not constitute a court-ordered treatment plan under 41-3-420. The relief may include but is not limited to*:

(a) right of entry by a peace officer or department worker;

(b) medical and psychological evaluation of the ~~youth~~ *child* or parents, guardians, or person having physical or legal custody;

(c) requirement that the ~~youth~~ *child*, parents, guardians, or person having physical or legal custody receive counseling services;

(d) ~~placement of~~ *right to place* the ~~youth~~ *child* in a temporary medical ~~facility or a facility for protection of the youth~~ *or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution*;

(e) requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate;

(f) requirement that the perpetrator of the alleged child abuse or neglect be removed from the familial home to allow the child to remain in the home;

(g) requirement that a parent provide the department with the name and address of the other parent, unless the other parent's parental rights to the child have been terminated;

(h) requirement that a parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding;

~~(f)~~*(i)* inquiry into the financial ability of the parents, guardian, or other person having custody of the ~~youth~~ *child* to contribute to the costs for the care, custody, and treatment of the ~~youth~~ *child* and requirement of a contribution for those costs pursuant to the requirements of 41-3-411; or

~~(g)~~*(j)* other temporary disposition that may be required in the best interests of the ~~youth~~ *child* that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(7) An order for temporary investigative authority and protective services may not be issued for a period longer than 90 days following the show cause hearing ~~and must be limited to one extension of 90 days~~. Before the expiration of the time provided for in an order for temporary investigative authority and protective services, the county attorney, the attorney general, or an attorney hired by the county shall file a petition for one of the following:

(a) limited emancipation;

(b) temporary legal custody;

(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption; or

(d) dismissal.

(8) Notwithstanding the above time limits, the court may continue an order for temporary investigative authority pending a hearing on a petition provided for in subsection (7).

(9) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 10. Section 41-3-404, MCA, is amended to read:

"**41-3-404. Adjudicatory hearing — temporary disposition.** (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine by a preponderance of the evidence whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth. *Hearsay evidence of statements made by the youth is admissible according to the Montana Rules of Evidence.*

(3) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

(4) (a) If the court determines that the youth is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-403 must be vacated.

(b) If the youth is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(6)."

Section 11. Section 41-3-406, MCA, is amended to read:

"**41-3-406. Dispositional hearing — temporary legal custody.** (1) If a ~~youth~~ *child* is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following dispositions to protect the welfare of the ~~youth~~ *child*:

(a) permit the ~~youth~~ *child* to remain with the ~~youth's~~ *child's* parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a ~~youth~~ *child* who is 16 years of age or older, as provided in 41-3-408;

(c) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide care of the ~~youth~~ *child*; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the ~~youth~~ *child*;

(d) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department ~~is notified and a court hearing is set in a timely manner on the proposed expenditure~~ *consents and informs the court that resources are available for payment.* The department is the payor of last resort after all family, insurance, and other resources have been examined.

(e) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department ~~is notified and a court hearing is set in a timely manner on the proposed expenditure~~ *consents and informs the court that resources are available for the proposed care and treatment.* The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-411.

(2) To grant temporary legal custody, the court shall make a finding that:

(a) dismissing the petition would create a substantial risk of harm to the child or detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-403, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(3) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) If the court finds that reasonable efforts are not necessary pursuant to subsection (2) or (3), a permanency *plan* hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody, not to exceed a total of 6 months, upon a showing that additional time is necessary for the parent or guardian to successfully complete a treatment plan;

(b) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right of adoption; or

(ii) appointment of a guardian pursuant to 41-3-607;

(c) long-term custody pursuant to 41-3-412;

(d) appointment of a guardian pursuant to 41-3-421; or

(e) dismissal.

(6) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (5).

(7) If an extension of temporary legal custody is granted to the department *under subsection (5)(a),* the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home *and must specifically find that an extension is in the child's best interests.*

(8) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 12. Section 41-3-411, MCA, is amended to read:

"41-3-411. Contributions by parents or guardians for youth's care. (1) If *physical or legal* custody of the youth is transferred to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(2) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (1), the court shall order the youth's parent or guardian to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(3) (a) Except as provided in subsection (3)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and must be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(4) Upon a showing of a change in the financial ability of the youth's parent or guardian to pay, the court may modify its order for the payment of contributions required under subsection (2).

(5) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 13. Section 41-3-412, MCA, is amended to read:

"**41-3-412. Permanency plan hearing.** (1) A permanency plan hearing must be held by the court no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first, unless the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian. The permanency plan hearing may be combined with a hearing that is required in other sections of this part if held within the time limits of that section. If a permanency plan hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section.

(2) At least 3 days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report must contain the:

(a) efforts and progress demonstrated by the child's parent or guardian to complete a treatment plan;

(b) extent to which the parent or guardian cooperated and used the services provided;

(c) status of the child, including the child's mental~~,~~ *and* physical~~, and psychological~~ health; and

(d) plan for permanency for the child, including specific times for achieving the plan.

(3) At least 3 days prior to the permanency plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) If the court finds that the permanency plan is in the best interests of the child, the court shall order the department to take whatever steps are necessary to effectuate the terms of the plan, including returning the child safely to the child's home, and shall order the county attorney, the attorney general, or an attorney hired by the county to file any necessary petition to implement the plan with the court within 30 days after the present hearing unless a petition has already been filed.

(5) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the provisions in subsection (6) and that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(6) If the permanency plan hearing results in a finding that reunification of the child with the child's parent or guardian is not in the best interests of the child, a subsequent petition filed must be one of the following:

(a) termination of parental rights if the applicable requirements to terminate parental rights have been met;

(b) appointment of a guardian pursuant to 41-3-421; or

(c) ~~long-term custody~~ *a planned permanent living arrangement* ~~of~~*for* a child if the evidence demonstrates by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;

~~(i)~~*(ii)* the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

~~(ii)~~*(iii)* the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

~~(iii)~~*(iv)* the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent;

~~(iv)~~*(v)* the child is in a group of siblings, at least one of whom meets the requirements of subsections (6)(c)(v)(A) through (6)(c)(v)(D), and the best interests of the child will be met by continued placement in the sibling group in ~~long-term foster care~~ *a planned permanent living arrangement*; or

~~(v)~~*(vi)* the child ~~is at least 12 years of age and~~ meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) a judicial finding has been made that other more permanent options are not appropriate or are not in the best interests of the child;

~~(C)~~*(D)* termination of parental rights to the child is not in the child's best interests; and

~~(D)~~*(E)* the child has been in a placement in which the foster parent has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(7) The court may terminate ~~long-term custody~~ *a planned permanent living arrangement* upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

Section 14. Section 41-3-413, MCA, is amended to read:

"**41-3-413. Review hearing.** Within 12 months of a finding that reunification is not in the best interests of the child *and every 12 months thereafter until the permanent placement of the child is finalized*, the court shall make additional findings regarding the department's reasonable efforts to make and finalize a permanent placement for the child."

Section 15. Section 41-3-420, MCA, is amended to read:

"**41-3-420. Treatment plan — contents — changes.** (1) ~~Upon the stipulation of the parties or upon a judicial finding that a child is a youth in need of care, the~~ *The* court may order a treatment plan *if:*

(a) the parents admit the allegations of an abuse and neglect petition or make stipulations pursuant to [section 32]; or

(b) the court has made an adjudication under 41-3-404 that the child is a youth in need of care.

(2) Every treatment plan must contain the following information:

(a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;

(b) the treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the treatment plan must include but is not limited to the conditions or requirements that must be established for the safe return of the child to the family.

(c) the projected time necessary to complete each of the treatment objectives;

(d) the specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the treatment plan; and

(e) the signature of the parent or parents or guardian, unless the plan is ordered by the court.

(3) A treatment plan may include but is not limited to any of the following remedies, requirements, or conditions:

(a) the right of entry into the child's home for the purpose of assessing compliance with the terms and conditions of a treatment plan;

(b) the requirement of either the child or the child's parent or guardian to obtain medical or psychiatric diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;

(c) the requirement of either the child or the child's parent or guardian to obtain psychological treatment or counseling;

(d) the requirement of either the child or the child's parent or guardian to obtain and follow through with alcohol or substance abuse evaluation and counseling, if necessary;

(e) the requirement that either the child or the child's parent or guardian be restricted from associating with or contacting any individual who may be the subject of a department investigation;

(f) the requirement that the child be placed in a temporary medical facility or a facility for protection of the youth;

(g) the requirement that the parent, guardian, or other person having physical or legal custody furnish services that the court may designate.

(4) A treatment plan may not be altered, amended, continued, or terminated without the approval of the parent or parents or guardian pursuant to a stipulation and order or order of the court."

Section 16. Section 41-3-604, MCA, is amended to read:

"**41-3-604. When petition to terminate parental rights required.** (1) If a child has been in foster care under the *physical* custody of the state for 15 months of the most recent 22 months, the best interests of the child must be presumed to be served by termination of parental rights. If a child has been in foster care for 15 months of the most recent 22 months or if the court has found that reasonable efforts to preserve or reunify a child with the child's parent or guardian are not required pursuant to 41-3-403, a petition to terminate parental rights must be filed unless:

(a) the child is being cared for by a relative;

(b) the department has not provided the services considered necessary for the safe return of the child to the child's home; or

(c) the department has documented a compelling reason, available for court review, for determining that filing a petition to terminate parental rights would not be in the best interests of the child.

(2) Compelling reasons for not filing a petition to terminate parental rights include but are not limited to the following:

(a) There are insufficient grounds for filing a petition.

(b) There is adequate documentation that termination of parental rights is not the appropriate plan and not in the best interests of the child.

(3) If a child has been in foster care for 15 months of the most recent 22 months and a petition to terminate parental rights regarding that child has not been filed with the court, the department shall file a report to the court or review panel at least 3 days prior to the next hearing or review detailing the reasons that the petition was not filed.

(4) If a hearing results in a finding of abandonment or that the parent has subjected the child to any of the circumstances listed in 41-3-403(2)(a) through (2)(e) and that reasonable efforts to provide preservation or reunification are not necessary, unless there is an exception made pursuant to subsections (1)(a) through (1)(c) of this section, a petition to terminate parental rights must be filed within 60 days of the finding.

(5) If an exception in subsections (1)(a) through (1)(c) of this section applies, a petition for an extension of temporary legal custody pursuant to 41-3-406, a petition for a planned permanent living arrangement pursuant to 41-3-412, or a petition to dismiss must be filed."

Section 17. Section 41-3-1102, MCA, is amended to read:

"**41-3-1102. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Foster child" means a person under 18 years of age who has been placed by the department in a youth care facility.

(4) "Person" means any individual, partnership, voluntary association, or corporation.

(5) "Respite care" means the provision of temporary, short-term supervision or care of a foster child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of a foster child whose mental or physical condition requires special or intensive supervision or care. Respite care includes but is not limited to homemaker services, child care, and emergency care either in the home or out of the home.

(6) "Respite care provider" means a person who meets the qualifications and requirements established by the department to provide respite care under 41-3-1151.

(7) "Substitute care" means full-time care of a youth in a residential setting who is placed by the department, another state agency, or a licensed child-placing agency. Individuals who provide care to youth who are recipients of services provided through the department's developmental disabilities, mental health, or medicaid home- and community-based services waiver program are also considered to be providing substitute care. This part does not apply when a person accepts the care and custody of a child on a temporary basis as an accommodation for the parent or parents, guardian, or relative of the child.

(8) "Transitional living program" means a program with the goal of self-sufficiency in which supervision of the living arrangement is provided for a youth who is 16 years of age or older and under 21 years of age.

~~(8)~~*(9)* "Youth assessment center" has the meaning provided in 41-5-103.

~~(9)~~*(10)* "Youth care facility" means a facility that is licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, youth group homes, child-care agencies, *transitional living programs,* and youth assessment centers.

~~(10)~~*(11)* "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

~~(11)~~*(12)* "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth."

Section 18. Section 41-3-1103, MCA, is amended to read:

"**41-3-1103. Powers and duties of department.** (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, child-care agencies, and ~~youth assessment centers~~ *transitional living programs* for youth in need of care, as defined in 41-3-102;

(b) exercise licensing authority over all youth foster homes, youth group homes, child-care agencies, *transitional living programs,* and youth assessment centers;

(c) collect and disseminate information relating to youth in need of care;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the number of youth in need of care in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements;

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of intervention, and indigent delinquent youths who require treatment; and

(h) provide reimbursement for mental health outpatient counseling services for persons who experience the death of a foster child while providing substitute care to the foster child in a youth care facility.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, *and* transportation~~, and treatment~~ in youth foster care homes and youth group homes for ~~youths committed to~~ *youth who are in the physical or legal custody of* the department *and* who need to be placed in the facilities. Payments for the clothing of a ~~child~~ *youth* placed in a youth foster home must be provided to the extent *that* the ~~child~~ *youth* needs a basic wardrobe or has a special clothing need. *Upon approval by the department, payments under this subsection may continue for a youth up to 21 years of age who remains in substitute care.* Payments under this subsection may not exceed appropriations for the purposes of this subsection.

(4) The department may provide a subsidy for a guardianship of a child who is in the department's legal custody if the guardianship has been approved by the department pursuant to 41-3-421 and in accordance with eligibility criteria established by department rule."

Section 19. Section 41-3-1115, MCA, is amended to read:

"**41-3-1115. Foster care review committee.** (1) Except as provided in Title 41, chapter 3, part 10, in every judicial district the ~~youth~~ *district* court judge, in consultation with the department, shall appoint a foster care review committee. The members of the committee must be willing to act without compensation. The committee shall be composed of not less than five or more than seven members. The members shall include:

(a) a representative of the department;

(b) a representative of the youth court;

(c) someone knowledgeable in the needs of children in foster care placements who is not employed by the department or the youth court;

(d) a representative of a local school district;

(e) if the child whose care under review is an Indian, someone, preferably an Indian person, knowledgeable about Indian cultural and family matters who is appointed effective only for and during that review; and

(f) if there is one, the foster parent of the child whose care is under review. The foster parent's appointment is effective only for and during that review.

(2) When a child is in foster care under the supervision of the department or if payment for care is made pursuant to 41-3-1122, the committee shall conduct a review of the foster care status of the child. The review must be conducted within a time limit established by the department. The time limit must comply with ~~federal law and may not be later than the 12-month anniversary date of the child's placement into foster care~~ *the Adoption and Safe Families Act of 1997, as enacted*.

(3) The department shall provide the committee with guidelines for operation of the committee. Within 30 days of the foster care review, the committee shall provide the youth court and the department a written report of its findings and recommendations for further action by the youth court or the department.

(4) The department shall adopt rules necessary to carry out the purposes of this section.

(5) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members are confidential and subject to the confidentiality requirements of the department.

(6) The committee is subject to the call of the youth court judge to meet and confer with the judge on all matters pertaining to the foster care of a child before the youth court."

Section 20. Section 41-3-1142, MCA, is amended to read:

"**41-3-1142. Issuance of license — authority of issuing agency — rules.** (1) The department may issue licenses to persons operating youth care facilities or grant approval of kinship or extended family care providers and prescribe the conditions upon which licenses and approvals may be issued. The department may make rules necessary for the licensure or approval, operation, and regulation of those facilities consistent with the welfare of the residents.

(2) The department may inspect all licensed facilities or approved homes and, as appropriate, undertake action, including but not limited to the revocation of licenses and approvals.

(3) The person providing care in the facilities or homes shall give the department any information that may be required and afford the department every reasonable opportunity for observing the operation of the facilities or homes.

(4) The department shall require an applicant for a youth foster home license to submit to a criminal and child protection background check, which must include information pertaining to criminal convictions, reports of domestic violence, and substantiated child abuse or neglect of children. The department shall require a criminal background investigation of each applicant by means of a fingerprint

check by the Montana department of justice and the federal bureau of investigation."

Section 21. Section 42-3-202, MCA, is amended to read:

"42-3-202. Initiation of preplacement evaluation — who conducts evaluation — payment of fees. (1) A prospective adoptive parent who wishes to adopt a child may initiate the process by:

(a) establishing a client relationship with the department or a licensed child-placing agency; or

(b) requesting a preplacement evaluation from ~~either~~ the department, *a licensed social worker,* or a licensed child-placing agency.

(2) ~~The department may contract with a licensed social worker or a licensed child-placing agency to conduct the evaluation.~~ *In a direct parental placement adoption, the preplacement evaluation must be conducted by either a licensed social worker or a licensed child-placing agency.*

(3) The prospective adoptive parent and the home of the prospective adoptive parent must be studied and evaluated according to the ~~department's or licensed child-placing agency's standards for placement of a child~~ *provisions of this part.*

(4) A department or agency from which an individual is seeking to adopt a child may require the individual to be evaluated by its own qualified employee or independent contractor even if the individual has received a favorable preplacement evaluation from another evaluator.

(5) Fees for the study and report are set by the entity completing them and must be paid for by the prospective adoptive parent."

Section 22. Section 42-3-301, MCA, is amended to read:

"42-3-301. Requirement for preplacement evaluation. (1) Before the department or licensed child-placing agency may place a child for purposes of adoption, the prospective adoptive parent and the home of the prospective adoptive parent must be studied and evaluated as provided in ~~42-3-202~~ *part 2 of this chapter.*

(2) The department or agency shall prepare a written report containing the results of its evaluation."

Section 23. Section 42-4-112, MCA, is amended to read:

"42-4-112. Period for postplacement supervision. (1) In a direct parental placement adoption, the court shall maintain jurisdiction over the placement during a postplacement evaluation period and issue an order for postplacement supervision and a postplacement evaluation.

(2) The postplacement evaluation period must be supervised and evaluated by a *licensed social worker or other* qualified person appointed, contracted with, or employed by:

(a) the department, if the department has accepted supervision of the placement; or

(b) a licensed child-placing agency.

(3) The court shall provide the evaluator with copies of the petition for adoption and the items filed with the petition.

(4) A decree of adoption may not be entered for at least 6 months from the date an order is entered granting temporary custody during the pendency of the proceedings."

Section 24. Section 42-5-101, MCA, is amended to read:

"**42-5-101. Petition for adoption.** (1) A petition for adoption must be ~~notarized by the petitioners~~ *verified* and must specify:

(a) the full names, ages, and place and duration of residence of the petitioners;

(b) the current marital status of petitioners and, if married, the place and date of the marriage;

(c) the circumstances under which the petitioners obtained physical custody of the child and the name of the individual or agency that placed the child;

(d) the date and place of birth of the child, if known;

(e) the name used for the child in the proceeding and, if a change in name is desired, the full name by which the child is to be known;

(f) that it is the desire of the petitioners that the relationship of parent and child be established between the petitioners and the child and to have all the rights and be subject to all the duties of that relationship;

(g) a full description and statement of value of all property owned or possessed by the child;

(h) the facts, if any, that excuse consent on the part of a person whose consent is required for the adoption;

(i) that any applicable law governing interstate or intercountry placement was complied with;

(j) that, if applicable, the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., was complied with;

(k) whether a previous petition has been filed by the petitioners to adopt the child at issue or any other child in any court and the disposition of the petitions; and

(l) the name and address, if known, of any person who is entitled to receive notice of the petition for adoption.

(2) There must be attached to or accompanying the petition:

(a) any written consent required by 42-2-301;

(b) a certified copy of any court order terminating the rights of the child's parents;

(c) a certified copy of any existing court order in any pending proceeding concerning custody of or visitation with the child;

(d) a copy of any agreement with a public agency to provide a subsidy for the benefit of the child with a special need;

(e) the postplacement evaluation prepared pursuant to 42-4-113 or 42-4-209;

(f) a disclosure of any disbursements made in connection with the adoption proceeding.

(3) One copy of the petition must be retained by the court. A copy must be sent to:

(a) the department or to the agency participating in the adoption proceeding; ~~or~~

(b) the parent placing the child for adoption in a direct parental placement adoption~~.~~*; or*

(c) the child's guardian ad litem if the child has one.

(4) Proceedings initiated under this part are subject to the Montana Rules of Civil Procedure except as modified by this part."

Section 25. Section 42-5-103, MCA, is amended to read:

"**42-5-103. Notice of hearing.** (1) Upon the filing of a petition for adoption, notice of hearing must be served on:

(a) a person whose consent to adoption is required under 42-2-301;

(b) the department or agency whose consent to adoption is required;

(c) the spouse of the petitioner if the spouse has not joined in the petition;

(d) a person who has revoked a consent or relinquishment or is attempting to have a consent or relinquishment set aside; ~~and~~

(e) the child's guardian ad litem if the child has one; and

~~(e)~~*(f)* any other person named by the court to receive notice.

(2) The notice must direct the person to appear in court at the time specified and to show cause why the petition should not be granted.

~~(3) The notice of hearing must be served in a manner appropriate under the Montana Rules of Civil Procedure.~~

~~(4)~~*(3)* A notice of hearing is not required to be served on any party:

(a) whose parental rights have been terminated in prior proceedings;

(b) who waives notice in a relinquishment, consent, or other document signed by the party;

(c) who has consented in writing to an adoption; or

(d) whose consent to adoption is not required under 42-2-302."

Section 26. Section 42-8-101, MCA, is amended to read:

"**42-8-101. Definitions.** As used in this part, the following definitions apply:

(1) "Person" includes any individual, partnership, voluntary association, or corporation.

(2) "Placement activities" means any of the following:

(a) placement of a child for adoption *or foster care*;

(b) arranging or providing short-term foster care for a child pending an adoptive placement; or

(c) facilitating placement of a child by maintaining a list in any form of birth parents or prospective adoptive *or foster* parents.

(3) "Soliciting" means to request, offer, promote, *or* refer, ~~or entice,~~ either directly or indirectly through correspondence, advertising, or other method, a potential adoptive *or foster* parent or couple, birth parent or parents, or placement of a child by a birth parent."

Section 27. Section 42-8-103, MCA, is amended to read:

"**42-8-103. License required — term of license — no fee charged.** (1) Only an entity holding a current child-placing agency license issued by the department may act as an agency for the purpose of:

(a) procuring or selecting proposed adoptive *or foster* homes;

(b) placing children in proposed adoptive *or foster* homes;

(c) soliciting persons to adopt *or foster* children or arranging for persons to adopt *or foster* children;

(d) soliciting persons to relinquish children or place children in potential adoptive *or foster* homes; or

(e) engaging in placement activities.

(2) Licenses are valid for 1 year after issuance. A fee may not be charged for a license."

Section 28. Section 42-8-104, MCA, is amended to read:

"**42-8-104. Requirements for licensure.** The department may issue licenses to agencies meeting the following minimum requirements:

(1) The chief function of the agency or a specific program within the agency must be the care and placement of children.

(2) The agency operates on a nonprofit basis and is financially responsible in and for its operation.

(3) The agency meets the requirements as designated by the department by rule.

(4) The directing or managing personnel of the agency must be qualified both on the basis of professional educational experience and character.

(5) ~~Complete~~ *The agency shall maintain complete* records ~~must be kept of both~~ *of* the children and ~~adopting~~ *adoptive or foster* parents with which the agency deals~~, and the~~. *Adoption* records must be maintained in accordance with 42-6-101.

(6) The agency shall maintain and use an in-state office for making a social study of the child ~~and proposed adoptive parent before placement of the child~~, particularly with regard to~~:~~

~~(a) the physical and mental health, emotional stability, and personal integrity of the adoptive parent and the parent's ability to promote the child's welfare; and~~

~~(b)~~ the physical and mental condition of the child and the child's family background.

(7) The agency shall maintain and use an in-state office for conducting a preplacement evaluation for adoptive parents or a home study for foster parents, particularly with regard to the physical and mental health, emotional stability, and personal integrity of the adoptive or foster parents and their ability to promote the child's welfare.

~~(7)~~*(8)* The agency must have the ability to provide education for adoptive *or foster* parents and counseling for placing parents as required in 42-2-409 and department rules.

~~(8)~~*(9)* The agency shall agree to cooperate with courts having jurisdiction in adoptive *or foster care* matters and with other public agencies having to deal with the welfare of children.

~~(9)~~*(10)* The agency shall, annually, submit a full, complete, and true financial statement to the department, and the statement must contain a full accounting of the operations of the agency during the preceding year."

Section 29. Section 42-8-107, MCA, is amended to read:

"**42-8-107. Investigation of agencies — cancellation of licenses.** (1) The department may, through its authorized representative, investigate the operations of licensed agencies and may cancel licenses for failure to observe prescribed rules or to maintain minimum requirements. An agency shall give to representatives of the department all information requested and allow them to observe the operation of the agency.

(2) When the department finds, upon the basis of the statement required by 42-8-104~~(9)~~*(10)* or upon its own investigation, that an agency has not conducted or is financially incapable of conducting its operations according to the established standards, the department may suspend, revoke, or deny a license for the agency."

Section 30. Limitation on placement. Except as provided in 41-3-301(1) and in the absence of a dispute between the parties to the action regarding the appropriate placement, the department shall determine the appropriate placement for a child alleged to be or adjudicated as a youth in need of care. The court shall settle any dispute between the parties to an action regarding the appropriate placement. The child may not be placed in a youth assessment center, youth detention facility, detention center, or other facility intended or used for the confinement of adults or youth accused or convicted of criminal offenses.

Section 31. Rulemaking authority. The department shall adopt rules necessary to carry out the purposes of this chapter.

Section 32. Stipulations. Subject to approval by the court, a parent may stipulate to any of the following:

(1) the child meets the definition of a youth in need of care by the preponderance of the evidence;

(2) a treatment plan, if the child has been adjudicated a youth in need of care; or

(3) the disposition.

Section 33. Repealer. Sections 41-3-1014, 41-3-1104, and 41-3-1114, MCA, are repealed.

Section 34. Codification instruction. [Sections 30 through 32] are intended to be codified as an integral part of Title 41, chapter 3, and the provisions of Title 41, chapter 3, apply to [sections 30 through 32].

Approved April 21, 2001

CHAPTER NO. 312

[SB 128]

AN ACT INCREASING THE CRIMINAL PENALTIES FOR PROSTITUTION, PROMOTING PROSTITUTION, AND AGGRAVATED PROMOTION OF PROSTITUTION; PROVIDING FOR A MANDATORY MINIMUM SENTENCE FOR AGGRAVATED PROMOTION OF PROSTITUTION; PROVIDING FOR THE POSSIBILITY OF A LIFE SENTENCE WITHOUT POSSIBILITY OF PAROLE FOR THIRD OFFENSE AGGRAVATED PROMOTION OF PROSTITUTION; REVISING THE DEFINITIONS OF "CORRECTIONAL INSTITUTION" AND "INMATE"; AND AMENDING SECTIONS 45-2-101, 45-5-601, 45-5-602, 45-5-603, 46-18-205, AND 46-18-219, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-2-101, MCA, is amended to read:

"**45-2-101. General definitions.** Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to another person or entity in whose welfare the beneficiary is interested. Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

(9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16) "Correctional institution" means a state prison, ~~county or city jail~~ *detention center, multijurisdictional detention center, private detention center, regional correctional facility, private correctional facility*, or other institution for the incarceration ~~or custody of persons~~ *of inmates* under sentence for offenses or *the custody of individuals* awaiting trial or sentence for offenses.

(17) "Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

(19) "Deprive" means:

(a) to withhold property of another:

(i) permanently;

(ii) for such a period as to appropriate a portion of its value; or

(iii) with the purpose to restore it only upon payment of reward or other compensation; or

(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(21) "Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

(22) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in a state prison for a term exceeding 1 year.

(23) "Forcible felony" means a felony that involves the use or threat of physical force or violence against any individual.

(24) A "frisk" is a search by an external patting of a person's clothing.

(25) "Government" includes a branch, subdivision, or agency of the government of the state or a locality within it.

(26) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.

(27) A "house of prostitution" means a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(28) "Human being" means a person who has been born and is alive.

(29) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(30) "Inmate" means a person who ~~engages in prostitution in or through the agency of a house of prostitution~~ *is confined in a correctional institution.*

(31) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32, and an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by volume.

(b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(32) An "involuntary act" means an act that is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(33) "Juror" means a person who is a member of a jury, including a grand jury, impaneled by a court in this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or proceeding. The term "juror"

also includes a person who has been drawn or summoned to attend as a prospective juror.

(34) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(35) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

(36) "Medicaid agency" has the meaning in 53-6-155.

(37) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(38) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or

(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.

(b) The term includes related documents submitted as a part of or in support of the claim.

(39) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person's own conduct.

(40) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance.

(41) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison for a term of 1 year or less.

(42) "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(43) "Nolo contendere" means a plea in which the defendant does not contest the charge or charges against the defendant and neither admits nor denies the charge or charges.

(44) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

(45) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

(46) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(47) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(48) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(49) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(50) "Official proceeding" means a proceeding heard or that may be heard before a legislative, a judicial, an administrative, or another governmental agency or official authorized to take evidence under oath, including any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

(51) "Other state" means a state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(52) "Owner" means a person other than the offender who has possession of or other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(53) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(54) "Peace officer" means a person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

(55) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(56) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of government.

(57) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(58) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(59) "Premises" includes any type of structure or building and real property.

(60) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;

(g) electricity, gas, and water;

(h) birds, animals, and fish that ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and copies thereof.

(61) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

(62) "Public place" means a place to which the public or a substantial group has access.

(63) "Public servant" means an officer or employee of government, including but not limited to legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(64) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(65) (a) "Serious bodily injury" means bodily injury that:

(i) creates a substantial risk of death;

(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or

(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ.

(b) The term includes serious mental illness or impairment.

(66) "Sexual contact" means touching of the sexual or other intimate parts of the person of another, directly or through clothing, in order to knowingly or purposely:

(a) cause bodily injury to or humiliate, harass, or degrade another; or

(b) arouse or gratify the sexual response or desire of either party.

(67) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by a body member of another person, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person to knowingly or purposely:

(i) cause bodily injury or humiliate, harass, or degrade; or

(ii) arouse or gratify the sexual response or desire of either party.

(b) For purposes of subsection (67)(a), any penetration, however slight, is sufficient.

(68) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(69) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

(70) "Statute" means an act of the legislature of this state.

(71) "Stolen property" means property over which control has been obtained by theft.

(72) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

(73) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(74) "Telephone" means any type of telephone, including but not limited to a corded, uncorded, cellular, or satellite telephone.

(75) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit a criminal offense;

(d) accuse a person of a criminal offense;

(e) expose a person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of a person;

(g) reveal information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(76) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than $1,000 by the standards set forth in subsection (76)(a), its value is considered to be an amount less than $1,000.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(77) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

(78) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(79) "Witness" means a person whose testimony is desired in an official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 2. Section 45-5-601, MCA, is amended to read:

"**45-5-601. Prostitution.** (1) A person commits the offense of prostitution if ~~such~~ *the* person engages in or agrees or offers to engage in sexual intercourse with another person for compensation, whether such compensation is received or to be received or paid or to be paid.

(2) *(a)* A ~~person~~ *prostitute* convicted of prostitution shall be fined *an amount* not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A prostitute's client who is convicted of prostitution shall for the first offense be fined an amount not to exceed $1,000 or be imprisoned for a term not to exceed 1 year, or both, and for a second or subsequent offense shall be fined an amount not to exceed $10,000 or be imprisoned for a term not to exceed 5 years, or both."

Section 3. Section 45-5-602, MCA, is amended to read:

"**45-5-602. Promoting prostitution.** (1) A person commits the offense of promoting prostitution if ~~he~~ *the person* purposely or knowingly commits any of the following acts:

(a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution or a prostitution business;

(b) procures an ~~inmate~~ *individual* for a house of prostitution or a place in a house of prostitution for ~~one who would be an inmate~~ *an individual*;

(c) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;

~~(d) solicits a person to patronize a prostitute;~~

(d) solicits clients for another person who is a prostitute;

(e) procures a prostitute for a patron;

(f) transports ~~a person~~ *an individual* into or within this state with the purpose to promote that ~~person's~~ *individual's* engaging in prostitution or procures or pays for transportation with that purpose;

(g) leases or otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate ~~such~~ *that* use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or

(h) lives in whole or in part upon the earnings of ~~a person~~ *an individual* engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self-support.

(2) A person convicted of promoting prostitution shall be fined *an amount* not to exceed ~~$500~~ *$50,000* or be imprisoned in ~~the county jail~~ *a state prison* for ~~any~~ *a* term not to exceed ~~6 months~~ *10 years*, or both."

Section 4. Section 45-5-603, MCA, is amended to read:

"**45-5-603. Aggravated promotion of prostitution.** (1) A person commits the offense of aggravated promotion of prostitution if ~~he~~ *the person* purposely or knowingly commits any of the following acts:

(a) compels another to engage in or promote prostitution;

(b) promotes prostitution of a child under the age of 18 years, whether or not ~~he~~ *the person* is aware of the child's age;

(c) promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or support ~~he~~ *the person* is responsible.

(2) *(a)* ~~A~~ *Except as provided in subsection (2)(b), a* person convicted of aggravated promotion of prostitution shall be ~~imprisoned~~ *punished by life imprisonment, by imprisonment* in ~~the~~ *a* state prison for ~~any~~ *a* term not to exceed ~~20~~ *20* years, or ~~be fined~~ *by a fine in* an amount not to exceed $50,000, or both.

(b) Except as provided in 46-18-219 and 46-18-222, a person convicted of aggravated promotion of prostitution of a child, who at the time of the offense is under 18 years of age, shall be punished by life imprisonment, by imprisonment in a state prison for a term of not less than 4 years or more than 100 years, or by a fine in an amount not to exceed $100,000, or both."

Section 5. Section 46-18-205, MCA, is amended to read:

"**46-18-205. Mandatory minimum sentences — restrictions on deferral or suspension.** (1) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under the following sections may not be deferred or suspended and the provisions of 46-18-222 do not apply to the first 30 days of the imprisonment:

(a) 45-5-503, sexual intercourse without consent;

(b) 45-5-504, indecent exposure;

(c) 45-5-505, deviate sexual conduct; or

(d) 45-5-507, incest.

(2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:

(a) 45-5-103(4), mitigated deliberate homicide;

(b) 45-5-202, aggravated assault;

(c) 45-5-302(2), kidnapping;

(d) 45-5-303(2), aggravated kidnapping;

(e) 45-5-401(2), robbery;

(f) 45-5-502(3), sexual assault;

(g) 45-5-503(2) and (3), sexual intercourse without consent;

(h) 45-5-603, aggravated promotion of prostitution;

~~(h)~~*(i)* 45-9-101(2), (3), and (5)(d), criminal distribution of dangerous drugs;

~~(i)~~*(j)* 45-9-102(4), criminal possession of dangerous drugs; and

~~(j)~~*(k)* 45-9-103(2), criminal possession with intent to distribute dangerous drugs.

(3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended."

Section 6. Section 46-18-219, MCA, is amended to read:

"**46-18-219. Life sentence without possibility of release.** (1) (a) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of one of the following offenses or of an offense under the laws of another state or of the United States that, if committed in this state, would be one of the following offenses, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-102, deliberate homicide;

(ii) 45-5-303, aggravated kidnapping;

(iii) 45-5-503, sexual intercourse without consent;

(iv) 45-5-625, sexual abuse of children; or

(v) 45-5-627, except subsection (1)(b), ritual abuse of a minor.

(b) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that, if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-103, mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) 45-5-302, kidnapping; ~~or~~

(iv) 45-5-401, robbery*; or*

(v) 45-5-603, aggravated promotion of prostitution.

(2) Except as provided in 46-23-210 and subsection (3) of this section, an offender sentenced under subsection (1):

(a) shall serve the entire sentence;

(b) shall serve the sentence in prison;

(c) may not for any reason, except a medical reason, be transferred for any length of time to another type of institution, facility, or program;

(d) may not be paroled; and

(e) may not be given time off for good behavior or otherwise be given an early release for any reason.

(3) If the offender was previously sentenced for either of two or three offenses listed in subsection (1), pursuant to any of the exceptions listed in 46-18-222, then

the provisions of subsections (1) and (2) of this section do not apply to the offender's present sentence.

(4) The imposition or execution of the sentences prescribed by this section may not be deferred or suspended. In the event of a conflict between this section and any provision of 46-18-201 or 46-18-205, this section prevails.

(5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type of facility that does not provide secure detention."

Approved April 21, 2001

CHAPTER NO. 313

[SB 131]

AN ACT GENERALLY REVISING THE LAWS GOVERNING INFORMATION TECHNOLOGY; PROVIDING FOR A CHIEF INFORMATION OFFICER; ESTABLISHING POLICIES FOR STATE INFORMATION TECHNOLOGY; ESTABLISHING DUTIES AND RESPONSIBILITIES CONCERNING INFORMATION TECHNOLOGY; AMENDING SECTIONS 2-3-301, 2-6-214, 2-15-102, 2-15-114, 2-15-404, 2-15-1514, 2-15-2212, 2-17-301, 2-17-303, 2-17-306, 2-17-322, 2-17-323, 2-17-503, 2-18-103, 5-11-402, 5-11-403, 5-12-205, 10-3-106, 17-7-111, 17-7-112, 17-7-123, 18-4-313, 61-3-345, AND 61-3-346, MCA; REPEALING SECTIONS 2-17-302, 2-17-304, 2-17-305, 2-17-321, 2-17-501, AND 2-17-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature finds that information technology is becoming a critical component of the methods used by state agencies in providing information and services to Montana citizens; and

WHEREAS, the cost for information technology is increasing both in absolute and relative terms in agency budgets; and

WHEREAS, information technology, in order to be deployed most effectively, must be carefully managed and coordinated throughout state agencies.

Be it enacted by the Legislature of the State of Montana:

Section 1. Information technology board — membership — qualifications — vacancies — compensation. (1) There is an information technology board. The board consists of 19 members who are appointed as follows:

(a) the director of the department of administration, who serves as presiding officer of the board;

(b) the chief information officer provided for in [section 5];

(c) the director of the office of budget and program planning;

(d) six members who are directors of state agencies and who are appointed by the governor;

(e) two members representing local government, appointed by the governor;

(f) one member representing the public service commission, appointed by the public service commission;

(g) one member representing the private sector, appointed by the governor;

(h) one member of the house of representatives, appointed by the speaker of the house of representatives;

(i) one member of the senate, appointed by the president of the senate;

(j) one member representing the legislative branch, appointed by the legislative branch computer system planning council;

(k) one member representing the judicial branch, appointed by the chief justice of the supreme court;

(l) one member representing the university system, appointed by the board of regents; and

(m) one member representing K-12 education, appointed by the superintendent of public instruction.

(2) Appointments must be made without regard to political affiliation and must be made solely for the wise management of the information technology resources used by the state.

(3) A vacancy occurring on the board must be filled by the appointing authority in the same manner as the original appointment.

(4) The board shall function in an advisory capacity as defined in 2-15-102.

(5) Members of the board must be reimbursed and compensated in the same manner as members of quasi-judicial boards under 2-15-124(7), except that legislative members are reimbursed and compensated as provided in 5-2-302.

Section 2. Short title. [Sections 2 through 18] may be cited as the "Montana Information Technology Act".

Section 3. Policy. (1) It is the policy of the state that information technology be used to improve the quality of life of Montana citizens by providing educational opportunities, creating quality jobs and a favorable business climate, improving government, and protecting individual privacy and the privacy of the information contained within information technology systems.

(2) It is the policy of the state that the development of information technology resources in the state must be conducted in an organized, deliberative, and cost-effective manner. The following principles must guide the development of state information technology resources:

(a) There are statewide information technology policies, standards, procedures, and guidelines applicable to all state agencies and other entities using the state network.

(b) Whenever feasible and cost-effective, common data is entered once and shared among agencies.

(c) In order to minimize unwarranted duplication, similar information technology systems and data management applications are implemented and managed in a coordinated manner.

(d) Planning and development of information technology resources are conducted in conjunction with budget development and approval.

(e) Information technology systems are deployed aggressively whenever it can be shown that it will provide improved services to Montana citizens.

(f) Public-private partnerships are used to deploy information technology systems when practical and cost-effective.

(g) State information technology systems are developed in cooperation with the federal government and local governments with the objective of providing seamless access to information and services to the greatest degree possible.

(h) State information technology systems are able to accommodate electronic transmissions between the state and its citizens, businesses, and other government entities.

(3) It is the policy of the state that the department must be accountable to the governor, the legislature, and the citizens of Montana.

Section 4. Definitions. In [sections 2 through 18], unless the context requires otherwise, the following definitions apply:

(1) "Board" means the information technology board established in [section 1].

(2) "Central computer center" means any stand-alone or shared computer and associated equipment, software, facilities, and services administered by the department for use by state agencies.

(3) "Chief information officer" means a person appointed by the director of the department to carry out the duties and responsibilities of the department relating to information technology.

(4) "Data" means any information stored on information technology resources.

(5) "Department" means the department of administration established in 2-15-1001.

(6) "Electronic access system" means a system capable of making data accessible by means of an information technology facility in a voice, video, or electronic data form, including but not limited to the internet.

(7) "Information technology" means hardware, software, and associated services and infrastructure used to store or transmit information in any form, including voice, video, and electronic data.

(8) "State agency" means any entity of the executive branch, including the university system.

(9) "Statewide telecommunications network" means any telecommunications facilities, circuits, equipment, software, and associated contracted services administered by the department for the transmission of voice, video, or electronic data from one device to another.

Section 5. Chief information officer — duties. The duties of the chief information officer include but are not limited to:

(1) carrying out all powers and duties of the department as assigned by the director of the department;

(2) serving as the chief policy advisor to the director of the department on statewide information technology issues; and

(3) assisting and advising the director of the department on the enforcement responsibilities provided in [section 8].

Section 6. Powers and duties of department. (1) The department is responsible for carrying out the planning and program responsibilities for information technology for state government. The department:

(a) shall encourage and foster the development of new and innovative information technology within state government;

(b) shall promote, coordinate, and approve the development and sharing of shared information technology application software, management systems, and information that provide similar functions for multiple state agencies;

(c) shall cooperate with the department of commerce to promote economic development initiatives based on information technology;

(d) shall establish and enforce a state strategic information technology plan as provided for in [section 13];

(e) shall establish and enforce statewide information technology policies and standards;

(f) shall review and approve state agency information technology plans provided for in [section 15];

(g) shall coordinate with the office of budget and program planning to evaluate budget requests that include information technology resources. The department shall make recommendations to the office of budget and program planning for the approval or disapproval of information technology budget requests. An unfavorable recommendation must be based on a determination that the request is not provided for in the approved agency information technology plan provided for in [section 15].

(h) shall staff the information technology board provided for in [section 1];

(i) shall fund the administrative costs of the information technology board provided for in [section 1];

(j) shall review the use of information technology resources for all state agencies;

(k) shall review and approve state agency specifications and procurement methods for the acquisition of information technology resources;

(l) shall review, approve, and sign all state agency contracts and shall review and approve other formal agreements for information technology resources provided by the private sector and other government entities;

(m) shall operate and maintain a central computer center for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department;

(n) shall operate and maintain a statewide telecommunications network for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department;

(o) shall ensure that the statewide telecommunications network is properly maintained. The department may establish a centralized maintenance program for the statewide telecommunications network.

(p) shall coordinate public safety communications on behalf of all state agencies as provided for in 2-17-311 through 2-17-313;

(q) shall manage the state 9-1-1 program as provided for in Title 10, chapter 4, part 3;

(r) shall provide electronic access to information and services of the state as provided for in 2-17-322;

(s) shall provide assistance to the legislature, the judiciary, the governor, and state agencies relative to state and interstate information technology matters;

(t) shall establish rates and other charges for services provided by the department;

(u) must accept federal funds granted by congress or by executive order and gifts, grants, and donations for any purpose of this section;

(v) shall dispose of personal property owned by it in a manner provided by law when, in the judgment of the department, the disposal best promotes the purposes for which the department is established;

(w) shall implement [sections 2 through 18] and all other laws for the use of information technology in state government;

(x) shall report to the appropriate interim committee on a regular basis and to the legislature as provided in 5-11-210 on the information technology activities of the department; and

(y) shall represent the state with public and private entities on matters of information technology.

(2) If it is in the state's best interest, the department may contract with qualified private organizations, foundations, or individuals to carry out the purposes of this section.

(3) The director of the department shall appoint the chief information officer to assist in carrying out the department's information technology duties.

Section 7. Duties of board. The board shall:

(1) provide a forum to:

(a) guide state agencies, the legislative branch, the judicial branch, and local governments in the development and deployment of intergovernmental information technology resources;

(b) share information among state agencies, local governments, and federal agencies regarding the development of information technology resources;

(2) advise the department in the development of cooperative contracts for the purchase of information technology resources;

(3) review and advise the department on:

(a) statewide information technology standards and policies;

(b) the state strategic information technology plan;

(c) major information technology budget requests;

(d) rates and other charges for services established by the department as provided in [section 6(1)(t)];

(e) requests for exceptions as provided for in [section 9];

(f) notification of proposed exemptions by the university system and office of public instruction as provided for in [section 10];

(g) action taken by the department as provided in [section 8(1)] for any activity that is not in compliance with [sections 2 through 18];

(h) transfer of information technology funds, resources, and employees as provided for in 2-17-303; and

(i) the implementation of major information technology projects and advise the respective governing authority of any issue of concern to the board relating to implementation of the project;

(4) study state government's present and future information technology needs and advise the department on the use of emerging technology in state government; and

(5) request information and reports that it considers necessary from any entity using or having access to the statewide telecommunications network or central computer center.

Section 8. Department — enforcement responsibilities. (1) If the department determines that an agency is not in compliance with the state strategic information technology plan provided for in [section 13], the agency information technology plan provided for in [section 15], or the statewide information technology policies and standards provided for in [section 6], the department may cancel or modify any contract, project, or activity that is not in compliance.

(2) Prior to taking action provided for in subsection (1), the department shall review with the board any activities that are not in compliance.

(3) Any contract entered into by an agency that includes information technology resources must include language developed by the department that references the department's enforcement responsibilities provided for in subsection (1). A contract that does not contain the required language is considered to be in violation of state law and is voidable pursuant to subsection (1). The language developed by the department may not be varied pursuant to 18-4-224.

Section 9. Granting exceptions to state agencies. Subject to [section 10], the department may grant exceptions to any policy, standard, or other requirement of [sections 2 through 18] if it is in the best interests of the state of Montana. The department shall inform the board, the office of budget and program planning, and the legislative finance committee of all exceptions that are granted and of the rationale for granting the exceptions. The department shall maintain written documentation that identifies the terms and conditions of the exception and the rationale for the exception.

Section 10. Exemptions — university system — office of public instruction — national guard. (1) Unless the proposed activities would detrimentally affect the operation of the central computer center or the statewide telecommunications network, the office of public instruction is exempt from [section 6(1)(k) and (1)(l)].

(2) Unless the proposed activities would detrimentally affect the operation of the central computer center or the statewide telecommunications network, the university system is exempt from:

(a) the enforcement provisions of [sections 6(1)(d) and (1)(e) and 8];

(b) the approval provisions of [sections 6(1)(f), 15, and 17];

(c) the budget approval provisions of [section 6(1)(g)];

(d) the provisions of [sections 6(1)(k) and (1)(l)]; and

(e) the transfer provisions of 2-17-303.

(3) The department, upon notification of proposed activities by the university system or the office of public instruction, shall determine if the central computer center or the statewide telecommunications network would be detrimentally affected by the proposed activity.

(4) For purposes of this section, a proposed activity affects the operation of the central computer center or the statewide telecommunications network if it detrimentally affects the processing workload, reliability, cost of providing service, or support service requirements of the central computer center or the statewide telecommunications network.

(5) When reviewing proposed activities of the university system, the department shall consider and make reasonable allowances for the unique educational needs and characteristics and the welfare of the university system as determined by the board of regents.

(6) When reviewing proposed activities of the office of public instruction, the department shall consider and make reasonable allowances for the unique educational needs and characteristics of the office of public instruction to communicate and share data with school districts.

(7) [Section 6(1)(u)] may not be construed to prohibit the university system from accepting federal funds or gifts, grants, or donations related to information technology or telecommunications.

(8) The national guard, as defined in 10-1-101(3), is exempt from [section 6].

Section 11. Legislative and judicial branch information sharing. The legislative branch and the judicial branch shall provide their information technology plans to the department.

Section 12. Rulemaking authority. (1) The department shall adopt rules to implement [sections 2 through 18], including the following:

(a) rules to guide the review and approval process for state agency software and management systems that provide similar functions for multiple state agencies, which must include but are not limited to:

(i) identifying the software and management systems that must be approved;

(ii) establishing the information that state agencies are required to provide to the department; and

(iii) establishing guidelines for the department's approval decision;

(b) rules to guide the review and approval process for state agency acquisition of information technology resources, which must include but are not limited to processes and requirements for:

(i) agency submissions to gain approval for acquiring information technology resources;

(ii) approving specifications for information technology resources; and

(iii) approving contracts for information technology resources; and

(c) rules for granting exceptions from the requirements of [sections 2 through 18], which must include but are not limited to:

(i) a process for applying for an exception; and

(ii) guidelines for determining the department's approval decision.

(2) The department may adopt rules to guide the development of state agency information technology plans. The rules may include:

(a) agency plan review procedures;

(b) agency plan content requirements;

(c) guidelines for the department's approval decision; and

(d) dispute resolution processes and procedures.

(3) Adequate rules for the use of any information technology resources must be adopted by the:

(a) supreme court for judicial branch agencies; and

(b) legislative council, with the concurrence of the legislative audit committee and the legislative finance committee, for the consolidated legislative branch, as provided for in 5-2-504.

Section 13. State strategic information technology plan — biennial report. (1) The department shall prepare a state strategic information technology plan. The department shall seek the advice of the board in the development of the plan.

(2) The plan must:

(a) reflect the policies as set forth in [section 3] and be in accordance with statewide standards and policies established by the department;

(b) establish the statewide mission, goals, and objectives for the use of information technology, including goals for electronic access to government records, information, and services; and

(c) establish the strategic direction for how state agencies will develop and use information technology resources to provide state government services.

(3) The department shall update the plan as necessary. The plan and any updates must be distributed as provided in [section 14].

(4) The department shall prepare a biennial report on information technology based on agency information technology plans and performance reports required under [section 16] and other information considered appropriate by the department. The biennial report must include:

(a) an analysis of the state's information technology infrastructure, including its value, condition, and capacity;

(b) an evaluation of performance relating to information technology;

(c) an assessment of progress made toward implementing the state strategic information technology plan;

(d) an inventory of state information services, equipment, and proprietary software:

(e) agency budget requests for major projects; and

(f) other information as determined by the department or requested by the governor or the legislature.

Section 14. State strategic information technology plan — distribution. (1) The department shall distribute the state strategic information technology plan and the biennial report to the governor and to the legislature as provided in 5-11-210.

(2) Updates to the state strategic information technology plan must be provided to the governor by March 1 of each even-numbered year and to the legislative finance committee at its next scheduled meeting after March 1.

(3) By April 1 of each even-numbered year, the updated state strategic information technology plan must be distributed to all state agencies with instructions and schedules for updating and approving agency information technology plans in accordance with [section 17].

Section 15. Agency information technology plans — policy. (1) Each state agency is required to develop and maintain an agency information technology plan. The agency information technology plans must reflect the content and format requirements specified in [section 16].

(2) An agency information technology plan must be submitted to and approved by the department as described in [section 17].

(3) New investments in information technology can be included in the governor's budget only if the project is contained in the approved agency information technology plan.

Section 16. Agency information technology plans — form and content — performance reports. (1) Each agency's information technology plan must include but is not limited to the following:

(a) a statement of the agency's mission, goals, and objectives for information technology, including a discussion of how the agency uses or plans to use information technology to provide mission-critical services to Montana citizens and businesses;

(b) an explanation of how the agency's mission, goals, and objectives for information technology support and conform to the state strategic information technology plan required in [section 13];

(c) a baseline profile of the agency's current information technology resources and capabilities that:

(i) includes sufficient information to fully support state-level review and approval activities; and

(ii) will serve as the basis for subsequent planning and performance measures;

(d) an evaluation of the baseline profile that identifies real or potential deficiencies or obsolescence of the agency's information technology resources and capabilities;

(e) a list of new projects and resources required to meet the objectives of the agency's information technology plan. The investment required for the new projects and resources must be developed using life-cycle cost analysis, including the initial investment, maintenance, and replacement costs, and must fulfill or support an agency's business requirements.

(f) when feasible, estimated schedules and funding required to implement identified projects; and

(g) any other information required by law or requested by the department, the governor, or the legislature.

(2) Each agency's information technology plan must project activities and costs over a 6-year time period, consisting of the biennium during which the plan is written or updated and the 2 subsequent bienniums.

(3) Each agency shall prepare and submit to the department a biennial performance report that evaluates progress toward the objectives articulated in its information technology plan. The report must include:

(a) an evaluation of the agency's performance relating to information technology;

(b) an assessment of progress made toward implementing the agency information technology plan; and

(c) an inventory of agency information services, equipment, and proprietary software.

(4) State agencies shall prepare agency information technology plans and biennial performance reports using standards, elements, forms, and formats specified by the department.

Section 17. Agency information technology plans — review and approval — updates. (1) Plans and reports required under [section 16] must be submitted to the department for review and approval according to a schedule adopted by the department. The schedule must provide for approval of plans no later than June 30 in each even-numbered year.

(2) The department may reject, require modification of, or approve agency information technology plans as considered appropriate by the department. The primary basis for evaluating agency information technology plans must be conformity to the state strategic information technology plan, as provided for in [section 13].

(3) Agency information technology plans must be updated and are subject to review and approval whenever substantive changes occur to an agency's information technology profile. Plan updates must be submitted to the department in a timely manner and may not be held until the next biennial reporting cycle.

Section 18. Information technology project budget summary. (1) The office of budget and program planning, in cooperation with the department, shall prepare a statewide summary of major new information technology projects contained in the state budget. The office of budget and program planning and the department shall jointly determine the criteria for classifying a project as a major new information technology project. The information technology project summary must include:

(a) a listing by institution, agency, or branch of all major new information technology budget requests included in the state budget. Each information technology budget request included on the list must include:

(i) a description of what would be accomplished by funding the request;

(ii) the proposed amount of the request;

(iii) the funding source for the request; and

(iv) the proposed cost of operating new information technology systems.

(b) a listing of internal service rates proposed for providing information technology services. Each internal service rate included on the list must include:

(i) a description of the services provided; and

(ii) a breakdown, aggregated by fund type, of requests included in the state budget to support the rate.

(c) any other information as determined by the budget director or the department or as requested by the governor or the legislature.

(2) The information technology project summary must be presented to the legislative fiscal analyst in accordance with 17-7-111(4).

Section 19. Section 2-3-301, MCA, is amended to read:

"2-3-301. Agency ~~using electronic mail~~ to accept public comment electronically — dissemination of electronic mail address and documents required — prohibiting fees. (1) An agency that accepts public comment pursuant to a statute, administrative rule, or policy, including an agency adopting rules pursuant to the Montana Administrative Procedure Act or an agency to which 2-3-111 applies, shall~~, if the agency is capable of receiving electronic mail from the internet world wide web,~~ provide for the receipt of public comment by the agency by use of ~~that~~ *an* electronic mail system.

(2) As part of the agency action required by subsection (1), an agency shall disseminate by appropriate ~~mediums~~ *media* its electronic mail address to which public comment may be made, including dissemination in:

(a) rulemaking notices published pursuant to the Montana Administrative Procedure Act;

(b) the telephone directory of state agencies published by the department of ~~administration~~ *administration*;

(c) any notice of agency existence, purpose, and operations published on the internet world wide web, popularly known as a "website", used by the agency;

~~(d) the state electronic bulletin board;~~ or

~~(e)~~*(d)* any combination of the methods of dissemination provided in subsections (2)(a) through ~~(2)(d)~~ *(2)(c)*.

(3) An agency ~~that uses electronic mail and creates or receives electronic documents~~ shall, at the request of another agency or person, disseminate the electronic documents to that agency or person by electronic mail in place of surface mail. An agency may not charge a fee for providing documents by electronic mail in accordance with this subsection.

(4) As used in this section, "agency" means a department, division, bureau, office, board, commission, authority, or other agency of the executive branch of state government."

Section 20. Section 2-6-214. MCA. is amended to read:

"2-6-214. Department of ~~administration~~ *administration* — powers and duties. (1) In order to ensure compatibility with the ~~computer and telecommunications~~ *information technology* systems of state government, the department of ~~administration~~ *administration* shall develop standards for technological compatibility for state agencies for records management equipment or systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods.

(2) The department of ~~administration~~ *administration* shall approve all acquisitions of executive agency records management equipment or systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods to ensure compatibility with the standards developed under subsection (1).

(3) The department of ~~administration~~ *administration* is responsible for the management and operation of equipment, systems, facilities, or processes integral to the department's central computer *center* and *statewide* telecommunications ~~systems~~ *system.*"

Section 21. Section 2-15-102, MCA, is amended to read:

"2-15-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Advisory capacity" means furnishing advice, gathering information, making recommendations, and performing ~~such~~ other activities ~~as~~ *that* may be necessary to comply with federal funding requirements and does not mean administering a program or function or setting policy.

(2) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive branch of state government.

(3) ~~"Data and information technology resources"~~ *"Data"* means ~~data processing mainframe, microcomputer hardware, peripherals, software, special forms, personnel, facility resources, maintenance, training, electronically stored data, or other related resources~~ *any information stored on information technology resources.*

(4) "Department" means a principal functional and administrative entity~~,~~ *that:*

(a) is created by this chapter within the executive branch of state government;

(b) is one of the 20 principal departments permitted under the constitution; and

(c) includes its units.

(5) "Department head" means a director, commission, board, commissioner, or constitutional officer in charge of a department created by this chapter.

(6) "Director" means a department head specifically referred to as a director in this chapter~~,~~ and does not mean a commission, board, commissioner, or constitutional officer.

(7) "Executive branch" means the executive branch of state government referred to in *Article III, section 1, and Article VI of* the Montana constitution~~,~~ ~~Articles III and VI~~.

(8) "Function" means a duty, power, or program, exercised by or assigned to an agency, whether or not specifically provided for by law.

(9) "Information technology resources" means hardware, software, and associated services and infrastructure used to store or transmit information in any form, including voice, video, and electronic data.

~~(9)~~*(10)* "Quasi-judicial function" means an adjudicatory function exercised by an agency, involving the exercise of judgment and discretion in making determinations in controversies. The term includes but is not limited to the functions of*:*

(a) interpreting, applying, and enforcing existing rules and laws;

(b) granting or denying privileges, rights, or benefits;

(c) issuing, suspending, or revoking licenses, permits, and certificates;

(d) determining rights and interests of adverse parties;

(e) evaluating and passing on facts;

(f) awarding compensation;

(g) fixing prices;

(h) ordering action or abatement of action;

(i) adopting procedural rules;

(j) holding hearings; and

(k) any other act necessary to the performance of a quasi-judicial function.

~~(10)~~*(11)* "Quasi-legislative function" generally means making or having the power to make rules or set rates and all other acts connected with or essential to the proper exercise of a quasi-legislative function.

~~(11)~~*(12)* "Unit" means an internal subdivision of an agency, created by law or by administrative action, including a division, bureau, section, or department, and an agency allocated to a department for administrative purposes only by this chapter."

Section 22. Section 2-15-114, MCA, is amended to read:

"2-15-114. Security responsibilities of departments for data and information technology resources. Each department head is responsible for ~~assuring~~ *ensuring* an adequate level of security for all data and information technology resources within ~~his~~ *that* department and shall:

(1) develop and maintain written internal policies and procedures to ~~assure~~ *ensure* security of data and information technology resources. The internal policies and procedures are confidential information and exempt from public inspection, except that ~~such~~ *the* information must be available to the legislative auditor in performing ~~his~~ postauditing duties.

(2) designate an information security manager to administer the department's security program for data and information technology resources;

(3) implement appropriate cost-effective safeguards to reduce, eliminate, or recover from identified threats to data and information technology resources;

(4) ensure *that* internal evaluations of the security program for data and information technology resources are conducted. The results of ~~such~~ *the* internal

evaluations are confidential and exempt from public inspection, except that ~~such~~ *the* information must be available to the legislative auditor in performing ~~his~~ postauditing duties.

(5) include appropriate security requirements, as determined by the department, in the written specifications for the department's solicitation of data and information technology resources; and

(6) ~~maintain an information technology plan, including~~ *include* a general description of the existing security program and future plans for ~~assuring~~ *ensuring* security of data and information technology resources *in the agency information technology plan as provided for in [section 15].*"

Section 23. Section 2-15-404, MCA, is amended to read:

"**2-15-404. Electronic filing system — requirements — rules.** (1) As authorized by 2-15-401, the secretary of state may develop and implement a statewide electronic filing system to accommodate the electronic filing of records and documents that are required to be filed in the office of the secretary of state.

(2) If the secretary of state develops and implements a statewide electronic filing system, the secretary of state shall establish a central database for all records and documents filed electronically with the secretary of state.

(3) If the secretary of state develops and implements a statewide electronic filing system, the secretary of state shall adopt rules that:

(a) provide procedures for entering data;

(b) provide security and protection of information in the system and monitor the database and other components of the system to ensure that unauthorized entry is precluded;

(c) require standardized information for entry into the system;

(d) prescribe an identification procedure for a person filing records or other documents or otherwise accessing the system;

(e) require each individual who is required to sign a document that is filed electronically to be specifically identified as acknowledging the document and giving assent to the electronic filing through an identification procedure unique to that individual;

(f) prescribe a procedure for certification of electronic filings by the secretary of state; and

(g) prescribe a procedure for converting an electronic filing to a paper copy and for certifying the paper copy for a person requesting a paper copy.

(4) ~~In accordance with 2-17-501, the~~ *The* secretary of state shall cooperate with the department of ~~administration~~ *administration* in the development of any electronic filing system. *The filing system must comply with the standards established pursuant to [section 6].*

(5) This section may not be construed to affect any requirement that a particular individual or officer of an organization acknowledge a document. Any person using an identification procedure in place of a signature or facsimile signature for any electronic filing is subject to the same civil and criminal penalties applicable to a person providing a signature or facsimile signature.

(6) An electronic filing system developed and implemented under this section may be constructed in phases as resources and technology allow."

Section 24. Section 2-15-1514, MCA, is amended to read:

"**2-15-1514. State library commission — natural resource data system advisory committee.** (1) (a) There is a state library commission ~~which is~~ created in Title 22, chapter 1.

(b) The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of commission members ~~remain~~ *are* as prescribed by law.

(2) (a) There is a natural resource data system advisory committee consisting of an employee of the legislative services division, *of the department of administration,* of the state library, and of each principal data source agency, appointed by the head of the respective state agency, and by the board of regents of higher education for the Montana university system.

(b) The state library shall provide staff support to the committee, within the limits of the library's available resources."

Section 25. Section 2-15-2212, MCA, is amended to read:

"**2-15-2212. Committee on telecommunications access services for persons with disabilities — composition — allocation.** (1) There is a committee on Montana telecommunications access services for persons with disabilities.

(2) The committee consists of ~~12~~ *13* members appointed by the governor as follows:

(a) four members who are persons with disabilities, two of whom must be deaf or hard-of-hearing;

(b) two members who are not persons with disabilities, one of whom must be engaged in a business other than a business in the telecommunications industry and one of whom must be a senior citizen;

(c) one member from the department of public health and human services;

(d) one member from the largest local exchange company in Montana;

(e) one member from an independent local exchange company;

(f) one member from an interLATA interexchange carrier;

(g) one member from the public service commission; ~~and~~

(h) one member who is a licensed audiologist*; and*

(i) one member from the department of administration.

(3) The committee is allocated to the department of public health and human services for administrative purposes only as provided in 2-15-121."

Section 26. Section 2-17-301, MCA, is amended to read:

"**2-17-301. Supervision of mailing~~, duplicating,~~ *and* copying~~, and telephone~~ facilities.** (1) The department of administration shall maintain and supervise any central mailing, messenger service, ~~duplicating,~~ and copying facilities for state agencies in the capitol area. *The central mailing, messenger* *service, and copying facilities must be capable of supporting state agencies within a 10-mile radius of the capitol.*

~~(2) The department shall maintain and supervise any central telephone switchboard for state agencies located in Helena.~~

~~(3)~~*(2)* Cost records ~~shall~~ *must* be maintained, and agencies ~~shall~~ *must* be billed for services received.

(3) The department of administration shall plan, review, and approve any additional installations of mail equipment for state agencies within a 10-mile radius of the capitol. In approving the installation of additional equipment or systems, the department shall first consult with and consider the recommendations and advice of the department heads of the various state agencies."

Section 27. Section 2-17-303, MCA, is amended to read:

"**2-17-303. Transfer of funds, equipment, facilities, and employees.** (1) ~~In order to~~ *The department shall* provide for ~~a centralized, economical, efficient, and effective maintenance program for all state communications equipment and facilities~~ *the cost-effective use of information technology resources.* ~~and~~ *In order* to ensure that needless duplication of efforts in this field do not occur, the department ~~of administration~~ may order ~~such~~ *the* transfer of appropriated funds, custody, and control of equipment and facilities and employees to the department as may be necessary to implement this program. Upon transfer, as authorized in this section, a credit account ~~shall~~ *must* be established in the name of the agency from which transfer is made in the amount of funds appropriated and the market value of equipment and facilities. ~~Such~~ *A* credit account ~~shall~~ *must* be used to defray the costs of ~~maintenance and repair~~ *associated charges from the department* as provided in ~~2-17-302(1)(e)~~ *[section 6].*

(2) The provisions of this section ~~shall in no manner~~ *may not* affect the rights or privileges of any employee transferred to the department ~~of administration~~ under the public employees' retirement system, the group insurance plan, or personnel system."

Section 28. Section 2-17-306, MCA, is amended to read:

"**2-17-306. Exemption of law enforcement ~~communications~~ *telecommunications* system — exception.** The provisions of this part ~~shall~~ *do* not apply to the law enforcement ~~communications~~ *telecommunications* system or its successor except ~~as to~~ *for* the provisions dealing with the purchase, maintenance, and allocation of ~~communication~~ *telecommunication* facilities. However, the department of justice shall cooperate with the department ~~of administration~~ to coordinate the ~~communications~~ *telecommunications* networks of the state."

Section 29. Section 2-17-322, MCA, is amended to read:

"**2-17-322. Establishment.** (1) The department ~~of administration~~ shall establish and maintain appropriate electronic access systems for state agencies to use ~~as a means of conveying information to the citizens of Montana~~ *to provide direct electronic access to information and services by citizens, businesses, and other government entities*. State agencies ~~may~~ *shall* establish electronic access systems that meet minimum technical standards established by the department. Agencies involved in communicating information *or providing services* to the public shall use these systems to provide appropriate information to the public, including but not limited to:

(a) descriptions of agency functions, including contact information;

(b) agency program services provided to citizens, businesses, and other government entities;

~~(a)~~*(c)* environmental assessments;

~~(b)~~*(d)* rulemaking notices;

~~(c)~~*(e)* board vacancy notices as required by 2-15-201;

~~(d)~~*(f)* agency reports mandated by statute;

~~(e)~~*(g)* parks reports required by 23-1-110;

~~(f)~~*(h)* requests for bids or proposals; and

~~(g)~~*(i)* public meeting notices and agendas.

(2) The purpose of electronic access systems is to encourage the practice of providing for direct citizen, *business, and other government entity* access to state computerized information *and services.*"

Section 30. Section 2-17-323, MCA, is amended to read:

"**2-17-323. Responsibilities.** (1) The department ~~of administration~~ shall:

(a) ~~in collaboration with other state agencies, set~~ *establish policies,* standards, *and procedures* ~~for the selection of software~~ for the electronic access systems;

(b) establish appropriate services to support state agencies' use of the electronic access systems; *and*

(c) develop user-friendly ~~file transfer and message~~ systems for entities regularly interacting with state government, ~~such as professional associations and citizen groups~~ *including but not limited to citizens, businesses, and other government entities*, and promote the systems' use to reduce copying and mailing costs for state government *and as a means to obtain information and services faster and in a more cost-effective manner*~~; and~~

~~(d) determine procedures for use of the electronic access systems~~.

(2) The department shall provide security to protect the integrity of its electronic access systems.

(3) Each department is responsible for ensuring the integrity and appropriateness of the information that it places in the electronic access systems.

~~(3)~~*(4)* The department shall provide for an equitable method for recovering the cost of operating the electronic access systems that the department provides."

Section 31. Section 2-17-503, MCA, is amended to read:

"**2-17-503. Security responsibilities of department ~~of administration~~.** The department ~~of administration~~ is responsible for providing centralized management and coordination of state policies for security of data and information technology resources and shall:

(1) establish and maintain the minimum security standards and policies to implement 2-15-114, including the physical security of *the* central *computer*

center, statewide telecommunications network, and backup ~~computer~~ facilities consistent with these standards;

(2) establish guidelines to assist agencies in identifying ~~electronic data processing~~ *information technology* personnel occupying positions of special trust or responsibility or sensitive locations;

(3) establish standards and policies for the exchange of data between ~~data centers or departments by hardwired or nondedicated telecommunications~~ *any agency information technology resource and any other state agency, private entity, or public entity* to ensure that exchanges do not jeopardize data security and confidentiality;

(4) coordinate and provide for a training program regarding security of data and information technology resources to serve governmental technical and managerial needs;

(5) include appropriate security requirements in the specifications for solicitation of state contracts for procuring data and information technology resources; and

(6) upon request, provide technical and managerial assistance relating to ~~the~~ *information technology* security ~~program~~."

Section 32. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

(1) elected officials;

(2) county assessors and their chief deputies;

(3) employees of the office of consumer counsel;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;

(11) four professional staff positions under the board of oil and gas conservation;

(12) assistant director for security of the Montana state lottery;

(13) executive director and employees of the state compensation insurance fund;

(14) state racing stewards employed by the executive secretary of the Montana board of horseracing;

(15) executive director of the Montana wheat and barley committee;

(16) commissioner of banking and financial institutions;

(17) training coordinator for county attorneys;

(18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;

(19) chief information officer in the department of administration."

Section 33. Section 5-11-402, MCA, is amended to read:

"**5-11-402. Legislative branch computer system planning council.** There is a legislative branch computer system planning council composed of:

(1) the secretary of the senate or another representative of the senate designated by the president;

(2) the chief clerk of the house of representatives or another representative of the house designated by the speaker;

(3) the sergeants-at-arms in the two houses or another representative of each house designated by the presiding officer of the legislative administration committee of that house;

(4) the executive director of the legislative services division, who shall chair the planning council;

(5) the legislative auditor;

(6) the legislative fiscal analyst;

(7) the consumer counsel; and

(8) a person designated by the ~~director~~ *director* of the department of ~~administration~~ *administration* to represent the ~~data processing policy and planning functions~~ *information technology responsibilities* of the department, who shall serve as a nonvoting member of the planning council."

Section 34. Section 5-11-403, MCA, is amended to read:

"**5-11-403. Duties of legislative branch computer system planning council.** (1) The legislative branch computer system planning council shall develop and maintain a legislative branch computer system plan. In developing and maintaining this plan, the planning council shall:

(a) continuously review or have reviewed existing information systems that are candidates for automation or enhancement, as well as review existing automated systems that may be improved or integrated with new applications;

(b) develop and maintain a description of functions or services in the legislative branch and its agencies that would, through application or improvement of computer technology, provide better service to members of the legislature, legislative agencies, and the public;

(c) develop and maintain a ranking of needs, taking into consideration the relative effectiveness and probable cost of alternative systems; and

(d) develop and maintain recommended system standards for the legislative branch and standard or custom software and hardware solutions appropriate to the needs and environment of the legislative branch and its agencies.

(2) To the extent possible:

(a) future applications should be explicitly identified in the plan;

(b) current applications should allow a high degree of flexibility so that future applications are not limited; and

(c) both current and future applications should be coordinated and compatible with the standards and goals of the executive branch ~~established under 2-17-501 through 2-17-503~~ *as expressed in the state strategic information technology plan provided for in [section 13]*, as well as the legislative branch standards developed in accordance with the requirement in subsection (1)(d)."

Section 35. Section 5-12-205, MCA, is amended to read:

"**5-12-205. Powers and duties of committee.** The committee:

(1) may organize, adopt rules to govern its proceedings, and meet as often as necessary, upon the call of the presiding officer, to advise and consult with the legislative fiscal analyst;

(2) may employ and, in accordance with the rules for classification and pay adopted by the legislative council, set the salary of the legislative fiscal analyst. The legislative fiscal analyst shall serve at the pleasure of and be responsible for providing services to the committee.

(3) may exercise the investigatory powers of a standing committee under chapter 5, part 1, of this title; ~~and~~

(4) shall monitor the information technology policies of the department of administration with specific attention to:

(a) identification of information technology issues likely to require future legislative attention; and

(b) the evaluation of proposed information technology policy changes and the fiscal implications of the proposed changes and shall provide written responses to the department of administration communicating the committee's positions and concerns on proposed policy changes;

(5) may accumulate, compile, analyze, and provide information relevant to existing or proposed legislation on how information technology can be used to impact the welfare of the state;

(6) may prepare legislation to implement any proposed changes involving information technology; and

~~(4)~~*(7)* shall, before each regular and special legislative session involving budgetary matters, prepare recommendations to the house appropriations committee and the senate finance and claims committee on the application of certain budget issues. At a minimum, the recommendations must include procedures for the consistent application during each session of inflation factors, the allocation of fixed costs, and the personal services budget. The committee may also make recommendations on other issues of major concern in the budgeting process, such as estimating the cost of implementing particular programs based upon present law."

Section 36. Section 10-3-106, MCA, is amended to read:

"**10-3-106. Communications.** (1) The division shall coordinate whatever means exist for rapid and efficient communications in time of emergency or disaster.

(2) The division shall, in cooperation with the ~~division of communications,~~ department of ~~administration~~ *administration*, consider the desirability of supplementing communications resources or of integrating them into a comprehensive state or state-federal telecommunications or other communications system or network.

(3) The division shall, in cooperation with the ~~division of communications~~ *department of administration* and local political subdivisions, evaluate the possibility of multipurpose use of communications systems or networks for general state and local governmental purposes.

(4) The division shall assist political subdivisions in the orderly development of telecommunications systems complementary to the ~~state~~ *statewide* telecommunications ~~system or~~ network."

Section 37. Section 17-7-111, MCA, is amended to read:

"**17-7-111. Preparation of state budget — agency program budgets — form distribution and contents.** (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:

(i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and

(ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.

(2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2) or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or the instructions given for completing the forms.

(3) The agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary of funds subject to appropriation or enterprise funds that transfer profits to the general fund or to an account subject to appropriation for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress;

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current biennium and estimated for the subsequent biennium;

(c) a statement of the agency mission and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives.

(d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

(e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

(f) a reference, for each program included in the agency budget request, identifying whether the program may be operated at the discretion of the agency or whether the agency is required by federal or state law to operate, administer, or manage the program;

(g) for only agencies with more than 20 FTE, a plan to reduce the proposed budget to 85% of the current base budget. The plan must include:

(i) a prioritized list of services that would be eliminated or reduced;

(ii) for each service included in the prioritized list, the savings that would result from the elimination or reduction; and

(iii) the consequences or impacts of the proposed elimination or reduction of each service.

(h) a reference for each new information technology proposal stating whether the new proposal is included in the approved agency information technology plan as required in [section 15]; and

~~(h)~~*(i)* other information the budget director feels is necessary for the preparation of a budget.

(4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

(b) a statewide summary of recommendations for information technology projects and new initiatives. Each recommendation must be presented by institution, agency, or branch and by funding source, and recommendations for major new information technology projects must contain the information identified in [section 18].

~~(b)~~*(c)* the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

~~(e)~~*(d)* agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(6) The budget director may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns."

Section 38. Section 17-7-112, MCA, is amended to read:

"17-7-112. Submission deadlines — budgeting schedule. The following is the schedule for the preparation of a state budget for submission to the legislature convening in the following year:

(1) By August 1, forms necessary for preparation of budget estimates must be distributed pursuant to 17-7-111(2).

(2) By September 1, each agency shall submit the information required under 17-7-111 to the budget director. The department of justice shall submit information received from counties concerning the state's share of county attorney salaries.

(3) By September 1, the budget director shall submit each state agency's budget request required under 17-7-111(3) to the legislative fiscal analyst. The transfer of budget information must be done on a schedule mutually agreed to by the budget director and the legislative fiscal analyst in a manner that facilitates an even transfer of budget information that allows each office to maintain a reasonable staff workflow.

(4) By October 10, the budget director shall furnish the legislative fiscal analyst with a preliminary budget reflecting the base budget in a format agreed

upon by both the office of budget and program planning and the legislative fiscal analyst.

(5) By October 30, a budget request must be prepared by the budget director and submitted to the legislative fiscal analyst on behalf of any agency that did not present the information required by this section. The budget request must be based upon the budget director's studies of the operations, plans, and needs of the institution, university unit, or agency.

(6) By November 1, the budget director shall furnish the legislative fiscal analyst with a present law base for each agency and a copy of the documents that reflect the anticipated receipts and other means of financing the base budget and present law base for each fiscal year of the ensuing biennium. The material must be in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.

(7) By November 12, the budget director shall furnish the legislative fiscal analyst with the documents, in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst, that reflect expenditures to the second level, as provided in 17-1-102(3), by funding source and detailed by accounting entity.

(8) By November 15, the proposed pay plan schedule *and the information technology summary* required by 17-7-111(4), a preliminary budget that meets the statutory requirements for submission of the budget to the legislature, and a summary of the preliminary budget designed for distribution to members and members-elect of the legislature must be submitted to the legislative fiscal analyst.

(9) By December 15, the budget director shall submit a preliminary budget to the governor and to the governor-elect, if there is one, as provided in 17-7-121, and shall furnish the legislative fiscal analyst with all amendments to the preliminary budget.

(10) By January 7, recommended changes proposed by a governor-elect must be transmitted to the legislative fiscal analyst and the legislature as provided in 17-7-121."

Section 39. Section 17-7-123, MCA, is amended to read:

"**17-7-123. Form of executive budget.** The budget submitted must set forth a balanced financial plan for funds subject to appropriation and enterprise funds that transfer profits to the general fund or to accounts subject to appropriation for each accounting entity and for the state government for each fiscal year of the ensuing biennium. The base level plan must consist of:

(1) a consolidated budget summary setting forth the aggregate figures of the budget in a manner that shows a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by explanatory schedules or statements.

(2) budget and full-time equivalent personnel position comparisons by agency, program, and appropriated funds for the current and subsequent biennium:

(3) the departmental mission and a statement of goals and objectives for each program of the department;

(4) base budget disbursements for the completed fiscal year of the current biennium, estimated comparable disbursements for the current fiscal year, and the proposed present law base budget plus new proposals, if any, for each department and each program of the department;

(5) a statement containing recommendations of the governor for the ensuing biennium by program and disbursement category, including:

(a) explanations of appropriation and revenue measures included in the budget that involve policy changes; ~~and~~

(b) matters not included as a part of the budget bill but included as a part of the executive budget, such as the state employee pay plan, programs funded through separate appropriations measures, and other matters considered necessary for comprehensive public and legislative consideration of the state budget; *and*

(c) a summary of budget requests that include proposed expenditures on information technology resources. The summary must include funding, program references, and a decision package reference;

(6) a report on:

(a) enterprise funds not subject to the requirements of subsections (1) through (5), including retained earnings and contributed capital, projected operations and charges, and projected fund balances; and

(b) fees and charges in the internal service fund type, including changes in the level of fees and charges, projected use of the fees and charges, and projected fund balances. Fees and charges in the internal service fund type must be approved by the legislature in the general appropriations act. Fees and charges in a biennium may not exceed the level approved by the legislature in the general appropriations act effective for that biennium.

(7) any other financial or budgetary material agreed to by the budget director and the legislative fiscal analyst."

Section 40. Section 18-4-313, MCA, is amended to read:

"18-4-313. Contracts — terms, extensions, and time limits. (1) Unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a period of more than 7 years. However, the department may contract for ~~the lease or purchase of telecommunications equipment and systems, data processing equipment~~ *information technology resources*, the department of revenue *may contract with* liquor agencies, and the department of public health and human services *may contract for the* medicaid management information system (MMIS) for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period at the time of the agreement, and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(2) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) ~~When~~ *If* funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled."

Section 41. Section 61-3-345, MCA, is amended to read:

"61-3-345. County motor vehicle computer system. (1) The department shall maintain a statewide online computer system to be used to register and reregister motor vehicles, boats, snowmobiles, and off-highway vehicles.

(2) The department shall establish the user advisory group to assist in the development of policies governing the registration and reregistration of motor vehicles, boats, snowmobiles, and off-highway vehicles. The user advisory group must be appointed by the attorney general and must include:

(a) an employee of the department of ~~administration, data processing division,~~ *administration* selected by the ~~division administrator~~ *director of the department of administration*;

(b) two county treasurers, selected by the Montana county treasurers association;

(c) one county motor vehicle section supervisor, selected by the Montana county treasurers association;

(d) an employee of the department of revenue who is engaged in property assessment, selected by the director of the department of revenue;

(e) an employee of the department of justice, data processing division, selected by the division administrator;

(f) an employee of the department of justice, motor vehicle division, registrar's bureau, selected by the division administrator;

(g) an employee of the department of justice, motor vehicle division, driver services bureau, selected by the division administrator;

(h) a member of the Montana bankers' association, selected by the association director;

(i) a member of the Montana automobile dealers association, selected by the association director; and

(j) a member or employee of the Montana American automobile association, selected by the association director.

(3) Committee members who are not employees of the state of Montana shall serve a term of 2 years, and state employee members shall serve at the pleasure of the attorney general.

(4) Travel and per diem expenses for the committee must be charged to the motor vehicle division.

(5) Secretarial and support services for the committee must be provided by the motor vehicle division.

(6) The committee shall meet no more than four times a year unless specifically called by the attorney general."

Section 42. Section 61-3-346, MCA, is amended to read:

"**61-3-346. County motor vehicle computer committee.** (1) There is a county motor vehicle computer committee.

(2) The committee is allocated to the department of justice for administrative purposes only as provided in 2-15-121.

(3) The committee consists of:

(a) an employee of the ~~information service division of the~~ department of ~~administration~~ *administration*, appointed by the ~~director of the department of administration~~ *director of the department*;

(b) two county treasurers, appointed by the Montana county treasurers association; and

(c) two employees of the department of justice, appointed by the attorney general."

Section 43. Repealer. Sections 2-17-302, 2-17-304, 2-17-305, 2-17-321, 2-17-501, and 2-17-502, MCA, are repealed.

Section 44. Codification instructions — instructions to code commissioner. (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 10, and the provisions of Title 2, chapter 15, part 10, apply to [section 1].

(2) [Sections 2 through 18] are intended to be codified as an integral part of Title 2, and the provisions of Title 2 apply to [sections 2 through 18].

(3) The code commissioner shall renumber sections 2-17-303, 2-17-306, 2-17-311 through 2-17-313, 2-17-322, 2-17-323, and 2-17-503 as an integral part of [sections 2 through 18].

Section 45. No appropriation. The legislature has determined that [this act] can be implemented within existing appropriations, and therefore no separate appropriation of state money is necessary to carry out the purposes of [this act].

Section 46. Coordination instruction. If Senate Bill No. 90 and [this act] are both passed and approved, then [section 40 of this act] is amended to read:

"**18-4-313. Contracts — terms, extensions, and time limits.** (1) Unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a period of more than 7 years. However, the department may contract for ~~the lease or purchase of telecommunications equipment and systems, data processing equipment~~ *hardware, software, or other information technology resources*, the department of revenue *may contract with* liquor agencies, and the department of public health and human services *may contract for the* medicaid management information system (MMIS) for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period at the time of the agreement, and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(2) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) ~~When~~ *If* funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled."

Section 47. Effective date. [This act] is effective July 1, 2001.

Approved April 21, 2001

CHAPTER NO. 314

[SB 145]

AN ACT REVISING THE LAWS GOVERNING THE STATE COMPENSATION INSURANCE FUND; AUTHORIZING THE STATE FUND TO ESTABLISH, AFTER CONSULTATION WITH THE DEPARTMENT OF ADMINISTRATION, ONE OR MORE ALTERNATIVE PERSONAL LEAVE PLANS FOR STATE FUND EMPLOYEES; PROVIDING AN EXEMPTION FOR THE STATE FUND FROM STATE PRINTING LAWS FOR EXTERNAL MARKETING OR EDUCATIONAL MATERIALS; SUBSTITUTING AN EXPENSE CONSTANT FOR A POLICY CHARGE; AUTHORIZING THE STATE FUND TO EXPEND FUNDS FOR SCHOLARSHIP, EDUCATIONAL, OR CHARITABLE PURPOSES; AUTHORIZING THE STATE FUND TO PROVIDE EMPLOYERS COVERAGE UNDER THE FEDERAL LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT, THE FEDERAL MERCHANT MARINE ACT (JONES ACT), AND THE FEDERAL EMPLOYERS' LIABILITY ACT; CLARIFYING AND SUBSTITUTING MULTIPLE RATING TIERS FOR VARIABLE PRICING; ELIMINATING THE ADMINISTRATIVE EXPENDITURE RESTRICTION ON THE STATE COMPENSATION INSURANCE FUND BOARD; REQUIRING A REPORT TO AN INTERIM COMMITTEE OF THE LEGISLATURE PRIOR TO THE 2003 LEGISLATIVE SESSION ON THE ALTERNATIVE PERSONAL LEAVE PLAN; AMENDING SECTIONS 2-18-601, 2-18-701, 2-18-703, 2-18-711, 18-7-101, 39-71-2311, 39-71-2316, 39-71-2330, AND 39-71-2363, MCA; REPEALING SECTION 39-71-2341, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. State fund alternative personal leave plan — exception — collective bargaining negotiation — personal leave definition. (1) Except as provided in subsection (2), the state fund, after consultation with the department of administration, may develop an alternative personal leave plan for all state compensation insurance fund employees. The number of days and the rate at which the number of days are earned for the alternative personal leave plan must be the same as the combined total of days provided for in 2-18-612 and 2-18-618. Prior to implementation, the alternative personal leave plan must be adopted by the board and the board may adopt changes to the plan.

(2) The state fund, after consultation with the department of administration, may develop one or more alternative personal leave plans for some or all of its employees or may choose to develop an alternative personal leave plan for a particular class of employees or work unit.

(3) To the extent that an alternative personal leave plan applies to an employee who is a member of a collective bargaining unit, the implementation of the personal leave plan is subject to negotiation under 39-31-305.

(4) As used in this section, "personal leave" means all leave provided to an employee under the provisions of Title 2, chapter 18, part 6.

Section 2. Section 2-18-601, MCA, is amended to read:

"**2-18-601. Definitions.** For the purpose of this part, except 2-18-620, the following definitions apply:

(1) *(a)* "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision ~~thereof~~ *of the state.*

(b) The term does not mean the state compensation insurance fund.

(2) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(3) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(4) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, and persons contracted as independent contractors or hired under personal services contracts.

(5) "Full-time employee" means an employee who normally works 40 hours a week.

(6) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

(7) "Part-time employee" means an employee who normally works less than 40 hours a week.

(8) "Permanent employee" means a permanent employee as defined in 2-18-101.

(9) "Seasonal employee" means a seasonal employee as defined in 2-18-101.

(10) "Short-term worker" means a short-term worker as defined in 2-18-101.

(11) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or a member of the employee's immediate family or for a permanent state employee who is eligible for parental leave under the provisions of 2-18-606.

(12) "Temporary employee" means a temporary employee as defined in 2-18-101.

(13) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

(14) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."

Section 3. Section 2-18-701, MCA, is amended to read:

"**2-18-701. Definitions.** In this part, as it applies to a person employed in the executive, judicial, or legislative branches of state government, "employee" means:

(1) a permanent full-time employee, as provided in 2-18-601;

(2) a permanent part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week;

(3) a seasonal full-time employee, as provided in 2-18-601, who is regularly scheduled to work 6 months or more a year or who works for a continuous period of more than 6 months a year although not regularly scheduled to do so;

(4) a seasonal part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week for 6 months or more a year or who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so;

(5) elected officials;

(6) officers and permanent employees of the legislative branch;

(7) judges and permanent employees of the judicial branch;

(8) academic, professional, and administrative personnel having individual contracts under the authority of the board of regents of higher education or the state board of public education;

(9) a temporary full-time employee, as provided in 2-18-601:

(a) who is regularly scheduled to work more than 6 months a year;

(b) who works for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

(c) whose temporary status is defined through collective bargaining; ~~and~~

(10) a temporary part-time employee, as provided in 2-18-601:

(a) who is regularly scheduled to work 20 hours or more a week for 6 months or more a year;

(b) who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

(c) whose temporary status is defined through collective bargaining~~.~~*; and*

(11) a part-time or full-time employee of the state compensation insurance fund. As used in this subsection, "part-time or full-time employee of the state compensation insurance fund" means an employee eligible for inclusion in the state employee group benefit plans under the rules of the department of administration."

Section 4. Section 2-18-703, MCA, is amended to read:

"**2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, *and the state compensation insurance fund* shall contribute the amount specified in this section ~~towards~~ *toward* the group benefits cost.

(2) For employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is ~~$270 a month for the period from July 1999 through December 1999, $285 a month for the period from January 2000 through December 2000, and~~ $295 a month ~~for January 2001 and for each succeeding month~~. For employees of the Montana university system, the employer contribution for group benefits is ~~$285 a month for the period from July 1999 through June 2000 and~~ $295 a month ~~for the period from July 2000 through June 2001 and for each succeeding month~~. When a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 a month.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(5) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

(6) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents."

Section 5. Section 2-18-711, MCA, is amended to read:

"**2-18-711. Cooperative purchasing of employee benefit services and insurance products — procedures.** (1) To provide employee group benefits, an agency, as defined in 2-18-601, *and the state compensation insurance fund* may participate with other agencies, nonprofit organizations, or business entities and in voluntary disability insurance purchasing pools provided for under 33-22-1815 if the agency *or the state fund* determines that cooperative purchasing is in the agency's *or the state fund's* best interest.

(2) Cooperative purchases under this section may be conducted according to purchasing procedures developed by the participating parties if, for contracts valued at $20,000 a year or more, purchasing procedures, at a minimum, include:

(a) public notice in three major Montana newspapers of requirements for submitting bids or offers; and

(b) consideration of all submitted bids or offers.

(3) For purposes of this section, "employee" also means a schoolteacher."

Section 6. Section 18-7-101, MCA, is amended to read:

"**18-7-101. Power to contract for printing** — ***exception.*** (1) Except as provided in 1-11-301, the department has exclusive power, subject to the approval of the governor, to contract for all printing for any purpose used by the state in any state office (elective or appointive), agency, or institution.

(2) The department shall supervise and attend to all public printing of the state as provided in this chapter and shall prevent duplication and unnecessary printing.

(3) Unless otherwise provided by law, the department, in letting contracts as provided in this chapter, for the printing, binding, and publishing of all laws, journals, and reports of the state agencies and institutions may determine the quantity, quality, style, and grade of all such printing, binding, and publishing.

(4) The provisions of this chapter do not apply to the state compensation insurance fund for purposes of external marketing or educational materials."

Section 7. Section 39-71-2311, MCA, is amended to read:

"**39-71-2311. Intent and purpose of plan** — ***expense constant defined.*** *(1)* It is the intent and purpose of the state fund to allow employers an option to insure their liability for workers' compensation and occupational disease coverage with the state fund. The state fund must be neither more nor less than self-supporting. Premium rates must be set at least annually at a level sufficient to ensure the adequate funding of the insurance program, including the costs of administration, benefits, and adequate reserves, during and at the end of the period for which the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover those costs. Unnecessary surpluses that are created by the imposition of premiums found to have been set higher than necessary because of a high estimate of the cost of a factor or factors may be refunded by the declaration of a dividend as provided in this part. For the purpose of keeping the state fund solvent, ~~the state fund shall implement variable pricing levels as provided in 39-71-2341 and~~ the board of directors may *implement multiple rating tiers as provided in 39-71-2330 and may*~~, in its discretion,~~ assess a ~~policy charge~~ *an expense constant*, a minimum premium, or both.

(2) As used in this section, "expense constant" means a premium charge applied to each workers' compensation policy to pay expenses related to issuing, servicing, maintaining, recording, and auditing the policy."

Section 8. Section 39-71-2316, MCA, is amended to read:

"**39-71-2316. Powers of state fund.** For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, as part of the

coverage, provide related employers' liability insurance upon approval of the board;

(2) sue and be sued;

(3) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(4) collect and disburse money received;

(5) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund is required to belong to a licensed workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, and may use the classifications of employment adopted by the designated workers' compensation advisory organization, as provided in Title 33, chapter 16, part 10, and corresponding rates as a basis for setting its own rates. Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's specific payroll or loss information, including but not limited to experience modification factors.

(6) pay the amounts determined *to be* due under a policy of insurance issued by the state fund;

(7) hire personnel;

(8) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside.

(9) adopt and implement one or more alternative personal leave plans pursuant to [section 1];

~~(9)~~*(10)* upon approval of the board, contract with licensed resident insurance producers;

~~(10)~~*(11)* upon approval of the board, enter into agreements with licensed workers' compensation insurers, insurance associations, or insurance producers to provide workers' compensation coverage in other states to Montana-domiciled employers insured with the state fund;

(12) upon approval of the board, expend funds for scholarship, educational, or charitable purposes;

(13) upon approval of the board, including terms and conditions, provide employers coverage under the federal Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901, et seq.) the federal Merchant Marine Act, 1920 (Jones Act, 46 U.S.C. 688), and the federal Employers' Liability Act (45 U.S.C. 51, et seq.);

~~(11)~~*(14)* perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund."

Section 9. Section 39-71-2330, MCA, is amended to read:

"39-71-2330. Rate setting — surplus — *multiple rating tiers.* (1) The board has the authority to establish the rates to be charged by the state fund for insurance. The board shall engage the services of an independent actuary who is a member in good standing with the American academy of actuaries to develop and recommend actuarially sound rates. Rates must be set at amounts sufficient, when invested, to carry the estimated cost of all claims to maturity, to meet the reasonable expenses of conducting the business of the state fund, and to amass and maintain an excess of surplus over the amount produced by the national association of insurance commissioners' risk-based capital requirements for a casualty insurer.

(2) Because surplus is desirable in the insurance business, the board shall annually determine the level of surplus that must be maintained by the state fund pursuant to this section, but shall maintain a minimum surplus of 25% of annual earned premium. The state fund shall use the amount of the surplus above the risk-based capital requirements to secure the state fund against various risks inherent in or affecting the business of insurance and not accounted for or only partially measured by the risk-based capital requirements.

(3) The board may implement multiple rating tiers for classifications that take into consideration losses, premium size, and other factors relevant in placing an employer within a rating tier."

Section 10. Section 39-71-2363, MCA, is amended to read:

"39-71-2363. Agency law — submission of budget — annual report. (1) The state fund is subject to state laws applying to state agencies, except as otherwise provided by law, and it is exempt from the provisions of The Legislative Finance Act in Title 5, chapter 12, and the provisions of Title 17, chapter 7, parts 1 through 4. The state fund may use the debt collection procedures provided in Title 17, chapter 4, part 1.

(2) (a) Except as provided in 2-15-2015, the executive director shall annually submit to the board for its approval an estimated budget of the entire expense of administering the state fund for the succeeding fiscal year, with due regard to the business interests and contract obligations of the state fund. ~~The administrative expenditures approved by the board may not exceed 15% of the earned annual premium of the prior fiscal year.~~ A copy of the approved budget must be delivered to the governor and the legislature.

~~(b) The board may approve administrative expenditures in excess of 15% of the earned annual premium of the prior fiscal year, but the excess amount approved may not exceed one-half of the investment income earned in the prior fiscal year.~~

~~(c)~~*(b)* Upon approval of the estimated budget for the succeeding fiscal year, the state fund shall, no later than October 1 of each year, submit the approved annual budget for review to the legislative finance committee established under 5-12-201.

~~(d)~~*(c)* Dividends may not be included as administrative expenditures as provided in subsection (2)(a), but are a disbursement of excess surplus pursuant to 39-71-2323 after a determination by the state fund of income from operations.

(3) The board shall submit an annual financial report to the governor and to the legislature as provided in 5-11-210, indicating the business done by the state fund during the previous year and containing a statement of the estimated liabilities of the state fund as determined by an independent actuary."

Section 11. Repealer. Section 39-71-2341, MCA, is repealed.

Section 12. Report to legislative committee. Prior to the 2003 legislative session, the state compensation insurance fund shall report on the development of its alternative personal leave plan to the state administration, public retirement systems, and veterans' affairs interim committee.

Section 13. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [section 1].

Section 14. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval.

(2) [Sections 1 through 5 and 8] are effective July 1, 2001.

(3) [Sections 7, 9, and 11] are effective July 1, 2002.

Approved April 21, 2001

CHAPTER NO. 315

[SB 147]

AN ACT GENERALLY REVISING THE PUBLIC WATER SUPPLIES, DISTRIBUTION, AND TREATMENT LAWS; CLARIFYING THE DEFINITIONS OF "PERSON", "PUBLIC SEWAGE SYSTEM", AND "PUBLIC WATER SUPPLY SYSTEM"; PROHIBITING THE CONTINUED CONSTRUCTION OR OPERATION OF PUBLIC WATER SUPPLY SYSTEMS OR PUBLIC SEWAGE SYSTEMS PRIOR TO DEPARTMENT APPROVAL; LIMITING OWNERSHIP OF PUBLIC WATER SUPPLY SYSTEMS AND PUBLIC SEWAGE SYSTEMS TO INDIVIDUALS, GOVERNMENTAL ENTITIES, AND CERTAIN TYPES OF BUSINESS ENTITIES; REQUIRING AN OWNER OF A PUBLIC WATER SUPPLY SYSTEM OR A PUBLIC SEWAGE SYSTEM TO SUBMIT INFORMATION TO THE DEPARTMENT ON OWNERSHIP STATUS; AMENDING SECTIONS 75-6-102 AND 75-6-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6-102, MCA, is amended to read:

"75-6-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Certified wellhead protection area" means an area certified by the department that protects the surface and subsurface area surrounding a source

of ground water for a public water supply system through which contaminants may move toward and reach the source of supply.

(3) "Community water system" means a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health.

(5) "Cross-connection" means a connection between a public water supply system and another water supply system, either public or private, or a wastewater or sewerline or other potential source of contamination so that a flow of water into or contamination of the public water supply system from the other source of water or contamination is possible.

(6) "Department" means the department of environmental quality provided for in 2-15-3501.

(7) "Drainage" means rainfall, surface, and subsoil water.

(8) "Industrial waste" means any waste substance from the processes of business or industry or from the development of a natural resource, together with any sewage that may be present.

(9) "Industrial waste discharge system" means a system that discharges industrial waste into state waters.

(10) "Maximum contaminant level" means the maximum permissible level of a contaminant in water that is delivered to a user of a public water supply system.

(11) "Montana wellhead protection program" means a program administered by the department to certify wellhead protection areas and review wellhead protection ordinances.

(12) "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(13) "Person" means an individual, ~~corporation, association, partnership, municipality, other political subdivision of the state, or federal agency~~ *firm, partnership, company, association, corporation, city, town, local government entity, federal agency, or any other governmental or private entity, whether organized for profit or not.*

(14) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that which is permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of a liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife. A discharge that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

(15) "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that serves 15 or more families or 25 or more persons daily for ~~a period of at least 60~~ *any 60 or more* days in a calendar year.

(16) "Public water supply system" means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for ~~a period of at least 60~~ *any 60 or more* days in a calendar year.

(17) "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations set forth in 40 CFR, parts 141 and 142.

(18) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with ground water infiltration and surface water present.

(19) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(20) "Transient noncommunity water system" means a public water supply system that is not a community water system and that does not regularly serve at least 25 of the same persons for at least 6 months a year."

Section 2. Section 75-6-112, MCA, is amended to read:

"**75-6-112. Prohibited acts.** A person may not:

(1) discharge sewage, drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;

(2) discharge sewage, drainage, industrial waste, or other waste into state waters or on the banks of state waters or into an abandoned or operating water well unless the sewage, drainage, industrial waste, or other waste is treated as prescribed by the board;

(3) commence *or continue* construction, alteration, extension, or operation of a system of water supply or water distribution that is designed to be a public water supply system or a system of sewer, drainage, waste, or sewage disposal that is designed to be a public sewage system or industrial waste discharge system before the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications. However, any facility reviewed by the department under Title 75, chapter 5, is not subject to the provisions of this section.

(4) operate or maintain a public water supply system that exceeds a maximum contaminant level established by the board unless the person has been granted or has an application pending for a variance or exemption pursuant to this part;

(5) violate any provision of this part or a rule adopted under this part; or

(6) violate any condition or requirement of an approval issued pursuant to this part."

Section 3. Ownership of public water supply system or public sewage system — change in status. (1) A person may not own a public water system or a public sewage system unless that person is:

(a) an individual;

(b) a limited partnership;

(c) a limited liability company;

(d) a corporation, whether organized for profit or not;

(e) a city, town, local government entity, or other political subdivision of the state; or

(f) a federal agency.

(2) The owner of a public water supply system or a public sewage system shall, within 90 days after being requested to do so by the department or within 90 days after a transfer in ownership:

(a) submit information on a form provided by the department that details the ownership status of the public water supply system or public sewage system; and

(b) provide other necessary information for the department's records.

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 75, chapter 6, part 1, and the provisions of Title 75, chapter 6, part 1, apply to [section 3].

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2001

CHAPTER NO. 316

[SB 163]

AN ACT REVISING STATUTES APPLICABLE TO THE MANAGEMENT OF CERTAIN ANIMAL SPECIES; RECLASSIFYING CERTAIN SPECIES TO INCREASE THE STATE'S ABILITY TO MAINTAIN OR REGAIN MANAGEMENT AUTHORITY RATHER THAN HAVING MANAGEMENT AUTHORITY EXERCISED BY THE FEDERAL GOVERNMENT; REVISING THE DEFINITION OF "PREDATORY ANIMAL"; ELIMINATING THE AUTHORITY OF THE DEPARTMENT OF LIVESTOCK TO EXTERMINATE PREDATORY ANIMALS; ALLOWING A PERSON TO PROTECT LIVESTOCK BY KILLING OR ATTEMPTING TO KILL A GRIZZLY BEAR THAT IS IN THE ACT OF ATTACKING OR KILLING LIVESTOCK; ALLOWING THE AMENDMENT OF REGULATIONS FOR A SPECIES IN NEED OF MANAGEMENT WITHOUT LEGISLATIVE APPROVAL; PROVIDING FOR MANAGEMENT OF THE GRAY WOLF IF IT IS REMOVED FROM THE FEDERAL AND STATE LISTS OF THREATENED OR ENDANGERED WILDLIFE; AMENDING SECTIONS 81-7-101, 81-7-102, 81-7-103, 81-7-104, 87-3-127, 87-3-130, AND 87-5-105, MCA; REPEALING SECTION 7, CHAPTER 244, LAWS OF 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-7-101, MCA, is amended to read:

"~~**81-7-101. (Temporary) Definition.** For the purpose of this part the term "wild animal" shall include coyote, lynx, and any other animal causing depredations upon livestock.~~

81-7-101. ~~**(Effective on occurrence of contingency)**~~ **Definition.** For the purpose of this part, the term "predatory animal" includes ~~gray wolf,~~ coyote, *red fox,*~~,lynx,~~ and any other *individual* animal causing depredations upon livestock."

Section 2. Section 81-7-102, MCA, is amended to read:

"~~**81-7-102. (Temporary) Department to supervise destruction of predatory animals — cooperation with other agencies — administration of moneys.** (1) The department of livestock shall conduct the destruction, extermination, and control of wild animals predatory in nature and capable of killing, destroying, maiming, or injuring domestic livestock or domestic poultry, and the protection and safeguarding of livestock and poultry in this state against depredations from these animals. The department shall formulate the practical programs for accomplishing these objectives in this state and for carrying out the programs in an efficient and practical manner responsive to the need for control in each area of this state.~~

~~(2) The department shall adopt rules applicable to predatory animal control which are necessary and proper for the systematic destruction of the wild animals by hunting, trapping, and poisoning operations and payments of bounties. The department shall make field, area, range, or other orders and instructions, including orders and instructions to hunter and trapper personnel and others, which are appropriate in the various areas at different seasons of the year, taking into consideration the habits, presence, migrations, or movements of the animals and their attacks on livestock and poultry, either singly or in packs or bands.~~

~~(3) The department shall cooperate with authorized representatives of the federal government, including the biological survey and the fish and wildlife service, the department of fish, wildlife, and parks, boards of county commissioners, voluntary associations of stockgrowers, sheepgrowers, ranchers, farmers, and sportsmen, and corporations and individuals, in the systematic destruction of wild animals by hunting, trapping, and poisoning operations.~~

~~(4) This section and 81-7-103 do not interfere with or impair the power and duties of the department of fish, wildlife, and parks in the control of predatory animals by the department of fish, wildlife, and parks as authorized by law, or the obligation of the department of fish, wildlife, and parks to expend its funds in cooperation with the department for predatory animal control as required by law. Funds of the department of fish, wildlife, and parks for the cooperative predatory animal control shall be administered and expended by the department of fish, wildlife, and parks.~~

81-7-102. ~~**(Effective on occurrence of contingency)**~~ **Department to supervise destruction of predatory animals — cooperation with other agencies — administration of money.** (1) The department of livestock shall conduct the destruction~~, extermination,~~ and control of predatory animals capable of killing, destroying, maiming, or injuring domestic livestock or domestic poultry~~,~~ and the protection and safeguarding of livestock and poultry in this state against depredations from these animals. The department shall formulate the practical programs for accomplishing these objectives in this state and for carrying out the programs in an efficient and practical manner responsive to the need for control in each area of this state.

(2) The department shall adopt rules applicable to predatory animal control ~~which~~ *that* are necessary and proper for the systematic destruction of the predatory animals by hunting, trapping, and poisoning operations and payments of bounties. The department shall make field, area, range, or other orders and instructions, including orders and instructions to hunter and trapper personnel and others, ~~which~~ *that* are appropriate in the various areas at different seasons of the year, taking into consideration the habits, presence, migrations, or movements of the animals and their attacks on livestock and poultry, either singly or in packs or bands.

(3) The department shall cooperate with authorized representatives of the federal government, including the biological survey and the fish and wildlife service, the department of fish, wildlife, and parks, boards of county commissioners, voluntary associations of stockgrowers, sheepgrowers, ranchers, farmers, and sportsmen, and corporations and individuals, in the systematic destruction of predatory animals by hunting, trapping, and poisoning operations.

(4) ~~This section and~~ *Section* 81-7-103 *and this section* do not interfere with or impair the power and duties of the department of fish, wildlife, and parks in the control of predatory animals by the department of fish, wildlife, and parks as authorized by law~~;~~ or the obligation of the department of fish, wildlife, and parks to expend its funds in cooperation with the department for predatory animal control as required by law. Funds of the department of fish, wildlife, and parks for the cooperative predatory animal control must be administered and expended by the department of fish, wildlife, and parks."

Section 3. Section 81-7-103, MCA, is amended to read:

"81-7-103. Administration of funds by ~~the~~ department. The department shall administer and expend for predatory animal ~~extermination and~~ control all money ~~which~~ *that* is made available to it, including the money allocated for this purpose under 81-7-104 and all money ~~which~~ *that* is made available to the department by appropriations made by the legislature for predatory animal control by the department. The department shall expend the funds for predatory animal control by all effective means responsive to the necessities of control in various areas of the state, including employment of hunters, trappers, and other personnel, procurement of traps, poisons, equipment, and supplies, and payment of bounties in the discretion of the department at those times of the year it considers advisable."

Section 4. Section 81-7-104, MCA, is amended to read:

"~~**81-7-104. (Temporary) Predator control moneys — use of proceeds.** (1) The department of livestock shall allocate a portion of the money from the levy under 15-24-921 for the purpose of protecting livestock in the state against destruction, depredation, and injury by wild animals, whether the livestock is on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. This protection may be by any means of effective predatory animal destruction, extermination, and control, including systematic hunting and trapping and payment of bounties.~~

~~(2) Money shall be paid out only on claims duly and regularly presented to the department of livestock and approved by the department in accordance with the~~

~~law applicable either to claims for bounties or for other expenditures necessary and proper for predatory animal control by means and methods other than payment of bounties, as determined by the department. Money designated for predator control shall be available for the payment of bounty claims and for expenditures for planned, seasonal, or other campaigns directed or operated by the department in cooperation with other agencies for the systematic destruction, extermination, and control of predatory wild animals, as determined by the department and its advisory committee. No claims may be approved in excess of moneys available for such purposes, and no warrants may be registered against the moneys.~~

81-7-104. ~~(Effective on occurrence of contingency)~~ Predator control money — use of proceeds. (1) The department of livestock shall allocate a portion of the money from the levy under 15-24-921 for the purpose of protecting livestock in the state against destruction, depredation, and injury by predatory animals, whether the livestock is on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. This protection may be by any means of effective predatory animal destruction~~, extermination,~~ and control, including systematic hunting and trapping and payment of bounties.

(2) Money ~~must~~ *may* be paid out only on claims duly and regularly presented to the department of livestock and approved by the department in accordance with the law applicable either to claims for bounties or for other expenditures necessary and proper for predatory animal control by means and methods other than payment of bounties, as determined by the department. Money designated for predator control must be available for the payment of bounty claims and for expenditures for planned, seasonal, or other campaigns directed or operated by the department in cooperation with other agencies for the systematic destruction~~, extermination,~~ and control of predatory animals, as determined by the department and its advisory committee. Claims may not be approved in excess of money available for those purposes, and warrants may not be registered against the money."

Section 5. Section 87-3-127, MCA, is amended to read:

"87-3-127. Taking of stock-killing animals. (1) Livestock owners, *their agents,* or employees of the department or ~~the~~ *a* federal ~~fish and wildlife service~~ *agency* may use dogs in pursuit of stock-killing *black* bears, stock-killing mountain lions, and stock-killing bobcats. Other means of taking stock-killing *black* bears, stock-killing mountain lions, and stock-killing bobcats may be used, except ~~the use of~~ the deadfall.

(2) Traps used in capturing bears ~~shall~~ *must* be inspected twice each day with the inspections 12 hours apart."

Section 6. Section 87-3-130, MCA, is amended to read:

"87-3-130. Taking of wildlife to protect persons or livestock. (1) This chapter may not be construed to impose, by implication or otherwise, criminal liability for the taking of wildlife protected by this chapter if the wildlife is ~~molesting, assaulting,~~ *attacking,* killing, or threatening to kill a person or livestock, *except that, for purposes of protecting livestock, a person may not kill or attempt to kill a grizzly bear unless the grizzly bear is in the act of attacking or killing livestock. In addition, a person may kill or attempt to kill a wolf or mountain lion that is in the act of attacking or killing a domestic dog.* A person who ~~so~~ takes wildlife protected by this chapter shall notify the department within 72 hours.

(2) A person may not intentionally provide supplemental feed to game animals in a manner that results in an artificial concentration of game animals that may potentially contribute to the transmission of disease. A person who violates this subsection is guilty of a misdemeanor and is subject to the penalty provided in 87-1-102(1). This subsection does not apply to supplemental feeding activities conducted by the department for disease control purposes.

(3) As used in this section, "livestock" includes ostriches, rheas, and emus."

Section 7. Section 87-5-105, MCA, is amended to read:

"**87-5-105. Regulations to manage nongame wildlife.** (1) On the basis of the determinations made pursuant to 87-5-104, the department shall issue management regulations. ~~Such~~ *The* regulations ~~shall~~ *must* set forth species or subspecies of nongame wildlife ~~which~~ *that* the department ~~deems~~ *considers to be* in need of management pursuant to 87-5-104 through 87-5-106, giving their common and scientific names by species and subspecies. ~~The department may from time to time amend such regulations on the approval of the legislature by adding or deleting therefrom species or subspecies of nongame wildlife.~~

(2) The department shall by ~~such regulations~~ *regulation* establish ~~proposed~~ limitations relating to taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment ~~as may be deemed~~ *considered* necessary to manage ~~such~~ nongame wildlife *that is designated in need of management.* ~~The department may make such changes in the proposed regulations as are consistent with effective management of nongame wildlife as designated by the legislature.~~"

Section 8. Process for delisting of gray wolf — management following delisting. (1) If the United States fish and wildlife service removes the Northern Rocky Mountain or gray wolf from the United States' list of endangered or threatened wildlife, the department is authorized to remove the wolf from the state list of endangered species upon a determination by the department pursuant to this part that the wolf is no longer endangered.

(2) Following state delisting of the wolf, the department shall manage the wolf as a species in need of management until the department and the commission determine that the wolf no longer needs protection as a species in need of management and can be managed and protected as a game animal. Upon making that determination, the commission may declare the wolf a big game animal or a furbearer and may regulate the taking of a wolf as a big game animal or furbearer.

(3) Following state delisting of the wolf, the department, or the department of livestock, pursuant to 81-7-102 and 81-7-103, may control wolves for the protection and safeguarding of livestock if the control action is consistent with a wolf management plan approved by both the department and the department of livestock.

Section 9. Repealer. Section 7, Chapter 244, Laws of 1995, is repealed.

Section 10. Codification instruction. [Section 8] is intended to be codified as an integral part of Title 87, chapter 5, part 1, and the provisions of Title 87, chapter 5, part 1, apply to [section 8].

Section 11. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2001

CHAPTER NO. 317

[SB 168]

AN ACT INCREASING THE JUNK VEHICLE DISPOSAL FEES ON PASSENGER CARS AND TRUCKS UNDER 8,001 POUNDS; INCREASING THE ANNUAL LICENSE FEE FOR MOTOR VEHICLE WRECKING FACILITIES; PROVIDING SUPPLEMENTAL REVENUE TO THE STATE MOTOR VEHICLE RECYCLING AND DISPOSAL PROGRAM TO OFFSET REVENUE LOSSES; AMENDING SECTIONS 61-3-508, 75-10-511, AND 75-10-532, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

WHEREAS, at the end of fiscal year 2000, the junk vehicle fund administered by the department of environmental quality was reduced to its lowest level since 1980 and was only 65% of its 1998 value; and

WHEREAS, a declining international market price for scrap steel has reduced revenues that the department received for vehicles recycled through the program by 63% over the last 2 years; and

WHEREAS, almost $900,000 of the $1.1 million dollar junk vehicle program budget is provided to counties for the control and removal of junk vehicles in their jurisdictions; and

WHEREAS, without increases in the junk vehicle disposal fees and the annual license fees for motor vehicle wrecking facilities, the department will have insufficient revenue to fully support county program grants, resulting in the counties' decreased ability to pay for the control and removal of junk vehicles; and

WHEREAS, insufficient funding to allow the counties to control and remove junk vehicles is likely to cause impairment of scenic values and an increased risk of contamination to the environment.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-508, MCA, is amended to read:

"61-3-508. Junk vehicle disposal fee. A special junk vehicle disposal fee must be assessed on each new application for a motor vehicle title and on each transfer of a motor vehicle title in the amount of ~~$1.50~~ *$2* on passenger cars and trucks under 8,001 pounds GVW. An additional special junk vehicle disposal fee must be assessed in the amount of ~~50 cents~~ *$1* on each passenger car and truck under 8,001 pounds GVW registered for licensing. *Fifteen cents of the $1 special junk vehicle disposal fee must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532.* The fees must be collected by the county treasurer. However, the following are exempt from payment of the fees:

(1) vehicles leased or owned by the state or by a county or municipality;

(2) vehicles used for transportation by nonresident, migratory workers temporarily employed in agricultural work in this state;

(3) vehicles displaying dealer's or wholesaler's plates while owned by a dealer or wholesaler; and

(4) housetrailers or equipment that is not self-propelled or that requires towing upon a highway of this state."

Section 2. Section 75-10-511, MCA, is amended to read:

"75-10-511. Motor vehicle wrecking facility and motor vehicle graveyard licenses. (1) A person may not conduct, maintain, or operate a motor vehicle wrecking facility or motor vehicle graveyard without a license issued by the department.

(2) Application for the license ~~shall~~ *must* be made on forms furnished by the department.

(3) An annual fee of ~~$50 shall~~ *$100 must* be paid to the department for the license. *The fee may be* ~~or~~ quarterly prorated for new facilities.

(4) A motor vehicle graveyard is excluded from paying the annual license fee but must meet all other requirements of ~~the~~ *this* part.

(5) A license ~~shall~~ *must* be displayed in a prominent place in the licensed facility or graveyard.

(6) The license expires on December 31 of the year issued.

(7) If a motor vehicle wrecking facility ceases to do business, the license ~~shall~~ *must* be surrendered to the department. The license is not transferable."

Section 3. Section 75-10-532, MCA, is amended to read:

"75-10-532. Disposition of money collected. All money received from the sale of the junk vehicles or from recycling of the material and all motor vehicle wrecking facility license fees and fees collected as motor vehicle disposal fees must be deposited with the state treasurer to be used for the control, collection, recycling, and disposal of junk vehicles and component parts and~~, to the extent the legislature appropriates funds expressly and solely for this purpose,~~ for the removal of abandoned vehicles."

Section 4. Effective date. [This act] is effective January 1, 2002.

Approved April 21, 2001

CHAPTER NO. 318

[SB 182]

AN ACT EXPANDING THE INTERLOCAL COOPERATION ACT TO ALLOW SCHOOL DISTRICTS TO SHARE TEACHERS, SPECIALISTS, SUPERINTENDENTS, OR OTHER PROFESSIONAL PERSONS LICENSED UNDER TITLE 37; AMENDING SECTIONS 7-11-104, 7-11-105, 20-4-201, AND 20-4-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-11-104, MCA, is amended to read:

"7-11-104. Authorization to create interlocal agreements — issuance of bonds for joint construction — *hiring of teacher, specialist, or superintendent.* One or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking or to participate in the provision or maintenance of any public infrastructure facility, project, or service, including the issuance of bonds for the joint construction of a facility under 20-9-404, *the hiring of a teacher or specialist under 20-4-201 or a superintendent under 20-4-401, or the hiring of or contracting with any other professional person licensed under Title 37*, that any of the public agencies entering into the contract is authorized by law to perform. The contract must be authorized and approved by the governing body of each party to the contract. The contract must outline fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties."

Section 2. Section 7-11-105, MCA, is amended to read:

"**7-11-105. Detailed contents of interlocal agreements.** The contract authorized by 7-11-104 ~~shall~~ *must* specify the following:

(1) its duration;

(2) the precise organization, composition, and nature of any separate legal entity created ~~thereby~~ *by the contract*;

(3) the purpose or purposes of ~~said~~ *the* interlocal contract;

(4) the manner of financing the joint or cooperative undertaking and establishing and maintaining a budget ~~therefor~~ *for the undertaking*;

(5) the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and, *if applicable*, for disposing of property upon ~~such~~ *a* partial or complete termination;

(6) provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking, including representation of the contracting parties on ~~said~~ *the* joint board;

(7) *if applicable*, the manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking;

(8) if applicable, the manner of sharing the employment of a teacher or specialist under 20-4-201, a superintendent under 20-4-401, or a professional person licensed under Title 37; and

~~(8)~~*(9)* any other necessary and proper matters."

Section 3. Section 20-4-201, MCA, is amended to read:

"**20-4-201. Employment of teachers and specialists by contract.** (1) The trustees of any district ~~shall~~ have the authority to employ any person as a teacher or specialist, but only a person who holds a valid Montana teacher or specialist certificate or for whom an emergency authorization of employment has been issued that qualifies ~~such~~ *the* person to perform the duties prescribed by the trustees for the position of employment. Each teacher or specialist ~~shall~~ *must* be employed under written contract, and each contract of employment ~~shall~~ *must* be authorized by a proper resolution of the trustees and ~~shall~~ *must* be executed in duplicate by the ~~chairman~~ *presiding officer* of the trustees and the clerk of the district in the name of the district and by the teacher or specialist.

(2) ~~No~~ *A* contract of employment with a teacher or specialist ~~shall~~ *may not* require ~~such~~ *the* teacher or specialist to teach more than 5 days a week or on any holiday recognized by 20-1-305. ~~No~~ *A* deduction ~~shall~~ *may not* be made from a teacher's or specialist's salary by reason of the fact that a holiday falls on a school

day. ~~Any~~ *A* teacher's or specialist's contract made in conflict with the ~~5-days-per-week~~ *5-days-a-week* provision of this section ~~shall~~ *is* not ~~be~~ enforceable against the teacher or specialist.

(3) Whenever the ~~board~~ *boards* of trustees of two or more school districts form a joint board of trustees under the provisions of 20-3-361 *or when the boards of trustees of two or more school districts enter into an interlocal agreement pursuant to Title 7, chapter 11, part 1, to cooperatively share the employment of a teacher or specialist*, ~~such~~ *the* joint board of trustees *or the boards of trustees of two or more school districts, pursuant to an interlocal agreement,* may execute a contract of employment with a teacher or specialist who shall serve the districts. When ~~such~~ a contract is executed, the districts shall prorate the compensation provided by ~~such~~ *the* contract on the basis of the total number of instructional hours expended by ~~such~~ *the* teacher or specialist within each district.

(4) Any contract executed under the provisions of this section may contain the oath or affirmation prescribed in 20-4-104, and the teacher or specialist shall subscribe to ~~such~~ *the* oath or affirmation before an officer authorized by law to administer oaths."

Section 4. Section 20-4-401, MCA, is amended to read:

"**20-4-401. Appointment and dismissal of district superintendent or county high school principal.** (1) The trustees of any high school district, except a county high school, and the trustees of the elementary district where its high school building is located shall jointly employ and appoint a district superintendent. The trustees of a county high school shall employ and appoint a district superintendent, except that they may employ and appoint a holder of a class 3 teacher certificate with a district superintendent endorsement as the county high school principal in lieu of a district superintendent. The trustees of any other district may employ and appoint a district superintendent.

(2) Whenever a joint board of trustees has been formed by a county high school and the elementary district where the county high school is located, ~~such~~ *the* joint board shall jointly employ and appoint a district superintendent. During the term of contract of the jointly appointed district superintendent, neither district ~~shall~~ *may* separately employ and appoint a district superintendent or county high school principal.

(3) School districts other than those provided in subsection (2) that form a joint board of trustees *or the boards of trustees of two or more districts* may jointly employ and appoint a district superintendent, as allowed in 20-3-362, *or may enter into an interlocal agreement pursuant to Title 7, chapter 11, part 1, to cooperatively share the employment of a district superintendent.*

(4) The written contract of employment of a district superintendent or a county high school principal ~~shall~~ *must* be authorized by the proper resolution of the trustees of the district or the joint board of trustees and executed in duplicate by the ~~chairman~~ *presiding officer* of the trustees or joint board of trustees and the clerks of the districts in the name of the districts and by the district superintendent or the county high school principal. ~~Such~~ *The* contract ~~shall~~ *must* be for a term of not more than 3 years, and after the second successive contract, the contract ~~shall be deemed~~ *is considered* to be renewed for a further term of 1 year from year to year ~~thereafter~~ unless the trustees ~~shall~~, by resolution passed by a majority vote of its membership, resolve to terminate the services of the district superintendent or the county high school principal at the expiration of ~~his~~

the existing contract. The trustees shall take ~~such~~ *the* termination action and notify the district superintendent or the county high school principal in writing of their intent to terminate ~~his~~ *the superintendent's or principal's* services at the expiration of ~~his~~ *the superintendent's or principal's* current contract not later than February 1 of the last year of ~~such~~ *the* contract.

(5) Whenever a joint board of trustees *or the boards of trustees of two or more districts* employs a person as the district superintendent under subsection (2) or (3), the districts shall prorate the compensation provided by the contract of employment on the basis of the number of teachers employed by each district.

(6) At any time the class 3 teacher certification or the endorsement of the certificate of a district superintendent or a county high school principal that qualifies ~~such~~ *the* person to hold ~~such~~ *the* position becomes invalid, the trustees of the district or the joint board of trustees shall discharge ~~such~~ *the* person as the district superintendent or county high school principal regardless of the unexpired term of ~~his~~ *the* contract. The trustees ~~shall~~ *may* not compensate ~~him~~ *the superintendent or principal* under the terms of ~~his~~ *the* contract for any services rendered subsequent to the date of the invalidation of ~~his~~ *the* teacher certificate.

(7) ~~No~~ *A* district superintendent or county high school principal ~~shall~~ *may not* engage in any work or activity ~~which~~ *that* the trustees ~~may deem~~ *consider* to be in conflict with ~~his~~ *the* duties and employment as the district superintendent or county high school principal."

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2001

CHAPTER NO. 319

[SB 226]

AN ACT REVISING THE RESTRICTION ON THE USE OF PUBLIC INFORMATION FOR MAILING LISTS; ALLOWING A PUBLIC SCHOOL TO PROVIDE LISTS OF STUDENTS TO ARMED FORCES RECRUITERS; AND AMENDING SECTION 2-6-109, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-6-109, MCA, is amended to read:

"2-6-109. Prohibition on distribution or sale of mailing lists — exceptions — penalty. (1) Except as provided in subsections (3) through ~~(8)~~ *(9)*, in order to protect the privacy of those who deal with state and local government:

(a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) [Except as provided in 30-9-403, this] This section does not prevent an individual from compiling a mailing list by examination of original documents or applications that are otherwise open to public inspection.

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115 and 13-38-103, to lists of the names of employees governed by Title 39, chapter 31, or to lists of persons holding driver's licenses provided for under 61-5-126.

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access either by Montana law enforcement agencies or, by purchase or otherwise, of public records dealing with motor vehicle registration.

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) This section does not apply to the use by the public employees' retirement board of a mailing list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the mailing list is not released to the organization.

(9) This section does not apply to a public school providing lists of graduating students to representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.

~~(9)~~*(10)* A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor. (Bracketed language deleted July 1, 2001.)"

Approved April 21, 2001

CHAPTER NO. 320

[SB 256]

AN ACT MAKING COMPLIANCE WITH THE FEDERAL MILITARY SELECTIVE SERVICE ACT A PREREQUISITE FOR STATE AGENCY OR MONTANA UNIVERSITY SYSTEM EMPLOYMENT, PAYMENT OF STATE STUDENT FINANCIAL ASSISTANCE, AND ENROLLMENT IN A POSTSECONDARY EDUCATIONAL INSTITUTION OF A STUDENT RECEIVING FINANCIAL ASSISTANCE PROVIDED BY STATE FUNDS; REQUIRING THE ADOPTION OF RULES BY THE DEPARTMENT OF ADMINISTRATION AND THE BOARD OF REGENTS; AND PROVIDING EFFECTIVE DATES.

WHEREAS, even in the time of voluntary membership in the armed services, Congress has chosen as part of the federal Military Selective Service Act, 50 App. U.S.C. 451, et seq., to maintain the military selective service registration system as a means for rapid induction of individuals into the armed forces and, as part of that system, still requires adult men between the ages of 18 and 26 to register with the selective service system; and

WHEREAS, the Military Selective Service Act in 50 App. U.S.C. 462(f) requires compliance with the registration requirements of the Military Selective Service Act as a prerequisite to the receipt of federal student financial assistance; and

WHEREAS, 5 U.S.C. 3328(a) makes ineligible for employment by a federal executive agency an individual who has failed to comply with the registration requirements of the Military Selective Service Act; and

WHEREAS, Montana should do all that it can to require that those men subject to the selective service registration requirements fulfill their obligation to register with the selective service system; and

WHEREAS, it is therefore appropriate that Montana likewise require compliance with the registration requirements of the Military Selective Service Act as a prerequisite for payment of state student financial aid, enrollment in a postsecondary educational institution of a student receiving financial assistance provided by state funds, and employment with the Executive Branch of state government.

Be it enacted by the Legislature of the State of Montana:

Section 1. Compliance with Military Selective Service Act required for employment — rulemaking. (1) An agency of state government or of the Montana university system may not employ, on a full-time or part-time basis, in a permanent or temporary position, an individual who has failed to comply with the registration requirements of the federal Military Selective Service Act, 50 App. U.S.C. 451, et seq. However, this prohibition does not apply to an individual who:

(a) by a preponderance of the evidence shows that the failure to register was not done knowingly or willfully; or

(b) is exempt from registration under the provisions of the Military Selective Service Act.

(2) The department of administration and the board of regents shall adopt rules to implement this section.

Section 2. Compliance with Military Selective Service Act for postsecondary financial assistance — rulemaking — definitions. (1) A postsecondary educational institution may not provide student financial assistance to or enroll as a student an individual who is receiving or will receive student financial assistance unless the individual has complied with the registration requirements of the federal Military Selective Service Act, 50 App. U.S.C. 451, et seq. However, this prohibition does not apply to an individual who:

(a) by a preponderance of the evidence shows that the failure to register was not done knowingly or willfully; or

(b) is exempt from registration under the provisions of the Military Selective Service Act.

(2) The board of regents shall adopt rules to implement this section.

(3) The following definitions apply to this section:

(a) "Postsecondary educational institution" means:

(i) the Montana university system; or

(ii) any other postsecondary school:

(A) accepting as a student an individual receiving student financial assistance; or

(B) accepting state funds.

(b) "Student financial assistance":

(i) means a grant, loan, or insurance on a loan, all or a part of which is provided by the state; and

(ii) includes money given or to be given pursuant to:

(A) the financial assistance for resident nonbeneficiary students provision in 20-25-428;

(B) the work-study program provided for in Title 20, chapter 25, part 7;

(C) the Montana resident student financial assistance program provided for in Title 20, chapter 26, parts 1 and 2; or

(D) the guaranteed student loan program provided for in Title 20, chapter 26, part 11.

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 4. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 20, chapter 1, part 2, and the provisions of Title 20, chapter 1, part 2, apply to [section 2].

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 1(1) and 2(1) and (3)] are effective July 1, 2001.

Approved April 21, 2001

CHAPTER NO. 321

[SB 262]

AN ACT ELIMINATING THE REQUIREMENT THAT A PERSON'S SOCIAL SECURITY NUMBER BE INCLUDED ON AN APPLICATION FOR A MONTANA HUNTING, FISHING, OR TRAPPING LICENSE OR A WILDLIFE CONSERVATION LICENSE IN CERTAIN CIRCUMSTANCES IF THE STATE RECEIVES AN EXEMPTION FROM THE REQUIREMENT; AMENDING

SECTIONS 87-2-106 AND 87-2-202, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-106, MCA, is amended to read:

"87-2-106. Application for license — penalties for violation — forfeiture of privileges. (1) A license may be procured from the director, a warden, or an authorized agent of the director. The applicant shall state the applicant's name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver's license, Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a license. It is unlawful and a misdemeanor for a license agent to sell a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the time of application for licensure. Except as provided in subsections (2) through (4), the statements made by the applicant must be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by mail. Statements on an application for a license to be issued by mail need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102(7), the applicant shall apply to the director and shall submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(7). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for the resident's spouse, parent, child, brother, or sister who is otherwise qualified to obtain the license.

(5) A license is void unless subscribed to by the licensee and by an employee or officer of the department or by a license agent or an authorized representative of the license agent.

(6) It is unlawful to subscribe to any statement, on an application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. A person violating any provision of this subsection is guilty of a misdemeanor.

(7) (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to a false statement to obtain a resident license shall be:

(i) fined not less than the greater of $100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than $1,000;

(ii) imprisoned in the county jail for not more than 6 months; or

(iii) both fined and imprisoned.

(b) In addition to the penalties specified in subsection (7)(a), upon conviction or forfeiture of bond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.

(8) It is unlawful and a misdemeanor for a person to purposely or knowingly assist an unqualified applicant in obtaining a resident license in violation of this section.

(9) [The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(10) The department shall delete an applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]."

Section 2. Section 87-2-202, MCA, is amended to read:

"**87-2-202. Application — fee — expiration.** (1) A wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license. It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of $4.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of $5.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

(5) [The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]."

Section 3. Contingent termination. (1) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted the state of Montana an exemption from the requirement that an applicant under 16 years of age provide a social security number on an application for a recreational license, the bracketed language in 87-2-106(1) and 87-2-202(1) must read: "social security number for an applicant 16 years of age or older".

(2) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted the state of Montana an exemption from the requirement that a Montana resident provide a social security number on an application for a recreational license, the bracketed language in 87-2-106(1) and 87-2-202(1) must read: "social security number for a nonresident applicant, social security number, driver's license number, or Montana identification card number issued by the department of justice for a resident who does not hold a Montana driver's license if the applicant has provided a social security number when applying for the Montana identification card".

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted the state of Montana an exemption from the requirement that any applicant provide a social security number on an application for a recreational license, the bracketed language in 87-2-106(1) and 87-2-202(1) must read: "social security number for a nonresident applicant who does not hold and present a valid driver's license from the applicant's state of residence, social security number, driver's license number, or Montana identification card number issued by the department of justice for a resident who does not hold a Montana driver's license if the applicant has provided a social security number when applying for the Montana identification card".

(4) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government, through repeal or amendment of federal law, no longer requires an applicant to provide a social security number on an application for a recreational license, the bracketed language in 87-2-106(1) and 87-2-202(1) is void, the bracketed language in 87-2-106(9) and 87-2-202(5) is void, and the bracketed language in 87-2-106(10) and 87-2-202(6) must read: "maintained by the department".

(5) The secretary of state shall notify the code commissioner of the occurrence of any of the contingencies described in subsections (1) through (4).

Section 4. Occurrence of multiple contingencies — directions to code commissioner. Whenever the secretary of state notifies the code commissioner of the occurrence of more than one of the contingencies described in [section 3], the code commissioner is directed to change the bracketed language in 87-2-106(1) and 87-2-202(1) to give effect to each exemption.

Section 5. Coordination instruction. If House Bill No. 282 and [this act] are both passed and approved, then [this act] is void.

Section 6. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) If one or more of the contingencies in [section 3] occur, the applicable contingency is effective upon certification of that contingency to the governor and the secretary of state and notification to the Montana code commissioner.

Section 7. Applicability. With regard to an application for a new hunting, fishing, or trapping license or wildlife conservation license, [this act] applies to license years beginning on or after the first day of March immediately following [the effective date of the respective applicable contingency].

Approved April 21, 2001

CHAPTER NO. 322

[SB 330]

AN ACT REVISING THE PROVISIONS RELATED TO MULTILEVEL DISTRIBUTION COMPANIES AND PYRAMID PROMOTIONAL SCHEMES; REMOVING THE REQUIREMENT THAT A MULTILEVEL DISTRIBUTION COMPANY FILE CONSENT TO SERVICE OF PROCESS ON AN ANNUAL BASIS; PROVIDING THAT THE SECURITIES COMMISSIONER MAY REQUEST ADDITIONAL INFORMATION FROM MULTILEVEL DISTRIBUTION COMPANIES; PROHIBITING A MULTILEVEL DISTRIBUTION COMPANY FROM REPRESENTING ITSELF AS LICENSED, REGISTERED, SANCTIONED, APPROVED, OR ENDORSED BY VIRTUE OF COMPLYING WITH STATE LAW; PROVIDING FOR A PENALTY; AND AMENDING SECTIONS 30-10-324 AND 30-10-326, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-324, MCA, is amended to read:

"30-10-324. Definitions. As used in 30-10-324 through 30-10-326, the following definitions apply:

(1) (a) "Compensation" means the receipt of money, a thing of value, or a financial benefit.

(b) Compensation does not include:

(i) payments to a participant based upon the sale of goods or services by the participant to third persons when the goods or services are purchased for actual use or consumption; or

(ii) payments to a participant based upon the sale of goods or services to the participant that are used or consumed by the participant.

(2) (a) "Consideration" means the payment of money, the purchase of goods or services, or the purchase of intangible property.

(b) Consideration does not include:

(i) the purchase of goods or services furnished at cost that are used in making sales and that are not for resale; or

(ii) a participant's time and effort expended in the pursuit of sales or in recruiting activities.

(3) (a) "Multilevel distribution company" means a person that:

(i) sells, distributes, or supplies goods or services through independent agents, contractors, or distributors at different levels of distribution;

(ii) may recruit other participants in the company; and

(iii) is eligible for commissions, cross-commissions, override commissions, bonuses, refunds, dividends, or other consideration that is or may be paid as a result of the sale of goods or services or the recruitment of or the performance or actions of other participants.

(b) The term does not include an insurance producer, real estate broker, or salesperson or an investment adviser, investment adviser representative, broker-dealer, or salesperson, as defined in 30-10-103, operating in compliance with this chapter.

(4) "Participant" means a person involved in a sales plan or operation.

(5) "Person" means an individual, corporation, partnership, limited liability company, or other business entity.

(6) (a) "Pyramid promotional scheme" means a sales plan or operation in which a participant gives consideration for the opportunity to receive compensation derived primarily from obtaining the participation of other persons in the sales plan or operation rather than from the sale of goods or services by the participant or the other persons induced to participate in the sales plan or operation by the participant.

(b) A pyramid promotional scheme does not include a sales plan or operation that:

(i) ~~does not compensate a participant solely for obtaining the participation of other persons in the sales plan or operation;~~

~~(ii)~~ subject to the provisions of subsection (6)(b)~~(vi)~~*(v)*, provides compensation to a participant based primarily upon the sale of goods or services by the participant, including goods or services used or consumed by the participant, *and not primarily for obtaining the participation of other persons in the sales plan or operation* and *that* provides compensation to the participant based upon the sale of goods or services by persons whose participation in the sales plan or operation has been obtained by the participant;

~~(iii)~~*(ii)* does not require a participant to purchase goods or services in an amount that unreasonably exceeds an amount that can be expected to be resold or consumed within a reasonable period of time;

~~(iv)~~*(iii)* is authorized to use a federally registered trademark or servicemark that identifies the company promoting the sales plan or operation, the goods or services sold, or the sales plan or operation;

~~(v)~~*(iv)* (A) provides each person joining the sales plan or operation with a written agreement containing or a written statement describing the material terms of participating in the sales plan or operation;

(B) allows a person at least 15 days to cancel the person's participation in the sales plan or operation plan; and

(C) provides that if the person cancels participation within the time provided and returns any required items, the person is entitled to a refund of any consideration given to participate in the sales plan or operation; and

~~(vi)~~*(v)* (A) provides for, upon the request of a participant deciding to terminate participation in the sales plan or operation, the repurchase, at not less than 90% of the amount paid by the participant, of any currently marketable goods or services sold to the participant within 12 months of the request that have not been resold or consumed by the participant; and

(B) if disclosed to the participant at the time of purchase, provides that goods or services are not considered currently marketable if the goods have been consumed or the services rendered or if the goods or services are seasonal, discontinued, or special promotional items. Sales plan or operation promotional materials, sales aids, and sales kits are subject to the provisions of this subsection (6)(b)~~(vi)~~*(v)* if they are a required purchase for the participant or if the participant has received or may receive a financial benefit from their purchase."

Section 2. Section 30-10-326, MCA, is amended to read:

"30-10-326. Notice of activity — consent to service. (1) A multilevel distribution company with a participant that is a resident of this state shall file ~~annually~~ with the securities commissioner on a form prescribed by the commissioner*:*

(a) an annual notice of the company's operation in this state; and

(b) an irrevocable consent designating the commissioner as its agent for service of process for any alleged violation of 30-10-325.

(2) Compliance with this section may not by itself subject a company to the provisions of any other statute of this state or to any taxes, licenses, or fees.

~~(2)~~*(3) (a)* The commissioner may require a multilevel distribution company to disclose ~~only~~ the following substantive information:

~~(a)~~*(i)* the names, *home or business* addresses, *social security numbers and birth dates,* and titles of the multilevel distribution company's officers, directors, and trustees;

~~(b)~~*(ii)* the corporate name; the headquarters street, mailing, and e-mail addresses, as well as telephone and telefax numbers; and the state of domicile and state of incorporation of the multilevel distribution company; and

~~(c)~~*(iii)* a detailed description of the levels of distribution in the multilevel distribution company, the manner of compensating participants, and the compensation structure of the marketing plan.

(b) The commissioner may not release to the public the social security numbers of officers, directors, or trustees of a multilevel distribution company.

~~(3)~~*(4)* This section does not preclude the commissioner from obtaining *additional* information required of participants *or multilevel distribution companies* during the course of an investigation or proceeding initiated under this chapter.

(5) Compliance with this chapter does not confer upon a multilevel distribution company any license or registration or signify that the state has sanctioned, approved, or endorsed a multilevel distribution company or its sales plan or operation.

(6) A multilevel distribution company or any individual or entity affiliated with a multilevel distribution company may not represent that the multilevel distribution company, individual, or entity is licensed, registered, sanctioned, approved, or endorsed in this state by virtue of compliance with 30-10-325 and this section.

(7) A multilevel distribution company or any individual or entity affiliated with a multilevel distribution company that violates subsection (6) is subject to the fines, injunctions, and other remedies specified in 30-10-305."

Approved April 21, 2001

CHAPTER NO. 323

[SB 356]

AN ACT REVISING THE LAWS GOVERNING THE BOARD OF REVIEW; CLARIFYING THE MEMBERSHIP OF THE BOARD OF REVIEW; PROVIDING THAT THE BOARD OF REVIEW IS ATTACHED TO THE

DEPARTMENT OF REVENUE FOR ADMINISTRATIVE PURPOSES; AMENDING SECTION 30-16-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-16-302, MCA, is amended to read:

"**30-16-302. Board of review.** (1) There is a board of review. The board of review's duty is to provide policy direction to the department of revenue in the establishment and operation of the system. The board of review includes the directors of the departments of agriculture, commerce, environmental quality, livestock, revenue, justice, and public health and human services, the secretary of state, *a member appointed by* the president of the senate ~~or a designee~~, and *a member appointed by* the speaker of the house ~~or a designee~~. If an agency that is not a member of the board of review requests inclusion in the streamlined registration and licensing plan as provided in 30-16-303, that agency's director must be appointed to the board of review *by the governor*.

(2) The governor shall appoint a presiding officer from among the members of the board of review.

(3) The board of review shall meet at the call of the presiding officer at least once each calendar quarter to:

(a) establish interagency policy and guidelines for the plan;

(b) review the findings, status, and problems of system operations and recommend courses of action; and

(c) receive reports from industry and agency task forces that the board of review may request to inquire into particular issues.

(4) The board of review may implement a plan for streamlined registration and licensing to include licenses not specified in 30-16-301, as provided in 30-16-303.

(5) The board of review is attached to the department of revenue for administrative purposes only as provided in 2-15-121."

Section 2. Coordination instruction. If this act and Senate Bill No. 445 are both passed and approved and if both bills amend 30-16-302, then 30-16-302 must read as follows:

"**Section 1.** Section 30-16-302, MCA, is amended to read:

"**30-16-302. Board of review.** (1) There is a board of review. The board of review's duty is to provide policy direction to the department of revenue in the establishment and operation of the system. The board of review includes the directors of the departments of agriculture, ~~commerce~~ *labor and industry*, environmental quality, livestock, revenue, justice, and public health and human services, the secretary of state, *a member appointed by* the president of the senate ~~or a designee~~, and *a member appointed by* the speaker of the house ~~or a designee~~. If an agency that is not a member of the board of review requests inclusion in the streamlined registration and licensing plan as provided in 30-16-303, that agency's director must be appointed to the board of review *by the governor*.

(2) The governor shall appoint a presiding officer from among the members of the board of review.

(3) The board of review shall meet at the call of the presiding officer at least once each calendar quarter to:

(a) establish interagency policy and guidelines for the plan;

(b) review the findings, status, and problems of system operations and recommend courses of action; and

(c) receive reports from industry and agency task forces that the board of review may request to inquire into particular issues.

(4) The board of review may implement a plan for streamlined registration and licensing to include licenses not specified in 30-16-301, as provided in 30-16-303.

(5) The board of review is attached to the department of revenue for administrative purposes only as provided in 2-15-121.""

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2001

CHAPTER NO. 324

[SB 359]

AN ACT AUTHORIZING INCORPORATED CITIES AND TOWNS TO CREATE ANNEXATION DISTRICTS; PROVIDING THAT PROPERTY MAY BE INCLUDED IN AN ANNEXATION DISTRICT ONLY UPON AN AGREEMENT BETWEEN A PROPERTY OWNER AND THE CITY OR TOWN; PROVIDING FOR THE PROVISION OF SERVICES BY A CITY OR TOWN TO PROPERTY WITHIN AN ANNEXATION DISTRICT; AND PROVIDING FOR INCREMENTAL TAXES OR FEES FOR SERVICES PROVIDED TO PROPERTY IN AN ANNEXATION DISTRICT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Annexation district. An incorporated city or town may create an annexation district outside of the city or town. Territory may be included in an annexation district only upon an agreement between the city or town and the owner of the property included in a district. The agreement may specify the duration of the district, which may not exceed 10 years. A city or town may provide the services specified in the agreement between the city or town and the property owner to the property in the district. The city or town may impose a tax levy or a fee on the owner of the property within the annexation district based upon the difference between the municipal levy or fee and the nonmunicipal levy or fee. By the end of the period specified in the agreement, the levy or fee must be the full amount that a resident of the city or town would pay in the year that the property is annexed. Unless the agreement provides otherwise, the property in the district is annexed after the period specified in the agreement, and the district is dissolved. A delinquency in a payment by the owner of property in the annexation district is collectible in the same manner that other delinquent taxes or fees are collectible.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 2, part 46, and the provisions of Title 7, chapter 2, part 46, apply to [section 1].

Approved April 21, 2001

CHAPTER NO. 325

[SB 375]

AN ACT REVISING THE PERMITTING AND RECLAMATION PLAN AMENDMENT PROCEDURES FOR THE OPENCUT MINING LAW; AND AMENDING SECTIONS 82-4-402, 82-4-422, 82-4-432, 82-4-434, AND 82-4-441, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-402, MCA, is amended to read:

"**82-4-402. Policy.** *Because the extraction and use of opencut materials is important to the economy of this state, it* ~~It~~ is the policy of this state to provide for the reclamation and conservation of land subjected to opencut materials mining. Therefore, it is the purpose of this part*:*

(1) to preserve natural resources~~,~~*;*

(2) to aid in the protection of wildlife and aquatic resources~~,~~*;*

(3) to safeguard and reclaim through effective means and methods all agricultural, recreational, home, and industrial sites subjected to or that may be affected by opencut materials mining*;*

(4) to protect and perpetuate the taxable value of property through reclamation~~,~~*;*

(5) to protect scenic, scientific, historic, or other unique areas~~,~~*;* and

(6) to promote the health, safety, and general welfare of the people of this state."

Section 2. Section 82-4-422, MCA, is amended to read:

"**82-4-422. Powers, duties, and functions.** (1) The department has the powers, duties, and functions to:

(a) issue permits when it is found on the basis of the information set forth in the application and an evaluation of the operation by the department that the requirements of ~~the~~ *this* part ~~or~~ *and* rules *adopted to implement this part* will be observed and that the operation and the reclamation of the affected area can be carried out consistently with the purpose of ~~the~~ *this* part;

(b) amend permits in accordance with the provisions of [section 5];

~~(b)~~*(c)* conduct hearings and, for the purposes of conducting those hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry;

~~(c)~~*(d)* reclaim any affected land with respect to which a bond has been forfeited; and

~~(d)~~*(e)* make investigations or inspections that are considered necessary to ensure compliance with any provision of this part.

(2) The board shall adopt rules:

(a) that pertain to opencut mining in order to accomplish the purposes of this part; and

(b) establishing uniform procedures for filing of necessary records, for the issuance of permits, and for any other matters of administration not specifically enumerated in this part."

Section 3. Section 82-4-432, MCA, is amended to read:

"**82-4-432. Application for permit — contents — issuance — amendment.** (1) Applications for a permit must be made upon a form furnished by the department. The form must contain the following:

(a) the name of the operator and, if other than the owner of the land, the name and address of the owner;

(b) the type of operation to be conducted;

(c) the volume of earth to be removed, as accurately as the volume may then be estimated, and the volume that has been previously removed, if any;

(d) the location of the operation by legal subdivision, section, township and range, and county;

(e) the date when the operation was or will be commenced; and

(f) a statement that the applicant has the right and power, by legal estate owned, to mine, by opencut mining, the lands described.

(2) The application must be accompanied by:

(a) a bond or security meeting the requirements as set out in this part;

(b) a fee of $50 for an application to mine bentonite, clay, scoria, sand, or gravel;

(c) a statement from the local governing body having jurisdiction over the area to be mined certifying that a proposed sand and gravel opencut mine and its operating and reclamation plans comply with applicable local zoning regulations adopted under Title 76, chapter 2; and

(d) the operator's plan of operation and a complete reclamation plan.

(3) If, prior to applying for a permit, a person notifies the department of the intention to submit an application and requests the department to examine the area to be mined, the department shall cause the area to be examined and make recommendations to the person regarding reclamation. The person may request a meeting with the department. The department shall hold a meeting if requested.

(4) Upon receipt of ~~a complete~~ *an* application containing all items listed in subsections (1) and (2), the department shall, within ~~30~~ *15* days, notify the person *whether or not the department believes that the application is complete. If the department determines that the application is not complete, the department shall include in the notification a detailed identification of all deficiencies. Within 30 days of receipt of a complete application, the department shall notify the applicant* if it has approved or denied the application. *If the department denies the application, the notice must include a detailed explanation describing why the application was denied.* The department may for sufficient cause extend its period of review for an additional 30 days if it notifies the person of the extension prior to the end of the original 30-day period. *The department shall include in the notification of extension the reason for the extension.* Upon approval of the application, the department shall issue a permit to the operator that entitles the

operator to continue or engage in opencut mining on the land described in the application.

(5) An operator desiring to have a permit amended to cover additional contiguous or nearby land may file an amended application with the department. Upon receipt of the amended application and any additional bond ~~as~~ *that* may be required and upon agreement to the terms of the amendment by the parties, the department may issue an amendment to the original permit covering the additional land described in the amended application without the payment of any additional fee.

(6) An operator may withdraw any land covered by a permit, except affected land, by notifying the department of the withdrawal, in which case the penalty of the bond or security filed by the operator pursuant to the provisions of this part must be reduced proportionately."

Section 4. Section 82-4-434, MCA, is amended to read:

"**82-4-434. Reclamation plan part of permit — requirements.** The reclamation plan must meet the following requirements:

(1) The department shall submit each reclamation plan or *operator-proposed* amendments to the reclamation plan to the landowner for recommendations and shall consider those recommendations in deciding whether to approve or disapprove any plan or *operator-proposed* amendments. The department may seek technical help from any state or federal agency. The department shall submit the plan immediately to the state historic preservation office for evaluation of possible archaeological or historical values in the area to be mined. The department may approve a reclamation plan only if the department has found that the plan provides for the best possible reclamation under the circumstances at the time, so that after mining operations are completed, the affected land will be reclaimed to a productive use. Once the reclamation plan is accepted, in writing, by the department, ~~it~~ *the plan* must become a part of the permit but is subject to annual review and modification by the department. *Any modification by the department must comply with the provisions of [section 5(2)].*

(2) The department may not approve a reclamation plan or a plan of operations unless the plans provide:

(a) that the land will be reclaimed for one or more specified uses, including but not limited to forest, pasture, orchard, cropland, residence, recreation, industry, ~~and~~ habitat for wildlife, including food, cover, or water, or other uses;

(b) that to the extent reasonable and practicable, the operator will establish vegetative cover commensurate with the proposed land use;

(c) whenever operations result in a need to prevent acid drainage or sedimentation on or in adjoining lands or streams, for the construction of earth dams or other reasonable devices to control water drainage, provided the formation of the impoundments or devices will not interfere with other landowners' rights or contribute to water pollution;

(d) that to accomplish practical utilization of soil materials, the material will be salvaged and utilized for placement on affected areas, if required by the reclamation plan after completion or termination of that particular phase of the mining operations, at a depth sufficient for plant growth on slopes of 3:1 or less. The depth of soil materials to be placed on the reclaimed area must be specified in the plan.

(e) that grading will be commensurate with the topography sought and land use designated;

(f) that metal and other waste will be removed or buried;

(g) that all access, haul, and other support roads will be located, constructed, and maintained in such a manner as to control and minimize channeling and other erosion;

(h) that the operator will submit a progress report annually to the department;

(i) that all operations will be conducted to avoid range and forest fires and spontaneous combustion and that open burning of carbonaceous materials will be in accordance with suitable practices for fire prevention and control;

(j) that archaeological and historical values in areas to be mined will be given appropriate protection;

(k) that except for those postmine land uses that do not require vegetation, each surface area of the mined premises that will be disturbed will be revegetated when its use for extractive purposes is no longer required;

(l) that seeding and planting will be done in a manner to achieve a permanent vegetative cover that is suitable for the postmine land use and that retards erosion and that all seed will be drilled unless otherwise provided in the plan;

(m) that reclamation will be as concurrent with mining operations as feasible and will be completed within a specified length of time;

(n) that surface water and ground water will be given appropriate protection, consistent with state law, from deterioration of water quality and quantity that may arise as a result of the operation;

(o) that noise and visual impacts on residential areas will be minimized to the degree practicable through berms, vegetation screens, and reasonable limits on hours of operation; and

(p) that any additional procedures that are necessary, consistent with the purposes of this part, to prevent significant physical harm to the affected land or adjacent land, structures, improvements, or life forms will be implemented.

(3) If reclamation according to the plan has not been completed in the time specified, the department, after 30 days' written notice, shall order the operator to cease mining and, if the operator does not cease, may issue an order to reclaim, a notice of violation, or an order of abatement or may institute an action to enjoin further operation and may sue for damages for breach of the conditions of the permit, for payment of the performance bond, or for both.

(4) (a) At any time during the term of the permit, the operator may for good reason submit to the department a new reclamation plan or amendments to the existing plan, including extensions of time.

(b) The department may approve the proposed new reclamation plan or amendments to the existing plan if:

(i) the operator has in good faith carried on reclamation according to the existing plan and the proposed new plan or amendments to the existing plan will result in reclamation as or more desirable than the reclamation proposed under the existing plan; or

(ii) it is highly improbable reclamation will be successful unless the existing plan is replaced or amended.

(c) When accepted, the proposed new reclamation plan or the proposed amendments to the existing plan become a part of the permit.

(5) The operator shall provide a performance bond or an alternative acceptable to the department in an amount commensurate with the estimated cost of reclamation, but in no case may the bond be less than $200 an acre. The estimated cost of reclamation must be set forth in the reclamation plan.

(6) The permit, reclamation plan, and amendments accepted by the department are a public record and are open to inspection.

(7) The permit is effective when signed by the department and the operator and remains in force until terminated by mutual consent or by the department upon 6 months' notice."

Section 5. Plan amendments. (1) Unless an amendment to a plan of operation, reclamation plan, or other permit is proposed by the operator, the department may modify only the terms of a plan or permit in compliance with this section.

(2) If the department believes, based on credible evidence, that continued operation under the terms of an existing plan or permit would violate a substantive numerical or narrative state standard or regulation or otherwise violate a purpose of this part, it may propose to the operator an amendment to the plan or permit.

(3) The department shall notify the operator of the proposed amendment in writing. The notice must include:

(a) an identification of the existing plan or permit;

(b) the justification for the amendment, including all test results or other credible evidence that the department relied on in proposing the amendment; and

(c) the text of the proposed amendment.

(4) The operator may, within 15 days of receipt of the department's amendment notice, request a review of the amendment by the department director. The amendment is not effective or enforceable until 15 days following the issuance of the department's amendment notice or until after the department director affirms or modifies the amendment if a review by the director is requested. A decision by the department director is subject to the contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, parts 6 and 7.

(5) If the operator does not appeal the proposed amendment, the amendment becomes effective and enforceable 15 days after the operator receives the notification.

Section 6. Section 82-4-441, MCA, is amended to read:

"82-4-441. Penalty — enforcement. (1) The department may assess against a person who violates any of the provisions of this part, rules adopted under this part, or provisions of a reclamation permit:

(a) a civil penalty of not less than $100 or more than $1,000 for the violation; and

(b) an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues following the service of notice of the violation.

(2) The department shall take into account the following factors in determining whether to institute a civil penalty action and in determining the penalty amount:

(a) the nature, circumstances, extent, and gravity of the violation;

(b) the violator's prior history of violations *within the past 3 years*;

(c) the economic benefit or savings, if any, to the violator resulting from the violator's action;

(d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and

(e) other matters that justice may require *to decrease the amount of penalty*.

(3) The department shall notify the person or operator of the violation. The person or operator is entitled, by filing a written request within 20 days of receipt of the notice of violation, to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be imposed is proper. The department shall issue a statement of proposed penalty, *including the penalty calculation that identifies and describes the factors considered pursuant to subsection (2),* no more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has expired, the department shall make findings of fact, issue a written decision as to the occurrence of the violation and the amount of penalty warranted, and order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. A person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the opencut mine is located.

(4) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a permit pursuant to this part in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the opencut mine is located."

Section 7. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 82, chapter 4, part 4, and the provisions of Title 82, chapter 4, part 4, apply to [section 5].

Approved April 21, 2001

CHAPTER NO. 326

[SB 378]

AN ACT AMENDING THE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT TO SPECIFICALLY AUTHORIZE THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO COLLECT INTEREST ON PAST-DUE REMEDIAL ACTION COSTS AND TO DEPOSIT THOSE FUNDS INTO THE ENVIRONMENTAL QUALITY PROTECTION FUND; AMENDING SECTIONS 75-10-704 AND 75-10-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-704, MCA, is amended to read:

"75-10-704. Environmental quality protection fund. (1) There is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) except as provided in subsection (7), establish and implement a system, including the preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund by the legislature;

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(e) funds received from the interest income of the fund; ~~and~~

(f) funds received from settlements pursuant to 75-10-719(7)*; and*

(g) funds received from the interest paid pursuant to 75-10-722.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) (a) There is established a state special revenue account for all funds donated or granted from private parties to remediate a specific release at a specific facility. There must be deposited into the account the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

(c) If the balance of the fund created in this subsection (7), as determined by the department pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial contribution, all donated or granted funds, including any interest on those donated or granted funds, must be returned to the grantor.

(d) If the balance for a specific project is determined by the department to be sufficient to remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial action, using the funds donated under this subsection (7).

(e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(f) The department shall expend the funds in a manner that maximizes the application of the funds to physically remediating the specific release.

(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as a result of the contribution of in-kind services.

(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that constitutes intentional misconduct.

(d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance, the person may not avoid that liability or responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of subsection (7) and this subsection (8).

(e) Any donated in-kind services that are employed as part of a remedial action pursuant to this subsection (8) must be approved by the department as appropriate remedial action."

Section 2. Section 75-10-722, MCA, is amended to read:

"**75-10-722. Payment of state costs and penalties.** (1) The department shall keep a record of the state's remedial action costs.

(2) Based on this record, the department may require a person liable under 75-10-715 to pay the amount of the state's remedial action costs, *including interest* and, if applicable, penalties under 75-10-715(3).

(3) If the state's remedial action costs and penalties are not paid by the liable person to the department within 60 days after receipt of notice that the costs and penalties are due, the department shall bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.

(4) If the department provides a notice that the state's remedial action costs are due, the department shall assess and collect interest on the unpaid amount at the rate provided for in 25-9-205:

(a) after 60 days of receipt of the notice if the notice covers costs incurred during a time period that is one-quarter of a year or less;

(b) after 90 days of receipt of the notice if the notice covers costs incurred during a time period that is more than one-quarter of a year and less than or equal to one-half of a year; and

(c) after 120 days of receipt of the notice if the notice covers costs incurred during a time period that is more than one-half of a year.

~~(4)~~*(5)* An action to recover remedial action costs *and interest* may be brought under this section at any time after any remedial action costs *and interest* have been incurred, and the court may enter a declaratory judgment on liability for remedial action costs *and interest* that is binding on any subsequent action or actions to recover further remedial action costs *and interest.* The court may disallow costs or damages only if the person liable under 75-10-715 can show on the record that the costs are not reasonable and are not consistent with this part. *The court may disallow the associated interest if it determines, based on the record, that the liable person can show that the costs are not reasonable.*

~~(5)~~*(6)* An initial action brought under 75-10-715(4) or a contribution action for costs incurred under this part must be commenced within 6 years after initiation of physical onsite construction of the final permanent remedy.

~~(6)~~*(7)* Remedial action costs, *interest,* and any penalties recovered by the state under 75-10-715 must be deposited into the environmental quality protection fund established in 75-10-704."

Section 3. Saving clause. [This act] does not affect claims, rights, and duties that matured or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. The requirement to assess and collect interest in [section 2], amending 75-10-722, applies to interest accrued after [the effective date of this act].

Approved April 21, 2001

CHAPTER NO. 327

[SB 380]

AN ACT REVISING GROSS VEHICLE WEIGHT FEES AND LENGTH LIMITS ON TRIPLE TRAILER TRUCK CONFIGURATIONS; AMENDING SECTIONS 61-10-124 AND 61-10-201, MCA; AND REPEALING SECTION 61-10-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-124, MCA, is amended to read:

"**61-10-124. Special permits — fees.** (1) Except as provided in subsections (2)(b), (2)(d), and (4), in addition to the regular registration and gross vehicle weight fees, a fee of $10 for each trip permit and a fee of $75 for each term permit issued for size in excess of that specified in 61-10-101 through 61-10-104 must be paid for all movements under special permits on the public highways under the jurisdiction of the department of transportation.

(2) (a) Except as provided in subsections (2)(b), (2)(d), (2)(f), (4), and (5), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; or an overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. A Rocky Mountain double may not exceed 81 feet in combined trailer length. A Rocky Mountain double is not subject to a combination length limit. Special permits for vehicle combinations of more than two trailers or more than two units designed for or used to carry a load are not permitted except as provided in subsections (4) and (5). Special permits for vehicle combinations may specify and special permits under subsections (4) and (5) must specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). The fee for this permit is $75. This permit expires on December 31 of each year, with no grace period.

(c) With payment of the appropriate gross weight fees required by 61-10-201 and with payment of the fee prescribed in subsection (1), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in combination length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, or on other highways within a 2-mile radius of an interchange on the interstate system in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange. The fee for this permit is $125.

(e) A term permit may be issued for a truck tractor-semitrailer combination when the semitrailer exceeds 53 feet in length but does not exceed 57 feet in length.

(f) (i) An annual permit may be issued for nondivisible loads up to 120 feet in length. The fee for this permit is $125.

(ii) Portions of a nondivisible load hauled on a public road off of the interstate highway may be detached and reloaded on the same hauling unit if the separate pieces are necessary to the operation of the machine or equipment that is being hauled and if the arrangement does not exceed limits for which a permit may be issued.

(iii) An applicant for a nondivisible load permit for use as provided in subsection (6)(b) is responsible for providing information regarding the number of work hours required to dismantle the load.

(iv) For use as provided in subsection (6)(b) and for the purposes of this section, emergency response vehicles and casks designed and used for the transport of spent nuclear materials are considered nondivisible loads.

(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department of transportation, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(4) The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, and within a 2-mile radius of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange.

(b) ~~a combination of vehicles powered by a cab-over (tilt cab) type truck tractor or a truck may not exceed overall length of 105 feet, inclusive of front and rear bumpers and overhang;~~

~~(c) a combination of vehicles powered by a conventional truck tractor may not exceed overall length of 110 feet, inclusive of front and rear bumpers and overhang~~ *the combined trailer length may not exceed 95 feet*;

~~(d)~~*(c)* an individual cargo unit of the combination may not exceed 28 1/2 feet in length and 102 inches in width;

~~(e)~~*(d)* gross weight fees under ~~61-10-203~~ *61-10-201* must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

~~(f)~~*(e)* the combination must have a special overlength permit issued at a fee of $200 for a term permit or $20 for each trip permit;

~~(g)~~*(f)* travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

~~(h)~~*(g)* the department may enforce any other restrictions determined by the department to be necessary. The permit is not transferable, and the fee for the permit is $200.

(5) The department of transportation may issue special permits under subsection (4) for vehicle combinations that consist of a truck-trailer-trailer if:

(a) the vehicle combination's overall length, inclusive of front and rear bumpers, is not more than 95 feet; and

(b) the person, firm, or corporation applying for the permit:

(i) restricts truck-trailer-trailer operations authorized by the permit to the hauling of talc ore, chlorite, dolomite, limestone, and custom combine equipment;

(ii) operated the truck-trailer-trailer combination before July 1, 1987;

(iii) restricts the truck-trailer-trailer operations authorized by the permit to the specified routes that those vehicles used before July 1, 1987; and

(iv) provides the department of transportation with an affidavit confirming the routes used before July 1, 1987, for truck-trailer-trailer operations.

(6) For the purposes of this section, a "nondivisible load" is:

(a) on public roads off of interstate highways, a load that cannot be readily or reasonably dismantled and that is reduced to a minimum practical size and weight;

(b) on interstate highways, a load or vehicle exceeding applicable length or weight limits that, if separated into smaller loads or vehicles, would:

(i) compromise the intended use of the vehicle;

(ii) destroy the value of the load or vehicle; or

(iii) require more than 8 work hours to dismantle using appropriate equipment."

Section 2. Section 61-10-201, MCA, is amended to read:

"**61-10-201. Weight fees on motortrucks, truck tractors, and buses.** In addition to other fees for the licensing of vehicles ~~and except as provided in 61-10-203~~, there must be paid and collected annually for each truck, truck tractor, and bus, based upon the manufacturer's rated capacity for trucks with a capacity of 1 ton or less and upon the maximum gross loaded weight and the maximum gross weight of any towed unit of each truck and truck tractor as set by the licensee in the licensee's application, the following fees:

Schedule I

Manufacturer's rated capacity up to 1/2 ton	$ 7.00
Manufacturer's rated capacity of 3/4 ton	12.50
Manufacturer's rated capacity of 1 ton	17.50
Up to 16,000 lbs	21.00
16,001 through 18,000 lbs	28.00
18,001 through 20,000 lbs	37.50
20,001 through 22,000 lbs	47.00
22,001 through 24,000 lbs	70.00

24,001 through 26,000 lbs	90.00
26,001 through 28,000 lbs	110.00
28,001 through 30,000 lbs	130.00
30,001 through 32,000 lbs	150.00
32,001 through 34,000 lbs	170.00
34,001 through 36,000 lbs	190.00
36,001 through 38,000 lbs	215.00
38,001 through 40,000 lbs	235.00
40,001 through 42,000 lbs	255.00
42,001 through 44,000 lbs	275.00
44,001 through 46,000 lbs	300.00
46,001 through 48,000 lbs	320.00
48,001 through 50,000 lbs	340.00
50,001 through 52,000 lbs	360.00
52,001 through 54,000 lbs	380.00
54,001 through 56,000 lbs	400.00
56,001 through 58,000 lbs	420.00
58,001 through 60,000 lbs	440.00
60,001 through 62,000 lbs	460.00
62,001 through 64,000 lbs	482.50
64,001 through 66,000 lbs	502.50
66,001 through 68,000 lbs	522.50
68,001 through 70,000 lbs	545.75
70,001 through 72,000 lbs	566.50
72,001 through 74,000 lbs	607.50
74,001 through 76,000 lbs	655.00
76,001 through 78,000 lbs	695.00
78,001 through 80,000 lbs	750.00
Over 80,000 lbs. and within the weight limits specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110	750.00 plus an additional 46.00 for each ton or fraction of a ton in excess of 80,000 lbs. plus an additional $100.00 to exceed the 80,000 lbs. federal gross weight limit."

Section 3. Repealer. Section 61-10-203, MCA, is repealed.

Approved April 21, 2001

CHAPTER NO. 328

[SB 387]

AN ACT ALLOWING A CUSTOMER-GENERATOR TO DESIGNATE A CERTAIN BEGINNING DATE FOR A 12-MONTH BILLING PERIOD; AMENDING SECTION 69-8-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-8-603, MCA, is amended to read:

"**69-8-603. Net energy measurement calculation.** Consistent with the other provisions of this part, the net energy measurement must be calculated in the following manner:

(1) The distribution services provider shall measure the net electricity produced or consumed during the billing period, in accordance with normal metering practices.

(2) If the electricity supplied by the electricity supplier exceeds the electricity generated by the customer-generator and fed back to the electricity supplier during the billing period, the customer-generator must be billed for the net electricity supplied by the electricity supplier, in accordance with normal metering practices.

(3) If electricity generated by the customer-generator exceeds the electricity supplied by the electricity supplier, the customer-generator must be:

(a) billed for the appropriate customer charges for that billing period, in accordance with 69-8-602; and

(b) credited for the excess kilowatt hours generated during the billing period, with this kilowatt-hour credit appearing on the bill for the following billing period.

(4) ~~At the beginning of each calendar year,~~ *On January 1, April 1, July 1, or October 1 of each year, as designated by the customer-generator as the beginning date of a 12-month billing period,* any remaining unused kilowatt-hour credit accumulated during the previous ~~year~~ *12 months* must be granted to the electricity supplier, without any compensation to the customer-generator."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2001

CHAPTER NO. 329

[SB 396]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE III, SECTION 7, AND ARTICLE XIV, SECTION 9, OF THE MONTANA CONSTITUTION TO CHANGE THE DISTRIBUTION OF ELECTORS WHO MUST PETITION TO HAVE A CONSTITUTIONAL AMENDMENT PLACED ON THE BALLOT FROM AT LEAST 10 PERCENT IN TWO-FIFTHS OF THE LEGISLATIVE DISTRICTS TO AT LEAST 10 PERCENT IN ONE-HALF OF THE COUNTIES AND TO CHANGE THE BASIS FOR DETERMINING THE NUMBER OF QUALIFIED ELECTORS

FROM THOSE ELECTORS IN A LEGISLATIVE REPRESENTATIVE DISTRICT LAST VOTING FOR GOVERNOR TO THOSE ELECTORS IN A COUNTY LAST VOTING FOR GOVERNOR.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article III, section 7, of The Constitution of the State of Montana is amended to read:

"**Section 7. Number of electors.** *(1)* The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election.

(2) For the purposes of a constitutional amendment, the number of qualified electors in each county and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election."

Section 2. Article XIV, section 9, of The Constitution of the State of Montana is amended to read:

"**Section 9. Amendment by initiative.** (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of ~~two-fifths~~ *at least one-half* of the ~~legislative districts~~ *counties.*

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise."

Section 3. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 2002 by printing on the ballot the full title of this act and the following:

☐ FOR requiring that signatures be gathered in one-half of the counties rather than two-fifths of legislative districts for constitutional initiatives.

☐ AGAINST requiring that signatures be gathered in one-half of the counties rather than two-fifths of legislative districts for constitutional initiatives.

CHAPTER NO. 330

[SB 397]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE III, SECTIONS 4 AND 7, OF THE MONTANA CONSTITUTION TO CHANGE THE DISTRIBUTION OF ELECTORS WHO MUST PETITION TO PLACE A STATUTORY INITIATIVE ON THE BALLOT

FROM 5 PERCENT IN AT LEAST ONE-THIRD OF THE LEGISLATIVE REPRESENTATIVE DISTRICTS TO 5 PERCENT IN AT LEAST ONE-HALF OF THE COUNTIES AND TO CHANGE THE METHOD OF DETERMINING THE NUMBER OF QUALIFIED ELECTORS FROM THOSE IN A LEGISLATIVE REPRESENTATIVE DISTRICT LAST VOTING FOR GOVERNOR TO THOSE IN A COUNTY LAST VOTING FOR GOVERNOR.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article III, section 4, of The Constitution of the State of Montana is amended to read:

"**Section 4. Initiative.** (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least ~~one-third~~ *one-half* of the ~~legislative representative districts~~ *counties* and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held."

Section 2. Article III, section 7, of The Constitution of the State of Montana is amended to read:

"**Section 7. Number of electors.** *(1)* The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election.

(2) For the purposes of a statutory initiative, the number of qualified electors required in each county and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election."

Section 3. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 2002 by printing on the ballot the full title of this act and the following:

☐ FOR requiring that signatures be gathered in each of one-half of the counties rather than one-third of legislative districts for statutory initiatives.

☐ AGAINST requiring that signatures be gathered in each of one-half of the counties rather than one-third of legislative districts for statutory initiatives.

CHAPTER NO. 331

[SB 420]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PROVIDE STANDARDIZED FORMS AND EDUCATIONAL MATERIALS TO PERSONAL-CARE FACILITIES AND TO HEALTH CARE PROFESSIONALS; REQUIRING THE DEPARTMENT TO REVIEW ADMINISTRATIVE RULES AND REPORT TO THE

LEGISLATURE; AMENDING SECTION 50-5-226, MCA; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-226, MCA, is amended to read:

"50-5-226. Placement in personal-care facilities. (1) A personal-care facility may provide personal-care services to a resident who is 18 years of age or older and in need of the personal care for which the facility is licensed under 50-5-227.

(2) A resident of a personal-care facility licensed as a category A facility under 50-5-227 may obtain third-party provider services for skilled nursing care for no more than 20 consecutive days at a time.

(3) A resident of a personal-care facility licensed as a category B facility under 50-5-227 must have a signed statement from a physician agreeing to the resident's admission to the facility if the resident is:

(a) in need of skilled nursing care;

(b) in need of medical, physical, or chemical restraint;

(c) nonambulatory or bedridden;

(d) incontinent to the extent that bowel or bladder control is absent; or

(e) unable to self-administer medications.

(4) A resident of a category B personal-care facility who needs skilled nursing care must have a signed statement, renewed on a quarterly basis by a physician, a physician assistant-certified, ~~a nurse practitioner~~ *an advanced practice registered nurse*, or a registered nurse, whose work is unrelated to the operation of the facility and who:

(a) actually visited the facility within the calendar quarter covered by the statement;

(b) has certified that the particular needs of the resident can be adequately met in the facility; and

(c) has certified that there has been no significant change in health care status that would require another level of care.

(5) The department shall develop standardized forms and education and training materials to provide to the personal-care facilities and to the physicians, physician assistants-certified, advanced practice registered nurses, or registered nurses who are responsible for the signed statements provided for in subsection (4). The use of the standardized forms is voluntary.

~~(5)~~*(6)* The department shall provide by rule:

(a) an application or placement procedure informing a prospective resident and, if applicable, the resident's physician of:

(i) physical and mental standards for residents of personal-care facilities;

(ii) requirements for placement in a facility with a higher standard of care if a resident's condition deteriorates; and

(iii) the services offered by the facility and services that a resident may receive from third-party providers while resident in the facility;

(b) standards to be used by a facility and, if appropriate, by a screening agency to screen residents and prospective residents to prevent residence by individuals referred to in subsection (3);

(c) a method by which the results of any screening decision made pursuant to rules established under subsection ~~(5)(b)~~ *(6)(b)* may be appealed by the facility operator or by or on behalf of a resident or prospective resident;

(d) standards for operating a category A personal-care facility, including standards for the physical, structural, environmental, sanitary, infection control, dietary, social, staffing, and recordkeeping components of a facility; and

(e) standards for operating a category B personal-care facility, which must include the standards for a category A personal-care facility and additional standards for assessment of residents, care planning, qualifications and training of staff, restraint use and reduction, prevention and care of pressure sores, incontinence care, and the storage and administration of drugs."

Section 2. Department review. (1) The legislature finds that an increasing number of individuals require personal-care services and that it is in the best interest of individuals who reside in personal-care facilities:

(a) to remain in those facilities and to age in place while having their health, medical, and social needs met;

(b) for the department to provide some flexibility in the regulation of personal-care facilities; and

(c) for the department to educate the personal-care facilities and health care professionals about the regulations.

(2) The department shall review all rules adopted pursuant to 50-5-226, in conjunction with consumers and providers of personal care, to determine any necessary changes that may be needed to the rules or the laws that they implement. The department shall consider the following, including but not limited to:

(a) the appropriate size of category A and category B personal-care facilities;

(b) the flexibility in the oversight and regulation of personal-care facilities based on the needs of the individuals who reside in the personal-care facilities in order to allow individuals to safely remain in those facilities and age in place; and

(c) the extent to which the rules specify provider qualifications, sufficient staff training requirements, and sufficient physician involvement in the care of the individuals in personal-care facilities.

(3) The department shall present its findings, recommendations, and any suggested legislation to the children, families, health, and human services interim committee by September 15, 2002, and to the legislature as provided in 5-11-210.

Section 3. Termination. [Section 2] terminates June 30, 2003.

Approved April 21, 2001

CHAPTER NO. 332

[SB 426]

AN ACT CLARIFYING THAT A COURT MAY AUTHORIZE A PRETRIAL SERVICES AGENCY TO ARREST A PERSON FOR FAILING TO COMPLY WITH A CONDITION OF RELEASE; DEFINING "PRETRIAL SERVICES AGENCY"; AMENDING SECTION 46-9-505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-9-505, MCA, is amended to read:

"**46-9-505. Issuance of arrest warrant — redetermining bail —** ***definition.*** (1) Upon failure to comply with any condition of a bail or recognizance, the court having jurisdiction at the time of the failure may, in addition to any other action provided by law, issue a warrant for the arrest of the person.

(2) On verified application by the prosecutor setting forth facts or circumstances constituting a breach or threatened breach of any of the conditions of the bail or a threat or an attempt to influence the pending proceeding, the court may issue a warrant for the arrest of the defendant.

(3) If the defendant has been released under the supervision of a pretrial services agency, referred to in 46-9-108(1)(f), an officer of that agency may arrest the defendant without a warrant or may deputize any other officer with power of arrest to arrest the defendant by giving the officer oral authorization and within 12 hours delivering to the place of detention a verified written statement setting forth that the defendant has, in the judgment of the officer, violated the conditions of the defendant's release. An oral authorization delivered with the defendant by the arresting officer to the official in charge of a county detention center or other place of detention is a sufficient warrant for detention of the defendant if the pretrial officer delivers a verified written statement within 12 hours of the defendant's arrest.

~~(3)~~*(4)* Upon the arrest, the defendant must be brought before the court without unnecessary delay and the court shall conduct a hearing and determine bail in accordance with 46-9-311.

(5) As used in this section, "pretrial services agency" means a government agency or a private entity under contract with a local government whose employees have the minimum training required in 46-23-1003 and that is designated by a district court, justice's court, municipal court, or city court to provide services pending a trial."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2001

CHAPTER NO. 333

[SB 428]

AN ACT INCREASING THE UNEMPLOYMENT INSURANCE MAXIMUM WEEKLY BENEFIT AMOUNT FROM 60 PERCENT TO 63 PERCENT OF

THE AVERAGE WEEKLY WAGE; AMENDING SECTION 39-51-2201, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-2201, MCA, is amended to read:

"39-51-2201. Weekly benefit amount — determination of average weekly wage. ~~(1) For claims filed before July 7, 1985, an eligible individual's weekly benefit amount shall be the total base period wages divided by the number of weeks of covered employment times 50%. The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount. However, such amount shall not be less than the minimum or more than the maximum weekly benefit amount. For claims effective July 7, 1985, and filed before July 7, 1991, an individual's weekly benefit amount shall be the total base period wages divided by the number of weeks of covered employment times 49%. The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount. However, such amount shall not be less than the minimum or more than the maximum weekly benefit amount.~~

~~(2)~~*(1)* ~~For claims filed on or after July 7, 1991, an~~ *An* individual's weekly benefit amount must be an amount equal to 1% of the total base period wages or equal to 1.9% of the total wages paid in the 2 calendar quarters in which wages were the highest during the base period. The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount. However, the amount may not be less than the minimum or more than the maximum weekly benefit amount.

~~(3)~~*(2)* On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before ~~such~~ *that* date for the preceding calendar year ~~shall~~ *must* be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on ~~such~~ *the* contribution reports. The amount ~~thus~~ obtained is the average annual wage. The average annual wage divided by 52, rounded to the nearest cent, is the average weekly wage. ~~Sixty percent~~ *The maximum weekly benefit amount is 63%* of the average weekly wage ~~shall constitute the maximum weekly benefit amount~~ and ~~shall apply~~ *must be applied* to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year~~, except that the maximum weekly benefit amount for benefit years commencing on or after July 1, 1984, through January 3, 1987, is the amount calculated under this subsection after January 1, 1984, and on or before May 31, 1984~~. ~~Such~~ *The* maximum weekly benefit amount, if not a multiple of $1, ~~shall~~ *must* be computed to the nearest lower full dollar amount.

~~(4)~~*(3)* The minimum weekly benefit amount ~~shall~~ *must* be 15% of the average weekly wage. The minimum weekly benefit amount, if not a multiple of $1, ~~shall~~ *must* be computed to the nearest lower full dollar amount."

Section 2. Effective date — applicability. [This act] is effective July 1, 2001, and applies to claims for benefits filed on or after July 1, 2001.

Approved April 21, 2001

CHAPTER NO. 334

[SB 433]

AN ACT PROVIDING COUNTIES WITH THE PAYMENT OPTIONS CONTAINED IN FEDERAL LAW FOR RECEIVING THEIR PORTION OF FOREST RESERVE FUNDS; SPECIFYING HOW THE FUNDS MUST BE DISTRIBUTED, DEPENDING ON THE PAYMENT OPTIONS CHOSEN; AMENDING SECTIONS 17-3-211, 17-3-212, AND 17-3-213, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-3-211, MCA, is amended to read:

"**17-3-211. Forest reserve money *and other federal funds*.** (1) The state treasurer, for the purpose of carrying out the provisions of 16 U.S.C. 500, *Public Law 106-393,* and all acts subsequent ~~thereto~~ *to them*, shall divide and distribute all forest reserve *and Public Law 106-393* ~~moneys~~ *funds* received by the state ~~thereunder~~, plus interest earned, to and among the several counties entitled ~~thereto~~ *to the funds* and pay the ~~same~~ *amounts* to the several county treasurers of ~~such~~ *the* counties within 30 days after receiving full payment ~~of the same~~, as directed by the state auditor.

(2) The forest reserve money *and the Public Law 106-393 money* ~~shall~~ *must* be invested and all investment earnings credited to the forest reserve account *or the Public Law 106-393 account, as appropriate.*"

Section 2. Section 17-3-212, MCA, is amended to read:

"**17-3-212. Apportionment of forest reserve funds *and other federal funds* among counties.** (1) The forest reserve funds, *all Public Law 106-393 funds,* and earned interest are statutorily appropriated, as provided in 17-7-502, from the federal special revenue fund to the state auditor. The state auditor shall apportion all forest reserve funds, *all Public Law 106-393 funds,* and earned interest for allocation among the counties in which the forest reserve is situated ~~in proportion to the acreage of the forest reserve in each county~~ *based upon federal law and this section.*

(2) The state treasurer shall pay the apportioned amounts plus interest, as provided in 17-3-211, to the respective counties."

Section 3. Section 17-3-213, MCA, is amended to read:

"**17-3-213. Allocation ~~to general road fund and countywide school levies~~ *of forest reserve funds and other federal funds — options provided in federal law.*** (1) ~~The forest reserve funds so apportioned to each county must~~ *The board of county commissioners in each county shall decide among payment options provided in subsections (2) through (4), as provided in Public Law 106-393, to determine how the forest reserve funds and Public Law 106-393 funds apportioned to each county must* be ~~apportioned~~ *distributed* by the county treasurer *pursuant to this section.* ~~in each county as follows:~~

(2) If a board of county commissioners chooses to receive a payment that is 25% of the revenue derived from national forest system lands, as provided in 16 U.S.C. 500, all funds received must be distributed as provided in subsection (5).

(3) (a) Except as provided in subsection (4), if a county elects to receive the county's full payment under Public Law 106-393, a minimum of 80% up to a

maximum of 85% of the county's full payment must be designated by the county for distribution as provided in subsection (5).

(b) The balance not distributed pursuant to subsection (3)(a) may be allocated by the county in accordance with Public Law 106-393.

(4) If a county's full payment is less than $100,000, the county may elect to distribute up to 100% of the payment as provided in subsection (5).

(5) The total amount designated by a county in accordance with subsection (3)(a) or (4) must be distributed as follows:

(a) to the general road fund, 66 2/3% of the ~~total~~ amount ~~received~~ *designated*;

(b) to the following countywide school levies, 33 1/3% of the ~~total sum received~~ *amount designated*:

(i) county equalization for elementary schools provided for in 20-9-331; ~~and~~

(ii) county equalization for high schools provided for in 20-9-333;

(iii) the county transportation fund provided for in 20-10-146; and

(iv) the elementary and high school district retirement fund obligations provided for in 20-9-501.

~~(2)~~*(6)* The apportionment of money to the funds provided for under subsection ~~(1)(b)~~ *(5)(b)* must be made by the county superintendent based on the proportion that the mill levy of each fund bears to the total number of mills for all the funds. Whenever the total amount of money available for apportionment under ~~this section~~ *subsection (5)(b)* is greater than the total requirements of a levy, the excess money and any interest income must be retained in a separate reserve fund, to be reapportioned in the ensuing school fiscal year to the levies designated in subsection ~~(1)(b)~~ *(5)(b).*

~~(3)~~*(7)* In counties in which special road districts have been created according to law, the board of county commissioners shall distribute a proportionate share of the 66 2/3% ~~of the total amount received~~ *distributed under subsection (5)(b)* for the general road fund to the special road districts within the county based upon the percentage that the total area of the road district bears to the total area of the entire county."

Section 4. Effective date. [This act] is effective July 1, 2001.

Approved April 21, 2001

CHAPTER NO. 335

[SB 438]

AN ACT CREATING STANDARDS FOR PROPERTY AND CASUALTY INSURERS SEEKING UTILIZATION REVIEW OPINIONS RELATING TO COVERAGE FOR MEDICAL EXPENSES OR BODILY INJURY; CREATING STANDARDS FOR UTILIZATION REVIEW ORGANIZATIONS PROVIDING UTILIZATION REVIEW SERVICES; PROVIDING DEFINITIONS; AND PROVIDING RULEMAKING AUTHORITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The legislature recognizes that property and casualty insurers providing coverage for medical expenses or liability coverage for bodily injury may need, with respect to some claims, to seek medical reviews from qualified utilization review organizations so that an insurer may use the reviews to determine its contractual obligations. [Sections 1 through 5] establish standards for organizations providing utilization reviews and for property and casualty insurers seeking reviews.

Section 2. Scope — rulemaking. (1) [Sections 1 through 5] apply to property and casualty insurers seeking utilization review opinions and to utilization review organizations that provide opinions with respect to property and casualty insurance contracts issued in this state.

(2) The commissioner may adopt rules to implement the provisions of [sections 1 through 5], including but not limited to registration procedures and medical privacy requirements.

Section 3. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "Utilization review" means the same as provided in 33-32-102(4).

(2) "Utilization review organization" means an entity that provides utilization review services.

Section 4. Standards for utilization review organizations. (1) A utilization review organization that conducts utilization reviews in this state for property and casualty insurers shall register with the commissioner prior to performing utilization reviews. The commissioner shall place a utilization review organization on the register when the utilization review organization provides information that establishes that the utilization review organization meets the standards set forth in this section. The commissioner shall remove from the register a utilization review organization that fails to meet the standards set forth in this section.

(2) Utilization review organizations may use only licensed or certified health care professionals to conduct utilization reviews.

(3) Utilization reviews must be conducted by health care professionals who are licensed or certified in the same specialty as the provider whose treatment is being received by the insured or by a health care professional who is qualified to render the treatment being reviewed.

(4) Utilization review organizations shall comply with all applicable state or federal medical privacy laws.

(5) Utilization review evaluations must use generally accepted standards for treatment of the illness, injury, or condition that is being reviewed.

(6) Utilization review opinions must be signed by the health care professional performing the review.

(7) A utilization review organization may not base its fees or charges on any recommendation for a reduction in payment under an insurance contract or on a percentage of claim savings.

Section 5. Standards for property and casualty insurers. (1) Property or casualty insurers seeking utilization reviews with respect to insurance contracts issued in this state may use only utilization review organizations that are registered under [section 4].

(2) A property or casualty insurer that denies, in whole or in part, a policyholder's claim after consideration of a utilization review shall provide the policyholder an opportunity to request reconsideration by the insurer and the opportunity to submit additional information relating to the claim.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 5].

Approved April 21, 2001

CHAPTER NO. 336

[SB 440]

AN ACT REQUIRING FULL DISCLOSURE TO CONSUMERS OF HEALTH CARE SERVICE COST PARTICIPATION REQUIREMENTS BY INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS; REQUIRING THE INSURANCE COMMISSIONER TO REVIEW AND APPROVE OUTLINES OF COVERAGE; PROVIDING DISCLOSURE STANDARDS FOR OUTLINES OF COVERAGE FOR INDIVIDUAL AND GROUP DISABILITY INSURANCE POLICIES AND APPLYING THOSE REQUIREMENTS TO HEALTH MAINTENANCE ORGANIZATIONS; AMENDING SECTIONS 33-1-501, 33-22-244, 33-22-521, AND 33-31-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-501, MCA, is amended to read:

"33-1-501. Filing and approval of forms. (1) (a) An insurance policy or annuity contract form, certificate, enrollment form, application form, printed rider or endorsement form, or form of renewal certificate may not be delivered or issued for delivery in Montana unless the form *and, for the purposes of disability insurance, an outline of coverage as required by 33-22-244 and 33-22-521* ~~has~~ *have* been filed with and approved by the commissioner and, if required, the regulatory official of the state of domicile of the insurer. This provision does not apply to surety bonds or policies, riders, endorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject or that relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. Forms for use in property, marine, other than ocean marine and foreign trade coverages, casualty, and surety insurance coverages may be filed by a rating organization on behalf of its members and subscribers or by a member or subscriber on its own behalf.

(b) The approval of an insurance policy or annuity contract form, certificate, enrollment form, application form, or other related insurance form by the state of domicile may be waived by the commissioner if the commissioner considers the requirements of subsection (1)(a) unnecessary for the protection of Montana insurance consumers. If the requirement is waived, an insurer shall notify the commissioner in writing within 10 days of disapproval, denial, or withdrawal of approval of a form by the state of domicile.

(2) The filing must be made not less than 60 days in advance of delivery. Approval of a form by the commissioner constitutes a waiver of any unexpired portion of the waiting period. The commissioner may extend by not more than an additional 60 days the period within which the commissioner may approve or disapprove a form by giving notice of the extension before expiration of the initial 60-day period. The commissioner may at any time, after notice and for cause shown, withdraw any approval.

(3) Notice by the commissioner disapproving a form or withdrawing a previous approval must state the grounds for disapproval or withdrawal in sufficient detail to inform the insurer.

(4) The commissioner may exempt from the requirements of this section, for so long as the commissioner considers proper, an insurance document, form, or type of document or form to which, in the commissioner's opinion, this section may not practicably be applied or the filing and approval of which are not desirable or necessary for the protection of the public.

(5) This section applies to a form used by a domestic insurer for delivery in a jurisdiction outside Montana if the insurance supervisory official of the jurisdiction informs the commissioner that the form is not subject to approval or disapproval by the official and upon the commissioner's order requiring the form to be submitted to the commissioner for the purpose. The same standards apply to these forms as apply to forms for domestic use.

(6) This section and 33-1-502 do not apply to:

(a) reinsurance;

(b) policies or contracts not issued for delivery in Montana or delivered in Montana, except as provided in subsection (5);

(c) ocean marine and foreign trade insurances.

(7) Except as provided in chapter 21, group certificates that are delivered or issued for delivery in Montana for group insurance policies effectuated and delivered outside Montana but covering persons resident in Montana must be filed with the commissioner upon request. The certificates must meet the minimum provisions mandated by Montana if Montana law prevails over conflicting provisions of other state law."

Section 2. Section 33-22-244, MCA, is amended to read:

"**33-22-244. Disclosure standards — individual policy.** (1) In order to provide for full and fair disclosure in the sale of disability insurance, an individual disability insurance policy may not be delivered or issued for delivery in this state unless an outline of coverage is *filed with and approved by the insurance commissioner in accordance with 33-1-501 and is* delivered to the applicant at the time the application is made.

(2) The outline of coverage must include:

(a) a general description of the principal benefits and coverages provided by the policy;

(b) a general description of the ~~insureds~~ *insured's* financial responsibility under the policy, including, if applicable, the amount of the deductible, the amount or percentage of copayment, and the maximum annual out-of-pocket expenses to be paid by the insured;

(c) a statement of the maximum lifetime benefit available under the policy;

(d) a statement of the estimated periodic premium to be paid by the insured;

(e) a general description of the factors or case characteristics that the insurer may consider in establishing or changing the premiums and, if applicable, in determining the insurability of the applicant; ~~and~~

(f) a prominently displayed statement of the insured's responsibility for payment of billed charges beyond those charges reimbursed by the insurer when the insured uses health care services from a health care provider who is outside a network of health care providers used by the insurer; and

~~(f)~~*(g)* a general description of the trend of premium increases or decreases for comparable policies issued by the insurer during the preceding 5 years, if the trend data is available.

(3) The outline of coverage may include any other information that the insurer considers relevant to the ~~applicants~~ *applicant's* selection of an appropriate individual disability policy.

(4) An insurer or producer shall provide to an individual, upon request, an outline of coverage for any health benefit product marketed to the general public. The outline of coverage provided under this subsection may exclude the statement of the estimated periodic premium to be paid by the insured."

Section 3. Section 33-22-521, MCA, is amended to read:

"33-22-521. Disclosure standards — group policy. (1) In order to provide for full and fair disclosure in the sale of disability insurance, a group disability insurance policy may not be delivered or issued for delivery in this state unless an outline of coverage is *filed with and approved by the insurance commissioner in accordance with 33-1-501 and is* delivered to the applicant at the time the application is made.

(2) The outline of coverage must include:

(a) a general description of the principal benefits and coverages provided by the policy;

(b) a general description of the ~~insureds~~ *insured's* financial responsibility under the policy, including, if applicable, the amount of the deductible, the amount or percentage of copayment, and the maximum annual out-of-pocket expenses to be paid by the insured;

(c) a statement of the maximum lifetime benefit available under the policy;

(d) a statement of the estimated periodic premium to be paid by the insured;

(e) a general description of the factors or case characteristics that the insurer may consider in establishing or changing the premiums and, if applicable, in determining the insurability of the applicant; ~~and~~

(f) a prominently displayed statement of the insured's responsibility for payment of billed charges beyond those charges reimbursed by the insurer when the insured uses health care services from a health care provider who is outside a network of health care providers used by the insurer; and

~~(f)~~*(g)* a general description of the trend of premium increases or decreases for comparable policies issued by the insurer during the preceding 5 years, if the trend data is available.

(3) If applicable, the outline of coverage must disclose that the policy does not contain coverage for mental illness or chemical dependency.

(4) The outline of coverage may include any other information that the insurer considers relevant to the ~~applicants~~ *applicant's* selection of an appropriate group disability policy.

(5) An insurer or producer shall provide to an individual, upon request, an outline of coverage for any health benefit product marketed to the general public. The outline of coverage provided under this subsection may exclude the statement of the estimated periodic premium to be paid by the insured.

(6) An outline of coverage must also be sent to an employee when an employee is sent a certificate of insurance."

Section 4. Section 33-31-111, MCA, is amended to read:

"**33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Chapter 1, parts 12 and 13, of this title, 33-3-431, 33-15-308, 33-22-131, 33-22-136, 33-22-141, 33-22-142, *33-22-244*, 33-22-246, 33-22-247, 33-22-514,

33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations."

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before January 1, 2002.

Section 6. Effective date — applicability. [This act] is effective January 1, 2002, and applies to all policies, contracts, plans, or certificates issued or renewed on or after that date.

Approved April 21, 2001

CHAPTER NO. 337

[SB 448]

AN ACT PROVIDING FUNDING FOR TRANSPORTATION SERVICES FOR SENIOR CITIZENS AND PERSONS WITH DISABILITIES; AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO AWARD GRANTS; ESTABLISHING PRIORITIES FOR THE AWARDING OF GRANTS TO TRANSPORTATION PROVIDERS THAT PROVIDE TRANSPORTATION SERVICES FOR SENIOR CITIZENS AND PERSONS WITH DISABILITIES; ALLOWING THE DEPARTMENT OF TRANSPORTATION TO AWARD GRANTS FOR OTHER TRANSPORTATION SERVICES; ASSESSING A FEE ON REGISTRATION OR REREGISTRATION OF VEHICLES; PROVIDING FOR DEPOSIT OF FEE REVENUE IN AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND; AMENDING SECTIONS 61-3-321, 61-3-332, 61-3-426, 61-3-457, 61-3-510, AND 61-3-562, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Senior citizen and persons with disabilities transportation services account — use. (1) There is a senior citizen and persons with disabilities transportation services account in the state special revenue fund. Money must be deposited in the account pursuant to 61-3-406.

(2) Except as provided in subsection (6), the account must be used to provide operating funds to counties, incorporated cities and towns, transportation districts, or nonprofit organizations for transportation services for persons 60 years of age or older and for persons with disabilities.

(3) (a) Subject to the conditions of subsection (3)(b), the department of transportation is authorized to award grants to counties, incorporated cities and towns, transportation districts, and nonprofit organizations for transportation services using guidelines established in the state management plan for the purposes described in 49 U.S.C. 5310 and 5311.

(b) Priority for awarding grants must be determined according to the following factors:

(i) the most recent census or federal estimate of persons 60 years of age or older and persons with disabilities in the area served by a county, incorporated city or town, transportation district, or nonprofit organization;

(ii) the annual number of trips provided by the transportation provider to persons 60 years of age or older and to persons with disabilities in the transportation service area;

(iii) the ability of the transportation provider to provide matching money in an amount determined by the department of transportation; and

(iv) the coordination of services as required in subsection (5).

(4) The department of transportation shall ensure that the available funding is distributed equally among the five transportation districts provided in 2-15-2502.

(5) In awarding grants, the department of transportation shall give preference to proposals that:

(a) include the establishment of a transit authority to coordinate service area or regional transportation services;

(b) address and document the transportation needs within the community, county, and service area or region;

(c) identify all other transportation providers in the community, county, and service area or region;

(d) explain how services are going to be coordinated with the other transportation providers in the service area or region;

(e) indicate how services are going to be expanded to meet the unmet needs of senior citizens and disabled persons within the community, county, and service area or region who are dependent upon public transit;

(f) include documentation of coordination with other local transportation programs within the community, county, and service area or region, including:

(i) utilization of existing resources and equipment to maximize the delivery of service; and

(ii) the projected increase in ridership and expansion of service;

(g) invite school districts to participate or be included in the transportation coordination efforts within the community, county, and service area or region; and

(h) at a minimum, comply with the provisions in subsections (5)(b) through (5)(f).

(6) Any amount of money remaining after grants have been awarded to transportation providers who provide transportation services for persons 60 years of age or older and persons with disabilities may be awarded to other transportation providers for operating costs for the purposes described in 49 U.S.C. 5311 other than for transportation services for persons 60 years of age or older or persons with disabilities.

Section 2. Section 61-3-321, MCA, is amended to read:

"**61-3-321. Registration fees of vehicles — certain vehicles exempt from license or registration fees — disposition of fees.** (1) Registration or license fees must be paid upon registration or reregistration of motor vehicles, trailers, housetrailers, and semitrailers, in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under (other than motortrucks), $5;

(b) motor vehicles weighing over 2,850 pounds (other than motortrucks), $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles and quadricycles, $2;

(e) tractors or trucks, $10;

(f) buses, which are classed as motortrucks, licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds declared weight and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds declared weight (except housetrailers), $5;

(i) trailers and semitrailers over 6,000 pounds declared weight, $10, except trailers and semitrailers registered in other jurisdictions through a proportional registration agreement;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or bridge materials, new and secondhand, $15 annually, regardless of size or capacity.

(2) All rates are 25% higher for motor vehicles, trailers, and semitrailers that are not equipped with pneumatic tires.

(3) "Tractor", as specified in this section, means any motor vehicle, except a passenger car, that is used for towing a trailer or semitrailer.

(4) If a motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee except for trailers or semitrailers registered as provided in 61-3-721(6).

(5) An additional fee of $5.25 a year for each registration of a vehicle, except trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, must be collected as a registration fee. Revenue from this fee must be forwarded by the respective county treasurers to the state treasurer for deposit in the general fund. The department shall pay an amount equal to 25 cents from each motor vehicle registration fee from the general fund to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(6) Except as provided in 61-3-562, a fee of 25 cents a year for each registration of a vehicle, except trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, must be collected when a vehicle is registered or reregistered. The revenue derived from this fee must be forwarded by the county treasurer for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in [section 1].

~~(6)~~*(7)* A fee of $2 for each set of new number plates must be collected when number plates provided for under 61-3-332(3) are issued. Revenue from this fee must be deposited as provided in subsection (5).

~~(7)~~*(8)* The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

~~(8)~~*(9)* The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.

~~(9)~~*(10)* A person qualifying under 61-3-332(10)(d) or 61-3-504 is exempt from the fees required under subsections (1), ~~and~~ (5), *and (6)* of this section. (See compiler's comments for contingent termination of certain text.)"

Section 3. Section 61-3-332, MCA, is amended to read:

"**61-3-332. Number plates.** (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bears the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bears the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bears the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bears the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bears the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned to the dealer, in the position that the department designates.

(2) (a) All number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(b) For light vehicles that are permanently registered as provided in 61-3-527 or 61-3-562, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.

(3) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22;

Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of $10. The additional fee must be distributed in accordance with the provisions of subsection (10)(f)(iii) and (10)(f)(iv).

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued:

(A) a special license plate under this section with a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(iii) Special license plates issued to a disabled veteran are not transferable to another person.

(iv) A disabled veteran is not entitled to a special disabled veteran's license plate for more than one vehicle.

(v) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(i) Fees required under 61-3-321(1), ~~and~~ (5), *and (6)* may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).

(ii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iii) An ex-prisoner of war is exempt from the light vehicle taxes imposed under 61-3-504 for one vehicle that displays a set of ex-prisoner of war license plates.

(iv) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.

(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue account established in 10-2-603 for administration, construction, operation, and maintenance of the state veterans' cemeteries.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.

(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 4. Section 61-3-426, MCA, is amended to read:

"**61-3-426. Combined license plates.** (1) An application for license plates for amateur radio operators may be combined with an application for the special license plates issued to veterans of the armed services who comply with the provisions in 61-3-332(10)(d), (10)(e), and (10)(f) or with an application for special license plates issued to a person with a disability who complies with the provisions in 61-3-332(10)(g). The applicant for the combined license plates is liable for the payment of all taxes and fees applicable to regular motor vehicle license plates and shall pay an additional fee of $5 for the original issuance as provided in 61-3-422.

(2) An application for license plates for amateur radio operators may be combined with an application for license plates for disabled veterans as provided in 61-3-332(10)(c). The fees for the registration of the combined license plates are the fees provided for in 61-3-332(10)(c) and in 61-3-422. The fees are in lieu of all other fees and taxes for that vehicle under this chapter.

(3) An application for license plates for amateur radio operators may be combined with an application for license plates for ex-prisoners of war as provided in 61-3-332(10)(d). The fees required under 61-3-321(1), ~~and~~ (5), *and (6)* may not be assessed upon one set of combination license plates issued to an ex-prisoner of war. An ex-prisoner of war receiving combination license plates under this section is liable for the fees required under 61-3-422.

(4) The combined license plates must be stamped with the official amateur radio call letters of the owner as assigned to the owner by the federal communications commission. The plates must also be stamped with the design or decal provided for in 61-3-332(10)(c), (10)(d), (10)(e), (10)(f), or (10)(g)."

Section 5. Section 61-3-457, MCA, is amended to read:

"**61-3-457. Ex-prisoner of war license plates transferable to spouse — conditions.** Upon the death of an ex-prisoner of war and providing that the surviving spouse does not remarry, the spouse of an ex-prisoner of war may retain and renew the one set of special license plates issued under 61-3-332(10)(d) and is not liable for light vehicle taxes under 61-3-504, for the fees required under 61-3-321(1), ~~and~~ (5), *and (6),* or for the special license plate fees required under 61-3-332."

Section 6. Section 61-3-510, MCA, is amended to read:

"**61-3-510. Weed control fee.** (1) A special weed control fee of $1.50 must be assessed on the annual registration or reregistration of each motor vehicle subject to registration. The fee must be collected by the county treasurer.

(2) For purposes of this section, motor vehicle includes:

(a) a motor vehicle as defined in 61-1-102;

(b) a motorcycle as defined in 61-1-105;

(c) a motor-driven cycle as defined in 61-1-106; and

(d) a quadricycle as defined in 61-1-133.

(3) The following vehicles are exempt from the fee:

(a) vehicles owned or controlled by the United States or a state, county, city, or special district, as defined in 18-8-202;

(b) vehicles exempt from payment of registration fees by 61-3-321~~(8)~~*(9)*; and

(c) vehicles or equipment that is not self-propelled or that requires towing when moved upon a highway of this state."

Section 7. Section 61-3-562, MCA, is amended to read:

"**61-3-562. Permanent registration — transfer of vehicle ownership — rules.** (1) (a) The owner of a light vehicle 11 years old or older subject to the registration fee, as provided in 61-3-561, may permanently register the vehicle upon payment of a $50 registration fee, the applicable registration and license fees under 61-3-321, and an amount equal to five times the applicable fees imposed for each of the following:

(i) junk vehicle disposal fees under 61-3-508;

(ii) weed control fees under 61-3-510;

(iii) county motor vehicle computer fees under 61-3-511;

(iv) the local option vehicle tax or flat fee on vehicles under 61-3-537;

(v) if applicable, license plate fees under 61-3-332 and renewal fees for personalized plates under 61-3-406;

(vi) if applicable, the amateur radio operator license plate fee under 61-3-422; ~~and~~

(vii) if applicable, the annual scholarship donation fee under 61-3-465*; and*

(viii) senior citizens and persons with disabilities transportation services fees as provided in 61-3-321(6).

(b) A person who permanently registers a vehicle as provided in subsection (1)(a) shall pay an additional $2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the $2 fee collected under this subsection (1)(b) from each motor vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(2) In addition to the fees described in subsection (1), an owner of a truck with a manufacturer's rated capacity of 1 ton or less that is permanently registered shall pay five times the applicable fees imposed under 61-10-201.

(3) The owner of a vehicle that is permanently registered under this section is not subject to additional fees under 61-3-561 or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle.

(4) The county treasurer shall:

(a) disburse the $50 registration fee collected under this section as provided in 61-3-509;

(b) once each month, remit to the state treasurer the amounts collected under this section for the purposes of 61-3-121(5), 61-3-508, 61-3-510, 61-3-511, and 61-10-201.

(5) (a) The permanent registration of a vehicle allowed by this section may not be transferred to a new owner. If the vehicle is transferred to a new owner, the department shall cancel the vehicle's permanent registration.

(b) Upon transfer of a vehicle registered under this section to a new owner, the new owner shall apply for a certificate of ownership under 61-3-201 and file an application for registration under 61-3-303."

Section 8. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations.

Section 9. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 14, part 1, and the provisions of Title 7, chapter 14, part 1, apply to [section 1].

Section 10. Effective date. [This act] is effective on passage and approval.

Section 11. Applicability. [This act] applies to registrations of motor vehicles occurring after December 31, 2001.

Approved April 21, 2001

CHAPTER NO. 338

[SB 449]

AN ACT ELIMINATING THE HARD-ROCK MINING AND RECLAMATION ACCOUNT AND THE OPENCUT MINING AND RECLAMATION ACCOUNT IN THE STATE SPECIAL REVENUE FUND; ESTABLISHING AN ENVIRONMENTAL REHABILITATION AND RESPONSE ACCOUNT IN THE STATE SPECIAL REVENUE FUND; DEDICATING CERTAIN FINES AND PENALTIES TO THE ACCOUNT; DEDICATING CERTAIN UNCLAIMED OR EXCESS RECLAMATION BOND FUNDS TO THE ACCOUNT; PROVIDING THAT FUNDS IN THE ACCOUNT BE APPROPRIATED TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR CERTAIN PURPOSES; AMENDING SECTIONS 75-10-1223, 82-4-241, 82-4-311, 82-4-424, AND 82-4-426, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Environmental rehabilitation and response account. (1) There is an environmental rehabilitation and response account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) fine and penalty money received pursuant to 75-10-1223, 82-4-311, and 82-4-424 and other funds or contributions designated for deposit to the account;

(b) unclaimed or excess reclamation bond money received pursuant to 82-4-241, 82-4-311, 82-4-424, and 82-4-426; and

(c) interest earned on the account.

(3) Money in the account is available to the department of environmental quality by appropriation and must be used to pay for:

(a) reclamation and revegetation of land affected by mining activities, research pertaining to the reclamation and revegetation of land, and the rehabilitation of water affected by mining activities;

(b) reclamation and revegetation of unreclaimed mine lands for which the department may not require reclamation by, or obtain costs of reclamation from, a legally responsible party;

(c) remediation of sites containing hazardous wastes or hazardous substances for which the department may not recover costs from a legally responsible party; or

(d) response to an imminent threat of substantial harm to the environment, to public health, or to public safety for which no funding or insufficient funding is available pursuant to 75-1-1101.

(4) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account until spent or appropriated by the legislature.

Section 2. Section 75-10-1223, MCA, is amended to read:

"**75-10-1223. Penalties and fines.** (1) A person ~~that~~ *who* disposes of septage in violation of 75-10-1210 or of the standards adopted pursuant to 75-10-1202 is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed $500.

(2) A person ~~that~~ *who* violates this part or a rule or order adopted pursuant to this part is subject to a civil penalty of not more than $500. Each day that violation of this part, a rule of the department, or an order issued pursuant to this part occurs constitutes a separate violation. The department or the county attorney of the county in which the violation occurred may file an action to collect the penalty.

(3) Penalties collected by the department under this section must be deposited in the ~~account provided for in 75-10-1203~~ *environmental rehabilitation and response account in the state special revenue fund provided for in [section 1].* Fines and penalties collected by a county must be deposited in the general fund of the county."

Section 3. Section 82-4-241, MCA, is amended to read:

"**82-4-241. Receipts paid into general fund — *disposition of bond forfeiture money.*** *(1)* Except for bond forfeiture ~~moneys~~ *money*, all fees, penalties, and other ~~moneys~~ *money* available or paid to the department under the provisions of this part ~~shall~~ *must* be placed in the state treasury and credited to the general fund.

(2) Bond forfeiture money must be used to pay for expenses that the department incurs pursuant to 82-4-240.

(3) Funds held by the department as bond or as a result of bond forfeiture that are no longer needed for reclamation and for which the department is not able to locate a surety or other person who owns the funds after diligent search must be deposited in the state special revenue fund and credited to the environmental rehabilitation and response account provided for in [section 1]."

Section 4. Section 82-4-311, MCA, is amended to read:

"**82-4-311.** ~~**Hard-rock mining and reclamation account**~~ ***Disposition of fees, fines, penalties, and other uncleared money.*** All fees, fines, penalties, and other uncleared money that has been or will be paid to the department under the provisions of this part must be placed in the *environmental rehabilitation and response account in the* state special revenue fund ~~in the state treasury and credited to a special account that is designated as the hard-rock mining and reclamation account. This account is available to the department by appropriation and may be expended for the research, reclamation, and revegetation of land and the rehabilitation of water affected by any mining operations~~ *provided for in [section 1]. Funds held by the department as bond or as a result of bond forfeiture that are no longer needed for reclamation and for which the department is not able to locate a surety or other person who owns the funds after diligent search must be deposited in the environmental rehabilitation and response account in the state special revenue fund.* ~~Any unencumbered and any unexpended balance of this account remaining at the end of a fiscal year does not lapse but must be carried forward for the purposes of this section until expended or until appropriated by subsequent legislative action.~~"

Section 5. Section 82-4-424, MCA, is amended to read:

"**82-4-424. Receipt and expenditure of funds —** ***disposition of fees, fines, penalties, and other money.*** (1) The department may receive any federal funds, state funds, or any other funds for the reclamation of land affected by opencut mining. The department may cause the reclamation work to be done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons.

~~(2) Any funds of any public works programs available to the department must be expended and used to reclaim and rehabilitate any lands that have been subject to opencut mining and that have not been reclaimed and rehabilitated in accordance with the standards of this part.~~

~~(3)~~*(2)* ~~There is an opencut mining and reclamation account within the state special revenue fund established in 17-2-102. There must be deposited in the account all~~ *All* fees, fines, penalties, and other money ~~that have been or will be~~ paid under the provisions of this part *must be deposited in the environmental rehabilitation and response account in the state special revenue fund provided for in [section 1].* ~~The money in the account is available to the department through appropriation and must be spent by the department for the reclamation and revegetation of land, research pertaining to the reclamation and revegetation of land, and the rehabilitation of water affected by opencut mining operations and for administration of this part.~~ *Funds held by the department as bond or as a result of bond forfeiture that are no longer needed for reclamation and for which the department is not able to locate a surety or other person who owns the funds after diligent search must be deposited in the environmental rehabilitation and response account in the state special revenue fund.* ~~Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account until spent or appropriated by the legislature.~~"

Section 6. Section 82-4-426, MCA, is amended to read:

"**82-4-426. Reclamation of land on which bond forfeited.** In keeping with the provisions of this part, the department may reclaim any affected lands with respect to which a bond has been forfeited. If the amount of the forfeited bond exceeds the cost of reclamation, the excess must be deposited in the ~~state general fund~~ *environmental rehabilitation and response account in the state special revenue fund provided for in [section 1].*"

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 75, chapter 1, and the provisions of Title 75, chapter 1, apply to [section 1].

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective July 1, 2001.

Approved April 21, 2001

CHAPTER NO. 339

[SB 450]

AN ACT EXCLUDING SERVICES PERFORMED BY INSURANCE SALESPEOPLE WHO ARE PAID SOLELY BY COMMISSION AND HAVE NO GUARANTEE OF MINIMUM EARNINGS FROM THE DEFINITION OF "EMPLOYMENT" FOR PURPOSES OF UNEMPLOYMENT AND WORKERS' COMPENSATION INSURANCE LAWS; AMENDING SECTIONS 39-51-204 AND 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) ~~service~~ *services* performed ~~as a~~ *by qualified* real estate ~~broker or salesperson who is licensed pursuant to Title 37, chapter 51~~ *agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings*;

(e) service performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined in 37-30-101, which contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the cosmetology salon or barbershop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership, members of a member-managed limited liability company that has filed with the secretary of state, or partners in a limited liability partnership that has filed with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the state by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(u) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States; or

(w) service performed by an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act.

(2) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(3) This section does not apply to a state or local governmental entity or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment as defined in the Federal Unemployment Tax Act."

Section 2. Section 39-71-401, MCA, is amended to read:

"**39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a ~~broker or salesperson performing under a license issued by the board of realty regulation~~ *real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings*;

(f) employment as a direct seller as defined by 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(p) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company:

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(q)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(q)(iii)(A) or (2)(q)(iii)(B).

(r) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(s) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order.

(3) (a) A sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and

individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. There is a $25 fee for the initial application. Any subsequent application renewal must be accompanied by a $25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) The exemption, if approved, remains in effect for 3 years following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall every 3 years submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved on or after July 1, 1995. The renewal application and the $25 renewal application fee must be received by the department at least 30 days before the anniversary date of the previously approved exemption.

(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of $1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the department denies the application for exemption, the applicant may, after mediation pursuant to department rules, contest the denial by petitioning the workers' compensation court.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of

exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2001

CHAPTER NO. 340

[SB 455]

AN ACT CLARIFYING THAT DOCUMENTS MAY BE RECORDED FOR THE SUBDIVISION AND TRANSFER OF LAND IN AREAS OVER WHICH THE STATE DOES NOT HAVE JURISDICTION; AMENDING SECTIONS 76-3-201, 76-3-301, 76-3-302, AND 76-4-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-201, MCA, is amended to read:

"76-3-201. Exemption for certain divisions of land. (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

(a) is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) is created to provide security for construction mortgages, liens, or trust indentures;

(c) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

(d) creates cemetery lots;

(e) is created by the reservation of a life estate;

(f) is created by lease or rental for farming and agricultural purposes; *or*

(g) is in a location over which the state does not have jurisdiction.

(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division."

Section 2. Section 76-3-301, MCA, is amended to read:

"**76-3-301. General restriction on transfer of title to subdivided lands.** (1) Except as provided in 76-3-303, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval of 76-3-611(1) in proper form *unless the plat is located in an area over which the state does not have jurisdiction*.

(2) The clerk and recorder shall notify the governing body or its designated agent of any land division described in 76-3-207(1).

(3) If transfers not in accordance with this chapter are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. The cost of ~~such~~ *the* action ~~shall~~ *must* be imposed against the party not prevailing."

Section 3. Section 76-3-302, MCA, is amended to read:

"**76-3-302. Restrictions on recording instruments relating to land subject to surveying requirements.** (1) Except as provided in subsection (2), the county clerk and recorder of any county may not record any instrument ~~which~~ *that* purports to transfer title to or possession of a parcel or tract of land ~~which~~ *that* is required to be surveyed by this chapter unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

(2) Subsection (1) does not apply when the parcel or tract to be transferred:

(a) is in a location in which the state does not have jurisdiction; or

(b) was created before July 1, 1973, and the instrument of transfer for the parcel or tract includes a reference to a previously recorded instrument of transfer or is accompanied by documents ~~which~~ *that*, if recorded, would otherwise satisfy the requirements of this subsection. The reference or document must demonstrate that the parcel or tract existed before July 1, 1973.

(3) The reference or documents required in subsection (2) do not constitute a legal description of the property and may not be substituted for a legal description of the property."

Section 4. Section 76-4-122, MCA, is amended to read:

"**76-4-122. Filing or recording of noncomplying map or plat prohibited.** (1) The county clerk and recorder may not file or record any map or plat showing a subdivision unless it complies with the provisions of this part.

(2) ~~A~~ *Except when a subdivision is in a location in which the state does not have jurisdiction, a* county clerk and recorder may not accept a subdivision plat for filing until one of the following conditions has been met:

(a) whenever reviewing authority approval is necessary, the person wishing to file the plat has obtained approval of the local health officer having jurisdiction and has filed the approval with the reviewing authority, and the reviewing authority has indicated by stamp or certificate that it has approved the plat and plans and specifications and that the subdivision is not subject to a sanitary restriction; or

(b) whenever reviewing authority approval is not necessary, the person wishing to file the plat has obtained a certificate from the governing body that the subdivision is inside the jurisdictional area of a growth policy adopted pursuant to chapter 1 *of this title* or *within* a class 1 or class 2 municipality and will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste."

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 6. Coordination instruction. *If Senate Bill No. 167 is passed and approved and if it includes a section that amends 76-4-122 to allow a county clerk and recorder to file or record a plat without approval by the reviewing authority when the subdivision is exempt from review, then [section 4 of this act], amending 76-4-122, is void.*

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2001

CHAPTER NO. 341

[SB 465]

AN ACT AMENDING THE INSURANCE INFORMATION AND PRIVACY PROTECTION ACT; PROVIDING FOR EXEMPTION FROM THE ACT FOR PERSONS COMPLYING WITH FEDERAL REGULATIONS THAT ARE INCONSISTENT WITH THE ACT AND NOT LESS PROTECTIVE OF PRIVACY THAN THE ACT; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ADOPT RULES; REVISING DEFINITIONS; REVISING REQUIREMENTS FOR NOTICE OF INSURANCE INFORMATION PRACTICES; REVISING STATUTES RELATING TO DISCLOSURE AUTHORIZATION FORMS; REVISING PROVISIONS RELATING TO EXCEPTIONS FROM PROHIBITED DISCLOSURES; PROVIDING RESTRICTIONS ON THE USE OF PERSONAL INFORMATION FOR MARKETING PURPOSES; REVISING CIVIL PENALTIES AND INDIVIDUAL REMEDIES APPLICABLE TO DISCLOSURE VIOLATIONS; AMENDING SECTIONS 33-19-102, 33-19-104, 33-19-202, 33-19-306, 33-19-405, AND 33-19-407, MCA; REPEALING SECTIONS 33-19-204, 33-19-402, 33-19-404, AND 33-19-406, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-19-102, MCA, is amended to read:

"**33-19-102. Purpose.** The purpose of this chapter is to establish standards for the collection, use, and disclosure of information gathered in connection with insurance transactions by insurance institutions, insurance producers, or insurance-support organizations; to maintain a balance between the need for information by those conducting the business of insurance and the public's need for fairness in insurance information practices, including the need to minimize intrusiveness; to establish a regulatory mechanism to enable natural persons to ascertain what information is being or has been collected about them in connection with insurance transactions and to have access to ~~such~~ *that* information for the purpose of verifying or disputing its accuracy; to limit the disclosure of information collected in connection with insurance transactions; and to enable insurance applicants and policyholders to obtain the reasons for any adverse underwriting decision. *The purpose of this chapter is also to provide privacy protection consistent with federal regulations governing the privacy of medical records when this chapter is consistent with those federal regulations. In those instances in which this chapter and the federal privacy regulations are inconsistent and this chapter provides privacy protection beyond that offered by the federal regulations, the purpose of this chapter is to provide that additional privacy protection.*"

Section 2. Section 33-19-104, MCA, is amended to read:

"**33-19-104. Definitions.** As used in this chapter, the following definitions apply:

(1) (a) "Adverse underwriting decision" means any of the following actions with respect to insurance transactions involving insurance coverage that are individually underwritten:

(i) a declination of insurance coverage;

(ii) a termination of insurance coverage;

(iii) failure of an insurance producer to apply for insurance coverage with a specific insurance institution that the insurance producer represents and that is requested by an applicant;

(iv) in the case of a property or casualty insurance coverage:

(A) placement by an insurance institution or insurance producer of a risk with a residual market mechanism, an unauthorized insurer, or an insurance institution that specializes in substandard risks; or

(B) the charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished;

(v) in the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.

(b) The following actions are not adverse underwriting decisions, but the insurance institution or insurance producer responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(i) the termination of an individual policy form on a class or statewide basis;

(ii) a declination of insurance coverage solely because the coverage is not available on a class or statewide basis; or

(iii) the rescission of a policy.

(2) "Affiliate" or "affiliated" means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(3) "Applicant" means a person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(4) "Consumer report" means any written, oral, or other communication of information bearing on a natural person's credit worthiness, credit standing,

credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used in connection with an insurance transaction.

(5) "Consumer reporting agency" means a person who:

(a) regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;

(b) obtains information primarily from sources other than insurance institutions; and

(c) furnishes consumer reports to other persons.

(6) "Control", including the terms "controlled by" or "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(7) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or insurance producer of requested insurance coverage.

(8) "Individual" means a natural person who:

(a) regarding property or casualty insurance, is a past, present, or proposed named insured or certificate holder;

(b) regarding life, health, or disability insurance, is a past, present, or proposed principal insured or certificate holder;

(c) is a past, present, or proposed policyowner;

(d) is a past or present applicant;

(e) is a past or present claimant; or

(f) derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this chapter.

(9) "Institutional source" means a person or governmental entity that provides information about an individual to an insurance producer, insurance institution, or insurance-support organization, other than:

(a) an insurance producer;

(b) the individual who is the subject of the information; or

(c) a natural person acting in a personal capacity rather than a business or professional capacity.

(10) "Insurance function" means claims administration, claims adjustment and management, fraud investigation, underwriting, loss control, ratemaking functions, reinsurance, risk management, case management, disease management, quality assessment, quality improvement, provider credentialing verification, utilization review, peer review activities, *subrogation,* grievance procedures, *insurance transactions,* and internal administration of compliance and policyholder service functions.

(11) (a) "Insurance institution" means a corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance, including health

maintenance organizations, and health service corporations as defined in 33-30-101.

(b) Insurance institution does not include insurance producers or insurance-support organizations.

(12) "Insurance producer" means an insurance producer as defined in 33-17-102 and 33-30-311.

(13) (a) "Insurance-support organization" means a person who assembles or collects information about natural persons for the purpose of providing the information to an insurance institution or insurance producer for insurance transactions, including:

(i) the furnishing of consumer reports or investigative consumer reports to an insurance institution or insurance producer for use in connection with an insurance transaction; or

(ii) the collection of personal information from insurance institutions, insurance producers, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(b) The following persons are not insurance-support organizations for purposes of this chapter: insurance producers, government institutions, medical care institutions, and medical professionals.

(14) "Insurance transaction" means a transaction involving insurance primarily for personal, family, or household needs, rather than for business or professional needs, that entails:

(a) the determination of an individual's eligibility for an insurance coverage, benefit, or payment; or

(b) the servicing of an insurance application, policy, contract, or certificate.

(15) "Investigative consumer report" means a consumer report or portion of a consumer report containing information about a natural person's character, general reputation, personal characteristics, or mode of living obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning this type of information.

(16) "Licensee" means:

(a) an insurance institution, insurance producer, or other person who is licensed or required to be licensed, authorized or required to be authorized, or registered or required to be registered pursuant to this title; or

(b) a surplus lines insurer.

~~(16)~~*(17)* "Medical care institution" means a facility or institution that is licensed to provide health care services to natural persons, including but not limited to health maintenance organizations, home health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies, and skilled nursing facilities.

~~(17)~~*(18)* "Medical professional" means a person who is licensed or certified to provide health care services to natural persons, including but not limited to a chiropractor, clinical dietitian, clinical psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker, or speech-language pathologist.

~~(18)~~*(19)* "Medical record information" means personal information that:

(a) relates to an individual's physical or mental condition, medical history, medical claims history, or medical treatment; and

(b) is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

~~(19)~~*(20)* "Person" means a natural person, corporation, association, partnership, or other legal entity.

~~(20)~~*(21)* "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. Personal information includes an individual's name and address and medical record information but does not include privileged information.

~~(21)~~*(22)* "Policyholder" means a person who:

(a) in the case of individual property or casualty insurance, is a present named insured;

(b) in the case of individual life, health, or disability insurance, is a present policyowner; or

(c) in the case of group insurance that is individually underwritten, is a present group certificate holder.

~~(22)~~*(23)* "Pretext interview" means an interview during which a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

(a) pretends to be someone else;

(b) pretends to represent a person not in fact being represented;

(c) misrepresents the true purpose of the interview; or

(d) refuses to provide identification upon request.

~~(23)~~*(24)* "Privileged information" means any individually identifiable information that:

(a) relates to a civil or criminal proceeding involving an individual; and

(b) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. Information otherwise meeting the requirements of privileged information under this subsection is considered personal information under this chapter if it is disclosed in violation of 33-19-306.

~~(24)~~*(25)* "Residual market mechanism" means an association, organization, or other entity defined or described in 61-6-144.

~~(25)~~*(26)* ~~(a)~~ "Separate, written authorization" means an individual's written authorization that is:

~~(i)~~*(a)* given to the recipient of personal or privileged information that has been disclosed pursuant to 33-19-306(3) through ~~(17)~~ *(22)*; and

~~(ii)~~*(b)* separate from any written authorization obtained by the disclosing insurance institution, insurance producer, or insurance-support organization ~~pursuant to 33-19-204~~.

~~(b) The term does not include the insurance institution, insurance producer, or insurance-support organization that discloses personal or privileged information pursuant to 33-19-306(3) through (17) .~~

~~(26)~~*(27)* "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

~~(27)~~*(28)* "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the commissioner to transact the business of insurance in this state."

Section 3. Exemption based on federal medical privacy rules — notice to commissioner required. (1) If a licensee is subject to and in compliance with a federal rule that is part of the federal health insurance portability and accountability privacy rules, 45 CFR, parts 160 and 164, and the federal rule with which the licensee complies is inconsistent with a provision of this chapter and not less protective of consumer privacy, the licensee is exempt from compliance with the inconsistent provision of this chapter.

(2) If a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (1), the licensee shall give written notice to the commissioner of that exemption. The notice must include a statement of the reason for the claimed exemption.

Section 4. Rulemaking authorized. The commissioner may adopt rules to carry out the provisions of this chapter.

Section 5. Section 33-19-202, MCA, is amended to read:

"**33-19-202. Notice of insurance information practices** — ***delivery of notice.*** ~~(1) An insurance institution or insurance producer~~ *A licensee* shall provide a *clear and conspicuous* notice of information practices *that accurately reflects its privacy policies and practices* to ~~all applicants or policyholders~~ *individuals about whom personal information is collected by the licensee* in connection with insurance transactions as ~~provided below:~~ *follows:*

~~(a) in~~ *(1) (a) Except as provided in subsection (2), in* the case of ~~an application for insurance~~ *a policyholder or certificate holder*, a notice must be ~~provided no later than~~ *delivered by an insurance institution*:

~~(i)~~*(i) in the case of policies issued after [the effective date of this section], no later than* at the time of the delivery of the insurance policy or certificate ~~when personal information is collected only from the applicant or from public records; or~~

~~(ii) at the time the collection of personal information is initiated when personal information is collected from a source other than the applicant or public records~~, *unless the notice delivered to the policyholder or certificate holder pursuant to subsection (4)(a) when the policyholder or certificate holder was an applicant is still accurate;*

(ii) at least annually, the 12-month period for which may be defined by the insurance institution and must be used consistently~~;~~*. The notice to certificate*

holders required in this subsection (1)(a)(ii) is not required if the insurance institution has not had any communication, including receiving a claim, from a certificate holder since the initial or last annual notice provided to the certificate holder.

~~(b)~~*(iii)* ~~in~~ *in* the case of a policy ~~renewal~~ *renewed after [the effective date of this section],* ~~a notice must be provided~~ no later than the policy renewal date, except that notice is not required in connection with a policy renewal if:

~~(i)~~*(A)* personal information is collected only from the policyholder or from public records; or

~~(ii)~~*(B)* a notice meeting the requirements of this section has been given within the previous ~~24~~ *12* months~~; or~~.

~~(c)~~*(b)* ~~in the case of a policy reinstatement or change in insurance benefits, a~~ *When a policyholder or certificate holder obtains a new insurance product or service or when a policy is reinstated and any notices already provided are no longer accurate with respect to the new product, service, or reinstatement, a new or revised and accurate* notice must be ~~provided~~ *delivered to the policyholder or certificate holder* no later than the time ~~a request for a policy reinstatement or change in insurance benefits is received by the insurance institution~~ *that the product or service is provided by the licensee or at the time of reinstatement*, except that notice is not required if personal information is collected only from the policyholder or from public records.

(2) (a) An insurance institution is not required to meet the requirements of this section with respect to certificate holders until the insurance institution has personally identifiable information regarding the certificate holder.

(b) Until the notice requirements of subsection (1) are met, a third party administrator or other agent or representative of an insurance institution may not disclose personal information, except as allowed in 33-19-306(2).

~~(2)~~*(3)* The notice *required in subsection (1)* must be in writing and must state:

(a) ~~whether~~ *the categories of* personal information *that* may be collected from persons other than the individual or individuals ~~proposed for coverage~~ *covered*;

(b) ~~the types of personal information that may be collected and the types of sources and investigative techniques that may be used to collect the information;~~

~~(c) the types of disclosures identified in subsections (3), (4), (5), (6), (7), (10), (12), and (14) of 33-19-306 and the circumstances under which the disclosures may be made without prior authorization. However, only those circumstances that occur with such frequency as to indicate a general business practice must be described.~~ *if a licensee discloses personal or privileged information to a third party without an authorization pursuant to an exception in 33-19-306 or [section 8], a separate description of the categories of information and the categories of third parties to whom the licensee discloses personal information;*

(c) the categories of personal information about a former policyholder or certificate holder that the licensee discloses pursuant to 33-19-306 and [section 8] and the categories of persons to whom the disclosure may be made;

(d) any disclosure that the licensee makes pursuant to section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.;

(e) the licensee's policies and practices with respect to protecting the confidentiality and security of personal and privileged information;

~~(d)~~*(f)* a description of the rights established under 33-19-301 and 33-19-302 and the manner in which those rights may be exercised; ~~and~~

~~(e)~~*(g)* that information obtained from a report prepared by an insurance-support organization may be retained by the insurance-support organization and disclosed to other persons~~.~~

~~(3) In lieu of the notice prescribed in subsection (2), the insurance institution or insurance producer may provide an abbreviated notice informing the applicant or policyholder that~~ *if the licensee collects or uses information from an insurance-support organization; and*

(h) that an individual is entitled to receive, upon written request to the licensee, a record of any subsequent disclosures of medical record information made by the licensee pursuant to 33-19-306 that must include:

(i) the name, address, and institutional affiliation, if any, of each person receiving or examining the medical information during the preceding 3 years;

(ii) the date of the receipt or examination; and

(iii) to the extent practicable, a description of the information disclosed.

(4) In the case of individuals who are not policyholders or certificate holders:

(a) except as provided in subsection (7), in the case of an applicant, an insurance institution shall provide a notice as described in subsection (3) when the applicant submits an application;

(b) for all other individuals, a notice must be given when a licensee seeks an authorization pursuant to 33-19-306(2) to make a disclosure that is not allowed by a disclosure exception provided for in 33-19-306(3) through (22) or [section 8]. A notice given pursuant to this subsection (4)(b) may be in an abbreviated form and must state that:

~~(a)~~*(i)* personal information may be collected from persons other than the individual or individuals proposed for coverage;

~~(b)~~*(ii)* the information as well as other personal or privileged information subsequently collected by the insurance institution or insurance producer may in certain circumstances be disclosed to third parties without authorization;

~~(c)~~*(iii)* a right of access and correction exists with respect to all personal information collected; and

~~(d)~~*(iv)* the notice prescribed in subsection ~~(2)~~ *(3)* must be furnished ~~to the applicant or policyholder~~ upon request. *The abbreviated notice provided for in this subsection (4)(b) must explain a reasonable means by which an individual may obtain that notice.*

~~(4)~~*(5)* The obligations imposed by this section upon ~~an insurance institution or insurance producer~~ *a licensee* may be satisfied*:*

(a) by another ~~insurance institution or insurance producer~~ *licensee* authorized to act on its behalf*;*

(b) by sending a notice to the primary policyholder of an individual policy or to the primary certificate holder.~~;~~

(6) A licensee shall provide a notice required by this section so that an intended recipient can reasonably be expected to receive actual notice in writing or, if the intended recipient agrees, electronically, as follows:

(a) by hand-delivering a printed copy of the notice to the intended recipient;

(b) by mailing a printed copy of the notice to the last-known address of the individual separately or in a policy, billing, or other written communication; or

(c) for an individual who has agreed to conduct transactions electronically, as provided in applicable law, by posting the notice on the electronic site and requiring the individual to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service.

(7) An insurance institution may provide the notice required in subsection (4)(a) telephonically if an application is submitted by telephone. A telephone notice under this subsection may be in abbreviated form as provided for in subsections (4)(b)(i) through (4)(b)(iv).

(8) If a licensee is required to provide notice concerning privacy in addition to the notice required by this section, the licensee may satisfy the notice requirements in this section through the use of combined or separate notices. If more than one notice form is used, a notice containing provisions specific to Montana must conspicuously refer to any other notice form."

Section 6. Disclosure authorizations — content — conditions prohibited. If a disclosure authorization is required by this chapter, the following requirements apply:

(1) A valid authorization to disclose personal information must be in written form, or in electronic form as provided by applicable law, and must contain the following:

(a) the identity of the individual who is the subject of the personal information;

(b) a description of the types of personal information to be disclosed;

(c) a description of the entity or type of entity to which the licensee discloses personal information, the purpose of the disclosure, and how the information will be used;

(d) the signature of the individual who is the subject of the personal information or the individual who may by law allow the disclosure and the date on which the authorization is signed; and

(e) notice of the length of time for which the authorization is valid, notice that the individual may revoke the authorization at any time, and notice of the procedure for revocation.

(2) An authorization remains valid for a period stated in the authorization that does not exceed 24 contiguous months.

(3) An individual who is the subject of personal information and has signed an authorization may revoke the authorization at any time.

(4) A licensee shall retain the original authorization or a copy of it in the record of the individual who is the subject of personal information.

(5) A licensee may not condition enrollment, coverage, benefits, or rates on an individual's signing of a disclosure authorization unless the disclosure sought through the authorization is necessary for the licensee to perform an insurance function.

Section 7. Section 33-19-306, MCA, is amended to read:

"**33-19-306. Disclosure limitations and conditions.** (1) Except as provided in this section, ~~an insurance institution, insurance producer, or insurance-support organization~~ *a licensee* may not disclose ~~any~~ personal or privileged information about an individual ~~collected or received in connection with an insurance transaction~~ *collected or received in connection with an insurance transaction.*

(2) Disclosure may be made with the written authorization of the individual ~~but:~~

~~(a) if the authorization is submitted by another insurance institution, insurance producer, or insurance-support organization, the authorization must meet the requirements of 33-19-204; or~~

~~(b) if the authorization is submitted by a person other than an insurance institution, insurance producer, or insurance-support organization, the authorization must be:~~

~~(i) dated;~~

~~(ii) signed by the individual;~~

~~(iii) sufficient to identify the nature of the information to be disclosed and the person to whom the information is to be disclosed; and~~

~~(iv) obtained 1 year or less prior to the date a disclosure is sought pursuant to this subsection~~. *The authorization must be in the form provided in [section 6].*

(3) Disclosure *limited to that which is reasonably necessary* may be made to a person ~~other than an insurance institution, insurance producer, or insurance-support organization, provided that the disclosure is limited to that which is reasonably necessary:~~

~~(a) to enable the person to perform an insurance function for the disclosing insurance institution, insurance producer, or insurance-support organization and the person agrees not to further disclose the information without the individual's separate, written authorization; or~~

~~(b) to enable the person that has agreed not to further disclose the information without the individual's separate, written authorization to provide information to the disclosing insurance institution, insurance producer, or insurance-support organization for the purpose of:~~

~~(i) determining an individual's eligibility for an insurance benefit or payment; or~~

~~(ii)~~ *to enable the person to provide information to the disclosing licensee for the purpose of* detecting or preventing criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction. *A person to whom information is disclosed pursuant to this subsection shall agree in writing not to further disclose the information, but this requirement for an agreement does not prevent disclosure of information that is necessary to obtain further information for the purposes set forth in this subsection.*

(4) *(a)* Disclosure may be made ~~to an insurance institution, insurance producer, insurance-support organization, or self-insurer that has agreed not to further disclose the information without the individual's separate, written authorization~~ *between licensees* if the information disclosed is limited to that which is reasonably necessary:

~~(a)~~*(i)* to detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with insurance transactions; or

~~(b)~~*(ii)* for either the disclosing or receiving ~~insurance institution, insurance producer, or insurance-support organization~~ *licensee* to perform its insurance function in connection with an insurance transaction involving ~~the~~ *an* individual.

(b) A licensee receiving information pursuant to this subsection (4) may not further disclose the information unless otherwise permitted by this section.

(5) Disclosure may be made to a medical care institution ~~or~~*, a* medical professional ~~of~~*, or the individual to whom the information pertains if* that information *is* reasonably necessary for the following purposes:

(a) verifying insurance coverage or benefits;

(b) informing an individual of a medical problem of which the individual may not be aware; ~~or~~

(c) conducting an operations or services audit*; or*

(d) determining the reasonableness or necessity of medical services.

(6) Disclosure*:*

(a) may be made to an insurance regulatory authority that agrees not to further disclose the information without the individual's separate, written authorization*;*

(b) must be made as required by law; and

(c) must be or may be made to the commissioner as required or permitted by law.

(7) Disclosure may be made *by a licensee or an insurance-support organization* to a law enforcement or other government authority *or to an insurance regulatory agency*:

(a) to protect the interests of ~~the insurance institution, insurance producer, or insurance-support organization~~ *a licensee* in preventing*, investigating,* or prosecuting the perpetration of fraud upon ~~it~~ *a licensee*; or

(b) if the ~~insurance institution, insurance producer, or insurance-support organization~~ *licensee or insurance-support organization* reasonably believes that illegal activities have been conducted by the individual.

(8) Disclosure that is limited to that which is reasonably necessary may be made as otherwise permitted or required by law.

(9) Disclosure that is limited to that which is reasonably necessary may be made in response to a facially valid administrative or judicial order, including a search warrant or subpoena.

(10) (a) Except as provided in subsection (10)(b), disclosure that is limited to that which is reasonably necessary may be made for the purpose of conducting actuarial or research studies~~, provided that~~ *if*:

(i) ~~no~~ *an* individual is *not* identified in any actuarial or research report;

(ii) materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed; and

(iii) the actuarial or research organization agrees not to further disclose the information without the individual's separate, written authorization.

(b) Disclosure of information may be made for:

(i) health research that is subject to the approval of an institutional review board and the requirements of federal law and regulations governing biomedical research; or

(ii) epidemiological or drug therapy outcomes research that requires information that has been made anonymous to protect the identity of the patient through coding or encryption.

(11) Disclosure may be made to a party or a representative of a party to a proposed ~~or consummated~~ sale, transfer, merger, or consolidation of all or part of the business of the ~~insurance institution, insurance producer,~~ *licensee* or insurance-support organization~~,~~ if:

(a) prior to the consummation of the sale, transfer, merger, or consolidation only information is disclosed that is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation; and

(b) the recipient agrees not to further disclose the information without the individual's separate, written authorization.

(12) (a) Disclosure that is limited to that which is reasonably necessary may be made to ~~any~~ *a licensee's* affiliate ~~whose only~~ *as follows:*

(i) to allow use of the information ~~will be~~ in connection with an audit of the ~~insurance institution or insurance producer if the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons~~ *licensee;*

(ii) to enable a licensee to perform an insurance function; or

(iii) as allowed by [section 8].

(b) ~~Disclosure of personal information that is limited to an individual's name, age, sex, family composition, address, telephone number, occupation, and avocations may be made to any affiliate whose only use of the information is in connection with the marketing of insurance or financial products if the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons~~ *A licensee disclosing pursuant to this section must have a written agreement with the affiliate that the affiliate will not use or further disclose information received except to carry out the purposes set forth in subsection (12) (a) and that if further disclosure is necessary to meet those purposes, the disclosure will be made only to the licensee or to a person who agrees in writing to be bound by the same prohibition on use and disclosure. A disclosure allowed by [section 8] is governed by that section.*

(13) ~~Except for medical record information, disclosure may be made by a consumer reporting agency to a person other than an insurance institution or insurance producer~~ *Disclosure that is limited to that which is reasonably necessary may be made to an insurance-support organization to perform insurance-support services for the licensee. The insurance-support organization may redisclose the information to the extent necessary to provide its services to its member or subscriber licensees and other insurance-support organizations or as otherwise permitted by law, but not for a marketing purpose.*

(14) ~~Disclosure~~ *Notwithstanding any other provision of this section, disclosure* may be made to a group policyholder for the purpose of reporting claims experience or conducting an audit of the ~~insurance institution's or insurance producer's~~ *licensee's* operations or services if the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit and the group policyholder agrees not to further disclose the information without the individual's separate, written authorization. *Information disclosed pursuant to this subsection must be edited to prevent the identification of the applicant, policyholder, or certificate holder.*

(15) Disclosure that is limited to that which is reasonably necessary may be made to a professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional if the professional peer review organization agrees not to further disclose the information without the individual's separate, written authorization.

(16) Disclosure that is limited to that which is reasonably necessary may be made to a governmental authority as required by federal or state law or for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

(17) Disclosure that is limited to that which is reasonably necessary may be made to a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction. *Disclosure pursuant to this subsection may not be made to a group policyholder without a separate, written authorization from the individual.*

(18) Disclosure may be made to a person contractually engaged to provide services to enable a licensee to perform an insurance function, or to perform an insurance function on behalf of a licensee, if the person agrees in writing that the person will not use or further disclose information obtained or developed pursuant to the engagement except to carry out the limited purpose of the engagement and that if further disclosure is necessary to perform the insurance function, that disclosure will be made only to the licensee or to a person who agrees in writing to be bound by the same prohibitions on use and disclosure.

(19) If a licensee has to disclose personal information in order to perform an insurance function and disclosure is not permitted under another exception in this section, disclosure may be made to a person other than a licensee if the disclosure is limited to that which is reasonably necessary to enable the person to perform services or an insurance function for the disclosing licensee and if the person is notified by the licensee that the person is prohibited from:

(a) using the information other than to carry out the limited purpose for which the information is disclosed; and

(b) disclosing the information other than to the licensee and as allowed in subsection (3).

(20) Notwithstanding any other provision of this chapter, disclosure for a marketing purpose may be made only as allowed by [section 8].

(21) Nothing in this section may be construed to prevent the disclosure of personal information that is otherwise discoverable pursuant to the Montana Rules of Civil Procedure.

~~(18)~~*(22)* The commissioner may~~, after notice and hearing,~~ adopt rules *creating additional exceptions to disclosure restrictions for the purpose of allowing a* *licensee or insurance-support organization* to carry out ~~the provisions of this section. The rules may not define the recordkeeping requirements regarding authorized disclosures of personal or privileged information pursuant to subsections (2) through (17) but may define the requirements of any agreement obtained by an insurance institution, insurance producer, or insurance-support organization regarding disclosures of personal or privileged information~~ *a necessary insurance function. The commissioner shall adopt rules establishing the methods that must be used by licensees to prevent identification as described in subsection (14).*"

Section 8. Personal information used for marketing purposes — restrictions. (1) Except as permitted in this section, a licensee may not use or disclose personal information for a marketing purpose. For the purposes of this section, an insurance producer who describes to the producer's clients products or services available through the producer is not engaged in marketing.

(2) A licensee may use or disclose to another licensee personal information that is reasonably necessary to enable the licensee to market insurance products or services. A licensee may use or disclose to another licensee personal information, excluding medical record information, that is reasonably necessary to enable the licensee to market financial products and services. A licensee that receives personal information under this section from a disclosing licensee may not further disclose the information or use the information for any purpose other than marketing insurance and financial products and services.

(3) A licensee may disclose personal information that is reasonably necessary to enable an affiliate that is not a licensee to market insurance products and services. A licensee may disclose to an affiliate that is not a licensee personal information, excluding medical record information, that is reasonably necessary to enable the affiliate to market financial products and services. Disclosures under this subsection may be made only with a written agreement with the affiliate that the affiliate will not further disclose the information and will use it only for marketing insurance or financial products and services.

(4) A licensee may disclose personal information that is reasonably necessary to enable a person contractually engaged to provide services for or on behalf of the licensee to market insurance or financial products or services if the person agrees in writing that the person will not use or further disclose information obtained or developed pursuant to the engagement except to carry out the limited purpose of the engagement. A licensee shall adopt, maintain, and monitor policies and procedures reasonably designed to ensure that third parties with whom the licensee contracts under this subsection comply with the requirements of this section.

(5) A licensee may use or disclose personal information for purposes other than those specified in subsections (2) and (3) only with an individual's separate written authorization. In addition to meeting the requirements of [section 6], the authorization must:

(a) clearly and conspicuously state that the disclosed information is intended to be used for marketing purposes;

(b) specify each entity or type of entity to which the licensee intends to disclose the information;

(c) specify what information the licensee intends to disclose; and

(d) specify the type of marketing that the individual might receive pursuant to the disclosure.

Section 9. Section 33-19-405, MCA, is amended to read:

"**33-19-405. Civil ~~penalties~~ *penalty*.** ~~If a hearing pursuant to 33-19-402 results in the finding of a knowing violation of~~ *A person who violates* this chapter~~,~~ ~~the commissioner may order payment of a~~ *is subject to the* civil penalty ~~of not more than $500 for each violation but not to exceed $10,000 in the aggregate for multiple violations~~ *provided in 33-1-317*."

Section 10. Section 33-19-407, MCA, is amended to read:

"**33-19-407. Individual remedies.** (1) If any insurance institution, insurance producer, or insurance-support organization fails to comply with 33-19-301, 33-19-302, or 33-19-303 with respect to the rights granted under those sections, any person whose rights are violated may apply to the district court of this state or any other court of competent jurisdiction for appropriate equitable relief.

(2) An insurance institution, insurance producer, or insurance-support organization that discloses information in violation of 33-19-306 *or [section 8]* is liable for damages sustained by the individual to whom the information relates. However, an individual is not entitled to a monetary award ~~which~~ *that* exceeds the actual damages sustained by the individual as a result of a violation of 33-19-306 *or [section 8]*.

(3) In ~~any~~ *an* action brought pursuant to this section, the court may award the cost of the action and reasonable ~~attorney's~~ *attorney* fees to the prevailing party.

(4) An action under this section must be brought within 2 years from the date the alleged violation is or should have been discovered.

(5) Except as specifically provided in this section, there is no remedy or recovery available to individuals, in law or in equity, for occurrences constituting a violation of any provision of this chapter."

Section 11. Repealer. (1) Section 33-19-204, MCA, is repealed.

(2) Sections 33-19-402, 33-19-404, and 33-19-406, MCA, are repealed.

Section 12. Codification instruction. [Sections 3, 4, 6, and 8] are intended to be codified as an integral part of Title 33, chapter 19, and the provisions of Title 33, chapter 19, apply to [sections 3, 4, 6, and 8].

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2001.

(2) [Sections 4, 7(22), 11(1), 12, and 13 and this section] are effective on passage and approval.

Section 15. Retroactive applicability. [Section 11(1)] applies retroactively, within the meaning of 1-2-109, to all insurance policies in force, issued, or renewed on or after January 1, 2000.

Approved April 21, 2001

CHAPTER NO. 342

[SB 466]

AN ACT GENERALLY REVISING THE MENTAL HEALTH COMMITMENT STATUTES; ALLOWING THE COURT TO COMMIT A PERSON TO COMMUNITY TREATMENT FOR A PERIOD NOT TO EXCEED 6 MONTHS; PROVIDING FOR OPTIONAL TREATMENT PLANS, PROVIDER CHOICE, AND CONDITIONS FOR A COMMITMENT TO COMMUNITY TREATMENT; PROVIDING FOR WRITTEN REPORTS BY THE TREATING PROVIDER TO THE COURT; PROVIDING THAT A REFERRAL FOR APPROPRIATE MENTAL ILLNESS PROCEEDINGS IS AN APPROPRIATE CONDITION OF PRETRIAL DIVERSION; DEFINING "MENTAL HEALTH PROFESSIONAL"; ALLOWING FOR AN EXTENSION OF COMMUNITY TREATMENT AT THE REQUEST OF THE RESPONDENT; AND AMENDING SECTIONS 46-16-130, 53-21-102, 53-21-104, 53-21-121, 53-21-123, 53-21-124, 53-21-126, 53-21-127, 53-21-128, AND 53-21-181, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Conditions of treatment in a community facility, program, or course of treatment. If the court orders a disposition under 53-21-127(3)(b), the court may order the following conditions for treatment in a community facility or program, or may order a course of treatment, including but not limited to:

(1) following a treatment plan developed pursuant to [section 2] that may include case management services, medication, short-term inpatient treatment, chemical dependency treatment, assertive community treatment, or a combination, as set forth by the designated community facility or program or the individual responsible for the management and supervision of the respondent's treatment; or

(2) specific residential or housing requirements that may include being under the care or custody of a relative or guardian.

Section 2. Treatment plan — provider choice. (1) Stabilizing treatment must be provided during the development of a treatment plan.

(2) If the court orders a treatment plan under this section as a condition of a commitment for treatment in a community facility, program, or course of treatment, the chief medical officer of the facility or program at which the respondent has been ordered to receive outpatient treatment and at which the respondent is treated as an outpatient or the chief medical officer's designee shall submit a treatment plan, including any outpatient treatment recommendations that the respondent is required to follow, to the clerk of district court as soon as practical. However, the plan must be submitted no later than 30 days after the respondent has been ordered to receive treatment as an outpatient.

(3) A treatment plan must be developed with the respondent and the friend of respondent or respondent's family, if family involvement is determined by the court in consultation with the mental health professional to be in the best interests of the respondent.

(4) The clerk of district court shall send a copy of the proposed treatment plan to the court, to the respondent, to the friend of respondent, and to the respondent's attorney of record, who may relay the respondent's objections to the

treatment plan, if any, and provide alternative treatment recommendations to the court.

(5) The court may accept the treatment plan or require a revised treatment plan that is approved by a mental health professional.

Section 3. Notification of noncompliance of condition for treatment plan — response. (1) If the respondent has been ordered to follow a treatment plan and the respondent does not substantially comply with the treatment plan developed pursuant to the order for treatment pursuant to a commitment to a community facility or program or course of treatment, the chief medical officer or designee shall promptly notify the court upon becoming aware of substantial noncompliance that is likely to result in at least one of the conditions in 53-21-126(1) and shall provide supporting documentation.

(2) The court may take reasonable steps to ensure compliance with the court's outpatient treatment order, including but not limited to the following:

(a) directing that the friend of respondent remind the respondent of the respondent's treatment obligations and attempt to persuade the noncompliant respondent to comply with the treatment plan;

(b) presenting the respondent to the mental health facility or program for treatment, including administration of medication pursuant to 53-21-127(6); or

(c) directing the treating provider to work with the respondent to bring about compliance with the treatment plan.

Section 4. Department funding responsibility. The department shall develop a separate funding category and procedure for payment for services that are court-ordered for a commitment to a community facility or program or course of treatment. However, nothing in this chapter obligates the department to pay for services ordered under 53-21-127 unless the respondent is eligible for mental health services under the public mental health system funded by the department, the service is one that the department has included in its mental health program, and the department determines that the mental health service is medically necessary for the respondent.

Section 5. Section 46-16-130, MCA, is amended to read:

"**46-16-130. Pretrial diversion.** (1) (a) Prior to the filing of a charge, the prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

(i) that the defendant may not commit any offense;

(ii) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

(iii) that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

(iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense; or

(v) any other reasonable conditions.

(b) The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and there is a trial on the charge.

(c) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

(d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

(2) A condition of pretrial diversion may be for the court to refer a defendant for evaluation to determine the appropriateness of proceedings pursuant to Title 53, chapter 21.

~~(2)~~*(3)* After a charge has been filed, a deferral of prosecution may be entered into only with the approval of the court.

~~(3)~~*(4)* A prosecution for a violation of 61-8-401, 61-8-406, or 61-8-410 may not be deferred."

Section 6. Section 53-21-102, MCA, is amended to read:

"**53-21-102. Definitions.** As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(3) "Court" means any district court of the state of Montana.

(4) "Department" means the department of public health and human services provided for in 2-15-2201.

(5) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

(6) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

(7) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

(a) addiction to drugs or alcohol;

(b) drug or alcohol intoxication;

(c) mental retardation; or

(d) epilepsy.

(8) "Mental health facility" or "facility" means a public hospital or a licensed private hospital that is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(9) "Mental health professional" means:

(a) a certified professional person;

(b) a physician licensed under Title 37, chapter 3;

(c) a professional counselor licensed under Title 37, chapter 23;

(d) a psychologist licensed under Title 37, chapter 17;

(e) a social worker licensed under Title 37, chapter 22; or

(f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

~~(9)~~*(10)* "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

~~(10)~~*(11)* "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

~~(11)~~*(12)* "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

~~(12)~~*(13)* "Professional person" means:

(a) a medical doctor; or

(b) a person who has been certified, as provided for in 53-21-106, by the department.

~~(13)~~*(14)* "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

~~(14)~~*(15)* "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

~~(15)~~*(16)* "State hospital" means the Montana state hospital."

Section 7. Section 53-21-104, MCA, is amended to read:

"53-21-104. Powers and duties of mental disabilities board of visitors. (1) The board is an independent board of inquiry and review to assure that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research involving persons admitted to a mental health facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human

subjects required by the United States department of health, education, and welfare. An experimental research project involving persons admitted to a mental health facility affected by this part may not be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall at least annually inspect every mental health facility ~~which~~ *that* is providing treatment and evaluation to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. ~~It~~ *The board* shall visit all wards and treatment areas. The board shall inquire concerning all treatment programs being implemented by the facility.

(4) The board shall annually insure that a treatment plan exists and is being implemented for each patient admitted or committed to a mental health facility under this part. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(5) The board may assist any patient at a mental health facility in resolving any grievance the patient may have concerning the patient's commitment or course of treatment in the facility.

(6) The board shall employ and be responsible for full-time legal counsel at the state hospital, whose responsibility is to act on behalf of all patients at the institution. The board shall insure that there is sufficient legal staff and facilities to insure availability to all patients and shall require that the appointed counsel periodically interview every patient and examine the patient's files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability.

(7) If the board believes that any facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any patient, it shall report its findings at once to the professional person in charge of the facility and the director of the department, and if appropriate, after waiting a reasonable time for a response from the professional person, the board may notify the next of kin or guardian of any patient involved, the friend of respondent appointed by the court for any patient involved, and the district court which has jurisdiction over the facility.

(8) The board shall report annually to the governor concerning:

(a) the status of the mental health facilities and treatment programs which it has inspected; and

(b) medications involuntarily administered to patients in mental health facilities and the effectiveness of the review procedure required by 53-21-127~~(2)~~*(6)* in protecting patients from unnecessary or excessive medication."

Section 8. Section 53-21-121, MCA, is amended to read:

"53-21-121. Petition for commitment — contents of — notice of. (1) The county attorney, upon the written request of any person having direct knowledge of the facts, may file a petition with the court alleging that there is a person within the county who is suffering from a mental disorder and who requires commitment pursuant to this chapter.

(2) The petition must contain:

(a) the name and address of the person requesting the petition and the person's interest in the case;

(b) the name of the respondent and, if known, the address, age, sex, marital status, and occupation of the respondent;

(c) the purported facts supporting the allegation of mental disorder, *including a report by a mental health professional if any,* a statement of the disposition sought pursuant to 53-21-127~~(2)~~, and the need for commitment;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the respondent for whom evaluation is sought;

(e) the name and address of the respondent's next of kin to the extent known to the county attorney and the person requesting the petition;

(f) the name and address of any person whom the county attorney believes might be willing and able to be appointed as friend of respondent;

(g) the name, address, and telephone number of the attorney, if any, who has most recently represented the respondent for whom evaluation is sought; if there is no attorney, there must be a statement as to whether to the best knowledge of the person requesting the petition the respondent for whom evaluation is sought is indigent and unable to afford the services of an attorney; and

(h) a statement of the rights of the respondent, which must be in conspicuous print and identified by a suitable heading.

(3) Notice of the petition must be hand-delivered to the respondent and to the respondent's counsel on or before the initial appearance of the respondent before the judge or justice of the peace. The respondent's counsel shall meet with the respondent, explain the substance of the petition, and explain the probable course of the proceedings. Notice of the petition and the order setting the date and time of the hearing and the names of the respondent's counsel, professional person, and friend of respondent must be hand-delivered or mailed to the person or persons legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, and any other person identified by the county attorney as a possible friend of respondent other than the one named as the friend of respondent. The notice may provide, other than as to the respondent and the respondent's counsel, that no further notice will be given unless written request is filed with the clerk of court."

Section 9. Section 53-21-123, MCA, is amended to read:

"**53-21-123. Examination of respondent following initial hearing — recommendation of professional person.** (1) Following the initial hearing, whether before a judge or justice of the peace, the respondent must be examined by the professional person without unreasonable delay. The examination may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney of the findings in person or by phone and shall make a written report of the examination to the court, with copies to the respondent's attorney and the county attorney. If the professional person recommends commitment, the professional person's written report must contain a statement of the professional person's recommendations to the court for disposition under 53-21-127~~(2)~~.

(2) The following action must be taken based on the professional person's findings:

(a) If the professional person recommends dismissal, the professional person shall additionally notify counsel and the respondent must be released and the petition dismissed. However, the county attorney may, upon good cause shown, request the court to order an additional, but no more than one, examination by a different professional person for a period of no more than 4 hours.

(b) If the court finds that commitment proceedings should continue, the hearing must be held as scheduled.

(3) The court may not order further evaluation pending the hearing unless sound medical reasons require additional time for a complete evaluation. The reasons must be set forth in the order, along with the amount of additional time needed."

Section 10. Section 53-21-124, MCA, is amended to read:

"**53-21-124. Detention of respondent pending hearing or trial — jail prohibited.** (1) The court may not order detention of a respondent pending the hearing unless requested by the county attorney and upon the existence of probable cause for detention. Counsel must be orally notified immediately. Counsel for the respondent may then request a detention hearing, which must be held ~~forthwith~~ *immediately*.

(2) In the event of detention, the respondent must be detained in the least restrictive setting necessary to ~~assure his~~ *ensure the respondent's* presence and ~~assure his safety and~~ *ensure* the safety of *the respondent and of* others as provided in 53-21-120.

(3) If the respondent is detained, ~~he~~ *the respondent* has the right to be examined additionally by a professional person of ~~his~~ *the respondent's* choice, *which may not depend on the respondent's ability to pay, and the respondent must be informed of this right.* Unless objection is made by counsel for the respondent, ~~he~~ *the respondent* must continue to be evaluated and treated by the professional person pending the hearing.

(4) A respondent may not be detained in a jail or other correctional facility pending a hearing or trial to determine whether the respondent should be committed to a mental health facility."

Section 11. Section 53-21-126, MCA, is amended to read:

"**53-21-126. Trial or hearing on petition.** (1) The respondent must be present unless the respondent's presence has been waived as provided in 53-21-119(2), and the respondent must be represented by counsel at all stages of the trial. The trial must be limited to the determination of whether or not the respondent is suffering from a mental disorder and requires commitment. At the trial, the court shall consider all the facts relevant to the issues of whether the respondent is suffering from a mental disorder. If the court determines that the respondent is suffering from a mental disorder, the court shall then determine whether the respondent requires commitment. In determining whether the respondent requires commitment *and the appropriate disposition under 53-21-127*, the court shall consider the following:

(a) whether the respondent, because of a mental disorder, is substantially unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety;

(b) whether the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others;

(c) whether, because of a mental disorder, there is an imminent threat of injury to the respondent or to others because of the respondent's acts or omissions; and

(d) whether the respondent's mental disorder, as demonstrated by the respondent's recent acts or omissions, will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent will become a danger to self or to others or will be unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by the respondent's relevant medical history.

(2) The standard of proof in a hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters. However, the respondent's mental disorder must be proved to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others must be proved by overt acts or omissions, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(3) The professional person appointed by the court must be present for the trial and subject to cross-examination. The trial is governed by the Montana Rules of Civil Procedure. However, if the issues are tried by a jury, at least two-thirds of the jurors shall concur on a finding that the respondent is suffering from a mental disorder and requires commitment. The written report of the professional person that indicates the professional person's diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely because it is contained in the report. The court may order the trial closed to the public for the protection of the respondent.

(4) The professional person may testify as to the ultimate issue of whether the respondent is suffering from a mental disorder and requires commitment. This testimony is insufficient unless accompanied by evidence from the professional person or others that:

(a) the respondent, because of a mental disorder, is substantially unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety;

(b) the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others;

(c) because of a mental disorder, there is an imminent threat of injury to the respondent or to others because of the respondent's acts or omissions; or

(d) (i) the respondent's mental disorder:

(A) has resulted in recent acts, omissions, or behaviors that create difficulty in protecting the respondent's life or health;

(B) is treatable, with a reasonable prospect of success;

(C) has resulted in the respondent's refusing or being unable to consent to voluntary admission for treatment; and

(ii) will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent will become a danger to self or to others or will be unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by the respondent's relevant medical history.

(5) The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue."

Section 12. Section 53-21-127, MCA, is amended to read:

"**53-21-127. Posttrial disposition.** (1) If, upon trial, it is determined that the respondent is not suffering from a mental disorder or does not require commitment within the meaning of this part, the respondent must be discharged and the petition dismissed.

(2) ~~(a)~~ If it is determined that the respondent is suffering from a mental disorder and requires commitment within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing must be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent.

(3) At the conclusion of the disposition hearing *and pursuant to the provisions in subsection (7),* the court shall:

~~(i)~~*(a)* commit the respondent to the state hospital for a period of not more than 3 months; *or*

~~(ii)~~*(b)* commit the respondent to a community facility~~,~~ *or* program~~,~~ or *to any appropriate* course of treatment, *which may include housing or residential requirements,* for a period of not more than ~~3~~ *6* months~~;~~

~~(iii) order the respondent to be placed in the care and custody of a relative or guardian or some other appropriate place other than an institution;~~

~~(iv) order outpatient therapy; or~~

~~(v) make some other appropriate order for treatment.~~

~~(b)~~*(4)* ~~A~~ *Except as provided in subsection (3)(b), a* treatment ordered pursuant to this ~~subsection~~ *section* may not affect the respondent's custody or course of treatment for a period of more than 3 months.

~~(c)~~*(5)* In determining which of the alternatives in subsection ~~(2)(a)~~ *(3)* to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.

(6) The court may authorize the chief medical officer of a facility or a physician designated by the court to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent or the public or to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility or a physician designated by the court approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility or program. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors

and the director of the department of public health and human services must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The director shall report to the governor on an annual basis.

~~(d)~~*(7)* Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court may require commitment only to a community facility *or program or an appropriate course of treatment as provided in subsection (3)(b),* and may not require commitment at the state hospital.

~~(e)~~*(8)* In ordering commitment pursuant to this section, the court shall make the following findings of fact:

~~(i)~~*(a)* a detailed statement of the facts upon which the court found the respondent to be suffering from a mental disorder and requiring commitment;

~~(ii)~~*(b)* the alternatives for treatment that were considered;

~~(iii)~~*(c)* the alternatives available for treatment of the respondent;

~~(iv)~~*(d)* the reason that any treatment alternatives were determined to be unsuitable for the respondent;

~~(v)~~*(e)* the name of the facility, program, or individual to be responsible for the management and supervision of the respondent's treatment;

~~(vi)~~*(f)* if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen from among other alternatives; ~~and~~ *and*

~~(vii)~~*(g)* if the order includes involuntary medication, the reason involuntary medication was chosen from among other alternatives."

Section 13. Section 53-21-128, MCA, is amended to read:

"**53-21-128. Petition for extension of commitment period.** (1) (a) Not less than 2 calendar weeks prior to the end of the 3-month period of commitment *to the state hospital or the period of commitment to a community facility or program or a course of treatment* provided for in 53-21-127~~(2)~~, the professional person in charge of the patient at the place of commitment may petition the district court in the county where the patient is committed for extension of the commitment period unless otherwise ordered by the original committing court. The petition must be accompanied by a written report and evaluation of the patient's mental and physical condition. The report must describe any tests and evaluation devices that have been employed in evaluating the patient, the course of treatment that was undertaken for the patient, and the future course of treatment anticipated by the professional person.

(b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, the patient's next of kin, if reasonably available, the friend of respondent appointed by the court, and the patient's counsel. If any person notified requests a hearing prior to the termination of the previous commitment authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people, including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

(c) Procedure on the petition for extension when a hearing has been requested must be the same in all respects as the procedure on the petition for the original 3-month commitment except the patient is not entitled to trial by jury. The hearing must be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. Court costs and witness fees, if any, must be paid by the county that paid the same costs in the initial commitment proceedings.

(d) If upon the hearing the court finds the patient not to be suffering from a mental disorder and requiring commitment within the meaning of this part, the patient must be discharged and the petition dismissed. If the court finds that the patient continues to suffer from a mental disorder and to require commitment, the court shall order commitment~~, custody in relatives, outpatient therapy, or other order~~ as set forth in 53-21-127~~(2)~~*(3)*. However, an order may not affect the patient's custody for more than 6 months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not found suitable. The court may not order continuation of an alternative that does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative must include a specific finding that a comprehensive, individualized plan of treatment exists.

(2) Prior to the end of the period of commitment to a community facility or program or course of treatment, a respondent may request that the treating provider petition the district court for an extension of the commitment order. The petition must be accompanied by a written report and evaluation of the respondent's mental and physical condition, an updated treatment plan, and a written statement by the respondent that an extension is desired. The extension procedure must follow the procedure required in subsections (1)(b) through (1)(d).

~~(2)~~*(3)* Further extensions *under subsection (1) or (2)* may be obtained under the same procedure described in subsection (1)~~;~~. ~~however~~ *However*, the patient's custody may not be affected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (1), including a statement of the findings required by subsection (1)."

Section 14. Section 53-21-181, MCA, is amended to read:

"**53-21-181. Discharge during or at end of initial commitment period — patient's right to referral.** (1) At any time within the ~~3-month~~ period *of commitment* provided for in 53-21-127~~(2)~~, the patient may be discharged on the written order of the professional person in charge of ~~him~~ *the patient*. ~~In the event~~ *If* the patient is not discharged within the ~~3-month~~ period *of commitment* and if the term is not extended as provided for in 53-21-128, ~~he shall~~ *the patient must* be discharged by the facility at the end of ~~3 months~~ *the period of commitment* without further order of the court. Notice of the discharge ~~shall~~ *must* be filed with the court and the county attorney at least 5 days prior to the discharge.

(2) Upon being discharged, each patient has a right to be referred, as appropriate, to other providers of mental health services."

Section 15. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to [sections 1 through 4].

Approved April 21, 2001

CHAPTER NO. 343

[SB 469]

AN ACT COORDINATING CERTAIN WORKFORCE DEVELOPMENT PROGRAMS BETWEEN THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING THAT THE GOVERNOR MAY CONSOLIDATE AND TRANSFER OTHER STATE AGENCY WORKFORCE DEVELOPMENT PROGRAMS INTO THE DEPARTMENT OF LABOR AND INDUSTRY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Coordination of certain workforce development programs — requirement for agreement between agencies. (1) The department shall enter into agreements with the department of labor and industry concerning the administration and coordination of the following workforce development programs:

(a) the employment and training program provided for in 53-2-903;

(b) the cash assistance employment and training program provided for in Title 53, chapter 4;

(c) blind and low-vision services provided for in Title 53, chapter 7, part 3; and

(d) vocational rehabilitation training, including counseling, advocacy, and assistive technology, provided for in Title 53, chapter 7, part 1.

(2) The department shall ensure that agreements entered into under subsection (1) are consistent with the requirements of federal rules and regulations that are applicable to the programs contained in subsections (1)(a) through (1)(d).

Section 2. Transfer of workforce development programs — notice to legislature. (1) The governor may transfer by executive order to the department of labor and industry any workforce development programs not identified in [section 1] and that are developed and administered by other state agencies unless a program is statutorily required to be administered by another agency. If a program is statutorily required to be administered by another agency, the governor may direct the agency to enter an agreement similar to the agreement provided for in [section 1].

(2) The governor shall inform the business and labor interim committee and the 58th legislature of any program transfers made pursuant to subsection (1).

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 2, part 1, and the provisions of Title 53, chapter 2, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2001

CHAPTER NO. 344

[SB 473]

AN ACT REVISING THE STATUTES RELATING TO THE MENTAL DISABILITIES BOARD OF VISITORS; PROVIDING DEFINITIONS; INCREASING THE MEMBERSHIP OF THE BOARD AND SPECIFYING REQUIREMENTS FOR MEMBERSHIP; STAGGERING TERMS OF BOARD MEMBERS; REQUIRING THE BOARD TO ADOPT FACILITY INSPECTION SCHEDULES; PROVIDING THAT BOARD INSPECTIONS MAY NOT BE PRECLUDED BY OTHER LICENSING OR ACCREDITATION PROCESSES; PROHIBITING ABUSE AND NEGLECT IN A MENTAL HEALTH FACILITY; PROVIDING FOR REPORTING AND INVESTIGATING ALLEGATIONS OF ABUSE AND NEGLECT IN A MENTAL HEALTH FACILITY; AND AMENDING SECTIONS 2-15-211, 53-21-102, AND 53-21-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-211, MCA, is amended to read:

"**2-15-211. Mental disabilities board of visitors — composition — allocation.** (1) The governor shall appoint a mental disabilities board of visitors.

(2) *(a)* The board shall consist of ~~five~~ *six* persons ~~representing but not limited to consumers, doctors of medicine, and the behavioral sciences, at least three of whom may not be professional persons and at least one of whom must be a representative of an organization concerned with the care and welfare of the mentally ill and one representative of an organization concerned with the care and welfare of the mentally retarded or persons with developmental disabilities.~~ *who possess qualifications necessary to carry out the responsibilities of the board defined in 53-20-104 and 53-21-104.*

(b) The members of the board must meet the following requirements:

(i) one person must possess skills, knowledge, and experience relative to the treatment and welfare of adults with serious disabling mental illnesses;

(ii) one person must possess skills, knowledge, and experience relative to the treatment and welfare of children with serious emotional disturbances;

(iii) one person must possess skills, knowledge, and experience relative to the treatment and welfare of adults with developmental disabilities;

(iv) one person must be a consumer of mental health services or a family member of a consumer of mental health services; and

(v) one person must be a consumer of developmental disabilities services or a family member of a person with developmental disabilities.

(c) The members of the board must also meet the following requirements:

(i) at least one board member must be a professional person in the field of mental health treatment;

(ii) at least one board member must be a professional person in the field of developmental disabilities treatment; and

(iii) no more than three board members may be professional persons in the fields of mental health treatment and developmental disabilities treatment.

(d) ~~No one may be a~~ *A* member of the board ~~who is~~ *may not be* a full-time agent or employee of the department of public health and human services or a mental health facility affected by Title 53, chapter 20, part 1, and *Title 53,* chapter 21, part 1, except this prohibition does not affect any employee of a state college or university.

(e) Board members serve for 2-year terms. The terms are staggered so that one-half of the terms expire June 30 of each year.

(3) The mental disabilities board of visitors is attached to the governor for administrative purposes. It may employ staff for the purpose of carrying out its duties as set out in Title 53, chapter 20, part 1, and *Title 53,* chapter 21, part 1."

Section 2. Section 53-21-102, MCA, is amended to read:

"53-21-102. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

~~(1)~~*(2)* "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

~~(2)~~*(3)* "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

~~(3)~~*(4)* "Court" means any district court of the state of Montana.

~~(4)~~*(5)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(5)~~*(6)* "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

~~(6)~~*(7)* "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

~~(7)~~*(8)* "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

(a) addiction to drugs or alcohol;

(b) drug or alcohol intoxication;

(c) mental retardation; or

(d) epilepsy.

~~(8)~~*(9)* "Mental health facility" or "facility" means ~~a public hospital or a licensed private hospital that is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department~~ *the state hospital, the Montana mental health nursing care center, or a hospital, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder.* A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(10) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

(i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

(ii) failure to follow a prescribed plan of care and treatment; or

(iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

~~(9)~~*(11)* "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

~~(10)~~*(12)* "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

~~(11)~~*(13)* "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

~~(12)~~*(14)* "Professional person" means:

(a) a medical doctor; or

(b) a person who has been certified, as provided for in 53-21-106, by the department.

~~(13)~~*(15)* "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

~~(14)~~*(16)* "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

~~(15)~~*(17)* "State hospital" means the Montana state hospital."

Section 3. Section 53-21-104, MCA, is amended to read:

"53-21-104. Powers and duties of mental disabilities board of visitors. (1) The board is an independent board of inquiry and review ~~to assure~~ *that is responsible to ensure* that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility *in Montana* is humane ~~and decent~~, *is consistent with established clinical and other professional standards,* and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research involving persons admitted to a mental health facility to ~~assure~~ *ensure* that ~~the~~ *each* research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health~~, education, and welfare~~ *and human services*. An *activity considered to be an* experimental research project ~~involving~~ *and that involves a person or* persons admitted to a mental health facility affected by this part may not be commenced unless it is approved by the mental disabilities board of visitors.

(3) *(a)* The board shall ~~at least annually~~ inspect every mental health facility ~~which is providing~~ *that provides* treatment ~~and~~ *or* evaluation to any person pursuant to this part. ~~The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment areas. The board shall inquire concerning all treatment programs being implemented by the facility.~~

(b) The board shall annually establish a schedule for the inspection of mental health facilities that enables the board to meet its obligation under subsection (1).

(c) The board's authority to inspect mental health facilities may not be waived or precluded by other treatment review, licensing, or accreditation requirements or protocols. The board may exercise the prerogative to inspect any mental health facility at any time independent of its facility inspection schedule.

(d) The board shall produce a written report of each inspection of a mental health facility that must include specific recommendations for improvements that the board concludes are necessary in order for the inspected facility to meet the requirements in this part.

(e) The board shall provide a draft of each written report within 30 calendar days of the completion of each mental health facility inspection to the professional person in charge of the inspected facility for review prior to publication.

(f) The professional person in charge of the inspected facility shall provide a written response to the board's written report within 30 calendar days of receipt of the report. The response must include one of the following for each recommendation:

(i) a specific plan for implementation of the recommended action; or

(ii) a specific rationale that explains why the recommendation cannot be implemented.

(g) The board shall include the inspected facility's written response in the board's final published written report.

(h) The board shall include in subsequent inspections an assessment of each facility's implementation of the recommendations.

(i) The board shall report in writing to the director of the department and the governor when it determines that a mental health facility has not either implemented written recommendations or provided a specific rationale that explains why any recommendations cannot be implemented.

(4) *(a)* The board ~~shall annually insure~~, *by applying a sampling process during a scheduled inspection of a mental health facility, shall ensure* that a treatment plan *and a discharge plan* exists and is being implemented for each

patient admitted or committed to ~~a~~ *the* mental health facility *being inspected* under this part.

(b) The board ~~shall inquire concerning all~~, *during a scheduled inspection of a mental health facility, shall review all aspects of the treatment of persons admitted to mental health facilities and review the use of treatment procedures that involve behavior control, including but not limited to the* use of *any type of mechanical* restraints, ~~isolation, or other extraordinary measures.~~ *locked and unlocked seclusion or isolation, time out, or any other procedure involving physical control.*

(c) The board shall ensure that the use of treatment procedures described in subsection (4)(b) at inspected mental health facilities is clinically justified, is monitored closely by a medical doctor and other mental health professionals, is implemented only when other less restrictive measures have failed, and is implemented to the least extent necessary to protect the safety and health of the affected individual or others in the immediate environment.

(d) The board may exercise the prerogative to inquire about and ensure the existence and implementation of treatment plans and discharge plans for any person admitted to a mental health facility and to inquire about and ensure the appropriate use of treatment procedures described in subsection (4)(b) with any person admitted to a mental health facility independent of its facility inspection schedule.

(5) The board may assist any ~~patient~~ *person who is receiving or who has received treatment* at a mental health facility in resolving any grievance the ~~patient~~ *person* may have concerning the ~~patient's commitment~~ *person's admission* or course of treatment in the facility.

(6) The board shall employ and ~~be~~ *is* responsible for full-time legal counsel at the state hospital, whose responsibility is to act on behalf of all patients at the ~~institution~~ *state hospital*. The board shall ~~insure~~ *ensure* that there ~~is~~ *are* sufficient legal staff and facilities to ~~insure~~ *ensure* availability to all patients and shall require that the appointed counsel periodically interview every patient and examine the patient's files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability.

(7) *(a)* If the board believes that any facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any ~~patient~~ *person*, it shall report its findings ~~at once~~ *in writing* to the professional person in charge of the facility and the director of the department~~, and if appropriate, after waiting a reasonable time for a response from the professional person,~~.

(b) The professional person in charge of the facility shall submit a written response to the board within 10 working days that includes a specific plan to implement corrective action.

(c) If the problem is not appropriately resolved to the satisfaction of the board within 15 working days of the written notice provided for in subsection (7)(a), the board ~~may~~ *shall* notify the next of kin or guardian of any ~~patient~~ *person* involved, the friend of respondent appointed by the court for any ~~patient~~ *person* involved, ~~and~~ the district court ~~which~~ *that* has jurisdiction over the facility, *and the governor.*

(8) The board shall publish standards for its inspections of mental health facilities.

~~(8)~~*(9)* The board shall report annually to the governor concerning:

(a) the status of the mental health facilities and treatment programs ~~which~~ *that* it has inspected *since the last annual report*; and

(b) *occurrences of the administration of* medications ~~involuntarily administered to patients~~ *against the wishes of persons receiving treatment* in mental health facilities and the effectiveness of the review procedure required by 53-21-127(2) in protecting ~~patients~~ *persons* from unnecessary or excessive medication."

Section 4. Abuse and neglect of persons admitted to mental health facility prohibited — reporting — investigations. (1) Any form of abuse or neglect of a person admitted to a mental health facility is prohibited.

(2) Each mental health facility shall publish policies and procedures that define the facility's guidelines for detecting, reporting, investigating, determining the validity, and resolving allegations of abuse or neglect.

(3) Each allegation of abuse or neglect must be reported as follows:

(a) Any employee of the mental health facility with knowledge of the allegation shall immediately report the allegation to the professional person in charge of the facility.

(b) The professional person in charge of the mental health facility shall report the allegation by the end of the next business day, in writing, to the board.

(c) When the allegation of abuse or neglect may constitute a criminal act, the professional person in charge of the mental health facility shall immediately report the allegation to the appropriate law enforcement authority.

(4) Each mental health facility shall provide a mechanism for reporting allegations of abuse or neglect that in no way deters or discourages an individual from reporting the allegations.

(5) Investigations of allegations of abuse or neglect must be initiated by the professional person in charge of the facility as soon as possible after the initial report of the incident, but not later than by the end of the next business day. Initiation of each investigation may not be delayed in any way that adversely affects the efficacy of the investigation. However, the investigation must be initiated immediately when there is a report of an alleged criminal act.

(6) The investigation of each allegation of abuse or neglect must be concluded within the minimum period of time necessary to gather the information relative to each allegation and to come to a conclusion following the initial report of the allegation.

(7) Each mental health facility shall document the following in writing regarding each allegation of abuse or neglect:

(a) details of each allegation of abuse or neglect, including the names of any facility staff against whom the allegation is made;

(b) a description of the rationale for conducting the investigation with either in-house or outside personnel;

(c) details of the process of the investigation of each allegation of abuse or neglect;

(d) details of the conclusions of the investigation; and

(e) details of corrective action taken.

(8) Mental health facilities shall provide a copy of the written report described in subsections (7)(a) through (7)(e) within 5 working days of the completion of each investigation to the director of the department and to the board.

Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to [section 4].

Approved April 21, 2001

CHAPTER NO. 345

[SB 474]

AN ACT GENERALLY REVISING THE INSURANCE UNFAIR TRADE PRACTICES LAW WITH RESPECT TO AUTOMOBILE GLASS REPLACEMENT, AUTOMOBILE GLASS REPAIR, AUTOMOBILE GLASS PRODUCTS, AND AUTOMOBILE REPAIR; AMENDING SECTIONS 30-14-225, 33-18-221, 33-18-222, 33-18-223, 33-18-224, AND 33-18-1006, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-14-225, MCA, is amended to read:

"**30-14-225. Prohibited practices — advertising allowed — violations.** (1) A person engaged in ~~automobile repair or~~ the sale, repair, or replacement of automobile glass ~~or in the business of automobile repair~~ *or in the business of automobile repair* may not:

(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy, including any incentive to purchase automobile glass ~~or automobile repairs~~ *or automobile repairs* offered to the customer in which the customer, in conjunction with the purchase of automobile glass ~~or automobile repairs~~ *or automobile repairs*, receives cash or other valuable consideration; or

(b) pay a sum or incentive to an individual or entity for directing ~~automobile repair services or~~ glass replacement or repair or the purchase of a glass product.

(2) A person or association of persons engaged in ~~automobile repair services or~~ the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

(3) A glass broker, as defined in 33-18-223, ~~or an automobile repair business~~ may not manage, handle, or arrange automobile glass replacement or glass repair work ~~or automobile repair services~~ for which the glass broker ~~or the automobile repair business~~ retains a percentage of the claim.

~~(4) Except as provided in 33-18-224, in a communication between an insurer and an insured regarding an insurance claim, the insurer may not:~~

~~(a) require, suggest, or encourage the use of the name of a particular automobile repair business or location; or~~

~~(b) mention or provide the name of a particular automobile repair business or location.~~

~~(5)~~*(4)* (a) A violation of subsection (1)(a) is an unfair and deceptive act under 30-14-103.

(b) A person engaged in the sale, repair, or replacement of automobile glass ~~or in the business of automobile repair~~ *or in the business of automobile repair* who violates subsection (1)(a) is also subject to the insurance fraud protection provisions of Title 33, chapter 1, part 12."

Section 2. Section 33-18-221, MCA, is amended to read:

"33-18-221. Designation of specific repair shops ~~and discrimination against insured customers~~ prohibited — lists allowed. (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular company or location for providing automobile glass replacement, glass repair services, or glass products insured in whole or part by the policy; or

(b) engage in any act or practice of intimidation, coercion, or threat for or against an insured person to use a particular company or location to provide automobile glass replacement, glass repair services, or glass products insured, in whole or in part, under the terms of an insurance policy.

(2) (a) An insurance company may provide an insured with a list that includes the names of particular companies or locations providing automobile glass replacement, glass repair services, or glass products if some of the listed companies or locations are reasonably close and convenient to the insured. The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.

(b) The insured may use a nonlisted company or location at the insured's sole discretion, and subject to the provisions of subsections (2)(c) and (3), the insurance company will fully and promptly pay for the cost of automobile glass replacement, glass repair services, or glass products provided, less any deductible under the terms of the policy.

(c) If the insured does not use a list as provided in subsection (2)(a), the insurer may require the insured to obtain not more than three competitive bids to establish the cost of automobile glass replacement, glass repair services, or glass products provided.

(3) This section does not require an insurer to pay more for automobile glass replacement, glass repair services, or glass products than the *lowest* prevailing market price as defined in 33-18-222.

(4) Notwithstanding the provisions of subsections (1) through (3), an insurance company may agree to pay the full cost of glass replacement or repair.

~~(5) It is unlawful for a company or location that provides automobile glass replacement services to charge or agree to charge an insured customer more than an uninsured customer for any automobile glass replacement service.~~"

Section 3. Section 33-18-222, MCA, is amended to read:

"33-18-222. ~~Prevailing~~ *Lowest prevailing* market price. For purposes of 33-18-221~~,~~ *and* 33-18-223, ~~and 33-18-224,~~ ~~"prevailing market price"~~ *"lowest prevailing market price"* means the lowest ~~competitive and generally accepted~~ market price in a local area. The *lowest* prevailing market price may not be less than cost as provided in 30-14-209."

Section 4. Section 33-18-223, MCA, is amended to read:

"**33-18-223. Prohibited activities — glass broker defined.** (1) It is unlawful for an insurance company, individually or with others, to directly or indirectly:

(a) establish an agreement with any person to act as a glass broker for the insurance company under which the glass broker sets a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work for the insurance company;

(b) establish an agreement with a glass broker that requires a glass repair shop to bill through that glass broker as a condition of doing glass replacement or glass repair work; *or*

(c) establish a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work that is below the *lowest* prevailing market price as provided in 33-18-222~~;~~.

~~(d) establish an agreement for the processing of claims or bills with a glass broker or with an entity that has a financial interest in an entity in this state that installs or provides glass for installation; or~~

~~(e) share information obtained through the processing of glass replacement or glass repair bills with an entity that is involved directly or indirectly in any aspect of the glass manufacturing, replacement, or repair business.~~

(2) As used in this section, "glass broker" means an automobile glass company that acts as a third-party agent for the insurer whenever the glass broker enters into agreements with other automobile glass dealers to perform glass replacement or glass repair work ~~or that installs or manufactures glass or provides glass for installation~~."

Section 5. Section 33-18-224, MCA, is amended to read:

"**33-18-224. Designation of specific automobile *body* repair shops prohibited ~~— certain requirements — allowances~~.** (1) An insurance company, including its ~~employees~~ *producers* and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(a) require ~~or encourage~~ *that* a person insured ~~or a claimant~~ under the policy ~~to~~ use a particular automobile repair business or location; *or*

(b) engage in any act or practice that intimidates, coerces, or threatens an insured person ~~or a claimant~~ or *that* provides an incentive or inducement for an insured person ~~or a claimant~~ to use a particular automobile repair business or location~~;~~.

~~(c) except as provided in subsection (2):~~

~~(i) suggest the use of a particular automobile repair business or location;~~

~~(ii) mention or provide the name of a particular automobile repair business or location;~~

~~(iii) direct an insured or claimant to an automobile repair business or location or entity in Montana that engages in or has a financial interest in the processing of a claim or bill unless the business or location has been selected by the insured or claimant; or~~

~~(iv) share information obtained through the processing of an automobile repair bill with an entity that is involved directly or indirectly in any aspect of the automobile repair business; or~~

~~(d) suggest or direct its appointed producers to suggest, mention, provide the name of, or encourage the use of a particular automobile repair business or location to an insured person or a claimant.~~

~~(2) (a) Subsections (1)(a), (1)(b), and (1)(c)(iii) apply to all insurance producers; and~~

~~(b) subsections (1)(c)(i) and (1)(c)(ii) apply only to insurance producers that:~~

~~(i) write automobile insurance for primarily one insurer; or~~

~~(ii) are contractually obligated to use one automobile insurer before using other insurers.~~

~~(3)~~*(2)* ~~An insurer may~~ *For the purposes of this section, an incentive or inducement does not include*:

(a) ~~provide~~ *providing* an insured person or a ~~claimant~~ *customer* with a list of all established automobile repair businesses or locations reasonably close to the insured person or ~~claimant~~ *customer* that offer a warranty for the automobile repair services provided by the businesses or locations; ~~or~~

(b) ~~provide~~ *providing* an insured person or a ~~claimant~~ *customer* with a list of particular ~~automobile repair businesses or locations that are reasonably close to the insured person or claimant that meet~~ *body shops meeting* reasonable standards of quality, service, and safety *when the list is requested by the insured person or customer; or*

(c) referring to a warranty issued by an automobile repair business or location.

~~(4) If an insurer elects to provide an insured person or a claimant with the list described in subsection (3)(b), the insurer shall:~~

~~(a) upon the request of any automobile repair business or location, make available the reasonable standards of quality, service, and safety that are to be met by automobile repair businesses or locations in order to be placed on the list. The standards may not exclude a business or location from being on the list solely on the basis of the size or location of the automobile repair business, the number of persons employed in the business, or pricing other than what is fair or reasonable in the market area of the automobile repair business or location.~~

~~(b) include on the list any automobile repair business or location that meets the standards and indicates in writing to the insurer that the business or location desires to be placed on the list.~~

~~(5) In the event of any dispute, the business or location may submit a complaint to the commissioner for a determination in accordance with the provisions of Title 33, chapter 1, part 7.~~

~~(6) In distributing the list provided for in subsection (3) to an insured or a claimant or in any discussion of the list with an insured or a claimant, an insurer may not express a preference or mention an advantage or inducement for the insured or the claimant to use a particular automobile repair facility or location on the list.~~

~~(7)~~*(3)* The insured may use a business or location at the insured's ~~or claimant's~~ sole discretion~~. The~~*, and the* insurance company shall pay for the reasonable and necessary cost of the automobile *body* repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile *body* repair services than the *lowest* prevailing market price, as defined in 33-18-222. ~~An insurer shall inform the insured person or claimant of the insured person's or claimant's rights under this subsection.~~

~~(8)~~*(4)* If the insured person ~~or claimant~~ uses an automobile repair business or location not on a list provided under subsection ~~(3)(a) or (3)(b)~~ *(2)(a) or (2)(b)*, the insurance company may not be held liable for any repair work performed by the automobile repair business or location that the insured person chooses to use.

~~(9)~~*(5)* It is unlawful for an automobile repair business or location to charge or agree to charge an insured customer more than an uninsured customer for any automobile repair service.

~~(10)~~*(6)* An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section ~~unless the independent adjuster is clearly acting at the direction of the insurance company~~.

~~(11)~~*(7)* For purposes of this section, "automobile repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products."

Section 6. Section 33-18-1006, MCA, is amended to read:

"33-18-1006. Desist orders for prohibited practices ~~— court injunctions.~~ ~~(1)~~ Violations of 33-18-221 through ~~33-18-224~~ *33-18-223* are subject to cease and desist orders of the commissioner issued under 33-18-1004.

~~(2) The commissioner, the attorney general, or a county attorney of the county where a violation of 33-18-221 through 33-18-224 is alleged may bring an action to enjoin any further violation of 33-18-221 through 33-18-224 in the first judicial district or in the county where the violation is alleged to have occurred.~~"

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. Effective date. [This act] is effective on passage and approval.

Section 9. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to October 1, 1999.

Approved April 21, 2001

CHAPTER NO. 346

[SB 476]

AN ACT CLARIFYING THE REQUIREMENTS FOR CERTIFICATION OF LONG-TERM CARE FACILITIES THAT PROVIDE INTERMEDIATE AND SKILLED NURSING CARE; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES TO DEFINE TERMS, AN INFORMAL DISPUTE RESOLUTION PROCESS, AND STANDARDS FOR QUESTIONING A PHYSICIAN'S ORDERS FOR DRUGS OR TREATMENTS; AND AMENDING SECTIONS 53-6-107 AND 53-6-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-107, MCA, is amended to read:

"**53-6-107. Sanctions — penalties.** (1) The department ~~of public health and human services~~ may suspend, terminate, or refuse to renew an agreement with a health care facility that has failed to meet the requirements for certification for or participation in the Montana medicaid program under 53-6-106 through 53-6-108 or other applicable law. The department may also impose sanctions in the form of denial of medicaid payments for new admissions or other penalties or sanctions, as described in 53-6-111 or Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, and any implementing federal regulations ~~and policies~~.

(2) The department may impose a civil monetary penalty, with interest not to exceed 12% a year, for each day that a facility is substantially out of compliance with standards or participation requirements provided by applicable state or federal laws, regulations, *or* rules, ~~or policies,~~ including but not limited to standards adopted by the department under the authority of Title 50, chapter 5, or 53-6-106 through 53-6-108. Penalties must be collected by the department and may be applied to the protection of the health and property of residents of health care facilities that the department finds deficient, including but not limited to payment for the costs of relocation of residents to other facilities, operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(3) The department may appoint temporary management personnel to oversee the operation of the facility and to ensure the health and safety of the facility's residents if there is a need for temporary management because:

(a) an orderly closure of the facility is necessary; or

(b) improvements are being made to bring the facility into compliance with applicable standards.

(4) The department shall, in the case of an emergency, close the facility or transfer residents in the facility to other facilities, or both."

Section 2. Section 53-6-108, MCA, is amended to read:

"**53-6-108. Rules governing sanctions or remedies.** The department ~~of public health and human services~~ shall adopt rules governing the application of sanctions or remedies imposed under 53-6-107, the amounts of any fines, and the severity of each of these sanctions or remedies. The rules must be designed for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. The civil penalty for violation of the applicable standards imposed by state or federal laws, regulations, *or* rules~~,~~ ~~or policies~~ may not exceed $10,000 for each day that the deficiency remains uncorrected. A health care facility aggrieved by an action of the department may request a hearing pursuant to Title 2, chapter 4, part 6."

Section 3. Consistent regulation of long-term care facilities — rulemaking authority. In order to provide more consistent regulation of long-term care facilities that provide intermediate and skilled nursing care statewide, the department shall adopt rules in consultation with long-term care provider groups, the long-term care ombudsman, as described in 52-3-603, and appropriate consumer groups by July 1, 2003, that:

(1) define the following terms used in the survey and certification process for long-term care facilities that provide intermediate and skilled nursing care:

(a) actual harm;

(b) potential for more than minimal harm;

(c) avoidable;

(d) unavoidable; and

(e) immediate jeopardy;

(2) define an informal dispute resolution process to provide nursing homes with an opportunity to respond to survey findings and deficiency citations that are believed to be made in error. The rules must be consistent with the purpose of informal dispute resolution that is intended to give the provider an opportunity to demonstrate that a deficiency has been applied in error or is a misjudgment of true facts. The objective of the process is to avoid the imposition of unnecessary sanctions and to diminish the need for formal administrative hearings with the state, as provided for in 53-6-108, or the federal government agencies that are responsible for the enforcement of remedies. The process must provide for an objective review of the raised issues by an individual who is independent of the survey process and who can evaluate the legal sufficiency of the findings of the surveyors.

(3) define standards for survey determinations in which the surveyors question the efficacy of orders for drugs and treatments made by a resident's attending physician. The standards must recognize that a written physician's order provides evidence of medical necessity and the appropriateness of the drugs and treatments ordered, unless the survey agency alleges substandard practice by the physician. The standards must provide for the reporting of any substandard practice of a physician to the board of medical examiners by the surveyors. The standards must outline a facility's responsibilities in monitoring drugs and treatments ordered for residents and for consulting with the attending physician as appropriate.

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [section 3].

Approved April 21, 2001

CHAPTER NO. 347

[SB 477]

AN ACT PROVIDING FOR USE OF SAFETY DEVICES IN LONG-TERM CARE FACILITIES UPON A REQUEST AND RECEIPT OF WRITTEN INFORMED CONSENT; DEFINING TERMS; PROVIDING FOR LONG-TERM CARE FACILITY PROCEDURES AND WRITTEN PHYSICIAN OR ADVANCED PRACTICE REGISTERED NURSE ORDERS; PROVIDING THAT A WRITTEN PHYSICIAN'S OR ADVANCED PRACTICE REGISTERED NURSE'S ORDER PROVIDES EVIDENCE OF MEDICAL NECESSITY FOR THE USE OF A SAFETY DEVICE; AND GRANTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES RULEMAKING AUTHORITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Use of safety devices — request and consent — allowed individuals — intent. (1) The following individuals may request the use of and provide informed consent for the use of certain safety devices aimed at ensuring the physical safety of the resident by reducing the risk of falls and injuries associated with a resident's medical symptom even if the resident cannot easily remove the device or the device restricts the resident's total freedom of movement:

(a) a resident;

(b) a family member of a resident who is unable to make decisions because the resident has a communication barrier or has been found by a physician to be medically incapable of granting informed consent, as provided in [section 3];

(c) a guardian, as defined in 72-1-103; or

(d) a person granted the power of attorney for health care decisions.

(2) A concern for a resident's physical safety or a resident's fear of falling may provide the basis for a medical symptom. A safety device may not be used for the convenience of staff or for disciplinary purposes.

(3) [Sections 1 through 5] are intended to provide residents and authorized or designated representatives with the authority to request and consent to the use of safety devices but are not intended to interfere with the right of licensed health care providers acting within their scope of practice to recommend and order treatments and services, including physical restraints, for residents in their care.

Section 2. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Long-term care facility" means a licensed facility that provides skilled nursing care or intermediate nursing care or that is a personal-care facility, as defined in 50-5-101.

(3) "Medical symptom" means an indication of a physical or psychological condition or of a physical or psychological need expressed by the patient.

(4) "Physician" includes an advanced practice registered nurse to the extent permitted by federal law.

(5) "Resident" means a person who lives in a long-term care facility.

(6) (a) "Safety devices" means side rails, tray tables, seatbelts, and other similar devices.

(b) The term does not include protective restraints as defined in 21 CFR 880.6760.

Section 3. Procedures — informed consent — physician involvement. (1) Upon receiving a request for use of a safety device, a long-term care facility shall inform the requestor of the alternatives and risks associated with the use of the safety device. The long-term care facility shall provide the requested safety device to the resident upon receipt of:

(a) a signed consent form authorizing its use and acknowledging receipt of specific information about available alternatives and risks: and

(b) a written order from the attending physician that specifies the circumstances under and the duration for which the safety device may be used and the medical symptoms that the safety device is intended to address.

(2) The requirements of subsection (1) do not apply if a side rail or other device is used only as an assistive device and does not restrict the resident's movement from bed or chair.

Section 4. Long-term care facility procedures. A long-term care facility that provides a safety device under [section 3] shall:

(1) document that the procedures outlined in [section 3] have been followed;

(2) monitor the use of the safety device in accordance with accepted standards of practice;

(3) reevaluate the resident's need for the safety device, no less than quarterly, in consultation with the resident, the resident's family, and the attending physician.

Section 5. Survey compliance and department enforcement — rulemaking authority. (1) The department is granted rulemaking authority for the purposes of implementing [sections 1 through 5].

(2) When determining compliance with state and federal standards for the use of a safety device, the department is bound by the statements and determinations contained in the attending physician's order regarding medical symptoms. A written order from the attending physician that contains statements and determinations regarding medical symptoms is sufficient evidence of the medical necessity of the safety device.

(3) A long-term care facility may not be subject to fines, civil penalties, or other state or federal survey enforcement remedies solely as the result of allowing the use of a safety device as authorized in [sections 1 through 5].

(4) This section does not preclude the department from taking action to protect the safety and health of the resident if there is clear and convincing evidence that:

(a) the use of the safety device has jeopardized the health and safety of the resident; and

(b) the long-term care facility has failed to take reasonable measures to protect the health and safety of the resident.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 50, chapter 5, and the provisions of Title 50, chapter 5, apply to [sections 1 through 5].

Approved April 21, 2001

CHAPTER NO. 348

[SB 479]

AN ACT AUTHORIZING LOCAL GOVERNMENTS TO ADOPT SUBDIVISION REGULATIONS THAT PROMOTE CLUSTER DEVELOPMENT AND PRESERVATION OF OPEN SPACE; ESTABLISHING ADDITIONAL PURPOSES FOR SUBDIVISION REGULATIONS; DEFINING

"CLUSTER DEVELOPMENT"; AUTHORIZING LOCAL GOVERNMENTS TO AUTHORIZE CERTAIN EXEMPTIONS FROM SUBDIVISION REGULATIONS AND PROCEDURES FOR CLUSTER DEVELOPMENTS THAT PRESERVE OPEN SPACE; REQUIRING THE DEPARTMENT OF COMMERCE TO DEVELOP EXAMPLES OF SUBDIVISION REGULATIONS THAT PROMOTE CLUSTER DEVELOPMENT AND TO PROVIDE TECHNICAL ASSISTANCE WITH THE DEVELOPMENT OF CLUSTER DEVELOPMENT REGULATIONS; AMENDING SECTIONS 17-6-505, 76-3-102, 76-3-103, 76-3-503, 76-3-504, 76-3-608, 76-3-621, AND 90-1-103, MCA; AND PROVIDING EFFECTIVE DATES.

WHEREAS, agricultural land is increasingly being taken out of production for development and becoming unavailable for production of food; and

WHEREAS, farmers and ranchers are often forced to sell their land to generate sufficient income to retire; and

WHEREAS, cluster development can facilitate the preservation of Montana's unique landscape; and

WHEREAS, cluster development can reduce local government costs for infrastructure and provision of services by concentrating building sites on smaller lots so that services and utilities can be concentrated in a smaller area; and

WHEREAS, the Montana Department of Commerce is charged with providing technical assistance and information related to community development; and

WHEREAS, local governments need mechanisms to encourage development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-505, MCA, is amended to read:

"**17-6-505. Rulemaking authority.** The department shall adopt rules to implement the provisions of this part, including rules:

(1) determining the amount of interest and the method of computation and payment of interest charged to recipients of job investment loans and specifying amortization schedules and other terms and conditions for job investment loans as necessary. The rate of interest charged on a loan may not be less than the prevailing market rate.

(2) establishing criteria for determining nonperformance and declaring default for a job investment loan;

(3) specifying security and collateral requirements that must be met as a condition of receiving a job investment loan;

(4) encouraging financial institutions to participate to the greatest extent possible in the financing of job investment projects;

(5) requiring that the job investment loan may not exceed the funding provided by private lenders and that at least one private lender must be a financial institution. The board shall secure the most favorable collateral position possible on any job investment loan.

(6) establishing appropriate loan loss reserves; and

(7) providing for an application process and a loan review process that:

(a) incorporate the funding criteria adopted by the department to implement the federal community development block grant program pursuant to 90-1-103~~(5)~~;

(b) minimize the amount of Job Investment Act funds required; and

(c) require financial institution review and contingent approval of the project before Job Investment Act funds are committed."

Section 2. Section 76-3-102, MCA, is amended to read:

"**76-3-102. Statement of purpose.** It is the purpose of this chapter to:

(1) promote the public health, safety, and general welfare by regulating the subdivision of land;

(2) prevent overcrowding of land;

(3) lessen congestion in the streets and highways;

(4) provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements;

(5) require development in harmony with the natural environment;

(6) promote preservation of open space;

(7) promote cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services;

~~(6)~~*(8)* protect the rights of property owners; and

~~(7)~~*(9)* require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey."

Section 3. Section 76-3-103, MCA, is amended to read:

"**76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Cluster development" means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.

~~(2)~~*(3)* "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

~~(3)~~*(4)* "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

~~(4)~~*(5)* "Examining land surveyor" means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.

~~(5)~~*(6)* "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

~~(6)~~*(7)* "Governing body" means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

~~(7)~~*(8)* "Immediate family" means a spouse, children by blood or adoption, and parents.

~~(8)~~*(9)* "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States government lot, the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

~~(9)~~*(10)* "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

~~(10)~~*(11)* "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

~~(11)~~*(12)* "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

~~(12)~~*(13)* "Registered land surveyor" means a person licensed in conformance with Title 37, chapter 67, to practice surveying in the state of Montana.

~~(13)~~*(14)* "Registered professional engineer" means a person licensed in conformance with Title 37, chapter 67, to practice engineering in the state of Montana.

~~(14)~~*(15)* "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

~~(15)~~*(16)* "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

~~(16)~~*(17)* (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of land under subsection ~~(16)(b)(i)~~ *(17)(b)(i)* unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels."

Section 4. Section 76-3-503, MCA, is amended to read:

"**76-3-503. Hearing on proposed regulations.** Before the governing body adopts subdivision regulations pursuant to 76-3-501 *or [section 6]*, it shall hold a public hearing ~~thereon~~ *on the regulations* and shall give public notice of its intent to adopt ~~such~~ *the* regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 or more than 30 days prior to the date of the hearing."

Section 5. Section 76-3-504, MCA, is amended to read:

"**76-3-504. ~~Minimum requirements for subdivision~~ *Subdivision* regulations — *contents*.** *(1)* The subdivision regulations adopted under this chapter must, at a minimum:

~~(1)~~*(a)* except as provided in 76-3-210, *[section 6]*, or 76-3-609(3), require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

~~(2)~~*(b)* establish procedures consistent with this chapter for the submission and review of subdivision plats;

~~(3)~~*(c)* prescribe the form and contents of preliminary plats and the documents to accompany final plats;

~~(4)~~*(d)* provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

~~(5)~~*(e)* prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

~~(6)~~*(f)* prescribe standards for:

~~(a)~~*(i)* the design and arrangement of lots, streets, and roads;

~~(b)~~*(ii)* grading and drainage;

~~(c)~~*(iii)* subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, at a minimum, meet the regulations adopted by the department of environmental quality under 76-4-104;

~~(d)~~*(iv)* the location and installation of utilities;

~~(7)~~*(g)* provide procedures for the administration of the park and open-space requirements of this chapter;

~~(8)~~*(h)* provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision. A utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body.

~~(9)~~*(i)* require the subdivider to establish ditch easements in the subdivision, in locations of appropriate topographic characteristics and sufficient width, to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots. Establishment of easements pursuant to this subsection ~~(9)~~ *(1)(i)* is not required if:

~~(a)~~*(i)* the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

~~(b)~~*(ii)* the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

~~(10)~~*(j)* require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under [section 6] and this section may include provisions that are consistent with this section that promote cluster development."

Section 6. Local option cluster development regulations and exemptions authorized. (1) If the governing body has adopted a growth policy that meets the requirements of 76-1-601, the governing body may adopt regulations to promote cluster development and preserve open space under this section.

(2) Regulations adopted under this section must:

(a) establish a maximum size for each parcel in a cluster development;

(b) subject to subsection (3)(d), establish a maximum number of parcels in a cluster development; and

(c) establish requirements, including a minimum size for the area to be preserved, for preservation of open space as a condition of approval of a cluster development subdivision under regulations adopted pursuant to this section. The regulations must require that open space be preserved through an irrevocable conservation easement, granted in perpetuity, as provided for in Title 76, chapter 6, prohibiting further division of the parcel.

(3) Regulations adopted under this section may:

(a) establish a shorter timeframe for review of proposed cluster developments;

(b) establish procedures and requirements that provide an incentive for cluster development subdivisions that are consistent with the provisions of this chapter;

(c) authorize the review of a division of land that involves more than one existing parcel as one subdivision proposal for the purposes of creating a cluster development;

(d) authorize the creation of one clustered parcel for each existing parcel that is reviewed as provided in subsection (3)(c); and

(e) establish exemptions from the following:

(i) the requirements of an environmental assessment pursuant to 76-3-603;

(ii) review of the criteria in 76-3-608(3)(a); and

(iii) park dedication requirements pursuant to 76-3-621.

(4) Except as provided in this section, the provisions of this chapter apply to cluster development subdivisions.

Section 7. Section 76-3-608, MCA, is amended to read:

"**76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision is whether the preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the subdivision meets the requirements of this chapter. A governing body may not deny approval of a subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (7) *of this section* or except as provided in 76-3-505 *and [section 6]*, the effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) (a) When a minor subdivision is proposed in an area where a growth policy has been adopted pursuant to chapter 1 and the proposed subdivision will comply with the growth policy, the subdivision is exempt from the review criteria contained in subsection (3)(a) but is subject to applicable zoning regulations.

(b) In order for a growth policy to serve as the basis for the exemption provided by this subsection (6), the growth policy must meet the requirements of 76-1-601.

(7) The governing body may exempt subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:

(a) the governing body has adopted a growth policy pursuant to chapter 1 that:

(i) addresses the criteria in subsection (3)(a);

(ii) evaluates the effect of subdivision on the criteria in subsection (3)(a);

(iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and

(iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and

(b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:

(i) apply to the entire area subject to the exemption; and

(ii) address the criteria in subsection (3)(a), as described in the growth policy."

Section 8. Section 76-3-621, MCA, is amended to read:

"76-3-621. Park dedication requirement. (1) Except as provided in *[section 6] or* subsections (2), (3), and (6) *of this section*, a subdivider shall dedicate to the governing body a cash or land donation equal to:

(a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller:

(b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

(c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

(d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) a minor subdivision;

(b) land proposed for subdivision into parcels larger than 5 acres;

(c) subdivision into parcels that are all nonresidential;

(d) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or

(e) a subdivision in which only one additional parcel is created.

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1).

(7) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside."

Section 9. Section 90-1-103, MCA, is amended to read:

"**90-1-103. Functions of department of commerce — community development.** *(1)* The department of commerce shall:

~~(1)~~*(a)* cooperate with and provide technical assistance to county, municipal, state, and regional planning commissions, zoning commissions, parks or recreation boards, community development groups, community action agencies, and similar agencies created for the purposes of aiding and encouraging orderly, productive, and coordinated development of the communities of the state;

~~(2)~~*(b)* assist the governor in coordinating the activities of state agencies that have an impact on solution of community development problems and implementation of community plans;

~~(3)~~*(c)* serve as a clearinghouse for information, data, and other materials that may be helpful or necessary to local governments to discharge their responsibilities and provide information on available federal and state financial and technical assistance;

~~(4)~~*(d)* carry out continuing studies and analyses of the problems faced by communities within the state and develop those recommendations for administrative or legislative action as appear necessary. In carrying out the studies and analyses and in providing technical assistance to communities, the department shall pay particular attention to the planning and financing of public facilities and to the problems of metropolitan, suburban, and other areas in which economic and population factors are rapidly changing.

~~(5)~~*(e)* administer the federal community development block grant program and adopt rules to implement the program.

(2) In partial fulfillment of its duties under subsection (1), by January 1, 2003, the department shall have developed and published examples of subdivision regulations that provide incentives for and remove disincentives to cluster development. The examples need not be limited to the local option cluster development regulations authorized in [section 6] and may include any cluster

development regulations that are authorized under Title 76, chapter 3. In developing the examples of regulations, the department shall seek the advice of interested parties. The department shall provide technical assistance to local governments that are developing cluster development regulations, as provided in subsection (1)(a)."

Section 10. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 76, chapter 3, part 5, and the provisions of Title 76, chapter 3, part 5, apply to [section 6].

Section 11. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2001.

(2) [Section 9 and this section] are effective on passage and approval.

Approved April 21, 2001

CHAPTER NO. 349

[SB 480]

AN ACT ESTABLISHING MONTANA AS A MEMBER OF THE PACIFIC NORTHWEST ECONOMIC REGION; PROVIDING FOR THE APPOINTMENT OF MEMBERS TO THE PACIFIC NORTHWEST ECONOMIC REGION AND ITS COMMITTEES; AMENDING SECTION 5-11-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings. (1) The legislature finds that there is a new emerging global economy in which countries and regions located in specific areas of the world are forging new cooperative arrangements.

(2) The legislature finds that these new cooperative arrangements are increasing the competitiveness of the participating countries and regions, thus increasing the economic benefits and the overall quality of life for the citizens of the individual countries and regions.

(3) The legislature also finds that the Pacific Northwest states of Alaska, Idaho, Montana, Oregon, and Washington, the Canadian provinces of Alberta and British Columbia, and the Yukon Territory of Canada are in a strategic position to act together as a region, thus increasing the overall competitiveness of the individual states, provinces, and territory that will provide substantial economic benefits for all of their citizens.

Section 2. Participation in Pacific Northwest economic region. The Pacific Northwest economic region is hereby enacted into law and entered into by the state of Montana as a party and is in full force and effect in accordance with the terms of this agreement.

THE PACIFIC NORTHWEST ECONOMIC REGION

ARTICLE I — Policy and Purpose

(1) States, provinces, and territories participating in the Pacific Northwest economic region shall seek to develop and establish policies that:

(a) promote greater regional collaboration among the eight entities;

(b) enhance the overall competitiveness of the region in international and domestic markets;

(c) increase the economic well-being of all citizens in the region; and

(d) improve the quality of life of the citizens of the Pacific Northwest.

(2) (a) States, provinces, and territories recognize that there are many public policy areas in which cooperation and joint efforts would be mutually beneficial. These areas include but are not limited to:

(i) international trade;

(ii) economic development;

(iii) human resources;

(iv) the environment and natural resources;

(v) energy; and

(vi) education.

(b) Parties to this agreement shall work diligently to establish collaborative activity in these and other appropriate policy areas in which cooperation is considered to be worthwhile and of benefit to the participating entities.

(c) Participating states, provinces, and territories also agree that there are areas in which cooperation may not be feasible.

(3) The substantive actions of the Pacific Northwest economic region may take the form of uniform legislation enacted by two or more states, provinces, or territories or policy initiatives endorsed as appropriate by participating entities. It is not necessary for all states, provinces, and territories to participate in each initiative.

ARTICLE II — Eligible Parties and Effective Date

(1) Each of the following states, provinces, and territory is eligible to become a party to this agreement: Alaska, Alberta, British Columbia, Idaho, Montana, Oregon, Washington, and Yukon.

(2) This agreement establishing the Pacific Northwest economic region becomes effective when it is executed by one state, one province, and one additional state, province, or territory in a form considered appropriate by each entity.

(3) This agreement continues in force and remains binding upon each of the states, provinces, and territories entering into it until renounced by the state, province, or territory.

(4) Renunciation of this agreement must be preceded by sending 1 year's notice in writing of intention to withdraw from the agreement to all other parties to the agreement.

ARTICLE III — Organizational Structure

(1) Each state, province, and territory participating in this agreement shall appoint representatives to the Pacific Northwest economic region.

(2) The organizational structure of the Pacific Northwest economic region consists of the following:

(a) a delegate council consisting of the governor or a designee and four legislators from each participating state and four representatives from each participating province and territory; and

(b) an executive committee consisting of one legislator from each participating state, province, or territory who is a member of the delegate council and four of the governors, premiers, or commissioners or their designees.

(3) Policy committees may be established to carry out further duties and responsibilities of the Pacific Northwest economic region.

ARTICLE IV — Duties and Responsibilities

(1) The delegate council has the following duties and responsibilities:

(a) facilitate the involvement of other government officials in the development and implementation of specific collaborative initiatives;

(b) work with policymaking committees in the development and implementation of specific initiatives;

(c) approve general organizational policies developed by the executive committee;

(d) provide final approval of the annual budget and staffing structure for the Pacific Northwest economic region developed by the executive committee; and

(e) other duties and responsibilities established in the rules and regulations of the Pacific Northwest economic region.

(2) The executive committee shall perform the following duties and responsibilities:

(a) elect the president and vice president of the Pacific Northwest economic region;

(b) approve and implement general organizational policies;

(c) develop the annual budget;

(d) devise the annual action plan;

(e) act as liaison with other public and private sector entities; and

(f) other duties and responsibilities established in the rules and regulations of the Pacific Northwest economic region.

(3) The rules and regulations of the Pacific Northwest economic region must establish the procedure for voting.

ARTICLE V — Membership of Policy Committees

(1) Policy committees dealing with specific subject matter may be established by the executive committee.

(2) Each participating state, province, and territory shall appoint legislators to sit on these policy committees in accordance with its own rules and regulations concerning appointments.

This agreement may not be construed to limit the powers of any state, province, or territory or to repeal or prevent the enactment of any legislation.

Section 3. Appointment to Pacific Northwest economic region — vacancy. (1) Pursuant to [section 2], Article III, the governor or a designee and four legislators must be appointed to the delegate council of the Pacific Northwest economic region. The legislative members are appointed as follows:

(a) one member to be appointed by the president of the senate;

(b) one member to be appointed by the speaker of the house of representatives;

(c) one member to be appointed by the minority leader of the senate; and

(d) one member to be appointed by the minority leader of the house of representatives.

(2) If the Pacific Northwest economic region establishes policy committees under [section 2], Article V, appointments of legislators to the policy committees are to be made by the legislative council as provided in 5-11-301.

(3) In the event that a vacancy occurs, appointment to fill the vacancy must be made in the same manner as the original appointment.

Section 4. Compensation of certain appointees to Pacific Northwest economic region. Legislative members appointed to the Pacific Northwest economic region under [section 3] are entitled to compensation as provided in 5-2-302.

Section 5. Section 5-11-301, MCA, is amended to read:

"**5-11-301. Functions of legislative council — interstate and international cooperation.** It is a function of the legislative council, within the limits of appropriations, to:

(1) carry forward the participation of the state of Montana as a member of appropriate interstate organizations, and the legislative council is designated as the Montana commission on interstate and international cooperation;

(2) encourage and assist the government of this state to develop and maintain friendly contact by correspondence, by conference, and otherwise with the other states, with the federal government, and with local units of government, as well as tribal governments, bordering Canadian provinces, *territories*, and regions designated as sister states by the legislature;

(3) establish delegations and committees as may be considered advisable to confer with similar delegations and committees from other states, provinces, *territories*, and countries concerning problems of mutual interest. The membership of the delegations and committees may consist of legislators and employees of the state other than members of the legislative council. Legislative members of the delegations and committees must be reimbursed and compensated as provided in 5-2-302.

(4) endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for interstate compacts and reciprocal or uniform legislation and by facilitating the adoption of uniform or reciprocal administrative rules and regulations, informal cooperation of governmental offices, personal cooperation among governmental officials and employees, interchange and clearance of research and information, and any other suitable process~~.~~*; and*

(5) make appointments to any policy committee established by the Pacific Northwest economic region as provided in [section 3(2)]."

Section 6. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 5, chapter 11, and the provisions of Title 5, chapter 11, apply to [sections 1 through 4].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2001

CHAPTER NO. 350

[SB 491]

AN ACT PROHIBITING A SELLER OR TELEMARKETER REGISTERED UNDER THE MONTANA TELEMARKETING REGISTRATION AND FRAUD PREVENTION ACT FROM BLOCKING ACCESS TO THE SELLER'S OR TELEMARKETER'S PHONE NUMBER; AMENDING SECTION 30-14-1412, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-14-1412, MCA, is amended to read:

"**30-14-1412. Abusive acts and practices.** (1) It is an abusive telemarketing act or practice and a violation of this part for any seller or telemarketer to engage in the following conduct:

(a) use threatening, intimidating, or profane or obscene language;

(b) engage any person repeatedly or continuously with behavior a reasonable person would consider annoying, abusive, or harassing;

(c) initiate a telemarketing call to a person who has stated previously, in compliance with 16 CFR 310 and 47 CFR 64.1200, that the person does not wish to receive solicitation calls from that seller or telemarketer;

(d) engage in telemarketing to a person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's location; ~~or~~

(e) engage in any other conduct that would be considered abusive to any reasonable consumer*; or*

*(f) intentionally block a person using caller identification or "*69" from accessing the seller's or telemarketer's phone number. It is not a violation of this subsection (1)(f) to provide a reasonable substitute name and number that accurately identify the entity causing the call to be made and a working telephone number at which the entity's personnel can be contacted.*

(2) The department or the attorney general may seek injunctive or declaratory relief or any other remedy provided in Title 30, chapter 14, part 1, for any violations of this section."

Section 2. Effective date. [This act] is effective July 1, 2001.

Approved April 21, 2001

CHAPTER NO. 351

[SB 169]

AN ACT REQUIRING SCREENING OF PREGNANT WOMEN FOR HEPATITIS B; DEFINING "HEALTH CARE PROVIDER"; ALLOWING FOR A HEALTH CARE PROVIDER TO COLLECT PRENATAL TESTS; REQUIRING REPORTING OF POSITIVE TEST RESULTS FOR HEPATITIS B SURFACE ANTIGEN TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AND AMENDING SECTIONS 37-27-312, 50-19-101, 50-19-102, 50-19-103, 50-19-104, 50-19-105, AND 50-19-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-27-312, MCA, is amended to read:

"**37-27-312. Screening procedures.** In addition to meeting the eligibility criteria for client screening established by the board pursuant to 37-27-105, a direct-entry midwife shall recommend that patients secure the following services by an appropriate health care provider:

(1) the standard serological test, as defined in 50-19-101~~(2)~~, for women seeking prenatal care;

(2) screening for ~~hepatitis B and, when appropriate,~~ human immunodeficiency virus, *when appropriate*;

(3) maternal serum alpha-fetoprotein test and ultrasound, upon request;

(4) Rh antibody and glucose screening at 28 weeks' gestation, upon request;

(5) nonstress testing by a fetal monitor of a fetus at greater than 42 1/2 weeks' gestation or if other reasons indicate the testing;

(6) screening for phenylketonuria;

(7) Rh screening of the infant for RhoGAM treatment if the mother is Rh negative; and

(8) screening for premature labor and other risk factors."

Section 2. Section 50-19-101, MCA, is amended to read:

"**50-19-101. Definitions.** (1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Health care provider" means a licensed physician, a physician assistant-certified, a registered nurse, an advanced practice registered nurse, a naturopathic physician, or a direct-entry midwife practicing within the scope of the provider's professional license.

~~(2)~~*(3)* "Standard serological test" means a test for syphilis, rubella immunity, and blood group, including ABO (Landsteiner blood type designation—O, A, B, AB) and RH (Dd) type, *and a screening for hepatitis B surface antigen,* approved by the department."

Section 3. Section 50-19-102, MCA, is amended to read:

"**50-19-102. Duties of department.** (1) The department shall provide all necessary printing and pay all necessary expenses relative to administration of this part.

(2) Reasonable rules for reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the ~~physician~~ *health care provider* and the state ~~shall~~ *must* be adopted by the department.

(3) The department may use information derived from reports of positive tests for sexually transmitted diseases *or hepatitis B surface antigen* for ~~follow-up~~ *followup* procedures required by law or considered necessary by the department for the protection of public health."

Section 4. Section 50-19-103, MCA, is amended to read:

"**50-19-103. Prenatal blood sample required for serological test.** (1) Every female, regardless of age or marital status, seeking prenatal care from a ~~physician~~ *health care provider* is required to submit *a* blood specimen for the purpose of a standard serological test. In submitting the specimen to the laboratory, the ~~physician~~ *health care provider* shall designate it as a prenatal test.

(2) A ~~physician or other person authorized by law to practice obstetrics~~ *health care provider* who attends a pregnant woman shall at the first professional visit take the blood sample and submit it to a laboratory.

(3) A person permitted to attend a pregnant woman, but not permitted to take blood samples, ~~shall~~ *must* have the sample taken by a person permitted to take blood samples and submit it to a laboratory.

(4) ~~Any physician or other person required to take the blood sample~~ *A health care provider* who violates this part is guilty of a misdemeanor. However, a ~~person~~ *health care provider* who requests a sample of blood in accordance with this provision and whose request is refused is not guilty of a violation of this section."

Section 5. Section 50-19-104, MCA, is amended to read:

"**50-19-104. Approved laboratory to perform syphilis, *hepatitis B surface antigen,* and rubella immunity tests.** (1) The tests for syphilis, *hepatitis B surface antigen,* and rubella immunity must be done by the laboratory of the department, a laboratory approved by the department, any other state laboratory, or a United States public health service or armed forces laboratory.

(2) The department may establish a reasonable fee for the tests done by the department laboratory."

Section 6. Section 50-19-105, MCA, is amended to read:

"**50-19-105. Report of positive test results.** All positive laboratory tests for any sexually transmitted diseases *or hepatitis B surface antigen* must be reported to the department by the laboratory preparing the test. The department shall prescribe the form and way of reporting."

Section 7. Section 50-19-107, MCA, is amended to read:

"**50-19-107. Required and permissible exhibit of test results.** The report of the results of the test ~~so~~ certified by the laboratory ~~shall~~ *must* be exhibited by the ~~physician~~ *health care provider* to the patient. Upon request of the patient, the report of the results of the test may be exhibited to the spouse of the patient, or if the patient is a minor, report of the results of the test may be exhibited to the minor's parents or to the minor's legal guardian."

Approved April 23, 2001

CHAPTER NO. 352

[SB 171]

AN ACT IMPROVING THE EFFICIENCY AND EFFECTIVENESS OF THE CHILD SUPPORT ENFORCEMENT PROGRAM; ALLOWING GARNISHMENT OF SOCIAL SECURITY BENEFITS FOR SPOUSAL SUPPORT IN CONFORMITY WITH FEDERAL LAW; CORRECTING PROVISIONS OF THE UNIFORM INTERSTATE FAMILY SUPPORT ACT; ALLOWING WARRANTS FOR DISTRAINT TO BE SERVED BY ACKNOWLEDGMENT WHEN THE ENTITY SERVED ENTERS INTO AN AGREEMENT WITH THE DEPARTMENT; PROVIDING FOR EXPIRATION OF SUPPORT LIENS; ALLOWING AN EMPLOYER RECEIVING AN INCOME-WITHHOLDING ORDER FROM ANOTHER STATE TO REQUEST INFORMATION FROM AND FORWARD THE FUNDS TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING THAT SERVICE OF NOTICE OF REVIEW IS CONSIDERED EFFECTIVE IF A PERSON SUBJECT TO SERVICE REQUESTS A HEARING OR APPEARS AT THE REVIEW; DEFINING "PAYOR" TO INCLUDE AN EMPLOYER UNDER THE UNIFORM INTERSTATE FAMILY SUPPORT ACT; ALLOWING SERVICE OF AN INCOME-WITHHOLDING ORDER BY ELECTRONIC SERVICE; PROVIDING THAT DISBURSEMENTS BY THE DEPARTMENT IN TITLE IV-D CASES MUST COMPLY WITH DEPARTMENT RULES FOR DISTRIBUTION NOTWITHSTANDING A RESTRICTIVE ENDORSEMENT; CLARIFYING A PARENT'S RESPONSIBILITY FOR NECESSITIES AND FINANCIAL ASSISTANCE TO A CHILD; AMENDING SECTIONS 25-13-608, 40-5-103, 40-5-154, 40-5-157, 40-5-158, 40-5-161, 40-5-162, 40-5-164, 40-5-173, 40-5-247, 40-5-248, 40-5-273, 40-5-403, 40-5-415, 40-5-909, 40-5-910, AND 40-6-215, MCA; REPEALING SECTIONS 40-5-244 AND 40-6-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-13-608, MCA, is amended to read:

"**25-13-608. Property exempt without limitation — exceptions.** (1) A judgment debtor is entitled to exemption from execution of the following:

(a) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;

(b) benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation, except as provided in subsection (2);

(c) veterans' benefits, except as provided in subsection (2);

(d) disability or illness benefits, except as provided in subsection (2);

(e) except as provided in subsection (2), individual retirement accounts, as defined in 26 U.S.C. 408(a), to the extent of deductible contributions made before the suit resulting in judgment was filed and the earnings on those contributions, and Roth individual retirement accounts, as defined in 26 U.S.C. 408A, to the extent of qualified contributions made before the suit resulting in judgment was filed and the earnings on those contributions;

(f) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;

(g) maintenance and child support; and

(h) a burial plot for the judgment debtor and the debtor's family.

(2) Veterans' and social security legislation benefits based upon remuneration for employment, as defined in 42 U.S.C. 662(f), disability benefits, and assets of individual retirement accounts are not exempt from execution if the debt for which execution is levied is for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse ~~if the spouse or former spouse is the custodial parent of a child for whom child support is owed or owing and the judgment debtor is the parent of the child~~."

Section 2. Section 40-5-103, MCA, is amended to read:

"**40-5-103. Definitions.** (1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a child support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "Duty of support":

(a) means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse; and

(b) includes an unsatisfied obligation to provide support.

(4) "Governor" includes an individual performing the functions of governor or the executive authority of any state covered by this part.

(5) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the state in which the child lived from birth with a parent or person acting as parent. A period of temporary absence of a parent or person acting as parent is counted as part of the 6-month or other period.

(6) "Income" includes:

(a) earnings or other periodic entitlements to money from any source; and

(b) any other property subject to withholding for support under the law of this state.

(7) "Income-withholding order" means an order or other legal process directed to an obligor's employer, as provided in Title 40, chapter 5, parts 3 and 4, or by a tribunal of another state to withhold support from the income of the obligor.

(8) "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state pursuant to this part or a law or procedure substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or a law or procedure substantially similar to either

of those acts or pursuant to a proceeding initiated by the department of public health and human services under 40-5-263.

(9) "Initiating tribunal" means the authorized tribunal in an initiating state.

(10) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(11) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(12) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(13) "Obligee" means:

(a) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(b) a state or political subdivision to which the rights under a duty of support or a support order have been assigned or that has independent claims based on financial assistance provided to an individual obligee; or

(c) an individual seeking a judgment determining parentage of that individual's child.

(14) "Obligor" means an individual or the estate of a decedent:

(a) who owes or is alleged to owe a duty of support;

(b) who is alleged but has not been adjudicated to be a parent of a child; or

(c) who is liable under a support order.

~~(15) "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.~~

~~(16)~~*(15)* "Register" means to file a support order or judgment determining parentage in the registry of foreign support orders.

~~(17)~~*(16)* "Registering tribunal" means a tribunal in which a support order is registered.

~~(18)~~*(17)* "Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this part or a law or procedure substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or a law or procedure substantially similar to either of those acts or under a proceeding initiated by the department of public health and human services under 40-5-263.

~~(19)~~*(18)* "Responding tribunal" means the authorized tribunal in a responding state.

~~(20)~~*(19)* "Spousal support order" means a support order for a spouse or former spouse of the obligor.

~~(21)~~*(20)* "State" means a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes an Indian tribe or a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this part, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

~~(22)~~*(21)* (a) "Support enforcement agency" means a public official or agency authorized to seek:

(i) enforcement of support orders or laws relating to the duty of support;

(ii) establishment or modification of child support;

(iii) a determination of parentage; or

(iv) to locate obligors or their assets.

(b) Support enforcement agency includes:

(i) in cases brought under Title IV-D of the Social Security Act, the department of public health and human services; and

(ii) in all other cases, the ~~prosecuting attorney~~ *prosecutor*.

~~(23)~~*(22)* "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, that:

(a) is for the benefit of a child, a spouse or a former spouse, or a state or political subdivision;

(b) provides for monetary support, health care, arrearages, or reimbursement; and

(c) may include related costs and fees, interest, income withholding, attorney fees, and other relief.

~~(24)~~*(23)* "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage."

Section 3. Section 40-5-154, MCA, is amended to read:

"**40-5-154. Conditions of rendition.** (1) Before making a demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of a child or to pay support to an obligee, the governor of this state may require any ~~prosecuting attorney~~ *prosecutor* of this state to demonstrate:

(a) that at least 60 days previously, the obligee had initiated proceedings for support pursuant to this part; or

(b) that the proceeding would be of no avail.

(2) If, under this part or a law substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or to pay support to an obligee, the governor of this state may require a ~~prosecuting attorney~~ *prosecutor* to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor of this state may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor of this state may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor of this state may decline to honor the demand if the individual is complying with the support order."

Section 4. Section 40-5-157, MCA, is amended to read:

"**40-5-157. Income-withholding orders of another state — employer compliance — employer immunity — penalties for noncompliance.** (1) An income-withholding order issued in another state may be sent to the person or entity defined as the obligor's employer under the income-withholding laws of this state without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

(2) (a) Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor ~~and, if the employer elects under subsection (3) to forward the funds to the department for distribution, to the department~~.

(b) The employer shall treat an income-withholding order issued in another state that appears regular on its face as if it had been issued by a tribunal of this state. ~~An employer may contact the department of public health and human services to determine whether the withholding order was issued by the appropriate authority.~~

(3) Except as provided by subsections (4) and (5), the employer shall withhold the funds and ~~either~~ distribute the funds as directed in the income-withholding order ~~or forward the funds to the department to be distributed by the department~~ by complying with the terms of the order that specify:

(a) the duration and the amount of periodic payments of current child support, stated as a sum certain;

(b) the person or agency designated to receive payments and the address to which the payments are to be forwarded;

(c) medical support, whether in the form of periodic cash payment, stated as a sum certain, or by ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(d) the amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(e) the amount of periodic payments of arrears and interest on arrears, stated as sums certain.

(4) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(a) the employer's fee for processing an income-withholding order;

(b) the maximum amount permitted to be withheld from the obligor's income; and

(c) the times within which the employer must implement the income-withholding order and forward the child support payment.

(5) An obligor's employer who receives multiple income-withholding orders with respect to the earnings of the obligor satisfies the terms of the multiple

orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.

(6) An employer who complies with an income-withholding order issued in another state in accordance with this section is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

(7) An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

(8) (a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state in the same manner as if the order had been issued by a tribunal of this state. Choice of law under 40-5-187 applies to the contest.

(b) The obligor shall give notice of the contest to:

(i) a support enforcement agency providing services to the obligee;

(ii) each employer that has directly received an income-withholding order; and

(iii) the person or agency designated to receive payments in the income-withholding order or, if a person or agency is not designated, to the obligee."

Section 5. Section 40-5-158, MCA, is amended to read:

"**40-5-158. Proceedings under this part.** (1) Except as otherwise provided in this part, 40-5-158 through 40-5-166, 40-5-170 through 40-5-178, 40-5-180, and 40-5-183 apply to all proceedings under this part.

(2) This part provides for the following proceedings:

(a) establishment of an order for spousal support or child support pursuant to 40-5-179;

(b) enforcement of a support order and income-withholding order of another state without registration;

(c) registration of an order for spousal support or child support of another state for enforcement pursuant to 40-5-184 through 40-5-195;

(d) modification of an order for child support or spousal support issued by a tribunal of this state pursuant to 40-5-147 through 40-5-150;

(e) registration of an order for child support of another state for modification pursuant to 40-5-184 through 40-5-195;

(f) determination of parentage pursuant to 40-5-196; and

(g) assertion of jurisdiction over nonresidents pursuant to 40-5-145 and 40-5-146.

~~(3) If the tribunal is the department of public health and human services, this part includes the administrative remedies under this chapter.~~

~~(4)~~*(3)* An individual or a support enforcement agency may commence a proceeding authorized under this part by filing a petition in an appropriate initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state that has or can obtain personal jurisdiction over the respondent."

Section 6. Section 40-5-161, MCA, is amended to read:

"**40-5-161. Duties of initiating tribunal.** (1) Upon the filing of a petition authorized by this part, an initiating tribunal shall forward three copies of the petition and its accompanying documents:

(a) to the responding tribunal or appropriate support enforcement agency in the responding state; or

(b) if the identity of the responding tribunal is unknown, to the state information agency of the responding state, with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

~~(2) The department of public health and human services is the initiating tribunal for any action or proceeding that may be brought under Title 40, chapter 5, parts 2, 4, and 6. In all other cases, the district court is the initiating tribunal.~~

~~(3)~~*(2)* If a responding state has not enacted the Uniform Interstate Family Support Act or another law or procedure substantially similar to that act, a tribunal of this state may issue a certificate or other documents and make findings required by the law or procedure of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state."

Section 7. Section 40-5-162, MCA, is amended to read:

"**40-5-162. Duties and powers of responding tribunal.** (1) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to 40-5-158~~(4)~~*(3)*, it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(2) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following:

(a) issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;

(b) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(c) order income withholding;

(d) determine the amount of any arrearages and specify a method of payment;

(e) enforce orders by use of civil or criminal contempt, or both;

(f) set aside property for satisfaction of the support order;

(g) place liens and order execution on the obligor's property;

(h) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(i) issue a bench warrant for an obligor who has failed, after proper notice, to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

(j) order the obligor to seek appropriate employment by specified methods;

(k) award reasonable attorney fees and other fees and costs; and

(l) grant any other available remedy.

(3) A responding tribunal of this state shall include in a support order issued under this part or in the documents accompanying the order the calculations on which the support order is based.

(4) A responding tribunal of this state may not condition the payment of a support order issued under this part upon a party's compliance with visitation provisions.

(5) If a responding tribunal of this state issues an order under this part, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

(6) The department of public health and human services is the responding tribunal for receipt of a petition or comparable proceedings from an initiating state as provided in 40-5-263. In all other cases, the district court is the responding tribunal."

Section 8. Section 40-5-164, MCA, is amended to read:

"**40-5-164. Duties of support enforcement agency.** (1) A support enforcement agency of this state, upon ~~application~~ *request*, shall provide services to a petitioner in a proceeding under this part.

(2) A support enforcement agency that is providing services to the petitioner shall, as appropriate:

(a) take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;

(b) request an appropriate tribunal to set a date, time, and place for a hearing;

(c) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(d) *within 2 days, exclusive of Saturdays, Sundays, and legal holidays,* after receipt of a written notice from an initiating, responding, or registering tribunal, ~~promptly~~ send a copy of the notice to the petitioner;

(e) *within 2 days, exclusive of Saturdays, Sundays, and legal holidays,* after receipt of a written communication from the respondent or the respondent's attorney, ~~promptly~~ send a copy of the communication to the petitioner; and

(f) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(3) This part does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

(4) For purposes of this part, the department of public health and human services is the support enforcement agency for this state as provided in Title 40, chapter 5, parts 2, 4, and 6. All the provisions of this part must be interpreted as

supplemental to and cumulative with the department's powers and duties under those provisions. In all other cases, the county attorney in the county in which an action must be filed is the support enforcement agency."

Section 9. Section 40-5-173, MCA, is amended to read:

"40-5-173. Costs and fees. (1) The petitioner may not be required to pay a filing fee or other costs to initiate a proceeding under this part.

(2) If an obligee prevails, a responding tribunal may assess against an obligor the filing fees, reasonable attorney fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. Except as provided by other law, the tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state. Attorney fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of current support owed to the obligee has priority over fees, costs, and expenses.

(3) The tribunal shall order the payment of costs and reasonable attorney fees if it determines that a hearing was requested primarily for delay. In a proceeding under 40-5-184 through 40-5-195, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

~~(4) The standardized schedule of fees established by the department of public health and human services under 40-5-210 is conclusive in any action under this section. Any fees or costs recoverable under subsection (2) that are not included in the standardized schedules are recoverable under subsection (2).~~"

Section 10. Section 40-5-247, MCA, is amended to read:

"40-5-247. Warrant for distraint — effect — satisfaction of support lien — redemption. (1) (a) The department may issue a warrant for distraint to execute support liens established by 40-5-248 or to enforce and collect any money obligation authorized under this chapter.

(b) The warrant must be an order, under official seal of the department, directed to a sheriff of any county of the state or to any levying officer authorized by law to enforce a district court judgment. The order must command the recipient to levy upon and sell nonexempt real and personal property to satisfy the support lien upon which the warrant is based. The warrant must include notice of:

(i) the existence of exemptions from execution;

(ii) the procedure by which an exemption may be claimed; and

(iii) the right to request a hearing to determine an exemption claim.

(c) A warrant must be signed by the director of the department or the director's designee.

(d) The warrant must be for the amount of the support lien or the amount of any other money obligation determined under this chapter, including interest and fees, if any.

(e) A warrant for distraint has the same effect as a writ of execution issued by a district court to enforce money judgments.

(2) (a) A warrant for distraint may be sent by the department to the sheriff or levying officer. Upon receipt of the warrant, the sheriff or levying officer shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment.

(b) A warrant for distraint may also be served by acknowledgment of service upon an entity that has entered into an agreement with the department to accept service of a warrant for distraint. Upon receipt of the warrant, the served entity shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment and shall return the warrant, along with any funds collected, within 90 days of receipt of the warrant.

~~(b)~~*(c)* A copy of the warrant must be mailed to the obligor at the obligor's last-known address at or promptly after the time of seizure.

~~(c)~~*(d)* Within 10 days after the date of the mailing of the warrant to the obligor, an obligor claiming an exemption may request a hearing to determine the existence of the exemption. The department shall convene a contested case hearing to determine the claimed exemption. An order entered under this section is a final agency order, subject to judicial review under Title 2, chapter 4, part 7.

~~(d)~~*(e)* A sheriff or levying officer shall return a warrant, along with any funds collected, within 90 days of the receipt of the warrant.

~~(e)~~*(f)* Funds resulting from execution upon the warrant must first be applied to the sheriff's or levying officer's costs, any superior liens, the support lien, or other money obligation and to any inferior liens. Any amounts in excess of this distribution must be paid to the obligor.

~~(f)~~*(g)* If the warrant is returned not fully satisfied, the department has the same remedies to collect the deficiency as are available for any civil judgment.

(3) A sheriff's or levying officer's levy against real and personal property of the obligor is not limited to property in possession of persons or other entities given notice of a support lien under 40-5-242.

(4) (a) Upon receiving payment in full of the unpaid warrant amount plus penalty and fees, if any, and accumulated interest, the department shall release the warrant.

(b) Upon receiving partial payment of the unpaid warrant amount or if the department determines that a release or partial release of the warrant will facilitate the collection of the unpaid amount, penalty, and interest, the department may release or may partially release the warrant for distraint. The department may release the warrant if it determines that the warrant is unenforceable.

(5) An obligor or other person or entity having an interest in real or personal property levied upon by a warrant for distraint at any time prior to sale of the property may pay the amount of the support lien or other money obligation and any costs incurred by the sheriff or levying officer serving the warrant. Upon payment in full, the property must be restored to the obligor or other person and all proceedings on the warrant must cease.

(6) An obligor or other person or entity having an interest in real property levied upon and sold by a sheriff or levying officer pursuant to a warrant for distraint may, within 240 days after sale of the property, redeem the property by making payment to the purchaser in the amount paid by the purchaser plus

interest at the statutory interest rate payable on judgments recovered in the district court.

(7) At any time after distraint of property under a warrant for distraint, the department may release all or part of the seized property without liability if payment of the support lien or other money obligation is assured or if the action will facilitate collection of the support lien or other money obligation. The release or return does not operate to prevent future action to collect the warrant amount from the same or other property.

(8) The department may issue a warrant for distraint to collect a support lien or other money obligation under this section at any time within the statutory limitation period for enforcing and collecting delinquent child support.

(9) The use of the warrant for distraint is not exclusive, and the department may use any other remedy provided by law for the collection of child support amounts."

Section 11. Section 40-5-248, MCA, is amended to read:

"**40-5-248. Lien against real and personal property — effect of lien — interest — warrant for distraint.** (1) There is a support lien on the real and personal property of an obligor:

(a) when the department has entered a final decision in a contested case under this chapter that finds the obligor owes a sum certain debt either to ~~this~~ *the* department or to an obligee, or both; or

(b) upon registration under 40-5-271 of a support order that includes finding that the obligor owes a sum certain amount of delinquent support.

(2) A support lien is for the amount required to satisfy:

(a) the sum certain debt shown in a final decision in a contested case under this chapter or the sum certain support debt included in any support order registered under 40-5-271;

(b) interest claimed under this section; and

(c) any fees that may be due under 40-5-210.

(3) A support lien has the priority of a secured creditor from the date the lien is perfected as provided by this section; however, the lien is subordinate to:

(a) any prior perfected lien or security interest;

(b) a mortgage, the proceeds of which are used by an obligor to purchase real property; or

(c) any perfected purchase money security interest, as [defined in 30-9-107] described in 30-9-321.

(4) Support liens remain in effect until the delinquency upon which the lien is based is satisfied or until ~~2 years after the child to whom the support lien is related attains the age of majority~~ *the applicable statute of limitations expires*, whichever occurs first.

(5) The lien applies to all real and personal property owned by the obligor if it can be located in the state. The lien applies to all real and personal property that the obligor can afterward acquire. Except as provided in subsections (5)(a) and (5)(b), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon

the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

(a) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the child support enforcement program or the FAIM financial assistance program.

(b) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

(6) The department shall keep a record of support liens asserted under this section in the registry of support orders established by 40-5-271.

(7) A support lien is perfected:

(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or may be located at the time of filing or at any time in the future;

(b) as to motor vehicles or other items for which a certificate of ownership is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;

(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under [30-9-401] 30-9-321. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.

(8) A buyer, in the ordinary course of business, who buys an obligor's personal property for value and who buys in good faith and without knowledge of the support lien takes the property free of the support lien.

(9) (a) The department may charge interest on the support lien at the rate of 1% per month.

(b) Interest accrues at the close of the business day on the last day of each month and is calculated by multiplying the unpaid balance of the lien, including prior accrued interest existing at the end of the day, by the applicable rate of interest.

(c) A provision of this section may not be construed to require the department to maintain interest balance due accounts. The department may waive interest if waiver would facilitate the collection of the debt.

(d) Interest under this subsection (9) is in addition to and not in substitution for any other interest accrued or accruing under any other provision of law.

(10) (a) Upon receiving payment in full of the amount of the lien plus interest and fees, if any, the department shall take all necessary steps to release the support lien.

(b) Upon receiving partial payment of the support lien or if the department determines that a release or partial release of the lien will facilitate the collection of support arrearages, the department may release or partially release the support lien. The department may release the support lien if it determines that the lien is unenforceable.

(11) A support lien under this section is in addition to any other lien created by law.

(12) A support lien under this section may not be discharged in bankruptcy.

(13) Support liens provided for by this section may be enforced or collected through the warrant for distraint provided for by 40-5-247. (Bracketed references deleted July 1, 2001.)"

Section 12. Section 40-5-273, MCA, is amended to read:

"**40-5-273. Administrative review of child support orders — modifying orders.** (1) A review application setting forth facts meeting any of the criteria for review of a child support order established in 40-5-272 must be scheduled for an administrative review. Unless the department determines under rules of the department that an in-person review is necessary, the review must be conducted by teleconferencing methods. A notice that an administrative review will be conducted must be served either personally or by certified mail on the obligor and the obligee. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. *Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed requests a hearing or appears at the administrative review.* The notice must include the following information as an exception to 2-4-601:

(a) a statement of the purpose, objectives, and possible consequences of the review;

(b) a statement of the right of the obligor and the obligee to request the department to issue subpoenas compelling the appearance of witnesses and the production of documents for a hearing; and

(c) a requirement that the obligor and the obligee provide the department with telephone numbers at which they and their witnesses may be contacted for the review.

(2) The department may issue an order commanding the obligor or the obligee, or both, to produce financial information. The order must be served either personally or by certified mail with the notice that a review will be conducted. If service is by certified mail, the department must receive a return receipt signed by the person to whom the order was mailed for the service to be effective. The department may also issue subpoenas ordering the parties to produce information in their possession about the obligor and the obligee that may be reasonably necessary for application of the guidelines. Any information so obtained by the department must be provided to the parties before a hearing.

(3) The requested modification of the order must be determined on the evidence submitted to the department under the following conditions:

(a) If an applicant other than the department fails to provide a telephone number for the review or fails to be at the number provided when telephoned for the review, the failure may be considered a withdrawal of the application.

(b) If a party other than the applicant fails to provide a telephone number for the review or fails to be at the number provided when telephoned for the review, the failure is considered to mean that the party does not oppose the modification.

(c) If the department is the applicant and if either the obligor or the obligee, or both, fails to provide a telephone number for the review or fails to be at the number provided when telephoned for the review, the failure may be considered an admission that the party or parties do not oppose the modification.

(4) (a) An order entered under the circumstances described in subsection (3)(a), (3)(b), or (3)(c) becomes final within 30 days of issuance unless a party provides the hearings officer an affidavit showing good cause for failure to provide a telephone number or failure to be available when telephoned.

(b) A proposed modification consent order or notice of proposed modification becomes final 30 days after issuance unless during that period a party files with the department a written request for further administrative proceedings.

(c) The department shall grant a modification hearing if it receives a timely written request by a party aggrieved by the department's determination. The hearing is subject to the provisions of this section relating to a review. The department may adopt rules regulating the fair and efficient conduct of the hearing. Unless the department determines under department rules that an in-person hearing is necessary, the hearing must be conducted by teleconferencing methods.

(5) A provision of law may not be construed to mean that an obligor or an obligee is a client of the department, and the department is not considered a party to the action.

(6) (a) In addition to the powers and duties provided by other law, the department shall, to ensure the equitable determination of a support obligation, during a review:

(i) question witnesses in a nonadversarial manner to elicit full disclosure of all pertinent facts;

(ii) introduce evidence on behalf of the parties;

(iii) apply the guidelines to the facts elicited from the review; and

(iv) inquire as to any circumstances that may require variance from the guidelines.

(b) If a party is represented by legal counsel, the department may allow the counsel to present that party's case.

(7) The department shall determine a support obligation in accordance with the guidelines and shall issue a modifying order. A stipulation by the parties in a proceeding under this section may not be contested before entry of the final department order. If the department determines that the difference between the existing support order and the amount determined under the guidelines is negligible under rules issued by the department, the modifying order may not change the amount of the support obligation. Even though the review may indicate that a modification of the support obligation is appropriate, the department may not modify the support order if the department determines, after the review, that to do so would not be in the best interests of the child under the rules issued by the department. An increase in child support is presumed to be in the best interests of the child unless, after a review, either the obligor or the

obligee demonstrates it would not be in the best interests of the child. The modifying order may modify the underlying support order from the date of service of a notice that an administrative review will be conducted under this section and may modify the underlying order from the date found to be the date that the amount required for support decreased. The obligee may be ordered to repay the obligor for any support amount overpayment found to have been paid since the date that the amount required for support decreased. If the case is a IV-D case, the department shall, on request of the obligor, enforce the obligee's repayment of the overpaid amount using any procedure provided in this chapter for payment, enforcement, and collection of child support or a delinquency.

(8) The department shall consider whether or not health insurance for the child is available and shall include an appropriate requirement for the provision of the child's health insurance needs in a modifying order in accordance with part 8 of this chapter.

(9) In addition to complying with other requirements of law, the modifying order must include provisions:

(a) that each party, other than the department, is required to promptly file with the department and update, as necessary, information on:

(i) the identity of the party;

(ii) the party's social security number;

(iii) the party's residential and mailing addresses;

(iv) the party's telephone number;

(v) the party's driver's license number;

(vi) the name, address, and telephone number of the party's employer; and

(vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or medical insurance plan, the policy identification number, the names of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to availability of coverage for the child through the obligor's and obligee's employers;

(b) that in a subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of a party, the department's due process requirements for notice and service of process are met with respect to the party upon delivery of written notice by regular mail to the most recent known address of the party or the party's employer's address reported to the department; and

(c) that the modifying order is subject to future administrative review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D.

(10) The department shall keep information provided under subsection (9)(a) confidential except as necessary for purposes of Title IV-D of the Social Security Act.

(11) An order entered under this section by the department is a final agency decision, subject to judicial review pursuant to the Montana Administrative Procedure Act, except as provided in 40-5-253. An order entered under this section must notify the parties that the order is subject to judicial review under

Title 2, chapter 4, part 7. A final order entered under a stipulation of parties waives the stipulating parties' right to judicial review.

(12) The parties to the support order and the department when it is providing services under IV-D may enforce the support order or modify that order independently, as provided in 40-4-208 and 53-2-613(5)(d)."

Section 13. Section 40-5-403, MCA, is amended to read:

"**40-5-403. Definitions.** As used in this part, the following definitions apply:

(1) "Alternative arrangement" means a written agreement between the obligor and obligee, and the department in the case of an assignment of rights under 53-2-613, that has been approved and entered in the record of the court or administrative authority issuing or modifying the support order.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Employer" includes a payor.

(4) "Income" means any form of periodic payment to a person, regardless of source, including commissions, bonuses, workers' compensation, disability payments, payments under a pension or retirement program, interest, and earnings and wages. However, income does not include:

(a) any amount required by law to be withheld, other than creditor claims, including federal, state, and local taxes and social security; and

(b) any amounts exempted from judgment, execution, or attachment by federal or state law.

(5) "Obligee" means either a person to whom a duty of support is owed or a public agency of this or another state to which a person has assigned the right to receive current and accrued support payments.

(6) "Obligor" means a person who owes a duty to make payments under a support order.

(7) "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure *or any employer under the Uniform Interstate Family Support Act contained in part 1 of this chapter*.

(8) "Support order" has the meaning provided in 40-5-201."

Section 14. Section 40-5-415, MCA, is amended to read:

"**40-5-415. Order to withhold income — rules.** (1) When the requirements of this part have been met, the department shall serve an order or modification order to withhold and deliver income upon any payor or combination of payors. The order must:

(a) direct the payor and successor payors to withhold from the obligor's income each month the amount specified in the order if sufficient funds are available;

(b) direct the payor to deliver the amount withheld to the department in the same month in which the funds were withheld:

(c) state that the order is binding on the payor until further notice by the department;

(d) state the rights and duties of the payor under this part; and

(e) include a statement that the obligor is required under a support order to provide health insurance coverage for the obligor's child, if appropriate.

(2) An order or modification order to withhold and deliver the obligor's income made under this section is binding upon the payor immediately upon service of the order upon the payor. Service of the order or modification order to withhold may be made either personally ~~or~~, by certified mail, *or by electronic service upon an entity that has entered into an agreement with the department to accept electronic service of an order entered under this part.*

(3) Whenever there is more than one payor, the department may, in its discretion, apportion the total amount to be withheld each month among payors. Whenever an obligor's income is subject to withholding for more than one obligee, the department may consolidate the payments received each month and distribute the income among the obligees according to department rules."

Section 15. Section 40-5-909, MCA, is amended to read:

"40-5-909. Centralized payment center — mandatory payments to center. (1) Payments due under a support order must be paid through the department for processing and distribution to the person or agency entitled to receive the payment whenever:

(a) the case is receiving IV-D services; or

(b) the support obligation is payable through non IV-D income withholding.

(2) A support order entered or modified in this state after October 1, 1998, that excludes the obligor from paying support through income withholding must provide that:

(a) if the case is or later becomes a IV-D case or if support becomes payable through IV-D or non IV-D income withholding, support payments must be paid through the department; and

(b) a payment that is not made to the department does not constitute payment of support or credit toward satisfaction of the support obligation unless the payment is verified by the department to its satisfaction.

(3) (a) If a support order does not include the provisions required by subsection (2) or directs payment of support to a payee other than the department, the department may give written notice to the obligor and obligee directing or redirecting payments to the department. After receipt of the notice, payment other than as directed does not constitute payment of support or credit toward satisfaction of the support obligation.

(b) An obligor who redirects payments to the department is not liable to the obligee or answerable to the court for not making payments as directed by the court.

(c) While support is required to be paid through the department, the notice directing or redirecting payments to the department may not be superseded by any subsequent order of a court or agency directing the obligor to make payments other than to the department.

(4) After the obligor has been ordered or directed to make payments to the department under this section, the obligor shall make the payments to the department and is not entitled to credit against a support obligation for payment made to a person or agency other than the department.

(5) (a) When the obligor is paying support through IV-D or non IV-D income withholding, the income-withholding order must direct the payor to make the payments through the department.

(b) If a payor is directed by the income-withholding order to make payments to a payee other than the department, the department may redirect the payments to the department by written order to the employer or payor. The order supersedes any prior, inconsistent court or agency order.

(c) For as long as income withholding is appropriate to the case, the directive to the payor to make payments to the department may not be superseded by any subsequent order of a court or agency directing payments to any other payee.

(6) (a) An employer who receives an income-withholding order issued in another state, as defined in 40-5-103, may contact the department to determine whether the withholding order was issued by the appropriate authority.

(b) The employer may elect to forward the funds to the department for distribution.

(c) If the employer elects under this section to forward the funds to the department for distribution, the employer shall immediately provide a copy of the income-withholding order to the department.

(7) Income-withholding orders may be issued in this state pursuant only to 40-5-308 through 40-5-315 and 40-5-401 through 40-5-432.

~~(6)~~*(8)* Payments of support that are received by the department in interstate cases or as the result of a writ of execution, warrant for distraint, state and federal tax offset, or similar enforcement remedy must be processed through the case management and payment processing unit.

~~(7)~~*(9)* (a) If, through a private collection action, an obligee obtains a payment of support that must be processed and distributed through the case management and payment processing unit, the obligee shall forward the payment to the department within 5 working days of the receipt of the payment.

(b) If the department takes an enforcement action against the obligor because the obligee failed to timely forward a payment of support under subsection ~~(7)(a)~~ *(9)(a)*, the obligee is liable in a civil action to the obligor for the amount that should have been forwarded to the department.

~~(8)~~*(10)* (a) Payments made to the department under this section must be by cash, personal or business check, money order, automatic bank account withdrawal, certified funds, electronic funds transfer services, or any other means acceptable to the department.

(b) Payments may not be credited to the obligor's child support obligation until actually received by the department.

(c) The withholding of income by a payor or employer under an order to withhold issued under Title 40, chapter 5, part 3 or 4, is not alone sufficient for credit against an obligor's support obligation. Payments withheld from an obligor's income that are not actually received by the department may not be credited to the obligor's child support obligation. The payor or employer is liable to the obligor in a civil action initiated by the obligor for the amount withheld but not paid to the department.

(d) A check presented to the department as payment, whether by the obligor, the obligor's employer, or another payor on the obligor's behalf, that is dishonored by the issuing bank may not be credited to the obligor's child support obligation.

(e) A payment made out to or delivered to any other person or agency other than to the department may not be credited to the obligor's support obligation.

~~(9)~~*(11)* An uncredited payment under this section is considered as still owed by the obligor and may be collected using any remedy available under law."

Section 16. Section 40-5-910, MCA, is amended to read:

"40-5-910. Distribution of payments. (1) Support payments processed through the case processing unit must be promptly disbursed unless one of the following circumstances or a similar circumstance prevents prompt distribution:

(a) the location of the obligee is unknown;

(b) the support debt is in litigation or, in an income-withholding case, the income-withholding action is contested; or

(c) the department receives a payment that does not include sufficient information to identify the case or the obligee.

(2) A disbursement must comply with department rules for distribution in IV-D cases, *notwithstanding an endorsement or other writing accompanying the payment that restricts disbursement or purports to direct disbursement in a manner contrary to the department's rules.*

(3) If the department is unable to make a distribution because the obligee's location is unknown, the department shall return the payment to the obligor.

(4) If a payment properly distributed under this section is later determined by a court or by department decision to be refundable to the obligor for any reason, except for when the department is the obligee, the department need not pay the refund or recover the refunded amount from the obligee or from any person or agency to whom the amount was distributed.

(5) If the department distributes a support payment in error or if a distribution is made to a person, obligee, or agency not entitled to retain the distributed amount, the department may obtain restitution by means of a setoff against future payments, including arrears payments, received on behalf of the person, obligee, or agency. A setoff against future payments of current support is limited to 10% of the payment."

Section 17. Section 40-6-215, MCA, is amended to read:

"40-6-215. When parent ~~liable~~ *responsible* for ~~necessaries~~ *necessities and financial assistance* supplied to child. *(1)* If a parent *with a duty to support a child fails to,* neglects to, *refuses to, or otherwise does not* provide *necessary* articles ~~necessary~~ *or financial assistance* for ~~his child under his charge~~ *the child's support*, according to ~~his~~ *the parent's* circumstances, a *relative or* third person may in good faith supply ~~such necessaries~~ *the necessary articles or financial assistance* and recover the reasonable value ~~thereof~~ from the parent.

(2) (a) If by court order or express or implied consent of either parent, a child resides with and is supported in the home of a relative or third person, the child's parent or parents shall provide support for the child to the relative or third person.

(b) A relative or third person may receive support under the substitute payee provisions of 40-4-204(8) or a similar law, or if the substitute payee laws are not applicable, the relative or third person may apply for establishment of a support order to any court or administrative agency with authority to enter child support orders.

(3) A parent's duty to support and maintain a child is not abrogated by the child's abandoning the parent's home or by any other voluntary act unless a court has determined the child to be an emancipated minor not in need of parental support."

Section 18. Repealer. Sections 40-5-244 and 40-6-216, MCA, are repealed.

Section 19. Effective date. [This act] is effective on passage and approval.

Approved April 23, 2001

CHAPTER NO. 353

[SB 181]

AN ACT ALLOWING COUNTIES AND MUNICIPALITIES TO USE BOND PROCEEDS TO FUND FAMILY SERVICES PROVIDER FACILITIES AS AN INDUSTRIAL DEVELOPMENT PROJECT UNDER TITLE 90, CHAPTER 5, PART 1, MCA; ALLOWING BOND PROCEEDS TO BE USED TO DISCHARGE AN EXISTING INDEBTEDNESS SECURED BY A LIEN AGAINST A FAMILY SERVICES PROVIDER FACILITY; AND AMENDING SECTIONS 90-5-101 AND 90-5-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-5-101, MCA, is amended to read:

"90-5-101. **~~Definition of terms~~** ***Definitions.*** As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Agricultural enterprises" ~~include~~ *includes* but ~~are~~ *is* not limited to producing, warehousing, storing, fattening, treating, handling, distributing, or selling farm products or livestock.

(2) "Bonds" means bonds, refunding bonds, notes, or other obligations issued by a municipality or county under the authority of this part, including without limitation short-term bonds or notes issued in anticipation of the issuance of long-term bonds or notes.

(3) "Family services providers" means organizations, including nonprofit corporations, that provide human services for children and adults, including but not limited to early care services for children, youth services, health services, social services, habilitative services, rehabilitative services, preventive care, and supportive services and training, educational, and referral activities in support of human services.

~~(3)~~*(4)* "Governing body" means the board or body in which the general legislative powers of the municipality or county are vested.

~~(4)~~*(5)* "Higher education facilities" means any real or personal properties required or useful for the operation of an institution of higher education.

~~(5)~~*(6)* "Institution of higher education" means any private, nonprofit corporation or institution within the state of Montana:

(a) authorized to provide or operate educational facilities; and

(b) providing a program of education beyond the high school level.

~~(6)~~*(7)* "Mortgage" means a mortgage or deed of trust or other security device.

~~(7)~~*(8)* "Municipality" means any incorporated city or town in the state.

~~(8)~~*(9)* "Project" means any land; any building or other improvement; and any other real or personal properties considered necessary in connection with the improvement, whether or not now in existence, ~~which~~ *that* must be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing, hospitals, long-term care facilities, community-based facilities for individuals who are persons with developmental disabilities as defined in 53-20-102, or medical facilities; higher education facilities; small-scale hydroelectric production facilities with a capacity of 50 megawatts or less; *family services provider facilities;* and any combination of these projects."

Section 2. Section 90-5-108, MCA, is amended to read:

"**90-5-108. Use of proceeds of bond sales.** (1) The proceeds from the sale of ~~any~~ bonds issued under authority of this part ~~shall~~ *must* be applied only for the purpose for which the bonds were issued or to discharge any existing indebtedness secured by a lien against a hospital or long-term care facility *or* ~~or~~ higher education facility leased or owned by a nonprofit corporation *or against a family services provider facility*. However, if the project is not a hospital or long-term care facility *or* ~~or~~ higher education facility leased or owned by a nonprofit corporation *or a family services provider facility*, the proceeds from the sale of bonds may not be used to discharge indebtedness without an improvement to the project.

(2) Any accrued interest and premium received in ~~any such~~ *the* sale *of bonds* ~~shall~~ *must* be applied to the payment of the principal of or the interest on the bonds sold. If for any reason any portion of ~~such~~ *the* proceeds ~~shall~~ *is* not ~~be~~ needed for the purpose for which the bonds were issued, then ~~such~~ *the* unneeded portion of ~~said~~ *the* proceeds ~~shall~~ *must* be applied to the payment of the principal of or the interest on ~~said~~ *the* bonds."

Approved April 23, 2001

CHAPTER NO. 354

[SB 187]

AN ACT STANDARDIZING THE PUBLIC NOTICE PROVISIONS FOR LOCAL GOVERNMENT UNITS; REQUIRING A LOCAL GOVERNMENT UNIT TO PUBLISH TWO NOTICES PRIOR TO A PUBLIC HEARING; AMENDING SECTIONS 7-1-2121, 7-1-4121, 7-1-4127, 7-1-4149, 7-2-2209, 7-2-2505, 7-2-2602, 7-2-4312, 7-2-4708, 7-2-4805, 7-3-604, 7-5-2502, 7-5-4202, 7-5-4302, 7-6-2316, 7-6-2320, 7-8-101, 7-8-2217, 7-8-2302, 7-12-1112, 7-12-2132, 7-12-4141, 7-12-4177, 7-12-4254, 7-12-4303, 7-12-4329, 7-12-4406, 7-12-4426, 7-12-4502, 7-12-4603, 7-13-107, 7-13-114, 7-13-126, 7-13-127, 7-13-145, 7-13-208, 7-13-232, 7-13-3005, 7-13-3021, 7-13-3023, 7-13-3028, 7-13-3043, 7-13-4507, 7-14-208, 7-14-244, 7-14-1102, 7-14-2403, 7-14-2616, 7-14-2822, 7-14-2902, 7-14-4114, 7-14-4712, 7-14-4732, 7-15-4215, 7-15-4263, 7-15-4404, 7-16-2442, 7-21-3305, 7-22-2212, 7-22-2232, 7-22-2406, 7-22-2408, 7-22-2446, 7-33-2102, 7-33-2125, 7-34-2162, 7-35-2112, 15-10-203, AND 75-2-215, MCA; AND REPEALING SECTIONS 7-1-4128, 7-2-2256, 7-12-2106, AND 7-12-4107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-2121, MCA, is amended to read:

"**7-1-2121. Publication and content of notice** — ***proof of publication.*** Unless otherwise specifically provided, whenever a local government unit other than a municipality is required to give notice by publication, the following applies:

(1) Publication must be in a newspaper meeting the qualifications of subsections (2) and (3), except that in a county where no newspaper meets these qualifications, publication must be made in a qualified newspaper in an adjacent county. If there is no qualified newspaper in an adjacent county, publication must be made by posting the notice in three public places in the county, designated by resolution of the governing body.

(2) The newspaper must be:

(a) of general paid circulation with a ~~second-class~~ *periodicals* mailing permit;

(b) published at least once a week; and

(c) published in the county where the hearing or other action will take place.

(3) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

(4) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

(5) The notice must be published twice, with at least 6 days separating *each* publication. ~~The first publication must be no more than 21 days prior to the action and the last no less than 3 days prior to the action.~~

(6) The published notice must contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

(7) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 *through 2-3-107*.

(8) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice."

Section 2. Section 7-1-4121, MCA, is amended to read:

"**7-1-4121. General definitions.** As used in 7-1-4121 through *7-1-4127 and 7-1-4129 through* 7-1-4149, unless otherwise provided, the following definitions apply:

(1) "Charter" means a written document defining the powers, structure, privileges, rights, and duties of the government and limitations ~~thereon~~ *on the government.*

(2) "Chief executive" means the elected executive in a government adopting the commission-executive form, the manager in a government adopting the commission-manager form, the chairman in a government adopting the commission-chairman form, the town chairman in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers ~~so~~ designated in the charter in a government adopting a charter.

(3) "Elector" means a resident of the municipality qualified and registered to vote under state law.

(4) "Employee" means a person other than an officer who is employed by a municipality.

(5) "Executive branch" means that part of the municipality, including departments, offices, and boards, charged with implementing actions approved and administering policies adopted by the governing body of the local government or performing the duties required by law.

(6) "Governing body" means the commission or town meeting legislative body established in the alternative form of local government.

(7) "Guideline" means a suggested or recommended standard or procedure to serve as an index of comparison and is not enforceable as a regulation.

(8) "Law" means a statute enacted by the legislature of Montana and approved and signed by the governor or a statute adopted by the people of Montana through statutory initiative procedures.

(9) "Municipality" means an entity ~~which~~ *that* incorporates as a city or town.

(10) "Office of the municipality" means the permanent location of the seat of government from which the records administrator, or the office of the clerk of the governing body where one is appointed, carries out ~~his~~ *the* duties *of the records administrator.*

(11) "Officer" means a person holding a position with a municipality which is ordinarily filled by election or, in those municipalities with a manager, the manager.

(12) "Ordinance" means an act adopted and approved by a municipality, having effect only within the jurisdiction of the local government.

(13) "Person" means any individual, firm, partnership, company, corporation, trust, trustee, assignee or other representative, association, or other organized group.

(14) "Plan of government" means a certificate submitted by a governing body that documents the basic form of government selected, including all applicable suboptions. The plan must establish the terms of all officers and the number of commissioners, if any, to be elected.

(15) "Political subdivision" refers to a local government, authority, school district, or multicounty agency.

(16) "Population" means the number of inhabitants as determined by an official federal, state, or local census or official population estimate approved by the department of commerce.

(17) "Printed" means the act of reproducing a design on a surface by any process as defined by 1-1-203(3).

(18) "Public agency" means a political subdivision, Indian tribal council, state or federal department or office, or the Dominion of Canada or any provincial department or office or political subdivision ~~thereof~~.

(19) "Public property" means any ~~and all~~ property owned by a municipality or held in the name of a municipality by any of the departments, boards, or authorities of the local government.

(20) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term "real property", including not only fee simple absolute but also all lesser interests such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

(21) "Reproduced" means the act of reproducing a design on any surface by any process.

(22) "Resolution" means a statement of policy by the governing body or an order by the governing body that a specific action be taken.

(23) "Service" means an authorized function or activity performed by local government.

(24) "Structure" means the entire governmental organization through which a local government carries out its duties, functions, and responsibilities."

Section 3. Section 7-1-4127, MCA, is amended to read:

"7-1-4127. Publication of notice — *content* — *proof*. (1) When a municipality is required to publish notice, ~~publications shall~~ *publication must* be in a newspaper, except that in a municipality with a population of 500 or less or in which no newspaper is published, publication may be made by posting in three public places in the municipality which have been designated by ordinance.

(2) The newspaper ~~shall~~ *must* be:

(a) of general paid circulation with a ~~second-class~~ *periodicals* mailing permit;

(b) published at least once a week; *and*

(c) published in the county where the municipality is located~~;~~.

~~(d)~~*(3) In the case of a contract award, the newspaper must have been* published continuously in the county for the 12 months preceding the awarding of the contract.

~~(3)~~*(4)* In a county where no newspaper meets these qualifications, publication ~~shall~~ *must* be made in a qualified newspaper in an adjacent county.

~~(4)~~*(5)* If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

(6) The notice must be published twice, with at least 6 days separating each publication.

(7) The published notice must contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

(8) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

(9) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice."

Section 4. Section 7-1-4149, MCA, is amended to read:

"**7-1-4149. Applicability.** (1) Except as provided in subsection (2), a provision of 7-1-4121 through *7-1-4127 and 7-1-4129 through* 7-1-4148 applies only in the absence of other laws governing the same subject matter.

(2) The governing body may by ordinance adopt the procedures and provisions contained in 7-1-4121 through *7-1-4127 and 7-1-4129 through* 7-1-4148 and make them applicable to all proceedings before the body."

Section 5. Section 7-2-2209, MCA, is amended to read:

"**7-2-2209. Hearing and notice on petition.** (1) Upon the filing of ~~such~~ *the* petition ~~or petitions~~ and ~~affidavits~~ *affidavit* with the clerk of the board of county commissioners, ~~said~~ *the* clerk shall ~~forthwith~~ fix a date to hear the ~~proof of the petitions~~ *petition* and ~~of~~ any opponents ~~thereto, which~~ *to the petition. The* date must be not later than 30 days after the filing of ~~such~~ *the* petition with the clerk of ~~said~~ *the* board.

(2) The county clerk shall also~~, at the same time, designate a newspaper of general circulation published~~ *publish a notice as provided in 7-1-2121* in the old counties ~~but not within the proposed new county~~ and also ~~a newspaper of general circulation published~~ within the boundaries of the proposed new county~~, if there be such, in which the county clerk shall order and cause to be published, at least once a week for 2 weeks preceding the date fixed for such hearing, a~~. *The* notice *must be published* in substantially the following form:

NOTICE

Notice is hereby given that a petition has been presented to the board of county commissioners of .... County (naming the county represented by the board of county commissioners with which ~~said~~ *the* petition was filed), ~~praying for~~ *requesting* the formation of a new county out of portions of .... County and .... County (naming the county or counties of which it is proposed to form the new county), and that ~~said~~ *the* petition will be heard by the board of county commissioners at its place of meeting (designating the city or town and the day and hour of the meeting ~~to be so held~~), when and where all persons interested may appear and oppose the granting of ~~said~~ *the* petition and make any objections ~~thereto~~ *to the petition.*

Dated .... at ...., Montana.

...., County Clerk"

Section 6. Section 7-2-2505, MCA, is amended to read:

"**7-2-2505. Publication ~~and posting~~ of copies of petition.** Upon the filing of the petition ~~as aforesaid~~, the clerk of the district court, upon the receipt of the cost from any voter in the county, shall ~~cause a copy of the same to be published for 4 successive weeks in some newspaper published in the county, and a copy of such petition must be posted at three of the most public places in the county for a like period by the clerk of the district court~~ *publish a copy of the petition as provided in 7-1-2121*. Proofs must be made of ~~such~~ *the* publication ~~and posting~~ before the petition can be considered and before a date for the hearing ~~thereon~~ *on the petition* may be fixed by the court."

Section 7. Section 7-2-2602, MCA, is amended to read:

"**7-2-2602. Filing of petition — notice and hearing.** (1) A petition for removal of a county seat must be filed with the county clerk.

(2) The county clerk, immediately upon the filing of ~~said~~ *the* petition, ~~must cause to be printed in every newspaper published within said county, a notice to the effect that a petition praying for the removal of said county seat has been filed with the county clerk, that said petition is open to the inspection of any and all persons interested therein, and that said petition will be presented to the board of county commissioners at its next regular session for action thereon~~ *shall publish a notice as provided in 7-1-2121. The notice must state that the petition is open to inspection in the office of the county clerk.*

(3) ~~No~~ *Any* other or additional petition than the one originally filed ~~shall~~ *may not* be considered by the board."

Section 8. Section 7-2-4312, MCA, is amended to read:

"**7-2-4312. Resolution of intent by city or town — notice.** When, in the judgment of any city or town council, expressed by a resolution that is passed and adopted, it is in the best interest of the city or town and the inhabitants of any contiguous platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed that the boundaries of the city or town be extended to include the platted tracts or parcels of land or unplatted land within the corporate limits of the city or town, the city or town clerk shall:

(1) immediately notify, in writing, all registered voters in the territory to be embraced; and

(2) ~~cause~~ *publish* a notice ~~to be published in the newspaper published nearest the platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed, at least once a week for 2 successive weeks~~ *as provided in 7-1-4127.*"

Section 9. Section 7-2-4708, MCA, is amended to read:

"**7-2-4708. Notice of hearing.** ~~(1)~~ The notice of public hearing ~~shall~~ *must:*

~~(a)~~*(1)* ~~fix the date, hour, and place of the public hearing~~ *be published as provided in 7-1-4127*;

~~(b)~~*(2)* describe clearly the boundaries of the area under consideration; *and*

~~(c)~~*(3)* state that the report required in 7-2-4731 will be available in the office of the municipal official designated by the governing body at least 14 days prior to the date of the public hearing.

~~(2) Such notice will be given by publication in a newspaper having general circulation in the municipality once a week for at least 4 successive weeks prior to the date of the hearing. The date of the last publication shall not be more than 7 days preceding the date of the public hearing. If there is no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing.~~"

Section 10. Section 7-2-4805, MCA, is amended to read:

"**7-2-4805. Resolution of intent to exclude land — notice.** If ~~said~~ *the* council by resolution~~, duly and regularly passed and adopted, shall find~~ *finds* that ~~said~~ *the* petition is signed by the requisite number of qualified electors of ~~said~~ *the* city or town or by the owners of not less than three-fourths in value of the territory to be excluded, that the territory petitioned to be excluded is within the corporate limits and on the border ~~thereof~~ *of the corporate limits*, and that the granting of ~~said~~ *the* petition ~~will be to~~ *is in* the best interest of ~~such~~ *the* city or town and the inhabitants ~~thereof~~ and will not materially mar the symmetry of ~~such~~ *the* city or town, the city or town clerk ~~of such city or town~~ shall ~~forthwith cause~~ *publish* a notice ~~to be published in the newspaper nearest such territory petitioned to be excluded, at least once a week for 2 successive weeks~~ *as provided in 7-1-4127.*"

Section 11. Section 7-3-604, MCA, is amended to read:

"**7-3-604. Meeting agenda.** An agenda of the town meeting and a list of all elective and appointive offices to be filled ~~shall~~ *must* be prepared by the town ~~chairman~~ *presiding officer*, who shall ~~post~~ *publish the* notice ~~at least 2 weeks prior to the convening of all annual and special town meetings~~ *as provided in 7-1-4127.* Upon written petition of at least 10% of the qualified electors of the town but not less than 10 qualified electors, the town ~~chairman~~ *presiding officer* shall insert a particular item or items in the agenda for the next annual or special town meeting. The town meeting agenda may include an item entitled "other business" under which any matter may be considered by the town meeting, except ~~no~~ *any* matter dealing with finance or taxation ~~shall~~ *may not* be considered under "other business"."

Section 12. Section 7-5-2502, MCA, is amended to read:

"**7-5-2502. Vacation of portion of village or townsite.** (1) When only a portion of any village or townsite in any unincorporated village or town is sought to be vacated or excluded ~~therefrom~~ *from the village or townsite* and ~~said~~ *the* portion is not less than three blocks in area and is situated at the limits or boundaries of ~~said~~ *the* village or townsite, a verified petition may be filed in the office of the clerk of the district court of the county where ~~said~~ *the* village or townsite is situated by the owner or owners of all the property sought to be vacated or excluded. The petition ~~shall~~ *must* be addressed to the district court of the county, setting forth the description of the portion sought to be excluded and the reason or reasons for desiring ~~such~~ *the* portion to be excluded. A citation ~~shall thereupon~~ *must* be issued by the judge of the court before whom ~~said~~ *the* matter is pending, citing all persons interested in ~~said~~ *the* matter to appear before ~~said~~ *the* court at a time and place specified in ~~said~~ *the* citation, but at a time not less than 3 weeks from the date of ~~said~~ *the* citation. The citation ~~shall~~ *must* be published ~~in a newspaper of regular circulation in the county or, if no such newspaper is in said county, then in such a newspaper located in an adjoining county of the state. The~~

~~citation shall be published once a week for 2 successive weeks before the date of said hearing~~ *as provided in 7-1-2121.*

(2) Upon the hearing of ~~said~~ *the* petition and upon conditions that may seem reasonable, the court may vacate and exclude the portion of ~~said~~ *the* village or townsite as ~~prayed for~~ *requested* in ~~said~~ *the* petition, including any streets, alleys, parks, or boulevards upon which ~~no~~ *a* public easement or easements ~~shall~~ *may not* vest. ~~Such~~ *The* excluded property ~~shall~~ *must* be described by metes and bounds in the decree of the court, and ~~said~~ *the* property ~~shall~~ *must* be assessed accordingly."

Section 13. Section 7-5-4202, MCA, is amended to read:

"**7-5-4202. Incorporation of technical codes by reference.** (1) The governing body of an incorporated city or town may adopt technical building, zoning, health, electrical, fire, and plumbing codes in whole or in part by reference.

(2) ~~At least 15 days prior to final action by a governing body of the city or town,~~ *The* notice of intent to adopt a technical code in whole or in part by reference ~~shall~~ *must* be published ~~in a newspaper of general circulation in the city or town~~ *as provided in 7-1-4127.* A copy of the code or part to be adopted ~~shall~~ *must* be filed with the clerk of the city or town for inspection by the public.

(3) If a technical code or part of a code is adopted by reference, a record in "The Ordinance Book" may be made by recording the ordinance without setting forth the provisions of the code or part of a code adopted."

Section 14. Section 7-5-4302, MCA, is amended to read:

"**7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts.** (1) Except as provided in 7-5-4303 or 7-5-4310, all contracts for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, equipment, or materials or supplies of any kind in excess of $20,000 or for construction, repair, or maintenance in excess of $25,000 must be let to the lowest responsible bidder after advertisement for bids.

(2) The advertisement must be ~~made in the official newspaper of the city or town if there is an official newspaper, and if not, it must be made in a daily newspaper of general circulation published in the city or town if there is a newspaper. If there is no newspaper, the advertisement must be made by posting in three of the most public places in the city or town. The advertisement, if by publication in a newspaper, must be made once each week for 2 consecutive weeks~~ *published as provided in 7-1-4127*, and the second publication must be made not less than 5 days or more than 12 days before the consideration of bids. If the advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of the advertisement and the day set for considering bids.

(3) The council may postpone action on any contract until the next regular meeting after bids are received in response to the advertisement and may reject any bids and readvertise as provided in this section."

Section 15. Section 7-6-2316, MCA, is amended to read:

"**7-6-2316. Notice of hearing on county proposed budget — exception.** (1) The board of county commissioners shall ~~cause~~ *publish* a notice ~~to be published~~ stating that:

(a) the board has completed its county proposed budget for the current fiscal year;

(b) the budget is open to inspection in the office of the county clerk and recorder;

(c) the board will meet to fix the final budget and make appropriations, stating the date, time, and place of the meeting; and

(d) any taxpayer or resident of the county may appear and be heard for or against any part of the budget.

(2) The notice must be published ~~two times, once each week, in a newspaper of general circulation in the county~~ *as provided in 7-1-2121.*

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 16. Section 7-6-2320, MCA, is amended to read:

"7-6-2320. Final budget — approval, adoption, and amendment — exception. (1) The budget as finally determined, in addition to setting out separately each item for which an appropriation or expenditure is authorized and the fund out of which it is to be paid, must set out:

(a) the total amount appropriated and authorized to be spent from each fund;

(b) the cash balance in the fund at the close of the preceding fiscal year;

(c) the amount estimated to accrue to the fund from sources other than taxation;

(d) the reserve for the next fiscal year; and

(e) the amount necessary to be raised for each fund by tax levy during the current fiscal year.

(2) The board shall then by resolution approve and adopt the budget as finally determined and enter the budget at length in the official minutes of the board.

(3) (a) Subject to compliance with the procedures set forth in subsection (4), the board may approve and adopt a resolution amending a final budget when:

(i) shortfalls in anticipated and budgeted revenues occur that, unless reductions in appropriations are made, will result in expenditures for the year exceeding actual revenues and cash balances available for the year; or

(ii) savings result from unanticipated adjustments in projected expenditures.

(b) Amended appropriations must be classified as:

(i) salaries and wages;

(ii) maintenance and operation;

(iii) capital outlay;

(iv) interest and debt redemption; or

(v) miscellaneous.

(4) Prior to amending a final budget, the board shall:

(a) hold a public hearing on the proposed amendments at least 7 days prior to a vote on the resolution amending the budget; and

(b) publish notice~~, at least once, in a newspaper of general circulation in the county at least 6 but not more than 16 days~~ *as provided in 7-1-2121* before the hearing on the budget amendments. The published notice must specify the date, time, place, and subject of the hearing.

(5) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 17. Section 7-8-101, MCA, is amended to read:

"**7-8-101. Authorization to transfer property between certain governmental entities.** (1) A county, upon first passing a resolution of intent to do so and upon giving notice of ~~such~~ intent by publication as provided in 7-1-2121, ~~shall have power to~~ *may* sell or trade to any city, town, or political subdivision, as the interests of its inhabitants require, any property, however held or acquired, ~~which~~ *that* is not necessary for the conduct of the county business~~,~~ without an ordinance, public notice, public auction, bids, or appraisal. Proceeds, if any, ~~shall~~ *must* be distributed according to law. ~~Such~~ *The* transactions ~~shall~~ *must* be made by resolution of the county commissioners involved and entered in the minutes of the regular or special meetings.

(2) A city or town, upon first passing a resolution of intent to do so and upon giving notice of ~~such~~ *the* intent by publication ~~once a week for 3 weeks in a newspaper published in such city or town or county in which located~~ *as provided in 7-1-4127*, ~~shall have power to~~ *may* sell or trade to any county or political subdivision, as the interests of its inhabitants require, any property, however held or acquired, ~~which~~ *that* is not necessary for the conduct of the city or town business~~,~~ without an ordinance, public notice, public auction, bids, or appraisal. Proceeds, if any, ~~shall~~ *must* be distributed according to law. ~~Such~~ *The* transactions ~~shall~~ *must* be made by resolution of the councils or commissions involved and entered in the minutes of the regular or special meetings.

(3) (a) A county ~~shall have power to~~ *may* trade with or purchase from any city, town, or political subdivision ~~such~~ *any* property without an appraisal of the property traded or purchased.

(b) A city or town ~~shall have power to~~ *may* trade with or purchase from any county or political subdivision ~~such~~ *any* property without an appraisal of the property traded or purchased."

Section 18. Section 7-8-2217, MCA, is amended to read:

"**7-8-2217. Procedure for sale of property of lesser value.** (1) If the property to be sold is ~~reasonably of a value of~~ *valued at* less than $2,500, ~~sale thereof~~ *it* may be ~~had~~ *sold* at either *a* public or private sale~~,~~ as ~~in the discretion of~~ the board of county commissioners ~~may appear~~ *determines* to be to the best interests of the county.

(2) If ~~it be~~ *the property is sold* at public sale, notice ~~shall~~ *must* be given ~~by posting in five public places in the county at least 5 days before the date of sale~~ *as provided in 7-1-2121*."

Section 19. Section 7-8-2302, MCA, is amended to read:

"**7-8-2302. Notice of disposal of tax-deed lands.** (1) Notice of the sale, donation, or retention of tax-deed lands provided for in 7-8-2301 must be given by publication as provided in 7-1-2121 ~~and must also be posted in at least three public places in the county~~.

(2) The ~~posted and published~~ notice must be signed by the county clerk~~,~~ and ~~the published notice~~ must include a list of all lands to be sold, donated, or retained, the fair market value of the lands as determined and fixed by the department of revenue, and the time and place of sale, donation, or retention. If the land is to be sold, the sales price as determined under 7-8-2301 must be stated in the published notice of sale."

Section 20. Section 7-12-1112, MCA, is amended to read:

"7-12-1112. Resolution of intention to create or expand district — notice. (1) Before creating or expanding a district, the governing body shall pass a resolution of intention to do so, designating the boundaries ~~thereof~~ *of the district*.

(2) Notice of passage of the resolution must be published ~~for 5 days in a daily newspaper or in one issue of a weekly paper published in the municipality or county or, in case no newspaper is published in the municipality or county, then by posting for 5 days in three public places in the municipality or county~~ *as provided in 7-1-2121*. A copy of the notice ~~shall~~ *must* be mailed to every owner of real property within the proposed district or within the proposed area of expansion listed on the last completed assessment roll for state, county, and school district taxes, at the owner's last-known address, on the same day the notice is first published or posted.

(3) The notice must describe the general purpose of the district or the general reason for the expansion and designate the time when and the place where the governing body will hear and pass upon all protests that may be made against the creation of the district or the expansion of the existing district. The notice ~~shall~~ *must* refer to the resolution on file with the governing body or clerk, if any, for the description of the boundaries.

(4) The resolution to expand a district deals only with the question of the expanded area, and the existing district does not have to be reestablished."

Section 21. Section 7-12-2132, MCA, is amended to read:

"7-12-2132. Advertising for bids. A notice inviting proposals and referring to specifications on file with the engineer selected ~~as hereinbefore provided shall~~ *must* be published ~~at least twice in a daily, semiweekly, or weekly newspaper published and circulated nearest to the boundaries of the proposed improvement district. The paper shall be designated by the board of county commissioners for that purpose. A copy of said notice shall be posted in at least three public places within the boundaries of the proposed district~~ *as provided in 7-1-2121*."

Section 22. Section 7-12-4141, MCA, is amended to read:

"7-12-4141. Bid for work — exception. (1) Except as provided in subsection (4), the city council may call for bids or proposals for several kinds and types of materials for the improvements proposed to be made under this part and part 42, reserving the right to select the kind or type of material to be used in making the improvements after the bids or proposals have been opened, examined, and declared.

(2) Notice inviting proposals and referring to the specifications on file must be published ~~at least twice in a daily, semiweekly, or weekly newspaper published and circulated in the city and designated by the council for that purpose, and in case there is no newspaper published in the city, then it must be posted in at least three public places~~ *as provided in 7-1-4127*.

(3) The time fixed for the opening of bids may not be less than 5 days or more than 12 days from the time of the final publication of the notice. If the advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of the advertisement and the day set for opening bids. The proposals or bids offered must be accompanied by bid security as provided for in Title 18, chapter 1, part 2. The proposals or bids must be delivered to the clerk of the city council.

(4) If the proposed improvement is the conversion of overhead utilities to an underground location, the work must be performed by the public utility responsible for the cost and feasibility report required under 69-4-313."

Section 23. Section 7-12-4177, MCA, is amended to read:

"**7-12-4177. Notice of resolution for tax levy — protest and hearing.** (1) A notice signed by the city clerk, stating that the resolution levying the special assessment to defray the cost of ~~such~~ *the* improvements is on file in ~~his~~ *the city clerk's* office and subject to inspection, ~~for a period of 10 days, shall~~ *must* be:

(a) published ~~at least once in a newspaper published in the city or town~~ *as provided in 7-1-4127*;

(b) mailed to the owner of each lot, tract, or parcel of land to be assessed. ~~(such~~ *The* lands must be identified and the mailing address determined from the last completed assessment roll for state, county, and school district taxes~~); and~~.

(c) mailed to ~~such~~ *all* other persons known to the clerk to have an ownership interest in the property.

(2) ~~Such~~ *The* notice ~~shall~~ *must* state the time and place at which objections to the final adoption of ~~such~~ *the* resolution will be heard by the council. The time for ~~such~~ *the* hearing ~~shall~~ *may* not be less than 10 days after the *final* publication and mailing of ~~such~~ *the* notice."

Section 24. Section 7-12-4254, MCA, is amended to read:

"**7-12-4254. Hearing on petition — notice.** (1) Upon the filing of ~~said~~ *the* petition, the district court or any *district court* judge ~~thereof~~ shall fix the time for *the* hearing on ~~said~~ *the* petition, which ~~shall~~ *may* not be less than 15 days from the date of filing the petition in ~~said~~ *the* court.

(2) The district court or any *district court* judge ~~thereof~~ shall order the clerk of the court to give notice of the filing of ~~said~~ *the* petition ~~and the date of hearing thereon by publication at least once a week for 2 calendar weeks in a newspaper published or of general circulation in the county where the city or town is situated and also by posting a written or printed copy thereof in at least three public places in each voting precinct of said city or town, the~~ *as provided in 7-1-2121. The* date of *the* first publication ~~and posting to be~~ *may* not *be* less than 15 days prior to the date fixed for hearing."

Section 25. Section 7-12-4303, MCA, is amended to read:

"**7-12-4303. Notice of resolution of intent to create lighting district.** (1) Upon having passed the resolution required by 7-12-4302, the council shall give notice of the passage of the resolution of intention. The notice of the passage of the resolution must be published ~~for 5 days in a daily newspaper or in one issue of a weekly newspaper in the city or town or, in case no newspaper is published in the city or town, then by posting for 5 days in three public places in the city or town~~ *as provided in 7-1-4127.* A copy of the notice must be mailed to every person, firm, or corporation having property within the proposed district, as listed on the current property tax record, at the property owner's address as the address is listed on the current property tax record, on the same day that the notice is first published or posted.

(2) The notice must describe the general character of the improvement proposed to be made, state the estimated cost of the improvement and the estimated cost of maintaining the lights and supplying the electrical current for the improvement and lights within the district for the first year, and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of the improvement or the creation of the district. The notice must refer to the resolution on file in the office of the city clerk for a description of the boundaries."

Section 26. Section 7-12-4329, MCA, is amended to read:

"**7-12-4329. Notice of resolution for assessment of installation costs — hearing on resolution.** (1) A notice, signed by the city clerk, stating that the resolution levying the assessment to defray the portion of the cost of installing and maintaining ~~said~~ *the* lights and supplying electrical current ~~therefor~~ for the first year as determined by the city or town council is on file in ~~his~~ *the city clerk's* office subject to inspection ~~for a period of 5 days shall~~, *must* be published ~~at least once in a newspaper published in the city~~ *as provided in 7-1-4127.*

(2) ~~Such~~ *The* notice ~~shall~~ *must* state the time and place at which objections to the final adoption of ~~such~~ *the* resolution ~~shall~~ *will* be heard by the council. The time for ~~such~~ *the* hearing ~~shall~~ *may* not be less than 5 days after the *final* publication of ~~such~~ *the* notice."

Section 27. Section 7-12-4406, MCA, is amended to read:

"**7-12-4406. Notice of ordinance for improvements.** The city or town clerk must give notice of the introduction of ~~such~~ *the* proposed ordinance and of the time it will be up for final adoption~~:~~

~~(1) by publication three times in a daily newspaper or in a weekly newspaper for two successive issues in such city or town; or~~

~~(2) if there be no such newspaper, then by posting for at least 10 days in three public places in each of the wards of said city or town~~. *The notice must be published as provided in 7-1-4127.*"

Section 28. Section 7-12-4426, MCA, is amended to read:

"**7-12-4426. Notice of resolution for assessment.** (1) A notice, signed by the city clerk, stating that the resolution levying a special assessment or changing the method of assessment to defray the cost of maintenance in the district or districts is on file in the city clerk's office and subject to inspection ~~for a period of 5 days~~, must be published ~~at least once in a newspaper published in the city or town~~ *as provided in 7-1-4127.*

(2) The notice must state the time and place at which objections to the final adoption of the resolution will be heard by the council and must contain a statement setting out the method of assessment being proposed for adoption or the change in the method of assessment that is being proposed for adoption. The time for the hearing must be ~~not less than~~ *at least* 5 days after the *final* publication of the notice."

Section 29. Section 7-12-4502, MCA, is amended to read:

"**7-12-4502. Notice of intention to abandon district.** (1) After the passage of the resolution provided for in 7-12-4501, the city or town clerk shall ~~give~~ *publish a* notice *as provided in 7-1-4127* of ~~such~~ *the* intention to abandon ~~by one publication in a newspaper published in such city or town at least 10 days prior to the passage of a resolution abandoning the same. In case there is no publication of a newspaper in such city or town, then notice shall be given by the posting of a notice of such intention to abandon in three places within such district to be abandoned~~.

(2) ~~Said~~ *The* notice ~~shall~~ *must* specify the boundaries of ~~such~~ *the* district to be abandoned, the date of the passage of the resolution of intention to abandon, and the date set for the passage of the resolution of abandonment and that unless 40% of the owners in the district file written protest with the clerk of ~~such~~ *the* city or town before the passage of the resolution, ~~the same~~ *it* will be passed. ~~Said~~ *The* notice ~~shall~~ *must* also set forth, when applicable, that it ~~shall be~~ *is* the duty of the owners of the property abutting on the street parking district involved to maintain the ~~same~~ *property* after ~~such~~ *the* abandonment."

Section 30. Section 7-12-4603, MCA, is amended to read:

"**7-12-4603. Notice of resolution of intent to create a fire hydrant maintenance district.** (1) Upon passing the resolution required by 7-12-4602, the council shall ~~give~~ *publish a* notice of ~~such~~ *the* passage~~. The notice must be published for 5 days in a daily newspaper or, if there is no daily newspaper, in one issue of a weekly newspaper in the city or town. If no newspaper is published in the city or town, notice must be given by posting the notice for 5 days in three public places in the city or town~~ *as provided in 7-1-4127*. A copy of the notice must be mailed to the last-known address of every person, firm, or corporation having property within the proposed district on the same day the notice is first published or posted.

(2) The notice must describe the general character of the proposed improvement, state the estimated cost of the improvement and the cost of maintaining the hydrants within the district for the first year, and designate the time when and place where the council will hear and pass upon all protests against the establishment of the improvement or the creation of the district. The notice must refer to the resolution on file in the office of the city clerk for a description of the boundaries."

Section 31. Section 7-13-107, MCA, is amended to read:

"**7-13-107. Notice of resolution of intention upon concurrence — hearing.** (1) If the city or town council concurs in the resolution of the board of county commissioners, the board ~~must~~ *shall* give notice of the passage of its resolution of intention and of the concurrence ~~therein~~ *in the resolution* by the city or town council.

(2) The notice must be published ~~for 10 consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created. The board shall also cause a copy of such notice to be posted in three public places within the boundaries of such special improvement district~~ *as provided in 7-1-2121*. A copy of ~~such~~ *the* notice ~~shall~~ *must* be mailed to every person, firm, or corporation or the agent of ~~such~~ *the* person, firm, or corporation owning property within the proposed district, at ~~his~~ *the* ~~last known~~ *last-known* place of residence, ~~upon~~ *on* the same day ~~such~~ *the* notice is first published ~~or posted~~.

(3) ~~Such~~ *The* notice must describe the general character of the improvement or improvements ~~so~~ proposed to be made, state the estimated cost ~~thereof~~, and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of ~~such~~ *the* improvements or the creation of ~~such~~ *the* district. The notice ~~shall~~ *must* refer to the resolution on file in the office of the county clerk for the description of the boundaries."

Section 32. Section 7-13-114, MCA, is amended to read:

"**7-13-114. Applicable provisions of laws relating to rural improvement districts.** The provisions of 7-12-2101, ~~7-12-2106,~~ 7-12-2107, 7-12-2110, 7-12-2115 through 7-12-2120, 7-12-2131 through 7-12-2140, 7-12-2153, 7-12-2154, 7-12-2161 through 7-12-2165, 7-12-2166(2), 7-12-2168(2), and 7-12-2169 and 7-12-2171 through 7-12-2174 pertaining to rural improvement districts ~~shall likewise~~ apply under the provisions of this part unless in conflict with the provisions of this part."

Section 33. Section 7-13-126, MCA, is amended to read:

"**7-13-126. Notice of resolution to assess and levy tax for making improvements — protest.** (1) A notice, signed by the county clerk and stating that the resolution levying a special assessment to defray the cost of making ~~such~~ *the* improvements is on file in the office of the county clerk and is subject to inspection, ~~shall~~ *must* be published ~~in at least one publication in a newspaper published nearest to where the special improvement is to be made~~ *as provided in 7-1-2121.*

(2) ~~Such~~ *The* notice ~~shall~~ *must* state the time and place in which objections to the final adoption of ~~such~~ *the* resolution will be heard by the board of county commissioners."

Section 34. Section 7-13-127, MCA, is amended to read:

"**7-13-127. Hearing on protest.** (1) The time for the hearing on protest ~~shall~~ *must* be not less than 5 days after the *final* publication of the notice required by 7-13-126.

(2) At the time ~~so~~ fixed *for the hearing*, the board of county commissioners shall meet and hear all ~~such~~ objections and for that purpose may adjourn from day to day. The board may by resolution modify ~~such~~ *the* assessment in whole or in part. A copy of ~~such~~ *the* resolution, certified by the county clerk, must be delivered to the county treasurer *within* 2 days after its passage."

Section 35. Section 7-13-145, MCA, is amended to read:

"**7-13-145. Hearing and notice on tax levy for operation and maintenance.** (1) Not less than 30 days prior to the date of making the levy for operation and maintenance of the system, the county commissioners ~~will~~ *shall* hold a public hearing on the resolution.

(2) Notice clearly setting forth the subject matter of the hearing must be given by the commissioners by publication as provided in 7-1-2121~~, and notice must also be posted in three public places within the district~~."

Section 36. Section 7-13-208, MCA, is amended to read:

"**7-13-208. Notice of resolutions of intention and concurrence — hearing.** (1) The commissioners ~~must~~ *shall* give notice of the passage of the resolution of intention and resolution of concurrence, if applicable, and a notice describing the general characteristics of the collection system and proposed fees to be charged for the service, designating the time and place where the commissioners will hear and pass upon protests made against the operation of the proposed district and stating that a description of the boundaries for the proposed district is included in the resolution on file in the county clerk's office.

(2) The notice ~~shall~~ *must* be published as provided in 7-1-2121 ~~and shall also be posted in three public places within the boundaries of the proposed district~~.

(3) A copy of the notice ~~shall~~ *must* be mailed as provided in 7-1-2122 to every person, firm, or corporation having real property within the proposed district listed upon the last completed assessment list for county taxes the same day the notice is first published."

Section 37. Section 7-13-232, MCA, is amended to read:

"**7-13-232. Determination of service charge.** (1) The board may establish, by resolution, rates for service charges, which may not be less than the actual cost of providing services. For solid waste management districts other than joint districts, the rates ~~must be~~ *are* subject to the approval of the county commissioners.

(2) Service charges may take into account:

(a) the character, kind, and quality of service; and

(b) the cost of providing the service, including but not limited to depreciation and the payment of principal and interest on money borrowed by the district for the acquisition and improvement of facilities and equipment.

(3) (a) Service charges may be assessed per family residential unit or based on:

(i) the size of a vehicle used to dispose of the waste;

(ii) the volume or weight of the waste; or

(iii) the cost, incentives, or penalties applicable to waste management practices.

(b) The service charge assessed to a family residential unit in which a home-based business is operated may not exceed the service charge assessed to a family residential unit without a home-based business unless there is a finding by the solid waste management district or joint district that the family residential unit with a home-based business is generating at least 20% more waste than the average for family residential units in the district that do not contain home-based businesses.

(4) The initial rate for any solid waste management district or joint district may not exceed the rate provided in the resolution creating the district.

(5) Fees for mobile home park accounts must be paid by the registered owner of each mobile home in the mobile home park.

(6) A notice of intention to enact a resolution to increase rates must be published as provided in ~~7-1-4128~~ *7-1-4127*, and the district shall hold a public hearing prior to the meeting at which the resolution is considered."

Section 38. Section 7-13-3005, MCA, is amended to read:

"**7-13-3005. Notice of resolution of intention upon concurrence — hearing.** (1) The governing body shall give notice of the passage of its resolution of intention to create the district.

(2) The notice must be published ~~for 10 consecutive days in a daily newspaper published nearest to the place where the district is to be created. The governing body shall also cause a copy of the notice to be posted in three public places within the boundaries of the district~~ *as provided in 7-1-2121*. A copy of the notice must be mailed to every person, firm, or corporation or the agent of the person, firm, or corporation owning property within the proposed district, at ~~his~~ *the* last-known place of residence, ~~upon~~ *on* the same day the notice is first published or posted.

(3) The notice must describe the general character of the improvement or improvements proposed to be made, state the estimated cost, and designate the time when and the place where the governing body will hear and pass upon all protests that may be made against the making or maintenance of the improvements or the creation of the district. The notice must refer to the resolution on file in the office of the local government clerk for the description of the boundaries."

Section 39. Section 7-13-3021, MCA, is amended to read:

"**7-13-3021. Notice of resolution to assess and levy tax for making improvements — protest.** (1) A notice, signed by the local government clerk and stating that the resolution levying a special assessment to defray the cost of making the improvements is on file in the office of the clerk and is subject to inspection, must be published ~~at least once in a newspaper published nearest to where the special improvement is to be made~~ *as provided in 7-1-2121.*

(2) The notice must state the time and place in which objections to the final adoption of the resolution will be heard by the governing body."

Section 40. Section 7-13-3023, MCA, is amended to read:

"**7-13-3023. Hearing on protest.** (1) The time for the hearing on protest must be not less than 5 days after the *final* publication of the notice required by 7-13-126.

(2) At the time fixed *for the hearing*, the governing body shall meet and hear all objections and for that purpose may adjourn from day to day. The governing body may by resolution modify the assessment in whole or in part. A copy of the resolution, certified by the clerk of the local government, must be delivered to the local government treasurer within 2 days after its passage."

Section 41. Section 7-13-3028, MCA, is amended to read:

"**7-13-3028. Hearing and notice on tax levy for operation and maintenance.** (1) Not less than 30 days prior to the date of making the levy for operation and maintenance of the system, the governing body shall hold a public hearing on the resolution.

(2) Notice clearly setting forth the subject matter of the hearing must be given by the governing body by publication as provided in 7-1-2121~~, and notice must also be posted in three public places within the district~~."

Section 42. Section 7-13-3043, MCA, is amended to read:

"**7-13-3043. Applicable provisions of laws relating to rural improvement districts.** The provisions of 7-12-2101, ~~7-12-2106,~~ 7-12-2107, 7-12-2110, 7-12-2115 through 7-12-2120, 7-12-2131 through 7-12-2140, 7-12-2153, 7-12-2154, 7-12-2161 through 7-12-2165, 7-12-2166(2), 7-12-2168(2), 7-12-2169, and 7-12-2171 through 7-12-2174 pertaining to rural improvement districts apply to this part unless in conflict with the provisions of this part."

Section 43. Section 7-13-4507, MCA, is amended to read:

"**7-13-4507. Notice of resolutions of intention and concurrence.** (1) The commissioners shall give notice of the passage of the resolution of intention and resolution of concurrence, if applicable, and publish a notice that:

(a) describes the local water quality program that would be implemented in the local water quality district;

(b) specifies the initial proposed fees to be charged;

(c) designates the time and place where the commissioners will hear and decide upon protests made against the operation of the proposed district; and

(d) states that a description of the boundaries for the proposed district is included in the resolution on file in the county clerk's office.

(2) The notice must be published as provided in 7-1-2121 ~~and must also be posted in three public places within the boundaries of the proposed district~~.

(3) The commissioners shall mail to all owners of proposed fee-assessed units, as listed in the property tax record maintained by the department of revenue, a postcard that identifies the location where the resolution of intention, resolution of concurrence, and protest forms may be obtained."

Section 44. Section 7-14-208, MCA, is amended to read:

"**7-14-208. Notice of hearing.** (1) A notice of the public hearing required by 7-14-207 must be published ~~in a newspaper having general circulation within the proposed transportation district or addition to the district once each week for at least 2 weeks, the last publication to be at least 2 weeks prior to the hearing. If there is not a newspaper having general circulation within the proposed district or addition, the notice of public hearing must be posted in at least three public places within the proposed district for 2 weeks prior to the hearing~~ *as provided in 7-1-2121.*

(2) The notice must state the time, date, place, and purpose of the hearing and describe the boundaries of the proposed district or addition."

Section 45. Section 7-14-244, MCA, is amended to read:

"**7-14-244. Notice of hearing on question of dissolution of district.** (1) A notice of the hearing required by 7-14-243(2)(a) ~~shall~~ *must* be published ~~in a newspaper having general circulation in the transportation district once each week for at least 2 weeks, the last publication to be at least 2 weeks before the hearing. If there is no newspaper having general circulation in the district, the notice of the hearing shall be posted in at least three public places in the district for 2 weeks before the hearing~~ *as provided in 7-1-2121.*

(2) The notice ~~shall~~ *must* state the time, date, place, and purpose of the hearing."

Section 46. Section 7-14-1102, MCA, is amended to read:

"**7-14-1102. Regional port authority.** (1) Two or more local governments may by joint resolution create a public body, corporate and politic, to be known as a regional port authority. The resolution creating a regional port authority must create a board of not less than five commissioners. The number to be appointed, their term, and their compensation, if any, must be provided for in the resolution. Each ~~such~~ regional port authority shall organize, select officers for terms to be fixed by agreement, and adopt and amend from time to time rules for its own procedure.

(2) A regional port authority may be increased from time to time to serve one or more additional counties or municipalities if each additional local government, each of the local governments then included in the regional authority, and the commissioners of the regional authority, respectively, adopt a joint resolution consenting ~~thereto~~ *to the increase*. However, if a local port authority for any local government seeking to be included in the regional authority is then in existence, the commissioners of the local authority must consent to the inclusion of the county or municipality in the regional authority; upon the inclusion of ~~such~~ *the* local government in the regional authority, all rights, contracts, obligations, and real and personal property of the local authority must be in the name of and vest in the regional authority.

(3) A regional port authority may be decreased if each of the local governments then included in the regional authority and the commissioners of the regional authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities.

(4) A county or municipality may not adopt any resolution authorized by this section without a public hearing ~~thereon~~. Notice must be given ~~at least 10 days prior to the hearing in a newspaper published in the county or municipality or, if there is no newspaper published therein, in a newspaper having general circulation in the county or municipality~~ *as provided in 7-1-2121*.

(5) For the purpose of this part, a regional port authority has the same powers as all other political subdivisions in the adoption and enforcement of comprehensive port zoning regulations, as provided by the laws of this state."

Section 47. Section 7-14-2403, MCA, is amended to read:

"**7-14-2403. Advertisement for bids.** Before any contract authorized by 7-14-2402 ~~shall be~~ *is* let, the board shall advertise for bids ~~at least once a week for 2 consecutive weeks in a newspaper of general circulation in the county~~ *as provided in 7-1-2121*."

Section 48. Section 7-14-2616, MCA, is amended to read:

"**7-14-2616. Procedure to discontinue street.** (1) The county commissioners may discontinue a street or alley or any part ~~thereof~~ *of a street or alley* in an unincorporated town or townsite upon the petition in writing of all owners of lots on the street or alley if it can be done without detriment to the public interest.

(2) Where the street or alley is to be closed for school purposes, a petition signed by 75% of the lot owners on the whole street or alley to be closed ~~will be~~ *is* required.

(3) Before acting upon ~~such~~ *the* petition, a notice must be published ~~or posted in three public places~~ *as provided in 7-1-2121*, stating when ~~such~~ *the* petition will be acted on and what street or alley or part ~~thereof~~ *of a street or alley* is asked to be vacated. ~~Such notice must be published in a newspaper or posted at least 1 week before the petition is acted on.~~"

Section 49. Section 7-14-2822, MCA, is amended to read:

"**7-14-2822. Notice of application to operate ferry.** Every applicant for authority to erect and take tolls on a public ferry must publish notice *as provided in 7-1-2121,* specifying the location and the time when and place where the application will be made~~:~~.

~~(1)~~ *Publication must be made* in at least one newspaper in each county in which the ferry is or touches or, if there is no newspaper published ~~therein~~ *in the county,* then in one published in an adjoining county~~; and~~

~~(2) by posting three notices in three public places in the township for 4 successive weeks~~."

Section 50. Section 7-14-2902, MCA, is amended to read:

"**7-14-2902. Creation of road improvement district — resolutions — hearing.** (1) The board of county commissioners may establish a road improvement district upon petition of at least 60% of the landowners in the proposed district. The petition must:

(a) describe the boundaries of the proposed district;

(b) describe the proposed improvement;

(c) estimate the total cost of the improvement and suggest the method of making landowner assessments;

(d) if the improvement is a service, such as snowplowing, estimate the length of time the service is to be provided; and

(e) describe the manner of providing the improvement, such as through contract with a private party or local government.

(2) To establish a road improvement district, the board shall:

(a) pass a resolution of intent to form the district. The notice of intent to form the district must:

~~(i) be posted at three places within the proposed district;~~

~~(ii)~~*(i)* be published as provided in 7-1-2121;

~~(iii)~~*(ii)* be mailed as provided in 7-1-2122 to every person, firm, or corporation or to the agent of the person, firm, or corporation owning real property within the proposed district listed in the name of the person, firm, or corporation upon the last completed assessment roll for state, county, and school district taxes; and

~~(iv)~~*(iii)* specify the method or methods by which the costs of the improvements are assessed against property in the district~~;~~.

(b) (i) hold a public hearing no earlier than 30 days or later than 90 days after passage of the resolution of intent;

(ii) accept written protests at the hearing from property owners of the proposed district; and

(iii) receive general protests and comments at the hearing relating to the establishment of the road improvement district and its boundaries, service levels, or any other matter relating to the proposed district; and

(c) pass a resolution creating the road improvement district. The district is created effective 60 days after passage of the resolution unless by that date the owners of property in the district to be assessed for more than 50% of the cost of the proposed work, in accordance with the method or methods of assessment described in the resolution of intention, protest its creation.

(3) Based on testimony received in the public hearing, the board in the resolution creating the road improvement district may establish different boundaries or change the manner in which the area will provide services to its residents. The board may change district boundaries only if all landowners affected by the change were given written notice of the public hearing as provided in subsection ~~(2)(a)(iii)~~ *(2)(a)(i).*

(4) The board of county commissioners may alter the boundaries or dissolve a road improvement district, using the same procedures required for the creation of a road improvement district. Any existing indebtedness of a road improvement district that is dissolved remains the responsibility of the owners of benefited property within the district, and any assets remaining after all indebtedness has been satisfied must be returned to the owners of property within the district."

Section 51. Section 7-14-4114, MCA, is amended to read:

"7-14-4114. Procedure to discontinue streets. (1) The council may discontinue a street or alley or any part ~~thereof~~ *of a street or alley* in a city or town, if it can be done without detriment to the public interest, upon:

(a) a petition in writing of all owners of lots on the street or alley; or

(b) (i) a petition in writing of more than 50% of the owners of lots on the street or alley; and

(ii) approval by a majority vote of the council.

(2) Where the street or alley is to be closed for school purposes, the council may discontinue the street or alley upon a petition signed by 75% of the lot owners on the whole street or alley to be closed.

(3) Before acting upon ~~such~~ *the* petition, a notice must be published ~~or posted in three public places~~, stating when ~~such~~ *the* petition will be acted on and what street or alley or part ~~thereof~~ *of a street or alley* is asked to be vacated. ~~Such~~ *The* notice must be published ~~in a newspaper or posted at least 1 week before the petition is acted on~~ *as provided in 7-1-4127.*"

Section 52. Section 7-14-4712, MCA, is amended to read:

"7-14-4712. Procedure upon receipt of petition from all property owners within proposed district. If a petition for the formation of an improvement district under the provisions of 7-14-4711 is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lienholders, the governing body, after verifying the ownership and making a finding of the fact, shall adopt a resolution of intention to order the improvement, as provided in 7-12-4104 and 7-12-4117, and may adopt the resolution ordering the improvement pursuant to 7-14-4711 through 7-14-4723 without the publication of the resolution of intention provided for in 7-12-4106. However, if special improvement district bonds are proposed to be issued and secured by the revolving fund, the requirements of 7-12-4106, *7-12-4108* through 7-12-4114, 7-12-4169, 7-12-4189, 7-12-4222, 7-12-4223, and 7-12-4225 must be met by the governing body."

Section 53. Section 7-14-4732, MCA, is amended to read:

"7-14-4732. Procedure upon receipt of petition for creation of offstreet parking district. (1) If a petition for the formation of an improvement district for the leasing, improvement, or operation and maintenance of an offstreet parking site is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lienholders, the governing body, after verifying the ownership and making a finding of fact, shall adopt a resolution of intention to order the improvement, pursuant to the provisions of 7-12-4104 and 7-12-4117, and may adopt the resolution ordering the improvement pursuant to 7-12-4114 without the publication of the resolution of intention provided for in 7-12-4106. However, if special improvement district bonds are proposed to be issued and secured by the revolving fund, the requirements of 7-12-4106, *7-12-4108* through 7-12-4114, 7-12-4169, 7-12-4189, 7-12-4222, 7-12-4223, and 7-12-4225 must be met by the governing body.

(2) If a petition for the formation of an improvement district for offstreet parking purposes and for the leasing of sites and improvement, operation, and maintenance of sites is signed by the owners of a majority of the frontage of the property proposed to be contained within the limits of the assessment district and is presented to the governing body, the governing body shall adopt a resolution of intention ordering the proposed improvement and publish the resolution pursuant to the provisions of 7-12-4104 and 7-12-4106."

Section 54. Section 7-15-4215, MCA, is amended to read:

"**7-15-4215. Notice of hearing on urban renewal plan.** (1) The notice required by 7-15-4214(1) ~~shall~~ *must* be given by publication ~~once each week for 2 consecutive weeks, not less than 10 or more than 30 days prior to the date of the hearing, in a newspaper having a general circulation in the urban renewal area of the municipality~~ *as provided in 7-1-4127* and by mailing a notice of ~~such~~ *the* hearing, not less than 10 days prior to the date of the hearing, to the persons whose names appear on the county treasurer's tax roll as the owners, reputed owners, or purchasers under contracts for deed of the property, at the address shown on the tax roll.

(2) The notice ~~shall~~ *must* describe the time, date, place, and purpose of the hearing, ~~shall~~ generally identify the urban renewal area affected, and ~~shall~~ outline the general scope of the urban renewal plan under consideration."

Section 55. Section 7-15-4263, MCA, is amended to read:

"**7-15-4263. Procedure to dispose of property to private persons.** (1) A municipality may dispose of real property in an urban renewal area to private persons only under ~~such~~ reasonable procedures as it shall prescribe or as provided in this section.

(2) (a) A municipality shall by public notice invite proposals from and make available all pertinent information to private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area or any part ~~thereof~~ *of an urban renewal area*.

(b) ~~Such~~ *The* notice ~~shall~~ *must* be ~~by publication once each week for 3 consecutive weeks in a newspaper having a general circulation in the community~~ *published as provided in 7-1-4127* prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance ~~with respect thereto~~ under the provisions of 7-15-4262 through 7-15-4266.

(c) ~~Such~~ *The* notice ~~shall~~ *must* identify the area or portion ~~thereof~~ *of the area* and ~~shall~~ *must* state that ~~such~~ *any* further information ~~as~~ *that* is available may be obtained at ~~such~~ *the* office ~~as shall be~~ designated in ~~said~~ *the* notice.

(3) The municipality shall consider all redevelopment or rehabilitation proposals and the financial and legal ability of the persons making ~~such~~ *the* proposals to carry them out. The municipality may accept ~~such~~ *those* proposals as it ~~deems~~ *considers* to be in the public interest and in furtherance of the purposes of this part and part 43. Thereafter, the municipality may execute, in accordance with the provisions of 7-15-4262 and 7-15-4264, and deliver contracts, deeds, leases, and other instruments of transfer."

Section 56. Section 7-15-4404, MCA, is amended to read:

"**7-15-4404. Notice of hearing on petition.** The notice required by 7-15-4403 ~~shall~~ *must* be ~~given~~ *published* at the city's expense ~~by publishing a notice at least 10 days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the city and said surrounding area or, if there be no such newspaper, by posting such a notice in at least three public places within the city at least 10 days preceding the day on which the hearing is to be held~~ *as provided in 7-1-4127.*"

Section 57. Section 7-16-2442, MCA, is amended to read:

"**7-16-2442. Dissolution of county park district.** (1) A county park district may be dissolved after an election on the question of dissolving the district. The process of dissolving the district may be initiated by a petition of 25% of the electorate of the district or by a resolution of intent to dissolve the district adopted by either the county park district commission or the county governing body.

(2) Upon receipt of a petition that has been certified by the county clerk as sufficient under this section or upon the adoption of a resolution of intent, the county governing body shall call a public hearing on the question of dissolving the district and ~~cause~~ *publish a* notice of the hearing ~~to be published in the official county newspaper~~ *as provided in 7-1-2121.*

(3) At the public hearing, the county governing body shall hear testimony of interested persons regarding the dissolution of the district. After the public hearing, the county governing body may either submit the question of dissolving the district to the electorate of the district or it may call for a public hearing on the question of altering the boundaries of the district. If the county governing body calls for a public hearing on the question of altering the boundaries of the district by withdrawal of territory, it shall publish notice of the hearing ~~in the official county newspaper~~ *as provided in 7-1-2121.* The notice must state the boundaries of the area proposed to be withdrawn from the district. After hearing testimony at the hearing, the county governing body may submit the question of either dissolving the district or altering the district by withdrawal of specified territory from the district to the electorate of the district.

(4) The question must be submitted by a resolution calling for an election on either dissolving the district or altering the boundaries of the district by withdrawal of land from the district. The county governing body shall schedule the election in conjunction with any other regularly scheduled election. The election on the question must be conducted as provided in Title 13.

(5) The question of withdrawal of territory under this section must be voted on separately by the electorate of the territory to be withdrawn and the electorate of the balance of the territory of the district. The question fails unless a simple majority of those voting on the question in each of the two territories authorize altering the district boundary. If the question passes, the boundary alteration is effective the following January 1. If the question fails, the county governing body shall by resolution call for an election on the question of dissolving the district."

Section 58. Section 7-21-3305, MCA, is amended to read:

"**7-21-3305. Notice of rules and days of operation.** The rules adopted for the government of the county market, together with a notice of the market days in each week, ~~shall~~ *must* be published *as provided in 7-1-2121* by the county commissioners once in each year ~~in every newspaper printed and published in their respective counties for a period of not less than 2 successive weeks, the first publication thereof to be made not less than 2 weeks~~ prior to the opening of the ~~markets~~ *market* ~~established hereunder in each county and the future annual publications thereof to be made at such time as may be ordered by the boards of county commissioners~~."

Section 59. Section 7-22-2212, MCA, is amended to read:

"**7-22-2212. Notice of hearing.** Upon setting a date for the hearing, the governing body shall give notice of the hearing in the following manner:

(1) notice is to be sent by certified mail to each owner of land within the proposed district at the last-known address as shown in the county records; *and*

~~(2) notice is to be posted in at least three public places within the proposed district; and~~

~~(3)~~*(2)* notice is to be published as provided in 7-1-2121."

Section 60. Section 7-22-2232, MCA, is amended to read:

"**7-22-2232. Dissolution of district.** (1) Upon receipt of a petition signed by the owners of at least 51% of the land in the district and after a hearing on the petition, a district may be dissolved by order of the governing body. Notice of the hearing is to be given by ~~posting notice in at least three public places in the district and by~~ publishing notice ~~at least once in a newspaper of general circulation in the district~~ *as provided in 7-1-2121*. If the governing body finds it to be in the best interest of the district lands and residents to terminate the district, the governing body shall ~~so~~ order *the termination*.

(2) The dissolution order ~~shall~~ *must* provide for a termination date and for liquidating the district assets and liabilities. Any money remaining in the district fund after all assets and liabilities have been liquidated ~~shall~~ *must* be transferred to the county general fund."

Section 61. Section 7-22-2406, MCA, is amended to read:

"**7-22-2406. Notice of hearing on petition to create district.** (1) The commissioners shall ~~cause~~ *mail a* notice of the hearing provided for in 7-22-2403 ~~to be mailed as~~ *in the manner* provided *for* in 7-1-2122 to each nonresident owner and purchaser under contract for deed of taxable real and personal property within the proposed district.

~~(2) The commissioners shall cause notice to be posted in three public places within the district. Whenever the district is partly in one county and partly in~~

~~another county, notice must be posted in each county but posting need not be in three places in each county.~~

~~(3)~~*(2)* The commissioners shall ~~also cause~~ *publish the* notice *of the hearing,* ~~to be given of the time and place of the hearing and the methods of objection by publication~~ as provided in 7-1-2121, in each county if the district is partly in one county and partly in another county."

Section 62. Section 7-22-2408, MCA, is amended to read:

"**7-22-2408. Hearing on petition to create district.** (1) At the time fixed for ~~said~~ *the* hearing, the commissioners shall determine whether or not the petition complies with the requirements ~~hereinbefore~~ set forth *in this part* and whether or not the notice has been published ~~and~~ *or* posted as required.

(2) At ~~such~~ *the* hearing, the board ~~must~~ *shall* hear all competent and relevant testimony offered in support of or in opposition to ~~said~~ *the* petition and creation of ~~said~~ *the* district and shall also consider the written objections to the creation of the district.

(3) Except as provided in 7-22-2409, if the commissioners, upon ~~such~~ *the* hearing, determine there has been compliance with all of the requirements ~~herein set forth~~, they shall, by an order ~~duly~~ made and entered on their minutes, declare the district created, setting forth the name and boundaries of the district and the description of land contained ~~therein~~ *within the district.*"

Section 63. Section 7-22-2446, MCA, is amended to read:

"**7-22-2446. Hearing on petition for dissolution — notice.** Upon the filing of a petition for dissolution, the board of county commissioners shall set a time for hearing the petition and shall ~~cause~~ *mail a* notice ~~thereof to be mailed~~ as provided in 7-1-2122 to all nonresident property owners and purchasers under contracts for deed within the district whose addresses are known~~, to be posted in at least three public places within the district, and to be published~~ *and publish a notice* as provided in 7-1-2121. ~~Whenever the district is partly in one county and partly in another county, notice must be posted in each county, but posting need not be in three places in each county, and notice must be published in each county.~~"

Section 64. Section 7-33-2102, MCA, is amended to read:

"**7-33-2102. Notice of hearing.** The board shall, within 10 days after the receipt of the petition, give notice of the hearing ~~thereof~~ at least 10 days prior to the hearing:

(1) by mailing a copy of the notice as provided in 7-1-2122 to each freeholder in the district at the address shown in the assessment roll; *and*

~~(2) by causing notices of the time and place of such hearing to be posted in at least three of the most public places within the area proposed to be established as a fire district; and~~

~~(3)~~*(2)* by publishing the notice as provided in 7-1-2121."

Section 65. Section 7-33-2125, MCA, is amended to read:

"**7-33-2125. Annexation of adjacent territory not contained in a fire district.** (1) Adjacent territory that is not already a part of a fire district may be annexed in the following manner:

(a) A petition in writing by the owners of 50% or more of the area of privately owned lands of the adjacent area proposed to be annexed who constitute a majority of the taxpaying freeholders within ~~such~~ *the* proposed area to be annexed and whose names appear upon the last completed assessment roll ~~shall~~ *must* be presented to the board of trustees of the district for approval~~, and if~~. *If* the proposed annexation is approved by the board of trustees, the petition ~~shall~~ *must* be presented to the board of county commissioners.

(b) At the first regular meeting of the board of county commissioners after the presentation of the petition, the commissioners shall set a date to hold a hearing on ~~such~~ *the* petition. The date of the hearing may not be less than 4 weeks after the date of the presentation of the petition to the board of county commissioners. The board of county commissioners shall publish notice of the hearing ~~at least once a week for 2 successive weeks in a newspaper published within the county~~ *as provided in 7-1-2121.*

(2) On the date set for the hearing, the board of county commissioners shall consider the petition and any objections to the annexation. The board shall approve the annexation unless a protest petition signed by a majority of the landowners of the area proposed for annexation is presented at the hearing, in which case the annexation ~~shall~~ *must* be disapproved.

(3) ~~Such~~ *The* annexed territory ~~shall become~~ *is* liable for any outstanding warrant and bonded indebtedness of the original district."

Section 66. Section 7-34-2162, MCA, is amended to read:

"**7-34-2162. Hearing on petition for dissolution — notice.** Upon the filing of ~~such~~ *the* petition, the board of county commissioners shall set a time for hearing the ~~same~~ *petition* and shall ~~cause~~ *publish a* notice ~~thereof to be posted in at least three separate public places within said district for at least 2 weeks prior to the hearing. The notice shall also be published~~ *of the hearing* as provided in 7-1-2121."

Section 67. Section 7-35-2112, MCA, is amended to read:

"**7-35-2112. Notice of hearing on withdrawal.** The board shall~~, at least 30 days prior to the time so fixed,~~ publish a notice of ~~such~~ *the* hearing ~~for two issues~~ as provided ~~by law~~ *in 7-1-2121.*"

Section 68. Section 15-10-203, MCA, is amended to read:

"**15-10-203. Increase of tax revenue — advertisement of intention and public hearing required.** (1) A local taxing authority may not budget an increased amount of ad valorem tax revenue in excess of the property tax revenue of the previous fiscal year exclusive of revenue from ad valorem taxation on properties appearing for the first time on the property tax record unless it adopts a resolution to budget additional property tax revenue. Prior to adoption of the resolution, the taxing authority shall hold a public hearing for the purpose of receiving comments on its intention to budget increased property tax revenue. The taxing authority shall advertise notice of the public hearing as specified in subsection (2). The public hearing may be held in conjunction with the tentative budget hearing or any other budget hearing that may be required by law.

(2) The taxing authority shall advertise its intent to budget an increase in property tax revenue in a newspaper meeting the requirements of 7-1-4127, except that the newspaper may not be primarily in the business of publishing legal advertisements. If there is not a newspaper in the county, in addition to

being posted as required in 7-1-4127, the advertisement must be published in one or more newspapers of general circulation widely subscribed to by the residents of the county. The advertisement may not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement must meet the notice requirements of ~~7-1-4128~~ *7-1-4127*. The advertisement must be published with at least the following information:

"NOTICE OF BUDGET INCREASE FROM PROPERTY TAXES

The (name of the taxing authority) intends to budget an increase in revenue from property taxation by (percentage of increase in property tax revenue from previous fiscal year) percent.

All concerned persons are invited to attend a public hearing on budgeting the increased property tax revenue to be held on (date and time) at (meeting place).

A decision on budgeting the increased property tax revenue will be made after considering comments made at this hearing.

For further information please contact: (name, address, and phone number of person who can be contacted for further information).""

Section 69. Section 75-2-215, MCA, is amended to read:

"75-2-215. Solid or hazardous waste incineration — additional permit requirements. (1) Until the department has issued an air quality permit pursuant to 75-2-211 that includes the conditions required by this section, a person may not construct, install, alter, or use a solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406, except as provided in subsection (2).

(2) An existing or permitted solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406 is subject to the provisions of subsection (1) only if it incinerates or uses as fuel or would incinerate or use as fuel solid or hazardous waste in an amount, form, kind, or content that changes the nature, character, or composition of its emissions from its design or permitted operation.

(3) The department may not issue a permit to a facility described in subsection (1) until:

(a) the owner or operator has provided to the department's satisfaction:

(i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing emission source at the facility; and

(ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from the incineration of solid or hazardous waste or the use of hazardous waste as fuel for a boiler or industrial furnace, as proposed in the permit application or modification;

(b) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the applicant has published, in the county where the project is proposed, at least three notices, in accordance with the procedures identified in 7-1-4127~~(2) and 7-1-4128(2)~~, describing the proposed project;

(c) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the department has conducted a public hearing on an environmental review prepared pursuant to Title 75, chapter 1, and, as appropriate, provided additional opportunities for the public to review and comment on the permit application or modification;

(d) the department has reached a determination that the projected emissions and ambient concentrations will constitute a negligible risk to the public health, safety, and welfare and to the environment; and

(e) the department has issued a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, if a license or permit is required. The decision to issue, deny, or alter a permit pursuant to 75-2-211 and this section must be made within 30 days from when the department issues a license pursuant to 75-10-221 or a permit pursuant to 75-10-406 or within 90 days after the receipt of a complete application for a permit or a permit alteration under 75-2-211 and this section, whichever is later.

(4) The department shall require the application of air pollution control equipment, engineering, or other operating procedures as necessary to provide reductions of air pollutants, including hazardous air pollutants, equivalent to or more stringent than those achieved through the best available control technology.

(5) The board may by rule provide for general air quality permits under the provisions of 75-2-211 and this section. The rules must cover numerous similar classes or categories of incinerators and boilers or industrial furnaces.

(6) This section does not relieve an owner or operator of a solid or hazardous waste incinerator or a boiler or industrial furnace that is not included under subsection (1) from the obligation to obtain any permit otherwise required under this chapter or rules implementing this chapter."

Section 70. Repealer. Sections 7-1-4128, 7-2-2256, 7-12-2106, and 7-12-4107, MCA, are repealed.

Approved April 23, 2001

CHAPTER NO. 355

[SB 190]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII, SECTION 13, OF THE MONTANA CONSTITUTION PROVIDING FOR THE INVESTMENT OF THE ASSETS OF A LOCAL GOVERNMENT GROUP SELF-INSURANCE PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VIII, section 13, of The Constitution of the State of Montana is amended to read:

"**Section 13. Investment of public funds and public retirement system and state compensation insurance fund assets.** (1) The legislature shall provide for a unified investment program for public funds and public retirement system and state compensation insurance fund assets and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except as provided in subsections (3) ~~and (4)~~ *through (5)*, no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other safe investments bearing a fixed rate of interest as may be provided by law.

(3) Investment of public retirement system assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of an enterprise of a similar character with similar aims. Public retirement system assets may be invested in private corporate capital stock.

(4) Investment of state compensation insurance fund assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of a private insurance organization. State compensation insurance fund assets may be invested in private corporate capital stock. However, the stock investments shall not exceed 25 percent of the book value of the state compensation insurance fund's total invested assets.

(5) Investment of the assets of a local government group self-insurance program established pursuant to state law shall be managed by the program in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of a private insurance organization. A local government group self-insurance program's assets may be invested in private corporate capital stock. However, the stock investments shall not exceed 25 percent of the book value of the group self-insurance program's total invested assets."

Section 2. Effective date. If approved by the electorate, the amendment in section 1 is effective January 1, 2003.

Section 3. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 2002 by printing on the ballot the full title of this act and the following:

☐ FOR allowing a maximum of 25% of a local government group self-insurance program's assets to be invested in private corporate capital stock.

☐ AGAINST allowing a maximum of 25% of a local government group self-insurance program's assets to be invested in private corporate capital stock.

Approved April 23, 2001

CHAPTER NO. 356

[SB 218]

AN ACT AUTHORIZING THE TRUSTEES OF A SCHOOL DISTRICT, AFTER DETERMINING THAT THE DISTRICT'S TUITION FUND IS INACTIVE AND WILL NO LONGER BE USED, TO CLOSE THE FUND BY TRANSFERRING ANY CASH OR FUND BALANCE INTO THE DISTRICT'S MISCELLANEOUS PROGRAMS FUND; AMENDING SECTIONS 20-9-201 AND 20-9-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-201, MCA, is amended to read:

"**20-9-201. Definitions and application.** (1) As used in this title, unless the context clearly indicates otherwise, "fund" means a separate detailed account of receipts and expenditures for a specific purpose as authorized by law or by the superintendent of public instruction under the provisions of subsection (2). Funds are classified as follows:

(a) A "budgeted fund" means any fund for which a budget must be adopted in order to expend money from the fund. The general fund, transportation fund, bus depreciation reserve fund, tuition fund, retirement fund, debt service fund, building reserve fund, adult education fund, nonoperating fund, and any other funds designated by the legislature are budgeted funds.

(b) A "nonbudgeted fund" means any fund for which a budget is not required in order to expend money on deposit in the fund. The school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, interlocal cooperative fund, internal service fund, impact aid fund, enterprise fund, agency fund, extracurricular fund, metal mines tax reserve fund, endowment fund, litigation reserve fund, and any other funds designated by the legislature are nonbudgeted funds.

(2) The school financial administration provisions of this title apply to all money of any elementary or high school district. Elementary and high school districts shall record the receipt and disbursement of all money in accordance with generally accepted accounting principles. The superintendent of public instruction has general supervisory authority as prescribed by law over the school financial administration provisions, as they relate to elementary and high school districts. The superintendent of public instruction shall adopt rules necessary to secure compliance with the law.

(3) *(a)* Except as *provided in subsection (3)(b) or as* otherwise provided by law, whenever the trustees of a district determine that a fund is inactive and will no longer be used, the trustees shall close the fund by transferring all cash and other account balances to the general fund if the fund does not have a cash or fund balance deficit.

(b) If the trustees of a district determine that its tuition fund is inactive and will no longer be used, the trustees shall close the fund by transferring any cash and account balances to the district's miscellaneous programs fund if the tuition fund does not have a cash or fund balance deficit."

Section 2. Section 20-9-507, MCA, is amended to read:

"**20-9-507. Miscellaneous programs fund.** (1) The trustees of a district receiving money from local, state, federal, or other sources provided in 20-5-324, other than money under the provisions of impact aid, as provided in 20 U.S.C. 7701, et seq., or federal money designated for deposit in a specific fund of the district, shall establish a miscellaneous programs fund for the deposit of the money. The money may be a reimbursement of miscellaneous program fund expenditures already realized by the district, indirect cost recoveries, *the transfer of a fund balance from a tuition fund closed under 20-9-201,* or a grant of money for the financing of expenditures to be realized by the district for a special, approved program to be operated by the district. When the money is a reimbursement, *the transfer of a tuition fund balance,* or a local government severance tax payment, the money may be expended at the discretion of the trustees for school purposes. When the money is a grant, the money must be expended according to the conditions of the program approval by the superintendent of public instruction or any other approval agent. Within the miscellaneous programs fund, the trustees shall maintain a separate accounting for each local, state, or federal grant project, *funds transferred from a closed tuition fund,* and the indirect cost recoveries.

(2) The financial administration of the miscellaneous programs fund must be in accordance with the financial administration provisions of this title for a nonbudgeted fund."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 23, 2001

CHAPTER NO. 357

[SB 236]

AN ACT ALLOWING LEGISLATORS A WINDOW DURING WHICH THEY MAY BECOME MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AMENDING SECTION 19-3-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-412, MCA, is amended to read:

"19-3-412. Optional membership. (1) The following employees in covered employment may become members of the retirement system at their option by filing an irrevocable, written application with the board within 180 days of commencement of their employment:

(a) elected officials of the state or local governments who are paid on a salary or wage basis rather than on a per diem or other reimbursement basis;

(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes in counties of the third, fourth, fifth, sixth, and seventh class.

(2) *(a)* ~~Employees~~ *Except as provided in subsection (2)(b), employees* and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.

(b) A legislator may also become a member as of the date prior to December 31, 2000, that the legislator filed an irrevocable written application with the board to become a member and paid the employee share of contributions determined by the board to be required to purchase the legislator's prior service. However, the legislator shall purchase at least 5 years of service credit, or if the legislator has less than 5 years of membership service, service credit equal to all of the legislator's membership service. The legislative branch is responsible for paying the amount determined by the board to be the employer's share of contributions required to purchase a legislator's service under this subsection (2)(b).

(3) If an employee declines optional membership, the employee shall execute a statement waiving membership and the employer shall retain the statement. An employee who declines optional membership may not receive membership credit or service credit for the employment for which membership was declined.

(4) An employee who declined optional membership but later becomes a member may qualify service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Qualification of service pursuant to this subsection must comply with 19-3-505.

(5) Membership in the retirement system is not optional for an employee who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(6) An employee who declines membership while employed in a position for which membership is optional may not later become a member while still employed in that position. If, after a break in service of 30 days or more an employee who was a member in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership. However, if the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(7) An employee accepting a position that requires membership shall become a member even if the employee previously declined membership and did not have a 30-day break in service.

(8) If an employee or official fails to file with the board an irrevocable, written application within the time allowed in this section, the employee or official waives membership."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to all persons who were legislators on July 1, 1999.

Approved April 23, 2001

CHAPTER NO. 358

[SB 237]

AN ACT REVISING THE MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT; EXPANDING THE PURPOSES OF THE AGREEMENT; DEFINING "COOPERATING COMMITTEE"; REQUIRING EACH PARTICIPATING JURISDICTION TO HAVE TWO DESIGNATED REPRESENTATIVES; MANDATING WHO SHALL SERVE AS MONTANA'S DESIGNATED REPRESENTATIVES; EXPANDING THE POWERS OF THE COOPERATING COMMITTEE; CLARIFYING THE VOTING PROCEDURES OF THE COOPERATING COMMITTEE; REVISING THE OBJECTIVES OF THE PARTICIPATING JURISDICTIONS; ELIMINATING OBSOLETE REFERENCES; AND AMENDING SECTION 61-10-1101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-1101, MCA, is amended to read:

"61-10-1101. Multistate Highway Transportation Agreement — enactment and text. The Multistate Highway Transportation Agreement is hereby enacted into law and entered into with all other jurisdictions legally joining ~~therein~~ *in the agreement* in the form substantially as follows:

MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT

Pursuant to and in conformity with the laws of their respective jurisdictions, the participating jurisdictions, acting by and through their officials lawfully authorized to execute this agreement, do mutually agree as follows:

Article I. Findings and Purposes

Section 1. Findings. The participating jurisdictions find that:

(a) the expanding regional economy depends on expanding transportation capacity;

(b) highway transportation is the major mode for movement of people and goods in the western states;

(c) uniform application in the West of more adequate vehicle size and weight standards will result in a reduction of pollution, congestion, fuel consumption, and related transportation costs, which are necessary to permit increased productivity;

(d) a number of western states, already having adopted substantially the 1964 bureau of public roads recommended vehicle size and weight standards, still find current federal limits more restrictive; *and*

(e) ~~the 1974 revision of federal law (23 U.S.C. 127) did not contain any substantial improvements for vehicle size and weight standards in the western states and deprives states of interstate matching money if vehicle weights and~~

~~widths are increased, even though the interstate system is nearly 92% complete; and~~

~~(f)~~ the participating jurisdictions are most capable of developing vehicle size and weight standards most appropriate for the regional economy and transportation requirements, consistent with and in recognition of principles of highway safety.

Section 2. Purposes. The purposes of this agreement are to:

(a) adhere to the principle that each participating jurisdiction should have the freedom to develop vehicle size and weight standards that it determines to be most appropriate to its economy and highway system;

(b) establish a system authorizing the operation of vehicles traveling between two or more participating jurisdictions at more adequate size and weight standards;

(c) promote uniformity among participating jurisdictions in vehicle size and weight standards on the basis of the objectives set forth in this agreement;

(d) secure uniformity, insofar as possible, of administrative procedures in the enforcement of recommended vehicle size and weight standards;

(e) provide means for the encouragement and utilization of research that will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in section 1 of this article*; and*

(f) facilitate communication between legislators, state transportation administrators, and commercial industry representatives in addressing the emerging highway transportation issues in participating jurisdictions.

Article II. Definitions

Section 1. As used in this agreement:

(a) *"cooperating committee" means a committee composed of the designated representatives from the participating jurisdictions;*

(b) "designated representative" means a legislator or other person authorized *under Article XII* to represent the jurisdiction;

~~(b)~~*(c)* "jurisdiction" means a state of the United States or the District of Columbia;

~~(c)~~*(d)* "vehicle" means any vehicle ~~as~~ defined by statute ~~to be~~ *as* subject to size and weight standards that operates in two or more participating jurisdictions.

Article III. General Provisions

Section 1. Qualifications for membership. Participation in this agreement is open to jurisdictions that subscribe to the findings, purposes, and objectives of this agreement and will seek legislation necessary to accomplish these objectives.

Section 2. Cooperation. The participating jurisdictions, working through their designated representatives, shall cooperate and assist each other in achieving the desired goals of this agreement pursuant to appropriate statutory authority.

Section 3. Effect of headings. Article and section headings contained ~~herein~~ *in this agreement* may not be considered to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any article or section ~~hereof~~ *of the agreement.*

Section 4. Vehicle laws and regulations. This agreement does not authorize the operation of a vehicle in any participating jurisdiction contrary to the laws or regulations ~~thereof~~ *of the jurisdiction.*

Section 5. Interpretation. The final decision regarding interpretation of questions at issue relating to this agreement ~~shall~~ *must* be reached by unanimous joint action of the participating jurisdictions, acting through the designated representatives. Results of all ~~such~~ actions ~~shall~~ *must* be placed in writing.

Section 6. Amendment. This agreement may be amended by unanimous joint action of the participating jurisdictions, acting through the officials ~~thereof~~ *of the jurisdictions* authorized to enter into this agreement, subject to the requirements of section 4, Article III. Any amendment ~~shall~~ *must* be placed in writing and become a part ~~hereof~~ *of the agreement.*

Section 7. Restrictions, conditions, or limitations. Any jurisdiction entering this agreement shall provide each other participating jurisdiction with a list of any restriction, condition, or limitation on the general terms of this agreement, if any.

Section 8. Additional jurisdictions. Additional jurisdictions may become members of this agreement by signing and accepting the terms of the agreement.

Article IV. Cooperating Committee

Section 1. *Each participating jurisdiction must have two designated representatives.* Pursuant to section 2, Article III, the designated representatives of the participating jurisdictions ~~shall~~ constitute a *the cooperating* committee that ~~shall have the power to~~ *may*:

(a) collect, correlate, analyze, and evaluate information resulting or derivable from research and testing activities in relation to vehicle size and weight related matters;

(b) recommend and encourage the undertaking of research and testing in any aspect of vehicle size and weight or related matter when, in their collective judgment, appropriate or sufficient research or testing has not been undertaken;

(c) recommend changes in law or policy with emphasis on compatibility of laws and uniformity of administrative rules that would promote effective governmental action or coordination in the field of vehicle size and weight related matters*;*

(d) recommend improvements in highway operations, in vehicular safety, and in state administration of highway transportation laws; and

(e) perform functions necessary to facilitate the purposes of this agreement.

Section 2. Each *designated representative of a* participating jurisdiction ~~shall be~~ *is* entitled to one vote only. ~~No~~ *An* action of the committee ~~shall~~ *may not* be ~~binding~~ *approved* unless a majority of the total number of votes cast by *the designated representatives of the* participating jurisdictions are in favor ~~thereof~~ *of the action.*

Section 3. The committee shall meet at least once annually and shall elect, from among its members, a ~~chairman~~ *presiding officer*, a ~~vice-chairman~~ *vice presiding officer*, and a secretary.

Section 4. The committee shall submit annually to the legislature of each participating jurisdiction~~, no later than November 1,~~ a report setting forth the work of the committee during the preceding year and including recommendations developed by the committee. The committee may submit ~~such~~ additional reports as it considers appropriate or desirable. ~~Copies of all such reports shall be made available to the transportation committee of the western conference, council of state governments, and to the western association of state highway and transportation officials.~~

Article V. Objectives of the Participating Jurisdictions

Section 1. Objectives. The participating jurisdictions hereby declare that:

(a) it is the objective of the participating jurisdictions to obtain more efficient and more economical transportation by motor vehicles between and among the participating jurisdictions by encouraging the adoption of standards that will, as minimums, allow the operation on all state highways, except those determined through engineering evaluation to be inadequate, with a single-axle weight not in excess of 20,000 pounds, a tandem-axle weight not in excess of 34,000 pounds, and a gross vehicle or combination weight not in excess of that resulting from application of the formula:

$$W = 500((LN/(N - 1)) + 12N + 36) \text{where}$$

W = maximum weight in pounds carried on any group of two or *more consecutive axles* computed to nearest 500 pounds;

L = distance in feet between the extremes of any group of two or more consecutive axles;

N = number of axles in group under consideration;

(b) it is the further objective of the participating jurisdictions that ~~in the event~~ the operation of a vehicle or combination of vehicles *in interstate commerce* according to the provisions of subsection (a) of this section ~~would result in withholding or forfeiture of federal-aid funds pursuant to section 127, Title 23, U.S. Code, the operation of such vehicle or combination of vehicles at axle and gross weights within the limits set forth in subsection (a) of this section will~~ be authorized under special permit authority by each participating jurisdiction ~~that could legally issue such permits prior to July 1, 1956, provided all regulations and procedures related to such issuance in effect as of July 1, 1956, are adhered to~~ *for vehicle combinations in excess of statutory weight of 80,000 pounds or statutory lengths*;

(c) ~~the objectives of subsections (a) and (b) of this section relate to vehicles or combinations of vehicles in regular operation, and the authority of any participating jurisdiction to issue special permits for the movement of any vehicle or combinations of vehicles having dimensions and/or weights in excess of the maximum statutory limits in each participating jurisdiction will not be affected;~~

~~(d)~~ it is the further objective of the participating jurisdictions to facilitate and expedite the operation of any vehicle or combination of vehicles between and among the participating jurisdictions under the provisions of subsection (a) or (b) of this section, and to that end the participating jurisdictions hereby agree, through their designated representatives, to meet and cooperate in the consideration of vehicle size and weight related matters including but not limited to the development of uniform enforcement procedures; additional vehicle size and weight standards; operational standards; agreements or compacts to facilitate regional application and administration of vehicle size and weight standards; uniform permit procedures; uniform application forms; rules for the operation of vehicles, including equipment requirements, driver qualifications, and operating practices; and ~~such~~ other matters as may be pertinent;

~~(e)~~*(d)* ~~in recognition of the limited prospects of federal revision of section 127, Title 23, U.S. Code, and in order to protect participating jurisdictions against any possibility of withholding or forfeiture of federal-aid highway funds, it is the further objective of the participating jurisdictions to~~ *the cooperating committee may recommend that the participating jurisdictions jointly* secure congressional approval of this agreement and specifically of the vehicle size and weight standards set forth in subsection (a) of this section;

~~(f) in recognition of desire for a degree of national uniformity of size and weight regulations, it is the further objective to encourage development of broad, uniform size and weight standards on a national basis and further that procedures adopted under this agreement be compatible with national standards~~

(e) it is the further objective of the participating jurisdictions to:

(1) establish transportation laws and regulations to meet regional and economic needs and to promote an efficient, safe, and compatible transportation network;

(2) develop standards that facilitate the most efficient and environmentally sound operation of vehicles on highways consistent with and in recognition of principles of highway safety; and

(3) establish programs to increase productivity and reduce congestion, fuel consumption, and related transportation costs and enhance air quality through the uniform application of state vehicle regulations and laws.

Article VI. Entry Into Force and Withdrawal

Section 1. This agreement ~~shall enter into force~~ *becomes effective* when enacted into law by any two or more jurisdictions. Thereafter, this agreement ~~shall become~~ *becomes* effective as to any other jurisdiction upon its enactment ~~thereof~~ *of the agreement*, except as otherwise provided in section 8, Article III.

Section 2. Any participating jurisdiction may withdraw from this agreement by canceling ~~the same~~ *it* but ~~no such~~ *a* withdrawal ~~shall~~ *may not* take effect until 30 days after the designated representative of the withdrawing jurisdiction has given notice in writing of the withdrawal to all other participating jurisdictions.

Article VII. Construction and Severability

Section 1. This agreement ~~shall~~ *must* be liberally construed so as to effectuate the purposes ~~thereof~~ *of the agreement*.

Section 2. The provisions of this agreement ~~shall be~~ *are* severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any participating jurisdiction or the applicability ~~thereto~~ *of this agreement* to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement ~~shall~~ *is* not ~~be~~ affected ~~thereby~~. If this agreement ~~shall be~~ *is* held contrary to the constitution of any jurisdiction participating ~~herein~~ *in the agreement*, the agreement ~~shall remain~~ *remains* in full force and effect as to the jurisdictions affected as to all severable matters.

Article VIII. Filing of Documents

Section 1. A copy of this agreement, its amendments, and rules promulgated ~~thereunder~~ *under the agreement* and interpretations ~~thereof shall~~ *of the agreement must* be filed in the highway department in each participating jurisdiction and ~~shall~~ *must* be made available for review by interested parties.

Article IX. Existing Statutes Not Repealed

Section 1. All existing statutes prescribing weight and size standards and all existing statutes relating to special permits ~~shall~~ continue to be of force and effect until amended or repealed by law.

Article X. State Government Departments Authorized to Cooperate With Cooperating Committee

Section 1. Within appropriations available ~~therefor~~, the departments, agencies, and officers of the government of this state shall cooperate with and assist the cooperating committee within the scope contemplated by Article IV, subsections 1(a) and 1(b) of the agreement. The departments, agencies, and officers of the government of this state are authorized generally to cooperate with ~~said~~ *the* cooperating committee.

Article XI. Funding

Section 1. Funds for the administration of this agreement, including participation in the cooperating committee and the actual expenses of the designated representatives, must be budgeted by each participating jurisdiction as appropriate.

Article XII. Selection of Designated Representatives

Section 1. The process for selecting the designated representatives to the cooperating committee must be established by law under this section.

Section 2. The persons authorized to represent the state of Montana as the designated representatives to the cooperating committee are the presiding officer of the senate highways and transportation committee and the presiding officer of the house transportation committee. The presiding officer may appoint a designee to serve in the presiding officer's place. The designee must be a legislator or an official of the Montana department of transportation.

Section 3. The presiding officers of the legislative committees shall each appoint one alternate designated representative. The alternate must be a legislator or an official of the Montana department of transportation and shall serve in the absence of the presiding officer."

Approved April 23, 2001

CHAPTER NO. 359

[SB 248]

AN ACT GENERALLY REVISING THE LAWS GOVERNING INFORMATION COLLECTED BY HEALTH CARE REVIEW COMMITTEES; EXTENDING INHOSPITAL REVIEW LAWS TO ALL HEALTH CARE FACILITIES; CLARIFYING THE TYPES OF COMMITTEES THAT HAVE ACCESS TO

HEALTH CARE INFORMATION; EXTENDING THE CONFIDENTIALITY AND EVIDENTIARY PRIVILEGE TO COMMITTEE RECORDS AND PROCEEDINGS; CLARIFYING THAT ONLY THE DATA OF HEALTH CARE REVIEW COMMITTEES IS PROTECTED FROM DISCLOSURE TO A PATIENT; AMENDING SECTIONS 50-16-201, 50-16-202, 50-16-203, 50-16-204, 50-16-205, AND 50-16-542, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-16-201, MCA, is amended to read:

"**50-16-201.** ~~**Data defined**~~ ***Definitions.*** As used in this part, *the following definitions apply:*

(1) (a) ~~"data"~~ *"Data"* means written reports, notes, or records *or oral reports or proceedings* ~~of tissue committees or other medical staff committees~~ *created by or at the request of a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of a health care facility that are used exclusively* in connection with the professional training, supervision, or discipline of ~~the~~ *a* medical ~~staff of hospitals~~ *practitioner by a health care facility.*

(b) The term does not include incident reports or occurrence reports.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) "Incident reports" or "occurrence reports" means a written business record of a health care facility, created in response to an untoward event, such as a patient injury, adverse outcome, or interventional error, in order to ensure a prompt evaluation of the event. The terms do not include any subsequent evaluation of the event in response to an incident report or occurrence report by a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee.

(4) "Medical practitioner" means an individual licensed by the state of Montana to engage in the practice of medicine, osteopathy, podiatry, optometry, or a nursing specialty described in 37-8-202(5) or licensed as a physician assistant-certified pursuant to 37-20-203."

Section 2. Section 50-16-202, MCA, is amended to read:

"**50-16-202. Committees to have access to information.** It is in the interest of public health and patient medical care that ~~inhospital medical staff~~ *health care facility* committees have access to the records~~,~~ *and other health care* information~~, and other data~~ relating to the condition and treatment of patients in ~~such hospital~~ *the health care facility* to study and evaluate for the purpose of evaluating matters relating to the care and treatment of ~~such~~ patients for research purposes and for the purpose of reducing morbidity or mortality and obtaining statistics and information relating to the prevention and treatment of diseases, illnesses, and injuries. To carry out ~~such~~ *these* purposes, any ~~hospital~~ *health care facility*~~,~~ *and* its agents and employees may provide medical records~~,~~ *or other health care* information~~, or other data~~ relating to the condition and treatment of any patient in ~~said hospital~~ *the health care facility* to any ~~inhospital medical staff~~ *utilization review, peer review, medical ethics review, quality assurance, or quality improvement* committee *of the health care facility.*"

Section 3. Section 50-16-203, MCA, is amended to read:

"**50-16-203. Committee *health care* information and proceedings confidential and privileged.** All ~~such~~ records~~, data,~~ and *health care* information ~~shall be~~ *referred to in 50-16-202 are* confidential and privileged to ~~said~~ *the* committee and the members ~~thereof~~ *of the committee*~~,~~ as though ~~such hospital~~ *the health care facility* patients were the patients of the members of ~~such~~ *the* committee. All proceedings, ~~and inhospital~~ records, and reports of ~~such medical staff~~ committees ~~shall be~~ *are* confidential and privileged."

Section 4. Section 50-16-204, MCA, is amended to read:

"**50-16-204. Restrictions on use or publication of information.** ~~Such inhospital medical staff committees~~ *A utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of a health care facility* ~~shall~~ *may* use or publish *health care* information ~~from such material~~ only for the purpose of evaluating matters of medical care, therapy, and treatment for research and statistical purposes. Neither ~~such inhospital medical staff~~ *a* committee nor the members, agents, or employees ~~thereof~~ *of a committee* shall disclose the name or identity of any patient whose records have been studied in any report or publication of findings and conclusions of ~~such~~ *a* committee, but ~~such inhospital medical staff~~ *a* committee~~,~~ *and* its members, agents, or employees shall protect the identity of any patient whose condition or treatment has been studied and ~~shall~~ *may* not disclose or reveal the name of any ~~such inhospital~~ *health care facility* patient."

Section 5. Section 50-16-205, MCA, is amended to read:

"**50-16-205. Data confidential — inadmissible in judicial proceedings.** All data ~~shall be~~ *is* confidential and ~~shall~~ *is* not ~~be~~ *discoverable or* admissible in evidence in any judicial proceeding~~,~~. ~~but~~ *However,* this section ~~shall~~ *does* not affect the *discoverability or* admissibility in evidence of ~~records dealing with the patient's hospital care and treatment~~ *health care information that is not data as defined in 50-16-201.*"

Section 6. Section 50-16-542, MCA, is amended to read:

"**50-16-542. Denial of examination and copying.** (1) A health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) knowledge of the health care information would be injurious to the health of the patient;

(b) knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) the health care information ~~was~~ *is data, as defined in 50-16-201, that is* compiled and ~~is~~ used solely for ~~litigation,~~ *utilization review, peer review, medical ethics review,* quality assurance, ~~peer review, or administrative purposes~~ *or quality improvement*;

(e) the health care information might contain information protected from disclosure pursuant to 50-15-121 and 50-15-122;

(f) the health care provider obtained the information from a person other than the patient; or

(g) access to the health care information is otherwise prohibited by law.

(2) Except as provided in 50-16-521, a health care provider may deny access to health care information by a patient who is a minor if:

(a) the patient is committed to a mental health facility; or

(b) the patient's parents or guardian has not authorized the health care provider to disclose the patient's health care information.

(3) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) from information for which access cannot be denied and permit the patient to examine or copy the information subject to disclosure.

(4) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (1)(c), the provider shall permit examination and copying of the record by the patient's spouse, adult child, or parent or guardian or by another health care provider who is providing health care services to the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection."

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 23, 2001

CHAPTER NO. 360

[SB 261]

AN ACT AUTHORIZING THE PRODUCTION OF INDUSTRIAL HEMP AS AN AGRICULTURAL CROP; REQUIRING THAT A LICENSE BE OBTAINED PRIOR TO GROWING INDUSTRIAL HEMP; REQUIRING THAT THE DEPARTMENT OF AGRICULTURE BE NOTIFIED WHEN GROWING OR SELLING INDUSTRIAL HEMP; PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF AGRICULTURE; PROVIDING FOR THE DISPOSITION OF FEES; PROVIDING AN AFFIRMATIVE DEFENSE FOR THE POSSESSION OR CULTIVATION OF MARIJUANA; PROVIDING AN EXEMPTION TO CRIMINAL POSSESSION OF DANGEROUS DRUGS AND CRIMINAL PRODUCTION OR MANUFACTURE OF DANGEROUS DRUGS FOR INDUSTRIAL HEMP PRODUCTION AS AN AGRICULTURAL CROP; REQUIRING THE DEPARTMENT OF AGRICULTURE TO REQUEST A CHANGE OR WAIVER IN FEDERAL LAW; AND AMENDING SECTION 45-9-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 7], the following definitions apply:

(1) "Industrial hemp" means all parts and varieties of the plant Cannabis sativa L. containing no greater than 0.3% tetrahydrocannabinol.

(2) "Marijuana" means all plant material from the genus cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

Section 2. Industrial hemp authorized as agricultural crop. Industrial hemp that has no more than 0.3% tetrahydrocannabinol is considered an agricultural crop in this state. Upon meeting the requirements of [section 3], an individual in this state may plant, grow, harvest, possess, process, sell, or buy industrial hemp if the industrial hemp does not contain more than 0.3% tetrahydrocannabinol.

Section 3. Industrial hemp — licensing. (1) An individual growing industrial hemp for commercial purposes shall apply to the department for a license on a form prescribed by the department.

(2) The application for a license must include the name and address of the applicant and the legal description of the land area to be used for the production of industrial hemp.

(3) The department shall require each first-time applicant for a license to file a set of the applicant's fingerprints, taken by a law enforcement officer, and any other information necessary to complete a statewide and nationwide criminal history check with the criminal investigation bureau of the department of justice for state processing and with the federal bureau of investigation for federal processing. All costs associated with the criminal history check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential. The department may use the records only to determine if an applicant is eligible to receive a license for the production of industrial hemp. If the applicant has completed the application process to the satisfaction of the department, the department shall issue the license, which is valid until December of that year. An individual licensed under this section is presumed to be growing industrial hemp for commercial purposes.

(4) The licensing requirements of [sections 1 through 7] do not apply to employees of the agricultural experiment station or the Montana state university-Bozeman extension service involved in research and extension-related activities.

Section 4. Industrial hemp production — notification requirements. (1) Each licensee shall file with the department:

(a) documentation showing that the seeds planted are of a type and variety certified to have no more than 0.3% tetrahydrocannabinol; and

(b) a copy of any contract to grow industrial hemp.

(2) Each licensee shall notify the department of the sale or distribution of any industrial hemp grown by the licensee, including the name and address of the person receiving the industrial hemp.

Section 5. Rulemaking authority. The department shall adopt rules that include but are not limited to:

(1) testing of the industrial hemp during growth to determine tetrahydrocannabinol levels;

(2) supervision of the industrial hemp during its growth and harvest;

(3) assessment of a fee that is commensurate with the costs of the department's activities in licensing, testing, and supervising industrial hemp production; and

(4) any other rules and procedures necessary to carry out [sections 1 through 7].

Section 6. Disposition of fees. All fees assessed as provided in [section 5] must be deposited with the state treasurer to the credit of the state special revenue fund for the use of the department for administering and enforcing [sections 1 through 7].

Section 7. Affirmative defense for possession or cultivation of marijuana. (1) It is an affirmative defense to a prosecution for the possession or cultivation of marijuana under 45-9-102, 45-9-103, and 45-9-110 that:

(a) the defendant was growing industrial hemp pursuant to [sections 1 through 7];

(b) the defendant had valid applicable controlled substances registrations from the United States department of justice, drug enforcement administration; and

(c) the defendant fully complied with all of the conditions of the controlled substances registration.

(2) This section is not an affirmative defense to a charge of criminal sale or distribution of marijuana.

Section 8. Section 45-9-108, MCA, is amended to read:

"45-9-108. Exemptions. (1) The provisions of 45-9-107 do not apply to:

(a) a drug manufacturer licensed by the state;

(b) a person authorized by rules adopted by the board of pharmacy to possess the combination of substances;

(c) a person employed by or enrolled as a student in a college or university within the state who possesses any combination of substances listed in 45-9-107 for the purposes of teaching or research ~~which~~ *that* is authorized by the college or university.

(2) The board of pharmacy shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the processing of any combination of the substances listed in 45-9-107 whenever it determines that there is a legitimate need and that the substances will be used for a lawful purpose.

(3) The provisions of 45-9-102, 45-9-103, and 45-9-110 do not apply to [section 2]."

Section 9. Request for federal change or waiver. The department shall send a copy of [this act], along with a request for a change in federal law or a waiver that will allow [this act] to be effective without federal preemption, to the Montana congressional delegation and the director of the drug enforcement administration.

Section 10. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 80, and the provisions of Title 80 apply to [sections 1 through 7].

Approved April 23, 2001

CHAPTER NO. 361

[SB 265]

AN ACT ALLOWING A LOCAL GOVERNMENTAL ENTITY TO IMPOSE LESS THAN THE MAXIMUM NUMBER OF MILLS AUTHORIZED AND TO CARRY FORWARD THE AUTHORITY TO IMPOSE THE MAXIMUM NUMBER OF MILLS IN A SUBSEQUENT TAX YEAR; AND AMENDING SECTIONS 7-6-2531, 7-6-4431, AND 15-10-420, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2531, MCA, is amended to read:

"**7-6-2531. County may exceed** ***or impose less than*** **maximum mill levy — election required** ***to exceed*****.** The governing body of a county may raise money by taxation for the support of county government services, facilities, or other capital projects in excess of the levy or levies allowed by law under the following conditions:

(1) The governing body shall pass a resolution indicating its intent to exceed the current statutory mill levy on the approval of a majority of the qualified electors voting in an election under subsection (2). The resolution must include:

(a) the specific purpose for which the additional money will be used;

(b) the specific amount to be raised;

(c) the approximate number of mills required; and

(d) the specific mill levy limitation to be exceeded.

(2) (a) Except as provided in subsection (2)(b), the governing body shall submit the question of the additional mill levy to the qualified electors of the county at the next regular primary election held in an even-numbered year.

(b) If the purpose of the special levy designated pursuant to subsection (1)(a) is for the support of a health care facility as described in 7-6-2512, the governing body may submit the question of the additional mill levy to the qualified electors of the county at a general election, at a school election held pursuant to 20-3-304, or at a regular primary election held in an even-numbered year.

(c) If the majority voting on the question are in favor of the additional levy or levies, the governing body is authorized to exceed the statutory mill levy limit in the amount specified in the resolution for a period not to exceed 2 years.

(3) An election is not required for a governing body to impose less than the maximum number of mills or to carry forward authorization to impose the maximum number of mills in a subsequent tax year as provided in 15-10-420(1)(b)."

Section 2. Section 7-6-4431, MCA, is amended to read:

"**7-6-4431. Authorization to exceed** ***or impose less than*** **maximum mill levy — election required** ***to exceed*****.** The governing body of a municipality may raise money by taxation for the support of municipal government services, facilities, or other capital projects in excess of the levy or levies allowed by law under the following conditions:

(1) The governing body ~~must~~ *shall* pass a resolution indicating its intent to exceed the current statutory mill levy on the approval of a majority of the

qualified electors voting in an election under subsection (2). The resolution must include:

(a) the specific purpose for which the additional money will be used;

(b) the specific dollar amount to be raised;

(c) the approximate number of mills required; and

(d) the specific mill levy limitation to be exceeded.

(2) The governing body ~~must~~ *shall* submit the question of the additional mill levy to the qualified electors of the municipality at the next regular primary or general election on either odd-numbered or even-numbered years. The question may not be submitted more than once in any calendar year. If the majority voting on the question are in favor of the additional levy or levies, the governing body is authorized to exceed the statutory mill levy limit in the amount specified in the resolution for a period not to exceed 2 years.

(3) An election is not required for a governing body to impose less than the maximum number of mills or to carry forward authorization to impose the maximum number of mills in a subsequent tax year as provided in 15-10-420(1)(b)."

Section 3. Section 15-10-420, MCA, is amended to read:

"**15-10-420. Procedure for calculating levy.** (1) *(a)* A governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year, even if that levy is greater than the levy established by law. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the value of newly taxable property.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)*(a)* plus any additional levies authorized by the voters to all property in the governmental unit, including newly taxable property.

(3) For purposes of this section, newly taxable property includes:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) transfer of property from tax-exempt to taxable status; and

(g) revaluations caused by expansion, addition, replacement, or remodeling of improvements.

(4) Subsection (1)*(a)* does not apply to school district general fund levies and the school district levy for tuition obligations established in 20-5-324(5).

(5) For purposes of subsection (1)*(a)*, taxes imposed:

(a) include registration fees imposed on light vehicles under 61-3-561 and distributed under 61-3-509(2); and

(b) do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(6) In determining the maximum number of mills in subsection (1)*(a)*, the governmental entity shall take into account any change from the prior year in the amount of statutory reimbursements for changes in the property tax laws. The amount of motor vehicle disposition under 61-3-509(2), as that section read on December 31, 2000, is an increased statutory reimbursement. It may increase the number of mills to account for a decrease in reimbursements and shall decrease the number of mills to fully account for any increase in reimbursements.

(7) The department shall calculate the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, 20-25-439, and 53-2-813. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections.

(8) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Approved April 23, 2001

CHAPTER NO. 362

[SB 288]

AN ACT REQUIRING THE BOARD OF PHARMACY TO CREATE A PROGRAM FOR THE DONATION OF PRESCRIPTION DRUGS BY LONG-TERM CARE FACILITIES TO PROVISIONAL COMMUNITY PHARMACIES OFFERING DRUGS TO CERTAIN LOW-INCOME PERSONS; REQUIRING THE BOARD OF PHARMACY TO ADOPT RULES; PROVIDING DEFINITIONS; REQUIRING A LONG-TERM CARE FACILITY DONATING DRUGS TO DELETE PATIENT IDENTIFICATION INFORMATION FROM THE PRESCRIPTION DRUG CONTAINER; PROVIDING FOR IMMUNITY FROM SIMPLE NEGLIGENCE FOR LONG-TERM CARE FACILITIES AND PATIENTS DONATING PRESCRIPTION DRUGS; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Department of public health and human services and board of pharmacy to create program for donation of unused prescription drugs — rulemaking required. (1) The board of pharmacy shall, in consultation and cooperation with the department of public health and human services, create a program for the donation of prescription drugs collected from long-term care facilities to qualified patients.

(2) For the purposes of the program created pursuant to subsection (1), prescription drugs, except those drugs defined as a dangerous drug in 50-32-101 or a drug designated as a precursor to a controlled substance in 50-32-401, unneeded by a resident or former resident of a long-term care facility may be donated by the long-term care facility to a provisional community pharmacy that provides or may provide prescription drugs to individuals who are qualified patients for transfer free of charge or at a reduced charge to those individuals.

(3) This section does not amend or otherwise change the law applicable to the prescribing of prescription drugs, the sale of those drugs, or the licensing of long-term care facilities or pharmacies.

(4) The board of pharmacy shall adopt rules to implement [sections 1 through 3]. The rules must address the subjects of collection and receipt of donated prescription drugs from residents of long-term care facilities, keeping of those drugs within the long-term care facility, transfer of the drugs to provisional community pharmacies, which pharmacies may be considered provisional community pharmacies that may sell or give the drugs to others, and the price for which the drugs may be sold. In adopting the rules, the board of pharmacy shall consider the ability of persons to pay for the drugs and the existence and operation of similar programs in other states.

(5) As used in [sections 1 through 3], the following definitions apply:

(a) "Long-term care facility" has the meaning provided in 50-5-101.

(b) "Provisional community pharmacy" means the practice of pharmacy at a site that has been approved by the board, including but not limited to federally qualified health centers as defined in 42 CFR 405.2401, where prescription drugs are dispensed to appropriately screened, qualified patients.

(c) "Qualified patients" mean persons who are uninsured, indigent, or have insufficient funds to obtain needed prescription drugs.

Section 2. Long-term care facilities to delete identifying information from donated prescription drugs. A long-term care facility donating a prescription drug pursuant to the program created under [sections 1 through 3] shall delete from the container in which that drug is held any information by which the long-term care facility resident or former resident for whom the drugs were prescribed may be identified.

Section 3. Immunity for long-term care patients and facilities donating prescription drugs. A resident or former resident of a long-term care facility and the long-term care facility donating a prescription drug as part of the program created pursuant to [sections 1 through 3] are not liable for simple negligence in the donation of a drug if the requirements of [sections 1 through 3] and the rules implementing [sections 1 through 3] have been complied with.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 37, chapter 7, and the provisions of Title 37, chapter 7, apply to [sections 1 through 3].

Section 5. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2001.

(2) [Sections 1(4) and 4 and this section] are effective on passage and approval.

Approved April 23, 2001

CHAPTER NO. 363

[SB 293]

AN ACT ESTABLISHING THE MONTANA DRIVER PRIVACY PROTECTION ACT MODELED AFTER THE FEDERAL ACT; PROHIBITING THE DISCLOSURE OF CERTAIN PERSONAL INFORMATION FROM MOTOR VEHICLE OR DRIVER RECORDS MAINTAINED BY THE DEPARTMENT OF JUSTICE; PROVIDING, IN ACCORDANCE WITH THE PRIVACY PROVISIONS OF THE MONTANA CONSTITUTION, MORE RESTRICTIONS ON THE RELEASE OF INFORMATION THAN EXIST IN THE FEDERAL ACT; ESTABLISHING CRITERIA FOR THE RELEASE OF CERTAIN INFORMATION; PROHIBITING THE SALE OR DISCLOSURE OF PERSONAL INFORMATION TO A THIRD PARTY EXCEPT FOR CERTAIN USES; ALLOWING THE DEPARTMENT OF JUSTICE TO ADOPT RULES TO IMPLEMENT THE ACT; INCLUDING MISREPRESENTATION TO OBTAIN PERSONAL INFORMATION FROM MOTOR VEHICLE AND DRIVER RECORDS IN THE OFFENSE OF TAMPERING WITH PUBLIC RECORDS OR INFORMATION; AMENDING SECTIONS 2-6-109, 45-7-208, 61-3-101, AND 61-11-105, MCA; REPEALING SECTION 13-38-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 10] may be cited as the "Montana Driver Privacy Protection Act".

Section 2. Purpose. The purpose of [sections 1 through 10] is to create a more restrictive state version of the federal prohibition on release and use of certain personal information from state motor vehicle records, found in 18 U.S.C. 2721, to protect an individual's privacy, consistent with the Montana constitution, by prohibiting the disclosure and use of personal information contained in Montana motor vehicle records, except when that use may be authorized by law.

Section 3. Definitions. As used in [sections 1 through 10], the following definitions apply:

(1) "Disclose" means to engage in any practice or conduct that makes available or known, by means of any communication to another person, organization, or entity, personal information contained in a motor vehicle record.

(2) "Express consent" means an affirmative authorization given in writing by a person to whom personal information pertains that specifically allows the department to release personal information to another person, organization, or entity. Consent may be conveyed electronically if the conveyance includes an electronic signature, as defined in 2-20-103, from the person to whom the personal information pertains.

(3) "Highly restricted personal information" means an individual's photograph or image, social security number, or medical or disability information.

(4) "Motor vehicle record" means any record maintained by the department that pertains to a driver's license, commercial driver's license, driving permit, motor vehicle title, motor vehicle registration, or identification card issued by the department.

(5) "Person" does not mean a state agency or local government entity.

(6) (a) "Personal information" means information that identifies a person, including a person's name, address, telephone number, social security number, driver identification number, photograph or image, and medical or disability information.

(b) The term does not include the five-digit zip code of an address, information on vehicular accidents, driving or equipment-related violations, a person's driver's license or vehicle registration status, or a vehicle's insurance status.

(7) "Record" includes all books, papers, photographs, photostats, cards, film, tapes, recordings, electronic data, printouts, or other documentary materials, regardless of physical form or characteristics.

Section 4. Disclosure of personal information from motor vehicle record prohibited. The department may not disclose personal information from a motor vehicle record unless the disclosure is permitted or required, as provided in [section 5, 6, or 7].

Section 5. Required disclosure. Upon application, proof of the identity of a person requesting a record, and payment of the fees required in [section 8], the department shall disclose personal information, excluding highly restricted personal information, from a motor vehicle record for use in implementing federal law and federal regulations regarding:

(1) motor vehicle or driver safety and theft;

(2) motor vehicle emissions;

(3) motor vehicle product alterations, recalls, or advisories;

(4) performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and

(5) removal of nonowner records from the original owner records of motor vehicle manufacturers.

Section 6. Permitted disclosure of personal information — specific uses. Upon application, proof of the identity of the person requesting a record, and payment of fees required in [section 8], the department may disclose personal information, including highly restricted personal information, from a motor vehicle record to:

(1) the person who is the subject of the motor vehicle record; or

(2) a person who represents that the use of the information will be strictly limited to one or more of the following:

(a) a federal, state, or local government agency, including a court or a law enforcement agency, and any individual acting on behalf of the agency in carrying out its functions, including representatives of the news media for a legitimate law enforcement purpose, as determined by the department; or

(b) a person, organization, or entity, upon the express consent of the person to whom the information pertains.

Section 7. Permitted disclosure of personal information, excluding highly restricted personal information — specific uses. Upon application, proof of the identity of the person requesting a record, and payment of the fees required in [section 8], the department may disclose personal information, excluding highly restricted personal information, from a motor vehicle record to a person who represents that the use of the personal information will be limited to one or more of the following uses:

(1) in the normal course of business by a legitimate business or its agents, employees, or contractors, but only:

(a) to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(b) if the submitted information is not correct or is no longer correct, to obtain the correct information for the purposes of preventing fraud by pursuing legal remedies against or recovering on a debt or security interest against the individual;

(2) by a party in interest, or the agent of a party in interest, in a civil, criminal, administrative, or arbitral proceeding in any court or government agency or before any self-regulatory body, including the service of process, an investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of any court;

(3) by an insurer or insurance support organization or a self-insured entity or its agents, employees, or contractors, in connection with the following arising under insurance policies:

(a) the investigation of claims;

(b) antifraud activities;

(c) ratemaking; or

(d) underwriting;

(4) by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license required under federal or state law;

(5) to conduct research activities and produce statistical reports and journalistic articles as long as the personal information is not published, disclosed to a third party, or used to contact individuals;

(6) to provide notice to the owners of towed, abandoned, or impounded vehicles;

(7) for use by any licensed private investigative agency or licensed security service for any purpose provided under this section;

(8) for use in activities pertaining to:

(a) motor vehicle or driver safety and theft;

(b) motor vehicle emissions;

(c) motor vehicle product alterations, recalls, or advisories;

(d) performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and

(e) removal of nonowner records from the original owner records of motor vehicle manufacturers;

(9) for any other use that is specifically related to the operation of a motor vehicle or to public safety and that is authorized by state law; and

(10) for any use by a requester who demonstrates to the department that the requester has obtained the express consent of the person to whom the information pertains.

Section 8. Prerequisites to disclosure. (1) Prior to the disclosure of personal information or highly restricted personal information, as provided in [section 5, 6, or 7], the department shall require the requester to complete and submit an application, in a form prescribed by the department, identifying the requester and specifying the statutorily recognized uses for which the personal information or highly restricted personal information is being sought.

(2) The department shall require the requester to provide identification acceptable to the department.

(3) (a) The department shall collect the appropriate fees paid by the requester and shall determine the amount of the fees in accordance with 61-3-101, 61-11-105, and this subsection (3), or as appropriate, in accordance with the terms of a contract between the department and the requester.

(b) The department shall ensure that fees established by policy or contract:

(i) recover the department's cost and expenses as provided in 2-6-110(2) and 61-3-101; and

(ii) include an additional amount necessary to compensate the department for costs associated with developing and maintaining the database from which information is requested.

(c) Except as provided in subsection (3)(d), the department shall charge a fee to any person, including a representative of a federal, state, or local government entity or member of the news media who requests information under this section.

(d) The department may not charge a fee for information requested by the governor's office of budget and program planning, the state tax appeal board, any legislative branch agency or committee, or any criminal justice agency, as defined in 44-5-103.

Section 9. Sale or disclosure of personal information by recipient. (1) A requester who receives personal information or highly restricted personal information pursuant to [section 5, 6, 7, or 8] may not sell or disclose the information, except for a use that is specifically permitted in [section 5, 6, or 7].

(2) A requester who sells or discloses personal information or highly restricted personal information to a third party under this section shall create and maintain records for a period of not less than 5 years from the date of the sale or disclosure. The records must show the name, address, telephone number, and any other identifying information required by the department of the third party who bought or received the information and must document the permitted use for which the information was obtained. The records must be produced or made available for inspection at the request of the department.

Section 10. Rulemaking. The department may adopt rules to implement [sections 1 through 9] and this section. The rules may include procedures for:

(1) verifying the identity of a person requesting personal information;

(2) maintaining records of release of personal information by the department or by any recipient under [sections 1 through 9] and this section; and

(3) providing for oversight of sale or disclosure of personal information to third parties.

Section 11. Section 2-6-109, MCA, is amended to read:

"**2-6-109. Prohibition on distribution or sale of mailing lists — exceptions — penalty.** (1) Except as provided in subsections (3) through (8), in order to protect the privacy of those who deal with state and local government:

(a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) [Except as provided in 30-9-403, this] This section does not prevent an individual from compiling a mailing list by examination of original documents or applications that are otherwise open to public inspection.

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115 ~~and 13-38-103,~~ *or* to lists of the names of employees governed by Title 39, chapter 31~~, or to lists of persons holding driver's licenses provided for under 61-5-126~~.

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access ~~either~~ by Montana law enforcement agencies ~~or, by purchase or otherwise, of public records dealing with motor vehicle registration~~.

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) This section does not apply to the use by the public employees' retirement board of a mailing list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the mailing list is not released to the organization.

(9) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor. (Bracketed language deleted July 1, 2001.)"

Section 12. Section 45-7-208, MCA, is amended to read:

"**45-7-208. Tampering with public records or information.** (1) A person commits the offense of tampering with public records or information if ~~he~~ *the person*:

(a) knowingly makes a false entry in or false alteration of any record, document, legislative bill or enactment, or thing belonging to or received, issued, or kept by the government for information or record or required by law to be kept by others for information of the government;

(b) makes, presents, or uses any record, document, or thing knowing it to be false and with purpose that it be taken as a genuine part of information or records referred to in subsection (1)(a); ~~or~~

(c) purposely destroys, conceals, removes, or otherwise impairs the verity or availability of ~~any such~~ *a* record, document, or thing~~.~~*; or*

(d) purposely or knowingly misrepresents the person's identity or the use for which personal information is sought in order to obtain personal information from a motor vehicle record under [section 5, 6, or 7].

(2) A person convicted of the offense of tampering with public records or information shall be imprisoned in the state prison for ~~any~~ *a* term not to exceed 10 years or be fined an amount not to exceed $50,000, or both."

Section 13. Section 61-3-101, MCA, is amended to read:

"**61-3-101. Duties of department — records.** (1) The department shall keep a record as specified in this section of all motor vehicles, trailers, and semitrailers of every kind, of certificates of registration and ownership of those vehicles, and of all manufacturers and dealers in motor vehicles.

(2) The record must show the following:

(a) the name of the owner, the residence address by street or rural route, the town, and the county and the mailing address if different from the residence address;

(b) the name and address of the conditional sales vendor, mortgagee, or other lienholder and the amount due under the contract or lien;

(c) the manufacturer of the vehicle;

(d) the manufacturer's designation of the style of the vehicle;

(e) the identifying number;

(f) the year of manufacture;

(g) the character of the motive power and the shipping weight of the vehicle as shown by the manufacturer;

(h) the distinctive license number assigned to the vehicle, if any;

(i) if a truck or trailer, the number of tons capacity or GVW if imprinted on the manufacturer's identification plate;

(j) except as provided in 61-3-103, the name and complete address of any holder of a perfected security interest in the vehicle; and

(k) other information that may from time to time be found desirable.

(3) The department shall file applications for registration received by it from county treasurers and register the vehicles and the vehicle owners as follows:

(a) under the distinctive license number assigned to the vehicle by the county treasurer;

(b) alphabetically under the name of the owner;

(c) numerically under make and identifying number of the vehicle; and

(d) under another index of registration as the department considers expedient.

(4) The department shall determine the amount of fees, including local option taxes or fees, to be collected at the time of registration for each light vehicle subject to a registration fee under 61-3-560 through 61-3-562 and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-528 and 61-3-529. The county treasurer shall collect the registration fee, other appropriate fees, and local option taxes or fees, if applicable, on each motor vehicle at the time of its registration.

(5) Vehicle registration records and indexes and driver's license records and indexes may be maintained by electronic recording and storage media.

(6) In the case of dealers, the records must show the information contained in the application for a dealer's, wholesaler's, or auto auction license, as required by chapter 4, parts 1 and 2, of this title, as well as the distinctive license number assigned to the dealer.

(7) In order to prevent an accumulation of unneeded records and files, regardless of any other statutory requirements, the department may destroy all records and files that relate to vehicles that have not been registered within the preceding 4 years and that do not have an active lien.

(8) ~~All~~ *Subject to the provisions of [sections 1 through 10], department* records must be open to inspection during reasonable business hours, and the department shall furnish any information from the records, *except personal information and highly restricted personal information, as defined in [section 3],* upon payment by the applicant of the cost of the information requested. Prior to providing the information, the department ~~may~~ *shall* require the applicant to provide identification. ~~However, the department may, by rule, reasonably restrict disclosure of information on an owner if the owner has requested in writing that the department not disclose the information or if the demands of individual privacy clearly exceed the merits of public disclosure~~ *The department may not disclose personal information or highly restricted personal information except as permitted or required under [section 5, 6, or 7].*"

Section 14. Section 61-11-105, MCA, is amended to read:

"**61-11-105. Release of information — fees.** (1) ~~Except as provided in~~ *Subject to the provisions of* subsection (2), the department shall, upon request, furnish a person the individual Montana driving record of a licensee, showing the following:

(a) driver's license status and expiration date;

(b) convictions of the licensee; and

(c) traffic accidents in which the licensee was involved.

(2) ~~Unless the merits of public disclosure exceed the demands of individual privacy, a driving record of a licensee released under subsection (1) may not disclose an individual's address, social security number, photograph, medical or disability information, or information provided through means of a tracking device~~ *The department may not disclose personal information or highly restricted personal information from an individual Montana driving record, except as permitted or required under [section 5, 6, or 7].*

(3) Information relating to a traffic accident that did not involve a conviction, as defined in 61-11-203, may not be released by the department unless the release

is requested or approved by a party involved in the accident or is required by court order or a duly executed subpoena.

(4) A fee of $4 must be paid for each individual Montana driving record requested. A fee of $10 must be paid if a certified Montana record, as provided in 61-11-102(6), is requested. All driving records must be provided without charge to any criminal justice agency, as defined in 44-5-103, or other state or federal agency."

Section 15. Repealer. Section 13-38-103, MCA, is repealed.

Section 16. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 61, chapter 11, and the provisions of Title 61, chapter 11, apply to [sections 1 through 10].

Section 17. Effective date. [This act] is effective on passage and approval.

Approved April 23, 2001

CHAPTER NO. 364

[SB 298]

AN ACT LIMITING THE AMOUNT OF RETAINAGE THAT MAY BE WITHHELD TO 10 PERCENT OF THE TOTAL AMOUNT TO BE PAID TO A CONSTRUCTION CONTRACTOR EXCEPT FOR A RESIDENTIAL PROJECT WITH A TOTAL COST OF LESS THAN $400,000; AMENDING SECTION 28-2-2107, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Limit on retainage. (1) The maximum retainage applied to construction contracts subject to the provisions of this part may not exceed 10% if the construction contractor is performing by the terms of the contract.

(2) The retainage percentage withheld by an owner, as provided in subsection (1), from a construction contractor is the maximum retainage that a construction contractor may withhold from a subcontractor.

Section 2. Section 28-2-2107, MCA, is amended to read:

"**28-2-2107. Exception for certain residential dwellings.** The provisions of this part do not apply to *residential projects or* improvements to real property intended for residential purposes ~~that consist of four or fewer residential units~~ *with a total cost of less than $400,000.*"

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 28, chapter 2, part 21, and the provisions of Title 28, chapter 2, part 21, apply to [section 1].

Section 4. Applicability. [This act] applies to contracts entered into or renewed after October 1, 2001.

Approved April 23, 2001

CHAPTER NO. 365

[SB 304]

AN ACT CLARIFYING THE SCOPE OF AND REVISING FUNDING CRITERIA FOR THE UPLAND GAME BIRD HABITAT ENHANCEMENT PROGRAM; REQUIRING THAT A PERCENTAGE OF AVAILABLE REVENUE BE SPENT ON THE UPLAND GAME BIRD RELEASE PROGRAM; CLARIFYING PROJECT ELIGIBILITY CRITERIA; AMENDING SECTIONS 87-1-247, 87-1-248, AND 87-1-249, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-247, MCA, is amended to read:

"**87-1-247. Authorized use of funds.** (1) Not more than ~~10%~~ *15%* of the money generated under 87-1-246 may be used by the department to:

(a) prepare and disseminate information to landowners and organizations concerning the upland game bird enhancement program;

(b) review potential ~~pheasant~~ *upland game bird* release sites;

(c) assist applicants in preparing management plans for project areas; and

(d) evaluate the upland game bird enhancement program.

(2) The remainder of the money raised must be used~~:~~

~~(a) to share, at $3 a bird, in the cost of releasing pheasants in suitable habitat, in such numbers and under conditions determined by the department under 87-1-248(1); and~~

~~(b) to revert, at the end of each fiscal year, all unexpended funds to the habitat portion of the program outlined in 87-1-248(2)~~ for *releasing upland game birds in suitable habitat and for* the development, enhancement, and conservation of upland game bird habitat in Montana.

(3) (a) At least 15% of the funds collected under 87-1-246 must be set aside each fiscal year for expenditures related to upland game bird releases.

(b) At least 25% of the funds set aside for upland game bird release must be spent each year."

Section 2. Section 87-1-248, MCA, is amended to read:

"**87-1-248. Qualification of upland game bird enhancement projects.** (1) A project eligible for funding under the ~~pheasant~~ *upland game bird* release program must contain the proper combination of winter cover, food, nesting cover, and other ~~pheasant~~ *upland game bird* habitat components determined necessary ~~by the department~~ to provide for *establishment of* a viable ~~permanent pheasant~~ *upland game bird* population.

(2) ~~Habitat~~ *A project eligible for funding under the habitat* enhancement ~~efforts~~ *program* must include assistance to applicants in the establishment of suitable nesting cover, winter cover, ~~and~~ *or* feeding areas through cost-sharing ~~programs~~, leases, ~~and~~ *or* conservation easements.

(3) ~~No~~ *A* project containing hunting preserves or any commercial hunting enterprise or ~~wherein~~ *in which* hunting rights are leased or paid for is *not* eligible for funding.

(4) Preference must be given for project applications submitted by youth organizations, 4-H clubs, ~~sportsmen's~~ *sports* groups, and other associations of sufficient size to guarantee completion of all project requirements. However, individual landowners may also apply, ~~so~~ *as* long as the land in the project area remains open to public hunting in accordance with reasonable use limitations imposed by the landowner.

(5) (a) Except when a greater amount, up to $200,000, is authorized by the commission, a project may not receive more than $100,000 in funds collected under 87-1-246.

(b) Total purchases of equipment, land, and buildings under the habitat enhancement program may not exceed $25,000 for each project.

(c) The construction of wells, pipelines, or roads using funds collected under 87-1-246 is only allowed on a cost-share basis, when the applicant pays at least 50% of the funded costs.

(d) Any equipment purchased with funds collected under 87-1-246 remains the property of the department.

(e) A shelterbelt may not be constructed within 400 feet of any residential building or building occupied by livestock.

(f) Funds collected under 87-1-246 may be expended for supplemental feeding programs that are authorized by the department."

Section 3. Section 87-1-249, MCA, is amended to read:

"**87-1-249. Rules.** *(1)* The department shall adopt rules for the administration of the upland game bird enhancement program created in 87-1-246 through 87-1-249.

(2) The rules must:

(a) provide for eligibility criteria for project applications, including project evaluation criteria that incorporate the following factors:

(i) proposed project acreage of suitable size;

(ii) proposed project acreage and adjoining lands that are suitable for upland game bird habitat;

(iii) evidence that existing and potential species will benefit from the project;

(iv) the number of acres that will be open to and suitable for public bird hunting under the proposal; and

(v) in addition to the criteria in subsections (2)(a)(i) through (2)(a)(iv), preference to proposed projects with:

(A) longer contract length and larger landowner cost share;

(B) lands with special or unique components, such as wetlands; and

(C) a landowner history of providing hunter access and habitat enhancement;

(b) be consistent with general requirements of the federal conservation reserve program, the agricultural conservation program, the state hunter management program, and the state hunting access enhancement program so that landowners who participate in those programs may also be eligible for participation in the upland game bird enhancement program;

(c) specifically indicate specifications under which upland game birds will be released in project areas, including but not limited to:

(i) habitat requirements;

(ii) number of upland game birds to be released;

(iii) health requirements;

(iv) banding requirements;

(v) time for release;

(vi) age of birds to be released; and

(vii) reimbursement amount for each bird released;

(d) establish application procedures for project funding and review and for approval or denial of applications; and

(e) establish project monitoring and reporting procedures, including a requirement that payments for projects authorized pursuant to 87-1-247 be supported by contracts, invoices, receipts, or other supporting documentation."

Section 4. Effective date. [This act] is effective July 1, 2001.

Approved April 23, 2001

CHAPTER NO. 366

[SB 309]

AN ACT PROHIBITING A RECOVERY CARE BED IN AN OUTPATIENT CENTER FOR SURGICAL SERVICES FROM BEING USED FOR A PATIENT FOR 24 HOURS OR MORE; PROVIDING FOR A WAIVER BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AMENDING DEFINITIONS; AMENDING SECTION 50-5-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-101, MCA, is amended to read:

"**50-5-101. Definitions.** As used in parts 1 through 4 *3* of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(3) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (3), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration. The term does not include the administration of prescriptive medications.

(4) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(5) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(6) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(7) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(8) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(9) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(10) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(11) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(12) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(13) "Department" means the department of public health and human services provided for in 2-15-2201.

(14) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(15) "Federal acts" means federal statutes for the construction of health care facilities.

(16) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(17) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including chemical dependency counselors. The term includes chemical dependency facilities, end-stage renal dialysis facilities, health maintenance organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(18) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(19) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(20) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(21) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(22) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(23) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(24) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(25) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102, or for individuals with related problems.

(26) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(27) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(28) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(29) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(30) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(31) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(32) "Observation bed" means a bed occupied by a patient recovering from surgery or other treatment.~~

~~(33)~~*(32)* "Offer" means the representation by a health care facility that it can provide specific health services.

~~(34)~~*(33)* "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

~~(35)~~*(34)* "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include ~~observation~~ *recovery care* beds.

~~(36)~~*(35)* "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(37)~~*(36)* "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(38)~~*(37)* "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

~~(39)~~*(38)* "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

(39) "Recovery care bed" means, except as provided in [section 2], a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

(40) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(41) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(42) "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

(43) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(44) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(45) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(46) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(47) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department."

Section 2. Hourly limitation waivable by department or department's designee. The department or the department's designee may waive the 24-hour limitation related to recovery care beds, as defined in 50-5-101, as that limitation applies to a particular bed, if the attending physician of the individual occupying the bed determines that the waiver is medically appropriate. The waiver may be granted by the department before or after the 24-hour limitation is exceeded.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 50, chapter 5, part 2, and the provisions of Title 50, chapter 5, part 2, apply to [section 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to a health care facility license for an outpatient center for surgical services that is issued or renewed after [the effective date of this act].

Approved April 23, 2001

CHAPTER NO. 367

[SB 310]

AN ACT GENERALLY REVISING PROVISIONS REGARDING THE MONTANA COMPREHENSIVE HEALTH ASSOCIATION; APPLYING MANDATORY COVERAGE FOR SEVERE MENTAL ILLNESS TO THE ASSOCIATION; REVISING THE 1 PERCENT ASSESSMENT AMOUNT TO A CAP THAT THE ASSESSMENT MAY NOT EXCEED; REMOVING THE

ABILITY TO ABATE AN EXCESS ASSESSMENT; ALLOWING THE ASSOCIATION TO CHARGE LATE PAYMENT PENALTIES, INTEREST, OR BOTH; PROVIDING RULEMAKING AUTHORITY REGARDING LATE PAYMENTS AND INTEREST CHARGES; RAISING THE AMOUNT TO $50 UNDER WHICH AN ASSESSMENT NEED NOT BE LEVIED; RAISING THE MAXIMUM PHARMACY BENEFIT TO $2,000; AMENDING SECTIONS 33-22-706, 33-22-1502, 33-22-1513, AND 33-22-1521, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-706, MCA, is amended to read:

"**33-22-706. Coverage for severe mental illness — definition.** (1) A policy or certificate of health insurance or disability insurance that is delivered, issued for delivery, renewed, extended, or modified in this state must provide a level of benefits for the necessary care and treatment of severe mental illness, as defined in subsection (6), that is no less favorable than that level provided for other physical illness generally. Benefits for treatment of severe mental illness may be subject to managed care provisions contained in the policy or certificate.

(2) Benefits provided pursuant to subsection (1) include but are not limited to:

(a) inpatient hospital services;

(b) outpatient services;

(c) rehabilitative services;

(d) medication;

(e) services rendered by a licensed physician, licensed advanced practice registered nurse with a specialty in mental health, licensed social worker, licensed psychologist, or licensed professional counselor when those services are part of a treatment plan recommended and authorized by a licensed physician; and

(f) services rendered by a licensed advanced practice registered nurse with prescriptive authority and specializing in mental health.

(3) Benefits provided pursuant to this section must be included when determining maximum lifetime benefits, copayments, and deductibles.

(4) (a) This section applies to health service benefits provided by:

(i) individual and group health and disability insurance;

(ii) individual and group hospital or medical expense insurance;

(iii) medical subscriber contracts;

(iv) membership contracts of a health service corporation; ~~and~~

(v) health maintenance organizations~~.~~*; and*

(vi) the comprehensive health association created by 33-22-1503.

(b) This section does not apply to the following coverages:

(i) blanket;

(ii) short-term travel;

(iii) accident only;

(iv) limited or specific disease;

(v) Title XVIII of the Social Security Act (medicare); or

(vi) any other similar coverage under state or federal government plans.

(5) This section does not limit benefits for an illness or condition that does not constitute a severe mental illness, as defined in subsection (6), but that does constitute a mental illness, as defined in 33-22-702.

(6) As used in this section, "severe mental illness" means the following disorders as defined by the American psychiatric association:

(a) schizophrenia;

(b) schizoaffective disorder;

(c) bipolar disorder;

(d) major depression;

(e) panic disorder;

(f) obsessive-compulsive disorder; and

(g) autism."

Section 2. Section 33-22-1502, MCA, is amended to read:

"33-22-1502. Duties of ~~the~~ commissioner — rules. The commissioner shall:

(1) adopt rules to carry out the provisions and purposes of this part, *including rules regarding late payment penalties or rates of interest charged on unpaid assessments*;

(2) supervise the creation of the association within the limits described in 33-22-1503;

(3) approve the selection of the lead carrier by the association and approve the association's contract with the lead carrier, including the association plan coverage and premiums to be charged;

(4) conduct periodic audits to ~~assure~~ *ensure* the general accuracy of the financial data submitted by the lead carrier and the association; and

(5) undertake, directly or through contracts with other persons, studies or demonstration projects to develop awareness of the benefits of this part so that the residents of this state may best avail themselves of the health care benefits provided by this part."

Section 3. Section 33-22-1513, MCA, is amended to read:

"33-22-1513. Operation of association plan and association portability plans. (1) Upon acceptance by the lead carrier under 33-22-1516, an eligible person may enroll in the association plan by payment of the association plan premium to the lead carrier.

(2) Upon application by a federally defined eligible individual to the lead carrier for an association portability plan, the association may not:

(a) decline to offer an association portability plan; or

(b) impose a preexisting condition exclusion with respect to an individual's association portability plan coverage if application for association portability plan coverage is made within 63 days following termination of the applicant's most recent prior creditable coverage.

(3) Not less than 88% of the association plan premiums paid to the lead carrier may be used to pay claims and not more than 12% may be used for payment of the lead carrier's direct and indirect expenses as specified in 33-22-1514.

(4) Any income in excess of the costs incurred by the association in providing reinsurance or administrative services must be held at interest and used by the association to offset past and future losses due to claims expenses of the association plan and the association portability plan or be allocated to reduce association plan premiums.

(5) (a) Each participating member of the association shall share the losses due to claims expenses of the association plan and the association portability plan for plans issued or approved for issuance by the association and shall share in the operating and administrative expenses incurred or estimated to be incurred by the association incident to the conduct of its affairs in the following manner:

(i) Each participating member of the association must be assessed by the association on an annual basis an amount ~~equal to~~ *not to exceed* 1% of the association member's total disability insurance premium received from or on behalf of Montana residents as determined by the commissioner. Assessments made under this subsection (5)(a) or funds from any other source must be allocated to the association plan and the association portability plan in proportion to the needs of the two plans. If the needs of the association plan and the association portability plan exceed the funds generated by the 1% assessment, the association is then authorized to spend any funds appropriated by the legislature for the support of the plans.

~~(ii) The association may abate, in whole or in part, the 1% assessment if the needs of the association plan and the association portability plan do not require the funds generated by the full 1% assessment. The commissioner shall approve any abatement of the 1% assessment.~~

~~(iii)~~*(ii) (A)* Payment of an assessment is due within 30 days of receipt by a member of a written notice of the annual assessment. *After 30 days, the association shall charge a member:*

(I) a late payment penalty of 1.5% a month or fraction of a month on the unpaid assessment, not to exceed 18% of the assessment due;

(II) interest at the rate of 12% a year on the unpaid assessment, to be accrued at 1% a month or fraction of a month; or

(III) both of the charges in subsections (5)(a)(ii)(A)(I) and (5)(a)(ii)(A)(II).

(B) Failure by a contributing member to tender the association assessment within the 30-day period is grounds for termination of membership. A member terminated for failure to tender the association assessment is ineligible to write health care benefit policies or contracts in this state under 33-22-1503(2).

~~(iv)~~*(iii)* An associate member that ceases to do disability insurance business within the state remains liable for assessments through the calendar year in which the member ceased doing disability insurance business. The association may decline to levy an assessment against an association member if the assessment, as determined pursuant to this section, would not exceed ~~$10~~ *$50.*

(b) For purposes of this subsection (5), "total disability insurance premium" does not include premiums received from disability income insurance, credit disability insurance, disability waiver insurance, life insurance, medicare risk or other similar medicare health maintenance organization payments, or medicaid health maintenance organization payments.

(c) Any income in excess of the incurred or estimated claims expenses of the association plan and the association portability plan and the operating and administrative expenses of the association must be held at interest and used by the association to offset past and future losses due to claims expenses of the association plan and the association portability plan or be allocated to reduce association plan premiums.

(6) The proportion of the annual assessment allocated to the operation and expenses of the association plan, *not to include any amount of late payment penalty or interest charged,* may be offset by an association member against the premium tax payable by that association member pursuant to 33-2-705 for the year in which the annual assessment is levied. The insurance commissioner shall report to the office of budget and program planning, as a part of the information required by 17-7-111, the total amount of premium tax offset claimed by association members during the preceding biennium. The proportion of the annual assessment allocated to the operation and expenses of the association portability plan and levied against an association member may not be offset against the premium tax payable by that association member."

Section 4. Section 33-22-1521, MCA, is amended to read:

"**33-22-1521. Association plan — minimum benefits.** A plan of health coverage must be certified as an association plan if it otherwise meets the requirements of Title 33, chapters 15, 22 (excepting ~~part 7~~ *33-22-701 through 33-22-705*), and 30, and other laws of this state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:

(1) (a) The minimum benefits for an insured must, subject to the other provisions of this section, be equal to at least 50% of the covered expenses required by this section in excess of an annual deductible that does not exceed $1,000 per person. The coverage must include a limitation of $5,000 per person on the total annual out-of-pocket expenses for services covered under this section. Coverage must be subject to a maximum lifetime benefit, but the maximums may not be less than $100,000.

(b) One association plan must be offered with coverage for 80% of the covered expenses provided in this section in excess of an annual deductible that does not exceed $1,000 per person. This association plan must provide a maximum lifetime benefit of at least $500,000.

(c) Covered expenses for plans under subsection (1)(a) and (1)(b) must be paid as specified in provider contracts or, in the absence of a provider contract, at the prevailing charge in the state where the service is provided.

(d) The board may authorize other association plans, including managed care plans as defined in 33-36-103.

(2) Covered expenses for plans offered under subsections (1)(a) and (1)(b) must be for the following medically necessary services and articles when prescribed by a physician or other licensed health care professional and when designated in the contract:

(a) hospital services;

(b) professional services for the diagnosis or treatment of injuries, illness, or conditions, other than dental;

(c) use of radium or other radioactive materials;

(d) oxygen;

(e) anesthetics;

(f) diagnostic x-rays and laboratory tests, except as specifically provided in subsection (3);

(g) services of a physical therapist;

(h) transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition;

(i) oral surgery for the gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth or in connection with TMJ;

(j) rental or purchase of durable medical equipment, which must be reimbursed after the deductible has been met at the rate of 50%, up to a maximum of $1,000;

(k) prosthetics, other than dental;

(l) services of a licensed home health agency, up to a maximum of 180 visits per year;

(m) drugs requiring a physician's prescription that are approved for use in human beings in the manner prescribed by the United States food and drug administration, covered at 50% of the expense, up to an annual maximum of ~~$1,000~~ *$2,000*;

(n) medically necessary, nonexperimental transplants of the kidney, pancreas, heart, heart/lung, lungs, liver, cornea, and high-dose chemotherapy bone marrow transplantation, limited to a lifetime maximum of $150,000, with an additional benefit not to exceed $10,000 for expenses associated with the donor;

(o) pregnancy, including complications of pregnancy;

(p) newborn infant coverage, as required by 33-22-301;

(q) sterilization;

(r) immunizations;

(s) outpatient rehabilitation therapy;

(t) foot care for diabetics;

(u) services of a convalescent home, as an alternative to hospital services, limited to a maximum of 60 days per year; ~~and~~

(v) travel, other than transportation by a licensed ambulance service, to the nearest facility qualified to treat the patients medical condition when approved in advance by the insurer*; and*

(w) coverage for severe mental illness as required in 33-22-706.

(3) (a) Covered expenses for the services or articles specified in this section do not include:

(i) home and office calls, except as specifically provided in subsection (2);

(ii) rental or purchase of durable medical equipment, except as specifically provided in subsection (2);

(iii) the first $20 of diagnostic x-ray and laboratory charges in each 14-day period;

(iv) oral surgery, except as specifically provided in subsection (2);

(v) that part of a charge for services or articles that exceeds the prevailing charge in the state where the service is provided; or

(vi) care that is primarily for custodial or domiciliary purposes that would not qualify as eligible services under medicare.

(b) Covered expenses for the services or articles specified in this section do not include charges for:

(i) care or for any injury or disease arising out of an injury in the course of employment and subject to a workers' compensation or similar law, for which benefits are payable under another policy of disability insurance or medicare;

(ii) treatment for cosmetic purposes other than surgery for the repair or treatment of an injury or congenital bodily defect to restore normal bodily functions;

(iii) travel other than transportation provided by a licensed ambulance service to the nearest facility qualified to treat the condition, except as provided by subsection (2);

(iv) confinement in a private room to the extent that it is in excess of the institution's charge for its most common semiprivate room, unless the private room is prescribed as medically necessary by a physician;

(v) services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering the services or articles;

(vi) room and board for a nonemergency admission on Friday or Saturday;

(vii) routine well baby care;

(viii) complications to a newborn, unless no other source of coverage is available;

(ix) reversal of sterilization;

(x) abortion, unless the life of the mother would be endangered if the fetus were carried to term;

(xi) weight modification or modification of the body to improve the mental or emotional well-being of an insured;

(xii) artificial insemination or treatment for infertility; or

(xiii) breast augmentation or reduction."

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 23, 2001

CHAPTER NO. 368

[SB 311]

AN ACT ELIMINATING FROM THE PROXIMATE CAUSATION STANDARD FOR OCCUPATIONAL DISEASES THE PROVISION REQUIRING THE DISEASE TO BE INCIDENTAL TO THE CHARACTER OF THE BUSINESS AND NOT INDEPENDENT OF THE RELATION OF EMPLOYER AND EMPLOYEE; REQUIRING THAT A TREATING PHYSICIAN, UPON MAKING A POSITIVE DETERMINATION REGARDING PROXIMATE CAUSE, INCLUDE A DETERMINATION BY PERCENTAGE OF THE AMOUNT OF THE OCCUPATIONAL DISEASE THAT WAS ATTRIBUTABLE TO WORK; AMENDING SECTION 39-72-408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-72-408, MCA, is amended to read:

"**39-72-408. Proximate causation — *determination by treating physician.*** *(1)* Occupational diseases ~~shall be deemed~~ *are considered* to arise out of the employment ~~only~~ if:

~~(1)~~*(a)* there is a direct causal connection between the conditions under which the work is performed and the occupational disease;

~~(2)~~*(b)* the disease can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

~~(3)~~*(c)* the disease can be fairly traced to the employment as the proximate cause;

~~(4)~~*(d)* the disease ~~does not come~~ *comes* from a hazard to which ~~workmen~~ *workers* would *not* have been equally exposed outside of the employment~~;~~

~~(5) the disease is incidental to the character of the business and not independent of the relation of employer and employee~~.

(2) If the treating physician makes a positive determination pursuant to the factors provided in subsection (1), the treating physician shall also determine by percentage the amount of the occupational disease that was attributable to work rather than to activities or other conditions unrelated to the employment."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 24, 2001

CHAPTER NO. 369

[SB 318]

AN ACT ELIMINATING THE SPEED LIMIT OF 40 MILES PER HOUR FOR AGRICULTURAL VEHICLES BEING OPERATED ON HIGHWAYS DURING HARVEST SEASON; INCREASING FROM 50 MILES TO 100 MILES THE DISTANCE THAT VEHICLES MAY TRAVEL FROM THE HARVESTED FIELD; INCREASING FROM 7 PERCENT TO 10 PERCENT THE AMOUNT BY WHICH CERTAIN VEHICLES MAY EXCEED WEIGHT LIMITS WITHOUT INCURRING PENALTIES; AMENDING SECTIONS 61-10-130 AND 61-10-144, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-130, MCA, is amended to read:

"61-10-130. Custom combiner's special permit — fee — collection — distribution — not transferable. (1) In lieu of the taxes required by 15-24-301 and in lieu of motor vehicle license fees, gross vehicle weight fees, and overwidth, overlength, and overheight permits provided for in Title 61, a nonresident engaged in the business of custom combining who brings equipment into the state may pay a special permit fee of $40 ~~per~~ *for each* unit. A unit ~~shall include~~ *includes*:

(a) one truck suitable for hauling grain;

(b) one header trailer or one combine trailer; and

(c) pickup trucks and all other equipment, except combines, used by a nonresident and brought into the state as part of ~~his~~ *the nonresident's* business of custom combining.

(2) In lieu of gross vehicle weight fees and overwidth, overlength, and overheight permits, Montana residents engaged in the business of custom combining may pay the annual farm gross vehicle weight fees and a special permit fee of $20 ~~per~~ *for each* unit. A unit includes:

(a) one truck suitable for hauling grain;

(b) one header trailer or one combine trailer; and

(c) pickup trucks used by the resident in ~~his~~ *the resident's* business of custom combining.

(3) When used to transport agricultural products, a truck authorized to be used under a custom combiner's special permit may be operated only within a ~~50-mile~~ *100-mile* radius from the harvested field to the point of first unloading. The truck may not haul agricultural products from one commercial elevator to another commercial elevator. The truck may be operated on any highway, except a highway that is part of the federal-aid interstate system, without incurring excess weight penalties under 61-10-145 if the total gross weight of the truck does not exceed allowable weight limitations by more than 20% ~~per~~ *for each* axle and the maximum load ~~per~~ *for each* inch of tire width does not exceed 670 pounds. ~~The truck may not be operated in excess of 40 miles per hour.~~ No trip permit is required. If the truck exceeds the tolerance provided under this subsection, the fine or penalty imposed applies to all weight over the legal limit allowed by 61-10-107.

(4) A combine trailer authorized to be used under subsection (1)(b) or (2)(b) may be operated under the same limitations and ~~until July 1, 1991,~~ may be operated within the same tolerances granted trucks under subsection (3), except that the ~~50-mile~~ *100-mile* limitation does not apply and the combine trailer may be used upon any highway of the state, including a highway that is part of the federal-aid interstate system. If the combine trailer exceeds the tolerance provided under subsection (3), the fine or penalty imposed applies to all weight over the legal limit allowed by 61-10-107.

(5) The fee required by this section must be collected by the department of transportation. Upon payment of the fee, the department of transportation ~~must~~ *shall* provide an identifying device to be displayed on each truck, header trailer, or combine trailer and other equipment used by the nonresident or resident in ~~his~~

the business of custom combining in the ~~state, which~~. *The* device is valid for the calendar year in which the fee is collected.

(6) All fees collected under this section must be distributed not later than January 31 immediately following the period of ~~license~~ *licensure* as follows:

(a) 62 1/2% to the county general fund in the county in which the permittee declares *that* the greatest amount of time will be spent ~~to operate,~~ *operating the vehicle; and*

(b) 37 1/2% to the state special revenue fund for the department of transportation.

(7) The identifying devices and fee paid for each unit are not transferable from one vehicle to another or transferable on the sale or change of ownership.

(8) The department of transportation may adopt rules, as provided in Title 2, chapter 4, to implement the provisions of this section."

Section 2. Section 61-10-144, MCA, is amended to read:

"61-10-144. Violation of standards — tolerance. (1) It is a misdemeanor for a person, firm, or corporation to violate any provision of 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110.

(2) The operator of a vehicle or combination of vehicles may move over the highways to the first open state scale, permanent or portable, without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable total gross weight limitations by more than ~~7%, or~~ 10% ~~for garbage trucks,~~ and if the weight carried by any axle or combination of axles does not exceed the allowable axle weight limitations by more than ~~7%, or~~ 10% ~~for garbage trucks~~. If the vehicle or combination of vehicles is not in excess of the allowable total gross or axle weight limitations by more than ~~7%, or~~ 10% ~~for garbage trucks~~, the department may issue a single trip permit for the fee of $10, allowing the vehicle or combination of vehicles to move over the highways to the first facility where its load can be safely adjusted or to its destination. Violations of total gross or axle weight limitations in excess of ~~7%, or~~ 10% ~~for garbage trucks,~~ are subject to the fines provided in 61-10-145, and all loads in excess of ~~7%, or~~ 10% ~~for garbage trucks,~~ of the total gross or axle weight limitations:

(a) may be required to be adjusted or reduced to conform to the size and weight limitations before the vehicle or combination of vehicles is moved from the point of weighing; or

(b) may be issued a permit as authorized by 61-10-141.

(3) Farm vehicles transporting agricultural products from a harvesting combine or other harvesting machinery may ~~move over a~~ *be operated on any* highway, except ~~any~~ *a* highway that is part of the federal-aid interstate system, within a ~~50-mile~~ *100-mile* radius of the harvested field to the point of first unloading without incurring ~~the~~ excess weight penalties ~~set forth in~~ *under* 61-10-145 if the total gross weight of the farm vehicle or combination of vehicles does not exceed allowable weight limitations by more than 20% for each axle~~, but~~ *and* the maximum load for each inch of tire width ~~may~~ *does* not exceed 670 pounds. ~~The farm vehicle or combination of vehicles may not exceed 40 miles an hour.~~ A single trip permit, as required in subsection (2), is not applicable to the farm vehicle or combination of vehicles. When a farm vehicle or combination of

vehicles violates any of the provisions of this subsection, the fine or penalty imposed applies to that portion of the load above the legal limit.

~~(4) For the purposes of this section, a garbage truck means only a motor vehicle operated by a Class D motor carrier, as determined and regulated by the public service commission pursuant to 69-12-301(5).~~"

Section 3. Effective date. [This act] is effective July 1, 2001.

Approved April 23, 2001

CHAPTER NO. 370

[SB 324]

AN ACT PROVIDING THAT MEDICAL MALPRACTICE CLAIMS AGAINST LICENSED CHEMICAL DEPENDENCY FACILITIES ARE SUBJECT TO THE MONTANA MEDICAL LEGAL PANEL ACT; AND AMENDING SECTION 27-6-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-6-103, MCA, is amended to read:

"27-6-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Dentist" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the assessment:

(i) has as the individual's principal residence or place of dental practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of dentistry; or

(b) for all other purposes, a person licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as the principal residence or place of dental practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render dental services and whose shareholders, partners, or owners were individual dentists licensed to practice dentistry under the provisions of Title 37, chapter 4.

(2) (a) "Health care facility" means a facility ~~(~~,other than a governmental infirmary but including a university or college infirmary~~)~~, licensed as a health care facility under Title 50, chapter 5.

(b) For the purposes of this chapter, a health care facility does not include a ~~chemical dependency facility,~~ an end-stage renal dialysis facility, a home infusion therapy agency, or a residential care facility.

(3) "Health care provider" means a physician, a dentist, a podiatrist, or a health care facility.

(4) "Hospital" means a hospital as defined in 50-5-101.

(5) "Malpractice claim" means a claim or potential claim of a claimant against a health care provider for medical or dental treatment, lack of medical or dental treatment, or other alleged departure from accepted standards of health care that proximately results in damage to the claimant, whether the claimant's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(6) "Panel" means the Montana medical legal panel provided for in 27-6-104.

(7) "Physician" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the assessment:

(i) has as the individual's principal residence or place of medical practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of medicine; or

(b) for all other purposes, a person licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as the principal residence or place of medical practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render medical services and whose shareholders, partners, or owners were individual physicians licensed to practice medicine under the provisions of Title 37, chapter 3.

(8) "Podiatrist" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice podiatry under the provisions of Title 37, chapter 6, who at the time of the assessment:

(i) has as the individual's principal residence or place of podiatric practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of podiatry; or

(b) for all other purposes, a person licensed to practice podiatry under the provisions of Title 37, chapter 6, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as the principal residence or place of podiatric practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render podiatric services and whose shareholders, partners, or owners were individual podiatrists licensed to practice podiatry under the provisions of Title 37, chapter 6."

Approved April 23, 2001

CHAPTER NO. 371

[SB 328]

AN ACT TRANSFERRING FROM THE ATTORNEY GENERAL TO THE GOVERNOR RESPONSIBILITIES RELATING TO THE AUDITING AND PAYMENT OF EXPENSES FOR THE TRANSPORTATION AND EXTRADITION OF OFFENDERS; AND AMENDING SECTIONS 7-32-2144 AND 46-30-411, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-2144, MCA, is amended to read:

"**7-32-2144. Mileage and expenses of sheriff for delivery of prisoners and mentally ill persons.** (1) A sheriff delivering prisoners at the state prison or a juvenile correctional facility or mentally ill persons at the Montana state hospital or other mental health facility ~~receives~~ *is entitled to* actual expenses necessarily incurred in their transportation. The expenses include the expenses of the sheriff in going to and returning from the institution. The sheriff shall take vouchers for every item of expense. The amount of these expenses, as shown by the vouchers when presented by the sheriff, ~~shall~~ *must* be audited and allowed by the ~~attorney general~~ *governor* or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties. ~~In determining the actual expense if travel is by a privately owned vehicle, the mileage rate shall be allowed as provided in subsection (2).~~ No other ~~or further~~ compensation may be received by sheriffs for ~~such~~ *the* expenses.

(2) Unless otherwise provided, while in the discharge of ~~his~~ *civil and criminal* duties, ~~both civil and criminal,~~ the sheriff ~~receives~~ *is entitled to* a mileage allowance, as provided in 2-18-503. The sheriff ~~shall~~ *must* also be reimbursed for actual and necessarily incurred expenses for transporting, lodging, and feeding persons ordered by the court, as provided in 2-18-501 through 2-18-503. The county is not liable for and the board of county commissioners may not pay for any claim of the sheriff or other officer for any other expenses incurred in travel or for ~~subsistence~~ *expenses* in cases ~~where~~ *for which* mileage is allowed under this section~~, the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work~~."

Section 2. Section 46-30-411, MCA, is amended to read:

"**46-30-411. Expenses of bringing fugitives back to this state.** (1) When the governor of this state, in the exercise of the authority conferred by ~~section 2,~~ Article IV, *section 2,* of the constitution of the United States or by the laws of this state, demands from the executive authority of any state of the United States or of any foreign government the surrender to the authorities of this state of a fugitive from justice who has been found and arrested in ~~such~~ *that* state or foreign government, the accounts of the person employed by ~~him~~ *the governor* to bring back ~~such~~ *the* fugitive must be audited by the ~~attorney general~~ *governor* and paid out of the state treasury.

(2) An agent of this state authorized to return a fugitive from justice to this state may ~~utilize~~ *use* commercial transportation, aircraft, or motor vehicle to return the fugitive. The agent ~~shall~~ *must* be paid travel expenses, as provided for in 2-18-501 through 2-18-503, ~~as amended,~~ incurred in returning the fugitive to this state."

Approved April 23, 2001

CHAPTER NO. 372

[SB 333]

AN ACT REMOVING THE TERMINATION DATE FROM THE REQUIREMENT THAT THE STATE PRISON RANCH MAKE AN ANNUAL PAYMENT TO POWELL COUNTY COMPARABLE TO A PAYMENT IN LIEU OF TAX; AMENDING SECTION 53-1-208, MCA; REPEALING SECTION 6, CHAPTER 550, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-208, MCA, is amended to read:

"53-1-208. ~~**(Temporary)**~~ **Payment to Powell County.** (1) The department of corrections shall allocate $46,000 each fiscal year from the proprietary enterprise fund established for the operation of the state prison ranch to the Powell County treasurer.

(2) The Powell County treasurer shall distribute the payment in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as property taxes are distributed. ~~(Terminates June 30, 2001—sec. 6, Ch. 550, L. 1999.)~~"

Section 2. Repealer. Section 6, Chapter 550, Laws of 1999, is repealed.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 23, 2001

CHAPTER NO. 373

[SB 355]

AN ACT REVISING THE REQUIREMENTS FOR SECURING LOGS ON POLE TRAILERS; AND AMENDING SECTION 61-9-414, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-9-414, MCA, is amended to read:

"61-9-414. Logging trucks. (1) A truck or truck trailer combination, except pole trailers, actively engaged in transporting logs must be equipped with chains, cables, steel straps, or fiber webbing with working load limits that meet or exceed the manufacturer's marked value. The number of tie-down assemblies must be determined by the working load limits and the total weight of the load. The working load limits must equal or exceed 1 1/2 times the total weight of the load.

(2) A pole trailer actively engaged in transporting logs upon the highways of the state must be equipped as follows:

(a) At least three ~~binders~~ *wrappers* are required as standard equipment. The ~~binders~~ *wrappers* must:

(i) be made of steel chain, ~~or~~ steel cable, *or a combination of steel chain and steel cable*;

(ii) have a minimum ~~diameter of three-eighths of an inch~~ *working load limit of at least 3,000 pounds*; and

(iii) be long enough to encompass any load when secured by a ~~fastener~~ *binder*.

(b) *(i)* ~~Binders~~ *Wrappers* used to secure loads of logs together must be fastened by means of a ~~fastener~~ *binder*.

~~(i)~~*(ii)* The ~~minimum diameter of the portions of the fastener under direct stress from the binder~~ *complete wrapper and binder assembly* must *have a working load limit of at least 3,000 pounds* ~~be three-eighths of an inch~~.

~~(ii)~~*(iii)* The handle, or leverage portion of the ~~fastener~~ *binder*, when in use in tightening and holding the ~~binder~~ *wrapper*, must be securely fastened to the ~~binder~~ *wrapper* or to the ~~fastener~~ *binder* so that it cannot be accidentally loosened.

(c) At least two ~~binders~~ *wrappers* must be in use on all loads. The ~~binders~~ *wrappers* must be placed as close as reasonably possible to the front and rear bunks.

(d) If short logs are loaded on top of longer logs, sufficient ~~binders~~ *wrappers* must be used to secure both ends of the short logs to the main body of the load. A log may not extend laterally beyond the stakes that form the outer boundary of the load at the top of the stakes. Logs or poles loaded above the tops of the stakes must be loaded in a pyramidal fashion.

(3) For the purposes of this section:

(a) "binder" means a device attached to a wrapper that provides tension on and secures a wrapper; and

(b) "wrapper" means an indirect tie-down device, the tension of which is intended to secure a stack of logs."

Approved April 23, 2001

CHAPTER NO. 374

[SB 429]

AN ACT EXTENDING THE TIME PERIOD WITHIN WHICH A PETITION REQUESTING A REFERENDUM ON AN ORDINANCE MAY BE FILED; AMENDING SECTION 7-5-132, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-132, MCA, is amended to read:

"**7-5-132. Procedure to exercise right of initiative or referendum.** (1) The electors may initiate and amend ordinances and require submission of existing ordinances to a vote of the people by petition. If an approved petition containing sufficient signatures is filed prior to the ordinance's effective date *or within 60 days after the passage of the ordinance, whichever is later*, a petition requesting a referendum on the ordinance ~~shall delay~~ *delays* the ordinance's effective date until the ordinance is ratified by the electors. A petition requesting a referendum on an emergency ordinance filed within ~~30~~ *60* days of ~~its~~ *the* effective date ~~shall suspend~~ *of the ordinance suspends* the ordinance until ratified by the electors.

(2) The governing body may refer existing or proposed ordinances to a vote of the people by resolution.

(3) A petition or resolution for initiative or referendum ~~shall~~ *must*:

(a) embrace only a single comprehensive subject;

(b) set out fully the ordinance sought by petitioners or, in the case of an amendment, set out fully the ordinance sought to be amended and the proposed amendment or, in the case of referendum, set out the ordinance sought to be repealed;

(c) be in the form prescribed in Title 13, chapter 27, except as specifically provided in this part;

(d) contain the signatures of 15% of the registered electors of the local government; and

(e) contain transition provisions if the measure changes terms of office or forms of government."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 23, 2001

CHAPTER NO. 375

[SB 493]

AN ACT REQUIRING THAT ALL PUBLIC FUNDS BE INVESTED IN ACCORDANCE WITH PRUDENT EXPERT PRINCIPLES BY REMOVING THE RESTRICTION ON INVESTMENT IN PRIVATE CORPORATE CAPITAL STOCK; SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII, SECTION 13, OF THE MONTANA CONSTITUTION; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VIII, section 13, of The Constitution of the State of Montana is amended to read:

"**Section 13. Investment of public funds and public retirement system and state compensation insurance fund assets.** (1) The legislature shall provide for a unified investment program for public funds and public retirement system and state compensation insurance fund assets and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. ~~Except as~~

~~provided in subsections (3) and (4), no public funds shall be invested in private corporate capital stock.~~ The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other safe investments ~~bearing a fixed rate of interest as may be provided by law~~ *that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in investing a fund guaranteed against loss or diversion.*

(3) Investment of public retirement system assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of an enterprise of a similar character with similar aims. Public retirement system assets may be invested in private corporate capital stock.

(4) Investment of state compensation insurance fund assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of a private insurance organization. State compensation insurance fund assets may be invested in private corporate capital stock. However, the stock investments shall not exceed 25 percent of the book value of the state compensation insurance fund's total invested assets."

Section 2. Effective date. If approved by the electorate, this amendment is effective January 1, 2003.

Section 3. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 2002 by printing on the ballot the full title of this act and the following:

☐ FOR requiring that all public funds be invested in accordance with prudent expert principles by removing the restriction on investment in private corporate capital stock.

☐ AGAINST requiring that all public funds be invested in accordance with prudent expert principles by removing the restriction on investment in private corporate capital stock.

CHAPTER NO. 376

[HB 249]

AN ACT AUTHORIZING THE BOARD OF TRUSTEES OF A SCHOOL DISTRICT TO HOLD ITS FINAL BUDGET MEETING ON OR BEFORE AUGUST 15; EXTENDING THE TIME FOR PROVIDING NOTIFICATION OF THE FINAL BUDGET MEETING; AMENDING SECTIONS 20-9-115 AND 20-9-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-115, MCA, is amended to read:

"**20-9-115. Notice of final budget meeting.** Between July ~~24~~ *1* and August 4 of each year, the clerk of each district shall publish one notice, in the local or county newspaper that the trustees of the district determine to be the newspaper with the widest circulation in the district, stating the *date,* time, and place that the trustees will meet ~~on the second Monday in August~~ for the purpose of considering and adopting the final budget of the district, *stating* that the meeting of the trustees may be continued from day to day until the final adoption of the district's budget, and *stating* that any taxpayer in the district may appear at the meeting and be heard for or against any part of the budget."

Section 2. Section 20-9-131, MCA, is amended to read:

"**20-9-131. Final budget meeting.** (1) On ~~the second Monday in~~ *or before* August *15, on the date and* at the time and place ~~noticed~~ *stated in the notice published* pursuant to 20-9-115, the trustees of each district shall meet to consider all budget information and any attachments required by law.

(2) The trustees may continue the meeting from day to day but shall adopt the final budget for the district and, subject to 15-10-420, determine the amounts to be raised by tax levies for the district not later than the fourth Monday in August and before the fixing of the tax levies for each district. Any taxpayer in the district may attend any portion of the trustees' meeting and be heard on the budget of the district or on any item or amount contained in the budget.

(3) Upon final approval, the trustees shall deliver the adopted budget, including the amounts to be raised by tax levies, to the county superintendent of schools within 5 days."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2001

CHAPTER NO. 377

[HB 265]

AN ACT AUTHORIZING BOARDS OF TRUSTEES OF SCHOOL DISTRICTS TO ENTER INTO INTERLOCAL AGREEMENTS WITH POSTSECONDARY INSTITUTIONS TO ALLOW 11TH AND 12TH GRADE STUDENTS TO OBTAIN CREDITS THROUGH ATTENDING CLASSES AVAILABLE ONLY AT POSTSECONDARY INSTITUTIONS; PROVIDING ELIGIBILITY CRITERIA; REQUIRING PAYMENT OF FEES BY DISTRICTS OR STUDENTS; AMENDING SECTION 20-3-324, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Running start program — authorizing class credits at postsecondary institution — eligibility — payment for credits. (1) As used in this section, "postsecondary institution" means a unit of the Montana university system, a public community college, or a tribal college.

(2) A school district may enter into an interlocal agreement pursuant to Title 7, chapter 11, with a postsecondary institution to institute a "running start"

program to allow 11th and 12th grade students, as defined by the district, to attend classes at the postsecondary institution at a cost determined by the interlocal agreement and to obtain credits in classes not available through the school district.

(3) An agreement entered into by the district and the postsecondary institution must state the amount for each credit to be paid to the postsecondary institution by the district or the student.

(4) To participate in the program, a student shall complete a running start application provided by the district. The district shall determine whether the student has the skills needed to succeed in the proposed college coursework. If accepted, a student may earn both high school and college credits as determined by the interlocal agreement.

(5) In registering 11th and 12th grade students in the program, a postsecondary institution may not displace adult students attending the postsecondary institution.

(6) If accepted into the program, the student is responsible for transportation, books, and all supplies.

(7) If a student accepted into the program drops out of a class or classes at the postsecondary institution during the drop period established by the postsecondary institution, the postsecondary institution shall reimburse the district or the student the cost associated with the student's credits as determined by the interlocal agreement.

Section 2. Section 20-3-324, MCA, is amended to read:

"**20-3-324. Powers and duties.** As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title:

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) subject to 15-10-420, establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative agreement fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, vocational education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

(22) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(23) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.

(24) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

(25) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education; ~~and~~

(26) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in [section 1], that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution; and

~~(26)~~*(27)* perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the president of each tribal college.

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 9, part 7, and the provisions of Title 20, chapter 9, part 7, apply to [section 1].

Section 5. Effective date — applicability. [This act] is effective July 1, 2001, and applies to interlocal agreements entered into on or after July 1, 2001.

Approved April 26, 2001

CHAPTER NO. 378

[HB 331]

AN ACT CREATING THE CRIMINAL OFFENSE OF THEFT OF IDENTITY; AND PROVIDING PENALTIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Theft of identity. (1) A person commits the offense of theft of identity if the person purposely or knowingly obtains personal identifying information of another person and uses that information for any unlawful purpose, including to obtain or attempt to obtain credit, goods, services, financial information, or medical information in the name of the other person without the consent of the other person.

(2) (a) A person convicted of the offense of theft of identity if no economic benefit was gained or was attempted to be gained or if an economic benefit of less than $1,000 was gained or attempted to be gained shall be fined an amount not to exceed $1,000, imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of the offense of theft of identity if an economic benefit of $1,000 or more was gained or attempted to be gained shall be fined an amount not to exceed $10,000, imprisoned in a state prison for a term not to exceed 10 years, or both.

(3) As used in this section, "personal identifying information" includes but is not limited to the name, date of birth, address, telephone number, driver's license number, social security number or other federal government identification number, place of employment, employee identification number, mother's maiden name, financial institution account number, credit card number, or similar identifying information relating to a person.

(4) If restitution is ordered, the court may include, as part of its determination of an amount owed, payment for any costs incurred by the victim, including attorney fees and any costs incurred in clearing the credit history or credit rating of the victim or in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as a result of the actions of the defendant.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 6, part 3, and the provisions of Title 45, chapter 6, part 3, apply to [section 1].

Approved April 26, 2001

CHAPTER NO. 379

[HB 349]

AN ACT AUTHORIZING AN EMPLOYEE OF THE MONTANA UNIVERSITY SYSTEM OR AN INDIVIDUAL WORKING ON BEHALF OF THE UNIVERSITY SYSTEM TO SERVE ON THE BOARD OF DIRECTORS OR OTHER GOVERNING BOARD OF OR TO SERVE AS A DIRECTOR, OFFICER, OR EMPLOYEE OF A BUSINESS ENTITY THAT HAS AN AGREEMENT WITH THE UNIVERSITY SYSTEM OR ANY OTHER STATE AGENCY OR POLITICAL SUBDIVISION OR THAT SHARES AN OWNERSHIP INTEREST IN INTELLECTUAL PROPERTY WITH THE UNIVERSITY SYSTEM RELATED TO INTELLECTUAL PROPERTY CREATED BY THE EMPLOYEE OR INDIVIDUAL; ALLOWING THE EMPLOYEE OR INDIVIDUAL TO HAVE EQUITY OWNERSHIP OR OTHER FINANCIAL INTEREST IN THE INTELLECTUAL PROPERTY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Authorized university system employee or individual activities. (1) A Montana university system employee who, as part of the employee's authorized work for the university system, conceives, creates, discovers, invents, or develops intellectual property may:

(a) if approved by the board of regents, own or be awarded equity interest or participation in the intellectual property; or

(b) if approved by the board of regents, serve as a member of the board of directors or other governing board of or as a director, officer, or employee of a business entity that:

(i) has an agreement with the university system or with any other Montana state agency or political subdivision that relates to the research, development, licensing, or exploitation of that intellectual property; or

(ii) shares an ownership interest in the intellectual property with the university system.

(2) An individual, at the request of and on behalf of the university system, may serve as a member of the board of directors or other governing board of a business entity that:

(a) has an agreement with the university system or with any other Montana state agency or political subdivision that relates to the research, development, licensing, or exploitation of the individual's intellectual property; or

(b) shares an ownership interest in the intellectual property with the university system.

(3) For purposes of this section, "intellectual property" means inventions, discoveries, and creations that may be eligible for copyright or patent. The term also includes other economic development activity of a proprietary nature, including but not limited to business practices, ideas, processes, or arrangements that may not be eligible for either patent or copyright but for which the possibility of profitable commercialization exists.

(4) An employee or individual included under the provisions of subsection (1) or (2) shall report the name of the business entity with which the employee or individual is affiliated to the commissioner of higher education and to the appropriate person within the unit of the university system at which the person is employed or on behalf of which the individual is serving.

(5) The provisions of 2-2-104, 2-2-105, 2-2-121, and 2-2-201 do not apply to this section.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 25, part 1, and the provisions of Title 20, chapter 25, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2001

CHAPTER NO. 380

[HB 610]

AN ACT REDUCING THE AMOUNT OF COAL SEVERANCE TAX DEPOSITED IN THE TREASURE STATE ENDOWMENT FUND; AMENDING SECTION 17-5-703, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-703, MCA, is amended to read:

"17-5-703. (Temporary) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a treasure state endowment regional water system fund;

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund; and

(f) a coal severance tax school bond contingency loan fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) through (5).

(3) (a) ~~On January 21, 1992, and continuing as~~ *As* long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

(4) (a) ~~Beginning July 1, 1993, and ending~~ *Until* June 30, 2013, the state treasurer shall quarterly transfer to the treasure state endowment fund ~~75%~~ *50%* of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(b) ~~Beginning July 1, 1999, and ending~~ *Until* June 30, 2013, the state treasurer shall quarterly transfer to the treasure state endowment regional water system fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(c) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(d) The state treasurer shall monthly transfer from the treasure state endowment regional water system fund to the treasure state endowment regional water system special revenue account the amount of earnings required to meet the obligations of the state that are payable from the account for regional water systems authorized under 90-6-715. Earnings not transferred to the treasure state endowment regional water system special revenue account must be retained in the treasure state endowment regional water system fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund. (Terminates June 30, 2013—sec. 6, Ch. 495, L. 1999.)

17-5-703. (Effective July 1, 2013) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a coal severance tax permanent fund;

(d) a coal severance tax income fund; and

(e) a coal severance tax school bond contingency loan fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) through (5).

(3) (a) ~~On January 21, 1992, and continuing as~~ *As* long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

(4) (a) ~~Beginning July 1, 1993, and ending~~ *Until* June 30, 2013, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(b) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not

otherwise allocated under this section must be deposited in the coal severance tax permanent fund."

Section 2. Effective date. [This act] is effective July 1, 2003.

Approved April 26, 2001

CHAPTER NO. 381

[HB 33]

AN ACT AUTHORIZING A SHORT-TERM LEASE OF A WATER RIGHT FOR ROAD CONSTRUCTION OR DUST ABATEMENT WITHOUT APPROVAL BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 85-2-122, 85-2-402, 85-2-407, AND 85-2-419, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short-term lease of appropriation right. (1) An appropriator may lease for a term not to exceed 90 days all or part of an appropriation right for road construction or dust abatement without the prior approval of the department, subject to the requirements of this section. The lease agreement must include the following information:

(a) the name and address of the lessee;

(b) the name of the owner of the appropriation right;

(c) the number of the appropriation right;

(d) the purpose of use of water for which the lease is being made;

(e) the source of water to be appropriated;

(f) the starting and ending date of the proposed use of water;

(g) the proposed point of diversion;

(h) the proposed place of use;

(i) the diversion flow rate and volume of water to be used during the period of use; and

(j) a description of how the existing use of water will be reduced to accommodate the temporary change of use of the appropriation right, including the number and location of acres to be removed from irrigation, if applicable.

(2) A short-term lease of an appropriation right under this section may not exceed 60,000 gallons a day or the amount of the appropriation right, whichever is less. Any combination of short-term leases cannot exceed 120,000 gallons a day for one project.

(3) The following information must be submitted to the department at least 2 days prior to the use of water by a lessee under this section:

(a) a copy of the publication notice or copies of the individual notice required under subsection (4);

(b) a copy of the lease agreement; and

(c) for a combination of short-term leases greater than 60,000 gallons a day for one project, an analysis by the lessee of any potential adverse effects and a description of planned actions to mitigate any potential adverse effects to appropriators in the area of the proposed point of diversion.

(4) The lessee of an appropriation right under this section shall, 30 days prior to the use of the water, publish a notice of the proposed use of water once in a newspaper of general circulation in the area of the diversion or mail individual notice to potentially affected appropriators in the area of the proposed point of diversion. The published notice or the individual notice must contain the information listed in subsections (1)(a) through (1)(j) and (3)(c).

(5) (a) The owner of a water right, whether the right is prior or subsequent in priority to the short-term lease acquired by a person under this section, who cannot satisfy in full the owner's right during the time that the short-term lessee is diverting water may make a complaint to the department and cause the short-term lessee's diversion to be discontinued.

(b) The diversion is discontinued until the owner's right is satisfied or until the lessee establishes to the department that the discontinuance has had no effect on the owner's water right. Upon establishment that discontinuance has not had an effect, the department shall enter an order allowing the diversion to continue.

(6) If a person purposely, with malicious intent, causes the discontinuance of a short-term diversion through the complaint process provided in subsection (5)(a) and the complaint is found to be invalid and frivolous, the person is, upon conviction, guilty of a misdemeanor and shall be fined in an amount not to exceed $500.

(7) This section does not limit the remedies available to an appropriator to enjoin or to seek damages from a person appropriating water under this section.

(8) A civil action instituted to enjoin or seek damages from a person appropriating water pursuant to this section must be commenced against the lessee. The lessor is not a necessary party to a civil action. The lessee has the burden of establishing that the lessee's use does not have an adverse effect on a prior appropriator of water.

Section 2. Section 85-2-122, MCA, is amended to read:

"**85-2-122. Penalties.** (1) A person who violates or refuses or neglects to comply with the provisions of this chapter, any order of the department, or any rule of the department is guilty of a misdemeanor.

(2) ~~A~~ *Except as provided in [section 1(6)], a* person who violates or refuses or neglects to comply with the provisions of 85-2-114, any order of the department, or any rule of the department is subject to a civil penalty not to exceed $1,000 per violation. Each day of violation constitutes a separate violation.

(3) Fines collected by the department or a district court under subsection (2) must be deposited in the account established in 85-2-318 for use by the department in the enforcement of 85-2-114."

Section 3. Section 85-2-402, MCA, is amended to read:

"**85-2-402. (Temporary) Changes in appropriation rights.** (1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. ~~An~~ *Except as provided in [section 1], an* appropriator may not make a change in an appropriation right ~~except, as permitted under this section, by applying for and receiving~~ *without* the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a lease authorization pursuant to 85-2-436, a temporary change authorization for instream use to benefit the fishery resource pursuant to 85-2-408, or water use pursuant to 85-2-439 when authorization does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a lease authorization pursuant to 85-2-436 or a temporary change authorization pursuant to 85-2-408 or 85-2-439 for instream flow to benefit the fishery resource, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana:

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to *the* terms, conditions, restrictions, and limitations ~~as~~ *that* it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section. (Terminates June 30, 2005—sec. 6, Ch. 322, L. 1995; sec. 14, Ch. 487, L. 1995.)

85-2-402. (Effective July 1, 2005) Changes in appropriation rights. (1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. ~~An~~ *Except as provided in [section 1], an* appropriator may not make a change in an appropriation right ~~except, as permitted under this section, by applying for and receiving~~ *without* the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a lease authorization pursuant to 85-2-436 that does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or

through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section. (Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)

85-2-402. (Effective July 1, 2009) Changes in appropriation rights. (1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. ~~An~~ *Except as provided in [section 1], an* appropriator may not make a change in an appropriation right ~~except, as permitted under this section, by applying for and receiving~~ *without* the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; *and*

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly

permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section."

Section 4. Section 85-2-407, MCA, is amended to read:

"**85-2-407. Temporary changes in appropriation right.** (1) ~~An~~ *Except as provided in [section 1], an* appropriator may not make a temporary change in appropriation right for the appropriator's use or another's use except with department approval in accordance with 85-2-402 and this section.

(2) A temporary change in appropriation right may be approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.

(3) An authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. Renewal of an authorization for a temporary change in appropriation right requires application to the department by the appropriator. Upon application, the department shall notify other appropriators potentially affected by the renewal and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(4) (a) During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(b) An appropriator, other than an appropriator identified in subsection (7), may object:

(i) during the initial temporary change application process;

(ii) during the temporary change renewal process; and

(iii) once during the term of the temporary change permit.

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.

(7) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a temporary change in appropriation right under this section may not object to the exercise of the temporary change according to its terms, the renewal of the authorization for the temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage. Persons described in this subsection must be notified of the existence of any temporary change authorizations from the same source of supply.

(8) If a water right for which a temporary change has been approved is transferred as an appurtenance of real property, the temporary change remains in effect unless another change in appropriation right is authorized by the department."

Section 5. Section 85-2-419, MCA, is amended to read:

"**85-2-419. Salvaged water.** It is the declared policy of the state in 85-1-101 to encourage the conservation and full use of water. Consistent with this policy, holders of appropriation rights who salvage water may retain the right to the salvaged water for beneficial use. ~~Any~~ *Except for a short-term lease pursuant to [section 1], any* use of the right to salvaged water for any purpose or in any place other than that associated with the original appropriation right must be approved by the department as a change in appropriation right in accordance with 85-2-402. Sale of the right to salvaged water must also be in accordance with 85-2-403, and the lease of the right to salvaged water ~~for instream flow purposes~~ must be in accordance with 85-2-408, *[section 1],* 85-2-436, or 85-2-439."

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to [section 1].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 30, 2001

CHAPTER NO. 382

[HB 46]

AN ACT INCREASING THE LIMIT FOR CONSTRUCTION CONTRACTS WITHOUT FORMAL COMPETITIVE BIDS FOR STATE-OWNED WATER PROJECTS TO $50,000; EXEMPTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM SPECIFIC SOLICITATION AND SELECTION PROCEDURES FOR CONTRACTS UP TO $15,000 FOR GOODS, NONCONSTRUCTION SERVICES, OR PROFESSIONAL SERVICES RELATED TO STATE-OWNED WATER PROJECTS; AMENDING SECTION 85-1-219, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-1-219, MCA, is amended to read:

"**85-1-219. State-owned works — department approval — bids — *procurement of goods and services.*** (1) For all state-owned works constructed, repaired, altered, improved, maintained, rehabilitated, or reconstructed, the department shall:

(a) review and approve all plans and working drawings prepared by engineers or architects, if any;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all money;

(c) solicit, accept, and reject bids and award all contracts to the lowest qualified bidder, considering conformity with specifications and terms and reasonableness of bid amount;

(d) review and approve all change orders;

(e) accept the works when completed according to approved plans and specifications.

(2) Except as provided in subsection (3), the department ~~must~~ *shall* solicit sealed, competitive bids before awarding a contract under subsection (1) and may award a contract only after receipt of at least one bid, if reasonably available.

(3) The department may negotiate a contract, without competitive bidding, with a contractor qualified to do business in Montana if:

(a) the department rejects all bids for the work;

(b) an emergency threatening life or property exists;

(c) the proposed construction costs are ~~less than $25,000; or~~ *$50,000 or less;*

(d) an exigency exists~~.~~*; or*

(e) the cost of goods, nonconstruction services, or professional services is $15,000 or less.

(4) ~~The~~ *(a) Except as provided in subsection (4)(b), the* provisions of Title 18, chapter 2, parts 2 through 4, apply to contracts awarded *for construction* under this section.

(b) The provisions of Title 18, chapter 2, parts 2 and 3, do not apply to contracts for which the proposed construction costs are ~~less than $25,000~~ *$50,000 or less.*

(c) The requirements of Title 18, chapter 4, do not apply to contracts for which the cost of goods or nonconstruction services is $15,000 or less.

(d) The department may contract for professional services by direct negotiation when the cost of professional services covered by the contract does not exceed $15,000. The department may not separate service contracts or split or break projects for the purpose of circumventing the provisions of Title 18, chapter 8, part 2."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2001

CHAPTER NO. 383

[HB 94]

AN ACT CLARIFYING THE REQUIREMENTS TO NOTIFY POTENTIALLY LIABLE PERSONS REGARDING THE INVESTIGATION AND REMEDIATION OF IMPACTS CAUSED BY THE RELEASE OF HAZARDOUS AND DELETERIOUS SUBSTANCES; STANDARDIZING THE POSTEMERGENCY ACTION NOTIFICATION DEADLINE; LIMITING THE LIABILITY DEFENSE TO ONLY THOSE DEPARTMENT COSTS INCURRED OR ENCUMBERED PRIOR TO THE DATE OF NOTICE; AMENDING SECTIONS 75-10-711, 75-10-712, 75-10-715, AND 75-10-745, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-711, MCA, is amended to read:

"75-10-711. Remedial action — orders — penalties — judicial proceedings. (1) The department may take remedial action whenever:

(a) there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health, welfare, or safety or the environment; and

(b) ~~the appropriate remedial action will not be done properly and expeditiously by any person liable under 75-10-715(1) and each person that is~~ *none of the persons who are* liable or potentially liable under 75-10-715(1) *and who* ~~has~~ *have* been given the opportunity by letter to properly and expeditiously perform the appropriate remedial action *will properly and expeditiously perform the appropriate remedial action.* Any person liable under 75-10-715(1) shall take immediate action to contain, remove, and abate the release.

(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release has occurred or is about to occur, the department may undertake remedial action in the form of any investigation, monitoring, survey, testing, or other information gathering as authorized by 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of release and the extent and imminence of the danger to the public health, safety, or welfare or the environment.

(3) Except as provided in 75-10-712, the department is authorized to draw upon the fund to take action under subsection (1) if it has made diligent good faith efforts to determine the identity of the person or persons liable for the release or threatened release and:

(a) is unable to determine the identity of the liable person or persons in a manner consistent with the need to take timely remedial action; or

(b) ~~the~~ *a* person or persons determined by the department to be *liable or potentially* liable under 75-10-715(1) have been informed in writing of the department's determination and have been requested by the department to take appropriate remedial action but are unable or unwilling to take action in a timely manner; and

(c) the written notice ~~to each person~~ informs the person that if subsequently found liable pursuant to 75-10-715(1), the person may be required to reimburse the fund for the state's remedial action costs and may be subject to penalties pursuant to this part.

(4) Whenever the department is authorized to act pursuant to subsection (1), it may issue to any person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or appropriate to protect the public health, safety, or welfare or the environment.

(5) (a) A person who violates or fails or refuses to comply with an order issued under 75-10-707 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than $10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining the amount of any penalty assessed, the court may take into account:

(i) the nature, circumstances, extent, and gravity of the noncompliance;

(ii) with respect to the person liable under 75-10-715(1):

(A) the person's ability to pay;

(B) any prior history of violations;

(C) the degree of culpability; and

(D) the economic benefit or savings, if any, resulting from the noncompliance; and

(iii) any other matters as justice may require.

(b) Civil penalties collected under subsection (5)(a) must be deposited into the environmental quality protection fund established in 75-10-704.

(6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the following actions:

(a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;

(b) an action to enforce an order issued under 75-10-707 or this section;

(c) an action to recover a civil penalty for violation of or failure to comply with an order issued under 75-10-707 or this section; or

(d) an action by a person to whom an order has been issued to determine the validity of the order, only if the person has been in compliance and continues in compliance with the order pending a decision of the court.

(7) In considering objections raised in a judicial action regarding orders issued under this part, the court shall uphold and enforce an order issued by the department unless the objecting party can demonstrate, on the administrative record, that the department's decision to issue the order was arbitrary and capricious or otherwise not in accordance with law.

(8) Instead of issuing a notification or an order under this section, the department may bring an action for legal or equitable relief in the district court of the county where the release or threatened release occurred or in the first judicial district as may be necessary to abate any imminent and substantial endangerment to the public health, safety, or welfare or the environment resulting from the release or threatened release.

(9) The department may take remedial action pursuant to subsection (1) at a site that is regulated under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, if the department determines that remedial action is necessary to carry out the purposes of this part."

Section 2. Section 75-10-712, MCA, is amended to read:

"**75-10-712. Emergency action.** If the department determines that immediate response to an imminent threat to public health, safety, or welfare or the environment is necessary to avoid substantial injury or damage to persons, property, or resources, remedial action may be taken pursuant to 75-10-711(1) without the prior written notice required by 75-10-711(3). The department shall give subsequent written notice to ~~the~~ *a person who is liable or potentially liable* ~~person liable~~ under 75-10-715(1) within ~~5~~ *30* days after the action is taken, describing the circumstances ~~which~~ *that* required the action to be taken without prior notice."

Section 3. Section 75-10-715, MCA, is amended to read:

"75-10-715. Liability — reimbursement and penalties — proceedings — defenses and exclusions. (1) Except as provided in 75-10-742 through 75-10-752, notwithstanding any other provision of law, and subject only to the defenses set forth in subsection (5) and the exclusions set forth in subsection (7), the following persons are jointly and severally liable for a release or threatened release of a hazardous or deleterious substance from a facility:

(a) a person who owns or operates a facility where a hazardous or deleterious substance was disposed of;

(b) a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of;

(c) a person who generated, possessed, or was otherwise responsible for a hazardous or deleterious substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment of the substance or arranged with a transporter for transport of the substance for disposal or treatment; and

(d) a person who accepts or has accepted a hazardous or deleterious substance for transport to a disposal or treatment facility.

(2) A person identified in subsection (1) is liable for the following costs:

(a) all remedial action costs incurred by the state; and

(b) damages for injury to, destruction of, or loss of natural resources caused by the release or threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were specifically identified as an irreversible and irretrievable commitment of natural resources in an approved final state or federal environmental impact statement or other comparable approved final environmental analysis for a project or facility that was the subject of a governmental permit or license and the project or facility was being operated within the terms of its permit or license.

(3) If the person liable under subsection (1) fails, without sufficient cause, to comply with a department order issued pursuant to 75-10-711(4) or to properly provide remedial action upon notification by the department pursuant to 75-10-711(3), the person may be liable for penalties in an amount not to exceed two times the amount of any costs incurred by the state pursuant to this section.

(4) The department may initiate civil proceedings in district court to recover remedial action costs, natural resource damages, or penalties under subsections (1), (2), and (3). Proceedings to recover costs and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs, damages, or penalties lies in the county where the release occurred or where the person liable under subsection (1) resides or has its principal place of business or in the district court of the first judicial district.

(5) A person has a defense and is not liable under subsections (1), (2), and (3) if the person can establish by a preponderance of the evidence that:

(a) the department failed to *provide notice to the person claiming the defense* ~~follow the notice~~ ~~provisions of~~ *when required by* 75-10-711 ~~when required;~~. *Establishment of this defense only prohibits the department from collecting those costs incurred or encumbered by the department prior to providing notice to the person and does not provide the person a defense to any other liability.*

(b) the release did not emanate from any vessel, vehicle, or facility to which the person contributed any hazardous or deleterious substance or over which the person had any ownership, authority, or control and was not caused by any action or omission of the person;

(c) the release or threatened release occurred solely as a result of:

(i) an act or omission of a third party other than either an employee or agent of the person; or

(ii) an act or omission of a third party other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the person, if the person establishes by a preponderance of the evidence that the person:

(A) exercised due care with respect to the hazardous or deleterious substance concerned, taking into consideration the characteristics of the hazardous or deleterious substance in light of all relevant facts and circumstances; and

(B) took precautions against foreseeable acts or omissions of a third party and the consequences that could foreseeably result from those acts or omissions;

(d) the release or ~~threat of~~ *threatened* release occurred solely as the result of an act of God or an act of war;

(e) the release or threatened release was from a facility for which a permit had been issued by the department, the hazardous or deleterious substance was specifically identified in the permit, and the release was within the limits allowed in the permit;

(f) in the case of assessment of penalties under subsection (3), factors beyond the control of the person prevented the person from taking timely remedial action; or

(g) the person transported only household refuse, unless that person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse.

(6) (a) For the purpose of subsection (5)(c)(ii), the term "contractual relationship" includes but is not limited to land contracts, deeds, or other instruments transferring title or possession, unless the real property on which the facility is located was acquired by the person after the disposal or placement of the hazardous or deleterious substance on, in, or at the facility and one or more of the following circumstances is also established by the person by a preponderance of the evidence:

(i) At the time the person acquired the facility, the person did not know and had no reason to know that a hazardous or deleterious substance that is the subject of the release or threatened release was disposed of on, in, or at the facility.

(ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or condemnation.

(iii) The person acquired the facility by inheritance or bequest.

(b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through (6)(a)(iii), the person shall establish that the person has satisfied the requirements of subsection (5)(c)(i) or (5)(c)(ii).

(c) To establish that the person had no reason to know, as provided in subsection (6)(a)(i), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of assessing this inquiry, the following must be taken into account:

(i) any specialized knowledge or experience on the part of the person;

(ii) the relationship of the purchase price to the value of the property if uncontaminated;

(iii) commonly known or reasonably ascertainable information about the property;

(iv) the obviousness of the presence or the likely presence of contamination on the property; and

(v) the ability to detect the contamination by appropriate inspection.

(d) (i) Subsections (5)(b) and (5)(c) or this subsection (6) may not diminish the liability of a previous owner or operator of the facility who would otherwise be liable under this part.

(ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge of the release or threatened release of a hazardous or deleterious substance at the facility when the person owned the real property and then subsequently transferred ownership of the property to another person without disclosing the knowledge, the previous owner is liable under subsections (1), (2), and (3) and a defense under subsection (5)(b) or (5)(c) is not available to that person.

(e) ~~Subsection~~ *This subsection* (6) does not affect the liability under this part of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous or deleterious substance that is the subject of the action relating to the facility.

(7) A person has an exclusion and is not liable under this section if:

(a) the person generated or disposed of only household refuse, unless the person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse;

(b) the person owns or operates real property where hazardous or deleterious substances have come to be located solely as a result of subsurface migration in an aquifer from a source or sources outside the person's property, provided that the following conditions are met:

(i) the owner or operator did not cause, contribute to, or exacerbate the release or threatened release of any hazardous or deleterious substances through any act or omission. The failure to take affirmative steps to mitigate or address contamination that has migrated from a source outside the owner's or operator's property does not, in the absence of exceptional circumstances, constitute an omission by the owner or operator.

(ii) the person who caused, contributed to, or exacerbated the release or threatened release of any hazardous or deleterious substance is not and was not an agent or employee of the owner or operator and is not or was not in a direct or indirect contractual relationship with the owner or operator, unless the department provides a written determination that an existing or proposed contractual relationship is an insufficient basis to establish liability under this section;

(iii) there is no other basis of liability under subsection (1) for the owner or operator for the release or threatened release of a hazardous or deleterious substance; and

(iv) the owner or operator cooperates with the department and all persons conducting department-approved remedial actions on the property, including granting access and complying with and implementing all required institutional controls;

(c) the person owns or occupies real property of 20 acres or less for residential purposes, provided that the following conditions are met:

(i) the person did not cause, contribute to, or exacerbate the release or threatened release of any hazardous or deleterious substance through any act or omission;

(ii) the person uses or allows the use of the real property for residential purposes. This exclusion does not apply to any person who acquires or develops real property for commercial use or any use other than residential use.

(iii) at the time the person purchased or occupied the real property, there were no visible indications of contamination on the surface of the real property;

(iv) the person cooperates with the department and all persons conducting department-approved remedial actions on the property, including granting access and complying with and implementing all required institutional controls; and

(v) there is no other basis of liability under subsection (1) for the owner or occupier for the release or threatened release of a hazardous or deleterious substance.

(8) A person is liable under this section if the department provides substantial credible evidence that the person fails to satisfy any element of each exclusion in subsections (7)(a) through (7)(c).

(9) The liability of a fiduciary under the provisions of this part for a release or a threatened release of a hazardous or deleterious substance from a facility held in a fiduciary capacity may not exceed the assets held in the fiduciary capacity that are available to indemnify the fiduciary unless the fiduciary is liable under this part independent of the person's ownership or actions taken in a fiduciary capacity.

(10) A person who holds indicia of ownership in a facility primarily to protect a security interest is not liable under subsections (1)(a) and (1)(b) for having participated in the management of a facility within the meaning of 75-10-701(15)(b) because of any one or any combination of the following:

(a) holding an interest in real or personal property when the interest is being held as security for payment or performance of an obligation, including but not limited to a mortgage, deed of trust, lien, security interest, assignment, pledge, or other right or encumbrance against real or personal property that is furnished by the owner to ensure repayment of a financial obligation;

(b) requiring or conducting financial or environmental assessments of a facility or a portion of a facility, making financing conditional upon environmental compliance, or providing environmental information or reports;

(c) monitoring the operations conducted at a facility or providing access to a facility to the department or its agents or to remedial action contractors;

(d) having the mere capacity or unexercised right to influence a facility's management of hazardous or deleterious substances;

(e) giving advice, information, guidance, or direction concerning the administrative and financial aspects, as opposed to day-to-day operational aspects, of a borrower's operations;

(f) providing general information concerning federal, state, or local laws governing the transportation, storage, treatment, and disposal of hazardous or deleterious substances and concerning the hiring of remedial action contractors;

(g) engaging in financial workouts, restructuring, or refinancing of a borrower's obligations;

(h) collecting rent, maintaining utility services, securing a facility from unauthorized entry, or undertaking other activities to protect or preserve the value of the security interest in a facility;

(i) extending or denying credit to a person owning or in lawful possession of a facility;

(j) in an emergency, requiring or undertaking activities to prevent exposure of persons to hazardous or deleterious substances or to contain a release;

(k) requiring or conducting remedial action in response to a release or threatened release if prior notice is given to the department and the department approves of the remedial action; or

(l) taking title to a facility by foreclosure, provided that the holder of indicia of ownership, from the time the holder acquires title, undertakes to sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the property in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the facility and taking all facts and circumstances into consideration and provided that the holder does not:

(i) outbid or refuse a bid for fair consideration for the property or outbid or refuse a bid that would effectively compensate the holder for the amount secured by the facility;

(ii) worsen the contamination at the facility;

(iii) incur liability under subsection (1)(c) or (1)(d) by arranging for disposal of or transporting hazardous or deleterious substances; or

(iv) engage in conduct described in subsection (11).

(11) The protection from liability provided in subsections (9) and (10) is not available to a fiduciary or to a person holding indicia of ownership primarily to protect a security interest if the fiduciary or person through affirmative conduct:

(a) causes or contributes to a release of hazardous or deleterious substances from the facility;

(b) allows others to cause or contribute to a release of hazardous or deleterious substances: or

(c) in the case of a person holding indicia of ownership primarily to protect a security interest, actually participates in the management of a facility by:

(i) exercising decisionmaking control over environmental compliance; or

(ii) exercising control at a level comparable to that of a manager of the enterprise with responsibility for day-to-day decisionmaking either with respect to environmental compliance or substantially all of the operational, as opposed to financial or administrative, aspects of the facility."

Section 4. Section 75-10-745, MCA, is amended to read:

"75-10-745. (Temporary) Allocation of liability — process initiation. (1) For a facility at which the department has initiated a remedial action under 75-10-711 through the issuance of a notice letter prior to July 1, 1997, any person determined to be potentially liable under 75-10-715 may petition the department in writing to initiate the allocation process. The right to participate in the allocation process is waived if the written petition is not provided to the department prior to the completion of remedial actions, except for operation and maintenance, at the facility.

(2) For a facility at which the department has not initiated a remedial action through the issuance of a notice letter under 75-10-711, any person potentially liable under 75-10-715 who has received approval of a voluntary cleanup plan under 75-10-730 through 75-10-738 may petition the department in writing to initiate the allocation process. The right to participate in the allocation process is waived if the written petition is not provided to the department prior to the completion of remedial actions, except for operation and maintenance, at the facility.

(3) For a facility at which the department initiates a remedial action through the issuance of a notice letter under 75-10-711 after July 1, 1997, any person potentially liable under 75-10-715 may petition the department in writing within 60 days of the date of the notice letter to initiate the allocation process. Any potentially liable person under 75-10-715 who does not provide a written petition to the department within this timeframe waives the right to participate in the allocation process and remains liable as provided in 75-10-715. The notice letter sent by the department must advise that a failure to petition the department for allocation as provided in this subsection will result in a waiver of the right to participate in the allocation process.

(4) The allocation process may be initiated and may proceed upon written petition of one or more potentially liable persons.

(5) Prior to the initiation of discovery as provided in 75-10-747, all persons who participate in the allocation process shall agree in writing that the allocator's decision is binding, subject only to the provisions of 75-10-750(9) and the appeal provisions of 75-10-751.

(6) All liable or potentially liable persons under 75-10-715 who do not participate in the allocation process under 75-10-742 through 75-10-752 remain liable as provided in 75-10-715.

(7) Upon receipt of a written petition under ~~subsections~~ *subsection* (1) or (2) or when initiating actions at a facility without a prior notice letter under subsection (3), the department shall:

(a) conduct a good faith investigation and may use its authority in 75-10-707 to identify persons who may be liable under 75-10-715; and

(b) issue notice letters to *one or more of* the persons it identifies as potentially liable under 75-10-715. *If a person petitions the department to initiate the allocation process as provided for in subsection (8), the department shall issue notice letters or nomination letters pursuant to subsection (9) to the persons it identified as potentially liable under 75-10-715 who were not previously given notice.*

(8) A person who receives a notice letter may, within 60 days from the date of the notice letter, petition the department in writing to participate in an allocation process and provide the department with the identity of other potentially liable persons under 75-10-715 who were not ~~noticed~~ *given notice* by the department. When identifying additional potentially liable persons, the ~~noticed~~ person *given notice* shall provide to the department a statement and credible evidence showing that there is a basis in law and fact to determine that the identified person is potentially liable under 75-10-715.

(9) Within 30 days of receipt of the information provided for in subsection (8), the department may issue a notice letter to an identified person whom the department determines is a potentially liable person under 75-10-715 *or to a person whom the department identified in subsection (7) and who was not previously given notice*. If the department does not issue a notice letter to an identified person, the department shall issue the person a nomination letter indicating that the person has been identified as potentially liable under 75-10-715. The nomination letter must state that the person has the right to participate in the allocation process and that if the person does not participate and is found liable, the person remains subject to liability as provided in 75-10-715. If the newly noticed or nominated person chooses to participate in the allocation process, the person shall provide a written petition of the person's intent to participate in the allocation process to the department within 30 days of the date of the notice or nomination letter. A failure to petition the department for allocation as provided in this subsection results in a waiver of the right to participate in the allocation process.

(10) If a person nominated under subsection (9) cannot be readily located, the department shall, within 30 days of receipt of the information provided for in subsection (8), publish one notice of the person's nomination, along with the information contained in a nomination letter under subsection (9), in a newspaper of general circulation in the county where all or a portion of the facility is located. The notice must state that the person has 30 days from the date of the notice to petition the department, in writing, to participate in the allocation process. A failure to petition the department for allocation as provided in this subsection results in a waiver of the right to participate in the allocation process.

(11) If one or more potentially liable persons petition in writing for an allocation process under subsection (1), (2), or (3) and the department determines that the facility has a potential orphan share, the department shall:

(a) publish a notice and brief description of the facility in a newspaper of general circulation in the area affected and provide at least 30 days for submission of public comment on the identification of potentially liable persons under 75-10-715; and

(b) notify interested persons and the county commissioners of each county in which all or a portion of the facility is located and provide at least 30 days for submission of comments on the identification of potentially liable persons under 75-10-715.

(12) If a nominated person participates in the allocation and the person is assigned a zero share of liability by the allocator, that person's reasonable costs of participating in the allocation, including attorney fees, must be borne by the person who proposed the addition of the nominated person to the allocation.

(13) If the department anticipates that a facility may have an orphan share, the department shall represent the orphan share in the allocation process. If the state is a potentially liable person under 75-10-715, an agency or entity other than the department shall represent the state in the allocation process.

(14) Except as provided in subsection (15), whenever the department is involved in allocation processes on five facilities, other allocation processes may be stayed before the discovery stage provided in 75-10-747. Upon completion of an allocation provided in 75-10-750 or 75-10-751, execution of a stipulated agreement under 75-10-750, or a default to liability as provided in 75-10-715 for one of the five facilities, the department shall notify the potentially liable persons for the facility on the waiting list that has the earliest date of written petition. Discovery under 75-10-747 must begin within 10 days of department notification.

(15) A stay on the allocation process may not occur under subsection (14) if all persons participating in the allocation process agree in writing that there is no orphan share and that the state is not a potentially liable person under 75-10-715. The agreement is binding upon all noticed or nominated persons.

(16) If, after initiating the process, a potentially liable person elects to discontinue participation in the process, the person remains subject to liability as provided in 75-10-715. (Terminates June 30, 2005—sec. 30, Ch. 415, L. 1997.)"

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2001

CHAPTER NO. 384

[HB 125]

AN ACT CLARIFYING THAT THE GOAL OF TEMPORARY WATER QUALITY STANDARDS IS TO IMPROVE WATER QUALITY TO THE POINT AT WHICH ALL THE BENEFICIAL USES DESIGNATED FOR THAT WATER BODY OR SEGMENT ARE SUPPORTED; REQUIRING THAT A SUPPORT DOCUMENT AND PRELIMINARY IMPLEMENTATION PLAN BE SUBMITTED TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY PRIOR TO REQUESTING TEMPORARY WATER QUALITY STANDARDS; REVISING THE INFORMATION REQUIRED IN THE SUPPORT DOCUMENT AND IMPLEMENTATION PLAN; REQUIRING THE SUBMISSION OF ANNUAL WORK PLANS THAT MUST BE APPROVED BY THE DIRECTOR OF THE DEPARTMENT; REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO REVIEW THE IMPLEMENTATION PLAN AT LEAST EVERY 3 YEARS AT A PUBLIC HEARING; AUTHORIZING THE DEPARTMENT TO MODIFY IMPLEMENTATION PLANS; AND AMENDING SECTION 75-5-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-312, MCA, is amended to read:

"75-5-312. Temporary water quality standards. (1) The board may ~~on its own~~, upon recommendation of the department~~,~~ or upon a petition for rulemaking, *as provided in 2-4-315,* by a person, including a permit applicant or permittee, temporarily modify a water quality standard for a specific water body or segment on a parameter-by-parameter basis in those instances in which substantive information indicates that the water body or segment is not supporting its designated uses. When the board adopts temporary standards, the goal is to improve water quality to the point at which *all the beneficial uses designated for that water body or segment* ~~an additional beneficial use or uses~~ are supported.

(2) As a condition for establishing temporary water quality standards for a particular water body or segment, the department or the petitioner, as applicable, shall prepare a support document and *a preliminary* implementation plan for use by the board in determining whether to adopt ~~a~~ *the* proposed temporary water quality ~~standard~~ *standards. A person shall submit a support document and a preliminary implementation plan to the department for its review at least 60 days prior to filing a petition with the board requesting the adoption of temporary water quality standards.*

(3) ~~If a person petitions for rulemaking under this section, the petition must specifically describe the affected state water, the existing ambient water quality for the parameter or parameters at issue, the water quality standard or standards affected, and the temporary modifications sought. Within 180 days after the board grants a petition to initiate rulemaking, the petitioner shall prepare and submit to the board and the department a proposed support document and implementation plan that sets forth:~~ *The support document prepared by the department or the petitioner, as applicable, must describe:*

(a) the chemical, biological, and physical condition of the water body or segment;

~~(a)~~*(b)* the *specific* water quality limiting factors affecting the water body or segment;

~~(b)~~*(c)* the existing *water quality standards that are not being achieved* ~~beneficial use or uses and the beneficial use or uses considered attainable in the absence of the water quality limiting factors~~;

(d) the temporary modifications to the existing water quality standards being requested;

(e) existing beneficial uses; and

(f) the designated uses considered attainable in the absence of the water quality limiting factors.

~~(c) an implementation plan to eliminate the water quality limiting factors to the extent considered achievable; and~~

~~(d) a schedule for implementing the plan that ensures that the water quality standards for the parameter or parameters at issue are met as soon as reasonably practicable and in no event later than the time allowed by the board in the temporary standard.~~

(4) The preliminary implementation plan prepared by the department or the petitioner, as applicable, must contain:

(a) a description of the proposed actions that will eliminate the water quality limiting factors identified in subsection (3)(b) to the extent considered achievable; and

(b) a schedule for implementing the proposed actions that ensures that the existing water quality standards for the parameter or parameters at issue are met as soon as reasonably practicable.

(5) Within 30 days after the board's adoption of temporary water quality standards, the department or the petitioner, as applicable, shall:

(a) modify the preliminary implementation plan and schedule to reflect the requirements and timeframe adopted by the board for the temporary standards; and

(b) develop a detailed work plan describing the implementation activities that will be conducted during the first field season of the temporary standards. The work plan must be approved by the director of the department.

(6) By March 1 of each year that the temporary water quality standards are in effect, the department or the petitioner, as applicable, shall submit a detailed work plan describing the implementation activities that will be conducted during that season. The annual work plans must be approved by the director of the department. The department shall maintain copies of the implementation plan, schedule, and annual work plans and any modifications to those plans and schedule.

~~(4)~~*(7)* Upon the board's adoption of a temporary water quality standard, the department shall ensure that reasonable conditions and limitations designed to achieve compliance with the implementation plan are established in appropriate discharge permits.

~~(5)~~*(8)* (a) A temporary modification of a water quality standard may not result in adverse impacts to existing beneficial uses or be established for a total period longer than 20 years.

(b) During the period of the temporary modification, the board may not allow a discharge that will cause overall water quality to become worse than the overall quality of the water body or segment prior to the discharge.

~~(6)~~*(9)* If a state water is designated as having temporary standards, the department shall report to the board at least every 3 years or upon request of the board regarding whether adequate efforts have been made to implement the plans submitted as the basis for the temporary ~~standard~~ *standards*.

~~(7)~~*(10)* The board shall review *the* temporary standards *and implementation plan* at least every 3 years at a public hearing for which notice and an opportunity for comment have been provided. *During this review, the board shall consider the progress made in restoring water quality to a level that achieves the goal of the temporary water quality standards.* The board may terminate *or modify* the temporary ~~standard~~ *standards* based on information submitted at the time of ~~its~~ review ~~that the applicant is not complying with the approved implementation plan~~.

~~(8)~~*(11)* The board shall terminate a temporary standard for a parameter if:

(a) values for the modified parameter or parameters improve to conditions that support all designated uses for that classification;

(b) the state water for which the temporary standard is adopted is reclassified as provided for in 75-5-302; or

(c) the plan submitted in support of the temporary water quality standard is not being implemented according to the plan's schedule or modifications to that *plan or* schedule made by the board or department.

~~(9)~~*(12)* The board *or the department* may modify the *implementation* plan if ~~the permittee submits~~ *there is* convincing evidence ~~to the board~~ that the plan needs modification. ~~The board may not extend the plan beyond a total period of 20 years.~~

~~(10)~~*(13)* If a temporary standard for a parameter in a particular state water is terminated because the plan submitted in support of the temporary water quality standard is not being implemented according to the plan's schedule or modifications to that schedule made by the board or department, a person may request a new temporary standard by submitting both a petition for rulemaking and ~~a~~ *an implementation* plan that meet the requirements of *subsection* ~~subsections (2) and (3)~~ *(4)*. However, the board may not adopt another temporary standard for the parameter in the state water that would cumulatively be in effect for a total period longer than 20 years for the parameter in the state water."

Approved April 28, 2001

CHAPTER NO. 385

[HB 156]

AN ACT GENERALLY REVISING THE LAWS RELATING TO MOTOR VEHICLE DEALERS; CLARIFYING CURBSTONING PROHIBITIONS; ALLOWING ISSUANCE OF COURTESY LICENSE PLATES; CLARIFYING THAT SELLERS OF SMALL TRAILERS ARE NOT REQUIRED TO HAVE A DEALER'S LICENSE; AMENDING SECTIONS 61-1-314, 61-4-101, 61-4-105, 61-4-123, 61-4-124, AND 61-4-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Unlawful curbstoning of vehicle for sale. (1) Except as provided in 61-4-123, a person may not display or park a motor vehicle offered or posted for sale on real property in which the person does not have a legal interest if the primary purpose of displaying or parking the vehicle on the property is to promote or effect the sale of the vehicle.

(2) This section does not prohibit the display or parking of a vehicle offered or posted for sale when:

(a) the display or parking of the vehicle is incidental to actual operation and immediate use of the vehicle by the vehicle owner;

(b) the vehicle owner obtains the written consent of the real property owner, lessee, or agent of the owner or lessee on whose property the motor vehicle is displayed and posts the written consent or a copy of the written consent in the front or rear window of the motor vehicle: or

(c) unless otherwise prohibited by local ordinance, the motor vehicle is displayed on a public street that is adjacent to real property in which the person offering the vehicle for sale has a legal interest.

(3) A person who violates subsection (1):

(a) is subject to a written warning for the first violation; and

(b) for a second or subsequent violation, is guilty of a misdemeanor and upon conviction may be fined an amount not less than $250 and not more than $500.

(4) Each violation of subsection (1) is considered a separate offense.

Section 2. Courtesy license plates — design and issuance — restrictions on use. (1) The department may design courtesy license plates to be issued to a new or used motor vehicle dealer for use in accordance with this section. The plates must bear the license number assigned to the dealer, an abbreviation for the vehicle type of the dealer's license, and the word "COURTESY".

(2) Upon application and payment of an annual fee of $150 a set, the department may issue up to two sets of courtesy plates to a dealer.

(3) Courtesy license plates may be displayed only on a motor vehicle that the dealer loans, without charge or fee, exclusively for religious, charitable, scientific, or educational purposes. A loan of a vehicle displaying courtesy license plates may not exceed 30 days in a year.

(4) A dealer shall maintain records detailing to whom a vehicle bearing courtesy plates has been loaned, the date of the loan, the date on which the vehicle bearing courtesy plates is to be returned, and the actual date of the vehicle's return. These records must include the name, address, and telephone number of the person or entity to whom the vehicle has been loaned and the name of a contact person who will oversee the actual operation and use of the vehicle. The records are subject to audit by the department.

(5) It is the dealer's responsibility to ensure that courtesy plates are not used by an eligible person or entity for more than 30 days in a year.

(6) It is the responsibility of the person or entity to whom the vehicle bearing courtesy plates was loaned to carry, while operating or in actual physical control of the vehicle, adequate proof of the status of the person or entity under this section.

(7) If a dealer allows a person or entity to operate or retain actual physical control of a vehicle bearing courtesy plates in violation of this section, the department may suspend the right to use the courtesy plates for a period not to exceed 6 months.

Section 3. Section 61-1-314, MCA, is amended to read:

"61-1-314. Dealer. (1) "Dealer" means~~:~~

~~(a)~~ a person, firm, association, or corporation that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker of new motor vehicles or used motor vehicles ~~for which certificates of ownership have not been issued and~~ that are not registered in the name of the person, firm, association, or corporation and ~~for whom a dealer's license~~ *that* ~~is~~ *are* required *to be licensed* under chapter 4 of this title~~:~~

~~(b) an owner of real property who allows more than three new or used motor vehicles not titled in the property owner's or the seller's name to be offered for sale on the property during 1 calendar year unless the property is leased to a motor vehicle dealer licensed under 61-4-101 and the vehicles offered for sale are bona fide units of the licensed dealer's inventory; or~~

~~(c) an owner of a motor vehicle that is offered for sale and is displayed on real property in which the motor vehicle owner does not have a legal interest, and the primary purpose for displaying the motor vehicle on the real property is to effect the sale of the motor vehicle~~.

(2) The term "dealer" does not include the following:

(a) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(b) employees of the persons included in subsection (2)(a) when engaged in the specific performance of their duties as employees; *or*

(c) public officers while performing or in the operation of their duties~~;~~

~~(d) a motor vehicle owner who obtains the written consent of the real property owner, lessee, or agent of the owner or lessee on whose property the motor vehicle is displayed and who posts the written consent or a copy of the written consent in the front or rear window of the motor vehicle; or~~

~~(e) a person who attempts to effect a sale of the person's motor vehicle by displaying the motor vehicle on a public street or public area that abuts real property in which the person has a legal interest~~."

Section 4. Section 61-4-101, MCA, is amended to read:

"**61-4-101. Dealer's license — types of licenses and terms — plates — bonds — zoning.** (1) Except as provided in 61-4-125, a person may not engage in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker of a new motor vehicle or used motor vehicle, new or used recreational vehicle, trailer *(except a trailer having an unloaded weight of less than 500 pounds)*, motorcycle, quadricycle, or special mobile equipment ~~for which a certificate of ownership has not been issued and~~ that is not registered in the person's name, unless the person is the holder of a dealer's license issued by the department under this part.

(2) (a) The department is authorized to issue a dealer's license for one or more specified vehicle types to any person ~~that~~ *whom* it determines is qualified to hold a license under the provisions of this section. A dealer's license may be issued for, and restricted to, one or more of the following vehicle types:

(i) new motor vehicle;

(ii) used motor vehicle;

(iii) new recreational vehicle;

(iv) used recreational vehicle;

(v) trailer ~~of any size,~~ or special mobile equipment; or

(vi) motorcycle or quadricycle.

(b) For each type of dealer's license authorized, the department shall design and issue dealer and demonstrator plates as provided in 61-4-102 and 61-4-129.

(c) With the exception of a licensed new motor vehicle dealer, a dealer licensed for a particular type of vehicle may sell, trade, or accept on consignment only vehicles of the type for which the license is authorized, unless the dealer's license specifically refers to more than one vehicle type, such as a motorcycle or quadricycle license. A new motor vehicle dealer is authorized to sell, trade, or accept on consignment new motor vehicles or used motor vehicles.

(d) Regardless of vehicle type, a dealer's license issued by the department has a term of 1 calendar year, commencing on or after January 1 in the year of issue and expiring on December 31 of the same year.

(3) (a) An applicant for a dealer's license shall submit a written application for a dealer's license to the department, specifying the type or types of dealer's license sought. The application must be signed by the applicant and contain a verification by the applicant, under penalty of law, that the information contained in the application is true and correct. Any information provided in the license application process is subject to independent verification by the department or ~~a duly~~ *an* authorized representative of the department.

(b) After examining a license application and conducting *an* investigation necessary to verify the information contained in the application and if the department is satisfied that the applicant qualifies for the issuance of a license under the provisions of this chapter, the department may issue the license. The department may refuse, after examination and investigation, to issue a license to an applicant who is not qualified for licensure or whose prior financial or other activities or criminal record, as determined by the department:

(i) ~~pose~~ *poses* a threat to the effective regulation of dealers, wholesalers, or auto auctions;

(ii) ~~pose~~ *poses* a threat to the public interest of the state; or

(iii) ~~create~~ *creates* a danger of illegal or deceptive practices being used in the conduct of the proposed dealership, wholesaler, or auto auction.

(4) To be qualified for licensure as a dealer, an applicant shall provide to the department the following:

(a) the name under which the applicant intends to conduct business and the name, address, date of birth, and social security number of any person who possesses or will possess an ownership interest in the business for which the license is sought. If the applicant is a corporation, the personal information required in this subsection (4)(a) must be provided for each corporate officer and the person designated by the corporation to manage or oversee the dealership.

(b) for each person subject to the provisions of subsection (4)(a), *information concerning* whether the person has:

(i) an ownership interest in a vehicle dealership or a wholesaler business in Montana or another jurisdiction and, if so, the name and address of each dealership or wholesaler; and

(ii) been found guilty of, or pleaded guilty to, a felony in this or any other jurisdiction and, if so, *shall* provide a summary of the conduct resulting in the felony charge, including the dates of the conduct and any court proceedings pertaining to the conduct and the name and address of any court in which the matter was heard:

(c) the name, address, and telephone number of the insurance carrier from whom the applicant has acquired garage ~~keepers~~ liability insurance, *naming the department as a certificate holder of the policy,* and the name, address, and telephone number of the local insurance agent for the carrier and the applicant's policy number. The insurance must cover any vehicle bearing dealer or demonstrator license plates that is offered for demonstration or loan to, or otherwise operated by, a customer in the regular course of the applicant's business *and must be for a minimum of 1 year*;

(d) the geographic location of the physical lot or lots upon which vehicles will be displayed for sale and *of* a permanent nonresidential building *that* will be maintained to store the actual physical or electronic records resulting from the purchase, sale, trade, or consignment of vehicles for which licensure is sought. An applicant may use more than one location to display vehicles for sale~~, provided~~ *if* the maximum distance between each display lot does not exceed 200 feet and *if* the distance between a display lot and the building in which vehicle sales records are stored does not exceed 1,000 feet.

(e) for each geographic location specified in the application, evidence of the applicant's compliance with applicable local land use planning, zoning, and business permitting requirements, if any. Evidence of compliance may be documented by means of a written verification of compliance signed by the authorized representative of the local land use planning or zoning board or the local business permitting agency.

(f) a diagram or plat showing the geographic location, lot dimensions, and building and sign placement for the applicant's proposed established place of business, along with two or more photographs of the geographic location, building premises, and sign, as prescribed by the department;

(g) a certification by the applicant that the applicant is a bona fide dealer in new motor vehicles, used motor vehicles, used recreational vehicles, trailers, motorcycles, quadricycles, or special mobile equipment;

(h) if the applicant is seeking a new motor vehicle dealer's license:

(i) the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement and the name and make of all motor vehicles to be handled by the applicant;

(ii) the geographic location or locations, specified in writing, upon which the applicant will provide and maintain a permanent building to display and sell new motor vehicles and offer and maintain a bona fide service department for the repair, service, and maintenance of the motor vehicles; *and*

(iii) *verification that the applicant* otherwise ~~meet~~ *meets* the requirements of part 2 of this chapter; and

~~(iv)~~*(i)* if the applicant is applying for a new recreational vehicle dealer's license, certification that the person is recognized by a manufacturer, importer, or distributor as a dealer in new recreational vehicles.

(5) If an applicant for a new motor vehicle or used motor vehicle, new or used recreational vehicle, or trailer dealer's license wants to maintain more than one established place of business, the applicant shall file a separate license application for each proposed established place of business and otherwise qualify for licensure at each place separately.

(6) Each application under this section must be accompanied by an application fee of $5 and one or more of the following license fees based on the type of dealer's license being sought:

(a) $25 for a new motor vehicle dealer's license;

(b) $25 for a used motor vehicle dealer's license;

(c) $25 for a new or used recreational vehicle dealer's license; or

(d) $25 for a motorcycle or trailer dealer's license.

(7) The applicant for a dealer's license shall also file with the application a bond of $25,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a new or used recreational vehicle dealer, or a trailer dealer. Applicants for a motorcycle dealer's license shall file a bond in the sum of $10,000. All bonds must be conditioned that the applicant shall conduct the business in accordance with the requirements of the law. The bond may extend to any other type of dealer license issued to the applicant at the same geographic location~~, provided that~~ *if* all types of licenses are indicated on the face of the bond. All bonds must be approved by the department, must be filed in its office, and must be renewed annually."

Section 5. Section 61-4-105, MCA, is amended to read:

"**61-4-105. Criminal penalty — civil penalty imposed by agency.** (1) ~~Any~~ *Except as provided in [section 1], a* person violating the provisions of ~~61-3-501, 61-4-101, 61-4-102, 61-4-104, 61-4-120, or 61-4-123 through 61-4-126~~ *this part* is guilty of a misdemeanor and subject to a fine *in an amount* of not less than $250 and not more than $500. For the purposes of this section, every sale of a motor vehicle in violation of the provisions of ~~61-3-501, 61-4-101, 61-4-102, 61-4-104, 61-4-120, or 61-4-123 through 61-4-126~~ *this part* is a separate offense.

(2) In addition to all other penalties created by this part, the department is authorized to take appropriate enforcement action on its own initiative. ~~Any~~ *Except as provided in [section 1], a* person violating the provisions of ~~61-3-501, 61-4-101, 61-4-102, 61-4-104, 61-4-120, or 61-4-123 through 61-4-126~~ *this part* may be subject to administrative action, in accordance with the contested case procedures of Title 2, chapter 4, as follows:

(a) a civil penalty not to exceed ~~$200~~ *$1,000* for each violation;

(b) suspension of the motor vehicle dealer, wholesaler, or auto auction license not to exceed 5 working days;

(c) revocation or denial of the motor vehicle dealer, wholesaler, or auto auction license; or

(d) any combination of subsections (2)(a) through (2)(c)."

Section 6. Section 61-4-123, MCA, is amended to read:

"**61-4-123. Dealer requirements and restrictions.** (1) A dealer may not offer for sale, trade, or consignment any vehicle type not authorized by the license issued to the dealer by the department or use a dealer or demonstrator plate on a vehicle of a type for which the dealer is not licensed.

(2) A dealer may not ~~exhibit~~ *display* at the dealer's established place of business or any approved off-premises sale location~~;~~ a vehicle *offered* for sale, trade, or consignment unless the Monroney label required for new motor vehicles pursuant to 15 U.S.C. 1232 or the buyer's guide label required for used motor vehicles pursuant to 16 CFR, part 455, is affixed to the side window of the vehicle

or is conspicuously displayed within the vehicle in a fashion that is readily readable by a customer.

(3) ~~A~~*Except as provided in subsection (4), a* dealer may not sell ~~vehicles from a~~ *or display a motor vehicle offered for sale at any* geographic location other than that of the dealer's established place of business as listed on the dealer's license ~~unless~~.

(4) (a) A dealer may conduct an off-premises display and sale at a geographic location other than that of the dealer's established place of business as listed on the dealer's license if the dealer notifies the department 10 days in advance, on a form prescribed by the department, of the opening date and location of an off-premises *display and* sale *and obtains a permit from the department. The department may require proof from the dealer that the location proposed for the off-premises display and sale is in compliance with local zoning ordinances.* Except for recreational vehicle dealers, an off-premises *display and* sale must be conducted within ~~the city limits of the city of the dealer's licensed location or upon an adjacent off-premises site that is approved by the department and that is within~~ the county of the dealer's licensed location. The *display and* sale may not exceed 10 consecutive ~~business~~ days, and a licensed dealer may not conduct more than 10 off-premises *displays and* sales during any 1 calendar year.

(b) A dealer may display one or more vehicles inside an airport terminal or shopping mall without obtaining an off-premises display and sale permit if no actual sales are made, or could be made, at the terminal or mall.

(c) Upon prior written notice to the department, a dealer may display one vehicle at a geographic location other than that of the dealer's established place of business as listed on the dealer's license if no actual sales are made, or could be made, at the display location and the display:

(i) conspicuously promotes or supports an event or a program sponsored by a nonprofit corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes and the vehicle is displayed at a location where the event is being held or the program is being promoted; or

(ii) conspicuously promotes a joint commercial endeavor between the dealer and another clearly identified business entity and the vehicle is displayed on premises owned or leased by the other business entity and where the other entity regularly conducts its business. A display under this subsection (4)(c)(ii) may not exceed 90 days.

~~(4)~~*(5)* If more than one dealer displays vehicles and maintains an established place of business at the same geographic location, each dealer shall ensure that all vehicle records, office facilities, and inventory, if applicable, are physically segregated from those of the other dealer and clearly identified and attributed to the appropriate dealer.

~~(5)~~*(6)* A dealer shall install and maintain telephone service at the dealer's established place of business. The telephone service must be listed in the directory assistance that applies to the area in which the business is located.

~~(6)~~*(7)* A dealer shall conspicuously post at the dealer's established place of business written notice indicating the regular and customary office hours maintained by the dealer.

~~(7)~~*(8)* (a) It is the responsibility of the dealer to ensure that *the department is named as a certificate holder on any garage liability insurance policy held by the dealer, that the minimum term of the policy is 1 year, and that* a lapse ~~in required garage keepers legal liability~~ *of* insurance does not occur as a result of cancellation or termination of a previously certified policy.

(b) This subsection ~~(7)~~ *(8)* does not relieve a dealer of the mandatory vehicle liability insurance obligation imposed under chapter 6 of this title.

~~(8)~~*(9)* A dealer shall display at the dealer's established place of business at least one sign stating the name of the business and indicating that vehicles are offered for sale, trade, or consignment. The letters of the sign must be at least 6 inches in height and clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet."

Section 7. Section 61-4-124, MCA, is amended to read:

"61-4-124. License renewal — fee — dealer's license suspension. (1) On or before December 31 of each year, a dealer shall apply to the department for renewal of the dealer's license for an additional 1-year period.

(2) (a) To qualify for renewal, a dealer shall submit a completed application, in a form prescribed by the department, updating prior submitted information concerning owner identity, other ownership interest, felony conduct, garage ~~keeper~~ liability insurance, and surety bond filings, as originally required under 61-4-101, and providing any other relevant information requested by the department.

(b) The department may also require a renewal applicant to submit one or more current photographs of the dealer's established place of business or the signage for the business.

(c) If a dealer seeks to change the geographic location of the dealer's established place of business, the dealer shall also provide information concerning local land use planning, zoning, and business permitting compliance, if applicable, and a diagram or plat for the proposed location, consistent with the requirements of 61-4-101.

(3) Except as provided in subsection (4)(c), a license renewal application must be accompanied by a $5 application fee and one or more of the following license fees, depending on the type of license renewal being sought:

(a) $25 for a new motor vehicle, used motor vehicle, new recreational vehicle, or used recreational vehicle dealer's license; and

(b) $25 for a motorcycle or trailer dealer's license.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a used motor vehicle dealer seeking license renewal shall also certify, under penalty of law, to the retail sale of 12 or more used motor vehicles during the expiring license term. A used motor vehicle dealer licensed for less than a full calendar year in the expiring license term shall certify, under penalty of law, to the retail sale of an average of at least one used motor vehicle a calendar month or portion of a calendar month, for which the expiring license was in effect.

(b) The minimum retail sales requirements of this subsection (4) do not apply to a dealer seeking to renew a used motor vehicle dealer's license and either a new motor vehicle dealer's license or a new recreational vehicle dealer's license.

(c) (i) To qualify for renewal, a used motor vehicle dealer who is also a qualified tow truck operator, as defined in 61-8-903, shall certify, under penalty of law, to the retail sale of five or more used motor vehicles during the expiring license term or pay a fee of $25 in addition to the application and license fee required in subsection (3).

(ii) A renewal applicant licensed as a motor vehicle wrecking facility under Title 75, chapter 10, part 5, is exempt from the minimum retail sales requirements of subsection (4)(a), as well as the additional renewal or the lower minimum sales requirements of this subsection (4).

(iii) If a used motor vehicle dealer also qualified as a tow truck operator loses the status of a qualified tow truck operator under 61-8-903, the dealer's license may be retained for the remainder of the license term, but after the current term, the dealer is subject to the retail sales requirements of subsection (4)(a).

(iv) If a used motor vehicle dealer also licensed as a motor vehicle wrecking facility ceases to do business as a wrecking facility and surrenders the wrecking facility license to the department of environmental quality, the dealer's license may be retained for the remainder of the license term, but after the current term, the dealer is subject to the retail sales requirements of subsection (4)(a).

(d) A dealer who fails to meet the retail sales requirements for license renewal under subsection (4)(a) is not eligible for license renewal and may not submit an application for another used motor vehicle dealer's license or a wholesaler's license for a period of 12 months from the expiration of the dealer's most recent license term.

(5) A dealer whose completed renewal application is received by the department on or before December 31 of the expiring license term may, if necessary, continue dealership operations and display or use dealer or demonstrator plates under the expired license through *the last day of* February ~~15~~ of the following year."

Section 8. Section 61-4-125, MCA, is amended to read:

"61-4-125. Wholesaler's license. (1) (a) The department is authorized to issue a wholesaler's license to any person ~~that~~ *whom* it determines is qualified to hold a license under the provisions of this section.

(b) A wholesaler is authorized to sell used motor vehicles, used recreational vehicles, trailers, motorcycles, quadricycles, or special mobile equipment. However, a wholesaler may sell a vehicle only to a dealer, an auto auction, or another wholesaler. Retail sale of vehicles by a wholesaler is not allowed.

(c) A wholesaler's license issued by the department has a term of 1 calendar year, commencing on or after January 1 in the year of issue and expiring on December 31 of the same year.

(d) The department shall design and issue wholesaler demonstrator plates of a similar sequence to demonstrator plates issued to dealers but that conspicuously display the term "wholesaler" or the abbreviation "W".

(2) To qualify for a wholesaler's license, an applicant shall submit a completed application, in a form prescribed by the department, that provides the following:

(a) the name under which the applicant intends to conduct business and the name, address, date of birth, and social security number of any person who possesses or will possess an ownership interest in the business for which the license is sought. If the applicant is a corporation, the personal information required in this subsection (2)(a) must be provided for each corporate officer and the person designated by the corporation to manage or oversee the dealership.

(b) for each person subject to the provisions of subsection (2)(a), *information concerning* whether the person has:

(i) an ownership interest in a vehicle dealership or wholesaler business in Montana or another jurisdiction and, if so, the name and address of each dealership or wholesaler; and

(ii) been found guilty of, or pleaded guilty to, a felony in this or any other jurisdiction~~,~~ and, if so, *shall* provide a summary of the conduct ~~giving rise to~~ *resulting in* the felony charge, including the dates of the conduct and any judicial proceeding pertaining to the conduct~~,~~ and the name and address of any court in which the matter was heard;

(c) the name, address, and telephone number of the insurance carrier from whom the applicant has acquired garage ~~keepers~~ liability insurance, *naming the department as a certificate holder under the policy,* and the name, address, and telephone number of the local insurance agent for the carrier and the applicant's policy number. The insurance must cover any vehicle bearing a wholesaler demonstrator plate that is offered for demonstration or loan to, or otherwise operated by, a customer in the regular course of the applicant's business *and must be for a minimum of 1 year.*

(d) the street address of the permanent nonresidential building or office where business records will be kept and *will be made* available for inspection by the department; and

(e) a bond of $25,000 filed with the department on behalf of the applicant. The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must be approved by the department and subject to annual renewal.

(3) The application fee for a wholesaler's license is $5, and the license fee is $25. Both fees must accompany an original or renewal wholesaler's license application.

(4) Wholesalers may not be issued or use dealer plates, as provided in 61-4-102. However, a wholesaler may be issued and is authorized to display and use a wholesaler demonstrator plate on any type of vehicle that a wholesaler is authorized to sell. The fee for a wholesaler demonstrator plate is $3. To the extent not inconsistent with this section, use of wholesaler demonstrator plates is otherwise governed by 61-4-129.

(5) (a) A wholesaler's license must be renewed annually, and application for renewal must be filed on or before December 31 of the expiring license term.

(b) To qualify for renewal of a wholesaler's license, a wholesaler ~~must~~ *shall* submit a completed application, in a form prescribed by the department, updating prior submitted information, as originally supplied under subsection (2).

(c) Additionally, the wholesaler shall certify, under penalty of law, that 12 or more vehicles of the type authorized under the license were sold by the wholesaler to a dealer, auto auction, or another wholesaler during the expiring license term. A wholesaler who was licensed for less than a full calendar year in the expiring term shall certify, under penalty of law, to the sale of an average of at least one vehicle a calendar month, or portion of a calendar month, during which the expiring license was in effect.

(d) A wholesaler who fails to meet the sales requirements for license renewal under this section is not eligible for license renewal and may not submit an application for another wholesaler's license or a used motor vehicle dealer's license for a period of 12 months from the expiration of the wholesaler's most recent license term.

(6) A wholesaler whose completed renewal application has been received by the department on or before December 31 of the expiring license term may, if necessary, operate the business and display wholesaler demonstrator plates under the expired license through *the last day of* February ~~15~~ of the following year."

Section 9. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 61, chapter 4, part 1, and the provisions of Title 61, chapter 4, part 1, apply to [sections 1 and 2].

Section 10. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2001

CHAPTER NO. 386

[HB 166]

AN ACT ALLOWING A WETLAND MITIGATION SITE TO BE CONVEYED BY THE DEPARTMENT OF TRANSPORTATION WITH A PERPETUAL CONSERVATION EASEMENT; RESTRICTING WHO MAY OWN THE CONSERVATION EASEMENT; PROVIDING SPECIAL RESTRICTIONS FOR WETLAND MITIGATION SITES; AND AMENDING SECTION 60-4-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-4-207, MCA, is amended to read:

"60-4-207. Conveyances — execution and contents. (1) Land or an interest in land sold by the department ~~shall~~ *may* be conveyed only when full payment has been made for it. ~~It shall~~ *Except as provided in subsection (2), land or an interest in land must* be conveyed by a deed or patent of conveyance without covenants ~~which recites~~, *stating* that ~~it~~ *the deed or patent* was issued under this chapter.

(2) (a) Land or an interest in land that has been constructed, altered, or otherwise used to satisfy wetland mitigation requirements of federal laws or regulations may be conveyed with a perpetual conservation easement that contains the wetland mitigation credit for the department.

(b) (i) The conservation easement must be held by a qualified easement holder defined, for the purpose of this part, as a private nonprofit organization, a land trust, or a state or federal agency.

(ii) The terms of any agreement to access the wetland mitigation site may not be expanded without the consent of the landowner of the property to which the access agreement applies.

~~(2)~~*(3)* The deed or patent ~~shall~~ *must* contain a reservation of easements for rights-of-way for the benefit of the United States and all other reservations to which the land conveyed may be subject.

~~(3)~~*(4)* The deed or patent ~~shall~~ *must* be signed by the governor or, in case of ~~his~~ *the governor's* absence or inability, the lieutenant governor. ~~It shall~~ *The signature must* be attested by the secretary of state and have attached the great seal of the state. ~~It~~ *The signature* need not be acknowledged."

Approved April 28, 2001

CHAPTER NO. 387

[HB 210]

AN ACT ALLOWING THE BOARD OF COMMISSIONERS OF AN IRRIGATION DISTRICT TO SET THE DAILY COMPENSATION RATE OF THE COMMISSIONERS; AND AMENDING SECTION 85-7-1505, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-7-1505, MCA, is amended to read:

"85-7-1505. Compensation and expenses of commissioners. *(1)* The commissioners, when sitting as a board or when engaged in the business of the district, are entitled to compensation *at an amount determined by a majority vote of the board* ~~of $25~~ for each day *that* they are actually and necessarily engaged in the performance of irrigation district duties. ~~and to~~ *The amount of compensation determined by the board may be no greater than $100.*

(2) The commissioners are also entitled to reimbursement for travel expenses, as provided in 2-18-501 through 2-18-503, and for ~~their~~ *their* necessary expenses when otherwise engaged ~~on~~ *in* district business, including premiums on qualifying bonds and any other bonds required of ~~them~~ *the commissioners* in connection with ~~their~~ *their* office."

Approved April 28, 2001

CHAPTER NO. 388

[HB 279]

AN ACT GENERALLY REVISING THE PRACTICE OF PHARMACY; CLARIFYING THE NUMBER OF TERMS A MEMBER OF THE BOARD OF PHARMACY MAY SERVE; PROVIDING THAT A BOARD MEMBER'S REFUSAL OR INABILITY TO PERFORM DUTIES IS GROUNDS FOR REMOVAL FROM THE BOARD; ADDING AND CLARIFYING DEFINITIONS; CLARIFYING THE DUTIES OF THE BOARD OF PHARMACY; PROVIDING FOR REGISTRATION TO PRACTICE TELEPHARMACY; PROVIDING FOR REGISTRATION FOR PHARMACY TECHNICIANS; PROVIDING FOR LICENSURE OF PHARMACY INTERNS; AND AMENDING SECTIONS 2-15-1843, 37-2-101, 37-7-101, 37-7-201, 37-7-301, 37-7-303, 37-7-321, 37-7-322, 37-7-323, 37-7-401, 37-7-406, 37-7-502, 37-7-505, 37-7-602, AND 50-32-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1843, MCA, is amended to read:

"**2-15-1843. Board of pharmacy.** (1) There is a board of pharmacy.

(2) The board consists of five members appointed by the governor with the consent of the senate. Three members must be licensed pharmacists, and two members must be from the general public.

(a) Each licensed member must have graduated and received the first professional undergraduate degree from the school of pharmacy of the university of Montana-Missoula or from an accredited pharmacy degree program that has been approved by the board. Each licensed member ~~shall~~ *must* have at least 5 consecutive years of practical experience as a pharmacist immediately before ~~his~~ appointment *to the board*. A licensed member who, during ~~his~~ *the member's* term of office, ceases to be actively engaged in the practice of pharmacy in this state ~~shall~~ *must* be automatically disqualified from membership on the board.

(b) Each public member of the board must be a resident of the state and may not be or ever have been:

(i) a member of the profession of pharmacy or the spouse of a member of the profession of pharmacy;

(ii) a person having any material financial interest in the providing of pharmacy services; or

(iii) a person who has engaged in any activity directly related to the practice of pharmacy.

(3) Members shall serve staggered 5-year terms. A member may not serve ~~consecutive 5-year terms on the board~~ *more than two consecutive full terms. For the purposes of this section, an appointment to fill an unexpired term does not constitute a full term.*

(4) A member ~~shall~~ *must* be removed from office by the governor*:*

(a) ~~on~~ *upon* proof of malfeasance or misfeasance in office, after reasonable notice of charges against ~~him~~ *the member* and after a hearing*; or*

(b) upon refusal or inability to perform the duties of a board member in an efficient, responsible, and professional manner.

~~(4)~~*(5)* The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 37-2-101, MCA, is amended to read:

"**37-2-101. Definitions.** As used in this part, the following definitions apply:

(1) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which the medical practitioner maintains an office for professional practice.

(2) "Device" means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in ~~man~~ *humans*;

(b) to affect the structure or any function of the body of ~~man~~ *humans*.

(3) "Drug" ~~means any article:~~

~~(a) recognized in the official United States Pharmacopoeia/National Formulary or in any supplement to the pharmacopoeia/formulary;~~

~~(b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;~~

~~(c) intended to affect the structure or any function of the body of man;~~

~~(d) intended for use as a component of any article described in subsection (a), (b), or (c) of this subsection (3), but the term does not include any device or any components of a device~~ *has the same meaning as provided in 37-7-101.*

(4) "Drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs; but the term does not include a pharmacy.

(5) "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry, optometry, or a nursing specialty as described in 37-8-202(5) and in the licensed practice to administer or prescribe drugs.

(6) "Person" means any individual and any partnership, firm, corporation, association, or other business entity.

(7) "Pharmacy" ~~means an establishment which engages in the sale of drugs requiring a prescription~~ *has the same meaning as provided in 37-7-101.*

(8) "State" means the state of Montana or any political subdivision ~~thereof~~ *of the state.*"

Section 3. Section 37-7-101, MCA, is amended to read:

"**37-7-101. Definitions.** ~~Unless the context requires otherwise,~~ *As used* in parts 1 through ~~3~~ *7* of this chapter, the following definitions apply:

(1) (a) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(b) The term does not include immunization by injection for children under 18 years of age.

~~(1)~~*(2)* "Board" means the board of pharmacy provided for in 2-15-1843.

~~(2)~~*(3)* "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(4) "Collaborative pharmacy practice" means the practice of pharmacy by a pharmacist who has agreed to work in conjunction with one or more prescribers, on a voluntary basis and under protocol, and who may perform certain patient care functions under certain specified conditions or limitations authorized by the prescriber.

(5) "Collaborative pharmacy practice agreement" means a written and signed agreement between one or more pharmacists and one or more prescribers that provides for collaborative pharmacy practice for the purpose of drug therapy management of patients.

~~(3)~~*(6)* "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(7) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device based on:

(a) a practitioner's prescription drug order;

(b) a professional practice relationship between a practitioner, pharmacist, and patient;

(c) research, instruction, or chemical analysis, but not for sale or dispensing; or

(d) the preparation of drugs or devices based on routine, regularly observed prescribing patterns.

(8) "Confidential patient information" means privileged information accessed by, maintained by, or transmitted to a pharmacist in patient records or that is communicated to the patient as part of patient counseling.

~~(4)~~*(9)* "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(10) "Device" has the same meaning as defined in 37-2-101.

(11) "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for administration to or use by a patient.

(12) "Distribute" means the delivery of a drug or device by means other than administering or dispensing.

~~(5) (a)~~*(13)* "Drug" means *a substance*:

~~(i)~~*(a)* ~~articles~~ recognized *as a drug* in ~~the~~ *any* official ~~United States Pharmacopoeia/National Formulary~~ *compendium* or a supplement;

~~(ii)~~*(b)* ~~articles~~ intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in ~~people~~ *humans* or ~~other~~ animals;

~~(iii)~~*(c)* ~~articles,~~ other than food, intended to affect the structure or function of the body of ~~an individual~~ *humans* or ~~other animal~~ *animals*; and

~~(iv)~~*(d)* ~~articles~~ intended for use as a component of ~~an article~~ *a substance* specified in subsection ~~(5)(a)(i), (5)(a)(ii), or (5)(a)(iii)~~ *(13)(a), (13)(b), or (13)(c).*

~~(b) Drug does not include devices or their components, parts, or accessories.~~

(14) "Drug utilization review" means an evaluation of a prescription drug order and patient records for duplication of therapy, interactions, proper utilization, and optimum therapeutic outcomes. The term includes but is not limited to the following evaluations:

(a) known allergies;

(b) rational therapy contraindications;

(c) reasonable dose and route administration;

(d) reasonable directions for use;

(e) drug-drug interactions;

(f) drug-food interactions;

(g) drug-disease interactions; and

(h) adverse drug reactions.

(15) "Equivalent drug product" means a drug product that has the same established name, active ingredient or ingredients, strength or concentration, dosage form, and route of administration and meets the same standards as another drug product as determined by any official compendium or supplement. Equivalent drug products may differ in shape, scoring, configuration, packaging, excipients, and expiration time.

~~(6)~~*(16)* "Intern" means ~~a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons under the supervision of a registered and licensed pharmacist.~~*:*

(a) a person who is licensed by the state to engage in the practice of pharmacy while under the personal supervision of a preceptor and who is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist;

(b) a graduate of an accredited college of pharmacy who is licensed by the state for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;

(c) a qualified applicant awaiting examination for licensure; or

(d) a person participating in a residency or fellowship program.

(17) (a) "Manufacturing" means the production, preparation, propogation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis.

(b) Manufacturing includes:

(i) any packaging or repackaging;

(ii) labeling or relabeling;

(iii) promoting or marketing; and

(iv) preparing and promoting commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons.

~~(7)~~*(18)* "Medicine" means a remedial agent which has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(19) "Patient counseling" means the communication by the pharmacist of information, as defined by the rules of the board, to the patient or caregiver in order to ensure the proper use of drugs or devices.

~~(8)~~*(20)* "Person" includes an individual, partnership, corporation, ~~or~~ association, *or other legal entity.*

(21) "Pharmaceutical care" means the provision of drug therapy and other patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of disease process.

~~(9)~~*(22)* "Pharmacist" means a ~~natural~~ person licensed by the ~~department~~ *state* to ~~prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons~~ *engage in the practice of pharmacy* and who may affix to the person's name the term "R.Ph.".

~~(10)~~*(23)* "Pharmacy" means an established ~~place registered by the department of commerce in which prescriptions, drugs requiring a prescription, medicines, chemicals, and poisons are compounded, dispensed, vended, or sold~~

location, either physical or electronic, registered by the board where drugs or devices are dispensed with pharmaceutical care or where pharmaceutical care is provided.

~~(11)~~*(24)* "Pharmacy ~~technician or auxiliary"~~ *technician"* means an individual who assists a pharmacist in the practice of pharmacy ~~pursuant to an approved utilization plan~~.

~~(12)~~*(25)* "Poison" means a substance which, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or which destroys living tissue with which it comes in contact.

(26) "Practice of pharmacy" means:

(a) interpreting, evaluating, and implementing prescriber orders;

(b) administering drugs and devices pursuant to a collaborative practice agreement and compounding, labeling, dispensing, and distributing drugs and devices, including patient counseling;

(c) properly and safely procuring, storing, distributing, and disposing of drugs and devices and maintaining proper records;

(d) monitoring drug therapy and use;

(e) initiating or modifying drug therapy in accordance with collaborative pharmacy practice agreements established and approved by health care facilities or voluntary agreements with prescribers;

(f) participating in quality assurance and performance improvement activities;

(g) providing information on drugs, dietary supplements, and devices to patients, the public, and other health care providers; and

(h) participating in scientific or clinical research as an investigator or in collaboration with other investigators.

(27) "Practice telepharmacy" means to provide pharmaceutical care through the use of information technology to patients at a distance.

(28) "Preceptor" means an individual who is registered by the board and participates in the instructional training of a pharmacy intern.

(29) "Prescriber" has the same meaning as provided in 37-7-502.

(30) "Prescription drug" means any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353).

~~(13)~~*(31)* "Prescription *drug order*" means an order ~~given individually for the person for whom prescribed, directly from the prescriber to the furnisher or indirectly to the furnisher,~~ *from a prescriber for a drug or device that is communicated directly or indirectly by the prescriber to the furnisher* by means of ~~an order signed by the prescriber and bearing~~ *a signed order, by electronic transmission, in person, or by telephone. The order must include* the name and address of the prescriber, the prescriber's license classification, the name *and address* of the patient, the name, *strength,* and ~~the~~ quantity of the drug ~~or~~, drugs, *or device* prescribed, the directions for use, and the date of its issue. These stipulations apply to ~~both~~ written, *oral, electronically transmitted,* and telephoned prescriptions *and orders derived from collaborative pharmacy practice.*

~~(14) "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician or auxiliary in the practice of pharmacy to perform tasks that:~~

~~(a) do not require the exercise of the pharmacist's independent professional judgment; and~~

~~(b) are verified by the pharmacist.~~

(32) "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician in the practice of pharmacy to perform tasks that:

(a) do not require the exercise of the pharmacist's independent professional judgment; and

(b) are verified by the pharmacist.

~~(15)~~*(33)* "Wholesale" means a sale for the purpose of resale."

Section 4. Section 37-7-201, MCA, is amended to read:

"**37-7-201. Organization — powers and duties.** (1) The board shall meet at least once a year to transact its business. The board shall annually elect from its members a president, ~~vice-president~~ *vice president*, and secretary.

(2) The board shall~~:~~

~~(a)~~ regulate the practice of pharmacy in this state ~~subject to this chapter;~~*, including but not limited to:*

~~(b)~~*(a)* ~~determine the minimum~~ *establishing minimum standards for:*

(i) equipment necessary in and for a pharmacy;

(ii) the purity and quality of drugs, devices, and other materials dispensed within the state through the practice of pharmacy, using an official compendium recognized by the board or current practical standards;

(iii) specifications for the facilities, environment, supplies, technical equipment, personnel, and procedures for the storage, compounding, or dispensing of drugs and devices;

(iv) monitoring drug therapy; and

(v) maintaining the integrity and confidentiality of prescription information and other confidential patient information;

~~(c) regulate, under therapeutic classification, the sale of drugs, medicines, chemicals, and poisons and their labeling;~~

~~(d) regulate the quality of drugs and medicines dispensed in this state, using the United States Pharmacopocia/National Formulary or revisions thereof as the standards;~~

~~(e)~~*(b)* ~~request~~ *requesting* the department to ~~enter and~~ inspect, at reasonable times~~;~~*:*

(i) places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured~~.~~*; and*

(ii) the appropriate records and the license of any person engaged in the practice of pharmacy for the purpose of determining whether any laws governing the legal distribution of drugs or devices or the practice of pharmacy are being violated. The board shall cooperate with all agencies charged with the enforcement of the laws of the United States, other states, or this state relating to drugs, devices, and the practice of pharmacy. It is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places and making an inspection.

~~(f)~~*(c)* ~~regulate~~ *regulating:*

(i) the training, qualifications, employment, licensure, and ~~the~~ practice of interns ~~under national standards~~;

(ii) the training, qualifications, employment, and registration of pharmacy technicians; and

(iii) under therapeutic classification, the sale and labeling of drugs, devices, medicines, chemicals, and poisons;

(d) examining applicants and issuing and renewing licenses of:

(i) applicants whom the board considers qualified under this chapter to practice pharmacy;

(ii) pharmacies and certain stores under this chapter;

(iii) wholesale drug distributors; and

(iv) persons engaged in the manufacture and distribution of drugs or devices;

(e) issuing certificates of "certified pharmacy" under this chapter;

(f) establishing and collecting license and registration fees;

(g) approving pharmacy practice initiatives that improve the quality of, or access to, pharmaceutical care but that fall outside the scope of this chapter. This subsection (2)(g) may not be construed to expand on the definition of the practice of pharmacy as defined in 37-7-101;

~~(g)~~*(h)* ~~make~~ *making* rules for the conduct of its business;

~~(h)~~*(i)* ~~perform~~ *performing* other duties and ~~exercise~~ *exercising* other powers as this chapter requires;

~~(i)~~*(j)* ~~adopt~~ *adopting* and ~~authorize~~ *authorizing* the department to publish rules for carrying out and enforcing parts 1 through ~~3~~ 7 of this chapter, *including but not limited to:*

(i) requirements and qualifications for the transfer of board-issued licenses;

(ii) minimum standards for pharmacy internship programs and qualifications for licensing pharmacy interns;

(iii) qualifications and procedures for registering pharmacy technicians; and

(iv) requirements and procedures necessary to allow a pharmacy licensed in another jurisdiction to be registered to practice telepharmacy across state lines.

~~(3) The department shall:~~

~~(a) license, register, and examine, subject to 37-1-101, applicants whom the board considers qualified under this chapter;~~

~~(b) license pharmacies and certain stores under this chapter;~~

~~(c) license wholesale drug distributors;~~

~~(d) issue certificates of "certified pharmacy" under this chapter; and~~

~~(e) establish and collect license fees.~~

(3) The board may:

(a) join professional organizations and associations organized exclusively to promote the improvement of standards of the practice of pharmacy for the protection of the health and welfare of the public and whose activities assist and facilitate the work of the board; and

(b) establish standards of care for patients concerning health care services that a patient may expect with regard to pharmaceutical care."

Section 5. Section 37-7-301, MCA, is amended to read:

"37-7-301. ~~**Sale of drugs or medicines unlawful except as provided**~~ ***Unlawful practice.*** ~~Except as provided in 37-7-307 through 37-7-309, it~~ *Except as provided in 37-7-307 through 37-7-309, it* is unlawful for a *person to*:

(1) ~~person to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons in any place other than a pharmacy, except as hereinafter provided~~ *engage in the practice of pharmacy unless licensed by the board*; *or*

(2) ~~proprietor, owner, or manager of a pharmacy or any other person to permit the compounding or dispensing of prescriptions or the vending or selling at retail of drugs, medicines, chemicals, or poisons in any pharmacy except by a registered and licensed pharmacist or by an intern registered and licensed by the department and under the supervision of a registered and licensed pharmacist;~~

~~(3) person to assume or pretend to the title of pharmacist or intern unless the person has a license as such, issued and in force pursuant to parts 1 through 3 of this chapter;~~

~~(4) person other than a licensed and registered pharmacist or a licensed and registered intern under the supervision of a licensed and registered pharmacist to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons except as provided in parts 1 through 3~~ *assist in the practice of pharmacy unless registered by the board as a pharmacy technician.*"

Section 6. Section 37-7-303, MCA, is amended to read:

"37-7-303. Renewal fee. A person licensed and registered by the ~~department~~ *board* shall pay to the ~~department~~ *board* on or before the license expiration date set by ~~department~~ *board* rule a renewal of registration fee prescribed by the board. A default in the payment of a renewal fee after the date it is due increases the renewal fee as prescribed by the board. It is unlawful for a person who refuses or fails to pay the renewal fee to practice pharmacy in this state. A certificate and renewal expires at the time prescribed by ~~department~~ *board* rule. A defaulter in a renewal fee may be reinstated within 1 year of the default without examination on payment of the arrears and compliance with other requirements prescribed by law."

Section 7. Section 37-7-321, MCA, is amended to read:

"37-7-321. Certified pharmacy license. (1) The board shall provide for the original certification and renewal by the ~~department~~ *board* of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board and on application on a form prescribed by the board and on the payment of an original certification fee prescribed by the board, the ~~department~~ *board* shall issue a license to a pharmacy as a certified pharmacy. However, the license may be granted only to pharmacies operated by registered pharmacists qualified under this chapter. The renewal fee for a pharmacy must be set by the board. Any default in the payment of the renewal fee after the date the fee is due increases the renewal fee as prescribed by the board. The license must be displayed in a conspicuous place in the pharmacy for which it is issued and expires on the date set by ~~department~~ *board* rule. It is unlawful for a person to conduct a pharmacy, use the word "pharmacy" to identify the business, or use the word "pharmacy" in advertising unless a license has been issued and is in effect.

(2) The board may impose discipline or deny or refuse to renew a pharmacy license for reasons specified in and subject to conditions specified in Title 37, chapter 1."

Section 8. Section 37-7-322, MCA, is amended to read:

"**37-7-322. Use of words pharmacy, apothecary, *drug store*, or chemist shop for advertising.** It is unlawful for a person to carry on, conduct, or transact a retail business under a name which contains as a part ~~thereof~~ *of the business* the words "pharmacy", "apothecary", *"drug store"*, or "chemist shop" or any abbreviation, translation, extension, or variation ~~thereof~~ *of those terms* or in any manner by advertisement circular or poster, sign, or otherwise to describe or refer to the place of business conducted by that person by ~~such~~ *the* term, abbreviation, translation, extension, or variation unless the ~~place so~~ *business* conducted is a pharmacy within the meaning of this chapter and ~~duly~~ licensed ~~as such~~ and in the charge of a ~~registered~~ *licensed* pharmacist."

Section 9. Section 37-7-323, MCA, is amended to read:

"**37-7-323. Penalty — enforcement.** ~~(1)~~*(1)* A person, firm, partnership, or corporation violating any of the provisions of parts 1 through 3 of this chapter is guilty of a misdemeanor and upon conviction for each violation shall ~~be punished accordingly and shall~~ automatically lose any license issued by the board.

~~(2) In addition to the penalty provided in subsection (1), the board may withdraw its approval of a utilization plan previously approved for a supervising pharmacist who:~~

~~(a) violates any provision of 37-7-307 through 37-7-309 or rules adopted under those sections;~~

~~(b) obtained the approval of the utilization plan through fraud; or~~

~~(c) acts in a manner contrary to the terms of the utilization plan.~~

~~(3) The board may seek an injunction to enforce the provisions of subsection (2).~~

(2) In addition to the penalty provided in subsection (1), the board may withdraw its approval of a utilization plan previously approved for a supervising pharmacist who:

(a) violates any provision of 37-7-307 through 37-7-309 or rules adopted under those sections;

(b) obtained the approval of the utilization plan through fraud; or

(c) acts in a manner contrary to the terms of the utilization plan.

(3) The board may seek an injunction to enforce the provisions of subsection (2)."

Section 10. Section 37-7-401, MCA, is amended to read:

"**37-7-401. Restrictions ~~upon sale or prescription of opiates — coding prohibited — refilling~~ *on* prescriptions.** (1) It is unlawful for any ~~physician, physician assistant-certified, or nurse specialist~~ *authorized prescriber* to sell ~~or~~, give to, or prescribe for any person any opium, morphine, alkaloid-cocaine, ~~or~~ alpha or beta eucaine, ~~or~~ codeine, ~~or~~ heroin, or any derivative, mixture, or preparation of any of them, except to a patient believed in good faith to require ~~the same~~ *opium, morphine, alkaloid-cocaine, alpha or beta eucaine, codeine, heroin, or any derivative, mixture, or preparation of the enumerated substances* for medical use and in quantities proportioned to the needs of the patient.

(2) A prescription must be written so that it can be compounded by any registered pharmacist. The coding of any prescription is a violation of this section.

(3) A prescription marked "non repetatur", "non rep", or "N.R." cannot be refilled. A prescription marked to be refilled by a specified amount may be filled by any registered pharmacist the number of times marked on the prescription. A prescription not bearing any refill instructions may not be refilled without first obtaining permission from the prescriber. A prescription may not be refilled for more than ~~3 years~~ *1 year* from the date it was originally filled. A ~~narcotic~~ *Schedule II* prescription may not be refilled."

Section 11. Section 37-7-406, MCA, is amended to read:

"**37-7-406. Standards for prospective drug utilization review and patient counseling.** (1) The board may by rule set standards for the provision of prospective drug utilization review information from a pharmacist to a patient before a prescription is dispensed to the patient or ~~his~~ *the patient's* representative. The review may include, when applicable, an appropriate level of screening for potential drug therapy problems due to therapeutic duplication, drug disease contraindications, drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse. ~~The sources for the standards must be nationally recognized compendia as the board may designate.~~

(2) Under the standards provided for in this section, the pharmacist should offer to discuss those matters that, in ~~his~~ *the pharmacist's* professional judgment, ~~he~~ *the pharmacist* considers significant to the patient's safe and proper use of the prescribed drug. The *patient* counseling should encompass the topics set forth in 42 U.S.C. 1396r-8 of the Social Security Act *and administrative rules established by the board.*

(3) Communications between a pharmacist and a patient pursuant to the standards provided for in this section constitute health care information for the purposes of Title 50, chapter 16, part 5.

(4) Standards established by the board under this section apply to all patients seen by a pharmacist or to categories of patients as the board may designate. However, standards provided for in this section may not apply to inpatients of a health care facility in which a nurse or other licensed health care professional is authorized to administer the prescribed drug."

Section 12. Section 37-7-502, MCA, is amended to read:

"37-7-502. Definitions. As used in this part, the following definitions apply:

(1) "Bioavailability" means the extent and rate of absorption from a dosage form as reflected by the time-concentration curve of the administered drug in the systemic circulation.

(2) "Bioequivalent" means a chemical equivalent which, when administered to the same individual in the same dosage regimen, will result in comparable bioavailability.

(3) "Brand name" means the proprietary or the registered trademark name given to a drug product by its manufacturer, labeler, or distributor and placed upon the drug, its container, label, or wrapping at the time of packaging.

(4) "Chemical equivalent" means drug products that contain the same amounts of the same therapeutically active ingredients in the same dosage forms and that meet present compendium standards.

(5) "Drug product" means a dosage form containing one or more active therapeutic ingredients along with other substances included during the manufacturing process.

(6) "Generic name" means the chemical or established name of a drug product or drug ingredient published in the latest edition of ~~the official United States Pharmacopoeia/National Formulary~~ *an official compendium recognized by the board.*

(7) "Person" ~~means an individual, firm, partnership, association, corporation, or any other entity, whether organized for profit or not~~ *has the same meaning as provided in 37-7-101.*

(8) "Prescriber" means a *medical* practitioner, *as defined in 37-2-101,* licensed under the professional laws of the state to administer *and prescribe* medicine and drugs.

(9) "Present compendium standard" means the official standard for drug excipients and drug products listed in the latest revision of ~~the United States Pharmacopoeia/National Formulary~~ *an official compendium recognized by the board.*

(10) "Product selection" means to dispense without the prescriber's express authorization a different drug product in place of the drug product prescribed.

(11) "Therapeutically equivalent" means those chemical equivalents which, when administered in the same dosage regimen, will provide essentially the same therapeutic effect as measured by the control of a symptom or a disease and/or toxicity."

Section 13. Section 37-7-505, MCA, is amended to read:

"37-7-505. Product selection permitted — limitation. (1) Except as limited by subsection (2) ~~of this section~~ and unless instructed otherwise by the purchaser, the pharmacist who receives a ~~written or oral~~ prescription for a specific drug product by brand or proprietary name may select a less expensive drug product with the same generic name, ~~the same~~ strength, quantity, dose, and dosage form as the prescribed drug ~~which~~ *that* is, in the pharmacist's professional opinion, therapeutically equivalent, bioequivalent, and bioavailable.

(2) If, in the professional opinion of the prescriber, it is medically necessary ~~for his patient~~ that an equivalent drug product not be selected, the prescriber may

so indicate by certifying that ~~in his professional judgment~~ the specific brand-name drug product is medically necessary for that particular patient. In the case of a prescription transmitted orally, the prescriber must expressly indicate to the pharmacist that the brand-name drug product prescribed is medically necessary."

Section 14. Section 37-7-602, MCA, is amended to read:

"37-7-602. Definitions. As used in this part, the following definitions apply:

(1) "Blood" means whole blood collected from a single donor and processed either for transfusion or for further manufacturing.

(2) "Blood component" means that part of blood separated by physical or mechanical means.

(3) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(4) "Manufacturer" means a person or entity engaged in the manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug *or device*.

(5) "Prescription drug" ~~means any drug for humans that is required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.S. 353)~~ *has the same meaning as provided in 37-7-101*.

(6) *(a)* "Wholesale drug distribution" means distribution of prescription drugs to persons other than a consumer or patient.

(b) The term does not include:

~~(a)~~*(i)* intracompany sales;

~~(b)~~*(ii)* the purchase or other acquisition, by a hospital or other health care entity that is a member of a group purchasing organization, of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of group purchasing organizations;

~~(c)~~*(iii)* the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

~~(d)~~*(iv)* the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control. For purposes of this subsection ~~(d)~~ *(6)(b)(iv)*, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise.

~~(e)~~*(v)* the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons. For the purposes of this subsection ~~(e)~~ *(6)(b)(v)*, "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage.

~~(f)~~*(vi)* the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

~~(g)~~*(vii)* the distribution of drug samples by manufacturers' representatives or distributors' representatives; or

~~(h)~~*(viii)* the sale, purchase, or trade of blood and blood components intended for transfusion.

(7) "Wholesale drug distributor" means a person or entity engaged in wholesale distribution of prescription drugs, including but not limited to manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, warehouses (including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses), independent wholesale drug traders, and retail pharmacies that conduct wholesale distributions."

Section 15. Section 50-32-101, MCA, is amended to read:

"**50-32-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or other means, to the body of a patient or research subject by:

(a) a practitioner or by the practitioner's authorized agent; or

(b) the patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. The term does not include a common or contract carrier, public warehouse operator, or employee of the carrier or warehouse operator.

(3) "Board" means the board of pharmacy provided for in 2-15-1843.

(4) "Bureau" means the drug enforcement administration, United States department of justice, or its successor agency.

(5) "Counterfeit substance" means a dangerous drug ~~that~~ or the container or labeling of a dangerous drug without authorization that bears the trademark, trade name, or other identifying mark, imprint, number, or device or a likeness of an identifying mark, imprint, number, or device of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(6) "Dangerous drug" means a drug, substance, or immediate precursor in Schedules I through V set forth in part 2.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(8) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(9) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(10) "Dispenser" means a practitioner who dispenses.

(11) "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

(12) "Distributor" means a person who distributes.

(13) ~~(a)~~ "Drug" ~~means:~~

~~(i) a substance recognized as a drug in the official United States Pharmacopoeia/National Formulary or any supplement to it;~~

~~(ii) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;~~

~~(iii) a substance, other than food, intended to affect the structure or a function of the body of humans or animals; and~~

~~(iv) a substance intended for use as a component of an article specified in subsection (13)(a)(i), (13)(a)(ii), or (13)(a)(iii).~~

~~(b) Drug does not include a device or its components, parts, or accessories~~ *has the same meaning as provided in 37-7-101.*

(14) "Hashish", as distinguished from marijuana, means the mechanically processed or extracted plant material that contains tetrahydrocannabinol (THC) and is composed of resin from the cannabis plant.

(15) "Immediate precursor" means a substance that the board finds *to be* and by rule designates as being the principal compound commonly used or produced primarily for use and that is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

(16) (a) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a dangerous drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes the packaging or repackaging of the drug or labeling or relabeling of its container.

(b) Manufacture does not include the preparation or compounding of a dangerous drug by an individual for personal use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(i) by a practitioner as an incident to the administering or dispensing of a dangerous drug in the course of a professional practice; or

(ii) by a practitioner or the practitioner's authorized agent under the practitioner's supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

(17) "Marijuana (marihuana)" means all plant material from the genus cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(18) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate and a salt, compound, derivative, or preparation of opium or opiate;

(b) a salt, compound, isomer, derivative, or preparation of a salt, compound, isomer, or derivative that is chemically equivalent or identical with any of the drugs referred to in subsection (18)(a), but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw; or

(d) coca leaves and a salt, compound, derivative, or preparation of coca leaves and a salt, compound, isomer, derivative, or preparation of a salt, compound, isomer, or derivative that is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine.

(19) "Opiate" means a drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term does not include, unless specifically designated as a dangerous drug under 50-32-202, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term does include its racemic and levorotatory forms.

(20) "Opium poppy" means the plant of the species papaver somniferum L., except its seeds.

(21) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(22) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(23) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state;

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state; and

(c) a physician licensed to practice medicine or a dentist licensed to practice dentistry in another state.

(24) "Prescription" ~~has the meaning that it has in 37-7-101~~ *means an order given individually for the person for whom prescribed, directly from the prescriber to the furnisher or indirectly to the furnisher, by means of an order signed by the prescriber and bearing the name and address of the prescriber, the prescriber's license classification, the name of the patient, the name and quantity of the drug or drugs prescribed, the directions for use, and the date of its issue. These stipulations apply to written, electronically transmitted, and telephoned prescriptions.*

(25) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this chapter.

(26) "State", when applied to a part of the United States, includes a state, district, commonwealth, territory, insular possession of the United States, and any area subject to the legal authority of the United States of America.

(27) "Ultimate user" means a person who lawfully possesses a dangerous drug for personal use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household."

Approved April 28, 2001

CHAPTER NO. 389

[HB 317]

AN ACT PROVIDING THAT A PEACE OFFICER SIGNING A CRIMINAL CHARGE BY COMPLAINT NEED NOT SIGN UNDER OATH; PROVIDING THAT IF THE COMPLAINT IS SIGNED BY A PERSON WITH KNOWLEDGE OF THE FACTS THE PERSON MUST SIGN UNDER OATH; AMENDING SECTION 46-11-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-11-401, MCA, is amended to read:

"**46-11-401. Form of charge.** (1) The charge must be in writing and in the name of the state or the appropriate *county or* municipality and must specify the court in which the charge is filed. The charge must be a plain, concise, and definite statement of the offense charged, including the name of the offense, whether the offense is a misdemeanor or felony, the name of the person charged, and the time and place of the offense as definitely as can be determined. The charge must state for each count the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated.

(2) If the charge is by information or indictment, it must include endorsed on the information or indictment the names of the witnesses for the ~~state~~ *prosecution*, if known.

(3) If the charge is by complaint, it must be signed ~~on oath~~ by a *sworn* peace officer, *under oath* by a person having knowledge of the facts, or by the prosecutor.

(4) If the charge is by information, it must be signed by the prosecutor. If the charge is by indictment, it must be signed by the foreman of the grand jury.

(5) The court, on motion of the defendant, may strike surplusage from ~~the~~ *an* indictment or information.

(6) A charge may not be dismissed because of a formal defect that does not tend to prejudice a substantial right of the defendant."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2001

CHAPTER NO. 390

[HB 434]

AN ACT PROVIDING THAT A COURT MAY, AS A CONDITION OF SENTENCE, IMPOSE RESIDENCY RESTRICTIONS ON A PERSON CONVICTED OF A SEXUAL OFFENSE AND DESIGNATED AS A LEVEL 3 OFFENDER; AMENDING SECTION 46-18-255, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-255, MCA, is amended to read:

"**46-18-255. Sentence upon conviction — restriction on employment *and residency*.** *(1)* A judge sentencing a person upon conviction of a sexual or violent offense shall, as a condition to probation, parole, or deferment or suspension of sentence, impose upon the defendant reasonable employment or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of further offenses by the defendant.

(2) In addition to any restriction on employment imposed under subsection (1), a judge sentencing a person convicted of a sexual offense involving a minor and designated as a level 3 offender under 46-23-509 shall, as a condition to probation, parole, or deferment or suspension of sentence, impose upon the defendant restrictions on the defendant's residency in the proximity of a private or public elementary or high school, preschool as defined in 20-5-402, licensed day-care center, church, or park maintained by a city, town, or county."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to persons sentenced after [the effective date of this act].

Approved April 28, 2001

CHAPTER NO. 391

[HB 491]

AN ACT INCREASING THE BENEFIT PAID TO CERTAIN BENEFIT RECIPIENTS IN THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM WHO ARE NOT COVERED BY THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT BY PROVIDING A ONE-TIME PERMANENT AD HOC PURCHASING POWER ADJUSTMENT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. One-time permanent ad hoc purchasing power adjustment. Beginning with the first benefit payment after [the effective date of this act], the board shall provide a one-time permanent ad hoc benefit increase to retired members and beneficiaries of the retirement system who are receiving a monthly retirement benefit and who are not covered by [19-9-1009 or 19-9-1010]. The ad hoc benefit increase must be calculated by the board actuary and approved by the board. The benefit increase must be designed to bring the benefit recipient's current benefit up to a level estimated to be no less than 75% of the purchasing power of the original recipient's initial monthly benefit. Purchasing power must be calculated considering the date that the first benefit was paid to the original benefit recipient, applicable benefit increases since that date, and a comparison with the consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor since the date the first benefit was paid to the original benefit recipient.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 19, chapter 9, part 10, and the provisions of Title 19, chapter 9, part 10, apply to [section 1].

Section 3. Coordination instruction. If House Bill No. 294 is passed and approved, then the bracketed language in [section 1 of this act] citing 19-9-1009 and 19-9-1010 must read"[section 16 of House Bill No. 294]".

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2001

CHAPTER NO. 392

[HB 552]

AN ACT ELIMINATING THE STATUTORY CAP ON ADMINISTRATIVE CHARGES FOR IRRIGATION DISTRICTS; AMENDING SECTION 85-7-2103, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-7-2103, MCA, is amended to read:

"85-7-2103. All irrigable lands chargeable alike. (1) *(a)* All irrigable lands in each irrigation district and all lands in each subdistrict of the district, except those lands that are included within the district because of the exchange or substitution of water under the provisions of 85-7-1912, ~~shall~~ *must* pay at the same rate for all purposes for which the lands are charged, except as otherwise provided by law. There may be an administrative charge *of $5 to $75* ~~of $5 to $75~~ against each separately owned tract of land regardless of its size, as provided in 85-7-2104. The administrative charge is in addition to the annual tax levied under 85-7-2104.

(b) The administrative charge allowed pursuant to subsection (1)(a) may exceed $75, but if the charge exceeds $75, the charge must be determined based on the actual costs for administration of the district or subdistrict and the actual costs of distribution of water.

(2) Whenever water used for the irrigation of any lands within an irrigation district or subdistrict is obtained by pumping to different elevations, the cost of maintenance, operation, and pumping to each separate elevation must be apportioned and levied upon the lands lying under the ditch or ditches running from that particular elevation, in a manner determined fair and equitable by the board of commissioners after considering the facts in each case. This apportionment must be made by the board of commissioners and included each year in the assessment provided for by 85-7-2104. The amount of the assessment for maintenance, operation, and pumping of water to each separate elevation, whenever there are different elevations, must be determined by the board in a

manner and upon notice to the persons interested in the district or subdistrict as the board in its rules may provide.

(3) Whenever a contract has been made with the United States, the lands within the district or of a subdistrict if the contract substantially benefits the subdistrict, whether originally included or later annexed to the district or subdistrict, must pay in accordance with the federal reclamation laws and the public notices, orders, and regulations issued under the reclamation laws and in compliance with any contracts made by the United States with the owners of the lands and in compliance with the contract between the districts and the United States.

(4) Whenever a contract has been made with the state of Montana, the lands within the district or of a subdistrict if the contract substantially benefits the subdistrict, whether originally included or later annexed to the district or subdistrict, must pay in accordance with state laws and public notices and rules issued under the laws and in compliance with any contract made by the state with the owners of the lands and in compliance with the contract between the district and the state.

(5) Whenever the works necessary for the completed project are constructed progressively over a period of years and whenever a portion of the lands within the district are or can be irrigated 1 year or more before the completion of the entire project, those lands irrigated or that can be irrigated through the built portion of the project must pay for the cost of operating that portion of the project serving them with irrigation water and must also pay the portion of the interest charges as its irrigable area bears to the irrigable area of the entire project.

(6) Whenever lands have appurtenant to the land a partial water right or partial rights in a system of irrigation other than that of the district or subdistrict, the amounts payable must be equitably apportioned.

(7) Whenever the owners of a portion of the lands within an irrigation district choose to install a gravity system to irrigate those lands, the cost of constructing the gravity system must be apportioned among and levied upon the lands irrigated by the gravity system in a manner determined to be equitable by the board. The levy must be included each year in the assessment charged under 85-7-2104."

Section 2. Effective date. [This act] is effective July 1, 2001.

Approved April 28, 2001

CHAPTER NO. 393

[HB 569]

AN ACT REVISING THE TIME PERIODS WITHIN WHICH A NEWLY LICENSED OUTFITTER, A NEWLY LICENSED OUTFITTER WHO PURCHASES AN EXISTING OUTFITTING BUSINESS, AND AN OUTFITTER WHO REQUESTS AN EXPANSION OF NET CLIENT HUNTER USE HAVE TO ESTABLISH NET CLIENT HUNTER USE; AMENDING SECTION 37-47-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-47-316, MCA, is amended to read:

"**37-47-316. Request for net client hunter use expansion — operation — transfer of NCHU upon transfer of operations plan.** (1) An outfitter who wishes to *establish or* expand NCHU shall present an expansion request to the board. A newly licensed outfitter ~~shall establish NCHU in the same manner as a licensed outfitter who requests an NCHU expansion~~ *licensed after [the effective date of this act] has 5 1/2 years from the date of first licensure to establish NCHU,* unless the newly licensed outfitter is purchasing the business of an existing outfitter, *in which case the provisions of subsection (5) apply.* The board shall evaluate the request based on the criteria provided in 37-47-317.

(2) For any *establishment or* expansion of NCHU approved by the board after March 1, 1996, the outfitter has ~~3 years from the date of the expansion approval~~ *until December 31, 2004,* to establish the new NCHU. ~~Upon expiration of the third year~~ *After December 31, 2004*, the outfitter's client base must be adjusted to reflect the highest number of clients actually served, up to but not exceeding the number of clients authorized by the NCHU expansion request. *This subsection (2) does not apply to an outfitter newly licensed after [the effective date of this act].*

(3) An outfitter may exceed the NCHU in any given year by the following percentages without formally requesting an NCHU expansion:

(a) 10% for an outfitter with 1 to 50 clients;

(b) 8% for an outfitter with 51 to 100 clients; and

(c) 2% for an outfitter with 101 to 300 clients.

(4) When an expansion of NCHU is approved, the outfitter who is granted the expansion shall operate within the limits of the NCHU. The flexibility to exceed NCHU in any given year, as outlined in subsection (3), does not apply to an outfitter who has been previously granted an NCHU expansion.

(5) The NCHU of an existing outfitting business transfers with the operations plan for that business unless the business has not been in operation for at least 3 years. Upon the expiration of ~~3~~ *5 1/2* years *after transfer*, the client base must be adjusted to reflect the highest number of clients served in any category during the preceding ~~3~~ *5 1/2* years, not to exceed the total authorized by the NCHU."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2001

CHAPTER NO. 394

[HB 577]

AN ACT INCREASING THE DEBT LIMITS FOR THE BOARD OF INVESTMENTS UNDER THE MUNICIPAL FINANCE CONSOLIDATION ACT; AUTHORIZING THE DEPARTMENT OF JUSTICE TO OBTAIN A LOAN FROM THE BOARD OF INVESTMENTS FOR THE PURPOSE OF FINANCING AN INFORMATION TECHNOLOGY SYSTEM FOR THE MOTOR VEHICLE DIVISION AND THE ACQUISITION OF VIDEO GAMBLING AUTOMATED ACCOUNTING AND REPORTING SYSTEM DATA COLLECTION UNITS FOR THE GAMBLING CONTROL DIVISION;

INCREASING THE LIEN FILING FEE TO $8 TO FUND REPAYMENT OF THE MOTOR VEHICLE INFORMATION TECHNOLOGY LOAN; CREATING A MOTOR VEHICLE INFORMATION TECHNOLOGY SYSTEM ACCOUNT IN THE STATE SPECIAL REVENUE FUND; APPROPRIATING TO THE DEPARTMENT OF JUSTICE MONEY BORROWED FROM THE BOARD OF INVESTMENTS; AMENDING SECTIONS 17-5-1608, 17-5-2001, AND 61-3-103, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-1608, MCA, is amended to read:

"**17-5-1608. Limitations on amounts.** The board may not issue any bonds or notes that cause the total outstanding indebtedness of the board under this part ~~(~~, except for bonds or notes issued to fund or refund other outstanding bonds or notes or to purchase registered warrants or tax or revenue anticipation notes of a local government as defined in 7-6-1101~~)~~, to exceed ~~$75~~ *$80* million."

Section 2. Section 17-5-2001, MCA, is amended to read:

"**17-5-2001. Loans to state agencies.** *(1)* An agency responsible for the procurement and provision of vehicles, *automated systems,* and equipment using an enterprise fund or an internal service fund, as described in 17-2-102, is authorized to enter into contracts, loan agreements, or other forms of indebtedness payable over a term not to exceed 7 years for the purpose of financing the cost of the vehicles and equipment and to pledge to the repayment of the indebtedness the revenue of the enterprise fund or internal service fund if:

~~(1)~~*(a)* the term of the indebtedness does not exceed the useful life of the items being financed; and

~~(2)~~*(b)* at the time that the indebtedness is incurred, the projected revenue of the fund, based on the fees and charges approved by the legislature and other available fund revenue, will be sufficient to repay the indebtedness over the proposed term and to maintain the operation of the enterprise.

(2) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed $4.5 million, payable over a term not to exceed 10 years, for financing the cost of an information technology system for the production and maintenance of motor vehicle title and registration records and driver's license records.

(b) For purposes of the financing of the motor vehicle information technology system, loans are payable from the money in the motor vehicle information technology system account as provided in [section 4]. The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the projected revenue of the motor vehicle information technology system account, based upon the fees approved by the legislature, must be sufficient to repay the indebtedness over the proposed term.

(3) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed $1,120,000, payable over a term not to exceed 7 years, for the acquisition of video gambling automated accounting and reporting system data collection units.

(b) The loan is payable from the department of justice's annual appropriation from the general fund.

(c) The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the department of justice's base budget appropriation from the general fund must be sufficient to repay the indebtedness with respect to the video gambling data collection units over the proposed term of the loan.

(d) The loan is subject to the risk of nonappropriation."

Section 3. Section 61-3-103, MCA, is amended to read:

"61-3-103. (Temporary) Filing of security interests — perfection — rights — procedure -- fees. (1) Except as provided in 61-3-109, the department may not file any voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, and the amount of the lien and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer in the county in which the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under chapter 4 of this title must be perfected in accordance with Title 30, chapter 9.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) Except as provided in 61-3-109 and subsection (6) of this section, a voluntary security interest or lien is perfected on the date that the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(6) Except as provided in 61-3-109, voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date that the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date that the lien notice is delivered to the department, of the existence of the security interest.

(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department the sum of $1 for each day that the person fails to file the satisfaction.

(9) Upon receipt of notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of the owner, conditional sale vendor, or mortgagees a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court and the action and the names of the attorneys for the plaintiff and attaching creditor.

(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time that this law takes effect.

(11) A fee of ~~$4~~ *$8* must be paid to the department to file any security interest or other lien against a motor vehicle. The ~~$4~~ *$8* fee includes the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department and of deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer. *Of the $8 fee, $4 must be deposited* ~~for deposit~~ in the state general fund in accordance with 15-1-504. *The remaining $4 must be forwarded to the state treasurer for deposit in the motor vehicle information technology system account provided for in [section 4].* (Terminates June 30, 2008—sec. 2, Ch. 260, L. 1999.)

61-3-103. (Effective July 1, 2008) Filing of security interests — perfection — rights — procedure — fees. (1) The department may not file any voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer where the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under chapter 4 of this title must be perfected in accordance with Title 30, chapter 9.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) Except as provided in subsection (6), a voluntary security interest or lien is perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(6) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest.

(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department the sum of $1 for each day that the person fails to file such satisfaction.

(9) Upon receipt of notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any owner, conditional sale vendor, or mortgagees a notice showing the name and

address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and attaching creditor.

(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(11) A fee of ~~$4~~ *$8* must be paid to the department to file any security interest or other lien against a motor vehicle. The ~~$4~~ *$8* fee must include and cover the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer. *Of the $8 fee, $4 must be deposited* ~~for deposit~~ in the state general fund in accordance with 15-1-504. *The remaining $4 must be forwarded to the state treasurer for deposit in the motor vehicle information technology system account provided for in [section 4].*"

Section 4. Motor vehicle information technology system account. (1) There is a motor vehicle information technology system account in the state special revenue fund provided for in 17-2-102.

(2) Fees received by the state treasurer pursuant to [section 3] must be deposited in the account.

(3) The money in the motor vehicle information technology system account must be appropriated by the legislature to the department of justice and must be used by the department for the purpose of:

(a) repaying any indebtedness or loan incurred for the creation of a new information technology system for motor vehicles; or

(b) payment of costs directly incurred in the creation and support of the new motor vehicle information technology system.

Section 5. Deposit of loan proceeds — capital projects appropriation. (1) The proceeds of any loan from the board of investments to the department of justice for creation of a new motor vehicle information technology system must be deposited in the capital projects fund.

(2) There is appropriated from the capital projects fund to the department of justice up to $4.5 million for the motor vehicle information technology system described in 17-5-2001.

(3) The department of justice is prohibited from using any of the proceeds from the loan for the motor vehicle information technology system authorized by 17-5-2001 for agency current level operating expenses.

(4) The appropriation continues until the project is completed in accordance with 17-7-212.

Section 6. Deposit of loan proceeds — appropriation — contractual restrictions. (1) The proceeds of any loan from the board of investments to the department of justice for the acquisition of video gambling automated accounting and reporting system data collection units must be deposited in a state special revenue account.

(2) There is appropriated from the state special revenue account to the department of justice $1,120,000 for the purchase of video gambling automated accounting and reporting system data collection units. The department shall enter into contracts with the owners or operators of machines in which the units are placed that will encumber and allow the expenditure of the appropriation over the term of the loan from the board of investments for the purchase of the units.

(3) The department of justice is prohibited from using any of the proceeds from the loan for the purchase of video gambling automated accounting and reporting system data collection units authorized by 17-5-2001 for agency current level operating expenses.

Section 7. Codification instruction. [Sections 3 and 4] are intended to be codified as an integral part of Title 61, chapter 3, part 5, and the provisions of Title 61, chapter 3, part 5, apply to [sections 3 and 4].

Section 8. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2001.

(2) [Section 3] is effective January 1, 2002.

Section 9. Termination. [This act] terminates June 30, 2011.

Approved April 28, 2001

CHAPTER NO. 395

[HB 615]

AN ACT REDUCING THE REQUIRED MAINTENANCE OF EFFORT FOR PROGRAMS FUNDED WITH THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT FROM 77 PERCENT TO 75 PERCENT; AMENDING SECTION 53-4-211, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-4-211, MCA, is amended to read:

"53-4-211. Administration of programs funded under temporary assistance for needy families block grant. (1) The department is authorized and is charged with the general administration and supervision of programs funded under the temporary assistance for needy families block grant under the powers, duties, and functions as prescribed in chapter 2 of this title.

(2) The state of Montana shall maintain a fiscal effort equivalent to at least ~~77%~~ *75%* of its historic state expenditures, as defined in 42 U.S.C. 609(a)(7)(B)(iii), governing maintenance of effort necessary to draw down the temporary assistance to needy families block grant."

Section 2. Effective date. [This act] is effective July 1, 2001.

Section 3. Retroactive applicability. [Section 1] applies retroactively, within the meaning of 1-2-109, to July 1, 1999.

Approved April 28, 2001

CHAPTER NO. 396

[HB 639]

AN ACT GENERALLY REVISING HOW FEES CHARGED BY THE SECRETARY OF STATE MAY BE SET; ELIMINATING THE REQUIREMENT THAT THE FEES MUST BE COMMENSURATE WITH COSTS ON A FEE-BY-FEE BASIS; PROVIDING THAT THE FEES MUST BE REASONABLY COMMENSURATE WITH OVERALL COSTS AND REASONABLY REFLECT PREVAILING RATES FOR SIMILAR SERVICES; PROVIDING THAT THE FEES BE DEPOSITED TO AN ACCOUNT IN THE ENTERPRISE FUND TYPE; AMENDING SECTIONS 1-5-408, 2-4-311, 2-4-312, 2-4-313, 2-6-103, 2-6-110, 7-13-2509, 13-2-115, 13-27-208, 27-18-411, 30-9-403, 30-9-407, 30-9-545, 30-13-217, 30-13-320, 35-1-1206, 35-1-1207, 35-2-1003, 35-5-205, 35-6-201, 35-8-211, 35-8-212, 35-12-521, 35-15-201, 35-15-205, 35-17-205, AND 35-18-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Fees charged by secretary of state — deposit to account — rulemaking. (1) The secretary of state shall, for fees charged by the secretary of state, set by administrative rule each fee authorized by law.

(2) Unless otherwise specified by law, fees:

(a) must be commensurate with the overall costs of the office of the secretary of state; and

(b) must reasonably reflect the prevailing rates charged in the public and private sectors for similar services.

(3) The secretary of state shall maintain records sufficient to support the fees established pursuant to this section.

(4) Except as otherwise provided by law, fees collected by the secretary of state must be deposited to an account in the enterprise fund type to the credit of the secretary of state. All income and interest earned on money in the account must be credited to the account.

Section 2. Section 1-5-408, MCA, is amended to read:

"**1-5-408. Fees for filing commission and issuing certificates.** The secretary of state shall set ~~by rule the~~ *and deposit* fees *in accordance with [section 1]* for filing or issuing certificates. ~~The fees must be commensurate with costs.~~ The secretary of state shall use application forms soliciting the information required by this part. The county clerk of any county in this state shall receive a fee as provided in 7-4-2631 for filing a copy of the commission and certifying to the official character."

Section 3. Section 2-4-311, MCA, is amended to read:

"**2-4-311. Publication and arrangement of ARM.** (1) The secretary of state shall compile, index, arrange, rearrange, correct errors or inconsistencies without changing the meaning, intent, or effect of any rule, and publish in the appropriate format all rules filed pursuant to this chapter in the ARM. The secretary of state shall supplement, revise, and publish the ARM or any part of the ARM as often as the secretary of state considers necessary. The secretary of state may include editorial notes, cross-references, and other matter that the secretary of state considers desirable or advantageous. The secretary of state shall publish supplements to the ARM at the times and in the form that the secretary of state considers appropriate.

(2) The ARM must be arranged, indexed, and printed or duplicated in a manner that permits separate publication of portions relating to individual agencies. An agency may make arrangements with the secretary of state for the printing of as many copies of the separate publications as it may require. The ~~cost of~~ *secretary of state may charge a fee for* any separate publications~~, determined~~. *The fee must be set and deposited* in accordance with ~~2-4-313(4),~~ *[section 1] and* must be paid by the agency."

Section 4. Section 2-4-312, MCA, is amended to read:

"2-4-312. Publication and arrangement of register. (1) The secretary of state shall publish in the register all notices, rules, and interpretations filed with the secretary of state at least once a month but not more often than twice a month.

(2) The secretary of state shall send the register without charge to each person listed in 2-4-313(1) and to each member of the legislature requesting the register. The secretary of state shall send the register to any other person who pays a subscription fee*, which must be* established ~~as provided in 2-4-313(4)~~ *and deposited in accordance with [section 1].*

(3) The register must contain three sections, a rules section, a notice section, and an interpretation section, as follows:

(a) The rules section of the register must contain all rules filed since the compilation and publication of the preceding issue of the register, together with the concise statement of reasons required under 2-4-305(1).

(b) The notice section of the register must contain all rulemaking notices filed with the secretary of state pursuant to 2-4-302 since the compilation and publication of the preceding register.

(c) The interpretation section of the register must contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

(4) Each issue of the register must contain the issue number and date of the register and a table of contents. Each page of the register must contain the issue number and date of the register of which it is a part. The secretary of state may include with the register information to help the user in relating the register to the ARM."

Section 5. Section 2-4-313, MCA, is amended to read:

"2-4-313. Distribution, costs, and maintenance. (1) The secretary of state shall distribute copies of the ARM and supplements or revisions to the ARM to the following:

(a) attorney general, one copy;

(b) clerk of United States district court for the district of Montana, one copy;

(c) clerk of United States court of appeals for the ninth circuit, one copy;

(d) county commissioners or governing body of each county of this state, for use of county officials and the public, at least one but not more than two copies, which may be maintained in a public library in the county seat or in the county offices as the county commissioners or governing body of the county may determine;

(e) state law library, one copy;

(f) state historical society, one copy;

(g) each unit of the Montana university system, one copy;

(h) law library of the university of Montana-Missoula, one copy;

(i) legislative services division, two copies;

(j) library of congress, one copy;

(k) state library, one copy.

(2) The secretary of state, each county in the state, and the librarians for the state law library and the university of Montana-Missoula law library shall maintain a complete, current set of the ARM, including supplements or revisions to the ARM. The designated persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall maintain a permanent set of the registers.

(3) The secretary of state shall make copies of and subscriptions to the ARM and supplements or revisions to the ARM and the register available to any person ~~at prices~~ *for a fee* ~~fixed~~ *set* in accordance with subsection ~~(4)~~ *(5).*

~~(4) The secretary of state shall determine the cost of supplying copies of the ARM and supplements or revisions to the ARM and the register to persons not listed in subsection (1). The cost must be the approximate cost of publication of the copies, including indexing, printing or duplicating, and mailing. However, a uniform price per page or group of pages may be established without regard to differences in the cost of printing different parts of the ARM and supplements or revisions to the ARM and the register.~~ Fees are not refundable.

~~(5) The secretary of state shall deposit all fees in a proprietary fund.~~

~~(6)~~*(4)* The secretary of state may charge agencies a filing fee for all material to be published in the ARM or the register.

(5) The secretary of state shall ~~fix~~ *set and deposit* the ~~fee to cover the costs of supplying copies of the ARM and supplements or revisions to the ARM and the register to the persons listed in subsection (1). The cost must be the approximate cost of publication of the copies, including indexing, printing or duplicating, and mailing. However, a uniform price per page or group of pages may be established without regard to differences in the cost of printing different parts of the ARM and supplements or revisions to the ARM and the register~~ *fees authorized in this section in accordance with [section 1].*"

Section 6. Section 2-6-103, MCA, is amended to read:

"**2-6-103. Filing and copying fees.** (1) The secretary of state~~, for services performed in the office,~~ shall charge and collect fees ~~commensurate with costs~~ for filing and copying services.

(2) A member of the legislature or state or county officer may not be charged for any search relative to matters appertaining to the duties of the member's office or for a certified copy of any law or resolution passed by the legislature relative to the member's official duties.

(3) The secretary of state may not charge a fee, other than the fees authorized in 2-6-110, for providing electronic information.

(4) Fees must be collected in advance and, when collected by the secretary of state, are not refundable ~~and must be deposited into an account in the proprietary fund to the credit of the secretary of state. All income and interest earned on money in the account must be credited to the account~~.

(5) Fees authorized by this section must be set and deposited in accordance with [section 1]."

Section 7. Section 2-6-110, MCA, is amended to read:

"2-6-110. Electronic information and nonprint records — public access — fees. (1) (a) Except as provided by law, each person is entitled to a copy of information compiled, created, or otherwise in the custody of public agencies that is in electronic format or other nonprint media, including but not limited to videotapes, photographs, microfilm, film, or computer disk, subject to the same restrictions applicable to the information in printed form. All restrictions relating to confidentiality, privacy, business secrets, and copyright are applicable to the electronic or nonprint information.

(b) The provisions of subsection (1)(a) do not apply to collections of the Montana historical society established pursuant to 22-3-101.

(2) Except as provided by law and subject to subsection (3), an agency may charge a fee, not to exceed:

(a) the agency's actual cost of purchasing the electronic media used for transferring data, if the person requesting the information does not provide the media;

(b) expenses incurred by the agency as a result of mainframe *and midtier* processing charges;

(c) expenses incurred by the agency for providing online computer access to the person requesting access;

(d) other out-of-pocket expenses directly associated with the request for information; and

(e) the hourly rate for the current fiscal year for a state employee classified as grade 10, market salary, under 2-18-312 for each hour, or fraction of an hour, after one-half hour of copying service has been provided.

(3) (a) In addition to the allowable fees in subsection (2), the department of revenue may charge an additional fee as reimbursement for the cost of developing and maintaining the property valuation and assessment system database from which the information is requested. The fee must be charged to persons, federal agencies, state agencies, and other entities requesting the database or any part of the database from any department property valuation and assessment system. The fee may not be charged to the governor's office of budget and program planning, the state tax appeal board, or any legislative agency or committee.

(b) The department of revenue may not charge a fee for information provided from any department property valuation and assessment system database to a local taxing jurisdiction for use in taxation and other governmental functions or to an individual taxpayer concerning the taxpayer's property.

(c) All fees received by the department of revenue under subsection (2) and this subsection (3) must be deposited in a state special revenue fund as provided in 15-1-521.

(d) Fees charged by the secretary of state pursuant to this section must be set and deposited in accordance with [section 1].

(4) For the purposes of this section, the term "agency" has the meaning provided in 2-3-102 but includes legislative, judicial, and state military agencies.

(5) An agency may not charge more than the amount provided under subsection (2) for providing a copy of an existing nonprint record.

(6) An agency shall ensure that a copy of information provided to a requester is of a quality that reflects the condition of the original if requested by the requester.

(7) This section does not authorize the release of electronic security codes giving access to private information."

Section 8. Section 7-13-2509, MCA, is amended to read:

"**7-13-2509. Resolution to create district.** (1) If the board of county commissioners desires to create the television district, they shall adopt a resolution describing the proposed system, including type of construction, location, and type and approximate cost of any installation to be made, describing the boundaries of ~~such~~ *the* district, and finding that the district will be conducive to the public interest and convenience~~,~~ and ~~thereby such~~ *that the* district ~~shall~~ be created.

(2) If the board passes a resolution creating ~~such~~ *a television* district, they shall name the district "........ television district" and *shall* file a copy of the order creating ~~such~~ *the* district, if only one county is included ~~therein~~ *in the district,* with the county clerk and recorder. If portions of more than one county are included in ~~said~~ *the* district, a copy of the order ~~shall~~ *must* be filed in each county. A copy of the order ~~shall~~ *must* be filed with the secretary of state~~,~~ for ~~which he shall receive~~ a fee ~~of $5~~, *which must be set and deposited in accordance with [section 1].*"

Section 9. Section 13-2-115, MCA, is amended to read:

"**13-2-115. Registration lists to be prepared.** (1) Except as provided in subsections (6) and (7), immediately after registration is closed, the election administrator shall prepare and ~~must~~ have printed lists of all registered electors in each precinct. Names of electors must be listed alphabetically, with their residence address or with a mailing address if located where street numbers are not used. A preliminary list of registered electors may be printed before the close of registration for an election. If a preliminary list is printed, a supplementary list must be printed after the close of registration.

(2) A copy of the list of registered voters must be displayed at the polling place. Extra copies of the lists must be retained by the election administrator and furnished to an elector upon request.

(3) The list of registered electors prepared for a primary election may be used for the general election if a supplemental list giving the additions and deletions since the primary list was prepared is printed. The election administrator may prepare lists for a special election, but lists are not required to be printed for special elections.

(4) Lists of registered voters need not be printed if the election will not be held.

(5) The election administrator shall forward a list of all registered electors in the county to the secretary of state, as provided in 13-2-123. The secretary of state shall use the lists submitted by election administrators to compile and maintain a list of all registered electors in the state. Upon written request, the secretary of state shall furnish to any elector, for noncommercial use, a current list of registered electors. Upon delivery of the list to the elector, the secretary of state shall charge and collect a fee ~~commensurate with the cost of compiling and maintaining the list and of reproducing the list in the format requested by the elector~~, *which must be set and deposited in accordance with [section 1].*

(6) If a law enforcement officer or reserve officer, as defined in 7-32-201, requests in writing that, for security reasons, the officer's and the officer's spouse's residential address, if the same as the officer's, not be disclosed, the registrar may not include the address on any list of registered voters but ~~shall~~ *may* list only the name or names.

(7) (a) Upon the request of an individual, an election administrator may not include the individual's residential address on any list of registered voters but ~~shall~~ *may* list only the name or names if the individual:

(i) proves to the election administrator that the individual, or a minor in the custody of the individual, has been the victim of partner or family member assault, stalking, custodial interference, or other offense involving bodily harm or threat of bodily harm to the individual or minor; or

(ii) proves to the election administrator that a temporary restraining order or injunction has been issued by a judge or magistrate to restrain another person's access to the individual or minor.

(b) Proof of the victimization is conclusive upon exhibition to the election administrator of a criminal judgment, information and judgment, or affidavit of a county attorney clearly indicating the conviction and the identity of the victim.

(c) Proof of the issuance of a temporary restraining order or injunction is conclusive upon exhibition to the election administrator of the temporary restraining order or injunction."

Section 10. Section 13-27-208, MCA, is amended to read:

"**13-27-208. Petitions to be made available in each county election administrator's office.** When the secretary of state sends written notice of the final approval of a petition as required under 13-27-202(4), the secretary of state shall forward a copy of the petition, along with signature sheets, to the election administrator of each county. The election administrator shall make a copy of each approved petition available for reading and signing in the administrator's office during business hours in an election year until the petitions are submitted under 13-27-301. The secretary of state may charge the person who submitted the petition a fee ~~sufficient to reimburse the secretary of state for the cost of providing copies of the petition and signature sheets to each county election administrator~~, *which must be set and deposited in accordance with [section 1].*"

Section 11. Section 27-18-411, MCA, is amended to read:

"**27-18-411. Duty of secretary of state — fees.** (1) ~~Upon such~~ *When* service ~~being so~~ *of an order of a writ of execution is* made ~~upon~~ *through* the secretary of state or ~~his~~ *the secretary of state's* deputy, the secretary of state or ~~his~~

the deputy shall promptly mail the copy of the writ, notice, and copy of ~~said~~ *the* order by ~~registered or~~ certified mail to the address of ~~such~~ *the* corporation at its principal home office, as shown by the papers on file in the office of *the* secretary of state~~, and~~. *The office of the secretary of state* shall ~~make~~ *fill* out and mail to the clerk of the court in which the action is pending a certificate of ~~such~~ *the* mailing~~; which~~ *and* shall ~~have attached thereto~~ *attach* the registry receipt for ~~such~~ *the* letter~~, that such attachment so made upon the secretary of state as herein provided shall~~. *The order must* be effective and the ~~said~~ ~~stock or shares or the interest therein~~ *specified assets* of the defendant ~~shall~~ *must* be attached upon the service of the writ~~,~~ as ~~herein~~ provided *in this section*.

(2) At the time ~~of the service of said~~ *the* writ *is served*, ~~there shall be paid to~~ the secretary of state *shall charge and collect* a fee ~~of $3, which shall be by him paid into the state treasury and~~, which *must be set and deposited in accordance with [section 1]. The fee* may be ~~taxed~~ *claimed* as *a* cost by the plaintiff."

Section 12. Section 30-9-403, MCA, is amended to read:

"**30-9-403. (Temporary) What constitutes filing — duration of filing — fees — effect of lapsed filing — duties of filing officer — computerized farm statement system.** (1) (a) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(b) The secretary of state may treat a facsimile copy of a document and the signatures on the facsimile copy in the same manner as an original for purposes of 30-9-402 and subsection (1)(a) of this section. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(c) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

(2) Except as provided in subsection (6), a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until 60 days after termination of the insolvency proceedings or until expiration of the 5-year period, whichever occurs later. Upon lapse the security interest becomes unperfected unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is considered to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any continuation statement must be signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 30-9-405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective, after which it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to

the lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if the filing officer has retained a microfilm or other photographic record or a record produced according to rules adopted by the secretary of state or, in other cases after 1 year after the lapse, upon approval by the local government records destruction subcommittee provided for in 2-6-403. The filing officer shall arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if the filing officer physically destroys the financing statements of a period more than 5 years past, those that have been continued by a continuation statement or that are still effective under subsection (6) must be retained.

(4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing. The filing officer shall hold the statement or a microfilm or other photographic copy or a copy produced according to rules adopted by the secretary of state for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fees for filing, indexing, and stamping a copy furnished by the filing party to show the date and place of filing must be set pursuant to subsection (12).

(6) If the debtor is a transmitting utility and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage that is effective as a fixture filing under 30-9-402(6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to 30-9-103(5) or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee under the financing statement or, if indexing is by description, in the same fashion as if the financing statement were a mortgage of the real estate described.

(8) When a financing or continuation statement filed by a financial institution covers farm products or accounts, livestock, general intangibles arising from or relating to the sale of farm products by a farmer, crops growing or to be grown, or equipment used in farming operations, the fee for filing must be ~~established~~ *set and deposited* by the secretary of state in ~~an amount commensurate with the costs of establishing and operating the computerized access system described in subsection (9)~~ *accordance with [section 1].*

(9) Within 1 working day of receipt of a financing or continuation statement, the secretary of state shall record the information contained in the statement on a centralized computer system that the secretary of state shall establish. The computer system must allow access to financing statement information by any type of communications that conform to standards used by the state central

computer. The system must have safeguards to allow only access to UCC data and to prevent alteration, addition, or deletion of the UCC data. The computer must be accessible whenever the state computer system is available. A perfected security interest is not created until the financing statement information is recorded on the system. A printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement. The secretary of state shall maintain adequate errors and omissions liability coverage to protect against input errors causing loss to a secured party.

(10) The secretary of state shall, upon request of a clerk and recorder, mail a certified copy of a financing statement, continuation statement, assignment, amendment, or termination covering collateral described in subsection (8) to the clerk and recorder in the county of the principal debtor's residence. The secretary of state shall mail the requested copies at least once each week. This subsection does not require the secretary of state to mail a copy of any document that does not specifically indicate the county of the principal debtor's residence on its face.

(11) Financing statement information in the computer system constitutes public writings within the meaning of 2-6-101, but the information may not be used to compile mailing lists.

(12) The secretary of state, with advice from the county clerk and recorders, shall ~~by administrative rule establish fees as required by this part. The fees must be commensurate with the costs of processing the documents. The secretary of state shall maintain records sufficient to support the amounts of the fees established under this subsection. The secretary of state shall deposit all fees in the enterprise fund in the state treasury~~ *set and deposit the fees required by this part in accordance with [section 1].* The secretary of state shall disseminate the uniform fee schedule to the county clerk and recorders for their use. (Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)"

Section 13. Section 30-9-407, MCA, is amended to read:

"**30-9-407. (Temporary) Information from filing officer —** ***fees.*** (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release furnishes the filing officer a copy of the statement, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to the person.

(2) Upon request of any person, the filing officer shall issue a certificate showing whether there is on file on the date and hour stated in the certificate, any presently effective financing statement naming a particular debtor and any statement of assignment and, if there is, giving the date and hour of filing of each statement and the name and address of each secured party in the statement. For financing statements recorded on the system described in 30-9-403(9), the filing officer shall, upon request of any person, also furnish written information concerning the collateral described for any presently effective financing statement covering collateral described in 30-9-403(8). However, the information is not a part of the filing officer's certificate and may not constitute a complete description of the collateral covered by the financing statement. The uniform fee for a certificate and description of collateral must be set *and deposited* pursuant to ~~30-9-403~~ *[section 1].* Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee ~~of 50 cents per page~~ *set and deposited in accordance with [section 1].*

(3) A computer printout from the system described in 30-9-403(9) constitutes the certificate of the secretary of state as to whether there is on file, on the date and hour stated on the printout, a financing statement covering the collateral described in 30-9-403(8). The fee for requesting a printout from the secretary of state must ~~cover the cost of the printout~~ *be set and deposited in accordance with [section 1].* If a certificate is made on a requestor's own computer using telephone dial-up access, a fee ~~commensurate with costs~~ must be *set,* charged, *and deposited in accordance with [section 1].*

(4) The secretary of state shall ensure that the system described in 30-9-403(9) complies with the requirements for a central filing system as defined by 7 U.S.C. 1631 as that statute read on January 1, 1987. The secretary of state shall distribute portions of the master list to registered buyers at least once each month. The secretary of state may distribute portions of the master list more frequently if the secretary of state determines it is necessary to improve the flow of agricultural credit. (Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)"

Section 14. Section 30-9-545, MCA, is amended to read:

"**30-9-545. (Effective July 1, 2001) Fees.** (1) Except as otherwise provided in subsection ~~(5)~~ *(2),* the fee for *each of the following must be set and deposited by the secretary of state as prescribed in [section 1]:*

(a) filing and indexing a record under this part, other than an initial financing statement of the kind described in 30-9-522(3)~~, must be commensurate with costs and must be established by rule.~~*;*

~~(2) Except as otherwise provided in subsection (5), the fee for~~

(b) filing and indexing an initial financing statement of the kind described in 30-9-522(3) ~~must be commensurate with costs and must be established by rule.~~

~~(3) The number of names required to be indexed does not affect the amount of the fees in subsections (1) and (2).~~

~~(4) The fee for~~*; and*

(c) responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor~~, must be commensurate with costs and must be established by rule~~.

~~(5)~~*(2)* This section does not require a fee with respect to a record of mortgage that is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under 30-9-522(3). However, the recording and satisfaction fees that otherwise would be applicable to the record of mortgage apply."

Section 15. Section 30-13-217, MCA, is amended to read:

"**30-13-217. Fees and charges to be established and collected by secretary of state.** (1) The secretary of state shall ~~by administrative rule~~ establish, charge, ~~and~~ collect, *and deposit,* in accordance with ~~the provisions of this part and commensurate with costs~~*[section 1]*:

(a) fees for filing documents and issuing certificates *pursuant to this part*; ~~and~~

(b) miscellaneous charges *for other services provided by the secretary of state pursuant to this part; and*~~.~~

~~(2) The secretary of state shall maintain records sufficient to support the fees and miscellaneous charges established under this section.~~

~~(3) In addition to the fees and charges in subsection (1), the secretary of state shall charge and collect~~

(c) a license fee from each limited liability partnership ~~a license fee of:~~

~~(a) $50~~ at the time of registration under 30-13-203~~;~~ and

~~(b) $50~~ at the time of each renewal of registration under 30-13-206 through 30-13-208.

~~(4)~~*(2)* Fees and charges ~~established under this section~~ may be paid by credit card and may be discounted for payment processing charges paid by the secretary of state to a third party."

Section 16. Section 30-13-320, MCA, is amended to read:

"**30-13-320. Secretary of state to establish and collect fees ~~commensurate with costs~~.** The secretary of state shall ~~by administrative rule establish and~~ provide for collection of fees and miscellaneous charges, *set and deposited in accordance with [section 1],* for filing documents and issuing certificates as required by this part. ~~The fees must be commensurate with the costs of processing the documents and certificates. The secretary of state shall maintain records sufficient to support the fees and miscellaneous charges established under this part.~~"

Section 17. Section 35-1-1206, MCA, is amended to read:

"**35-1-1206. Fees for filing, copying, and services.** (1) The secretary of state shall establish ~~by rule~~ fees for *the following:*

(a) filing documents and issuing certificates as required by this chapter~~.~~*; and*

~~(2) The secretary of state shall establish by rule fees for~~

(b) copying documents, priority handling, transmitting or filing facsimile copies, and providing computer-generated information.

~~(3) The fees prescribed under this section must be reasonably related to the costs of processing the documents and preparing and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section.~~

(2) Fees authorized under this section must be set and deposited in accordance with [section 1]."

Section 18. Section 35-1-1207, MCA, is amended to read:

"**35-1-1207. License fee.** (1) In addition to the filing fee authorized by 35-1-1206, the secretary of state shall charge and collect from each domestic corporation a license fee ~~based upon the number of shares that it will have authority to issue~~ at the time of:

(a) filing its articles of incorporation;

(b) filing articles of amendment ~~increasing the number of authorized shares~~; and

(c) filing articles of merger or consolidation ~~increasing the number of authorized shares that the surviving or new corporation, if a domestic corporation, will have authority to issue above the aggregate number of shares~~

~~that the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state have authority to issue~~.

(2) The license fee for domestic corporations ~~is as follows:~~

~~(a) 1 to 50,000 shares~~	~~$ 50~~
~~(b) 50,001 to 100,000 shares.~~	~~100~~
~~(c) 100,001 to 250,000 shares~~	~~250~~
~~(d) 250,001 to 500,000 shares~~	~~400~~
~~(e) 500,001 to 1,000,000 shares~~	~~600~~
~~(f) over 1,000,000 shares.~~	~~1,000~~

must be set and deposited in accordance with [section 1].

(3) ~~If the domestic corporation is increasing the number of authorized shares either by amendment or by merger, the domestic corporation shall pay the difference in license fee between the fee based on the initial number of authorized shares and the amended number of shares.~~

~~(4)~~ In addition to the filing fee authorized by 35-1-1206, the secretary of state shall charge and collect from each foreign corporation a license fee ~~of $100~~ at the time of filing an application for a certificate of authority to transact business. *The fee must be set and deposited in accordance with [section 1].*"

Section 19. Section 35-2-1003, MCA, is amended to read:

"**35-2-1003. Fees for filing, copying, and services.** (1) The secretary of state shall establish ~~by rule~~ fees for *the following:*

(a) filing documents and issuing certificates as required by this chapter~~.~~*; and*

~~(2) The secretary of state shall by rule establish fees for~~

(b) copying documents, priority handling, transmitting~~,~~ or filing facsimile copies, and ~~for~~ providing computer-generated information.

~~(3) The fees presented under this section must be reasonably related to the costs of processing the documents and preparing and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section.~~

(2) The fees authorized in this section must be set and deposited in accordance with [section 1]."

Section 20. Section 35-5-205, MCA, is amended to read:

"**35-5-205. Taxes and fees.** Any business trust created under this chapter or entering this state pursuant to this chapter shall pay ~~such~~ *the* taxes and fees ~~as are~~ imposed by the laws, ordinances, and regulations of this state and ~~any~~ *its* counties and municipalities ~~thereof~~ on domestic and foreign corporations~~, respectively, on an identical basis therewith~~. *Fees charged by the secretary of state pursuant to this chapter must be set and deposited in accordance with [section 1].*"

Section 21. Section 35-6-201, MCA, is amended to read:

"**35-6-201. Reinstatement of dissolved corporation — *fee.*** (1) The secretary of state may:

(a) reinstate any corporation ~~which~~ *that* has been dissolved under the provisions of this chapter; and

(b) restore to ~~such~~ *the* corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state one original and one copy of the application, executed by a person who was an officer or director at the time of dissolution, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated pursuant to 35-1-938 through 35-1-943 or 35-2-726 and 35-2-727;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; and

(b) a filing fee ~~in an amount equal to one-half of the filing and license fees which the corporation would be required to pay if the corporation were filing its articles of incorporation~~, *which must be set and deposited by the secretary of state in accordance with [section 1].*

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, ~~he~~ *the secretary of state* shall:

(a) conform and file in ~~his~~ *the secretary of state's* office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation ~~so~~ *that is* reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of ~~such~~ *the* certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution."

Section 22. Section 35-8-211, MCA, is amended to read:

"**35-8-211. Fees for filing, copying, and services ~~— rules~~.** (1) The secretary of state shall establish ~~by rule~~ fees for *the following:*

(a) filing documents as required by this chapter~~.~~*; and*

~~(2) The secretary of state shall establish by rule fees for~~

(b) copying documents, priority handling, transmitting or filing facsimile copies, and providing computer-generated information.

~~(3) The fees prescribed under this section must be reasonably related to the costs of processing the documents and preparing and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section.~~

(2) The fees authorized in the section must be set and deposited in accordance with [section 1]."

Section 23. Section 35-8-212, MCA, is amended to read:

"35-8-212. License fee. (1) In addition to the filing fee authorized by 35-8-211, the secretary of state shall charge and collect from each foreign limited liability company*:*

(a) a license fee ~~of $50~~ at the time of filing its articles of organization~~.~~*; and*

~~(2) In addition to the filing fee authorized by 35-8-211, the secretary of state shall charge and collect from each foreign limited liability company~~

(b) a license fee ~~of $50~~ at the time of filing an application for a certificate of authority to transact business.

(2) The fees authorized in this section must be set and deposited in accordance with [section 1]."

Section 24. Section 35-12-521, MCA, is amended to read:

"35-12-521. Secretary of state to establish fees. The secretary of state shall set filing fees ~~reasonably related to the costs of~~ *for* processing the applications and certificates. The secretary of state may establish fees for filing a certificate of limited partnership, *a* certificate of amendment or restatement, *a* certificate of cancellation, an application to reserve a name, a notice of transfer of a reserved name, an application for registration of a foreign limited partnership, *or* a certificate of cancellation or correction of a foreign limited partnership or *for* filing any other statement or report of a domestic or foreign limited partnership. ~~The secretary of state shall maintain records sufficient to support the fee charged for the filing requirements.~~ *The fees authorized in this section must be set and deposited in accordance with [section 1].*"

Section 25. Section 35-15-201, MCA, is amended to read:

"35-15-201. Incorporation. (1) Whenever any number of persons, not less than three or more than seven, ~~may~~ desire to become incorporated as a cooperative association for the purpose of trade or of prosecuting any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, ~~they~~ *the persons* shall make a statement to that effect ~~under their hands~~ *and* setting forth:

(a) the name of the proposed corporation;

(b) its capital stock;

(c) its location;

(d) the duration of the association; and

(e) the particular branch or branches of industry ~~which~~ *that* they intend to prosecute.

(2) In addition to provisions required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-216.

(3) The statement ~~shall~~ *must* be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall ~~thereupon~~ issue to ~~such~~ *the* persons a license as commissioners to open books for subscription to the capital stock of ~~such~~ *the* corporation, at ~~such~~ *a* time and place

~~as they~~ *that the persons* may determine, for which ~~he~~ *the secretary of state* shall ~~receive the~~ *charge a* fee ~~of $20~~ *set and deposited in accordance with [section 1].*"

Section 26. Section 35-15-205, MCA, is amended to read:

"**35-15-205. Amendment of articles of incorporation — *fee.*** At any time after the filing of the certificate of complete organization, the articles of incorporation may be amended. Any amendment of the articles of incorporation ~~shall~~ *must* first be approved by two-thirds of the directors and then adopted by a vote of not less than two-thirds of those stockholders voting thereon at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A certificate setting forth ~~such~~ *the* amendment ~~shall~~ *must* be executed on behalf of the association by its president or ~~vice-president and~~ *vice president,* its corporate seal *must be* affixed ~~thereto~~ *to the certificate,* and *the certificate must be* attested by its secretary. ~~Such~~ *The* certificate ~~shall~~ *must* be filed in the office of the secretary of state, who shall ~~thereupon~~ issue a certificate of amendment of the articles of incorporation, for which ~~he~~ *the secretary of state* ~~shall~~ *must* receive ~~the sum of $10~~ *a fee that is set and deposited in accordance with [section 1].*~~, and thereupon~~ *Upon the secretary of state's receipt of the fee,* a certified copy of ~~such~~ *the* certificate ~~shall~~ *must* be filed in the office of the county clerk in which the principal office of the association is located."

Section 27. Section 35-17-205, MCA, is amended to read:

"**35-17-205. Fees for filing articles and amendments thereto.** For filing articles of incorporation and receiving a certificate of incorporation, an association organized ~~hereunder~~ *pursuant to this part* shall pay to the secretary of state ~~$40 and~~ *a fee* for filing an amendment to the articles and *a fee for* receiving a certificate of amendment~~, $10~~. *The fees must be set and deposited in accordance with [section 1].*"

Section 28. Section 35-18-502, MCA, is amended to read:

"**35-18-502. Fees to be charged by secretary of state.** *(1)* The secretary of state shall charge and collect *a fee* for *each of the following*:

~~(1)~~*(a)* filing articles of incorporation and issuing a certificate of incorporation~~, $40~~;

~~(2)~~*(b)* filing articles of amendment and issuing a certificate of amendment~~, $10~~;

~~(3)~~*(c)* filing articles of consolidation or merger and issuing a certificate of consolidation or merger~~, $10~~;

~~(4)~~*(d)* filing articles of conversion and issuing a certificate of conversion~~, $10~~;

~~(5)~~*(e)* filing *a* certificate of election to dissolve and issuing *a* certificate of election to dissolve~~, $10~~;

~~(6)~~*(f)* filing articles of dissolution and issuing *a* certificate of dissolution~~, $10~~; and

~~(7)~~*(g)* filing *a* certificate of change of principal office and issuing *a* certificate of change of *principal* office~~, $10~~.

(2) Fees pursuant to this section must be set and deposited in accordance with [section 1]."

Section 29. Coordination instruction. (1) If Senate Bill No. 23 and [this act] are both passed and approved and both bills amend 30-9-545, then 30-9-545 must read as follows:

"**Section 14.** Section 30-9-545, MCA, is amended to read:

"**30-9-545. (Effective July 1, 2001) Fees.** (1) Except as otherwise provided in subsection ~~(5)~~ *(2)*, the fee for *each of the following must be set and deposited by the secretary of state as prescribed in [section 1 of House Bill No. 639]:*

(a) filing and indexing a record under this part, other than an initial financing statement ~~of the kind described in 30-9-522(3),~~ *filed in connection with a public-finance transaction or a manufactured-home transaction* ~~must be commensurate with costs and must be established by rule.~~*;*

~~(2) Except as otherwise provided in subsection (5), the fee for~~

(b) filing and indexing an initial financing statement of the kind described in 30-9-522(3) ~~must be commensurate with costs and must be established by rule.~~

~~(3) The number of names required to be indexed does not affect the amount of the fees in subsections (1) and (2).~~

~~(4) The fee for~~*; and*

(c) responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor~~, must be commensurate with costs and must be established by rule~~.

~~(5)~~*(2)* This section does not require a fee with respect to a record of mortgage that is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under 30-9-522(3). However, the recording and satisfaction fees that otherwise would be applicable to the record of mortgage apply.""

(2) If Senate Bill No. 122 and [this act] are both passed and approved:

(a) and both bills amend 35-15-201, then 35-15-201 must read as follows:

"**Section 25.** Section 35-15-201, MCA, is amended to read:

"**35-15-201. Incorporation.** (1) Whenever ~~any number of persons, not less than three or more than seven, may~~ *two or more persons* desire to ~~become incorporated~~ *incorporate* as a cooperative association for the purpose of trade or of ~~prosecuting~~ *carrying out* any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, ~~they~~ *the persons* shall ~~make~~ *prepare* a statement to that effect ~~under their hands setting~~ *that also sets* forth:

(a) the name of the proposed ~~corporation~~ *cooperative association*;

(b) its capital stock;

(c) its location;

(d) the duration of the association; and

(e) the particular branch or branches of industry ~~which they~~ *that the association* ~~intend~~ *intends* to ~~prosecute~~ *carry out*.

(2) In addition to ~~provisions~~ *the items* required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with ~~law regarding~~ *the* liability *provisions* ~~as~~ set forth in 35-1-216.

(3) The statement, *accompanied by the required filing fee, set and deposited in accordance with [section 1 of House Bill No. 639],* ~~shall~~ *must* be filed in the office of the secretary of state as the articles of incorporation of the association. ~~The~~ *After receiving the statement and the fee, the* secretary of state shall ~~thereupon~~ issue to ~~such~~ *the* persons *forming the association* a license as commissioners to open books for subscription to the capital stock of ~~such corporation,~~ *the association* at ~~such~~ *a* time and place ~~as they~~ *that the persons forming the association* may determine~~, for which he shall receive the fee of $20~~.""

(b) and both bills amend section 35-15-205, then 35-15-205 must read as follows:

"**Section 26.** Section 35-15-205, MCA, is amended to read:

"**35-15-205. Amendment of articles of incorporation** — ***fee.*** At any time after the filing of the certificate of complete organization, the articles of incorporation may be amended. Any amendment of the articles of incorporation ~~shall first~~ *must* be *first* approved by two-thirds of the directors and then adopted by a vote of not less than two-thirds of those stockholders voting ~~thereon~~ *on the issue* at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A certificate setting forth ~~such~~ *the* amendment ~~shall~~ *must* be executed on behalf of the association by its president or ~~vice-president~~ *vice president* and ~~its corporate seal affixed thereto and~~ attested *to* by its secretary. ~~Such~~ *The* certificate ~~shall~~ *must* be filed in the office of the secretary of state, who shall ~~thereupon~~ issue a certificate of amendment of the articles of incorporation, for which ~~he~~ *the secretary of state* ~~shall~~ *must* receive ~~the sum of $10, and thereupon a certified copy of such certificate shall be filed in the office of the county clerk in which the principal office of the association is located~~ *a fee that is set and deposited in accordance with [section 1 of House Bill No. 639].*""

Section 30. Effective date. [This act] is effective July 1, 2001.

Approved April 28, 2001

CHAPTER NO. 397

[SB 46]

AN ACT PROVIDING THAT A NOTICE OF LEVY WHEN ISSUED HAS THE SAME FORCE AND EFFECT AS A WRIT OF EXECUTION; PROVIDING THAT A LEVY UPON EARNINGS CONTINUES IN EFFECT FOR 120 DAYS; AMENDING SECTIONS 15-1-706 AND 39-51-1304, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-706, MCA, is amended to read:

"**15-1-706. Execution upon warrant.** (1) Upon receipt of a copy of the filed warrant and notice from the department that the applicable hearing provisions have been complied with, the sheriff or agent authorized to collect the tax shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment.

(2) A notice of levy may be made by means of a certified letter by an agent authorized to collect the tax. An agent is not entitled to any fee or compensation in excess of actual expenses incurred in enforcing the warrant.

(3) When issued, a notice of levy has the same force and effect as a writ of execution. A levy upon earnings continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to all pay periods beginning during the 120-day period.

~~(3)~~*(4)* A sheriff or agent shall return a warrant, along with any funds collected, within 90 days of the date of the warrant.

~~(4)~~*(5)* If the warrant is returned not satisfied in full, the department has the same remedies to collect the deficiency as are available for any civil judgment."

Section 2. Section 39-51-1304, MCA, is amended to read:

"39-51-1304. Lien for payment of unpaid taxes — levy and execution. (1) Unpaid taxes, including penalties and interest assessed on unpaid taxes, have the effect of a judgment against the employer or against the liable corporate officer or liable member or manager of a limited liability company referred to in 39-51-1105~~,~~ or a partner in a limited liability partnership, arising at the time that the payments are due. The department may issue a certificate stating the amount of payments due and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time that the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment through the sheriff or agent authorized to collect the tax in the same manner as prescribed for execution upon a judgment. *When issued, a notice of levy has the same force and effect as a writ of execution. A levy upon earnings continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to all pay periods beginning during the 120-day period.* A notice of levy may be made by means of a certified letter by an agent authorized to collect the tax. The department may enforce the judgment at any time within 10 years of the creation of the lien or the effective date of the lien, whichever is later.

(2) A judgment lien filed pursuant to this section may be renewed for another 10-year period pursuant to the methods provided in 25-13-102.

(3) The lien provided for in subsection (1) is not valid against any third party owning an interest in real or personal property against which the judgment is enforced if:

(a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that all taxes, penalties, and interest due from the grantor have been paid.

(4) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed under 39-51-1303, this section, or both, to collect the delinquent taxes, penalties, and interest from the:

(a) employer;

(b) liable corporate officer;

(c) liable member or manager of a limited liability company referred to in 39-51-1105; or

(d) partner in a limited liability partnership.

(5) The lien provided for in subsection (1) must be released upon payment in full of the unpaid taxes, penalties, and accumulated interest. The department may release or may partially release the lien upon partial payment or whenever the department determines that the release or partial release of the lien will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if it determines that the lien is unenforceable."

Section 3. Coordination instruction. If House Bill No. 254 is not passed and approved, then this bill is void.

Section 4. Effective date. [This act] is effective July 1, 2001.

Approved April 28, 2001

CHAPTER NO. 398

[SB 92]

AN ACT EXTENDING THE TERMINATION DATE FOR THE INCOME AND CORPORATE TAX CREDIT FOR RECYCLING OF MATERIAL AND THE INCOME AND CORPORATE TAX DEDUCTION FOR THE PURCHASE OF RECYCLED MATERIAL; REMOVING SOIL CONTAMINATED BY HAZARDOUS WASTES FROM THE DEFINITION OF "RECLAIMABLE MATERIAL"; DELETING THE RESTRICTION ON DEPRECIABLE PROPERTY THAT TREATS SOIL CONTAMINATED BY HAZARDOUS WASTES; AMENDING SECTIONS 15-32-601, 15-32-602 AND 15-32-603, MCA, SECTION 9, CHAPTER 712, LAWS OF 1991, SECTIONS 4 AND 5, CHAPTER 542, LAWS OF 1995, AND SECTION 1, CHAPTER 411, LAWS OF 1997; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-32-601, MCA, is amended to read:

"**15-32-601.** ~~**(Temporary)**~~ **Definitions.** For the purposes of this part, unless otherwise required by the context, the following definitions apply:

(1) "Collect" means the collection and delivery of reclaimable materials to a recycling or reclaimable materials processing facility.

(2) "Postconsumer material" means a product or packaging material that has served its final intended use, that has been discarded by an individual, commercial enterprise, or other entity after having fulfilled its intended application or use, and that is usually thrown away and hauled to landfills. This term does not include wastes generated during production of an end product.

(3) "Process" includes but is not limited to the treatment of hazardous wastes as defined in 75-10-403.

(4) (a) "Reclaimable material" means~~:~~

~~(i)~~ material that has useful physical or chemical properties after serving a specific purpose and that would normally be disposed of as solid waste, as defined in 75-10-203, by a consumer, processor, or manufacturer~~; or~~

~~(ii) soil that has been contaminated by hazardous wastes to the extent that treatment of those wastes is required as defined in 75-10-403~~.

(b) Except for claiming a tax credit as provided in 15-32-603(1)(d), material may not be considered reclaimed by the consumer, processor, or manufacturer that generated the material.

(5) "Recycled material" means a substance that is produced from reclaimed material as provided in 15-32-609. ~~(Terminates December 31, 2001—sec. 1, Ch. 411, L. 1997.)~~"

Section 2. Section 15-32-602, MCA, is amended to read:

"**15-32-602. ~~(Temporary)~~ Amount and duration of credit — how claimed.** (1) An individual, corporation, partnership, or small business corporation, as defined in 15-31-201, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for investments in depreciable property to collect or process reclaimable material or to manufacture a product from reclaimed material, if the taxpayer qualifies under 15-32-603.

(2) Subject to ~~15-32-603(3) and~~ subsection (4) ~~of this section~~, a taxpayer qualifying for a credit under 15-32-603 is entitled to claim a credit, as provided in subsection (3) ~~of this section~~, for the cost of each item of property purchased to collect or process reclaimable material or to manufacture a product from reclaimed material only in the year in which the property was purchased. ~~If qualifying property was purchased prior to January 1, 1992, but on or after January 1, 1990, a taxpayer is entitled to a credit for tax year 1992.~~

(3) The amount of the credit that may be claimed under this section for investments in depreciable property is determined according to the following schedule:

(a) 25% of the cost of the property on the first $250,000 invested;

(b) 15% of the cost of the property on the next $250,000 invested; and

(c) 5% of the cost of the property on the next $500,000 invested.

(4) A credit may not be claimed for investments in depreciable property in excess of $1 million. ~~(Terminates December 31, 2001—sec. 1, Ch. 411, L. 1997.)~~"

Section 3. Section 15-32-603, MCA, is amended to read:

"**15-32-603. ~~(Temporary)~~ Credit for investment in property used to collect or process reclaimable material or to manufacture a product from reclaimed material.** (1) The following requirements must be met to be entitled to a tax credit for investment in property to collect or process reclaimable material or to manufacture a product from reclaimed material:

(a) The investment must be for depreciable property used primarily to collect or process reclaimable material or to manufacture a product from reclaimed material.

(b) (i) The taxpayer claiming a credit must be a person who, as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that collects or processes reclaimable material or that manufactures a product from reclaimed material. For the purposes of this section, a business qualifies as a business that collects reclaimable material if it gathers reclaimable material for later sale or processing for another business that has as its primary business function the collection or processing of reclaimable material or the manufacture of a product from reclaimed material. The collection of reclaimable material may be a minor or nonprofit part of a business otherwise engaged in a retail trade or other business activity.

(ii) The taxpayer may but need not operate or conduct a business that collects or processes reclaimable material or manufactures a product from reclaimed material. If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (1)(b), and must have been collecting or processing reclaimable material or manufacturing a product from reclaimed material during the tax year for which the credit is claimed.

(d) The reclaimed material collected, processed, or used to manufacture a product may not be an industrial waste generated by the person claiming the tax credit unless:

(i) the person generating the waste historically has disposed of the waste onsite or in a licensed landfill; and

(ii) standard industrial practice has not generally included the reuse of the waste in the manufacturing process.

~~(2) A credit for depreciable property that treats soil contaminated by hazardous wastes applies only to property that treats contaminated soil and not to auxiliary property.~~

~~(3) A credit under this section may be claimed by a taxpayer for a business only if the qualifying property is purchased before January 1, 2002.~~

~~(4)~~*(2)* The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

~~(5)~~*(3)* A tax credit otherwise allowable under this section that is not used by the taxpayer in the taxable year may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year.

~~(6)~~*(4)* The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

~~(7)~~*(5)* If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in equipment necessary to collect or process reclaimable material or to manufacture a product from reclaimed material. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law. ~~(Terminates December 31, 2001—sec. 1, Ch. 411, L. 1997.)~~"

Section 4. Section 9, Chapter 712, Laws of 1991, is amended to read:

"**Section 9. Termination.** [This act] terminates December 31, ~~1995~~ *2005.*"

Section 5. Section 4, Chapter 542, Laws of 1995, is amended to read:

"**Section 9. Termination.** [This act] terminates December 31, ~~1995~~ *2005.*"

Section 6. Section 5, Chapter 542, Laws of 1995, is amended to read:

"**Section 5. Termination — exception.** (1) [Sections 1 through 3] terminate December 31, ~~1997~~ *2005*.

(2) Not withstanding subsection (1), 15-32-603(3), as numbered by [this act], which reads: "A credit under this section may be claimed by a taxpayer for a business only if the qualifying property is purchased before January 1, ~~1998~~ *2006*.", is deleted in its entirety on December 31, ~~1997~~ *2005*."

Section 7. Section 1, Chapter 411, Laws of 1997, is amended to read:

"**Section 5. Termination — exception.** (1) [Sections 1 through 3] terminate December 31, ~~1997~~ *2005*.

(2) Not withstanding subsection (1), 15-32-603(3), as numbered by [this act], which reads: "A credit under this section may be claimed by a taxpayer for a business only if the qualifying property is purchased before January 1, ~~1998~~ *2006*.", is deleted in its entirety on December 31, ~~1997~~ *2005*."

Section 8. Applicability. [This act] applies to tax years beginning after December 31, 2001.

Approved April 28, 2001

CHAPTER NO. 399

[SB 134]

AN ACT PROVIDING THAT COAL PRODUCED FOR IN-STATE ELECTRICAL GENERATING FACILITIES THAT OFFER ELECTRICAL POWER AT A SPECIFIC PRICE FOR IN-STATE USE AND THAT ARE CONSTRUCTED AFTER DECEMBER 31, 2001, IS TAXED AT ONE-THIRD THE OTHERWISE APPLICABLE COAL SEVERANCE TAX RATE; AMENDING SECTIONS 15-35-101 AND 15-35-103, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-101, MCA, is amended to read:

"**15-35-101. Legislative findings and declarations of purpose.** (1) The legislature finds that ~~while~~ *although* coal is extracted from the earth like metal minerals, there are differences between coal and metal minerals ~~such~~ *so* that they should be classified in different categories for taxation purposes. The legislature finds that ~~while~~ *although* coal can be ~~utilized~~ *used* like petroleum products, there are differences between coal and petroleum ~~such~~ *so* that they should be classified in different categories for taxation purposes. The legislature further finds that:

(a) coal is the only mineral ~~which~~ *that* can supply energy while being easily found in abundance in Montana;

(b) coal is the only mineral ~~which~~ *that* is so often marketed through sales contracts of many years' duration;

(c) coal, unlike most minerals, varies widely in composition and consequent value when marketed:

(d) coal in Montana is subject to regional and national demands for development ~~which~~ *that* could affect the economy and environment of a larger portion of the state than any other mineral development has done;

(e) subbituminous coal and lignite coal in Montana have sufficiently different markets and value and therefore require different production taxes;

(f) coal produced in underground mines has higher production costs and underground producers are able to pay lesser amounts of royalty and production tax than strip-mine producers can pay; ~~and~~

(g) coal production in Montana has been subject to an uncoordinated array of taxes ~~which~~ *that* overlap one another and yield revenue in an inconsistent and unpredictable manner*; and*

(h) coal used for the production of electricity near the coal mine by modern generating plants has significant statewide and nationwide economic, transportation, and environmental advantages that allow different production taxes.

(2) The legislature declares that the purposes of this chapter are to:

(a) allow the severance taxes on coal production to remain a constant percentage of the price of coal;

(b) stabilize the flow of tax revenue from coal mines to local governments through the property taxation system;

(c) simplify the structure of coal taxation in Montana, reducing tax overlap and improving the predictability of tax projections; ~~and~~

(d) recognize the economic, transportation, and environmental advantages of electrical generation by modern electrical generation plants near coal mines; and

~~(d)~~*(e)* accomplish the ~~foregoing~~ purposes *of this subsection (2)* by establishing categories of taxation ~~which~~ *that* recognize the unique character of coal, as well as the variations found within the coal industry, *and by encouraging the use of coal to produce electricity in modern generating plants near the coal mine.*"

Section 2. Section 15-35-103, MCA, is amended to read:

"**15-35-103. (Temporary) Severance tax — rates imposed.** (1) *(a)* A severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	10% of value	3% of value
7,000 and over	15% of value	4% of value

(b) The rate of taxation for coal that meets the following conditions is one-third the applicable rate set forth in subsection (1)(a), rounded to the nearest 10th of a percent:

(i) The coal is used for the production of electricity within the state in an electrical generation facility that was constructed after December 31, 2001, and before January 1, 2008.

(ii) The electrical producer agrees to offer, for use within the state, the first one-half of the amount of power that it produces to Montana customers and distribution services providers at a cost to be set by the public service commission

that reflects the producer's cost of generating the electricity plus a reasonable return on investment.

(2) "Value" means the contract sales price.

(3) The formula that yields the greater amount of tax in a particular case must be used at each point on the schedule.

(4) A person is not liable for any severance tax upon 50,000 tons of the coal that the person produces in a calendar year, except that if more than 50,000 tons of coal are produced in a calendar year, the producer is liable for severance tax upon all coal produced in excess of the first 20,000 tons.

(5) In addition to the exemption described in subsection (4), a person is not liable for any severance tax upon up to 2 million tons of coal that the person produces as feedstock for coal enhancement facilities in a calendar year, except if more than 2 million tons of coal are produced as feedstock for coal enhancement facilities in a calendar year, the producer is liable for severance tax on all coal produced as feedstock for these facilities in excess of the first 2 million tons. (Terminates December 31, 2005—sec. 5, Ch. 318, L. 1995.)

15-35-103. (Effective January 1, 2006) Severance tax — rates imposed. (1) *(a)* A severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	10% of value	3% of value
7,000 and over	15% of value	4% of value

(b) The rate of taxation for coal *that meets the following conditions* is one-third the applicable rate set forth in subsection (1)(a), *rounded to the nearest 10th of a percent:*

(i) The coal is used for the production of electricity within the state in an electrical generation facility that was constructed after December 31, 2001, and before January 1, 2008.

(ii) The electrical producer agrees to offer, for use within the state, the first one-half of the amount of power that it produces to Montana customers and distribution services providers at a cost to be set by the public service commission that reflects the producer's cost of generating the electricity plus a reasonable return on investment.

(2) "Value" means the contract sales price.

(3) The formula that yields the greater amount of tax in a particular case must be used at each point on the schedule.

(4) A person is not liable for any severance tax upon 50,000 tons of the coal that the person produces in a calendar year, except that if more than 50,000 tons of coal are produced in a calendar year, the producer is liable for severance tax upon all coal produced in excess of the first 20,000 tons."

Section 3. Effective date. [This act] is effective January 1, 2002.

Section 4. Applicability. [This act] applies to coal produced after December 31, 2001.

Approved April 28, 2001

CHAPTER NO. 400

[SB 162]

AN ACT PROVIDING CRITERIA FOR THE DEDICATION OF STATE REVENUE FOR LOCAL GOVERNMENTS; PROVIDING FOR THE REVIEW OF REVENUE DEDICATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 3], unless the context requires otherwise, the following definitions apply:

(1) "Dedicated revenue provision" means an administrative or legislative action that allocates the revenue from a tax, fee, assessment, or other source to a local government.

(2) "General revenue source" means a source of revenue not governed by established or implied restrictions based on the source or limited use of the revenue. The term includes taxes, interest earnings, investment earnings, fines, and forfeitures.

Section 2. Revenue dedication guidelines. (1) It is the policy of the legislature that a revenue source may be dedicated for a specific purpose when one or more of the following conditions are met:

(a) The person or entity paying the tax, fee, or assessment is the direct beneficiary of the specific activity that is funded by the tax, fee, or assessment, and the tax, fee, or assessment is commensurate with the costs of the program or activity.

(b) The entire cost of the activity is paid by the beneficiary, and the tax, fee, or assessment is commensurate with the costs of the activity, including reasonable administrative costs.

(c) There is an expectation that funds donated by a person or entity will be used for a specified purpose. Grants from private or public entities are considered donations under this subsection.

(d) There is a legal basis for the revenue dedication. A legal basis is a constitutional mandate, federal mandate, or statutory requirement in which a source of funds is designated for a specific purpose.

(e) There is a recognized need for accountability through a separation of funding from the general fund consistent with generally accepted accounting principles.

(2) In the consideration of the general appropriations act for each biennium, the legislature shall determine the appropriateness of dedicating revenue. The office of budget and program planning shall describe the occurrence in its presentation of the executive budget, and the legislative fiscal analyst shall highlight the issue in the budget analysis and for the appropriations subcommittee considering the revenue dedication.

Section 3. Review of dedicated revenue provisions. (1) Each interim, the legislative finance committee shall review dedicated revenue provisions based upon procedures established under subsection (4) and the revenue dedication guidelines set forth in [section 2].

(2) The legislature recognizes that dedicated revenue provisions are also subject to review by:

(a) the office of budget and program planning in the development and implementation of the executive budget and analysis of legislation;

(b) legislative fiscal division in analyzing the executive budget;

(c) the legislative services division in drafting legislation; and

(d) the legislative audit division in auditing agencies.

(3) To avoid unnecessary use of dedicated revenue provisions, the entities listed in subsection (2) shall, in the course of current duties, consider the guidelines listed in [section 2] and any criteria provided in the legislation dedicating the revenue and listed in this subsection. The expenditures from a dedicated revenue provision must be based on requirements for meeting a legislatively established outcome. Statutorily mandated programs or activities funded through dedicated revenue provisions from general revenue sources must be reviewed to the same extent as programs or activities funded from the general fund. The use of a dedicated revenue provision may be justified if it satisfies one or more of the following:

(a) The program or activity funded provides direct benefits for those who pay the dedicated tax, fee, or assessment, and the tax, fee, or assessment is commensurate with the costs of the program or activity.

(b) The use of the dedicated revenue provision provides special information or other advantages that could not be obtained without the revenue dedication.

(c) The dedicated revenue provision involves collection and allocation formulas that are appropriate to the present circumstances and current priorities of state and local government.

(d) The dedicated revenue provision does not impair the legislature's ability to scrutinize budgets, control expenditures, and establish priorities for state spending.

(e) The dedicated revenue provision results in an appropriate projected ending fund balance.

(f) The dedicated revenue provision fulfills a continuing need recognized by both local government and the legislature.

(g) The dedicated revenue provision does not result in accounting or auditing inefficiency.

(4) The legislative finance committee shall establish procedures to facilitate a biennial review and evaluation of dedicated revenue provisions.

(5) Upon completion of the review, the committee shall report a summary of its findings to the legislature, including its recommendation of termination or extension, with or without modification, of the dedicated revenue provision.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 17, chapter 1, and the provisions of Title 17, chapter 1, apply to [sections 1 through 3].

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to state revenue dedications after December 31, 2000.

Approved April 28, 2001

CHAPTER NO. 401

[SB 185]

AN ACT GENERALLY REVISING THE LAWS GOVERNING ELECTIONS AND CAMPAIGN FINANCE; REVISING THE DUTIES OF THE COMMISSIONER OF POLITICAL PRACTICES; REMOVING REFERENCES TO THE COMMISSIONER OF POLITICAL PRACTICES' AUTHORITY TO REGULATE CONTESTS FOR NOMINATION TO PUBLIC OFFICE; REMOVING REFERENCES TO PRIMARY POLITICAL COMMITTEES; CLARIFYING REPORTING REQUIREMENTS FOR BALLOT ISSUES; REMOVING CRIMINAL PENALTIES FOR UNLAWFUL CONTRIBUTIONS; CLARIFYING THAT ISSUANCE OF AN ORDER OF NONCOMPLIANCE IS NOT A PREREQUISITE FOR OTHER ACTION; CONFORMING CONTRIBUTION REPORTING REQUIREMENTS TO CURRENT LIMITS; REVISING DISTANCE RESTRICTIONS ON EXIT POLLING; ELIMINATING THE POLITICAL CRIMINAL LIBEL LAW; AMENDING SECTIONS 13-1-101, 13-35-211, 13-35-226, 13-37-111, 13-37-112, 13-37-113, 13-37-114, 13-37-117, 13-37-118, 13-37-121, 13-37-124, 13-37-125, 13-37-126, 13-37-127, 13-37-128, 13-37-226, AND 13-37-228, MCA; AND REPEALING SECTION 13-35-234, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-1-101, MCA, is amended to read:

"**13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Active elector" means a qualified elector whose name is on the active list.

(2) "Active list" means a list of active electors maintained by an election administrator pursuant to 13-2-219.

(3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) "Application for voter registration" means a completed voter registration card submitted to the election administrator and subject to confirmation, as provided in 13-2-207.

(5) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; and

(c) an officeholder who is the subject of a recall election.

(6) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residence for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees~~, as long as the organization is not a primary political committee~~; or

(iv) filing fees paid by the candidate.

(7) "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(8) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.

(9) "Elector" means an individual qualified and registered to vote under state law.

(10) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (6);

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees~~, as long as the organization is not a primary political committee~~.

(11) "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(12) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

(13) "Inactive elector" means an individual whose name is placed on an inactive list.

(14) "Inactive list" means a list of inactive electors maintained by an election administrator pursuant to 13-2-219.

(15) "Individual" means a human being.

(16) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. For the purposes of chapters 35~~, 36, or~~ *and* 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes ~~an~~ *a "ballot* issue" upon approval by the secretary of state of the form of the petition or referral.

(17) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (5).

(18) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

(19) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

(20) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

(21) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(22) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(23) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

(24) "Voting machine or device" means any equipment used to record, tabulate, or in any manner process the vote of an elector."

Section 2. Section 13-35-211, MCA, is amended to read:

"**13-35-211. Electioneering — soliciting information from electors.** (1) ~~No~~ *A* person may *not* do any electioneering on election day within any polling place or any building in which an election is being held or within ~~200~~ *100* feet ~~thereof~~ *of any entrance to the building in which the polling place is located*, which aids or promotes the success or defeat of any candidate or ballot issue to be voted upon at the election.

(2) ~~No~~ *A* person may *not* buy, sell, give, wear, or display at or about the polls on an election day any badge, button, or other insignia which is designed or tends to aid or promote the success or defeat of any candidate or ballot issue to be voted upon at the election.

(3) ~~No~~ *A* person within a polling place or any building in which an election is being held may *not* solicit from an elector, before or after ~~he~~ *the elector* has marked ~~his~~ *a* ballot and returned it to an election judge, information as to whether the elector intends to vote or has voted for or against a candidate or ballot issue."

Section 3. Section 13-35-226, MCA, is amended to read:

"**13-35-226. Unlawful acts of employers and employees.** (1) It is unlawful for any employer, in paying employees the salary or wages due them, to include with their pay the name of any candidate or any political mottoes, devices, or arguments containing threats or promises, express or implied, calculated or intended to influence the political opinions or actions of the employees.

(2) It is unlawful for an employer to exhibit in a place where the employer's workers or employees may be working any handbill or placard containing*:*

(a) any threat, promise, notice, or information that, in case any particular ticket or political party, organization, or candidate is elected~~,~~*:*

(i) work in the employer's place or establishment will cease, in whole or in part, or will be continued or increased;

(ii) the employer's place or establishment will be closed; *or*

(iii) the salaries or wages of the workers or employees will be reduced or increased; or

(b) other threats or promises, express or implied, intended or calculated to influence the political opinions or actions of the employer's workers or employees. ~~This section applies to corporations, individuals, and public officers and employees.~~

~~(2)~~*(3)* A person may not ~~attempt to~~ coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

~~(3)~~*(4)* A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at the place of employment.

However, subject to 2-2-121, this section ~~is~~ *does* not ~~intended to~~ restrict the right of a public employee to express personal political views.

~~(4)~~*(5)* ~~Any~~ *A* person who violates ~~the provisions of~~ this section ~~shall be fined an amount not to exceed $1,000, be imprisoned in the county jail for a term not to exceed 6 months, or both, for each separate offense~~ *is liable in a civil action authorized by 13-27-128, brought by the commissioner or a county attorney pursuant to 13-37-124 and 13-37-125.*"

Section 4. Section 13-37-111, MCA, is amended to read:

"**13-37-111. Investigative powers and duties.** (1) The commissioner ~~of political practices shall be~~ *is* responsible for investigating all of the alleged violations of the election laws contained in ~~chapters~~ *chapter* 35~~, 36, or 37~~ of this title *or this chapter* and ~~shall~~ in conjunction with the county attorneys ~~be~~ *is* responsible for enforcing these election laws.

(2) The commissioner may investigate all statements filed pursuant to the provisions of ~~chapters~~ *chapter* 35~~, 36, or 37~~ of this title *or this chapter* and shall ~~also~~ investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant to the provisions of ~~chapters~~ *chapter* 35~~, 36, or 37~~ of this title *or this chapter.* Upon the submission of a written complaint by any individual, the commissioner shall ~~also~~ investigate any other alleged violation of the provisions of ~~chapters~~ *chapter* 35~~, 36, or 37~~ of this title, *this chapter,* or any rule adopted pursuant ~~thereto~~ *chapter 35 of this title or this chapter.*

(3) The commissioner may inspect any records, accounts, or books that must be kept pursuant to the provisions of ~~chapters~~ *chapter* 35~~, 36, or 37~~ of this title *or this chapter* which are held by any political committee or candidate, ~~so~~ *as* long as ~~such~~ *the* inspection is made during reasonable office hours.

(4) The commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, bank account statements of a political committee or candidate, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of ~~chapters~~ *chapter* 35~~, 36, or 37~~ of this title *or this chapter.*"

Section 5. Section 13-37-112, MCA, is amended to read:

"**13-37-112. Personnel and budget.** (1) The commissioner shall select an appropriate staff to enforce the provisions of ~~chapters~~ *chapter* 35~~, 36, or 37~~ of this title *and this chapter*, and ~~he~~ may hire and fire all personnel under ~~his~~ *the commissioner's* supervision.

(2) The commissioner ~~shall be~~ *is* responsible for preparing, administering, and allocating the budget for ~~his~~ *the* office."

Section 6. Section 13-37-113, MCA, is amended to read:

"**13-37-113. Hiring of attorneys — prosecutions.** The commissioner may hire or retain attorneys who are properly licensed to practice before the supreme court of the state of Montana to prosecute violations of ~~chapters~~ *chapter* ~~35, 36, or 37~~ *35* of this title *or this chapter.* Any ~~properly licensed~~ attorney ~~so~~ retained or hired shall exercise the powers of a special attorney general, and ~~he~~ *the attorney* may prosecute, subject to the control and supervision of the commissioner and the provisions of 13-37-124 and 13-37-125, any criminal or civil action arising out of a violation of any provision of ~~chapters~~ *chapter* 35~~, 36, or 37~~ of this title *or this chapter.* All prosecutions ~~shall~~ *must* be brought in the state district court for the county in which a violation has occurred or in the district court for Lewis and Clark County. The authority to prosecute as prescribed by this section includes the authority to:

(1) institute proceedings for the arrest of persons charged with or reasonably suspected of criminal violations of ~~chapters~~ *chapter* 35~~, 36, or 37~~ of this title *or this chapter*;

(2) attend and give advice to a grand jury when cases involving criminal violations of ~~chapters~~ *chapter* 35~~, 36, or 37~~ of this title *or this chapter* are presented;

(3) draw and file indictments, informations, and criminal complaints;

(4) prosecute all actions for the recovery of debts, fines, penalties, or forfeitures accruing to the state or county from persons convicted of violating ~~chapters~~ *chapter* 35~~, 36, or 37~~ of this title *or this chapter*; and

(5) do any other act necessary to successfully prosecute a violation of any provision of ~~chapters~~ *chapter* 35~~, 36, or 37~~ of this title *or this chapter*."

Section 7. Section 13-37-114, MCA, is amended to read:

"**13-37-114. Rules.** The commissioner shall ~~promulgate and publish~~ *adopt* rules to carry out the provisions of ~~chapters~~ *chapter* 35~~, 36, or 37~~ of this title *and this chapter* ~~and shall promulgate such rules~~ in conformance with the Montana Administrative Procedure Act."

Section 8. Section 13-37-117, MCA, is amended to read:

"**13-37-117. Commissioner to provide forms, manuals, and election laws.** (1) The commissioner shall prescribe forms for reports and other information required to be filed pursuant to chapter 35~~, 36, or 37~~ of this title *and this chapter* and furnish forms and appropriate information to persons required to file reports and other information.

(2) The commissioner shall prepare and publish a manual prescribing a uniform system for accounts for use by persons required to file reports pursuant to chapter 35~~, 36, or 37~~ of this title *or this chapter*.

(3) The commissioner shall, at the expense of the state, furnish copies of the election laws relating to penalties, campaign practices, campaign finances, and contested elections to candidates and to any other persons required to file reports or other information pursuant to chapter 35~~, 36, or 37~~ of this title *or this chapter*."

Section 9. Section 13-37-118, MCA, is amended to read:

"**13-37-118. Information voluntarily supplied.** The commissioner shall accept and file any information voluntarily supplied that exceeds the requirements of ~~chapters~~ *chapter* 35~~, 36, or 37~~ of this title *or this chapter*."

Section 10. Section 13-37-121, MCA, is amended to read:

"**13-37-121. Inspection of statements and reports — issuance of orders of noncompliance.** (1) Each statement and report filed with the commissioner during an election or within 60 days after the election must be inspected within ~~10~~ *20* days after the statement or report is filed. *Intermediate Saturdays, Sundays, and holidays must be excluded in the computation of time under this section.* If a person has not satisfied the provisions of this chapter, the commissioner shall immediately notify the person of the noncompliance. *Notification by the commissioner may be accomplished by written or electronic* *communication or by telephone.* If the person fails to comply after the notification, the commissioner shall issue an order of noncompliance as provided in this section.

(2) An order of noncompliance may be issued when:

(a) upon examination of the official ballot, it appears that the person has failed to file a statement or report as required by this chapter or that a statement or report filed by a person does not conform to law; or

(b) it is determined that a statement or report filed with the commissioner does not conform to the requirements of this chapter or that a person has failed to file a statement or report required by law.

(3) If an order of noncompliance is issued during a campaign period or within 60 days after an election, a candidate or political committee shall submit the necessary information within 5 days after receiving the order of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner may initiate a civil or criminal action pursuant to the procedures outlined in 13-37-124 and 13-37-125.

(4) If an order of noncompliance is issued during any period other than that described in subsection (3), a candidate or political committee shall submit the necessary information within 10 days after receiving the order of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner shall initiate a civil or criminal action pursuant to the procedures outlined in 13-37-124 and 13-37-125.

(5) After a complaint is filed with the commissioner pursuant to 13-37-111, the procedure described in this section regarding the provision of notice and issuance of orders of noncompliance is not a prerequisite to initiation of any other administrative or judicial action authorized under chapter 35 of this title or this chapter."

Section 11. Section 13-37-124, MCA, is amended to read:

"**13-37-124. Consultation and cooperation with county attorney.** (1) Whenever the commissioner determines that there appears to be sufficient evidence to justify a civil or criminal prosecution under ~~chapters~~ *chapter* 35~~, 36, or 37~~ of this title *or this chapter*, ~~he~~ *the commissioner* shall notify the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to the county attorney all information relevant to the alleged violation. If the county attorney fails to initiate the appropriate civil or criminal action within 30 days after ~~he receives~~ *receiving* notification of the alleged violation, the commissioner may then initiate the appropriate legal action.

(2) A county attorney may, at any time prior to the expiration of the 30-day time period specified in subsection (1), waive ~~his~~ *the* right to prosecute, and ~~thereby authorize~~ *the waiver authorizes* the commissioner to initiate the appropriate civil or criminal action.

(3) The provisions of subsection (1) do not apply to a situation in which the alleged violation has been committed by the county attorney of a county. In this instance, the commissioner is authorized to directly prosecute any alleged violation of ~~chapters~~ *chapter* 35~~, 36, or 37~~ of this title *or this chapter.*

(4) If a prosecution is undertaken by the commissioner, all court costs associated with the prosecution ~~shall~~ *must* be paid by the state of Montana, and all fines and forfeitures imposed pursuant to a prosecution by the commissioner,

except those paid to or imposed by a justice's court, ~~shall~~ *must* be deposited in the state general fund."

Section 12. Section 13-37-125, MCA, is amended to read:

"**13-37-125. Powers of county attorney to investigate.** (1) Nothing in ~~chapters~~ *chapter* 35~~, 36, or 37~~ of this title *or this chapter* prevents a county attorney from inspecting any records, accounts, or books which must be kept pursuant to the provisions of ~~chapters~~ *chapter* 35~~, 36, or 37~~ of this title *or this chapter* that are held by a political committee or candidate involved in an election to be held within the county. However, the inspections must be conducted during reasonable office hours.

(2) A county attorney may:

(a) administer oaths and affirmations;

(b) subpoena witnesses and compel their attendance;

(c) take evidence; and

(d) require the production of any books, correspondence, memoranda, bank account statements of a political committee or candidate, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of ~~chapters~~ *chapter* 35~~, 36, or 37~~ of this title *or this chapter*."

Section 13. Section 13-37-126, MCA, is amended to read:

"**13-37-126. Names not to be printed on ballot.** (1) The name of a candidate may not be printed on the official ballot for an election if the candidate or a ~~political~~ treasurer for a candidate fails to file any statement or report as required by this chapter.

(2) A vacancy on an official ballot under this section may be filled in the manner provided by law, but not by the name of the same candidate.

(3) In carrying out the mandate of this section, the commissioner shall, by a written statement, notify the secretary of state or the election administrator that a candidate or a candidate's treasurer has not complied with the provisions of this chapter, as described in subsection (1), and that a candidate's name should not be printed on the official ballot. The commissioner shall provide this notification by the ballot certification deadline provided in 13-10-208 for primary elections and by no later than 7 days before the ballot certification deadline provided in 13-12-201 for general elections."

Section 14. Section 13-37-127, MCA, is amended to read:

"**13-37-127. Withholding of certificates of nomination or election.** (1) A certificate of election ~~shall~~ *may* not be granted to any candidate until ~~he~~ *the candidate* or ~~his political~~ *the candidate's* treasurer has filed the reports and statements that must be filed pursuant to the provisions of this chapter. ~~No~~ *A* candidate for an elective office may *not* assume the powers and duties of that office until ~~he~~ *the candidate* has received a certificate of election as provided by law. A certificate of election ~~shall~~ *may* only be issued by the public official responsible for issuing a certificate or commission of election.

(2) In carrying out the mandate of this section, the commissioner must, by written statement, notify the public official responsible for issuing a certificate of nomination or election that a candidate or ~~his~~ *the candidate's* treasurer has complied with the provisions of this chapter as described in subsection (1) and that a certificate of nomination or election may be issued."

Section 15. Section 13-37-128, MCA, is amended to read:

"**13-37-128. Cause of action created.** (1) A person who intentionally or negligently violates any of the reporting provisions of this chapter is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to $500 or three times the amount of the unlawful contributions or expenditures, whichever is greater.

(2) A person who makes or receives a contribution or expenditure in violation of 13-35-225, 13-35-227, 13-35-228, or this chapter *or who violates 13-35-226* is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to $500 or three times the amount of the unlawful contribution or expenditure, whichever is greater."

Section 16. Section 13-37-226, MCA, is amended to read:

"**13-37-226. Time for filing reports.** (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot;

(b) on the 10th day of March and September in each year that an election is to be held and on the 15th and 5th days preceding the date on which an election is held and within 24 hours after receiving a contribution of ~~$500~~ *$200* or more if received between the 10th day before the election and the day of the election;

(c) not more than 20 days after the date of the election; and

(d) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which ~~funds are received or expended~~ *the text of the proposed measure is submitted for review and approval pursuant to 13-27-202* during the year or years prior to the election year that an issue ~~subject to a referendum~~ is or is expected to be on the ballot;

(b) on the 10th day of March and on the 10th day of each subsequent month through September;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of $500 or more if received between the 10th day before the election and the day of the election;

(e) within 20 days after the election; and

(f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).

(3) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the 12th day preceding the date on which an election is held and within 48 hours after receiving a contribution of $100 or more if received between the 17th day before the election and the day of the election. The report under this subsection (3)(a) may be made by mail or by electronic communication to the clerk and recorder and the commissioner of political practices.

(b) not more than 20 days after the date of the election; and

(c) whenever a candidate or political committee files a closing report as specified in 13-37-228(3).

(4) Candidates for any other public office and political committees that are specifically organized to support or oppose a particular local issue shall file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds $500, except as provided in 13-37-206.

(5) For the purposes of this subsection, a committee that is not specifically organized to support or oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file:

(a) a report on the 12th day preceding the date of an election in which it participates by making an expenditure;

(b) a report not more than 20 days after the date of the election in which it participates by making an expenditure; and

(c) a report on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.

(6) The commissioner may promulgate rules regarding the extent to which organizations that are ~~not primary political committees but are~~ incidental political committees shall report their politically related activities in accordance with this chapter.

(7) All reports required by this section must be complete as of the fifth day before the date of filing as specified in 13-37-228(2) and this section."

Section 17. Section 13-37-228, MCA, is amended to read:

"**13-37-228. Time periods covered by reports.** Reports filed under 13-37-225 and 13-37-226 ~~shall~~ *must* be filed to cover the following time periods even though no contributions or expenditures may have been received or made during the period:

(1) The initial report ~~shall~~ *must* cover all contributions received or expenditures made by a candidate or political committee prior to the time that a person became a candidate or a political committee as defined in 13-1-101 until the fifth day before the date of filing of the appropriate initial report pursuant to subsections (1) through (5) of 13-37-226. *Reports filed by political committees organized to support or oppose a statewide ballot issue must disclose all contributions received and expenditures made prior to the time an issue becomes a*

ballot issue by approval of the form of the petition or referral by the secretary of state, even if the issue subsequently fails to garner sufficient signatures to qualify for the ballot.

(2) Subsequent periodic reports ~~shall~~ *must* cover the period of time from the closing of the previous report to 5 days before the date of filing of a report pursuant to 13-37-226(1) through (5).

(3) Closing reports ~~shall~~ *must* cover the period of time from the last periodic report to the final closing of the books of the candidate or political committee. A candidate or political committee shall file a closing report following an election in which ~~he or it~~ *the candidate or political committee* participates whenever all debts and obligations are extinguished and no further contributions or expenditures will be received or made which relate to the campaign, unless the election is a primary election and the candidate or political committee will participate in the general election."

Section 18. Repealer. Section 13-35-234, MCA, is repealed.

Approved April 28, 2001

CHAPTER NO. 402

[SB 191]

AN ACT PROVIDING FOR THE ISSUANCE OF GENERIC SPECIALTY LICENSE PLATES; ALLOWING QUALIFIED ORGANIZATIONS TO SPONSOR GENERIC SPECIALTY LICENSE PLATES THAT INCLUDE THE SPONSOR'S NAME, IDENTIFYING PHRASE, AND GRAPHIC; REQUIRING THE DEPARTMENT OF JUSTICE TO ADMINISTER THE PROGRAM AND ADOPT RULES THAT DICTATE THE APPEARANCE OF THE PLATES; LISTING THE REQUIREMENTS FOR BECOMING A GENERIC SPECIALTY LICENSE PLATE SPONSOR; REQUIRING THE APPOINTMENT OF GENERIC SPECIALTY LICENSE PLATE LIAISONS; ESTABLISHING A FEE FOR PURCHASE OF THE PLATES AND SPECIFYING DISBURSEMENT OF THE REVENUE; PROVIDING AN APPROPRIATION OF $120,000 FROM THE GENERAL FUND TO THE DEPARTMENT OF CORRECTIONS FOR MANUFACTURE OF THE PLATES; PROVIDING AN APPROPRIATION OF $26,010 FROM THE GENERAL FUND TO THE DEPARTMENT OF JUSTICE FOR PROGRAMMING COSTS; AMENDING SECTIONS 61-3-332, 61-3-407, AND 61-3-446, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 10] may be cited as the "Montana Generic Specialty License Plate Act".

Section 2. Definitions. As used in [sections 1 through 10], the following definitions apply:

(1) "Generic specialty license plate" means a license plate bearing the name, identifying phrase, or graphic of a sponsor, approved by the department, and that is issued by the department to a person who is entitled to a special certificate of registration.

(2) "Governmental body" means a tribal government, state agency, local government, school district, or other political subdivision within this state.

(3) "Organization" means an association, corporation, group, or other entity:

(a) recognized by the internal revenue service as tax-exempt under 26 U.S.C. 501(c)(3); and

(b) that does not have as its primary focus sectarian activities, including but not limited to activities aimed at promoting the adoption of one or more religious or political viewpoints.

(4) "Special certificate of registration" means the certificate of motor vehicle registration issued in accordance with [section 8].

(5) "Sponsor" means the governmental body or organization approved by the department to promote the sale and issuance of a generic specialty license plate.

(6) "Tribal government" means the officially recognized government of an Indian tribe, nation, or other organized Indian group or community located in Montana that is exercising self-government powers and that is recognized as being eligible for services provided by the United States to Indians because of their status as Indians.

Section 3. Responsibility for design of generic specialty license plates — numbering — rulemaking — approval — county designation by sticker — listing of plate sponsors. (1) The department shall:

(a) design the background and general format of generic specialty license plates;

(b) in consultation with the department of corrections, determine which license plate processing system is the most efficient and versatile manufacturing method for the production of generic specialty license plates;

(c) use a numbering system for generic specialty license plates that is distinctive from the numbering system required under 61-3-332 or used for collegiate license plates;

(d) adopt rules that prescribe:

(i) the minimum and maximum number of characters that a generic specialty license plate may display;

(ii) the general placement of the sponsor's name, identifying phrase, and graphic; and

(iii) any specifications or limitations on the use or choice of color or detail in the sponsor's graphic design.

(2) All sponsor names, identifying phrases, and graphics intended for use on generic specialty license plates must be approved by the department prior to the manufacture of the plates.

(3) Upon the issuance of generic specialty license plates, the department shall provide nonremovable stickers bearing the appropriate county designation as provided in 61-3-332. The stickers must be affixed to the license plates in use in accordance with instructions by the department.

(4) The department shall maintain a list of the organizations that it has approved as sponsors of generic specialty license plates, including the name and address of a generic specialty license plate liaison for each organization. The

department shall, upon request, make copies of this list available to interested members of the public.

(5) The department may, in its discretion, revoke its previous approval of an organization's generic specialty license plate sponsorship if the organization fails to comply with the provisions of [sections 1 through 10] or if the department has reliable information that the organization may no longer be qualified for sponsorship under [sections 1 through 10].

Section 4. Qualifications and approval of organization as sponsor. (1) To qualify as a sponsor of a generic specialty license plate, an organization shall:

(a) apply, through the organization's officers, for sponsorship on a form or in a format prescribed by the department;

(b) submit proof of good standing if the organization is required to be registered with the office of the secretary of state;

(c) designate one of its members as the organization's generic specialty license plate liaison. The liaison is responsible for all communications with the department regarding the organization's sponsorship of generic specialty license plates and shall file the liaison's name, address, and telephone number with the department for the purposes provided for in [section 3(4)].

(d) submit to the department proof that is acceptable to the department that:

(i) the organization is a nonprofit organization as demonstrated in its charter or bylaws or by an internal revenue service ruling. The department may request copies of an internal revenue service ruling to verify an organization's nonprofit status.

(ii) the primary purpose of the organization, except for an organization of military service veterans, is service to the community through specific programs that promote improving public health, education, or general welfare;

(iii) the organization's name, identifying phrase, or graphic that will be placed on the generic specialty license plate does not:

(A) invoke connotations offensive to good taste and decency;

(B) promote, advertise, or endorse a product, brand, or service provided for sale;

(C) infringe or otherwise violate a trademark, trade name, service mark, copyright, or other proprietary or property right; or

(D) obscure the generic specialty license plate letters or numbers that the department assigns as provided in [section 3(1)(c)];

(iv) the organization's headquarters or base of operations is in this state or, if the organization is a chapter or branch of an international, national, or regional organization, the chapter or branch is in good standing and has authorization in writing from the parent organization to use the name and graphic of the parent organization; and

(v) the organization has an active telephone number listed under its name in at least one published Montana directory.

(2) The department may require a statement under oath from the officers of the organization that the organization is authorized to use the name, identifying

phrase, and graphic submitted for display on a generic specialty license plate and that no infringement or violation of any property right exists, together with an agreement to defend and hold harmless the state of Montana, its employees, or its agents for any liability as a result of an infringement or violation of any property right.

(3) The department's approval or rejection of an organization's application for generic specialty license plate sponsorship must be based on the requirements provided in [sections 1 through 10]. The department shall state in writing the reasons for its rejection of an organization's application.

Section 5. Qualification and approval of governmental body as sponsor. To qualify for sponsorship of a generic specialty license plate, a governmental body shall:

(1) apply for sponsorship through the executive body of a tribal government, the state agency director or department head, the commission or council of a local government or political subdivision, or the board of trustees of a school district on a form or in a format approved by the department;

(2) if the governmental body is a state agency, identify the statutory authority under which it is relying to seek sponsorship of a generic specialty license plate and specify the account in which any generic specialty license plate donations must be placed;

(3) designate one of its officers or employees as the governmental body's generic specialty license plate liaison. The liaison is responsible for all communications with the department regarding the governmental body's sponsorship of generic specialty license plates and shall file the liaison's name, address, and telephone number with the department for the purposes provided for in [section 3(4)].

Section 6. Generic specialty license plate liaison — responsibilities. (1) Upon the department's approval of an organization's or a governmental body's proposed sponsorship of a generic specialty license plate, the generic specialty license plate liaison designated under [sections 4(1)(c) and 5(3)] shall submit to the department the sponsor's name, identifying phrase, and graphic that will appear on the generic specialty license plate.

(2) The generic specialty license plate liaison shall verify and approve in writing the prototype or mockup of the sponsoring organization's generic specialty license plate before it may be manufactured or issued by the department.

(3) Subject to the provisions of [section 8], the generic specialty license plate liaison shall determine a person's eligibility to receive a generic specialty license plate and shall provide, on behalf of the sponsor, a written certificate of eligibility to an eligible person who has paid the required donation as determined by the sponsor and as provided in [section 9].

Section 7. Generic specialty license plate sponsor fee — exception. (1) Except as provided in subsection (2), upon approval of an organization's application to sponsor a generic specialty license plate and before a sponsor's generic specialty license plates may be manufactured, the department shall assess and the sponsor shall pay a $1,200 fee to reimburse the department for the initial costs incurred in producing the generic specialty license plates for the sponsoring organization.

(2) In lieu of the fee required in subsection (1), a minimum of 400 applications for a sponsoring organization's generic specialty license plates must be filed and prepaid with the department before the generic specialty license plates may be manufactured and issued.

Section 8. Special certificate of registration and issuance of generic specialty license plates — qualifications. (1) The department shall issue a special certificate of registration and generic specialty license plates to a person who applies if the person presents written certification, in a form prescribed by the department, from the sponsoring organization indicating that the person is eligible to receive the generic specialty license plates.

(2) If the sponsor is a governmental body that has a written agreement with the county treasurer pursuant to [section 9], the department shall issue a special certificate of registration and generic specialty license plates to an eligible person who applies if the person pays the donation specified by the governmental body to the county treasurer at the time of application.

(3) A special certificate of registration and generic specialty license plates may be issued only for a light vehicle.

(4) The department may issue a special certificate of registration and generic specialty license plates to joint owners of a motor vehicle if one of the owners is determined by the sponsor to be eligible and if the eligible owner's name appears on the vehicle's special certificate of registration.

(5) (a) Except as provided in [sections 1 through 10], a person who receives a special certificate of registration and generic specialty license plates is subject to the same rules and laws as those that govern number plates.

(b) Except as provided in [sections 1 through 10], the department is subject to the same rules and laws as govern the issuance of number plates.

(c) Generic specialty license plates issued under [sections 1 through 10] are not subject to the maximum 4-year limitation provided in 61-3-332(2)(a).

Section 9. Fees for generic specialty license plates — disposition. (1) In addition to the other fees and taxes imposed by law, an eligible person who applies for a generic specialty license plate shall pay an administrative fee of $10. The county treasurer shall, upon receipt of the fee:

(a) deposit $2 of the fee in the county general fund; and

(b) remit $8 of the fee to the state general fund.

(2) An applicant for a generic specialty license plate sponsored by a state agency shall pay to the county treasurer the donation required by the state agency. The county treasurer shall remit the entire amount of the donation to the state treasurer for deposit in either the state general fund or the state special revenue fund to the credit of the sponsoring state agency.

(3) If an additional donation is required by a state agency for renewal of generic specialty license plates sponsored by the state agency, the additional donation must be paid to the county treasurer upon renewal and remitted to the state agency as prescribed in subsection (2).

(4) The county treasurer shall also collect from an applicant any donation required by a sponsoring local government, school district, or political subdivision if a written agreement exists between the county treasurer and the

sponsoring local government, school district, or political subdivision. The agreement must:

(a) authorize the collection of the donations by the county treasurer;

(b) specify the amount of donation required for issuance and renewal of the generic specialty license plates; and

(c) provide for the disbursement of the revenue.

Section 10. Generic specialty license plates — restrictions on use. (1) Generic specialty license plates may be issued by the department only in conjunction with the registration of a light vehicle. The department may not issue generic specialty license plates without the motor vehicle having been registered.

(2) Generic specialty license plates may be used only as the official number plates for a motor vehicle.

Section 11. Section 61-3-332, MCA, is amended to read:

"61-3-332. Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bears the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bears the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bears the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bears the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bears the distinctive letters "RV" or the letter "R" and the word "DEALER", and one *each* for special license plates, *collegiate license plates, and generic specialty license plates authorized under this chapter*. All markings for the various kinds of dealers' plates must be placed on the number plates assigned to the dealer, in the position that the department designates.

(2) (a) ~~All~~ *Except as provided in [section 8], all* number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the ~~state~~ *department*. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(b) For light vehicles that are permanently registered as provided in 61-3-527 or 61-3-562, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.

(3) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. ~~The~~ *Except for generic specialty license plates, the* outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" ~~and the year~~ must be placed ~~across the plates~~ *on each plate*. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. ~~The~~ *Except for special license plates, collegiate license plates, and generic specialty license plates, the* distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. A

registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 *and generic specialty license plates authorized in [sections 1 through 10]*, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of $10. The additional fee must be distributed in accordance with the provisions of subsection (10)(f)(iii) and (10)(f)(iv).

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued:

(A) a special license plate under this section with a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a ~~passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less~~ *light vehicle* is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(iii) Special license plates issued to a disabled veteran are not transferable to another person.

(iv) A disabled veteran is not entitled to a special disabled veteran's license plate for more than one vehicle.

(v) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(i) Fees required under 61-3-321(1) and (5) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).

(ii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iii) An ex-prisoner of war is exempt from the ~~light vehicle taxes imposed under 61-3-504~~ *registration fees imposed under 61-3-560 through 61-3-562* for one vehicle that displays a set of ex-prisoner of war license plates.

(iv) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.

(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue account established in 10-2-603 for administration, construction, operation, and maintenance of the state veterans' cemeteries.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.

(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 12. Section 61-3-407, MCA, is amended to read:

"61-3-407. Personalized veterans', national guard veterans', ~~or~~ legion of valor members', *and generic specialty* license plates. (1) Subject to the provisions of 61-3-405 and 61-3-406, an application for veterans', national guard veterans', ~~or~~ legion of valor members', *or generic specialty* license plates under 61-3-332(10)(a)(ii), (10)(f), or (10)(h) *or [sections 1 through 10]* may be combined with an application for personalized plates.

(2) An application for personalized veterans', national guard veterans', ~~or~~ legion of valor members', *or generic specialty* license plates must be made on a form supplied by the department."

Section 13. Section 61-3-446, MCA, is amended to read:

"61-3-446. Retention of special license plates. If during a registration year the holder of special license plates issued under 61-3-332(10) *or generic specialty license plates issued as provided in [sections 1 through 10]* disposes of the vehicle to which the plates are affixed, the holder ~~shall~~ *may* retain the plates and ~~may~~ affix them to another vehicle."

Section 14. Appropriation. (1) There is appropriated from the general fund to the department of corrections for the biennium ending June 30, 2003, $120,000 to be used for the manufacture of generic specialty license plates by the prison industries program.

(2) There is appropriated from the general fund to the department of justice for the biennium ending June 30, 2003, $26,010 to be used for computer programming costs incurred as a result of [this act].

Section 15. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 16. Coordination instruction. If [LC 32] and [this act] both are passed and approved, then the introductory language in [section 10(2)] of [LC 32] must read:

"(2) In addition to special license plates, collegiate license plates, and generic specialty license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:".

Section 17. Coordination instruction. (1) If Senate Bill No. 393 and [this act] are both passed and approved, then:

(a) [sections 1 through 4, 6, 7, 10, and 11] of Senate Bill No. 393 (Second Reading, Second House version) are void;

(b) [section 5] of Senate Bill No. 393 must read as follows:

"NEW SECTION. **Section 5. Lewis and Clark bicentennial license plates — authorization to apply as sponsor — use of proceeds.** (1) The Lewis and Clark bicentennial commission may:

(a) apply to the department of justice to sponsor a generic specialty license plate as provided in [section 5] of Senate Bill No. 191; and

(b) require an applicant for a generic specialty license plate sponsored by the Lewis and Clark bicentennial commission to make a donation of $20 to the Lewis and Clark bicentennial commission upon initial issuance of the license plates and a donation of $20 upon each annual renewal of the license plates.

(2) The donation provided for in subsection (1)(b) must be paid to the county treasurer, who shall remit the entire amount to the state treasurer for deposit in the special revenue account established in 2-15-150.

(3) The Lewis and Clark bicentennial commission shall establish the criteria that entities or organizations are required to meet in order to receive proceeds from the special revenue account established in 2-15-150, and the commission may distribute the money in a manner and in any amount that it determines appropriate.

(4) The Lewis and Clark bicentennial commission may retain any amount of money collected in the special revenue account that it determines necessary to fulfill its responsibilities and carry out the activities provided in 2-15-150.

(5) Entities receiving funds under subsection (3) may not use the funds for purposes other than those prescribed by the Lewis and Clark bicentennial commission and subject to 2-15-150.

(6) Proceeds from license plate donations and proceeds from any loan from the board of investments that are received in the special revenue account established in 2-15-150 are statutorily appropriated, as provided in 17-7-502, to the Lewis and Clark bicentennial commission."; and

(c) the codification instruction in [section 14] of Senate Bill No. 393 is void and [section 5] of Senate Bill No. 393 must be codified as an integral part of Title 2, chapter 15, part 1, and the provisions of Title 2, chapter 15, part 1, apply to [section 5].

(2) If [this act] and Senate Bill No. 53 are both passed and approved, then 61-3-332(10)(c)(ii) must read as follows:

"(ii) The fee for original or renewal registration by a 100% disabled veteran for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter."

Section 18. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 61, chapter 3, part 4, and the provisions of Title 61, chapter 3, part 4, apply to [sections 1 through 10].

Section 19. Effective date. [This act] is effective on passage and approval.

Section 20. Applicability. [This act] applies to registrations of motor vehicles occurring after December 31, 2001.

Section 21. Termination. [This act] terminates June 30, 2005.

Approved April 28, 2001

CHAPTER NO. 403

[SB 240]

AN ACT ELIMINATING PROJECT DEVELOPMENT DEADLINES THAT ARE REQUIRED TO QUALIFY FOR REDUCED OIL PRODUCTION TAX RATES FOR CERTAIN OIL WELL ENHANCED RECOVERY PROJECTS; REVISING DEFINITIONS; AMENDING SECTION 15-36-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-303, MCA, is amended to read:

"**15-36-303. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(2) "Department" means the department of revenue provided for in 2-15-1301.

(3) "Enhanced recovery project" means the use of any process for the displacement of oil from the earth other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process.

(4) "Existing enhanced recovery project" means an enhanced recovery project that began development before January 1, 1994.

(5) "Expanded enhanced recovery project" or "expansion" means the addition of injection wells or production wells, the recompletion of existing wells as horizontally completed wells, the change of an injection pattern, or other operating changes to an existing enhanced recovery project that will result in the recovery of oil that would not otherwise be recovered. The project must be developed after December 31, 1993~~, and before January 1, 2002~~.

(6) "Gross taxable value", for the purpose of computing the oil and natural gas production tax, means the gross value of the product as determined in 15-36-305.

(7) "Horizontal drain hole" means that portion of a well bore with 70 degrees to 110 degrees deviation from the vertical and a horizontal projection within the common source of supply, as that term is defined by the board, that exceeds 100 feet.

(8) "Horizontally completed well" means:

(a) a well with one or more horizontal drain holes; and

(b) any other well classified by the board as a horizontally completed well.

(9) "Incremental production" means:

(a) the volume of oil produced by a new enhanced recovery project, by a well in primary recovery recompleted as a horizontally completed well, or by an expanded enhanced recovery project, which volume of production is in excess of the production decline rate established under the conditions existing before:

(i) the commencement of the recompletion of a well as a horizontally completed well;

(ii) expansion of the existing enhanced recovery project; or

(iii) commencing a new enhanced recovery project; or

(b) in the case of any project that had no taxable production prior to commencing the enhanced recovery project, all production of oil from the enhanced recovery project.

(10) "Natural gas" or "gas" means natural gas and other fluid hydrocarbons, other than oil, produced at the wellhead.

(11) "New enhanced recovery project" means an enhanced recovery project that began development after December 31, 1993~~, and before January 1, 2002~~.

(12) "Nonworking interest owner" means any interest owner who does not share in the exploration, development, and operation costs of the lease or unit, except for production taxes.

(13) "Oil" means crude petroleum or mineral oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form and that are not the result of condensation of gas after it leaves the wellhead.

(14) "Operator" or "producer" means a person who produces oil or natural gas within this state or who owns, controls, manages, leases, or operates within this state any well or wells from which any marketable oil or natural gas is extracted or produced.

(15) "Post-1999 well" means an oil or natural gas well drilled on or after January 1, 1999, that produces oil or natural gas or a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying as a post-1999 well.

(16) "Pre-1999 well" means an oil or natural gas well that was drilled before January 1, 1999.

(17) "Primary recovery" means the displacement of oil from the earth into the well bore by means of the natural pressure of the oil reservoir and includes artificial lift.

(18) "Production decline rate" means the projected rate of future oil production, extrapolated by a method approved by the board, that must be determined for a project area prior to commencing a new or expanded enhanced recovery project or the recompletion of a well as a horizontally completed well. The approved production decline rate must be certified in writing to the department by the board. In that certification, the board shall identify the project area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used to determine the volume of incremental production that qualifies for the tax rate imposed under 15-36-304(5)(e).

(19) *(a)* "Qualifying production" means the first 12 months of production of oil or natural gas from a well ~~drilled after December 31, 1998,~~ *drilled after December 31, 1998,* or the first 18 months of production of oil or natural gas from a horizontally completed well ~~drilled after December 31, 1998,~~ *drilled after December 31, 1998,* or from a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying production.

(b) Qualifying production does not include oil production from a horizontally recompleted well.

(20) "Secondary recovery project" means an enhanced recovery project, other than a tertiary recovery project, that commenced or was expanded after December 31, 1993, ~~and before January 1, 2002,~~ and meets each of the following requirements:

(a) The project must be certified as a secondary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated according to the specifications required by the board.

(c) The project must involve the application of secondary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of oil that may potentially be recovered. For purposes of this part, secondary recovery methods include but are not limited to:

(i) the injection of water into the producing formation for the purposes of maintaining pressure in that formation or for the purpose of increasing the flow of oil from the producing formation to a producing well bore; or

(ii) any other method approved by the board as a secondary recovery method.

(21) "Stripper natural gas" means the natural gas produced from any well that produces less than 60,000 cubic feet of natural gas a day during the calendar year immediately preceding the current year. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

(22) "Stripper oil" means the oil produced from any well that produces less than 15 barrels a day for the calendar year immediately preceding the current year if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper tax rate, including stripper well exemption tax rate, in that quarter. The average price for a barrel is computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

(23) "Stripper well exemption" means petroleum and other mineral or crude oil produced by a stripper well that produces 3 barrels a day or less.

(24) "Tertiary recovery project" means an enhanced recovery project, other than a secondary recovery project, using a tertiary recovery method that meets the following requirements:

(a) The project must be certified as a tertiary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated in the certification according to the specifications required by the board.

(c) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil that may potentially be recovered. For purposes of this part, tertiary recovery methods include but are not limited to:

(i) miscible fluid displacement;

(ii) steam drive injection;

(iii) micellar/emulsion flooding;

(iv) in situ combustion;

(v) polymer augmented water flooding;

(vi) cyclic steam injection;

(vii) alkaline or caustic flooding;

(viii) carbon dioxide water flooding;

(ix) immiscible carbon dioxide displacement; or

(x) any other method approved by the board as a tertiary recovery method.

(25) "Well" or "wells" means a single well or a group of wells in one field or production unit and under the control of one operator or producer.

(26) "Working interest owner" means the owner of an interest in an oil or natural gas well or wells who bears any portion of the exploration, development, and operating costs of the well or wells."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2001

CHAPTER NO. 404

[SB 280]

AN ACT REINSTATING THE 1-CENT-A-GALLON AVIATION FUEL TAX THAT WAS DEPOSITED IN THE AERONAUTICAL LOAN ACCOUNT THAT TERMINATED JANUARY 1, 2001, AFTER THE LOAN ACCOUNT REACHED A BALANCE OF $1 MILLION; PROVIDING THAT THE PROCEEDS OF THE REINSTATED 1-CENT TAX BE DEPOSITED IN THE AIRPORT GRANT ACCOUNT FOR MUNICIPALITIES; AMENDING SECTIONS 15-70-204, 15-70-205, 15-70-221, 67-1-301, AND 67-1-303, MCA; REPEALING SECTION 67-1-305, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-204, MCA, is amended to read:

"~~**15-70-204. (Temporary) Gasoline license tax — rate.** (1) Every distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:~~

~~(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and~~

~~(b) 27 cents, beginning July 1, 1994, for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.~~

~~(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.~~

~~(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1). (Terminates on occurrence of contingency—sec. 17, Ch. 642, L. 1993.)~~

15-70-204. ~~**(Effective on occurrence of contingency)**~~ **Gasoline license tax — rate.** (1) ~~Every~~ *Each* distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) ~~3~~ *4* cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1)."

Section 2. Section 15-70-205, MCA, is amended to read:

"~~**15-70-205. (Temporary) Distributor's statement and payment — confidentiality.** (1) Each distributor shall, not later than the 25th day of each calendar month, except as provided in 15-70-113(3), render a true signed statement to the department of all gasoline distributed and received by the distributor in this state during the preceding calendar month and containing any other information that the department may reasonably require in order to administer the gasoline license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under 15-70-226 and less 1% of the total tax that may be deducted by the distributor as an allowance for collecting the tax. An allowance may not be deducted from the 4-cent tax on aviation fuel.~~

~~(2) A distributor engaged in or carrying on a business at more than one place or location in this state may include all places of business in one statement.~~

~~(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. This section does not prohibit:~~

~~(a) the delivery to a distributor or the distributor's authorized representative of a certified copy of any return or report filed in connection with the tax;~~

~~(b) the inspection by the attorney general or other legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;~~

~~(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;~~

~~(d) the inspection by the commissioner of internal revenue of the United States or the proper officer or any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or the officer's representative if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or must be in compliance with 15-70-121 and 15-70-122; or~~

~~(e) the compliance of the department with any order of a court of competent jurisdiction. (Terminates on occurrence of contingency—sec. 17, Ch. 642, L. 1993.)~~

15-70-205. ~~**(Effective on occurrence of contingency)**~~ **Distributor's statement and payment — confidentiality.** (1) Each distributor shall, not later than the 25th day of each calendar month, except as provided in 15-70-113(3), render a true signed statement to the department of all gasoline distributed and received by the distributor in this state during the preceding calendar month and containing any other information that the department may reasonably require in order to administer the gasoline license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under 15-70-226 and less 1% of the total tax that may be deducted by the distributor as an allowance for collecting the tax. An allowance may not be deducted from the ~~3-cent~~ *4-cent* tax on aviation fuel.

(2) A distributor engaged in or carrying on a business at more than one place or location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. This section does not prohibit:

(a) the delivery to a distributor or the distributor's authorized representative of a certified copy of any return or report filed in connection with the tax;

(b) the inspection by the attorney general or other legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer or any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or the officer's representative if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or must be in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction."

Section 3. Section 15-70-221, MCA, is amended to read:

"~~**15-70-221. (Temporary) Refund or credit authorized.** (1) A person who purchases and uses any gasoline on which the Montana gasoline license tax has been paid for denaturing alcohol to be used in gasohol, for operating stationary gasoline engines used off the public highways and streets, or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the gasoline. The refund may not exceed the tax paid or to be paid to the state. Except as provided in subsection (5), a refund is not allowed for the tax per gallon upon aviation fuel allocated to the department of transportation by 67-1-301.~~

~~(2) A distributor who pays the gasoline license tax to this state erroneously is allowed a credit or refund of the amount of tax paid.~~

~~(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline with a tax liability of $200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor may not have declared the accounts of the purchaser worthless more than once during a 3-year period, and the distributor must have claimed those accounts as bad debts for federal or state income tax purposes.~~

~~(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.~~

~~(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.~~

~~(4) A person who purchases and exports for sale, use, or consumption outside Montana gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state the fuel is destined for. The credit or refund must be made upon completion of the information reports required under 15-70-209 and presentation to the department of proof of delivery outside Montana as it may by rule require.~~

~~(5) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of 2 cents on each gallon of aviation fuel purchased by the carrier on which the Montana gasoline license tax has been paid. (Terminates on occurrence of contingency—sec. 17, Ch. 642, L. 1993.)~~

15-70-221. ~~**(Effective on occurrence of contingency)**~~ **Refund or credit authorized.** (1) A person who purchases and uses any gasoline on which the Montana gasoline license tax has been paid for denaturing alcohol to be used in gasohol, for operating stationary gasoline engines used off the public highways and streets, or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the gasoline. The refund may not exceed the tax paid or to be paid to the state. Except as provided in subsection (5), a refund is not allowed for the tax per gallon upon aviation fuel allocated to the department of transportation by 67-1-301.

(2) A distributor who pays the gasoline license tax to this state erroneously is allowed a credit or refund of the amount of tax ~~so~~ paid *erroneously*.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline with a tax liability of $200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor may not have declared the accounts of the purchaser worthless more than once during a 3-year period, and the distributor must have claimed those accounts as bad debts for federal or state income tax purposes.

(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(4) A person who purchases and exports for sale, use, or consumption outside Montana gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state the fuel is destined for. The credit or refund must be made upon completion of the information reports required under 15-70-209 and presentation to the department of proof of delivery outside Montana as it may by rule require.

(5) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of ~~1 cent~~ *2 cents* on each gallon of aviation fuel purchased by the carrier on which the Montana gasoline license tax has been paid."

Section 4. Section 67-1-301, MCA, is amended to read:

"~~**67-1-301. (Temporary) Money — receipt and disbursement.** (1) All costs and expenses of administering this title, including the salaries of employees of the department engaged in functions pertaining to aeronautics, the expenses of members of the board, and all other disbursements necessary to carry out the purposes of this title, must be paid out of the following revenue:~~

~~(a) all gifts and all legislative appropriations to the department for aeronautics;~~

~~(b) all money received from any branch or department of the federal government or from other sources for the purposes mentioned in this title or for the furtherance of aeronautics generally in this state.~~

~~(2) All money collected under subsection (1) must be deposited in the state treasury to the credit of the department.~~

~~(3) When the airport loan program is terminated, any balance of the bond proceeds that is not loaned must remain in the state special revenue fund to be invested, and the income must be used to retire the outstanding debt on the remaining bond proceeds.~~

~~(4) (a) The following amounts must be deposited from the proceeds of the 4-cent-a-gallon tax imposed on aviation fuel by 15-70-204(1):~~

~~(i) in the state special revenue fund to the credit of the department, an amount equal to the proceeds of 2 cents a gallon collected under 15-70-204(1) for the sole purpose of carrying out its functions pertaining to aeronautics;~~

~~(ii) in the aeronautical loan account created in 67-1-305 to the credit of the department, an amount equal to the proceeds of 1 cent a gallon for loans to local governments and state agencies; and~~

~~(iii) in a separate account in the state special revenue fund to the credit of the department:~~

~~(A) an amount equal to the proceeds of 1 cent a gallon to provide grants to municipalities for airport development or improvement programs and to provide navigational aids, safety improvements, weather reporting services, and other aeronautical services for airports and landing fields and for the state's airways; and~~

~~(B) 25% of the amount collected from scheduled passenger air carriers certified under 14 CFR, part 121 or 135.~~

~~(b) Money deposited in the account created in 67-1-305 may, with the approval of the board, be used only to provide loans to local governments and state agencies for aeronautical purposes, including airport improvement. The board shall establish procedures, including the interest rate charged, for providing loans. Proceeds of all repayments of loans, including interest, made under this subsection (4)(b) must be deposited in the account created in 67-1-305.~~

~~(c) Money deposited in the separate account established in subsection (4)(a)(iii) may, with the approval of the board, be used only to provide grants to municipalities for airport development or improvement programs and to provide navigational aids, safety improvements, weather reporting services, and other aeronautical services for airports and landing fields and for the state's airways. The board shall establish procedures for the awarding of grants.~~

~~(5) Except as provided in 15-70-221, the gasoline license tax imposed by the laws of this state on aviation fuel purchased and used for the operation of airplanes or aircraft may not be refunded.~~

~~(6) Of the amount of aviation fuel tax collected from the scheduled passenger air carriers certified under 14 CFR, part 121 or 135, 25% must be deposited in the separate account provided for in 67-1-305 to be used only for pavement preservation on airports served by these air carriers. (Terminates on occurrence of contingency—sec. 17, Ch. 642, L. 1993.)~~

67-1-301. ~~**(Effective on occurrence of contingency)**~~ **Money — receipt and disbursement.** (1) All costs and expenses of administering this title, including the salaries of employees of the department engaged in functions pertaining to aeronautics, the expenses of members of the board, and all other disbursements necessary to carry out the purposes of this title, must be paid out of the following revenue:

(a) all gifts and all legislative appropriations to the department for aeronautics;

(b) all money received from any branch or department of the federal government or from other sources for the purposes mentioned in this title or for the furtherance of aeronautics generally in this state.

(2) All money collected under subsection (1) must be deposited in the state treasury to the credit of the department.

~~(3) When the airport loan program is terminated, any balance of the bond proceeds that is not loaned must remain in the state special revenue fund to be invested, and the income must be used to retire the outstanding debt on the remaining bond proceeds.~~

~~(4)~~*(3)* (a) The following amounts must be deposited from the proceeds of the ~~3-cent-a-gallon~~ *4-cent-a-gallon* tax imposed on aviation fuel by 15-70-204(1):

(i) in the state special revenue fund to the credit of the department, an amount equal to the proceeds of 2 cents a gallon collected under 15-70-204(1) for the sole purpose of carrying out its functions pertaining to aeronautics; and

(ii) in a separate account in the state special revenue fund to the credit of the department:

(A) an amount equal to the proceeds of ~~1 cent~~ *2 cents* a gallon ~~for~~ *to provide* grants to municipalities *for airport development or improvement programs and to provide navigational aids, safety improvements, weather reporting services,* and ~~for~~ other aeronautical ~~purposes as provided in subsection (4)(b)~~ *services for airports and landing fields and for the state's airways*; and

(B) 25% of the amount collected from scheduled passenger air carriers certified under 14 CFR, part 121 or 135.

(b) Money deposited in the account created in 67-1-306 may, with the approval of the board, be used only to provide loans to local governments and state agencies for aeronautical purposes, including airport improvement. The board shall establish procedures, including the interest rate charged, for providing loans. Proceeds of all repayments of loans, including interest, made under this subsection (3)(b) must be deposited in the account created in 67-1-306.

~~(b)~~*(c)* Money deposited in the separate account established in subsection ~~(4)(a)(ii)~~ *(3)(a)(ii)* may, with the approval of the board, be used only to provide grants to municipalities for airport development or improvement programs and to provide navigational aids, safety improvements, weather reporting services, and other aeronautical services for airports and landing fields and for the state's airways. The board shall establish procedures for the awarding of grants.

~~(5)~~*(4)* Except as provided in 15-70-221, the gasoline license tax imposed by the laws of this state on aviation fuel purchased and used for the operation of airplanes or aircraft may not be refunded.

~~(6)~~*(5)* Of the amount of aviation fuel tax collected from the scheduled passenger air carriers certified under 14 CFR, part 121 or 135, 25% must be deposited in the separate account provided for in ~~67-1-305~~ *subsection (3)(a)(ii)* to be used only for pavement preservation *grants, with the approval of the board,* on airports served by these air carriers."

Section 5. Section 67-1-303, MCA, is amended to read:

"**67-1-303. Airline property tax — state airports.** (1) Within 30 days of receipt, the county treasurer shall transmit to the state treasury 90% of the property tax collected on property of airline companies by reason of a state airport being located in the county.

(2) The state treasurer shall place the money in the state special revenue fund to the credit of the department of transportation for the purposes provided for in ~~67-1-301(4)(a)(i)~~ *67-1-301(3)(a)(i).*"

Section 6. Repealer. Section 67-1-305, MCA, is repealed.

Section 7. Effective date. [This act] is effective July 1, 2001.

Approved April 28, 2001

CHAPTER NO. 405

[SB 317]

AN ACT REVISING LAWS GOVERNING BREWERS OF BEER; REVISING THE TAXATION OF BEER TO A SLIDING SCALE BASED UPON THE NUMBER OF BARRELS OF BEER BREWED ANNUALLY BY THE BREWER; REVISING THE ANNUAL LICENSE RENEWAL FEE FOR CERTAIN BREWERS; AMENDING SECTIONS 16-1-406 AND 16-4-501, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-406, MCA, is amended to read:

"**16-1-406. Taxes on beer.** (1) *(a)* A tax ~~of $4.30 per~~ *is imposed on each* barrel ~~of 31 gallons is imposed on each barrel~~ of beer sold in Montana by a wholesaler. *A barrel of beer equals 31 gallons. The tax is based upon the total number of barrels of beer produced by a brewer in a year. A brewer who produces less than 20,000 barrels of beer a year is taxed on the following increments of production:*

(i) up to 5,000 barrels, $1.30;

(ii) 5,001 barrels to 10,000 barrels, $2.30; and

(iii) 10,001 barrels to 20,000 barrels, $3.30.

(b) The tax on beer sold for a brewer who produces over 20,000 barrels is $4.30.

(2) The tax *imposed pursuant to subsection (1)* is due at the end of each month from the wholesaler upon beer sold by the wholesaler during that month. The department shall compute the tax due on beer sold in containers other than barrels or in barrels of more or less capacity than 31 gallons.

~~(2)~~*(3)* Each quarter, in accordance with the provisions of 15-1-501, of the tax collected pursuant to subsection (1), an amount equal to:

(a) ~~$1~~ *23.26%* must be deposited in the state treasury to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism;

(b) ~~50 cents~~ *11.63%* must be deposited in the state general fund; and

(c) ~~$2.80~~ *65.11%* must be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the state special revenue fund.

~~(3)~~*(4)* (a) The money in the incorporated cities and towns beer tax account is statutorily appropriated, as provided in 17-7-502, to the department, which shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census. For cities and towns incorporated after the latest official federal census, the census must be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it may not receive any funds under this section and the amount previously distributed to the city or town must be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section must be expended for state purposes, such as law enforcement, maintenance of the transportation system, and public health.

(b) The department may adjust population estimates only on the July 1 following the date of publication of the estimates by the U.S. bureau of the census. The adjusted distribution formula must remain in effect for the entire fiscal year."

Section 2. Section 16-4-501, MCA, is amended to read:

"**16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay ~~an annual~~ *a* license fee. *Unless otherwise specified in this section, the fee is an annual fee and is imposed* as follows:

(a) *(i)* each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, $500;

(ii) for each storage depot, $400;

(b) *(i)* each beer wholesaler, $400; each table wine distributor, $400;

(ii) for each subwarehouse, $400;

(c) each beer retailer, $200;

(d) *(i)* for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license;

(ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the rate of $10 a day for each day that beer and table wine are sold at those events lasting 2 or more days, but the fee may not exceed $300 for a series of scheduled sporting events.

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer and table wine only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is $200.

(6) The annual renewal fee for:

(a) a brewer producing 20,000 or fewer barrels of beer, as defined in 16-1-406, is $200; and

(b) resort retail all-beverages licenses within a given resort area is $2,000 for each license.

(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as provided in this section, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $250 for a unit of a nationally chartered veterans' organization and $400 for all other licensees;

(b) except as provided in this section, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $350 for a unit of a nationally chartered veterans' organization and $500 for all other licensees;

(c) except as provided in this section, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $500 for a unit of a nationally chartered veterans' organization and $650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $650 for a unit of a nationally chartered veterans' organization and $800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsections (6) and (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a $20,000 license fee. A successful applicant shall pay a one-time original license fee of $20,000 for a license issued. The one-time license fee of $20,000 may not apply to any transfer or renewal of a license issued prior to July 1, 1974. All licenses, however, are subject to the specified annual renewal fees.

(8) The fee for one all-beverages license to a public airport is $800. This license is nontransferable.

(9) The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is $250.

(10) The license fees provided in this section are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

(11) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the

renewal year or 1 year after the licensee's anniversary date, 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month after the licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal year or 1 year and 2 months after the licensee's anniversary date.

(12) All license and permit fees collected under this section must be deposited as provided in 16-2-108."

Section 3. Effective date. [This act] is effective July 1, 2001.

Section 4. Applicability. [This act] applies to beer sold by a wholesaler on or after July 1, 2001.

Approved April 28, 2001

CHAPTER NO. 406

[SB 325]

AN ACT GENERALLY REVISING RURAL COOPERATIVE LAWS; CLARIFYING THE DESCRIPTION OF CLASS NINE PROPERTY AS IT RELATES TO RURAL ELECTRIC COOPERATIVES; REVISING THE DEFINITION OF "RURAL AREA"; REQUIRING THAT A COOPERATIVE'S ARTICLES OF INCORPORATION INCLUDE PROVISIONS FOR CLASSIFICATION OF MEMBERS; CLARIFYING COOPERATIVE MEMBERSHIP AND VOTING DISTRICT PROVISIONS; PROVIDING THAT POLE ATTACHMENT MATTERS ARE GOVERNED BY FEDERAL LAW IN CERTAIN MUNICIPAL AREAS; AMENDING SECTIONS 15-6-141, 35-18-102, 35-18-104, 35-18-203, 35-18-301, AND 35-18-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class nine property — description — taxable percentage. (1) Class nine property includes:

(a) centrally assessed allocations of an electric power company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities, not including rural electric cooperatives. However, rural electric cooperatives' property used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property *or serving an incorporated municipality with a population that is greater than 3,500 persons formerly served by a public utility that after January 1, 1998, received service from the facilities of an electric cooperative* is included. For purposes of this subsection (1)(a), "property used for the sole purpose" does not include a headquarters, office, shop, or other similar facility.

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electrical generation facility property included in class thirteen;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five;

(iii) property owned by organizations providing telephone communications to rural areas and classified in class five;

(iv) railroad transportation property included in class twelve;

(v) airline transportation property included in class twelve; and

(vi) telecommunications property included in class thirteen.

(2) Class nine property is taxed at 12% of market value."

Section 2. Section 35-18-102, MCA, is amended to read:

"35-18-102. Definitions. ~~(1) Corporations organized under this chapter and corporations which become subject to this chapter in the manner hereinafter provided are hereinafter referred to as "cooperatives".~~

~~(2)~~ In this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Broadband" means transmission facilities capable of handling frequencies greater than those required for high grade voice communication, higher than 4 kilohertz.

~~(a)~~*(2)* "Cable television system" means a system that receives and amplifies the signals broadcast by one or more television stations and redistributes the signals to subscribing members of the public for a fixed or periodic fee by wire, cable, microwave, or other means, whether ~~such~~ *the* means are owned or leased.

~~(b) "Broadband" means transmission facilities capable of handling frequencies greater than those required for high grade voice communication (higher than 4 kilohertz).~~

(3) "Cooperative" means a corporation organized under this chapter or a corporation that becomes subject to the provisions of this chapter.

~~(c)~~*(4)* "Member" means each incorporator of a cooperative and each person admitted to and retaining membership ~~therein and shall include a husband and wife~~ *in a cooperative as provided by the articles of incorporation or bylaws of the cooperative, including persons* admitted to joint membership.

~~(d)~~*(5)* "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or *an* agency ~~thereof~~ *of a state or political subdivision*, or ~~any body politic~~ *other organization or group of persons*.

~~(e)~~*(6)* "Rural area", as applied to all corporations organized under the provisions of 35-18-105(1), means:

(a) ~~any~~ *an* area not included within the boundaries of ~~any~~ *an* incorporated or unincorporated city, town, village, or borough having a population in excess of 3,500 persons on March 17, 1939, or subsequent ~~thereto, and~~ *to March 17, 1939;*

(b) ~~every~~ *an* incorporated municipality in which 95% or more of the premises are served by an electric cooperative on February 1, 1971*;*

(c) a former rural area annexed by a municipality and subject to 69-5-109; or

(d) an incorporated municipality that was served by a public utility that sold the public utility's distribution facilities within that municipality to an electric cooperative after January 1, 1998."

Section 3. Section 35-18-104, MCA, is amended to read:

"**35-18-104. Exemption from jurisdiction of ~~the~~ public service commission — *federal pole regulation.*** Cooperatives and foreign corporations transacting business in this state pursuant to this chapter*:*

(1) ~~shall be~~ *are* exempt in all respects from the jurisdiction and control of the public service commission of this state*; and*

(2) if they operate in a rural area described in 35-18-102 (6)(d), shall use the formulas provided in pole attachment rules of the federal communications commission or successor formulas with respect to any matters pertaining to rates, terms, or conditions of any pole attachment agreement between themselves and any pole tenant or lessee made after [the effective date of this act]."

Section 4. Section 35-18-203, MCA, is amended to read:

"**35-18-203. Articles of incorporation.** (1) The articles of incorporation of a cooperative ~~shall recite~~ *must state* in the caption that ~~they~~ *the articles of incorporation* are executed pursuant to this chapter, ~~shall~~ *must* be signed by each of the incorporators, and ~~shall~~ *must* state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the names and addresses of the incorporators;

(d) the names and addresses of the persons who ~~shall~~ constitute its first board of trustees; and

(e) any provisions not inconsistent with this chapter ~~deemed~~ *considered* necessary or advisable for the conduct of its business and affairs.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain*:*

(a) provisions not inconsistent with law regarding liability as ~~set forth~~ *provided* in 35-1-216*; and*

(b) provisions for classification of members in a cooperative.

(3) ~~Such~~ *A cooperative's* articles of incorporation ~~shall~~ *must* be submitted to the secretary of state for filing as provided in this chapter.

(4) It ~~shall~~ *is* not ~~be~~ necessary to ~~set forth~~ *include* in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter."

Section 5. Section 35-18-301, MCA, is amended to read:

"**35-18-301. Members.** (1) ~~No~~ *A* person who is not an incorporator ~~shall~~ *may not* become a member of a cooperative unless ~~such~~ *that* person ~~shall agree~~ *agrees* to use ~~electric~~ *electrical* energy, *electrical energy delivery services,* or telephone service ~~furnished by the cooperative when such electric energy or telephone~~

service shall be available through its facilities. The bylaws may provide that any person, including an incorporator, shall cease to be a member of a cooperative if he shall fail or refuse to use electric energy or telephone service made available by the cooperative or if electric energy or telephone service shall not be made available to such person by the cooperative within a specified time after such person shall have become a member thereof *as provided by the cooperative's bylaws*.

(2) Membership in the cooperative ~~shall not be~~ *is not* transferable, except as provided in the bylaws. The *articles of incorporation or the* bylaws may *allow joint membership and may* prescribe additional qualifications, ~~and~~ limitations, *rights, and obligations* in respect to *any* membership *and membership class, including but not limited to the number of trustees that each class or membership or class or classes of membership within a voting district under 35-18-313 are entitled to elect.*

(3) The articles of incorporation or the bylaws of a cooperative may provide for classifications of members in a cooperative.

(4) Members or a class or classes of members may designate voting delegates, as provided by 35-18-313 and the cooperative's bylaws, and may vote through their designated voting delegates. The bylaws may provide that each classification of members may designate a different number and method for selecting and governing voting delegates."

Section 6. Section 35-18-313, MCA, is amended to read:

"**35-18-313. Voting districts.** (1) *(a) For corporations organized under the provisions of 35-18-105(2),* ~~Notwithstanding~~ *notwithstanding* any other provisions of this chapter, the bylaws may provide that the territory in which a cooperative supplies ~~electric energy or~~ telephone service to ~~its~~ members ~~shall~~ *must* be divided into two or more voting districts and that in respect to each ~~such~~ voting district:

~~(a)~~*(i)* ~~a designated number of trustees shall be elected by~~ the members residing ~~therein~~ *in the voting district shall elect a designated number of trustees*;

~~(b)~~*(ii)* ~~a designated number of delegates shall be elected by~~ the members residing ~~therein~~ *in the voting district shall elect a designated number of delegates*; or

~~(c)~~*(iii)* ~~both such trustees and delegates shall be elected by such~~ *the* members *shall elect both trustees and delegates.*

~~(2)~~*(b)* ~~In any such case the~~ *The* bylaws ~~shall~~ *must* prescribe the manner in which ~~such~~ *the* voting districts and the members ~~thereof~~ *of those voting districts* and the delegates and trustees, if any, elected ~~therefrom~~ *from those voting districts* shall function and the powers of the delegates, which may include the power to elect trustees.

~~(3)~~*(c)* ~~No~~ *A* member *present* at any voting district meeting and ~~no~~ *a* delegate *present* at any meeting ~~shall~~ *may not* vote by proxy or by mail.

(2) (a) For corporations organized under the provisions of 35-18-105(1), notwithstanding any other provisions of this chapter, the bylaws may provide that the territory or geographic area in which a cooperative operates to serve members, or a class or classes of members, must be divided into two or more voting districts and that in respect to each voting district:

(i) the members or the members of a membership class or classes residing in the voting district shall elect a designated number of trustees;

(ii) the members or the members of a membership class or classes residing in the voting district shall elect a designated number of delegates; or

(iii) the members or the members of a membership class or classes shall elect both trustees and delegates.

(b) This section does not restrict or prohibit a cooperative from using any combination of voting districts based on members or classes of members within a territory or geographical area or voting districts at large based on members or classes of members using one or more kinds of service or product provided by the cooperative.

(c) The bylaws must prescribe the manner in which the voting districts and the trustees and delegates, if any, elected from those voting districts shall function and the powers of the delegates, which may include the power to elect trustees and adopt, amend, or repeal the bylaws of a cooperative.

(d) A member present at any voting district meeting and a delegate present at any meeting may not vote by proxy or by mail."

Section 7. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2001

CHAPTER NO. 407

[SB 326]

AN ACT GENERALLY REVISING LAWS GOVERNING WEEDS; REQUIRING A WEED MANAGEMENT DISTRICT TO PROVIDE THE DEPARTMENT OF AGRICULTURE WITH A COMPREHENSIVE WEED MANAGEMENT PLAN BEFORE BECOMING ELIGIBLE TO RECEIVE STATE FUNDING; TRANSFERRING FUNDS ANNUALLY FROM THE HIGHWAY NONRESTRICTED ACCOUNT AND ONE TIME FROM THE RESOURCE INDEMNITY TRUST FUND INTO THE NOXIOUS WEED STATE SPECIAL REVENUE ACCOUNT; PROVIDING DIRECTION TO THE DEPARTMENT OF AGRICULTURE FOR THE DISBURSEMENT OF FUNDS TO WEED MANAGEMENT DISTRICTS; ALLOWING A DISTRICT WEED BOARD TO ENTER INTO COST-SHARE AGREEMENTS FOR NOXIOUS WEED MANAGEMENT; REVISING THE APPEAL PROCEDURE FOR A PERSON ADVERSELY AFFECTED BY ANY NOTICE, ACTION, OR ORDER OF THE DISTRICT WEED BOARD; CHANGING THE VIOLATION PENALTY FROM A MISDEMEANOR TO A CIVIL PENALTY; ALLOWING A DISTRICT WEED BOARD TO ENTER INTO AGREEMENTS WITH COMMERCIAL APPLICATORS FOR THE CONTROL AND DESTRUCTION OF WEEDS; ESTABLISHING STATUTORY AUTHORITY FOR COUNTY COMMISSIONERS TO IMPOSE A TAX FOR WEED CONTROL WITHIN A SPECIAL MANAGEMENT ZONE IF THE TAX IS APPROVED BY THE CITIZENS OF THE MANAGEMENT ZONE; REQUIRING THAT

MUNICIPALITIES COMPLETE THEIR COOPERATIVE AGREEMENTS WITH THEIR RESPECTIVE DISTRICT WEED BOARDS BY JANUARY 1, 2002; REQUIRING PRIOR NOTIFICATION TO THE DISTRICT WEED BOARD OF AN ACTIVITY THAT MAY REQUIRE REVEGETATION OF RIGHTS-OF-WAY AND AREAS THAT HAVE THE POTENTIAL FOR NOXIOUS WEED INFESTATION; REQUIRING A PERSON OWNING PROPERTY THAT IS OFFERED FOR SALE TO NOTIFY THE OWNER'S AGENT AND THE PURCHASER OF THE EXISTENCE OR POTENTIAL EXISTENCE OF NOXIOUS WEEDS ON THE PROPERTY; EXPANDING THE CONDITIONS THAT CONSTITUTE A NOXIOUS WEED EMERGENCY AND INCREASING THE AMOUNT OF FUNDS THAT CAN BE ALLOCATED TO ADDRESS NOXIOUS WEED EMERGENCIES; DIRECTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO SPEND A PERCENTAGE OF MONEY IN THE HUNTER MANAGEMENT PROGRAM AND THE HUNTING ACCESS ENHANCEMENT PROGRAM ON DEPARTMENTAL WEED CONTROL PROGRAMS; AMENDING SECTIONS 7-22-2101, 7-22-2109, 7-22-2110, 7-22-2111, 7-22-2116, 7-22-2117, 7-22-2123, 7-22-2124, 7-22-2130, 7-22-2142, 7-22-2146, 7-22-2150, 7-22-2151, 7-22-2152, 7-22-2153, 80-5-120, 80-7-105, 80-7-133, 80-7-801, 80-7-815, 80-7-816, AND 80-7-903, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Funding — reporting requirements — emergency exemption. (1) (a) Before a district is eligible to receive from the state any state funding or federal funding, the district shall provide the department with a comprehensive weed management plan, as provided in 7-22-2121.

(b) Upon receipt of the district's comprehensive weed management plan by the department, the district may apply for and receive state funding.

(c) A district's comprehensive weed management plan must be updated and submitted to the department every 2 years.

(d) The department may adopt rules and procedures necessary to implement this section. The rules may not impair the ability of the district to meet its responsibilities.

(2) The department may exempt a district from the requirements of subsection (1) if a noxious weed emergency is declared by the governor as provided in 80-7-815.

Section 2. Transfer of funds. (1) There is transferred $100,000 annually from the highway nonrestricted account, provided for in 15-70-125, to the noxious weed state special revenue account, provided for in 80-7-816, for the purposes provided in [section 3].

(2) There is a one-time transfer in fiscal year 2003 of up to $500,000 from the resource indemnity trust fund, as provided in 15-38-202, from the first money paid into the resource indemnity trust fund that exceeds $100 million for the purposes provided in [section 3].

Section 3. Weed management district program enhancement. (1) On an annual basis, the department shall distribute equally among Montana's counties that have established a noxious weed fund the funds in the noxious weed state special revenue account, provided for in 80-7-816, that were collected pursuant to [section 2] to be deposited in the county noxious weed fund as provided in 7-22-2141. Any unused portion must revert to the department for deposit in the noxious weed management trust fund established in 80-7-811.

(2) The weed management districts shall use the funds on a county level to enhance noxious weed management programs.

Section 4. Section 7-22-2101, MCA, is amended to read:

"7-22-2101. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board" means a district weed board created under 7-22-2103.

(2) "Commissioners" means the board of county commissioners.

(3) "Coordinator" means the person employed by the board to conduct the district noxious weed management program and supervise other district employees.

~~(3)~~*(4)* "Department" means the department of agriculture provided for in 2-15-3001.

~~(4)~~*(5)* "District" means a weed management district organized under 7-22-2102.

~~(5)~~*(6)* "Native plant" means a plant endemic to the state of Montana.

~~(6)~~*(7)* "Native plant community" means an assemblage of native plants occurring in a natural habitat.

~~(7)~~*(8)* (a) "Noxious weeds" or "weeds" means any exotic plant species established or that may be introduced in the state ~~which~~ *that* may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated:

(i) as a statewide noxious weed by rule of the department; or

(ii) as a district noxious weed by a board, following public notice of intent and a public hearing.

(b) A weed designated by rule of the department as a statewide noxious weed must be considered noxious in every district of the state.

~~(8)~~*(9)* "Person" means an individual, partnership, corporation, association, or state or local government agency or subdivision owning, occupying, or controlling any land, easement, or right-of-way, including any county, state, or federally owned and controlled highway, drainage or irrigation ditch, spoil bank, barrow pit, or right-of-way for a canal or lateral.

~~(9) "Supervisor" means the person employed by the board to conduct the district noxious weed management program and supervise other district employees.~~

(10) "Weed management" or "control" means the planning and implementation of a coordinated program for the containment, suppression, and, where possible, eradication of noxious weeds."

Section 5. Section 7-22-2109, MCA, is amended to read:

"7-22-2109. Powers and duties of board. (1) In addition to any powers or duties established in the resolution creating a district weed board, the board may:

(a) employ a ~~supervisor~~ *coordinator* and other employees as necessary and provide for their compensation;

(b) purchase chemicals, materials, and equipment and pay other operational costs ~~as~~ *that* it determines necessary for implementing an effective *noxious* weed management program. The costs must be paid from the noxious weed fund.

(c) determine what chemicals, materials, or equipment may be made available to persons controlling weeds on their own land. The cost for the chemicals, materials, or equipment must be paid by the person and collected as provided in this part.

(d) enter into agreements with the department for the control and eradication of any new exotic plant species not previously established in the state ~~which~~ *that* may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial use if the plant species spreads or threatens to spread into the state; ~~and~~

(e) enter into cost-share agreements for noxious weed management;

(f) enter into agreements with commercial applicators, as defined in 80-8-102, for the control of noxious weeds; and

~~(e)~~*(g)* perform other activities relating to weed management.

(2) The board shall:

(a) administer the district's noxious weed *management* program;

(b) establish management criteria for noxious weeds on all land within the district;

(c) make all reasonable efforts to develop and implement a noxious weed *management* program covering all land within the district owned or administered by a federal agency."

Section 6. Section 7-22-2110, MCA, is amended to read:

"**7-22-2110. Administrative hearing — appeals.** (1) A person adversely affected by any notice, action, or order of the board may request an administrative hearing before the ~~board~~ *commissioners*. The ~~board~~ *commissioners* shall hold a hearing within 30 days of the request. Participants may be represented by legal counsel. The ~~board~~ *commissioners* shall make a record of the proceeding and enter its order and findings within 7 days after the hearing.

~~(2) An order of the board may be appealed to the commissioners within 30 days from the time the order is entered. The commissioners shall hear such appeal within 30 days after the notice of appeal and shall render their order and findings within 7 days after such hearing. Participants may be represented by legal counsel.~~

~~(3)~~*(2)* Within 30 days after the commissioners render their order and findings, the person adversely affected may file a petition in district court requesting that the order and findings of the commissioners be set aside or modified. The court may affirm, modify, or set aside the order complained of, in whole or in part."

Section 7. Section 7-22-2111. MCA. is amended to read:

"**7-22-2111. Liability restrictions.** A district~~, as defined in 7-22-2101,~~ is liable for damages caused by its use of herbicides only for an act or omission that constitutes gross negligence. The provisions of 2-9-305 apply to board members, ~~supervisors~~ *coordinators*, and employees of a district."

Section 8. Section 7-22-2116, MCA, is amended to read:

"**7-22-2116. Unlawful to permit noxious weeds to propagate** — ***notice required in sale.*** *(1)* It is unlawful for any person to permit any noxious weed to propagate or go to seed on ~~his~~ *the person's* land, except that any person who adheres to the noxious weed management program of ~~his~~ *the person's weed management* district or who has entered into and is in compliance with a noxious weed management agreement is considered to be in compliance with this section.

(2) When property is offered for sale, the person who owns the property shall notify the owner's agent and the purchaser of the existence or potential existence of noxious weeds on the property offered for sale."

Section 9. Section 7-22-2117, MCA, is amended to read:

"**7-22-2117. Violations.** (1) Any person who in any manner interferes with the board or its authorized agent in carrying out the provisions of this part or who refuses to obey an order or notice of the board is *liable for a civil penalty in the amount of the actual cost to the board or the estimated cost of removing the noxious weeds from the impacted property in addition to any penalty imposed under 7-22-2124* ~~guilty of a misdemeanor, and upon conviction thereof, he shall be fined not to exceed $100 for the first offense and not less than $100 or more than $200 for each subsequent offense~~.

(2) All fines, bonds, and penalties collected under the provisions of this part~~, except those collected by a justice's court, shall~~ *must* be paid to the county treasurer of each county and placed by ~~him to the credit of~~ *the county treasurer into* a fund to be known as the noxious weed fund."

Section 10. Section 7-22-2123, MCA, is amended to read:

"**7-22-2123. Procedure in case of noncompliance.** (1) ~~Where~~ *When a* complaint has been made or the board has reason to believe that noxious weeds described in this part are present upon a person's land within the district in violation of the law, that person must be notified by mail or telephone of the complaint and the board may request inspection of ~~such~~ *the* land. The board or its authorized agent and the landowner or ~~his~~ *the landowner's* representative shall inspect the land at an agreeable time, within 10 days of notification of the landowner. If after reasonable effort the board is unable to gain cooperation of the person, the board or its authorized agent may enter and inspect the land to determine if the complaint is valid.

(2) If noxious weeds are found, the board or ~~supervisor~~ *coordinator* shall notify the person or ~~his~~ *the person's* representative and seek voluntary compliance with the district *noxious* weed ~~control~~ *management* program. If voluntary compliance is not possible, notice of noncompliance must be sent to the person by certified mail.

(3) The notice must specify:

(a) the basis for the determination of noncompliance;

(b) the geographic location of the area of noncompliance, by legal description or other reasonably identifiable description;

(c) measures to be undertaken in order to comply with the district's management criteria;

(d) a reasonable period of time, not less than 10 days, in which compliance measures must be initiated; and

(e) the right of the person to request, within the time specified in subsection (3)(d), an administrative hearing as provided by 7-22-2110.

(4) A person is considered in compliance if ~~he~~ *the person* submits and the board accepts a proposal to undertake specified control measures and is in compliance ~~for so long~~ as *long as* ~~he~~ *the person* performs according to the terms of the proposal. If the measures proposed to be taken extend beyond the current growing season, the proposal and acceptance must be in writing.

(5) In accepting or rejecting a proposal, the board shall consider the economic impact on the person and ~~his~~ *the person's* neighbors, practical biological and environmental limitations, and alternative control methods to be used."

Section 11. Section 7-22-2124, MCA, is amended to read:

"**7-22-2124. Destruction of weeds by board.** (1) If corrective action is not taken and ~~no~~ *a* proposal is *not* made and accepted or ~~no~~ *a* request for an administrative hearing is *not* made within the time specified in the notice, the board may ~~forthwith~~ enter upon the person's land and institute appropriate control measures. In ~~such~~ *that* case, the board shall submit a bill to the person, itemizing ~~man-hours~~ *hours* of labor, material, and equipment time, together with a penalty not exceeding ~~10%~~ *50%* of the total cost incurred. Labor and equipment must be valued at the current rate paid for commercial management operations in the district. The bill must specify and order a payment due date of 30 days from the date the bill is sent. *The board may enter into an agreement with a commercial applicator, as defined in 80-8-102, to destroy the weeds. The commercial applicator shall agree to carry any insurance required by the board.*

(2) A copy of the bill must also be submitted by the board to the county clerk and recorder.

(3) If a person receiving an order to take corrective action requests an administrative hearing, the board may not institute control measures until the matter is finally resolved, except in case of an emergency. In ~~such a~~ *that* case, the person is liable for costs as provided in subsection (1) only to the extent determined appropriate by the board, commissioners, or court that finally resolves the matter."

Section 12. Section 7-22-2130, MCA, is amended to read:

"**7-22-2130. Weed district ~~supervisor~~ *coordinator* training.** Within the limitations of available funds, the board shall ensure that the weed district ~~supervisor~~ *coordinator* obtains training to properly implement the noxious weed management program described in 7-22-2121. The department shall specify through rulemaking the level and type of training necessary to fulfill this requirement."

Section 13. Section 7-22-2142, MCA, is amended to read:

"**7-22-2142. Sources of money for noxious weed fund.** (1) The commissioners ~~may create the noxious weed fund and~~ *may create a noxious weed fund to enable the board to fulfill its duties as specified in 7-22-2109.*

(2) The commissioners may provide sufficient money in the *noxious weed* fund for the board to fulfill its duties, as specified in 7-22-2109, by:

(a) appropriating money from the general fund of the county; *and*

(b) subject to 15-10-420 and at any time fixed by law for levy and assessment of taxes, levying a tax *of not less than 1.6 mills* ~~not exceeding 2 mills~~ on the dollar of total taxable valuation in the county *or by contributing an equivalent amount from another source of not less than the amount received from all county sources in fiscal year 2000 or, for first-class counties, as defined in 7-1-2111, the greater of the amount received from all county sources in fiscal year 2000 or $100,000.* The tax levied under this subsection must be identified on the assessment as the tax that will be used for noxious weed control.

~~(c) levying a tax in excess of 2 mills if authorized by a majority of the qualified electors voting in an election held for this purpose pursuant to 7-6-2531 through 7-6-2536.~~

~~(2)~~*(3)* The proceeds of the noxious weed control tax *or other contribution* must be used solely for the purpose of managing noxious weeds in the county and must be ~~designated to~~ *deposited in* the noxious weed fund.

~~(3)~~*(4)* Any proceeds from work or chemical sales must revert to the noxious weed fund and must be available for reuse within that fiscal year or any subsequent year.

~~(4)~~*(5)* The commissioners may accept any private, state, or federal gifts, grants, contracts, or other funds to aid in the management of noxious weeds within the district. These funds must be placed in the noxious weed fund.

(6) The commissioners may impose a tax for weed control within a special management zone as provided in 7-22-2121(4). For the purposes of imposing the tax, the special management zone boundaries must be established by the board and approved by a majority of the voters within the special management zone. The amount of the tax must be approved by a majority of the voters within the special management zone, and approval of the zone and the tax may occur simultaneously. Revenue received from a special management zone tax must be spent on weed management projects within the boundaries of the special management zone."

Section 14. Section 7-22-2146, MCA, is amended to read:

"**7-22-2146. Financial assistance to persons responsible for weed control.** (1) The commissioners, upon recommendation of the board, may establish *a* cost-share ~~programs with any person, specifying costs that may be paid from the noxious weed fund and costs that must be paid by the person. Cost-share programs may be established for special projects and for established management zones~~ *program for the control of noxious weeds. The board shall develop rules and procedures for the administration of the cost-share program. These procedures may include the cost-share rate or amount and for what purposes cost-share funds may be used.*

(2) (a) Any person may voluntarily enter into a cost-share agreement for the management of noxious weeds on the person's property. The coordinator shall draft a cost-share agreement in cooperation with the person. The agreement must, in the board's judgment, provide for effective weed management.

(b) The agreement must specify:

(i) costs that must be paid from the noxious weed fund;

(ii) costs that must be paid by the person;

(iii) a location-specific weed management plan that must be followed by the person; and

(iv) reporting requirements of the person to the board.

(c) The cost-share agreement must be signed by the person and, upon approval of the board, by the presiding officer.

(3) The agreement must contain a statement disclaiming any liability of the board for any injuries or losses suffered by the person in managing noxious weeds under a cost-share agreement. If the board later finds that the person has failed to abide by the terms of the agreement, all cost-share payments and agreements must be canceled and the provisions of 7-22-2124 apply to that person.

~~(2)~~*(4)* (a) When under the terms of any voluntary agreement, whether entered into pursuant to 7-22-2123 or otherwise, or under any cost-share ~~program~~ *agreement* entered pursuant to this section a person incurs any obligation for materials or services provided by the board, the board shall submit a bill to the person, itemizing ~~man-hours~~ *hours* of labor, material, and equipment time. The bill must specify and order a payment due date not less than 30 days from the date the bill is sent.

(b) A copy of the bill must be submitted by the board to the county clerk and recorder. If the sum to be repaid by the person billed is not repaid on or before the date due, the county clerk and recorder shall certify the amount ~~thereof~~ *not repaid*, with the description of the land to be charged, and shall enter the sum on the assessment list as a special tax on the land, to be collected in the manner provided in 7-22-2148."

Section 15. Section 7-22-2150, MCA, is amended to read:

"**7-22-2150. Cooperation with state and federal-aid programs.** The board ~~is empowered to~~ *may* cooperate with any state or federal-aid program that becomes available~~.~~ *if the district complies with [section 1].* Under ~~such~~ a plan of cooperation, the direction of the program ~~shall~~ *must* be under the direct supervision of the board of the district in which the program operates."

Section 16. Section 7-22-2151, MCA, is amended to read:

"**7-22-2151. Cooperative agreements.** (1) A state agency that controls land within a district, including the department of transportation; the department of fish, wildlife, and parks; the department of corrections; the department of natural resources and conservation; and the university system, shall enter into a written agreement with the board. The agreement must specify mutual responsibilities for integrated noxious weed management on state-owned or state-controlled land within the district. The agreement must include the following:

(a) a 6-year integrated noxious weed management plan, which must be updated biennially;

(b) a noxious weed management goals statement;

(c) a specific plan of operations for the biennium, including a budget to implement the plan; and

(d) a provision requiring a biennial performance report by the board to the state weed coordinator in the department of agriculture, on a form to be provided by the state weed coordinator, regarding the success of the plan.

(2) The board and the governing body of each incorporated municipality within the district shall enter into a written agreement and shall cooperatively plan for the management of noxious weeds within the boundaries of the municipality *by January 1, 2002*. The board may implement management procedures described in the plan within the boundaries of the municipality for noxious weeds only. Control of nuisance weeds within the municipality remains the responsibility of the governing body of the municipality, as specified in 7-22-4101.

(3) A board may develop and carry out its noxious weed management program in cooperation with boards of other districts, with state and federal governments and their agencies, or with any person within the district. The board may enter into cooperative agreements with any of these parties.

(4) Each agency or entity listed in subsection (1) shall submit a statement or summary of all noxious weed actions that are subject to the agreement required under subsection (1) to the state weed coordinator and shall post a copy of the statement or summary on ~~the~~ *a* state ~~bulletin board~~ *electronic access system*."

Section 17. Section 7-22-2152, MCA, is amended to read:

"**7-22-2152. Revegetation of rights-of-way and ~~disturbed~~ areas *that have potential for noxious weed infestation*.** (1) Any *person or* state agency ~~or local government unit approving~~ *proposing* a mine, *a* major facility *under Title 75, chapter 20, an electric, communication, gas, or liquid* transmission line, *a* solid waste facility, *a* highway *or road*, *a* subdivision, *a commercial, industrial, or government development*, or any other development ~~resulting~~ *that needs state or local approval and that results* in *the potential for noxious weed infestation* ~~significant disturbance of land~~ within a district shall notify the board *at least 15 days prior to the activity*.

(2) Whenever any person or agency ~~disturbs vegetation on an easement or right-of-way within a district by construction of~~ *constructs* a road, *an* irrigation or drainage ditch, *a* pipeline, *an electric, communication, gas, or liquid* transmission line, or *any* other development~~,~~ *on an easement or right-of-way*, the board shall require that the ~~disturbed~~ areas be seeded, planted, or otherwise managed to reestablish a cover of beneficial plants.

(3) (a) The person or agency ~~disturbing the land~~ *committing the action* shall submit to the board a written plan specifying the methods to be used to accomplish revegetation *at least 15 days prior to the activity*. The plan must describe the time and method of seeding, fertilization practices, recommended plant species, use of weed-free seed, and the weed management procedures to be used.

(b) The plan is subject to approval by the board, which may require revisions to bring the revegetation plan into compliance with the district weed management plan. ~~Upon approval by the board, the revegetation plan must be signed by the chairman of the board and the person or agency responsible for the disturbance and constitutes a binding agreement between the board and such person or agency.~~ *The activity for which notice is given may not occur until the plan is approved by the board and signed by the presiding officer of the board and by the person or a representative of the agency responsible for the action. The signed plan constitutes a binding agreement between the board and the person or agency. The plan must be approved, with revisions if necessary, within 10 days of receipt by the board.*"

Section 18. Section 7-22-2153, MCA, is amended to read:

"**7-22-2153. Voluntary agreements for control of noxious weeds along roads — liability of landowner who objects to weed district control measures — penalties.** (1) Any person may voluntarily seek to enter into an agreement for the management of noxious weeds along a state or county highway or road bordering or running through the person's land. The ~~supervisor~~ *coordinator* may draft a voluntary agreement upon the request of and in cooperation with the person. However, the agreement must, in the board's judgment, provide for effective weed management. The weed management agreement must be signed by the person and, upon approval of the board, by the presiding officer. An agreement involving a state highway right-of-way must also be signed by a representative of the department of transportation.

(2) The agreement must contain a statement disclaiming any liability of the board and, if applicable, the department of transportation for any injuries or losses suffered by the person in managing noxious weeds on the state or county highway right-of-way. The signed agreement transfers responsibility for managing noxious weeds on the specified section of right-of-way from the board to the person signing the agreement. If the board later finds that the person has failed to adhere to the agreement, the board shall issue an order informing the person that the agreement will be void and that responsibility for the management of noxious weeds on the right-of-way will revert to the board unless the person complies with the provisions of the agreement within a specified time period.

(3) (a) If a person objects to weed control measures bordering a state or county highway right-of-way and does not enter a voluntary agreement pursuant to subsections (1) and (2) and if the board finds that the person has failed to provide alternative weed control, the board shall issue an order informing the person that the management of noxious weeds on the right-of-way will be undertaken by the board unless the person provides alternative weed control within 30 days.

(b) A person who does not provide alternative weed control within the time specified in subsection (3)(a) is guilty of a misdemeanor and, upon conviction, shall be sentenced pursuant to 46-18-212 and assessed the costs of weed control provided by the board. A second or subsequent conviction is punishable by a fine of not less than $500 or more than $2,000, plus the costs of weed control provided by the board."

Section 19. Section 80-5-120, MCA, is amended to read:

"**80-5-120. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Advertisement" means a representation, other than a representation on the label, that is disseminated by any means and that relates to seed governed by the provisions of this chapter.

(2) "Agricultural seeds" means the seeds of grass, forage, cereal, fiber crops, and any other kinds of seeds commonly recognized within this state as agricultural seeds. The term includes lawn seeds and mixtures of seeds.

(3) "Approximate percentage" and "approximate number" mean the percentage or number with the variations above and below that value as allowed according to the tolerance limits defined in the rules for seed testing adopted by the association of official seed analysts.

(4) "Bulk" means not packaged in separate units.

(5) "Certifying agency" means:

(a) an agency authorized under the laws of a state, territory, or possession of the United States to officially certify seed and that has standards and procedures to ensure the genetic purity and identity of the seed certified; or

(b) an agency of a foreign country determined by the department to adhere to procedures and standards for seed certification that are comparable to those adhered to generally by the seed certifying agencies described in subsection (5)(a).

(6) "Conditioning" means drying, cleaning, scarifying, and other operations that could change the purity or germination of a seed and require the seed lot to be retested to determine labeling.

(7) "Controlling the pollination" means to use a method of hybridization that will produce pure seed that is at least 75% hybrid seed.

(8) "Dormant" means viable seeds, excluding hard seeds, that fail to germinate when provided the specified germination conditions for the seed in question.

(9) "Flower seeds" means seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and that are commonly known and sold under the name of flower seeds in this state.

(10) "Genuine grower declaration" means a statement signed by the grower that indicates, for each lot of seed, the lot number, kind, variety, origin, weight, year of production, date, and destination of shipment.

(11) "Germination" means the emergence and development from the seed embryo as evidence of vitality when the seeds are subjected to the proper moisture and temperature conditions with proper aeration for the customary length of time for each specific kind of seed, as specified in the rules for seed testing adopted by the association of official seed analysts.

(12) "Hard seeds" means seeds that remain hard at the end of the prescribed test period because they have not absorbed water because of an impermeable seed coat.

(13) "Hybrid", as the term applies to varieties of seed, means the first generation seed of a cross produced by controlling the pollination and by combining:

(a) two or more inbred lines;

(b) one inbred or a single cross with an open pollinated variety; or

(c) two or more selected clones, seed lines, varieties, or species except open-pollinated varieties of corn (Zea mays). The second generation of subsequent generations from those crosses may not be regarded as hybrids. Hybrid designations must be treated as variety names.

(14) "Indigenous seeds" means the seeds of those plants that are naturally adapted to an area where the intended use is for revegetation of disturbed sites. These plants include grasses, forbs, shrubs, and legumes.

(15) "Inert matter" means all matter that is not seed, including broken seeds, sterile florets, chaff, fungus bodies, and stones as determined by methods defined by the association of official seed analysts.

(16) "Kind" means one or more related species or subspecies that are known singly or collectively by one common name, such as corn, oats, alfalfa, and timothy.

(17) "Labeling" means a tag or other device, attached to or written, stamped, or printed on a container or accompanying a lot of bulk seeds, that purports to set forth the information required on the seed label under 80-5-123 and that may include any other information relating to the labeled seed.

(18) "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion of which is uniform within recognized tolerances for the factors that appear in the labeling.

(19) "Mixture" means seed consisting of more than one kind, each in excess of 5% by weight of the whole.

(20) "Montana certified seed grower" means a member of an authorized Montana seed certifying agency who has consented to produce seed under the rules for certified classes of seed, with respect to the maintenance of genetic purity and variety identity, set forth by the establishing agency.

(21) "Other crop seeds" means any agricultural, vegetable, or flower seeds other than the kind or variety of seed or the mixture of seeds included as pure seed.

(22) "Person" means an individual, firm, partnership, corporation, or association.

(23) "Prohibited noxious weed seeds" means the seeds of plant species *that are* designated as noxious weeds ~~under~~ *as defined in* 7-22-2101~~(7)(a)(i)~~*(8)(a)(i)*.

(24) "Protected variety" means a variety for which a certificate has been issued by the United States plant variety protection office or for which an application for protection has been filed granting the owner or the owner's authorized agent exclusive rights in the sale and distribution of the variety.

(25) "Pure live seed" means the product of the percentage of germination plus hard seed or dormant seed multiplied by the percentage of pure seed, divided by 100, with the result expressed as a whole number.

(26) "Pure seed" means seed exclusive of inert matter and all other seeds not of the seed being considered, as determined by methods defined by the association of official seed analysts.

(27) "Restricted weed seeds" means the seeds of any plant that may adversely affect agriculture or the environment and that are designated as restricted weed seeds under rules adopted by the department.

(28) "Screening" means chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed from seed by any kind of cleaning or conditioning.

(29) "Seed conditioning plant" means a place of business, whether a permanent or portable facility, that conditions seeds.

(30) "Seed dealer" means a person who sells seeds.

(31) "Seed labeler" means a person affixing labels to seeds, with that person's name, address, and other information as required in 80-5-123.

(32) "Sell" means to offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade. The term includes furnishing agricultural seed to growers for the production of a crop on contract.

(33) "Stop sale" means an administrative order provided by law that restrains the sale, use, disposition, and movement of a definite amount of seed.

(34) "Treated" means that seed has received an application of a substance or has been subjected to a process for which a claim is made.

(35) "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

(36) "Variety" means a subdivision of a kind that is:

(a) distinct, in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties known publicly;

(b) uniform, in the sense that the variations in essential and distinctive characteristics are describable; and

(c) stable, in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

(37) "Vegetable seeds" means seeds of those crops that are or may be grown in gardens or on truck farms and are or may be sold generally under the name of vegetable seeds or herbs.

(38) "Viable" means that seeds are capable of producing a normal seedling under optimum growing conditions after all forms of dormancy have been overcome, if present.

(39) "Weed seeds" means the seeds of all plants generally recognized as weeds within this state and includes noxious weed seeds."

Section 20. Section 80-7-105, MCA, is amended to read:

"80-7-105. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Firm" means an individual, company, partnership, association, or corporation.

(2) "Nursery" means the business or location where nursery stock is grown or offered for sale~~,~~ *or* resale~~,~~ or as part of a landscape service.

(3) "Nursery stock" means botanically classified plants or parts of plants. The following plants and plant materials may not be considered nursery stock:

(a) aquatic plants used for aquarium purposes;

(b) field crop plants and seeds;

(c) pasture grasses;

(d) cut plants not for propagation;

(e) corms, tubers, and bulbs;

(f) fruits or vegetables for human or animal consumption;

(g) cut trees and products for processing; and

(h) plant debris for disposal or processing.

(4) "Nursery stock certification" means the process ~~whereby~~ *by which* the nursery stock or other plants have been inspected and found to meet certification standards established by department rule.

(5) "Plant inspection certificate" means a document issued by the department or the plant pest regulatory agency of another state that declares that the nursery stock, plants, or plant material grown by the firm named on the certificate is apparently free of injurious plant pests.

(6) "Plant pest" means an insect, fungus, virus, bacteria, or other organism that can directly or indirectly injure or cause damage in a plant or a product of a plant and that meets the criteria as a pest established by department rule. For purposes of this chapter, noxious weeds, as defined in 7-22-2101~~(7)(a)(i)~~*(8)(a)(i)*, or other exotic weeds are defined as plant pests."

Section 21. Section 80-7-133, MCA, is amended to read:

"**80-7-133. Acts made unlawful — penalty.** (1) It is unlawful for a firm to:

(a) fail to properly identify nursery stock offered for sale at retail. Identification must include but is not limited to the common name and variety. Each nursery plant offered for sale as a separate plant must be identified. A single means of identification is allowed on each bundle of bare root seedlings, liners, or hedging grade nursery stock.

(b) falsely represent or misrepresent the name, age, variety, or class of any nursery stock sold or offered for sale;

(c) falsely represent or state that any nursery stock offered for sale, sold, or delivered was grown in or came from a certain nursery or locality, when in fact the nursery stock was grown in or came from another location or nursery;

(d) deceive or defraud any firm in the sale of any nursery stock by substituting inferior or different varieties or ages from those ordered;

(e) willfully or intentionally bring into this state, offer for sale or distribution within this state, or ship, sell, or deliver upon any sale any nursery stock that is infected or infested with a plant pest dangerous to the horticultural interests of the state; or

(f) sell or distribute nursery stock or cut decorative or aquarium plants declared *to be* noxious weeds ~~under~~ *as defined in* 7-22-2101~~(7)(a)(i)~~*(8)(a)(i)*.

(2) In case of misrepresentation, false representation, deceit, fraud, substitution, or sale and distribution of noxious weeds, the firm is subject to punishment as provided in 80-7-135 and is liable to a party damaged or injured, to the extent of all damages sustained, to be recovered in a civil action in any court of competent jurisdiction."

Section 22. Section 80-7-801, MCA, is amended to read:

"**80-7-801. Definitions.** As used in this part, the following definitions apply:

(1) "Crop weed" means any plant commonly accepted as a weed and for which grants for management research, evaluation, and education under 80-7-814(3)(g) may be given.

(2) "Department" means the department of agriculture established in 2-15-3001.

(3) "Noxious weed" means any weed defined in 7-22-2101~~(7)(a)~~*(8)(a)*."

Section 23. Section 80-7-815, MCA, is amended to read:

"**80-7-815. Noxious weed emergency — expenditure authorized.** (1) ~~If~~ *The governor may declare a noxious weed emergency if:*

(a) a new and potentially harmful noxious weed is discovered growing in the state and is verified by the department~~, the governor may declare a noxious weed emergency.~~*; or*

(b) the state is facing a potential influx of noxious weeds as the result of a natural disaster.

(2) In the absence of necessary funding from other sources, this declaration authorizes the department to allocate up to ~~$150,000~~ *$150,000* of the principal of the noxious weed management trust fund to government agencies for emergency relief to eradicate or confine the new noxious weed species *or to protect the state from an influx of noxious weeds due to a natural disaster.*

~~(2)~~*(3)* If the expenditure causes the principal of the trust fund to fall below $2.5 million, it must be replenished by the interest or revenue generated by the trust fund, by the other revenue provided by this part, or by revenue obtained from the fee imposed by 61-3-510, as determined by the department."

Section 24. Section 80-7-816, MCA, is amended to read:

"**80-7-816. Account — deposit — investment.** (1) There is ~~an~~ *a noxious weed* account in the state special revenue fund established in 17-2-102. The interest from the noxious weed trust fund, ~~and~~ the fee imposed in 61-3-510, *and the funds directed to be deposited as provided in [section 2]* must be deposited in the account and must be expended as provided in 80-7-814 *and [section 3].*

(2) The department may direct the board of investments to invest the funds collected under subsection (1) pursuant to the provisions of 17-6-201. The income from the investments must be credited to the account in the state special revenue fund."

Section 25. Section 80-7-903, MCA, is amended to read:

"**80-7-903. Definitions.** As used in this part, the following definitions apply:

(1) "Advisory council" means the Montana noxious weed seed free forage advisory council. Except as provided in 80-7-904, the council is subject to the provisions of 2-15-122.

(2) "Certification" means the state-approved and documented process of determining within a standard range of variances or tolerances that forage production fields are free of the seeds of noxious weeds, as defined in ~~7-22-2101(7)(a)(i)~~ *7-22-2101 (8)(a)(i)*, which process allows a person to sell the forage as noxious weed seed free and to attach approved certification identification.

(3) "Forage" means any crop, including alfalfa, grass, small grains, straw, and similar crops and commodities, that is grown, harvested, and sold for livestock forage, bedding material, or mulch or related uses and the byproducts of those crops or commodities that have been processed into pellets, cubes, or related products.

(4) "Noxious weed seed free" means that forage has an absence of noxious weed seeds within a standardized range of variances or tolerances established by department rule.

(5) "Person" means a natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons, whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(6) "Producer" means a person engaged in growing forage, a tenant personally engaged in growing forage, or both the owner and the tenant jointly and includes a person, cooperative organization, trust, sharecropper, and any other business entity, devices, and arrangements that grow forage that is proposed to be certified as noxious weed seed free.

(7) "Sale" or "sell" means the selling, wholesaling, distributing, offering, exposing for sale, advertising, exchanging, brokering, bartering, or giving away by any person within this state of any forage as noxious weed seed free or certified or approved as noxious weed seed free."

Section 26. Expenditure of program funds on weed control. The legislature recognizes that the hunter management and hunting access enhancement programs in 87-1-265 through 87-1-267 have successfully encouraged landowners to increase public access to private lands for purposes of hunting, but that increased public access may also contribute to an increase in the spread of noxious weeds on public and private lands. Therefore, in an effort to improve management and services related to those programs, the department may offer up to 5% in additional incentive payments to landowners who agree to use those payments for specific weed management activities on lands under their control.

Section 27. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 7, chapter 22, part 21, and the provisions of Title 7, chapter 22, part 21, apply to [section 1].

(2) [Section 3] is intended to be codified as an integral part of Title 80, chapter 7, part 7, and the provisions of Title 80, chapter 7, part 7, apply to [section 3].

(3) [Section 2] is intended to be codified as an integral part of Title 80, chapter 7, part 8, and the provisions of Title 80, chapter 7, part 8, apply to [section 2].

(4) [Section 26] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 26].

Section 28. Effective date. [This act] is effective July 1, 2001.

Section 29. Termination. [Section 26] terminates March 1, 2006.

Approved April 28, 2001

CHAPTER NO. 408

[SB 329]

AN ACT PROVIDING FOR PROVISIONAL PRACTICE PERMITS FOR REGISTERED PROFESSIONAL AND LICENSED PRACTICAL NURSES FROM CANADA AND TEMPORARY PRACTICE PERMITS FOR NURSES

FROM ANOTHER STATE WHILE APPLICANTS SEEK LICENSURE TO PRACTICE PROFESSIONAL OR PRACTICAL NURSING IN THE STATE OF MONTANA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Provisional practice permit for Canadian nurses. (1) The board may grant a nonrenewable, provisional practice permit to an applicant for a license to engage in the practice of nursing under this part if the applicant:

(a) currently possesses an unencumbered license to practice professional nursing or to practice practical nursing from an equivalent licensing board or authority in Canada; and

(b) is authorized to sit for the licensing exam required for licensure in this state.

(2) The board may grant only one provisional practice permit to an applicant.

(3) A provisional practice permit issued under this section expires on the earliest of the following:

(a) 180 days after the date of issue;

(b) the date that the applicant is notified that the applicant failed a licensure examination, as approved by the board; or

(c) the date that the applicant is issued a license to practice nursing under this part.

(4) A registered professional nurse or licensed practical nurse who is employed under a provisional practice permit may function only under the supervision of a registered professional nurse, physician, dentist, osteopath, or podiatrist, who is on the premises where and when the permittee is working and who is specifically assigned the responsibility of supervising the performance of the provisional practice permittee. The permittee may not be supervised by a licensee who holds a temporary practice permit.(5) A permittee may not perform duties for which certification for advanced practice registered nursing is required and may perform duties only specifically allowed under the practice of professional or practical nursing.

Section 2. Temporary practice permit. (1) The board shall issue a temporary practice permit to an individual licensed in another state that has licensing standards substantially equivalent to those of this state if the board determines that:

(a) the applicant has submitted a completed application as approved by the board;

(b) the initial screening by the board staff shows no current disciplinary action as identified by the board by rule; and

(c) there is no reason to deny a temporary practice permit under the laws of this state governing the practice of nursing.

(2) The individual may practice under a temporary practice permit until a license is granted, until a notice of proposal to deny a temporary practice permit is issued, or until the period of time adopted by the board by rule expires.

(3) A nurse who is employed under a temporary practice permit may function only under the supervision of a registered professional nurse, physician, dentist, osteopath, or podiatrist, who is on the premises where and when the permittee is working and who is specifically assigned the responsibility of supervising the performance of the temporary practice permittee.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 37, chapter 8, part 4, and the provisions of Title 37, chapter 8, part 4, apply to [sections 1 and 2].

Section 4. Effective date. [This act] is effective July 1, 2001.

Section 5. Termination. [Section 1] terminates June 30, 2007.

Approved April 28, 2001

CHAPTER NO. 409

[SB 344]

AN ACT INCREASING THE BASE RATE FOR REIMBURSEMENT FOR AN INDIVIDUAL TRANSPORTATION CONTRACT FROM 21.25 CENTS TO 25 CENTS; INCREASING THE MAXIMUM REIMBURSEMENT FOR AN INDIVIDUAL TRANSPORTATION CONTRACT AND FOR ROOM AND BOARD FROM $8 TO $9.25 FOR THE FIRST STUDENT AND FROM $5 TO $6 FOR EACH ADDITIONAL STUDENT; AMENDING SECTIONS 20-5-323 AND 20-10-142, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-323, MCA, is amended to read:

"**20-5-323. Tuition and transportation rates.** (1) Except as provided in subsections (3) through (5), whenever a child has approval to attend a school outside of the child's district of residence under the provisions of 20-5-320 or 20-5-321, the basis of the rate of tuition is a flat rate for each of the 15 district-size groupings determined by rule by the superintendent of public instruction by March 15 of each year, using statewide district expenditure and revenue data for the general fund, debt service fund, and retirement fund to determine the average district contribution.

(2) The tuition for a child with a disability must be determined under rules adopted by the superintendent of public instruction for the calculation of tuition for special education pupils.

(3) The tuition rate for out-of-district placement pursuant to 20-5-321(1)(d) and (1)(e) for a student without disabilities who requires a program with costs that exceed the average district costs must be determined as the actual individual costs of providing that program according to the following:

(a) the district of attendance and the district, person, or entity responsible for the tuition payments shall approve an agreement with the district of attendance for the tuition cost; and

(b) for a Montana resident student, the average district per-ANB foundation payment amount received in the year for which the tuition charges are calculated must be subtracted from the per-student program costs for a Montana resident student.

(4) When a child attends a public school of another state or province, the amount of daily tuition may not be greater than the average annual cost ~~per~~ *for each* student in the child's district of residence. This calculation for tuition purposes is determined by totaling all of the expenditures for all of the district budgeted funds for the preceding school fiscal year and dividing that amount by the October 1 enrollment in the preceding school fiscal year. For the purposes of this subsection, the following do not apply:

(a) placement of a child with a disability pursuant to Title 20, chapter 7, part 4;

(b) placement made in a state or province with a reciprocal tuition agreement pursuant to 20-5-314;

(c) an order issued under Title 40, chapter 4, part 2; or

(d) out-of-state placement by a state agency.

(5) When a child is placed by a state agency in an out-of-state residential facility, the state agency making the placement is responsible for the education costs resulting from the placement.

(6) The amount, if any, charged for transportation may not exceed the lesser of the average transportation cost ~~per~~ *for each* student in the child's district of residence or ~~21.25~~ *25* cents ~~per~~ *a* mile. The average expenditures for the district transportation fund for the preceding school fiscal year must be calculated by dividing the transportation fund expenditures by the October 1 enrollment for the preceding fiscal year."

Section 2. Section 20-10-142, MCA, is amended to read:

"**20-10-142. Schedule of maximum reimbursement for individual transportation.** The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. The schedules provided in this section may not be altered by any authority other than the legislature. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimburse the parent or guardian for actual miles transported on the basis of the following schedule:

(1) When a parent or guardian transports an eligible transportee or transportees from the residence of the parent or guardian to a school or to schools located within 3 miles of one another, the total reimbursement ~~per~~ *for each* day of attendance is determined by multiplying the distance in miles between the residence and the school, or the most distant school if more than one, by 2, subtracting 6 miles from the product, and multiplying the difference by ~~21.25~~ *25* cents, provided that:

(a) if two or more eligible transportees are transported by a parent or guardian to two or more schools located within 3 miles of one another and if the schools are operated by different school districts, the total amount of the reimbursement must be divided equally between the districts;

(b) if two or more eligible transportees are transported by a parent or guardian to two or more schools located more than 3 miles from one another, the parent or guardian must be separately reimbursed for transporting the eligible transportee or transportees to each school;

(c) if a parent transports two or more eligible transportees to a school and a bus stop that are located within 3 miles of one another, the total reimbursement must be determined under the provisions of this subsection *(1)* and must be divided equally between the district operating the school and the district operating the bus;

(d) if a parent transporting two or more eligible transportees to a school or bus stop must, because of varying arrival and departure times, make more than one round-trip journey to the bus stop or school, the total reimbursement allowed by this section is limited to one round trip ~~per~~ *a* day for each scheduled arrival or departure time;

(e) notwithstanding subsection (1)(a), (1)(b), (1)(c), or (1)(d), a reimbursement may not be less than 25 cents a day.

(2) When the parent or guardian transports an eligible transportee or transportees from the residence to a bus stop of a bus route approved by the trustees for the transportation of the transportee or transportees, the total reimbursement ~~per~~ *for each* day of attendance is determined by multiplying the distance in miles between the residence and the bus stop by 2, subtracting 6 miles from the product, and multiplying the difference by ~~21.25~~ *25* cents, provided that:

(a) if the eligible transportees attend schools in different districts but ride on one bus, the districts shall divide the total reimbursement equally; and

(b) if the parent or guardian is required to transport the eligible transportees to more than one bus, the parent or guardian must be separately reimbursed for transportation to each bus.

(3) When, because of excessive distances, impassable roads, or other special circumstances of isolation, the rates prescribed in subsection (1) or (2) would be an inadequate reimbursement for the transportation costs or would result in a physical hardship for the eligible transportee, a parent or guardian may request an increase in the reimbursement rate. A request for increased rates because of isolation must be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances that exist to justify the increase. Before an increased rate because of isolation may be paid to the requesting parent or guardian, the rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the committee and the superintendent of public instruction, the trustees shall pay the increased rate because of isolation. The increased rate is 1 1/2 times the rate prescribed in subsection (1).

(4) The state and county transportation reimbursement for an individual transportation contract may not exceed ~~$8~~ *$9.25* ~~per~~ *for each* day of attendance for the first eligible transportee and ~~$5~~ *$6* ~~per~~ *for each* day of attendance for each additional eligible transportee.

(5) When the isolated conditions of the household where an eligible transportee resides require an eligible transportee to live away from the

household in order to attend school, the eligible transportee is eligible for the room and board reimbursement. Approval to receive the room and board reimbursement must be obtained in the same manner prescribed in subsection (3). The per diem rate for room and board is ~~$8~~ *$9.25* for one eligible transportee and ~~$5~~ *$6* for each additional eligible transportee of the same household.

(6) When the individual transportation provision is to be satisfied by supervised home study or supervised correspondence study, the reimbursement rate is the cost of the study, provided that the course of instruction is approved by the trustees and supervised by the district."

Section 3. Effective date — applicability. [This act] is effective July 1, 2001, and applies to school district transportation reimbursements for school fiscal years beginning on or after July 1, 2001.

Approved April 28, 2001

CHAPTER NO. 410

[SB 346]

AN ACT RELATING TO THE PAYMENT OF PROPERTY TAXES; ALLOWING PAYMENT OF PROPERTY TAXES UNDER LOW-INCOME PROPERTY TAX ASSISTANCE PROVISIONS WITHOUT PENALTY AND INTEREST IF THE PAYMENT IS MADE WITHIN 20 CALENDAR DAYS OF THE DATE THE PAYMENT IS DUE; AMENDING SECTION 15-16-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-102, MCA, is amended to read:

"15-16-102. Time for payment — penalty for delinquency. Unless suspended or canceled under the provisions of Title 15, chapter 24, part 17, all taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103, are payable as follows:

(1) One-half of the taxes are payable on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, and one-half are payable on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of the taxes are paid on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, the amount payable is delinquent and draws interest at the rate of 5/6 of 1% a month from and after the delinquency until paid and 2% must be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year are delinquent and draw interest at the rate of 5/6 of 1% a month from and after the delinquency until paid, and 2% must be added to the delinquent taxes as a penalty.

(4) *(a)* If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with 1-1-307.

(b) If taxes on property qualifying under the low-income property tax assistance provisions of 15-6-134(1)(c) and 15-6-191 are paid within 20 calendar days of the date on which the taxes are due, the taxes may be paid without penalty or interest. If a tax payment is made later than 20 days after the taxes were due, the penalty must be paid and interest accrues from the date on which the taxes were due.

(5) A taxpayer may pay current year taxes without paying delinquent taxes. The county treasurer shall accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full taxable years, provided that taxes for both halves of the current tax year have been paid. Payment of taxes for delinquent taxes must be applied to the taxes that have been delinquent the longest. The payment of taxes for the current tax year is not a redemption of the property tax lien for any delinquent tax year.

(6) The penalty and interest on delinquent assessment payments for specific parcels of land may be waived by resolution of the city council. A copy of the resolution must be certified to the county treasurer.

(7) If the department revises an assessment that results in an additional tax of $5 or less, an additional tax is not owed and a new tax bill does not need to be prepared."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to eligible property tax payments made after March 1, 2001.

Approved April 28, 2001

CHAPTER NO. 411

[SB 350]

AN ACT CREATING A TAX CREDIT FOR DONATIONS TO THE AFFORDABLE HOUSING REVOLVING LOAN ACCOUNT BY INDIVIDUAL AND CORPORATE TAXPAYERS; PROVIDING THAT THE CREDIT IS A PERCENTAGE OF THE AMOUNT OF THE DONATION AND MAY NOT EXCEED $10,000; PROVIDING FOR THE ALLOCATION OF THE CREDIT FOR SMALL BUSINESS CORPORATIONS AND PARTNERSHIPS; PROVIDING THAT FOR THE PURPOSES OF THE QUALIFIED ENDOWMENT CREDIT UNDER STATE TAX LAW, THE AFFORDABLE HOUSING REVOLVING LOAN ACCOUNT IS A QUALIFIED ENDOWMENT; AMENDING SECTION 15-30-165, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Credit for contributions to affordable housing revolving loan account. (1) A taxpayer is allowed a tax credit against the taxes imposed by 15-30-103 or 15-31-101 in an amount equal to 20% of the amount donated by an individual taxpayer or 10% of the amount donated by a taxpayer under Title 15, chapter 31, during the year to the affordable housing revolving loan account established in 90-6-133. The maximum credit that may be claimed by a taxpayer is $10,000. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-30-121(1), 15-30-136(2), or 15-31-114.

(3) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has claimed a credit for a contribution to a qualified endowment under the provisions of 15-30-165 through 15-30-167, 15-31-161, or 15-31-162 for a contribution to the affordable housing revolving loan account.

(4) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

Section 2. Credit for contributions to affordable housing revolving loan account. (1) A contribution to the affordable housing revolving loan account as provided in [section 1] by a small business corporation, as defined in 15-31-201, a partnership, or a limited liability company, as defined in 35-8-102, carrying on any trade or business for which deduction would be allowed under section 162 of the Internal Revenue Code, 26 U.S.C. 162, or carrying on any rental activity qualifies for the credit provided in [section 1].

(2) If contributions to the affordable housing revolving loan account are claimed as a credit under [section 1] by a small business corporation, as defined in 15-31-201, or a partnership, the credit must be attributed to shareholders or partners, using the same proportion used to report the corporation's or partnership's income or loss for Montana income tax purposes.

Section 3. Section 15-30-165, MCA, is amended to read:

"15-30-165. (Temporary) Qualified endowments credit — definitions. For the purposes of 15-30-166, the following definitions apply:

(1) "Planned gift" means an irrevocable contribution to a permanent endowment held by a tax-exempt organization, or for a tax-exempt organization, when the contribution uses any of the following techniques that are authorized under the Internal Revenue Code:

(a) charitable remainder unitrusts, as defined by 26 U.S.C. 664;

(b) charitable remainder annuity trusts, as defined by 26 U.S.C. 664;

(c) pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);

(d) charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);

(e) charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);

(f) charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(g) deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(h) charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B);

(i) paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

(2) *(a)* "Qualified endowment" means a permanent, irrevocable fund that is held by a Montana incorporated or established organization that:

~~(a)~~*(i)* is a tax-exempt organization under 26 U.S.C. 501(c)(3); or

~~(b)~~*(ii)* is a bank or trust company, as defined in Title 32, chapter 1, part 1, that is holding the fund on behalf of a tax-exempt organization.

(b) For the purposes of sections 15-30-165 through 15-30-167, the affordable housing revolving loan account established in 90-6-133 is considered qualified endowment. (Terminates December 31, 2001—sec. 9, Ch. 537, L. 1997.)"

Section 4. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [section 2].

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

Section 7. Termination. [This act] terminates December 31, 2004.

Approved April 28, 2001

CHAPTER NO. 412

[SB 368]

AN ACT ALLOWING AN INSTRUMENT THAT IS TO BE RECORDED TO INCORPORATE INFORMATION BY REFERENCE FROM OTHER RECORDED INSTRUMENTS; AND AMENDING SECTIONS 7-4-2613 AND 72-16-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2613, MCA, is amended to read:

"**7-4-2613. Documents subject to recording.** *(1)* The county clerk shall, upon the payment of the appropriate fees, record by printing, typewriting, ~~or~~ photographic, micrographic, or electronic process or by the use of prepared blank forms:

~~(1)~~*(a)* ~~(a)~~*(i)* subject to ~~subsection~~ *subsection* (1)~~(b)~~*(a)(ii)*, deeds, grants, transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property any part of which is situated in the county, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, *reconveyances by trustees of deeds of trust, assignments of mortgages and deeds of trust,* powers of attorney to convey real estate, leases that have been acknowledged or proved, and abstracts of the instruments that have been acknowledged or proved;

~~(b)~~*(ii)* an instrument or deed evidencing either a division of real property or a merger of real property only if the instrument or deed is accompanied by a certification from the county treasurer that taxes and special assessments that have been assessed and levied have been paid;

~~(2)~~*(b)* notices of buyer's interest in real property, notwithstanding any other requirement of law or rule relating to eligibility for recording of the deed, contract for deed, or other document relating to the notice of buyer's interest. However, if the instrument of conveyance underlying a notice of buyer's interest would be unrecordable, the clerk and recorder shall notify the buyer by certified mail that the underlying instrument is unrecordable and may be void~~;~~*.*

~~(3)~~*(c)* except as provided in 72-16-503, a document on a form provided by the department of revenue certifying that the holder of a nonprobate interest in real property is deceased and that the deceased's interest is terminated. A nonprobate interest in real property is a joint tenancy interest, a life estate interest, or any other interest not requiring probate. The document may be on the form used by the department of revenue for responding to the application for determination of estate tax. It must contain:

~~(a)~~*(i)* a statement that the holder of the nonprobate interest has died and that the holder's interest in the property is terminated;

~~(b)~~*(ii)* a certification by the county treasurer that the estate tax, if any tax was due, has been paid or that estate tax was not due; *and*

~~(c)~~*(iii)* a description of the property~~;~~*.*

~~(4)~~*(d)* certificates of births and deaths;

~~(5)~~*(e)* wills devising real estate admitted to probate;

~~(6)~~*(f)* official bonds;

~~(7)~~*(g)* transcripts of judgments that by law are made liens upon real estate;

~~(8)~~*(h)* instruments describing or relating to the individual property of married persons;

~~(9)~~*(i)* all orders and decrees made by the district court in probate matters affecting real estate and that are required to be recorded;

~~(10)~~*(j)* notice of preemption claims;

~~(11)~~*(k)* notice and declaration of water rights;

~~(12)~~*(l)* assignments for the benefit of creditors;

~~(13)~~*(m)* affidavits of annual work done on mining claims;

~~(14)~~*(n)* notices of mining locations and declaratory statements;

~~(15)~~*(o)* estrays and lost property;

~~(16)~~*(p)* a book containing appraisement of state lands; and

~~(17)~~*(q)* other writings that are required or permitted by law to be recorded.

(2) Any instrument that qualifies for recording under this section may incorporate by reference any provision, statement, description, or other language or material that is contained in another properly recorded instrument and that is recorded in the same county as the instrument that is incorporating the language or material by reference is to be recorded."

Section 2. Section 72-16-503, MCA, is amended to read:

"**72-16-503. Additional filings required when real property involved and no representative.** (1) If an interest in real property is involved under 72-16-502, the applicant shall record with the clerk and recorder of each county in which the real property or any part of the property is located a document containing those matters required by 7-4-2613~~(3)~~*(1)(c)*. A surviving joint tenant described in 72-16-313(1) or (2) is not subject to the recording requirements under 7-4-2613~~(3)~~*(1)(c)*.

(2) A surviving joint tenant described in 72-16-313(1) or (2) with an interest in real property under 72-16-502 shall record with the clerk and recorder of each county in which the real property is located an acknowledged statement that the holder of the nonprobate interest has died and that the holder's interest in the property is terminated. The acknowledged statement must include a legal description of the real property."

Approved April 28, 2001

CHAPTER NO. 413

[SB 379]

AN ACT REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES GOVERNING AUTHORIZATION TO DISCHARGE UNDER A GENERAL PERMIT FOR STORM WATER DISCHARGE ASSOCIATED WITH CONSTRUCTION ACTIVITY; REQUIRING THAT THE RULES AUTHORIZE DISCHARGE UNDER THE GENERAL PERMIT UPON RECEIPT OF A NOTICE OF INTENT AND POLLUTION PREVENTION PLAN; AMENDING SECTION 75-5-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-401, MCA, is amended to read:

"75-5-401. Board rules for permits — ground water exclusions. (1) Except as provided in subsection (5), the board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state ~~surface~~ waters ~~and ground waters~~, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The board may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(c) governing authorization to discharge under a general permit for storm water associated with construction activity. These rules must allow an owner or operator to notify the department of the intent to be covered under the general permit. This notice of intent must include a signed pollution prevention plan that requires the applicant to implement best management practices in accordance with the general permit. The rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by the department.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; or

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The board may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4)."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2001

CHAPTER NO. 414

[SB 393]

AN ACT AUTHORIZING THE DESIGN, MANUFACTURE, AND ISSUANCE OF LEWIS AND CLARK BICENTENNIAL LICENSE PLATES; PROVIDING FOR DISPOSITION OF THE PROCEEDS FROM THE SALE OF THE PLATES; SPECIFYING THAT THE USE OF THE PROCEEDS MUST BE APPROVED BY THE LEWIS AND CLARK BICENTENNIAL COMMISSION; ALLOWING THE COMMISSION TO OBTAIN A LOAN FROM THE BOARD OF INVESTMENTS; STATUTORILY APPROPRIATING PROCEEDS TO THE COMMISSION; APPROPRIATING $480,000 FROM THE GENERAL FUND TO THE DEPARTMENT OF CORRECTIONS FOR MANUFACTURE OF THE LICENSE PLATES; AMENDING SECTIONS 2-15-150, 17-7-502, 61-3-332, AND 61-3-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 7] may be cited as the "Lewis and Clark Bicentennial License Plate Act".

Section 2. Lewis and Clark bicentennial license plates. The department shall:

(1) design, cause to be manufactured, and issue Lewis and Clark bicentennial license plates, as provided in [sections 3 through 7], and subject to the requirements in 61-3-332(4);

(2) prescribe the color and design of the Lewis and Clark bicentennial license plates after consultation with the Lewis and Clark bicentennial commission established under 2-15-150;

(3) use a numbering system for Lewis and Clark bicentennial license plates that is distinctive from the numbering system required under 61-3-332 or used for collegiate plates; and

(4) provide nonremovable stickers bearing the appropriate county designation as provided in 61-3-332. The stickers must be affixed to the license plates in use in accordance with instructions provided by the department.

Section 3. Application for Lewis and Clark bicentennial license plates. An applicant for new or renewal Lewis and Clark bicentennial license plates shall apply in the form and by the date that the department requires.

Section 4. Issuance — fees — disposition. (1) Subject to [section 7] and subsection (6) of this section, the department shall issue new Lewis and Clark bicentennial license plates upon the receipt of an application that shows:

(a) compliance with 61-3-303, 61-3-311, and 61-3-312; and

(b) payment to the county treasurer of $30 for the original purchase of the plates.

(2) Upon receipt of an original application for Lewis and Clark bicentennial license plates and payment of the $30 fee, the county treasurer shall:

(a) deposit $2 in the county general fund;

(b) remit $8 for deposit in the state general fund; and

(c) remit to the state treasurer $20 for deposit in the state special revenue account established in 2-15-150 for the Lewis and Clark bicentennial commission.

(3) The department shall issue renewal Lewis and Clark bicentennial license plates upon the receipt of an application that shows compliance with 61-3-303, 61-3-311, and 61-3-312 and payment to the county treasurer of a $20 renewal fee.

(4) Upon subsequent annual renewal of registration, the county treasurer shall remit all of the $20 renewal fee to the state treasurer for deposit as provided in subsection (2)(c).

(5) Unless otherwise specifically exempted, the Lewis and Clark bicentennial license plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. If during a registration year prior to 2007 the holder of license plates issued under this section disposes of the vehicle to which the plates are affixed, the holder may retain the plates and affix them to another vehicle.

(6) A person who receives and renews Lewis and Clark bicentennial license plates under this section is liable for payment of all taxes and fees required under parts 3, 4, and 5 of this chapter in addition to the fees required under subsections (2) and (3).

Section 5. Revenue distribution — use of funds. (1) The Lewis and Clark bicentennial commission shall establish the criteria that entities or organizations must meet in order to receive proceeds from the special revenue account established in 2-15-150, and the commission may distribute the money in a manner and in any amount that it determines appropriate.

(2) The Lewis and Clark bicentennial commission may retain any amount of money collected in the special revenue account that it determines necessary to fulfill its responsibilities and carry out the activities provided in 2-15-150.

(3) Entities receiving funds under this section may not use the funds for purposes other than those prescribed by the Lewis and Clark bicentennial commission and subject to 2-15-150.

(4) Proceeds from license plate sales and proceeds from any loan from the board of investments that are received in the special revenue account established

in 2-15-150 are statutorily appropriated, as provided in 17-7-502, to the Lewis and Clark bicentennial commission.

Section 6. Personalized Lewis and Clark bicentennial license plates. (1) Subject to the provisions of 61-3-405 and 61-3-406, an application for Lewis and Clark bicentennial license plates may be combined with an application for personalized license plates.

(2) An application for personalized plates must be made on a form supplied by the department.

(3) Personalized Lewis and Clark bicentennial license plates must bear the distinctive color and design as provided in [section 2].

Section 7. Continued use and replacement authorized. (1) A person who owns and displays Lewis and Clark bicentennial license plates on a motor vehicle on or before December 31, 2006, may continue to display the plates on the vehicle after that date as long as the plates remain legible or as long as replacement plates are available from the department, whichever is later.

(2) The department shall authorize the continued display of Lewis and Clark bicentennial license plates after December 31, 2006, as provided for in subsection (1), and shall replace the plates for individuals who owned and displayed the plates on or before December 31, 2006, as long as replacement stock owned by the department remains available and usable.

Section 8. Section 2-15-150, MCA, is amended to read:

"2-15-150. (Temporary) Lewis and Clark bicentennial commission — membership — purpose — account. (1) There is a Lewis and Clark bicentennial commission.

(2) The commission consists of 12 members, as follows:

(a) nine members who must be appointed by the governor, at least three of whom must be enrolled members of a Montana Indian tribe and live on a Montana Indian reservation, who shall serve 3-year staggered terms, who shall represent Montana's different geographical areas, and who must have an interest in the history of the Lewis and Clark expedition;

(b) the director of the Montana historical society, established in 22-3-101;

(c) the administrator of the parks division within the department of fish, wildlife, and parks, established in 2-15-3401; and

(d) the director of travel Montana.

(3) The commission is responsible for coordinating and promoting observance of Montana's bicentennial commemoration of the Lewis and Clark expedition and the importance of the roles played by Montana's Indian people to the Lewis and Clark expedition. The commission may:

(a) cooperate with national, regional, statewide, and local events promoting the bicentennial;

(b) plan and coordinate or assist in planning and coordinating bicentennial events;

(c) engage in fundraising activities, including revenue-earning enterprises and the solicitation of grants, gifts, and donations;

(d) promote public education concerning the Lewis and Clark expedition and the history and culture of Montana's Indian people at the time of the Lewis and Clark expedition; and

(e) perform other related duties.

(4) (a) The Lewis and Clark bicentennial commission is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed $3 million, payable over a term not to exceed 6 years, for the purposes identified in subsection (3).

(b) The Lewis and Clark bicentennial commission shall pledge to the repayment of any indebtedness the proceeds from the sale of Lewis and Clark bicentennial license plates as provided in [sections 1 through 7].

(c) The proceeds of any loan from the board of investments to the Lewis and Clark bicentennial commission must be deposited in the account established in subsection (5).

~~(4)~~*(5)* There is a Montana Lewis and Clark bicentennial account. Money in the account may include money from revenue-earning enterprises, grants, gifts, or donations, money appropriated by the legislature, and interest earned on the account. Account funds must be used for the purposes described in this section.

~~(5)~~*(6)* The commission is attached to the Montana historical society for administrative purposes only as provided in 2-15-121. (Terminates December 31, 2007—sec. 2, Ch. 428, L. 1997.)"

Section 9. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-31-702; 15-34-115; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; *[section 5];* 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-222; 80-4-416; 80-11-518; 81-5-111; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of

Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; and pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005.)"

Section 10. Section 61-3-332, MCA, is amended to read:

"**61-3-332. Number plates.** (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bears the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bears the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bears the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bears the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bears the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned to the dealer, in the position that the department designates.

(2) (a) All number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the ~~state~~ *department*. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(b) For light vehicles that are permanently registered as provided in 61-3-527 or 61-3-562, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.

(3) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. ~~The~~ *Except for Lewis and Clark bicentennial license*

plates authorized in [section 2], the outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" ~~and the year~~ must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 *and Lewis and Clark bicentennial license plates authorized in [section 2]*, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of $10. The additional fee must be distributed in accordance with the provisions of subsection (10)(f)(iii) and (10)(f)(iv).

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued:

(A) a special license plate under this section with a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(iii) Special license plates issued to a disabled veteran are not transferable to another person.

(iv) A disabled veteran is not entitled to a special disabled veteran's license plate for more than one vehicle.

(v) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(i) Fees required under 61-3-321(1) and (5) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).

(ii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iii) An ex-prisoner of war is exempt from the *registration fees imposed under 61-3-560 through 61-3-562* ~~light vehicle taxes imposed under 61-3-504~~ for one vehicle that displays a set of ex-prisoner of war license plates.

(iv) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.

(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue account established in 10-2-603 for administration, construction, operation, and maintenance of the state veterans' cemeteries.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.

(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 11. Section 61-3-403, MCA, is amended to read:

"**61-3-403. Color and design of personalized license plates — ~~exception~~ *exceptions* — county designation.** (1) Except as provided in 61-3-466 *or in [section 6]*, the personalized license plates must be the same color and design as regular passenger motor vehicle license plates and must consist of numbers or letters, or any combination ~~thereof~~ *of numbers and letters*, not exceeding eight positions and not less than two positions, provided that there are no conflicts with existing passenger, commercial, trailer, motorcycle, quadricycle, or special license plate series under this title.

(2) Upon the issuance of personalized license plates or upon the reregistration of any motor vehicle assigned personalized license plates that do not bear a county designation or no longer bear the correct county designation, the department shall provide nonremovable stickers bearing the appropriate county designation, which must be affixed to the license plates in use in accordance with instructions by the department."

Section 12. Appropriation. There is appropriated $480,000 from the general fund to the department of corrections for the biennium ending June 30, 2003, to provide for the manufacture of Lewis and Clark bicentennial license plates by the prison industries program.

Section 13. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 14. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 61, chapter 3, part 4, and the provisions of Title 61, chapter 3, part 4, apply to [sections 1 through 7].

Section 15. Effective date. [This act] is effective on passage and approval.

Section 16. Applicability. [This act] applies to registrations of motor vehicles occurring after December 31, 2001.

Section 17. Termination. [Sections 1 through 6 and 8 through 11] terminate December 31, 2006.

Approved April 28, 2001

CHAPTER NO. 415

[SB 451]

AN ACT ELIMINATING THE REQUIREMENT THAT AN OPERATOR OF A CERTAIN KIND OF BICYCLE MUST HAVE A DRIVER'S LICENSE; AND AMENDING SECTION 61-5-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-102, MCA, is amended to read:

"**61-5-102. Drivers to be licensed.** (1) Except as provided in 61-5-104, a person may not drive a motor vehicle upon a highway in this state unless the person has a valid Montana driver's license. A person may not receive a Montana driver's license until the person surrenders to the department all valid driver's licenses issued by any other jurisdiction. A person may not have in the person's possession or under the person's control more than one valid Montana driver's license at any time.

(2) (a) A license is not valid for the operation of a motorcycle or quadricycle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement". A motorcycle endorsement is required for the operation of a quadricycle.

(b) A license is not valid for the operation of a commercial vehicle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "commercial driver's license".

(3) When a city or town requires a licensed driver to obtain a local driving license or permit, a license or permit may not be issued unless the applicant presents a state driver's license valid under the provisions of this chapter.

~~(4) A person operating a bicycle defined in 61-1-123(2) must have in the person's possession at all times when operating the bicycle a valid Montana driver's license.~~"

Approved April 28, 2001

CHAPTER NO. 416

[SB 454]

AN ACT CREATING A MULTIAGENCY CHILDREN'S SERVICES INITIATIVE FOR CHILDREN WITH SERIOUS EMOTIONAL DISTURBANCES TO IDENTIFY HIGH-COST CHILDREN WHO REQUIRE SERVICES FROM MULTIPLE AGENCIES TO HAVE NEW CARE AND TREATMENT PLANS AND SERVICES DEVELOPED TO TREAT THEM IN THE LEAST RESTRICTIVE ENVIRONMENT; SPECIFYING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AS THE LEAD AGENCY; ALLOWING PROVIDER NETWORKS TO PARTICIPATE IN THE INITIATIVE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The legislature finds that it is necessary to immediately direct coordinated efforts to provide services to children with serious emotional disturbances who are in need of integrated services from multiple agencies. The legislature directs that the respective agencies engage in unified planning to further develop a continuum of services to reduce the use of high-cost, highly restrictive, out-of-home residential placements. The legislature directs that concentrated efforts be made to bring together the respective agencies that provide multiagency services to children with serious emotional disturbances for the purpose of containing costs and increasing the capacity of communities to serve these children in the least restrictive environment. These efforts are intended to parallel and supplement efforts to develop long-term structural changes in the public mental health system.

Section 2. Coordination of integrated multiagency services for children with serious emotional disturbances. (1) The department of public health and human services shall work with the office of public instruction, the department of corrections, the department of justice, and youth courts to coordinate responsibility for integrated multiagency services for children with serious emotional disturbances. The collaboration may include:

(a) pooling funding from federal, state, and local sources, to the extent possible, to maximize the most cost-effective use of funds to provide the appropriate services to children with serious emotional disturbances and multiagency needs in the least restrictive environment;

(b) applying for any federal waivers necessary to provide necessary services or to pool funds to achieve the purpose of this section;

(c) providing for multiagency data collection and analysis of data that is relevant to the use of services based on client needs and outcomes and using the analysis in the decisionmaking process;

(d) developing mechanisms for the pooling of human and fiscal resources; and

(e) providing training and technical assistance, as funds permit, at the local level regarding governance and the development and delivery of integrated multiagency children's services to children with serious emotional disturbances.

(2) The department of public health and human services shall identify the children with serious emotional disturbances:

(a) who are using the highest proportion of fiscal resources in the public mental health system; and

(b) who are receiving services out of state; or

(c) who, in order to be served in state or in the child's home community, may require services or who have required services in the past:

(i) from the child protective services system;

(ii) from the developmental disabilities system;

(iii) for mental health services as a youth adjudicated in need of intervention or delinquent from the juvenile correctional system;

(iv) in day treatment or special education in school;

(v) from public assistance; or

(vi) from the chemical dependency system.

(3) The department of public health and human services shall identify the children by community to facilitate organization or identification of local children's service agencies and providers to develop care and treatment plans for these children at a cost less than the current funding required for the children. Care and treatment plans must identify the least restrictive placements, as close to home as possible, the services required, and the responsible lead agency.

(4) The department of public health and human services shall report on its progress and any findings and recommendations to the governor's budget office and the children, families, health, and human services interim committee at least every 6 months.

Section 3. Provider networks. (1) Any licensed mental health provider willing to participate in this initiative, subject to the limitations in law or rule pursuant to each program, must be allowed initially to participate in a provider network.

(2) (a) All providers who choose to participate in the provider network shall work in alignment with the department of public health and human services, the mental health oversight advisory council, and any existing local interagency children's service groups to determine the core services that must be available in a provider network.

(b) The provider network is responsible to coordinate efforts with the department of public health and human services in developing performance-based outcomes and standards of care and developing mechanisms for ensuring that standards are met by all providers in the network.

(3)Providers may provide services within areas that are defined in any contract for services. A provider must be part of a provider network, with the exception of a provider who has been granted an out-of-network waiver by the department of public health and human services, to provide services pursuant to [section 2].

(4) The department of public health and human services shall maintain listings of local, regional, and statewide provider networks.

Section 4. Long-term transition to regional mental health system. The department of public health and human services shall work with the mental health oversight advisory council to respond to technical assistance recommendations received by the department to define and design new mental health structures in order to develop a continuum of core services for children with serious emotional disturbances that is integrated with other children's services and to coordinate any development of future programs for mental health services for children and adults.

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Termination. [This act] terminates June 30, 2003.

Approved April 28, 2001

CHAPTER NO. 417

[SB 489]

AN ACT REVISING THE PENALTIES FOR FOURTH OR SUBSEQUENT OFFENSE DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS AND DRIVING WITH EXCESSIVE ALCOHOL CONCENTRATION; ALLOWING AS A PENALTY FOR A FOURTH OR SUBSEQUENT OFFENSE THAT A PERSON ENTER AND COMPLETE A RESIDENTIAL ALCOHOL DEPENDENCY TREATMENT PROGRAM OPERATED OR APPROVED BY THE DEPARTMENT OF CORRECTIONS; ALLOWING THE DEPARTMENT OF CORRECTIONS TO OPERATE A RESIDENTIAL ALCOHOL TREATMENT PROGRAM AT THE FORENSIC UNIT AT WARM SPRINGS; AMENDING SECTIONS 53-1-202, 61-8-731, AND 61-8-732, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the incidence of fourth or subsequent convictions for driving under the influence of alcohol has not abated despite the threat of imprisonment; and

WHEREAS, alcoholism may be treatable with the appropriate level of intensive therapeutic programming; and

WHEREAS, a program of intensive residential alcohol treatment may reduce recidivism by persons who drive under the influence of alcohol.

THEREFORE, the Legislature finds that it is in the interests of public health and safety to establish a residential alcohol treatment program.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-202, MCA, is amended to read:

"53-1-202. (Temporary) Department of corrections. (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following correctional facilities or programs:

(a) the prisons listed in 53-30-101;

(b) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs; and

(c) the boot camp authorized by 53-30-403.

(3) Youth correctional services consist of the following correctional facilities or programs to provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in need of intervention pursuant to Title 52, chapter 5:

(a) Pine Hills youth correctional facility or other state youth correctional facility; and

(b) any other facility or program that provides custody and services for delinquent youth.

(4) A state institution or facility may not be moved, discontinued, or abandoned without the consent of the legislature.

53-1-202. (Effective on occurrence of contingency) Department of corrections. (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following correctional facilities or programs:

(a) the prisons listed in 53-30-101;

(b) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs;

(c) the boot camp authorized by 53-30-403; and

(d) *a residential alcohol treatment program located at* the forensic unit at Warm Springs.

(3) Youth correctional services consist of the following correctional facilities or programs to provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in need of intervention pursuant to Title 52, chapter 5:

(a) Pine Hills youth correctional facility or other state youth correctional facility; and

(b) any other facility or program that provides custody and services for delinquent youth.

(4) A state institution or correctional facility may not be moved, discontinued, or abandoned without the consent of the legislature."

Section 2. Section 61-8-731, MCA, is amended to read:

"61-8-731. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — penalty for fourth or subsequent offense. (1) On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person is guilty of a felony and shall be punished by:

~~(a)~~*(a)* ~~imprisonment~~ *sentencing the person to the department of corrections for placement in an appropriate correctional facility or program* ~~for a term of not less than 6 months or more than 13 months, for which the imposition or execution of the first 6 months may not be suspended, and during which the person is not eligible for parole;~~

~~(b) probation for a term of not less than 1 year or more than 4 years; and~~ *for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.*

(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and

~~(c)~~*(c)* a fine *in an amount* of not less than $1,000 or more than $10,000.

~~(2) The court shall, subject to sentencing restrictions:~~

~~(a) specify one of the following facilities as the initial place in which the term of imprisonment must be served:~~

~~(i) a state prison;~~

~~(ii) a regional correctional facility;~~

~~(iii) a county jail;~~

~~(iv) a boot camp, provided the prior approval of the department of corrections has been obtained; or~~

~~(v) a prerelease center or, upon acceptance by the facility, a state-approved public or private treatment facility that provides the appropriate level of chemical dependency treatment, provided the prior approval of the department of corrections has been obtained; or~~

~~(b) sentence the person to the department of corrections for placement in an appropriate correctional institution or program; and~~

~~(c) order a person who is financially able to pay the costs of imprisonment, probation, and chemical dependency treatment under this section.~~

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

(3) The court shall, as a condition of probation, order:

(a) that the person abide by the standard conditions of probation promulgated by the department of corrections;

(b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section;

(c) that the person may not frequent an establishment where alcoholic beverages are served;

(d) that the person may not consume alcoholic beverages;

(e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(g) that the person submit to random or routine drug and alcohol testing; and

(h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.

~~(3)~~*(4)* The sentencing judge may impose upon the defendant any *other* reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include *but are not limited to*:

(a) payment of a fine as provided in 46-18-231;

(b) payment of costs as provided in 46-18-232 and 46-18-233;

(c) payment of costs of court-appointed counsel as provided in 46-8-113;

(d) community service;

(e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; *or*

~~(f) treatment in a state-approved public or private treatment facility; or~~

~~(g)~~*(f)* any combination of the restrictions or conditions listed in subsections (3)(a) through ~~(3)(f)~~ *(3)(e).*

~~(4) (a)~~*(5)* Following initial placement of a defendant in a ~~boot camp, prerelease center, or~~ treatment facility under subsection (2)~~(a)~~, the department of corrections may, at its discretion, place the offender in another facility or program.

~~(b) The department of corrections may order all or any portion of the term of probation to be served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation, apply to the probation.~~

~~(5) If a violation of the restrictions or conditions of the probation is established, the court may continue the period of probation or may require the defendant to serve the remainder of the probation sentence in one of the facilities set forth in subsection (2)(a) or (2)(b). The court may credit the remainder of the probation or the time to be served in a facility set forth in subsection (2)(a) or (2)(b) with all or part of the time already served on probation.~~

(6) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to persons sentenced under this section."

Section 3. Section 61-8-732, MCA, is amended to read:

"**61-8-732. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — assessment, education, and treatment required.** (1) In addition to the punishments provided in 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation of 61-8-401 or 61-8-406 shall complete:

(a) a chemical dependency assessment;

(b) a chemical dependency education course; and

(c) on a second or subsequent conviction for a violation of 61-8-401 or 61-8-406, *except a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program under 61-8-731(2),* or as required by subsection (8) of this section, chemical dependency treatment.

(2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

(3) The chemical dependency assessment and the chemical dependency education course must be completed at a treatment program approved by the department of public health and human services and must be conducted by a certified chemical dependency counselor. The defendant may attend a treatment program of the defendant's choice as long as the treatment services are provided by a certified chemical dependency counselor. The defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment.

(4) The assessment must describe the defendant's level of addiction, if any, and contain a recommendation as to education, treatment, or both. A defendant who disagrees with the initial assessment may, at the defendant's cost, obtain a second assessment provided by a certified chemical dependency counselor or a program approved by the department of public health and human services.

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(6) Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or treatment program. If the defendant fails to attend the education course or treatment program, the counselor shall notify the court of the failure.

(7) A court or counselor may not require attendance at a self-help program other than at an "open meeting", as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

(8) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

(b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional 6 months."

Section 4. Coordination instruction. If Senate Bill No. 207 is passed and approved and if it includes a section that removes the forensic unit at Warm Springs as one of the facilities or programs of the department of corrections, then [section 1] is void.

Section 5. Effective date. [This act] is effective July 1, 2001.

Section 6. Applicability. [This act] applies to persons sentenced under 61-8-731 for offenses committed on or after [the effective date of this act].

Approved April 28, 2001

CHAPTER NO. 418

[SB 495]

AN ACT REVISING SCHOOL FUNDING THROUGH THE USE OF THE PUBLIC SCHOOL FUND; REVISING THE STRUCTURE OF THE PUBLIC SCHOOL FUND; AUTHORIZING THE BOARD OF INVESTMENTS TO PURCHASE THE MINERAL PRODUCTION RIGHTS HELD BY THE PUBLIC SCHOOL FUND; PROVIDING THAT A PORTION OF ROYALTY PAYMENTS ON THE PURCHASED MINERAL PRODUCTION RIGHTS MUST BE DEPOSITED IN THE GUARANTEE ACCOUNT; LOANING MONEY FROM

THE COAL SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR THE PURCHASE OF THE MINERAL PRODUCTION RIGHTS; APPROPRIATING THE LOAN PROCEEDS; REQUIRING REPAYMENT OF THE EXPENDED AMOUNTS FROM MINERAL ROYALTY PROCEEDS; DELETING THE PROHIBITION ON PUBLIC FUND INVESTMENT IN CORPORATE STOCK CONTINGENT ON THE PASSAGE OF THE CONSTITUTIONAL AMENDMENT ALLOWING INVESTMENT IN CORPORATE STOCK; AMENDING SECTIONS 17-6-201, 77-2-303, AND 77-2-304, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definition. (1) As used in [sections 1 through 3] "distributable revenue" means 95% of all revenue from the management of school trust lands and the permanent fund, including timber sale proceeds, lease fees, interest, dividends, and net realized capital gains.

(2) The term does not include mineral royalties or land sale proceeds that are deposited directly in the permanent fund or net unrealized capital gains that remain in the permanent fund until realized.

Section 2. Permanent fund. (1) The public school fund provided for in Article X, section 2, of the Montana constitution consists of the permanent fund, which consists of the permanent corpus fund.

(2) The permanent fund must be invested for the purpose of generating future income for distribution to public elementary and secondary school districts as provided in Article X, section 5, of the Montana constitution.

Section 3. Guarantee account. (1) There is a guarantee account in the state special revenue fund. The guarantee account is intended to stabilize the long-term growth of the permanent fund and to maintain a constant and increasing distributable revenue stream. All realized capital gains and all distributable revenue must be deposited in the guarantee account. Except as provided in subsection (2), the guarantee account must be distributed to school districts through the basic and per-ANB entitlements.

(2) As long as a portion of the coal severance tax loan authorized in [section 8] is outstanding, the department shall annually transfer from the guarantee account to the general fund an amount that represents the amount of interest income that would be earned from the investment of the amount of the loan that is outstanding in the prior year.

Section 4. Purchase of permanent fund mineral estate. The department of natural resources and conservation may purchase the mineral production rights held by the public school fund established in Article X, section 2, of the Montana constitution for fair market value. If the department of natural resources and conservation purchases mineral production rights, any royalty payments received by the board that are not used to reimburse the coal severance tax trust fund for the loan used for purchasing the mineral production rights must be deposited in the guarantee account provided for in [section 3].

Section 5. Section 17-6-201, MCA, is amended to read:

"**17-6-201. Unified investment program — general provisions.** (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires an investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) ~~(a)~~ Retirement funds may be invested in common stocks of any corporation.

~~(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.~~

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring real property obtained through investments. Prior to the transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a qualified appraiser.

(b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund."

Section 6. Section 77-2-303, MCA, is amended to read:

"**77-2-303. Restrictions on land available for sale.** (1) ~~Lands~~ *Subject to purchase by the department pursuant to [section 4], land* that in the judgment of the ~~board are~~ *department is* likely to contain valuable deposits of coal, oil, oil shale, phosphate, metals, sodium, or other valuable mineral deposits ~~are~~ *is* not subject to sale of either the surface land or any of the mineral deposits. However, this *subsection* does not prohibit the sale of lands containing sand, gravel, building stone, brick clay, or similar materials.

(2) (a) There is reserved from sale from all state ~~lands~~ *land* bordering on navigable lakes, nonnavigable meandered lakes, and navigable streams, that the board considers in the best interests of the state, a strip of land that includes all the land lying between low-water mark and high-water mark and that extends in width landward from the line of high-water mark of the lake or stream the full width of the 40-acre tract or government lot abutting the line of high-water mark. If the width of the abutting government lot at its narrowest point is less than 100 feet, then the strip reserved must extend to and include the next adjoining 40-acre tract or government lot. The land reserved from sale by this subsection is subject to the granting of easements the same as other state lands.

(b) Strips of land bordering on meandering lakes or on navigable streams, except the strip lying between low-water and high-water mark, whether surveyed and platted into blocks and lots or not, may be leased as provided in this title for the leasing of other state lands."

Section 7. Section 77-2-304, MCA, is amended to read:

"**77-2-304. Mineral reservations in state ~~lands~~ *land*.** All coal, oil, oil shale, gas, phosphate, sodium, and other mineral deposits in state ~~lands~~ *land*, except sand, gravel, building stone, and brick clay, which were not reserved by the United States before July 1, 1927, are reserved to the state. ~~All~~ *Subject to [section 4],* those deposits are reserved from sale except upon a rental and royalty basis as provided by law. A purchaser of state ~~lands~~ *land* acquires no right, title, or interest in or to any of those deposits. The state also reserves for itself and its lessees the right to enter upon ~~these lands~~ *state land* to prospect for, develop, mine, and remove ~~those~~ *mineral* deposits and to occupy and use so much of the surface of the ~~lands~~ *land* as may be required for all purposes reasonably extending to the exploring for, mining, and removal of the deposits ~~therefrom~~ *from the land*, but the lessee shall make just payment to the purchaser for all damage done by reason of ~~such~~ entry upon the land and the use and occupancy of the surface ~~thereof~~ *of the land*."

Section 8. Coal severance tax loan — rate of interest — appropriation. (1) There is appropriated to the department of natural resources and conservation from the coal severance tax permanent fund an amount not to exceed $75 million for the biennium ending June 30, 2003, for the purpose of purchasing mineral production rights as provided in [section 4]. The department shall deposit the appropriated loan proceeds in the guarantee account provided for in [section 3].

(2) The interest to be paid on the loan authorized under subsection (1) must be at the long-term investment rate. The interest is payable as of the date of the transfer of the loan proceeds from the coal severance tax permanent fund to the department.

Section 9. Loan agreement. (1) In order to make the loan authorized in [section 8], the board of investments shall enter into a contract with the department of natural resources and conservation pledging the percentage of mineral royalties to the repayment of the loan over a period of 30 years. The loan agreement may not require a payment on the loan until fiscal year 2004. In fiscal years 2004 and 2005, 20% of the mineral royalties deposited in the guarantee account provided for in [section 3] must be pledged to the loan repayment. In fiscal years 2006 through 2011, not less than 25% of the mineral royalties deposited in the guarantee account must be pledged to the loan repayment, and in succeeding fiscal years, not less than 34% of the mineral royalties deposited in the guarantee account must be pledged to the loan repayment until the loan is fully paid.

(2) The contract must provide that the loan repayment proceeds be deposited in the coal severance tax permanent fund. To the extent possible, the board of investments shall make the loan from the portion of the coal severance tax permanent fund invested in the short-term pool. The loan authorized in [section 8] may not be made until the contract required by this section has become effective.

Section 10. Codification instruction. (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to [sections 1 through 3].

(2) [Section 4] is intended to be codified as an integral part of Title 17, chapter 6, part 3, and the provisions of Title 17, chapter 6, part 3, apply to [section 4].

Section 11. Three-fourths vote. Because [section 8] appropriates money from the coal severance tax permanent fund, Article IX, section 5, of the Montana constitution requires a vote of three-fourths of the members of each house of the legislature for passage.

Section 12. Coordination. If House Bill No. 41 and [this act] are both passed and approved, then the references to the state equalization aid account contained in 20-9-343(3) in [section 3] of House Bill No. 41 are changed to references to the guarantee account provided for in [section 3 of this act].

Section 13. Effective dates. (1) [Sections 1 through 4 and 6 through 12 and this section] are effective July 1, 2001.

(2) [Section 5] is effective January 1, 2003, if Senate Bill No. 493 is approved by the electorate.

Approved April 28, 2001

CHAPTER NO. 419

[SB 501]

AN ACT GENERALLY REVISING THE TAXATION OF PROPERTY; REVISING THE LIMIT ON PROPERTY TAXES; ALLOWING A GOVERNMENTAL ENTITY TO CARRY FORWARD MILL LEVY AUTHORITY; REQUIRING THE DEPARTMENT OF REVENUE TO PROVIDE CERTIFIED VALUES FOR NEWLY TAXABLE PROPERTY AND TOTAL TAXABLE VALUE, EXCLUSIVE OF NEWLY TAXABLE PROPERTY, OF CERTAIN CENTRALLY ASSESSED PROPERTY; REQUIRING THE DEPARTMENT OF REVENUE TO RECERTIFY THE TAXABLE VALUE OF CERTAIN CLASS THIRTEEN PROPERTY FOR TAX YEAR 2000; REQUIRING LOCAL GOVERNMENTS TO RECALCULATE PROPERTY TAXES THAT WOULD HAVE BEEN ACTUALLY ASSESSED BASED ON THE RECERTIFICATION OF CERTAIN CLASS THIRTEEN PROPERTY; REVISING THE REQUIREMENTS FOR REPORTING CERTIFIED TAXABLE VALUE BY THE DEPARTMENT OF REVENUE TO LOCAL TAXING AUTHORITIES; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF REVENUE REPORT CERTIFIED MILLAGE RATES TO LOCAL TAXING AUTHORITIES; ELIMINATING THE REQUIREMENT THAT LOCAL TAXING AUTHORITIES ADOPT A RESOLUTION TO INCREASE MILL LEVIES IN EXCESS OF THE CERTIFIED MILLAGE RATES; AMENDING SECTIONS 7-6-2522, 15-10-202, 15-10-206, AND 15-10-420, MCA; REPEALING SECTIONS 15-10-204, 15-10-205, 15-10-207, AND 15-10-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2522, MCA, is amended to read:

"**7-6-2522. All-purpose levy — maximum.** (1) The all-purpose levy is an annual levy upon the taxable value of all property in the county subject to taxation for county purposes in lieu of the levies specified in 7-6-2523. Subject to 15-10-420, the all-purpose levy may not exceed the lesser of:

(a) 55 mills on the dollar; or

(b) the total number of mills levied in the prior year pursuant to the levies set forth in 7-6-2523 ~~as certified by the department of revenue under 15-10-202~~.

(2) If the county governing body determines that the interests of the county would be served by an all-purpose levy, it shall specify its intent to impose the all-purpose levy in the resolution approving and adopting the annual budget."

Section 2. Section 15-10-202, MCA, is amended to read:

"**15-10-202. Certification of taxable values ~~and millage rates~~.** ~~By~~ *(1) Subject to subsections (2) and (3), by* the second Monday in July, the department shall certify to each taxing authority the *total* taxable value within the jurisdiction of the taxing authority. The department shall also send to each taxing authority a written statement of its best estimate of the total ~~assessed~~ *taxable* value of ~~all new construction and improvements not included on the previous property tax record and the value of deletions from the previous property tax record. Exclusive of new construction, improvements, and deletions, the~~

~~department shall certify to each taxing authority a millage rate that will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the department shall use 95% of the taxable value appearing on the property tax record, exclusive of properties appearing for the first time in the property tax record~~ *newly taxable property, as described in 15-10-420(3).*

(2) For tax years beginning after December 31, 2000, if the ownership of centrally assessed property has been transferred in whole or in part to a different owner and the transferred property has a market value of $1 million or more as determined by the department, the department shall determine separately the taxable value of newly taxable property and the taxable value associated with reappraisal of centrally assessed property that is transferred to a different owner. The department shall certify to each taxing authority, at the time specified in subsection (1), the taxable value of newly taxable property and the total taxable value of centrally assessed property, exclusive of newly taxable property, that has been transferred to a different owner.

(3) For tax year 2001, for property that was classified as class thirteen property in tax year 2000 and that was transferred in whole or in part to a different owner in tax year 1999, if the transferred property has a market value of $1 million or more as determined by the department, the department shall determine separately the taxable value of newly taxable property and the taxable value associated with reappraisal of class thirteen property that was transferred to a different owner. The department shall recertify, at the time specified in subsection (1), to each taxing authority that had class thirteen property described in this subsection (3) in tax year 2000 the recertified total taxable value of newly taxable property."

Section 3. Section 15-10-206, MCA, is amended to read:

"**15-10-206.** ~~**Exceptions for**~~ ***Notification of*** **decisions of tax appeal boards.** The department shall notify each taxing authority of any change in the property tax record that results from actions by the state or county tax appeal boards. ~~An increase in the taxing authority's millage above the millage certified by the department or adopted by resolution or ordinance of the governing body of the taxing authority that is required solely by a reduction of the property tax record by the state or county tax appeal board may be adopted without further notice.~~"

Section 4. Section 15-10-420, MCA, is amended to read:

"**15-10-420. Procedure for calculating levy.** (1) *(a)* ~~A~~ *Subject to the provisions of this section, a* governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year, even if that levy is greater than the levy established by law. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the value of newly taxable property.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1) plus any additional levies authorized by the voters to all property in the governmental unit, including newly taxable property.

(3) *(a)* For purposes of this section, newly taxable property includes:

~~(a)~~*(i)* annexation of real property and improvements into a taxing unit;

~~(b)~~*(ii)* construction, expansion, or remodeling of improvements;

~~(c)~~*(iii)* transfer of property into a taxing unit;

~~(d)~~*(iv)* subdivision of real property; *and*

~~(e) reclassification of property;~~

~~(f)~~*(v) except as provided in subsection (3)(b),* transfer of property from tax-exempt to taxable status~~; and~~

~~(g) revaluations caused by expansion, addition, replacement, or remodeling of improvements~~.

(b) For the purposes of this section, newly taxable property does not include:

(i) reclassification of property; or

(ii) an increase in the appraised value of land that was previously valued at 75% of the value of improvements on the land as provided in 15-7-111(4) and (5), as those subsections applied on December 31, 2001.

(4) For the purposes of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonagricultural land as described in 15-6-133(1)(c).

~~(4)~~*(5)* Subsection (1) does not apply to school district general fund levies and the school district levy for tuition obligations established in 20-5-324(5).

~~(5)~~*(6)* For purposes of subsection (1), taxes imposed:

(a) include registration fees imposed on light vehicles under 61-3-561 and distributed under 61-3-509(2); and

(b) do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

~~(6)~~*(7) (a)* In determining the maximum number of mills in subsection (1), the governmental entity shall take into account any change from the prior year in the amount of statutory reimbursements for changes in the property tax laws.

(b) ~~The amount of motor vehicle disposition under 61-3-509(2), as that section read on December 31, 2000, is an increased statutory reimbursement. It~~ *The governmental entity* may increase the number of mills to account for a decrease in reimbursements and shall decrease the number of mills to fully account for any increase in reimbursements.

~~(7)~~*(8)* The department shall calculate, *on a statewide basis,* the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, 20-25-439, and 53-2-813. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4209, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402; or

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

~~(8)~~*(10)* The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Section 5. Certain governmental entities to recalculate mill levy. (1) (a) If the taxable value of all property, exclusive of the recertified value of newly taxable property as determined under 15-10-202(3), is more than 101% of the total taxable value of all property originally certified, exclusive of newly taxable property, by the department in tax year 2000 to the governmental entity authorized to impose mills, the governmental entity shall recalculate the mill levy under 15-10-420(1) for tax year 2000. The governmental entity shall not recalculate taxes for tax year 2000.

(b) The governmental entity shall then multiply the total taxable value in tax year 2000 by the mill levy determined under subsection (1)(a). The governmental entity shall use that amount as the amount of property tax that was actually generated in tax year 2000.

(2) For the purpose of 15-10-420(1), the amount of property tax actually generated in tax year 2000 as determined in subsection (1)(b) is the amount that must be used by the governmental entity for imposing mills in tax year 2001.

Section 6. Repealer. Sections 15-10-204, 15-10-205, 15-10-207, and 15-10-208, MCA, are repealed.

Section 7. Effective date. [This act] is effective on passage and approval.

Section 8. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000.

Section 9. Termination. [Sections 2(3) and 5] terminate January 1, 2002.

Approved April 28, 2001

CHAPTER NO. 420

[SB 511]

AN ACT REVISING SCHOOL FUNDING THROUGH THE USE OF THE STATE UNIVERSITY FUND; REVISING THE ALLOCATION OF TIMBER PROCEEDS FOR MONTANA UNIVERSITY SYSTEM LANDS; PROVIDING THAT TIMBER PROCEEDS BECOME A PART OF THE INCOME STREAM RATHER THAN BEING DEPOSITED IN THE CORPUS; AMENDING SECTION 77-1-109, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-1-109, MCA, is amended to read:

"77-1-109. Deposits of proceeds in trust land administration account. (1) The department shall, until the deposit equals the amount appropriated for the fiscal year pursuant to 77-1-108, deposit into the trust land administration account created by 77-1-108, the following:

(a) mineral royalties;

(b) the proceeds or income from the sale of easements and timber, except timber from public school *and Montana university system* lands; and

(c) 5% of the interest and income annually credited to the public school fund in accordance with 20-9-341.

(2) After the deposits in subsection (1) have been made, the remainder of the proceeds, *other than proceeds from timber from Montana university system lands,* must be deposited in the permanent fund for the appropriate trust and the capitol building land grant trust fund. *Timber proceeds from university system lands must be paid over to the state treasurer, who shall deposit the money to the credit of the proper fund for use as provided in 17-3-1003(1).*

(3) The amount of money that is deposited into the trust land administration account may not exceed 1 1/8% of the book value balance in each of the nine nonexpendable trust funds administered by the department on the first day of January preceding the new biennium and 10% of the previous fiscal year revenue deposited into the capitol building land grant trust fund."

Section 2. Effective date. [This act] is effective July 1, 2001.

Approved April 28, 2001

CHAPTER NO. 421

[SB 519]

AN ACT REVISING THE TAXATION OF OIL FROM EXEMPT STRIPPER WELL PRODUCTION; IMPOSING THE TAX IF THE AVERAGE PRICE FOR A BARREL OF OIL AS REPORTED IN THE WALL STREET JOURNAL FOR WEST TEXAS INTERMEDIATE CRUDE OIL DURING A CALENDAR QUARTER IS MORE THAN $38 A BARREL; AMENDING SECTIONS 15-36-303 AND 15-36-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-303, MCA, is amended to read:

"**15-36-303. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(2) "Department" means the department of revenue provided for in 2-15-1301.

(3) "Enhanced recovery project" means the use of any process for the displacement of oil from the earth other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process.

(4) "Existing enhanced recovery project" means an enhanced recovery project that began development before January 1, 1994.

(5) "Expanded enhanced recovery project" or "expansion" means the addition of injection wells or production wells, the recompletion of existing wells as horizontally completed wells, the change of an injection pattern, or other operating changes to an existing enhanced recovery project that will result in the recovery of oil that would not otherwise be recovered. The project must be developed after December 31, 1993, and before January 1, 2002.

(6) "Gross taxable value", for the purpose of computing the oil and natural gas production tax, means the gross value of the product as determined in 15-36-305.

(7) "Horizontal drain hole" means that portion of a well bore with 70 degrees to 110 degrees deviation from the vertical and a horizontal projection within the common source of supply, as that term is defined by the board, that exceeds 100 feet.

(8) "Horizontally completed well" means:

(a) a well with one or more horizontal drain holes; and

(b) any other well classified by the board as a horizontally completed well.

(9) "Incremental production" means:

(a) the volume of oil produced by a new enhanced recovery project, by a well in primary recovery recompleted as a horizontally completed well, or by an expanded enhanced recovery project, which volume of production is in excess of the production decline rate established under the conditions existing before:

(i) the commencement of the recompletion of a well as a horizontally completed well;

(ii) expansion of the existing enhanced recovery project; or

(iii) commencing a new enhanced recovery project; or

(b) in the case of any project that had no taxable production prior to commencing the enhanced recovery project, all production of oil from the enhanced recovery project.

(10) "Natural gas" or "gas" means natural gas and other fluid hydrocarbons, other than oil, produced at the wellhead.

(11) "New enhanced recovery project" means an enhanced recovery project that began development after December 31, 1993, and before January 1, 2002.

(12) "Nonworking interest owner" means any interest owner who does not share in the exploration, development, and operation costs of the lease or unit, except for production taxes.

(13) "Oil" means crude petroleum or mineral oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form and that are not the result of condensation of gas after it leaves the wellhead.

(14) "Operator" or "producer" means a person who produces oil or natural gas within this state or who owns, controls, manages, leases, or operates within this state any well or wells from which any marketable oil or natural gas is extracted or produced.

(15) "Post-1999 well" means an oil or natural gas well drilled on or after January 1, 1999, that produces oil or natural gas or a well that has not produced

oil or natural gas during the 5 years immediately preceding the first month of qualifying as a post-1999 well.

(16) "Pre-1999 well" means an oil or natural gas well that was drilled before January 1, 1999.

(17) "Primary recovery" means the displacement of oil from the earth into the well bore by means of the natural pressure of the oil reservoir and includes artificial lift.

(18) "Production decline rate" means the projected rate of future oil production, extrapolated by a method approved by the board, that must be determined for a project area prior to commencing a new or expanded enhanced recovery project or the recompletion of a well as a horizontally completed well. The approved production decline rate must be certified in writing to the department by the board. In that certification, the board shall identify the project area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used to determine the volume of incremental production that qualifies for the tax rate imposed under 15-36-304(5)(e).

(19) "Qualifying production" means the first 12 months of production of oil or natural gas from a well drilled after December 31, 1998, or the first 18 months of production of oil or natural gas from a horizontally completed well drilled after December 31, 1998, or from a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying production. Qualifying production does not include oil production from a horizontally recompleted well.

(20) "Secondary recovery project" means an enhanced recovery project, other than a tertiary recovery project, that commenced or was expanded after December 31, 1993, and before January 1, 2002, and meets each of the following requirements:

(a) The project must be certified as a secondary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated according to the specifications required by the board.

(c) The project must involve the application of secondary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of oil that may potentially be recovered. For purposes of this part, secondary recovery methods include but are not limited to:

(i) the injection of water into the producing formation for the purposes of maintaining pressure in that formation or for the purpose of increasing the flow of oil from the producing formation to a producing well bore; or

(ii) any other method approved by the board as a secondary recovery method.

(21) "Stripper natural gas" means the natural gas produced from any well that produces less than 60,000 cubic feet of natural gas a day during the calendar year immediately preceding the current year. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

(22) "Stripper oil" means the oil produced from any well that produces less than 15 barrels a day for the calendar year immediately preceding the current year if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper tax rate~~, including stripper well exemption tax rate,~~ in that quarter. *There is no stripper well exemption tax rate if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is more than $38 a barrel.* The average price for a barrel is computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

(23) "Stripper well exemption" means petroleum and other mineral or crude oil produced by a stripper well that produces 3 barrels a day or less.

(24) "Tertiary recovery project" means an enhanced recovery project, other than a secondary recovery project, using a tertiary recovery method that meets the following requirements:

(a) The project must be certified as a tertiary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated in the certification according to the specifications required by the board.

(c) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil that may potentially be recovered. For purposes of this part, tertiary recovery methods include but are not limited to:

(i) miscible fluid displacement;

(ii) steam drive injection;

(iii) micellar/emulsion flooding;

(iv) in situ combustion;

(v) polymer augmented water flooding;

(vi) cyclic steam injection;

(vii) alkaline or caustic flooding;

(viii) carbon dioxide water flooding;

(ix) immiscible carbon dioxide displacement; or

(x) any other method approved by the board as a tertiary recovery method.

(25) "Well" or "wells" means a single well or a group of wells in one field or production unit and under the control of one operator or producer.

(26) "Working interest owner" means the owner of an interest in an oil or natural gas well or wells who bears any portion of the exploration, development, and operating costs of the well or wells."

Section 2. Section 15-36-304, MCA, is amended to read:

"**15-36-304. Production tax rates imposed on oil and natural gas.** (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in 15-36-324.

(2) Natural gas is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) (i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months		
(A) pre-1999 wells	14.8%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper natural gas pre-1999 wells	11%	14.8%
(c) horizontally completed well production		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months	9%	14.8%

(3) The reduced tax rates under subsection (2)(a)(i) on production for the first 12 months of natural gas production from a well begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(4) The reduced tax rate under subsection (2)(c)(i) on production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(5) Oil is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) primary recovery production		
(i) first 12 months of qualifying production	0.5%	14.8%

(ii) after 12 months		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper oil production		
(i) first 1 through 10 barrels a day production	5.5%	14.8%
(ii) more than 10 barrels a day production	9.0%	14.8%
(c) stripper well exemption production	0.5%	14.8%
(d) horizontally completed well production		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(e) incremental production		
(i) new or expanded secondary recovery production	8.5%	14.8%
(ii) new or expanded tertiary production	5.8%	14.8%
(f) horizontally recompleted well		
(i) first 18 months	5.5%	14.8%
(ii) after 18 months		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%

(6) (a) The reduced tax rates under subsection (5)(a)(i) for the first 12 months of oil production from a well begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that notification has been given to the department.

(b) (i) The reduced tax rates under subsection (5)(d)(i) on oil production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that the well has been certified as a horizontally completed well to the department by the board.

(ii) The reduced tax rate under subsection (5)(f)(i) on oil production from a horizontally recompleted well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that the well has been certified as a horizontally recompleted well to the department by the board.

(c) Incremental production is taxed as provided in subsection (5)(e) if the average price for each barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter as determined in subsection (6)(d), then incremental production from pre-1999 wells and from post-1999 wells is taxed at the rate imposed on primary recovery production under subsections (5)(a)(ii)(A) and (5)(a)(ii)(B), respectively, for production occurring in that quarter, *other than exempt stripper well production. Stripper well exemption production is taxed as provided in subsection (5)(c) only if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $38 a barrel.*

(d) For the purposes of subsection (6)(c), the average price for each barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(7) The tax rates imposed under subsections (2) and (5) on working interest owners and nonworking interest owners must be adjusted to include the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to production occurring on or after January 1, 2001.

Approved April 28, 2001

CHAPTER NO. 422

[HB 57]

AN ACT TRANSFERRING MONEY FROM THE FEDERAL HOUSING AND URBAN DEVELOPMENT SECTION 8 ADMINISTRATIVE FEE RESERVE ACCOUNT TO THE AFFORDABLE HOUSING REVOLVING LOAN ACCOUNT; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Transfer of housing assistance money. There is transferred $500,000 from the federal housing and urban development section 8 administrative fee reserve account to the affordable housing revolving loan account established in 90-6-133.

Section 2. Effective date. [This act] is effective July 1, 2001.

Approved April 30, 2001

CHAPTER NO. 423

[HB 63]

AN ACT PROVIDING A DISABILITY BENEFIT FOR MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM IN THE DEFINED CONTRIBUTION RETIREMENT PLAN; PROVIDING FUNDING FROM CURRENT EMPLOYER CONTRIBUTIONS; REQUIRING THE PUBLIC EMPLOYEES' RETIREMENT BOARD TO DEVELOP A LONG-TERM DISABILITY PLAN AND A TRUST FUND THROUGH WHICH BENEFITS ARE PAID; AUTHORIZING THE PUBLIC EMPLOYEES' RETIREMENT BOARD TO RECEIVE A LOAN FROM THE BOARD OF INVESTMENTS TO PAY FOR STARTUP COSTS; CREATING A STATE DEBT; AMENDING SECTIONS 19-2-303, 19-2-406, 19-3-2117, 19-3-2121, 19-3-2123, 19-3-2124, AND 19-3-2126, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Long-term disability plan — benefit amount — eligibility — administration and rulemaking. (1) A disabled member eligible under the provisions of this section is entitled to a disability benefit equal to one fifty-sixth of the member's final average salary, as defined in 19-3-108, multiplied by the member's years of service, including any service credit purchased under 19-3-513.

(2) Payment of the disability benefit provided in this section is subject to the following:

(a) the member must be vested in the plan as provided in 19-3-2116;

(b) the benefit may be paid only until the member reaches 60 years of age; and

(c) the member must satisfy the other applicable requirements of this section and the board's rules adopted to implement this section.

(3) Application for a disability benefit must be made in accordance with 19-3-1005.

(4) The board shall make determinations on disability claims and conduct medical reviews in a manner consistent with the provisions of 19-2-406 and 19-3-1015. A member may seek review of a board determination as provided in rules adopted by the board.

(5) If a member receiving a disability benefit under this section dies, the disability benefit payments cease and the member's beneficiary is entitled to death benefits only as provided for in 19-3-2125.

(6) The board shall establish a long-term disability plan trust fund from which disability benefit costs pursuant to this section must be paid. The trust fund must be entirely separate and distinct from the defined benefit plan trust fund.

(7) The board shall perform the duties, exercise the powers, and adopt reasonable rules to implement the provisions of this section.

Section 2. Disability benefit recipients to remain members — access to account prohibited. A plan member who is receiving a disability benefit pursuant to [section 1] remains a member of the retirement plan irrespective of employment status and may not receive a distribution from the member's retirement account.

Section 3. Section 19-2-303, MCA, is amended to read:

"**19-2-303. (Temporary) Definitions.** Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a system, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a retirement system over the present value of future normal costs in that retirement system.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member to purchase various types of optional service credit as allowed by the applicable retirement system.

(8) "Annuity" means equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement system and as such are not benefits paid by a retirement system and are not subject to periodic or one-time increases.

(9) "Benefit" means the service or disability retirement or survivorship benefit payment provided by a retirement system.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(12) "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement system and that are used to calculate service or disability retirement or survivorship benefits under a retirement system.

(13) "Department" means the department of administration.

(14) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits or lump-sum payments upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(15) "Disability" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(16) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer.

(17) "Employer" means a governmental entity participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees.

(18) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

(19) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(20) "Inactive member" means a member who is not an active or retired member.

(21) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999.

(22) "Member" means any person with accumulated contributions and service credited with a retirement system or receiving a retirement benefit on account of the person's previous service credited in a retirement system.

(23) "Membership service" or "years of service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(24) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a retirement system during any year in the future. Normal cost does not include any portion of the supplemental costs of a retirement system.

(25) "Pension" means benefit payments for life derived from contributions to a system made from state- or employer-controlled funds.

(26) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system in public trust.

(27) "Regular contributions" means contributions required from members under a retirement system.

(28) "Regular interest" means interest at the rate set from time to time by the board.

(29) "Retirement" or "retired" means the status of a member who has been terminated from service for at least 30 days and has received and accepted a retirement benefit from a retirement system.

(30) "Retirement benefit" means the periodic benefit payable as a result of service, early, or disability retirement under a retirement system. An annuity is not a retirement benefit.

(31) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(32) "Service" means employment of an employee in a position covered by a retirement system.

(33) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(34) "Supplemental cost" means an element of the total actuarial cost of a retirement system arising from benefits payable for service performed prior to the inception of the retirement system or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement system.

(35) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a retirement system.

(36) "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

(37) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a retirement system's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(38) "Vested member" or "vested" means a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under a retirement system.

(39) "Written application" means a written instrument, specified by the board, properly executed, and filed with the board, that contains all the information required by the board, including documentation that the board considers necessary.

19-2-303. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Account balance" means all contributions, income, and other assets in a retirement account that have, pursuant to 19-3-2116, vested to a member of the defined contribution plan.

(2) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(3) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(4) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(5) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(6) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(7) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(8) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(9) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(10) "Benefit" means:

(a) the service or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, *including a disability payment under [section 1],* for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

(11) "Board" means the public employees' retirement board provided for in 2-15-1009.

(12) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(13) "Covered employment" means employment in a covered position.

(14) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(15) "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate service or disability retirement or survivorship benefits under a defined benefit retirement plan.

(16) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(17) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

(18) "Department" means the department of administration.

(19) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(20) "Disability" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(21) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer.

(22) "Employer" means a governmental entity participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees.

(23) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

(24) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(25) "Inactive member" means a member who is not an active or retired member.

(26) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999.

(27) "Member" means either:

(a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

(b) a person with a retirement account in the defined contribution plan.

(28) "Membership service" or "years of service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(29) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of

a defined benefit retirement plan during any year in the future. Normal cost does not include any portion of the supplemental costs of a retirement plan.

(30) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(31) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(32) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities ~~and~~ *and* the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

(33) "Regular contributions" means contributions required from members under a retirement plan.

(34) "Regular interest" means interest at the rate set from time to time by the board.

(35) "Retirement" or "retired" means the status of a member who has been terminated from service for at least 30 days and has received and accepted a retirement benefit from a retirement plan.

(36) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and employee contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

(37) "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service, early, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (10)(b).

(38) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(39) "Service" means employment of an employee in a position covered by a retirement system.

(40) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(41) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

(42) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

(43) "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

(44) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(45) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under the retirement plan; or

(b) with respect to the defined contribution plan, a member or the status of a member who, pursuant to 19-3-2116, is entitled to employer contributions and income on those contributions in the member's retirement account.

(46) "Written application" means a written instrument, specified by the board, properly executed, and filed with the board, that contains all the information required by the board, including documentation that the board considers necessary."

Section 4. Section 19-2-406, MCA, is amended to read:

"**19-2-406. (Temporary) Determination of disability by board — compliance with federal law — conversion to service retirement benefit — rules.** (1) The board shall determine whether a member has become disabled. In the discharge of its duty regarding determinations, the board, any member of the board, or any authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement.

(2) The board shall adopt rules requiring employers to identify and explain the essential elements of a member's position, any accommodations that were or can be made in compliance with the Americans With Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), and the effectiveness of the accommodations.

(3) The board shall retain medical personnel to advise it in assessing the nature and extent of disabling conditions while reviewing claims for disability retirement.

(4) The disability retirement benefit paid to a member must be converted to a service retirement benefit, without recalculation of the monthly benefit amount, when the member has attained the minimum age required for normal service retirement. The board shall notify the member in writing as to the change in status.

19-2-406. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Determination of disability by board — compliance with federal law — conversion to service retirement benefit — rules. (1) The board shall determine whether a member has become disabled. In the discharge of its duty regarding determinations, the board, any member of the board, or any authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement.

(2) The board shall adopt rules requiring employers to identify and explain the essential elements of a member's position, any accommodations that were or can be made in compliance with the Americans With Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), and the effectiveness of the accommodations.

(3) The board shall retain medical personnel to advise it in assessing the nature and extent of disabling conditions while reviewing claims for disability retirement.

(4) The disability retirement benefit paid to a member *of the defined benefit plan* must be converted to a service retirement benefit, without recalculation of the monthly benefit amount, when the member has attained the minimum age required for normal service retirement. The board shall notify the member in writing as to the change in status.

~~(5) This section does not apply to members of the defined contribution plan.~~"

Section 5. Section 19-3-2117, MCA, is amended to read:

"**19-3-2117. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Allocation of contributions and forfeitures.** (1) Each plan member's retirement account must be credited with the employee contributions made under 19-3-315.

(2) Subject to adjustment by the board as provided in 19-3-2121, beginning on the plan's effective date, of the employer contributions under 19-3-316:

(a) ~~4.49%~~ *4.19%* of compensation must be allocated to the member's retirement account; and

(b) ~~2.37%~~ *2.37%* of compensation must be allocated to the defined benefit plan as the plan choice rate.

(3) Subject to adjustment by the board pursuant to 19-3-2121(7) and beginning on the plan's effective date, of the employer contributions under 19-3-316, 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to [section 1].

~~(3)~~*(4)* Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the employer contributions obligation provided under subsection (2)(a) of this section in lieu of direct contributions by the employer and shall increase the contribution amount under subsection (2)(b) of this section by the amount of the forfeitures used in lieu of the employer contributions."

Section 6. Section 19-3-2121, MCA, is amended to read:

"19-3-2121. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Determination and adjustment of plan choice rate and contribution allocations — rulemaking. (1) The board shall provide for the periodic review of the sufficiency of the plan choice rate and shall adjust the allocation of contributions under 19-3-2117 as specified in this section. The board shall provide that the data necessary to comply with this section is collected and maintained for all system members.

(2) The plan choice rate set in 19-3-2117(2)(b) must be adjusted as provided in this section, taking into account:

(a) as determined under subsection (3), the change in the normal cost contribution rate in the defined benefit plan that is the result of member selection of the defined contribution plan;

(b) as determined under subsection (4), the anticipated reduction in defined contribution plan costs because of forfeitures; ~~and~~ *and*

(c) as determined under subsection (5), the sufficiency of the plan choice rate to actuarially fund the defined contribution ~~plan's~~ *plan member's appropriate* share of the defined benefit plan's unfunded liabilities.

(3) The change in the normal cost contribution rate must be an amount equal to the difference between the normal cost contribution rate in the defined benefit plan that would have resulted if all system members remained in the defined benefit plan and the normal cost contribution rate in the defined benefit plan for the actual members of the defined benefit plan, multiplied by the covered payroll of members in the defined benefit plan, divided by the covered payroll of members in the defined contribution plan. The measurements under this subsection must be based on the defined benefit plan in effect on the effective date of the defined contribution plan until the board determines that the defined benefit plan has been amended in a manner that significantly affects plan choices available to system members. After a board determination that the defined benefit plan has been significantly changed, the measurements in this subsection with respect to members entering the system after the significant change must be made on the basis of the defined benefit plan, as amended.

(4) The anticipated reduction in defined contribution plan costs as a result of forfeitures under 19-3-2116 must be determined as the amount of forfeitures expected during the next biennium based on actual forfeitures in the preceding biennium, adjusted by taking into account the gains or losses during the preceding biennium resulting from forfeitures of greater or lesser amounts than expected, divided by twice the covered payroll of members of the defined contribution plan.

(5) The sufficiency of the plan choice rate to actuarially fund the appropriate share of the defined benefit plan's unfunded liabilities must be determined as follows:

(a) The board shall determine the number of years required to actuarially fund the defined benefit plan's unfunded liabilities as of the June 30, 1998, actuarial valuation, which must be the initial schedule for the defined contribution plan to actuarially fund the plan's share of the unfunded liabilities. The board shall reduce the schedule by 1 year each biennium.

(b) During each subsequent actuarial valuation of the defined benefit plan conducted pursuant to 19-2-405, the board shall determine whether the plan choice rate minus the sum of the amounts provided in subsections (2)(a) and (2)(b) of this section is sufficient to pay the unfunded liability obligations within the schedule determined under subsection (5)(a) of this section. If the amount is insufficient to fund the liability over a period of 10 years longer than the scheduled period or is more than sufficient to fund the liability over a period of 10 years earlier than the scheduled period, the board shall determine to the nearest 0.1% the amount of the increase or decrease in the plan choice rate that is required to actuarially fund the liabilities according to the established schedule.

(6) If the board determines that the plan choice rate should be increased or decreased, the plan choice rate under 19-3-2117(2)(b) must be increased or decreased accordingly. If the plan choice rate is increased, the allocation of employer contributions to member accounts under 19-3-2117(2)(a) must be decreased by that amount. If the plan choice rate is decreased, the allocation of employer contributions to member accounts under 19-3-2117~~(2)(b)~~*(2)(a)* must be increased by that amount.

(7) If the board determines that the contribution rate to the disability plan under 19-3-2117(3) should be increased, the employer contribution to each member's account under 19-3-2117(2)(a) must be decreased by that amount. If the board determines that the contribution rate to the disability plan under 19-3-2117(3) should be decreased, the employer contribution to each member's account under 19-3-2117(2)(a) must be increased by that amount.

~~(7)~~*(8)* By November 1 of the year of a determination pursuant to this section that the allocation of employer contributions under 19-3-2117(2) must be changed, the board shall notify system members, participating employers, employee and employer organizations, the governor, and the legislature of its determination and of the changes required.

~~(8)~~*(9)* Effective January 1 of the year after the regular legislative session that immediately follows a determination under this section, the plan choice rate and the allocation of contributions under 19-3-2117(2) must be adjusted according to the board's determination."

Section 7. Section 19-3-2123, MCA, is amended to read:

"19-3-2123. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Payout of account balances when terminating plan membership. ~~Any~~ *Except as provided in [section 2], any* time after termination of covered employment, a member or the member's beneficiary may terminate plan membership by making a written application to the board and removing the member's account balance from the plan through any combination of the following payout options, each of which is subject to applicable regulations of the internal revenue service:

(1) a direct rollover to an eligible retirement plan or to an individual retirement account or annuity pursuant to section 401(a)(31) of the Internal Revenue Code;

(2) a regular rollover to an eligible retirement plan pursuant to section 402(c) of the Internal Revenue Code; or

(3) a lump-sum distribution of the member's account balance."

Section 8. Section 19-3-2124, MCA, is amended to read:

"19-3-2124. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Distribution options for plan members — rulemaking — minimum distribution requirements — restrictions. (1) Subject to 19-3-2116 ~~and~~, 19-3-2126, *and [section 2],* a member may, after termination of covered employment, leave the member's account balance in the plan, and the member is eligible for a distribution as provided in this section.

(2) After termination of covered employment, upon written application to the board, a member may, if provided for by the board, select a distribution option offered pursuant to a contract negotiated by the board with a plan vendor or vendors.

(3) A member who is less than 70 1/2 years of age who returns to covered employment may not continue to receive a distribution under this section while actively employed in a covered position.

(4) The board shall adopt rules to administer this section and to provide that distributions comply with the minimum distribution requirements established in the Internal Revenue Code and applicable under 19-2-1007."

Section 9. Section 19-3-2126, MCA, is amended to read:

"19-3-2126. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Minimum account balance required for membership after termination — adjustment by rule. (1) (a) ~~If~~ *Except as provided in [section 2], if* a member's account balance is less than $5,000 at the time that the member terminates covered employment, the member shall terminate plan membership by removing the member's account balance from the plan in a manner provided pursuant to 19-3-2123.

(b) If the member fails to remove the member's account balance, the board may close the account by paying to the member a lump-sum distribution of the member's entire account balance.

(2) The board may by rule adjust the minimum account balance provided in this section as necessary to maintain reasonable administrative costs and to account for inflation."

Section 10. Implementation. (1) To implement the provisions of [section 1], the board shall establish a self-insured long-term disability plan through which the disability benefits must be paid.

(2) If the disability plan cannot be implemented as described in subsection (1), the board shall implement the provisions of [section 1] by contracting for long-term disability insurance that provides for the benefits described in [section 1].

Section 11. Loan for startup — repayment. To pay the startup costs for the defined contribution plan disability benefit established pursuant to [section 1], the public employees' retirement board may receive a long-term loan from the intercap revolving loan program adopted by the board of investments pursuant to 17-5-1605. The loan must be repaid with interest under terms and conditions determined by the board of investments.

Section 12. Two-thirds vote required. Because [section 11] authorizes the creation of a state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 13. Codification instruction. [Sections 1, 2, and 10] are intended to be codified as an integral part of Title 19, chapter 3, part 21, and the provisions of Title 19, chapter 3, part 21, apply to [sections 1, 2, and 10].

Section 14. Coordination instruction. (1) If Senate Bill No. 306 is passed and approved and if it includes language providing for a disability benefit equal to one-fiftieth of the member's final average salary multiplied by the member's years of total service credit, then [section 1(1) of this act] is amended to read:

"(1) (a) Except as provided in subsection(1)(b), a disabled member eligible under the provisions of this section is entitled to a disability benefit equal to one fifty-sixth of the member's final average salary, as defined in 19-3-108, multiplied by the member's years of service, including any service credit purchased under 19-3-513.

(b) An eligible member with at least 25 years of service credit is entitled to a disability benefit equal to one-fiftieth of the member's final average salary, as defined in 19-3-108, multiplied by the member's years of service credit, including any service credit purchased under 19-3-513."

(2) If House Bill No. 116 and [this act] are both passed and approved, then:

(a) [section 5 of this act], amending 19-3-2117, is amended to read:

"**19-3-2117. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Allocation of contributions and forfeitures.** (1) Each plan member's retirement account must be credited with the employee contributions made under 19-3-315.

(2) Subject to adjustment by the board as provided in 19-3-2121, beginning on the plan's effective date, of the employer contributions under 19-3-316, *an amount equal to*:

(a) ~~4.49%~~ *4.19%* of compensation must be allocated to the member's retirement account; ~~and~~

(b) ~~2.37%~~ *2.37%* of compensation must be allocated to the defined benefit plan as the plan choice rate*; and*

(c) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(c).

(3) *Subject to adjustment by the board pursuant to 19-3-2121(7) and beginning on the plan's effective date, of the employer contributions under 19-3-316, 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to [section 1].*

(4) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the ~~employer contributions obligation provided under subsection (2)(a) of this section in lieu of direct contributions by the employer and shall increase the contribution amount under subsection (2)(b) of this section by the amount of the forfeitures used in lieu of the employer contributions~~ *plan's administrative expenses, including startup expenses.*"

(b) [section 9 of this act], amending 19-3-2126, is amended to read:

"**19-3-2126. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) ~~Minimum~~ *Refunds — minimum* account balance**

required for membership after termination — adjustment by rule. (1) ~~(a) If a member's account balance is less than $5,000 at the time that the member terminates covered employment, the member shall terminate plan membership by removing the member's account balance from the plan in a manner provided pursuant to 19-3-2123.~~

~~(b) If the member fails to remove the member's account balance, the board may close the account by paying to the member a lump-sum distribution of the member's entire account balance.~~ *Before termination of service, a member may not receive a refund of any portion of the member's vested account.*

(2) Except as provided in [section 2], a nonvested member who terminates from service and whose vested account balance is less than $200 must be paid the vested account balance in a lump sum. The payment must be made as soon as administratively feasible after the member's termination without a written application from the member.

(3) Except as provided in [section 2], unless a written application is made pursuant to subsection (4)(a), a nonvested member who terminates from service and whose vested account balance is between $200 and $5,000 must be paid the vested account balance in a lump sum. The payment must be made as soon as administratively feasible after the member's termination.

(4) (a) Except as provided in [section 2], upon the written application of a terminating member whose vested account balance is $200 or more, the board shall make a direct rollover distribution pursuant to section 401(a)(31) of the Internal Revenue Code of the eligible portion of that balance. To receive the direct rollover distribution, the member is responsible for correctly designating, on forms provided by the board, a retirement plan that allows the rollover and is qualified under applicable federal law. The direct rollover distribution must be paid directly to the qualified retirement plan.

(b) Except as provided in [section 2], the amount of the member's vested account balance not eligible for a direct rollover distribution under subsection (4)(a) must be paid to the member in a lump sum.

~~(2)~~*(5)* The board may by rule adjust the minimum account balance provided in this section as necessary to maintain reasonable administrative costs and to account for inflation."

Section 15. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 16. Contingent voidness. If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void.

Section 17. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 1(1) through (5) and sections 2 through 9] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier.

Approved April 30, 2001

CHAPTER NO. 424

[HB 87]

AN ACT CREATING A ONE-STOP DELIVERY SYSTEM FOR ADMINISTERING THE SEPARATE WORKFORCE INVESTMENT, EDUCATIONAL, AND OTHER HUMAN RESOURCE PROGRAMS; PROVIDING FOR STATE AND LOCAL WORKFORCE INVESTMENT BOARDS TO PLAN, OPERATE, AND OVERSEE THE ONE-STOP DELIVERY SYSTEM; UPDATING THE STATE'S UNEMPLOYMENT INSURANCE LAWS BY SUBSTITUTING "WORKFORCE INVESTMENT ACT OF 1998" FOR CURRENT REFERENCES TO THE JOB TRAINING PARTNERSHIP ACT; AMENDING SECTION 39-51-2602, MCA; REPEALING SECTIONS 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, AND 53-2-1110, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings and intent. (1) The legislature finds and declares that:

(a) many Montanans need access to information and high quality services in order to manage their careers; and

(b) Montana businesses need skilled workers.

(2) It is the intent of the legislature to establish and continually improve a workforce development system that:

(a) streamlines services through better integration in a one-stop delivery system;

(b) empowers individuals to make informed decisions about their careers and career preparation;

(c) provides for universal access;

(d) calls for increased accountability through a series of performance indicators and consumer reports;

(e) focuses on promoting personal responsibility; and

(f) efficiently provides services to guarantee maximum impacts.

Section 2. Definitions. For the purposes of [sections 1 through 7], unless the context otherwise requires, the following definitions apply:

(1) "Act" means the federal Workforce Investment Act of 1998, Public Law 105-220 (29 U.S.C. 2801, et seq.).

(2) "Local board" means a local workforce investment board provided for in [section 4].

(3) "One-stop center" means one or more entities designated or certified under section 121(d) of the Act (29 U.S.C. 2841(d)).

(4) "One-stop delivery system" means a system under which entities responsible for administering separate workforce investment, educational, and other human resource programs and funding sources collaborate to create a seamless system of service delivery to enhance access to the programs' services and improve long-term employment outcomes for individuals receiving assistance.

(5) "State board" means the state workforce investment board provided for in [section 3].

(6) "Workforce investment area" means a local area designated by the governor in accordance with section 116 of the Act (29 U.S.C. 2831).

Section 3. State workforce investment board — membership — duties. (1) There is a state workforce investment board.

(2) The state board consists of:

(a) the governor or a person designated by the governor to act on behalf of the governor;

(b) two members of the house of representatives, each from a different political party, and two members of the senate, each from a different political party, appointed by the presiding officer of each respective chamber; and

(c) individuals appointed by the governor, including:

(i) representatives of businesses located in Montana who:

(A) are owners of businesses, chief executive or operating officers, and other business executives or employers with optimum policymaking or hiring authority, including business members of local boards; and

(B) represent businesses with employment opportunities that reflect the employment opportunities in Montana;

(ii) chief elected officials of local government;

(iii) representatives of labor organizations;

(iv) representatives of individuals and organizations who have experience with respect to youth activities;

(v) representatives of individuals and organizations who have experience and expertise in the delivery of workforce investment activities;

(vi) representatives of the state agencies who are responsible for the programs and activities that are carried out by the one-stop centers, including but not limited to:

(A) the department of commerce;

(B) the department of labor and industry;

(C) the department of public health and human services;

(D) the office of the commissioner of higher education; and

(E) the office of public instruction; and

(vii) other representatives that the governor may designate.

(3) The selection and appointment of members of the state board must follow the nominating provisions of section 111 of the Act (29 U.S.C. 2821).

(4) The governor shall appoint enough individuals described in subsection (2)(c)(i) so that those persons compose a majority of the membership of the state board.

(5) The governor shall consider the special needs of Montana's hard-to-serve Indian population and the state's relationship with tribal governments when making appointments to the state board.

(6) The state board shall perform the functions described in section 111 of the Act (29 U.S.C. 2821).

Section 4. Local workforce investment boards. (1) The chief elected official or officials in each workforce investment area shall establish a local board to plan and carry out the duties and responsibilities of the local board in each respective workforce investment area of the state.

(2) Selection of the local boards must be made using the criteria established by the governor and the state board. The membership of the local board must be in accordance with the requirements of section 117 of the Act (29 U.S.C. 2832).

(3) Each local board shall carry out the duties and responsibilities of a local board as provided in section 117 of the Act (29 U.S.C. 2832).

Section 5. Workforce investment program. (1) There is a workforce investment program to implement the provisions of Title I-B of the Act (29 U.S.C. 2801, et seq.), to operate the one-stop delivery system to adults, dislocated workers, and youth.

(2) The one-stop delivery system must be administered in accordance with a 5-year strategic statewide workforce investment plan that meets the requirements of section 112 of the Act (29 U.S.C. 2822). The strategic statewide plan must be created with the assistance of the state board.

(3) There must be a 5-year local workforce investment plan for each workforce investment area. The local plan must be created by the local board. The local plan must meet the requirements of the state plan and section 116 of the Act (29 U.S.C. 2831).

Section 6. Performance indicators. (1) The 5-year strategic statewide workforce investment plan must contain performance indicators to measure the effectiveness and operation of the programs identified in Title I-B of the Act (29 U.S.C. 2801, et seq.). The strategic statewide plan must contain the expectation of continuous improvement, as negotiated with the secretary of the U.S. department of labor, and conform to the requirements of section 112 of the Act (29 U.S.C. 2822).

(2) Each 5-year local workforce investment plan must include a description of the local levels of performance to be used to measure the performance of the local area and to be used by the local board for measuring the performance of the one-stop delivery system and the one-stop centers providing services in the local area. The local plan must include the performance accountability systems required by section 136 of the Act (29 U.S.C. 2871).

Section 7. Coordination of services. (1) The state board shall assist the governor in developing and continuously improving the statewide system of activities that are provided within the state workforce investment systems by:

(a) developing linkages in order to ensure coordination among the programs described in section 121(b) of the Act (29 U.S.C. 2841(b)); and

(b) reviewing local plans, which include a description of the one-stop delivery system to be established or designated in the local area.

(2) Local boards shall coordinate services provided to Indians with providers offering services pursuant to section 166 of the Act (29 U.S.C. 2911) and providers offering services pursuant to the Indian Employment, Training and Related Services Demonstration Act of 1992, Public Law 102-477 (25 U.S.C. 3401).

Section 8. Section 39-51-2602, MCA, is amended to read:

"**39-51-2602. Approved training under federal programs.** (1) Notwithstanding any other provisions of this chapter, an otherwise eligible individual may not be denied benefits for any week:

(a) because of participation in training approved under ~~Section~~ *section* 236(a)(1) of the federal Trade Act of 1974 (19 U.S.C. 2296) or under ~~Title III of the federal Job Training Partnership Act (29 U.S.C. 1501, et seq.)~~ *Title I-B of the Workforce Investment Act of 1998 (29 U.S.C. 2801, et seq.) when the individual is receiving Title I-B services as a dislocated worker*;

(b) because of participation in approved training described in subsection (1)(a) by reason of leaving work to enter the training if the work left is not suitable employment; or

(c) because of the application to any ~~such~~ week in training of *the* provisions in this chapter or any federal unemployment insurance law administered by this agency, relating to availability for work, active search for work, or refusal to accept work.

(2) For purposes of this section, "suitable employment" means work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal Trade Act of 1974 ~~and the federal Job Training Partnership Act~~, and for which the wages are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal Trade Act of 1974 ~~and the federal Job Training Partnership Act~~."

Section 9. Repealer. Sections 53-2-1101, 53-2-1102, 53-2-1103, 53-2-1104, 53-2-1105, 53-2-1106, 53-2-1107, 53-2-1108, 53-2-1109, and 53-2-1110, MCA, are repealed.

Section 10. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa, and the Montana United Indian Association.

Section 11. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 53, chapter 2, and the provisions of Title 53, chapter 2, apply to [sections 1 through 7].

Section 12. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 13. Effective date. [This act] is effective July 1, 2001.

Approved April 30, 2001

CHAPTER NO. 425

[HB 119]

AN ACT CLARIFYING THE AUTHORITY OF THE BOARD OF PARDONS AND PAROLE TO HAVE INITIAL APPEARANCES AND HEARINGS BEFORE THE BOARD'S DESIGNEE; AMENDING SECTIONS 46-23-104 AND 46-23-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-23-104, MCA, is amended to read:

"**46-23-104. Board of pardons and parole.** (1) The board of pardons and parole is responsible for executive clemency and parole as provided in this chapter.

(2) The board shall meet monthly, and at other times that the board considers necessary, at the state prison.

(3) The principal office of the board is in Deer Lodge.

(4) The board may designate one of its members, one of its staff members, or any other adult correctional releasing authority to conduct interviews relative to:

(a) parole eligibility;

(b) plans for release on parole; or

(c) revocation hearings.

(5) If the offense was committed prior to March 20, 1989, the board may not designate one of its staff members or any other adult correctional releasing authority to preside over an initial appearance or hearing under 46-23-202, and the initial appearance and hearing must be before at least one member of the board."

Section 2. Section 46-23-202, MCA, is amended to read:

"**46-23-202. Investigation of prisoner by board *or board's designee*.** (1) Within the 2 months prior to a prisoner's official parole eligibility date or as soon ~~thereafter~~ *after that date* as possible, the prisoner shall make an initial appearance before the board *or the board's designee as provided for in 46-23-104(4), except that if the offense was committed prior to March 20, 1989, the initial appearance must be before at least one member of the board*. The board shall consider all pertinent information regarding the prisoner, including:

(a) the circumstances of the offense;

(b) the prisoner's previous social history and criminal record;

(c) the prisoner's conduct, employment, and attitude in prison; and

(d) the reports of any physical and mental examinations that have been made.

(2) Before ~~ordering the parole of~~ a prisoner *may be paroled*, the board *or its designee* shall:

(a) conduct a hearing and interview the prisoner, *except that if the offense was committed prior to March 20, 1989, the hearing must be before at least one member of the board*. At the time of the hearing, the board *or its designee* must receive relevant statements from interested persons and any person may be represented by counsel~~;~~. ~~provided that the~~ *The* board has the power to regulate procedures at all hearings.

(b) permit a victim to present a statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's opinion regarding whether the prisoner should be paroled. In the board's discretion, the victim's statement may be kept confidential. The board shall consider the victim's statement, along with the information provided under subsection (1), in determining whether to grant parole."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 30, 2001

CHAPTER NO. 426

[HB 186]

AN ACT APPROPRIATING $50,000 FROM THE GENERAL LICENSE FUND OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR THE USDA-APHIS WILDLIFE SERVICES PROGRAM TO ASSIST WITH PREDATOR CONTROL IN MONTANA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, there is an ongoing and increasing need in Montana to control predators that prey on Montana wildlife and livestock; and

WHEREAS, additional funding will enhance the efforts of the USDA-APHIS wildlife services program to control predators and benefit the state's wildlife and livestock industry.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. There is appropriated $50,000 from the general license fund of the department of fish, wildlife, and parks for the department of fish, wildlife, and parks to conduct enhanced predator control in Montana for wildlife management purposes in cooperation with the department of livestock and the USDA-APHIS wildlife services program. This appropriation is to be biennial, restricted, and one time only and is supplemental to any other appropriation that the program might receive from other state sources.

Section 2. Effective date. [This act] is effective July 1, 2001.

Approved April 30, 2001

CHAPTER NO. 427

[HB 201]

AN ACT CREATING THE OFFENSE OF THEFT BY EMBEZZLEMENT; PROVIDING A PENALTY; AND AMENDING SECTION 45-6-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter 71 or 72, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) A person commits the offense of theft when the person purposely or knowingly commits insurance fraud as provided in 33-1-1202.

(7) A person commits the offense of theft of property by embezzlement when, with the purpose to deprive the owner of the property, the person:

(a) purposely or knowingly obtains or exerts unauthorized control over property of the person's employer or over property entrusted to the person; or

(b) purposely or knowingly obtains by deception control over property of the person's employer or over property entrusted to the person.

~~(7)~~*(8)* (a) A person convicted of the offense of theft of property not exceeding $1,000 in value shall be fined *an amount* not to exceed $1,000 or be imprisoned in the county jail for ~~any~~ *a* term not to exceed 6 months, or both. A person convicted of a second offense shall be fined $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) ~~A~~ *Except as provided in subsection (8)(c), a* person convicted of the offense of theft of property exceeding $1,000 in value or theft of any commonly domesticated hoofed animal shall be fined *an amount* not to exceed $50,000 or be imprisoned in ~~the~~ *a* state prison for ~~any~~ *a* term not to exceed 10 years, or both.

(c) A person convicted of the offense of theft of property exceeding $10,000 in value by embezzlement shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years and may be fined an amount not to exceed $50,000. The court may, in its discretion, place the person on probation with the

requirement that restitution be made under terms set by the court. If the terms are not met, the required prison term may be ordered.

~~(8)~~*(9)* Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Approved April 30, 2001

CHAPTER NO. 428

[HB 218]

AN ACT REGULATING AND LICENSING WATER HAULERS AS FOOD ESTABLISHMENTS; DEFINING "WATER HAULER"; REQUIRING WATER HAULERS TO OBTAIN WATER FROM PUBLIC WATER SUPPLY SYSTEMS OR APPROVED SOURCES; AMENDING SECTION 50-50-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-50-102, MCA, is amended to read:

"**50-50-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not potentially hazardous foods.

(2) (a) "Commercial establishment" means an establishment operated primarily for profit.

(b) The term does not include a farmer's market.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Establishment" means a food manufacturing establishment, meat market, food service establishment, food warehouse, frozen food plant, commercial food processor, ~~or~~ perishable food dealer, *or water hauler not regulated as a public water supply system as provided in Title 75, chapter 6.*

(5) "Farmer's market" means a farm premises, a roadside stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority.

(6) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(7) "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

(8) (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely

serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge.

(b) The term does not include establishments, vendors, or vending machines that sell or serve only packaged, nonperishable foods in their unbroken, original containers or a private organization serving food only to its members.

(c) The term does not include an establishment, as defined in 50-51-102, that serves food only to its registered guests.

(9) (a) "Food warehouse" means a commercial establishment and buildings or structures in connection with it used to store food, drugs, or cosmetics for distribution to retail outlets.

(b) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs.

(10) "Frozen food plant" means a place used to freeze, process, or store food, including facilities used in conjunction with the frozen food plant, and a place where individual compartments are offered to the public on a rental or other basis.

(11) "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, store, or display meat or meat products for sale to the public or for human consumption.

(12) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

(13) "Perishable food dealer" means a person or commercial establishment that is in the business of purchasing and selling perishable food to the public.

(14) "Person" means a person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment.

(15) (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable of supporting:

(i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

(ii) the growth and toxin production of Clostridium botulinum.

(b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

(c) The term does not include:

(i) an air-cooled, hard-boiled egg with intact shell;

(ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24º *degrees* C (75º *degrees* F);

(iii) a food with a water activity (aw) value of 0.85 or less;

(iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

(v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinum cannot occur.

(16) (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters, marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration (pH) of 4.6 or below when measured at 24º *degrees* C (75º *degrees* F) and that are aseptically processed, packaged, and sealed.

(b) The term does not include:

(i) tomatoes or food products containing tomatoes; or

(ii) any other food substrate or product preserved by any method other than that described in subsection (16)(a).

(17) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's market in their natural state that are not packaged and labeled and are not:

(a) cooked;

(b) canned;

(c) preserved, except for drying;

(d) combined with other food products; or

(e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

(18) "Water hauler" means a person engaged in the business of transporting water for human consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter 6. The term does not include a person engaged in the business of transporting water for human consumption that is used for individual family households and family farms and ranches."

Section 2. Water hauler requirements. As a requirement for licensure, a water hauler may obtain potable water only from an approved public water supply system, as defined in 75-6-102, or from sources approved and adopted by the department by rule.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 50, chapter 50, part 2, and the provisions of Title 50, chapter 50, part 2, apply to [section 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 30, 2001

CHAPTER NO. 429

[HB 239]

AN ACT PROVIDING FOR ACCESS TO INFORMATION TECHNOLOGY FOR INDIVIDUALS WHO ARE BLIND OR VISUALLY IMPAIRED THROUGH THE PURCHASE OF TECHNOLOGY IN ACCORDANCE WITH STANDARDS FOR EQUIVALENT ACCESS BY BOTH VISUAL AND NONVISUAL MEANS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Findings — policy. (1) The legislature finds that:

(a) the advent of the information age throughout the United States and around the world has resulted in lasting changes in information technology;

(b) the use of interactive visual display terminals by the state is becoming a widespread means of access for public employees and the public to obtain information available electronically, but nonvisual access, whether by speech, Braille, or other appropriate means, has not been systematically incorporated into the procurement process for new information technology;

(c) presentation of electronic data solely in a visual format is a barrier to access by individuals who are blind or visually impaired, preventing them from participating on equal terms in crucial areas of life, such as education and employment;

(d) alternatives, including both software and hardware adaptations, have been created so that interactive control of computers and the use of the information presented are possible by both visual and nonvisual means;

(e) the goals of the state in obtaining and deploying new forms of technology properly include universal access so that segments of society with particular needs, including individuals who are unable to use visual displays, will not be left out of the information age; and

(f) although access to programs, technology, and information is provided for under other state and federal law and, in many instances, compels the installation and availability of nonvisual technology adaptations, access to information technology is most effectively accomplished at the point of procurement, ensuring that funds are expended on information technology designed to be readily adaptable for nonvisual access.

(2) It is the policy of this state that all state programs and activities be conducted in accordance with the following principles:

(a) Individuals who are blind or visually impaired have the right to full participation in the life of the state, including the use of information technology that is provided by the state for use by employees, program participants, and the public.

(b) Technology purchased in whole or in part with funds provided by the state that is to be used for the creation, storage, retrieval, or dissemination of information and that is intended for use by employees, program participants, and the public must be accessible to and usable by individuals who are blind or visually impaired.

Section 2. Definitions. As used in [sections 1 through 5], unless the context requires otherwise, the following definitions apply:

(1) "Access" means the ability to receive, use, and manipulate data and operate controls included in information technology.

(2) "Blind or visually impaired" means an individual who has:

(a) a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision so that the widest diameter of the visual field subtends an angle no greater than 20 degrees;

(b) a medically indicated expectation of visual deterioration; or

(c) a medically diagnosed limitation in visual functioning that restricts the individual's ability to read and write standard print at levels expected of individuals of comparable ability.

(3) "Information technology" means all electronic information processing hardware and software, including telecommunications.

(4) "Nonvisual" means synthesized speech, Braille, and other output methods not requiring sight.

(5) "Readily adaptable" means that all critical components of information may be rendered by the information technology in equivalent nonvisual formats and that the installation or operation of software or hardware adaptations for speech, Braille, or other nonvisual formats do not require extraordinary alterations to the information technology.

(6) "State agency" means a department, board, commission, office, bureau, institution, university system entity, or unit of state government recognized in the state budget.

(7) "Telecommunications" means the transmission of information, images, pictures, voice, or data by radio, video, or other electronic or impulse means.

(8) "Undue burden" means compliance may be accomplished only by incurring an undue financial or administrative burden or by fundamentally altering a program or activity.

Section 3. Assurance of nonvisual access. When information technology equipment and software are procured for use by employees, program participants, or members of the public, the state agency head shall ensure that the equipment or software:

(1) provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired;

(2) is designed to present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; and

(3) has been purchased under a contract that includes the technology access clause required by [section 4].

Section 4. Procurement requirements. (1) The technology access clause, referred to in [section 3(3)], must be developed by the department of administration and must require compliance with nonvisual access standards developed by the state. The access clause and the nondiscrimination language required in 49-3-207 must be inserted in all contracts for the procurement of information technology by, or for the use of, state agencies.

(2) The nonvisual access standards developed pursuant to subsection (1) must include specifications that are necessary to fulfill the assurances contained in [section 3] and must include the following minimum specifications:

(a) Effective, interactive control and use of the technology, including the operating system, applications programs, and format of the data presented, are readily adaptable to nonvisual means.

(b) The technology equipped for nonvisual access must be compatible with information technology used by other individuals with whom the blind or visually impaired individual may interact or exchange electronic information.

(c) Nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public.

(d) The technology for nonvisual access must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Section 5. Implementation. (1) For the purposes of ensuring the effective phasing in of nonvisual access technology procurement, the head of any state agency may not approve exclusion of the technology access clause required by [section 4] from any contract with respect to the compatibility of standard operating systems and software with nonvisual access software and peripheral devices or with respect to the initial design, development, and installation of information systems, including the design and procurement of interactive equipment and software.

(2) This section does not require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

(3) Notwithstanding subsection (2), the applications programs and underlying operating systems, including the format of the data, used for the manipulation and presentation of information must permit the installation and effective use of nonvisual access software and peripheral devices.

(4) Compliance with [sections 1 through 5] with regard to information technology purchased prior to [the effective date of this act] must be achieved at the time of procurement of an upgrade or replacement of existing equipment or software.

(5) Until July 1, 2003, a state agency may be exempted from the requirements of [section 4] if the cost would cause the state agency's budget to exceed legislative appropriations.

(6) A state agency may be exempted from the provisions of [sections 1 through 5] if the state agency makes a good faith determination that compliance would result in an undue burden.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 18, chapter 5, and the provisions of Title 18, chapter 5, apply to [sections 1 through 5].

Section 7. Effective date. [This act] is effective July 1, 2001.

Approved April 30, 2001

CHAPTER NO. 430

[HB 564]

AN ACT REVISING THE UNIVERSAL SERVICE TELECOMMUNICATIONS LAWS; REQUIRING THE PUBLIC SERVICE COMMISSION UPON PETITION OR ITS OWN MOTION TO INVESTIGATE THE NEED FOR A UNIVERSAL SERVICE FUND; PROVIDING THE COMMISSION WITH THE AUTHORITY TO ESTABLISH A UNIVERSAL SERVICE FUND; PROVIDING THE COMMISSION WITH THE AUTHORITY TO ADOPT RULES FOR THE

ADMINISTRATION OF THE UNIVERSAL SERVICE FUND; PROVIDING FOR THE COLLECTION OF CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND ON A QUARTERLY RATHER THAN A MONTHLY BASIS; CLARIFYING THE METHODOLOGY FOR CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND; CLARIFYING THE PAYMENT PROCESS FROM THE UNIVERSAL SERVICE FUND; AMENDING SECTIONS 69-3-842, 69-3-843, 69-3-844, AND 69-3-845, MCA; REPEALING SECTION 41, CHAPTER 349, LAWS OF 1997, AND SECTION 6, CHAPTER 187, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-842, MCA, is amended to read:

"**69-3-842.** ~~**(Temporary)**~~ **Universal service fund established — purpose.** (1) ~~Pursuant to a determination of need, the commission shall establish and administer~~ *Upon petition for good cause by a telecommunications carrier or the consumer counsel or on the commission's own motion, the commission shall investigate the need for* a fund to assist eligible telecommunications carriers in providing affordable telecommunications services in high-cost areas. *This investigation must take into account the evolving nature of universal service as well as changes in federal and state telecommunications support systems, including but not limited to universal service funds and access reform.*

(2) If the commission determines that a state universal service fund is necessary to promote the policies in 69-3-841 and is consistent with the public interest, the commission shall establish a state universal service fund. The fund must provide support for the following services:

(a) voice grade access to the public switched network, including some usage;

(b) dual-tone multifrequency (DTMF or "touch tone") signaling or its equivalent;

(c) single-party service;

(d) access to emergency services, including access to 9-1-1, where available, and access to enhanced 9-1-1 when requested by a telecommunications carrier's local community and when the telecommunications carrier has technical capacity to provide it;

(e) access to operator services;

(f) access to interexchange services; and

(g) access to directory assistance.

~~(2)~~*(3)* The fund must support only access to the services listed in subsections ~~(1)(d)~~ *(2)(d)* through ~~(1)(g)~~ *(2)(g)* and not support the services themselves.

~~(3)~~*(4)* The fund must be administered to ensure that its operation is competitively and technologically neutral.

(5) For the purposes of this section, "interexchange services" means telecommunications long-distance services. ~~(Terminates December 31, 2001—sec. 6, Ch. 187, L. 1999.)~~"

Section 2. Section 69-3-843. MCA. is amended to read:

"69-3-843. ~~(Temporary)~~ Fund administrator — *commission rulemaking authority.* (1) A fiscal agent and daily administrator must be selected *by the commission* to receive and distribute funds under 69-3-841, 69-3-842, 69-3-844, 69-3-845, and this section.

(2) The fiscal agent must be selected by the commission based upon a competitive bidding process after an opportunity for public comment on the specific qualifications required of the fiscal agent. A telecommunications carrier is not eligible to be the fiscal agent. The duties of the fiscal agent must be determined by a contract consistent with 69-3-841, 69-3-842, 69-3-844, 69-3-845, and this section. The contract term of the fiscal agent ~~must expire December 31, 2001~~ *may not be for a period greater than 3 years.*

(3) The *commission may adopt rules for the administration of the fund.* ~~fiscal agent shall provide monthly reports of fund activities to the commission and shall provide audits annually by a certified public accountant in a manner determined by and under the direction of the commission.~~

~~(4) The fund financial accounts of the fiscal agent must be available at reasonable times to any telecommunications carrier in the state and to the public. The commission may investigate the accounts and practices of the fiscal agent and enter orders concerning the accounts and practices.(Terminates December 31, 2001—sec. 6, Ch. 187, L. 1999.)~~"

Section 3. Section 69-3-844, MCA, is amended to read:

"69-3-844. ~~(Temporary)~~ Contributions to fund. (1) The fiscal agent shall collect contributions from all telecommunications carriers on a ~~monthly~~ *quarterly* basis, based on a ~~July 1 to June 30 fiscal~~ *January 1 to December 31 calendar* year. *Those contributions must be determined on a percentage of total intrastate retail revenue for all telecommunications carriers registered in the state. If the high-cost mechanisms of the federal universal service program are eliminated, contributions must be determined on a percentage of total intrastate and interstate retail revenue for all telecommunications carriers registered in the state.* ~~Initial contributions to the fund may only be collected for the 2-month period prior to the effective date of distributions from the fund and must be calculated as follows:~~

~~(a) determine the total retail revenue for all telecommunications carriers for the immediately preceding calendar year;~~

~~(b) determine the total funds needed for distributions in the next fiscal year as authorized pursuant to 69-3-845;~~

~~(c) compute a uniform percentage of the amount determined in subsection (1)(a) that will produce an amount equal to the fund total calculated in subsection (1)(b);~~

~~(d) adjust the percentage multiplier computed in subsection (1)(c) to recover or reimburse any fund shortfalls or excesses in the previous fiscal year, including uncollectibles, new providers seeking support, cost of administration, and auditing; and~~

~~(e) send notice of the current uniform percentage and appropriate remittance forms to each telecommunications carrier at least 2 months prior to the effective date of the application of the percentage.~~

(2) The commission shall adopt ~~procedural~~ rules to govern collection of the contributions required by this section, as well as rules allowing the fiscal agent

and daily administrator to assess late fees and interest on delinquent payments from telecommunications carriers. The fiscal agent is specifically authorized to enforce the contribution requirements of this section through suit in the district courts of Montana, *and the prevailing party in an action is entitled to the recovery of costs and attorney fees incurred in that action.*

(3) Any funds received by an eligible telecommunications carrier from the state high-cost fund must be used for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

~~(3)~~*(4)* Any reduction in telecommunications carrier access expenses because of the removal of implicit subsidies inherent in telecommunications carrier access rates must be passed through to Montana end-user customer retail rates.~~(Terminates December 31, 2001—sec. 6, Ch. 187, L. 1999.)~~"

Section 4. Section 69-3-845, MCA, is amended to read:

"**69-3-845.** ~~**(Temporary) Distributions**~~ ***Payments*** **from fund —** ~~**calculation of**~~ **costs.** (1) ~~Subject to the requirements of this section, payments~~ *Payments* from the fund must be made from collected contributions by the fiscal agent to qualifying eligible telecommunications carriers, on a ~~monthly~~ *quarterly* basis, pursuant to rules adopted by the commission.

(2) Only eligible telecommunications carriers that offer the telecommunications services described in ~~69-3-842(1)~~ *69-3-842(2)* to all customers in a designated support area and that advertise the availability of the telecommunications services and the charges for the telecommunications services using media of general distribution may receive support from the fund for the designated support area.

~~(3) Distributions must be calculated for the designated support areas established by the commission. In the case of an area served by a rural telephone company, the term "designated support area" means the rural telephone company's Montana service area unless the rural telephone company voluntarily adopts a proxy model for the calculation of the rural telephone company's cost of telecommunications services under subsection (6). After adoption of a proxy model, the rural telephone company's designated support area must be an area designated by the commission, which may be smaller than a wire center. The term designated support area for all other telecommunications carriers means a geographic area as established by the commission, which must be smaller than a wire center.~~

~~(4) Support for the services listed in 69-3-842(1) must be calculated as the difference between the costs determined in each designated support area and the affordability benchmark in that support area. The commission shall adopt rules to determine affordability benchmarks.~~

~~(5) Except as provided in subsection (6), for rural telephone companies and other eligible telecommunications carriers offering services in a designated support area served by a rural telephone company, the average cost for each line must be calculated and submitted, based on the preceding calendar year, to the fiscal agent as follows:~~

~~(a) If an additional eligible telecommunications carrier has not been designated pursuant to 69-3-840(3), the rural telephone company's total unseparated loop cost, as defined by federal separation rule methodology in effect on December 31, 1996, must be added to the switching costs, local transport costs,~~

~~and customer operations costs assigned to the telecommunications services set forth in 69-3-842(1), which must be calculated using the methodology set forth in federal communications commission jurisdictional separation rules in effect as of December 31 of each calendar year. This total cost must be reduced by any federal universal service support, interstate allocation of loop costs, and loop costs recovered through intrastate telecommunications carrier common line charges to long-distance companies.~~

~~(b) Upon the designation of an additional eligible telecommunications carrier pursuant to 69-3-840(3) in a designated support area served by a rural telephone company, the additional eligible telecommunications carrier has access to the fund on the same basis as the rural telephone company. Upon the designation of the additional eligible telecommunications carrier, both the carrier and the rural telephone company must receive distributions from the fund based upon the rural telephone company's average cost for each line disaggregated to geographic areas smaller than a wire center. The support for each line for each geographic area must be based upon the rural telephone company's costs, as determined in subsection (5)(a), distributed to each of the geographic areas on the basis of relative distribution factors established by a cost proxy model adopted by the commission.~~

~~(6) Except as provided in subsection (5)(b), for companies that are not rural telephone companies and for rural telephone companies voluntarily electing to use a cost proxy model, the average cost for each line in designated support areas must be calculated based on the cost proxy model adopted by the commission. This total per-line cost must be reduced by any federal universal service support, interstate allocation of loop costs, and loop costs recovered through intrastate telecommunications carrier common line charges to long-distance companies.~~

~~(7) In determining any proxy mechanism under this section, the commission shall use a model that:~~

~~(a) targets support to a geographic area smaller than a wire center;~~

~~(b) uses acceptable outside plant design and costing principles;~~

~~(c) uses reasonable switch design and costing principles;~~

~~(d) includes a reasonable share of the joint and common costs of the telecommunications carrier;~~

~~(e) meets standards for documenting model logic and the sources of cost data input; and~~

~~(f) meets reasonableness tests to ensure that model outputs are representative of costs that can be reasonably expected in the construction of a network and that the network is capable of providing telecommunications services that meet the telecommunications services quality standards of the commission and federal regulators.~~

~~(8)~~*(3)* An eligible telecommunications carrier providing telecommunications services through resale of another telecommunications carrier's telecommunications services or facilities may not receive support for those telecommunications services or facilities if the rates charged to an eligible telecommunications carrier by the other telecommunications carrier have been reduced by a contribution from universal service funds under this section.

~~(9)~~*(4)* Costs of administering the fund must be paid from the fund. ~~(Terminates December 31, 2001--sec. 6, Ch. 187, L. 1999.)~~"

Section 5. Repealer. Section 41, Chapter 349, Laws of 1997, and section 6, Chapter 187, Laws of 1999, are repealed.

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 30, 2001

CHAPTER NO. 431

[HB 368]

AN ACT CLARIFYING THAT THE RESEARCH AND COMMERCIALIZATION EXPENDABLE TRUST MAY BE USED FOR GRANTS FOR PRODUCTION AGRICULTURE RESEARCH AND COMMERCIALIZATION PROJECTS; AMENDING SECTIONS 90-3-1002 AND 90-3-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-3-1002, MCA, is amended to read:

"**90-3-1002. Research and commercialization expendable trust.** (1) There is a research and commercialization expendable trust fund within the state treasury. The purpose of the fund is to establish a permanent source of funding for research and commercialization projects to be conducted at research and commercialization centers in the state.

(2) The research and commercialization expendable trust fund must be invested by the board of investments. Earnings on the expendable trust fund must be deposited in the fund for distribution pursuant to 90-3-1003(3), *(4),* and ~~(5)~~ *(7).*"

Section 2. Section 90-3-1003, MCA, is amended to read:

"**90-3-1003. Research and commercialization expendable trust — use.** (1) The research and commercialization expendable trust fund provided for in 90-3-1002 is statutorily appropriated, as provided in 17-7-502, to the board of research and commercialization technology, provided for in 2-15-1819, for the purposes provided in this section.

(2) The establishment of the expendable trust fund in 90-3-1002 is intended to enhance the economic growth opportunities for Montana and constitute a public purpose.

(3) The expendable trust fund may be used only for*:*

(a) loans *that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana;*

(b) grants that are to be used for production agriculture research and commercialization projects to be conducted at research and commercialization centers located in Montana; or ~~for~~

(c) matching funds for grants from nonstate sources that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana.

(4) At least 20% of the ~~investments made~~ *trust funds approved for research and commercialization projects* must be directed toward projects that enhance

production agriculture. ~~An amount allocated for matching funds must be matched by at least a 1-to-1 ratio.~~

(5) An applicant for a grant shall provide matching funds from nonstate sources equal to 25% of total project costs. The requirement to provide matching funds is a qualifier, but not a criterion, for approval of a grant.

~~(4)~~*(6)* The board shall establish policies, procedures, and criteria that achieve the objectives in ~~their~~ *its* research and commercialization strategic plan for the awarding of grants and loans. The criteria must include:

(a) the project's potential to diversify or add value to a traditional basic industry of the state's economy;

(b) whether the project shows promise for enhancing technology-based sectors of Montana's economy or promise for commercial development of discoveries;

(c) whether the project employs or otherwise takes advantage of existing research and commercialization strengths within the state's public university and private research establishment;

(d) whether the project involves a realistic and achievable research project design;

(e) whether the project develops or employs an innovative technology;

(f) verification that the project activity is located within the state;

(g) whether the project's research team possesses sufficient expertise in the appropriate technology area to complete the research objective of the project;

(h) verification that the project was awarded based on its scientific merits, following review by a recognized federal agency, philanthropic foundation, or other private funding source; and

(i) whether the project includes research opportunities for students.

~~(5)~~*(7)* The board shall direct the state treasurer to distribute funds for approved projects. Unallocated interest and earnings from the expendable trust fund must be retained in the fund. Repayments of loans and any agreements authorizing the board to take a financial right to licensing or royalty fees paid in connection with the transfer of technology from a research and commercialization center to another nonstate organization or ownership of corporate stock in a private sector organization must be deposited in the fund.

~~(6)~~*(8)* The board shall refer grant applications to external peer review groups. The board shall compile a list of persons willing to serve on peer review groups for purposes of this section. The peer review group shall review the application and make a recommendation to the board as to whether the application for a grant should be approved. The board shall review the recommendation of the peer review group and either approve or deny a grant application.

~~(7)~~*(9)* The board shall identify whether a grant or loan is to be used for basic research, applied research, or some combination of both. For the purposes of this section, "applied research" means research that is conducted to attain a specific benefit or solve a practical problem and "basic research" means research that is conducted to uncover the basic function or mechanism of a scientific question."

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 30, 2001

CHAPTER NO. 432

[HB 401]

AN ACT CREATING THE RAILROAD VANDALISM PREVENTION ACT; ESTABLISHING THE OFFENSES OF STOWING AWAY ON RAILROAD PROPERTY, INTENTIONAL VANDALISM TO RAILROAD PROPERTY, THEFT OF RAILROAD FREIGHT, AND RECEIVING STOLEN RAILROAD FREIGHT; ESTABLISHING PENALTIES FOR THE OFFENSES; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 6] may be cited as the "Railroad Vandalism Prevention Act".

Section 2. Purpose. The purpose of [sections 1 through 6] is to:

(1) better inform the public of current widespread vandalism that takes place on railroad property and the cost of that vandalism that must ultimately be borne by shippers;

(2) prevent accidents and injuries to persons who enter railroad property;

(3) prevent acts of vandalism to railroad property that affect the health, safety, and welfare of the traveling public, the neighboring community, and railroad employees;

(4) protect railroad property and freight in transit; and

(5) otherwise enhance the safety of transportation by railroad.

Section 3. Definitions. As used in [sections 1 through 6], the following definitions apply:

(1) "Bodily injury" means:

(a) a cut, abrasion, bruise, burn, or disfigurement;

(b) physical pain;

(c) illness;

(d) impairment of the function of or loss of a bodily member, organ, or mental faculty; or

(e) any other injury to the body, no matter how temporary.

(2) "Enter railroad property" includes but is not limited to performing vandalism or other unlawful activity on railroad property.

(3) (a) "Railroad" means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways.

(b) Railroad does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(4) "Railroad carrier" means an entity that provides rail transportation.

(5) (a) "Railroad property" means all tangible real and personal property owned, leased, or operated by a railroad carrier including a right-of-way, track, bridge, yard, shop, station, tunnel, viaduct, trestle, depot, warehouse, terminal, railroad signal system, train control system, centralized dispatching system, or any other structure, appurtenance, or equipment owned, leased, or used in the operation of any railroad carrier, including a train, locomotive, engine, railroad car, work equipment, rolling stock, or safety device.

(b) Railroad property does not include a railroad carrier's administrative buildings or offices, office equipment, or intangible property such as computer software or other information.

(6) "Right-of-way" means the track or roadbed owned, leased, or operated by a railroad carrier that is located on either side of its tracks and that is readily recognizable to a reasonable person as being railroad property or is reasonably identified as railroad property by fencing or appropriate signs.

(7) "Serious bodily injury" means bodily injury that involves:

(a) a substantial risk of death;

(b) extreme physical pain;

(c) protracted and obvious disfigurement; or

(d) protracted impairment of the function of or loss of a bodily member, organ, or mental faculty.

(8) "Vandalism to railroad property" means committing an act that may cause damage to railroad property or bodily injury to another person. This includes but is not limited to:

(a) taking, removing, defacing, altering, marking with graffiti, or otherwise marking a railroad sign, placard, or marker;

(b) throwing a rock, baseball, or other dangerous object at a locomotive, railroad car, or train;

(c) dropping a brick or other dangerous object from a bridge or other overpass onto a railroad right-of-way;

(d) shooting a firearm or other dangerous weapon at a locomotive, railroad car, or train;

(e) removing appurtenances from, damaging, or otherwise impairing the operation of any railroad signal system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal on a railroad owned, leased, or operated by a railroad carrier, without consent of the railroad carrier;

(f) interfering or tampering with or obstructing in any way any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure, or appliance pertaining to or connected with any railroad carrier, without consent of the railroad carrier; or

(g) taking, stealing, removing, changing, adding to, altering, or in any manner interfering with any journal bearing, brass, waste, packing, triple valve, pressure cock, brake, air hose, or any other part of the operating mechanism of any locomotive, engine, tender, coach, car, caboose, or motor car used or capable of being used by any railroad carrier, without the consent of the railroad carrier.

(9) "Yard" means a system of parallel tracks, crossovers, and switches where railroad cars are switched and made up into trains and where railroad cars, locomotives, and other rolling stock are kept when not in use or when awaiting repairs.

Section 4. Stowing away on railroad property. (1) A person commits the offense of stowing away on railroad property if the person knowingly and without lawful authority or consent is on, occupies, or rides on the outside of a train or on the inside of a passenger car, locomotive, or freight car, including a boxcar, flatbed, or container car.

(2) A person convicted of the offense of stowing away on railroad property shall be fined an amount not to exceed $1,000 or be incarcerated in the county jail for a term not to exceed 6 months, or both.

Section 5. Intentional vandalism to railroad property. (1) A person commits the offense of intentional vandalism to railroad property if the person knowingly or purposely vandalizes railroad property.

(2) A person convicted of intentional vandalism to railroad property must be ordered to make restitution to the railroad carrier in the amount of the cost to repair any railroad property damaged, the cost of any train or shipment delay, and the cost of any accident or damage resulting from the vandalism.

(3) (a) A person convicted of the offense of intentional vandalism to railroad property in which the damage to railroad property does not exceed $500 and in which there is no bodily injury to another person as a result of the offender's actions shall be fined an amount not to exceed $10,000 or be incarcerated for a term not to exceed 10 years, or both.

(b) A person convicted of the offense of intentional vandalism to railroad property in which the damage to railroad property exceeds $500 or in which there is bodily injury to another person as a result of the offender's actions shall be fined an amount not to exceed $20,000 or be incarcerated for a term not to exceed 20 years, or both.

(c) A person convicted of the offense of intentional vandalism to railroad property that results in serious bodily injury to another person as a result of the offender's actions shall be fined an amount not to exceed $25,000 or be incarcerated in a state prison for any term of years or for life, or both, except as provided in 46-18-219 and 46-18-222.

(d) A person convicted of the offense of intentional vandalism to railroad property that results in the death of another person as a result of the offender's actions shall be fined an amount not to exceed $100,000 or be incarcerated in a state prison for any term of years or for life, or both, except as provided in 46-18-219 and 46-18-222.

Section 6. Theft of railroad freight — receiving stolen railroad freight. (1) A person commits the offense of theft of railroad freight if the person takes railroad freight by theft, as established in 45-6-301(1).

(2) A person commits the offense of receiving stolen railroad freight if the person obtains stolen railroad freight by theft, as established in 45-6-301(3).

(3) A person convicted of the offense of theft of railroad freight or the offense of receiving stolen railroad freight shall be fined an amount not to exceed $5,000 or be incarcerated for a term not to exceed 5 years, or both.

Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 69, chapter 14, and the provisions of Title 69, chapter 14, apply to [sections 1 through 6].

Section 8. Termination. [This act] terminates April 30, 2003.

Approved April 30, 2001

CHAPTER NO. 433

[HB 455]

AN ACT AUTHORIZING A TEMPORARY CHANGE OF APPROPRIATION RIGHT FOR INSTREAM FLOW FOR UP TO 30 YEARS UNDER CERTAIN CONDITIONS; AMENDING SECTION 85-2-407, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-407, MCA, is amended to read:

"85-2-407. Temporary changes in appropriation right. (1) An appropriator may not make a temporary change in appropriation right for the appropriator's use or another's use except with department approval in accordance with 85-2-402 and this section.

(2) ~~A~~ *Except as provided in subsection (9), a* temporary change in appropriation right may be approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.

(3) ~~An~~ *An* authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. Renewal of an authorization for a temporary change in appropriation right requires application to the department by the appropriator. Upon application, the department shall notify other appropriators potentially affected by the renewal and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(4) (a) During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(b) An appropriator, other than an appropriator identified in subsection (7), may object:

(i) during the initial temporary change application process;

(ii) during the temporary change renewal process; and

(iii) once during the term of the temporary change permit.

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.

(7) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a temporary change in appropriation right under this section may not object to the exercise of the temporary change according to its terms, the renewal of the authorization for the temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage. Persons described in this subsection must be notified of the existence of any temporary change authorizations from the same source of supply.

(8) If a water right for which a temporary change has been approved is transferred as an appurtenance of real property, the temporary change remains in effect unless another change in appropriation right is authorized by the department.

(9) If the quantity of water that is subject to a temporary change is made available from the development of a new water conservation or storage project, a temporary change in appropriation right pursuant to 85-2-408 may be approved for a period equal to the expected life of the project, not to exceed 30 years."

Section 2. Effective date. [This act] is effective July 1, 2001.

Section 3. Termination. [This act] terminates June 30, 2005.

Approved April 30, 2001

CHAPTER NO. 434

[HB 9]

AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECT GRANT AWARDS; APPROPRIATING GENERAL FUND AND OTHER MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation of cultural and aesthetic grant funds — priority of disbursement. (1) The Montana arts council shall award grants for projects authorized by and limited to the amounts appropriated by [section 2] and this section. Money must be disbursed in priority order, first to projects covered under subsection (3) and second to the projects listed in [section 2].

(2) The Montana arts council shall disburse money to projects authorized by [section 2] through grant contracts between the Montana arts council and the grant recipient.

(3) There is appropriated from the cultural and aesthetic projects account to the Montana historical society $15,000 for the biennium ending July 1, 2003, for care and conservation of capitol complex artwork. This appropriation is recommended to be repeated for one additional biennium and also to be reviewed

in fiscal year 2003 to determine if it should continue in the 2005 biennium and future bienniums.

Section 2. Appropriation of general fund and cultural and aesthetic grant funds. (1) There is appropriated $300,000 of general fund money in fiscal year 2002 and $223,575 of general fund money in fiscal year 2003 to the Montana arts council for the projects approved in this section. The general fund appropriation is a continuing appropriation for the biennium.

(2) The following projects are approved and amounts are appropriated to the Montana arts council for the biennium ending June 30, 2003, from the cultural and aesthetic projects account first and the general fund last:

(a) Category 1 - Special Projects $4,500 or Less:

Grantee	Amount
Montana Storytelling Roundup	$4,500
Council for the Arts, Lincoln	2,500
Miles City Preservation Commission	4,000
Montana Oral History Association	4,000
All Nations Pishkun Association	3,000
Swan Ecosystem Center	2,800

(b) Category 2 - Special Projects:

Montana Committee for the Humanities	32,000
VIAS, Inc.	22,000
Glacier Orchestra & Chorale	22,000
MCT, Missoula Children's Theatre	10,000
KUFM-TV	11,000
Bozeman Symphony	10,000
Hockaday Museum of Art	15,000
Miles Community College	6,000
Valley County Coalition	12,000
Montana Repertory Theatre	20,000
Missoula Symphony Association	5,000
Montana Arts	20,000
Montana Historical Society	20,000
Montana Performing Arts Consortium	20,000
Rocky Mountain Ballet Theater	7,000
Lewistown Art Center	8,000
Museum of the Rockies	10,000
Southwest Montana Arts Council	10,000
Montana Alliance for Arts Education	10,000
VSA of Montana	7,000

Madison Valley Cultural Corp.	4,000
Artslink, College of Arts & Architecture, MSU	5,000
Mineral Museum	5,000
(c) Category 3 - Operational Support:	
Western Heritage Center	14,000
Montana Art Gallery Directors Association	25,000
Writer's Voice (Billings YMCA)	25,000
Custer County Art Center	22,000
Carbon County Historical Society	16,000
Art Museum of Missoula	20,000
Shakespeare in the Parks	18,000
Billings Symphony Society	20,000
Alberta Bair Theater	18,000
Montana Dance Arts Association	5,000
Great Falls Symphony Association	12,000
Butte Center for the Performing Arts	20,000
Fort Peck Community College	15,000
Schoolhouse History and Art Center	20,000
Young Audiences of Western Montana	10,000
Holter Museum of Art	10,000
Montana Agricultural Center & Museum	12,000
Archie Bray Foundation	15,000
Butte Symphony Association	15,000
Growth Thru Art Inc.	20,000
Vigilante Theatre Company	18,000
Helena Symphony Association	12,000
Big Horn Arts & Crafts Assoc./Jailhouse Gallery	10,000
Montana Association of Symphony Orchestras	15,000
Montana Transport Company	12,000
Yellowstone Art Museum	20,000
Whitefish Theatre Company	10,000
Montana Ballet Company	10,000
Livingston Depot Foundation	15,000
Yellowstone Ballet Company	6,000
Artist Group, The	1,600
(d) Category 4 - Capital Expenditures:	
Cascade County Historical Society	20,000

Billings Preservation Society	20,000
Butte-Silver Bow Public Archives	20,000
Belt Public Library	16,500
Arlee Historical Society	1,655
Fort Peck Fine Arts Council	16,000
Daly Mansion	20,000
Paris Gibson Square	5,000
Liberty Village Arts Center	2,775
Tobacco Valley Improvement Assoc. Board of Art	18,000
Bitterroot Community Band	6,000
Great Falls Civic Center	6,800

Section 3. Reversion of granted money. On July 1, 2003, the unencumbered balance of the 2003 biennium grants revert to the cultural and aesthetic projects account provided for in 15-35-108 and the unencumbered balance of the general fund reverts to the general fund.

Section 4. Reduction of grants. Except as provided in [section 1(3)], if money in the cultural and aesthetic projects account is insufficient to fund projects at the appropriation levels contained in [section 2], reductions to all projects will be made on a pro rata basis.

Section 5. Effective date. [This act] is effective July 1, 2001.

Approved April 30, 2001

CHAPTER NO. 435

[HB 11]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS UNDER THE TREASURE STATE ENDOWMENT PROGRAM AND TO REGIONAL WATER AUTHORITIES FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT SPECIAL REVENUE ACCOUNT AND FUNDS FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; AMENDING SECTION 90-6-715, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations from treasure state endowment special revenue account. (1) There is appropriated to the department of commerce the interest earnings of the treasure state endowment special revenue account to finance grants authorized by this section.

(2) The funds appropriated in this section must be used by the department to make grants to the governmental entities listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The appropriations are subject to the conditions set forth in [sections 1 through 3] and described in the treasure state endowment program 2003 biennium report to the 57th legislature. The legislature, pursuant to 90-6-710, authorizes the grants for the projects listed in subsection (3). The department shall commit funds to projects listed in subsection (3), up to the amounts authorized, based on the manner of disbursement set forth in [section 3] until interest earnings deposited into the treasure state endowment special revenue account during the 2003 biennium are expended.

(3) The following applicants and projects are authorized for grants in the order of their priority:

Applicant/Project	Grant
1. Lewis and Clark County (bridge)	$500,000
2. Alder Water and Sewer District, Madison County (wastewater)	500,000
3. Hot Springs, Town of (water)	500,000
4. Whitewater Water and Sewer District, Phillips County (wastewater)	500,000
5. Virginia City, Town of (wastewater)	500,000
6. Froid, Town of (wastewater)	390,600
7. Nashua, Town of (wastewater)	500.000
8. Richland County (bridge)	296,500
9. Lavina, Town of (wastewater)	483,000
10. Gardiner-Park County Water District, Park County (water)	398,500
11. Park City/County Water and Sewer District, Stillwater County (wastewater)	500,000
12. Stanford, Town of (wastewater)	500,000
13. Florence County Water and Sewer District, Ravalli County (wastewater)	500,000
14. Ashland County Water and Sewer District, Rosebud County (wastewater)	500,000
15. Geraldine, Town of (water)	167,460
16. Manhattan, Town of (wastewater)	500,000
17. Lambert County Water and Sewer District, Richland County (water)	403,000
18. Browning, Town of (water)	500,000
19. Kevin, Town of (wastewater)	385,000
20. Power-Teton Co. Water and Sewer District, Teton County (water)	425,000
21. Blackfeet Tribe (water)	500,000
22. Whitefish, City of (wastewater)	500.000

23. Choteau, City of (wastewater)	500,000
24. Lockwood Water and Sewer District, Yellowstone County (wastewater)	500,000
25. Eureka, Town of (water)	369,000
26. Shelby, City of (water)	500,000
27. Charlo Sewer District, Lake County (wastewater)	500,000
28. Essex Water and Sewer District, Flathead County (water)	225,000
29. Yellowstone County (bridge)	300,000
30. Hinsdale Water and Sewer District, Valley County (wastewater)	329,000
31. Havre, City of (water)	500,000
32. Helena, City of (storm drain)	500,000
33. Fairfield, Town of (wastewater)	500,000
34. Jordan, Town of (water/wastewater)	500,000

(4) If sufficient funds are available, this section constitutes a valid obligation of funds to the grant recipients listed in subsection (3) for purposes of encumbering the treasure state endowment special revenue account funds received during the 2003 biennium under 17-7-302. However, a grant recipient's entitlement to receive funds is dependent on the grant recipient's compliance with the conditions described in [section 3(1)] and on the availability of funds.

(5) If funds deposited into the treasure state endowment special revenue account during the biennium ending June 30, 2003, are insufficient to fully fund the projects numbered 1 through 31 in subsection (3) that have satisfied the conditions described in [section 3(1)] by June 30, 2003, these projects will be funded from deposits into the treasure state endowment special revenue account made during the 2005 biennium, before projects authorized by the 58th legislature receive funding from the account. However, any of the projects numbered 1 through 31 listed in subsection (3) that have not completed the conditions described in [section 3(1)] by January 1, 2003, must be reviewed by the next regular session of the legislature to determine if the authorized grant should be withdrawn.

(6) Projects numbered 32 through 34 listed in subsection (3) that have satisfied the conditions described in [section 3(1)] may not receive grant funds unless sufficient funds have been deposited into the treasure state endowment special revenue account to fully fund the projects numbered 1 through 31 in subsection (3). However, if a subsequent legislature withdraws funding for any of the projects numbered 1 through 31 listed in subsection (3), those funds could be made available to projects numbered 32 through 34 listed in subsection (3) that have completed the conditions described in [section 3(1)].

(7) In the event that any remaining funds deposited into the treasure state endowment special revenue account are insufficient to fully fund one of the grant recipients listed in subsection (3), the department may make the remaining funds from the treasure state endowment special revenue account available to the grant recipient on condition that the grant recipient is able to firmly commit the balance of the amount necessary to fund the project in its entirety.

Section 2. Approval of grants — completion of appropriation. (1) The legislature, pursuant to 90-6-701, authorizes grants for the projects identified in [section 1(3)].

(2) The authorization of these grants completes an appropriation from the treasure state endowment special revenue account provided for in 17-5-703(4)(c).

Section 3. Conditions and manner of disbursement of grant funds. (1) The disbursement of grant funds under [sections 1 through 3] for the projects specified in [section 1(3)] are subject to completion of the following conditions:

(a) The grant recipient shall execute a grant agreement with the department of commerce.

(b) The scope of work and budget for the project as approved by the department in the grant agreement must be consistent with the intent and circumstances under which the application was originally ranked by the department and approved by the legislature. The department may not approve amendments to the scope of work or budget affecting activities or improvements that would materially alter the intent and circumstances under which the application was originally ranked by the department and approved by the legislature.

(c) The grant recipient must have a project management plan that is approved by the department.

(d) The grant recipient shall document that other matching funds required for completion of the project are firmly committed.

(e) The grant recipient must be in compliance with the auditing and reporting requirements provided for in 2-7-503 and have established a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles. Tribal governments shall comply with auditing and reporting requirements provided for in OMB Circular A-133 instead of 2-7-503.

(f) The grant recipient shall satisfactorily comply with any conditions described in the application (project) summaries section of the treasure state endowment program 2003 biennium report to the 57th legislature.

(g) The grant recipient shall satisfy other specific requirements considered necessary by the department to accomplish the purpose of the project as evidenced by the application to the department.

(2) The department shall commit grant funds to projects authorized in the order of priority listed in [section 1(3)] to grant recipients that have met the conditions in subsection (1) as treasure state endowment special revenue account interest income becomes available during the 2003 biennium.

(3) If a grant recipient authorized in [section 1(3)] has not met the conditions in subsection (1), the department shall move down the list of projects in the order of priority listed in [section 1(3)] to the next project that has met the conditions in subsection (1).

(4) The department may not commit grant funds to a grant recipient authorized in [section 1(3)] unless sufficient funds will be available in the treasure state endowment special revenue account.

(5) The department shall disburse grant funds on a reimbursement basis as grant recipients incur eligible project expenses.

(6) In the event that actual project expenses are lower than the projected expense of the project, the department may, at its discretion, reduce the amount of treasure state endowment program grant funds to be provided to grant recipients in proportion to all other project funding sources. In the alternative, the department may authorize the use of the remaining authorized treasure state endowment program grant amount for the construction of additional, directly related components that will further enhance the overall system.

(7) In the event that actual project expenses are lower than the projected expense of a project as presented in the grant recipient's treasure state endowment program application, the department may, at its discretion, reduce the amount of treasure state endowment program grant funds to be provided so that the grant recipient's projected average residential user rates do not become lower than their target rate as determined by the department.

(8) Once Yellowstone County has satisfied the conditions described in subsection (1) and the department has sufficient funds to disperse to Yellowstone County in accordance with this section, the department shall reimburse eligible final engineering- and construction-related expenses that were incurred by Yellowstone County since submitting its application in May 2000.

Section 4. Appropriations from treasure state endowment regional water system special revenue account. (1) There is appropriated to the department of commerce the interest earnings of the treasure state endowment regional water system special revenue account to finance the state's share of regional water system projects authorized by this section and as set forth in 90-6-715.

(2) The dry prairie rural water authority and the north central Montana regional water authority are authorized to receive funds.

(3) Up to $2,358,058 is authorized for the 2003 biennium to provide the state's share for regional water system projects.

(4) A regional water authority's receipt of funds is dependent on the authority's compliance with the conditions described in [section 6(1)].

(5) This section constitutes a valid obligation of funds to the regional water authorities listed in subsection (2) for purposes of encumbering the treasure state endowment regional water system special revenue account funds received during the 2003 biennium under 17-7-302.

Section 5. Approval of funds — completion of appropriation. (1) The legislature, pursuant to 90-6-715, authorizes funds for the regional water authorities identified in [section 4(2)].

(2) The authorization of these funds completes an appropriation from the treasure state endowment regional water system special revenue account provided for in 17-5-703(4)(d).

Section 6. Conditions and manner of disbursement of funds. (1) The disbursement of funds under [sections 4 through 6] is subject to completion of the following conditions:

(a) The regional water authority shall execute an agreement with the department of commerce.

(b) The regional water authority must have a project management plan that is approved by the department.

(c) The regional water authority shall establish a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles.

(d) The regional water authority's project must be authorized by the federal government.

(2) The department shall disburse funds on a reimbursement basis as the regional water authority incurs eligible project expenses. The regional water authority shall document that local matching funds are committed in equal proportion to the department's disbursement.

Section 7. Review of previously authorized project grants. Projects authorized for grants by previous legislatures that have not completed startup conditions are to be notified by the department of commerce that the legislature at the next regular session will review these projects to determine if the commitment of any treasure state endowment grants should be withdrawn.

Section 8. Emergency grants. (1) There is appropriated to the department of commerce $100,000 for the biennium beginning July 1, 2001, from the interest earnings of the treasure state endowment special revenue account for the purpose of providing local governments, as defined in 90-6-701, with emergency grants for infrastructure projects, as defined in 90-6-701.

(2) The projects eligible for emergency grants must be necessary to remedy conditions that if allowed to continue until legislative approval could be obtained would endanger the public health or safety and expose the applicant to substantial financial risk.

(3) The department may not make an emergency grant if it determines that through the implementation of reasonable management practices, the applicant can forestall the risks to health or safety until the legislative approval can be obtained.

(4) The department shall inform the governor and the legislative finance committee of emergency grants that are awarded during the biennium.

Section 9. Conrad emergency drinking water grant. There is appropriated to the department of commerce for a grant to the city of Conrad $100,000 from the interest earnings of the treasure state endowment special revenue account. The grant must be used for the city's drinking water system in order to move the pumping station. The city of Conrad may not receive the funds until it has satisfied the conditions described in [section 3(1)(a) and (1)(c) through (1)(e)]. The status of this project will be reviewed by the legislature as provided under [section 7]. The department shall disburse grant funds on a reimbursement basis as eligible project expenses are incurred.

Section 10. Section 90-6-715, MCA, is amended to read:

"**90-6-715. (Temporary) Special revenue account — use.** (1) The treasure state endowment regional water system special revenue account may be used to provide matching funds to plan and construct regional drinking water systems in Montana. Each state dollar must be matched equally by local funds. Federal and state grants may not be used as a local match.

(2) The funds in the account are further restricted to be used to finance regional drinking water systems *that supply water to large geographical areas and serve multiple local governments*, such as projects in north central Montana, from the waters of the Tiber reservoir, that will provide water for domestic use,

industrial use, and stockwater for communities and rural residences that lie south of the Canadian border, west of Havre, north of Dutton, and east of Cut Bank and in northeastern Montana, from the waters of the Missouri River, that will provide water for domestic use, industrial use, and stockwater for communities and rural residences that lie south of the Canadian border, west of the North Dakota border, north of the Missouri River, and east of range 39.

(3) The funds must be administered by the department of commerce for eligible projects. (Terminates June 30, 2013—sec. 6, Ch. 495, L. 1999.)"

Section 11. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 1, 4, 8, and 9] are effective July 1, 2001.

Approved April 30, 2001

CHAPTER NO. 436

[HB 375]

AN ACT REQUIRING THAT A HEALTH CARE FACILITY BE DESIGNATED BY THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES AS A HEALTH PROFESSIONAL SHORTAGE AREA BEFORE AN EMPLOYEE OF THAT FACILITY WHOSE VEHICLE IS REGISTERED IN ANOTHER STATE OR COUNTRY MAY BE EXEMPT FROM FOREIGN VEHICLE REGISTRATION FEES; AND AMENDING SECTIONS 15-6-217 AND 61-3-707, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-217, MCA, is amended to read:

"**15-6-217. Exemption for vehicle of certain health care professionals.** A motor vehicle that is brought, driven, or coming into this state ~~that~~ *is exempt from the registration fees imposed in 15-24-301 if the motor vehicle* is registered in another state or country by a nonresident person who is a licensed health care professional, as provided in Title 37, chapter 3, 5, 8, 11, 14, 20, 21, 25, 28, or 34, and who is employed in Montana by a rural health care facility that ~~is located in a medically underserved area~~ *is located in an area that has been:*

(1) designated by the secretary of the federal department of health and human services as a health professional shortage area, as provided in 42 U.S.C. 254(e) ~~is exempt from taxation as provided in 15-24-301~~*; or*

(2) determined to have a critical shortage of nurses, as provided in 42 U.S.C. 297n(a)(3)."

Section 2. Section 61-3-707, MCA, is amended to read:

"**61-3-707. Foreign vehicles used for transportation in connection with employment.** (1) (a) Before a motor vehicle assessed a fee pursuant to 15-24-301(4) may be operated in Montana for a calendar quarter, the person responsible for payment of fees shall apply for and obtain a window decal provided by the department.

(b) Decals must be color-coded to distinguish the four quarterly registration periods of the year.

(c) An applicant may purchase a decal for more than one registration quarter at a time by paying the appropriate amount.

(d) There is a $2 fee for each decal, and money collected from this fee must be deposited to the county general fund. The $2 fee is in addition to the registration fee.

(e) A current window decal must be displayed on the lower right-hand corner of the windshield.

(2) (a) Before a motor vehicle exempted pursuant to 15-6-217 may be operated in Montana, the person responsible for the motor vehicle shall apply for and obtain a window decal from the county treasurer. The department shall supply the decals to the county treasurers.

(b) An application approved by the department must include a verification from the employer that the person is employed by a *Montana* health care facility ~~in a rural, medically underserved area that experiences difficulty in recruiting and retention of health care professionals~~ *that is located in an area that has been:*

(i) designated by the secretary of the federal department of health and human services as a health professional shortage area, as provided in 42 U.S.C. 254(e); or

(ii) determined to have a critical shortage of nurses, as provided in 42 U.S.C. 297n(a)(3).

(c) Decals expire each year on December 31 of the year in which issued, and application for reregistration must be filed with the county treasurer no later than February 15 of each year. Decals must be color-coded to distinguish the year.

(d) A current window decal must be displayed on the lower right-hand corner of the windshield."

Approved April 30, 2001

CHAPTER NO. 437

[HB 353]

AN ACT PROVIDING STARTUP COSTS FOR SCHOOL DISTRICTS TO ESTABLISH SCHOOL BREAKFAST PROGRAMS; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. School breakfast program. (1) It is the goal of the state of Montana to make available to all students a breakfast at the beginning of each school day.

(2) A school district that wishes to participate in the school breakfast program may apply to the superintendent of public instruction for startup funds to establish the program. If there is more than one school in the district, the trustees shall select the schools to be included in the program. The participating schools shall:

(a) make the breakfast program available to all students within the school;

(b) serve breakfasts that meet the federal nutrition standards provided in 7 CFR 220.8: and

(c) provide free and reduced-price breakfasts to children determined eligible under 7 CFR 245.3.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 10, part 2, and the provisions of Title 20, chapter 10, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2001.

Section 4. Termination. [This act] terminates June 30, 2003.

Approved April 30, 2001

CHAPTER NO. 438

[HB 362]

AN ACT EXEMPTING FROM TAXATION ALL MANUFACTURING MACHINERY, FIXTURES, EQUIPMENT, AND TOOLS USED FOR THE PRODUCTION OF ETHANOL FROM GRAIN DURING THE COURSE OF THE CONSTRUCTION OF AN ETHANOL MANUFACTURING FACILITY AND FOR 10 YEARS AFTER INITIAL PRODUCTION OF ETHANOL FROM THE FACILITY; AMENDING SECTIONS 15-6-138 AND 15-6-201, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-138, MCA, is amended to read:

"15-6-138. (Temporary) Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-201(1)(bb);

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools ~~that are not exempt under 15-6-201(1)(r) or (1)(bb)~~, *except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as providers as provided in 15-6-201,* and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(f) special mobile equipment as defined in 61-1-104;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at~~:~~

~~(a) 6% of its market value for tax years beginning after December 31, 1997; and~~

~~(b)~~ 3% of its market value ~~for tax years beginning after December 31, 1999~~.

(5) (a) If, in any year beginning with tax year 2004, the percentage growth in inflation-adjusted Montana wage and salary income, in the last full year for which data is available, is at least 2.85% from the prior year, then the tax rate for class eight property will be reduced by 1% each year until the tax rate reaches zero.

(b) The department shall calculate the percentage growth in subsection (5)(a) by using the formula (W/CPI) - 1, where:

(i) W is the Montana wage and salary income for the most current available year divided by the Montana wage and salary income for the year prior to the most current available year; and

(ii) CPI is the consumer price index for the most current available year used in subsection (5)(b)(i) divided by the consumer price index for the year prior to the most current available year as used in subsection (5)(b)(i).

(c) For purposes of determining the percentage growth in subsection (5)(a), the department shall use the wage and salary data series referred to as the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements. Inflation must be measured by the consumer price index, U.S. city average, all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(6) ~~Beginning with tax year 2000, the~~ *The* class eight property of a person or business entity that owns an aggregate of $5,000 or less in market value of class eight property is exempt from taxation. (Repealed on occurrence of contingency—secs. 27(2), 31(4), Ch. 285, L. 1999.)"

Section 2. Section 15-6-201, MCA, is amended to read:

"**15-6-201. (Temporary) Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) (i) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) the following percentage of the market value of residential property as described in 15-6-134(1)(e) and (1)(f):

~~(i) 16% for tax year 1999;~~

~~(ii)~~*(i)* 23% for tax year 2000;

~~(iii)~~*(ii)* 27.5% for tax year 2001; and

~~(iv)~~*(iii)* 31% for tax year 2002 and succeeding tax years;

(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):

~~(i) 6.5% for tax year 1999;~~

~~(ii)~~*(i)* 9% for tax year 2000;

~~(iii)~~*(ii)* 11% for tax year 2001; and

~~(iv)~~*(iii)* 13% for tax year 2002 and succeeding tax years;

(bb) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy; ~~and~~

(cc) light vehicles as defined in 61-1-139*; and*

(dd) all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after initial production of ethanol from the facility.

(2) (a) For the purposes of subsection (1)(e):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) For the purposes of subsection (1)(bb):

(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure.

15-6-201. (Effective January 1, 2003) Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) (i) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) the following percentage of the market value of residential property as described in 15-6-134(1)(e) and (1)(f):

~~(i) 16% for tax year 1999;~~

~~(ii)~~*(i)* 23% for tax year 2000;

~~(iii)~~*(ii)* 27.5% for tax year 2001; and

~~(iv)~~*(iii)* 31% for tax year 2002 and succeeding tax years;

(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):

~~(i) 6.5% for tax year 1999;~~

~~(ii)~~*(i)* 9% for tax year 2000;

~~(iii)~~*(ii)* 11% for tax year 2001; and

~~(iv)~~*(iii)* 13% for tax year 2002 and succeeding tax years;

(bb) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

(cc) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than $15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis; ~~and~~

(dd) all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility; and

~~(dd)~~*(ee)* light vehicles as defined in 61-1-139.

(2) (a) For the purposes of subsection (1)(e):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) For the purposes of subsection (1)(bb):

(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure.

15-6-201. (Effective on occurrence of contingency) Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) (i) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) the following percentage of the market value of residential property as described in 15-6-134(1)(e) and (1)(f):

~~(i) 16% for tax year 1999;~~

~~(ii)~~*(i)* 23% for tax year 2000;

~~(iii)~~*(ii)* 27.5% for tax year 2001; and

~~(iv)~~*(iii)* 31% for tax year 2002 and succeeding tax years;

(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):

~~(i) 6.5% for tax year 1999;~~

~~(ii)~~*(i)* 9% for tax year 2000;

~~(iii)~~*(ii)* 11% for tax year 2001; and

~~(iv)~~*(iii)* 13% for tax year 2002 and succeeding tax years;

(bb) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

(cc) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than $15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;

(dd) all agricultural implements and equipment;

(ee) all mining machinery, fixtures, equipment, tools ~~that are not exempt under 15-6-201(1)(r)~~, and supplies except those included in class five;

(ff) all manufacturing machinery, fixtures, equipment, tools ~~that are not exempt under 15-6-201(1)(r)~~, and supplies except those included in class five;

(gg) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(hh) special mobile equipment as defined in 61-1-104;

(ii) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(jj) x-ray and medical and dental equipment;

(kk) citizens' band radios and mobile telephones;

(ll) radio and television broadcasting and transmitting equipment;

(mm) cable television systems;

(nn) coal and ore haulers;

(oo) theater projectors and sound equipment; and

(pp) light vehicles as defined in 61-1-139.

(2) (a) For the purposes of subsection (1)(e):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) For the purposes of subsection (1)(bb):

(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 3. Applicability. [This act] applies to tax years beginning after December 31, 2001.

Approved April 30, 2001

CHAPTER NO. 439

[HB 437]

AN ACT REQUIRING THAT ELEVATORS, ESCALATORS, DUMBWAITERS, MOVING WALKS, MATERIAL LIFTS, WHEELCHAIR LIFTS, AND STAIRWAY CHAIRLIFTS MUST BE INSPECTED BY THE DEPARTMENT OF COMMERCE, A CERTIFIED MAINTENANCE COMPANY REPRESENTATIVE, OR A CERTIFIED INSURANCE COMPANY REPRESENTATIVE; PROVIDING AN EXEMPTION FOR PRIVATE RESIDENCES, FARMS, AND RANCHES; AMENDING SECTIONS 50-60-701, 50-60-702, AND 50-60-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-60-701, MCA, is amended to read:

"50-60-701. Inspection of ~~passenger~~ elevators, ~~and~~ escalators, *dumbwaiters, moving walks, and certain lifts* — fees. (1) All ~~passenger~~ elevators, ~~and~~ escalators, ~~in public places may~~ *dumbwaiters, including dumbwaiters with automatic transfer devices, moving walks, material lifts, wheelchair lifts, and stairway lifts must* be inspected by the department to ~~insure~~ *ensure* compliance with the requirements of the state building code. The department shall establish and charge a reasonable ~~and uniform~~ fee *based on the type of equipment* for the inspections that may not exceed the expense of providing the inspection.

(2) In lieu of inspection by the department, inspections of ~~passenger elevators and escalators~~ *equipment provided for in subsection (1)* to ~~assure~~ *ensure* compliance with the state building code may be made by:

(a) a maintenance company representative certified by the department who regularly maintains or services the ~~elevator or escalator~~ equipment; or

(b) an insurance company representative certified by the department who regularly inspects ~~an elevator or escalator~~ *the equipment* insured by the company against public liability ~~and who~~ *if the company* maintains a service record of the ~~elevator or escalator~~ *equipment*.

(3) When an inspection ~~of a passenger elevator or escalator~~ is made pursuant to subsection (2), a copy of the condition report must be provided to the owner and must be sent to the department. The department may not charge more than $10 for receiving and processing a condition report for each ~~elevator or escalator~~ *individual piece of equipment* in ~~any~~ *a* building and for issuing ~~certificates~~ *a certificate* of inspection ~~therefor~~ *for the piece of equipment* if the certified maintenance or insurance company inspector doing the inspection certifies to the department that all deficient ~~elevator or escalator~~ conditions noted in the condition report have been corrected and ~~no follow-up~~ *that followup* by the department in that regard is *not* necessary.

(4) This section does not apply to private residences or farm and ranch operations.

(5) Freight elevators, material lifts, and dumbwaiters must be inspected once every 3 years."

Section 2. Section 50-60-702, MCA, is amended to read:

"50-60-702. Department to adopt inspection standards — certification of inspectors. (1) The department shall adopt standards for ~~passenger elevator and escalator inspections that assure~~ *the inspection of equipment subject to this part. The standards must ensure* compliance with the requirements of the state building code.

(2) The department shall adopt rules for the certification of maintenance and insurance company inspectors who may inspect ~~passenger elevators and escalators pursuant to 50-60-701~~ *equipment subject to this part.*"

Section 3. Section 50-60-703, MCA, is amended to read:

"50-60-703. When inspection ~~of elevators not~~ necessary. ~~Elevators that do not carry passengers do not need to~~ *Equipment that is located in a building or structure and that is subject to the provisions of this part and operated by an employee of the building or structure or the public must* be inspected by the department *or a certified maintenance company or insurance company representative*."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 30, 2001

CHAPTER NO. 440

[HB 456]

AN ACT PROVIDING ELIGIBILITY FOR MEDICAID FOR INDIVIDUALS WHO HAVE PARTICIPATED IN THE MONTANA BREAST AND CERVICAL HEALTH PROGRAM AND WHO REQUIRE TREATMENT FOR BREAST OR CERVICAL CANCER, OR BOTH; PROVIDING AN APPROPRIATION FROM THE GENERAL FUND AND REQUESTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CONSIDER THE INCLUSION OF FUNDING FOR THE 2005 BIENNIUM EXECUTIVE BUDGET REQUEST FROM THE INCOME ON THE TOBACCO SETTLEMENT TRUST FUND; AMENDING SECTION 53-6-131, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-131, MCA, is amended to read:

"53-6-131. Eligibility requirements. (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of public health and human services, in its discretion, to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., and does not have income or resources in excess of the applicable medical assistance limits or receive from FAIM financial assistance, as defined in 53-4-702, benefits under Title IV of the federal Social Security Act, 42 U.S.C. 601, et seq.

(b) The person would be eligible for assistance under a program described in subsection (1)(a) if that person were to apply for that assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the person would be receiving assistance under one of the programs in subsection (1)(a).

(d) The person is under 19 years of age and meets the conditions of eligibility in the state plan, as defined in 53-4-201, other than with respect to age and school attendance.

(e) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a child with special needs.

(f) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(e) and:

(i) the person's income does not exceed the income level specified for federally aided categories of assistance and the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance:

(A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for federally aided categories of assistance; and

(B) has resources that are within the resource standards of the federal supplemental security income program.

(g) The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

(2) The department may establish income and resource limitations. Limitations of income and resources must be within the amounts permitted by federal law for the medicaid program.

(3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for medicaid-eligible persons participating in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the Social Security Act; and

(b) has resources that do not exceed standards that the department determines reasonable for purposes of the program.

(4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(5) In accordance with waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may grant eligibility for basic medicaid benefits as described in 53-6-101 to an individual receiving FAIM financial assistance, as defined in 53-4-702, as the specified caretaker relative of a dependent child under the FAIM project and to all adult recipients of medical assistance only who are covered under a group related to the program of FAIM financial assistance. A recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage as provided in 53-6-101.

(6) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the Social Security Act, 42 U.S.C. 1396, et

seq., as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

(7) Notwithstanding any other provision of this chapter, medical assistance must be provided to infants and pregnant women whose family income does not exceed 133% of the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C. 1396a(l)(2)(A)(i), and whose family resources do not exceed standards that the department determines reasonable for purposes of the program.

(8) Subject to appropriations, the department may cooperate with and make grants to a nonprofit corporation that uses donated funds to provide basic preventive and primary health care medical benefits to children whose families are ineligible for the Montana medicaid program and who are ineligible for any other health care coverage, are under 19 years of age, and are enrolled in school if of school age.

(9) A person described in subsection (7) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7).

(10) The department may establish resource and income standards of eligibility for mental health services that are more liberal than the resource and income standards of eligibility for physical health services. The standards for eligibility for mental health services may provide for eligibility for households not eligible for medicaid with family income that does not exceed 200% of the federal poverty threshold or that does not exceed a lesser amount determined in the discretion of the department. The department may by rule specify under what circumstances deductions for medical expenses should be used to reduce countable family income in determining eligibility. The department may also adopt rules establishing fees, premiums, or copayments to be charged recipients for services. The fees, premiums, or copayments may vary according to family income.

(11) Full medical assistance under the Montana medicaid program may be granted to an individual during the period in which the individual requires treatment of breast or cervical cancer, or both, or of a precancerous condition of the breast or cervix, if the individual:

(a) has been screened for breast and cervical cancer under the Montana breast and cervical health program funded by the centers for disease control and prevention program established under Title XV of the Public Health Service Act, 42 U.S.C. 300k, or in accordance with federal requirements;

(b) needs treatment for breast or cervical cancer, or both, or a precancerous condition of the breast or cervix;

(c) is not otherwise covered under creditable coverage, as provided by federal law or regulation;

(d) is not eligible for medical assistance under any mandatory categorically needy eligibility group; and

(e) has not attained 65 years of age."

Section 2. Appropriation — funding request. (1) There is appropriated from the general fund to the department of public health and human services $129,270 in fiscal year 2002 and $258,540 in fiscal year 2003 for the purposes of matching with federal medicaid money to treat victims of breast and cervical cancer, as provided in [section 1].

(2) The department is requested to consider for inclusion in its budget request to the 2003 legislature funding from the income on the tobacco settlement trust fund provided for in Article XII, section 4, of the Montana constitution and matching federal medicaid money to continue the program to treat victims of breast and cervical cancer, as provided in [section 1], in the 2005 biennium.

Section 3. Effective date. [This act] is effective July 1, 2001.

Approved April 30, 2001

CHAPTER NO. 441

[HB 387]

AN ACT CREATING THE CROP RESEARCH FACILITIES PROTECTION ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 4] may be cited as the "Crop Research Facilities Protection Act".

Section 2. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) "Consent" means agreement in fact, whether express or apparent.

(2) "Crop" means a product grown, developed, or raised for purposes including but not limited to human or animal consumption, research, industrial use, commercial use, or pharmacological use.

(3) "Deprive" means to:

(a) withhold a crop or other property from the owner permanently or for such a period of time that a major portion of the value or enjoyment of the crop or property is lost to the owner;

(b) restore the crop or other property only upon payment of reward or other compensation; or

(c) dispose of a crop or other property in a manner that makes recovery of the crop or property by the owner unlikely.

(4) "Effective consent" means consent by the owner or by a person legally authorized to act for the owner. Consent is not effective if it is:

(a) induced by force or threat;

(b) given by a person who the person to whom it is given knows is not legally authorized to act for the owner; or

(c) given by a person who by reason of youth, mental disease or defect, or being under the influence of drugs or alcohol is known by the person to whom it is given to be unable to make reasonable decisions.

(5) "Notice" means:

(a) oral or written communication by the owner or someone with apparent authority to act for the owner;

(b) fencing or other enclosure obviously designed to exclude intruders or to contain crops; or

(c) a sign or signs posted on the property or at the entrance to a building that are reasonably likely to come to the attention of intruders and that indicate that entry is forbidden.

(6) "Owner" means a person who has:

(a) title to the property; or

(b) lawful possession of the property.

(7) "Person" means an individual, state agency, corporation, association, nonprofit corporation, joint-stock company, firm, trust, or partnership; two or more persons having a joint or common interest; or some other legal entity.

(8) "Possession" means actual care, custody, control, or management.

(9) "Research facility" means a public or private place, laboratory, institution, medical care facility, elementary school, high school, college, or university at which a scientific test, experiment, or investigation involving the use of a crop is lawfully carried out, conducted, or attempted.

Section 3. Unlawful acts. (1) A person who does not have the effective consent of the owner may not acquire or otherwise exercise control over a crop research facility, a crop from a crop research facility, or other property from a crop research facility with the intent to deprive the owner of the facility, crop, or property or to damage the enterprise conducted at the crop research facility.

(2) A person who does not have the effective consent of the owner and who purposely or knowingly intends to damage the enterprise conducted at a crop research facility may not:

(a) damage or destroy a crop research facility or a crop or property in or on the premises of a crop research facility;

(b) enter a crop research facility that is at the time closed to the public with the intent to commit an act prohibited by [sections 1 through 4];

(c) remain concealed in a crop research facility with the intent to commit an act prohibited by [sections 1 through 4];

(d) enter a crop research facility and commit or attempt to commit an act prohibited by [sections 1 through 4];

(e) enter a crop research facility to take pictures by photograph, video camera, or other means with the intent to commit an unlawful act; or

(f) enter or remain on the premises of a crop research facility if the person:

(i) had notice that the entry was forbidden; or

(ii) received notice to depart but failed to do so.

(3) The provisions of [sections 1 through 4] do not apply to lawful activities of a government agency or its employees who are carrying out their duties under law or to lawful activities of a financial institution or other secured party.

Section 4. Action for damage. (1) A person who has been damaged by reason of a violation of [section 3] may bring against the person who caused the damage an action in the district court to recover actual and consequential damages and court costs and reasonable attorney fees.

(2) [Sections 1 through 4] may not be construed to affect any other rights of a person who has been damaged by reason of a violation of [sections 1 through 4]. The provisions of subsection (1) may not be construed to limit the exercise of any rights arising out of or relating to a violation of [section 3].

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 80, and the provisions of Title 80 apply to [sections 1 through 4].

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 30, 2001

CHAPTER NO. 442

[HB 472]

AN ACT REOPENING THE OPPORTUNITY FOR A STATE PEACE OFFICER TO TRANSFER MEMBERSHIP FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM TO THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM; AND AMENDING SECTION 19-8-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-8-302, MCA, is amended to read:

"19-8-302. Public employees' retirement system — transfer of membership. (1) Except as provided in subsections (2) and (4), an eligible peace officer shall become a member of the game wardens' and peace officers' retirement system on the first day of covered service.

(2) A member of the public employees' retirement system who first becomes eligible for membership in the game wardens' and peace officers' retirement system on July 1, 1997, may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by submitting a written election of intent ~~to~~ *that must be received by* the board no later than ~~December 31, 1997~~ *December 31, 2001.*

(3) A person who is a member of the game wardens' and peace officers' retirement system assigned to law enforcement who transfers to a position involving duties other than law enforcement within the same state agency may retain membership in the retirement system by filing a written election of intent with the board no later than 30 days after transfer to the new position.

(4) A person who is a member of the public employees' retirement system who transfers to a position covered by the game wardens' and peace officers' retirement system may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election of intent with the board no later than 30 days after transfer to the new position."

Approved April 30, 2001

CHAPTER NO. 443

[HB 469]

AN ACT ALLOWING RURAL FIRE DISTRICT TRUSTEES TO ACQUIRE REAL PROPERTY ALONG WITH EQUIPMENT, HOUSING, AND FACILITIES NECESSARY FOR FIRE PROTECTION; AMENDING SECTIONS 7-33-2105, 7-33-2109, AND 7-33-2111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2105, MCA, is amended to read:

"**7-33-2105. Powers and duties of trustees.** (1) The trustees shall prepare and adopt suitable bylaws.

(2) The trustees ~~shall~~ have the authority to provide adequate and standard firefighting and emergency response apparatus, equipment, personnel, housing, and facilities, *including real property* for the protection of the district. They shall appoint and form fire companies that ~~shall~~ have the same duties, exemptions, and privileges as other fire companies.

(3) The trustees shall prepare annual budgets and request special levies ~~therefor~~ *for the budgets*. The budget laws relating to county budgets ~~shall~~ *must*, as far as applicable, apply to fire districts."

Section 2. Section 7-33-2109, MCA, is amended to read:

"**7-33-2109. Tax levy, debt incurrence, and bonds authorized.** (1) At the time of the annual levy of taxes, the board of county commissioners may, subject to 15-10-420, levy a special tax upon all property within a rural fire district for the purpose of buying or maintaining fire protection facilities, *including real property,* and apparatus, including emergency response apparatus, for the district or for the purpose of paying to a city, town, or private fire service the consideration provided for in any contract with the council of the city, town, or private fire service for the purpose of furnishing fire protection service to property within the district. The tax must be collected as are other taxes.

(2) The board of county commissioners or the trustees, if the district is governed by trustees, may pledge the income of the district, subject to the requirements and limitations of 7-33-2105(3), to secure financing necessary to procure equipment and buildings, *including real property,* to house the equipment.

(3) In addition to the levy authorized in subsection (1), a district may borrow money by the issuance of bonds to provide funds for the payment of all or part of the cost of buying or maintaining fire protection facilities, *including real property,* and apparatus, including emergency response apparatus, for the district.

(4) The amount of debt incurred pursuant to subsection (2) and the amount of bonds issued pursuant to subsection (3) and outstanding at any time may not exceed 18% of the taxable value of the property in the district as ascertained by the most recent assessment for state and county taxes prior to the incurrence of debt or the issuance of the bonds.

(5) The bonds must be authorized, sold, and issued and provisions must be made for their payment in the manner and subject to the conditions and

limitations prescribed for the issuance of bonds by counties under Title 7, chapter 7, part 22."

Section 3. Section 7-33-2111, MCA, is amended to read:

"**7-33-2111. Fire district capital improvement fund.** The trustees of a fire district may establish a capital improvement fund. The fund may be used for the acquisition and replacement of equipment or facilities, *including real property*. The cost of the equipment must exceed $5,000, and *the equipment must* have a life expectancy of 5 years or more."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 30, 2001

CHAPTER NO. 444

[HB 381]

AN ACT REVISING CERTAIN PROPERTY TAX LAWS AS THEY RELATE TO MULTIPLE, UNDIVIDED INTERESTS IN A PARCEL OF LAND; ALLOWING THE DEPARTMENT OF REVENUE TO SEND THE NOTICE OF CLASSIFICATION AND APPRAISAL TO A SINGLE OWNER OF A MULTIPLE, UNDIVIDED INTEREST IN A PARCEL OF LAND; REQUIRING THE DEPARTMENT OF REVENUE TO FURNISH THE NAMES OF THE OWNERS OF MULTIPLE, UNDIVIDED INTERESTS IN A PARCEL OF LAND TO THE COUNTY TREASURER; ESTABLISHING A LIEN FOR AN OWNER WHO REDEEMS A PROPERTY TAX LIEN FOR OTHER OWNERS OF A MULTIPLE, UNDIVIDED INTEREST IN A PARCEL OF LAND; AMENDING SECTIONS 15-7-102 AND 15-18-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Notice of classification and appraisal to single address for owners of undivided interest. (1) (a) Subject to subsection (2), in the case of multiple, undivided interests in a parcel of land, the department shall send the notice of classification and appraisal required by 15-7-102 to a single owner of the land, as provided in this section.

(b) Except as provided in subsection (1)(c), the owners of the land shall provide to the department the name and address of the owner to whom the notice is to be sent and shall notify the department of a change in name or address. If an address is not provided, then the department shall send the notice to the address to which previous notices were sent.

(c) In the case of multiple, undivided interests in a parcel of land created after [the effective date of this act], the department shall send the notice to the name and address shown on the recorded document creating the multiple, undivided interests in the land. If more than one name and address is shown on the document, the department shall send the notice to the first name and address shown on the document.

(2) A copy of the notice must be sent to other persons upon request of an owner of the land. If a parcel of land is located within the boundaries of a federally recognized Indian reservation, each individual fee patent, even when it is an

undivided interest, will be treated as a separate assessment and receive a separate notice of classification and appraisal.

Section 2. List of owners of multiple, undivided interests in parcel of land to county treasurer. (1) The department shall furnish to the county treasurer the names and, if available, the addresses of the owners of each multiple, undivided interest in a parcel of land located within the county. The department shall inform the county treasurer that the list of names may not include every owner of the parcel of land.

(2) If a parcel of land with undivided interests is located within the boundaries of a federally recognized Indian reservation, a copy of the notice of classification and appraisal shall be provided to the tribe or tribes governing the reservation. The department and the tribe may agree on a different procedure which provides the equivalent information to the tribal government.

Section 3. Section 15-7-102, MCA, is amended to read:

"15-7-102. Notice of classification and appraisal to owners — appeals. (1) (a) ~~The~~ *Except as provided in [section 1], the* department shall mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(i) change in ownership;

(ii) change in classification;

(iii) except as provided in subsection (1)(b), change in valuation; or

(iv) addition or subtraction of personal property affixed to the land.

(b) After the first year, the department is not required to mail the notice provided for in subsection (1)(a)(iii) if the change in valuation is the result of an annual incremental change in valuation caused by the phasing in of a reappraisal under 15-7-111 or the application of the exemption under 15-6-201 or caused by an incremental change in the tax rate.

(c) The notice must include the following for the taxpayer's informational purposes:

(i) the total amount of mills levied against the property in the prior year; and

(ii) a statement that the notice is not a tax bill.

(d) Any misinformation provided in the information required by subsection (1)(c) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail the notice of classification and appraisal to a new owner or purchaser under contract for deed unless the department has received the transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed. The department shall notify the county tax appeal board of the date of the mailing.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for that purpose, within 30 days after receiving the notice of classification and appraisal from the department. The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review. After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection in writing; and

(b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed within 30 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 4. Section 15-18-112. MCA. is amended to read:

"15-18-112. Redemption from property tax lien — *lien on interest in property for taxes paid*. (1) Except as provided in subsection ~~(3)~~ *(4)*, in all cases ~~where~~ *in which* a property tax lien has been acquired, the purchaser may pay the subsequent taxes assessed against the property.

(2) Upon the redemption of the property from the property tax lien, the redemptioner shall, in addition to the amount for which the property tax lien was sold, including penalties, interest, and costs, pay the subsequent taxes assessed, with interest and penalty ~~thereon~~ at the rate established for delinquent taxes in 15-16-102.

(3) An owner of less than all of the interest or a lienholder with an interest in real property who redeems a property tax lien on the property has a lien for the taxes paid on the interests of the property that are not owned by the redemptioner.

~~(3)~~*(4)* The property tax lien may also be redeemed for a particular tax year by a partial payment of that tax year, as provided in 15-16-102(5), if:

(a) the property tax lien for the year in which the partial payment is made is owned by the county; and

(b) the tax deed has not been issued pursuant to 15-18-211."

Section 5. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 7, part 1, and the provisions of Title 15, chapter 7, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 8, part 7, and the provisions of Title 15, chapter 8, part 7, apply to [section 2].

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000.

Approved April 30, 2001

CHAPTER NO. 445

[HB 390]

AN ACT PROVIDING IMMUNITY FROM CIVIL DAMAGES FOR INJURY TO A PERSON OR PROPERTY DAMAGE ARISING FROM AN ALLOWABLE USE OF FORCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Civil damages immunity for injury caused by legal use of force. (1) A use of force allowable under the provisions of Title 45, chapter 3, part 1, provides immunity to the person using the force from civil damages for injury to any person or property arising from injury to the person, or damage to the property of the person, against whom the force was used.

(2) Conviction of a crime committed by the person who was injured or whose property was damaged by the use of force is not a prerequisite to a defense under subsection (1), but it is evidence that the act or omission to which the use of force was a response occurred.

(3) The reasonableness of the use of force must be determined in light of the circumstances at the time that the force was used.

(4) The prevailing party in an action in which a defense is asserted under this section is entitled to costs and reasonable attorney fees.

Approved April 30, 2001

CHAPTER NO. 446

[HB 382]

AN ACT PROHIBITING SELF-GOVERNING LOCAL GOVERNMENT UNITS FROM EXERCISING CERTAIN POWERS RELATED TO LANDLORDS AND TENANTS; AND AMENDING SECTION 7-1-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-111, MCA, is amended to read:

"**7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation), except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of environmental compatibility and public need;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) any power that applies to or affects Title 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife)~~.~~; *and*

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction."

Approved April 30, 2001

CHAPTER NO. 447

[HB 397]

AN ACT ESTABLISHING THE CLARK FORK RIVER BASIN TASK FORCE; REQUIRING THE TASK FORCE TO DEVELOP A WATER MANAGEMENT PLAN FOR THE BASIN; REQUIRING THE TASK FORCE TO SUBMIT INTERIM REPORTS TO THE GOVERNOR AND THE LEGISLATURE; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO PROVIDE A WRITTEN NOTICE WHEN THE DEPARTMENT ISSUES WATER USE PERMITS IN THE CLARK FORK RIVER BASIN; SPECIFYING THE CONTENTS OF THE WRITTEN NOTICE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Clark Fork River basin task force — water management plan. (1) The governor's office shall designate an appropriate entity to convene and coordinate a Clark Fork River basin task force to prepare a water management plan for the Clark Fork River basin pursuant to 85-1-203. The designated appropriate entity shall:

(a) identify the individuals and organizations, public, tribal, and private, that are interested in or affected by water management in the Clark Fork River basin;

(b) provide advice and assistance in selecting representatives to serve on the task force;

(c) develop, in consultation with the task force, appropriate opportunities for public participation in the development of a water management plan; and

(d) ensure that all watershed and viewpoints within the basin are adequately represented on the task force, including a representation from the following:

(i) the reach of the Clark Fork River in Montana below its confluence with the Flathead River:

(ii) the Flathead River basin, including Flathead Lake, from Flathead Lake to the confluence of the Flathead River and the Clark Fork River. At least one representative from this basin must be a representative of the Confederated Salish and Kootenai tribal government.

(iii) the Flathead River basin upstream from Flathead Lake;

(iv) the reach of the Clark Fork River between the confluence of the Blackfoot River and the Clark Fork River and the confluence of the Clark Fork River and the Flathead River;

(v) the Bitterroot River basin as defined in 85-2-344; and

(vi) the Upper Clark Fork River basin as defined in 85-2-335.

(2) The task force shall examine, for applicability to the water management plan, existing laws, rules, plans, and other provisions affecting water management in the Clark Fork River basin, including:

(a) the temporary closure of Bitterroot River subbasins pursuant to 85-2-344;

(b) the closure of the Upper Clark Fork River basin pursuant to 85-2-336;

(c) the restrictions on ground water development in the Upper Clark Fork River basin provided for in 85-2-337; and

(d) the Upper Clark Fork River basin management plan, adopted as a section of the state water plan pursuant to 85-1-203.

(3) The task force shall prepare a water management plan for the Clark Fork River basin pursuant to 85-1-203. The water management plan must identify options to protect the security of water rights and provide for the orderly development and conservation of water in the future.

(4) The task force shall submit an interim report annually by October 31 on its activities to the governor and the legislature.

(5) The water management plan, including the information prepared by the task force under this section, must be submitted to the 59th legislature, as provided in 85-1-203, by September 15, 2004.

Section 2. Notice to permitholders — Clark Fork River basin. The department shall provide a written notice to each person that receives a provisional water use permit to appropriate water within the Clark Fork River basin. The written notice must state: "This provisional water use permit has a priority date that is junior to the rights of senior water right holders in the Clark Fork River Basin. In accordance with Montana law, you may be subject to a call by senior water right holders, in which case you may be required to discontinue your use of water for the period of the call."

Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 85, and the provisions of Title 85 apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [section 2].

Section 4. Notification to tribal government. The secretary of state shall send a copy of [this act] to the tribal government located on the Flathead Indian reservation.

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Termination. [This act] terminates April 15, 2005.

Approved April 30, 2001

CHAPTER NO. 448

[HB 399]

AN ACT GENERALLY REVISING LIQUOR LICENSING LAWS; PROVIDING FOR THE DEPOSIT OF LIQUOR LICENSE FEES AND PERMIT FEES INTO THE DEPARTMENT OF REVENUE'S LIQUOR ENTERPRISE FUND; CHANGING THE METHOD FOR DETERMINING WHEN THE DEPARTMENT OF REVENUE SHALL PUBLISH NOTICE OF APPLICATION FOR LIQUOR LICENSE TO WHEN THE APPLICATION IS COMPLETE RATHER THAN 30 DAYS AFTER AN INVESTIGATION IS REQUESTED; AMENDING SECTIONS 15-1-501, 16-2-108, 16-4-207, AND 16-4-401, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-501, MCA, is amended to read:

"15-1-501. Disposition of money from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

(a) income taxes, interest, and penalties collected under chapter 30;

(b) except as provided in 15-31-702, all taxes, interest, and penalties collected under chapter 31;

(c) oil and natural gas production taxes allocated under 15-36-324(8)(a) and (10)(a);

(d) electrical energy producer's license taxes under chapter 51;

(e) ~~[an amount equal to 25% of]~~ the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;

(f) liquor license taxes under Title 16;

(g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(h) estate taxes under Title 72, chapter 16; and

(i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.

(2) The department shall also deposit to the credit of the state general fund all money received from the collection of license taxes ~~and fees~~ and all net revenue and receipts from all ~~other~~ sources, *other than certain fees,* under the operation of the Montana Alcoholic Beverage Code.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded

for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded."

Section 2. Section 16-2-108, MCA, is amended to read:

"**16-2-108. Disposition of money received.** *(1)* The department may purchase liquor from money deposited to its account in the enterprise fund. The department shall pay from its account in the enterprise fund its administrative expenses *associated with the sale of liquor*, subject to the limits imposed by legislative appropriation. An obligation created or incurred by the department may not be a debt or claim against the state of Montana but must be payable by the department solely from funds derived from the operation of state liquor sales. The department shall pay into the state treasury to the credit of the enterprise fund the receipts from the sale of liquor and all taxes ~~and license and permit fees~~ collected by it. Taxes~~, license and permit fees,~~ and the net proceeds from the operation of state liquor sales must be transferred to the general fund.

(2) All liquor license fees and permit fees collected by the department must be deposited into the department's liquor enterprise fund.

(3) The department shall pay from its account in the liquor enterprise fund:

(a) expenses associated with administering liquor licensing and fee collection; and

(b) expenses associated with investigations pursuant to its agreement with the department of justice.

(4) The net proceeds of the liquor enterprise fund must be transferred to the general fund."

Section 3. Section 16-4-207, MCA, is amended to read:

"**16-4-207. Notice of application — investigation — publication — protest.** (1) When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer the location of a retail license, the department shall review the application for completeness and, based upon review of the application and any other information supplied to the department, determine whether the applicant or the premises to be licensed meets criteria provided by law. The department may make one request for additional information necessary to complete the application. The application is considered complete when the applicant furnishes the application information requested by the department. If the applicant does not provide the additional application information within ~~60~~ *30* days of the department's request, the department shall terminate the application and return it to the applicant with an explanation of why the application was terminated. The terminated application is not a denial, and the premises identified in the application are not subject to the provisions of 16-4-413. An applicant whose application is terminated may subsequently submit a new application. When the application is complete, the department shall request that the department of justice investigate the application as provided in 16-4-402. ~~If the department does not discover a basis to deny the application within 30 days after the department requests the investigation by the department of justice,~~ *When the department determines that an application for a* *license under this code is complete,* the department shall publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that the applicant has made application for a retail on-premises license or a transfer of location and that protests may be made against the approval of the application by a person who has extended credit to the transferor or by residents of the county from which the application comes or adjoining Montana counties. Protests may be mailed to a named administrator in the department of revenue within 10 days after the final notice is published. Notice of application for a new license must be published once a week for 4 consecutive weeks. Notice of application for transfer of ownership or location of a license must be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL
ALL-BEVERAGES LICENSE

Notice is given that on the .... day of ...., 20..., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue to be used at (describe location of premises where beverages are to be sold). A person who has extended credit to the transferor and residents of ...... counties may protest against the approval of the application. Each protestor is required to mail a letter that contains in legible print the protestor's full name, mailing address, and street address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures of persons opposing the approval of an application may not be considered as a protest. Protests may be mailed to ...., department of revenue, Helena, Montana, on or before the .... day of ...., 20...

Dated ....

Signed

....

ADMINISTRATOR

(2) Each applicant shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) (a) If the administrator receives no written protests, the department may approve the application without holding a public hearing.

(b) A response to a notice of opportunity to protest an application may not be considered unless the response is a letter satisfying all the requirements contained in the notice in subsection (1).

(c) If the department receives sufficient written protests that satisfy the requirements in subsection (1) against the approval of the application, the department shall hold a public hearing as provided in subsection (4).

(4) (a) If the department receives at least one protest but less than the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c), the department shall schedule a public hearing to be held in Helena, Montana, to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405, exclusive of public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

(b) If the department receives the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c) and the application is for an original license or for a transfer of location, the department shall schedule a public hearing to be held in the county of the proposed location of the license to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405 including public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

(c) The minimum number of protests necessary to initiate a public hearing to determine whether an application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for the proposed premises located within a quota area described in 16-4-201 must be 25% of the quota for all-beverages licenses determined for that quota area according to 16-4-201(1), (2), and (5) but in no case less than two. The minimum number of protests determined in this manner will apply only to applications for either on-premises consumption beer or all-beverages licenses."

Section 4. Section 16-4-401, MCA, is amended to read:

"**16-4-401. License as privilege — criteria for decision on application.** (1) A license under this code is a privilege that the state may grant to an applicant and is not a right to which any applicant is entitled.

(2) Except as provided in subsection (6), in the case of a license that permits on-premises consumption, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

(iv) the applicant is a resident of the state and is qualified to vote in a state election;

(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(vi) the applicant is not under 19 years of age; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (2)(a)(iv);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a);

(iii) each individual who has control over the operation of the license ~~or shares in the profits or liabilities of the license~~ meets the requirements for an individual applicant listed in subsection (2)(a);

(iv) each person who shares in the profits or liabilities of a license meets the requirements for an individual applicant listed in subsection (2)(a). This subsection (2)(b)(iv) does not apply to a shareholder of a corporation who owns less than 10% of the outstanding stock in that corporation.

~~(iv)~~*(v)* the corporation is authorized to do business in Montana; and

~~(v)~~*(vi)* in the case of a corporation not listed on a national stock exchange, each owner of stock meets the requirements of subsections (2)(a)(i) and (2)(a)(ii); and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (2)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (2)(b).

(3) In the case of a license that permits only off-premises consumption, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

(iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, the applicant's rights have been restored;

(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(vi) the applicant is not under 19 years of age; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (3)(a)(iv);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (3)(a); and

(iii) the corporation is authorized to do business in Montana; and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (3)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (3)(b).

(4) In the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic beverage, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant has no ownership interest in any establishment licensed under this chapter for retail alcoholic beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, rights have been restored;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments;

(v) the applicant is not under 19 years of age; and

(vi) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (4)(a)(iii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (4)(a);

(iii) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(iv) the corporation is authorized to do business in Montana; and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (4)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (4)(b).

(5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b) apply separately to each class of stock.

(6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to 16-4-302."

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Applicability. [Sections 1 and 2] apply to fees collected after June 30, 2001.

Approved April 30, 2001

CHAPTER NO. 449

[HB 405]

AN ACT ADDING TO THE REQUIREMENTS OF VICTIM NOTIFICATION TO INCLUDE VICTIMS OF THE CRIMES OF PARTNER OR FAMILY MEMBER ASSAULT AND VIOLATION OF AN ORDER OF PROTECTION; MODIFYING THE CONDITIONS FOR RELEASE ON BAIL TO INCLUDE PERSONS WHO VIOLATE AN ORDER OF PROTECTION; INCREASING FROM $10 TO $25 THE CHARGE THAT EACH CONVICTED CRIMINAL MUST PAY FOR VICTIM ADVOCATE PROGRAMS OPERATED OR USED BY COUNTIES, CITIES, AND TOWNS; CLARIFYING THE DISTRIBUTION OF THE VICTIM ADVOCATE CHARGE; AMENDING SECTIONS 3-10-601, 46-9-108, 46-9-302, AND 46-18-236, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-601, MCA, is amended to read:

"**3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees.** (1) Each justice of the peace shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county in which the justice of the peace holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) All fines, penalties, and forfeitures that are required to be imposed, collected, or paid in a justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

(3) ~~The~~ *Except as provided in 46-18-236(7), the* county treasurer shall, in the manner provided in 15-1-504, distribute money received under subsection (2) as follows:

(a) 50% to the state treasurer for deposit in the state general fund; and

(b) 50% to the county general fund."

Section 2. Section 46-9-108, MCA, is amended to read:

"**46-9-108. Conditions upon defendant's release — notice to victim of stalker's release.** (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

(a) the defendant may not commit an offense during the period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with an alleged victim of the crime and any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol, or any dangerous drug or other controlled substance without a legal prescription;

(j) the defendant shall furnish bail in accordance with 46-9-401; or

(k) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

(3) Whenever a person accused of a violation of *45-5-206,* 45-5-220, *or 45-5-626* is admitted to bail, the court shall, as soon as possible under the circumstances, make one and if necessary more reasonable attempts, by means that include but are not limited to certified mail, to notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release."

Section 3. Section 46-9-302, MCA, is amended to read:

"**46-9-302. Bail schedule — acceptance by peace officer.** (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is*:*

(a) any assault on a partner or family member, as partner or family member is defined in 45-5-206~~, or~~*;*

(b) stalking, as defined in 45-5-220*; or*

(c) violation of an order of protection, as defined in 45-5-626.

(2) A peace officer may accept bail on behalf of a judge:

(a) in accordance with the bail schedule established under subsection (1); or

(b) whenever the warrant of arrest specifies the amount of bail.

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered."

Section 4. Section 46-18-236, MCA, is amended to read:

"**46-18-236. (Temporary) Imposition of charge upon conviction or forfeiture — administration.** (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $15 for each misdemeanor charge;

(b) the greater of $20 or 10% of the fine levied for each felony charge; and

(c) an additional ~~$10~~ *$25* for each misdemeanor and felony charge under Title 45, 61-8-401, or 61-8-406.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment of the charge imposed by this section.

(3) The charges imposed by this section are not fines and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charges imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charges.

(5) The charges collected under subsection (1), except those collected *under subsections (1)(a) and (1)(b)* by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court *or justice's court* is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its county attorney and deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for those salaries may be used for the payment of any other county salaries.

(7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program, *including a program operated by a private, nonprofit organization,* that provides the services specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

(b) The appropriate county, city, or town finance officer or treasurer shall deposit $1 of each ~~$10~~ charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.

(c) If the county, city, or town does not operate or use a victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims compensation and assistance account established in 53-9-109, except as provided in subsection (7)(b). (Terminates July 1, 2001—sec. 4, Ch. 411, L. 1999.)

46-18-236. (Effective July 1, 2001) Imposition of charge upon conviction or forfeiture — administration. (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a ~~defendant~~ *person* upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $15 for each misdemeanor charge;

(b) the greater of $20 or 10% of the fine levied for each felony charge; and

(c) an additional ~~$10~~ *$25* for each misdemeanor and felony charge under Title 45, 61-8-401, or 61-8-406.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the ~~defendant~~ *person* is not able to pay the fine and costs or that the ~~defendant~~ *person* is unable to pay within a reasonable time, the court shall waive payment of the charge imposed by this section.

(3) The charges imposed by this section are not fines and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charges imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charges.

(5) The charges collected under subsection (1), except those collected *under subsections (1)(a) and (1)(b)* by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court *or justice's court* is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for those salaries may be used for the payment of any other county salaries.

(7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program, *including a program operated by a private, nonprofit organization,* that provides the services specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

(b) The appropriate county, city, or town finance officer or treasurer shall deposit $1 of each ~~$10~~ charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.

(c) If the county, city, or town does not operate or use a victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims compensation and assistance account established in 53-9-109, except as provided in subsection (7)(b)."

Section 5. Effective date. [This act] is effective July 1, 2001.

Approved April 30, 2001

CHAPTER NO. 450

[HB 406]

AN ACT REQUIRING INSURANCE COVERAGE FOR OUTPATIENT SELF-MANAGEMENT TRAINING AND EDUCATION FOR THE TREATMENT OF DIABETES AND A LIMITED BENEFIT FOR CERTAIN DIABETIC EQUIPMENT AND SUPPLIES; REQUIRING THAT MANDATORY COVERAGE APPLY TO COVERAGE BY HEALTH MAINTENANCE ORGANIZATIONS; PROVIDING THAT STATE AND LOCAL GOVERNMENT EMPLOYEE PLANS ARE NOT INCLUDED IF THE PLANS PROVIDE EQUIVALENT OR GREATER COVERAGE; AMENDING SECTIONS 2-18-704, 33-31-102, AND 33-31-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Coverage for outpatient self-management training and education for treatment of diabetes — limited benefit for medically necessary equipment and supplies. (1) Each group disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for outpatient self-management training and education for the treatment of diabetes. Any education must be provided by a licensed health care professional with expertise in diabetes.

(2) (a) Coverage must include a $250 benefit for a person each year for medically necessary and prescribed outpatient self-management training and education for the treatment of diabetes.

(b) Nothing in subsection (2)(a) prohibits an insurer from providing a greater benefit.

(3) Each group disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for diabetic equipment and supplies that is limited to insulin, syringes, injection aids, devises for self-monitoring of glucose levels (including those for the visually impaired), test strips, visual reading and urine test strips, one insulin pump for each warranty period, accessories to insulin pumps, one prescriptive oral agent for controlling blood sugar levels for each class of drug approved by the United States food and drug administration, and glucagon emergency kits.

(4) Annual copayment and deductible provisions are subject to the same terms and conditions applicable to all other covered benefits within a given policy.

(5) This section does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, specific disease, or long-term care policies.

(6) (a) This section does not apply to the state employee group insurance program, the university employee group insurance program, or any employee group insurance program of a city, town, county, school district, or other political subdivision of this state that on [the effective date of this act] provides substantially equivalent or greater coverage for outpatient self-management training and education for the treatment of diabetes and certain diabetic equipment and supplies provided for in subsection (3).

(b) The state employee group insurance program, the university employee group insurance program, or any employee group insurance program of a city, town, county, school district, or other political subdivision of this state that reduces or discontinues substantially equivalent or greater coverage after [the effective date of this act] is subject to the provisions of this section.

Section 2. Section 2-18-704, MCA, is amended to read:

"**2-18-704. (Temporary) Mandatory provisions.** (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions provided by law to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge shall notify the department of administration in writing within 90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended.

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

(7) An insurance contract or plan issued under this part must include coverage for treatment of inborn errors of metabolism, as provided for in 33-22-131.

(8) An insurance contract or plan issued under this part must include substantially equivalent or greater coverage for outpatient self-management training and education for the treatment of diabetes and certain diabetic equipment and supplies as provided in [section 1].

2-18-704. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Mandatory provisions. (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions of a defined benefit plan provided by law or, in the case of the defined contribution plan provided in Title 19, chapter 3, part 21, a member with at least 5 years of service and who is at least age 50 while in covered employment to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection

(1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group plan unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge shall notify the department of administration in writing within 90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended.

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

(7) An insurance contract or plan issued under this part must include coverage for treatment of inborn errors of metabolism, as provided for in 33-22-131.

(8) An insurance contract or plan issued under this part must include substantially equivalent or greater coverage for outpatient self-management training and education for the treatment of diabetes and certain diabetic equipment and supplies as provided in [section 1]."

Section 3. Section 33-31-102, MCA, is amended to read:

"**33-31-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Affiliation period" means a period that, under the terms of the health insurance coverage offered by a health maintenance organization, must expire before the health insurance coverage becomes effective.

(2) "Basic health care services" means:

(a) consultative, diagnostic, therapeutic, and referral services by a provider;

(b) inpatient hospital and provider care;

(c) outpatient medical services;

(d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);

(f) care and treatment of mental illness, alcoholism, and drug addiction;

(g) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(h) preventive health services, including:

(i) immunizations:

(ii) well-child care from birth;

(iii) periodic health evaluations for adults;

(iv) voluntary family planning services;

(v) infertility services; and

(vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction;

(i) minimum mammography examination, as defined in 33-22-132; ~~and~~

(j) outpatient self-management training and education for the treatment of diabetes along with certain diabetic equipment and supplies as provided in [section 1]; and

~~(j)~~*(k)* treatment and medical foods for inborn errors of metabolism. "Medical foods" and "treatment" have the meanings provided for in 33-22-131.

(3) "Commissioner" means the commissioner of insurance of the state of Montana.

(4) "Enrollee" means a person:

(a) who enrolls in or contracts with a health maintenance organization;

(b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or

(c) on whose behalf the health maintenance organization contracts to receive health care services.

(5) "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

(6) "Health care services" means:

(a) the services included in furnishing medical or dental care to a person;

(b) the services included in hospitalizing a person;

(c) the services incident to furnishing medical or dental care or hospitalization; or

(d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

(7) "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

(8) "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers. This subsection does not limit methods of provider payments made by health maintenance organizations.

(9) "Insurance producer" means an individual, partnership, or corporation appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

(10) "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

(11) "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

(12) "Point-of-service option" means a delivery system that permits an enrollee of a health maintenance organization to receive health care services from a provider who is, under the terms of the enrollee's contract for health care services with the health maintenance organization, not on the provider panel of the health maintenance organization.

(13) "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, or advanced practice registered nurse, as specifically listed in 37-8-202, who treats any illness or injury within the scope and limitations of the provider's practice or any other person who is licensed or otherwise authorized in this state to furnish health care services.

(14) "Provider panel" means those providers with whom a health maintenance organization contracts to provide health care services to the health maintenance organization's enrollees.

(15) "Purchaser" means the individual, employer, or other entity, but not the individual certificate holder in the case of group insurance, that enters into a health care services agreement.

(16) "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent."

Section 4. Section 33-31-111, MCA, is amended to read:

"33-31-111. Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Chapter 1, parts 12 and 13, of this title, 33-3-431, 33-15-308, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-246, 33-22-247, 33-22-514, 33-22-523, 33-22-524, 33-22-526, ~~and~~ 33-22-706, *and [section 1]* apply to health maintenance organizations."

Section 5. Application to types of insurance. The provisions of [section 1(1) and (2)] apply if the state employee group insurance program, the university employee group insurance program, or any employee group insurance program of a city, town, county, school district, or other political subdivision of this state reduces or discontinues substantially equivalent or greater coverage for outpatient self-management training and education for the treatment of diabetes and certain diabetic equipment and supplies.

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, and the provisions of Title 33, chapter 22, apply to [section 1].

Section 7. Effective date — applicability. [This act] is effective January 1, 2002, and applies to all policies, contracts, plans, or certificates issued or renewed on or after that date.

Approved April 30, 2001

CHAPTER NO. 451

[HB 412]

AN ACT INCREASING THE HOMESTEAD EXEMPTION FROM $60,000 TO $100,000; AMENDING SECTION 70-32-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-32-104, MCA, is amended to read:

"**70-32-104. Limitation on value.** (1) A homestead may not exceed *$100,000* in value ~~$60,000~~. In a proceeding instituted to determine the value of the homestead, the assessed value of the land with included appurtenances, if any, and of the dwelling house as *it* appears on the last-completed assessment roll preceding the institution of the proceeding is prima facie evidence of the value of the property claimed as a homestead.

(2) If a claimant who is an owner of an undivided interest in real property claims a homestead exemption, the claimant is limited to an exemption amount proportional to the claimant's undivided interest."

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to tax years beginning on or after January 1, 2001.

Approved April 30, 2001

CHAPTER NO. 452

[HB 430]

AN ACT PROVIDING FOR GRANTS TO CERTAIN MONTANA MUNICIPALITIES FOR COURTESY CARS; SETTING TERMS AND CONDITIONS OF THE COURTESY CAR PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. (1) The purpose of [sections 1 through 4] is to provide grants to municipalities for courtesy cars at certain Montana airports where rental cars or taxicabs are not available.

(2) The purpose of the program is to provide the airport users with ground transportation for short-term use between the airport and the local trading or recreation area.

Section 2. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) "Airport" means an airport and landing field, as defined in 67-1-101, that does not have commercial automobile rental services available. The term includes a regional airport authority or municipal airport authority as defined in 67-1-101.

(2) "Courtesy car" means a motor vehicle provided by, and titled in the name of, a municipality for the purposes and pursuant to the conditions set out in [sections 1 through 4].

(3) (a) "User" means an airplane pilot or an airplane passenger who flies into an airport.

(b) The term does not include local residents or airport personnel.

Section 3. Use of courtesy cars at airports — department responsibilities. (1) Upon the request of a municipality, the department may provide grant money from the department's special revenue account for courtesy cars for use at qualified airports, as provided in [sections 1 through 4].

(2) A courtesy car grant may not be given to a municipality if commercial rental cars or taxicabs are available that provide service to local airports.

(3) The department may adopt necessary rules, pursuant to its authority in 67-2-102, to provide courtesy car grants, including rules regarding the receipt and review of grant applications.

Section 4. Responsibilities and obligations of municipality. (1) A municipality may apply to the department for a grant to provide courtesy car services at a qualified airport. The municipality may procure a sponsor and assign the sponsor to a qualified airport to manage the municipality's courtesy car program. A sponsor may be a fixed base operator, an airport manager, or other responsible party. The municipality shall ensure that the local sponsor is familiar with and complies with all conditions of the courtesy car program.

(2) A municipality may not provide a courtesy car for use by local residents or airport personnel.

(3) A courtesy car may be used only between the airport and the local trading or recreation area. Travel in a courtesy car across the state line or beyond the local trading or recreation area is prohibited.

(4) (a) The municipality shall procure liability insurance to protect itself and the department from risk of loss. Liability insurance limits must be a minimum of $750,000 for each claim and $1.5 million for each occurrence, as provided in 2-9-108. The department must be named as an additional insured.

(b) Claims and actions against the sponsor are subject to and are governed by Title 2, chapter 9, part 3.

(5) A courtesy car may not be used unless the municipality or the sponsor has obtained certification that the user has personal motor vehicle liability insurance coverage as required in 61-6-301.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 67, and the provisions of Title 67 apply to [sections 1 through 4].

Section 6. Effective date. [This act] is effective July 1, 2001.

Approved April 30, 2001

CHAPTER NO. 453

[HB 498]

AN ACT PROVIDING THAT SOLID WASTE MANAGEMENT DISTRICT SERVICE CHARGES MAY BE BASED ON A COMBINATION OF WASTE MANAGEMENT FACTORS; ELIMINATING VEHICLE SIZE AS A FACTOR ON WHICH SERVICE CHARGES MAY BE BASED; AMENDING SECTION 7-13-232, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, section 75-10-102(1)(e), MCA, provides that it is the public policy of the state of Montana that "costs for the management and regulation of solid waste management systems should be charged to those persons generating solid waste in order to encourage the reduction of the solid waste stream"; and

WHEREAS, appointed solid waste boards may assess service charges on only one of several factors available to determine usage by persons in a solid waste management district; and

WHEREAS, a fixed assessment on family residential units does not accurately charge all users for waste generated; and

WHEREAS, service charges based on a combination of factors are more equitable to all the users of a solid waste system and promote the greatest reduction in the waste stream.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-232, MCA, is amended to read:

"**7-13-232. Determination of service charge.** (1) The board may establish, by resolution, rates for service charges, which may not be less than the actual cost of providing services. For solid waste management districts other than joint districts, the rates must be subject to the approval of the county commissioners.

(2) Service charges may take into account:

(a) the character, kind, and quality of service; and

(b) the cost of providing the service, including but not limited to depreciation and the payment of principal and interest on money borrowed by the district for the acquisition and improvement of facilities and equipment.

(3) (a) Service charges may be assessed per family residential unit or based on*:*

~~the size of a vehicle used to dispose of the waste;~~

(i) the volume or weight of the waste; ~~or~~

(ii) the cost, incentives, or penalties applicable to waste management practices*; or*

(iii) any combination of these factors.

(b) The service charge assessed to a family residential unit in which a home-based business is operated may not exceed the service charge assessed to a family residential unit without a home-based business unless there is a finding by the solid waste management district or joint district that the family residential unit with a home-based business is generating at least 20% more waste than the average for family residential units in the district that do not contain home-based businesses.

(4) The initial rate for any solid waste management district or joint district may not exceed the rate provided in the resolution creating the district.

(5) Fees for mobile home park accounts must be paid by the registered owner of each mobile home in the mobile home park.

(6) A notice of intention to enact a resolution to increase rates must be published as provided in 7-1-4128, and the district shall hold a public hearing prior to the meeting at which the resolution is considered."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 30, 2001

CHAPTER NO. 454

[HB 510]

AN ACT PROVIDING THAT THE PROVISION OF NUTRITION, INCLUSIVE OF SUPPLEMENTS AND PRESCRIBED MEDICATIONS, THROUGH A GASTROSTOMY OR JEJUNOSTOMY TUBE BY CERTAIN PERSONS IS NOT WITHIN THE SCOPE OF THE PRACTICE OF NURSING; AMENDING SECTION 37-8-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-8-103, MCA, is amended to read:

"**37-8-103. Exemptions — limitations on authority conferred.** (1) This chapter may not be construed as prohibiting:

(a) gratuitous nursing by friends or members of the family;

(b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

(c) nursing assistance in the case of an emergency;

(d) the practice of nursing by students enrolled in approved nursing education programs;

(e) the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one engagement not to exceed 6 months in length, provided that person does not represent to the public that the person is a nurse licensed to practice in this state;

(f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency of the United States while in the discharge of that nurse's official duties;

(g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents of the religion or denomination;

(h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent that the care may be provided by a parent or guardian;

(i) the execution of a death sentence pursuant to 46-19-103; ~~and~~

(j) nursing tasks delegated by licensed nurses to unlicensed persons according to rules adopted by the board*; and*

(k) the provision of nutrition, inclusive of supplements and medications prescribed by a physician, an advanced practice registered nurse, or a physician assistant-certified, to be administered to an individual through a gastrostomy or jejunostomy tube by a parent, guardian, foster parent, surrogate parent, other family member, or individual, regardless of compensation, who is authorized and trained by the individual receiving the nutrition, inclusive of supplements and prescribed medications, or who is authorized and trained by a parent, guardian, foster parent, surrogate parent, or other adult family member. The exemption in this subsection (1)(k) does not apply to provision of nutrition, inclusive of supplements and prescribed medications, in a licensed facility that provides skilled nursing care as provided in Title 50, chapter 5.

(2) This chapter may not be construed:

(a) as conferring any authority to practice medicine, surgery, or any combination of medicine or surgery;

(b) to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; or

(c) to permit any person to undertake the treatment of disease by any of the methods employed in the healing arts unless the licensee has been qualified under the applicable law or laws licensing the practice of those professions or healing arts in the state of Montana.

(3) (a) This chapter may not be construed to apply to a personal assistant performing health maintenance activities and acting at the direction of a person with a disability.

(b) The following definitions apply to this subsection:

(i) "Health care professional" means an individual licensed pursuant to Title 37 as a physician assistant-certified, ~~nurse practitioner~~ *advanced practice registered nurse*, registered nurse, or occupational therapist or a medical social worker working as a member of a case management team for the purposes of the home- and community-based services program of the department of public health and human services.

(ii) "Health maintenance activities" includes urinary systems management, bowel treatments, administration of medications, and wound care if the activities in the opinion of the physician or other health care professional for the person with a disability could be performed by the person if the person were physically capable and if the procedure may be safely performed in the home.

(iii) "Physician" means an individual licensed pursuant to Title 37, chapter 3."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 30, 2001

CHAPTER NO. 455

[HB 539]

AN ACT CREATING A MONTANA TITLE LOAN ACT TO BE ADMINISTERED BY THE DEPARTMENT OF COMMERCE; PROVIDING FOR LICENSURE, LICENSE AND EXAMINATION FEES, DISCLOSURE REQUIREMENTS, COMPLAINT PROCEDURES, CONTRACT PROVISIONS, LOAN AMOUNT LIMITS, RULEMAKING AUTHORITY, CIVIL REMEDIES, AND CRIMINAL PENALTIES; AMENDING SECTIONS 31-1-106 AND 32-5-103, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 19] may be cited as the "Montana Title Loan Act".

Section 2. Purpose — rules — scope. (1) The purpose of [sections 1 through 19] is to protect consumers who enter into short-term, high-rate loans with lenders from abuses that occur in the credit marketplace when the lenders are unregulated.

(2) The department may adopt rules to implement the provisions of [sections 1 through 19]. The rules may include but are not limited to rules establishing forms and procedures for licensing, rules pertaining to acceptable practices at a business location, rules establishing disclosure requirements, and rules establishing complaint and hearing procedures.

(3) [Sections 1 through 19] do not apply to banks, savings and loan associations, credit unions, other state or federally regulated financial institutions, or pawn brokers.

(4) [Sections 1 through 19] may not be construed as affecting in any way the method of perfecting security interests on personal property provided for elsewhere in law.

Section 3. Definitions. For the purposes of [sections 1 through 19], the following definitions apply:

(1) "Borrower" means the owner of any titled personal property who pledges the property to a title lender pursuant to a title loan agreement.

(2) "Capital assets" means the assets of a person less the liabilities of that person. Assets and liabilities must be measured according to generally accepted accounting principles.

(3) "Certificate of title" means a state-issued certificate of title or certificate of ownership for personal property deposited with a title lender as security for a title loan pursuant to a title loan agreement.

(4) "Department" means the department of commerce provided for in 2-15-1801.

(5) "Person" means an individual, corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, or other entity.

(6) "Pledged property" means personal property the ownership of which is evidenced and delineated by a state-issued certificate of title.

(7) "Title lender" means a person who has qualified to engage in the business of making title loans pursuant to [sections 1 through 19] and maintains at least one title loan office in this state.

(8) "Title loan agreement" means a written agreement between a borrower and a title lender in a form that complies with the requirements of [sections 1 through 19].

(9) "Title loan office" means the location or premises where a title lender regularly conducts business.

(10) "Titled personal property" means any personal property the ownership of which is evidenced and delineated by a state-issued certificate of title.

Section 4. Licensure of title lenders. (1) It is unlawful for any person to act as a title lender unless the person has first been licensed by the department.

(2) (a) All title loan agreements entered into by a person who acts in violation of the license requirements of [sections 1 through 19] and all title pledges accepted by the person are void.

(b) Any borrower who enters into a title loan agreement with a person who acts in violation of the provisions of [sections 1 through 19] may not be bound by the terms of the title loan agreement, and the borrower's only liability is for the return of the principal sum borrowed plus interest at the rate set by statute for interest on judgments.

Section 5. Qualifications for licensure. (1) To be eligible for licensure as a title lender, an applicant must be a natural person residing in this state, a business entity formed under the laws of this state, or a foreign business entity qualified to conduct business in this state.

(2) (a) The application for licensure must be in writing, under oath, and in the form prescribed by the department.

(b) The application must contain:

(i) the name of the applicant;

(ii) the date of formation if a business entity;

(iii) the physical address of each title loan office to be operated;

(iv) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and

(v) any other pertinent information that the department may require.

(3) An applicant for licensure shall pay an application fee of $500, unless less than 6 months remain in the calendar year, in which case the fee is $250, and an annual license renewal fee of $500 for each title loan office that the applicant intends to operate or operates in this state.

(4) (a) Each license must specify the location of the specific title loan office to which it applies and must be conspicuously displayed in the title loan office.

(b) Before any title loan office location may be changed or moved by the title lender, the department shall approve the change of location by endorsing the license for that title loan office or mailing the licensee a new license for that title loan office without charge.

(5) (a) Upon the filing of the application and the payment of the fee by a person eligible to apply for a title lender's license, the department shall issue a license to the applicant to engage in the title loan business in accordance with the provisions of [sections 1 through 19] for a period that expires on the last day of December following the date of its issuance.

(b) Each license must be uniquely numbered and may not be transferred or assigned. Renewal licenses are effective for a period of 1 year.

(6) Each licensee shall post a bond in the amount of $10,000 for each location. The bond must continue in effect for 2 years after the licensee ceases operation in this state. The bond must be available to pay damages and penalties to consumers harmed by a violation of [sections 1 through 19].

(7) More than one place of business may not be maintained under the same license, but the department may issue more than one license to the same licensee if the licensee is otherwise qualified.

Section 6. Examinations — fees. (1) The department may conduct an examination of a licensee's title lending operation at any time to ensure that the licensee is in compliance with the provisions of [sections 1 through 19].

(2) A licensee shall pay the department a fee in the amount of $300 a day for each examiner required to conduct an annual examination.

(3) A licensee shall make available to a department examiner the information required under [section 9] or as required by rule.

(4) Completion of an annual examination must, in the absence of the department's finding of just cause to revoke or suspend a license, constitute grounds for license renewal.

Section 7. License revocation or suspension. (1) If the department finds, after notice and hearing or opportunity for hearing, as provided in the Montana Administrative Procedure Act, that a licensee or an officer, agent, employee, or representative of the licensee has violated any of the provisions of [sections 1 through 19], has failed to comply with the rules, regulations, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, or has furnished false information to the department, the department may issue an order revoking or suspending the right of the licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee.

(2) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

Section 8. Complaint procedure. The department shall maintain a list of licensees that is available to interested persons and to the general public. The department shall also establish by rule a procedure under which an aggrieved consumer or any member of the public may file a complaint against a licensee or an unlicensed person who violates any provision of [sections 1 through 19]. The department may hold hearings, make findings of fact or conclusions of law, issue cease and desist orders, refer the matter to the appropriate law enforcement agency for prosecution for a violation of [sections 1 through 19], seek injunctive or other relief in district court, or revoke or suspend a license granted under [sections 1 through 19].

Section 9. Information and annual reports. (1) Each licensee shall keep books, accounts, and records that will enable the department to determine if the licensee is complying with the provisions of [sections 1 through 19] and shall maintain any other records required by the department. The department is authorized to examine the records at any reasonable time. The records must be kept for 2 years following the last entry on a title loan and must be kept according to generally accepted accounting procedures that include an examiner being able to review the recordkeeping and reconcile each title loan with documentation maintained in the borrower's loan file records.

(2) Each licensee shall file, on forms prescribed by the department, an annual report with the department on or before March 31 for the 12-month period in the preceding year ending as of December 31. The report must disclose in detail and under appropriate headings:

(a) the resources, assets, and liabilities of the licensee at the beginning and the end of the period;

(b) the income, expense, gain, loss, and balance sheets;

(c) the total number of title loans made in the year ending as of December 31 of the previous year;

(d) the total number of title loans outstanding as of December 31 of the previous year; and

(e) verification that the licensee has not used a criminal process or caused a criminal process to be used in the collection of any title loans or used any civil process to collect the payment of title loans not available to title lenders under [sections 1 through 19].

(3) A report must be verified by the oath or affirmation of the owner, manager, or president of the title lender.

(4) (a) If a licensee conducts another business or is affiliated with other licensees under [sections 1 through 19] or if any other situation exists under which allocations of expense are necessary, the licensee shall make the allocation according to appropriate and reasonable accounting principles as approved by the department.

(b) Information about any other business conducted on the same premises where title loans are made must be provided as required by the department.

(5) Each licensee shall file a copy of the disclosure pamphlets described in [section 13] with the department prior to the date of commencement of business at each location, at the time that any changes are made to the pamphlets, and annually upon renewal of the license. These pamphlets must be available to interested parties and to the general public through the department.

Section 10. Title loan requirements — liability of borrower. (1) Any licensed title lender may engage in the business of making loans secured by a certificate of title subject to the provisions of [sections 1 through 19].

(2) Every title loan must be reduced to writing in a title loan agreement. Each title loan agreement must provide that:

(a) the title lender agrees to make a loan of money to the borrower and that the borrower agrees to give the title lender a security interest in unencumbered titled personal property owned by the borrower;

(b) the borrower consents to the title lender keeping possession of the certificate of title;

(c) the borrower has the exclusive right to redeem the certificate of title by repaying the loan of money in full and by complying with the title loan agreement for an agreed period of time;

(d) (i) the title lender may renew the title loan for additional 30-day periods beyond the original term provided that beginning with the sixth extension or continuation, and for each subsequent extension or continuation, the borrower must reduce the principal amount by at least 10% of the original principal amount of the loan; and

(ii) if the borrower fails to reduce the principal amount as required by subsection (2)(d)(i), the title lender may at its option:

(A) declare outstanding principal and any finance charges due and payable; or

(B) solely for the purpose of calculating the finance charge, reduce the amount of the principal balance by 10%, with the understanding that that portion of the principal is still owed by the borrower but that portion of the loan may not accrue interest or finance charges after that date;

(e) when the certificate of title is redeemed, the title lender shall release its security interest in the titled personal property and return the personal property certificate of title

to the borrower;

(f) (i) upon failure of the borrower to redeem the certificate of title at the end of the original 30-day agreement period or at the end of any agreed-upon 30-day renewal or subsequent

renewals, the borrower shall deliver the titled personal property to the title lender at the location specified in the title loan agreement; and

(ii) the borrower shall deliver the titled personal property to the title lender in substantially the same condition that it was in at the time that the borrower entered into the loan, minus normal wear and tear;

(g) if the borrower fails to deliver the titled personal property to the title lender, the title lender must be allowed to take possession of the titled personal property;

(h) upon obtaining possession of the titled personal property, the title lender is authorized to sell the titled personal property and to convey to the buyer good title, subject to the waiting periods provided for in [section 14]; and

(i) a borrower who does not redeem a pledged certificate of title is not personally liable to the title lender to repay principal, interest, or expenses incurred in connection with the title loan and that the title lender shall look solely to the titled personal property for satisfaction of the amounts owed under the title loan agreement.

(3) The security interest provided for in subsection (2)(a) is not perfected unless it is filed in accordance with 23-2-611 or 61-3-103.

(4) Any borrower who obtains a title loan from a title lender under false pretenses by hiding or not disclosing the existence of a valid prior lien or security interest affecting the titled personal property is personally liable to the title lender for the full amount stated in the title loan agreement, including interest and expenses incurred by the title lender in connection with the loan.

Section 11. Interest rates — fees charged — repossession charges. (1) The maximum rate of interest that a title lender shall contract for and must receive for making and carrying any title loan authorized by [sections 1 through 19] may not exceed:

(a) 25% for each 30-day period for the portion of a loan that does not exceed $2,000;

(b) 18% for each 30-day period for the portion of a loan exceeding $2,000 but not exceeding $4,000; and

(c) a 10% percentage rate for each 30-day period, plus fees, on the portion of a loan that exceeds $4,000.

(2) Title lenders may charge their actual costs of recording liens on borrowers' certificates of title.

Section 12. Title loan agreements — required disclosures. Each title loan agreement must disclose the following:

(1) all disclosures required to be made under the federal Truth in Lending Act;

(2) that the transaction is a loan secured by the pledge of titled personal property;

(3) the identity of the parties to the title loan agreement, including the name, business address, telephone number, and certificate number of the title lender and the name, resident address, and

identification of the borrower;

(4) the monthly interest rate to be charged;

(5) the allowable fees and expenses to be charged to the borrower upon redemption of the certificate of title;

(6) the date on which the borrower's exclusive right to redeem the pledged certificate of title pursuant to [section 14] expires;

(7) the location where the titled personal property is to be delivered if the certificate of title is not redeemed and the hours that the location is open for receiving deliveries;

(8) that if the titled personal property is sold by the title lender, any proceeds of the sale in excess of the amount owed on the loan and the reasonable costs of repossession must be paid to the borrower;

(9) that any attempt by a borrower to obtain a replacement certificate of title on a motor vehicle during the active term of a loan under [sections 1 through 19] may be a violation of 61-3-204 and may be subject to the penalty provisions of 61-3-601; and

(10) any additional disclosures considered necessary by the department.

Section 13. Required disclosure pamphlet. Before entering into a title loan agreement, the licensee shall deliver to the consumer a pamphlet prepared by or at the direction of the department that:

(1) explains, in simple language, all of the consumer's rights and responsibilities in a title loan transaction;

(2) includes a telephone number to the department's office that handles concerns or complaints by consumers;

(3) informs consumers that the department's office can provide information about whether a lender is licensed and other legally available information; and

(4) in a manner that is more conspicuous than the other information provided in the pamphlet and that is in at least 14-point bold typeface, furnishes a statement that "you cannot be prosecuted in criminal court for collection of this loan".

Section 14. Redemption of certificate of title — failure to take possession. (1) (a) Except as otherwise provided in [sections 1 through 19], the borrower is entitled to redeem the certificate of title upon timely satisfaction of all outstanding obligations agreed to in the title loan agreement.

(b) Upon expiration or default of a title loan agreement and of the renewal or renewals of the title loan agreement, if any, the title lender shall give written notification to the borrower of the borrower's right to redeem the certificate of title and shall retain possession of the certificate of title for at least 20 days after providing the notification.

(c) If the borrower fails to redeem the certificate of title before the lapse of the 20-day holding period, the borrower shall forfeit all right, title, and interest in and to the titled personal property to the title lender, who acquires an absolute right of title to the titled personal property. The title lender may sell or dispose of the pledged property.

(2) The title lender has, upon default by the borrower of any obligation pursuant to the title loan agreement, the right to take possession of the titled personal property.

(3) In taking possession, the title lender or the title lender's agent may proceed without judicial process if this can be done without breach of the peace or, if necessary, may proceed by judicial process.

(4) If the title lender takes possession of the titled personal property, either personally or through its agent, at any time during the 20-day holding period provided in subsection (1), the title lender shall retain possession, either personally or through its agent, of the titled personal property until the expiration of the 20-day holding period.

(5) If during the 20-day holding period the borrower redeems the certificate of title by paying all outstanding principal, interest, and other fees stated in the title loan agreement and, if applicable, repossession fees and storage fees, the borrower must be given possession of the certificate of title and the titled personal property without further charge.

Section 15. Records of title loan agreements. (1) Each title lender shall keep a consecutively numbered record of each title loan agreement executed. In addition to a copy of the title loan agreement, the record must include the following:

(a) a clear and accurate description of the titled personal property, including its vehicle identification or serial number, license plate number, year, make, model, type, and color, if applicable;

(b) the date of the title loan agreement;

(c) the amount of the loan made pursuant to the title loan agreement;

(d) the date of maturity of the loan; and

(e) the name, social security number, resident address, and type and an identification number of a photo identification of the borrower and whether the borrower is over 18 years of age.

(2) The title lender shall make a good and useable photocopy of the photo identification of the

borrower or shall take an instant photograph of the borrower, which photocopy or photograph must be attached to the title lender's copy of the title loan agreement.

(3) The borrower and the title lender or the title lender's employee or agent shall sign the title loan agreement, and the borrower must be provided with a copy at the time of signing.

(4) (a) The title lender shall keep the numbered record and a copy of a title loan agreement for a period of not less than 2 years from the date of the closing of

the last transaction reflected in the record. The date of the last transaction, as used in this subsection, means, in the case in which a borrower redeemed the pledged certificate of title, the date of the redemption and, in the case in which a borrower does not redeem the pledged certificate of title, the date on which the title lender sells the titled personal property.

(b) A title lender who ceases engaging in the business of making title loans shall keep all records in the title lender's possession for a period of not less than 2 years from the date on which the title lender ceased engaging in the business.

(5) The records required to be maintained by this section must be made available for inspection by any employee of the department upon request during ordinary business hours without warrant or court order.

Section 16. Safekeeping of certificates of title — liability insurance — liability. (1) A person engaged in the business of title lending shall provide a safe place for the keeping of the pledged certificates of title and for the keeping of pledged property delivered to the title lender pursuant to the terms of any title loan agreement.

(2) A person engaged in the business of title lending shall maintain premises liability insurance in an amount of not less than $100,000 for each occurrence for the benefit of consumers and employees who visit or work at the title lending office.

(3) A person engaged in the business of title lending is immune from liability for any loss or injury occasioned or caused by the use of pledged property unless the pledged property is actually in the possession of the title lender.

(4) A person engaged in the business of title lending is strictly liable to the borrower for any loss to pledged property in the possession of the title lender but only if the borrower makes a redemption of the pledged property prior to the expiration of the 20-day holding period provided in [section 14].

Section 17. Prohibited acts. (1) A title lender may not:

(a) accept a pledge from a person under 18 years of age;

(b) make any title loan agreement giving the title lender any recourse against the borrower other than the rights granted title lenders under [sections 1 through 19];

(c) accept any waiver, in writing or otherwise, of any right or protection accorded a borrower pursuant to [sections 1 through 19];

(d) fail to exercise reasonable care to protect from loss or damage certificates of title or titled personal property in the physical possession of the title lender;

(e) purchase titled personal property for personal use that was repossessed from the borrower by the title lender;

(f) enter into a title loan agreement unless the borrower presents clear title to the titled personal property at the time that the loan is made and the title is retained in the physical possession of the title lender;

(g) threaten to use or use a criminal process in this or any other state to collect on the loan made to a consumer in this state or any civil process to collect the payment of titled loans not generally available to creditors to collect on loans in default:

(h) use any device or title loan agreement that would have the effect of charging or collecting more fees, charges, or interest than those allowed by [sections 1 through 19];

(i) engage in unfair, deceptive, or fraudulent practices in the making or collection of a title loan;

(j) knowingly violate any provision of or rule promulgated pursuant to [sections 1 through 19]; or

(k) include any of the following provisions in the title loan agreement:

(i) a hold harmless clause, provided that a title lender is not liable to the borrower or a third party for injuries to or damages sustained by the borrower or a third party as the result of an accident involving personal property to which the title lender holds the certificate of title;

(ii) a confession of judgment clause;

(iii) any assignment of or order for payment of wages or other compensation for services;

(iv) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract; or

(v) a waiver of any provision of [sections 1 through 19].

(2) If a title lender enters into a transaction contrary to this section, any lien or security interest obtained by the title lender is void.

Section 18. Civil remedies. (1) The remedies provided in this section are cumulative and apply to licensees and unlicensed persons to whom [sections 1 through 19] apply.

(2) Any violation of [sections 1 through 19] constitutes an unfair or deceptive trade practice.

(3) A person found to have violated [sections 1 through 19] is liable to the consumer for actual and consequential damages, plus statutory damages of $1,000 for each violation, plus costs and attorney fees.

(4) A consumer may sue for injunctive and other appropriate equitable relief to stop a person from violating any provisions of [sections 1 through 19].

(5) The consumer may bring a class action suit to enforce [sections 1 through 19].

(6) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer for a violation of [sections 1 through 19].

Section 19. Criminal penalties. A person, including a member, officer, or director of a title lender, who knowingly violates [sections 1 through 19] is guilty of a misdemeanor and, on conviction, is subject to a fine in an amount not exceeding $1,000 or imprisonment not exceeding 6 months, or both.

Section 20. Section 31-1-106, MCA, is amended to read:

"**31-1-106. Legal interest.** (1) Except as otherwise provided by the Uniform Commercial Code, ~~or~~ 31-1-111 and 31-1-112, *or [section 11]*, unless there is an express contract in writing fixing a different rate or a law or ordinance or resolution of a public body fixing a different rate on its obligations, interest is payable on all ~~moneys~~ *money* at the rate of 10% a year after ~~they become~~ *it becomes* due on:

(a) any instrument of writing, except a judgment;

(b) an account stated;

(c) ~~moneys~~ *money* lent or due on any settlement of accounts from the date on which the balance is ascertained; and

(d) ~~moneys~~ *money* received for the use of another *person* and detained from ~~him~~ *that person*.

(2) In the computation of interest for a period of less than 1 year, 365 days constitute a year."

Section 21. Section 32-5-103, MCA, is amended to read:

"**32-5-103. Engaging in business of making consumer loans restricted.** (1) Except as provided in subsection (5), a person may not engage in the business of making consumer loans in any amount and contract for, charge, or receive directly or indirectly on or in connection with any loan any charges, whether for interest, compensation, consideration, or expense, except as provided in and authorized by this chapter. The provisions of this chapter do not apply to any exempted person.

(2) A licensee may sell its business and assets to a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by an agency of the state of Montana or an agency of the federal government. All contracts for loans and all other contracts entered into by the licensee pursuant to the provisions of this chapter that are sold and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

(3) The provisions of subsection (1) apply to any person who seeks to evade its applications by any device, subterfuge, or pretense.

(4) Any act by a licensee in the making of a contract or in the collection of a loan made under the contract that violates the provisions of this chapter is void. The licensee has no right to collect, receive, or retain any principal, interest, or charges.

(5) A consumer loan licensee or a person who seeks a regulated lender exemption under 31-1-112 as a consumer loan licensee shall fully comply with this chapter. A regulated lender as defined in 31-1-111, other than a consumer loan licensee, or a lender who complies with the provisions of Title 31, chapter 1, part 1, is not required to comply with this chapter. A deferred deposit lender, as defined in 31-1-703, who complies with the provisions of Title 31, chapter 1, part 7, is not required to comply with this chapter. *A title lender, as defined in [section 3], who complies with the provisions of [sections 1 through 19], is not required to comply with this chapter.*"

Section 22. Codification instruction. [Sections 1 through 19] are intended to be codified as an integral part of Title 31, chapter 1, and the provisions of Title 31, chapter 1, apply to [sections 1 through 19].

Section 23. Applicability. [This act] applies to title loan agreements entered into or renewed after January 1, 2002.

Approved April 30, 2001

CHAPTER NO. 456

[HB 559]

AN ACT GENERALLY REVISING THE NOTICE PERIODS FOR LANDLORDS NOTIFYING TENANTS OF INTENDED TERMINATION OF THE RENTAL AGREEMENT FOR NONCOMPLIANCE OR VIOLATION OF THE RENTAL AGREEMENT OR OTHER PROVISIONS OF THE MONTANA RESIDENTIAL LANDLORD AND TENANT ACT OF 1977; AMENDING SECTIONS 70-24-422, 70-24-436, AND 70-24-441, MCA; AND PROVIDING AN APPLICABILITY PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-24-422, MCA, is amended to read:

"**70-24-422. Noncompliance of tenant generally — landlord's right of termination — damages — injunction.** (1) Except as provided in ~~this chapter~~ *this chapter*, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321 ~~affecting health and safety~~, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the ~~breach~~ *noncompliance* and that the rental agreement will terminate upon a date *specified in the notice* not less than ~~14~~ *the minimum number of* days after receipt of the notice *provided for in this section*. ~~If the breach is not remedied within that time, the~~ *The* rental agreement terminates as provided in the notice, subject to the following ~~exceptions~~:

(a) If the ~~breach~~ *noncompliance* is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the ~~breach~~ *noncompliance* ~~before the date specified in the notice~~ *before the date specified in the notice*, the rental agreement does not terminate.

(b) If the ~~breach~~ *noncompliance* involves an unauthorized pet, the *notice period is* ~~landlord may deliver a written notice to the tenant that the rental agreement will terminate upon a date not less than~~ 3 days ~~after receipt of the notice if the breach is not remedied within that time. This subsection does not apply to a rental agreement involving a tenant who rents space to park a mobile home but who does not rent the mobile home~~.

(c) If the ~~breach~~ *noncompliance* involves unauthorized persons residing in the rental unit, ~~the landlord may deliver a written notice to the tenant that the rental agreement will terminate upon a date not less than 3 days after receipt of the notice if the breach is not remedied within that time. This subsection does not apply to a rental agreement involving a tenant who rents space to park a mobile home but who does not rent the mobile home~~ *the notice period is 3 days.*

(d) If the noncompliance is not listed in subsection (1)(b)~~or~~ *or (1)(c),*~~;~~ *the notice period is 14 days.*

~~(d)~~*(e)* If substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the ~~breach~~ *noncompliance* and the date of the termination of the rental agreement.

(f) This subsection (1) does not apply to a rental agreement involving a tenant who rents space for a mobile home but does not rent the mobile home.

(2) ~~(a) Except as provided in subsection (2)(b), if~~ *If* rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement. *This subsection does not apply to a rental agreement involving a tenant who rents space for a mobile home but does not rent the mobile home.*

~~(b) For a rental agreement involving a tenant who rents space to park a mobile home but who does not rent the mobile home, the notice period referred to in subsection (2)(a) is 15 days.~~

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the ~~breach~~ *noncompliance* under the provisions of 70-24-321(2).

(4) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. Except as provided in subsection (5), if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

(5) Treble damages may not be recovered for the tenant's early termination of the tenancy.

(6) Subsections (3) through (5) apply to all rental agreements, including those involving a tenant who rents space for a mobile home but does not rent the mobile home.

~~(6)~~*(7)* The landlord is not bound by this section in the event that*:*

(a) the rental agreement does not involve a tenant who rents space for a mobile home but does not rent the mobile home; and

(b) the landlord elects to use the 30-day notice for termination of tenancy as provided in 70-24-441."

Section 2. Section 70-24-436, MCA, is amended to read:

"**70-24-436. Mobile home parks — grounds for termination of rental agreement.** (1) ~~A landlord of a mobile home park may terminate a rental agreement only by following the procedure set forth in 70-24-422, except as specifically provided in this section, and only for one or more of the following reasons~~ *With respect to a tenant who rents space in a mobile home park but does not rent the mobile home, if there is a noncompliance by the tenant with the rental agreement or with a provision of 70-24-321, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts or omissions constituting the noncompliance and stating that the rental agreement will terminate upon a date specified in the notice that may not be less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates as provided in the notice for one or more of the following reasons and subject to the following conditions*:

(a) nonpayment of rent, late charges, or common area maintenance fees as established in the rental agreement, *for which the notice period is 7 calendar days*;

(b) ~~late payment of rent, late charges, or common area maintenance fees as established in the rental agreement three or more times within a 12-month period if written notice is given by the landlord after each failure to pay, as~~

~~required by 70-24-422. For this subsection (1)(b), the notice period referred to in 70-24-422(1) is 30 days.~~ *a violation of a mobile home park rule other than provided for in subsection (1)(a) that does not create an immediate threat to the health and safety of any resident of the mobile home park or its manager or owner, for which the notice period is 14 days;*

(c) *a* violation of a mobile home park rule that creates an immediate threat to the health and safety of any resident of the mobile home park, *its manager, or its owner, the notice period is 24 hours;* ~~if the violation has not been remedied 24 hours after the violator is given written notice of the violation;~~

(d) subject to the right to terminate in subsections (1)(e) through (1)(l), if the noncompliance described in subsections (1)(a) through (1)(c) is remediable by repairs, the payment of damages, or otherwise, and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate as a result of that noncompliance;

(e) late payment of rent, late charges, or common area maintenance fees as established in the rental agreement three or more times within a 12-month period if written notice is given by the landlord after each failure to pay, as required by subsection (1)(a), for which the notice period for termination for the final late payment is 30 days;

(f) a violation of a mobile home park rule that creates an immediate threat to the health and safety of any resident of the mobile home park, its manager, or owner, whether or not notice was given pursuant to subsection (1)(c) and the violation was remedied as provided in subsection (1)(d), for which the notice period for termination is 14 days;

~~(d) two or more violations within a 12-month period of any combination of one or more mobile home park rules, the violation of which would have a significant adverse impact on the mobile home park or its residents and that are so designated;~~

~~(e)~~*(g)* two or more violations within a 12-month period of the same rule~~. For this subsection (1)(e), the~~ *for which notice has been given for each prior violation as provided in subsection (1)(a), (1)(b), or (1)(c), for which the* notice period ~~referred to in 70-24-422(1) is~~ *for termination for the final violation is* 30 days~~.~~*;*

~~(f)~~*(h)* two or more violations of 70-24-321(1) within a 12-month period ~~or~~*, for which the notice period for termination for the final violation is 14 days;*

(i) any violation of 70-24-321(2), *for which the notice period is as provided in 70-24-422(3)*;

~~(g)~~*(j)* disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment and use of the premises~~. For this subsection (1)(g)~~, *for which* the notice period ~~referred to in 70-24-422(1)~~ is 30 days~~.~~*;*

~~(h)~~*(k) any other noncompliance or violation not covered by subsection (1)(a) through (1)(j) that* endangers other residents or mobile home park personnel or causes substantial damage to the mobile home park premises, *for which the notice period is 14 days*;

~~(i)~~*(l)* conviction of the mobile home owner or a tenant of the mobile home owner of a violation of a federal or state law or local ordinance, when the violation is detrimental to the health, safety, or welfare of other residents or the landlord of the mobile home park, or the landlord's documentation of a violation of the provisions of Title 45, chapter 9, *for which the notice period is 14 days*;

~~(j)~~*(m)* changes in the use of the land if the requirements of subsection (2) are met~~. For this subsection (1)(j)~~, *for which* the notice period ~~referred to in 70-24-422(1)~~ is 180 days~~.~~*;*

~~(k)~~*(n)* ~~a~~ *any* legitimate business reason *not covered elsewhere in subsection (1)*, provided that the landlord meets the following requirements:

(i) the termination does not violate a provision of this section or any other state statute; and

(ii) the landlord has given the mobile home owner or tenant of the mobile home owner a minimum of 90 days' written notice of the termination.

(2) If a landlord plans to change the use of all or part of the land composing the mobile home park from mobile home lot rentals to some other use, each affected mobile home owner must receive notice from the landlord as follows:

(a) The landlord shall give the mobile home owner and a tenant of the mobile home owner at least 15 days' written notice that the landlord will be appearing before a unit of local government to request permits for a change of use of the mobile home park.

(b) After all required permits requesting a change of use have been approved by the unit of local government, the landlord shall give the mobile home owner and a tenant of the mobile home owner 6 months' written notice of termination of tenancy. If the change of use does not require local government permits, the landlord shall give the written notice at least 6 months prior to the change of use. In the notice, the landlord shall disclose and describe in detail the nature of the change of use.

(c) Prior to entering a rental agreement during the 6-month notice period referred to in subsection (2)(b), the landlord shall give each prospective mobile home owner, and *any* tenant of the mobile home owner *whose identity and address have been provided to the landlord,* written notice that the landlord is requesting a change in use before a unit of local government or that a change in use has been approved.

(3) For purposes of calculating the total number of notices given within a 12-month period under subsection (1)~~(b)~~*(e)*, only one notice for each violation per month may be included in the calculation."

Section 3. Section 70-24-441, MCA, is amended to read:

"70-24-441. Termination by landlord or tenant — *applicability.* (1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least 7 days before the termination date specified in the notice.

(2) The landlord or the tenant may terminate a month-to-month tenancy by giving to the other at any time during the tenancy at least 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy.

(3) The tenancy terminates on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

(4) The provisions of this section do not apply to a tenant who rents space for a mobile home in a mobile home park but does not rent the mobile home."

Section 4. Applicability. The notice provisions of 70-24-422 and 70-24-436 apply to existing rental agreements to the extent that an existing rental agreement does not contain specific notice provisions.

Approved April 30, 2001

CHAPTER NO. 457

[HB 570]

AN ACT REVISING WATER LAWS; AUTHORIZING A COUNTY ATTORNEY TO BRING AN INDEPENDENT ACTION FOR THE ENFORCEMENT OF WATER USE LAWS; CHANGING THE ALLOWABLE TIME FOR ATTEMPTING TO OBTAIN VOLUNTARY COMPLIANCE; PROVIDING FOR THE DEPOSIT OF PENALTIES COLLECTED PURSUANT TO AN INDEPENDENT ACTION; AMENDING SECTIONS 85-2-114, 85-2-122, AND 85-2-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-114, MCA, is amended to read:

"**85-2-114. Judicial enforcement.** (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of this chapter, it may, after reasonable attempts have failed to obtain voluntary compliance as provided in subsection (4), petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take ~~such~~ steps ~~as~~ *that* may be necessary to remedy the waste, unlawful use, or interference; or

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

(2) Upon the issuance of an order or injunction, the department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it~~,~~. ~~which~~ *The* notice ~~shall be~~ *constitutes* legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin ~~such~~ *the* waste, unlawful use, interference, or violation. *The county attorney may prosecute under 85-2-122(1) or bring an action under 85-2-122(2) without being requested to do so by the department. The attorney general and a county attorney are subject to the voluntary compliance provisions of subsection (4).*

(4) The department ~~must~~ *shall* attempt to obtain voluntary compliance through warning, conference, or any other appropriate means before petitioning the district court under subsection (1). The attempts to obtain voluntary compliance under this subsection *must extend over a period of at least 7 days and* may not exceed ~~3~~ *30* working days."

Section 2. Section 85-2-122, MCA, is amended to read:

"**85-2-122. Penalties.** (1) A person who violates or refuses or neglects to comply with the provisions of this chapter, any order of the department, or any rule of the department is guilty of a misdemeanor.

(2) A person who violates or refuses or neglects to comply with the provisions of 85-2-114, any order of the department, or any rule of the department is subject to a civil penalty not to exceed $1,000 per violation. Each day of violation constitutes a separate violation.

(3) *(a)* ~~Fines~~ *Except as provided in subsection (3)(b), fines* collected by the department or a district court under subsection (2) must be deposited in the account established in 85-2-318 for use by the department in the enforcement of 85-2-114.

(b) If a fine is collected by an independent action brought by the county attorney, the fine must be deposited in the general fund of the county."

Section 3. Section 85-2-123, MCA, is amended to read:

"**85-2-123. Deposit of fees and penalties.** Except as provided in *85-2-122 and* 85-2-124, all fees and penalties collected under this chapter must be deposited in the water right appropriation account established in 85-2-318. Except for fines collected by a district court under 85-2-122, all penalties or fines imposed by any court other than a justice's court for a violation of this chapter must be deposited in the general fund of the county where the court presides and must be disposed of in the same manner as any other penalty or fine."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 30, 2001

CHAPTER NO. 458

[HB 596]

AN ACT AUTHORIZING PRIVATE GOLF COURSES AS WELL AS PUBLIC GOLF COURSES TO QUALIFY FOR A GOLF COURSE BEER AND WINE LICENSE; REQUIRING THAT A PRIVATE GOLF COURSE MEET CERTAIN ELIGIBILITY CRITERIA; PROVIDING THAT BEER AND WINE SALES ON THE PREMISES OF A PRIVATE GOLF COURSE MAY TAKE PLACE ONLY WHEN THE GOLF COURSE IS OPEN FOR BUSINESS; PROVIDING THAT SALES MUST STOP AT DARKNESS; PROHIBITING GAMBLING ON THE PREMISES; ALLOWING CERTAIN GOVERNMENT ENTITIES THAT OWN A GOLF COURSE TO LEASE THE GOLF COURSE BEER AND WINE LICENSE TO INDIVIDUALS OR ENTITIES APPROVED BY THE DEPARTMENT OF REVENUE; AMENDING SECTION 16-4-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-109, MCA, is amended to read:

"**16-4-109. ~~Publicly owned golf~~ *Golf* course beer and wine license.** (1) Upon application, the department of revenue shall issue a retail beer and wine license, to be known as a ~~publicly owned~~ golf course beer and wine license, for use at a golf course ~~owned by the state, a unit of the university system, or a local government~~. *If the owner of the golf course is not the state, a unit of the university system, or a local government, to qualify for a license under this section:*

(a) the golf course must consist of at least 18 holes and 6,000 lineal yards;

(b) the golf course must be either within the limits of an incorporated city or town or within 1 mile of the limits of an incorporated city or town; and

(c) the applicant for a license under this section may not have held a beer and wine or all-beverages license within 12 months of the date of application.

(2) The application must be made by the ~~state agency, unit of the university system, or local government~~ *person or entity* that owns and operates the ~~public~~ golf course. *If the owner of the golf course is not the state, a unit of the university system, or a local government, the owner must be approved by the department as provided in this chapter for the issuance of beer licenses.* ~~The owner may lease the license for use at the golf course to an individual or entity approved by the department.~~

(3) *(a)* ~~A publicly owned~~ *Except as provided in subsection (3)(c), a* golf course beer and wine license and all retail beer and wine sales ~~thereunder~~ *under the license* are subject to all statutes and rules governing a retail beer license with a wine license amendment.

(b) If the owner of the golf course is not the state, a unit of the university system, or a local government:

(i) retail beer and wine sales may be made only during the time of the year that the golf course is open for business, and sales on days during that time must stop by 1 hour after sunset;

(ii) the seating capacity of the premises where the beer and wine are sold may not exceed 75 persons; and

(iii) gaming or gambling is not authorized under the license issued under this section.

(c) If the owner of a golf course is the state, a unit of the university system, or a local government, the owner may lease the beer and wine license for use at the golf course to an individual or entity approved by the department of revenue.

(4) The department of revenue shall issue a ~~publicly owned~~ golf course beer and wine license to a qualified applicant regardless of the number of beer and wine licenses already issued within the beer and wine license quota area in which the golf course is situated. A license issued pursuant to this section is nontransferable."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 30, 2001

CHAPTER NO. 459

[HB 609]

AN ACT ALLOWING THE AGRICULTURAL LANDS ADVISORY COMMITTEE MORE DISCRETION IN DETERMINING THE UNDERLYING BASIS FOR ITS RECOMMENDATIONS FOR AGRICULTURAL PRODUCTIVE LAND VALUES FOR PROPERTY TAX PURPOSES; AND AMENDING SECTION 15-7-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-201, MCA, is amended to read:

"15-7-201. Legislative intent — value of agricultural property. (1) Because the market value of many agricultural properties is based upon speculative purchases that do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land must be classified according to its use, which classifications include but are not limited to irrigated use, nonirrigated use, and grazing use.

(3) Within each class, land must be subclassified by production categories. Production categories are determined from the productive capacity of the land based on yield.

(4) In computing the agricultural land valuation schedules to take effect on the date when each revaluation cycle takes effect pursuant to 15-7-111, the department of revenue shall determine the productive capacity value of all agricultural lands using the formula V = I/R where:

(a) V is the per-acre productive capacity value of agricultural land in each land use and production category;

(b) I is the per-acre net income of agricultural land in each land use and production category and is to be determined as provided in subsection (5); and

(c) R is the capitalization rate and, *unless the advisory committee recommends a different rate and the department adopts the recommended capitalization rate by rule,* is equal to 6.4%. This capitalization rate must remain in effect until ~~new agricultural land valuation schedules are adopted by the department, after considering the recommendations from the advisory committee as provided in subsection (7)~~ *the next revaluation cycle.*

(5) (a) Net income must be determined separately in each land use based on production categories.

(b) Net income must be based on commodity price data, *which may include* grazing fees, crop *and livestock* share arrangements, *cost of production data,* and water cost data for the base period~~, as follows:~~ *using the best available data.*

(i) Commodity price data *and cost of production data* ~~and grazing fees~~ for the base period must be obtained from the Montana Agricultural Statistics, ~~and from~~ the Montana crop and livestock reporting service, *and other sources of publicly available information if considered appropriate by the advisory committee.*

(ii) Crop share *and livestock share* arrangements are based on ~~the rental value of the land~~ *typical agricultural business practices* and average landowner costs.

(iii) Allowable water costs consist only of the per-acre labor costs, energy costs of irrigation, and, *unless the advisory committee recommends otherwise and the department adopts the recommended cost by rule,* a base water cost of $5.50 for each acre of irrigated land. *Total allowable water costs may not exceed $40 for each acre of irrigated land.* ~~Total allowable water costs may not exceed $35 for each acre of irrigated land.~~ Labor and energy costs must be determined as follows:

(A) Labor costs are zero for pivot sprinkler irrigation systems; $4.50 an acre for tow lines, side roll, and lateral sprinkler irrigation systems; and $9 an acre for hand-moved and flood irrigation systems.

(B) Energy costs must be based on per-acre energy costs incurred in the energy cost base year, which is the calendar year immediately preceding the year specified by the department in 15-7-103(5). By July 1 of the year following the energy cost base year, an owner of irrigated land shall provide the department, on a form prescribed by the department, with energy costs incurred in that energy cost base year. In the event that no energy costs were incurred in the energy cost base year, the owner of irrigated land shall provide the department with energy costs from the most recent year available. The department shall adjust the most recent year's energy costs to reflect costs in the energy cost base year.

(c) The base crop for valuation of irrigated land is alfalfa hay, adjusted to 80% of sales price, and the base crop for valuation of nonirrigated land is wheat. The base unit for valuation of grazing lands is ~~the average grazing fee for a 1,000-pound animal~~ *animal unit months (AUM), defined as the average monthly requirement of pasture forage to support a 1,000-pound cow with a calf or its equivalent.*

(d) ~~The~~ *Unless the advisory committee recommends a different base period and the department adopts the recommended base period by rule, the* base period used to determine net income must be the most recent 7 years for which data is available prior to the date the revaluation cycle ends. ~~Commodity price~~ *Unless the advisory committee recommends a different averaging method and the department adopts the recommended averaging method by rule,* data ~~and grazing fees~~ referred to in subsection (5)(b) must be averaged ~~for the 7-year period~~, but the average must exclude the lowest and highest ~~commodity prices or grazing fees~~ *yearly data* in the period.

(6) The department shall compile data and develop valuation manuals adopted by rule to implement the valuation method established by subsections (4) and (5).

(7) The governor shall appoint an advisory committee of persons knowledgeable in agriculture and agricultural economics ~~to compile and review the data required by subsections (4) and (5)~~. The advisory committee shall include one member of the Montana state university-Bozeman, college of agriculture, staff. The advisory committee shall:

(a) compile and review data required by subsections (4) and (5);

(b) recommend to the department any adjustments to data or to landowners' share percentages if required by changes in government agricultural programs, market conditions, or prevailing agricultural practices;

(c) recommend appropriate base periods and averaging methods to the department;

(d) evaluate the appropriateness of the capitalization rate and recommend a rate to the department;

(e) verify for each class of land that the income determined in subsection (5) reasonably approximates that which the average Montana farmer or rancher could have attained; and

(f) recommend agricultural land valuation schedules to the department. With respect to irrigated land, the *recommended* value of irrigated land may not be below the value that the land would have if it were not irrigated."

Approved April 30, 2001

CHAPTER NO. 460

[SB 484]

AN ACT CREATING A HARD-ROCK MINING RECLAMATION DEBT SERVICE FUND; AUTHORIZING THE BOARD OF EXAMINERS TO ISSUE AND SELL HARD-ROCK MINING RECLAMATION GENERAL OBLIGATION BONDS IN AN AMOUNT NOT EXCEEDING $8 MILLION UPON THE REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; CREATING THE HARD-ROCK MINING RECLAMATION SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 15-37-117 AND 75-10-743, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Hard-rock mining reclamation debt service fund. (1) There is a hard-rock mining reclamation debt service fund within the debt service fund type established in 17-2-102.

(2) The state pledges, allocates, and directs to be credited to the hard-rock mining reclamation debt service fund money from the metalliferous mines license tax, as provided in 15-37-117.

(3) Money in the hard-rock mining reclamation debt service fund that is in excess of the amount needed to satisfy the annual principal and interest payment requirements in [section 2] must be transferred to the hard-rock mining reclamation special revenue account created in [section 4].

Section 2. Hard-rock mining reclamation bonds. (1) When authorized by the legislature and within the limits of the authorization and the further limitations established in this section, the board of examiners may issue and sell hard-rock mining reclamation bonds of the state in the amount and manner that it considers necessary and proper to finance legally required reclamation, operation, and maintenance at hard-rock mines upon certification by the director of the department that the reclamation, operation, or maintenance would otherwise not occur because there is no likelihood of getting additional funds from the mine operator and the available surety bond is insufficient. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds issued and interest and redemption premiums payable on the bonds according to their terms.

(2) Each series of hard-rock mining reclamation bonds may be issued by the board of examiners upon request of the department, at public or private sale, in the denominations and forms, whether payable to the bearer with attached interest coupons or registered as to principal or as to both principal and interest, with provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at a rate or rates, maturing at a rate or rates, maturing at the time or times not exceeding 30 years from the date of issue, subject to optional or mandatory redemption at earlier times and prices and upon notice, with provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of the banking institution or institutions within or outside the state, as the board of examiners determines, subject to the limitations contained in 17-5-731 and this section.

(3) In the issuance of each series of hard-rock mining reclamation bonds, the interest rates, maturities, and any mandatory redemption provisions of the bonds must be established in a manner that the funds then specifically pledged and appropriated by law to the hard-rock mining reclamation debt service fund created in [section 1] will, in the judgment of the board of examiners, be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of the bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. The bonds, notes, and any interest coupons appurtenant to the bonds and notes must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all the bonds and notes issued and sold.

(5) All proceeds of bonds or notes issued under this section must be deposited in the hard-rock mining reclamation special revenue account created in [section 4].

(6) All actions taken by the board of examiners under this section must be authorized by a vote of a majority of the members.

Section 3. Authorization for sale of hard-rock mining reclamation bonds. The board of examiners is authorized to issue and sell hard-rock mining reclamation general obligation bonds in an amount not exceeding $8 million upon the request of the department, as provided for in [section 2]. Proceeds of the bonds or notes are allocated to the hard-rock mining reclamation special revenue account provided for in [section 4] to fund:

(1) legally required reclamation, operation, and maintenance at hard-rock mines that would otherwise not occur when the director of the department determines that there is no likelihood of getting additional funds from the mine operator and the available surety bond is insufficient; and

(2) the costs of issuing the bonds or notes.

Section 4. Hard-rock mining reclamation special revenue account. (1) There is a hard-rock mining reclamation special revenue account within the state special revenue fund established in 17-2-102. There must be paid into the account:

(a) revenue from the sale of hard-rock mining reclamation bonds issued by the board of examiners pursuant to [sections 2 and 3];

(b) interest income earned on the account; and

(c) excess money transferred from the hard-rock mining reclamation debt service fund as described in [section 1].

(2) Funds may be appropriated from the hard-rock mining reclamation special revenue account for the following purposes only:

(a) state costs of implementing legally required reclamation, operation, and maintenance at hard-rock mines that would otherwise not occur because there is no likelihood of getting additional funds from the mine operator and the available surety bond is insufficient;

(b) state costs of implementing legally required reclamation, operation, and maintenance neither eligible for nor reasonably expected to be reimbursed from other federal or private funds; and

(c) state costs related to the implementation of [sections 1 through 4].

Section 5. Section 15-37-117, MCA, is amended to read:

"**15-37-117. Disposition of metalliferous mines license taxes.** (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501, be allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 2.5% of total collections each year;

(c) to the *hard-rock mining reclamation debt service fund created in [section 1]* ~~orphan share state special revenue account established in 75-10-743~~, 8.5% of total collections each year;

(d) to the reclamation and development grants program state special revenue account, 7% of total collections each year; and

(e) on or before June 1, to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 24% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 37.5% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(e)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(e) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(e). The allocation to the county described by subsection (1)(e) is a statutory appropriation pursuant to 17-7-502."

Section 6. Section 75-10-743, MCA, is amended to read:

"75-10-743. (Temporary) Orphan share state special revenue account — reimbursement of claims — payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-752 and to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

~~(a) money allocated from the metalliferous mines license tax pursuant to 15-37-117;~~

~~(b)~~*(a)* all penalties assessed pursuant to 75-10-750(12);

~~(c)~~*(b)* funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

~~(d)~~*(c)* funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;

~~(e)~~*(d)* unencumbered funds remaining in the abandoned mines state special revenue account;

~~(f)~~*(e)* interest income on the account;

~~(g)~~*(f)* funds received from settlements pursuant to 75-10-719(7); and

~~(h)~~*(g)* funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsection (8), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of petition provided in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-752 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the orphan share fund must pay the department's costs incurred in defending the orphan share in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-752 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

(7) If any money remains in the orphan share fund after June 30, 2005, and after outstanding claims are paid, the money must be deposited in the general fund.

(8) If the lead liable person under /5-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(9) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process. (Terminates June 30, 2005—sec. 30, Ch. 415, L. 1997.)"

Section 7. Two-thirds vote required. Because [sections 2 and 3] authorize the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 8. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 82, chapter 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to [sections 1 through 4].

Section 9. Effective date. [This act] is effective July 1, 2002.

Approved April 30, 2001

CHAPTER NO. 461

[SB 514]

AN ACT REVISING TAX LAWS BY REQUIRING THAT INFORMATION AGENTS REPORT PROCEEDS FROM REAL ESTATE TRANSACTIONS THAT UNDER RULES OR REGULATIONS OF THE INTERNAL REVENUE SERVICE ARE REQUIRED TO BE REPORTED; ALLOWING THE DEPARTMENT OF REVENUE TO PROVIDE MORE METHODS OF REPORTING BY INFORMATION AGENTS; PROVIDING A PENALTY; REQUIRING A REPORT TO THE REVENUE AND TAXATION INTERIM COMMITTEE; AMENDING SECTION 15-30-301, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-301, MCA, is amended to read:

"**15-30-301. Information agents' duties.** (1) Every information agent shall make a return to the department of complete information concerning the following distributions made for any individual during the ~~taxable~~ *tax* year upon which no withholding tax has been deducted:

(a) sums in excess of $10 distributed as dividends, interest as defined in section 6049 of the Internal Revenue Code of 1965 or as that section may be amended, royalties, and payments made under a retirement plan covering an owner-employee as defined in section 401(c)(3) of the Internal Revenue Code of 1965 or as that section may be amended;

(b) all interest income in excess of $10 from obligations of another state and a county, municipality, district, or other political subdivision of that state;

(c) interest, other than that specified in subsections (1)(a) and (1)(b), rents, salaries, wages, prizes, awards, annuities, pensions, and other fixed or determinable gains, profits, and income in excess of $600, except interest coupons payable to the bearer*;*

(d) proceeds from real estate transactions that under rules or regulations of the internal revenue service are required to be reported.

(2) The return should be made under the regulations and in the form and manner prescribed by the department~~; provided, however, that for~~. *For* ease of reporting, the form ~~shall~~ *should* be ~~as nearly~~ identical to the comparable federal form ~~as possible~~ *or the department may allow submission of a copy of the federal form or submission by magnetic media or in electronic format.*

(3) Notwithstanding the provisions of 15-30-321, an information agent who fails to file a return under the provisions of subsection (1)(d) is subject only to a penalty of $50 a return."

Section 2. Report to revenue and taxation interim committee. The department of revenue shall monitor the reports filed pursuant to 15-30-301(1)(d) and report to the revenue and taxation interim committee, on a periodic basis, the results of requiring the reporting and any other factors the department may notice as a result of the required reporting.

Section 3. Effective date. [This act] is effective July 1, 2001.

Section 4. Termination. [This act] terminates December 31, 2004.

Approved April 30, 2001

CHAPTER NO. 462

[SB 394]

AN ACT AUTHORIZING THE TRUSTEES OF A SCHOOL DISTRICT TO ENTER INTO AN INTERLOCAL COOPERATIVE AGREEMENT WITH AN ACCREDITED MONTANA JOB CORPS PROGRAM TO PROVIDE EDUCATIONAL OR VOCATIONAL SERVICES TO SUPPLEMENT THE DISTRICT'S EDUCATIONAL PROGRAM; REQUIRING THAT CLASSES BE APPROVED BY THE SCHOOL DISTRICT AND MEET GRADUATION REQUIREMENTS AND THAT CREDITS RECEIVED MUST BE REPORTED TO THE DISTRICT OF RESIDENCE AND COUNTED TOWARD GRADUATION REQUIREMENTS; PROVIDING THAT THE DISTRICT OF RESIDENCE IS NOT RESPONSIBLE FOR TRANSPORTATION COSTS; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Agreement with accredited Montana job corps program. (1) The trustees of a school district may enter into an interlocal cooperative agreement for the ensuing school fiscal year under the provisions of Title 7, chapter 11, part 1, with a Montana job corps program accredited by the northwest association of schools and colleges to provide educational or vocational services that are supplemental to the educational programs offered by the resident school district.

(2) A student who receives educational or vocational services at a Montana job corps program pursuant to an agreement authorized under subsection (1) must be enrolled, for purposes of calculating average number belonging, in a public school in the student's district of residence. Credits taken at the accredited Montana job corps program must be approved by the school district and meet the requirements for graduation at a school in the student's district of residence, must be taught by an instructor who has a current and appropriate Montana high school certification, and must be reported by the institution to the student's district of residence. Upon accumulating the necessary credits at either a school in the district of residence or at an accredited Montana job corps program pursuant to an interlocal cooperative agreement, a student must be allowed to graduate from the school in the student's district of residence.

(3) A school district that, pursuant to an interlocal cooperative agreement, allows an enrolled student to attend a Montana job corps program accredited as prescribed in subsection (1) is not responsible for payment of the student's transportation costs to the job corps program.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 9, part 7, and the provisions of Title 20, chapter 9, part 7, apply to [section 1].

Section 3. Effective date — applicability. [This act] is effective July 1, 2002, and applies to agreements entered into on or after [the effective date of this act].

Approved April 30, 2001

CHAPTER NO. 463

[SB 303]

AN ACT REVISING THE MANNER OF DETERMINING PROPERTY TAXES IMPOSED ON AGRICULTURAL PROPERTY AND FOREST LAND FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST ON BONDS ISSUED BY A PUBLIC BODY FOR THE PRESERVATION OF OPEN SPACE; AMENDING SECTION 76-6-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-6-109, MCA, is amended to read:

"**76-6-109. Powers of public bodies.** (1) A public body has ~~all~~ the ~~powers necessary or convenient~~ *power* to carry out the purposes and provisions of this chapter, including the following powers in addition to others granted by this chapter:

(a) to borrow funds and make expenditures necessary to carry out the purposes of this chapter;

(b) to advance or accept advances of public funds;

(c) to apply for and accept and ~~utilize~~ *use* grants and any other assistance from the federal government and any other public or private sources, to give security as may be required, to enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government conditions imposed pursuant to federal laws as the public body may consider reasonable and appropriate and that are not inconsistent with the purposes of this chapter;

(d) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter;

(e) in connection with the real property acquired or designated for the purposes of this chapter, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities or structures that may be necessary to the provision, preservation, maintenance, and management of the property as open-space land;

(f) to insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance;

(g) to demolish or dispose of any structures or facilities that may be detrimental to or inconsistent with the use of real property as open-space land; and

(h) to exercise any ~~or all~~ of its functions and powers under this chapter jointly or cooperatively with public bodies of one or more states, if they are authorized by state law, and with one or more public bodies of this state and to enter into agreements for joint or cooperative action.

(2) For the purposes of this chapter, the state or a city, town, other municipality, or county may:

(a) appropriate funds;

(b) subject to 15-10-420, levy taxes and assessments according to existing codes and statutes not to exceed 1 mill;

(c) issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the state, *subject to subsection (3)*; and

(d) exercise its powers under this chapter through a board or commission or through the office or officers that its governing body by resolution determines or as the governor determines in the case of the state.

(3) Property taxes levied to pay the principal and interest on general obligation bonds issued by a city, town, other municipality, or county pursuant to this chapter may not be levied against the following property:

(a) agricultural land eligible for valuation, assessment, and taxation as agricultural land under 15-7-202;

(b) forest land as defined in 15-44-102;

(c) all agricultural improvements on agricultural land referred to in subsection (3)(a);

(d) all noncommercial improvements on forest land referred to in subsection (3)(b);

(e) agricultural implements and equipment described in 15-6-138(1)(a); and

(f) livestock described in 15-6-136(1)(a)."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to mill levies assessed against property for the payment of interest and principal on open-space bonds issued after [the effective date of this act].

Approved April 30, 2001

CHAPTER NO. 464

[SB 65]

AN ACT REVISING THE OUT-OF-DISTRICT TUITION LAWS; ELIMINATING MANDATORY TUITION APPROVAL IF THE RESIDENT DISTRICT PROVIDES TRANSPORTATION BUT IS NOT IN THE SAME COUNTY AS THE DISTRICT OF CHOICE; ALLOWING A SCHOOL DISTRICT TO WAIVE TUITION FOR A SPECIFIC GROUP REQUIRED TO PAY TUITION WHILE CHARGING TUITION TO OTHER GROUPS REQUIRED TO PAY; REQUIRING THE COUNTY TRANSPORTATION COMMITTEE TO DETERMINE WHEN GEOGRAPHIC CONDITIONS MAKE IT IMPRACTICAL FOR A CHILD TO ATTEND SCHOOL IN THE DISTRICT OF RESIDENCE; PLACING TUITION PAYMENTS INTO THE OVER-BASE BUDGET OF A SCHOOL DISTRICT; SETTING THE RATE OF TUITION BY STATUTE; AMENDING SECTIONS 20-5-320, 20-5-321, 20-5-323, 20-5-324, 20-9-141, 20-9-212, 20-9-335, AND 20-10-132, MCA; REPEALING SECTION 20-9-334, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-320, MCA, is amended to read:

"**20-5-320. Attendance with discretionary approval.** (1) A child may be enrolled in and attend a school in a Montana school district that is outside of the child's district of residence or a public school in a district of another state or province that is adjacent to the county of the child's residence, subject to discretionary approval by the trustees of the resident district and the district of choice. If the trustees grant discretionary approval of the child's attendance in a school of the district, the parent or guardian may be charged tuition and may be charged for transportation.

(2) (a) Whenever a parent or guardian of a child wishes to have the child attend a school under the provisions of this section, the parent or guardian shall apply to the trustees of the district where the child wishes to attend. The application must be made on an out-of-district attendance agreement form supplied by the district and developed by the superintendent of public instruction.

(b) The attendance agreement must set forth the financial obligations, if any, for tuition and for costs incurred for transporting the child under Title 20, chapter 10.

(c) *(i)* The trustees of the district of choice may waive any or all of the tuition rate~~, but any waiver must be applied equally to all students~~. *The trustees of the district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity and may charge tuition for all students whose tuition is required to be paid by another type of entity. However, any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.*

(ii) As used in this subsection (2)(c), "entity" means a parent or guardian or the trustees of the district of residence.

(3) An out-of-district attendance agreement approved under this section requires that the parent or guardian initiate the request for an out-of-district attendance agreement and that the trustees of both the district of residence and the district of choice approve the agreement.

(4) If the trustees of the district of choice waive tuition, approval of the resident district trustees is not required.

(5) The trustees of a school district may approve or disapprove the out-of-district attendance agreement consistent with this part and the policy adopted by the local board of trustees for out-of-district attendance agreements.

(6) The approval of an out-of-district attendance agreement by the applicable approval agents or as the result of an appeal must authorize the child named in the agreement to enroll in and attend the school named in the agreement for the designated school year.

(7) The trustees of the district where the child wishes to attend have the discretion to approve any attendance agreement.

(8) This section does not preclude the trustees of a district from approving an attendance agreement for educational program offerings not provided by the resident district, such as the kindergarten or grades 7 and 8 programs, if the trustees of both districts agree to the terms and conditions for attendance and any tuition and transportation requirement. For purposes of this subsection, the trustees of the resident district shall initiate the out-of-district agreement.

(9) (a) A provision of this title may not be construed to deny a parent *or guardian* the right to send a child, at personal expense, to any school of a district other than the resident district when the trustees of the district of choice have approved an out-of-district attendance agreement and the parent *or guardian* has agreed to pay the tuition as prescribed by 20-5-323. However, under this subsection (9), the tuition rate must be reduced by the amount *that* the parent or guardian of the child paid in district ~~and county~~ property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school.

(b) For the purposes of this section, "parent or guardian" includes an individual shareholder of a domestic corporation as defined in 35-1-113 whose shares are 95% held by related family members to the sixth degree of consanguinity or by marriage to the sixth degree of affinity.

(c) The tax amount to be credited to reduce any tuition charge to a parent or guardian under subsection (9)(a) is determined in the following manner:

(i) determine the percentage of the total shares of the corporation held by the shareholder parent or parents or guardian;

(ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation, parent, or guardian for the benefit and support of the district in which the child will attend school.

(d) The percentage of total shares as determined in subsection (9)(c)(i) is the percentage of taxes paid as determined in subsection (9)(c)(ii) that is to be credited to reduce the tuition charge.

(10) As used in 20-5-320 through 20-5-324, the term "guardian" means the guardian of a minor as provided in Title 72, chapter 5, part 2."

Section 2. Section 20-5-321, MCA, is amended to read:

"**20-5-321. Attendance with mandatory approval — tuition and transportation.** (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district and~~:~~

~~(i)~~ the resident district does not provide transportation; or

~~(ii) the district of residence provides transportation and is not within the same county as the child's school district of choice;~~

(b) *(i)* the child resides in a location where, due to ~~road or~~ geographic conditions *between the child's home and the school that the child would attend within the district of residence*, it is impractical to attend ~~the~~ school ~~nearest the child's~~ *in the district of* residence, *as determined by the county transportation committee based on the following criteria:*

(A) the length of time that is in excess of the 1-hour limit for each bus trip for an elementary child as authorized under 20-10-121;

(B) whether distance traveled is greater than 40 miles one way from the child's home to school on a dirt road or greater than a total of 60 miles one way from the

child's home to school in the district of residence over the shortest passable route; or

(C) whether the condition of the road or existence of a geographic barrier, such as a river or mountain pass, causes a hazard that prohibits safe travel between the home and school.

(ii) The decision of the county transportation committee is subject to appeal to the superintendent of public instruction, as provided in 20-3-107, but the decision must be considered as final for the purpose of the payment of tuition under 20-5-324(6) until a decision is issued by the superintendent of public instruction. The superintendent of public instruction may review and rule upon a decision of the county transportation committee without an appeal being filed~~;~~.

(c) the child is a member of a family that is required to send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided that the child resides more than 3 miles from an elementary school in the resident district or that the parent is required to move to the elementary district where the high school is located to enroll another child in high school~~;~~. *A child enrolled in an elementary school pursuant to this subsection (1)(c) may continue to attend the elementary school after the other child has left the high school.*

(d) the child is under the protective care of a state agency or has been adjudicated to be a youth in need of intervention or a delinquent youth, as defined in 41-5-103; or

(e) the child is required to attend school outside of the district of residence as the result of a placement in foster care or a group home licensed by the state.

(2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an out-of-district attendance agreement in consultation with an appropriate official of the district *that* the child will attend.

(b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

(c) *(i)* The trustees of the district of choice may waive any or all of the tuition rate~~, but any waiver must be applied equally to all students~~. *The trustees of the district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity and may charge tuition for all students whose tuition is required to be paid by another type of entity. However, any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.*

(ii) As used in this subsection (2)(c), "entity" means a parent, guardian, the trustees of the district of residence, or a state agency.

(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of choice shall approve the out-of-district attendance agreement and notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days. The ~~county superintendent~~ *county superintendent* shall ~~approve the agreement for payment under 20-5-324(5)~~ *approve the agreement for payment under 20-5-324(5).*

(4) Unless the child is a child with a disability who resides in the district, the trustees of the district where the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, due to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child."

Section 3. Section 20-5-323, MCA, is amended to read:

"**20-5-323. Tuition and transportation rates.** (1) Except as provided in subsections ~~(3)~~ *(2)* through (5), whenever a child has approval to attend a school outside of the child's district of residence under the provisions of 20-5-320 or 20-5-321, the ~~basis of the~~ rate of tuition ~~is a flat rate for each of the 15 district-size groupings determined by rule by the superintendent of public instruction by March 15 of each year, using statewide district expenditure and revenue data for the general fund, debt service fund, and retirement fund to determine the average district contribution~~ *charged for a Montana resident student may not exceed 20% of the per-ANB maximum rate established in 20-9-306 for the year of attendance.*

(2) The tuition for a child with a disability must be determined under rules adopted by the superintendent of public instruction for the calculation of tuition for special education pupils.

(3) The tuition rate for out-of-district placement pursuant to 20-5-321(1)(d) and (1)(e) for a student without disabilities who requires a program with costs that exceed the average district costs must be determined as the actual individual costs of providing that program according to the following:

(a) the district of attendance and the district, person, or entity responsible for the tuition payments shall approve an agreement with the district of attendance for the tuition cost; ~~and~~

(b) for a Montana resident student, ~~the average district~~ *80% of the maximum* per-ANB ~~foundation payment amount~~ *rate established in 20-9-306(10),* received in the year for which the tuition charges are calculated must be subtracted from the per-student program costs for a Montana resident student*; and*

(c) the maximum tuition rate paid to a district under this section may not exceed $2,500 per ANB.

(4) When a child attends a public school of another state or province, the amount of daily tuition may not be greater than the average annual cost per student in the child's district of residence. This calculation for tuition purposes is determined by totaling all of the expenditures for all of the district budgeted funds for the preceding school fiscal year and dividing that amount by the October 1 enrollment in the preceding school fiscal year. For the purposes of this subsection, the following do not apply:

(a) placement of a child with a disability pursuant to Title 20, chapter 7, part 4;

(b) placement made in a state or province with a reciprocal tuition agreement pursuant to 20-5-314;

(c) an order issued under Title 40, chapter 4, part 2; or

(d) out-of-state placement by a state agency.

(5) When a child is placed by a state agency in an out-of-state residential facility, the state agency making the placement is responsible for the education costs resulting from the placement.

(6) The amount, if any, charged for transportation may not exceed the lesser of the average transportation cost per student in the child's district of residence or 21.25 cents per mile. The average expenditures for the district transportation fund for the preceding school fiscal year must be calculated by dividing the transportation fund expenditures by the October 1 enrollment for the preceding fiscal year."

Section 4. Section 20-5-324, MCA, is amended to read:

"**20-5-324. Tuition report and payment provisions — exemption.** (1) At the close of the school term of each school fiscal year ~~and before July 15~~ *and before July 15*, the trustees of a district shall report to the ~~county~~ *county* superintendent:

(a) the name and district of residence of each child who is attending a school of the district under ~~an approved~~ *a* mandatory out-of-district attendance agreement *approved under the provisions of 20-5-321(1)(b), (1)(d), or (1)(e)*;

(b) the number of days of enrollment for each child reported under the provisions of subsection (1)(a);

(c) the annual tuition rate for each child's tuition payment, as determined under the provisions of 20-5-323, and the tuition cost for each reported child; and

(d) the names, districts of attendance, and amount of tuition to be paid by the district for resident students attending public schools out of state.

(2) ~~The county superintendent shall send, as soon as practicable, the reported information to the county superintendent of the county in which a reported child resides.~~ *The county superintendent shall send, as soon as practicable, the reported information to the county superintendent of the county in which a reported child resides.*

~~(3) Before July 30, the county superintendent shall report~~

(3) Before July 30, the county superintendent shall report the information in subsection (1)(d) ~~to~~ *to* the superintendent of public instruction~~, who~~, *who* shall determine the total per-ANB entitlement for which the district would be eligible if the student were enrolled in the resident district. The reimbursement amount is the difference between the actual amount paid and the amount calculated in this subsection.

~~(4)~~*(4)* Notwithstanding the requirements of subsection ~~(5)~~ *(5)(a)*, tuition payment provisions for out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7, part 4.

~~(5)~~*(5) (a)* ~~Except as provided in subsection (6), when~~ *When* a child has approval to attend a school outside the child's district of residence under the provisions of 20-5-320 or 20-5-321*(1)(a) or (1)(b)*, the district of residence shall finance the tuition amount from the district tuition fund and any transportation amount from the transportation fund.

(b) When a child has approval to attend a school outside the child's district of residence under the provisions of 20-5-321(1)(c), the parent or guardian of the child shall finance the tuition and transportation amount.

~~(6)~~*(6)* When a child has mandatory approval under the provisions of 20-5-321*(1)(d) or (1)(e)*, the tuition ~~and transportation~~ *and transportation* obligation ~~for an elementary school child attending a school outside of the child's county of residence~~ *for an elementary school child attending a school outside of the child's district of residence* must be financed by the ~~basic county tax for elementary equalization, as provided in 20-9-331, for the child's county of residence or for a high school child attending a school outside the county of residence by the basic county tax for high school equalization, as provided in 20-9-333, for the child's county of residence~~ *basic county tax for elementary equalization, as provided in 20-9-331, for the child's county of residence or for a high school child attending a school outside the district of residence by the basic county tax for high school equalization, as provided in 20-9-333, for the child's county of residence.*

~~(7)~~*(7)* ~~By December 31 of the school fiscal year, the county superintendent or the trustees shall pay at least one-half of any tuition and transportation obligation established under this section out of the money realized to date from the appropriate elementary or high school county equalization fund provided for in 20-9-335 or from the district tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year. The payments must be made to the county treasurer in each county with a school district that is entitled to tuition and transportation.~~ *By December 31 of the school fiscal year, the county superintendent or the trustees shall pay at least one-half of any tuition and transportation obligation established under this section out of the money realized to date from the appropriate elementary or high school county equalization fund provided for in 20-9-335 or from the district tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year. The payments must be made to the county treasurer in each county with a school district that is entitled to tuition and transportation.* Except as provided in subsection ~~(9)~~ *(9)*, the county treasurer shall credit tuition receipts to the general fund of a school district entitled to a tuition payment. The tuition receipts must be used in accordance with the provisions of 20-9-141. The county treasurer shall credit transportation receipts to the transportation fund of a school district entitled to a transportation payment.

~~(8)~~*(8)* The superintendent of public instruction shall reimburse the district of residence for the per-ANB entitlement determined in subsection ~~(3)~~ *(3)*.

~~(9)~~*(9)* (a) Any tuition receipts received under the provisions of 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(b) Any tuition receipts received for the current school fiscal year for a pupil who is a child with a disability that exceed the tuition amount received for a pupil without disabilities may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

~~(c) Any other tuition receipts received for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used for that year in the manner~~

~~provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget.~~

(c) Any other tuition receipts received for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget.

~~(10)~~*(10)* The provisions of this section do not apply to out-of-state placements made by a state agency pursuant to 20-7-422."

Section 5. Section 20-9-141, MCA, is amended to read:

"20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353, including any additional funding for a general fund budget that exceeds the maximum general fund budget.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) 98% of actual amounts received in fiscal year 1999 for light vehicle taxes under 61-3-504;

(iii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) revenue from taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204;

(B) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(C) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid;

~~(iv) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2);~~

~~(v)~~*(iv)* anticipated oil and natural gas production taxes;

~~(vi)~~*(v)* pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703 and property tax reimbursements under 15-1-111, 15-1-112, and section 167, Chapter 584, Laws of 1999; and

~~(vii)~~*(vi)* anticipated revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) ~~Subtract~~ *Determine the sum of* any amount remaining after the determination in subsection (1)(c) *and any tuition payments for out-of-district pupils to be received under the provisions of 20-5-320 through 20-5-324, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2).*

(e) Subtract the amount determined in subsection (1)(d) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703 and property tax reimbursements under 15-1-111, 15-1-112, and section 167, Chapter 584, Laws of 1999."

Section 6. Section 20-9-212, MCA, is amended to read:

"20-9-212. Duties of county treasurer. The county treasurer of each county shall:

(1) receive and hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts that are entitled to a portion of the money according to the apportionments ordered by the county superintendent or by the superintendent of public instruction. A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax for elementary equalization;

(b) the basic county tax for high school equalization;

(c) the county tax in support of the transportation schedules;

(d) the county tax in support of the elementary and high school district retirement obligations; and

(e) any other county tax for schools, including the community colleges, that may be authorized by law and levied by the county commissioners.

(2) whenever requested, notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent or the superintendent of public instruction;

(3) keep a separate accounting of the receipts, expenditures, and cash balances for each fund;

(4) except as otherwise limited by law, pay all warrants properly drawn on the county or district school money;

(5) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law or by the district if a fund is not designated by law. Interest and penalties on delinquent school taxes must be credited to the same fund and district for which the original taxes were levied.

(6) send all revenue received for a joint district, part of which is situated in the county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months after that date until the end of the school fiscal year;

(7) at the direction of the trustees of a district, assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(8) register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(9) when directed by the trustees of a district, invest the money of the district within 3 working days of the direction;

(10) each month give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, registered warrants, interest distribution, amounts and types of revenue received, and the cash balance;

(11) remit promptly to the state treasurer receipts for the county tax for a vocational-technical program within a unit of the university system when levied by the board of county commissioners under the provisions of 20-25-439;

(12) invest the money received from the basic county taxes for elementary and high school equalization, the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation schedules within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited

proportionately, in the funds established to account for the taxes received for the purposes specified in subsections (1)(a) through (1)(d).

(13) remit on a monthly basis to the state treasurer, in accordance with the provisions of 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333, including all interest earned ~~and excluding any amount required for high school out-of-county tuition under the provisions of 20-9-334~~ *and excluding any amount required for tuition paid under the provisions of 20-5-324(6) or (7)*, in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must be used as required in 20-9-331(1)(b) and 20-9-333(1)(b)."

Section 7. Section 20-9-335, MCA, is amended to read:

"20-9-335. Formula for apportionment of county equalization money. (1) The superintendent of public instruction shall calculate the apportionment of revenue available in the elementary and high school county equalization funds in accordance with the following procedure:

(a) determine the percentage that the county equalization money available for the support of the elementary direct state aid of the districts in the county is of the total elementary direct state aid of all districts in the county;

(b) multiply the elementary direct state aid amount of each district by the percentage determined in subsection (1)(a) to determine the portion of the county equalization money available to each school district.

(2) The procedure in subsection (1) must also be applied for the high school direct state aid ~~after the deduction of the county's obligation for high school out-of-county tuition~~ *after the deduction of the county's obligation for tuition paid under the provisions of 20-5-324(6) and (7).*

(3) Territory situated within a county may not be excluded from the calculations of the county equalization money under this section solely because the territory lies within the boundaries of a joint district. Cash balances to the credit of any district at the end of a school fiscal year may not be considered in the apportionment procedure prescribed in this section.

(4) The county equalization money reported under these procedures is the first source of revenue for financing the elementary and high school direct state aid payments."

Section 8. Section 20-10-132, MCA, is amended to read:

"20-10-132. Duties of county transportation committee. (1) It is the duty of the county transportation committee to:

(a) establish the transportation service areas within the county, without regard to district boundary lines, for each district that operates a school bus transportation program;

(b) except as provided in subsection (2), approve, disapprove, or adjust the school bus routes submitted by the trustees of each district in conformity with the transportation service areas established in subsection (1)(a);

(c) approve, disapprove, or adjust applications, approved by the trustees, for increased reimbursements for individual transportation because of isolated conditions of the eligible transportee's residence; ~~and~~

(d) conduct hearings to establish the facts of transportation controversies that have been appealed from the decision of the trustees and act on the appeals on the basis of the facts established at the hearing; *and*

(e) determine if geographic conditions make it impractical for a child to attend school in the district of residence, in accordance with 20-5-321(1)(b).

(2) In an emergency situation, a temporary bus route change may be approved by the county superintendent. A bus route change approved by the county superintendent must be confirmed by the county transportation committee within 30 days in order to be continued for a period longer than 30 days.

(3) When the county transportation committee reviews a request for a new bus route or a change to an existing route, the committee shall consider the following:

(a) a map of the existing and proposed bus route;

(b) a description of turnarounds;

(c) conditions affecting safety;

(d) the total mileage and change in mileage of the affected bus route;

(e) the approximate total cost;

(f) reasons for the proposed bus route change;

(g) the number of children to be served;

(h) a copy of the official minutes of the meeting at which the school trustees approved the new bus route or route change; and

(i) any other information that the county transportation committee considers relevant.

(4) When an application for increased reimbursement for individual transportation is presented to the county transportation committee, it must include a signed individual transportation contract and a copy of the official minutes of the meeting at which the trustees acted upon the request for increased reimbursement.

(5) After a factfinding hearing and decision on a transportation controversy, the trustees or a patron of the district may appeal the decision to the superintendent of public instruction who shall issue a decision on the basis of the facts established at the county transportation committee hearing."

Section 9. Repealer. Section 20-9-334, MCA, is repealed.

Section 10. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2001.

(2) [Section 5] is effective July 1, 2002.

Section 11. Applicability. (1) Except as provided in subsection (2), [this act] applies to tuition paid for students who enroll out of district in the school fiscal year beginning on or after July 1, 2001.

(2) [Section 5] is applicable to budgets for the school fiscal year beginning on or after July 1, 2002.

Approved April 30, 2001

CHAPTER NO. 465

[SB 77]

AN ACT GENERALLY REVISING THE LAWS GOVERNING PUBLIC ASSISTANCE; DEFINING FINANCIAL ASSISTANCE AND NONFINANCIAL ASSISTANCE TO COMPORT WITH FEDERAL LAW; REMOVING AUTHORITY FOR ONE-TIME-ONLY INCOME EXCLUSIONS FOR SPECIAL EMPLOYMENT-RELATED NEEDS; AUTHORIZING THE ADOPTION OF RULES GOVERNING THE DURATION OF BENEFITS AND ELIGIBILITY FOR NONFINANCIAL ASSISTANCE; CLARIFYING SANCTIONS FOR FAILURE OR REFUSAL TO COMPLY WITH FAMILY INVESTMENT AGREEMENTS; REMOVING REFERENCES TO PATHWAYS AND THE COMMUNITY SERVICES PROGRAM; REMOVING THE DESIGNATED COMPONENTS OF THE FAIM PROGRAM; AMENDING SECTIONS 23-1-303, 39-7-303, 39-71-118, 39-71-123, 40-4-215, 40-5-242, 40-5-248, 53-2-201, 53-2-211, 53-2-606, 53-2-610, 53-2-613, 53-2-901, 53-2-902, 53-2-903, 53-2-904, 53-2-1103, 53-4-201, 53-4-202, 53-4-212, 53-4-214, 53-4-231, 53-4-233, 53-4-241, 53-4-246, 53-4-602, 53-4-606, 53-4-611, 53-4-612, 53-4-613, 53-4-702, 53-4-704, 53-4-705, 53-4-706, 53-4-717, 53-6-101, 53-6-113, 53-6-131, 53-6-132, 53-6-134, AND 53-24-106, MCA; REPEALING SECTIONS 53-4-247, 53-4-603, 53-4-607, 53-4-608, AND 53-4-701, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-1-303, MCA, is amended to read:

"**23-1-303. Powers and duties of the division.** The division, in cooperation with the department, may:

(1) hire a corps coordinator;

(2) coordinate with state agencies to place eligible participants in work experience projects, including those recipients of ~~FAIM~~ financial assistance, as defined in ~~53-2-902~~ *53-4-201*, utilizing grant diversion funding and *to place* youth *who are* under state supervision utilizing payments from the department of public health and human services;

(3) develop and approve work experience projects that meet the requirements of this part;

(4) ensure that work experience projects involve labor-intensive improvements to public lands or facilities that will result in a public value and have a potential to yield revenue;

(5) execute contracts or cooperative agreements containing the terms and conditions necessary and desirable for the employment of crewleaders and corpsmembers in approved work experience projects with federal, state, or local agencies, persons, firms, partnerships, associations, or corporations;

(6) execute contracts or cooperative agreements with federal, state, or local agencies, persons, partnerships, associations, or corporations for the purpose of administering the requirements of this part;

(7) develop procedures for awarding incentive vouchers;

(8) authorize use of the corps for emergency projects, including but not limited to natural disasters, fire prevention and suppression, and rescue of lost or

injured persons, and provide adequate training to corpsmembers prior to participation in an emergency project;

(9) apply for and accept grants or contributions of services, funds, or lands from any public or private donors, including the acceptance of federal funds appropriated by the legislature;

(10) purchase, rent, acquire, or obtain personal property, supplies, instruments, tools, or equipment necessary to complete work experience projects; and

(11) adopt rules and guidelines necessary to implement the provisions of this part and to effectively administer the program."

Section 2. Section 39-7-303, MCA, is amended to read:

"**39-7-303. Definitions.** As used in this part, the following definitions apply:

(1) "Adult" means a person who is 18 years of age or older.

(2) "Commissioner" means the commissioner of labor and industry as provided in 2-15-1701.

(3) "Displaced homemaker" means an adult who:

(a) has worked as an adult primarily without remuneration to care for the home and family and for that reason has diminished marketable skills and who has been dependent on public assistance or on the income of a relative but is no longer supported by that income; or

(b) (i) is a parent whose youngest dependent child will become ineligible to receive financial assistance ~~under the FAIM financial assistance~~, as defined in ~~53-2-902~~ *53-4-201*, pursuant to Title 53, chapter 4, part 2, within 2 years of the parent's application for displaced homemaker assistance;

(ii) is unemployed or underemployed and is experiencing difficulty in obtaining any employment or suitable employment, as appropriate; or

(iii) meets the qualifications described in subsection (3)(a) or (3)(b) and is a criminal offender."

Section 3. Section 39-71-118, MCA, is amended to read:

"**39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) The term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in this chapter, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as defined in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-1-301;

(g) a person who is an enrolled member of a volunteer fire department, as described in 7-33-4109, or a person who provides ambulance services under Title 7, chapter 34, part 1; and

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704 is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for ~~participants in the FAIM project~~ *recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902,* who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's ~~FAIM~~ *public assistance* participants and may only be for the duration of each participant's training ~~in the FAIM project~~ *while receiving financial assistance or while participating in the food stamp program* under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(d) serving as a foster parent, licensed as a foster care provider in accordance with 41-3-1141, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of *the* weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect not less than $200 a week and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state: or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d)."

Section 4. Section 39-71-123, MCA, is amended to read:

"39-71-123. Wages defined. (1) "Wages" means all remuneration paid for services performed by an employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium other than cash. The term includes but is not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and *periods of* sickness ~~periods~~;

(b) backpay or any similar pay made for or in ~~regards~~ *regard* to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan;

(c) tips or other gratuities received by the employee, to the extent that tips or gratuities are documented by the employee to the employer for tax purposes;

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration;

(e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(f) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) The term "wages" does not include any of the following:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) the amount of the payment made by the employer for employees, if the payment was made for:

(i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(ii) sickness or accident disability under a workers' compensation policy;

(iii) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family;

(iv) death, including life insurance for the employee or the employee's immediate family;

(c) vacation or sick leave benefits accrued but not paid;

(d) special rewards for individual invention or discovery; or

(e) monetary and other benefits paid to a person as part of public assistance ~~provided through the FAIM project~~, as defined in ~~53-4-702~~ *53-4-201*.

(3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the term of employment for the same employer is less than four pay periods, the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work.

(b) For good cause shown, if the use of the last four pay periods does not accurately reflect the claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including periods of idleness or seasonal fluctuations.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3). As used in this subsection, "concurrent employment" means employment in which the employee was actually employed at the time of the injury and would have continued to be employed without a break in the term of employment if not for the injury.

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except for the wages earned by individuals while engaged in the employments outlined in 39-71-401(3)(a) who elected not to be covered, from which the employee is disabled by the injury incurred."

Section 5. Section 40-4-215, MCA, is amended to read:

"**40-4-215. Investigations and reports.** (1) If a parent or a court-appointed third party requests, or if the court finds that a parenting proceeding is contested, the court may order an investigation and report concerning parenting arrangements for the child. The investigator may be the child's guardian ad litem or other professional considered appropriate by the court. The department of public health and human services may not be ordered to conduct the investigation or draft a report unless the person requesting the investigation is a recipient of ~~cash assistance under the temporary assistance for needy families block grant, FAIM~~ financial assistance, *as defined in 53-4-201, or a participant in the food stamp program*, as defined in 53-2-902, ~~food stamps, or public assistance~~ and all reasonable options for payment of the investigation, if conducted by a person not employed by the department, are exhausted. The department may consult with any investigator and share information relevant to the child's best interests. The cost of the investigation and report must be paid according to the final order. The cost of the educational evaluation under subsection (2)(a) must be paid from the fees for filing petitions for contested amendment of a parenting plan, as provided in 25-1-201(9).

(2) The court shall determine, if appropriate, the level of evaluation necessary for adequate investigation and preparation of the report, which may include one or more of the following:

(a) parenting education;

(b) mediation pursuant to 40-4-301;

(c) factfinding by the investigator; and

(d) psychological evaluation of the parties.

(3) In preparing a report concerning a child, the investigator may consult any person who has information about the child and the child's potential parenting arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. Except as required for children 16 years of age or older, the investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the persons or entities authorized by law to grant or withhold access to the records. The child's consent must be obtained if the child ~~has reached the age of~~ *is* 16 *years of age or older* unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (4) are fulfilled, the investigator's report may be received in evidence at the hearing.

(4) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. When consistent with state and federal law, the investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (3), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing. The results of the investigation must be included in the court record and may, without objection, be sealed."

Section 6. Section 40-5-242, MCA, is amended to read:

"40-5-242. Notice of support lien — civil liability upon failure to honor support lien or to comply with warrant for distraint. (1) The department may, at any time after asserting a support lien, serve a notice of the lien on any person, firm, corporation, association, or political subdivision or department of the state in possession of any real or personal property that is due, owing, or belonging to an obligor. For this purpose, personal property includes the obligor's share of a decedent's estate, workers' compensation benefits, and any proceeds or potential proceeds from suits at law. Except as provided in subsections (1)(a) and (1)(b), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

(a) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the child support enforcement program or the

~~FAIM financial assistance program~~ *for temporary assistance for needy families, as defined in 53-4-201.*

(b) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

(2) Except as provided in subsection (3), a person or entity is liable to the department in an amount equal to 100% of the value of a support lien or warrant for distraint or the value of real or personal property subject to a support lien or distrained by a warrant for distraint, whichever is less, together with costs, interest, and reasonable attorney fees, if the person or entity:

(a) pays over, releases, sells, transfers, or conveys real or personal property subject to a support lien, to or for the benefit of the obligor, after the person or entity receives actual notice of filing of the support lien; or

(b) fails or refuses to surrender upon demand property of an obligor when presented with a warrant for distraint by a sheriff or levying officer under the provisions of 40-5-247.

(3) A person or entity is not liable to the department under this section when:

(a) a written release or waiver of the support lien or warrant for distraint issued by the department has been delivered to the person or entity;

(b) a determination has been made in an adjudicative proceeding, either administrative or judicial, that a support lien does not exist or that the lien has been satisfied; or

(c) the property subject to a support lien has been transferred to, paid over to, or repossessed by a person or entity holding:

(i) a prior perfected lien;

(ii) a mortgage, the proceeds of which were used by the obligor to purchase real property; or

(iii) a perfected purchase money security interest, as [defined by 30-9-107] described by 30-9-321. (Bracketed reference deleted July 1, 2001.)"

Section 7. Section 40-5-248, MCA, is amended to read:

"**40-5-248. Lien against real and personal property — effect of lien — interest — warrant for distraint.** (1) There is a support lien on the real and personal property of an obligor:

(a) when the department has entered a final decision in a contested case under this chapter that finds the obligor owes a sum certain debt either to this department or to an obligee, or both; or

(b) upon registration under 40-5-271 of a support order that includes finding that the obligor owes a sum certain amount of delinquent support.

(2) A support lien is for the amount required to satisfy:

(a) the sum certain debt shown in a final decision in a contested case under this chapter or the sum certain support debt included in any support order registered under 40-5-271;

(b) interest claimed under this section; and

(c) any fees that may be due under 40-5-210.

(3) A support lien has the priority of a secured creditor from the date the lien is perfected as provided by this section; however, the lien is subordinate to:

(a) any prior perfected lien or security interest;

(b) a mortgage, the proceeds of which are used by an obligor to purchase real property; or

(c) any perfected purchase money security interest, as [defined in 30-9-107] described in 30-9-321.

(4) Support liens remain in effect until the delinquency upon which the lien is based is satisfied or until 2 years after the child to whom the support lien is related attains the age of majority, whichever occurs first.

(5) The lien applies to all real and personal property owned by the obligor if it can be located in the state. The lien applies to all real and personal property that the obligor can afterward acquire. Except as provided in subsections (5)(a) and (5)(b), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

(a) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the child support enforcement program or ~~the FAIM financial~~ *for temporary* assistance ~~program~~ *for needy families, as defined in 53-4-201.*

(b) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

(6) The department shall keep a record of support liens asserted under this section in the registry of support orders established by 40-5-271.

(7) A support lien is perfected:

(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or may be located at the time of filing or at any time in the future;

(b) as to motor vehicles or other items for which a certificate of ownership is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;

(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under [30-9-401] 30-9-321. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.

(8) A buyer, in the ordinary course of business, who buys an obligor's personal property for value and who buys in good faith and without knowledge of the support lien takes the property free of the support lien.

(9) (a) The department may charge interest on the support lien at the rate of 1% per month.

(b) Interest accrues at the close of the business day on the last day of each month and is calculated by multiplying the unpaid balance of the lien, including prior accrued interest existing at the end of the day, by the applicable rate of interest.

(c) A provision of this section may not be construed to require the department to maintain interest balance due accounts. The department may waive interest if waiver would facilitate the collection of the debt.

(d) Interest under this subsection (9) is in addition to and not in substitution for any other interest accrued or accruing under any other provision of law.

(10) (a) Upon receiving payment in full of the amount of the lien plus interest and fees, if any, the department shall take all necessary steps to release the support lien.

(b) Upon receiving partial payment of the support lien or if the department determines that a release or partial release of the lien will facilitate the collection of support arrearages, the department may release or partially release the support lien. The department may release the support lien if it determines that the lien is unenforceable.

(11) A support lien under this section is in addition to any other lien created by law.

(12) A support lien under this section may not be discharged in bankruptcy.

(13) Support liens provided for by this section may be enforced or collected through the warrant for distraint provided for by 40-5-247. (Bracketed references deleted July 1, 2001.)"

Section 8. Section 53-2-201, MCA, is amended to read:

"53-2-201. Powers and duties of department. (1) The department shall:

(a) administer and supervise public assistance, including the provision of food stamps, food commodities, ~~FAIM~~ financial assistance *and nonfinancial assistance*, as defined in 53-2-902, energy assistance, weatherization, vocational rehabilitation, services for persons with severe disabilities, developmental disability services, medical care payments in behalf of recipients of public assistance, employment and training services for recipients of public assistance, and other programs as necessary to strengthen and preserve families;

(b) give consultant service to private institutions providing care for adults who are needy, indigent, or dependent or who have disabilities;

(c) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(d) ~~provide services in respect to organization~~ *organize* and supervise ~~county departments~~ *the local offices* of public ~~welfare and county boards of public welfare~~

assistance in ~~the administration of public assistance functions and for efficiency and economy~~ *an efficient and economical manner*;

(e) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when requested, by performing services in conformity with public assistance purposes;

(f) administer all state and federal funds allocated to the department for public assistance and do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes;

(g) make rules governing payment for services and supplies provided to recipients of public assistance; and

(h) adopt rules regarding assignment of monetary and medical support upon application for ~~FAIM~~ financial assistance, as defined in 53-2-902, and related medical assistance.

(2) The department may:

(a) purchase, exchange, condemn, or receive by gift either real or personal property that is necessary to carry out its public assistance functions. Title to property obtained under this subsection must be taken in the name of the state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its public assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance."

Section 9. Section 53-2-211, MCA, is amended to read:

"**53-2-211. Department to share eligibility data.** (1) The department shall make available to the unemployment compensation program of the department of labor and industry all information contained in its files and records pertaining to eligibility of persons for medicaid, ~~FAIM~~ financial assistance *and nonfinancial assistance*, as defined in 53-2-902, and food stamps. The information made available must include information on the amount and source of an applicant's income. The information received from the department must be used by the department of labor and industry for the purpose of determining fraud, abuse, or eligibility for benefits under the unemployment compensation program of the state and for no other purpose.

(2) The department shall make available to the unemployment compensation and ~~the~~ workers' compensation programs of the department of labor and industry all information contained in its files and records pertaining to eligibility of persons for low-income energy assistance~~,~~ and weatherization. The information made available must include information on the amount and source of an applicant's income. The information received from the department must be used by the department of labor and industry for the purpose of determining fraud, abuse, or eligibility for benefits under the unemployment compensation and workers' compensation programs of the state and for no other purpose.

(3) (a) Subject to federal restrictions, the department may request information from the department of labor and industry pertaining to unemployment, workers' compensation, and occupational disease benefits. If the

department of labor and industry discovers evidence relating to fraud or abuse for unemployment, workers' compensation, or occupational benefits, the department of labor and industry may request information from the department of revenue pertaining to income as provided in 15-30-303(8)(c).

(b) The information must be used by the department for the purpose of determining fraud, abuse, or eligibility for benefits.

(4) The department may, to the extent permitted by federal law, make available to an agency of the state or to any other organization information contained in its files and records pertaining to the eligibility of persons for medicaid, ~~FAIM~~ financial assistance *and nonfinancial assistance*, as defined in 53-2-902, food stamps, low-income energy assistance, weatherization, or other public assistance. ~~The information may be disclosed only for purposes directly connected with the administration of a program or purpose of the agency and may not be used by the agency for any other purpose.~~"

Section 10. Section 53-2-606, MCA, is amended to read:

"53-2-606. Right of appeal. (1) If an application for assistance for food stamps, ~~FAIM~~ financial assistance *or nonfinancial assistance*, as defined in 53-2-902, or medicaid is not acted upon promptly or if a decision is made with which the applicant or recipient is not satisfied, the applicant or recipient may appeal to the board of public assistance for a fair hearing by addressing a request for a hearing to the department of public health and human services. The board of public assistance shall, upon receipt of a request for a hearing, give the applicant or recipient prompt notice and opportunity for a fair hearing.

(2) The department may upon its own motion review any decision of a county welfare board and may consider any application upon which a decision has not been made by the county board within a reasonable time from the filing of the decision. The department may have an additional ~~investigation~~ *eligibility determination* made and shall make a decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this title.

(3) If the department reviews a county decision on its own motion, applicants or recipients affected by the decisions of the department shall upon request be given reasonable notice and an opportunity for a fair hearing by the board of public assistance.

~~(4) All decisions of the department or the board of public assistance are final and are binding and must be complied with by the county department.~~"

Section 11. Section 53-2-610, MCA, is amended to read:

"53-2-610. County to reimburse department. (1) On or before the 20th of each month, the department shall present a claim for reimbursement to each county department for its proportionate share of public assistance granted in the county to recipients during the month and for vendor medical payments made on behalf of recipients in the previous month. The county department shall make the reimbursement to the department within 20 days after the claim is presented.

(2) The counties may not be required to reimburse the department for:

(a) any portion of public assistance paid to a household eligible for ~~FAIM~~ financial assistance *or nonfinancial assistance*, as defined in 53-2-902, if the household includes an enrolled Indian who is the caretaker relative of a needy dependent child; or

(b) any payment on behalf of any person in a state-operated medical institution.

(3) (a) From the original date of entrustment or the original date of state residency, whichever is earlier, recipients of public assistance who become wards or patients in a licensed nursing home or hospital, foster home, or private charitable institution are the financial responsibility of the appropriate county as provided in subsections (3)(b) through (3)(d).

(b) The county in which commitment of an adult is initiated is considered the county of financial responsibility except when a court decree declares the residency to be otherwise. When an adult is transferred from a facility or institution to one of the facilities listed in subsection (3)(a), the county that initiated the original commitment is considered the county of financial responsibility except in the case of an adult transfer from an out-of-state institution, in which case the county in which the facility is located is considered the county of financial responsibility.

(c) In all cases in which a minor patient or ward is involved, the county of financial responsibility is the county in which the parent or guardian resides. If the custody of a minor is entrusted to a state agency, the agency may make a reasonable declaration of the county residency of its ward using applicable guidelines enumerated in this section.

(d) If a person is or becomes an adult while in an institution, the person may determine the county of residence when the person is restored to competency and released. The person becomes the financial responsibility of the new county of residence."

Section 12. Section 53-2-613, MCA, is amended to read:

"**53-2-613. Application for assistance — assignment of support rights.** (1) Applications for public assistance, including but not limited to ~~FAIM~~ financial assistance *or nonfinancial assistance*, as defined in 53-2-902, and medical assistance, ~~must~~ *may* be made ~~to the county department of public welfare in the county~~ in ~~which the person is residing~~ *any local office of public assistance.* The application must be submitted, in the manner and form prescribed by the department, and must contain information required by the department.

(2) A person who signs an application for ~~FAIM~~ financial assistance, as defined in 53-2-902, or *for* related medical assistance assigns to the state, to the department, and to the county ~~welfare department~~, *if county funds were used to pay for services,* all rights that the applicant may have to monetary and medical support from any other person in the applicant's own behalf or in behalf of any other family member for whom application is made. A person who signs an application for public assistance other than ~~FAIM~~ financial assistance, as defined in 53-2-902, or *for* related medical assistance may, in accordance with rules adopted by the department, be required to assign to the state, to the department, and to the county ~~welfare department~~ all rights that the applicant may have to monetary and medical support from any other person in the applicant's own behalf or on behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for both current and accrued support, including unpaid support that accrued before the applicant received public assistance, and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance; and

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

(4) If a person who is the legal custodian and child support obligee under a support order relinquishes physical custody of a child to a caretaker relative without obtaining a modification of legal custody and the caretaker relative is determined eligible for public assistance on behalf of the child, the child support obligation is transferred by operation of law to the caretaker relative and may be assigned as provided in subsection (2). The transfer and assignment terminate when the caretaker relative no longer has physical custody of the child, except for any unpaid support still owing under the assignment at that time.

(5) Whenever a child support or spousal support obligation is assigned to the department pursuant to this section, the following provisions apply:

(a) If the support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse the cumulative total of public assistance money expended.

(b) A recipient or former recipient of public assistance may not commence or maintain an action to recover or enforce a delinquent support obligation or make any agreements with any other person or agency concerning the support obligation, except as provided in 40-5-202.

(c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department's child support enforcement division has filed a written notice that:

(i) the assignment of current support amounts has been terminated; and

(ii) all assigned support delinquencies, if any, are satisfied or released.

(d) A recipient or former recipient of public assistance may not take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department's child support enforcement division is given written notice under the provisions of 40-5-202. Any modifications or agreements entered into without the participation of the department are void with respect to the state, the department, and the county welfare department.

(e) A support obligation assigned under this section may not be terminated, invalidated, waived, set aside, or considered uncollectible by the conduct, misconduct, or failure of a recipient or former recipient of public assistance to take any action or to cease any action required under a decree, judgment, support order, custody order, visitation order, restraining order, or other similar order."

Section 13. Section 53-2-901, MCA, is amended to read:

"53-2-901. Administration of food stamp program — rulemaking authority. (1) The department is authorized to administer the food stamp program in compliance with all federal laws and requirements.

(2) The department shall adopt rules that are necessary and desirable for the administration of the food stamp program.

(3) The department shall adopt rules that may include but are not limited to rules concerning:

(a) eligibility for assistance, including income and resource limitations, income and resource exclusions, and transfers of resources;

(b) amounts of assistance and methods for determining benefit amount;

(c) periodic redetermination of eligibility;

(d) reporting requirements;

(e) work registration, employment, and training requirements and exemptions from those requirements;

(f) procedures and policies of the employment and training program;

(g) disqualification because of intentional program violations, for voluntarily quitting a job without good cause, or for any other violation of program rules; and

(h) penalties applicable to recipients of ~~FAIM~~ financial assistance who have been sanctioned because of failure to meet any requirement of that program.

(4) The department may adopt rules that include but are not limited to rules concerning:

(a) requirements for recipients to assign the right of support;

(b) requirements for recipients to cooperate with the state agency administering the child support enforcement program established under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq.; and

(c) disqualification for failure to perform actions required by other means-tested programs, for failure to cooperate with the state agency administering the child support enforcement program under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq., or for failure to pay court-ordered child support as provided in sections 819, 822, and 823 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 7 U.S.C. 2015."

Section 14. Section 53-2-902, MCA, is amended to read:

"**53-2-902. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided in Title 2, chapter 15, part 22.

(2) "Employment and training demonstration project" means the employment and training program for recipients of ~~FAIM~~ financial assistance who are participating in the FAIM project.

~~(3) "FAIM financial assistance" means the program that provides participants in the job supplement program, pathways program, and community services program of the FAIM project with benefits that may include cash, services, and noncash assistance.~~

~~(4)~~*(3)* "FAIM project" means the families achieving independence in Montana project, including the ~~FAIM~~ financial assistance part ~~established in 53-4-603~~, a food stamp part administered pursuant to the Food Stamp Act of 1977, 7 U.S.C. 2026, and a medicaid part administered pursuant to the Social Security Act, 42 U.S.C. 1315.

(4) (a) "Financial assistance" means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(a).

(b) The term does not include nonfinancial assistance.

(5) "Food stamp program" means the provision of food stamp benefits that can be used to purchase food to low-income persons pursuant to the Food Stamp Act Amendments of 1980, 7 U.S.C. 2011, et seq.

(6) "Nonfinancial assistance" means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(b).

(7) "Temporary assistance for needy families" means the block grant established pursuant to 42 U.S.C. 601, et seq."

Section 15. Section 53-2-903, MCA, is amended to read:

"53-2-903. Employment and training program. The department shall establish and administer an employment and training program for food stamp recipients that is in compliance with federal requirements. For purposes of the FAIM project, in accordance with waivers of federal law that are granted by the food and consumer service of the U.S. department of agriculture, the department may merge its food stamp program employment and training program with its ~~FAIM~~ financial assistance employment and training program or may modify the rules and requirements of the food stamp program employment and training program as necessary to make them consistent with those of the employment and training demonstration project."

Section 16. Section 53-2-904, MCA, is amended to read:

"53-2-904. Income and resource exclusions — FAIM participants. In accordance with waivers of federal law that are granted by the food and consumer service of the U.S. department of agriculture, the department may by rule establish special income and resource exclusions to be applied to participants of the FAIM project in determining their eligibility for food stamps and in determining the benefit amount. ~~Exclusions that may be established include but are not limited to exclusions for one-time only cash payments for special employment-related needs as provided in 53-4-603 in determining the recipients' eligibility for food stamps and determining the benefit amount.~~"

Section 17. Section 53-2-1103, MCA, is amended to read:

"53-2-1103. Definitions. For the purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Economically disadvantaged person" has the same meaning as provided in section 4 of the Job Training Partnership Act (29 U.S.C. 1503).

(2) "Job Training Partnership Act" means the federal Job Training Partnership Act, Public Law 97-300 (29 U.S.C. 1501, et seq.), as amended.

(3) "Job training plan" means the plan for providing services and training in a service delivery area, as required in 53-2-1107.

(4) "Program" means the program created by 53-2-1104 to implement the provisions of Title II-A of the Job Training Partnership Act.

(5) "Program year" means the fiscal year beginning on July 1 of the year for which an appropriation is made for the program established under this part, as provided in section 161 of the Job Training Partnership Act (29 U.S.C. 1571).

(6) "Public assistance program" means the state program ~~of FAIM~~ *that provides* financial assistance, as defined in 53-2-902.

(7) "Service delivery area" means an area designated as provided in section 101 of the Job Training Partnership Act (29 U.S.C. 1511)."

Section 18. Section 53-4-201, MCA, is amended to read:

"**53-4-201. Definitions.** As used in part 6 and this part, the following definitions apply:

(1) "Assessment" means the process of evaluating a recipient's skills, education, job readiness, and barriers to employment. The term may include further in-depth examination to identify and access services and resources to assist the recipient in eliminating barriers to employment if barriers are identified during the initial assessment.

~~(1)~~*(2)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(2)~~*(3)* (a) "Dependent child", for public assistance purposes, means:

(i) a child under 18 years of age; or

(ii) a person under 19 years of age who is a student, as defined by the department by rule.

(b) The person described in subsection ~~(2)(a)(i) or (2)(a)(ii)~~ *(3)(a)(i) or (3)(a)(ii)* must be living with a specified caretaker relative, as defined by the department by rule.

~~(3) "FAIM financial assistance" means the program that provides participants in the job supplement program, pathways program, and community services program of the FAIM project with benefits that may include cash, services, and noncash assistance.~~

~~(4)~~*(4)* "FAIM project" means the families achieving independence in Montana project as established in 53-4-601.

~~(5)~~*(5)* "Family" means a group of people who live with a dependent child, each of whom is related to the dependent child by blood, marriage, or adoption or by law, such as:

(a) a parent, including a natural or adoptive parent, a stepparent, or a person considered by law to be a parent in the case of a child conceived by artificial insemination; or

(b) a sibling.

~~(6)~~*(6)* "Federal poverty level" means the measure of indigence established annually by the U.S. office of management and budget.

(7) "Financial assistance" means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(a).

(8) "Nonfinancial assistance" means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(b).

~~(7)~~*(9)* "Public assistance" or "assistance" means a type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

~~(8)~~*(10)* "Specified caretaker relative" means a person within a degree of kinship to the dependent child, as specified by department rule, who lives with the child and exercises care and control over the child.

~~(9)~~*(11)* "State plan" means the policies and procedures governing the state of Montana's FAIM ~~financial assistance program~~ *project* and other programs funded by temporary assistance for needy families. It is prepared by the department and certified by the federal agency that provides funding for those programs.

~~(10)~~*(12)* "Temporary assistance for needy families" means the federal block grant ~~that funds FAIM financial assistance and other programs to strengthen and preserve families~~ *established* pursuant to ~~Title IV of the Social Security Act,~~ 42 U.S.C. 601, et seq.~~, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.~~"

Section 19. Section 53-4-202, MCA, is amended to read:

"53-4-202. ~~FAIM financial~~ *Financial* assistance to be in effect in all counties. (1) It is ~~mandatory and~~ required that the state plan and programs described in the state plan must be in effect in each county of the state.

(2) It is not required that the programs funded under ~~the~~ temporary assistance for needy families ~~block grant~~ be uniformly administered in each county of the state, provided that it is administered in accordance with all requirements of the state plan and federal law. The department may also administer demonstration programs pursuant to section 1115 of the Social Security Act, 42 U.S.C. 1315, or any other provision of that act that permits the states to administer experimental, pilot, or demonstration projects.

(3) An enrolled member of an Indian tribe participating in a program that is funded, *at least in part,* by ~~the~~ temporary assistance for needy families ~~block grant administered by the state of Montana~~ must be subject to the same rules, policies, and requirements as all other applicants for and recipients of benefits funded by ~~the~~ temporary assistance for needy families ~~block grant~~ *unless an exception is expressly granted by federal law.*"

Section 20. Section 53-4-212, MCA, is amended to read:

"53-4-212. Department to make rules. (1) The department shall make rules and take action as necessary or desirable for the administration of ~~the FAIM financial~~ *public* assistance ~~program and other~~ programs ~~funded under the temporary assistance for needy families block grant~~.

(2) The department shall adopt rules that may include but are not limited to rules concerning:

(a) eligibility requirements, including gross and net income limitations, resource limitations, and income and resource exclusions;

(b) amounts of assistance, ~~and~~ methods for computing benefit amounts, *and the length of time for which benefits may be granted*;

(c) the degree of kinship required for a person to qualify as a specified caretaker relative in order to be eligible for assistance;

(d) procedures and policies for employment and training programs, requirements for participation in employment and training programs, and exemptions, if any, from participation requirements;

(e) requirements for specified caretaker relatives ~~participating in the community services program~~, including *cooperation with assessments,* the number of hours of ~~community service work~~ *participation required for each* ~~per~~ month, *specific activities required to address employment barriers,* and other terms of performance;

(f) eligibility for and terms and conditions of child-care assistance for ~~FAIM project~~ *financial assistance* ~~participants~~ *recipients*, including maximum amounts of assistance payable and amounts of copayments required by specified caretaker relatives;

(g) ~~maximum amounts of one-time only cash payments for special employment-related needs and the length of time that a family is required to remain off cash assistance after a payment is received~~ *eligibility criteria and participation requirements for nonfinancial assistance recipients*;

~~(h) exemptions from time limits in pathways and the community services program;~~

~~(i)~~*(h)* terms of *ineligibility or sanctions against* a specified caretaker ~~relative's~~ *relative* or other family ~~member's ineligibility for assistance because of failure~~ *member who fails* to enter into a family investment agreement, *as provided for in 53-4-606,* or to comply with the individual's obligations under the agreement, including the length of the period of ineligibility, *if any*;

~~(j)~~*(i)* requirements, if any, for participation in ~~and exemptions from participation in and procedures and policies of~~ the employment and training demonstration project;

~~(k)~~*(j)* eligibility for and terms and conditions of extended ~~child-care and~~ medical assistance benefits;

~~(l)~~*(k)* reporting requirements;

~~(m)~~*(l)* sanctions, disqualification, or other penalties for failure *or refusal* to comply with the ~~program~~ rules or requirements *of a public assistance program*;

~~(n)~~*(m)* exemptions from the 60-month limitation on assistance provided in 53-4-231 based on hardship or for families that include an individual who has been battered or subjected to extreme cruelty, as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608, including but not limited to the duration of the exemption;

~~(o)~~*(n)* individuals who must be included as members of an assistance unit;

~~(p)~~*(o)* categories of aliens who may receive assistance, if any;

~~(q)~~*(p)* requirements relating to the assignment of child and medical support rights and cooperation in establishing paternity and obtaining child and medical support;

~~(r)~~*(q)* requirements for eligibility and other terms and conditions of other programs to strengthen and preserve families;

~~(s)~~*(r)* special eligibility or participation requirements applicable to teenage parents, if any; and

~~(t)~~*(s)* conditions under which assistance may be continued when *an adult or* a dependent child is temporarily absent from the home and the length of time for which assistance may be continued."

Section 21. Section 53-4-214, MCA, is amended to read:

"**53-4-214. Distribution of copies of law and forms by department.** The department shall have printed and shall distribute copies of this part to all ~~county welfare departments~~ *local offices of public assistance* and shall prescribe the form of and print and supply to the ~~county welfare department~~ *local offices of public assistance* blanks of applications, reports, and other forms that may be necessary in relation to the ~~FAIM financial assistance and other~~ *administration of public assistance* programs ~~funded under the temporary assistance for needy families block grant~~."

Section 22. Section 53-4-231, MCA, is amended to read:

"**53-4-231. Eligibility.** (1) Subject to the provisions of subsections (2) through (5), assistance may be granted under this part to:

(a) a dependent child;

(b) a specified caretaker relative or relatives, including but not limited to the natural or adoptive parents of a dependent child *who:*

(i) enters into a family investment agreement, as provided for in 53-4-606, if required by the department; and

(ii) cooperates in all assessments and screening required by the department;

(c) the stepparent of a dependent child who lives with the child and the child's natural or adoptive parent;

(d) persons under 18 years of age who live in the home with a dependent child, including but not limited to siblings related to the dependent child by blood, marriage, or adoption or by law;

(e) a needy pregnant woman with no other children who is receiving payments. Payments may begin no earlier than the third month prior to the month in which the child is expected to be born.

(2) Persons who are not citizens of the United States are eligible for assistance only as provided in sections 401 through 435 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as codified in Title 8 of the United States Code.

~~(3)~~*(3)* The following are not eligible for assistance:

(a) persons who are receiving supplemental security income payments under the Social Security Act;

(b) *an adult or* a dependent child who is or is expected to be absent from the home of the specified caretaker relative continuously for a period of time prescribed by the department by rule;

(c) a specified caretaker relative who fails to comply with requirements for reporting the absence of a dependent child from the specified caretaker relative's home as prescribed by the department by rule;

(d) families in which the specified caretaker relative fails or refuses to assign child and medical support rights to the department or to cooperate in establishing paternity or obtaining child or medical support as required by the department by rule;

(e) families in which the specified caretaker relative or other adult household member, as specified by the department by rule, fails or refuses to:

(i) cooperate in any required screening or assessment; or

(ii) enter into a family investment agreement required by the department under 53-4-606;

~~(e)~~*(f)* teenage parents who fail or refuse to attend secondary school or another training program as required by the department by rule;

~~(f)~~*(g)* teenage parents who are not living in an adult-supervised setting as defined by the department by rule;

~~(g)~~*(h)* a fugitive felon or probation or parole violator as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608;

~~(h)~~*(i)* individuals who have fraudulently misrepresented their place of residence, as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608~~;~~. *The ineligibility continues* for a period of 10 years beginning on the date of conviction~~; and~~

~~(i) an individual convicted after August 22, 1996, of any offense that is classified as a felony and that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substance Act, 21 U.S.C. 802(6)~~.

(j) an individual convicted after August 22, 1996, of any offense that is classified as a felony and that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substance Act, 21 U.S.C. 802(6).

~~(4)~~*(4)* A family is not eligible for *financial* assistance if the family includes an adult who has received *financial* assistance in a program funded under ~~the~~ temporary assistance for needy families ~~block grant~~ in any state or states for 60 months or more, whether or not the months are consecutive, ~~except as provided by the department by rule in accordance with section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608~~ *unless an exception is expressly granted by federal law.*

~~(5)~~*(5)* This part may not be interpreted to entitle any individual or family to assistance under programs funded by ~~the~~ temporary assistance for needy families ~~block grant~~."

Section 23. Section 53-4-233, MCA, is amended to read:

"**53-4-233.** ~~**Investigation of**~~ ***Eligibility determination for*** **applications.** Whenever a ~~county department~~ *local office of public assistance* receives an application for assistance under this part, an ~~investigation~~ *eligibility determination* must be promptly made by the ~~county department~~ *local office* of public ~~welfare~~ *assistance*. Each applicant *shall participate in any screening required by the department and* must be informed of the applicant's right to a fair hearing and of the confidential nature of information secured. Upon completion of an ~~investigation~~ *eligibility determination and any required screening*, aid must be furnished promptly to all eligible persons. Each applicant must receive written notice of the decision concerning the applicant's request for assistance."

Section 24. Section 53-4-241, MCA, is amended to read:

"**53-4-241. Amount of assistance determined by department rules.** The amount of ~~FAIM~~ financial assistance *or nonfiancial assistance* granted in any case must be determined according to the rules and standards of assistance established by the department."

Section 25. Section 53-4-246, MCA, is amended to read:

"**53-4-246. (Temporary) County share of participation.** Except for recipients who are enrolled members of an Indian tribe, for each recipient of cash assistance in the FAIM project, the county where the recipient resides shall reimburse the department 22.5% of the nonfederal share of the approved temporary assistance for needy families grant for the recipient. However, a county is not required to reimburse the department more for temporary assistance for needy families grants for 1 state fiscal year than the dollar amount that the county paid as its share of cash assistance and emergency assistance programs in 1996. For purposes of determining the nonfederal share, the federal share is considered to be equal to the federal medical assistance percentage paid to the states for medicaid benefits under Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq. (Terminates June 30, 2001—sec. 6, Ch. 341, L. 1999.)

53-4-246. (Effective July 1, 2001) County share of participation. Each county where the recipient of ~~FAIM~~ financial assistance resides shall reimburse the department in the amount equal to the percentage of the approved temporary assistance for needy families grants not paid with federal temporary assistance for needy families funds."

Section 26. Section 53-4-602, MCA, is amended to read:

"**53-4-602. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Cash assistance" means monetary payments to a recipient of ~~FAIM~~ financial assistance to meet basic needs, such as shelter, utilities, clothing, and personal needs.

(2) "Child-care assistance" means payments to or on behalf of the specified caretaker relative of a dependent child to defray the cost of having a third party care for the child.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "FAIM project" means the families achieving independence in Montana project, including a ~~FAIM~~ financial assistance part ~~established in 53-4-603~~, a food stamp part administered under the Food Stamp Act of 1977, 7 U.S.C. 2026, and a medicaid part administered pursuant to the Social Security Act, 42 U.S.C. 1315.

(5) "Section 1931 medicaid benefits" means medical assistance authorized by 42 U.S.C. 1396u-1 for families eligible for the Montana medicaid program, as established in Title 53, chapter 6, based on the department's income limitations, as increased each year by that year's increase in the Consumer Price Index for Urban Wage Earners, compiled by the U.S. department of labor, bureau of labor statistics, and other standards approved by the federal government for 1996 for the federal aid to families with dependent children program, as that program was established under Title IV of the federal Social Security Act (42 U.S.C. 601, et seq.)."

Section 27. Section 53-4-606, MCA, is amended to read:

"**53-4-606. Requirements for eligibility — *family investment agreement*.** (1) Eligibility for ~~FAIM~~ financial assistance under the FAIM project with regard to income, resources, and all other factors of eligibility must be determined in accordance with the waivers granted by the U.S. secretary of health and human services under section 1115 of the Social Security Act, 42 U.S.C. 1315.

(2) (a) As a condition of eligibility for *financial* assistance ~~under pathways and the community services program~~, all specified caretaker relatives and other family members, as specified by the department by rule, shall enter into a family investment agreement with the department and shall comply with the terms of that agreement. ~~Entering into an agreement is not a condition of eligibility for the job supplement program.~~

(b) The family investment agreement must set forth the mutual obligations of the participant and the department to help the family achieve the goal of self-sufficiency. The agreement may contain provisions:

(i) regarding actions to be taken by the specified caretaker relative and by the department to secure child support;

(ii) requiring that the immunization and health-screening requirements of the early and periodic screening, diagnosis, and treatment program be met for all children in the family; ~~and~~

(iii) requiring the participant to cooperate in any assessments necessary to identify barriers to self-sufficiency and listing specific actions to be taken in order to eliminate any identified barriers; and

~~(iii)~~*(iv)* specifying other services and activities appropriate for the participant or family.

(c) ~~An individual who is required to enter into a family investment agreement and who~~ *Families in which the specified caretaker relative or other adult household member, as specified by rule,* fails *or refuses to enter into a family investment agreement* without good cause ~~to do so or fails without good cause to comply with the individual's obligations under the agreement is~~ *are* ineligible~~, as provided in 53-4-608,~~ for ~~FAIM~~ financial assistance.

(d) An individual who is required to enter into a family investment agreement and who refuses or fails, without good cause, to comply with the terms of the family investment agreement must be sanctioned in accordance with the rules and policies of the department.

~~(3) As a condition of eligibility for the community service program, a specified caretaker relative shall perform community service work as required by the department.~~"

Section 28. Section 53-4-611, MCA, is amended to read:

"**53-4-611. Child-care assistance.** ~~(1) In the job supplement program component of the FAIM project, the~~ *The* department may provide child-care assistance to all ~~single-parent~~ families *receiving financial assistance* if child care is necessary to allow the parent to engage in paid employment and if funding is available. Child-care assistance may~~, at the department's discretion,~~ be provided to ~~two-parent~~ families *receiving financial assistance* if child care is necessary to allow either or both parents to engage in ~~paid employment~~ *the activities required by a family investment agreement under 53-4-606* and if funding is available.

~~(2) In the pathways component of the FAIM project, the department may provide child-care assistance to all single-parent families if child care is necessary to allow the parent to participate in an activity required by the family investment~~

~~agreement and if funding is available. Child care assistance may, at the department's discretion, be provided to two-parent families if child care is necessary to allow either or both of the parents to participate in an activity required by the family investment agreement and if funding is available.~~

~~(3) In the community services program component of the FAIM project, the department may provide child care assistance to all single-parent families if child care is necessary to allow the parent to participate in an activity required by the family investment agreement and if funding is available. Child care assistance may, at the department's discretion, be provided to two-parent families if child care is necessary to allow either or both of the parents to participate in an activity required by the family investment agreement and if funding is available.~~"

Section 29. Section 53-4-612, MCA, is amended to read:

"**53-4-612. Extended ~~child care and~~ medical assistance benefits.** A family receiving ~~FAIM financial assistance under a component of the FAIM project~~ *section 1931 medicaid benefits* that loses eligibility for assistance because of increased income ~~from any source~~ *to the assistance unit, as that term is defined in the rules of the department,* may receive extended medical assistance benefits if funding is available, provided that the family's income does not exceed a percentage of the federal poverty level specified by the department by rule~~, and may receive child care assistance pursuant to 53-4-611 if funding is available~~."

Section 30. Section 53-4-613, MCA, is amended to read:

"**53-4-613. Employment and training program.** In cases in which the department determines that participation in the employment and training program would be appropriate for a ~~participant in pathways~~ *recipient of financial assistance*, the ~~participant~~ *recipient* may be required to participate in employment and training as one of the conditions of the ~~participant's~~ family investment agreement *required under 53-4-606. The department may count education activities as an allowable work activity in a family investment agreement for up to 60 months in a FAIM project cash assistance program consistent with federal law.*"

Section 31. Section 53-4-702, MCA, is amended to read:

"**53-4-702. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(2) "FAIM financial assistance" means the program that provides participants in the job supplement program, pathways program, and community services program of the FAIM project with benefits that may include cash payments, services, and noncash assistance.~~

~~(3)~~*(2)* "FAIM project" means the families achieving independence in Montana project as established in 53-4-601.

(3) (a) "Financial assistance" means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(a).

(b) The term does not include nonfinancial assistance.

(4) "Nonfinancial assistance" means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(b).

(5) "Temporary assistance for needy families" means the block grant program established pursuant to 42 U.S.C. 601, et seq."

Section 32. Section 53-4-704, MCA, is amended to read:

"**53-4-704. Placement of ~~FAIM~~ *financial assistance recipients or food stamp program* participants for purpose of training.** (1) The department or a person designated by the department may place an individual *receiving financial assistance or* participating in the ~~FAIM project~~ *food stamp program* into a position of employment with a public or private entity for the purpose of training the individual in the knowledge and skills necessary for the individual to become successfully employed.

(2) The department may, pursuant to subsection (1), place an individual ~~participating in the FAIM project~~ into a position at a worksite only with the permission and assistance of the public or private entity at the worksite under a written training agreement between the department and the entity.

(3) The placement of an individual into a position at a public or private worksite pursuant to subsection (1) is only for the purpose of training the individual in employment knowledge and skills and is not for the purpose of providing paid employment for the individual. The placement may not supplant an existing employment position or another individual already employed at the worksite. Placement of the individual at the public or private worksite pursuant to subsection (1) should last no longer than is necessary to achieve the employment training purposes of the ~~FAIM project~~ *program.*

(4) The private or public entity where an individual is placed pursuant to subsection (1) may choose whether or not to later employ the individual after the conclusion of the individual's training."

Section 33. Section 53-4-705, MCA, is amended to read:

"**53-4-705. Services and activities.** Under the program provided for in 53-4-703, the department shall make available a broad range of services and activities to assist recipients of ~~FAIM~~ financial assistance as specified by the department by rule."

Section 34. Section 53-4-706, MCA, is amended to read:

"**53-4-706. Participation requirements.** (1) Except as otherwise provided in this section, the department may require individuals to participate in the employment and training program as a condition of their eligibility for ~~FAIM~~ financial assistance.

(2) To the extent that the program is available and that state resources permit, the department shall require recipients of ~~FAIM~~ financial assistance ~~who are participating in the pathways component of the FAIM project~~ to participate in the program if the department determines that it is an appropriate activity for the recipient and includes participation as a condition of the recipient's family investment agreement *as provided for in 53-4-606.*"

Section 35. Section 53-4-717, MCA, is amended to read:

"**53-4-717. Sanctions.** If an individual receiving ~~FAIM~~ financial assistance ~~under the FAIM project~~ is required to participate in the employment and training program as a condition of the individual's family investment agreement, *as provided for in 53-4-606,* and fails without good cause to participate, the individual must be sanctioned in accordance with rules established by the department. Except as required by federal law, a sanction may not include any restriction or termination of food stamps or medicaid coverage, and child care benefits may only be continued for employment-related activities required by the family investment agreement that the ~~FAIM~~ participant has signed that are to be performed during the sanction period. The department may establish rules to ensure that individuals who participate in good faith are sanctioned properly and avail themselves of additional case management services to ensure compliance with the family investment agreement."

Section 36. Section 53-6-101, MCA, is amended to read:

"53-6-101. Montana medicaid program — authorization of services. (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended. The department of public health and human services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services that are provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department; and

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law:

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23;

(m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;

(o) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and

(p) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of assistance.

(5) In accordance with *federal law or* waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving ~~FAIM~~ financial assistance, as defined in ~~53-4-702~~ *53-4-201*, as the specified caretaker relative of a dependent child under the FAIM project and for all adult recipients of medical assistance only who are covered under a group related to ~~the~~ *a* program ~~of FAIM~~ *providing* financial assistance, as defined in ~~53-4-702~~ *53-4-201*. Basic medicaid benefits consist of all mandatory services listed in subsections (2)(a) through (2)(l) but may include those optional services listed in subsections (3)(a) through (3)(p) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature ~~for the FAIM project~~ and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage.

(6) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(7) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(8) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(9) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

(10) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(11) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(12) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.

(13) Medicaid payment for personal-care facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."

Section 37. Section 53-6-113, MCA, is amended to read:

"**53-6-113. Department to adopt rules.** (1) The department of public health and human services shall adopt appropriate rules necessary for the administration of the Montana medicaid program as provided for in this part and ~~as~~ *that* may be required by federal laws and regulations governing state participation in medicaid under Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as amended.

(2) The department shall adopt rules ~~as~~ *that* are necessary to further define for the purposes of this part the services provided under 53-6-101 and to provide that services being used are medically necessary and that the services are the most efficient and cost-effective available. The rules may establish the amount, scope, and duration of services provided under the Montana medicaid program, including the items and components constituting the services.

(3) The department shall establish by rule the rates for reimbursement of services provided under this part. The department may in its discretion set rates of reimbursement that it determines necessary for the purposes of the program. In establishing rates of reimbursement, the department may consider but is not limited to considering:

(a) the availability of appropriated funds;

(b) the actual cost of services;

(c) the quality of services;

(d) the professional knowledge and skills necessary for the delivery of services; and

(e) the availability of services.

(4) The department shall specify by rule those professionals who may deliver or direct the delivery of particular services.

(5) The department may provide by rule for payment by a recipient of a portion of the reimbursements established by the department for services provided under this part.

(6) The department may adopt rules consistent with this part to govern eligibility for the Montana medicaid program. Rules may include but are not limited to financial standards and criteria for income and resources, treatment of resources, nonfinancial criteria, family responsibilities, residency, application, termination, definition of terms, confidentiality of applicant and recipient information, and cooperation with the state agency administering the child support enforcement program under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq.

(7) The department may adopt rules limiting eligibility based on criteria more restrictive than that provided in 53-6-131 if required by Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, or if funds appropriated are not sufficient to provide medical care for all eligible persons.

(8) The department may adopt rules necessary for the administration of medicaid managed-care systems. Rules to be adopted may include but are not limited to rules concerning:

(a) participation in managed care;

(b) selection and qualifications for providers of managed care; and

(c) standards for the provision of managed care.

(9) The department shall establish by rule income limits for eligibility for extended medical assistance of persons receiving ~~benefits from FAIM financial assistance, as defined in 53-4-702,~~ ~~as participants of the FAIM project~~ *section 1931 medicaid benefits, as defined in 53-4-602,* who lose eligibility because of increased income *to the assistance unit, as that term is defined in the rules of the department*, as provided in 53-6-134, and shall also establish by rule the length of time for which extended medical assistance will be provided. The department, in exercising its discretion to set income limits and duration of assistance, may consider the amount of funds appropriated by the legislature ~~for the FAIM project~~."

Section 38. Section 53-6-131, MCA, is amended to read:

"**53-6-131. Eligibility requirements.** (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of public health and human services, in its discretion, to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., and does not have income or resources in excess of the applicable medical assistance limits ~~or receive from FAIM financial assistance, as defined in 53-4-702, benefits under Title IV of the federal Social Security Act, 42 U.S.C. 601, et seq~~.

(b) The person would be eligible for assistance under ~~a~~ *the* program described in subsection (1)(a) if that person were to apply for that assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the person would be receiving assistance under ~~one of~~ the ~~programs~~ *program* in subsection (1)(a).

~~(d) The person is under 19 years of age and meets the conditions of eligibility in the state plan, as defined in 53-4-201, other than with respect to age and school attendance.~~

~~(e)~~*(d)* The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a child with special needs.

~~(f)~~*(e)* The person meets the nonfinancial criteria of the categories in subsections (1)(a) through ~~(1)(e)~~ *(1)(d)* and:

(i) the person's income does not exceed the income level specified for federally aided categories of assistance and the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance:

(A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for federally aided categories of assistance; and

(B) has resources that are within the resource standards of the federal supplemental security income program.

~~(g)~~*(f)* The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

(2) The department may establish income and resource limitations. Limitations of income and resources must be within the amounts permitted by federal law for the medicaid program.

(3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for medicaid-eligible persons participating in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the Social Security Act; and

(b) has resources that do not exceed standards that the department determines reasonable for purposes of the program.

(4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(5) In accordance with waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public

health and human services may grant eligibility for basic medicaid benefits as described in 53-6-101 to an individual receiving ~~FAIM financial assistance~~ *section 1931 medicaid benefits*, as defined in ~~53-4-702~~ *53-4-602*, as the specified caretaker relative of a dependent child under the ~~FAIM project and to all adult recipients of medical assistance only who are covered under a group related to the program of FAIM financial assistance~~ *section 1931 medicaid program*. A recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage as provided in 53-6-101.

(6) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

(7) Notwithstanding any other provision of this chapter, medical assistance must be provided to infants and pregnant women whose family income does not exceed 133% of the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C. 1396a(l)(2)(A)(i), and whose family resources do not exceed standards that the department determines reasonable for purposes of the program.

(8) Subject to appropriations, the department may cooperate with and make grants to a nonprofit corporation that uses donated funds to provide basic preventive and primary health care medical benefits to children whose families are ineligible for the Montana medicaid program and who are ineligible for any other health care coverage, are under 19 years of age, and are enrolled in school if of school age.

(9) A person described in subsection (7) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7).

(10) The department may establish resource and income standards of eligibility for mental health services that are more liberal than the resource and income standards of eligibility for physical health services. The standards for eligibility for mental health services may provide for eligibility for households not eligible for medicaid with family income that does not exceed 200% of the federal poverty threshold or that does not exceed a lesser amount determined in the discretion of the department. The department may by rule specify under what circumstances deductions for medical expenses should be used to reduce countable family income in determining eligibility. The department may also adopt rules establishing fees, premiums, or copayments to be charged recipients for services. The fees, premiums, or copayments may vary according to family income."

Section 39. Section 53-6-132, MCA, is amended to read:

"**53-6-132. Application for assistance — exception.** (1) ~~Except as provided in~~ *Subject to* subsection (2), application for assistance under this part ~~must~~ *may* be made ~~to the~~ *in any local* office of ~~the county department in the county in which the person is residing~~ *public assistance*. The application must be presented in the manner and on the form prescribed by the department of public health and human services. All individuals wishing to apply must have the opportunity to do so.

(2) Notwithstanding the provisions of subsection (1), the department may designate an entity other than the ~~county department~~ *local office of public assistance* to determine eligibility for medicaid managed care services."

Section 40. Section 53-6-134, MCA, is amended to read:

"53-6-134. Extension of eligibility for medical assistance to persons terminated from ~~FAIM financial assistance~~ *section 1931 medicaid program*. (1) In providing for the extension of eligibility for medical assistance under subsection (2), the department may provide for health insurance or other health coverage in accordance with subsections 1925(a)(4)(B) and 1925(b)(4)(C) of Title XIX of the Social Security Act, 42 U.S.C. 1396r-6(a)(4)(B) and 42 U.S.C. 1396r-6(b)(4)(C), and may exercise the other options contained in section 1925 of Title XIX of the Social Security Act, 42 U.S.C. 1396r-6, regarding the provision of medical assistance.

(2) In accordance with waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may provide extended eligibility for medical assistance for a period of time established by the department by rule for persons receiving ~~FAIM financial assistance, as defined in 53-4-702, under the job supplement program, pathways, or community services program components of the FAIM project described in 53-4-603~~ *section 1931 medicaid benefits, as defined in 53-4-602,* who lose eligibility because of increased *earned or unearned* income ~~from any source or because of exhausting time-limited earned income disregards~~ *to the assistance unit, as that term is defined in the rules of the department*, provided that the family's income does not exceed a percentage of the federal poverty level established by the department by rule. The department, in exercising its discretion to establish income standards and duration of extended medical assistance by rule, may consider the amount of funds appropriated by the legislature ~~for the FAIM project~~."

Section 41. Section 53-24-106, MCA, is amended to read:

"53-24-106. Criminal laws limitation. (1) ~~No~~ *A* county, municipality, or other political subdivision may *not* adopt or enforce a local law, ordinance, resolution, or rule having the force of law that includes drinking, being a common drunkard, or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or sanction.

(2) ~~Nothing in this~~ *This* section ~~affects~~ *does not affect* any law, ordinance, resolution, or rule against drunken driving, driving under the influence of alcohol, or other similar offense involving the operation of a vehicle, an aircraft, a boat, machinery, or other equipment or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages at stated times and places or by a particular class of persons.

(3) This section does not prevent the department from imposing a sanction on or denying eligibility to applicants for or recipients of public assistance who fail or refuse to comply with all eligibility criteria and program requirements."

Section 42. Coordination instruction. If House Bill No. 101 is not passed and approved, then all references in [this act] to local offices of public assistance are changed to references to county welfare offices.

Section 43. Repealer. Sections 53-4-247, 53-4-603, 53-4-607, 53-4-608, and 53-4-701, MCA, are repealed.

Section 44. Effective date. [This act] is effective July 1, 2001.

Section 45. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level.

Approved April 30, 2001

CHAPTER NO. 466

[SB 82]

AN ACT REVISING THE LAWS RELATING TO THE PUBLIC MENTAL HEALTH SYSTEM AND MANAGED CARE; CONSOLIDATING MANAGED HEALTH CARE ENTITY FINANCIAL SOLVENCY PROVISIONS UNDER THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; REDEFINING "MANAGED CARE COMMUNITY NETWORK"; REORGANIZING CERTAIN MENTAL HEALTH MANAGED CARE LAWS AND PUBLIC MENTAL HEALTH SYSTEM LAWS; PROVIDING A REQUIREMENT FOR A SYSTEM OF TRACKING CHILDREN WHO NEED MENTAL HEALTH SERVICES; REORGANIZING ELIGIBILITY FOR PUBLIC MENTAL HEALTH SERVICES; AMENDING SECTIONS 33-31-115, 53-6-116, 53-6-131, 53-6-701, 53-6-702, 53-6-703, 53-21-701, AND 53-21-702, MCA; AND REPEALING SECTION 53-21-704, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-31-115, MCA, is amended to read:

"**33-31-115. Applicability to managed health care entity.** (1) A managed health care entity, as defined in 53-6-702, is governed by the provisions of Title 53, chapter 6, part 7~~, and by the licensure and financial solvency provisions of this chapter, but the commissioner may by rule reduce or eliminate a requirement of this chapter if the requirement is demonstrated to be unnecessary for the operation of a managed health care entity~~.

(2) The department of public health and human services may limit the amount, scope, and duration of services provided by a managed health care entity under contract for programs established under Title 53. These services may be less than services required by this title."

Section 2. Section 53-6-116, MCA, is amended to read:

"**53-6-116. Medicaid managed care — capitated health care.** (1) The department of public health and human services, in its discretion, may develop ~~managed-care~~ *managed care* and capitated health care systems for medicaid recipients.

(2) The department may contract with one or more persons for the management of comprehensive physical health services and the management of comprehensive mental health services for medicaid recipients. The department may contract for the provision of these services by means of a fixed monetary or capitated amount ~~per~~ *for each* recipient.

(3) A ~~managed-care~~ *managed care* system is a program organized to serve the medical needs of medicaid recipients in an efficient and cost-effective manner by managing the receipt of medical services for a geographical or otherwise defined population of recipients through appropriate health care professionals.

(4) The provision of medicaid services through ~~managed-care~~ *managed care* and capitated health care systems is not subject to the limitations provided in ~~53-6-101 and~~ 53-6-104. *The managed care or capitated health care system that is provided to a defined population of recipients may be based on one or more of the medical assistance services provided for in 53-6-101.*

(5) The proposed systems, referred to in subsection (1), must be submitted to the legislative finance committee. The legislative finance committee shall review the proposed systems at its next regularly scheduled meeting and shall provide any comments concerning the proposed systems to the department ~~of public health and human services~~."

Section 3. Section 53-6-131, MCA, is amended to read:

"53-6-131. Eligibility requirements. (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of public health and human services, in its discretion, to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., and does not have income or resources in excess of the applicable medical assistance limits or receive from FAIM financial assistance, as defined in 53-4-702, benefits under Title IV of the federal Social Security Act, 42 U.S.C. 601, et seq.

(b) The person would be eligible for assistance under a program described in subsection (1)(a) if that person were to apply for that assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the person would be receiving assistance under one of the programs in subsection (1)(a).

(d) The person is under 19 years of age and meets the conditions of eligibility in the state plan, as defined in 53-4-201, other than with respect to age and school attendance.

(e) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a child with special needs.

(f) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(e) and:

(i) the person's income does not exceed the income level specified for federally aided categories of assistance and the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance:

(A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for federally aided categories of assistance; and

(B) has resources that are within the resource standards of the federal supplemental security income program.

(g) The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

(2) The department may establish income and resource limitations. Limitations of income and resources must be within the amounts permitted by federal law for the medicaid program.

(3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for medicaid-eligible persons participating in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the Social Security Act; and

(b) has resources that do not exceed standards that the department determines reasonable for purposes of the program.

(4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(5) In accordance with waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may grant eligibility for basic medicaid benefits as described in 53-6-101 to an individual receiving FAIM financial assistance, as defined in 53-4-702, as the specified caretaker relative of a dependent child under the FAIM project and to all adult recipients of medical assistance only who are covered under a group related to the program of FAIM financial assistance. A recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage, as provided in 53-6-101.

(6) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

(7) Notwithstanding any other provision of this chapter, medical assistance must be provided to infants and pregnant women whose family income does not exceed 133% of the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C. 1396a(l)(2)(A)(i), and whose family resources do not exceed standards that the department determines reasonable for purposes of the program.

(8) Subject to appropriations, the department may cooperate with and make grants to a nonprofit corporation that uses donated funds to provide basic preventive and primary health care medical benefits to children whose families are ineligible for the Montana medicaid program and who are ineligible for any

other health care coverage, are under 19 years of age, and are enrolled in school if of school age.

(9) A person described in subsection (7) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7).

~~(10) The department may establish resource and income standards of eligibility for mental health services that are more liberal than the resource and income standards of eligibility for physical health services. The standards for eligibility for mental health services may provide for eligibility for households not eligible for medicaid with family income that does not exceed 200% of the federal poverty threshold or that does not exceed a lesser amount determined in the discretion of the department. The department may by rule specify under what circumstances deductions for medical expenses should be used to reduce countable family income in determining eligibility. The department may also adopt rules establishing fees, premiums, or copayments to be charged recipients for services. The fees, premiums, or copayments may vary according to family income.~~"

Section 4. Section 53-6-701, MCA, is amended to read:

"**53-6-701. Policy of medicaid managed care — system for integrated health care services.** It is the public policy of the state of Montana to adopt, to the extent practicable, a health care ~~program~~ *system* that encourages the integration of health care services and that manages the health care of ~~program~~ enrollees to improve their health while preserving reasonable choice within a competitive and cost-efficient environment. In furtherance of this public policy, the department shall develop and implement ~~an~~ integrated health care ~~program~~ *programs* consistent with the provisions of this part. The provisions of this part apply only to ~~the program~~ *programs* created under this part. The department shall by rule identify persons eligible for enrollment in ~~the~~ *a* program. The department shall inform enrollees of their choice, if any, among health care delivery systems. Persons enrolled in ~~the~~ *a* program may also be offered cost-effective indemnity insurance plans, subject to availability."

Section 5. Section 53-6-702, MCA, is amended to read:

"**53-6-702. Definitions.** As used in this part, the following definitions apply:

~~(1) "Commissioner" means the commissioner of insurance provided for in 2-15-1903.~~

~~(2)~~*(1)* "Department" means the department of public health and human services.

~~(3)~~*(2)* "Health maintenance organization" means a health maintenance organization as defined in 50-5-101.

~~(4)~~*(3) (a)* "Managed care community network" or "network" means an entity, other than a health maintenance organization, ~~that is owned, operated, or governed by a person and~~ that provides or arranges ~~managed~~ *for comprehensive physical or mental* health care services under *a* contract with the department ~~to enrollees of the program.~~, *that is reimbursed by a capitated rate or a fixed monetary amount for a specified time period with a risk of financial loss or a financial incentive to the entity, and that:*

(i) contracts for an estimated annual value of $1 million or more of state and federal medicaid funds; or

(ii) operates statewide or covers 20% or more of the medicaid population.

(b) The term does not include a provider of health care services under a contract with the department on a fee-for-service basis.

~~(5)~~*(4)* "Managed health care entity" or "entity" means a health maintenance organization or a managed care community network.

~~(6) "Person" means:~~

~~(a) an individual;~~

~~(b) a group of individuals;~~

~~(c) an insurer, as defined in 33-1-201;~~

~~(d) a health service corporation, as defined in 33-30-101;~~

~~(e) a corporation, partnership, facility, association, or trust; or~~

~~(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.~~

~~(7)~~*(5)* "Program" means *an element of* the integrated health care ~~program~~ *system* created by this part."

Section 6. Section 53-6-703, MCA, is amended to read:

"**53-6-703. Managed care community network.** (1) A managed care community network shall comply with~~:~~

~~(a) the licensure and financial solvency requirements of Title 33, chapter 31, but the commissioner may by rule reduce or eliminate a requirement of Title 33, chapter 31, if the requirement is demonstrated to be unnecessary for the operation of the managed care community network; and~~

~~(b)~~ the federal requirements for prepaid health plans as provided in 42 CFR, part 434.

(2) A managed care community network may contract with the department to provide any combination of medicaid-covered health care services that is acceptable to the department.

(3) ~~A~~ *The department, prior to entering into a contract, shall require that a* managed care community network ~~shall~~ demonstrate *to the department* its ability to bear the *level of* financial risk ~~of~~ *being assumed by* servicing enrollees under ~~the program~~ *a contract for comprehensive physical or mental health care services.* The ~~commissioner~~ *department* shall by rule adopt criteria for assessing the financial ~~soundness~~ *solvency* of a network. The rules must consider risk-bearing and management techniques *and protections against financial insolvency, if a managed care community network is declared insolvent or bankrupt,* as determined appropriate by the ~~commissioner~~ *department.* The rules must also consider whether a network has sufficiently demonstrated its financial solvency and net worth. The ~~commissioner's~~ *department's* criteria must be based on sound actuarial, financial, and accounting principles. The ~~commissioner~~ *department* is responsible for monitoring compliance with the rules. *The department shall provide for independent review of any contract provisions and contract compliance with the financial solvency rules.*

(4) A managed care community network may not begin operation before the effective date of rules adopted by the ~~commissioner~~ *department to implement the*

changes made by [this act] under this part, the approval of any necessary federal waivers, and the completion of the review of an application submitted to the ~~commissioner~~ *department*. The ~~commissioner~~ *department* may charge the applicant an application review fee for the ~~commissioner's~~ *department's* actual cost of review of the application. The ~~fees~~ *fee* must be adopted by rule by the ~~commissioner~~ *department*. Fees collected by the ~~commissioner~~ *department* must be deposited in an account in the special revenue fund and are statutorily appropriated, as provided in 17-7-502, to the ~~commissioner~~ *department* to defray the cost of application review.

(5) A health care delivery system that contracts with the department under the program may not be required to provide or arrange for any health care or medical service, procedure, or product that violates religious or moral teachings and beliefs if that health care delivery system is owned, controlled, or sponsored by or affiliated with a religious institution or religious organization but must comply with the notice requirements of 53-6-705(4)(c).

~~(6) The commissioner shall adopt rules to protect managed care community networks against financial insolvency. Managed care community networks are subject to health maintenance protections against financial insolvency contained in 33-31-216 in the event that a managed care community network is declared insolvent or bankrupt.~~"

Section 7. Section 53-21-701, MCA, is amended to read:

"53-21-701. Mental health managed care *allowed* — contract— ~~**advisory council.**~~ (1) ~~The department of public health and human services shall incrementally develop managed care systems for recipients of public mental health services.~~ The department *of public health and human services* may contract with one or more persons for the management of comprehensive mental health services for medicaid recipients, *as provided in 53-6-116,* and for persons ~~as specified in 53-6-131(10)~~ *in households not eligible for medicaid with family income that does not exceed 160% of the federal poverty threshold or that does not exceed a lesser amount determined in the discretion of the department.* ~~The department may contract for the provision of these services by means of a fixed monetary or capitated amount per recipient.~~ The department shall *determine whether or not a potential contractor that will serve medicaid enrollees is a managed care community network, as defined in 53-6-702, prior to entering into a contract and shall* ensure that each contractor that ~~assumes risk is required to comply~~ *qualifies as a managed care community network complies* with the provisions of Title 53, chapter 6, part 7, for the medicaid portion of the program.

(2) A managed care system is a program organized to serve the mental health needs of recipients in an efficient and cost-effective manner by managing the receipt of *comprehensive* mental health care and services for a geographical or otherwise defined population of recipients through appropriate health care professionals. The management of mental health care services must provide for services in the most cost-effective manner through coordination and management of the appropriate level of care and appropriate level of services. ~~The managed care system shall review and determine the appropriate level of services on an individual basis in order to ensure that access to care, quality of care, and the cost of the program are maintained.~~

(3) The department may enter into one or more contracts with *a* managed *health* care ~~entities~~ *entity, as defined in 53-6-702,* for the administration or delivery of mental health services. These contracts may be based upon a fixed

monetary amount or a capitated amount ~~per~~ *for each* individual, and a contractor may assume all or a part of the financial risk of providing *and making payment for* services to a set population of eligible individuals *if the contractor has complied with Title 53, chapter 6, part 7*. The department may require the participation of recipients in managed care systems based upon geographical, financial, medical, or other factors that the department may determine are relevant to the development and efficient operation of the managed care systems. *Any contract for delivery of mental health care services that includes hospitalization or physician services, or both, must include a provision that, prior to final award of a contract, a successful bidder that serves adults shall enter into an agreement regarding the Montana state hospital and the Montana mental health nursing care center that is consistent with 53-1-402, 53-1-413, and 90-7-312 and that includes financial incentives for the development and use of community-based services, rather than the use of the state institutional services.*

~~(4) The department may establish eligibility requirements, resource and income standards, premiums, fees, and copayments. Eligible individuals may not have a family income that exceeds the amount established pursuant to 53-6-131(10).~~

~~(5) The department shall establish the amount, scope, and duration of services to be provided under the program. The services to be provided and eligibility requirements may be more limited than those in the medicaid program under chapter 6.~~

~~(6) (a) The department shall form an advisory council, to be known as the mental health oversight advisory council, that is not subject to 2-15-122 to provide input to the department in the development and management of any public mental health system. The advisory council membership must include:~~

~~(i) one-half of the members as consumers of mental health services, including persons with serious mental illnesses who are receiving public mental health services, other recipients of mental health services, former recipients of public mental health services, and immediate family members of recipients of mental health services; and~~

~~(ii) advocates for consumers or family members of consumers, members of the public at large, providers of mental health services, legislators, department representatives, and a representative of the commissioner of insurance.~~

~~(b) The advisory council under this section may be administered so as to fulfill any federal advisory council requirements to obtain federal funds for this program.~~

~~(c) Geographic representation must be considered when appointing members to the advisory council in order to provide as wide a representation as possible.~~

~~(d) The advisory council shall provide a summary of each meeting and a copy of any recommendations made to the department to the legislative finance committee and any other designated appropriate legislative interim committee. The department shall provide the same committees with the department's rationale for not accepting or implementing any recommendation of the advisory council.~~

~~(7)~~*(4)* The department shall formally evaluate contract performance with regard to specific outcome measures. The department shall explicitly identify performance and outcome measures that contractors are required to achieve in order to comply with contract requirements and to continue the contract. The contract must provide for progressive intermediate sanctions that may be imposed for nonperformance. *The contract performance evaluation must include a section concerning contract enforcement, including any sanctions imposed along with the rationale for not imposing a sanction when the imposition is authorized.* The evaluation must be performed at least annually."

Section 8. Section 53-21-702, MCA, is amended to read:

"53-21-702. Mental health ~~managed~~ care — system ~~elements~~ — *eligibility — services — advisory council.* (1) The department of public health and human services shall develop a delivery system of mental health ~~managed~~ care from ~~current~~ providers or other entities that are able to provide administration or delivery of mental health services. ~~A system of mental health managed care must include the following elements~~ *The public mental health care system shall*:

(a) *include* specific outcome and performance measures for the administration or delivery of a continuum of mental health services ~~in order to provide contract compliance monitoring~~;

~~(b) a fixed monetary or capitated payment mechanism;~~

~~(c)~~*(b)* ~~a provision~~ *provide* for local advisory councils that shall report to and meet on a regular basis with the advisory council provided for in ~~53-21-701(6)~~ *subsection (4)*;

~~(d)~~*(c)* ~~provisions for appeal at the local level~~ *provide level-of-care appeals that are understandable and accessible*; *and*

~~(e) a requirement that each contractor that assumes any financial risk shall comply with the provisions of Title 53, chapter 6, part 7, for the medicaid portion of the program;~~

~~(f) provisions that require documentation of evidence of the ability to provide services through an adequate provider network, as provided for in Title 33, chapter 36, and to comply with rules, regulations, and contract requirements;~~

~~(g) a provision that, prior to final award of a contract, a successful bidder that serves adults shall enter into a contract with the Montana state hospital and the Montana mental health nursing care center that is consistent with 53-1-402, 53-1-413, and 90-7-312 and that includes financial incentives for the development and use of community-based services, rather than the use of the state institutional services;~~

~~(h) the services that must be provided for medicaid-eligible individuals;~~

~~(i) a provision to allow a spenddown by individuals to become eligible for medicaid;~~

~~(j) the services, which may include a pharmacy benefit, that must be provided to nonmedicaid-eligible individuals whose income levels are below 200% of the federal poverty level as provided for in 53-6-131(10);~~

~~(k) a provision that allows implementation of a specific sliding scale for premiums or copayments by nonmedicaid-eligible individuals taking into account income and percentage of poverty level;~~

~~(l)~~*(d)* ~~a provision for~~ *provide a system for tracking* children who need mental health services that are provided under substantive interagency agreements between state agencies responsible for addictive and mental disorders, foster care, children with developmental disabilities, special education, and juvenile corrections~~; and~~

~~(m) requirements to ensure that the mental health managed care system will be operated in a cost-effective manner~~.

(2) The department may establish resource and income standards of eligibility for mental health services that are more liberal than the resource and income standards of eligibility for physical health services. The standards of eligibility for mental health services may provide for eligibility for households not eligible for medicaid with family income that does not exceed 160% of the federal poverty threshold or that does not exceed a lesser amount determined at the discretion of the department. The department may by rule specify under what circumstances deductions for medical expenses should be used to reduce countable family income in determining eligibility. The department may also adopt rules establishing fees, premiums, or copayments to be charged recipients for services. The fees, premiums, or copayments may vary according to family income.

~~(2)~~*(3) The department shall establish the amount, scope, and duration of services to be provided under the program.* Services for nonmedicaid-eligible individuals may be more limited than those services provided to medicaid-eligible individuals. *Services to nonmedicaid-eligible individuals may include a pharmacy benefit.*

~~(3) The department shall contract with an independent professional consulting firm that is knowledgeable and experienced in developing managed mental health care systems. The department shall require, as part of the contract, that the consulting firm make regular reports to the legislative finance committee and any other appropriate legislative interim committee. Reports must be made at least every 6 months and must include information about the development and implementation of the new mental health managed care system.~~

~~(4) The term of a mental health managed care contract may not be more than 5 years. The department may implement care-managed fee-for-service reimbursement to provide mental health services as otherwise permitted by law during the transition from a single statewide contract for mental health managed care.~~

(4) (a) The department shall form an advisory council, to be known as the mental health oversight advisory council, to provide input to the department in the development and management of any public mental health system. The advisory council is not subject to 2-15-122. The advisory council membership must include:

(i) one-half of the members as consumers of mental health services, including persons with serious mental illnesses who are receiving public mental health services, other recipients of mental health services, former recipients of public mental health services, and immediate family members of recipients of mental health services; and

(ii) advocates for consumers or family members of consumers, members of the public at large, providers of mental health services, legislators, and department representatives.

(b) The advisory council under this section may be administered so as to fulfill any federal advisory council requirements to obtain federal funds for this program.

(c) Geographic representation must be considered when appointing members to the advisory council in order to provide the widest possible representation.

(d) The advisory council shall provide a summary of each meeting and a copy of any recommendations made to the department to the legislative finance committee and any other designated appropriate legislative interim committee. The department shall provide the same committees with the department's rationale for not accepting or implementing any recommendation of the advisory council."

Section 9. Repealer. Section 53-21-704, MCA, is repealed.

Approved April 30, 2001

CHAPTER NO. 467

[SB 129]

AN ACT IMPLEMENTING THE TOBACCO SETTLEMENT TRUST FUND AUTHORIZED BY ARTICLE XII, SECTION 4, OF THE MONTANA CONSTITUTION; PROVIDING CRITERIA TO GOVERN THE PURPOSES FOR WHICH THE INTEREST, INCOME, AND PRINCIPAL OF THE TRUST FUND MAY BE APPROPRIATED; PROVIDING FOR THE MANAGEMENT OF THE TRUST FUND; AMENDING SECTION 17-6-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Establishment — purpose. A Montana tobacco settlement trust fund, as provided for in Article XII, section 4, of the Montana constitution, is established to provide a permanent source of revenue to fund the costs that the state incurs in:

(1) programs for tobacco disease prevention; and

(2) providing benefits, services, or coverage of health care needs.

Section 2. Definitions. As used in [sections 1 through 3], the following definitions apply:

(1) "Benefits, services, or coverage of health care needs" means the provision of health care to persons by the state through any program of benefits, services, or coverage, including income tax incentives.

(2) "Health care" has the meaning provided in 50-16-504.

(3) "Programs for tobacco disease prevention" means programs of services administered by the state for the purposes of informing individuals of the health risks of tobacco use and exposure, assisting persons in the avoidance of tobacco products use, and assisting individuals in cessation of tobacco use.

(4) "Tobacco products" means a substance intended for human use that contains tobacco and includes but is not limited to cigarettes, cigars, smoking tobacco, and tobacco intended for use in an oral or nasal cavity.

(5) "Trust fund" means the Montana tobacco settlement trust fund authorized by Article XII, section 4, of the Montana constitution and implemented through [sections 1 through 3].

Section 3. Montana tobacco settlement trust fund — state special revenue fund account. (1) Nine-tenths of the interest and income derived from the trust fund on or after January 1, 2001, must be deposited in an account in the state special revenue fund and is subject to appropriation in accordance with subsection (3). One-tenth of the interest and income derived from the trust fund must remain in the trust fund.

(2) In addition to the money required to be deposited in the trust fund as principal, the legislature may deposit additional money in the trust fund as principal.

(3) The legislature shall appropriate money from the state special revenue fund account provided for in subsection (1) for programs for tobacco disease prevention and for state programs that provide benefits, services, or coverage of health care needs.

(4) The money appropriated under this section may not be used to replace state or federal money used to fund programs for tobacco disease prevention or state programs in existence on December 31, 1999, that provide benefits, services, or coverage of health care needs.

Section 4. Section 17-6-203, MCA, is amended to read:

"**17-6-203. Separate investment funds.** Separate investment funds ~~shall~~ *must* be maintained as follows:

(1) the nonexpendable trust funds, including all public school funds and funds of the Montana university system and other state institutions of learning referred to in ~~sections 2 and 10,~~ Article X, *sections 2 and 10,* of the ~~1972~~ Montana constitution. The principal and any part ~~thereof~~ of each ~~and every~~ fund constituting the Montana nonexpendable trust fund type ~~shall be~~ *are* subject to payment at any time when due under the statutory provisions applicable ~~thereto~~ *to the nonexpendable trust fund* and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular fund arises.

(2) a separate investment fund, which may not be held jointly with other funds, for money pertaining to each retirement or insurance system ~~now or hereafter~~ maintained by the state, including those now maintained under the following statutes:

(a) the highway patrol officers' retirement system described in Title 19, chapter 6;

(b) the public employees' retirement system described in Title 19, chapter 3;

(c) the game wardens' and peace officers' retirement system described in Title 19, chapter 8;

(d) the teachers' retirement system described in Title 19, chapter 20; and

(e) the industrial accident insurance program described in Title 39, chapter 71, part 23;

(3) a pooled investment fund, including all other accounts within the treasury fund structure established by 17-2-102;

(4) the fish and wildlife mitigation trust fund established by 87-1-611;

(5) a fund consisting of gifts, donations, grants, legacies, bequests, devises, and other contributions made or given for a specific purpose or under conditions

expressed in the gift, donation, grant, legacy, bequest, devise, or contribution on the part of the state of Montana to be observed. If ~~such~~ *a* gift, donation, grant, legacy, bequest, devise, or contribution permits investment and is not otherwise restricted by its terms, it may be treated jointly with other ~~such~~ gifts, donations, grants, legacies, bequests, devises, or contributions.

(6) a fund consisting of coal severance taxes allocated ~~thereto~~ *to the coal tax severance trust fund* under ~~section 5,~~ Article IX, *section 5,* of the Montana constitution~~; the~~. *The* principal of this trust fund ~~shall be~~ *is* permanent~~; in~~. *However, in* the event *that* the legislature appropriates any part of the principal of this fund by *a* vote of three-fourths of the members of each house, ~~such~~ *the* liquidation may create a gain or loss in the principal~~; and~~.

(7) a Montana tobacco settlement trust fund established in accordance with Article XII, section 4, of the Montana constitution and [sections 1 through 3]; and

~~(7)~~*(8)* ~~such~~ additional investment funds ~~as may be~~ *that are* expressly required by law or may be determined by the board of investments to be necessary to fulfill fiduciary responsibilities of the state with respect to funds from a particular source."

Section 5. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 17, chapter 6, and the provisions of Title 17, chapter 6, apply to [sections 1 through 3].

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to proceeds from the tobacco settlement occurring on or after January 1, 2001.

Approved April 30, 2001

CHAPTER NO. 468

[SB 258]

AN ACT GENERALLY REVISING THE LAWS GOVERNING FAMILY EDUCATION SAVINGS ACCOUNTS; EXCLUDING FROM INCOME THOSE EARNINGS ON ACCOUNTS THAT ARE WITHDRAWN FOR QUALIFIED EXPENSES; IMPOSING A TAX ON CERTAIN WITHDRAWALS FROM ACCOUNTS INSTEAD OF RECAPTURING THE WITHDRAWALS AS INCOME; REQUIRING THAT ACCOUNTS BE OPEN FOR 3 YEARS TO QUALIFY FOR THE BENEFIT OF DEDUCTION OF THE CONTRIBUTION; CLARIFYING ACCESS TO CERTAIN RECORDS CONCERNING ACCOUNTS; REVISING DEFINITIONS TO CONFORM TO FEDERAL LAW; CLARIFYING THE INCOME TAX DEDUCTION FOR CONTRIBUTIONS TO AN ACCOUNT; AUTHORIZING THE USE OF MULTIPLE FINANCIAL INSTITUTIONS OR MULTIPLE INVESTMENT INSTRUMENTS; AMENDING SECTIONS 15-30-111, 15-62-103, 15-62-201, AND 15-62-603, MCA; REPEALING SECTION 15-62-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Deductions for contributions. An individual who contributes to an account in a tax year is entitled to reduce the individual's adjusted gross income, in accordance with 15-30-111(8), by the amount of the contribution, but not more than $3,000. The contribution must be made to an account owned by the contributor, the contributor's spouse, the contributor's child, or the contributor's stepchild if the stepchild is a Montana resident.

Section 2. Tax on certain withdrawals of deductible contributions. (1) There is a recapture tax at a rate equal to the highest rate of tax provided in 15-30-103 on the recapturable withdrawal of amounts that reduced adjusted gross income under 15-30-111(8).

(2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross income, all withdrawals must be allocated between income and contributions in accordance with the principles applicable under section 529(c)(3)(A) of the Internal Revenue Code of 1986, 26 U.S.C. 529(c)(3)(A). The portion of a recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions, if any, that did not reduce adjusted gross income, to the extent of those contributions, and then to contributions that reduced adjusted gross income. The portion of any other withdrawal that is allocated to contributions must be treated as first derived from contributions that reduced adjusted gross income, to the extent of the contributions, and then to contributions that did not reduce adjusted gross income.

(3) (a) The recapture tax imposed by this section is payable by the owner of the account from which the withdrawal or contribution was made. The tax liability must be reported on the income tax return of the account owner and is payable with the income tax payment for the year of the withdrawal or at the time that an income tax payment would be due for the year of the withdrawal. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.

(b) The department may require withholding on recapturable withdrawals from an account that was at one time owned by a Montana resident if the account owner is not a Montana resident at the time of the withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that was at one time owned by a Montana resident must be treated as if the account is owned by a resident of Montana.

(4) For the purposes of this section, all contributions made to accounts by residents of Montana are presumed to have reduced the contributor's adjusted gross income unless the contributor can demonstrate that all or a portion of the contributions did not reduce adjusted gross income. Contributors who claim deductions for contributions shall report on their Montana income tax returns the amount of deductible contributions made to accounts for each designated beneficiary and the social security number of each designated beneficiary.

(5) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a nonqualified withdrawal or a withdrawal or distribution from an account that was opened after the later of:

(a) [the effective date of this act]; or

(b) the date that is 3 years prior to the date of the withdrawal or distribution.

(6) The department shall use all means available for the administration and enforcement of income tax laws in the administration and enforcement of this section.

Section 3. Access to records. Information that identifies the contributor, account owner, or designated beneficiary of a family education savings account is exempt from the provisions of 2-6-102 and 2-6-104 and any other provision of law permitting the public inspection or copying of documents. The provisions of this section may not prevent the release of information about a specific designated beneficiary to a higher education institution at which the designated beneficiary is enrolled or to which the designated beneficiary has applied for admission.

Section 4. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted; and

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, a county, municipality, or district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) ~~money, not exceeding $3,000 for each taxpayer, contributed to a family education savings program account established in accordance with 15-62-201;~~

~~(m) principal~~ *contributions* withdrawn from ~~an~~ *a family education savings account or earnings withdrawn from a family education savings* account for qualified higher education expenses, as defined in 15-62-103, ~~for~~ *of* a designated beneficiary ~~of the taxpayer~~;

~~(n)~~*(m)* the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

~~(o)~~*(n)* if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period; and

~~(p)~~*(o)* income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained ~~age~~ 65 *years of age* by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross

income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) of this section do not apply with respect to withdrawals of contributions that reduced adjusted gross income. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"

Section 5. Section 15-62-103, MCA, is amended to read:

"**15-62-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Account" means an individual trust account or savings account established under this chapter.

(2) "Account owner" means the person designated at the time that an account is opened as having the right to withdraw money from the account before the account is disbursed to or for the benefit of the designated beneficiary.

(3) "Board" means the board of regents of higher education established by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

(4) "Committee" means the family education savings program oversight committee established in 20-25-901.

(5) "Designated beneficiary" means, with respect to an account, the person designated at the time that the account is opened as the person whose higher education expenses are expected to be paid from the account or if this person is replaced in accordance with 15-62-202, the individual replacing the former designated beneficiary.

(6) "Financial institution" means any bank, commercial bank, national bank, savings bank, savings and loan association, credit union, insurance company, trust company, mutual fund, or other similar entity that is authorized to do business in this state.

(7) "Higher education institution" means~~:~~

~~(a)~~ an *eligible educational* institution ~~described in the Higher Education Act of 1965, 20 U.S.C. 1141(a) and 1088(a); or~~

~~(b) an area vocational educational school, as defined in section 521(3) of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2471(3)(C) and (3)(D), that is located in this state~~ *as defined in section 529(e)(5) of the Internal Revenue Code, 26 U.S.C. 529(e)(5).*

(8) "Member of the family" means~~:~~

~~(a) an ancestor of a person;~~

~~(b) the spouse of a person;~~

~~(c) a lineal descendant, including a legally adopted child, of a person, of a person's spouse, or of a parent of a person; or~~

~~(d) the spouse of any lineal descendant described in subsection (8)(c)~~, *with respect to a designated beneficiary, a member of the family of the designated beneficiary as defined in section 529(e)(2) of the Internal Revenue Code, 26 U.S.C. 529(e)(2).*

(9) "Nonqualified withdrawal" means a withdrawal from an account that is not:

(a) a qualified withdrawal;

(b) a withdrawal made as the result of the death or disability of the designated beneficiary of an account;

(c) a withdrawal that is made on the account of a scholarship or the allowance or payment described in section 135(d)(1)(B) or (d)(1)(C) of the Internal Revenue Code, 26 U.S.C. 135(d)(1)(B) or (d)(1)(C), and that is received by the designated beneficiary; or

(d) a rollover or change of designated beneficiary *described in 15-62-202*.

(10) "Program" means the family education savings program established pursuant to 15-62-201. The program must be structured to permit the long-term accumulation of savings that can be used to finance all or a share of the costs of higher education.

(11) "Qualified higher education expenses" means ~~tuition and fees required for enrollment or attendance of a designated beneficiary at a higher education institution~~ *qualified higher education expenses, as defined in section 529(e)(3) of the Internal Revenue Code, 26 U.S.C. 529(e)(3).*

(12) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account."

Section 6. Section 15-62-201, MCA, is amended to read:

"**15-62-201. Program requirements — application — establishment of account — qualified and nonqualified withdrawal — penalties.** (1) A person who wishes to deposit money into an account to pay the qualified higher education expenses of a designated beneficiary shall:

(a) complete an application on the form prescribed by the board that includes:

(i) the name, address, and social security number or employer identification number of the contributor;

(ii) the name, address, and social security number of the account owner if the account owner is not the contributor;

(iii) the name, address, and social security number of the designated beneficiary;

(iv) the certification relating to no excess contributions adopted by the board pursuant to 20-25-902; and

(v) any other information required by the board;

(b) pay the one-time application fee established by the board;

(c) make the minimum contribution required by the board or by opening an account; and

(d) designate the type of account to be opened if more than one type of account is offered.

(2) A person shall make contributions to an opened account in cash.

(3) An account owner may withdraw all or part of the balance from an account under rules prescribed by the board to enable the board or program manager to determine if a withdrawal is a nonqualified withdrawal or a qualified withdrawal. The rules may require that:

(a) account owners seeking to make a qualified withdrawal or other withdrawal that is not a nonqualified withdrawal shall provide certifications, copies of bills for qualified higher education expenses, or other supporting material;

(b) qualified withdrawals from an account be made only by a check payable jointly to the designated beneficiary and a higher education institution; and

(c) withdrawals not meeting certain requirements be treated as nonqualified withdrawals by the program manager, and if these withdrawals are not nonqualified withdrawals, the account owner shall seek refunds of penalties directly from the board.

(4) If a nonqualified withdrawal is made from an account, an amount equal to 10% of the portion of the proposed withdrawal that would constitute income as determined in accordance with section 529 of the Internal Revenue Code, 26 U.S.C. 529, must be withheld as a penalty and paid to the board for use in operating and marketing the program and for state student financial aid. ~~A nonqualified withdrawal constitutes income for Montana purposes to the extent it was previously deducted from income in calculating Montana individual income taxes.~~

(5) The board, by rule, shall increase the percentage of the penalty prescribed in subsection (4) or change the basis of this penalty if the board determines that the amount of the penalty must be increased to constitute a minimum penalty for purposes of qualifying the program as a qualified state tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529.

(6) The board may decrease the percentage of the penalty prescribed in subsection (4) if:

(a) the penalty is greater than is required to constitute a minimum penalty for purposes of qualifying the program as a qualified state tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529; or

(b) the penalty, when combined with other revenue generated under this chapter, is producing more revenue than is required to cover the costs of operating and marketing the program and to recover any costs not previously recovered.

(7) If an account owner makes a nonqualified withdrawal and a penalty amount is not withheld pursuant to subsection (4) or the amount withheld was less than the amount required to be withheld under that subsection for nonqualified withdrawals, the account owner shall pay:

(a) the unpaid portion of the penalty to the board at the same time that the account owner files a federal and state income tax return for the taxable year of the withdrawal; or

(b) if the account owner does not file a return, the unpaid portion of the penalty on the due date for federal and state income tax returns, including any authorized extensions.

(8) Each account must be maintained separately from each other account under the program.

(9) Separate records and accounting must be maintained for each account for each designated beneficiary.

(10) A contributor to, account owner of, or designated beneficiary of an account may not direct the investment of any contributions to any account or the earnings generated by the account and may not pledge the interest of an account or use an interest in an account as security for a loan.

(11) If the board terminates the authority of a financial institution to hold accounts and accounts must be moved from that financial institution to another financial institution, the board shall select the financial institution and type of investment to which the balance of the account is moved unless the internal revenue service provides guidance stating that allowing the account owner to select among several financial institutions that are then contractors would not cause a plan to cease to be a qualified state tuition plan.

(12) If there is any distribution from an account to any person or for the benefit of any person during a calendar year, the distribution must be reported to the internal revenue service and the account owner or the designated beneficiary to the extent required by federal law.

(13) The financial institution shall provide statements to each account owner at least once each year within 31 days after the 12-month period to which they relate. The statement must identify the contributions made during a preceding 12-month period, the total contributions made through the end of the period, the value of the account as of the end of this period, distributions made during this period, and any other matters that the board requires be reported to the account owner.

(14) Statements and information returns relating to accounts must be prepared and filed to the extent required by federal or state tax law or by administrative rule.

(15) A state or local government or organizations described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), may, without designating a designated beneficiary, open and become the account owner of an account to fund scholarships for persons whose identity will be determined after an account is opened."

Section 7. Section 15-62-203, MCA, is amended to read:

"15-62-203. Selection of financial institution as account depository and manager — contract — termination. (1) The board shall implement the program through the use of one or more financial institutions to act as the depository and manager. Under the program, a person may establish accounts at the depository.

(2) The committee shall solicit proposals from financial institutions to act as the depositories and managers of the program. Financial institutions that submit proposals shall describe the financial instruments that will be held in accounts.

(3) On the recommendation of the committee, the board shall select as program depositories and managers the financial institution or institutions from among bidding financial institutions that demonstrate the most advantageous combination, both to potential program participants and to this state, of:

(a) financial stability and integrity;

(b) the safety of the investment instruments being offered, taking into account any insurance provided with respect to these instruments;

(c) the ability of the investment instruments to track estimated costs of higher education as calculated by the board and provided by the financial institution to the account holder;

(d) the ability of the financial institutions, directly or through a subcontract, to satisfy recordkeeping and reporting requirements;

(e) the financial institution's plan for promoting the program and the investment that it is willing to make to promote the program;

(f) the fees, if any, proposed to be charged to persons for maintaining accounts;

(g) the minimum initial deposit and minimum contributions that the financial institution will require and the willingness of the financial institution or its subcontractors to accept contributions through payroll deduction plans and other deposit plans; and

(h) any other benefits to this state or its residents contained in the proposal, including an account opening fee payable to the board by the account owner to cover expenses of operation of the program and any additional fee offered by the financial institution for statewide program marketing by the board.

(4) The board shall enter into a contract with a financial institution or, except as provided in subsection (5), into contracts with financial institutions to serve as depositories and program managers.

(5) The committee may select more than one financial institution ~~and investment for the program if:~~

~~(a) the internal revenue service has provided guidance that giving a contributor a choice of two or more investment instruments under a state plan will not cause the plan to fail to qualify for favorable tax treatment under section 529 of the Internal Revenue Code, 26 U.S.C. 529; and~~

~~(b) the committee concludes that the choice of instrument vehicles is in the best interest of program participants and will not interfere with the promotion of the program.~~ *to serve as depository and program manager. The committee may select more than one kind of investment instrument to be offered through the program. Any decision on the use of multiple financial institutions or multiple investment instruments must take into account:*

(a) the requirements for qualifying as a qualified state tuition program under section 529 of the Internal Revenue Code (26 U.S.C. 529);

(b) differing needs of contributors regarding risk and potential return of investment instruments; and

(c) administrative costs and burdens that may be imposed as the result of the decision.

(6) A program manager or its subcontractor shall:

(a) take action required to keep the program in compliance with its contract or the requirements of this chapter to manage the program so that it is treated as a qualified state tuition plan under section 529 of the Internal Revenue Code, 26 U.S.C. 529;

(b) keep adequate records of each account, keep each account segregated from each other account, and provide the board with the information necessary to prepare statements required by 15-62-201(12) through (14) or file these statements on behalf of the board;

(c) compile and total information contained in statements required to be prepared under 15-62-201(12) through (14) and provide these compilations to the board;

(d) if there is more than one program manager, provide the board with the information to assist the board in determining compliance with rules adopted by the board pursuant to 20-25-902;

(e) provide representatives of the board, including other contractors or other state agencies, access to the books and records of the program manager to the extent needed to determine compliance with the contract. At least once during the term of any contract, the board, its contractor, or the state agency responsible for examination oversight of the program manager shall conduct an examination to the extent needed to determine compliance with the contract.

(f) hold all accounts in trust for the benefit of this state and the account owner.

(7) A person may not circulate any description of the program, whether in writing or through the use of any media, unless the board or its designee first approves the description.

(8) A contract executed between the board and a financial institution pursuant to this section must be for a term of at least 3 years and not more than 7 years.

(9) If a contract executed between the board and a financial institution pursuant to this section is not renewed, at the end of the term of the nonrenewed contract:

(a) accounts previously established and held in investment instruments at the financial institution may not be terminated;

(b) additional contributions may be made to the accounts in existence at the time of nonrenewal of a contract; and

(c) new accounts may not be placed with that financial institution unless a new contract is executed.

(10) The board may terminate a contract with a financial institution at any time for good cause on the recommendation of the committee. If a contract is terminated pursuant to this subsection, the board shall take custody of accounts held at that financial institution and shall seek to promptly transfer the accounts to another financial institution that is selected as a program manager and into investment instruments as similar as possible to the original investments."

Section 8. Repealer. Section 15-62-204, MCA, is repealed.

Section 9. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 15, chapter 62, part 2, and the provisions of Title 15, chapter 62, part 2, apply to [sections 1 through 3].

Section 10. Effective date. [This act] is effective on passage and approval.

Section 11. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

Approved April 30, 2001

CHAPTER NO. 469

[SB 263]

AN ACT CONTINUING THE FUNDING OF THE HERITAGE PRESERVATION AND DEVELOPMENT PROGRAM FROM THE LODGING FACILITY USE TAX; AMENDING SECTION 15-65-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-65-121, MCA, is amended to read:

"**15-65-121. (Temporary) Distribution of tax proceeds.** (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The amount of $400,000 each year must be deposited in the Montana heritage preservation and development account provided for in 22-3-1004. On July 1, 1997, the amount of $45,000 is transferred to the department of commerce for purposes of a grant to the Fort Peck interpretive center. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies or in the Montana heritage preservation and development account is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city or consolidated city-county exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city or consolidated city-county is located, to be distributed to the nonprofit convention and visitors bureau in that city or consolidated city-county.

(2) If a city or consolidated city-county qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city or consolidated city-county is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials. (Terminates July 1, 2001—sec. 23(3), Ch. 469, L. 1997.)

15-65-121. (Effective July 1, 2001) Distribution of tax proceeds. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. *The amount of $400,000 each year must be deposited in the Montana heritage preservation and development account provided for in 22-3-1004.* The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation, ~~or~~ deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies, *or deposited in the heritage preservation and development account* is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city or consolidated city-county exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city or consolidated city-county is located, to be distributed to the nonprofit convention and visitors bureau in that city or consolidated city-county.

(2) If a city or consolidated city-county qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city or consolidated city-county is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Termination. [This act] terminates July 1, 2007.

Approved April 30, 2001

CHAPTER NO. 470

[SB 264]

AN ACT ALLOWING ALCOHOL TAXES TO BE USED TO FUND PRIVATE, FOR-PROFIT CHEMICAL DEPENDENCY TREATMENT PROGRAMS AND FOR MEDICAID MATCHING FUNDS FOR ALCOHOLISM AND CHEMICAL DEPENDENCY PROGRAMS; AMENDING SECTIONS 16-1-404, 16-1-406, 16-1-411, 53-24-108, AND 53-24-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-404, MCA, is amended to read:

"16-1-404. License tax on liquor — amount — distribution of proceeds. (1) The department shall collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of:

(a) 10% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 8.6% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The license tax must be charged and collected on all liquor brought into the state and taxed by the department. The retail selling price must be computed by adding to the cost of the liquor the state markup as designated by the department. The license tax must be figured in the same manner as the state excise tax and is in addition to the state excise tax. The department shall retain in a separate account the amount of the license tax received. The department, in accordance with the provisions of 15-1-501, shall allocate the revenue as follows:

(a) Thirty percent is allocated to the counties according to the amount of liquor purchased in each county to be distributed to the incorporated cities and towns, as provided in subsection (4).

(b) Four and one-half percent is allocated to the counties according to the amount of liquor purchased in each county, and this money may be used for county purposes.

(c) Sixty-five and one-half percent must be deposited in the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism *and chemical dependency*.

(3) (a) In the case of purchases of liquor by a retail liquor licensee for use in the licensee's business, the department shall make regulations necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in 16-1-405.

(b) The department shall pay quarterly to each county treasurer the proportion of the license tax due each county, in accordance with the provisions of 15-1-501, to be allocated to the incorporated cities and towns of the county. The payments to counties under this section are statutorily appropriated, as provided in 17-7-502.

(4) The license tax proceeds allocated to the county under subsection (2) for use by cities and towns must be distributed by the county treasurer to the incorporated cities and towns within 30 days of receipt from the department. The distribution of funds to the cities and towns must be based on the proportion that the gross sale of liquor in each city or town is to the gross sale of liquor in all of the cities and towns of the county.

(5) The license tax proceeds that are allocated to the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism *and chemical dependency* must be credited quarterly to the department of public health and human services. The legislature may appropriate a portion of the license tax proceeds to support alcohol *and chemical dependency* programs. The remainder must be distributed as provided in 53-24-206."

Section 2. Section 16-1-406, MCA, is amended to read:

"**16-1-406. Taxes on beer.** (1) A tax of $4.30 per barrel of 31 gallons is imposed on each barrel of beer sold in Montana by a wholesaler. The tax is due at the end of each month from the wholesaler upon beer sold by the wholesaler during that month. The department shall compute the tax due on beer sold in containers other than barrels or in barrels of more or less capacity than 31 gallons.

(2) Each quarter, in accordance with the provisions of 15-1-501, of the tax collected pursuant to subsection (1), an amount equal to:

(a) $1 must be deposited in the state treasury to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism *and chemical dependency*;

(b) 50 cents must be deposited in the state general fund; and

(c) $2.80 must be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the state special revenue fund.

(3) (a) The money in the incorporated cities and towns beer tax account is statutorily appropriated, as provided in 17-7-502, to the department, which shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census. For cities and towns incorporated after the latest official federal census, the census must be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it may not receive any funds under this section and the amount previously distributed to the city or town must be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section must be expended for state purposes, such as law enforcement, maintenance of the transportation system, and public health.

(b) The department may adjust population estimates only on the July 1 following the date of publication of the estimates by the U.S. bureau of the census. The adjusted distribution formula must remain in effect for the entire fiscal year."

Section 3. Section 16-1-411, MCA, is amended to read:

"**16-1-411. Tax on wine and hard cider — penalty and interest.** (1) (a) A tax of 27 cents per liter is imposed on table wine, except hard cider, imported by a table wine distributor or the department.

(b) A tax of 3.7 cents per liter is imposed on hard cider imported by a table wine distributor or the department.

(2) The tax imposed in subsection (1) must be paid by the table wine distributor by the 15th day of the month following sale of the table wine or hard cider from the table wine distributor's warehouse. Failure to file a tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 15-1-216.

(3) The tax paid by a table wine distributor in accordance with subsection (2) must, in accordance with the provisions of 15-1-501, be distributed as follows:

(a) 59% to the state general fund;

(b) 31% to the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism *and chemical dependency*;

(c) 5% is statutorily appropriated, as provided in 17-7-502, to the department for allocation to the counties, based on population, for the purpose established in 16-1-404; and

(d) 5% is statutorily appropriated, as provided in 17-7-502, to the department for allocation to the cities and towns, based on population, for the purpose established in 16-1-405.

(4) The tax computed and paid in accordance with this section is the only tax imposed by the state or any of its subdivisions, including cities and towns.

(5) For purposes of this section, the following definitions apply:

(a) "Based on population" means:

(i) for counties, the direct proportion that the population of each county bears to the total population of all counties as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census as provided in 16-1-406; and

(ii) for cities, the distribution described in 16-1-406; and

(b) "Table wine" has the meaning assigned in 16-1-106, but does not include hard cider."

Section 4. Section 53-24-108, MCA, is amended to read:

"**53-24-108. Use of funds generated by taxation on alcoholic beverages.** (1) Revenue generated by 16-1-404, 16-1-406, and 16-1-411 *and allocated to the department* to *be used in* state-approved private~~, nonprofit~~ or public programs whose function is the treatment, rehabilitation, and prevention of alcoholism, *which for the purposes of this section includes chemical dependency,* may be distributed in ~~either~~ *any* of the following ~~manners~~ *ways*:

(a) as payment of fees for alcoholism services provided by state-approved private~~, nonprofit~~ or public alcoholism programs and licensed hospitals for detoxification services; ~~or~~

(b) as grants to state-approved private~~, nonprofit~~ or public alcoholism programs; *or*

(c) as matching funds for the Montana medicaid program administered by the department that are used for alcoholism and chemical dependency programs.

~~(2) State-approved private chemical programs organized for profit are not eligible for revenue generated by 16-1-404, 16-1-406, and 16-1-411.~~

(2) After providing funding pursuant to 53-24-206(3)(b) of at least $1 million a year, services provided by funding under this chapter may include treatment and rehabilitation for persons with co-occurring mental illness and chemical dependency, but the total amount expended may not exceed $1,300,000 in each biennium.

~~(3)~~*(3)* A person operating a state-approved alcoholism program may not be required to provide matching funds as a condition of receiving a grant under subsection (1).

~~(4)~~*(4)* In addition to funding received under this section, a person operating a state-approved alcoholism program may accept gifts, bequests, or the donation of services or money for the treatment, rehabilitation, or prevention of alcoholism.

~~(5)~~*(5)* A person receiving funding under this section to support operation of a state-approved alcoholism program may not refuse alcoholism treatment, rehabilitation, or prevention services to a person solely because of that person's inability to pay for those services.

~~(6)~~*(6)* A grant made under this section is subject to the following conditions:

(a) The grant application must contain an estimate of all program income, including income from earned fees, gifts, bequests, donations, and grants from other than state sources during the period for which grant support is sought.

(b) Whenever, during the period of grant support, program income exceeds the amount estimated in the grant application, the amount of the excess must be reported to the grantor.

(c) The excess must be used by the grantee under the terms of the grant in accordance with one or a combination of the following options:

(i) use for any purpose that furthers the objectives of the legislation under which the grant was made; or

(ii) to allow program growth through the expansion of services or for capital expenditures necessary to improve facilities where services are provided.

~~(7)~~*(7)* Revenue generated by 16-1-404, 16-1-406, and 16-1-411 for the treatment, rehabilitation, and prevention of alcoholism that has not been encumbered for those purposes by the counties of Montana or the department must be returned to the state special revenue fund for the treatment, rehabilitation, and prevention of alcoholism within 30 days after the close of each fiscal year and must be distributed by the department the following year as provided in 53-24-206(3)(b)."

Section 5. Section 53-24-206, MCA, is amended to read:

"**53-24-206. Administration of financial assistance.** (1) The department may apply for and receive grants, allotments, or allocations of funds or other assistance for purposes pertaining to the problems of chemical dependency or related social problems under laws and rules of the United States, any other state, or any private organization.

(2) The department may cooperate with any other government agency or private organization in programs on chemical dependency or related social problems. In carrying out cooperative programs, the department may make grants of financial assistance to government agencies and private organizations under terms and conditions agreed upon.

(3) (a) In administering proceeds derived from the liquor license tax, the beer license tax, or the wine tax, the department shall distribute those funds appropriated by the legislature. Money that is appropriated for distribution to approved private~~, nonprofit~~ or public programs on a discretionary basis ~~shall~~ *must* be distributed to those programs that can demonstrate that:

(i) the program is achieving the goals and objectives mutually agreed upon by the program and the department; and

(ii) the receipt of additional funds would be justified.

(b) The remainder of the proceeds ~~shall~~ *must* be distributed to the counties for use by approved private~~, nonprofit~~ or public programs. The distribution of these proceeds is statutorily appropriated as provided in 17-7-502 and must be distributed in the following manner:

(i) Eighty-five percent ~~shall~~ *must* be allocated according to the proportion of each county's population to the state's population according to the most recent United States census.

(ii) Fifteen percent ~~shall~~ *must* be allocated according to the proportion of the county's land area to the state's land area.

(c) Money distributed under subsection (3) may only be used for purposes pertaining to the problems of alcoholism *and chemical dependency*."

Section 6. Termination. Section 53-24-108(2), relating to funding co-occurring mental illness and chemical dependency, terminates July 1, 2003.

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 30, 2001

CHAPTER NO. 471

[SB 274]

AN ACT REQUIRING AN INSURANCE INSTITUTION OR INSURANCE-SUPPORT ORGANIZATION TO DISCLOSE SPECIFIC UNDERWRITING INFORMATION TO CERTAIN ENTITIES THAT HAVE OBTAINED OR THAT ADMINISTER GROUP HEALTH PLANS PROVIDED BY THEM; PROVIDING THAT THE INFORMATION DISCLOSED MAY NOT INCLUDE ANY PERSONAL INFORMATION PERTAINING TO AN INDIVIDUAL COVERED BY AN ENTITY'S GROUP PLAN; AND PROVIDING THAT THE INFORMATION MAY BE REQUESTED ONCE PER YEAR.

Be it enacted by the Legislature of the State of Montana:

Section 1. Disclosure of underwriting information. (1) An insurance institution or insurance-support organization shall, within 30 days of receiving a written request from an entity listed in subsection (2) that it provides coverage for, disclose to that entity the following information that the entity specifically requests about the entity's coverage:

(a) total premiums collected from the entity for the policy year; and

(b) total losses paid out with respect to the entity for the policy year.

(2) Any of the following entities may request information about the entity's coverage pursuant to this section:

(a) an association having a group health insurance program for its members;

(b) a group purchasing cooperative;

(c) a group health plan that is a multiple employer welfare arrangement;

(d) a self-insured group; and

(e) a business that provides group health insurance for its employees, except that a business with between 2 and 50 employees is not subject to the provisions of this section.

(3) Information disclosed pursuant to this section may not include any personal information pertaining to an individual covered by a group plan that has been obtained or administered by an entity listed in subsection (2).

(4) Information that is obtainable pursuant to the provisions of this section may not be requested more than once during any calendar year.

(5) An association provided for in subsection (2)(a) must be provided with reasonable information by its insurance institution or insurance support organization to enable the association to receive a bid or quote for coverage from other insurance entities.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 19, part 3, and the provisions of Title 33, chapter 19, part 3, apply to [section 1].

Approved April 30, 2001

CHAPTER NO. 472

[SB 281]

AN ACT REVISING LAWS GOVERNING PROPERTY TAX PAYMENT; PROVIDING THAT A PERSON TO WHOM PROPERTY TAXES ARE ASSESSED WILL RECEIVE NOTICE IF THE PROPERTY IS SUBJECT TO A TAX SALE; PROVIDING THAT A PERSON TO WHOM PROPERTY TAXES ARE ASSESSED WILL RECEIVE A COPY OF A TAX SALE CERTIFICATE OR ASSIGNMENT CERTIFICATE IF ONE IS ISSUED ON THE PROPERTY; PROVIDING THAT THE NOTICE IS TO BE MAILED TO THE ADDRESS OF RECORD OF THE PERSON TO WHOM PROPERTY TAXES ARE ASSESSED; REQUIRING PROOF OF CERTIFIED MAIL NOTICE TO THE ASSESSED OWNER BEFORE ISSUANCE OF A TAX SALE CERTIFICATE OR ASSIGNMENT OF RIGHTS; AND AMENDING SECTIONS 15-16-101, 15-17-212, AND 15-17-323, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-101, MCA, is amended to read:

"15-16-101. Treasurer to publish notice — manner of publication. (1) Within 10 days after the receipt of the property tax record, the county treasurer shall publish a notice specifying:

(a) that one-half of all taxes levied and assessed will be due and payable before 5 p.m. on the next November 30 or within 30 days after the notice is postmarked and that unless paid prior to that time the amount then due will be delinquent and will draw interest at the rate of 5/6 of 1% per month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty;

(b) that one-half of all taxes levied and assessed will be due and payable on or before 5 p.m. on the next May 31 and that unless paid prior to that time the taxes will be delinquent and will draw interest at the rate of 5/6 of 1% per month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) *(a)* The county treasurer shall send to the last-known address of each taxpayer a written notice, postage prepaid, showing the amount of taxes and assessments due for the current year and the amount due and delinquent for other years. The written notice must include:

~~(a)~~*(i)* the taxable value of the property;

~~(b)~~*(ii)* the total mill levy applied to that taxable value;

~~(c)~~*(iii)* the value of each mill in that county;

~~(d)~~*(iv)* itemized city services and special improvement district assessments collected by the county;

~~(e)~~*(v)* the number of the school district in which the property is located; and

~~(f)~~*(vi)* the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax.

(b) If the property is the subject of a tax sale for which a tax sale certificate has been issued under 15-17-212, the notice must also include, in a manner calculated to draw attention, a statement that the property is the subject of a tax sale and that the taxpayer may contact the county treasurer for complete information.

(3) The municipality shall, upon request of the county treasurer, provide the information to be included under subsection ~~(2)(d)~~ *(2)(a)(iv)* ready for mailing.

(4) The notice in every case must be published once a week for 2 weeks in a weekly or daily newspaper published in the county, if there is one, or if there is not, then by posting it in three public places. Failure to publish or post notices does not relieve the taxpayer from any tax liability. Any failure to give notice of the tax due for the current year or of delinquent tax will not affect the legality of the tax.

(5) If the department revises an assessment that results in an additional tax of $5 or less, an additional tax is not owed and a new tax bill does not need to be prepared."

Section 2. Section 15-17-212, MCA, is amended to read:

"15-17-212. Tax sale certificate. (1) ~~Upon~~ *After receiving proof of mail notice to the person to whom the property was assessed as required by subsection (3), and upon* receipt of all delinquent taxes, penalties, interest, and costs, the county treasurer shall prepare a tax sale certificate that must contain:

(a) the date on which the property taxes became delinquent;

(b) the date on which a property tax lien was sold at a tax sale;

(c) the name and address of record of the person to whom the taxes were assessed;

(d) a description of the property on which the taxes were assessed;

(e) the name and mailing address of the purchaser;

(f) the amount paid to liquidate the delinquency, including a separate listing of the amount of the delinquent taxes, penalties, interest, and costs;

(g) a statement that the certificate represents a lien on the property that may lead to the issuance of a tax deed for the property;

(h) a statement specifying the date on which the purchaser will be entitled to a tax deed; and

(i) an identification number corresponding to the tax sale certificate number recorded by the county treasurer as required in 15-17-213.

(2) The certificate must be signed by the county treasurer and delivered to the purchaser. A copy of the certificate must be filed by the treasurer in the office of the county clerk. *A copy of the certificate must also be mailed to the person to whom the taxes were assessed, at the address of record, together with a notice that the person may contact the county treasurer for further information on property tax sales.*

(3) Prior to paying delinquent taxes, penalties, interests, and costs received by the county treasurer under subsection (1), a person shall send notice of the proposed payment, by certified mail, to the person to whom the property was assessed. The form of the notice must be adopted by the department by rule. The notice must have been mailed at least 2 weeks prior to the date of the payment. The person making the payment shall provide proof of the mailing."

Section 3. Section 15-17-323, MCA, is amended to read:

"**15-17-323. Assignment of rights — form.** (1) A tax sale certificate or other official record in which the county is listed as the purchaser must be assigned by the county treasurer to any person who, *after providing proof of mail notice to the person to whom the property was assessed as required by subsection (5),* pays to the county the amount of the delinquent taxes, including penalties, interest, and costs, accruing from the date of delinquency.

(2) *(a)* The assignment made under subsection (1) must be in the form of an assignment certificate in substantially the following form:

I, ..., the treasurer of .... County, state of Montana, hereby certify that a tax sale for tax year 20..., in the county of ...., was held on .... (date), for the purpose of liquidating delinquent assessments, and I further certify that a property tax lien for delinquent taxes in the following property .... (insert property description) was offered for sale and that there was no purchaser of the property tax lien. Accordingly, the county was listed as the purchaser as required by 15-17-214, MCA. As of the date of this certificate, the delinquency, including penalties, interest, and costs amounting to $.........., has not been liquidated by the person to whom the property was assessed, nor has the delinquency been otherwise redeemed.

Because there has been no liquidation of the delinquency or other redemption, I hereby assign all rights, title, and interest of the county of ...., state of Montana, acquired in such property by virtue of the sale to .... (name and address of assignee) to proceed to obtain a tax deed to the property or receive payment in case of redemption as provided by law.

Witness my hand and official seal of office this .... day of ...., 20...

..... County Treasurer

..... County

(b) A copy of an assignment certificate must be mailed to the person to whom the taxes were assessed, at the address of record, together with a notice that the person may contact the county treasurer for further information on lien assignments and property tax sales.

(3) An assignment made by a purchaser other than the county, by an assignee of the county, or by a previous assignee may be made for any consideration

whatsoever. An assignment so made is legal and binding only upon filing with the county treasurer a statement that the purchaser's or other assignee's interest in the property has been assigned. The statement must contain:

(a) the name and address of the new assignee;

(b) the name and address of the original purchaser of the tax sale certificate;

(c) the name and address of each previous assignee, if any;

(d) a description of the property upon which the property tax lien was issued, which ~~description~~ must contain the same information as contained in the tax sale certificate or assignment certificate, as appropriate;

(e) the signature of the party, ~~be~~ *whether* it *is the* purchaser or *the* assignee, making the assignment;

(f) the signature of the new assignee; and

(g) the date on which the statement was signed.

(4) If the certificate described in subsection (1) or the statement described in subsection (3) is lost or destroyed, the county treasurer shall, upon adequate proof and signed affidavit by the assignee that loss or destruction has occurred, issue a duplicate certificate to the assignee.

(5) Prior to making a payment under subsection (1), a person shall send notice of the proposed payment, by certified mail, to the person to whom the property was assessed. The form of the notice must be adopted by the department by rule. The notice must have been mailed at least 2 weeks prior to the date of the payment. The person making the payment shall provide proof of the mailing.

~~(5)~~*(6)* The provisions of this section apply to any sale of land for which a treasurer's deed was not issued on or before March 5, 1917, or for which a tax deed was not issued on or before April 23, 1987, and the holder of any certificate described in subsection (1) has the same rights, powers, and privileges with regard to securing a deed as any purchaser of land at a tax sale may now have."

Approved April 30, 2001

CHAPTER NO. 473

[SB 282]

AN ACT CREATING THE ASBESTOS CLAIMS COURT; PROVIDING FOR THE APPOINTMENT OF THE ASBESTOS CLAIMS JUDGE; PROVIDING FOR THE PROCEDURES TO BE USED FOR TRYING AN ASBESTOS-RELATED CLAIM; AMENDING SECTIONS 3-5-113, 3-5-115, 3-15-104, 3-15-204, AND 3-15-205, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

WHEREAS, the Legislature finds that there are a large number of asbestos-related claims by Montana citizens that are primarily within the venue of the 19th Judicial District; and

WHEREAS, the large number of asbestos-related claims will impede the ability of the single District Court Judge in the 19th Judicial District to handle the normal case load of the District and will raise several potential conflicts of interest: and

WHEREAS, it is imperative that asbestos-related claims be dealt with expeditiously in order to allow Montana citizens with life-threatening illnesses to receive a speedy resolution of their claims; and

WHEREAS, Article VII, section 1, of the Montana Constitution allows additional courts to be provided by law.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definition. As used in [sections 1 through 5], unless the context requires otherwise, "asbestos-related claim" means an action brought for the recovery of monetary damages for personal injury, wrongful death, loss or consortium, or other injury arising out of an asbestos-related disease that is alleged to result from the mining of vermiculite, the processing of vermiculite, or the transfer, storage, installation, or removal of a product containing vermiculite.

Section 2. Asbestos claims judge. (1) A civil action involving an asbestos-related claim may be tried by a judge pro tempore or special master, who must be a member of the bar of the state, agreed upon in writing by the parties litigant or their attorneys of record, appointed by the supreme court as provided in 3-5-115, and sworn to try the cause before entering upon the duties in trying the cause. Upon appointment, the individual must be designated as the asbestos claims judge. The right to a jury trial is not waived by the stipulation to and appointment of the asbestos claims judge.

(2) The asbestos claims judge has the authority and power of an elected district court judge in the civil action involving an asbestos-related claim. All proceedings before the asbestos claims judge must be conducted in accordance with the rules of evidence and procedure governing district courts.

(3) Any order, judgment, or decree made or rendered in an asbestos-related civil case by the asbestos claims judge has the same force and effect as if made or rendered by the district court with the regular judge presiding.

(4) A party stipulating to have an asbestos-related claim heard by the asbestos claims judge may not file a motion for substitution of the judge pursuant to 3-1-804.

(5) All filings relating to an asbestos-related claim must be filed with the clerk of court in the judicial district in which the claim arose. The parties shall provide a copy of each filing to the asbestos claims judge.

Section 3. Asbestos claims court — venue — jury pool. (1) The asbestos claims judge may hear an asbestos-related claim in any venue stipulated by the parties as provided in 25-2-202 or in any venue otherwise determined by the asbestos claims judge in accordance with a stipulation of the parties. In stipulating venue, the parties shall take into consideration the availability of courtroom facilities. The asbestos claims court may prepare a list of available courtroom facilities for consideration of the parties.

(2) The pool of prospective jurors for an asbestos-related claim may be drawn from any county in accordance with a stipulation of the parties. The jurors must be drawn, as provided in 3-15-501 and 3-15-503, from the jury lists of the counties comprising the jury pool. The clerk of the district court for the district in which the trial is conducted shall notify the prospective jurors and make the statement provided for in 3-15-204(4).

Section 4. Operating expenses — asbestos claims administration fund. The asbestos claims judge may employ the employees that may be required to carry out the duties under [sections 1 through 5]. All expenditures of the asbestos claims judge, including but not limited to salaries, travel expenses, office rent, office equipment, and supplies, must be paid out of the asbestos claims administration fund. The asbestos claims administration fund is the account in the state treasury in which the funding for the asbestos claims court is deposited.

Section 5. Direct appeal to supreme court. An appeal from a final decision of the asbestos claims judge must be filed directly with the supreme court of Montana in the manner provided by law for appeals from the district court in civil cases.

Section 6. Section 3-5-113, MCA, is amended to read:

"3-5-113. Judges pro tempore — special masters — scope of authority in criminal and civil cases. (1) (a) A civil action in the district court may be tried by a judge pro tempore or special master, who must be a member of the bar of the state, agreed upon in writing by the parties litigant or their attorneys of record, appointed by the court as provided in 3-5-115 *or [section 2]*, and sworn to try the cause before entering upon the duties in trying the cause.

(b) The judge pro tempore or special master has the authority and power of an elected district court judge in the particular civil action tried in the manner provided for in this subsection (1). All proceedings before a judge pro tempore or special master must be conducted in accordance with the rules of evidence and procedure governing district courts.

(c) Any order, judgment, or decree made or rendered in a civil case by the judge pro tempore or special master has the same force and effect as if made or rendered by the district court with the regular judge presiding.

(2) (a) Preliminary, nondispositive proceedings in criminal actions in a district court may be conducted by a judge pro tempore or special master. The judge pro tempore or special master in a criminal case must be appointed by a district court judge or judges as provided in 3-5-122.

(b) All proceedings before a judge pro tempore or special master in a criminal case must be conducted in accordance with the rules of evidence and procedure governing district courts.

(c) The judge pro tempore or special master in a criminal case has the authority and power of a district court judge to issue orders pursuant to Title 46, chapter 9, concerning bail and conditions of release or detention of persons pending trial, and to conduct arraignments, initial appearances on warrants, and initial appearances on probation revocations. An order made by the judge pro tempore or special master in a criminal case has the same force and effect as if made by a district court judge.

(d) Within 10 days after issuance of an order by a judge pro tempore or special master in a criminal case, a party may object to the order as provided by rules of court and a district court judge shall make a de novo determination of that portion of the order to which objection is made. The district court judge may accept, reject, or modify the order in whole or in part. The district court judge may also receive further evidence or recommit the matter to the judge pro tempore or special master with instructions.

(e) All proceedings before a judge pro tempore or special master in a criminal case must be conducted in a suitable room in the courthouse, subject to the provisions of Title 46 relating to the use of two-way electronic audio-video communication. All records must be filed and kept in accordance with the rules governing the district court."

Section 7. Section 3-5-115, MCA, is amended to read:

"**3-5-115. Agreement, petition, and appointment of judge pro tempore — waiver of jury trial.** (1) Prior to trial and upon written agreement of all the parties to a civil action, the parties may petition for the appointment of a judge pro tempore. ~~If~~ *Except as provided in [section 2], if* the district court judge having jurisdiction over the case where the action was filed finds that the appointment is in the best interest of the parties and serves justice, ~~he~~ *the district court judge* may appoint the judge pro tempore nominated by the parties to preside over the whole or any aspect of the action as if the regular district court judge were presiding.

(2) ~~An~~ *Except as provided in [section 2], an* appointment of a judge pro tempore constitutes a waiver of the right to trial by jury by any party having the right.

(3) The supreme court shall appoint the asbestos claims judge as provided in [section 2]."

Section 8. Section 3-15-104, MCA, is amended to read:

"**3-15-104. Trial jury defined.** ~~A~~ *Except as provided in [section 3], a* trial jury is a body of persons returned from the citizens of a particular district before a court or officer of competent jurisdiction and sworn to try and determine, by verdict, a question of fact."

Section 9. Section 3-15-204, MCA, is amended to read:

"**3-15-204. Duties of clerk as to jurors.** (1) The clerk ~~must~~ *shall* keep a record of the attendance of jurors and compute the amount due for mileage. The distance from any point to the county seat must be determined by the shortest traveled route.

(2) The clerk ~~must~~ *shall* give to each juror, at the time ~~he~~ *the juror* is excused from further service, a warrant signed by ~~himself~~ *the clerk*, in which must be stated the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due.

(3) On presentation of ~~such~~ *the* warrant to the county treasurer, the amount specified in the warrant must be paid out of the general fund unless the county has a district court fund. If the county has a district court fund, the amount must be paid out of ~~such~~ *the district court* fund.

(4) The clerk ~~must~~ *shall* make a detailed statement containing a list of the jurors and the amount of fees and mileage earned by each *juror* and file the ~~same~~ *statement* with the clerk of the board of county commissioners on the first day of every regular meeting of the board. ~~No~~ *A* quarterly salary ~~must~~ *may not* be paid *to* the clerk until ~~such~~ *the* statement is filed. The board ~~must~~ *shall* examine ~~such~~ *the* statement and see that it is correct.

(5) The clerk of court for the county in which an asbestos-related claim is tried shall perform the functions required in subsections (1) through (4). The payment of costs incurred under this section must be made from the asbestos claims administration fund provided for in [section 4]."

Section 10. Section 3-15-205. MCA. is amended to read:

"3-15-205. Costs of impaneling jury. (1) In a civil action before a court of record in which the parties substantially agree to a settlement of the issues prior to impanelment of the jury and either settle the action or stipulate to a continuance and then fail or refuse to inform the court or clerk of court of the settlement or request a continuance and a jury is impaneled, the court may, upon hearing, assess the reasonable public expenses of impaneling the jury, including jury fees and mileage expenses paid or owing under 3-15-201, against any party.

(2) In civil actions, the court may assess against a party the reasonable public expenses of impaneling a jury, including jury fees and mileage expenses paid or owing under 3-15-201, if the court on an issue of law or the jury on an issue of fact determines that the party's case is frivolous or maintained for purposes of harassment. The court shall instruct the jury regarding the provisions of this subsection.

(3) *(a)* ~~Costs~~ *Except as provided in subsection (3)(b), costs* collected under this section must be deposited in the county general fund unless the county has a district court fund. If the county has a district court fund, the costs must be deposited in the district court fund.

(b) Costs collected under this section by the asbestos claims court provided for in [section 3] must be deposited in the asbestos claims administration fund provided for in [section 4]."

Section 11. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 3, and the provisions of Title 3 apply to [sections 1 through 5].

Section 12. Contingent effective date. [This act] is effective contingent on a determination by the Montana supreme court that, based on decisions reached in the federal bankruptcy proceedings involving W.R. Grace and other circumstances that the court deems advisable to consider, there exists sufficient need to implement the provisions of [this act]. The court shall notify the secretary of state and the code commissioner when this contingency is met.

Approved April 30, 2001

CHAPTER NO. 474

[SB 313]

AN ACT AUTHORIZING A DISTRICT TO DEPRECIATE TECHNOLOGICAL EQUIPMENT AS AN AUTHORIZED USE OF THE TECHNOLOGY ACQUISITION AND DEPRECIATION FUND; REQUIRING VOTER APPROVAL FOR A LEVY TO INCREASE THE DISTRICT'S FUNDS TO SUPPORT TECHNOLOGY; AMENDING SECTIONS 20-9-375 AND 20-9-533, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-375, MCA, is amended to read:

"20-9-375. Aid for technology acquisition, textbooks, library materials, and building maintenance. (1) The superintendent of public instruction shall allocate the amount appropriated for technology acquisition *and depreciation*, textbooks, library materials, and building maintenance to each district based on the per-ANB of the district.

(2) The district may deposit the funds received under this section in the miscellaneous programs fund authorized in 20-9-507 or the technology acquisition *and depreciation* fund authorized in 20-9-533. Any portion of the funds deposited in the miscellaneous programs fund must be restricted for textbooks, library materials, and building maintenance. Any portion of the funds deposited in the technology acquisition *and depreciation* fund must be used consistent with the requirements of 20-9-533."

Section 2. Section 20-9-533, MCA, is amended to read:

"20-9-533. Technology acquisition *and depreciation* fund — limitations. (1) The trustees of a district may establish a technology acquisition *and depreciation* fund for school district expenditures incurred *and depreciation accrued* for:

(a) the purchase, rental, repair, ~~and~~ maintenance, *and depreciation* of technological equipment, including computers and computer network access; and

(b) associated technical training for school district personnel.

(2) *Any expenditures from the technology acquisition and depreciation fund must be made in accordance with the financial administration requirements for a budgeted fund pursuant to this title.* The trustees of a district shall fund the technology acquisition *and depreciation* fund with*:*

(a) the state money received under 20-9-534*;* and ~~with~~

(b) other local, state, *private,* and federal funds received for the purpose of funding technology *or technology-associated training.*

(3) In depreciating the technological equipment of a school district, the trustees may include in the district's budget, contingent upon voter approval of a levy under subsection (6) and pursuant to the school budgeting requirements of this title, an amount each fiscal year that does not exceed 20% of the original cost of any technological equipment, including computers and computer network access, that is owned by the district. The amount budgeted may not, over time, exceed 150% of the original cost of the equipment.

(4) The annual revenue requirement for each district's technology acquisition and depreciation fund determined within the limitations of this section must be reported by the county superintendent of schools to the board of county commissioners on the fourth Monday of August as the technology acquisition and depreciation fund levy requirement for that district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(5) Any expenditure of technology acquisition and depreciation fund money must be within the limitations of the district's final technology acquisition and depreciation fund budget and the school financial administration provisions of this title.

(6) In addition to the funds received pursuant to subsection (2), the trustees of a school district may submit a proposition to the qualified electors of the district to approve an additional levy to fund the depreciation of technological equipment authorized under this section. The election must be called and conducted in the manner prescribed by this title for school elections. The ballot for a proposition

must provide for and against provisions stating whether the trustees are authorized to impose a levy of (state the dollars) dollars and (state the approximate number of mills) mills to fund the depreciation of technological equipment in the school district.

(7) The technology proposition is approved if a majority of those electors voting at the election approve the levy. Notwithstanding any other provision of law, the levy under subsection (6) is subject to 15-10-420.

~~(3)~~*(8)* The trustees of a district may not use revenue in the technology acquisition *and depreciation* fund to finance contributions to the teachers' retirement system, the public employees' retirement system, or the federal social security system or for unemployment compensation insurance."

Section 3. Coordination instruction. If House Bill No. 179 is passed and approved, then [section 2(6) of this act] must read as follows:

"(6) In addition to the funds received pursuant to subsection (2) ~~and the amount levied pursuant to subsection (4)~~, the trustees of a school district may submit a proposition to the qualified electors of the district to approve an additional levy to fund the depreciation of technological equipment authorized under this section. The election must be called and conducted in the manner prescribed by this title for school elections *and in the manner prescribed by [section 1 of House Bill No. 179].* ~~The ballot for a proposition must provide for and against provisions stating whether the trustees are authorized to impose a levy of (state the approximate number of mills and dollars) dollars and (state the approximate number of mills) mills and dollars to fund the depreciation of technological equipment in the school district.~~"

Section 4. Effective date — applicability. [This act] is effective on passage and approval and applies to school budgets for school fiscal years beginning on or after July 1, 2001.

Approved April 30, 2001

CHAPTER NO. 475

[SB 315]

AN ACT ALLOWING THE MONTANA COMPREHENSIVE HEALTH ASSOCIATION TO ADOPT A SLIDING SCALE OF PREMIUM RATES FOR PARTICIPATION OF LOW-INCOME PERSONS IN THE ASSOCIATION PLANS; AMENDING SECTIONS 33-22-1512 AND 33-22-1513, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-1512, MCA, is amended to read:

"33-22-1512. Association plan and association portability plan premium. *(1)* The association shall establish the schedule of premiums to be charged eligible persons for membership in the association plan. The schedule of association plan premiums for eligible persons may not exceed 200% of the average premium rates charged by the five insurers or health service corporations with the largest premium amount of individual plans of major medical insurance in force in this state. The schedule of association portability plan premiums for federally defined eligible individuals may not~~, for the period of~~

~~1 year from July 1, 1997, be less than 135% and may not~~ at any time exceed 150% of the average premium rates charged by the five insurers or health service corporations with the largest premium amount of individual plans of major medical insurance in force in this state. The premium rates of the five insurers or health service corporations used to establish the premium rates for each type of coverage offered by the association must be determined by the commissioner from information provided annually at the request of the commissioner. The association shall use generally acceptable actuarial principles and structurally compatible rates.

(2) (a) The association, with the approval of the commissioner, may adopt a reduced premium rate schedule that is equitably proportional to the income level for eligible persons who have an income less than or equal to 150% of the federal poverty level. The association may not adopt a reduced premium rate schedule unless it has secured federal or private funding specifically for that purpose and limits participation to the available funding.

(b) The association, with the approval of the commissioner, may adopt as many income categories as it finds necessary.

(c) Any person who qualifies for coverage under this section may apply to the association for a reduced premium. However, eligible persons with coverage in the traditional association plan must receive first priority for reduced premiums. By agreement of the association and the commissioner, reduced premiums may be made available to persons eligible for the portability plan.

(d) The association may grant as many reduced premiums as funding sources allow but may not increase overall premium rates to subsidize the reduced premium rate schedule. The association may limit the number of people receiving reduced premiums when funds are not available and may establish a waiting list for reduced premiums, if necessary."

Section 2. Section 33-22-1513, MCA, is amended to read:

"33-22-1513. Operation of association plan and association portability plans. (1) Upon acceptance by the lead carrier under 33-22-1516, an eligible person may enroll in the association plan by payment of the association plan premium to the lead carrier.

(2) Upon application by a federally defined eligible individual to the lead carrier for an association portability plan, the association may not:

(a) decline to offer an association portability plan; or

(b) impose a preexisting condition exclusion with respect to an individual's association portability plan coverage if application for association portability plan coverage is made within 63 days following termination of the applicant's most recent prior creditable coverage.

(3) Not less than 88% of the association plan premiums paid to the lead carrier may be used to pay claims and not more than 12% may be used for payment of the lead carrier's direct and indirect expenses as specified in 33-22-1514.

(4) Any income in excess of the costs incurred by the association in providing reinsurance or administrative services must be held at interest and used by the association to offset past and future losses ~~due to~~ *because of* claims expenses of the association plan and the association portability plan or be allocated to reduce association plan premiums.

(5) (a) Each participating member of the association shall share the losses ~~due to~~ *because of* claims expenses of the association plan and the association portability plan for plans issued or approved for issuance by the association and shall share in the operating and administrative expenses incurred or estimated to be incurred by the association incident to the conduct of its affairs in the following manner:

(i) Each participating member of the association must be assessed by the association on an annual basis an amount equal to 1% of the association member's total disability insurance premium received from or on behalf of Montana residents as determined by the commissioner. Assessments made under this subsection (5)(a) or funds from any other source must be allocated to the association plan and the association portability plan in proportion to the needs of the two plans. If the needs of the association plan and the association portability plan exceed the funds generated by the 1% assessment, the association is then authorized to spend any funds appropriated by the legislature for the support of the plans. *Any appropriation to the association may be expended for the operation of the association plan or the association portability plan.*

(ii) The association may abate, in whole or in part, the 1% assessment if the needs of the association plan and the association portability plan do not require the funds generated by the full 1% assessment. The commissioner shall approve any abatement of the 1% assessment.

(iii) Payment of an assessment is due within 30 days of receipt by a member of a written notice of the annual assessment. Failure by a contributing member to tender the association assessment within the 30-day period is grounds for termination of membership. A member terminated for failure to tender the association assessment is ineligible to write health care benefit policies or contracts in this state under 33-22-1503(2).

(iv) An associate member that ceases to do disability insurance business within the state remains liable for assessments through the calendar year in which the member ceased doing disability insurance business. The association may decline to levy an assessment against an association member if the assessment, as determined pursuant to this section, would not exceed $10.

(b) For purposes of this subsection (5), "total disability insurance premium" does not include premiums received from disability income insurance, credit disability insurance, disability waiver insurance, life insurance, medicare risk or other similar medicare health maintenance organization payments, or medicaid health maintenance organization payments.

(c) Any income in excess of the incurred or estimated claims expenses of the association plan and the association portability plan and the operating and administrative expenses of the association must be held at interest and used by the association to offset past and future losses ~~due to~~ *because of* claims expenses of the association plan and the association portability plan or be allocated to reduce association plan premiums.

(6) The proportion of the annual assessment allocated to the operation and expenses of the association plan may be offset by an association member against the premium tax payable by that association member pursuant to 33-2-705 for the year in which the annual assessment is levied. The ~~insurance~~ commissioner shall report to the office of budget and program planning, as a part of the information required by 17-7-111, the total amount of premium tax offset

claimed by association members during the preceding biennium. The proportion of the annual assessment allocated to the operation and expenses of the association portability plan and levied against an association member may not be offset against the premium tax payable by that association member."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 30, 2001

CHAPTER NO. 476

[SB 338]

AN ACT REVISING THE ELIGIBILITY CAP FOR THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM TO 150 PERCENT OF THE FEDERAL POVERTY LEVEL; PROVIDING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES WITH THE ABILITY TO LIMIT THE AMOUNT, SCOPE, OR DURATION OF SERVICES; ALLOWING THE DEPARTMENT TO MAKE DIRECT PAYMENTS TO HEALTH CARE PROVIDERS AND CONTRACT ON A FEE-FOR-SERVICE BASIS; AMENDING SECTIONS 53-4-1002, 53-4-1004, 53-4-1005, 53-4-1007, AND 53-4-1009, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature is firmly committed to providing health services for children of families with limited income; and

WHEREAS, the Legislature is aware of the limited financial resources of the state, the many competing and worthwhile needs of citizens of the state, and the provisions of Article VIII, section 9, of the Montana Constitution requiring a balanced state budget under which appropriations by the Legislature may not exceed anticipated revenue.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-4-1002, MCA, is amended to read:

"53-4-1002. (Temporary) Purpose — definition. (1) The purpose of this part is to create a program to provide health care to children who are not eligible for health care services under the Montana medicaid program. These health care services may be provided by the payment for health care through an insurance plan, a health maintenance organization, ~~or~~ a managed care plan, *or direct payment to a health care provider.*

(2) As used in 53-4-1003 through 53-4-1005 and 53-4-1007 through 53-4-1010, "program" means the state children's health insurance program. (Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999.)"

Section 2. Section 53-4-1004, MCA, is amended to read:

"53-4-1004. (Temporary) Eligibility for program — rulemaking. (1) To be considered eligible for the program, a child:

(a) must be 18 years of age or younger;

(b) ~~except as provided in subsection (4),~~ must have a combined family income at or below ~~150%~~ *150%* of the federal poverty level *or at a lower level determined by the department of public health and human services as provided in subsection (4)*;

(c) may not already be covered by private insurance that offers creditable coverage, as defined in 42 U.S.C. 300gg(c);

(d) may not be eligible for medicaid benefits; and

(e) must be a United States citizen or qualified alien and a Montana resident.

(2) The department of public health and human services shall adopt rules that establish the program's criteria for residency. The criteria must conform as nearly as practicable with the residency requirements for medicaid eligibility.

(3) Subject to 53-4-1009(3), rules governing eligibility may also include financial standards and criteria for income and resources, treatment of resources, and nonfinancial criteria.

(4) If the department determines that there is insufficient funding for the program, it may lower the percentage of the federal poverty level established in subsection (1)(b) in order to reduce the number of persons who may be eligible to participate *or may limit the amount, scope, or duration of specific services provided*. (Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999.)"

Section 3. Section 53-4-1005, MCA, is amended to read:

"53-4-1005. (Temporary) Benefits provided. (1) Benefits provided to participants in the program *may* include but are not limited to:

(a) inpatient and outpatient hospital services;

(b) physician and advanced practice registered nurse services;

(c) laboratory and x-ray services;

(d) well-child and well-baby services;

(e) immunizations;

(f) clinic services;

(g) dental services;

(h) prescription drugs;

(i) mental health and substance abuse treatment services;

(j) hearing and vision exams; and

(k) eyeglasses.

(2) The department is specifically prohibited from providing payment for birth control contraceptives under this program. (Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999.)"

Section 4. Section 53-4-1007, MCA, is amended to read:

"53-4-1007. (Temporary) Department may contract for services. *(1)* The department of public health and human services may contract with insurance companies or other entities to provide services for a set monthly or yearly fee based on the number of participants in the program and the types of services provided *or based on a fee for service as established by the department.*

(2) The department of public health and human services may contract for a health care service based on a fee for service when the department does not contract for a health care service through an insurance plan, a health maintenance organization, or a managed care plan. The department shall first offer the insurer the opportunity to negotiate a contract price prior to purchasing a health care

service on a fee-for-service basis. (Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999.)"

Section 5. Section 53-4-1009, MCA, is amended to read:

"**53-4-1009. (Temporary) Department to adopt rules — review by interim committee.** (1) The department of public health and human services shall adopt rules necessary for the administration of the program, including rules governing the application process, termination, and confidentiality.

(2) The rules may include, as necessary:

(a) the amount, scope, and duration of specific services provided;

(b) criteria to ensure that the services provided are medically necessary and cost-effective;

(c) provisions for participant cost-sharing, including, at the department's discretion:

(i) the establishment of enrollment fees, premiums, deductibles, and copayments; and

(ii) the process for setting the amounts of enrollment fees, premiums, deductibles, and copayments, taking into account a participant's family income and resources; and

(d) the type of professionals who may deliver services or direct the delivery of services and the qualifications required of those professionals.

(3) In adopting rules, the department shall consider the federal requirements on which the receipt of the federal share of program funds are contingent and may not include any provision that places that funding at risk. *Rules adopted by the department must, when appropriate, take into account the availability of appropriated funds.*

(4) Rules adopted by the department pursuant to 53-4-1004 and 53-4-1009 must be presented to and reviewed by an appropriate interim committee that examines issues related to children and families. (Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999.)"

Section 6. Effective date. [This act] is effective July 1, 2001.

Approved April 30, 2001

CHAPTER NO. 477

[SB 348]

AN ACT CLARIFYING THE REQUIREMENT THAT LOCOMOTIVES SOUND THEIR HORNS AT PUBLIC ROAD AND HIGHWAY CROSSINGS; ELIMINATING OBSOLETE OR ARCHAIC REQUIREMENTS FOR RAILROADS AND THOSE REQUIREMENTS THAT ARE FEDERALLY PREEMPTED; AND AMENDING SECTION 69-14-562, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-14-562, MCA, is amended to read:

"**69-14-562. Regulation of ~~health and~~ safety on railroads.** *(1)* ~~Any~~ *A* railroad corporation within this state ~~shall be deemed~~ *is* guilty of a misdemeanor and upon conviction ~~thereof shall~~ ~~be fined for the first offense in the sum of $1,000, for the second violation of the same provision, $2,000, and for every other and further violation of any provision of which it has been twice before found guilty, a sum not less than $5,000 or more than $10,000, if the corporation shall~~ *is subject to the penalties provided in subsection (2) if the corporation*:

~~(1) neglect~~ *(a) neglects* to provide comfortable and convenient cars or coaches for the transportation of its passengers and their baggage or safe cars for the transportation of express matter and freight;

~~(2) use any highly inflammable oils for lighting any car on its passenger trains;~~

~~(3) transport within this state on any of its passenger cars any oil of vitriol, gunpowder, lucifer matches, nitroglycerine, glynon oil, nytroleum or blasting oil, nitrate oil, powder mixed with any such oil or fiber saturated therewith, duolin or giant powder, blasting powder, or other goods of a dangerous nature;~~

~~(4) in any incorporated city or town in this state, run any train at a rate of speed forbidden by the laws of this state or the ordinances of such city or town;~~

~~(5)~~*(b)* ~~run any~~ *runs a* train over ~~any~~ *an* unsafe bridge, trestlework, or aqueduct ~~in this state~~;

~~(6) fail~~ *(c) fails* to have ~~upon any~~ *a* locomotive in use by it ~~in this state~~ *equipped with* ~~a bell and whistle~~ *a properly functioning horn and bell* ~~in fit condition for use thereon~~;

~~(7) permit~~ *(d) permits* ~~any~~ *a* locomotive to approach ~~any~~ *a public* highway, *public* road, or *public* railroad crossing without causing the ~~whistle~~ *locomotive horn and bell* to be sounded at a point ~~between 50 and 80 rods~~ *1,320 feet* from the crossing, the ~~bell~~ *horn and bell* to be ~~rung~~ *sounded* from ~~said~~ *the specified* point until the crossing is reached~~;~~. *If the owner or permitholder of a private crossing makes a written request to the railroad corporation to have the locomotive horn and bell sounded at the private crossing, the railroad shall comply with the request. The owner or permitholder is not subject to any liability as a result of not making a request.*

~~(8)~~*(e)* willfully ~~fail~~ *fails* to make any report ~~herein~~ required *by law* ~~or which may be hereafter required by any law of this state~~.

(2) Upon conviction of the offenses provided in subsection (1), a railroad corporation is subject to a fine of:

(a) $1,000 for the first offense;

(b) $2,000 for the second violation of the same provision; and

(c) not less than $5,000 or more than $10,000 for subsequent violations of a provision for which it has twice been found guilty."

Approved April 30, 2001

CHAPTER NO. 478

[SB 376]

AN ACT EXEMPTING CERTAIN ACTIONS OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE BOARD OF

LAND COMMISSIONERS FROM ENVIRONMENTAL REVIEW REQUIREMENTS; AMENDING SECTION 77-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-1-121, MCA, is amended to read:

"**77-1-121. Environmental review — ~~exemption~~ *exemptions*.** (1) The department and board are required to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77 only if the department is actively proposing to issue a sale, exchange, right-of-way, easement, placement of improvement, lease, license, *or* permit, ~~or other authorization for use of state lands~~ or is acting in response to an application for an authorization *for such a proposal.*

(2) Except for rulemaking and as provided in subsection (1), the department and board are otherwise exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77, including but not limited to the issuance of lease renewals. The department and board do not have an obligation to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77 if the department or board ~~choose~~ *chooses* not to take any action, even though either may have the authority to take an action.

(3) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when taking actions, including preparing plans or proposals, in relation to and in compliance with the following local government actions:

(a) development or adoption of a growth policy or a neighborhood plan pursuant to Title 76, chapter 1;

(b) development or adoption of zoning regulations;

(c) review of a proposed subdivision pursuant to Title 76, chapter 3;

(d) actions related to annexation;

(e) development or adoption of plans or reports on extension of services; and

(f) other actions that are related to local planning."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to all matters pending before the department or the board on [the effective date of this act].

Approved April 30, 2001

CHAPTER NO. 479

[SB 427]

AN ACT AUTHORIZING A COUNTY TO ISSUE LIMITED GENERAL OBLIGATION BONDS WITHIN THE COUNTY BUT OUTSIDE OF AN INCORPORATED CITY OR TOWN TO FINANCE ROAD CONSTRUCTION

AND MAINTENANCE; AMENDING SECTIONS 7-14-2521 AND 7-14-2522, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Authorization of road and highway bonds. (1) A county may issue limited general obligation bonds to:

(a) finance the establishment, construction, reconstruction, improvement, maintenance, and repair of county roads;

(b) acquire rights-of-way for roads and highways; or

(c) acquire capital equipment or supplies to improve, maintain, or repair roads and highways.

(2) Bond proceeds may be used to pay the costs for the issuance and sale of the bonds.

(3) The bonds may not be issued for a term longer than 20 years. The bonds may be sold at public or private sale on terms and at prices that the county commissioners determine to be advantageous. The bonds must be authorized, sold, and issued, with provision for their payment, in accordance with the provisions of chapter 7, part 22, of this title, except as those provisions may conflict with the express provisions of this section.

(4) The bonds, except for bonds issued to refund bonds issued for the purpose described in subsection (1), must be authorized by the registered electors of the county, exclusive of the electors residing within the incorporated area of a city or town located in whole or in part within the county, in accordance with the provisions of chapter 7, part 22, of this title.

(5) The bonds issued under this section are subject to any other statutory debt limitations. Bonds may not be issued under this section in a principal amount that, with all the bonds and warrants of the county, exceeds 0.68% of the total assessed value of taxable property, determined as provided in 15-8-111, in the county, exclusive of the total assessed value of taxable property in all incorporated cities and towns located in whole or in part within the county.

(6) Bonds issued under this section are legal and valid obligations of the county, and the full faith and credit of the county must be irrevocably pledged to the prompt payment of the principal of the bonds and interest on the bonds as they become due. Property taxes for the payment of the principal or interest may not be levied by the county against the taxable property in the incorporated area of a city or town located in whole or in part within the county.

(7) The powers conferred on a county by this section to provide financing for county roads and highways are in addition to the powers conferred by any other general, special, or local law. To the extent that the provisions of this section are inconsistent with the provisions of any other general, special, or local law, the provisions of this section are controlling. To the extent that the provisions of other general, special, or local laws apply to the acquisition of the property or the letting, undertaking, or completion of the work to be financed by bonds issued under this section, the provisions are applicable to the acquisition or work.

Section 2. Section 7-14-2521, MCA, is amended to read:

"**7-14-2521. Bond financing *for county bridges* authorized.** Subject to the limitations and restrictions provided in the ~~constitution and code~~ *law*, each board of county commissioners may issue bonds upon the faith and credit of the county for the construction or improvement of county ~~roads, state highways, and~~ bridges."

Section 3. Section 7-14-2522, MCA, is amended to read:

"**7-14-2522. County ~~road and~~ bridge bonds authorized.** (1) Each board may issue, negotiate, and sell coupon bonds on the credit of the county:

(a) to construct, ~~or~~ improve, or acquire rights-of-way for public ~~highways or~~ bridges;

(b) to refund, pay, and redeem optional, redeemable, or maturing ~~highway or~~ bridge bonds when there are not sufficient funds available and it is ~~deemed~~ *considered* in the best interests of the county to refund the bonds.

(2) The bonds ~~shall~~ *must* be issued as provided in 7-7-2201."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 14, part 25, and the provisions of Title 7, chapter 14, part 25, apply to [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 30, 2001

CHAPTER NO. 480

[SB 436]

AN ACT REVISING SCHOOL DISTRICT OPERATING EXPENSE AND PURCHASING LAWS BY ALLOWING A DISTRICT TO MAKE TRANSFERS BETWEEN DIFFERENT FUNDS OR BETWEEN THE FINAL BUDGET AND A BUDGET AMENDMENT; PROHIBITING TRANSFERS FROM OR TO THE GENERAL FUND; AND AMENDING SECTIONS 20-9-133, 20-9-201, 20-9-208, AND 20-9-443, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-133, MCA, is amended to read:

"**20-9-133. Adoption and expenditure limitations of final budget.** (1) When the trustees determine and set the amount of the budget for each budgeted fund, they shall enter the amount in the portion of the budget form provided for the reporting of the final budget and the ~~chairman~~ *presiding officer* and clerk shall sign the budget form. The resulting budget constitutes the final budget and the appropriations for the district for the current school fiscal year.

(2) Except as provided in subsection (3), the trustees and all officers and employees of the district are limited in making expenditures or incurring liabilities to the total amount of each fund's budget. Transfers from any appropriation item to another appropriation item within a fund's budget *or transfers between different funds or between the final budget and a budget amendment* may be made as provided by 20-9-208. Except as provided in subsection (3), money of the district may not be used to pay expenditures made, liabilities incurred, or warrants issued in excess of the final budget established for each budgeted fund.

(3) If a district incurs a legal bonded debt payment after the final debt service fund budget for the current fiscal year has been adopted and if payment on the debt is required for the current fiscal year, payment on the debt in the current school fiscal year is allowed if money is available."

Section 2. Section 20-9-201, MCA, is amended to read:

"20-9-201. Definitions and application. (1) As used in this title, unless the context clearly indicates otherwise, "fund" means a separate detailed account of receipts and expenditures for a specific purpose as authorized by law or by the superintendent of public instruction under the provisions of subsection (2). Funds are classified as follows:

(a) A "budgeted fund" means any fund for which a budget must be adopted in order to expend money from the fund. The general fund, transportation fund, bus depreciation reserve fund, tuition fund, retirement fund, debt service fund, building reserve fund, adult education fund, nonoperating fund, and any other funds designated by the legislature are budgeted funds.

(b) A "nonbudgeted fund" means any fund for which a budget is not required in order to expend money on deposit in the fund. The school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, interlocal cooperative fund, internal service fund, impact aid fund, enterprise fund, agency fund, extracurricular fund, metal mines tax reserve fund, endowment fund, litigation reserve fund, and any other funds designated by the legislature are nonbudgeted funds.

(2) The school financial administration provisions of this title apply to all money of any elementary or high school district. Elementary and high school districts shall record the receipt and disbursement of all money in accordance with generally accepted accounting principles. The superintendent of public instruction has general supervisory authority as prescribed by law over the school financial administration provisions, as they relate to elementary and high school districts. The superintendent of public instruction shall adopt rules necessary to secure compliance with the law.

(3) Except as otherwise provided by law, whenever the trustees of a district determine that a fund is inactive and will no longer be used, the trustees shall close the fund by transferring all cash and other account balances to ~~the general fund~~ *any fund considered appropriate by the trustees* if the fund does not have a cash or fund balance deficit."

Section 3. Section 20-9-208, MCA, is amended to read:

"20-9-208. ~~Transfer~~ *Transfers* among appropriation items of a fund — *transfers from fund to fund.* (1) Whenever it appears to the trustees of a district that the appropriated amount of an item of a budgeted fund of the final budget or a budget amendment is in excess of the amount actually required during the school fiscal year for the appropriation item, the trustees may transfer any ~~or all~~ of the excess appropriation amount to any other appropriation item of the same budgeted fund.

(2) ~~Transfers~~ *Unless otherwise restricted by a specific provision in this title, transfers* may ~~not~~ be made between different funds of the same district~~,~~ *or* between the final budget and a budget amendment~~, or between similar funds of different districts except as specifically provided by this title~~ *under one of the following circumstances:*

(a) (i) Except as provided in subsection (2)(a)(ii), transfers may be made from one budgeted fund to another budgeted fund or between the final budget and a budget amendment for a budgeted fund whenever the trustees determine, in their discretion, that the transfer of funds is necessary to improve the efficiency of spending within the district or when an action of the trustees results in savings in one budgeted fund that can be put to more efficient use in another budgeted fund. Transfers may not be made with funds approved by the voters or with funds raised by a nonvoted levy unless the transfer is within or directly related to the purposes for which the funds were raised. Before a transfer can occur, the trustees shall hold a properly noticed hearing to accept public comment on the transfer.

(ii) Unless otherwise authorized by a specific provision in this title, transfers from the general fund to any other fund and transfers to the general fund from any other fund are prohibited.

(b) Transfers may be made from one nonbudgeted fund to another nonbudgeted fund whenever the trustees determine that the transfer of funds is necessary to improve the efficiency of spending within the district. Transfers may not be made with funds restricted by state or federal law unless the transfer is in compliance with any restrictions or conditions imposed by state or federal law. Before a transfer can occur, the trustees shall hold a properly noticed hearing to accept public comment on the transfer.

(3) The trustees shall enter the authorized transfers upon the permanent records of the district."

Section 4. Section 20-9-443, MCA, is amended to read:

"**20-9-443. Disposition of remaining debt service fund.** When all of the bonds and bond interest of any school district have been fully paid, all money remaining in the debt service fund for ~~such~~ *the* school district and all ~~moneys which~~ *money that* may come into ~~such~~ *the* debt service fund from the payment of the delinquent taxes ~~shall~~ *must* be transferred by the county treasurer to the *building reserve levy fund, the technology acquisition fund, or the* general fund ~~of such~~ *as designated by the* school district, *provided that the subsequent use of the funds by the school district is limited to constructing, equipping, or enlarging school buildings or purchasing land needed for school purposes in the district.*"

Section 5. Effective date — applicability. [This act] is effective July 1, 2001, and applies to transfers during the school fiscal year beginning on or after July 1, 2001.

Approved April 30, 2001

CHAPTER NO. 481

[SB 441]

AN ACT PROVIDING FOR A STUDY OF THE FUNDING MECHANISM FOR THE COMPREHENSIVE HEALTH ASSOCIATION PLAN AND ASSOCIATION PORTABILITY PLAN.

Be it enacted by the Legislature of the State of Montana:

Section 1. Study of funding mechanism. (1) The insurance commissioner, in conjunction with the Montana comprehensive health association board of directors and the entities listed in subsection (2), shall study the current funding mechanism of the association that provides for assessment on the participating membership of the association. The purpose of the study is to evaluate:

(a) the need for alternative funding options;

(b) the adequacy of the current assessment funding mechanism;

(c) the participating membership that is assessed and provides the base of funding for the association and the individuals covered by the program;

(d) alternative funding mechanisms, which may include a change in the assessment, a change in the participating membership, or other alternatives; and

(e) provider reimbursement rates.

(2) The commissioner shall include participation from the following entities in the study, including but not limited to:

(a) the association board of directors;

(b) health-related stop-loss or excess of loss carriers;

(c) the state employee health benefit plan;

(d) the university employee health benefit plan;

(e) local government employee benefit plans;

(f) school district employee benefit plans;

(g) consumer advocates;

(h) persons enrolled in an association plan;

(i) members of the medical community;

(j) a representative from a multiple employer welfare arrangement; and

(k) a member of the legislature.

(3) The commissioner, in conjunction with the association and the entities listed in subsection (2), shall bring alternative proposals and associated justification to the 58th legislature to provide for appropriate funding of the association and recommendations regarding alternative assessments or funding mechanisms.

Approved April 30, 2001

CHAPTER NO. 482

[SB 442]

AN ACT CREATING A REVOLVING FUND FOR LOANS FOR LOW-INCOME FAMILIES, USING TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT FUNDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Revolving loan account. (1) There is an account in the department that is a revolving loan account.

(2) The department may access temporary assistance for needy families block grant funds upon identification of the immediate need or use of the funds as provided in this section. Any interest that is generated from a loan repayment

must be deposited into the revolving loan account and used to sustain the program.

(3) The funds from the revolving loan account may be used to provide loans, not to exceed $8,000 each, for individuals who are eligible for state programs that are funded by the temporary assistance for needy families block grant. Loans may be made for the purposes of:

(a) payment for job training expenses;

(b) payment for home repair work for weatherization and energy conservation;

(c) payment of short-term bills, excluding fines or bad debt;

(d) payment for business startup costs or business inventory costs, excluding construction;

(e) payment for gaps in loan payments for escrow costs, for the period before other loans are made, and for closing costs or costs for participating in other loan programs; or

(f) providing assistance to applicants seeking to develop secondary sources of outside income.

Section 2. Administration of revolving loan account — rulemaking authority. (1) The department shall adopt rules establishing:

(a) eligibility criteria;

(b) processes and procedures for disbursing loans, including the agencies or organizations that are allowed to process the loan application for the department; and

(c) terms and conditions for the loans, including repayment schedules and interest.

(2) The department shall solicit assistance in the development and operation of the program from individuals familiar with financial services and from low-income individuals.

(3) Administrative costs shall not exceed 5% of the total loans. Legal fees and costs associated with collection of debt on principal are not considered administrative fees.

(4) The loan repayment period may not exceed 2 years. The department may seek recovery of the amount of principal loaned in the event of default.

Section 3. Outcome measures. The department shall develop reasonable outcome measures by which the program success will be measured on an annual basis. Minimal outcome that must be measured includes:

(1) a loan loss ratio of under 5%;

(2) the types of training that are most successful in leading to specific types of employment; and

(3) a determination of the number of individuals who did not have to access public assistance because of successful participation in this program.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 53, chapter 4, part 2, and the provisions of Title 53, chapter 4, part 2, apply to [sections 1 through 3].

Approved April 30, 2001

CHAPTER NO. 483

[SB 445]

AN ACT GENERALLY REVISING THE LAWS GOVERNING THE DEPARTMENT OF COMMERCE; REASSIGNING CERTAIN FUNCTIONS OF THE DEPARTMENT TO OTHER ENTITIES; TRANSFERRING CERTAIN ECONOMIC DEVELOPMENT FUNCTIONS TO THE GOVERNOR'S OFFICE; CREATING THE GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT; TRANSFERRING FUNDING FROM THE DEPARTMENT OF COMMERCE TO THE GOVERNOR'S OFFICE TO REFLECT THE FUNCTION TRANSFER; ALLOWING THE DIRECTOR OF THE DEPARTMENT OF COMMERCE TO BE INTERESTED IN OR TO BORROW MONEY FROM ANY STATE BANK; ASSIGNING MOST PROFESSIONAL AND OCCUPATIONAL LICENSING FUNCTIONS, BUILDING CODE FUNCTIONS, AND WEIGHTS AND MEASURES FUNCTIONS TO THE DEPARTMENT OF LABOR AND INDUSTRY; ASSIGNING THE LOTTERY, FINANCIAL INSTITUTIONS, BOARD OF COUNTY PRINTING, AND LOCAL GOVERNMENT AUDIT AND ASSISTANCE FUNCTIONS TO THE DEPARTMENT OF ADMINISTRATION; ASSIGNING THE BOARD OF HORSERACING TO THE DEPARTMENT OF LIVESTOCK; ASSIGNING CONSUMER AFFAIRS FUNCTIONS TO THE DEPARTMENT OF ADMINISTRATION; ELIMINATING THE PROPRIETARY POSTSECONDARY EDUCATIONAL ADVISORY COUNCIL; AMENDING SECTIONS 2-6-402, 2-6-403, 2-7-501, 2-7-518, 2-15-1803, 2-15-1811, 2-15-1852, 2-15-1859, 2-15-1860, 2-15-1872, 2-15-1882, 2-15-1883, 2-18-103, 5-5-223, 7-1-4145, 7-1-4147, 7-1-4148, 7-2-4906, 7-2-4911, 7-2-4912, 7-3-146, 7-3-153, 7-3-187, 7-6-603, 7-6-604, 7-6-2114, 7-6-2141, 7-6-2203, 7-6-2302, 7-6-2311, 7-6-2314, 7-6-2322, 7-6-4140, 7-6-4205, 7-6-4260, 15-35-108, 17-2-304, 17-5-1529, 17-5-1651, 17-6-321, 18-1-106, 19-18-205, 19-18-206, 19-18-403, 20-6-621, 20-6-622, 20-9-203, 20-25-901, 22-3-804, 23-3-301, 23-4-101, 23-7-201, 23-7-210, 23-7-301, 25-1-1104, 27-12-206, 30-11-515, 30-11-801, 30-12-101, 30-12-105, 30-14-102, 30-14-202, 30-14-1403, 30-16-302, 31-1-202, 31-1-703, 31-3-125, 31-3-152, 31-3-203, 32-1-109, 32-1-201, 32-1-212, 32-1-382, 32-1-901, 32-1-1005, 32-1-1007, 32-2-101, 32-3-104, 32-3-201, 32-3-203, 32-3-205, 32-3-301, 32-3-302, 32-3-303, 32-3-307, 32-3-321, 32-3-322, 32-3-323, 32-3-404, 32-3-611, 32-3-703, 32-3-705, 32-4-201, 32-4-306, 32-5-102, 32-6-103, 32-7-101, 32-7-102, 32-8-103, 33-22-705, 37-1-101, 37-1-121, 37-1-130, 37-1-137, 37-1-302, 37-1-401, 37-3-102, 37-4-101, 37-5-101, 37-6-101, 37-7-101, 37-8-102, 37-9-101, 37-10-101, 37-11-101, 37-12-101, 37-14-102, 37-14-322, 37-15-102, 37-16-102, 37-17-102, 37-18-101, 37-19-101, 37-22-102, 37-23-201, 37-24-103, 37-26-103, 37-27-205, 37-29-102, 37-30-101, 37-30-412, 37-31-101, 37-32-102, 37-34-103, 37-35-102, 37-40-101, 37-47-101, 37-50-101, 37-51-102, 37-51-209, 37-54-102, 37-60-101, 37-65-102, 37-66-103, 37-67-101, 37-68-102, 37-69-101, 37-69-310, 37-72-101, 46-18-111, 50-3-103, 50-6-202, 50-32-101, 50-37-104, 50-39-101, 50-39-102, 50-39-103, 50-39-106, 50-39-107, 50-39-108, 50-53-103, 50-60-101, 50-60-504, 50-60-505, 50-60-507, 50-60-508, 50-60-509, 50-60-510, 50-60-511, 50-60-512, 50-60-513, 50-60-514, 50-60-603, 50-60-604, 50-60-605, 50-60-606, 50-60-607, 50-60-803, 50-64-102, 50-74-101, 50-74-312, 50-76-102, 50-76-103, 50-76-104, 50-76-105, 50-76-110, 50-76-111, 52-3-813, 61-2-208, 61-4-507, 61-4-511, 61-4-512, 61-4-515, 61-4-516, 61-4-517, 61-4-518, 61-4-519, 61-4-520, 61-4-526, 61-4-532, 75-10-913, 75-10-918, 75-20-211, 75-20-216, 75-20-226, 76-3-403, 80-8-204, 82-15-101, 85-7-1616, 85-7-1913, AND 90-3-1001, MCA; REPEALING SECTION 2-15-1804, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Policy — purpose. (1) It is the policy of this state to:

(a) strengthen the foundations of the state's business environment and diversify and expand existing economic endeavors to achieve long-term economic stability;

(b) cooperate with business enterprises, local governments, other public organizations, and the federal government and use all practical means and measures, including financial and technical assistance, to:

(i) establish an economic climate in which the state's natural resources and agricultural operations remain constant contributors to the state's economic welfare;

(ii) articulate a coherent economic development vision for the future; and

(iii) take a proactive role to ensure that Montana has the flexibility and resources to be an effective competitor in the changing global marketplace.

(2) The purpose of [sections 1 through 5] is to provide a vision and a direction through the development of strategies and initiatives to ensure that the state's role in expanding the economy takes place in an orderly and effective manner.

Section 2. Office of economic development — structure. (1) There is an office of economic development within the office of the governor.

(2) The head of the office is the chief business development officer, who must be appointed by the governor.

(3) The office of economic development is composed of the following policy and program specialties:

(a) business retention and recruitment;

(b) workforce development;

(c) technology development;

(d) infrastructure improvement; and

(e) permitting and regulatory processes.

(4) The office may employ or contract with policy specialists to implement the programs listed in subsection (3) of this section and the functions referred to in [section 3].

(5) The office may accept grants, loans, and other gifts from sources other than the state for the purpose of administering the provisions of [sections 1 through 5].

Section 3. Chief business development officer — duties. (1) The chief business development officer shall:

(a) advise the governor on policy issues related to economic development;

(b) lead the state's business recruitment, retention, and expansion efforts;

(c) coordinate the development and distribution of a statewide coordinated strategic economic development plan;

(d) coordinate the individual functions and programs within the office as provided in [section 2]; and

(e) serve as the state's primary liaison between federal, state, and local agencies, Montana tribal governments, private nonprofit economic development organizations, and the private sector.

Section 4. Cooperation of state agencies. State agencies that have economic development responsibilities shall cooperate with the office of economic development and provide information, technical expertise, and other assistance when requested by the office of economic development.

Section 5. Rulemaking authority. (1) The office of economic development shall adopt rules to implement the provisions of [sections 1 through 5]. The rules must include but are not limited to:

(a) criteria for providing assistance to communities; and

(b) coordinating economic development efforts among other state agencies, Montana tribal governments, private enterprise, federal agencies, and local governments.

(2) The office may adopt rules necessary to administer the duties and responsibilities of the office.

Section 6. Section 2-6-402, MCA, is amended to read:

"2-6-402. Local government records committee — creation. (1) There is a local government records committee.

(2) The committee consists of the following seven members:

(a) the state archivist;

(b) the state records manager;

(c) a representative of the department of ~~commerce~~ *administration*;

(d) two local records custodians, appointed by the director of the Montana historical society; and

(e) two additional local records custodians, appointed by the secretary of state.

(3) Committee members subject to appointment shall hold office for a period of 2 years beginning on January 1 of the year following their appointment.

(4) Any vacancies must be filled in the same manner that they were filled originally.

(5) The committee shall elect a presiding officer and a vice presiding officer.

(6) The committee shall meet twice a year upon the call of the secretary of state or the presiding officer.

(7) Members of the committee not serving as part of their compensated government employment must be compensated in accordance with 2-18-501 through 2-18-503 for each day in committee attendance. Members who serve as part of their compensated government employment may not receive additional compensation, but the employing governmental entity shall furnish, in accordance with the prevailing per diem rates, a reasonable allowance for travel and other expenses incurred in attending committee meetings."

Section 7. Section 2-6-403, MCA, is amended to read:

"**2-6-403. Duties and responsibilities.** (1) The local government records committee shall approve, modify, or disapprove proposals for local government records retention and disposition schedules.

(2) The local government records committee shall appoint a subcommittee, known as the local government records destruction subcommittee, to handle requests for disposal of records. The subcommittee consists of the state archivist and a representative of the department of ~~commerce~~ *administration*. Unless specifically authorized by statute or by the retention and disposition schedule, a local government public record may not be destroyed or otherwise disposed of without the unanimous approval of the subcommittee. When approval is required, a request for the disposal or destruction of any local government records must be submitted to the subcommittee by the entity concerned. If there is not unanimous approval of the subcommittee, the issue of the disposition of a record must be referred to the local government records committee for approval. When approval is obtained from the subcommittee or from the local government records committee for the disposal of a record, the local government records committee shall consider the inclusion of a new category of record for which a disposal request is not required and shall update the schedule.

(3) The local government records committee shall establish a retention and disposition schedule for categories of records for which a disposal request is not required. The committee shall publish the retention and disposition schedules. Updates to those schedules, if any, must be published at least annually.

~~(4) The committee shall establish school records retention schedules by September 1, 1997.~~

~~(5)~~*(4)* The committee shall respond to requests for technical advice on matters relating to local government records.

~~(6)~~*(5)* The committee shall provide leadership and coordination in matters affecting the records of multiple local governments."

Section 8. Section 2-7-501, MCA, is amended to read:

"**2-7-501. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Audit" means a financial audit and includes financial statement and financial-related audits as defined by government auditing standards as established by the U.S. comptroller general.

(2) "Board" means the Montana board of public accountants provided for in 2-15-1866.

(3) "Department" means the department of ~~commerce~~ *administration*.

(4) (a) "Financial assistance" means assistance provided by a federal, state, or local government entity to a local government entity or subrecipient to carry out a program. Financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance. Financial assistance includes awards received directly from federal and state agencies or indirectly when subrecipients receive funds identified as federal or state funds by recipients. The granting agency is responsible for identifying the source of funds awarded to recipients. The recipient is responsible for identifying the source of funds awarded to subrecipients.

(b) Financial assistance does not include direct federal, state, or local government cash assistance to individuals.

(5) "Financial report" means a presentation of schedules that reflect a current financial position and the operating results for the 1-year reporting period.

(6) "Independent auditor" means:

(a) a federal, state, or local government auditor who meets the standards specified in the government auditing standards; or

(b) a licensed accountant who meets the standards in subsection (6)(a).

(7) (a) "Local government entity" means a county, city, district, or public corporation that:

(i) has the power to raise revenue for the purpose of serving the general public;

(ii) is governed by a board, commission, or individual elected or appointed by the public or representatives of the public; and

(iii) receives local, state, or federal financial assistance.

(b) Local government entities include but are not limited to:

(i) airport authority districts;

(ii) cemetery districts;

(iii) counties;

(iv) county housing authorities;

(v) county road improvement districts;

(vi) county sewer districts;

(vii) county water districts;

(viii) county weed control districts;

(ix) drainage districts;

(x) fire department relief associations;

(xi) fire districts;

(xii) hospital districts;

(xiii) incorporated cities or towns;

(xiv) irrigation districts;

(xv) mosquito districts;

(xvi) municipal housing authority districts;

(xvii) port authorities;

(xviii) refuse disposal districts;

(xix) rural improvement districts;

(xx) school districts including a district's extracurricular funds;

(xxi) soil conservation districts;

(xxii) special education or other cooperatives;

(xxiii) television districts;

(xxiv) urban transportation districts;

(xxv) volunteer fire departments; and

(xxvi) water conservancy districts.

(8) "Revenues" means all receipts of a local government entity from any source excluding the proceeds from bond issuances."

Section 9. Section 2-7-518, MCA, is amended to read:

"**2-7-518. Deposit of fees.** All fees received from local government entities ~~after June 30, 1981, shall~~ *must* be deposited in the enterprise fund to the credit of the department of ~~commerce~~ *administration* for administration of Title 2, chapter 7, part 5."

Section 10. Section 2-15-1803, MCA, is amended to read:

"**2-15-1803. State banking board — composition — allocation.** (1) There is a state banking board.

(2) The board is composed of six members. The members of the board must be appointed with consideration given banks of small, medium, and large size and to geographical distribution. Two of the six members must be active officers in state banks of Montana; one must be an active officer of a national bank doing business in Montana; and three must be members of the public, none of whom is an officer, director, or shareholder of any state or national bank. The board shall elect a presiding officer from its members.

(3) The members must be appointed by the governor, with the consent of the senate, for terms of 3 years. Vacancies must be filled by appointment for the unexpired term. A member may not serve more than two consecutive terms.

(4) The board is allocated to the department *of administration* for administrative purposes only as provided in 2-15-121."

Section 11. Section 2-15-1811, MCA, is amended to read:

"**2-15-1811. Board of county printing — composition — allocation — compensation.** (1) There is a board of county printing.

(2) The board consists of five members appointed by the governor with the consent of the senate for terms of 2 years.

(3) The members are:

(a) two members of the printing industry;

(b) two county commissioners;

(c) one member of the general public.

(4) The board is allocated to the department *of administration* for administrative purposes only as prescribed in 2-15-121.

(5) The members of the board ~~shall~~ *must* be compensated and reimbursed in the same manner and amount as provided for in 37-1-133."

Section 12. Section 2-15-1852, MCA, is amended to read:

"**2-15-1852. Board of veterinary medicine.** (1) There is a board of veterinary medicine.

(2) The board consists of six members appointed by the governor with the consent of the senate, five of whom ~~shall~~ *must* be licensed veterinarians and one of whom ~~shall~~ *must* be a public member who is a consumer of veterinary services and who ~~shall~~ *may* not be a ~~licentiate~~ *licensee* of the board or of any other board under the department of ~~commerce~~ *labor and industry*.

(3) Each veterinarian member ~~shall~~ *must* be a reputable licensed veterinarian who has graduated from a college authorized by law to confer degrees and have educational standards equal to those approved by the American veterinary medical association. Each veterinarian member shall have actually and legally practiced veterinary medicine in either private practice or public service in this state for at least 5 years immediately before his appointment.

(4) Each member shall serve for a term of 5 years. The governor may, after notice and hearing, remove a member for misconduct, incapacity, or neglect of duty.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 13. Section 2-15-1859, MCA, is amended to read:

"**2-15-1859. Board of occupational therapy practice.** (1) There is a board of occupational therapy practice.

(2) The board consists of five members appointed by the governor. The members are:

(a) three occupational therapists licensed under Title 37, chapter 24, who are actively engaged in the practice or teaching of occupational therapy; and

(b) two members of the general public with an interest in the rights of the consumers of health services.

(3) The Montana occupational therapy association may submit names of nominees under *subsection* (2)(a) of this section to the governor as provided in 37-1-132.

(4) Each appointment is subject to confirmation by the senate then meeting in regular session or next meeting in regular session following appointment.

(5) Members shall serve staggered 4-year terms. A term begins on the first day of the calendar year and ends on the last day of the calendar year or when a successor is appointed. A member who has served two successive complete terms is not eligible for reappointment until after 1 year.

(6) The governor may, after hearing, remove a member for neglect of duty or other just cause.

(7) The board is allocated to the department of ~~commerce~~ *labor and industry* for administrative purposes only as prescribed in 2-15-121."

Section 14. Section 2-15-1860, MCA, is amended to read:

"**2-15-1860. Board of respiratory care practitioners.** (1) There is a board of respiratory care practitioners. The board consists of five members appointed by the governor. Each member must be a citizen of the United States and a resident of this state. The governor may request advice from the Montana society for respiratory care in making appointments to the board.

(2) The board consists of:

(a) three respiratory care practitioners, each of whom has engaged in the practice of respiratory care for a period of at least 3 years immediately preceding their appointment to the board. At least one of these members must have passed the registry examination for respiratory therapists administered by the national board for respiratory care and at least one of these members must have passed the entry-level examination for respiratory therapy technicians administered by the national board for respiratory care.

(b) one physician licensed in Montana who has a special interest in the treatment of cardiopulmonary diseases; and

(c) one member of the public who is not a member of a health care profession.

(3) The board is a quasi-judicial board, except that one member of the board need not be an attorney licensed to practice law in this state. Members are appointed, serve, are compensated, and are subject to removal as provided in 2-15-124.

(4) The board is allocated to the department of ~~commerce~~ *labor and industry* for administrative purposes only as provided in 2-15-121."

Section 15. Section 2-15-1872, MCA, is amended to read:

"**2-15-1872. Board of landscape architects.** (1) There is a board of landscape architects.

(2) The board consists of five members. Members of the board ~~shall~~ *must* be appointed by the governor with the consent of the senate and must be residents of this state. Three members must be landscape architects licensed under Title 37, chapter 66. Two members must be representatives of the public who are not engaged in the practice of landscape architecture.

(3) The board is allocated to the department of ~~commerce~~ *labor and industry* for administrative purposes only as prescribed in 2-15-121.

(4) Terms are for 4 years. Each member shall hold office until the appointment and qualification of ~~his~~ *a* successor. Vacancies occurring prior to the expiration of the term ~~shall~~ *must* be filled in the same manner as original appointments. ~~No~~ *A* member may *not* serve more than 8 consecutive years."

Section 16. Section 2-15-1882, MCA, is amended to read:

"**2-15-1882. Board of athletics.** (1) There is a board of athletics.

(2) The board consists of three members appointed by the governor with the consent of the senate.

(3) Members shall serve staggered 3-year terms, and a member may not serve more than four consecutive terms.

(4) The board is allocated to the department of ~~commerce~~ *labor and industry* for administrative purposes only as prescribed in 2-15-121."

Section 17. Section 2-15-1883, MCA, is amended to read:

"**2-15-1883. Board of outfitters.** (1) There is a board of outfitters.

(2) The board consists of the following seven members to be appointed by the governor:

(a) one big game hunting outfitter;

(b) one fishing outfitter;

(c) two outfitters who are engaged in the fishing and hunting outfitting business;

(d) two sportspersons; and

(e) one member of the general public.

(3) (a) A subcommittee composed of five members of the board shall review net client hunter use expansion requests as provided in 37-47-316, based on the criteria provided in 37-47-317, and report its determinations to the full board. A favorable vote of at least a majority of all members of the board is required to adopt any resolution, motion, or other decision.

(b) The subcommittee must consist of the two hunting outfitters, the two sportspersons, and the one member of the public serving on the board pursuant to subsection (2).

(4) A vacancy on the board must be filled in the same manner as the original appointment.

(5) The members shall serve staggered 3-year terms and take office on the day they are appointed.

(6) The board is allocated to the department of ~~commerce~~ *labor and industry* for administrative purposes only as prescribed in 2-15-121.

(7) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133."

Section 18. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

(1) elected officials;

(2) county assessors and their chief deputies;

(3) employees of the office of consumer counsel;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;

(11) four professional staff positions under the board of oil and gas conservation;

(12) assistant director for security of the Montana state lottery;

(13) executive director and employees of the state compensation insurance fund;

(14) state racing stewards employed by the executive secretary of the Montana board of horseracing;

(15) executive director of the Montana wheat and barley committee;

(16) commissioner of banking and financial institutions;

(17) training coordinator for county attorneys;

(18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504*;*

(19) chief business development officer and six professional staff positions in the office of economic development provided for in [section 2]."

Section 19. Section 5-5-223, MCA, is amended to read:

"**5-5-223. Business and labor interim committee.** The business and labor interim committee has administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

(1) department of agriculture;

(2) department of commerce;

(3) department of labor and industry;

(4) department of livestock;

(5) department of public service regulation; ~~and~~

(6) office of the state auditor and insurance commissioner*; and*

(7) office of economic development."

Section 20. Section 7-1-4145, MCA, is amended to read:

"**7-1-4145. State reports.** (1) Municipal governing bodies, chief executives, officers, employees, departments, boards, and authorities shall file with state agencies in a timely fashion all reports and information required by state law.

(2) The department of ~~commerce~~ *administration* shall coordinate to the greatest extent possible the collection of data by state and federal agencies in order to minimize the requests of municipalities and to maximize access to information collected on municipalities.

(3) Prior to requesting reports from a municipality, all state agencies shall notify the department of ~~commerce~~ *administration* of the intended request."

Section 21. Section 7-1-4147, MCA, is amended to read:

"**7-1-4147. State technical advice and assistance.** (1) All state agencies are authorized and encouraged to provide technical assistance to municipalities.

(2) The technical assistance services ~~shall~~ *may* not include those that can be as reasonably and expeditiously obtained through business channels.

(3) State agencies are encouraged to develop the capacity to provide technical advice and assistance without charge to municipalities, but they are also encouraged to establish service charges for special or extraordinary technical advice.

(4) The department of ~~commerce~~ *administration* shall coordinate technical advice and assistance provided to municipalities by state agencies.

(5) State agencies may lend personnel, equipment, and machinery to municipalities."

Section 22. Section 7-1-4148, MCA, is amended to read:

"**7-1-4148. Penalty.** ~~Where~~ *When* a municipality is required by state law to provide information to a state agency and fails to provide the required information, the department of ~~commerce~~ *administration* may issue an order stopping payment of any state financial aid to the municipality. Upon provision of the information, all financial aid ~~which~~ *that* was stopped because of failure to provide the information ~~shall~~ *must* be paid to the municipality."

Section 23. Section 7-2-4906, MCA, is amended to read:

"**7-2-4906. Effect of sufficient vote to disincorporate.** (1) ~~In case~~ *If* the canvass reveals that 60% or more of all the votes cast were in favor of disincorporation, the county commissioners shall~~, under their hands, make and~~ file in their office and cause to be entered upon their proceedings an order ~~that~~ *granting* the petition for disincorporation ~~be granted~~ and declaring that the city or town is disincorporated. The order takes effect within 60 days following the date of the order.

(2) A certified copy of the order ~~shall~~ *must* be sent to the secretary of state and the ~~head~~ *director* of the department of ~~commerce~~ *administration*."

Section 24. Section 7-2-4911, MCA, is amended to read:

"**7-2-4911. Certification of financial condition.** (1) Upon receiving a certified copy of the order of disincorporation, the director of the department of ~~commerce~~ *administration* shall certify a current statement of the financial condition of the disincorporating city or town to the board of county commissioners.

(2) The statement ~~shall~~ *must* include but *is* not ~~be~~ limited to:

(a) a determination of all assets of the city or town, including any current or delinquent utility accounts ~~and/or~~ *and* taxes receivable; and

(b) a statement of all city or town indebtedness, including any revenue or general obligation bonds, special improvement district obligations outstanding, contracts payable, all other obligations of the city, and a schedule for the repayment of indebtedness."

Section 25. Section 7-2-4912, MCA, is amended to read:

"**7-2-4912. Management of unencumbered cash.** (1) Under the supervision of the director of the department of ~~commerce~~ *administration* or ~~his agent~~ *the director's designee*, the city treasurer or town clerk shall draw a treasurer's check for the amount of unencumbered cash in the city or town treasury. The check ~~shall~~ *must* be made payable to and delivered to the county treasurer of the county in which the disincorporating city or town is situated.

(2) The county treasurer shall immediately place ~~said~~ *the* money in a special fund, to be drawn upon as provided in this part."

Section 26. Section 7-3-146, MCA, is amended to read:

"7-3-146. Filing of petitions. (1) Two copies of a petition ~~shall~~ *must* be filed with the department of ~~commerce~~ *administration*.

(2) One copy of a petition ~~shall~~ *must* be filed with the local government records administrator.

(3) The filings required by this section ~~shall~~ *must* be done within 45 days of submission of the petition."

Section 27. Section 7-3-153, MCA, is amended to read:

"7-3-153. Filing of approved plan. (1) A copy of the existing or proposed plan of government ratified by the voters and any apportionment plan or consolidation or merger plan ~~shall~~ *must* be certified by the ~~chairman~~ *presiding officer* of the governing body and filed with the department of ~~commerce~~ *administration*, the county records administrator, and the municipal records administrator if it is a municipal plan.

(2) The approved plan filed with the department of ~~commerce~~ *administration* is the official plan and is a public record open to inspection by the public and judicially noticeable by all courts."

Section 28. Section 7-3-187, MCA, is amended to read:

"7-3-187. Final report. (1) A study commission shall adopt a final report. If the study commission recommends an alternative form of government, the final report must contain the following materials and documents, each signed by a majority of the study commission members:

(a) those materials and documents required of a petition proposing an alteration of an existing form of government in 7-3-142;

(b) a certificate establishing the date of the special election, which must be held in conjunction with a regular or primary election, at which the alternative form of government is presented to the electors and a certificate establishing the form of the ballot question or questions; and

(c) a certificate establishing the dates of the first primary and general elections for officers of a new government if the proposal is approved and establishing the effective date of the proposal if approved.

(2) The final report must contain any minority report signed by members of the commission who do not support the majority proposal.

(3) If the study commission is not recommending any changes, its final report must indicate that changes are not recommended.

(4) The study commission shall file two copies of the final report with the department of ~~commerce~~ *administration*, one of which the department shall forward to the state library. A copy of the final report must be certified by the study commission to the municipal or county records administrator within 30 days after the adoption of the final report.

(5) Sufficient copies of the final report must be prepared for public distribution. The final report must be available to the electors not later than 30 days prior to the election on the issue of adopting the alternative plan. Copies of the final report may be distributed to electors or residents of the local government or governments affected.

(6) After submission of the final report, the commission shall deposit copies of its minutes and other records with the county clerk and recorder."

Section 29. Section 7-6-603, MCA, is amended to read:

"**7-6-603. Adoption of alternative accounting method.** (1) A local government entity may by resolution adopt the alternative accounting method established in 7-6-604.

(2) A local government entity that adopts the alternative accounting method is considered to have complied with state accounting and financial reporting standards and requirements.

(3) A local government entity that does not adopt the alternative accounting method is subject to state accounting and financial reporting standards and requirements.

(4) A local government entity may not adopt the alternative accounting method unless it has received an auditor's unqualified opinion on its annual financial statements prepared for its preceding fiscal year.

(5) A local government entity that adopts the alternative accounting method by resolution shall submit a copy of the resolution to the department of ~~commerce~~ *administration*."

Section 30. Section 7-6-604, MCA, is amended to read:

"**7-6-604. Alternative accounting method — requirements.** A local government entity that adopts the alternative accounting method shall:

(1) prepare its accounting records and financial reports in accordance with generally accepted accounting principles established by the governmental accounting standards board or its generally recognized successor;

(2) adopt a fiscal year that commences on July 1 of each year;

(3) (a) compile an annual financial report covering the preceding fiscal year and submit a copy of the annual financial report or an annual audit, pursuant to subsection (3)(b), to the department of ~~commerce~~ *administration* within 6 months of the end of that reported fiscal year; or

(b) if the local government entity submits an audit report in lieu of an annual financial report, ensure that the audit report contains, at a minimum, the entity's general purpose financial statements and combining and individual fund and account group statements as defined under the principles described in subsection (1);

(4) cause an annual audit in accordance with the provisions of Title 2, chapter 7, part 5; and

(5) ensure that a budget is made each year that:

(a) shows the complete expenditure program for the local government entity for the coming fiscal year and the sources by which it will be funded;

(b) must be completed on or before the second Monday in August of the current fiscal year;

(c) must be approved or amended by the governing body in a regularly scheduled meeting;

(d) must be the subject of one or more advertised public hearings, pursuant to the provisions of 7-1-2121 or 7-1-4127, prior to approval or amendment; and

(e) must be submitted to the department of ~~commerce~~ *administration* by September 15."

Section 31. Section 7-6-2114, MCA, is amended to read:

"7-6-2114. Inspection of treasurer's books and records. (1) The books, accounts, and vouchers of the treasurer are at all times subject to the inspection and examination of the board of county commissioners and the grand jury.

(2) The treasurer ~~must~~ *shall* permit the department of ~~commerce~~ *administration* and county clerk or the board of county commissioners to examine ~~his~~ *the treasurer's* books and count the money in the treasury when ~~any of them wants~~ *they wish* to make an examination or counting."

Section 32. Section 7-6-2141, MCA, is amended to read:

"7-6-2141. Coordination of state revenue collected by counties — duties of department of ~~commerce~~ *administration*. (1) The department of ~~commerce~~ *administration* shall advise the counties concerning any questions involving collection of revenue on behalf of the state. The department shall prepare and distribute a county collections manual to county treasurers, setting forth the procedures and forms to be used by the counties in collecting revenue for the state. The manual must be revised at least biennially, with the manual and revisions being sent to each county treasurer.

(2) State agencies receiving revenue collected by the counties shall coordinate the collection of revenue with the department. Necessary instructions or procedures must be submitted to the counties by state agencies through the department to provide coordination and ensure placement in the county collections manual."

Section 33. Section 7-6-2203, MCA, is amended to read:

"7-6-2203. Annual financial statement — exception. (1) Within 120 days after the close of each fiscal year, the county clerk shall compile and present to the board of county commissioners and the department of ~~commerce~~ *administration* a complete statement of the financial condition of the county. The statement must show:

(a) a detailed description of all of the resources and liabilities of the county and the book value of the resources and liabilities;

(b) the amount of money received, showing the source of that revenue;

(c) the amount of money disbursed, with the purpose of disbursement;

(d) the operation of each of the cash and warrant accounts, showing the balance at the beginning of the year, the credits, the debits, and the balance at the end of the year;

(e) the assessed valuation of the real and personal property of the county;

(f) the rate of taxation and the amount of taxes delinquent for the preceding years; and

(g) other items that the department of ~~commerce~~ *administration* may prescribe.

(2) The statement must be on the form designated by the department.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 34. Section 7-6-2302, MCA, is amended to read:

"**7-6-2302. Role of department of ~~commerce~~ *administration* — exception.** (1) The department of ~~commerce~~ *administration* shall make rules and classifications and prescribe forms necessary to carry out the provisions of this part, to define ~~what~~ *those* expenditures *that* are chargeable to each budget account, and to establish accounting and cost systems necessary to provide accurate budget information.

(2) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 35. Section 7-6-2311, MCA, is amended to read:

"**7-6-2311. Filing of estimate of revenues and expenses with county clerk *and recorder* — exception.** (1) Before June 1 each year the county clerk and recorder shall notify in writing each county official in charge of an office, department, service, institution, or county-funded district court program of the county to file with the county clerk and recorder, before June 10, detailed and itemized estimates, both of the probable revenue from sources other than taxation and of all expenditures required by the office, department, service, or institution for the next fiscal year.

(2) (a) The county commissioners shall submit to the county clerk and recorder the estimate of expenditures for all purposes for the board and a detailed statement showing all new road and bridge construction to be financed from county road and bridge funds, from any special road or bridge fund, from any special highway fund, and from bond issues issued or authorized for the next fiscal year, together with the cost of that construction as computed by the county surveyor or, if for construction in charge of a special engineer, then by that engineer. The county commissioners shall also submit to the county clerk and recorder detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies that are required to be approved at an election to be held.

(b) The county surveyor and any special engineer shall prepare the estimates of cost of road and bridge construction for the county commissioners. They shall also submit a similar statement showing road and bridge maintenance expenditures as nearly as can be estimated.

(c) The county treasurer shall prepare the estimates for interest and debt reduction.

(d) The county clerk and recorder shall prepare all other estimates that properly fall within the duties of the office.

(3) The estimates required in this section must be submitted on forms provided by the county clerk and recorder and prescribed by the department of ~~commerce~~ *administration*. The forms may ~~only~~ be varied or departed from *only* with permission and approval of ~~that~~ *the* department. Each of the officials shall file the estimates within the time and in the manner provided in the form and notice.

(4) In the absence or disability of an official, the duties required by ~~this section or~~ 7-6-2312 *or this section* devolve upon the official or employee in charge of the office, department, service, or institution.

(5) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 36. Section 7-6-2314, MCA, is amended to read:

"**7-6-2314. Classification of estimates, appropriations, and expenditures — exception.** (1) In the tabulation required by 7-6-2313, the estimates, appropriations, and expenditures must be classified as:

(a) salaries and wages;

(b) maintenance and operation;

(c) capital outlay;

(d) interest and debt redemption;

(e) miscellaneous; and

(f) expenditures proposed to be made from bond issues not yet authorized or from the proceeds of a tax levy or levies that are required to be submitted to and approved at an election to be held later.

(2) (a) Within the general class of salaries and wages, each salary must be set forth separately, together with the title or position of the recipient. An unitemized appropriation may be made to cover the expenses of special deputies or assistants in any office where the services of the special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made, but the proposed rate per day for each class or kind of labor must be set forth.

(b) Expenditures under the general class of maintenance and operation must be classified according to a standard classification to be established by the department of ~~commerce~~ *administration*.

(c) Expenditures for capital outlay must set forth and describe each object of expenditure separately.

(d) Under the general class of interest and debt redemption, proposed expenditures for interest and for redemption of principal must be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements must be set forth in a similar manner.

(e) Under the general class of miscellaneous, expenditures for all purposes not listed in or that cannot properly be assigned to any of the general classes must be set forth and itemized in detail.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 37. Section 7-6-2322, MCA, is amended to read:

"**7-6-2322. Budget and tax levies to be supplied to department of ~~commerce~~ *administration*.** (1) The county clerk and recorder shall, not later than September 15, forward a full and detailed copy of the final budget, together with the tax levies, to the department of ~~commerce~~ *administration*.

(2) If a county clerk and recorder fails to forward a copy of the budget to the department within that time, that department shall, before October 1, notify the board of county commissioners of the county that a copy of the budget has not been forwarded by the county clerk and recorder. The board ~~must~~ *shall* then

withhold the county clerk and recorder's salary for September until the county clerk and recorder files with the board a receipt from the department showing the receipt of a copy."

Section 38. Section 7-6-4140, MCA, is amended to read:

"**7-6-4140. Role of department of ~~commerce~~ *administration*.** (1) The department of ~~commerce~~ *administration* shall prescribe for all municipalities:

(a) general methods and details of accounting as provided in 2-7-504;

(b) uniform internal and interim reporting systems as provided in 2-7-503;

(c) annual financial report forms as provided in 2-7-503; and

(d) general methods and details of accounting for the annual financial report as provided in 2-7-513.

(2) Municipalities shall file with the department of ~~commerce~~ *administration*:

(a) an annual financial report within 6 months of the fiscal yearend; and

(b) an audit report within 12 months of the end of the audited period.

(3) The audit report must be accepted in lieu of the annual financial report if it contains, at a minimum, the municipality's general purpose financial statements and combining and individual fund and account group statements.

(4) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 39. Section 7-6-4205, MCA, is amended to read:

"**7-6-4205. Budget and levies to be supplied to department of ~~commerce~~ *administration*.** (1) The finance officer shall, not later than October 1, forward a complete copy of the final budget together with tax levies to the department of ~~commerce~~ *administration*.

(2) The finance officer shall use standard forms prescribed by the department of ~~commerce~~ *administration* or shall use an alternative budget format acceptable to the department of ~~commerce~~ *administration*.

(3) This section does not apply to a city or town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 40. Section 7-6-4260, MCA, is amended to read:

"**7-6-4260. Preliminary annual operating budget.** (1) The finance officer shall prepare, under the direction of the chief executive, a preliminary annual operating budget for the municipality. The finance officer shall use standard forms prescribed by the department of ~~commerce~~ *administration* or an alternative budget format acceptable to the department of ~~commerce~~ *administration*.

(2) The preliminary annual operating budget for each fund must include, at a minimum:

(a) a listing of all revenue and other resources for the prior year, current year budget, and proposed budget year. Revenue and other resources must be summarized into the following categories: taxes; special assessment principal; special assessment interest; licenses and permits; intergovernmental revenue;

charges for services, fines, and forfeitures; interest on investments~~,~~; other revenue~~,~~; and operating transfers in.

(b) a listing of all expenditures for the prior year, current year budget, and proposed budget year. All expenditures must be classified under one of the following categories: salaries and wages, operation and maintenance, capital outlay, debt service, or transfers out.

(c) a projection of changes in fund balances or cash balances available for governmental fund types and a projection of changes in cash balances and working capital for proprietary fund types. This projection must be supported by a summary for each fund or group of funds listing the estimated beginning balance, plus estimated revenue, less proposed expenditures, cash reserves, and estimated ending balances.

(d) a detailed list of proposed capital expenditures and a list of proposed major capital projects for the budget year;

(e) financial data on current and future debt obligations;

(f) schedules or summary tables of personnel or position counts for the prior year, current year, and budget year. The budgeted amounts for personnel services must be supported by a listing of positions, salaries, and benefits for all positions of the municipality. The listing of positions, salaries, and benefits is not required to be part of the budget document.

(g) all other estimates that fall under the purview of the budget.

(3) The preliminary annual operating budget for each fund for which the municipality will levy an ad valorem tax must include the amount to be raised by taxation, the taxable value, and the number of mills to be levied.

(4) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 41. Section 15-35-108, MCA, is amended to read:

"**15-35-108. (Temporary) Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) (a) Subject to subsection (7)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, for the biennium ending June 30, 2001, as follows:

(i) $65,000 to the cooperative development center;

(ii) $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) to the department of commerce:

~~(A) $350,000 for business recruitment;~~

~~(B)~~*(A)* $125,000 for a small business development center;

~~(C)~~*(B)* $50,000 for a small business innovative research program;

~~(D)~~*(C)* $425,000 for certified communities;

~~(E)~~*(D)* $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

~~(F)~~*(E)* $300,000 for export trade enhancement; ~~and~~

(iv) $350,000 to the office of economic development for business recruitment and retention; and

~~(iv)~~*(v)* $600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in 7-15-4299. Reimbursement must be made to qualified districts on a proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district. (Terminates June 30, 2001—sec. 10(1), Ch. 10, Sp. L. May 2000.)

15-35-108. (Effective July 1, 2001) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund

money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) (a) Subject to subsections (7)(b) and (7)(c), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) to the department of commerce:

~~(A) $350,000 for business recruitment;~~

~~(B)~~*(A)* $125,000 for a small business development center;

~~(C)~~*(B)* $50,000 for a small business innovative research program;

~~(D)~~*(C)* $425,000 for certified communities;

~~(E)~~*(D)* $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

~~(F)~~*(E)* $300,000 for export trade enhancement; ~~and~~

(iv) $350,000 to the office of economic development for business recruitment and retention; and

~~(iv)~~*(v)* $600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in

7-15-4299. Reimbursement must be made to qualified districts on a proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district.

(c) Beginning July 1, 2001, there is transferred annually from the interest income referred to in subsection (7)(b) ~~$4.85~~ *$4.85* million to the research and commercialization expendable trust fund created in 90-3-1002. (Terminates June 30, 2005—sec. 10(2), Ch. 10, Sp. L. May 2000.)

15-35-108. (Effective July 1, 2005) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) ~~Beginning July 1, 1997, and ending June 30, 1999, the amount of 0.87% must be allocated to an account in the state special revenue fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Beginning July 1, 1999, the~~ *The* amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

Section 42. Section 17-2-304, MCA, is amended to read:

"**17-2-304. Reports required.** (1) The approving authority for a state agency shall annually report in writing to the legislative finance committee by August 1:

(a) each state agency that had a cash balance in a state charge for services fund contrary to the limitation provided in 17-2-302(1) during the previous 12 months;

(b) the facts certified for each state agency by the approving authority pursuant to 17-2-302(2);

(c) each state agency that has complied with the requirements of 17-2-303 and the circumstances of the agency's compliance; and

(d) each state agency that has not complied with 17-2-303 and the circumstances of the agency's noncompliance.

(2) The director of the department of ~~commerce~~ *administration* shall report to the legislature at the time and in the manner required by 5-11-210 a list of each local government entity that had a balance in a local charge for services fund contrary to the limitation provided by 17-2-302(1)~~,~~ *or* that failed to reduce the charge as provided in 17-2-303, or both, during the previous 12 months."

Section 43. Section 17-5-1529, MCA, is amended to read:

"**17-5-1529. Annual audits.** (1) At least once each year, the bank examiners of the department *of administration* shall examine loans and investments of the board. The actual cost of this examination must be paid from the board's funds.

(2) The board's books and records must be audited at least once each fiscal year by or at the direction of the legislative auditor. The actual costs of the audit ~~shall~~ *must* be paid from the board's funds."

Section 44. Section 17-5-1651, MCA, is amended to read:

"**17-5-1651. Limitations on board's power.** Under this part, the board may not:

(1) make loans of money to any person, firm, or corporation other than an eligible government unit or purchase securities issued by any person, firm, or corporation other than an eligible government unit as provided in this part;

(2) emit bills of credit, accept deposits of money for time or demand deposit, engage in any form or manner in the conduct of any private or commercial banking business, or act as a savings bank or savings and loan association;

(3) be or constitute a bank or trust company within the jurisdiction or under the control of the state banking board, the department of ~~commerce~~ *administration*, or the comptroller of the currency of the United States department of the treasury;

(4) be or constitute a bank, banker, or dealer in securities within the meaning of or subject to the provisions of any securities, securities exchange, or securities dealers law of the United States or of this state or of any other state."

Section 45. Section 17-6-321, MCA, is amended to read:

"**17-6-321. Audits.** (1) At least once each year, the bank examiners of the department *of administration* shall examine loans and investments of the board. The actual cost of this examination must be paid from the board's funds.

(2) The board's books and records must be audited once each fiscal year by or at the direction of the legislative auditor. The actual cost of this audit must be paid from the board's funds."

Section 46. Section 18-1-106, MCA, is amended to read:

"**18-1-106. Department of ~~commerce~~ *labor and industry* to determine residency of selected contractors — applications for redetermination — determination as prima facie evidence.** (1) The department of ~~commerce~~ *labor and industry* shall determine whether or not certain contractors are residents of the state of Montana within the meaning of 18-1-102 and 18-1-103. Any public agency charged by law with the responsibility for the execution of any contract subject to the provisions of 18-1-102 may request that a determination of ~~resident/nonresident~~ *resident or nonresident* status be made by the department *of labor and industry*. All requests must specify the name and address of the licensed public contractor for whom a determination of ~~resident/nonresident~~ *resident or nonresident* status is required.

(2) If a determination is made that a public contractor is not a resident but ~~thereafter~~ *the public contractor later* qualifies as a resident, the contractor may apply to the department of ~~commerce~~ *labor and industry* for a redetermination of residency. If, upon redetermination, the public contractor is found to qualify as a resident, the contractor must be furnished a letter by the department *of labor and industry* attesting to resident status.

(3) The determination of the department of ~~commerce~~ *labor and industry* that a public contractor is or is not a resident within the meaning of 18-1-102 and 18-1-103 is prima facie evidence of that fact."

Section 47. Section 19-18-205, MCA, is amended to read:

"**19-18-205. Annual report of secretary and treasurer to association and state auditor.** The secretary and treasurer of the association shall annually prepare a report of its receipts and expenditures for the preceding year in accordance with 2-7-503, showing to whom and for what purposes money has been expended. ~~They~~ *The secretary and treasurer* shall file the report with the association, the department of ~~commerce~~ *administration*, and the state auditor. Money may not be paid to the treasurer of the association until the report is filed."

Section 48. Section 19-18-206, MCA, is amended to read:

"**19-18-206. Authority of department of ~~commerce~~ *administration* — mishandling of funds.** (1) All of the financial books and accounts of the association are subject at all times to examination by the department of ~~commerce~~ *administration*.

(2) When a complaint is made to the department of ~~commerce~~ *administration* that any money paid to the treasurer of the association has been or is being spent for an unauthorized purpose and, upon examination, the money is found to have been spent contrary to the authority given, the department shall ~~so~~ report to the governor, upon whose directions to the state auditor ~~no further~~ warrants may *not* be issued to the association treasurer until the misspent money has been returned."

Section 49. Section 19-18-403, MCA, is amended to read:

"**19-18-403. Investment of fund by board of investments.** (1) Whenever the average yield on investments of public retirement funds under the board of investments exceeds by 1% in any fiscal year the average yield on investments of the fund made pursuant to 19-18-402, the surplus money in the fund ~~shall~~ *must* be remitted to the state treasurer for investment under the direction of the board of investments as is provided in 17-6-204. The ~~department of commerce~~ *board of investments* shall advise the association of the current yield on investments of public retirement funds.

(2) As used in subsection (1), "surplus money" means the excess over the greater of the following:

(a) 1 1/2 times the monthly benefit paid in the preceding month; or

(b) $5,000."

Section 50. Section 20-6-621, MCA, is amended to read:

"**20-6-621. Selection of school sites — approval election.** (1) (a) Except as provided in subsection (1)(b), the trustees of a district may select the sites for school buildings or for other school purposes, but the selection must first be approved by the qualified electors of the district before a contract for the purchase of a site is entered into by the trustees.

(b) The trustees may purchase or otherwise acquire property contiguous to an existing site that is in use for school purposes without a site approval election. The trustees may take an option on a site prior to the site approval election.

(2) The election for the approval of a site must be called under the provisions of 20-20-201 and must be conducted in the manner prescribed by this title for school elections. An elector who may vote at a school site election is qualified to vote under the provisions of 20-20-301. If a majority of those voting at the election approve the site selection, the trustees may purchase the site. A site approval election is not required when the site was specifically identified in an election at which an additional levy or the issuance of bonds was approved for the purchase of the site.

(3) Any site for a school building or other building of the district that is selected or purchased by the trustees must:

(a) be in a place that is convenient, accessible, and suitable;

(b) comply with the minimum size and other requirements prescribed by the department of public health and human services; and

(c) comply with the statewide building regulations, if any, promulgated by the department of ~~commerce~~ *labor and industry*."

Section 51. Section 20-6-622, MCA, is amended to read:

"**20-6-622. Review and approval of school building plans and specifications.** (1) ~~No~~ *A* school building, either publicly or privately owned or operated, in which students are housed or instructed may *not* be built, enlarged, or remodeled until the plans and specifications for ~~such~~ construction have been submitted to and approved by the department of ~~commerce~~ *labor and industry* or a municipality or county with a building code adopted as provided in 50-60-301.

(2) The plans and specifications required in subsection (1) ~~shall~~ *must* show in detail the proposed construction of the building and ~~shall~~ *must* illustrate and indicate conformity with the applicable building code.

(3) As a service to districts, the superintendent of public instruction may review the plans and specifications required in subsection (1) to assist the districts in designing facilities for optimum utilization."

Section 52. Section 20-9-203, MCA, is amended to read:

"**20-9-203. Examination of district accounting records.** The accounting records of all first-, second-, and third-class school districts must be audited in accordance with 2-7-503. The trustees of the district shall file a copy of the completed audit report with the department of ~~commerce~~ *administration*, the superintendent of public instruction, and the county superintendent."

Section 53. Section 20-25-901, MCA, is amended to read:

"**20-25-901. Family education savings program oversight committee — membership — powers and duties.** (1) There is created a family education savings program oversight committee under the authority of the board.

(2) The committee consists of seven members appointed by the governor to staggered 4-year terms. The members must include:

(a) the commissioner of insurance or the commissioner's designee;

(b) ~~the director of the department of commerce or the director's designee;~~

~~(c)~~ the state treasurer or the state treasurer's designee;

~~(d)~~*(c)* the presiding officer of the board or the presiding officer's designee; and

~~(e)~~*(d)* ~~three~~ *four* members of the general public, each of whom possesses knowledge, skill, and experience in accounting, risk management, or investment management or as an actuary.

(3) The committee shall select a presiding officer and a vice presiding officer from among the committee's membership.

(4) A majority of the membership constitutes a quorum for the transaction of business. The committee shall meet at least once a year, with additional meetings called by the presiding officer.

(5) The committee:

(a) shall recommend financial institutions for approval by the board to act as the depositories and managers of family education savings accounts pursuant to 15-62-201; and

(b) may submit proposed policies to the board to assist in the implementation and administration of Title 15, chapter 62.

(6) The committee is allocated to the board for administrative purposes only, as prescribed in 2-15-121.

(7) Members of the committee must be compensated as provided in 2-15-124.

(8) The definitions in 15-62-103 apply to this section."

Section 54. Section 22-3-804, MCA, is amended to read:

"**22-3-804. Board — composition — rights — responsibilities.** (1) There is a burial preservation board. The board is composed of:

(a) one representative of each of the seven reservations, appointed by the governor from a list of up to three nominees provided by each of the respective tribal governments;

(b) one person appointed by the governor from a list of up to three nominees submitted by the Little Shell band of Chippewa Indians;

(c) one person appointed by the governor from a list of up to three nominees submitted by the Montana state historic preservation officer;

(d) one representative of the Montana archaeological association appointed by the governor from a list of up to three nominees submitted by the Montana archaeological association;

(e) one physical anthropologist appointed by the governor;

(f) one representative of the Montana coroners' association appointed by the governor from a list of up to three nominees submitted by the Montana coroners' association; and

(g) one representative of the public, appointed by the governor, who is not associated with tribal governments; state government; the fields of historic preservation, archaeology, or anthropology; or the Montana coroners' association.

(2) Members of the board shall serve staggered 2-year terms. A vacancy on the board must be filled in the same manner as the original appointment and only for the unexpired portion of the term.

(3) The board shall:

(a) provide for the establishment and maintenance of a registry of burial sites located in the state;

(b) designate the appropriate member or members of the board or a representative or representatives of the board to conduct a field review upon notification of the discovery of human skeletal remains, a burial site, or burial materials;

(c) assist interested landowners in the development of agreements with the board for the treatment and disposition, with appropriate dignity, of human skeletal remains and burial material;

(d) mediate, upon application of either party, disputes that may arise between a landowner and known descendants that relate to the treatment and disposition of human skeletal remains and burial material;

(e) assume responsibility for final treatment and disposition of human skeletal remains and burial material if the field review recommendation is not accepted by the board's representatives and the landowner;

(f) establish a nonrefundable application fee, not to exceed $50, for a permit for scientific analysis of human skeletal remains or burial material from burial sites as provided by 22-3-806;

(g) issue permits authorizing scientific analysis;

(h) accept grants or real or in-kind donations to carry out the purposes of this part;

(i) adopt rules necessary to administer and enforce the provisions of this part; and

(j) perform any other duties necessary to implement the provisions of this part.

(4) The board is allocated to the department of ~~commerce~~ *administration* for administrative purposes only as prescribed in 2-15-121.

(5) Members of the board shall serve without pay but are entitled to reimbursement for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503."

Section 55. Section 23-3-301, MCA, is amended to read:

"**23-3-301. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of athletics provided for in 2-15-1882.

(2) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*."

Section 56. Section 23-4-101, MCA, is amended to read:

"**23-4-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of horseracing provided for in 2-15-1881.

(2) "Board of stewards" means a board composed of three stewards who supervise race meets.

(3) "Department" means the department of ~~commerce~~ *livestock* provided for in Title 2, chapter 15, part ~~18~~ *31*.

(4) "Immediate family" means the spouse, parents, children, grandchildren, brothers, or sisters of an official or licensee regulated by this chapter who have a permanent or continuous residence in the household of the official or licensee and all other persons who have a permanent or continuous residence in the household of the official or licensee.

(5) "Minor" means a person under 18 years of age.

(6) "Persons" means individuals, firms, corporations, fair boards, and associations.

(7) (a) "Race meet" means racing of registered horses or mules at which the parimutuel system of wagering is used. The term includes horseraces, mule races, and greyhound races that are simulcast.

(b) The term does not include live greyhound racing.

(8) "Racing" means live racing of registered horses or mules and simulcast racing of horses, mules, and greyhounds.

(9) "Simulcast" means a live broadcast of an actual horserace, mule race, or greyhound race at the time it is run. The term includes races of local or national prominence.

(10) "Simulcast facility" means a facility at which horseraces, mule races, or greyhound races are simulcast and wagering on the outcome is permitted under the parimutuel system.

(11) "Steward" means an official hired by the department and by persons sponsoring a race meet to regulate and control the day-to-day conduct and operation of a sanctioned meet."

Section 57. Section 23-7-201, MCA, is amended to read:

"23-7-201. State lottery commission — allocation — composition — compensation — quorum. (1) There is a state lottery commission.

(2) The commission consists of five members, who shall reside in Montana, appointed by the governor.

(3) At least one commissioner must have 5 years of experience as a law enforcement officer. At least one commissioner must be an attorney admitted to the practice of law in Montana. At least one commissioner must be a certified public accountant licensed in Montana.

(4) After initial appointments, each commissioner ~~shall~~ *must* be appointed to a 4-year term of office, and the terms ~~shall~~ *must* be staggered.

(5) A commissioner may be removed by the governor for good cause. An office that for any reason becomes vacant must be filled within 30 days by the governor, and the commissioner filling the vacancy shall serve for the rest of the unexpired term.

(6) The commission shall elect one of its members as ~~chairman~~ *presiding officer*.

(7) Three or more commissioners constitute a quorum to do business, and action may be taken by a majority of a quorum.

(8) Commissioners are entitled to compensation, to be paid out of the state lottery fund, at the rate of $50 for each day in which they are engaged in the performance of their duties and are entitled to travel, meals, and lodging expenses, to be paid out of the state lottery fund, as provided for in Title 2, chapter 18, part 5.

(9) The commission is allocated to the department of ~~commerce~~ *administration* for administrative purposes only as prescribed in 2-15-121."

Section 58. Section 23-7-210, MCA, is amended to read:

"23-7-210. Director — appointment — compensation — qualifications. (1) The director must be appointed by the governor and shall hold office at the pleasure of the governor.

(2) The director must be qualified by training and experience to direct the state lottery. ~~He~~ *The director* must be a full-time employee and may not engage in any other occupation.

(3) The director's salary is equal to 90% of the salary of the director of the department of ~~commerce~~ *administration*."

Section 59. Section 23-7-301, MCA, is amended to read:

"23-7-301. Ticket or chance sales agents — licenses. (1) Lottery tickets or chances may be sold only by ticket or chance sales agents licensed by the director in accordance with this section.

(2) The commission shall by rule determine the places at which state lottery game tickets or chances may be sold.

(3) (a) Before issuing a license, the director shall consider:

(i) the financial responsibility and security of the applicant and the applicant's business or activity;

(ii) the accessibility of the applicant's place of business or activity to the public; and

(iii) the sufficiency of existing licenses to serve the public convenience and the volume of the expected sales.

(b) A person under 18 years of age may not sell lottery tickets or chances.

(c) A license as an agent to sell lottery tickets or chances may not be issued to any person to engage in business exclusively as a lottery ticket or chance sales agent.

(4) The director may issue temporary licenses upon conditions that the director considers necessary.

(5) License applicants shall pay a $50 fee to cover the cost of investigating and processing the application.

(6) The director may require a bond from any licensed agent in an amount provided in the commission's rules and may purchase a blanket bond covering the activities of licensed agents.

(7) A licensed agent shall display the license or a copy of the license conspicuously in accordance with the commission's rules.

(8) A license is not assignable or transferable.

(9) An employee of a ticket or chance sales agent may not be required to sell lottery game tickets or chances if the sale is against the employee's religious or moral beliefs.

(10) Sales agents are entitled to a commission of no more than 10% of the face value of tickets and chances that they purchase from the lottery and do not return. However, to further the sale of lottery products, the lottery commission may adopt rules providing additional commissions to sales agents based on incremental sales. Commissions may not come from that part of all gross revenue that is net revenue and is paid to the general fund. The commissions are statutorily appropriated, as provided in 17-7-502, to the lottery.

(11) Each sales agent shall keep a complete and up-to-date set of records and accounts fully showing the agent's sales and provide it for inspection upon request of the commission, the director, the department of ~~commerce~~ *administration*, the office of the legislative auditor, or the office of the attorney general.

(12) Sales agents may pay the state lottery only by check, bankdraft, electronic funds transfer, or other recorded, noncash, financial transfer method as determined by the director.

(13) A license may be suspended or revoked for failure to maintain the license qualifications provided in subsection (3) or for violation of any provision of this chapter or a commission rule. Prior to suspension or revocation, the licensee must be given notice and an opportunity for a hearing."

Section 60. Section 25-1-1104, MCA, is amended to read:

"**25-1-1104. Handbook for process servers.** (1) The department of ~~commerce~~ *labor and industry* shall publish a handbook for process servers and levying officers.

(2) Each person who applies to the clerk of the district court of any county for registration as a process server ~~must~~ *shall* demonstrate that ~~he~~ *the person* has passed an examination based on the handbook and administered by the board of private security patrol officers and investigators provided for in 2-15-1891.

(3) The department of ~~commerce~~ *labor and industry* may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination provided for in this section."

Section 61. Section 27-12-206, MCA, is amended to read:

"**27-12-206. Funding.** (1) There is an account in the state special revenue fund. Money from the assessments levied under this section must be deposited in the account.

(2) For each fiscal year, beginning July 1, an annual assessment is levied on all chiropractic physicians. The amount of the assessment must be annually set by the director and equally assessed against all chiropractic physicians. A fund surplus at the end of a fiscal year, not required for the administration of this chapter, must be retained in the account and used to finance the administration of this chapter during the next fiscal year, in which event the director shall reduce the next annual assessment to an amount estimated to be necessary for the proper administration of this chapter during that fiscal year.

(3) The annual assessment must be paid on or before the date *that* the chiropractic physician's annual renewal fee under 37-12-307 is due. An unpaid assessment bears a late charge fee of $25. The late charge fee is part of the annual assessment. The director has the same powers and duties in connection with the collection of and failure to pay the annual assessment as the department of ~~commerce~~ *labor and industry* has under 37-12-307 with regard to a chiropractic physician's annual license fee."

Section 62. Section 30-11-515, MCA, is amended to read:

"**30-11-515. Enforcement.** The provisions of this part ~~shall~~ *must* be enforced by the department of ~~commerce~~ *labor and industry* and the county attorney of the county in which the violation occurred."

Section 63. Section 30-11-801, MCA, is amended to read:

"**30-11-801. Definitions.** As used in this part, the following definitions apply:

(1) "Community of interest" means a continuing financial interest that the grantor and grantee have in common.

(2) "Dealer" means a person who is a grantee of a farm implements dealership situated in this state.

(3) "Dealership" means a contract or agreement, expressed or implied, whether oral or written, including a franchise as defined in 61-4-201, by which a person is granted the right to sell or distribute farm implements, in which there is a community of interest in the business of offering, selling, or distributing farm implements.

(4) "Department" means the department of ~~commerce~~ *labor and industry* established in ~~2-15-1801~~ *2-15-1701*.

(5) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer.

(6) "Designated successor" means a person designated in writing by the retiring dealer to succeed ~~him~~ *the retiring dealer* in the dealership or, in the case of an incapacitated dealer, a person appointed by a court as the legal representative of the dealer's property or the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(7) "Farm implement" means any vehicle, machine, or attachment designed or adapted and used exclusively for agricultural operations and only incidentally operated or used on the highways.

(8) (a) "Good cause", when used in 30-11-801 through 30-11-803 and 30-11-811, means:

(i) failure by a dealer to comply substantially with essential and reasonable requirements imposed upon ~~him~~ *the dealer* by the grantor or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers either by the terms of the requirements or in the manner of their enforcement; or

(ii) bad faith by the dealer in carrying out the terms of the dealership.

(b) Good cause, when used in 30-11-804 through 30-11-809, means a showing that succession to a dealership would be detrimental to the public interest or to the representation of the grantor.

(9) "Grantor" means a person who grants a dealership.

(10) "Person" means any individual, partnership, association, corporation, or other entity."

Section 64. Section 30-12-101, MCA, is amended to read:

"30-12-101. Definitions. Unless the context requires otherwise, in parts 1 through 5 of this chapter the following definitions apply:

(1) "Barrel", when used in connection with fermented liquor, means a unit of 31 gallons.

(2) "Commerce", "trade", or "commercial" means a monetary or value exchange between parties for merchandise or services.

(3) "Commodity in package form" means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive~~, however,~~ of any auxiliary shipping container enclosing packages that individually conform to the requirements of parts 1 through 5. An individual item or lot of any commodity not in *a consumer* package form ~~as defined in this section~~ *or nonconsumer package form*, but on which there is marked a selling price based on an established price per unit of weight or of measure, is a commodity in package form.

(4) "Consumer package" or "package of consumer commodity" means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

(5) "Cord", when used in connection with wood intended for fuel purposes, means the amount of wood that is contained in a space of 128 cubic feet when the wood is ranked and well stowed.

(6) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(7) "Intrastate commerce" means any commerce or trade that is begun, carried on, and completed wholly in this state, and the phrase "introduced into intrastate commerce" defines the time and place at which the first sale and delivery of a commodity is made in this state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

(8) "Nonconsumer package" or "package of nonconsumer commodity" means a commodity in package form other than a consumer package and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

(9) "Person" includes individuals, partnerships, corporations, companies, societies, and associations.

(10) "Sell" and "sale" include but are not limited to barter and exchange.

(11) "Ton" means a unit of 2,000 pounds avoirdupois weight.

(12) "Weight", when used in connection with any commodity, means net weight.

(13) *(a)* "Weight", "measure", and "weights and measures" mean all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with those instruments and devices. The terms do not include meters for the measurement of electricity, gas (natural or manufactured), or water when they are operated in a public utility system. ~~None of the~~ *The* provisions of parts 1 through 5 *do not* apply to electricity, gas, or water meters operated in a public utility system or to any appliances or accessories associated with them.

(b) The terms do not include time measuring devices by which products or services are sold."

Section 65. Section 30-12-105, MCA, is amended to read:

"**30-12-105. Use of metric sizes in sale of commodities — department to make rules.** ~~Notwithstanding any other provision, metric~~ *Metric* sizes as defined by the department of ~~commerce~~ *labor and industry* by rule will be permitted~~, provided~~ *if* there is compliance with all labeling requirements of the state ~~of Montana~~."

Section 66. Section 30-14-102, MCA, is amended to read:

"**30-14-102. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of ~~commerce~~ *administration* created in ~~2-15-1801~~ *2-15-1001*.

(2) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate.

(3) "Examination" of documentary material includes the inspection, study, or copying of ~~such~~ *documentary* material and the taking of testimony under oath or acknowledgment in respect to any ~~such~~ documentary material or copy ~~thereof~~ *of documentary material*.

(4) "National advertising" means any advertising run simultaneously in five or more states and over which a local advertiser has no control.

(5) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(6) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever ~~situate~~ *located*, and ~~shall include~~ *includes* any trade or commerce directly or indirectly affecting the people of this state."

Section 67. Section 30-14-202, MCA, is amended to read:

"30-14-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) *(a)* "Article of commerce" includes but is not limited to any commodity, product, service or output of a service trade, or any product of the soil.

(b) ~~A~~ *The term does not include a* product or service of a public utility ~~is not included within the term "article of commerce"~~.

(2) "Business" includes any person, ~~as defined in (7),~~ domestic or foreign, engaged in the production, manufacture, distribution, purchasing, or sale of any article of commerce within the state of Montana.

(3) (a) "Cost", as applied to production, includes the cost of raw materials, labor, and all overhead expenses of the producer.

(b) Cost, as applied to distribution, means either the invoice price of the article or product sold or the cost to the dealer or vendor for replacing the article or product in the quantity last purchased within 90 days prior to the sale of the article or product, whichever is ~~lesser~~ *less*, ~~less~~ *minus* all trade discounts except customary cash discounts plus the cost of doing business by the vendor.

(4) "Cost of doing business" or "overhead expense" includes all costs of doing business incurred in the conduct of a business and includes~~, without being~~ *but is not* limited to~~,~~ the following items of expense:

(a) labor (including salaries of executives and officers);

(b) rent;

(c) interest on borrowed capital;

(d) depreciation;

(e) selling cost;

(f) maintenance of equipment;

(g) delivery costs;

(h) credit losses;

(i) all types of licenses;

(j) taxes;

(k) insurance and advertising.

(5) "Customary cash discount" means any allowance not exceeding 2%, whether a part of a larger discount or not, made to a wholesale or retail vendor when ~~such~~ *the* vendor pays for merchandise within a limited or specified time.

(6) "Department" means the department of ~~commerce~~ *administration* provided for in ~~2-15-1801~~ *2-15-1001*.

(7) "Person" includes any person, partnership, firm, corporation, joint-stock company, or other association engaged in business within this state.

(8) "Vendor" includes not only any person acting as one known generally and legally as a vendor but also any person who performs work upon, renovates, alters, or improves any personal property belonging to another person."

Section 68. Section 30-14-1403, MCA, is amended to read:

"**30-14-1403. Definitions.** As used in this part, the following definitions apply:

(1) "Consumer" means a person who is or may be required to pay for goods or services offered by a seller or telemarketer through telemarketing.

(2) "Department" means the department of ~~commerce~~ *administration* created in ~~2-15-1801~~ *2-15-1001*.

(3) "Goods or services" means any real property, any tangible or intangible personal property, or services of any kind provided or offered to a person.

(4) "Material aspect" means any factor likely to affect a person's choice of or conduct regarding goods or services. The term includes currency values and comparative expressions of value, including but not limited to percentages or multiples.

(5) "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association, or other legal entity.

(6) "Prize" means anything offered, purportedly offered, given, or purportedly given to a person by chance.

(7) "Prize promotion" means a sweepstakes or other game of chance or an oral or written representation, express or implied, that a person has won, has been selected to receive, or is eligible to receive a prize or purported prize.

(8) "Seller" means a person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the consumer in exchange for consideration.

(9) "Solicitation" means a written or oral notification or advertisement that:

(a) is transmitted by or on behalf of a seller or telemarketer by any printed, audio, video, cinematic, telephonic, or electronic means to a consumer; and

(b) in the case of a notification or advertisement other than by telephone, either of the following conditions is met:

(i) the notification or advertisement is followed by a telephone call from a seller or telemarketer; or

(ii) the notification or advertisement induces a response by telephone and, through that response, a seller or telemarketer attempts to make a sale of goods or services.

(10) "Supervised financial organization" means any bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, consumer finance lender, commercial finance lender, or insurer, provided that the organization is subject to supervision by an agency of this or any

other state of the United States or an agency, bureau, or department of government of the United States.

(11) "Telemarketer" means a person, located within or outside of this state, who in connection with telemarketing initiates or receives telephone calls to or from a consumer in this state. The term includes a seller directly engaged in telemarketing on the seller's own behalf or a person engaged in telemarketing at the direction of a seller.

(12) "Telemarketing" means a plan, program, or campaign that is conducted by telephone to induce the purchase of goods or services and that involves more than one telephone call to a consumer."

Section 69. Section 30-16-302, MCA, is amended to read:

"**30-16-302. Board of review.** (1) There is a board of review. The board of review's duty is to provide policy direction to the department of revenue in the establishment and operation of the system. The board of review includes the directors of the departments of agriculture, ~~commerce~~ *labor and industry*, environmental quality, livestock, revenue, justice, and public health and human services~~,~~ *and* the secretary of state~~, the president of the senate or a designee, and the speaker of the house or a designee~~. If an agency that is not a member of the board of review requests inclusion in the streamlined registration and licensing plan as provided in 30-16-303, that agency's director must be appointed to the board of review.

(2) The governor shall appoint a presiding officer from among the members of the board of review.

(3) The board of review shall meet at the call of the presiding officer at least once each calendar quarter to:

(a) establish interagency policy and guidelines for the plan;

(b) review the findings, status, and problems of system operations and recommend courses of action; and

(c) receive reports from industry and agency task forces that the board of review may request to inquire into particular issues.

(4) The board of review may implement a plan for streamlined registration and licensing to include licenses not specified in 30-16-301, as provided in 30-16-303."

Section 70. Section 31-1-202, MCA, is amended to read:

"**31-1-202. Definitions.** (1) Unless the context requires otherwise, in this part the following definitions apply:

(a) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services ~~which~~ *that* are the subject matter of the retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license, and official fees and cash sale prices for services, if any, and for accessories and their installation and for delivering, servicing, repairing, or improving the goods.

(b) "Department" means the department of ~~commerce~~ *administration* provided for in Title 2, chapter 15, part ~~18~~ *10.*

(c) "Finance charge" means the amount, as limited by 31-1-241, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

(d) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal but not including money or things in action. The term includes goods that, at the time of the sale or subsequently, are to be so affixed to realty as to become a part of the realty, whether or not severable from it.

(e) "Holder" means*:*

(i) the retail seller of the goods or services under the retail installment contract or retail charge account agreement or a person who establishes and administers retail charge account agreements with retail buyers;

(ii) the assignee, if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred; or

(iii) any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

(f) "Manufactured structure" means any structure, transportable in one or more sections, designed to be used as a single-family dwelling or commercial building with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.

(g) *(i)* "Motor vehicle" means any new or used automobile, motorcycle, quadricycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway~~,~~*.*

(ii) ~~excepting, however,~~ *The term does not include* any vehicle ~~which~~ *that* runs only on rails or tracks or in the air.

(h) "Official fees" means:

(i) the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction; or

(ii) the premium for insurance in lieu of filing, recording, or otherwise perfecting any title or lien retained or taken by a seller in connection with a retail installment transaction to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(i) "Person" means an individual, partnership, corporation, association, and any other group, however organized.

(j) "Principal balance" means the cash sale price of the goods or services ~~which~~ *that* are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's down payment in money or goods.

(k) "Recreational vehicle" means a vehicular type unit that either has its own motor power or is mounted on or drawn by another vehicle, primarily designed as temporary living quarters for recreational, camping, or travel use.

(l) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

(m) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions ~~which~~ *that* may be made under it from time to time under which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller and under the terms of which a finance charge may be computed in relation to the buyer's average daily balance in the account during the billing cycle or the buyer's balance from time to time.

(n) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state under which a buyer promises to pay in one or more deferred installments the time sale price of goods or services, or both. The term includes a chattel mortgage, *a* conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(o) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of, goods or services by a retail seller to a retail buyer pursuant to a retail charge account agreement or under a retail installment contract.

(p) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.

(q) *(i)* "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, or savings and loan association, if engaged in purchasing retail installment contracts.

(ii) The term does not include a person who makes only isolated purchases of retail installment contracts~~, which purchases~~ *that* are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

(r) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

(s) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits, if a separate identified charge is made for insurance and benefits, and the amounts of the official fees and the finance charge.

(2) *(a)* This part does not apply to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending institutions.

(b) ~~However, this~~ *This* part ~~pertains~~ *applies* to the extension of credit by those banks or other lending institutions under retail installment contracts or credit cards issued by those banks or other lending institutions."

Section 71. Section 31-1-703, MCA, is amended to read:

"**31-1-703. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Check" means a negotiable instrument, as defined in 30-3-104, that is drawn on a bank and is payable on demand at the maturity of a deferred deposit loan.

(2) "Consumer" means a natural person who, singly or jointly with another natural person, enters into a deferred deposit loan.

(3) "Deferred deposit lender" or "licensee" means a person engaged in the business of making deferred deposit loans.

(4) "Deferred deposit loan" means an arrangement, including all representations made by the deferred deposit lender whether express or implied, in which:

(a) a person accepts a check dated on the date the check is written and agrees to hold the check for a period of days prior to deposit or presentment; or

(b) a person accepts a check dated subsequent to the date on which the check is written and agrees to hold the check for deposit or presentment until the date written on the check.

(5) "Department" means the department of ~~commerce~~ *administration.*

(6) "Person" means a natural person, sole proprietorship, firm, partnership, corporation, or other entity."

Section 72. Section 31-3-125, MCA, is amended to read:

"**31-3-125. Fees for disclosures to consumers.** A consumer reporting agency shall make all disclosures pursuant to 31-3-122 and 31-3-124 to the consumer, with appropriate fees to be established by the department of ~~commerce~~ *administration* in accordance with the Montana Administrative Procedure Act."

Section 73. Section 31-3-152, MCA, is amended to read:

"**31-3-152. Rules.** The department of ~~commerce~~ *administration* shall enforce this part and ~~promulgate~~ *adopt* rules necessary to carry out the intent of this part."

Section 74. Section 31-3-203, MCA, is amended to read:

"**31-3-203. Exemptions.** Section 31-3-202 does not apply to:

(1) ~~those~~ situations involving debt adjusting incurred incidentally in the lawful practice of law in this state;

(2) banks and fiduciaries ~~duly~~ authorized ~~and admitted~~ to transact business in this state and performing credit and financial adjusting service in the regular course of their principal business;

(3) title insurers and abstract companies, while doing an escrow business;

(4) judicial officers or others acting under court orders;

(5) nonprofit or charitable corporations or associations engaged in debt adjusting;

(6) ~~those~~ situations involving debt adjusting incurred incidentally in connection with the lawful practice of a certified public accountant;

(7) bona fide trade or mercantile associations in the course of arranging adjustment of debts with business establishments;

(8) employers for their employees;

(9) any person ~~(~~other than a collection agency~~)~~:

(a) who provides a bond in the amount of $10,000 to the department of ~~commerce~~ *administration* under which the person is the obligor and the bond is conditioned that the obligor shall apply all funds received and discharge all obligations for which the obligor has contracted; and

(b) whose maximum fees do not exceed:

(i) a processing and documentation fee of $75; and

(ii) for debt adjusting as defined in 31-3-201, 15% of the total amounts that are owed by the debtor and that are reduced in equal monthly portions over the life of a contract;

(10) any person who, at the request of a debtor, arranges for or makes a loan to the debtor and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan without compensation for the services rendered in adjusting the debts."

Section 75. Section 32-1-109, MCA, is amended to read:

"**32-1-109. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Affiliate" has the meaning given that term in 12 U.S.C. 1841(k).

(2) "Bank holding company" means a bank holding company registered under the federal Bank Holding Company Act of 1956, as amended.

(3) "Board" means the state banking board provided for in 2-15-1803.

(4) "Branch bank" means:

(a) a banking house, other than the main banking house, maintained and operated by a bank doing business in the state and at which deposits are received, checks are paid, or money is lent, but does not include a satellite terminal, as defined in 32-6-103, or the office of an affiliated depository institution acting as an agent; and

(b) in the case of a trust company, any office at which trust services are provided.

(5) "Capital", "capital stock", and "paid-in capital" mean that fund for which certificates of stock are issued to stockholders.

(6) "Consolidate" and "merge" mean the same thing and may be used interchangeably in this chapter.

(7) "Demand deposits" means all deposits, the payment of which can legally be required when demanded.

(8) "Department" means the department of ~~commerce~~ *administration* provided for in Title 2, chapter 15, part ~~18~~ *10*.

(9) "Depository institution" means a bank or savings association organized under the laws of a state or the United States.

(10) "Division" means the division of banking and financial institutions of the department.

(11) "Insured depository institution" means a bank or savings association in which the deposits are insured by the federal deposit insurance corporation.

(12) "Main banking house" means the designated principal place of business of a bank in the state.

(13) "Net earnings" means the excess of the gross earnings of a bank over expenses and losses chargeable against those earnings during any 1 year.

(14) "Principal shareholder" means a person who directly or indirectly owns or controls, individually or through others, more than 10% of any class of voting stock.

(15) "Profit and loss account" or "profit and loss" means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings", and against which all loss and other disbursement items are charged, revealing "net earnings", which are then properly closed to "undivided profits accounts" or "undivided profits", out of which dividends are paid and reserves set aside.

(16) "Savings association" means a savings association or savings bank organized under the laws of the United States or a building and loan association, savings and loan association, or similar entity organized under the laws of a state.

(17) "Shell bank" means a bank organized solely for the purpose of, and that does not conduct any banking business prior to, acquiring control of, merging with, or acquiring all or substantially all of the assets of an existing bank or savings association.

(18) "Subsidiary" means a company 25% or more of whose voting shares or equity interests are owned and controlled by a bank.

(19) "Surplus" means a fund paid in or created under this chapter by a bank from its net earnings or undivided profits that, when set apart and designated as surplus, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as the bank has undivided profits.

(20) "Time deposits" means all deposits, the payment of which cannot legally be required within 7 days.

(21) "Undivided profits" means the credit balance of the profit and loss account of a bank."

Section 76. Section 32-1-201, MCA, is amended to read:

"32-1-201. State banking board — secretary — meetings — per diem. **(1) The state banking board, created in 2-15-1803, shall elect a secretary from its members to serve at the pleasure of the board.**

(2) In performing its functions, the board shall have use of the offices, equipment, and personnel of the department as it requires.

(3) The board shall hold meetings at the office of the department at dates and times set by the department. Special meetings may be called by the presiding officer at any time upon 3 days' notice to the members.

(4) A quorum for all meetings is a majority of the board members, and a majority of the quorum present at any meeting may take action.

(5) A board member may be removed by the governor without cause in any case.

(6) The board members shall receive compensation and travel expenses in the same manner and amount as provided for in 37-1-133 for boards allocated to the department of ~~commerce~~ *administration*. The costs and expenses of the board are legitimate charges of the department."

Section 77. Section 32-1-212, MCA, is amended to read:

"**32-1-212. ~~Director and employees~~ *Employees* not to be interested in banks.** ~~Neither the director of the department of commerce nor any~~ *A* bank examiner may *not* be interested in or a borrower from any state bank, directly or indirectly."

Section 78. Section 32-1-382, MCA, is amended to read:

"**32-1-382. Definitions.** As used in 32-1-381 through 32-1-384, unless the context requires otherwise, the following definitions apply:

(1) "Acquire" means:

(a) the direct or indirect purchase or exchange of stock;

(b) the direct or indirect purchase of assets and liabilities; or

(c) a merger.

(2) "Bank" means a commercial bank, as defined in 32-1-105, or a national banking association as designated by 12 U.S.C. 24.

(3) "Bank holding company" means a bank holding company that is registered under the Bank Holding Company Act of 1956, as amended, regardless of where it is located or has its headquarters.

(4) "Control" means:

(a) ownership of, authority over, or power to vote, directly or indirectly, 25% or more of any class of voting security;

(b) authority in any manner over the election of a majority of directors; or

(c) power to exercise, directly or indirectly, a controlling influence over management and policies.

(5) "Department" means the department of ~~commerce~~ *administration* provided for in ~~2-15-1801~~ *2-15-1001*.

(6) "Financial institution" means a bank or bank holding company.

(7) "Headquarters" means the state in which the activities of a bank holding company or a company controlling the bank holding company are "principally conducted" within the meaning of the Bank Holding Company Act of 1956, as amended.

(8) "Located in this state" means:

(a) in the case of a bank, that the organizational certificate identifies an address in this state as the principal place of conducting its business; and

(b) in the case of a bank holding company, an entity, partnership, or trust organized under the laws of this state."

Section 79. Section 32-1-901, MCA, is amended to read:

"**32-1-901. Definitions.** For purposes of this part, the following definitions shall apply:

(1) "Board member" means a member of the board of directors of the institution.

(2) "Cease and desist order which has become final" and "order which has become final" mean a cease and desist order or an order issued by the director with the consent of the institution or the board member, officer, or other person concerned, with respect to which*:*

(a) ~~no~~ *a* timely petition for review of the action of the director has *not* been filed in a district court as specified in 32-1-908(2)*; or*

(b) ~~with respect to which~~ the action of the court in which a petition for review has been filed is not subject to further review by the courts of the state.

(3) "Director" means the director of the department of ~~commerce~~ *administration*.

(4) "Institution" means a commercial bank, savings bank, trust company, or investment company chartered under Title 32, chapter 1.

(5) "Violation" includes without limitation any action, alone or with others, causing, counseling, aiding, or abetting a violation."

Section 80. Section 32-1-1005, MCA, is amended to read:

"**32-1-1005. Bond.** Before accepting an appointment or acting as a trustee, guardian, or conservator, a foreign trust company shall file a bond with a court of competent jurisdiction in an amount as the court directs, with sufficient sureties, conditioned on the faithful discharge of its duties as trustee, guardian, or conservator. In lieu of the bond, the foreign trust company shall certify, in a manner acceptable to the department of ~~commerce~~ *administration*, that the capital stock of the foreign trust company is fully paid in cash, on deposit with an appropriate bank, and is of a sufficient amount to meet the requirements of 32-1-307 for a trust company organized under the laws of this state. The deposit must be maintained until the foreign trust company ceases to act as trustee, guardian, or conservator under this part. A foreign trust company is not required to file a bond or certify the deposit of its capital with respect to a trust, created other than a trust created by a will, if the trust instrument requests or directs that a bond is not required of the trustee."

Section 81. Section 32-1-1007, MCA, is amended to read:

"**32-1-1007. Solicitation of business.** A foreign trust company may conduct business in Montana only in accordance with rules ~~promulgated~~ *adopted* by the department ~~of commerce~~."

Section 82. Section 32-2-101, MCA, is amended to read:

"**32-2-101. Purpose — definitions.** (1) A corporation operated for the purpose of encouraging home ownership and thrift and making substantially all of its loans on real estate mortgage security ~~shall be~~ *is* known in this chapter as a building and loan association or a savings and loan association and is under the supervision of the department, which shall enforce all laws with respect to it.

(2) The associations have continual succession and ~~shall~~ *must* be organized under the provisions of this chapter.

(3) When used in this chapter, the following definitions apply:

(a) "Building and loan association" includes savings and loan associations organized under this chapter.

(b) "Capital stock" means the aggregate of shares of nonwithdrawable capital issues by a capital stock association.

(c) "Department" means the department of ~~commerce~~ *administration* provided for in Title 2, chapter 15, part ~~18~~ *10*.

(d) *(i)* "Member" means:

~~(i)~~*(A)* a person holding a savings account of a mutual association;

~~(ii)~~*(B)* a person borrowing from or assuming or obligated upon a loan or an interest ~~therein~~ *in a loan* held by the association;

~~(iii)~~*(C)* a person purchasing property securing a loan or interest ~~therein~~ *in the loan* held by ~~such~~ *the* association; or

~~(iv)~~*(D)* any other person obligated to the association.

(ii) A joint, survivorship, or any other multiple owner or borrower relationship constitutes a single membership.

(e) "Mutual association" means a building and loan association formed without authority to issue stock.

(f) "Savings account" means that part of the savings liability of the association ~~which~~ *that* is credited to the account of the holder ~~thereof~~ and includes any form of withdrawable deposit.

(g) "Stock association" means a building and loan association formed with authority to issue stock.

(h) "Stockholder" means the holder of one or more shares of any class of capital stock of a capital stock association organized and operating pursuant to the provisions of this chapter.

~~(4) For the purposes of subsection (3)(d), a joint, survivorship, or any other multiple owner or borrower relationship constitutes a single membership.~~"

Section 83. Section 32-3-104, MCA, is amended to read:

"**32-3-104. Office facilities.** (1) A credit union may change its place of business within this state upon written notice to the department of ~~commerce~~ *administration*.

(2) A credit union may share office space with one or more credit unions and contract with any person or corporation to provide facilities or personnel.

(3) A credit union may maintain, upon prior written notice to the department, additional offices at locations other than its principal place of business if the purpose of maintaining the additional offices is to furnish service to its members.

(4) The department shall approve any additional office unless a compelling reason for disapproval is found by the department. Competition with other financial institutions is not a sufficiently compelling reason for disapproval.

(5) If the department disapproves an additional office, the credit union ~~shall~~ *must* be afforded an opportunity for a hearing according to Title 2, chapter 4, part 6. The purpose of the hearing ~~shall be~~ *is* to determine whether a compelling reason exists for disapproval of the additional office."

Section 84. Section 32-3-201, MCA, is amended to read:

"**32-3-201. Director of ~~the~~ department of ~~commerce~~ *administration*.** (1) The director *of the department of administration* shall administer the laws of this state relating to credit unions. ~~He~~ *The director* may appoint or employ ~~such~~ special assistants, deputies, examiners, or other employees ~~as~~ *that* are necessary for the purpose of administering or enforcing this chapter.

(2) The director may ~~prescribe~~ *adopt* rules for the administration of this chapter and may establish chartering, supervisory, and examination fees. Fees ~~so~~ collected must be deposited in the state special revenue fund for the use of the department in its supervision function.

(3) The director shall~~, from time to time, issue~~ *adopt* rules prescribing the minimum amount of surety bond coverage and casualty, liability, and fire insurance required of credit unions in relation to their assets or to the money and other personal property involved or their exposure to risk."

Section 85. Section 32-3-203, MCA, is amended to read:

"**32-3-203. Examinations.** (1) The department of ~~commerce~~ *administration* shall annually examine or cause to be examined each credit union. Each credit union and all of its officers and agents ~~shall~~ *must* be required to give to representatives of the director of the department full access to all books, papers, securities, records, and other sources of information under their control~~;~~. ~~and for~~ *For* the purpose of the examination the representatives may subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

(2) A report of the examination ~~shall~~ *must* be forwarded to the executive officer of each credit union promptly after completion. The report ~~shall~~ *must* contain comments relative to the management of the affairs of the credit union and also as to the general condition of its assets. Within 60 days after the receipt of the report, the directors and ~~committeemen~~ *committee members* shall meet to consider matters contained in the report.

(3) In lieu of making an annual examination of a credit union, the director may accept an audit report of the condition of the credit union made by an auditor approved by the director. The cost of the audit ~~shall~~ *must* be borne by the credit union."

Section 86. Section 32-3-205, MCA, is amended to read:

"32-3-205. Suspension. (1) If it appears that any credit union is bankrupt or insolvent or that it has willfully violated this chapter or is operating in an unsafe or unsound manner, the director of the department of ~~commerce~~ *administration* shall issue an order temporarily suspending the credit union's operations for not less than 30 or more than 60 days. The board of directors ~~shall~~ *must* be given notice by certified ~~or registered~~ mail of ~~such~~ *the* suspension~~;~~. ~~which~~ *The* notice ~~shall~~ *must* include a list of the reasons for ~~such~~ *the* suspension ~~and/or~~ *and* a list of the specific violations of this chapter.

(2) Upon receipt of ~~such~~ *a* suspension notice, the credit union shall cease all operations, except those authorized by the director. The credit union shall then file with the director a reply to the suspension notice and may request a hearing to present a plan of corrective actions proposed if it desires to continue operations. The board may request that the credit union be declared insolvent and a liquidating agent be appointed.

(3) Upon receipt from the suspended credit union of evidence that the conditions causing the order of suspension have been corrected, the director may revoke the suspension notice and permit the credit union to resume normal operations.

(4) If the director, after issuing *a* notice of suspension and providing an opportunity for a hearing, rejects the credit union's plan to continue operations, ~~he~~ *the director* may issue a notice of involuntary liquidation and appoint a liquidating agent. The credit union may request the appropriate court to stay execution of ~~such~~ *the* action. Involuntary liquidation may not be ordered prior to the conclusion of suspension procedures outlined in this section.

(5) If, within the suspension period, the credit union fails to answer the suspension notice or request a hearing, the director may then revoke the credit union's charter, appoint a liquidating agent, and liquidate the credit union."

Section 87. Section 32-3-301, MCA, is amended to read:

"32-3-301. Organization procedure. (1) Any seven or more residents of this state, of legal age, who have a common bond defined in 32-3-304, may organize a credit union and become charter members ~~thereof~~ *of the credit union* by complying with this section.

(2) The subscribers shall execute in duplicate articles of incorporation, which conform to the applicable Montana corporation law, and agree to the terms ~~thereof;~~ *of the articles.* ~~which~~ *The* articles ~~shall~~ *must* state:

(a) the name, which shall include the words "credit union" and which ~~shall~~ *may* not be the same as that of any other existing credit union in this state, and the location where the proposed credit union is to have its principal place of business;

(b) that the existence of the credit union is perpetual;

(c) the par value of the shares of the credit union, which ~~shall~~ *must* be in $5 multiples of not less than $5 or more than $25;

(d) that the credit union ~~shall~~ *must* be organized under this chapter for the purposes set forth ~~therein~~ *in this chapter*;

(e) the names and addresses of the subscribers to the articles of incorporation and the value of shares subscribed to by each, which ~~shall~~ *may not* be ~~not~~ less than $5; and

(f) that the credit union may exercise ~~such~~ incidental powers ~~as~~ *that* are necessary or requisite to enable it to carry on effectively the business for which it is incorporated and those powers ~~which~~ *that* are inherent in the credit union as a legal entity.

(3) The subscribers shall prepare and adopt bylaws for the general government of the credit union, consistent with this chapter, and execute the ~~same~~ *bylaws* in duplicate.

(4) The subscribers shall select at least five qualified persons who agree to serve on the board of directors and at least three qualified persons who agree to serve on the supervisory committee. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, ~~shall~~ *must* be executed by ~~those who so agree~~ *the parties*. This agreement ~~shall~~ *must* be submitted to the director of the department of ~~commerce~~ *administration*.

(5) The subscribers shall forward the articles of incorporation and the bylaws to the director of the department of ~~commerce~~ *administration*. The director may issue a certificate of approval if the articles and the bylaws are in conformity with this chapter and ~~he~~ *the director* is satisfied that the proposed field of operation is favorable to the success of ~~such~~ *the* credit union and that the standing of the proposed organizers ~~is such as to give~~ *gives* assurance that its affairs will be properly administered. ~~He~~ *The director* shall return *to the applicants or their representatives* a copy of the bylaws and the articles ~~to the applicants or their representatives~~, which ~~shall~~ *must* be preserved in the permanent files of the credit union. The application ~~shall~~ *must* be acted upon within 30 days. The articles of incorporation ~~shall then~~ *must* be filed with the secretary of state who, upon payment of the filing fees ~~therefor~~, shall issue a certificate of incorporation.

(6) The subscribers for a credit union charter ~~shall~~ *may* not transact any business until formal approval of the charter has been received."

Section 88. Section 32-3-302, MCA, is amended to read:

"**32-3-302. Form of articles and bylaws.** In order to simplify the organization of credit unions, the director of the department of ~~commerce~~ *administration* shall cause to be prepared a form of articles of incorporation and a form of bylaws, consistent with this chapter, which may be used by credit union incorporators for their guidance. ~~Such~~ *The* articles of incorporation and bylaws ~~shall~~ *must* be available without charge to persons desiring to organize a credit union."

Section 89. Section 32-3-303, MCA, is amended to read:

"**32-3-303. Amendments.** (1) The articles of incorporation or the bylaws may be amended as provided in the bylaws. Amendments to the articles of incorporation or bylaws ~~shall~~ *must* be submitted to the director of the department of ~~commerce~~ *administration* who shall approve or disapprove the amendments within 60 days.

(2) Amendments ~~shall~~ become effective upon:

(a) approval in writing by the director, for which ~~no~~ *a* fee may *not* be charged; and

(b) in the case of articles of incorporation, filing with the secretary of state."

Section 90. Section 32-3-307, MCA, is amended to read:

"**32-3-307. Limited-income persons.** Existing credit unions may include within their field of membership limited-income persons, as defined by the director of the department of ~~commerce~~ *administration*, for whom credit union services are otherwise unavailable."

Section 91. Section 32-3-321, MCA, is amended to read:

"**32-3-321. Liquidation.** (1) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section and the applicable Montana corporation laws.

(2) The board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily and directing that the question of liquidation be submitted to the members.

(3) Within 10 days after the board of directors decides to submit the question of liquidation to the members, the president shall notify the director of the department of ~~commerce thereof~~ *administration* in writing, setting forth the reasons for the proposed action. Within 10 days after the members act on the question of liquidation, the president shall notify the director in writing as to whether or not the members approved the proposed liquidation.

(4) As soon as the board of directors decides to submit the question of liquidation to the members, payment on shares, withdrawal of shares, making any transfer of shares to loans and interest, making investments of any kind, and granting loans ~~shall~~ *must* be suspended pending action by members on the proposal to liquidate. On approval by the members of ~~such~~ *the* proposal, all ~~such~~ business transactions ~~shall~~ *must* be permanently discontinued. Necessary expenses of operation ~~shall, however,~~ *must* continue to be paid on authorization of the board of directors or liquidating agent during the period of liquidation.

(5) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds majority of the members present at a regular or special meeting of the members is required. If authorization for liquidation is to be obtained at a meeting of the members, notice in writing ~~shall~~ *must* be given to each member, by first-class mail, at least 10 days prior to ~~such~~ *the* meeting.

(6) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing ~~such~~ debts and obligations until its affairs are fully adjusted.

(7) The board of directors or the liquidating agent shall use the assets of the credit union to pay:

(a) expenses incidental to liquidating, including any surety bond that may be required;

(b) any liability due nonmembers; and

(c) special purpose thrift accounts as provided in this chapter. ~~Assets then remaining shall~~ *Remaining assets must* be distributed to the members proportionately to the shares held by each member as of the date dissolution was ~~voted~~ *approved.*

(8) As soon as the board of directors or the liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, ~~he~~ *the board or the agent*

shall execute a certificate of dissolution on a form prescribed by the department. ~~and file the same with the department~~ *The form,* together with all pertinent books and records of the liquidating credit union~~, whereupon such~~ *must be filed with the department. Upon filing, the* credit union ~~shall be~~ *is* dissolved."

Section 92. Section 32-3-322, MCA, is amended to read:

"**32-3-322. Merger.** (1) Any credit union may, with the approval of the director of the department of ~~commerce~~ *administration* and compliance with the applicable Montana corporation law, merge with another credit union under the existing charter of the other credit union, pursuant to any plan agreed upon by the majority of each board of directors of each credit union joining in the merger and approved by the affirmative vote of a majority of the members of the merging credit union present at a meeting of its members ~~duly~~ called for ~~such~~ *that* purpose.

(2) After agreement by the directors and approval by the members of the merging credit union, the president and secretary of the credit union shall execute a certificate of merger, which ~~shall~~ *must* set forth all of the following:

(a) the time and place of the meeting of the board of directors at which the plan was agreed upon;

(b) the vote in favor of the adoption of the plan;

(c) a copy of the resolution or other action by which the plan was agreed upon;

(d) the time and place of the meeting of the members at which the plan agreed upon was approved; and

(e) the vote by which the plan was approved by the members.

(3) ~~Such~~ *The* certificate and a copy of the plan of merger agreed upon ~~shall~~ *must* be forwarded to the director, certified by ~~him~~ *the director*, and returned to both credit unions within 30 days.

(4) Upon return of the certificate from the director, all property rights and members' interest of the merged credit union ~~shall~~ vest in the surviving credit union without deed, endorsement, or other instrument of transfer, and all debts, obligations, and liabilities of the merged credit union ~~shall be deemed~~ *are considered* to have been assumed by the surviving credit union under whose charter the merger was effected. The rights and privileges of the members of the merged credit union ~~shall~~ remain intact.

(5) This section ~~shall~~ *must* be construed, whenever possible, to permit a credit union chartered under any other law to merge with one chartered under this chapter or to permit one chartered under this chapter to merge with one chartered under any other law."

Section 93. Section 32-3-323, MCA, is amended to read:

"**32-3-323. Conversion of charter.** (1) A credit union chartered under the laws of this state may be converted to a credit union chartered under the laws of any other state or under the laws of the United States, subject to regulations issued by the director of the department of ~~commerce~~ *administration*.

(2) A credit union chartered under the laws of the United States or of any other state may convert to a credit union chartered under the laws of this state. To effect ~~such~~ a conversion, a credit union ~~must~~ *shall* comply with all the requirements of the jurisdiction under which it was originally chartered and the

requirements of the director of the department of ~~commerce~~ *administration* and file proof of ~~such~~ compliance with ~~said~~ *the* director."

Section 94. Section 32-3-404, MCA, is amended to read:

"**32-3-404. Record of board and committee members.** Within 15 days after election or appointment, a record of the names and addresses of the members of the board, committees, and all officers of the credit union ~~shall~~ *must* be filed with the department of ~~commerce~~ *administration* on forms provided by the department."

Section 95. Section 32-3-611, MCA, is amended to read:

"**32-3-611. Share insurance.** (1) Each credit union shall maintain insurance on its share accounts under the provisions of Title II of the Federal Credit Union Act or through a legally constituted insurance plan approved by the commissioner of insurance and the director of the department *of administration*.

(2) ~~No~~ *A* credit union may *not* begin operation or transact any business until proof that it has obtained insurance under the provisions of Title II of the Federal Credit Union Act or under an approved insurance plan has been furnished to the director of the department of ~~commerce~~ *administration*.

(3) A credit union operating in violation of this section is subject to an order of suspension as provided for in 32-3-205.

(4) The director of the department of ~~commerce~~ *administration* shall make available reports of condition and examination reports to the administrator of the national credit union administration or any official of an insurance plan and may accept any report of examination made on behalf of such administrators or officials. The director may appoint the administrator of the national credit union administration or any official of an insurance plan as liquidating agent of an insured credit union."

Section 96. Section 32-3-703, MCA, is amended to read:

"**32-3-703. Use of regular reserve.** The regular reserve ~~shall belong~~ *belongs* to the credit union and ~~shall~~ *must* be used to meet losses including, with prior approval of the director of the department of ~~commerce~~ *administration*, losses from the sale of investments or securities. The regular reserve may not be used to meet losses resulting from an excess of expenses over income and may not be distributed except on liquidation of the credit union or in accordance with a plan approved by the director of the department of ~~commerce~~ *administration*."

Section 97. Section 32-3-705, MCA, is amended to read:

"**32-3-705. Special reserves.** In addition to ~~such~~ *the* regular reserve, special reserves to protect the interest of members ~~shall~~ *must* be established:

(1) when required by regulation; or

(2) when found by the board of directors of the credit union or by the director of the department of ~~commerce~~ *administration*~~, in any special case,~~ to be necessary ~~for that purpose~~."

Section 98. Section 32-4-201, MCA, is amended to read:

"**32-4-201. Incorporators — general powers — capital stock — articles of incorporation.** Nine or more persons, a majority of whom ~~shall~~ *must* be residents of this state, who desire to create a development corporation under the provisions of this chapter for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges ~~hereinafter~~ provided *in this part* may be incorporated in the following manner:

(1) The persons shall, by articles of incorporation filed in the manner prescribed in Title 35,~~-under their hands and seals,~~ set forth:

(a) the name of the corporation, which ~~shall~~ *must* include the words "Development Corporation of Montana";

(b) the location of the principal office of the corporation, but the corporation may have offices in other places within the state as ~~may be~~ fixed by the board of directors;

(c) the purposes for which the corporation is founded, which ~~shall~~ *must* include the following:

(i) to elect, appoint, and employ officers, agents, and employees;

(ii) to make contracts and incur liabilities for any of the purposes of the corporation, provided that the corporation may not incur any secondary liability by way of guaranty or endorsement of obligations of any person, firm, corporation, joint-stock company, association, or trust or in any other manner;

(iii) to borrow money from members, nonmember persons, firms, or corporations and state, federal, county, or municipal agencies or authorities for any of the purposes of the corporation;

(iv) to issue for the purposes of the corporation its bonds, debentures, convertible debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and to secure the indebtedness by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature or any part or interest in its property, franchises, rights, and privilege, without securing stockholder or member approval~~;~~. ~~provided that~~ *However,* a loan to the corporation may not be secured in any manner unless all outstanding loans to the corporation are secured equally and ratably in proportion to the unpaid balance of the loans and in the same manner~~;~~.

~~(iv)~~*(v)* to make loans to any person, firm, corporation, joint-stock company, association, or trust and establish and regulate the terms and conditions with respect to any loans and the charges for interest and service connected with the loans~~;~~. ~~provided, however~~ *However*, ~~that~~ the corporation may not approve any application for a loan unless the person applying for the loan shows that ~~he~~ *the person* has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution~~;~~.

~~(v)~~*(vi)* to participate with any ~~duly~~ authorized private lending agency or city, county, state, or federal governmental lending agencies in the making of loans;

~~(vi)~~*(vii)* to purchase, receive, hold, lease, or otherwise acquire, except by condemnation, and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with rights and privileges ~~as~~ *that* may be incidental and appurtenant to the property and the use of the property, including but not restricted to any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations;

~~(vii)~~*(viii)* to acquire the goodwill, business, rights, real and personal property, and other assets or any part or interest in the assets of any persons, firms, corporations, joint-stock companies, associations, or trusts and to assume.

undertake, or pay the obligations, debts, and liabilities of any person, firm, corporation, joint-stock company, association, or trust;

~~(viii)~~*(ix)* to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments or for the purpose of disposing of real estate to others for the construction of industrial plants or other business establishments;

~~(ix)~~*(x)* to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments;

~~(x)~~*(xi)* to acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in or indebtedness of any person, firm, corporation, joint-stock company, association, or trust and while the owner or holder of interest for indebtedness *to* exercise all the rights, powers, and privileges of ownership, including the right to vote;

~~(xi)~~*(xii)* to mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in subsections ~~(1)(c)(vi)~~ *(1)(c)(vii)* through ~~(1)(c)(x)~~ *(1)(c)(xi)* ~~of this section~~, as security for the payment of any part of the purchase price of the property, right, or thing of value;

~~(xii)~~*(xiii)* to cooperate with and avail itself of the facilities of the ~~state planning and economic development divisions of the~~ department of commerce and any similar governmental ~~agencies~~ *agency* and to cooperate with, assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of the communities or of this state or of any part of the state;

~~(xiii)~~*(xiv)* to accept gifts, donations, bequests, devises, or grants from any person, corporation, association, or governmental agency or authority, whether state, federal, county, or municipal;

~~(xiv)~~*(xv)* to do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter;

(d) the amount of total authorized capital stock and the number of shares in which it is divided, the par value of each share, the amount of capital stock with which it will commence business and, if there is more than one class of stock, a description of the different classes, and the names and post-office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription ~~shall~~ *must* be the amount of capital with which the corporation will commence business.

(2) The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation or creating, defining, limiting, and regulating its powers. The articles of incorporation ~~shall~~ *must* be in accordance with the provisions of Title 35, so far as *they are* consistent with this chapter."

Section 99. Section 32-4-306, MCA, is amended to read:

"**32-4-306. Control — supervision — reports.** The corporation is subject to the examination of the department of ~~commerce~~ *administration* and shall make reports of its condition not less than annually to ~~that~~ *the* department~~;~~*.* *The department* ~~which in turn~~ shall make copies of the reports available to the commissioner of insurance and to the governor. The corporation shall also file an annual statement required by Title 35."

Section 100. Section 32-5-102, MCA, is amended to read:

"**32-5-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal, family, or household purposes, including loans for personal, family, or household purposes that are secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate.

(b) Consumer loans do not include loan transactions that are governed by 12 U.S.C. 1735f-7a, but a consumer loan business may engage in transactions that are governed by 12 U.S.C. 1735f-7a.

(2) "Consumer loan business" means the business of making consumer loans as a licensee under this chapter.

(3) "Department" means the department of ~~commerce~~ *administration* provided for in Title 2, chapter 15, part ~~18~~ *10*.

(4) "License" means one or both of the licenses provided for by this chapter.

(5) "Licensee" means the person holding a license.

(6) "Person" means individuals, partnerships, associations, corporations, and all legal entities in the loaning business."

Section 101. Section 32-6-103, MCA, is amended to read:

"**32-6-103. Definitions.** As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Customer", in relation to a financial institution, means a holder of a demand or time account or a membership share in the institution or a person who is a borrower or a mortgagor; in relation to a merchant, it means a purchaser of goods or services.

(2) "Department" means the department of ~~commerce~~ *administration*.

(3) *(a)* "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes but is not limited to point-of-sale transfers, automated teller machine transfers, direct deposits or withdrawals of funds, and transfers initiated by telephone. It also includes a transfer resulting from a debit card transaction, including a transaction that does not involve an electronic terminal at the time of the transaction.

(b) The term does not include payments made by check, draft, or similar paper instrument at an electronic terminal.

(4) "Electronic terminal" means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic funds transfer. The term includes but is not limited to point-of-sale terminals, automated teller machines, and cash dispensing machines.

(5) "Financial institution" means a bank chartered under chapter 1 of this title, a bank chartered under the National Banking Acts in Title 12 of the United

States Code, a building and loan association chartered under chapter 2 of this title, a savings and loan association chartered under the Home Owners' Loan Act in Title 12 of the United States Code, a credit union chartered under chapter 3 of this title, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code. For purposes of this chapter only, a consumer loan company licensed under chapter 5 is considered a financial institution.

(6) "Merchant" means a natural person, corporation, partnership, or association engaged in buying and selling goods or services, except that a financial institution is not a merchant.

(7) "Person" means an individual, partnership, corporation, association, or any other business organization.

(8) "Premises" means those locations where, by applicable law, financial institutions are authorized to maintain a principal place of business and other offices for the conduct of their respective businesses. The term includes a detached drive-in or walk-up facility approved under 32-1-372.

(9) (a) "Satellite terminal" means any machine or device that is located off the premises of a financial institution and that a financial institution or its customers may use to carry out electronic funds transfers.

(b) Satellite terminal includes:

(i) an automated teller machine, which means a satellite terminal to make electronic funds transfers, located off the premises of financial institutions, operated by customers of financial institutions without assistance, and activated by a unique identification device and personal identification number;

(ii) a point-of-sale terminal, which means a satellite terminal located on the premises of a merchant, operated by a customer, a merchant, or the merchant's employees solely to debit or credit a customer's deposit or share account in a financial institution and solely to credit or debit the merchant's account commensurately for transactions in goods or services. A point-of-sale terminal need not be activated by a unique personal identification device. A merchant has the option, if the necessary computer capability exists at a reasonable cost, of selling goods or services by point-of-sale terminals with the electronic funds transfer taking effect at the time of the transaction or at a stated time after the transaction.

(c) The definition of satellite terminal does not include and nothing in this chapter may be construed to apply to:

(i) an automated teller machine located on the premises of a financial institution;

(ii) an automated clearinghouse or any equivalent system designed to transfer funds between financial institutions; or

(iii) a point-of-sale terminal that is used by a merchant in the merchant's business only and does not provide access to a financial institution.

(10) "Unique identification device" means a magnetic encoded plastic card or equivalent device that contains either a number or a dollar balance, or both, that is unique to a customer and that is issued by a financial institution, merchant, or other person."

Section 102. Section 32-7-101, MCA, is amended to read:

"**32-7-101. Title and purpose.** (1) This part ~~shall~~ *must* be known and may be cited as the "Regulation of Escrow Businesses Act".

(2) It is the intent of the legislature that the escrow industry be supervised and regulated by the ~~financial division of the~~ department of ~~commerce~~ *administration* in order to protect the citizens of the state and to provide that the business practices of the escrow industry are fair and orderly among the members of the escrow industry, with due regard to the ultimate consumers in this important area of property protection."

Section 103. Section 32-7-102, MCA, is amended to read:

"**32-7-102. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of ~~commerce~~ *administration* as provided for in Title 2, chapter 15, part ~~18~~ *10.*

(2) "Director" means the director of the department of ~~commerce~~ *administration.*

(3) "Escrow" means any transaction in which one person, for the purpose of effecting the sale, transfer, encumbrance, or lease of real or personal property to another person or for the purpose of making payments under any encumbrance of the property, delivers any written instrument, money, evidence, title to real or personal property, or other thing of value to a third person to be held by that third person until the happening of a specified event or the performance of a prescribed condition, when the instrument, money, evidence, title, or thing of value is to be delivered by the third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, or bailor or to any ~~of his~~ agents or employees pursuant to the written escrow instructions.

(4) "Escrow business" means a commercial activity characterized by the regular and continuous carrying on of escrow transactions.

(5) "Licensee" means a person holding a valid license under this part as an escrow business.

(6) "Person" means an individual, cooperative, association, company, firm, partnership, corporation, or other legal entity."

Section 104. Section 32-8-103, MCA, is amended to read:

"**32-8-103. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Bank holding company" means a company registered under the federal Bank Holding Company Act of 1956, as amended.

(2) "Board" means the state banking board provided for in 2-15-1803.

(3) "Capital" means currency that is convertible to U.S. dollars or personal property, including tangible personal property.

(4) "Cash" means currency, cashier's checks, money orders, and other monetary instruments as defined in the Bank Secrecy Act (Public Law 91-508).

(5) "Charter" means a certificate issued by the state banking board through the commissioner to a corporation verifying that the corporation is authorized to conduct business in Montana as a foreign capital depository.

(6) "Commissioner" means the commissioner of banking and financial institutions provided for in 32-1-211.

(7) "Controlling person" means a person who holds 5% or more of the equity in a depository or who is otherwise determined by the board to exercise controlling authority over decisions affecting the management and operation of the depository.

(8) "Customer" means a person who is using or has used the services of a foreign capital depository or for whom a foreign capital depository has acted as a fiduciary.

(9) "Department" means the department of ~~commerce~~ *administration* established in ~~2-15-1801~~ *2-15-1001.*

(10) "Foreign bank" means a bank that has its primary office outside the jurisdiction of the United States and is licensed under the laws of a foreign country or a political subdivision of a foreign country.

(11) "Foreign capital depository" or "depository" means a financial institution incorporated in Montana and chartered by the board to conduct business as a foreign capital depository in accordance with parts 1 through 5 of this chapter.

(12) "Money laundering" is the process through which the existence, illegal source, true ownership, or unlawful application of illicitly derived funds is concealed or disguised to make the funds appear legitimate, thereby helping to evade detection, prosecution, seizure, or taxation.

(13) "Nonresident alien" means a person who is not a citizen or a resident of the United States.

(14) "Person" means an individual, partnership, corporation, limited liability company, association, trust, or other legal entity.

(15) "Supervisory agency" means any of the following:

(a) the attorney general and the department of justice, established by 2-15-2001, for the purpose of the enforcement of all criminal laws of the state;

(b) the department, for the purposes of the administration and enforcement of the state laws relating to the examination and supervision of a foreign capital depository;

(c) the commissioner, for the purposes of the administration and enforcement of the state laws relating to the chartering and supervision of a foreign capital depository;

(d) the board, for the purposes of chartering a foreign capital depository;

(e) the federal reserve system, when the chartered depository is a subsidiary of a financial institution domiciled outside the jurisdiction of the United States, for the purposes of examining a foreign capital depository;

(f) the legislative audit division, established by 5-13-301, for the purposes of the administration of state laws relating to the audit of state agencies and the collection and disbursement of public funds;

(g) the department of revenue, established by 2-15-1301, for the purposes of the administration and enforcement of laws relating to the collection of taxes or fees from a foreign capital depository;

(h) the insurance department, established by 2-15-1902, and the commissioner of insurance, established by 2-15-1903, for the purpose of the administration and enforcement of state laws relating to the regulation of an insurer of accounts in a foreign capital depository.

(16) "Tangible personal property" includes platinum, palladium, gold, or silver bullion or coins, precious stones, jewelry, works of art, furnishings, and other objects of value that are not legal tender."

Section 105. Section 33-22-705, MCA, is amended to read:

"33-22-705. Inpatient and outpatient benefits. (1) "Inpatient benefits" are benefits payable for charges made by a hospital or freestanding inpatient facility for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient and, with respect to major medical policies or contracts, also includes those benefits payable for charges made by a physician for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient. Care and treatment of alcoholism or drug addiction in a freestanding inpatient facility must be in a chemical dependency treatment center that is approved by the department of public health and human services under 53-24-208. Inpatient benefits include payment for medically monitored and medically managed intensive inpatient services and clinically managed high-intensity residential services.

(2) "Outpatient benefits" are benefits payable for:

(a) reasonable charges made by a hospital for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as an inpatient;

(b) reasonable charges for services rendered or prescribed by a physician for the necessary care and treatment for mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as an inpatient;

(c) reasonable charges made by a mental health or chemical dependency treatment center for the necessary care and treatment of a covered person provided in the treatment center. The chemical dependency treatment center must be approved by the department of public health and human services under 53-24-208.

(d) reasonable charges for services rendered by a licensed psychiatrist, psychologist, licensed professional counselor, licensed social worker, or chemical dependency counselor certified by the department of ~~commerce~~ *labor and industry* under Title 37, chapter 35."

Section 106. Section 37-1-101, MCA, is amended to read:

"37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department of ~~commerce~~ *labor and industry* may:

(1) provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, taking applications for licenses, issuing and denying licenses granted by the boards, renewing licenses, disciplining licensees, registering, taking minutes of board meetings and hearings, and filing;

(2) standardize and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for the meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) administer and grade examinations required by each board or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

(6) assess the costs of the department to the boards on an equitable basis as determined by the department;

(7) adopt rules setting expiration, renewal, and termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's licensing board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(e)."

Section 107. Section 37-1-121, MCA, is amended to read:

"**37-1-121. Duties of ~~director~~ *commissioner*.** In addition to the powers and duties under 2-15-112 and 2-15-121, the ~~director of commerce~~ *commissioner of labor and industry* shall:

(1) at the request of a party, appoint an impartial ~~hearing~~ *hearings* examiner to conduct hearings before each board within the department whenever any board holds a contested case hearing. The ~~hearing~~ *hearings* examiner shall conduct hearings in a proper and legal manner.

(2) hire all personnel to perform the administrative, legal, and clerical functions of the department for the boards. Boards within the department do not have authority to hire personnel.

(3) approve all contracts and expenditures by boards within the department. A board within the department may not enter into a contract or expend funds without the approval of the ~~director~~ *commissioner*."

Section 108. Section 37-1-130, MCA, is amended to read:

"**37-1-130. Definition.** As used in this part, "board" means each board in this title that regulates a profession or occupation and that is allocated to the department of ~~commerce~~ *labor and industry*."

Section 109. Section 37-1-137, MCA, is amended to read:

"**37-1-137. Grounds for disciplinary action as grounds for license denial — conditions to new licenses.** (1) Unless otherwise provided by law, grounds for disciplinary action by a board allocated to the department of ~~commerce~~ *labor and industry* against a holder of an occupational or professional license may be, under appropriate circumstances, grounds for either issuance of a probationary license for a period not to exceed 1 year or denial of a license to an applicant.

(2) The denial of a license or the issuance of a probationary license under subsection (1) must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act."

Section 110. Section 37-1-302, MCA, is amended to read:

"**37-1-302. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of ~~commerce~~ *labor and industry.*

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the board;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term, such as permit, certificate, recognition, or registration, used for the permission.

(7) "Profession" or "occupation" means a profession or occupation regulated by a board."

Section 111. Section 37-1-401, MCA, is amended to read:

"**37-1-401. Uniform regulation for licensing programs without boards — definitions.** As used in this part, the following definitions apply:

(1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(2) "Department" means the department of ~~commerce~~ *labor and industry* provided for in ~~2-15-1801~~ *2-15-1701.*

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by Title 50, chapter 39, 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of Title 50, chapter 39, 74, or 76."

Section 112. Section 37-3-102, MCA, is amended to read:

"**37-3-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) ~~An "approved~~ *"Approved* internship" ~~is~~ *means* an internship training program of at least 1 year in a hospital ~~which~~ *that* is either approved for intern training by the American osteopathic association or conforms to the minimum standards for intern training established by the council on medical education of the American medical association or successors. However, the board ~~shall have the authority~~ *may*, upon investigation, ~~to~~ approve any other internship.

(2) ~~An "approved~~ *"Approved* medical school" ~~is~~ *means* a school ~~which~~ *that* either is accredited by the American osteopathic association or conforms to the minimum education standards established by the council on medical education of the American medical association or successors for medical schools or is equivalent in the sound discretion of the board. The board may, on investigation of the education standards and facilities, approve any medical school, including foreign medical schools.

(3) ~~An "approved~~ *"Approved* residency" ~~is~~ *means* a residency training program in a hospital conforming to the minimum standards for residency training established by the council on medical education of the American medical association or successors or approved for residency training by the American osteopathic association. However, the board ~~shall have the authority~~ *may* upon investigation ~~to~~ approve any other residency.

(4) "Board" means the Montana state board of medical examiners provided for in 2-15-1841.

(5) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(6) "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities. If a person who does not possess a license to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, ~~he~~ *the person* is practicing medicine in violation of this chapter."

Section 113. Section 37-4-101, MCA, is amended to read:

"**37-4-101. Definitions — practice of dentistry.** (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of dentistry provided for in 2-15-1842.

(b) "Conscious sedation" means a minimally depressed level of consciousness in which the patient breathes normally without assistance, retains protective reflexes, and responds to physical stimulation or verbal command in a manner appropriate to the patient's cognitive level. Conscious sedation is not a form of general anesthesia, and brief interludes of unconsciousness during conscious sedation do not bring conscious sedation within the scope of general anesthesia.

(c) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(d) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body and a greater or lesser degree of muscular relaxation. The drugs producing this state can be administered by inhalation, intravenously, intramuscularly, or via the gastrointestinal tract. General anesthesia is divided into:

(i) full general anesthesia, which means a level of consciousness in which the patient is without intact protective reflexes, is unable to maintain an airway, and is incapable of rational response to query or command; and

(ii) light general anesthesia, which means a level of consciousness in which the patient breathes normally without assistance and retains protective reflexes throughout most of the procedure.

(e) *(i)* "General anesthetic" means any recognized anesthetic agent, sedative, hypnotic, tranquilizer, or narcotic used in sufficient prescribed dosages for the purpose of inducing general anesthesia.

(ii) The term does not include a nitrous ~~oxide/oxygen~~ *oxide and oxygen* mixture or any other anesthetic administered to produce conscious sedation.

(2) Except for the provisions of 37-4-104, a person is ~~"practicing dentistry"~~ *practicing dentistry* under this chapter if the person:

(a) performs, attempts, advertises to perform, causes to be performed by the patient or any other person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind gratuitously or for a salary, fee, money, or other remuneration paid or to be paid, directly or indirectly, to the person, any other person, or any agency;

(b) is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed, unless the person is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist, as provided in 37-4-104;

(c) directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(d) places the appliance or structure in the human mouth or attempts to adjust it;

(e) advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(g) extracts or attempts to extract human teeth or corrects, attempts, or professes to correct malpositions of teeth or of the jaw;

(h) gives or professes to give interpretations or readings of dental roentgenograms;

(i) administers an anesthetic of any nature, subject to the limitations provided in 37-4-511, in connection with a dental operation;

(j) uses the words "dentist", "dental surgeon", or "oral surgeon", the letters "D.D.S."~~,~~ *or* "D.M.D.", or any other words, letters, title, or descriptive matter that in any way represents the person as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(k) states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that the person can perform or will attempt to perform dental operations or render a diagnosis in connection with dental operations; or

(l) engages in any of the practices included in the curricula of recognized dental colleges."

Section 114. Section 37-5-101, MCA, is amended to read:

"**37-5-101. Definitions — practice of osteopathy.** (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of medical examiners provided for in 2-15-1841.

(b) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(2) ~~Every~~ *A* person is ~~"practicing osteopathy"~~ *practicing osteopathy* within the meaning of this chapter ~~who~~ *if the person*:

(a) appends to or uses in connection with ~~his or her~~ *the person's* name the words ~~"doctor of osteopathy, diplomate of osteopathy, osteopath, osteopathist, osteopathic practitioner, osteopathic physician"~~ *"doctor or osteopathy", "diplomate of osteopathy", "osteopath", "osteopathist", "osteopathic practitioner", "osteopathic physician"*, or words of like import or any abbreviation ~~thereof~~ *of the phrases* or the letters "D.O."; or

(b) professes publicly to or ~~who~~, either on ~~his~~ *the person's* own behalf, in ~~his~~ *person's* own name, ~~or~~ in ~~his~~ *the person's* trade name, or in behalf of any other person, corporation, association, partnership (as manager, bookkeeper, practitioner, or agent), treats, cures, alleviates, or relieves any ailment or disease of either mind or body or cures or relieves any fracture or misplacement or abnormal condition or bodily injury or deformity by any treatment or manipulation or method of manipulating a human body or any of its limbs, muscles, or parts by the use of the hands or mechanical appliances in an effort or attempt to relieve any pressure, obstruction, misplacement, or defect in any bone, muscle, ligament, nerve, vessel, organ, or part of the body, after having received or with the intent or expectation of receiving ~~therefor~~, either directly or indirectly, any bonus, gift, or compensation ~~whatsoever;~~. ~~provided, however~~ *However*, ~~that nothing in~~ this section ~~restrains or restricts~~ *does not restrain or restrict* any legally licensed physician or surgeon in the practice of ~~his~~ *the physician's or surgeon's licensed* profession."

Section 115. Section 37-6-101, MCA, is amended to read:

"**37-6-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of medical examiners provided for in 2-15-1841.

(2) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(3) "Podiatrist" means a physician or surgeon of the foot and ankle, licensed to diagnose and treat ailments of the human functional foot and ankle.

(4) "Podiatry" means the diagnosis and treatment of ailments of the human functional foot and ankle as provided in 37-6-102."

Section 116. Section 37-7-101, MCA, is amended to read:

"**37-7-101. Definitions.** Unless the context requires otherwise, in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Board" means the board of pharmacy provided for in 2-15-1843.

(2) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(3) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(4) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(5) (a) "Drug" means:

(i) articles recognized in the official United States Pharmacopoeia/National Formulary or a supplement;

(ii) articles intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in people or other animals;

(iii) articles, other than food, intended to affect the structure or function of the body of an individual or other animal; and

(iv) articles intended for use as a component of an article specified in subsection (5)(a)(i), (5)(a)(ii), or (5)(a)(iii).

(b) Drug does not include devices or their components, parts, or accessories.

(6) "Intern" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons under the supervision of a registered and licensed pharmacist.

(7) "Medicine" means a remedial agent ~~which~~ *that* has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(8) "Person" includes an individual, partnership, corporation, or association.

(9) "Pharmacist" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons and who may affix to the person's name the term "R.Ph.".

(10) "Pharmacy" means an established place registered by the department ~~of commerce~~ in which prescriptions, drugs requiring a prescription, medicines, chemicals, and poisons are compounded, dispensed, vended, or sold.

(11) "Pharmacy technician or auxiliary" means an individual who assists a pharmacist in the practice of pharmacy pursuant to an approved utilization plan.

(12) "Poison" means a substance ~~which~~ *that*, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or ~~which~~ *that* destroys living tissue with which it comes in contact.

(13) "Prescription" means an order given individually for the person for whom prescribed, directly from the prescriber to the furnisher or indirectly to the furnisher, by means of an order signed by the prescriber and bearing the name and address of the prescriber, the prescriber's license classification, the name of the patient, the name and the quantity of the drug or drugs prescribed, the directions for use and the date of its issue. These stipulations apply to both written and telephoned prescriptions.

(14) "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician or auxiliary in the practice of pharmacy to perform tasks that:

(a) do not require the exercise of the pharmacist's independent professional judgment; and

(b) are verified by the pharmacist.

(15) "Wholesale" means a sale for the purpose of resale."

Section 117. Section 37-8-102, MCA, is amended to read:

"37-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202(5)(a).

(2) "Board" means the board of nursing provided for in 2-15-1844.

(3) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(4) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a ~~senior or~~ junior college, *college,* or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

(5) "Practice of nursing" embraces two classes of nursing service and activity, as follows:

(a) "Practice of practical nursing" means the performance for compensation of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. Practical nursing practice uses standardized procedures in the observation and care of the ill, injured, and infirm~~;~~, in the maintenance of health~~;~~, in action to safeguard life and health~~;~~, and in the administration of medications and treatments prescribed by a physician, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

(b) "Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health~~;~~*,* the prevention, casefinding, and management of illness, injury, or infirmity~~;~~*,* and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (5)(b):

(i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals."

Section 118. Section 37-9-101, MCA, is amended to read:

"**37-9-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of nursing home administrators provided for in 2-15-1845.

(2) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(3) "Long-term care facility" means a skilled nursing facility, nursing home, or intermediate care facility as defined for licensing purposes under state law or the rules for long-term care facilities of the department of public health and human services, whether proprietary or nonprofit, including facilities owned or administered by the state or a political subdivision.

(4) "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility, whether the individual has an ownership interest in the facility and whether the individual's functions and duties are shared with one or more other individuals."

Section 119. Section 37-10-101, MCA, is amended to read:

"**37-10-101. Definitions — practice of optometry.** (1) The practice of optometry is the profession constituting the art and science of visual care and includes any one of the following acts:

(a) the optometric examination or optometric diagnosis of all of those physiological or anatomical parts or functions that consummate the process of human vision to ascertain the presence of abnormal conditions or functions that may be optometrically diagnosed, corrected, remedied, or relieved;

(b) the employment of any optometric means for the purpose of detecting any condition of the process of vision that may have any significance in a complete optometric eye and vision examination, including the employment and administration of drugs topically applied for examination purposes, limited to cycloplegics, mydriatics, topical anesthetics, dyes such as fluorescein, and for emergency use only, miotics;

(c) the application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, and any physical, mechanical, or physiological therapy and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies;

(d) the administration, dispensation, and prescription of the oral analgesics codeine, propoxyphene, hydrocodone, and dihydrocodeine, alone or in combination with nonscheduled or nonregulated drugs; and

(e) the administration, dispensation, and prescription of those drugs approved by the board for use in ocular treatment limited to the anterior segment of the eye and adnexa. Glaucoma may be treated.

(2) Subsection (1) does not prohibit an optometrist from removing from the eye or adnexa a foreign body that is not intraocular.

(3) Subsection (1) does not allow an optometrist to perform surgery or laser surgery for any purpose.

(4) Unless the context requires otherwise, in this chapter:

(a) "board" means the board of optometry provided for in 2-15-1846; and

(b) "department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17.*"

Section 120. Section 37-11-101, MCA, is amended to read:

"**37-11-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of physical therapy examiners provided for in 2-15-1858.

(2) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17.*

(3) "Hearing" means the adjudicative proceeding concerning the issuance, denial, suspension, or revocation of a license, after which the appropriate action toward an applicant or licensee is to be determined by the board.

(4) "Physical therapist" or "physiotherapist" means a person who practices physical therapy.

(5) "Physical therapist assistant" or "assistant" means a person who:

(a) is a graduate of an accredited physical therapist assistant curriculum approved by the board;

(b) assists a physical therapist in the practice of physical therapy but who may not make evaluations or design treatment plans; and

(c) is supervised by a licensed physical therapist as described in 37-11-105.

(6) "Physical therapist assistant student" means a person who is enrolled in an accredited physical therapist assistant curriculum and who as part of the clinical and educational training is practicing under the supervision of a licensed physical therapist as described in 37-11-105.

(7) "Physical therapy" means the evaluation, treatment, and instruction of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain, injury, and any bodily or mental conditions by the use of therapeutic exercise, prescribed topical medications, and rehabilitative procedures for the purpose of preventing, correcting, or alleviating a physical or mental disability.

(8) "Physical therapy aide" or "aide" means a person who aids in the practice of physical therapy, whose activities require on-the-job training, and who is supervised by a licensed physical therapist or a licensed physical therapist assistant as described in 37-11-105.

(9) "Physical therapy practitioner", "physical therapy specialist", "physiotherapy practitioner", or "manual therapists" are equivalent terms, and any derivation of the ~~above~~ *phrases* or any letters implying the ~~above~~ *phrases* are equivalent terms. Any reference to any one of the terms in this chapter includes the others but does not include certified corrective therapists or massage therapists.

(10) "Physical therapy student" or "physical therapy intern" means an individual who is enrolled in an accredited physical therapy curriculum, who, as part of the individual's professional, educational, and clinical training, is practicing in a physical therapy setting, and who is supervised by a licensed physical therapist as described in 37-11-105.

(11) "Topical medications" means medications applied locally to the skin and includes only medications listed in 37-11-106(2) for which a prescription is required under state or federal law."

Section 121. Section 37-12-101, MCA, is amended to read:

"37-12-101. Definitions — practice of chiropractic. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of chiropractors provided for in 2-15-1847.

(2) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(3) "Chiropractic" is the system of specific adjustment or manipulation of the articulations and tissues of the body, particularly of the spinal column, for the correction of nerve interference and includes the use of recognized diagnostic and treatment methods as taught in chiropractic colleges but does not include surgery or the prescription or use of drugs."

Section 122. Section 37-14-102, MCA, is amended to read:

"37-14-102. Definitions. In this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Board" means the board of radiologic technologists provided for in 2-15-1848.

(2) "Department" means the department of ~~commerce~~ *labor and industry*.

(3) "License" means an authorization issued by the department to perform x-ray procedures on persons.

(4) "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, denturitry, dental hygiene, podiatry, osteopathy, or chiropractic.

(5) "Limited permit technician" means a person who does not qualify for the issuance of a license under the provisions of this chapter but who has demonstrated, to the satisfaction of the board, the capability of performing specified high-quality x-ray procedures without endangering public health and safety.

(6) "Performance of x-ray procedures" means the involvement or completion of any portion of an x-ray procedure that may have an effect on the patient's accumulated x-ray radiation exposure, including positioning of the patient, technique selection, selection of ancillary equipment, initiation of exposure, and darkroom procedures.

(7) "Permit" means an authorization ~~which~~ *that* may be granted by the board to perform x-ray procedures on persons when the applicant's qualifications do not meet standards required for the issuance of a license.

(8) "Radiologic technologist" means a person, other than a licensed practitioner, who has qualified under the provisions of this chapter for the issuance of a license to perform diagnostic x-ray procedures on persons and who performs the following functions in connection with the diagnostic procedure:

(a) operates x-ray equipment to reveal the internal condition of patients for the diagnosis of fractures, diseases, and other injuries;

(b) prepares and positions patients for x-ray procedures;

(c) selects the proper radiographic technique for visualization of specific internal structures of the human body;

(d) selects the proper ancillary equipment to be ~~utilized~~ *used* in the x-ray procedure to enhance the visualization of the desired structure;

(e) prepares film processing solutions and develops or processes the exposed x-ray film; and

(f) inspects, maintains, and performs minor repairs to x-ray equipment."

Section 123. Section 37-14-322, MCA, is amended to read:

"**37-14-322. Inspections.** Inspections for compliance with the provisions of this chapter may be performed by:

(1) the board of radiologic technologists;

(2) the department of ~~commerce~~ *labor and industry*;

(3) the department of public health and human services."

Section 124. Section 37-15-102, MCA, is amended to read:

"**37-15-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "ASHA" means the American speech-language-hearing association.

(2) "Association" means the Montana speech-language and hearing association.

(3) "Audiologist" means a person who practices audiology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is an audiologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "audiologist", "audiology", "audiometrist", "audiometry", "audiological", "audiometrics", "hearing clinician", "hearing clinic", "hearing therapist", "hearing therapy", "hearing center", "hearing aid audiologist", or any similar title or description of services.

(4) "Audiology aide" means any person meeting the minimum requirements established by the board of speech-language pathologists and audiologists who works directly under the supervision of a licensed audiologist.

(5) "Board" means the board of speech-language pathologists and audiologists provided for in 2-15-1849.

(6) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(7) "Practice of audiology" means rendering or offering to render a service in audiology to individuals or groups of individuals who have or are suspected of having hearing disorders. These services include:

(a) prevention, identification, measurement, testing, evaluation, prediction, consultation, habilitation, rehabilitation, instruction, and research;

(b) participating in hearing conservation and hearing aid and assistive listening device evaluation, prescription, preparation, dispensing, and orientation;

(c) fabricating ear molds;

(d) providing auditory training and speech reading;

(e) conducting tests of vestibular function;

(f) evaluating tinnitus;

(g) planning, directing, conducting, or supervising programs that render or offer to render a service in audiology; and

(h) speech or language screening, limited to a pass/fail determination.

(8) "Practice of speech-language pathology" means rendering or offering to render a service in speech-language pathology to individuals or groups of individuals who have or are suspected of having communication disorders. These services include:

(a) prevention, identification, measurement, testing, evaluation, prediction, consultation, habilitation, and rehabilitation;

(b) determining the need for augmentative communication systems and providing training in the use of these systems;

(c) planning, directing, conducting, or supervising programs that render or offer to render a service in speech-language pathology;

(d) nondiagnostic pure-tone air conduction, tympanometry, and acoustic reflex screening, limited to a pass/fail determination;

(e) aural rehabilitation, which includes services and procedures for facilitating adequate receptive and expressive communication in individuals with hearing impairment;

(f) oral motor rehabilitation, which includes services and procedures for evaluating and facilitating face, lip, and tongue mobility and control;

(g) cognitive retraining, which includes services and procedures for evaluating and facilitating memory, attention, reasoning, processing, judgment, and other related areas in individuals with language impairment resulting from head injury, stroke, or other insult; and

(h) dysphagia therapy, which includes services and procedures for evaluating and facilitating swallowing and feeding in those individuals with swallowing disorders.

(9) "Speech-language pathologist" means a person who practices speech-language pathology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is a speech-language pathologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "speech pathologist", "speech pathology", "speech correctionist", "speech corrections", "speech therapist", "speech therapy", "speech clinician", "speech clinic", "language pathologist", "language pathology", "voice therapist", "voice therapy", "voice pathologist", "voice pathology", "logopedist", "logopedics", "communicologist", "communicology", "aphasiologist", "aphasiology", "phoniatrist", "language therapist", "language clinician", or any similar title or description of services or functions.

(10) "Speech-language pathology aide" means a person meeting the minimum requirements established by the board who works directly under the supervision of a licensed speech-language pathologist."

Section 125. Section 37-16-102, MCA, is amended to read:

"**37-16-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of hearing aid dispensers provided for in 2-15-1850.

(2) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(3) "Hearing aid" means an instrument or device designed for or represented as aiding or improving defective human hearing and parts, attachments, or accessories of the instrument or device.

(4) "License" means a regular or trainee license.

(5) "Practice of selling, dispensing, and fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent selection, adaption, sale, dispensing, or fitting of hearing aids intended to compensate for hearing loss, including eyeglass hearing aids and their fittings, and the making of an impression of the ear and the subsequent selection of a proper ear mold, but does not include batteries, cords, or accessories."

Section 126. Section 37-17-102, MCA, is amended to read:

"**37-17-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by the regional accrediting association for institutions of higher learning, such as the northwest association of schools and colleges.

(2) "Board" means the board of psychologists provided for in 2-15-1851.

(3) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(4) (a) "Practice of psychology" means the observation, description, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of eliminating symptomatic, maladaptive, or undesired behavior and improving interpersonal relations, work and life adjustment, personal effectiveness, and mental health.

(b) The practice of psychology includes but is not limited to psychological testing and evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy; diagnosis and treatment of mental and emotional disorders or disabilities, chemical dependency, substance abuse, and the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation.

(5) A person represents to the public that the person is a "psychologist" when the person uses a title or description of services incorporating the words "psychologist", "psychological", "psychologic", or "psychology" and offers to render or renders psychological services defined in subsection (4) to individuals, groups, corporations, or the public, whether or not the person does so for compensation or fee."

Section 127. Section 37-18-101, MCA, is amended to read:

"**37-18-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of veterinary medicine provided for in 2-15-1852.

(2) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*."

Section 128. Section 37-19-101, MCA, is amended to read:

"**37-19-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Arrangements" includes:

(a) planning the details of funeral service, including time of service, type of service, and, if requested, acquiring the services of clergy;

(b) obtaining the necessary information for filing death certificates and obtaining burial-transit permits;

(c) comparing or discussing prices, including merchandise prices and financial arrangements; and

(d) providing for onsite direction and coordination of participants and onsite direction, coordination, and facilitation at funeral, graveside, or memorial services or rites.

(2) "At-need" arrangements means arrangements made by an authorized person on behalf of a deceased.

(3) "Authorizing agent" means a person legally entitled to order the final disposition, including burial, cremation, entombment, donation to medical science, or other means, of human remains. An authorizing agent is, in order of preference:

(a) a spouse;

(b) a majority of adult children;

(c) a parent;

(d) a close relative of the deceased; or

(e) in the absence of a person or persons listed in subsections (1)(a) through (1)(d), a personal representative, a public administrator, the deceased through a preneed authorization, or others as designated by board rule.

(4) "Board" means the board of funeral service provided for in 2-15-1853.

(5) "Branch establishment" means a separate facility that may or may not have a suitable visitation room or preparation room and that is owned by, a subsidiary of, or otherwise financially connected to or controlled by a licensed mortuary.

(6) "Cemetery" means any land or structure in this state dedicated to and used or intended to be used for interment of cremated remains or human remains. It may be any one or a combination of a burial park for earth interments, a mausoleum for crypt or niche interments, or a columbarium.

(7) "Cemetery company" means an individual, partnership, corporation, or association that:

(a) owns or controls cemetery lands or property and conducts the business of a cemetery; or

(b) applies to the board to own or control cemetery lands or property and conduct the business of a cemetery.

(8) "Closed container" means a container in which cremated remains can be placed and enclosed in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.

(9) "Columbarium" means a room or space in a building or structure used or intended to be used for the interment of cremated remains.

(10) "Cremated remains" means all human remains recovered after the completion of the cremation, including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.

(11) "Cremation" means the technical process, using heat, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation.

(12) "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the cremation of human remains.

(13) "Cremation container" means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet substantially all of the following standards:

(a) be composed of readily combustible materials suitable for cremation;

(b) be able to be closed in order to provide a complete covering for the human remains;

(c) be resistant to leakage and spillage;

(d) be rigid enough for handling with ease; and

(e) be able to provide protection for the health, safety, and integrity of crematory personnel.

(14) "Crematory" means the building or portion of a building that houses the cremation chamber and the holding facility.

(15) "Crematory operator" means the person in charge of the licensed crematory facility.

(16) "Crematory technician" means an employee of a crematory facility who is trained to perform cremations and is licensed by the board.

(17) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person.

(18) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(19) "Embalming" means:

(a) obtaining burial or removal permits or assuming other duties incidental to the practice of embalming;

(b) disinfecting and preserving or attempting to preserve dead human bodies in their entirety or in parts by the use of chemical substances, fluids, or gasses ordinarily intended for that use by introducing the chemical substances, fluids, or gasses into the body by vascular or hypodermic injection or by direct introduction into the organs or cavities; and

(c) restorative art.

(20) "Funeral directing" includes:

(a) supervising funerals;

(b) the making of preneed or at-need contractual arrangements for funerals;

(c) preparing dead bodies for burial, other than by embalming;

(d) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and

(e) representing to the public that one is a funeral director.

(21) "Holding facility" means an area within or adjacent to the crematory facility designated for the retention of human remains prior to cremation that must:

(a) comply with any applicable public health law;

(b) preserve the dignity of the human remains;

(c) recognize the health, safety, and integrity of the crematory operator and crematory personnel; and

(d) be secure from access by anyone other than authorized personnel.

(22) "Human remains" means the body of a deceased person or part of a body or limb that has been removed from a living person, including the body, part of a body, or limb in any stage of decomposition.

(23) "Interment" means any lawful disposition of cremated remains or human remains.

(24) (a) "Intern" means a person who has met the educational and testing requirements for a license to practice mortuary science in Montana, has been licensed by the board as an intern and is engaged in the practice of mortuary science under the supervision of a licensed mortician.

(b) For the purposes of this subsection (24), "supervision" means the extent of oversight that a mortician believes an intern requires based upon the training, experience, judgment, and professional development of the intern.

(25) "Lot" or "grave space" means a space in a cemetery used or intended to be used for interment.

(26) "Mausoleum" means a community-type room or space in a building or structure used or intended to be used for the interment of human remains in crypts or niches.

(27) "Mortician" means a person licensed under this chapter to practice mortuary science.

(28) (a) "Mortuary" means a place of business licensed by the board, located in a building or portion of a building having a specific street address or location, containing but not limited to a suitable room for viewing or visitation and a preparation room, and devoted exclusively to activities that are related to the preparation and arrangements for funerals, transportation, burial, or other disposition of dead human bodies.

(b) The term includes conducting activities from the place of business referred to in subsection (28)(a) that are incidental, convenient, or related to the preparation of funeral or memorial services or rites or the transportation, burial, cremation, or other disposition of dead human bodies in any area where those activities may be conducted.

(29) "Mortuary science" means the profession or practice of funeral directing and embalming.

(30) "Niche" means a space in a columbarium or mausoleum used or intended to be used for the interment of the cremated remains or human remains of one or more deceased persons.

(31) "Perpetual care and maintenance" means continual and proper maintenance of cemetery buildings, grounds, and lots or grave spaces.

(32) "Preneed arrangements" means arrangements made with a licensed funeral director or licensed mortician by a person on the person's own behalf or

by an authorized individual on the person's behalf prior to the death of the person.

(33) "Temporary container" means a receptacle for cremated remains that is usually made of cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.

(34) "Urn" means a receptacle designed to permanently encase the cremated remains."

Section 129. Section 37-22-102, MCA, is amended to read:

"**37-22-102. Definitions.** As used in this chapter:

(1) "Board" means the board of social work examiners and professional counselors established under 2-15-1854.

(2) "Department" means the department of ~~commerce~~ *labor and industry*.

(3) "Licensee" means a person licensed under this chapter.

(4) "Psychotherapy" means the use of psychosocial methods within a professional relationship to assist a person to achieve a better psychosocial adaptation and to modify internal and external conditions that affect individuals, groups, or families in respect to behavior, emotions, and thinking concerning their interpersonal processes.

(5) "Social work" means the professional practice directed toward helping people achieve more adequate, satisfying, and productive social adjustments. The practice of social work involves special knowledge of social resources, human capabilities, and the roles that individual motivation and social influences play in determining behavior and involves the application of social work techniques, including:

(a) counseling and using psychotherapy with individuals, families, or groups;

(b) providing information and referral services;

(c) providing, arranging, or supervising the provision of social services;

(d) explaining and interpreting the psychosocial aspects in the situations of individuals, families, or groups;

(e) helping communities to organize to provide or improve social and health services; and

(f) research or teaching related to social work."

Section 130. Section 37-23-201, MCA, is amended to read:

"**37-23-201. Representation or practice as licensed clinical professional counselor — license required.** (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed clinical professional counselor" or "professional counselor".

(2) Except as provided in subsection (3), a person may not represent that the person is a licensed professional counselor or licensed clinical professional counselor by adding the letters "LPC" or "LCPC" after the person's name or by any other means, engage in the practice of professional counseling, or represent that the person is engaged in the practice of professional counseling, unless licensed under this chapter.

(3) Individuals licensed in accordance with this chapter before October 1, 1993, who use the title "licensed professional counselor" or "LPC" may use the title "licensed clinical professional counselor" or "LCPC".

(4) Subsection (2) does not prohibit:

(a) a qualified member of another profession, such as a physician, lawyer, pastoral counselor, probation officer, court employee, nurse, school counselor, educator, chemical dependency counselor accredited by a federal agency, or chemical dependency counselor certified pursuant to Title 37, chapter 35, from performing duties and services consistent with the person's licensure or certification and the code of ethics of the person's profession or, in the case of a qualified member of another profession who is not licensed or certified or for whom there is no applicable code of ethics, from performing duties and services consistent with the person's training, as long as the person does not represent by title that the person is engaging in the practice of professional counseling;

(b) an activity or service or use of an official title by a person employed by or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution that is a part of the duties of the office or position;

(c) an activity or service of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) an activity or service of a student, intern, or resident in mental health counseling pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activity or service constitutes a part of the supervised course of study;

(e) an activity or service of a person who is not a resident of this state, which activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year, if the person is authorized under the law of the state or country of residence to perform the activity or service. However, the person shall report to the department of ~~commerce~~ *labor and industry* the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(f) pending disposition of the application for a license, the activity or service by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform the activity or service in the state of the person's former residence;

(g) an activity or service of a person who is working to satisfactorily complete the 3,000 hours of counseling practice required for licensure by 37-23-202(1)(b) if the person has already completed a planned graduate program as required by 37-23-202(1)(a) or is working to complete the 3,000 hours of social work experience as required by 37-22-301; or

(h) an activity or service performed by a licensed social worker, licensed psychiatrist, or licensed psychologist when performing the activity or service in a manner consistent with the person's license and the code of ethics of the person's profession."

Section 131. Section 37-24-103, MCA, is amended to read:

"**37-24-103. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of occupational therapy practice established by 2-15-1859.

(2) "Certified occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under this chapter, who works under the general supervision of an occupational therapist in accordance with the provisions of the Essentials for an Approved Educational Program for the Occupational Therapy Assistant, published by the American occupational therapy association and adopted by the board.

(3) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(4) "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.

(5) "Occupational therapy" means the use of purposeful activity and interventions to achieve functional outcomes to maximize the independence and the maintenance of health of an individual who is limited by physical injury or illness, psychosocial dysfunction, mental illness, developmental or learning disability, the aging process, cognitive impairment, or an adverse environmental condition. The practice encompasses assessment, treatment, and consultation. Occupational therapy services may be provided individually, in groups, or through social systems. Occupational therapy interventions include but are not limited to:

(a) teaching daily living skills;

(b) developing perceptual-motor skills and sensory integrative functioning;

(c) developing play skills and leisure capacities and enhancing educational performance skills;

(d) designing, fabricating, or applying splints or selective adaptive equipment and training in the use of upper extremity prosthetics or upper extremity orthotic devices;

(e) providing for the development of emotional, motivational, cognitive, psychosocial, or physical components of performance;

(f) providing assessment and evaluation, including the use of skilled observation or the administration and interpretation of standardized or nonstandardized tests and measurements to identify areas for occupational therapy services;

(g) adapting environments for the disabled, including assistive technology, such as environmental controls, wheelchair modifications, and positioning;

(h) developing feeding and swallowing skills;

(i) enhancing and assessing work performance and work readiness through occupational therapy intervention, including education and instruction, activities to increase and improve general work behavior and skill, job site evaluation, on-the-job training and evaluation, development of work-related activities, and supported employment placement;

(j) providing neuromuscular facilitation and inhibition, including the activation, facilitation, and inhibition of muscle action, both voluntary and involuntary, through the use of appropriate sensory stimulation, including vibration or brushing, to evoke a desired muscular response;

(k) employing physical agent modalities as defined in this section; and

(l) promoting health and wellness.

(6) "Occupational therapy aide" means a person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant and whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

(7) "Physical agent modalities" means those modalities that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity. Physical agent modalities are characterized as adjunctive methods used in conjunction with or in immediate preparation for patient involvement in purposeful activity. Superficial physical agent modalities include hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling devices. Use of superficial physical agent modalities is limited to the shoulder, arm, elbow, forearm, wrist, and hand and is subject to the provisions of 37-24-105. Use of sound and electrical physical agent modality devices is limited to the elbow, forearm, wrist, and hand and is subject to the provisions of 37-24-106.

(8) "Purposeful activity" means an activity in which the individual is an active, voluntary participant and is directed toward a goal that the individual considers meaningful. Purposeful activities are used to evaluate, facilitate, restore, or maintain individuals' abilities to function within their daily occupations."

Section 132. Section 37-26-103, MCA, is amended to read:

"37-26-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Approved naturopathic medical college" means a college and program granting the degree of doctor of naturopathy or naturopathic medicine that:

(a) is accredited by the council on naturopathic medical education or another accrediting agency recognized by the United States department of education;

(b) has the status of candidate for accreditation with the accrediting agency; or

(c) has been approved by the board after an investigation that determines that the college or program meets education standards equivalent to those established by the accrediting agency and complies with the board's rules, which must require as a minimum a 4-year, full-time resident program of academic and clinical study.

(2) "Board" means the alternative health care board established in 2-15-1840.

(3) "Department" means the department of ~~commerce~~ *labor and industry* provided for in ~~2-15-1801~~ *2-15-1701*.

(4) "Homeopathic preparations" means substances and drugs prepared according to the official Homeopathic Pharmacopoeia of the United States, which is the standard homeopathic text recognized by the United States food and drug administration.

(5) (a) "Minor surgery" means the use of:

(i) operative, electrical, or other methods for the surgical repair and care incidental to superficial lacerations and abrasions, superficial lesions, and the removal of foreign bodies located in the superficial tissues; and

(ii) antiseptics and local anesthetics in connection with the methods.

(b) Minor surgery does not include general or spinal anesthetics, major surgery, surgery of the body cavities, or specialized surgeries, such as plastic surgery, surgery involving the eyes, or surgery involving tendons, ligaments, nerves, or blood vessels.

(6) *(a)* "Naturopathic childbirth attendance" means the specialty practice of natural childbirth by naturopathic physicians that includes the use of natural therapeutic substances, ophthalmic antibiotics, oxytocin (pitocin), and minor surgery, as set by board rules.

(b) The term does not include a forceps delivery, general or spinal anesthesia, or a cesarean section.

(7) "Naturopathic medicine", "naturopathic health care", or "naturopathy" means a system of primary health care practiced by naturopathic physicians for the prevention, diagnosis, and treatment of human health conditions, injury, and disease. Its purpose is to promote or restore health by the support and stimulation of the individual's inherent self-healing processes. This is accomplished through education of the patient by a naturopathic physician and through the use of natural therapies and therapeutic substances.

(8) "Naturopathic physical applications" means the therapeutic use by naturopathic physicians of the actions or devices of electrical muscle stimulation, galvanic, diathermy, ultrasound, ultraviolet light, constitutional hydrotherapy, and naturopathic manipulative therapy.

(9) "Naturopathic physician" means a person authorized and licensed to practice naturopathic health care under this chapter.

(10) "Topical drugs" means topical analgesics, anesthetics, antiseptics, scabicides, antifungals, and antibacterials."

Section 133. Section 37-27-205, MCA, is amended to read:

"37-27-205. Provisional license — apprentice license. (1) Upon payment of a $200 fee to the department of ~~commerce~~ *labor and industry*, the board may grant an apprentice direct-entry midwife license to a person who:

(a) is working under the personal supervision of a licensed direct-entry midwife, a certified nurse-midwife, a licensed physician, or a licensed naturopathic physician who is certified for the specialty practice of naturopathic childbirth attendance; and

(b) is seeking licensure as a direct-entry midwife under this chapter.

(2) An apprentice direct-entry midwife license is valid for a period prescribed by department of ~~commerce~~ *labor and industry* rule and must be renewed at an interval established by the department of ~~commerce~~ *labor and industry*, with a limit of four renewals."

Section 134. Section 37-29-102, MCA, is amended to read:

"37-29-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the state board of dentistry provided for in 2-15-1842.

(2) "Denture" means any removable full or partial upper or lower prosthetic dental appliance to be worn in the mouth.

(3) "Denturist" means a person licensed under this chapter to engage in the practice of denturitry.

(4) "Department" means *the* department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17.*

(5) "Immediate denture" means a denture constructed prior to and inserted immediately after extraction of teeth.

(6) "Practice of denturitry" means:

(a) the making, fitting, constructing, altering, reproducing, or repairing of a denture and furnishing or supplying of a denture directly to a person or advising the use of a denture; or

(b) the taking or making or the giving of advice, assistance, or facilities respecting the taking or making of any impression, bite, cast, or design preparatory to or for the purpose of making, constructing, fitting, furnishing, supplying, altering, repairing, or reproducing a denture."

Section 135. Section 37-30-101, MCA, is amended to read:

"37-30-101. Definitions — practice of barbering. (1) Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(a) "Barbershop" means a place where a person carries on, engages in, practices, or causes to be carried on, engaged in, or practiced the business of barbering.

(b) "Board" means the board of barbers provided for in 2-15-1856.

(c) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17.*

(2) Any one or any combination of the following practices, when done upon the human body for tonsorial purposes and not for the treatment of disease or physical or mental ailments and when done for payment, either directly or indirectly, constitutes the practice of barbering:

(a) shaving or trimming the beard;

(b) cutting, styling, coloring, or waving the hair;

(c) straightening of the hair by using chemicals;

(d) giving facial or scalp massage or treatment with oils, creams, lotions, or other preparations, either by hand or mechanical appliances;

(e) singeing or shampooing the hair or applying hair tonic or bleaching or highlighting the hair of male persons;

(f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to scalp, face, hands, or neck.

(3) The practice of cosmetology by a licensed cosmetologist, including cutting the hair of any person, does not constitute the practice of barbering."

Section 136. Section 37-30-412, MCA, is amended to read:

"**37-30-412. Barbershop owner's duty to monitor employees.** An owner or manager of a barbershop licensed under this chapter shall make certain that each barber employed holds a certificate to practice barbering in this state and that employees observe the sanitary rules of the department of public health and human services and the department ~~of commerce~~ and shall report to the department ~~of commerce~~ the name of a person practicing barbering in the barbershop who has a communicable disease."

Section 137. Section 37-31-101, MCA, is amended to read:

"**37-31-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of cosmetologists provided for in 2-15-1857.

(2) "Booth" means any part of a cosmetology, manicuring, or esthetics salon that is rented or leased for the performance of cosmetologist, manicuring, or esthetics services, as specified in 39-51-204(1)(e).

(3) "Cosmetology salon" means the premises, a building, or a part of a building in which a branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or cosmetologist is practiced by a person licensed under the provisions of this chapter.

(4) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(5) "Esthetician" means a person licensed under this chapter to engage in the practice of esthetics.

(6) "Esthetics" means skin care of the face, neck, and hands, including but not limited to hot compresses or the use of approved electrical appliances or chemical compounds formulated for professional application only and the temporary removal of superfluous hair by means of lotions, creams, or mechanical or electrical apparatus or appliances on another person.

(7) "Esthetics salon" means the premises, a building, or a part of a building in which the art of esthetics is practiced.

(8) "Manicuring" includes nail care of the hands and feet and the application and maintenance of artificial nails.

(9) "Manicuring salon" means the premises, a building, or a part of a building in which the art of manicuring is practiced.

(10) *(a)* "Practice and teaching of cosmetology" means work included in the terms "hairdressing", "manicuring", "esthetics", and "beauty culture" and performed in cosmetology salons, in booths, or by itinerant cosmetologists~~, which~~ *when the* work is done for the embellishment, cleanliness, and beautification of the hair, scalp, face, arms, feet, or hands.

(b) The practice and teaching of cosmetology may not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store or place of business holding a license from the state of Montana as a store or place of business."

Section 138. Section 37-32-102, MCA, is amended to read:

"**37-32-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Approved school" means a school ~~which~~ *that* the board has approved as having a course of instruction or education and training in electrology ~~which~~ *that* meets the criteria established by the board.

(2) "Board" means the board of cosmetologists.

(3) "Department" means the department of ~~commerce~~ *labor and industry.*

(4) *(a)* "Electrology" means the study and professional practice of permanently removing superfluous hair by destroying the hair roots by passage of an electric current with an electrified needle. Electrology ~~as defined in this chapter shall include~~ *includes* electrolysis ~~and/or~~ *and* thermolysis.

(b) Electrology does not include the practice of pilethermology, which is the study and professional practice of removing superfluous hair by passage of radio frequency energy with electronic tweezers and similar devices."

Section 139. Section 37-34-103, MCA, is amended to read:

"37-34-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of clinical laboratory science practitioners established in 2-15-1863.

(2) "Clinical laboratory" or "laboratory" means any facility or office in which clinical laboratory tests are performed.

(3) (a) "Clinical laboratory science practitioner" means a health care professional who performs clinical laboratory tests or who is engaged in management, education, consulting, or research in clinical laboratory science.

(b) The term includes laboratory directors, managers, supervisors, clinical laboratory scientists, clinical laboratory specialists, and clinical laboratory technicians who work in a laboratory.

(c) The term does not include:

(i) persons employed by a clinical laboratory to perform supportive functions not related to direct performance of laboratory tests; or

(ii) clinical laboratory trainees.

(4) "Clinical laboratory scientist" means a person who:

(a) performs clinical laboratory tests pursuant to established and approved protocols requiring the exercise of independent judgment and responsibility;

(b) maintains equipment and records;

(c) performs quality assurance activities related to test performance; and

(d) may supervise and teach within a clinical laboratory setting.

(5) "Clinical laboratory specialist" means a person who:

(a) performs laboratory testing in a specialized testing area, such as microbiology, chemistry, immunology, or hematology, according to approved protocols requiring the exercise of independent judgment and responsibility;

(b) maintains equipment and records;

(c) performs quality assurance activities related to test performance; and

(d) may supervise and teach within the specific area of the clinical laboratory.

(6) "Clinical laboratory technician" means a person who performs laboratory tests pursuant to established and approved protocols that require limited exercise of independent judgment and that are performed under the supervision of a clinical laboratory scientist, laboratory supervisor, or laboratory director.

(7) "Clinical laboratory test" or "laboratory test" means:

(a) a microbiological, serological, chemical, hematological, radiobioassay, cytological, biophysical, immunological, cytogenetical, or other examination that is performed on material derived from the human body; or

(b) any other test or procedure conducted by a laboratory or facility that provides information for the assessment of a medical condition or for the diagnosis, prevention, or treatment of a disease.

(8) "Department" means the department of ~~commerce~~ *labor and industry* provided for in ~~2-15-1801~~ *2-15-1701.*

(9) "License" means the clinical laboratory science license issued under this chapter.

(10) "Practice of clinical laboratory science" means the performance and interpretation of microbiological, serological, chemical, hematological, radiobioassay, cytological, biophysical, immunological, cytogenetical, or other examination on material that is derived from the human body and that provides information for the assessment of a medical condition or for the diagnosis, prevention, or treatment of a disease."

Section 140. Section 37-35-102, MCA, is amended to read:

"**37-35-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by a regional accrediting association for institutions of higher learning.

(2) "Certified chemical dependency counselor" means a person who has the knowledge and skill necessary to provide the therapeutic process of chemical dependency counseling and who is certified under the provisions of this chapter.

(3) "Chemical dependency" means the use of any chemical substance, legal or illegal, that creates behavior or health problems, or both, resulting in operational impairment. This term includes alcoholism, drug dependency, or both, that endanger the health, interpersonal relationships, or economic functions of an individual or the public health, safety, or welfare.

(4) "Department" means the department of ~~commerce~~ *labor and industry* provided for in ~~2-15-1801~~ *2-15-1701.*"

Section 141. Section 37-40-101, MCA, is amended to read:

"**37-40-101. Definitions.** Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Board" means the board of sanitarians provided for in 2-15-1861.

(2) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17.*

(3) "Practice the profession of sanitarian" means:

(a) giving advice on or enforcing compliance with state and local regulations applicable to local government jurisdictions and programs concerning food service, food processing, public accommodations, trailer courts, campgrounds, day-care centers, schools, swimming pools and spas, air pollution, solid and hazardous waste collection and disposal, sewage treatment and disposal, vector control, underground storage tanks, drinking water, land subdivision, and milk sanitation;

(b) cooperating with government agencies on matters of public and environmental health, including epidemiological investigations and emergency response to investigations; and

(c) providing educational and training programs in environmental standards and public health.

(4) "Registered sanitarian" means a sanitarian licensed under this chapter.

(5) "Sanitarian", within the meaning and intent of this chapter, shall mean a person who, by reason of ~~his~~ *the person's* special knowledge of the physical, biological, and chemical sciences and the principles and methods of public health acquired by professional education and practical experience through inspectional, educational, ~~and/or~~ *or* enforcement duties, is qualified to practice the profession of sanitarian.

(6) "Sanitarian-in-training" means a person who meets the minimum educational qualifications required for a sanitarian's license and who works under the supervision of a licensed sanitarian. Sanitarians-in-training may, with board approval, work in a public health agency for a period not to exceed 1 year and be considered exempt from the licensing and registration requirements of 37-40-301."

Section 142. Section 37-47-101, MCA, is amended to read:

"37-47-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Accompany" means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.

(2) "Base of operations" means the primary physical location where an outfitter receives mail and telephone calls, conducts regular daily business, and bases livestock, equipment, and staff during the hunting season.

(3) "Board" means the board of outfitters provided for in 2-15-1883.

(4) "Camp" means each individual facility or group of facilities that an outfitter uses to lodge a client for a client's trip or uses to lodge a client in the operating area designated in the outfitter's operations plan, including a motel, campground, bed and breakfast, lodge, tent camp, cabin, camper, trailer, or house.

(5) "Consideration" means something of value given or done in exchange for something of value given or done by another.

(6) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(7) "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

(8) "License year" means that period beginning January 1 and ending December 31 of the same year.

(9) "Net client hunter use" or "NCHU" means the most actual clients served by an outfitter in any NCHU license category in any license year, as documented by verifiable client logs or other documents maintained by the board pursuant to 37-47-201(7).

(10) "Nonresident" means a person other than a resident.

(11) "Outfitter" means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal; facilities; camping equipment; vehicle, watercraft, or other conveyance; or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or professional guide in accompanying that person.

(12) "Participant" means a person using the services offered by a licensed outfitter.

(13) "Professional guide" means a guide who has met experience, training, and testing qualifications for designation as a professional guide, as set by board rule.

(14) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102."

Section 143. Section 37-50-101, MCA, is amended to read:

"**37-50-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of public accountants provided for in 2-15-1866.

(2) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(3) "Practice of public accounting" means performing or offering to perform by a person certified under 37-50-302 or licensed under 37-50-303, for a client or potential client, one or more types of services involving the use of accounting or auditing skills, including:

(a) the issuance of reports or financial statements on which the public may rely;

(b) one or more types of management advisory or consulting services;

(c) the preparation of tax returns; or

(d) furnishing advice on tax matters."

Section 144. Section 37-51-102, MCA, is amended to read:

"**37-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

(3) "Board" means the board of realty regulation provided for in 2-15-1867.

(4) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property; or

(g) advertises or represents to the public that the individual is engaged in any of the activities referred to in subsections (4)(a) through (4)(f).

(5) "Broker associate" means a broker who associates, as an employee or independent contractor, with a broker owner and does not own an interest in a real estate firm.

(6) "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

(7) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

(8) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

(9) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

(10) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

(11) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(12) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a dual agent.

(13) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(14) "In-house buyer agent designate" means a broker associate or salesperson employed by or associated as an independent contractor with a broker owner and designated by the broker owner as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

(15) "In-house seller agent designate" means a broker associate or salesperson employed by or associated as an independent contractor with a broker owner and designated by the broker owner as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

(16) "Listing agreement" means a written agreement between a seller and broker for the sale of real estate, with the terms and conditions set out in the agreement.

(17) "Negotiations" means:

(a) efforts to act as an intermediary between parties to a real estate transaction;

(b) facilitating and participating in contract discussions;

(c) completing forms for offers, counteroffers, addendums, and other writings; and

(d) presenting offers and counteroffers.

(18) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(19) "Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

(20) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(21) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

(22) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(23) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

(24) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

(25) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

(26) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker."

Section 145. Section 37-51-209, MCA, is amended to read:

"**37-51-209. Executive secretary — hiring, duties, and qualifications.** (1) The department ~~of commerce~~ may hire an executive secretary to carry out duties prescribed by the board pursuant to the board's responsibilities and duties established by law.

(2) The person hired to be executive secretary:

(a) ~~shall~~ *must* possess at least a bachelor's degree from an accredited college or university;

(b) may not be an officer or paid employee of a real estate association or group of real estate dealers or brokers;

(c) must be a citizen of the United States of America; and

(d) must be of good moral character."

Section 146. Section 37-54-102, MCA, is amended to read:

"**37-54-102. Definitions.** Terms commonly used in appraisal practice and as used in this chapter must be defined according to the Uniform Standards of Appraisal Practice, as issued by the appraisal foundation. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987, pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3310, et seq. The purposes of the appraisal foundation are to:

(a) establish and improve uniform appraisal standards by defining, issuing, and promoting those standards;

(b) establish appropriate criteria for the licensure and certification of qualified appraisers by defining, issuing, and promoting qualification criteria and disseminate the qualification criteria to states and other governmental entities; and

(c) develop or assist in the development of appropriate examinations for qualified appraisers.

(2) "Board" means the board of real estate appraisers provided for in 2-15-1868.

(3) "Certified real estate appraiser" means a person who develops and communicates real estate appraisals and who has a valid real estate appraisal certificate issued under 37-54-305.

(4) "Department" means the department of ~~commerce~~ *labor and industry* provided for in ~~2-15-1801~~ *2-15-1701*.

(5) "Licensed real estate appraiser" means a person who holds a current valid real estate appraiser license issued under 37-54-201."

Section 147. Section 37-60-101, MCA, is amended to read:

"**37-60-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means any individual employed by a contract security company or a proprietary security organization to respond to security alarm system signals.

(2) "Armed carrier service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

(3) "Armed private investigator" means a private investigator who at any time wears, carries, possesses, or has access to a firearm in the performance of ~~his~~ *the individual's* duties.

(4) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, carrier service guard, or alarm response runner and who at any time wears or carries a firearm in the performance of ~~his~~ *the individual's* duties.

(5) "Armored car service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

(6) "Board" means the board of private security patrol officers and investigators provided for in 2-15-1891.

(7) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

(8) "Contract security company" means any person who installs or maintains a security alarm system, undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

(9) "Department" means the department of ~~commerce~~ *labor and industry* provided for in ~~2-15-1801~~ *2-15-1701.*

(10) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration whatsoever conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes or wrongs committed or threatened against the United States or any state or territory ~~thereof~~ *of the United States.*

(11) "Licensee" means a person licensed under this chapter.

(12) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.

(13) "Person" includes any individual, firm, company, association, organization, partnership, and corporation.

(14) "Private investigator" means a person other than an insurance adjuster who for any consideration whatsoever makes or agrees to make any investigation with reference to:

(a) crimes or wrongs done or threatened against the United States or any state or territory ~~thereof~~ *of the United States*;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, or injury to persons or property; or

(e) securing evidence to be used before any court, board, officer, or investigating committee.

(15) "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal

acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property~~,~~ or the direction of the movements of the public in public areas.

(16) "Proprietary security organization" means any person who employs a private security guard, ~~an~~ alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

(17) "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.

(18) "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is conducted.

(19) *(a)* "Security alarm system" means an assembly of equipment and devices or a single device, such as a solid state unit ~~which~~ *that* plugs directly into a 110-volt AC line, designed to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a protected premises~~,~~ *and* to which signals police, private security guards, or alarm response runners are expected to respond.

(b) ~~Fire~~ *The term does not include* alarm systems and alarm systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a premises ~~are not included within the meaning of this definition~~.

(20) "Street patrol service" means any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares.

(21) "Unarmed private investigator" means a private investigator who does not wear, carry, possess, or have access to a firearm in the performance of ~~his~~ *the individual's* duties.

(22) "Unarmed private security guard" means an individual *who is* employed by a contract security company or a proprietary security organization, whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, *and* who does not wear or carry a firearm in the performance of those duties."

Section 148. Section 37-65-102, MCA, is amended to read:

"**37-65-102. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Architect" means an individual technically and legally qualified to practice architecture and who is authorized under this chapter to practice architecture.

(2) "Board" means the board of architects provided for in 2-15-1871.

(3) "Building" means a structure intended primarily for human occupancy or use.

(4) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(5) "Practice of architecture" means any professional service or creative work requiring the application of advanced knowledge of architectural design, building construction, and standards and involving the constant exercise of discretion and judgment in ~~such~~ *those* activities, in which the safeguarding of life, health, or property is concerned, as consultation, investigation, evaluation, planning, design, or inspection of construction for any public or private building.

(6) "Public building" means any building ~~which~~ *that* the state or any political subdivision ~~thereof~~ *of the state* maintains for the use of the public."

Section 149. Section 37-66-103, MCA, is amended to read:

"37-66-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of landscape architects provided for in 2-15-1872.

(2) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(3) "Landscape architect" means a person who holds a certificate to practice landscape architecture in the state of Montana under the provisions of this chapter.

(4) "Landscape architecture" means performing services in conjunction with all aspects of the planning and design of the exterior environment for human use and environmental protection. It includes regional planning of natural resources, urban and rural planning and design, institutional design, park and recreation planning and design, and the preparation of project master plans. It is the design discipline specifically oriented to addressing the problems involved in adapting man's uses of land to the characteristics of the exterior environment both functionally and aesthetically. It includes the preparation of contract documents, construction specifications, construction cost estimates, and project contracts. It includes contract negotiations, project management, and construction management. The term does not include the design of structures or facilities with separate and self-contained purposes that are ordinarily included in the practice of engineering or architecture and does not include the making of land surveys or final land plats for official approval or recording."

Section 150. Section 37-67-101, MCA, is amended to read:

"37-67-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of professional engineers and professional land surveyors provided for in 2-15-1873.

(2) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(3) "Engineer intern" means a person who complies with the requirements for education, experience, and character and has passed an examination in the fundamental engineering subjects, as provided in this chapter.

(4) "Land surveyor intern" means a person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this chapter.

(5) (a) "Practice of engineering" means:

(i) any service or creative work the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to the services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of water, teaching of advanced engineering subjects, engineering surveys, and the inspection of construction for the purpose of ensuring compliance with drawings and specifications;

(ii) any of the functions described in subsection (5)(a)(i) that embrace the services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of mechanical, electrical, hydraulic, pneumatic, or thermal nature insofar as they involve safeguarding life, health, or property.

(b) The term includes other professional services necessary to the planning, progress, and completion of any engineering services.

(c) The term does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, communication lines, signal circuits, electric powerlines, or pipelines.

(6) "Practice of land surveying" means any service or work, the performance of which requires the application of special knowledge of the principles of mathematics, physical sciences, applied sciences, and:

(a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;

(b) teaching of land surveying subjects;

(c) measurement and allocation of lines, angles, elevations, and coordinate systems;

(d) location of natural and constructed features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, including work for the determination of areas and volumes;

(e) monumenting of property boundaries;

(f) platting and layout of lands and the subdivisions of land, including the alignment and grades of streets and roads in subdivisions; and

(g) preparation and perpetuation of maps, plats, field note records, and property descriptions.

(7) "Professional engineer" means a person who, by reason of special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and engineering experience, is qualified to practice engineering and who has been registered and licensed as a professional engineer by the board.

(8) "Professional land surveyor" means a person who:

(a) has been registered and licensed as a land surveyor by the board;

(b) is a professional specialist in the technique, analysis, and application of measuring land;

(c) is skilled and educated in the principles of mathematically related physical and applied sciences, relevant requirements of law for adequate evidence, and all requisites to the surveying of real property; and

(d) is engaged in the practice of land surveying as defined in this section.

(9) "Responsible charge" means direct charge and control and personal supervision either of engineering work or of land surveying. Only a professional engineer or a professional land surveyor may legally assume responsible charge under this chapter."

Section 151. Section 37-68-102, MCA, is amended to read:

"**37-68-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the state electrical board provided for in 2-15-1874.

(2) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(3) "Electrical contractor" means a person, firm, partnership, corporation, association, or combination of these ~~who~~ *that* undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power. A registered electrical engineer who plans or designs electrical installations is not an electrical contractor.

(4) "Journeyman electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes under the rules governing this work.

(5) "Master electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and supervise the installation and repair of wiring apparatus and equipment for electric light, heat, power, and other purposes under the rules governing this work.

(6) "Residential electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes in residential construction consisting of less than five living units in a single structure under the rules governing this work."

Section 152. Section 37-69-101, MCA, is amended to read:

"**37-69-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of plumbers provided for in 2-15-1875.

(2) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(3) "Drainage system" means all the piping inside the walls of a building that conveys sewage or other liquid wastes outside the building to the building sewer but that does not extend more than 2 feet outside the building way.

(4) "Field of plumbing" means the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts ~~thereof~~ *of plumbing and drainage systems.*

(5) "Journeyman plumber" means a person who is authorized to make installation of all sanitary plumbing and potable water supply piping and appliances connected ~~thereto~~ *to the plumbing and piping.*

(6) "Master plumber" means a person who is authorized by this chapter to plan, estimate, bid, contract for, and supervise plumbing work and who may do the work of a journeyman plumber.

(7) (a) ~~Except as provided in subsection (7)(b), plumbing system~~ *"Plumbing system"* means all potable water supply and distribution pipes, plumbing fixtures and traps, drainage and vent pipes, and building drains, including their respective joints and connections, devices, receptacles, and appurtenances within the property lines of any premises, up to 20 feet beyond the building foundation line, and includes potable water piping, water heaters, and vents for the premises.

(b) ~~As defined in subsection (7)(a), "plumbing system"~~ *The term* does not include water services installed and maintained by water districts or water user associations in which water service is installed by any qualified person appointed or hired by the administrative authority of the water system.

(8) "Public sewer system" means any common sewer carrying liquid wastes from two or more dwellings or any other facility that serves the public.

(9) "Public water supply" means any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves 10 or more families or 25 or more persons on a regular and continuous basis."

Section 153. Section 37-69-310, MCA, is amended to read:

"37-69-310. Citation and fine for failure to display license. (1) A citation for failure to display a plumber's license or proof of licensure issued by an employee of the department ~~of commerce~~ must include:

(a) the time and date on which the citation is issued;

(b) the name, address, mailing address, and signature of the person to whom the citation is issued;

(c) reference to the statutory authority to issue the citation;

(d) the name, title, affiliation, and signature of the person issuing the citation;

(e) information explaining the procedure for the person to follow in order to pay the fine or to demonstrate proof of licensure; and

(f) the amount of the applicable fine.

(2) The applicable civil fines for failing to display a license or proof of licensure are as follows:

(a) $100 for the first offense;

(b) $250 for the second offense: and

(c) $500 for the third and any subsequent offense.

(3) Each day of violation constitutes a separate offense. The person issuing the citation is responsible for determining, by means of an up-to-date list or through telephone or other communication with the board office, whether the citation being issued is for a first, second, or subsequent offense.

(4) The person who issues the citation is authorized to collect the fine, but the person who is issued a citation may pay the fine to the board within 5 business days of the date of issuance. The board may, upon finding that the person has demonstrated acceptable proof of licensure, waive or refund the fine.

(5) A person who refuses to sign and accept a citation commits a misdemeanor, punishable in the same manner as provided in 37-1-318."

Section 154. Section 37-72-101, MCA, is amended to read:

"**37-72-101. Construction blasting restrictions — license required — definitions — exemptions.** (1) A person may not engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the department.

(2) For the purposes of this chapter:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) "department" means the department of ~~commerce~~ *labor and industry*;

(d) "explosive" has the meaning ~~given~~ *provided* in 61-1-506.

(3) ~~Nothing in this~~ *This* chapter ~~applies~~ *does not apply* to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection shall comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under 82-4-231(10)(e)."

Section 155. Section 46-18-111, MCA, is amended to read:

"**46-18-111. Presentence investigation — when required.** (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, or

45-5-627, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the offender in the least restrictive environment, considering the risk the offender presents to the community and offender needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to ~~the professional and occupational licensing bureau of~~ the department of ~~commerce~~ *labor and industry*. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(2) The court shall order a presentence report unless the court makes a finding that a report is unnecessary. Unless the court makes ~~such a~~ *that* finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation officer is presented to and considered by the district court. The district court may, in its discretion, order a presentence investigation for a defendant convicted of a misdemeanor."

Section 156. Section 50-3-103, MCA, is amended to read:

"50-3-103. Rules promulgated by department. (1) Rules promulgated by the department by authority of 50-3-102 must be reasonable and calculated to effect the purposes of this chapter. ~~They~~ *The rules* must include but are not limited to requirements for*:*

(a) design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction;

(b) building restrictions within congested districts;

(c) exit facilities from structures;

(d) fire extinguishers, fire alarm systems, and fire extinguishing systems;

(e) fire emergency drills;

(f) flue and chimney construction;

(g) heating devices;

(h) electrical wiring and equipment;

(i) air conditioning, ventilating, and other duct systems;

(j) refrigeration systems;

(k) flammable liquids;

(l) oil and gas wells;

(m) application of flammable finishes;

(n) explosives, acetylene, liquefied petroleum gas, and similar products;

(o) calcium carbide and acetylene generators;

(p) flammable motion picture film;

(q) combustible fibers;

(r) hazardous chemicals or materials;

(s) rubbish;

(t) open-flame devices;

(u) parking of vehicles;

(v) dust explosions;

(w) lightning protection;

(x) storage of smokeless powder and small arms primers; and

(y) other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state or a municipal building code, the rules are effective upon approval of the department of ~~commerce~~ *labor and industry* and filing with the secretary of state.

(3) Federal or other nationally recognized standards for fire protection may be adopted in whole or in part by reference.

(4) Rules must be adopted as prescribed in the Montana Administrative Procedure Act.

(5) Rules promulgated by the department may not prevent the installation of an aboveground storage tank in a community, city, or town with a population of 1,500 or less if the tank is installed in conformance with all other applicable laws and regulations.

(6) Rules promulgated by the department may not require diked areas or heat-actuated or other shutoff devices for storage tanks containing class I or class II liquids, as defined in the uniform fire code, intended only for private use on farms and ranches.

(7) A person violating any rule made under the provisions of this part is guilty of a misdemeanor."

Section 157. Section 50-6-202, MCA, is amended to read:

"**50-6-202. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means the *Montana state* board of medical examiners~~, department of commerce~~ *provided for in 2-15-1841.*

(2) "Emergency medical technician" means a person who has been specially trained in emergency care in a training program approved by the ~~state~~ board ~~of medical examiners~~ and certified by the board as having demonstrated a level of competence suitable to treat victims of injury or other emergent condition."

Section 158. Section 50-32-101, MCA, is amended to read:

"**50-32-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or other means, to the body of a patient or research subject by:

(a) a practitioner or by the practitioner's authorized agent; or

(b) the patient or research subject at the direction and in the presence of the practitioner.

(2) *(a)* "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser.

(b) The term does not include a common or contract carrier, public warehouse operator, or employee of the carrier or warehouse operator.

(3) "Board" means the board of pharmacy provided for in 2-15-1843.

(4) "Bureau" means the drug enforcement administration, United States department of justice, or its successor agency.

(5) "Counterfeit substance" means a dangerous drug that or the container or labeling of a dangerous drug without authorization that bears the trademark, trade name, or other identifying mark, imprint, number, or device or a likeness of an identifying mark, imprint, number, or device of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(6) "Dangerous drug" means a drug, substance, or immediate precursor in Schedules I through V set forth in part 2.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(8) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(9) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(10) "Dispenser" means a practitioner who dispenses.

(11) "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

(12) "Distributor" means a person who distributes.

(13) (a) "Drug" means:

(i) a substance recognized as a drug in the official United States Pharmacopoeia/National Formulary or any supplement to it;

(ii) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(iii) a substance, other than food, intended to affect the structure or a function of the body of humans or animals; and

(iv) a substance intended for use as a component of an article specified in subsection (13)(a)(i), (13)(a)(ii), or (13)(a)(iii).

(b) Drug does not include a device or its components, parts, or accessories.

(14) "Hashish", as distinguished from marijuana, means the mechanically processed or extracted plant material that contains tetrahydrocannabinol (THC) and is composed of resin from the cannabis plant.

(15) "Immediate precursor" means a substance that the board finds and by rule designates as being the principal compound commonly used or produced primarily for use and that is an immediate chemical intermediary used or likely to

be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

(16) (a) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a dangerous drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes the packaging or repackaging of the drug or labeling or relabeling of its container.

(b) Manufacture does not include the preparation or compounding of a dangerous drug by an individual for personal use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(i) by a practitioner as an incident to the administering or dispensing of a dangerous drug in the course of a professional practice; or

(ii) by a practitioner or the practitioner's authorized agent under the practitioner's supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

(17) "Marijuana (marihuana)" means all plant material from the genus cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(18) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate and a salt, compound, derivative, or preparation of opium or opiate;

(b) a salt, compound, isomer, derivative, or preparation of a salt, compound, isomer, or derivative that is chemically equivalent or identical with any of the drugs referred to in subsection (18)(a), but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw; or

(d) coca leaves and a salt, compound, derivative, or preparation of coca leaves and a salt, compound, isomer, derivative, or preparation of a salt, compound, isomer, or derivative that is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine.

(19) "Opiate" means a drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term does not include, unless specifically designated as a dangerous drug under 50-32-202, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term does include its racemic and levorotatory forms.

(20) "Opium poppy" means the plant of the species papaver somniferum L., except its seeds.

(21) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(22) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(23) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state;

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state; and

(c) a physician licensed to practice medicine or a dentist licensed to practice dentistry in another state.

(24) "Prescription" has the meaning that it has in 37-7-101.

(25) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this chapter.

(26) "State", when applied to a part of the United States, includes a state, district, commonwealth, territory, insular possession of the United States, and any area subject to the legal authority of the United States of America.

(27) "Ultimate user" means a person who lawfully possesses a dangerous drug for personal use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household."

Section 159. Section 50-37-104, MCA, is amended to read:

"50-37-104. Lawful sales or uses of fireworks — "no smoking" sign — wholesaler's permit. (1) Subject to subsection (2), it is lawful for an individual, firm, partnership, corporation, or association to possess for sale, sell or offer for sale at retail, or use within the state the permissible fireworks enumerated in 50-37-105. At any place where permissible fireworks are sold or displayed, a sign reading "NO SMOKING" must be posted in letters at least 4 inches in height where customers are most likely to read it.

(2) Before a fireworks wholesaler may lawfully possess for sale, offer for sale, or sell within the state the permissible fireworks enumerated in 50-37-105, the wholesaler ~~must~~ *shall* obtain a fireworks wholesaler permit from the department of ~~commerce~~ *labor and industry*.

(3) A person making application for a fireworks wholesaler permit shall:

(a) pay an application fee to the department of ~~commerce~~ *labor and industry*, which must be set by the department of ~~commerce~~ *labor and industry* commensurate with costs; and

(b) furnish proof under oath, on a form provided by the department, that ~~he~~ *person*:

(i) is at least 18 years of age;

(ii) is of good moral character; and

(iii) has not been convicted of a crime involving the use, possession, or sale of fireworks.

(4) The department of ~~commerce~~ *labor and industry* shall adopt rules implementing this section."

Section 160. Section 50-39-101, MCA, is amended to read:

"**50-39-101. License and endorsements required.** (1) A person or entity shall obtain a license from the department of ~~commerce~~ *labor and industry* before engaging in the business of servicing fire extinguishers or before engaging in the business of selling, servicing, or installing fire alarm systems, special agent fire suppression systems, or fire extinguishing systems. Each individual, except an apprentice, employed by the licensee to perform services under the license shall obtain from the department an endorsement to sell, service, or install:

(a) fire alarm systems;

(b) special agent fire suppression systems; or

(c) fire extinguishing systems.

(2) The license and endorsement or endorsements must be prominently displayed at the business premises, and copies must be carried by the person conducting each installation or servicing and must be shown to anyone ~~requesting~~ *who requests* to see them.

(3) It is a misdemeanor to knowingly or purposely service a fire extinguisher or sell, service, or install a fire alarm system, special agent fire suppression system, or fire extinguishing system without the required license and endorsement.

(4) ~~Nothing in this~~ *This* chapter may *not* be construed to prohibit a licensed electrician, practicing within the scope of practice of electricians, as provided in Title 37, chapter 68, from installing components of fire protection equipment if the installation is inspected and approved by an individual endorsed to sell, service, or install fire protection equipment."

Section 161. Section 50-39-102, MCA, is amended to read:

"**50-39-102. Application for license and endorsements.** (1) An application for a license and any endorsements must be made on a form prescribed by the department of ~~commerce~~ *labor and industry*.

(2) The department shall issue a license and endorsement to an applicant who:

(a) submits satisfactory proof that the applicant is properly equipped and staffed to provide the sales or services to be licensed and endorsed; and

(b) submits satisfactory proof that the applicant is insured to engage in the business covered by the license and endorsement or endorsements.

(3) The department shall:

(a) issue an endorsement to an applicant who scores a passing grade on an examination devised or approved by the department;

(b) issue an endorsement to an applicant who has been issued a letter of certification, specific to the endorsement being sought, from any national testing agency approved by the department; and

(c) renew the endorsement at the time intervals prescribed by the department and upon payment of the endorsement fee and submission of satisfactory proof that the endorsee has completed continuing education, training, or testing required by the department."

Section 162. Section 50-39-103, MCA, is amended to read:

"**50-39-103. Inspections, examinations, and hearings authorized.** When requested by the department of ~~commerce~~ *labor and industry*, the department of justice shall conduct inspections of the applicant's business facilities and shall report to the department of ~~commerce~~ *labor and industry* the results of its inspection. The department of ~~commerce~~ *labor and industry* may consider the inspection report and conduct examinations or hearings to determine an applicant's qualifications."

Section 163. Section 50-39-106, MCA, is amended to read:

"**50-39-106. Deposit of fees.** The fees collected under 50-39-105 must be deposited in an account in the state special revenue fund to the credit of the department of ~~commerce~~ *labor and industry* and *must be* appropriated to the department of ~~commerce~~ *labor and industry* and the department of justice to administer this part."

Section 164. Section 50-39-107, MCA, is amended to read:

"**50-39-107. Rulemaking authority.** The department of ~~commerce~~ *labor and industry* may adopt rules to implement this part."

Section 165. Section 50-39-108, MCA, is amended to read:

"**50-39-108. Definitions.** As used in this chapter, the following definitions apply:

(1) "Apprentice" means a person who is working in a training capacity to service or install fire alarm systems, special agent fire suppression systems, or fire extinguishing systems and who is studying in accordance with a program approved by the department of ~~commerce~~ *labor and industry*.

(2) "Endorsement" means a document, issued by the department of ~~commerce~~ *labor and industry* to an individual who has met qualifications, that authorizes the individual to sell, service, and install fire alarm systems, special agent fire suppression systems, or fire extinguishing systems.

(3) "Entity" means any business, partnership, sole proprietorship, organization, association, corporation, firm, governmental organization, fire agency, or any other business association.

(4) (a) "Fire alarm system" means a combination of approved compatible devices with the necessary electrical interconnection and energy to produce an alarm signaling the event of fire or system activation.

(b) The term does not include single station smoke or heat detectors.

(5) "Fire extinguisher" means a portable device containing an extinguishing agent that can be expelled under pressure for the purpose of suppressing or extinguishing a fire.

(6) "Fire extinguishing system" means a fire sprinkler system designed in accordance with nationally recognized standards that consists of an assembly of piping or conduits that conveys water, foam, or air with or without other agents to dispersal openings or devices to extinguish, control, or contain fire and to provide

protection from exposure to fire or the products of combustion. ~~Included are~~ *The term includes* underground and overhead piping, ponds, tanks, pumps, extra or special hazard applications, and other related components or devices necessary for water supplies.

(7) "Inspection" means the periodic examination of premises, equipment, or procedures or of a licensed or endorsed person or entity to determine whether the person's or entity's business or profession is being conducted in a manner consistent with the public health, safety, and welfare. The term includes the inquiry, analysis, audit, or other pursuit of information, with respect to a written complaint or other information before the department of commerce, that is carried out for the purpose of assisting the department of commerce in determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) whether a license should be granted or denied; or

(c) whether the department of commerce should seek an injunction against unlicensed practice.

(8) (a) "Install" means the technical work that may be performed only by an endorsed individual or an apprentice in the assembly of a fire alarm system, special agent fire suppression system, or fire extinguishing system.

(b) The term does not include the delivery of supplies or the offsite cutting or threading of pipe.

(c) The term does include the following tasks:

(i) inspection of jobsites to determine the presence of obstructions and to ascertain that holes will not cause structural weaknesses;

(ii) determination of the course or plan of installation;

(iii) any jobsite bending of pipe or electrical conduit as part of the installation;

(iv) jobsite assembly and installation of metal or nonmetal pipe fittings, including but not limited to those made of brass, copper, lead, glass, and plastic;

(v) jobsite assembly and installation of wiring systems;

(vi) joining of piping by any means, including pipes joined by threaded, caulked, wiped, soldered, brazed, fused, or cemented joints;

(vii) securing of pipe, wire, or electrical conduit to the structure by any means, including but not limited to clamps, brackets, hangers, and welds; and

(viii) testing the installed system for electrical or mechanical malfunctions.

(9) "License" means the document issued by the department of ~~commerce~~ *labor and industry* that authorizes a person or entity to engage in the business of servicing fire extinguishers or to engage in the business of selling, servicing, or installing fire alarm systems, special agent fire suppression systems, or fire extinguishing systems.

(10) "Sell", "sale", and associated words mean offering or contracting to transfer, lease, or rent any merchandise, equipment, or service at retail to the public or any member of the public for an agreed sum of money or other consideration.

(11) (a) "Service", when referring to portable fire extinguishers and fire extinguisher cylinders, means maintenance and includes breakdown for replacement of parts or for agent, repair, recharging, or hydrostatic testing.

(b) When referring to alarm systems, fire extinguishing systems, and fire suppression systems, the term means maintenance and testing required to keep the protective signaling, extinguishing, and suppression system and its component parts in an operative condition at all times, together with replacement of the system or its component parts with listed or approved parts when for any reason they become undependable, defective, or inoperative.

(c) The term does not include resetting manual alarm systems that may be reset by a properly trained building owner or the owner's designated representative.

(12) "Special agent fire suppression system" means an approved system and components that require individual engineering in accordance with manufacturer specifications and includes dry chemical, carbon dioxide, halogenated, gaseous agent, foam, and wet chemical systems. The term includes a preengineered system but does not include a fire extinguishing system."

Section 166. Section 50-53-103, MCA, is amended to read:

"**50-53-103. Department rules.** (1) The department shall adopt rules relating to the operation of public swimming pools and public bathing places, including rules:

(a) setting standards to ensure sanitation and safety in public swimming pools and public bathing places to protect public health and safety;

(b) relating to the licensing of operators of public swimming pools and public bathing places;

(c) providing procedures for the enforcement of the laws and rules relating to public swimming pools and public bathing places;

(d) relating to cooperative agreements between the department and local boards of health; and

(e) setting performance standards for local boards of health, local health officers, and sanitarians to meet as a condition to receipt of funds provided by the department pursuant to 50-53-218.

(2) Any rule relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings or installation of equipment in buildings is effective only when it has been adopted by the department of ~~commerce~~ *labor and industry* as part of the state building code and filed with the secretary of state pursuant to 50-60-204."

Section 167. Section 50-60-101, MCA, is amended to read:

"**50-60-101. Definitions.** As used in parts 1 through 4 and part 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Alteration" means any change, addition, or modification in construction or occupancy.

(2) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The term must be construed as though followed by the words "or part or parts ~~thereof~~ *of a building*".

(3) (a) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation ~~thereof~~ *of laws, rules, resolutions, regulations, ordinances, or codes* enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings.

(b) The term does not include zoning ordinances.

(4) "Code enforcement program" means the plan for enforcement of the building regulations adopted by a municipality or county and includes the local building department and the staff associated with executing any aspect of the program's purposes or functions.

(5) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

(6) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(7) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(8) (a) "Factory-built building" means a factory-assembled structure or structures equipped with the necessary service connections but not made so as to be readily movable as a unit or units and designed to be used with a permanent foundation.

(b) The term does not include manufactured housing constructed after June 15, 1976, under the National Mobile Home Construction and Safety Standards Act of 1974 ~~(~~, 42 U.S.C. 5401, et seq.~~)~~.

(9) "Local building department" means the agency or agencies of a municipality charged with the administration, supervision, or enforcement of building regulations, the approval of plans, the inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(10) "Local legislative body" means the council or commission charged with governing the municipality.

(11) (a) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality.

(b) Upon request of a municipality with the written consent of the county in which the municipality is located, the department may approve extension of the jurisdictional area to include:

(i) all or part of the area within 4 1/2 miles of the corporate limits of a municipality;

(ii) all of any platted subdivision that is partially within 4 1/2 miles of the corporate limits of a municipality; and

(iii) all of any zoning district adopted pursuant to Title 76, chapter 2, part 1 or 2, that is partially within 4 1/2 miles of the corporate limits of a municipality.

(c) Distances must be measured in a straight line on a horizontal plane.

(d) The initial written consent by a county to an extended municipal jurisdiction area must disclose the scope of the building codes to be enforced, the type of structures to be subject to the building codes, and the schedule of fees to be charged for permits. If after the county's initial written consent, the municipality wishes to change either the scope of the building codes enforced or the type of structures covered, the changes must first be approved in writing by the county. Unapproved changes result in the rescission of the county approval of the extended municipal jurisdiction area.

(12) "Municipality" means any incorporated city or town and its jurisdictional area as defined in this section.

(13) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

(14) "Primary function area" means an area of a building or facility in which a major activity for which the building or facility is designed is carried out. Primary function areas include but are not limited to a customer service lobby of a savings institution, a cafeteria dining area, and meeting rooms of a conference center. Areas that are not primary function areas include but are not limited to boiler rooms, storage rooms, employee lounges, janitorial closets, entrances, corridors, and restrooms.

(15) "Public building" means a building or facility owned or operated by a governmental entity or a private sector building or facility that is open to members of the public.

(16) "Public sidewalk" means a sidewalk located in a public right-of-way.

(17) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own mode of power or is mounted on or towed by another vehicle, including but not limited to a:

(a) travel trailer;

(b) camping trailer;

(c) truck camper; or

(d) motor home.

(18) "Site" means a parcel of land bounded by property lines or a designated portion of a public right-of-way.

(19) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(20) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments."

Section 168. Section 50-60-504, MCA, is amended to read:

"**50-60-504. Department to prescribe minimum standards.** The department of ~~commerce~~ *labor and industry* shall by rule prescribe minimum standards ~~which~~ *that* are uniform ~~and which are thereafter effective~~ for all plumbing installations or maintenance, except ~~where~~ *those that are* exempt ~~by~~ *under* 50-60-503."

Section 169. Section 50-60-505, MCA, is amended to read:

"**50-60-505. Permit required.** (1) It is unlawful for any person to engage in the business, trade, or work ~~having to do with the installation, removal, alteration, or repair of~~ *of installing, removing, altering, or repairing* plumbing and drainage systems or parts ~~thereof~~ *of plumbing and drainage systems* without first obtaining a permit from the department of ~~commerce~~ *labor and industry.*

(2) A separate permit ~~shall~~ *must* be obtained for each building or structure.

(3) ~~No~~ *A* person may *not* allow any other person to do or cause to be done any work under a permit secured by the permittee except persons in ~~his~~ *the permittee's* employ.

(4) When a permit has been obtained to connect an existing building or existing work to the public sewer or to connect to a new private disposal facility, backfilling of private sewage disposal facilities abandoned consequent to the connection is included in the permit."

Section 170. Section 50-60-507, MCA, is amended to read:

"**50-60-507. Application for and issuance of permit.** (1) A person required to apply for a permit shall ~~make application~~ *apply* on ~~forms~~ *a form* provided by the department of ~~commerce~~ *labor and industry* or its authorized representative. ~~He~~ *The applicant* shall give a description of the character of the work proposed to be done and the location, ownership, occupancy, and use of the premises in connection ~~therewith~~ *with the work.*

(2) The department or its authorized representative may require sketches, specifications, or drawings and ~~such~~ other information it ~~deems~~ *considers* necessary in order to determine the scope of the work contemplated.

(3) If the department determines that the sketches, specifications, drawings, descriptions, and information furnished by the applicant are in compliance with the state plumbing code, it shall issue the permit applied for upon payment of the required fee as established by the department."

Section 171. Section 50-60-508, MCA, is amended to read:

"**50-60-508. Permit fees.** (1) The department of ~~commerce~~ *labor and industry* shall establish permit fees in accordance with the Montana Administrative Procedure Act, and the fees must be deposited to the state special revenue fund of the department for use in the administration and enforcement of this part and the Montana state plumbing code and for other purposes as established by law.

(2) For the purpose of 50-60-505 through 50-60-513, a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached must be construed to be a fixture. Fees for reconnection and retest of plumbing systems in relocated buildings must be based on the number of plumbing fixtures, gas systems, water heaters, and the like involved. The fees established pursuant to this section must be commensurate with the costs of the administration and enforcement of this part and with appropriations for other purposes."

Section 172. Section 50-60-509, MCA, is amended to read:

"50-60-509. Person commencing work without a permit to pay double the permit fee — exception. ~~Any~~ *A* person who commences any work for which a permit is required without first obtaining a permit shall, if subsequently ~~permitted~~ *allowed* to obtain a permit, pay double the permit fee for the work, except that this provision does not apply to emergency work when it is proved to the satisfaction of the department of ~~commerce~~ *labor and industry* or its authorized representative that the work was urgently necessary and that it was not practical to obtain a permit before the commencement of the work. In all ~~such~~ *emergency* cases, a permit ~~shall~~ *must* be obtained as soon as it is practical to do so, and if there is unreasonable delay in applying for the permit, a double fee ~~shall~~ *must* be charged."

Section 173. Section 50-60-510, MCA, is amended to read:

"50-60-510. Inspections to ensure compliance. All plumbing and drainage systems may be inspected by the department of ~~commerce~~ *labor and industry* or an authorized representative or a municipality or county certified to perform an inspection pursuant to 50-60-302 in order to ensure compliance with the requirements of the state plumbing code. As part of any inspection, the inspector shall request proof of licensure from any person who is required to be licensed who is involved with or, in the inspector's judgment, appears to be involved with plumbing activities if the person is on the site. The inspector shall report any instance of license violation to the inspector's employing agency, and the employing agency shall in turn report the violation to the board of plumbers."

Section 174. Section 50-60-511, MCA, is amended to read:

"50-60-511. Duty of permittee regarding inspection and compliance. (1) It is the duty of the person doing work authorized by the permit to notify the department of ~~commerce~~ *labor and industry*, orally or in writing, that the work is ready for inspection. The notification ~~shall~~ *must* be given not less than 24 hours before the work is to be inspected.

(2) It is the duty of the person doing the work authorized by the permit to ensure that the work performed before notification and after notification pending inspection complies with the state plumbing code."

Section 175. Section 50-60-512, MCA, is amended to read:

"50-60-512. Department authorized to order work stopped for noncompliance. Whenever any work is being done contrary to the provisions of the state plumbing code, the department of ~~commerce~~ *labor and industry* or its authorized representative may, after a hearing conducted under the provisions of the Montana Administrative Procedure Act, order work stopped by notice in writing served on any person engaged in the work."

Section 176. Section 50-60-513, MCA, is amended to read:

"50-60-513. Suspension or revocation of permit. The department of ~~commerce~~ *labor and industry* may suspend or revoke a permit whenever it is issued in error or on the basis of incorrect information supplied or *whenever* work performed ~~thereunder~~ *under the permit* is in violation of any of the provisions of ~~this part or~~ Title 37, chapter 69 *or this part*."

Section 177. Section 50-60-514, MCA, is amended to read:

"50-60-514. District court — jurisdiction — restraining orders. The district court of any county has jurisdiction in equity, on application of the department of ~~commerce~~ *labor and industry*, to restrain from connection any new plumbing installations on finding, after *a* hearing, that the plumbing is inferior to the standards of the state plumbing code."

Section 178. Section 50-60-603, MCA, is amended to read:

"**50-60-603. Electrical installations to comply with building codes adopted by department.** (1) All installations in this state of wires and equipment to convey electric current and installations of apparatus to be operated by current, except as provided in 50-60-602, ~~shall~~ *must* be made substantially in accord with building codes adopted by the department of ~~commerce~~ *labor and industry*.

(2) Rules and standards relating to buildings and equipment ~~shall~~ *must* be ~~promulgated~~ *adopted* by the department."

Section 179. Section 50-60-604, MCA, is amended to read:

"**50-60-604. Inspections — electrical permits — fees.** The department of ~~commerce~~ *labor and industry* or an authorized representative or a municipality or county certified to perform an inspection pursuant to 50-60-302 shall inspect electrical installations, issue electrical permits for these installations, and establish and charge a reasonable and uniform fee for the inspections. The fee must be commensurate with the expense of providing the inspection and with appropriations for other purposes. As part of any inspection, the inspector shall require proof of licensure from any person who is required to be licensed who is involved with or, in the inspector's judgment, appears to be involved with electrical installations if the person is on the site. The inspector shall report any instance of license violation to the inspector's employing agency, and the employing agency shall in turn report the violation to the board of electricians."

Section 180. Section 50-60-605, MCA, is amended to read:

"**50-60-605. Power supplier not to energize installation without inspection tag.** Individuals, firms, cooperatives, corporations, or municipalities selling electricity are power suppliers. Except for temporary connections which the department may authorize by rule for a period not exceeding 14 days without a preconnection inspection, power suppliers may not connect with or energize an electrical installation under this part unless the owner or a licensed electrical contractor has delivered to the power supplier an inspection tag covering the installation, issued by the department of ~~commerce~~ *labor and industry*."

Section 181. Section 50-60-606, MCA, is amended to read:

"**50-60-606. Power supplier to deliver inspection tag to department after installation energized.** Immediately after an installation has been energized, the power supplier shall deliver to the department of ~~commerce~~ *labor and industry* the inspection tag covering the installation."

Section 182. Section 50-60-607, MCA, is amended to read:

"**50-60-607. Unlawful acts.** It is unlawful for a person, partnership, company, firm, association, or corporation other than a power supplier to energize an electrical installation under this part unless an application for an inspection tag covering the installation, together with the inspection fee, has been forwarded to the department of ~~commerce~~ *labor and industry*."

Section 183. Section 50-60-803, MCA, is amended to read:

"**50-60-803. Energy labeling sticker.** (1) The department of ~~commerce~~ *labor and industry*, in consultation with the department of environmental quality, shall prescribe by rule requirements for a labeling sticker to be affixed to a new residential building that describes the energy efficiency components of the home, including but not limited to heating appliance efficiencies and R-value or U-value of ceilings, walls, floors, windows, and doors in new residential buildings.

(2) A person constructing a new residential building shall affix to that residential building in a manner prescribed by the department of ~~commerce~~ *labor and industry* a labeling sticker as described in subsection (1)."

Section 184. Section 50-64-102, MCA, is amended to read:

"**50-64-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Department" means the department of ~~commerce~~ *labor and industry*.

(2) "Fibrated product" means a substance used in construction for whatever purpose ~~which~~ *that* contains asbestos fibers ~~which~~ *that* tend to disperse into ambient air during application or upon destruction or removal.

(3) "Person" means an individual, firm, corporation, partnership, association, or other legal entity."

Section 185. Section 50-74-101, MCA, is amended to read:

"**50-74-101. Definition — department to formulate rules.** (1) As used in this chapter, the term "department" means the department of ~~commerce~~ *labor and industry*.

(2) The department shall adopt definitions and rules for the safe construction, installation, operation, inspection, and repair of equipment covered by this chapter. The definitions and rules must follow generally accepted nationwide engineering standards as published by the American society of mechanical engineers."

Section 186. Section 50-74-312, MCA, is amended to read:

"**50-74-312. Review of license rejection.** (1) An applicant for a license under the provisions of this chapter whose application has been rejected may, within 45 days after the date of the rejection, set forth in writing any arguments opposing the rejection and request a review by the department. The request must be addressed to the department and must be signed by the applicant.

(2) Within 2 days after receiving the request, the department shall notify the applicant in writing that on a certain day, not less than 5 days or more than 30 days after receipt of the written request, the department shall review and evaluate the application and any arguments opposing the rejection of the license application.

(3) The applicant may appear in person at the review. At least 2 days before the day set for the review, the applicant may designate in writing to the department of ~~commerce~~ *labor and industry* the name of an engineer holding a valid license of equal or higher grade than the one applied for, and the engineer may testify on behalf of the applicant at the review.

(4) After the review, if the department of ~~commerce~~ *labor and industry* determines that the applicant is entitled to the license, the department shall issue the license. If the department affirms the decision to not issue the license, the

applicant is required to reapply to take the license examination, as provided in 50-74-309 through 50-74-311, and may not take the examination within 45 days of the final decision to not issue the license."

Section 187. Section 50-76-102, MCA, is amended to read:

"50-76-102. Hoisting engine license required. (1) (a) It is unlawful for a person to operate any hoisting engine driven by any power when used in lowering or hoisting personnel or material in industrial operations or on construction projects without first obtaining a license from the department ~~of commerce~~.

(b) In emergencies under 50-74-317 relating to the employment of unlicensed engineers, the provisions of that section apply to the operation of the engines and machinery named in this section.

(2) First-class hoisting engineers must be licensed to operate hoisting engines driven by any power and unlimited horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(3) Second-class hoisting engineers must be licensed to operate hoisting engines driven by any power and not in excess of 100 brake horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(4) The provisions of this section do not apply to hoists and cranes defined in 50-76-103."

Section 188. Section 50-76-103, MCA, is amended to read:

"50-76-103. Crane and hoist license required. (1) (a) It is unlawful for a person to operate any crane and hoist equipment, when used in hoisting or lowering personnel or material, that has a manufacturer's rating of more than 6 tons and a boom length of more than 25 feet without first obtaining a license from the department ~~of commerce~~. This equipment includes overhead trolley and gantry cranes used in construction only and excludes equipment with excavation attachments or log loading equipment when in use.

(b) In emergencies, 50-74-317 applies to the operation of the equipment named in this section.

(2) Licensing is as follows:

(a) First-class crane and hoist engineers are licensed to operate any hoisting equipment in industrial or construction operations.

(b) (i) An applicant for a first-class crane and hoist engineer's license must be 18 years of age or older and:

(A) must have no less than 3 years' experience operating equipment requiring a second-class crane and hoist engineer's license or shall demonstrate equivalent competency by examination; and

(B) is required to pass a written test prescribed by the department ~~of commerce~~.

(ii) A biennial physical exam is required of all licensees.

(c) Second-class crane and hoist engineers are licensed to operate crane and hoist equipment with a manufacturer's rating of 6 tons and a boom length of 25 feet up to equipment with a rating of 15 tons and a boom length of 60 feet.

(d) (i) An applicant for a second-class crane and hoist engineer's license must be 18 years of age or older and:

(A) must have no less than 2 years' experience in actual operation of crane and hoist equipment covered by this section or shall demonstrate equivalent competency by examination; and

(B) is required to successfully pass a written examination prescribed by the department ~~of commerce~~.

(ii) A biennial physical exam is required of all licensees.

(e) Third-class crane and hoist engineers are licensed to move all truck cranes driven by any power and of any capacity. This license requirement applies to truck crane oilers who move truck cranes.

(f) An applicant for a third-class crane and hoist engineer's license is required to successfully pass a written test prescribed by the department ~~of commerce~~ and must be 18 years of age or older before receiving a license.

(3) The department ~~of commerce~~ shall reexamine each licensed engineer or operator every 5 years during the anniversary month of the issuance of the license if the licensee has not worked at the trade for 5 years."

Section 189. Section 50-76-104, MCA, is amended to read:

"**50-76-104. Application and fee for license.** Application for licenses must be made to the department ~~of commerce~~ and submitted with the appropriate fee that is set commensurate with the cost of administering this program, to be deposited in the state special revenue fund for use by the department."

Section 190. Section 50-76-105, MCA, is amended to read:

"**50-76-105. Renewal and period of validity of license.** The license is valid for a period established by the department ~~of commerce~~ by rule and may be renewed in the same manner provided by law for the renewal of a license to operate steam engines, boilers, or steam-driven machinery under chapter 74 of this title."

Section 191. Section 50-76-110, MCA, is amended to read:

"**50-76-110. Crane inspector.** The department ~~of commerce~~ shall employ at least one crane inspector. The crane inspector shall hold a first-class hoisting engineer's license under this chapter for a minimum of 1 year and must have a minimum of 3 years' experience operating cranes."

Section 192. Section 50-76-111, MCA, is amended to read:

"**50-76-111. Definitions.** As used in this part, the following definitions apply:

(1) "Crane" means a machine with a hoisting mechanism that is integral to the machine and that is used for lifting and lowering a load and for moving it horizontally.

(2) "Department" means the department of ~~commerce~~ *labor and industry* provided for in ~~2-15-1801~~ *2-15-1701*.

(3) "Gantry crane" and "trolley crane" are synonymous and mean a crane similar to an overhead crane except that the bridge for carrying the trolley or

trolleys is rigidly supported on two or more legs running on fixed rails or another type of runway.

(4) "Hoist" means a power-driven apparatus capable of lifting and lowering loads and not designed to facilitate horizontal movements."

Section 193. Section 52-3-813, MCA, is amended to read:

"**52-3-813. Confidentiality.** (1) The case records of the department, its local affiliate, the county attorney, and the court concerning actions taken under this part and all reports made pursuant to 52-3-811 must be kept confidential except as provided by this section. For the purposes of this section, the term "case records" includes records of an investigation of a report of abuse, sexual abuse, neglect, or exploitation.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who is caring for an older person or a person with a developmental disability who the physician reasonably believes was abused, sexually abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person or the person with a developmental disability if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, sexually abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, sexual abuse, neglect, or exploitation is later convicted of an offense constituting abuse, sexual abuse, neglect, or exploitation and if the identity of the older person or the person with a developmental disability who is the subject of the report is not disclosed to the researcher;

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(f) an authorized representative of a provider of services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability if:

(i) the department and the provider are parties to a contested case proceeding under Title 2, chapter 4, part 6, resulting from action by the department adverse to the license of the provider and if information contained in the records or reports of the department is relevant to the case;

(ii) disclosure to the provider is determined by the department to be necessary to protect an interest of a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability; or

(iii) the person is carrying out background screening or employment- or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with an older person or a person with a developmental disability through employment or volunteer activities if the disclosure is limited to information that indicates a risk to an older person or a person with a developmental disability posed by the employee or volunteer, as determined by the department. A request for information under this subsection must be made in writing.

(g) an employee of the department if disclosure of the record or report is necessary for administration of a program designed to benefit a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability;

(h) an authorized representative of a guardianship program approved by the department if the department determines that disclosure to the program or to a person designated by the program is necessary for the proper provision of guardianship services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability;

(i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794e, 42 U.S.C. 6042, and 42 U.S.C. 10805;

(j) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and does not violate the privacy rights of the older person, person with a developmental disability, or alleged perpetrator of abuse, sexual abuse, neglect, or exploitation, as determined by the department;

(k) a coroner or medical examiner who is determining the cause of death of an older person or a person with a developmental disability;

(l) a person about whom a report has been made and that person's attorney with respect to relevant records pertaining to that person only without disclosing the identity of the person who made the report or any other person whose safety might be endangered through disclosure;

(m) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a developmental disability; and

(n) a department, agency, or organization, including a federal agency, military reservation, or tribal organization, that is legally authorized to receive, inspect, or investigate reports of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a developmental disability and that meets the disclosure criteria contained in this section.

(3) The records and reports required to be kept confidential by subsection (1) must be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court that has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, sexually abused, neglected, or exploited an older person or a person with a developmental disability is the holder of a license, permit, or certificate issued by the department of ~~commerce~~ *labor and industry* under the provisions of Title 37 or issued by any other entity of

state government, the report may be submitted to the entity that issued the license, permit, or certificate."

Section 194. Section 61-2-208, MCA, is amended to read:

"**61-2-208. Equipment safety commission funds.** (1) Pursuant to Article VI(1) of the compact, the vehicle equipment safety commission shall submit its budgets to the state budget director.

(2) Pursuant to Article VI(5) of the compact, the department of ~~commerce is hereby empowered and authorized to~~ *administration may* inspect the accounts of the vehicle equipment safety commission."

Section 195. Section 61-4-507, MCA, is amended to read:

"**61-4-507. Exhaustion of remedies under federal law.** The provisions of 61-4-503 are not applicable against a manufacturer who has established an informal dispute settlement procedure certified by the department ~~of commerce~~ *of administration* to be in substantial compliance with the provisions of Title 16, Code of Federal Regulations, part 703, as those provisions read on October 1, 1983, unless the consumer has first resorted to that procedure without satisfaction."

Section 196. Section 61-4-511, MCA, is amended to read:

"**61-4-511. Manufacturer's dispute settlement procedure — certification — prohibited contents.** (1) A manufacturer who has established an informal dispute settlement procedure under the provisions of Title 16, Code of Federal Regulations, part 703 (16 CFR, part 703), as those provisions read on October 1, 1983, shall submit a copy of the procedure to the department ~~of commerce~~ *of administration*. The department ~~of commerce~~ *of administration* shall issue a certificate of approval to a manufacturer whose procedure complies in all respects with ~~such~~ *the* federal regulations and subsection (2). ~~The department of commerce shall report to the department of justice all manufacturer's procedures certified.~~ *The department of administration shall report to the department of justice all manufacturer's procedures certified.* The department ~~of commerce~~ *of administration* may issue subpoenas requiring the attendance of witnesses and the production of records, documents, or other evidence necessary to it in an investigation related to the certification of a manufacturer's informal dispute settlement procedure.

(2) A manufacturer's informal dispute settlement procedure must afford the consumer or ~~his~~ *the consumer's* representative an opportunity to appear and present evidence in Montana at a location reasonably convenient to the consumer and, further, may not include any practices that:

(a) delay a decision in any dispute beyond 60 days after the date on which the consumer initially resorts to the dispute settlement procedure;

(b) delay performance of remedies awarded in a settlement beyond 10 days after a decision, except that a manufacturer may have 30 days following the date of decision to replace a motor vehicle or make refund to the consumer as provided in 61-4-503;

(c) require the consumer to make the vehicle available for inspection by a manufacturer's representative more than once;

(d) fail to consider in decisions any remedies provided by this part; or

(e) require the consumer to take any action or assume any obligation not specifically authorized under the federal regulations referred to in subsection (1)."

Section 197. Section 61-4-512, MCA, is amended to read:

"61-4-512. Annual audit — revocation or suspension of certification. (1) A manufacturer establishing an informal dispute resolution procedure shall file with the department ~~of commerce~~ *of administration* a copy of the annual audit required under Title 16, Code of Federal Regulations, part 703 (16 CFR, part 703), as those provisions read on October 1, 1983, along with any additional information *that* the department ~~of commerce~~ *of administration* may require, including the number of refunds and replacements made by the manufacturer during the period audited.

(2) The department ~~of commerce~~ *of administration* may, after notice and hearing as provided in Title 2, chapter 4, suspend or revoke the certification of a manufacturer's informal dispute resolution procedure upon a finding that the procedure is being used to create hardship to consumers. ~~The department of commerce shall notify the department of justice of any revocation or suspension of a certification.~~ *The department of administration shall notify the department of justice of any revocation or suspension of a certification.* The department ~~of justice~~ *of administration* may consider the revocation or suspension in licensing manufacturers under Title 61, chapter 4, part 2."

Section 198. Section 61-4-515, MCA, is amended to read:

"61-4-515. Arbitration procedure. (1) The department ~~of commerce~~ *of administration* shall provide an independent forum and arbitration procedure for the settlement of disputes between consumers and manufacturers of motor vehicles that do not conform to all applicable warranties under the provisions of this part. The procedure must conform to Title 27, chapter 5. All arbitration ~~shall~~ *must* take place in Montana at a place reasonably convenient to the consumer.

(2) Except as provided in 61-4-520, a consumer owning a motor vehicle that fails to conform to all applicable warranties may bring a grievance before an arbitration panel only if the manufacturer of the motor vehicle has not established an informal dispute settlement procedure ~~which~~ *that* has been certified by the department ~~of commerce~~ *of administration* under 61-4-511."

Section 199. Section 61-4-516, MCA, is amended to read:

"61-4-516. Composition of arbitration panel. An arbitration panel hearing a grievance under this part must consist of three members. One member must be chosen by the consumer, one member must be chosen by the manufacturer, and one member must be chosen by mutual agreement of the parties. The department ~~of commerce~~ *of administration* may maintain a list of persons willing to serve on panels from which the third member may be chosen."

Section 200. Section 61-4-517, MCA, is amended to read:

"61-4-517. Implementation of arbitration. (1) A consumer may initiate a request for arbitration by filing a notice with the department ~~of commerce~~ *of administration*. The consumer shall file, on a form prescribed by the department ~~of commerce~~ *of administration*, any information considered relevant to the resolution of the dispute and shall return the form, along with a $50 filing fee, within 5 days after receiving it. The complaint form must offer the consumer the choice of presenting any subsequent testimony orally or in writing, but not both.

(2) The department ~~of commerce~~ *of administration* shall determine whether the complaint alleges the violation of any applicable warranty under this part. If the department ~~of commerce~~ *of administration* determines that a complaint does not allege a warranty violation, it ~~must~~ *shall* refund the filing fee.

(3) Upon acceptance of a complaint, the department ~~of commerce~~ *of administration* shall notify the manufacturer of the filing of a request for arbitration and shall obtain from the manufacturer, on a form prescribed by the department ~~of commerce~~ *of administration*, any information considered relevant to the resolution of the dispute. The manufacturer ~~must~~ *shall* return the form within 15 days of receipt, with a filing fee of $250.

(4) Fees collected under this section ~~shall~~ *must* be deposited in a special revenue fund for the use of the department ~~of commerce~~ *of administration* in administering this part.

(5) The manufacturer's fee provided in subsection (3) is due only if the department ~~of commerce~~ *of administration* arbitration procedures are ~~utilized~~ *used.*"

Section 201. Section 61-4-518, MCA, is amended to read:

"**61-4-518. Arbitration — role of department ~~of commerce~~ *of administration* — expert.** (1) The department ~~of commerce~~ *of administration* shall investigate, gather, and organize all information necessary for a fair and timely decision in each dispute. The department ~~of commerce~~ *of administration* may, on behalf of the arbitration panel, issue subpoenas to compel the attendance of witnesses and the production of documents, papers, and records relevant to the dispute.

(2) If requested by the panel, the department ~~of commerce~~ *of administration* may forward a copy of all written testimony and documentary evidence to an independent technical expert certified by the national institute of automotive excellence. The expert may review the material and be available to advise and consult with the panel. The expert may sit as a nonvoting member of the panel whenever oral testimony is presented. ~~The department of justice may suggest an expert at the request of the department of commerce.~~"

Section 202. Section 61-4-519, MCA, is amended to read:

"**61-4-519. Action by arbitration panel — decision.** (1) The arbitration panel shall, as expeditiously as possible, but not later than 60 days after the department ~~of commerce~~ *of administration* has accepted a complaint, render a fair decision based on the information gathered and disclose its findings and its reasoning to the parties.

(2) The decision ~~shall~~ *must* provide appropriate remedies, including but not limited to:

(a) repair of the vehicle;

(b) replacement of the vehicle with an identical vehicle or a comparable vehicle acceptable to the consumer;

(c) refund as provided in 61-4-503(2);

(d) any other remedies available under the applicable warranties or 15 U.S.C. 2301 through 2312, as in effect on October 1, 1983; or

(e) reimbursement of expenses and costs to the prevailing party.

(3) The decision ~~shall~~ *must* specify a date for performance and completion of all awarded remedies. The department ~~of commerce~~ *of administration* shall contact the prevailing party within 10 working days after the date for performance to determine whether performance has occurred. The parties shall act in good faith in abiding by any decision. In addition, if the decision is not accepted, the parties shall follow the provisions of Title 27, chapter 5. If it is determined by the court that the appellant has acted without good cause in bringing an appeal of an award, the court, in its discretion, may grant to the respondent ~~his~~ costs and reasonable attorney fees."

Section 203. Section 61-4-520, MCA, is amended to read:

"61-4-520. Nonconforming procedure — arbitration de novo. A consumer injured by the operation of any procedure that does not conform with procedures established by a manufacturer pursuant to 61-4-511 and the provisions of Title 16, Code of Federal Regulations, part 703, as in effect on October 1, 1983, may appeal any decision rendered as the result of ~~such a~~ *the* procedure by requesting arbitration de novo of the dispute by a department ~~of commerce~~ *of administration* panel. Filing procedures and fees for appeals must be the same as those required in 61-4-515 through 61-4-517. The findings of the manufacturer's informal dispute settlement procedure are admissible in evidence at the department ~~of commerce~~ *of administration* arbitration panel hearing and in any civil action arising out of any warranty obligation or matter related to the dispute."

Section 204. Section 61-4-526, MCA, is amended to read:

"61-4-526. Records of disputes. The department ~~of commerce~~ *of administration* shall maintain records of each dispute as it determines, including an index of disputes by brand name and model. The department ~~of commerce~~ *of administration* shall, at intervals of no more than 6 months, compile and maintain statistics indicating the record of compliance with arbitration decisions and the number of refunds or replacements awarded. ~~A copy of the~~ *The* statistical summary must be *considered* ~~filed with~~ *by* the department ~~of justice and must be considered by it~~ *of administration* in determining the issuance of any manufacturer license required under Title 61, chapter 4, part 2."

Section 205. Section 61-4-532, MCA, is amended to read:

"61-4-532. Rulemaking. The department ~~of commerce~~ *of administration* may adopt rules to implement the provisions of this part."

Section 206. Section 75-10-913, MCA, is amended to read:

"75-10-913. Annual long-range plan submitted — contents — available to public. (1) A person may not file an application for a certificate of site acceptability required by 75-10-916 unless the megalandfill has been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department.

(2) The annual long-range plan must be submitted by July 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the person for which construction is projected during the ensuing 2 years, as well as those facilities to be closed during the planning period;

(b) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(c) projections of the demand for the service rendered by the person and an explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(d) additional information that the department by rule, on its own initiative, or upon the advice of interested state agencies requests in order to carry out the purposes of 75-10-901 through 75-10-945.

(3) The plan must be furnished to the governing body of each county in which any facility included in the plan under subsection (2)(a) is proposed to be located and must be made available to the public by the department. The applicant shall give public notice throughout the state by publishing at least once a week for 2 consecutive weeks a summary of the proposed plan in newspapers of general circulation. The plan must also be filed with the environmental quality council, the department of transportation, the department of fish, wildlife, and parks, ~~the department of commerce,~~ and the department of natural resources and conservation. Interested persons may obtain a copy of the plan by written request and payment to the department of the costs of copying the plan."

Section 207. Section 75-10-918, MCA, is amended to read:

"75-10-918. Application — filing and contents — proof of service and notice. (1) (a) An applicant shall file with the department an application for a certificate under 75-10-916 in a form that the board requires, containing the following information:

(i) a description of the proposed location and of the facility to be built;

(ii) a summary of any studies that have been made of the environmental, social, and economic impacts of the facility;

(iii) a description of at least three reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(iv) baseline data for the primary and reasonable alternate locations;

(v) at the applicant's option, an environmental study plan to satisfy the requirements of 75-10-901 through 75-10-945; and

(vi) other information that the applicant considers relevant or that the board by order or rule may require or that the department by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) must be filed with the department, if ordered, and must be available for public inspection.

(2) An application must be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, each county commissioner, city or county planning board, and solid waste district, and each federal agency charged with the duty of protecting the environment or of planning land use located in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:

(a) environmental quality council;

(b) department of fish, wildlife, and parks;

~~(c) department of commerce;~~

~~(d)~~*(c)* department of transportation; and

~~(e)~~*(d)* department of natural resources and conservation.

(3) An application must be accompanied by proof that public notice was given to persons residing in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located by publication of a summary of the application in newspapers of general circulation that will substantially inform those persons of the application."

Section 208. Section 75-20-211, MCA, is amended to read:

"75-20-211. Application — filing and contents — proof of service and notice. (1) (a) An applicant shall file with the department an application for a certificate under this chapter and for the permits required under the laws administered by the department in the form that is required under applicable rules, containing the following information:

(i) a description of the proposed location and of the facility to be built;

(ii) a summary of any studies that have been made of the environmental impact of the facility;

(iii) for facilities defined in 75-20-104(8)(c) and (8)(d), a statement explaining the need for the facility, a description of reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(iv) (A) for facilities as defined in 75-20-104(8)(c) and (8)(d), baseline data for the primary and reasonable alternate locations; or

(B) for facilities as defined in 75-20-104(8)(a), (8)(b), (8)(e), and (8)(f), baseline data for the proposed location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;

(v) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

(vi) other information that the applicant considers relevant or that the department by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) must be filed with the department, if ordered, and must be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination that are physically and directly attached to each other and are operationally a single operating entity.

(3) An application must be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, county commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:

(a) environmental quality council;

(b) department of public service regulation;

(c) department of fish, wildlife, and parks;

(d) department of natural resources and conservation;

~~(e) department of commerce;~~

~~(f)~~*(e)* department of transportation.

(4) The copy of the application must be accompanied by a notice specifying the date on or about which the application is to be filed.

(5) An application must also be accompanied by proof that public notice of the application was given to persons residing in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application."

Section 209. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies. (1) After receipt of an application, the department shall within 60 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and shall list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department shall use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Except as provided for in 75-20-231, the department shall issue within 1 year following the date of acceptance of an application any decision, opinion, order, certification, or permit required under the laws, other than those contained in this part, administered by the department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a preliminary decision by the department and pursuant to rules adopted by the department, the department shall provide an opportunity for public review and comment.

(4) Except as provided in 75-20-231, within 1 year following acceptance of an application for a facility, the department shall issue a report that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the

department shall issue its report within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) For projects subject to joint review by the department and a federal land management agency, the department's certification decision may be timed to correspond to the record of decision issued by the participating federal agency.

(6) The departments of transportation; ~~commerce;~~ fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

Section 210. Section 75-20-226, MCA, is amended to read:

"**75-20-226. Renewal study — renewal hearing — decision.** (1) Upon receipt of a completed application for renewal of a certificate, the department shall evaluate the updated information and any significant changes in alternatives, technology, baseline environment, and the environmental impacts of a facility that have taken place since the original study performed in granting the certificate, considering the applicable criteria listed in 75-20-301 and the original department findings and certificate conditions.

(2) The department, within 10 months of acceptance of a complete renewal application, shall complete the statutory duties established in 75-20-216(3). Any air or water quality decision, opinion, order, certification, or permit must be used as part of its decisionmaking process under subsections (3), (5), and (6) of this section.

(3) Within 12 months following acceptance of a complete application for renewal of a certificate, the department shall issue a report. This report must contain the department's studies, evaluations, recommendations, and other pertinent documents resulting from its study and evaluation and an updated environmental impact statement or analysis pursuant to the Montana Environmental Policy Act. The department's report must be directed to the question of whether the original department findings and conditions have been or need to be altered as a result of any significant changes in alternatives, technology, baseline environment, or environmental impact since issuance of the certificate, considering the applicable criteria listed in 75-20-301.

(4) The departments of transportation; ~~commerce;~~ fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of responsibility. The report may include opinions as to the advisability of renewing the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the cost of compiling information and issuing the required reports.

(5) Within 45 days after completion of the report pursuant to 75-20-226, the department shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the renewal application or renewing the certificate with such changes in the terms and conditions as the board considers appropriate.

(6) The department may not renew a certificate either as proposed by the applicant or as modified by the department unless it finds and determines that the criteria in 75-20-301, considering any significant changes in need, alternatives, technology, baseline environment, and environmental impact, have been met."

Section 211. Section 76-3-403, MCA, is amended to read:

"76-3-403. Monumentation. (1) The department of ~~commerce~~ *labor and industry* shall, in conformance with the Montana Administrative Procedure Act, prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(2) It ~~shall be~~ *is* the responsibility of the governing body to require the replacement of all monuments removed in the course of construction."

Section 212. Section 80-8-204, MCA, is amended to read:

"80-8-204. Application for applicator's license. (1) Application for a pesticide applicator's license provided for in 80-8-203 ~~shall~~ *must* be made annually to the department before applying pesticides in any calendar year, ~~provided that pesticide applicators~~ *and a pesticide applicator who is* applying for renewal of *a* license shall do so on or before March 1 of that calendar year. ~~Any~~ *A pesticide* applicator ~~applying~~ *who applies* for renewal of *a* license after March 1 ~~shall~~ *must* be assessed a $25 late licensing fee.

(2) An individual applying for a license to engage in aerial application of pesticides shall certify on the application that ~~he~~ *the individual* has met all the federal aviation administration and the department of ~~commerce~~ *transportation* requirements for aerial pesticide applicators."

Section 213. Section 82-15-101, MCA, is amended to read:

"82-15-101. Definitions. As used in this part, the following definitions apply:

(1) "Dealer" means any person engaged in the petroleum business and includes petroleum dealers and liquefied petroleum dealers.

(2) "Department" means the department of ~~commerce~~ *labor and industry* provided for in Title 2, chapter 15, part ~~18~~ *17*.

(3) "Liquefied petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or of selling or offering or advertising for sale or refining or manufacturing or keeping for sale in this state any petroleum product composed predominately of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, butanes (normal butane or isobutane), and butylenes but excluding prepackaged liquefied petroleum products.

(4) "Liquefied petroleum product" means a product composed predominately of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, butanes (normal butane or isobutane), and butylenes.

(5) "Liquefied petroleum product container" means ~~an~~ *a container approved by the* American society of mechanical ~~engineers-approved container~~ *engineers* that can hold 110 gallons or more of a liquefied petroleum product.

(6) "Mislabeled" means a package label or dispensing device of a product that bears any statement, design, or device regarding the product or regarding

ingredients or substances in the product or regarding the properties, quality, or kind of products that is false or misleading in any manner.

(7) "Owner" means a person:

(a) who is listed with the American society of mechanical engineers or with the manufacturer as owner by the serial number of the liquefied petroleum product container;

(b) who holds a written bill of sale or other instrument under which title to a liquefied petroleum product container was transferred; or

(c) who holds a paid invoice showing purchase of and payment for a liquefied petroleum product container.

(8) "Person" means an individual, trust, estate, partnership, corporation, joint-stock company, firm, agency, association, or any receiver appointed by law.

(9) "Petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or offering or advertising for sale, refining, manufacturing, or keeping for sale in this state any gasoline, kerosene, distillate, road oil, fuel oil, lubricating oil, or greases or any oil or gas or oil and gas product except prepackaged petroleum products and except as otherwise defined as a liquefied petroleum dealer in subsection (3).

(10) "Sell" and "sale" includes barter and exchange."

Section 214. Section 85-7-1616, MCA, is amended to read:

"**85-7-1616. Required records and audits.** (1) The board of control shall keep or cause to be kept, in the form prescribed by the department of ~~commerce~~ *administration*, a full and complete book and record of the accounts, records, contracts, securities, minutes of meetings, and other matters of every kind pertaining to or belonging to the joint operation of the irrigation districts.

(2) The department of ~~commerce~~ *administration* shall prescribe forms for the use of the board of control.

(3) The accounting records of all boards of control must be audited in accordance with 2-7-503."

Section 215. Section 85-7-1913, MCA, is amended to read:

"**85-7-1913. Board to maintain records.** (1) The board of commissioners shall keep a complete book and record of the accounts, records, contracts, securities, minutes of meetings, and other matters of every kind pertaining to or belonging to the irrigation district in the form prescribed by the department of ~~commerce~~ *administration*. The department of ~~commerce~~ *administration* shall prescribe forms for the use of irrigation districts. The books and records must be open to the inspection of any landowner of the district the same as other public records.

(2) The books and records of irrigation districts are subject to audit in accordance with 2-7-503.

(3) If a district is appointed fiscal agent of the United States or is authorized by the United States to make collections for or on behalf of the United States in connection with a federal irrigation project, the board of commissioners or its secretary shall at any time allow any officer or employee of the United States, when acting under the orders of the secretary of the interior, to have access to all

books, records, and vouchers of the district that are in possession or control of the secretary or board.

(4) The failure of the board of commissioners to comply with ~~this section or~~ 85-7-1914 *or this section* is grounds for removal from office, and the county attorney of any county in which the irrigation district is situated shall prosecute ouster proceedings against any commissioner or commissioners. The cost of the proceedings is a charge against the irrigation district and must be paid as are other bills against the districts."

Section 216. Section 90-3-1001, MCA, is amended to read:

"90-3-1001. Purpose — definition. (1) The purpose of establishing a research and commercialization expendable trust fund in 90-3-1002 and 90-3-1003 is to:

(a) provide a predictable and stable source of funding for research and commercialization projects conducted in the state that demonstrates to both private and public sources, including federal research granting agencies, that Montana recognizes the important contributions that research and commercialization endeavors offer to the state's basic industries;

(b) expand and strengthen research efforts for the state's basic industries to increase their economic impact on the state's economy; and

(c) expand research efforts into areas beyond the scope of the state's basic industries to diversify and strengthen the state's economic security through the creation of technology-based operations and long-term quality jobs.

(2) As used in 90-3-1002 and 90-3-1003, "research and commercialization center" means the campuses of the university of Montana or Montana state university, tribal colleges, colleges of technology, community colleges, agricultural research centers, or a private~~, nonprofit~~ laboratory or research center."

Section 217. Repealer. Section 2-15-1804, MCA, is repealed.

Section 218. Transition. (1) The provisions of 2-15-131 through 2-15-137 apply to [this act].

(2) Agencies involved in the reorganization and transfer of certain governmental functions may: (a) reallocate existing personnel across and within the involved agencies;

(b) adjust indirect cost rates commensurate with costs for central management functions; and

(c) reallocate and adjust spending authority for indirect charges to the programs of agencies involved in the reorganization.

Section 219. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 220. Codification instruction. (1) [Sections 1, 4, and 5] are intended to be codified as an integral part of Title 90, chapter 1, and the provisions of Title 90, chapter 1, apply to [sections 1, 4, and 5].

(2) [Sections 2 and 3] are intended to be codified as an integral part of Title 2, chapter 15, part 2, and the provisions of Title 2, chapter 15, part 2, apply to [sections 2 and 3].

Section 221. Code commissioner instructions. (1) Whenever legislation enacted by the 57th legislature refers to the "department of commerce", the code commissioner shall change the reference to conform to [this act].

(2) The code commissioner shall renumber 2-15-1840, 2-15-1841, 2-15-1842, 2-15-1843, 2-15-1844, 2-15-1845, 2-15-1846, 2-15-1847, 2-15-1848, 2-15-1849, 2-15-1850, 2-15-1851, 2-15-1852, 2-15-1853, 2-15-1854, 2-15-1856, 2-15-1857, 2-15-1858, 2-15-1859, 2-15-1860, 2-15-1861, 2-15-1863, 2-15-1866, 2-15-1867, 2-15-1868, 2-15-1871, 2-15-1872, 2-15-1873, 2-15-1874, 2-15-1875, 2-15-1882, 2-15-1883, and 2-15-1891 as part of Title 2, chapter 15, part 17.

(3) The code commissioner shall renumber 2-15-1803 and 2-15-1811 as part of Title 2, chapter 15, part 10.

(4) The code commissioner shall renumber 2-15-1881 as part of Title 2, chapter 15, part 31.

(5) The code commissioner shall change all references to sections renumbered pursuant to subsections (2) through (4).

Section 222. Effective date. [This act] is effective July 1, 2001.

Approved April 30, 2001

CHAPTER NO. 484

[SB 494]

AN ACT REVISING THE LAWS RELATED TO THE RETAIL TELECOMMUNICATIONS EXCISE TAX TO MAKE IT REVENUE-NEUTRAL AS COMPARED TO THE TELEPHONE LICENSE TAX AND PROPERTY TAX PROVISIONS THAT IT SUPPLANTED; SUSPENDING THE ADVANCED TELECOMMUNICATIONS INFRASTRUCTURE TAX CREDIT; AMENDING SECTIONS 15-53-129 AND 15-53-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

WHEREAS, the Retail Telecommunications Excise Tax Act, House Bill No. 128, 56th Legislature (Chapter 426, Laws of 1999), was enacted as a part of the 1999 Legislative Session's economic development package, replacing an archaic telephone license tax and an illogical and confusing array of property tax provisions with an excise tax that would foster Montana's long-term economic growth and ensure that Montana will have the necessary telecommunications infrastructure needed to be competitive for jobs and income for the future; and

WHEREAS, as enacted, the purpose section of the Retail Telecommunications Excise Tax Act, in 15-53-128(4)(c), stated that one of the reasons for imposing a replacement tax was to "preserve the revenue base of the existing property tax system for taxing jurisdictions in the state"; and

WHEREAS, as enacted, in the purpose section of the Retail Telecommunications Excise Tax Act, in 15-53-128(7), the legislature declared a "compelling public need to modify the existing system of property taxation . . . to ensure competitive neutrality and constancy of revenue to taxing jurisdictions in the state of Montana".

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-53-129, MCA, is amended to read:

"**15-53-129. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Customer" or "purchaser" means a person who acquires for consideration retail telecommunications services for use or consumption and not for resale.

~~(2)~~*(2)* "Retail telecommunications" means the two-way transmission of voice, image, data, or other information over wire, cable, fiber optics, microwave, radio, satellite, or similar facilities that originates or terminates in this state and is billed to a customer with a Montana service address. The term includes but is not limited to local exchange, long-distance, two-way paging, wireless telephony, and related services.

~~(3)~~*(3)* (a) "Sales price" means the consideration paid for the distribution, supply, furnishing, sale, transmission, or delivery of retail telecommunications services to the end-user customer.

(b) Sales price does not include:

(i) an amount added to the customer's bill because of a charge made pursuant to the tax imposed by this part;

(ii) charges added to a customer's bill under 10-4-201, 53-19-311 and 69-3-844;

(iii) federal excise taxes or other federally imposed charges or fees *collected for and remitted to a federal government entity*;

(iv) a charge for a dishonored check;

(v) a finance or credit charge, penalty or charge for delayed payment, or discount for prompt payment;

(vi) a charge for ~~reconnection of service or for replacement of service~~ *construction* or relocation of facilities;

(vii) the *installation,* repair, inspection, or servicing of equipment *and wiring* located on customer premises;

(viii) bad debt;

(ix) a charge added by a hotel, motel, or similar facility for telecommunications services used in placing calls for guests;

(x) charges paid by inserting coins in coin-operated telecommunications devices; and

(xi) charges for telecommunications services that have been prepaid by a prepaid calling card that enables the origination of calls by using an access number or authorization code.

~~(4)~~*(4)* "Service address" means:

(a) the location from where the retail telecommunications services originated or where the retail telecommunications services are received; or

(b) where there is not a defined location, the location in Montana where the statement of charges for retail telecommunications services is mailed.

~~(5)~~*(5)* "Telecommunications services provider" means a person providing retail telecommunications services."

Section 2. Section 15-53-202, MCA, is amended to read:

"**15-53-202. (Temporary) Advanced telecommunications infrastructure tax credit — *temporary suspension*.** (1) ~~There~~ *Except as provided in subsection (4), there* is allowed a tax credit against the tax imposed by part 1 of this chapter for advanced telecommunications infrastructure improvements in the state made by a telecommunications services provider in an amount equal to 20% of the total amount of the infrastructure investment.

(2) The tax credit provided for in subsection (1) may not exceed a total of $2 million for all qualified telecommunications services providers in any consecutive 12-month period.

(3) There is no carryback or carryforward of the credit allowed under this section, and the credit must be applied in the year the advanced telecommunications infrastructure improvements were made and may not be refunded if the taxpayer has no tax liability.

(4) The credit allowed under this section may not be claimed for investments in advanced telecommunications infrastructure improvements made after June 30, 2001, and before July 1, 2003. (Terminates July 1, 2004—sec. 8, Ch. 534, L. 1999.)"

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to federal subscriber line charges and other federally authorized charges and fees collected but not remitted to a federal governmental entity by the telecommunications carrier and to retail telecommunications installation and activation charges made only after June 30, 2001.

Section 5. Termination. [Section 2] terminates July 1, 2003.

Approved April 30, 2001

CHAPTER NO. 485

[SB 510]

AN ACT ENCOURAGING THE LEASING OF PROPERTY FOR COAL MINING THAT IS RECEIVED FROM THE UNITED STATES GOVERNMENT AS PART OF THE CROWN BUTTE LAND EXCHANGE; PROVIDING THAT PROCEEDS FROM THE LEASES BE USED FOR EDUCATION PURPOSES IF PERMITTED; AMENDING SECTION 77-3-303, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-3-303, MCA, is amended to read:

"**77-3-303. Rules relating to coal leasing.** *(1)* The board ~~shall have the power and authority to prescribe such additional~~ *may adopt* rules and ~~to do and~~ perform all acts ~~and things~~ not inconsistent with The Enabling Act, the constitution, and the statutes of this state ~~as~~ *that* it ~~may deem~~ *considers* necessary and proper relating to the leasing of state land for coal mining purposes.

(2) The board is encouraged to lease the property interests acquired from the federal government in the Crown Butte land exchange for coal mining purposes.

The proceeds from the leases must be used for the direct funding of education, including K-12 school districts, institutions of higher education, and vocational-technical education, unless otherwise provided in the transfer agreement."

Section 2. Contingent effective date. [This act] is effective on the date that the governor certifies by executive order that the federal government has transferred the title to federal property interests to the state as part of the Crown Butte land exchange and certifies that the property is not restricted from being used as provided in [this act]. The governor shall provide a copy of the executive order to the secretary of state and the code commissioner.

Approved April 30, 2001

CHAPTER NO. 486

[HB 14]

AN ACT AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2003; PROVIDING FOR MATTERS RELATING TO APPROPRIATIONS; AMENDING SECTION 2, CHAPTER 518, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 9], unless otherwise stated, the following definitions apply:

(1) "Capital project" means the acquisition of land or improvements or the planning, capital construction, renovation, furnishing, or major repair projects, including broadcast transmission lines, transmitters, and related equipment, authorized in [sections 1 through 9].

(2) "CPF" means the capital projects fund.

(3) "Other funding sources" means money other than CPF money, including special revenue fund money, that accrues to an agency under the provisions of the law.

Section 2. Appropriation of bond proceeds and other funds. (1) The following money is appropriated from the CPF and other funding sources to the department of administration for the capital projects described in this section, contingent upon the respective authorization of general obligation long-range building program bonds by the 57th legislature and the sale of the bonds by the board of examiners:

Agency/Project	CPF	Other Funding Sources
DEPARTMENT OF CORRECTIONS		
Construct Central Reception Unit, MSP, Deer Lodge	$5,000,000	

It is the intent of the 57th legislature that the department of corrections reduce its general fund present law base by $300,000 a year because of the savings from paying local governments to hold offenders as a result of building the new reception center. This reduction is to occur when the new reception center starts receiving offenders. The reduction for the first year is to be on a pro rata basis for the portion of the first fiscal year that the new reception center is receiving offenders. The reduction in the following years is to be $300,000.

DEPARTMENT OF MILITARY AFFAIRS

Construct New Armory, Dillon	1,940,000

It is the intent of the 57th legislature that all future operating and maintenance for the Dillon armory be funded from its base budget.

MONTANA UNIVERSITIES AND COLLEGES

Renovate Chemistry Building UM-Missoula	6,350,000
Renovate Liberal Arts, Life Safety/ Deferred Maintenance, MSU-Billings	3,220,000
Renovate Exterior Linfield Hall and Montana Hall/Deferred Maintenance, MSU-Bozeman	1,450,000
Upgrade HVAC Systems, Cowan Hall, MSU-Northern	2,173,000
Construct Applied Technology Center, MSU-Northern	2,000,000
Agricultural Experiment Station, MSU-Bozeman	1,000,000
Install PBS Digital Conversion, MSU-Bozeman	1,892,286

(2) The university system and the information services division of the department of administration will work together to develop network plans or procedures that provide for the highest degree of bandwidth and cost-sharing capability between the university system and the department that is within technical specifications agreed to by the parties and is mutually beneficial to them. This obligation to cooperate and coordinate for the purpose of seeking mutually beneficial network arrangements applies to the intercity transport services acquired by the university system or the department of administration to meet the needs of the public broadcast system, including the utilization and sharing of excess capacity bandwidth to help meet the telecommunication needs of all state agencies in a manner that is both cost-effective and compatible with the efficient operation of the public broadcast system.

(3) Prior to the sale of bonds for the applied technology center, private or federal funding in the amount of $2 million must be available to match the bonded amount for completion of the building.

Section 3. Authorization of bonds. The board of examiners is authorized to issue and sell general obligation long-range building program bonds in an amount not exceeding $81,310,000 for up to 20 years and not exceeding

$1,892,286 for up to 10 years for the capital projects described in [section 2] over and above the amount of general obligation long-range building program bonds outstanding on January 1, 2001. The bonds must be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell general obligation long-range building program bonds.

Section 4. Agreement with department of environmental quality. The department of environmental quality shall review capital projects authorized in [section 2] for potential inclusion in the state buildings energy conservation program. When review shows that a capital project will result in energy improvements, that capital project must be submitted to the energy conservation program for consideration of receiving funding under that program. Funding provided under the energy conservation program guidelines must be used to offset or add to the authorized funding for the capital project, and the amount must be dependent on the annual utility savings resulting from the facility improvement. Agencies must be notified of potential funding after the review.

Section 5. Agreement with Montana university system. If Montana public broadcasting services receives funding at a higher federal participation rate than 67%, the amount authorized for general obligation long-range building program bonds to install PBS digital conversion through MSU-Bozeman in [section 2] must be reduced by the amount of the increased federal share.

Section 6. Agreement with department of corrections. The board of examiners and the department of corrections may enter into an agreement for the construction of the central reception unit in Deer Lodge, under which the department will reduce the $5 million of bonds requested to be issued by the amount of additional federal funds that are being received for the central reception unit. After the bonds have been issued for the project, future federal funds received for construction of the central reception unit will be used to pay the portion of the debt service related to the central reception unit project in accordance with federal provisions governing use of the federal money.

Section 7. Agreement with Montana state university agricultural experiment station. The board of examiners and the Montana state university agricultural experiment station may enter into an agreement for the construction and repair of various experiment station buildings at the following locations: $1,250,000 for Huntley, $180,000 for Moccasin, $200,000 for Havre, $210,000 for Sidney, and $160,000 for Kalispell. The amount of $1 million for these projects will be funded from CPF, and the amount of $1 million will be funded from the non-LRBP fund sources in House Bill No. 5.

Section 8. Planning and design. The department of administration may proceed with the planning and design portions of capital projects before the receipt of other funding sources. The department may use interaccount loans in accordance with 17-2-107 to pay planning and design costs incurred before the receipt of other funding sources.

Section 9. Capital projects — contingent funds. If a capital project is financed in whole or in part with appropriations contingent upon the receipt of other funding sources, the department of administration may not let the projects for bid until the agency has submitted a financial plan for approval by the director of the department. A financial plan may not be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding level provided in [section 2] for that project; or

(2) the scope of the capital project is substantially altered or revised from the preliminary plans presented for that capital project in the 2003 biennium long-range building program presented to the 57th legislature.

Section 10. Legislative consent. The appropriations authorized in [section 2] constitute legislative consent for the capital projects contained in [section 2] within the meaning of 18-2-102.

Section 11. Legislative intent to increase maintenance funding. It is the intent of the 57th legislature that the department of administration and the office of budget and program planning make a payment of $665,000 a year of debt service from the general fund instead of the long-range building account on the 1996D bond issue, the 1997B bond issue, and the 1999C bond issue and increase the general fund statutory appropriation for debt service by a like amount. The $665,000 a year in the long-range building account is to be appropriated by the legislature for deferred maintenance and to develop a design to expand the university of Montana college of technology in Helena.

Section 12. Section 2(1), Chapter 518, Laws of 1999, is amended to read:

"**Section 2. Appropriation of bond proceeds and other funds.** (1) The following money is appropriated from the CPF and other funding sources to the department of administration for the capital projects described in this section, contingent upon the respective authorization of general obligation long-range building program bonds by the 56th legislature and the sale of the bonds by the board of examiners:

Agency/Project	CPF	Other Funding Sources
DEPARTMENT OF ADMINISTRATION		
Capitol Renovation	$3,898,750	$
DEPARTMENT OF CORRECTIONS		
Expand Women's Prison, MWP, Billings	$2,900,000	
Complete Pine Hills Youth Correctional Facility, Miles City	2,225,000	
Security Improvements and Wallace Expansion, MSP, Deer Lodge	3,000,000	
DEPARTMENT OF LABOR AND INDUSTRY		
Havre Job Service Supplemental		210,000
DEPARTMENT OF MILITARY AFFAIRS		
Montana National Guard, Veterans' Affairs and Emergency Operations Center, Fort Harrison, Helena	3,500,000	
Construct New Armory, Kalispell	1,800,000	

The proceeds of this bond issue, up to the amount authorized, are restricted to be used for the installation of a new water and sewer system that will serve the Kalispell armory, except for up to $100,000 for construction of space for a veterans' administration office.

Construct New Armory, Bozeman	2,200,000
MONTANA UNIVERSITIES AND COLLEGES	
Renovate Renne Library, MSU-Bozeman	7,500,000
Rural Technology Education Center, UM-Dillon	4,170,000
Lab and Classroom Renovations, UM-All Campuses	2,000,000"

Section 13. Requirement for approval of state debt. Because [section 3] authorizes the creation of state debt, a vote of two-thirds of the members of each house of the legislature is required for enactment of [section 3]. If [section 3] is not approved by the required vote, [this act] is void.

Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. Effective date. [This act] is effective on passage and approval.

Approved May 1, 2001

CHAPTER NO. 487

[HB 47]

AN ACT GENERALLY REVISING THE LAWS GOVERNING STATE INVESTMENTS; REMOVING THE REQUIREMENT THAT STATE BANK EXAMINERS EXAMINE LOANS AND INVESTMENTS; INCREASING THE MAXIMUM LOAN FOR IN-STATE INVESTMENTS; REQUIRING COMMERCIAL LENDER PARTICIPATION FOR CERTAIN INVESTMENTS; ELIMINATING RESTRICTIONS ON MAXIMUM LOAN SIZES FOR PURPOSES OF JOB CREDIT INTEREST RATE REDUCTIONS; AMENDING SECTIONS 17-5-1529, 17-6-311, 17-6-312, 17-6-318, AND 17-6-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-1529, MCA, is amended to read:

"**17-5-1529. Annual audits.** ~~(1) At least once each year, the bank examiners of the department shall examine loans and investments of the board. The actual cost of this examination must be paid from the board's funds.~~

~~(2)~~ The board's books and records *related to economic development bonds* must be audited at least once each fiscal year by or at the direction of the legislative auditor. The actual costs of the audit ~~shall~~ *must* be paid from the board's funds."

Section 2. Section 17-6-311, MCA, is amended to read:

"**17-6-311. Limitation on size of investments.** ~~(1) Except as provided in subsections (2) through (4), an investment may not be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of which exceeds 1% of the permanent coal tax trust fund. This subsection does not apply to a loan made pursuant to 17-6-317.~~

~~(2) Subsection (1) does not limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2).~~

~~(3) Subsection (1) does not apply to the purchase of debentures issued by a capital company. However, the total amount of debentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time of purchase.~~

~~(4)~~*(1) Except as provided in subsection (2) and this subsection, an investment may not be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of which exceeds 10% of the permanent coal tax trust fund. If an investment results in any one business enterprise or person incurring a debt in excess of 6% of the permanent coal tax trust fund, at least 30% of the debt incurred for the project or enterprise for the coal tax investment that was made to the business enterprise or person must be held by a commercial lender. This subsection does not:*

(a) apply to a loan made pursuant to 17-6-317;

(b) limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2);

(c) apply to the purchase of debentures issued by a capital company. However, the total amount of debentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time of purchase.

(2) The total amount of loans made pursuant to 17-6-309(2) or 17-6-317 may not exceed $50 million, and a single loan may not be less than $250,000. Except for a loan made pursuant to 17-6-317, a loan may not exceed $16,666 for each job that is estimated to be created. In determining the size of a loan made pursuant to 17-6-309(2), the board shall consider:

~~(a)~~*(a)* the estimated number of jobs to be created by the project within a 4-year period from the time that the loan is made and the impact of the jobs on the state and the community where the project will be located;

~~(b)~~*(b)* the long-term effect of corporate and personal income taxes estimated to be paid by the business and its employees;

~~(c)~~*(c)* the current and projected ability of the community to provide necessary infrastructure for economic and community development purposes;

~~(d)~~*(d)* the amount of increased salaries, wages, and business incomes of existing jobholders and businesses; and

~~(e)~~*(e)* other matters that the board considers necessary."

Section 3. Section 17-6-312, MCA, is amended to read:

"**17-6-312. State participation in loans.** (1) Subject to 17-6-311~~(4)~~, state participation in any loan to a business enterprise, except for a loan made pursuant to 17-6-317 or guaranteed by a federal agency, must be limited to 80% of the outstanding loan. The state shall participate in the security for a loan in the same proportion as the loan participation amount.

(2) The purchase of debentures issued by a capital company is not a loan participation and is not subject to subsection (1).

(3) State participation in loans to nonprofit corporations may qualify for the job credit interest rate reductions under 17-6-318 if the interest rate reduction passes through to a for-profit business creating the jobs."

Section 4. Section 17-6-318, MCA, is amended to read:

"**17-6-318. Job credit interest rate reduction for business loan ~~participations~~ *participation*.** (1) A borrower who uses the proceeds of a business loan participation funded under the provisions of this part to create jobs employing Montana residents is entitled to a job credit interest rate reduction for each job created ~~over a 2-year period~~ to employ a Montana resident. A borrower who ~~used~~ *uses* the proceeds of a loan made pursuant to 17-6-309(2) to create jobs is entitled to a job credit interest rate reduction for each job created ~~in the 4-year period provided for in 17-6-311(4)(a). The date of the formal written interim or permanent loan application to the financial institution will be used as a beginning date for counting the number of jobs created. The job credit interest rate reduction may not apply to a loan participation of more than 1% of the total of the permanent coal tax trust fund determined at the end of the last completed fiscal year.~~ The job credit interest rate reduction is equal to 0.05% for each job created to employ a Montana resident, up to a maximum interest rate reduction of 2.5%.

(2) If the salary or wage of the job created:

(a) exceeds the average weekly wage, as defined in 39-71-116, the amount of the job credit interest rate reduction may be increased proportionately for each increment of 25% above the average weekly wage to a maximum of two times the average weekly wage; or

(b) is less than the average weekly wage, as defined in 39-71-116, the job credit interest rate reduction is reduced proportionately for each 25% increment below the average wage.

(3) A job credit interest rate reduction may not be allowed for a job created by the borrower using the proceeds of the loan for which the salary or wage is less than the minimum wage provided for in 39-3-409.

(4) A job credit may not be given unless one whole job is created.

(5) To qualify for the job credit interest rate reduction, the borrower shall provide satisfactory evidence of the creation of jobs and *shall* make *a written* application ~~in writing,~~ *to the board* through its financial institution *or, in the case of a loan made pursuant to 17-6-309(2), shall make a written application directly* to the board ~~when the loan is delivered to the board or not later than 45 days after the applicable anniversary dates of the loan~~."

Section 5. Section 17-6-321, MCA, is amended to read:

"**17-6-321. Audits.** ~~(1) At least once each year, the bank examiners of the department shall examine loans and investments of the board. The actual cost of this examination must be paid from the board's funds.~~

~~(2)~~ The board's books and records *related to in-state investments* must be audited once each fiscal year by or at the direction of the legislative auditor. The actual cost of this audit must be paid from the board's funds."

Section 6. Effective date. [This act] is effective upon passage and approval.

Approved May 1, 2001

CHAPTER NO. 488

[HB 69]

AN ACT REVISING THE DEFINITIONS, APPLICABLE FEES, AND MINE PERFORMANCE BONDING AND APPEAL PROCEDURES OF THE METAL MINE RECLAMATION LAWS; ALLOCATING INTEREST FROM THE HARD-ROCK MINING AND RECLAMATION ACCOUNT AND THE OPENCUT MINING AND RECLAMATION ACCOUNT TO THOSE ACCOUNTS; AMENDING SECTIONS 82-4-303, 82-4-311, 82-4-331, 82-4-332, 82-4-335, 82-4-338, 82-4-339, 82-4-341, 82-4-360, AND 82-4-424, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-303, MCA, is amended to read:

"**82-4-303. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Amendment" means a change to an approved operating or reclamation plan. A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

(5) "Department" means the department of environmental quality provided for in 2-15-3501.

(6) "Disturbed land" means the area of land or surface water that has been disturbed, beginning at the date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, *load-out facilities*, leach dumps, and all similar excavations or coverings that result from the operation and that have not been previously reclaimed under the reclamation plan.

(7) "Exploration" means:

(a) all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation; and

(b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

(8) "Mineral" means any ore, rock, or substance (other than oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium) that is taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(9) "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(10) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(11) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

(12) "Placer deposit" means:

(a) naturally occurring, scattered or unconsolidated valuable minerals in gravel, glacial, eolian, colluvial, or alluvial deposits lying above bedrock; or

(b) all forms of deposit except veins of quartz and other rock in place.

(13) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

(14) "Reclamation plan" means the operator's written proposal, as required and approved by the department, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas when necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) maps and other supporting documents that may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

(15) (a) "Small miner" means a person, firm, or corporation that engages in mining activity that is not exempt from this part pursuant to 82-4-310, that engages in the business of reprocessing of tailings or waste materials, or, except as provided in 82-4-310, that knowingly allows other persons to engage in mining activities on land owned or controlled by the person, firm, or corporation; that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(2) or a permit that meets the criteria of subsection (15)(c); and that conducts:

(i) an operation that results in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation; and

(B) at least 1 mile apart at their closest point.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation:

(i) exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases; and

(ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in the amount of the estimated total cost of reclamation along with a description of the location of the road and the specifications to which it will be constructed.

(c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100 acres at any time.

(16) "Soil materials" means earth material found in the upper soil layers that will support plant growth.

(17) (a) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

(b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.

(18) "Underground mining" means all methods of mining other than surface mining.

(19) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit. The term includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

(20) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 2. Section 82-4-311, MCA, is amended to read:

"**82-4-311. Hard-rock mining and reclamation account.** All fees, fines, penalties, and other uncleared money that has been or will be paid to the department under the provisions of this part must be placed in the state special revenue fund in the state treasury and credited to a special *interest-bearing* account that is designated as the hard-rock mining and reclamation account. *All accrued interest on the account must be credited to the hard-rock mining and reclamation account.* This account is available to the department by appropriation and may be expended for the research, reclamation, and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this account remaining at the end of a fiscal year does not lapse but must be carried forward for the purposes of this section until expended or until appropriated by subsequent legislative action."

Section 3. Section 82-4-331, MCA, is amended to read:

"**82-4-331. Exploration license required — employees included — limitation.** (1) A person may not engage in exploration in the state without first obtaining an exploration license from the department. A license must be issued for a period of 1 year from *the* date of issue and is renewable from year to year on application. An application for renewal must be filed within 30 days preceding the expiration of the current license and be accompanied by payment of a *$25 renewal* fee ~~as required for a new license~~. A license may not be renewed if the applicant for renewal is in violation of any provision of this part. A license is subject to suspension and revocation as provided by this part.

(2) Employees of persons holding a valid license under this part are included in and covered by the license.

(3) A person may not be issued an exploration license if:

(a) that person's failure, *or the failure of any firm or business association of which that person was a principal or controlling member,* to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in *either* the ~~forfeiture~~ *receipt* of a bond *proceeds by the department or the completion of reclamation by the person's surety or by the department*~~, unless that person meets the conditions described in 82-4-360~~*, unless that person meets the conditions described in 82-4-360*;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305~~, unless the department has certified that the area for which the bond should have~~

~~been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation~~; *or*

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of *the* abatement."

Section 4. Section 82-4-332, MCA, is amended to read:

"**82-4-332. Exploration license.** (1) An exploration license ~~shall~~ *must* be issued to any applicant ~~therefor~~ who ~~shall~~:

(a) ~~pay~~ *pays* a fee of ~~$5~~ *$100* to the department;

(b) ~~agree~~ *agrees* to reclaim any surface area damaged by the applicant during exploration operations, as may be reasonably required by the department;

(c) *is* not ~~be~~ in default of any other reclamation obligation under this law.

(2) An application for an exploration license ~~shall~~ *must* be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application ~~shall~~ *must* include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The board shall by rule determine the precise nature of ~~such~~ *the* exploration map or sketch. The applicant ~~must~~ *shall* state what type of prospecting and excavation techniques will be employed in disturbing the land.

(3) Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with 82-4-338.

(4) In the event that the holder of an exploration license desires to mine the area covered by the exploration license and has fulfilled all of the requirements for an operating permit, the department shall allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for an operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the operating reclamation plan ~~shall~~ *must* be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner acceptable to the department."

Section 5. Section 82-4-335, MCA, is amended to read:

"**82-4-335. Operating permit — limitation — fees.** (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the department. A separate operating permit is required for each complex.

(2) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

(3) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee of ~~$25~~ *$500*. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the

normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed $5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(4) The person shall submit an application on a form provided by the department, which must contain the following information and any other pertinent data required by rule:

(a) the name and address of the operator and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) the minerals expected to be mined;

(c) a proposed reclamation plan;

(d) the expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;

(i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

(j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable:

(m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water; and

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site.

(5) Except as provided in subsection (7), the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(6) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(7) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(8) A person may not be issued an operating permit if:

(a) that person's failure, *or the failure of any firm or business association of which that person was a principal or controlling member,* to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in *either* the ~~forfeiture~~ *receipt* of a bond *proceeds by the department or the completion of reclamation by the person's surety or by the department*~~, unless that person meets the conditions described in 82-4-360~~*, unless that person meets the conditions described in 82-4-360*;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305~~, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation~~; *or*

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(9) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (4)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (9)(a)(i) or (9)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members."

Section 6. Section 82-4-338, MCA, is amended to read:

"**82-4-338. Performance bond.** (1) The applicant shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than $200 for each acre or fraction of an acre of the disturbed land, conditioned upon the faithful performance of the requirements of this part, the rules of the board, and the permit. In lieu of a bond, the applicant may file with the department a cash deposit, an assignment of a certificate of deposit, *an irrevocable letter of credit,* or other surety acceptable to the department. The bond may not be less than the estimated cost to the state to ensure compliance with *Title 75, chapters 2 and 5,* this part, the rules, and the permit, including the potential cost of department management, operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment, until full bond liquidation can be effected. A public or governmental agency may not be required to post a bond under the provisions of this part. A blanket performance bond covering two or more operations may be accepted by the department. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

(2) (a) The department may calculate one or more reclamation plan components within its jurisdiction with the assistance of one or more third-party contractors selected jointly by the department and the applicant and compensated by the applicant when, based on relevant past experience, the department determines that additional expertise is necessary to calculate the bond amount for reclamation plan components. The department may contract for assistance pursuant to this subsection in determining bond amounts for the initial bond and for any subsequent bond review and adjustment. The mine owner is responsible for the first $5,000 in contractor services provided under this subsection. The mine owner and the department are each responsible for 50% of any amount over $5,000.

(b) To select a third-party contractor as authorized in subsection (2)(a), the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

~~(2)~~*(3)* *(a)* The department shall conduct an overview of the amount of each bond annually and shall conduct a comprehensive bond review at least every 5 years. The department may conduct additional comprehensive bond reviews if, after modification of the reclamation or operation plan, an annual overview, or an inspection of the permit area, the department determines that an increase of the bond level may be necessary. The department shall consult with the licensee or permittee if the review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of compliance with this part, the rules, and the permit, the department ~~may~~ *shall* modify the bonding requirements of that permit or license. *The licensee or permittee must have 60 days to negotiate the preliminary bond determination with the department, at the end of which time period the department shall issue the proposed bond determination.* The department shall ~~make written findings,~~ give the licensee or permittee a copy of the ~~findings~~ *bond calculations that form the basis for the proposed bond determination*~~;~~ and, for operating permits, publish notice of the ~~findings~~*proposed bond determination* in a newspaper of general circulation in the county in which the operation is located. *The* department shall issue a final bond determination *in 30 days. Unless the licensee or permittee requests a hearing under subsection (3)(b), the* licensee or permittee shall post bond with the department in the amount represented by the final bond determination no later than 30 days after issuance *of the final bond determination. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a 30-day extension of the deadline.*

(b) The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing under the provisions of the Montana Administrative Procedure Act on the ~~adjusted bond level~~ *final bond determination* by filing with the department, within 30 days of the ~~notice~~ *issuance of the final bond determination,* a written request for hearing. *The request for hearing must specify the amount of bond increase, if any, that the licensee or permittee considers appropriate and state the reasons that the licensee or permittee considers the department's final bond determination to be excessive. As a condition precedent to any right to request a hearing, the licensee or permittee shall post bond with the department in the amount of the bond increase that the licensee or permittee has stated is appropriate in the request for hearing or the amount that is one-half of the increase contained in the department's final bond determination, whichever amount is greater. If the board determines that additional bond is necessary, the licensee or permittee shall post bond in the amount determined by the board within 30 days of receipt of the board's decision. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a reasonable extension of the deadline.*

(c) If a licensee or permittee fails to post bond in accordance with subsection (3)(a) or (3)(b) in the required amounts by the required deadlines, the license or permit is suspended by operation of law and the licensee or permittee shall immediately cease mining and exploration operations until the required bond is posted with and approved by the department.

~~(3)~~*(4)* A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

~~(4)~~*(5)* A bond filed for an operating permit obtained under 82-4-335 may not be released or decreased until the public has been provided an opportunity for a hearing and a hearing has been held if requested. The department shall provide reasonable statewide and local notice of the opportunity for a hearing, including but not limited to publishing the notice in newspapers of general daily circulation.

~~(5)~~*(6) All* ~~All~~ bonds required in accordance with the provisions of this section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply with conditions of an operating permit or license. Bonds may be required only for anticipated activities as described in subsection (1). *Only* ~~Only~~ those activities that themselves or in conjunction with other activities have a reasonable possibility of occurring may be bonded. *Bond calculations, including calculations for the initial bond or for subsequent bond reviews and adjustments, may not include amounts for any occurrence or contingency that is not a reasonably forseeable result of any activity conducted by the applicant.*

~~(6)~~*(7)* At the applicant's discretion, bonding in addition to that required by this section may be posted. These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

(8) (a) If the department determines that there exists at an area permitted or licensed under this part an imminent danger to public health, safety, or the environment caused by a violation of this part, the rules adopted pursuant to this part, or the permit or license, and if the permittee or licensee fails or refuses to expeditiously abate the danger, the department may immediately suspend the permit or license, enter the site, and abate the danger. The department may thereafter institute proceedings to revoke the license or permit, declare the permittee or licensee in default, and forfeit a portion of the bond, not to exceed $150,000 or 10% of the bond, whichever is less, to be used to abate the danger. The department shall notify the surety of the forfeiture and the forfeiture amount by certified mail, and the surety shall pay the forfeiture amount to the department within 30 days of receipt of the notice. The department shall, as a condition of any termination of the suspension and revocation proceedings, require that the permittee or licensee reimburse the surety, with interest, for any amount paid to and expended by the department pursuant to this subsection (8) and for the actual cost of the surety's expenses in responding to the department's forfeiture demand.

(b) If the department is unable to permanently abate the imminent danger using the amount forfeited under subsection (8)(a), the department may forfeit additional amounts under the procedure provided in subsection (8)(a).

(c) The department shall return to the surety any money received from the surety pursuant to this subsection and not used by the department to abate the imminent danger. The amount not returned to the surety must be credited to the surety and reduces the penal amount of the bond on a dollar-for-dollar basis.

(d) Any interest accrued on bond proceeds that is not required to abate the imminent danger determined in subsection (8)(a) must be returned to the surety, unless otherwise agreed to in writing by the surety.

(9) If a bond is terminated as a result of the action or inaction of a licensee or permittee or is canceled or otherwise terminated by the surety issuing the bond and the licensee or permittee fails to post a new bond for the entire amount of the terminated bond within 30 days following the notice of termination provided to the

department, then the license or permit must be immediately suspended without further action by the department."

Section 7. Section 82-4-339, MCA, is amended to read:

"**82-4-339. Annual report of activities by permittee — fee — notice of large-scale mineral developer status.** (1) Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at ~~such~~ *a* later date ~~as~~ *that* may be provided by rules of the board and each year ~~thereafter~~ *after that date* until reclamation is completed and approved, the permittee shall pay the annual fee of ~~$25~~ *$100* and shall file a report of activities completed during the preceding year on a form prescribed by the department. ~~which~~ *The* report ~~shall~~ *must*:

(a) identify the permittee and the permit number;

(b) locate the operation by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;

(c) estimate acreage to be newly disturbed by operation in the next 12-month period;

(d) include the number of persons on the payroll for the previous permit year and for the next permit year at intervals that the department considers sufficient to enable a determination of the permittee's status under 90-6-302(4);

(e) update the information required in 82-4-335(4)(a); and

(f) update any maps previously submitted or specifically requested by the department. ~~Such~~ *The* maps ~~shall~~ *must* show:

(i) the permit area;

(ii) the unit of disturbed land;

(iii) the area to be disturbed during the next 12-month period;

(iv) if completed, the date of completion of operations;

(v) if not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and

(vi) the date of beginning, amount, and current status of reclamation performed during the previous 12 months.

(2) Whenever the department determines that the permittee has become or will, during the next permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the permittee, the hard-rock mining impact board, and the county or counties in which the operation is located."

Section 8. Section 82-4-341, MCA, is amended to read:

"**82-4-341. Compliance — reclamation by department.** (1) The department shall cause the permit area to be inspected at least annually to determine whether the permittee has complied with this part, the rules adopted under this part, or the permit.

(2) The permittee shall proceed with reclamation as scheduled in the approved reclamation plan or as required pursuant to subsection (8). Following written notice by the department noting deficiencies, the permittee shall commence action within 30 days to rectify these deficiencies and shall diligently

proceed until the deficiencies are corrected. Deficiencies that also violate other laws that require earlier rectification must be corrected in accordance with the applicable time provisions of those laws. The department may extend performance periods referred to in ~~this section and in~~ 82-4-336 *and in this section* for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the department, making every reasonable effort to comply.

(3) Within 30 days after notification by the permittee and when, in the judgment of the department, reclamation of a unit of disturbed land area is properly completed, the department shall provide the public notice and conduct any hearing requested pursuant to 82-4-338. As soon as practicable ~~thereafter~~ *after notice and hearing*, the permittee must be notified in writing and the bond on the area must be released or decreased proportionately to the acreage included within the bond coverage.

(4) The department shall cause the bond to be forfeited if:

(a) reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within 30 days after notification by the department;

(b) reclamation is not properly completed in conformance with the reclamation plan within 2 years after completion or abandonment of operation on any fraction of the permit area or within a longer period that may have been authorized under this part; or

(c) after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the department within the time required.

(5) The department shall notify the permittee and the surety ~~by order~~ *by certified mail*. If the bond is not paid within 30 days after receipt of the notice, the attorney general, upon request of the department, shall bring an action on behalf of the state in district court.

(6) The department may, with the staff, equipment, and material under its control or by contract with others, take any necessary actions for required reclamation of the disturbed lands *according to the existing reclamation plan or a modified reclamation plan if the department makes a written finding that the modifications are necessary to prevent a violation of Title 75, chapter 2 or 5, or to prevent a substantial reclamation failure*. Except in an environmental emergency, work provided for in this section must be let on the basis of competitive bidding. The department shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials used. The surety is liable to the state to the extent of the bond. The permittee is liable for the remainder of the cost. Upon completion of the reclamation, the department shall return *to the surety* any amount not expended, *including any unexpended interest accrued on bond proceeds, unless otherwise agreed to in writing by the surety*.

(7) In addition to the other liabilities imposed by this part, failure to commence an action to remedy specific deficiencies in reclamation within 30 days after notification by the department or failure to satisfactorily complete reclamation work on any segment of the permit area within 2 years or within a longer period that the department may permit on the permittee's application or on the department's own motion, after completion or abandonment of operations on any segment of the permit area, constitutes sufficient grounds for cancellation

of a permit or license and refusal to issue another permit or license to the applicant. A cancellation action may not be effected while an appeal is pending from any ruling requiring the cancellation of a permit or license.

(8) (a) If at the time of bond review pursuant to 82-4-338 no mineral extraction or ore processing has occurred on a mine permit area for the past 5 years, the department shall determine whether further suspension of the operation will create conditions that will cause violations of Title 75, chapter 2 or 5, or significantly impair reclamation of disturbed areas. If the department determines in writing that violations of Title 75, chapter 2 or 5, or significant impairment of reclamation will occur, the department shall notify the permittee that the permittee shall, within a reasonable time specified in the notice, abate the conditions or commence reclamation. The department may grant reasonable extensions of time for good cause shown. If the permittee does not abate the conditions or commence reclamation within the time specified in the notice and any extensions, the department shall order either that the condition be abated or that reclamation be commenced.

(b) The permittee may request a hearing on the order by submitting a written request for hearing within 30 days of receipt of the order. A request for hearing stays the order pending a final decision, unless the department determines in writing that the stay will create an imminent threat of significant environmental harm or will significantly impair reclamation."

Section 9. Section 82-4-360, MCA, is amended to read:

"**82-4-360.** **~~Activity~~ *When activity* prohibited ~~if bond forfeited — exception~~ — *exception.*** ~~(1) Except as provided in subsection (2), a~~ *(1) Except as provided in subsection (2), a* person may not conduct mining or exploration activities in this state if that person or any firm or business association of which that person was a principal or controlling member had a bond forfeited under this part, *if the department otherwise received proceeds from a surety to perform reclamation on that person's behalf, or if the person's surety completed reclamation on the person's behalf.*

~~(2) A person described in subsection (1) may apply for an operations permit or an exploration license or may conclude a written agreement under 82-4-305 if that person first pays to the department:~~

~~(a) the full amount of the necessary expenses incurred by the department under 82-4-341(6) for reclamation of the area for which the bond was forfeited;~~

~~(b) the full amount of any penalties assessed under this part; and~~

~~(c) interest on these amounts and penalties incurred at the rate of 6% per year.~~

(2) A person described in subsection (1) may apply for an operating permit or an exploration license or may conclude a written agreement under 82-4-305 if:

(a) that person pays to the department:

(i) the full amount of the necessary expenses incurred by the department under 82-4-341(6) for reclamation of the area for which the bond was forfeited;

(ii) the full amount of any penalties assessed under this part; and

(iii) interest on the expenses incurred and penalties assessed at the rate of 6% a year; and

(b) the person demonstrates and the department determines that the person has remedied the conditions that led to the bond forfeiture or receipt of the bond proceeds and that those conditions no longer exist."

Section 10. Section 82-4-424, MCA, is amended to read:

"**82-4-424. Receipt and expenditure of funds.** (1) The department may receive any federal funds, state funds, or any other funds for the reclamation of land affected by opencut mining. The department may cause the reclamation work to be done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons.

(2) Any funds of any public works programs available to the department must be expended and used to reclaim and rehabilitate any lands that have been subject to opencut mining and that have not been reclaimed and rehabilitated in accordance with the standards of this part.

(3) There is an opencut mining and reclamation account within the state special revenue fund established in 17-2-102. There must be deposited in the account all fees, fines, penalties, and other money that have been or will be paid under the provisions of this part. *All accrued interest on the account must be credited to the opencut mining and reclamation account.* The money in the account is available to the department through appropriation and must be spent by the department for the reclamation and revegetation of land, research pertaining to the reclamation and revegetation of land, and the rehabilitation of water affected by opencut mining operations and for administration of this part. Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account until spent or appropriated by the legislature."

Section 11. Coordination instruction. If Senate Bill No. 449 and [this act] are both passed and approved and if both contain sections that amend 82-4-311 and 82-4-424, then [sections 2 and 10 of this act] are void.

Section 12. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Effective date. [This act] is effective on passage and approval.

Section 15. Applicability. Sections 82-4-303(6) and 82-4-338(8) apply to licenses and permits issued after [the effective date of this act] and to permits issued before [the effective date of this act] that are in effect on [1 year after the effective date of this act].

Approved May 1, 2001

CHAPTER NO. 489

[HB 73]

AN ACT REQUIRING CERTAIN DIVISIONS, BUREAUS, UNITS, AND PROGRAMS TO DEVELOP AND IMPLEMENT A FULL COST

ACCOUNTING PILOT PROGRAM; AMENDING SECTION 5-5-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 5] may be cited as the "Full Cost Accounting Act".

Section 2. Legislative findings and declarations. (1) The legislature finds that acknowledging the complete costs of agency programs and services enables policymakers to develop more informed decisions, identify opportunities for streamlining programs and services, facilitate cost-saving efforts, and better plan for the future.

(2) The legislature further finds that applying a full cost accounting model may result in the following benefits:

(a) agency rates and fees for goods and services that are set correctly and fairly;

(b) agency budget requests that are more clear and defensible; and

(c) programs or services that may be operated more effectively or offered for less cost.

(3) The legislature further finds that full cost accounting serves different goals and audiences than traditional government accounting reports.

(4) Therefore, the legislature declares that there is a compelling public need to adopt a full cost accounting model to isolate state agency program costs.

Section 3. Policy and purpose. The purpose of [sections 1 through 5] is to provide the legislature, the executive branch, and the public with a detailed description of individual program costs to:

(1) identify cost-effective methods of providing goods and services;

(2) assist the legislature in making decisions regarding the appropriation of public revenue; and

(3) establish rates and fees that reflect the true cost of providing goods and services.

Section 4. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "Committee" means the business and labor interim committee provided for in 5-5-223.

(2) "Direct costs" means costs that are clearly and exclusively associated with an agency program or service.

(3) "Executive branch" means the executive branch of state government referred to in Article III, section 1, and Article VI of the Montana constitution.

(4) "Executive oversight" means the salary and expenses of an agency director, deputy director, or advisory board or commission.

(5) "Full cost accounting" means a systematic approach for identifying, aggregating, and reporting the actual costs of agency programs or services by accounting for all monetary resources used or committed by agency programs or services.

(6) "Indirect costs" means costs that are not exclusively related to an agency program or service and that benefit at least one other agency program or service. For the purposes of [section 5], indirect costs include but are not limited to the following services:

(a) accounting and payroll;

(b) human resource;

(c) legal;

(d) purchasing and procurement;

(e) data processing;

(f) records management; and

(g) executive oversight.

(7) "Program" means any legislatively or administratively created function, project, or duty of an agency.

Section 5. Full cost accounting pilot program — duties of divisions, bureaus, units, and programs — cost factors — reporting requirements. (1) Beginning July 1, 2001, each division, bureau, unit, or program listed in subsection (2) shall establish a full cost accounting model to determine the total cost of providing services in-house, using the cost factors provided for in subsection (3).

(2) The following divisions, bureaus, units, or programs shall establish a full cost accounting model:

(a) central stores program within the department of administration;

(b) marketing unit of the travel promotion and development division within the department of commerce;

(c) nursery program of the forestry division within the department of natural resources and conservation;

(d) plan and specification review program of the public water supply section within the department of environmental quality;

(e) chemical dependency bureau within the department of public health and human services;

(f) motor pool unit within the department of transportation;

(g) state hail program and state grain laboratory bureau within the department of agriculture; and

(h) capitol grounds maintenance program within the department of fish, wildlife, and parks.

(3) The full cost accounting model must contain the following cost factors:

(a) direct costs, including but not limited to:

(i) employee wages, benefits, and pensions;

(ii) supplies and materials;

(iii) travel;

(iv) printing;

(v) rent;

(vi) utilities;

(vii) interest on capital items;

(viii) facility and equipment costs;

(ix) communications; and

(x) other costs expended for the exclusive benefit of the program; and

(b) indirect costs.

(4) Each division, bureau, unit, or program shall prepare and deliver a final report of its findings to the committee, the legislative finance committee, and the legislative auditor no later than September 1, 2002. Each report must contain:

(a) the true cost of providing a service or program;

(b) issues associated with implementing and administering a full cost accounting model;

(c) recommendations for changing the full cost accounting model to ensure the effective collection and use of information; and

(d) any recommendation to privatize functions within the departments, which must be submitted for review according to the provisions of Title 2, chapter 8, part 3.

Section 6. Section 5-5-223, MCA, is amended to read:

"**5-5-223. Business and labor interim committee.** *(1)* The business and labor interim committee has administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

~~(1)~~*(a)* department of agriculture;

~~(2)~~*(b)* department of commerce;

~~(3)~~*(c)* department of labor and industry;

~~(4)~~*(d)* department of livestock;

~~(5)~~*(e)* department of public service regulation; and

~~(6)~~*(f)* office of the state auditor and insurance commissioner.

(2) The committee shall review the implementation and administration of the full cost accounting pilot program and make recommendations for implementing a full cost accounting model for all state agencies."

Section 7. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective on passage and approval.

Section 10. Termination. [This act] terminates December 31, 2002.

Approved May 1, 2001

CHAPTER NO. 490

[HB 116]

AN ACT GENERALLY REVISING THE DEFINED CONTRIBUTION PLAN PROVISIONS UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; COMPLYING WITH INTERNAL REVENUE CODE REQUIREMENTS; LIMITING LIABILITY; REVISING THE ALLOCATION OF CURRENT CONTRIBUTIONS TO AN EDUCATION FUND; REVISING HOW FAMILY LAW ORDERS AND EXECUTION OF WITHHOLDING AND SUPPORT OBLIGATION ORDERS MAY BE APPLIED; REVISING THE USE OF FORFEITURES; MAKING CONTRACTED SERVICES DISCRETIONARY; CLARIFYING PLAN CHOICE PROVISIONS FOR UNIVERSITY EMPLOYEES; ELIMINATING A PROHIBITION ON REJOINING THE DEFINED BENEFIT PLAN UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; REVISING THE INTEREST CREDITED ON AMOUNTS TRANSFERRED TO THE DEFINED CONTRIBUTION PLAN; CLARIFYING TRANSFER AND ROLLOVER PROVISIONS; REVISING MINIMUM ACCOUNT BALANCE PROVISIONS; REVISING CERTAIN PROVISIONS OF THE OPTIONAL RETIREMENT PROGRAM; AMENDING SECTIONS 19-2-303, 19-2-401, 19-2-907, 19-2-909, 19-2-1001, 19-2-1002, 19-2-1003, 19-2-1004, 19-2-1005, 19-2-1006, 19-2-1007, 19-3-2101, 19-3-2102, 19-3-2111 19-3-2112, 19-3-2113, 19-3-2114, 19-3-2115, 19-3-2116, 19-3-2117, 19-3-2121, 19-3-2122, 19-3-2123, 19-3-2124, 19-3-2125, 19-3-2126, 19-3-2133, 19-21-101, 19-21-103, 19-21-201, 19-21-202, AND 19-21-203, MCA, AND SECTIONS 79 AND 81, CHAPTER 471, LAWS OF 1999; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-2-303, MCA, is amended to read:

"**19-2-303. (Temporary) Definitions.** Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a system, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a retirement system over the present value of future normal costs in that retirement system.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member to purchase various types of optional service credit as allowed by the applicable retirement system.

(8) "Annuity" means equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement system and as such are not benefits paid by a retirement system and are not subject to periodic or one-time increases.

(9) "Benefit" means the service or disability retirement or survivorship benefit payment provided by a retirement system.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(12) "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement system and that are used to calculate service or disability retirement or survivorship benefits under a retirement system.

(13) "Department" means the department of administration.

(14) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits or lump-sum payments upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(15) "Disability" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(16) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer.

(17) "Employer" means a governmental entity participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees.

(18) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

(19) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(20) "Inactive member" means a member who is not an active or retired member.

(21) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999.

(22) "Member" means any person with accumulated contributions and service credited with a retirement system or receiving a retirement benefit on account of the person's previous service credited in a retirement system.

(23) "Membership service" or "years of service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(24) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a retirement system during any year in the future. Normal cost does not include any portion of the supplemental costs of a retirement system.

(25) "Pension" means benefit payments for life derived from contributions to a system made from state- or employer-controlled funds.

(26) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system in public trust.

(27) "Regular contributions" means contributions required from members under a retirement system.

(28) "Regular interest" means interest at the rate set from time to time by the board.

(29) "Retirement" or "retired" means the status of a member who has been terminated from service for at least 30 days and has received and accepted a retirement benefit from a retirement system.

(30) "Retirement benefit" means the periodic benefit payable as a result of service, early, or disability retirement under a retirement system. An annuity is not a retirement benefit.

(31) *"Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.*

(32) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

~~(32)~~*(33)* "Service" means employment of an employee in a position covered by a retirement system.

~~(33)~~*(34)* "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

~~(34)~~*(35)* "Supplemental cost" means an element of the total actuarial cost of a retirement system arising from benefits payable for service performed prior to the inception of the retirement system or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement system.

~~(35)~~*(36)* "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a retirement system.

~~(36)~~*(37)* "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

~~(37)~~*(38)* "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a retirement system's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

~~(38)~~*(39)* "Vested member" or "vested" means a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under a retirement system.

~~(39)~~*(40)* "Written application" means a written instrument, specified by the board, properly executed, and filed with the board, that contains all the information required by the board, including documentation that the board considers necessary.

19-2-303. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) ~~"Account balance" means all contributions, income, and other assets in a retirement account that have, pursuant to 19-3-2116, vested to a member of the defined contribution plan.~~

~~(2)~~ "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

~~(3)~~*(2)* "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

~~(4)~~*(3)* "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

~~(5)~~*(4)* "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

~~(6)~~*(5)* "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

~~(7)~~*(6)* "Actuary" means the actuary retained by the board in accordance with 19-2-405.

~~(8)~~*(7)* "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

~~(9)~~*(8)* "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

~~(10)~~*(9)* "Benefit" means:

(a) the service or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

~~(11)~~*(10)* "Board" means the public employees' retirement board provided for in 2-15-1009.

~~(12)~~*(11)* "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

~~(13)~~*(12)* "Covered employment" means employment in a covered position.

~~(14)~~*(13)* "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

~~(15)~~*(14)* "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate service or disability retirement or survivorship benefits under a defined benefit retirement plan.

~~(16)~~*(15)* "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

~~(17)~~*(16)* "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

~~(18)~~*(17)* "Department" means the department of administration.

~~(19)~~*(18)* "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

~~(20)~~*(19)* "Disability" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

~~(21)~~*(20)* "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer.

~~(22)~~*(21)* "Employer" means a governmental entity participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees.

~~(23)~~*(22)* "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

~~(24)~~*(23)* "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

~~(25)~~*(24)* "Inactive member" means a member who is not an active or retired member.

~~(26)~~*(25)* "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999.

~~(27)~~*(26)* "Member" means either:

(a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

(b) a person with a retirement account in the defined contribution plan.

~~(28)~~*(27)* "Membership service" or "years of service" means the periods of service that are used to determine eligibility for retirement or other benefits.

~~(29)~~*(28)* "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future. Normal cost does not include any portion of the supplemental costs of a retirement plan.

~~(30)~~*(29)* "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

~~(31)~~*(30)* "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

~~(32)~~*(31)* "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

~~(33)~~*(32)* "Regular contributions" means contributions required from members under a retirement plan.

~~(34)~~*(33)* "Regular interest" means interest at the rate set from time to time by the board.

~~(35)~~*(34)* "Retirement" or "retired" means the status of a member who has been terminated from service for at least 30 days and has received and accepted a retirement benefit from a retirement plan.

~~(36)~~*(35)* "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and employee contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

~~(37)~~*(36)* "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service, early, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection ~~(10)(b)~~ *(9)(b).*

(37) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

(38) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(39) "Service" means employment of an employee in a position covered by a retirement system.

(40) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(41) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

(42) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

(43) "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

(44) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(45) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts: the member's contribution account, the vested portion of the employer's contribution account, and the member's account for other contributions.

(46) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under the retirement plan; or

(b) with respect to the defined contribution plan, a member or the status of a member who~~, pursuant to~~ *meets the minimum membership service requirement of* 19-3-2116~~, is entitled to employer contributions and income on those contributions in the member's retirement account~~.

~~(46)~~*(47)* "Written application" means a written instrument, specified by the board, properly executed, and filed with the board, that contains all the information required by the board, including documentation that the board considers necessary."

Section 2. Section 19-2-401, MCA, is amended to read:

"~~**19-2-401. (Temporary) Location of board — jurisdiction and venue for judicial review — quorum — officers and employees.** (1) The board shall maintain its office in the city of Helena. Jurisdiction and venue for judicial review of final administrative decisions of the board are in the first judicial district, Lewis and Clark County, unless otherwise stipulated by the parties.~~

~~(2) A quorum of the board is three members.~~

~~(3) The board shall elect one of its members presiding officer. The board may appoint a committee of one or more of its members to perform routine acts, such as retirement of members and fixing of retirement benefits, approval of death claims, and correction of records necessary in the administration of the systems in accordance with the provisions of chapters 3, 5 through 9, 12, 13, and 15 of this title and in accordance with the rules of the board. The attorney general is the legal counsel for the board.~~

19-2-401. ~~(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)~~ Location of board — jurisdiction and venue for judicial review — quorum — officers and employees. (1) The board shall maintain its office in the city of Helena. Jurisdiction and venue for judicial review of final administrative decisions of the board are in the first judicial district, Lewis and Clark County, unless otherwise stipulated by the parties.

(2) A quorum of the board is four members.

(3) The board shall elect one of its members presiding officer. The board may appoint a committee of one or more of its members to perform routine acts, such as retirement of members and fixing of retirement benefits, approval of death claims, and correction of records necessary in the administration of the systems in accordance with the provisions of chapters *2,* 3, 5 through 9, 13, ~~and~~ 17, *and 50* of this title and in accordance with the rules of the board. The attorney general is the legal counsel for the board."

Section 3. Limitation of liability. (1) The board shall exercise its fiduciary authority in the same manner that would be used by a prudent person acting in the same capacity who is familiar with the circumstances and in an enterprise of a similar character with similar aims.

(2) Plan fiduciaries are not liable for any loss to a defined contribution plan or optional retirement program participant's or beneficiary's account that results from the participant's or beneficiary's exercise of control.

(3) Plan fiduciaries are not responsible for the acts or omissions of any vendor providing services to the defined contribution plan or optional retirement program. Nothing in this subsection limits the liability of any vendor for services required by contract.

(4) Plan fiduciaries are not liable for their reliance on the express provisions of the defined contribution plan or optional retirement program.

Section 4. Section 19-2-907, MCA, is amended to read:

"19-2-907. Alternate payees — family law orders — rulemaking. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section; and

(b) "participant" means *an identified person who is* a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system *or plan* designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(3) A family law order must identify *a participant and* an alternate payee by full name, current address, *date of birth,* and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system *or plan.*

(5) ~~In~~ *With respect to* a defined benefit plan, a family law order may ~~only~~ provide for payment to an alternate payee *only* as follows:

(a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of *either* a percentage of the amount payable or ~~payment of~~ a fixed amount of no more than the amount payable to the participant. *Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified.*

(b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. Conversion of a disability retirement to a service retirement pursuant to 19-2-406(4), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be apportioned to an alternate payee.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned *as a percentage* only if existing benefit payments are apportioned *as a percentage*. The adjustments must be apportioned *as a percentage* in the same ratio as existing benefit payments.

(d) ~~Payments must be limited to the life of the appropriate participant. The duration of payments to an alternate payee may be further limited only to a specified maximum time, the life of the alternate payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.~~

~~(e)~~ The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system or plan allows for that option.

(6) *With respect to a defined contribution plan, a family law order may provide for payment to an alternate payee only as follows:*

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount apportioned may not exceed the amount in participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may not be established for an alternate payee.

(b) If the participant is receiving periodic payments from an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(7) The duration of monthly payments apportioned from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(8) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

~~(7)~~*(9)* Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

~~(8)~~*(10)* The board shall adopt rules to provide for the ~~application~~ *administration* of a family law ~~order within the defined contribution plan~~ *orders*."

Section 5. Section 19-2-909, MCA, is amended to read:

"19-2-909. Execution or withholding for support obligation — rulemaking. (1) Benefits in the retirement systems or plans provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution and income withholding for the payment of a participant's support obligation.

(2) For purposes of this section, the following definitions apply:

(a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-157.

(c) "Participant" means *an identified person who is* a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(d) "Support obligation" has the meaning provided in 40-5-403 for a support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(4) An execution or income-withholding order applied to a defined benefit retirement plan may provide for payment only as follows:

(a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

~~(d) Payments must be limited to the life of the appropriate participant. The duration of payments under this section may be further limited only to a specified maximum time or the life of a specified participant. Payments may also be limited to a specific amount each month if the number of payments is specified.~~

(5) *With respect to a defined contribution plan, an execution or income-withholding order may provide for payment to an alternate payee only as follows:*

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount apportioned may not exceed the amount in the participant's vested account. The alternate payee

may receive the payment only as a direct payment, rollover, or transfer. A new account may not be established for an alternate payee.

(b) If the participant is receiving periodic payments from an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(6) The duration of monthly or other periodic payments apportioned from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(7) The board shall adopt rules to provide for the ~~application~~ *administration* of ~~an~~ execution or income-withholding ~~order within the defined contribution plan~~ *orders.*"

Section 6. Section 19-2-1001, MCA, is amended to read:

"**19-2-1001. Maximum contribution and benefit limitations.** (1) Employee contributions paid to and retirement benefits paid from ~~the~~ *a* retirement ~~systems~~ *system or plan* may not exceed the annual limits on contributions and benefits ~~in~~, respectively, allowed by section 415 of the Internal Revenue Code.

(2) A member may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in section 415(b) of the Internal Revenue Code.

(3) Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to a retirement system *or plan* if the amount of the contribution would exceed the limits provided in section 415 of the Internal Revenue Code, by using the following methods:

(a) If the ~~retirement system's~~ law requires a lump-sum payment for the purchase of service credit, the board may establish a periodic payment plan for the member ~~in order~~ to avoid a contribution in excess of the limits under section 415(c) or 415(n) of the Internal Revenue Code.

(b) If payment pursuant to subsection (3)(a) will not avoid a contribution in excess of the limits imposed by section 415(c) of the Internal Revenue Code, the board shall either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.

(4) The limitation year for purposes of section 415 of the Internal Revenue Code is the calendar year beginning each January 1 and ending December 31.

(5) "Salary" or any other similar term used for the purposes of determining compliance with section 415 of the Internal Revenue Code includes the amount of an elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any other contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member because of sections 125, 403(b), or 457 of the Internal Revenue Code."

Section 7. Section 19-2-1002, MCA, is amended to read:

"~~**19-2-1002. (Temporary) Vesting of retirement benefits upon termination of system.** Upon termination of a retirement system, termination of employment of a substantial number of members that would constitute a partial termination of the retirement system, or complete discontinuance of contributions to that retirement system, the retirement benefit accrued to each member directly affected by the occurrence becomes fully vested and nonforfeitable to the extent funded.~~

19-2-1002. ~~**(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)**~~ **Vesting of retirement benefits upon termination of plan.** Upon termination of a retirement *system or* plan, termination of employment of a substantial number of members that would constitute a partial termination of the retirement *system or* plan, or complete discontinuance of contributions to that retirement *system or* plan, the retirement benefit accrued to each member directly affected by the occurrence becomes fully vested and nonforfeitable to the extent funded."

Section 8. Section 19-2-1003, MCA, is amended to read:

"~~**19-2-1003. (Temporary) Transfer of dormant, nonvested member-accumulated contributions.** The board may, in its discretion, transfer the accumulated contributions of a nonvested member to the pension trust fund of the system in which the member is participating if the member has not participated in the plan as an employee for a period of 10 years. Rights of the member may not be jeopardized by the transfer, and the accumulated contributions must be transferred to the member's name upon subsequent return to service or subsequent application for refund.~~

19-2-1003. ~~**(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)**~~ **Transfer of dormant, nonvested member-accumulated contributions.** The board may, in its discretion, transfer the accumulated contributions of a nonvested member of a defined benefit *system or* plan to the pension trust fund of the *system or* plan in which the member is participating if the member has not participated in the *system or* plan as an employee for a period of 10 years. Rights of the member may not be jeopardized by the transfer, and the accumulated contributions must be transferred to the member's name upon subsequent return to service or subsequent application for refund."

Section 9. Section 19-2-1004, MCA, is amended to read:

"**19-2-1004. Exemption from taxes and legal process.** Except as provided in 19-2-907 and 19-2-909, the right of a person to any benefit or payment from ~~the~~ *a* retirement ~~systems~~ *system or plan* and the money in the *system or plan's* pension trust ~~funds~~ *fund* is not:

(1) subject to execution, garnishment, attachment, or any other process;

(2) subject to state, county, or municipal taxes except for:

(a) a benefit or annuity received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a refund of a member's regular contributions picked up by an employer after June 30, 1985, as provided in 19-3-315, 19-5-402, 19-6-402, 19-7-403, 19-8-502, 19-9-710, or 19-13-601; or

(3) assignable except as specifically provided in this chapter."

Section 10. Section 19-2-1005, MCA, is amended to read:

"~~**19-2-1005. (Temporary) Compensation limit.** A retirement system subject to this chapter may not take into account compensation of a member in excess of the amount permitted in Internal Revenue Code section 401(a)(17).~~

19-2-1005. ~~**(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)**~~ **Compensation limit.** A retirement *system or* plan subject to this chapter may not take into account compensation of a member in excess of the amount permitted in Internal Revenue Code section 401(a)(17)."

Section 11. Section 19-2-1006, MCA, is amended to read:

"**19-2-1006. Use of forfeitures.** A retirement *system or* plan subject to this chapter may not apply forfeitures of benefits resulting from the member's termination of employment, the death of the member, or any other reason to increase the benefits of any member in a manner not permitted in Internal Revenue Code section 401(a)(8). However, forfeitures may be used to reduce the ~~costs~~ *cost* of ~~administration of~~ *administering* a retirement *system or* plan subject to this chapter."

Section 12. Section 19-2-1007, MCA, is amended to read:

"~~**19-2-1007. (Temporary) Required distributions.** The benefits payable by the retirement systems subject to this chapter are subject to the requirements of section 401(a)(9) of the Internal Revenue Code as follows:~~

~~(1) Benefits must begin by the later of April 1 of the calendar year following the calendar year in which the member reaches 70 1/2 years of age or April 1 of the calendar year following the calendar year in which the member terminates employment. If a member fails to apply for retirement benefits by April 1 of the year following the calendar year in which the member attains age 70 1/2 or April 1st of the year following the calendar year in which the member terminates employment, whichever is later, the board shall begin distribution of the benefit as required by the retirement system to which the member belongs or, subject to subsection (2), as an option 4 benefit in chapters 3, 5, 7, and 8 of this title.~~

~~(2) The member's entire interest in the retirement system must be distributed over the life of the member or the lives of the member and a designated beneficiary, over a period not extending beyond the life expectancy of the member or the life expectancy of the member and designated beneficiary. Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations implementing that section.~~

~~(3) The life expectancy of a member or the member's beneficiary may not be recalculated after payment of the benefits has begun.~~

~~(4) When a member dies after distribution of benefits has begun, the remaining portion of the member's interest must be distributed beginning within 3 months of notification to the board of the death of the member and, if necessary, the identification of the beneficiary pursuant to 19-2-802 and must be distributed at least as rapidly as under the method of distribution prior to the member's death.~~

~~(5) When a member dies before distribution of benefits has begun, the entire interest of the member must be distributed within 5 years of the member's death. The 5-year payment rule does not apply to any portion of the member's interest that is payable to a designated beneficiary over the life or life expectancy of the~~

~~beneficiary and that begins within 1 year after the date of the member's death. The 5-year payment rule does not apply to any portion of the member's interest that is payable to a surviving spouse, payable over the life or life expectancy of the spouse, and that begins no later than the date the member would have reached 70 1/2 years of age. Distributions to a member's beneficiary must begin as soon as administratively feasible, but must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. If the beneficiary has not elected the form of payment by that date, payment to the beneficiary must be made in the form of a lifetime monthly benefit payment if the beneficiary is eligible for a monthly benefit or in a lump sum if that is the only benefit payable to the beneficiary.~~

~~(6) The benefits payable must meet the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code.~~

19-2-1007. ~~**(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)**~~ **Required distributions.** The benefits payable by ~~the~~ *a* retirement ~~plans~~ *system or plan* subject to this chapter are subject to the requirements of section 401(a)(9) of the Internal Revenue Code as follows:

(1) Benefits must begin by the later of April 1 of the calendar year following the calendar year in which the member reaches 70 1/2 years of age or April 1 of the calendar year following the calendar year in which the member terminates employment. If a member fails to apply for retirement benefits by April 1 of the year following the calendar year in which the member attains age 70 1/2 or April 1st of the year following the calendar year in which the member terminates employment, whichever is later, the board shall begin distribution of the benefit as required by the retirement system *or plan* to which the member belongs or, subject to subsection (2), as an option 4 benefit in chapters 3, 5, 7, and 8 of this title.

(2) The member's entire interest in a retirement *system or* plan must be distributed over the life of the member or the lives of the member and a designated beneficiary or over a period not extending beyond the life expectancy of the member or the life expectancy of the member and a designated beneficiary. Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations implementing that section.

(3) The life expectancy of a member or the member's beneficiary may not be recalculated after payment of the benefits has begun.

(4) When a member dies after distribution of benefits has begun, the remaining portion of the member's interest must be distributed beginning within 3 months of notification to the board of the death of the member and, if necessary, the identification of the beneficiary pursuant to 19-2-802 and must be distributed at least as rapidly as under the method of distribution prior to the member's death.

(5) When a member dies before distribution of benefits has begun, the entire interest of the member must be distributed within 5 years of the member's death. The 5-year payment rule does not apply to any portion of the member's interest that is payable to a designated beneficiary over the life or life expectancy of the beneficiary and that begins within 1 year after the date of the member's death. The 5-year payment rule does not apply to any portion of the member's interest that is payable to a surviving spouse, that is payable over the life or life expectancy of the spouse, and that begins no later than the date the member would have

reached 70 1/2 years of age. Distributions to a member's beneficiary must begin as soon as administratively feasible, but must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. If the beneficiary has not elected the form of payment by that date, payment to the beneficiary must be made in the form of a lifetime monthly benefit payment if the beneficiary is eligible for a monthly benefit or in a lump sum if that is the only benefit payable to the beneficiary.

(6) The benefits payable must meet the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code."

Section 13. Nonapplication of part to defined contribution plan. Unless otherwise explicitly provided in this part, none of the provisions of this part apply under the defined contribution plan.

Section 14. Section 19-3-2101, MCA, is amended to read:

"**19-3-2101. Definitions.** Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) "Member" means ~~an employee~~ *a person* with a retirement account in the defined contribution plan.

(2) "Optional retirement program" means the retirement plan established by the board of regents under chapter 21 of this title.

(3) "Plan" or "defined contribution plan" means the defined contribution retirement plan."

Section 15. Section 19-3-2102, MCA, is amended to read:

"**19-3-2102. (Subsection (1) effective on occurrence of contingency or July 1, 2002, whichever is earlier) Defined contribution plan established — assets to be held in trust — contracted services.** (1) The board shall establish within the public employees' retirement system a defined contribution plan in accordance with the provisions of this part. The plan must be established as a pension plan for the exclusive benefit of members and their beneficiaries and as a "qualified *governmental* plan" pursuant to section 401(a) of the Internal Revenue Code and its implementing regulations. Retirement accounts must be established for each member of the defined contribution plan. Assets of the plan must be held in trust. The plan is established in addition to any retirement, pension, deferred compensation, or other benefit plan administered by the state or a political subdivision.

(2) The board ~~shall~~ *may* contract for plan administration and use a competitive bidding process when contracting for consulting, educational, investment, recordkeeping, or other services for the plan.

~~(3) The board shall contract for a qualified consultant to assist in preparation of the request for bid or request for proposal for plan services.~~"

Section 16. Limited contract right. The statutory provisions governing the defined contribution plan and the optional retirement program are subject to amendment by the legislature. Employees choosing the defined contribution plan or the optional retirement program pursuant to this part do not have a contract right to the specific terms and conditions specified in statute on the date the employee's choice becomes effective.

Section 17. Section 19-3-2111, MCA, is amended to read:

"19-3-2111. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Plan membership — written election required — failure to elect — effect of election. (1) Except as otherwise provided in this part:

(a) (i) a member who is an active member of the defined benefit plan on the date that the defined contribution plan becomes effective may, within 12 months after that date, elect to transfer to and become a member of the plan;

(ii) a member who was an inactive member of the defined benefit plan on the date that the defined contribution plan becomes effective and who is rehired into covered employment after the plan effective date may, within 12 months after the member's rehire date, elect to transfer to and become a member of the plan;

(b) a member who is initially hired into covered employment on or after the date that the defined contribution plan becomes effective may, within 12 months of the member's hire date, elect to become a member of the plan.

(2) (a) Elections made pursuant to this section must be made on a form prescribed by the board.

(b) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(c) An election under this section, including the default election pursuant to subsection (2)(b), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(c) does not prohibit a new election after an employee has terminated membership in either plan and returned to covered employment.

(3) A member in either the defined benefit plan or the defined contribution plan who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(4) A system member may not simultaneously be a member of the defined benefit plan and the defined contribution plan and must be a member of either the defined benefit plan or the defined contribution plan. A period of service may not be credited in more than one retirement plan within the system.

(5) The provisions of this part do not prohibit the board from adopting rules to allow an employee to elect the defined contribution plan ~~on~~ *from* the first day of covered employment.

(6) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the defined contribution plan unless the order is modified to apply under the defined contribution plan ~~or, for university employees making an election pursuant to 19-3-2112, the optional retirement program~~."

Section 18. Section 19-3-2112, MCA, is amended to read:

"19-3-2112. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Plan choices for members employed by university system — amount available to transfer — effect on rights. (1) If an employee of the *Montana* university system~~, as provided for in 20-1-101,~~ is eligible to make an election under this part to transfer to the defined contribution plan, the employee may, instead of electing the *defined contribution* plan, ~~make a one-time irrevocable election on a form prescribed by the board~~ *elect* to transfer membership to the university system's optional retirement program provided for under chapter 21 of this title.

(2) Except as otherwise provided in this part, an election to transfer to the optional retirement program must be made in accordance with the following provisions:

(a) (i) A university employee who is an active member of the defined benefit plan on the effective date of the defined contribution plan may, within 12 months after that date, elect to transfer to and become a member of the optional retirement program.

(ii) A university employee who was an inactive member of the defined benefit plan on the effective date of the defined contribution plan and who is hired or rehired into covered employment with the university system after that date may, within 12 months after the member's hire or rehire date, elect to transfer to and become a member of the optional retirement program.

(iii) An employee who is initially hired into covered employment with the university system on or after the effective date of the defined contribution plan may, within 12 months of the member's hire date, elect to become a member of the optional retirement program.

(b) Elections made pursuant to this section must be made on a form prescribed by the board.

(c) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(d) An election under this section, including the default election pursuant to subsection (2)(c), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(d) does not prohibit a new election after an employee has terminated membership in the optional retirement program and returned to employment in a position covered under the system.

(e) A member in either the defined benefit plan or the optional retirement program who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(f) A university employee in a position covered under the system may not simultaneously be a member of more than one retirement plan under this title, but must be a member of the defined benefit plan, the defined contribution plan, or the optional retirement program as provided by applicable provisions of this title. The same period of service may not be credited in more than one retirement system or plan.

(g) The provisions of this part do not prohibit the board from adopting rules to allow an eligible employee to elect the optional retirement program from the first day of covered employment.

(h) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the optional retirement program unless the order is modified to apply under the optional retirement program.

~~(2)~~*(3)* For an employee electing to transfer to the optional retirement program, the board shall transfer to the optional retirement program the amount that the employee would have been able to transfer to the defined contribution plan under 19-3-2114.

~~(3)~~*(4)* An election to become a member of the optional retirement program pursuant to this section is a waiver of all rights and benefits under the public employees' retirement system."

Section 19. Section 19-3-2113, MCA, is amended to read:

"**19-3-2113. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Reinstatement of plan membership — purchase of prior service in defined benefit plan.** (1) (a) ~~An employee~~ *A participant* who ~~terminated~~ *terminates* membership in the defined benefit plan, the defined contribution plan, or the optional retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment ~~after a break in service of~~ *in* less than 24 ~~consecutive~~ months shall become a member of the plan that the member last selected and is not eligible for a new plan choice election.

(b) ~~Except as provided in subsection (2), an employee~~ *A participant* who terminated membership in either the defined benefit plan, the defined contribution plan, or the optional retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment after ~~a break in service of~~ 24 ~~consecutive~~ months or more is eligible to make a plan choice election as ~~if the employee were~~ *though* initially hired as provided for in 19-3-2111(1)(b).

~~(2) (a) An employee who returns to covered employment after terminating plan membership in the defined contribution plan or the optional retirement program shall return to the plan previously selected if the employee has accessed money derived from the employee's former retirement account by:~~

~~(i) receiving a lump-sum distribution of the member's former retirement account, unless the distribution was forced pursuant to 19-3-2126(1)(b);~~

~~(ii) receiving a lump-sum distribution from an account outside the defined contribution plan that has at any time received a transfer of funds from the member's former retirement account or any account to which the member has transferred funds from a former retirement account; or~~

~~(iii) receiving a regular benefit, payment, or distribution from an account outside the defined contribution plan in which there is money from the member's former retirement account.~~

~~(b) For the purposes of this subsection (2), "retirement account" also includes an employee's account under the optional retirement program.~~

~~(3)~~*(2)* (a) An employee who returns to covered employment after terminating membership in the defined benefit plan, who is eligible to make a plan choice, and who elects to join the defined benefit plan may reinstate prior membership service as provided in 19-2-603.

(b) An employee who returns to covered employment after terminating membership in the defined contribution plan or the optional retirement program, who is eligible to make a plan choice, and who elects to join the defined benefit plan may purchase prior membership service by paying to the board the full actuarial cost of the service as of the latest actuarial valuation of the defined benefit plan. The employee may not purchase membership service under this section in excess of the employee's length of service as a member of the defined contribution plan or the optional retirement program."

Section 20. Section 19-3-2114, MCA, is amended to read:

"19-3-2114. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Amount available to transfer. (1) (a) For an employee who was a system member on the day before the effective date of the defined contribution plan and who elects to transfer to the plan, the board shall transfer from the defined benefit plan to the member's retirement account the employee's contributions and the percentage of the employer's contributions specified in subsection (1)(b), plus 8% compounded annual interest on the total of the *transferred* employee and employer contributions.

(b) Based on the contribution amount historically available to pay unfunded liabilities in the defined benefit plan and the transferring member's years of service, the percentage of the employer contributions that may be transferred are as follows:

Years of service	Percentage of employer contributions available to transfer
Less than 5 years	65.53%
5 to 9 years	58.59%
10 to 14 years	55.26%
15 to 19 years	55.42%
20 or more years	57.53%

(2) For an employee hired on or after the effective date of the defined contribution plan who elects to become a member of the plan, the board shall transfer from the defined benefit plan to the member's retirement account an amount equal to the amount that would have been credited to the member's account pursuant to 19-3-2117 had the employee become a plan member on the employee's hire date, plus *8% compounded annual* interest ~~credited at the actuarially assumed rate of return on the defined benefit plan assets as of the plan's latest actuarial valuation~~."

Section 21. Section 19-3-2115, MCA, is amended to read:

"19-3-2115. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Transfers or rollovers into plan — *service transfers* — membership credit for purposes of vesting. (1) *(a)* Except as provided in subsection (2), the board shall accept the ~~transfer or~~ rollover of ~~assets~~ *contributions and the income on those contributions* from another qualified plan to the member's ~~retirement~~ *vested* account. ~~If a member is transferring assets from another plan provided for in this title, the member must, for the purposes of becoming vested pursuant to 19-3-2116, receive credit for the employee's prior membership service under that plan.~~

(b) To transfer service from another retirement system in this title, an employee must be a member of the defined benefit plan. The member must receive membership service and service credit for the service the member transfers. The transferring member may, within 12 months after joining the defined benefit plan, elect to become a member of the defined contribution plan. The transferred service may be used for purposes of vesting in the defined contribution plan pursuant to 19-3-2116.

(2) (a) After-tax money may not be transferred or rolled over to a retirement account unless the money was contributed to the system's defined benefit plan on an after-tax basis.

(b) To the extent that the transfer or rollover is disallowed under the Internal Revenue Code provisions in effect as of the calendar year immediately preceding the date of the transfer or rollover, a member may not transfer or rollover to a retirement account contributions made under sections 403(b) and 457 of the Internal Revenue Code."

Section 22. Section 19-3-2116, MCA, is amended to read:

"19-3-2116. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Vesting — mandatory termination of membership — forfeitures. (1) A member is fully vested with the member's contributions and the income on those contributions from the date that the employee becomes a member of the plan, but is not considered a vested member~~, as defined in 19-2-303,~~ unless the member meets the criteria under subsection (2).

(2) A member is not vested with the employer's contributions and the income on those contributions and does not attain the status of a vested member until the member has a total of ~~5-years~~ *5 years* of membership service under the system.

(3) A member who terminates covered employment before becoming a vested member shall terminate plan membership by removing from the plan the member's entire *vested* account balance as provided in 19-3-2123. The employer contributions and income on the employer's contributions in the member's retirement account are forfeited and must be allocated as provided in 19-3-2117."

Section 23. Section 19-3-2117, MCA, is amended to read:

"19-3-2117. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Allocation of contributions and forfeitures. (1) Each plan member's retirement account must be credited with the employee contributions made under 19-3-315.

(2) Subject to adjustment by the board as provided in 19-3-2121, beginning on the plan's effective date, of the employer contributions under 19-3-316, *an amount equal to*:

(a) 4.49% of compensation must be allocated to the member's retirement account; ~~and~~

(b) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate*; and*

(c) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(c).

(3) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the ~~employer contributions obligation provided under subsection (2)(a) of this section in lieu of direct contributions by the employer and shall increase the contribution amount under subsection (2)(b) of this section by the amount of the forfeitures used in lieu of the employer contributions~~ *plan's administrative expenses including startup expenses.*"

Section 24. Section 19-3-2121, MCA, is amended to read:

"19-3-2121. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Determination and adjustment of plan choice rate and contribution allocations ~~— rulemaking~~. (1) The board shall ~~provide for the periodic~~ *periodically* review ~~of~~ the sufficiency of the plan choice rate and shall adjust the allocation of contributions under 19-3-2117 as specified in this section. The board shall ~~provide that~~ *collect and maintain* the data necessary to comply with this section ~~is collected and maintained for all system members~~.

(2) The plan choice rate set in 19-3-2117(2)(b) must be adjusted as provided in this section, taking into account:

(a) as determined under subsection (3), the change in the normal cost contribution rate in the defined benefit plan that is the result of member selection of the defined contribution plan; *and*

~~(b) as determined under subsection (4), the anticipated reduction in defined contribution plan costs because of forfeitures; and~~

~~(c)~~*(b)* as determined under subsection ~~(5)~~ *(4)*, the sufficiency of the plan choice rate to actuarially fund the defined contribution plan's share of the defined benefit plan's unfunded liabilities.

(3) The change in the normal cost contribution rate must be an amount equal to the difference between the normal cost contribution rate in the defined benefit plan that would have resulted if all system members remained in the defined benefit plan and the normal cost contribution rate in the defined benefit plan for the actual members of the defined benefit plan, multiplied by the covered payroll of members in the defined benefit plan, divided by the covered payroll of members in the defined contribution plan. The measurements under this subsection must be based on the defined benefit plan in effect on the effective date of the defined contribution plan until the board determines that the defined benefit plan has been amended in a manner that significantly affects plan choices available to system members. After a board determination that the defined benefit plan has been significantly changed, the measurements in this subsection with respect to members entering the system after the significant change must be made on the basis of the defined benefit plan, as amended.

~~(4) The anticipated reduction in defined contribution plan costs as a result of forfeitures under 19-3-2116 must be determined as the amount of forfeitures expected during the next biennium based on actual forfeitures in the preceding biennium, adjusted by taking into account the gains or losses during the preceding biennium resulting from forfeitures of greater or lesser amounts than expected, divided by twice the covered payroll of members of the defined contribution plan.~~

~~(5)~~*(4)* The sufficiency of the plan choice rate to actuarially fund the appropriate share of the defined benefit plan's unfunded liabilities must be determined as follows:

(a) The board shall determine the number of years required to actuarially fund the defined benefit plan's unfunded liabilities as of the June 30, 1998, actuarial valuation, which must be the initial schedule for the defined contribution plan to actuarially fund the plan's share of the unfunded liabilities. The board shall reduce the schedule by 1 year each biennium.

(b) During each subsequent actuarial valuation of the defined benefit plan conducted pursuant to 19-2-405, the board shall determine whether the plan choice rate minus the ~~sum of the amounts~~ *amount* provided in ~~subsections~~ *subsection* (2)(a) ~~and (2)(b)~~ of this section is sufficient to pay the unfunded liability obligations within the schedule determined under subsection ~~(5)(a)~~ *(4)(a)* of this section. If the amount is insufficient to fund the liability over a period of 10 years longer than the scheduled period or is more than sufficient to fund the liability over a period of 10 years earlier than the scheduled period, the board shall determine to the nearest 0.1% the amount of the increase or decrease in the plan choice rate that is required to actuarially fund the liabilities according to the established schedule.

~~(6)~~*(5)* If the board determines that the plan choice rate should be increased or decreased, the plan choice rate under 19-3-2117(2)(b) must be increased or decreased accordingly. If the plan choice rate is increased, the allocation of employer contributions to member accounts under 19-3-2117(2)(a) must be decreased by that amount. If the plan choice rate is decreased, the allocation of employer contributions to member accounts under 19-3-2117~~(2)(b)~~*(2)(a)* must be increased by that amount.

~~(7)~~*(6)* By November 1 of the year of a determination pursuant to this section that the allocation of employer contributions under 19-3-2117(2) must be changed, the board shall notify system members, participating employers, employee and employer organizations, the governor, and the legislature of its determination and of the changes required.

~~(8)~~*(7)* Effective January 1 of the year after the regular legislative session that immediately follows a determination under this section, the plan choice rate and the allocation of contributions under 19-3-2117(2) must be adjusted according to the board's determination."

Section 25. Section 19-3-2122, MCA, is amended to read:

"**19-3-2122. (Subsections (4) through (6) effective on occurrence of contingency or July 1, 2002, whichever is earlier) Investment alternatives — notice of changes — default fund.** (1) The board shall ~~contract with a vendor or vendors to~~ provide for at least eight investment alternatives within the defined contribution plan. In providing for the plan's investment alternatives, only a vendor or vendors offering suitable and well-managed investments, licensed to conduct business in Montana, and regulated by the United States securities and exchange commission may be used, *unless exempt from the commission's regulation*.

(2) The investment alternatives must include at least three that offer plan members the following:

(a) the ability to materially affect the potential return on amounts in the member's retirement account and the degree of risk to which those amounts are subject;

(b) a range of investment alternatives that:

(i) provides sound and diversified funds;

(ii) offers, under each alternative, a materially different risk and return characteristic than found in the other alternatives;

(iii) allows the member or beneficiary to choose among them to achieve a portfolio with an aggregate risk and return characteristic to achieve a point within the risk and return range normally appropriate for the member or beneficiary based on age, income, and individual retirement goals; and

(iv) tends to minimize through diversification the overall risk of large losses.

(3) ~~Subject to a competitive bidding process, the~~ *The* investment alternatives may include the investment alternatives offered to members of the state deferred compensation plan pursuant to chapter 50 of this title.

(4) The board shall from time to time review the suitability and management of investment alternatives and may change the alternatives to be offered. The board shall notify affected members of potential changes before any changes become effective.

(5) Assets within each member's retirement account must be invested as directed by the member.

(6) The board shall provide for a balanced fund to be established as a default investment fund. In the case of a member failing to direct how the member's retirement account is to be invested, the member's entire account ~~balance~~ must be invested in the default fund.

(7) This section does not prohibit the board from contracting with the board of investments established in 2-15-1808 to provide one or more investment alternatives within the plan."

Section 26. Section 19-3-2123, MCA, is amended to read:

"**19-3-2123. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Payout of *vested* account balances when terminating plan membership.** Any time after termination of ~~covered employment~~ *service*, a member or the member's beneficiary may terminate plan membership by ~~making~~ *filing* a written application ~~to~~ *with* the board and removing the member's *vested* account balance from the plan through any combination of the following payout options, each of which is subject to applicable regulations of the internal revenue service:

(1) a direct rollover to an eligible retirement plan or to an individual retirement account or annuity pursuant to section 401(a)(31) of the Internal Revenue Code;

(2) a regular rollover to an eligible retirement plan pursuant to section 402(c) of the Internal Revenue Code; or

(3) a lump-sum distribution of the member's *vested* account balance."

Section 27. Section 19-3-2124, MCA, is amended to read:

"**19-3-2124. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Distribution options for plan members — rulemaking — minimum distribution requirements — restrictions.** (1) Subject to 19-3-2116 and 19-3-2126, a member may, after termination of ~~covered employment~~ *service*, leave the member's *vested* account balance in the plan, and the member is eligible for a distribution as provided in this section.

(2) After termination of ~~covered employment,~~ *service and* upon *filing a* written application ~~to~~ *with* the board, a member may, if provided for by the board, select a distribution option offered pursuant to a contract negotiated by the board with a plan vendor or vendors.

(3) A member who is less than 70 1/2 years of age who returns to ~~covered employment~~ *service* may not continue to receive a distribution under this section while actively employed in a covered position.

(4) The board shall adopt rules to administer this section and to provide that distributions comply with the minimum distribution requirements established in the Internal Revenue Code and applicable under 19-2-1007."

Section 28. Section 19-3-2125, MCA, is amended to read:

"**19-3-2125. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Death benefits.** A plan member's beneficiary must be determined as provided in chapter 2, part 8, of this title. Upon *filing a* written application ~~filed~~ with the board after the death of a plan member, the member's beneficiary is entitled to the member's *vested* account balance ~~and all rights established in and~~ subject to this part."

Section 29. Section 19-3-2126, MCA, is amended to read:

"**19-3-2126. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) ~~Minimum~~ *Refunds — minimum* account balance ~~required for membership after termination~~ — adjustment by rule.** (1) ~~(a) If a member's account balance is less than $5,000 at the time that the member terminates covered employment, the member shall terminate plan membership by removing the member's account balance from the plan in a manner provided pursuant to 19-3-2123.~~

~~(b) If the member fails to remove the member's account balance, the board may close the account by paying to the member a lump-sum distribution of the member's entire account balance.~~ *Before termination of service, a member may not receive a refund of any portion of the member's vested account.*

(2) A nonvested member who terminates from service and whose vested account balance is less than $200 must be paid the vested account balance in a lump sum. The payment must be made as soon as administratively feasible after the member's termination without a written application from the member.

(3) Unless a written application is made pursuant to subsection (4)(a), a nonvested member who terminates from service and whose vested account balance is between $200 and $5,000 must be paid the vested account balance in a lump sum. The payment must be made as soon as administratively feasible after the member's termination.

(4) (a) Upon the written application of a terminating member whose vested account balance is $200 or more, the board shall make a direct rollover distribution pursuant to section 401(a)(31) of the Internal Revenue Code of the eligible portion of that balance. To receive the direct rollover distribution, the member is responsible for correctly designating, on forms provided by the board, a retirement plan that allows the rollover and is qualified under applicable federal law.

(b) The direct rollover distribution must be paid directly to the qualified retirement plan. The amount of the member's vested account balance not eligible for a direct rollover distribution must be paid to the member in a lump sum.

~~(2)~~*(5)* The board may by rule adjust the minimum account balance provided in this section as necessary to maintain reasonable administrative costs and to account for inflation."

Section 30. Section 19-3-2133, MCA, is amended to read:

"19-3-2133. Creation of employee investment advisory council. The board shall, by August 1, 1999, ~~appoint~~ *create* an employee investment advisory council. The advisory council shall meet at least quarterly to:

(1) advise the board concerning the establishment and operation of the defined contribution plan, including the selection of the initial investment alternatives to be provided pursuant to 19-3-2122;

(2) advise the board about negotiating, contracting, or modifying services for the state deferred compensation plan provided for in chapter 50; and

(3) review existing deferred compensation plans and to advise the board on the administration of the program."

Section 31. Section 19-21-101, MCA, is amended to read:

"19-21-101. Authority to establish optional retirement program. The board of regents may establish an optional retirement program, as provided in this chapter, for the administrative officers and members of the instructional and scientific staff of the Montana university system. The program may be an independent plan or part of a larger plan with respect to some or all of the benefits provided. The benefits under the program must be provided through individual annuity contracts, either fixed or variable, or a combination ~~thereof~~ *of contracts*, issued to and owned by the participants in the program. *The program must comply with applicable sections of the Internal Revenue Code.*"

Section 32. Section 19-21-103, MCA, is amended to read:

"19-21-103. Duties of board of regents. The board of regents shall:

(1) *act as fiduciaries of the program and exercise its fiduciary authority in the same manner that would be used by a prudent person acting in the same capacity who is familiar with the circumstances and in an enterprise of a similar character with similar aims;*

(2) provide for the administration of the program;

~~(2)~~*(3)* designate the company or companies from which the contracts are to be purchased and approve the form and content of the contracts, taking into consideration the:

(a) nature and extent of the rights and benefits to be provided by the contracts for participants and their beneficiaries;

(b) relationship of these rights and benefits to the amount of contributions to be made;

(c) suitability of these rights and benefits to the needs of the participants and the interests of the Montana university system in the recruitment and retention of administrative officers and members of the instructional and scientific staff; and

(d) ability of the designated company or companies to provide these rights and benefits."

Section 33. Section 19-21-201, MCA, is amended to read:

"19-21-201. (Temporary) Participation in program. (1) Except as provided in subsection (2), academic and professional administrative personnel with individual contracts under the authority of the board of regents are eligible for and may elect to participate in the optional retirement program instead of the teachers' retirement system. This election must be exercised:

(a) before January 1, 1988, for an eligible person hired before July 1, 1987;

(b) within 90 days after entry into service or before January 1, 1988, whichever is later, for a person hired in an eligible position on or after July 1, 1987; and

(c) within 30 days after receiving written notice of eligibility or before January 1, 1988, whichever is later, for an employee who becomes eligible to participate in the optional retirement program by reason of appointment, promotion, transfer, or reclassification to an eligible position.

(2) (a) An eligible person hired on or after July 1, 1993, shall become a member of the optional retirement plan unless the person is, on the date hired, an active, inactive, or retired member of a public retirement system created in Title 19, chapter 3 or 20.

(b) A person hired who is a member of a public retirement system created in Title 19, chapter 3 or 20, shall elect to:

(i) remain with the retirement system of which the person is a member on the date hired; or

(ii) become a member of the optional retirement plan.

(c) A person eligible to make an election under this subsection (2) shall exercise the election within 30 days of being hired.

(3) The election must be exercised by filing a written notice with the teachers' retirement system and the disbursing officer of the employer. The election is effective as of the date the notice is filed or January 1, 1988, whichever is later.

(4) If an eligible officer or staff member fails to exercise the election, as provided by this section, that person must remain or become a member of the teachers' retirement system.

(5) An election under this section is not effective unless the notice filed with the disbursing officer of the employer is accompanied by an appropriate application, if one is required, for the issuance of a contract or contracts under the program.

19-21-201. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Participation in program. (1) Except as provided in subsection (2), academic and professional administrative personnel with individual contracts under the authority of the board of regents are eligible for and may elect to participate in the program instead of the teachers' retirement system. This election must be exercised:

(a) before January 1, 1988, for an eligible person hired before July 1, 1987;

(b) within 90 days after entry into service or before January 1, 1988, whichever is later, for a person hired in an eligible position on or after July 1, 1987; and

(c) within 30 days after receiving written notice of eligibility or before January 1, 1988, whichever is later, for an employee who becomes eligible to participate in the program by reason of appointment, promotion, transfer, or reclassification to an eligible position.

(2) (a) An eligible person hired on or after July 1, 1993, shall become a member of the program unless the person is, on the date hired, an active, inactive, or retired member of a public retirement system created in Title 19, chapter 3 or 20.

(b) An eligible person hired who is a member of a public retirement system created in Title 19, chapter 3 or 20, shall elect to:

(i) remain with the retirement system of which the person is a member on the date hired; or

(ii) become a member of the program.

(c) A person eligible to make an election under this subsection (2) shall exercise the election within 30 days of being hired.

(d) A person is ineligible to make an election under subsection (1) or (2) if the person previously elected to remain in the teachers' retirement system pursuant to subsection (1) or to remain in the public employees' retirement system pursuant to this subsection (2).

(3) The election must be exercised by filing a written irrevocable election with the teachers' retirement system and the disbursing officer of the employer. The election is effective as of the date the notice is filed or January 1, 1988, whichever is later.

(4) If an eligible officer or staff member fails to exercise the election, as provided by this section, that person shall remain or become a member of the teachers' retirement system.

(5) An election under this section is not effective unless the notice filed with the disbursing officer of the employer is accompanied by an appropriate application, if one is required, for the issuance of a contract or contracts under the program.

~~(6) Subject to and as provided in 19-3-2112, a university system employee in a position covered under the public employees' retirement system may elect to participate in the program.~~"

Section 34. Participation by employees in positions covered by public employees' retirement system. Subject to and as provided in 19-3-2112, a university system employee in a position covered under the public employees' retirement system may elect to participate in the program.

Section 35. Section 19-21-202, MCA, is amended to read:

"~~**19-21-202. (Temporary) Effect on rights under teachers' retirement system.** (1) An election under 19-21-201 to participate in the optional retirement program is a waiver of all rights and benefits under the teachers' retirement system except as provided in this section.~~

~~(2) A member of the teachers' retirement system who elects to participate in the optional retirement program is considered, for the purpose of determining eligibility for rights and benefits under that system, to be no longer employed in a capacity that allows active membership in that system as of the effective date of the election. Thereafter, the member is considered an inactive member of the retirement system if qualified under 19-20-303, with the rights and privileges provided under 19-20-603(1). A member who elects to participate in the optional retirement program who does not qualify as an inactive member under 19-20-303 is considered a terminated member of the retirement system under 19-20-304(4).~~

~~(3) A person who elects to participate in the optional retirement program is ineligible to be an active member of the teachers' retirement system while continuously employed in a position eligible to participate in the optional retirement program.~~

19-21-202. ~~(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)~~ Effect on rights under teachers' retirement system. (1) An election under 19-21-201~~(1) through (3) and (5)~~ to participate in the program is a waiver of all rights and benefits under the teachers' retirement system except as provided in this section.

(2) A member of the teachers' retirement system who elects to participate in the program is considered, for the purpose of determining eligibility for rights and benefits under that system, to be no longer employed in a capacity that allows active membership in that system as of the effective date of the election. Thereafter, the member is considered an inactive member of the system if qualified under 19-20-303, with the rights and privileges provided under 19-20-603(1). A member who elects to participate in the program who does not qualify as an inactive member under 19-20-303 is considered a terminated member of the system under 19-20-304(4).

(3) A person who elects to participate in the program is ineligible to be an active member of the teachers' retirement system while continuously employed in a position eligible to participate in the program."

Section 36. Section 19-21-203, MCA, is amended to read:

"**19-21-203. (Temporary) Contributions.** (1) Each optional retirement program participant shall contribute an amount equal to the member's contribution required under 19-20-602. The board of regents shall contribute an amount that, when added to the participant's contribution, is equal to 12% of the participant's earned compensation.

(2) (a) On or after July 1, 1997, the board of regents may:

(i) reduce the participant's contribution rate established in subsection (1) to an amount not less than 6% of the participant's earned compensation; and

(ii) increase the employer's contribution rate to an amount not greater than 6% of the participant's earned compensation.

(b) The sum of the participant's and employer's contributions made under subsection (2)(a) must remain at 12% of the participant's earned compensation.

(3) The board of regents shall determine whether the participant's contribution is to be made by salary reduction under section 403(b) of the Internal Revenue Code of 1954 or by employer pick-up under section 414(h)(2) of that code.

(4) The disbursing officer of the employer or other official designated by the board of regents shall pay both the participant's contribution and the appropriate portion of the regents' contribution to the designated company or companies for the benefit of the participant.

(5) The board of regents shall make the supplemental contributions to the teachers' retirement system as provided in 19-20-621 to discharge the obligation incurred by the Montana university system for the past service liability incurred by active, inactive, and retired members of the teachers' retirement system.

19-21-203. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Contributions — supplemental and plan choice rate contributions. *The following provisions apply to program participants not otherwise covered under [section 37]:*

(1) Each program participant shall contribute an amount equal to the member's contribution required under 19-20-602. The board of regents shall contribute an amount that, when added to the participant's contribution, is equal to 12% of the participant's earned compensation.

(2) (a) The board of regents may:

(i) reduce the participant's contribution rate established in subsection (1) to an amount not less than 6% of the participant's earned compensation; and

(ii) increase the employer's contribution rate to an amount not greater than 6% of the participant's earned compensation.

(b) The sum of the participant's and employer's contributions made under subsection (2)(a) must remain at 12% of the participant's earned compensation.

(3) The board of regents shall determine whether the participant's contribution is to be made by salary reduction under section 403(b) of the Internal Revenue Code of 1954 or by employer pickup under section 414(h)(2) of that code.

(4) The disbursing officer of the employer or other official designated by the board of regents shall pay both the participant's contribution and the appropriate portion of the board of regents' contribution to the designated company or companies for the benefit of the participant.

(5) ~~(a)~~ The board of regents shall make the supplemental contributions to the teachers' retirement system, as provided in 19-20-621, to discharge the obligation incurred by the Montana university system for the past service liability incurred by active, inactive, and retired members of the teachers' retirement system.

~~(b) For employees electing to become program members pursuant to 19-3-2112, the board of regents shall, in addition to other contributions required under this section, contribute to the public employees' retirement system the plan choice rate provided in 19-3-2117(2)(b) and adjusted pursuant to 19-3-2121.~~"

Section 37. Contributions and allocations for employees in positions covered under the public employees' retirement system. (1) The contribution rates for employees in positions covered under the public employees' retirement system who elect to become program members pursuant to 19-3-2112 are as follows:

(a) the member's contribution rate must be the rate provided in 19-3-315; and

(b) the employer's contribution rate must be the rate provided in 19-3-316.

(2) Subject to subsection (3), the employer's contribution under subsection (1)(b) must be allocated as follows:

(a) 4.49% of compensation must be allocated to the participant's program account;

(b) 2.37% of compensation must be allocated to the defined benefit plan under the public employees' retirement system as the plan choice rate; and

(c) 0.04% of compensation must be allocated to the education fund pursuant to 19-3-112(1)(c).

(3) The allocations under subsection (2) are subject to adjustment by the public employees' retirement board, but only as described in and in a manner consistent with the express provisions of 19-3-2121.

Section 38. Section 79, Chapter 471, Laws of 1999, is amended to read:

"**Section 79. Effective dates.** (1) Except as provided in subsections (2) through ~~(4)~~ *(5),* [this act] is effective October 1, 1999.

(2) [Sections 3, 11, 20 through 22, 43(2) and (3), 44, 45, 55(1) through (3) and (7), 60, 61, 64, 65, 72, 75 through 78, 80, and 81 and this section] are effective on passage and approval.

(3) [Sections 34, 41(1)(a), (1)(b), and (2) through (6), 46, 62, 63, and 66 through 71, 73, and 74] are effective July 1, 1999.

(4) [Sections 2, 4 *5, 8* through 10, 12 through 19, 23 ~~through~~, *29, 31 through 33, 35 through 37, 39,* 40, 41(1)(c), 43(1), 47 through 54, 55(4) through (6), and 56 through 59] are effective contingent upon certification, as provided in [section 65], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier.

(5) [Sections 4, 6, 7, 24 through 28, 30, and 38] are effective July 1, 2001."

Section 39. Section 81, Chapter 471, Laws of 1999, is amended to read:

"**Section 81. Termination.** (1) [Sections ~~41(1)(b),~~ 61~~,~~ and 63] terminate July 1, 2001.

(2) [~~Section~~ *Sections 41(1)(b) and* 60] ~~terminates~~ *terminate* July 1, 2002."

Section 40. Codification instruction. (1) [Section 3] is intended to be codified as an integral part of Title 19, chapter 2, part 5, and the provisions of Title 19, chapter 2, part 5, apply to [section 3].

(2) [Section 13] is intended to be codified as an integral part of Title 19, chapter 3, part 16, and the provisions of Title 19, chapter 3, part 16, apply to [section 13].

(3) [Section 16] is intended to be codified as an integral part of Title 19, chapter 3, part 21, and the provisions of Title 19, chapter 3, part 21, apply to [section 16].

(4) [Sections 34 and 37] are intended to be codified as an integral part of Title 19, chapter 21, part 2, and the provisions of Title 19, chapter 21, part 2, apply to [section 34 and 37].

Section 41. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 42. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 43. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2001.

(2) [Sections 34 and 37] are effective contingent upon certification by the public employees' retirement board pursuant to section 65, Chapter 471, Laws of 1999, that the defined contribution plan is ready to become operational or on July 1, 2002, whichever is earlier.

Approved May 1, 2001

CHAPTER NO. 491

[HB 118]

AN ACT REVISING THE CLEAN AIR ACT OF MONTANA; ALLOWING THE SMALL BUSINESS STATIONARY SOURCE REPRESENTATIVE TO BE LOCATED WITHIN A NONREGULATORY PROGRAM OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; LIMITING THE PURPOSES FOR WHICH THE DEPARTMENT MAY USE INFORMATION OBTAINED BY THE SMALL BUSINESS STATIONARY SOURCE REPRESENTATIVE; REMOVING A REQUIREMENT THAT THE DEPARTMENT ACT ON OPERATING PERMIT APPLICATIONS BY NOVEMBER 15, 1997; AMENDING SECTIONS 75-2-109 AND 75-2-218, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-109, MCA, is amended to read:

"75-2-109. Small business stationary source representative — duties. (1) The department shall establish a small business stationary source representative position that is not located in *a regulatory program of* the department ~~or~~ *and not* subject to ~~the~~ direct supervision ~~of~~ *by a regulatory program of* the department.

(2) The small business stationary source representative shall represent the interests of small business stationary sources before the department and other appropriate local, state, and federal agencies concerning the implementation and application of the requirements of this chapter. In addition, the representative shall provide assistance to small business stationary sources in meeting the requirements of this chapter. In carrying out these activities, the representative shall:

(a) monitor the activities of the small business stationary source technical and environmental compliance assistance program;

(b) review and provide comments and recommendations to the department, local air pollution control programs, and the appropriate federal agencies regarding the development and implementation of regulations pertaining to air quality that impact small business stationary sources;

(c) facilitate and promote the participation of small business stationary sources in the development of new regulations pertaining to air quality that impact small business stationary sources;

(d) assist in the preparation and dissemination of reports and other information regarding the applicability of the requirements of this chapter to small business stationary sources;

(e) assist in the preparation of guideline documents by the small business stationary source technical and environmental compliance assistance program to ensure that these documents are readily understandable by the lay person;

(f) assist small business stationary sources and their trade associations to encourage voluntary compliance with the requirements of this chapter;

(g) cooperate with appropriate local, state, and federal agencies and private sector financial institutions to assist small business stationary sources in locating financial assistance necessary for compliance with the requirements of this chapter;

(h) consult with the small business compliance assistance advisory council regarding problems faced by small business stationary sources concerning the implementation and application of the requirements of this chapter; and

(i) perform other duties as may be necessary to meet the requirements of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(3) Subject to Article II, section 9, of the Montana constitution, the small business stationary source representative may not provide information that the representative obtains from a small business stationary source to the department for use in any administrative or judicial action to enforce the requirements of this chapter, unless the information discloses a violation that constitutes an imminent and substantial danger to human health, safety, or the environment."

Section 2. Section 75-2-218, MCA, is amended to read:

"**75-2-218. Permits for operation — application completeness — action by department — application shield — review by board.** (1) An application for an operating permit or renewal is not considered filed until the department has determined that it is complete. An application is complete if all fees required under 75-2-220 and all information and completed application forms required under 75-2-217 have been submitted. A complete application must contain all of the information required for the department to begin processing the application. If the department fails to notify the applicant in writing within 60 days after submittal of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed on the date of the department's receipt of the application. The department may request additional information after a completeness determination has been made. The department shall adopt rules that contain criteria for use in determining both when an application is complete and when additional information is required after a completeness determination has been made.

(2) Except as provided in subsection (3), the department shall, consistent with the procedures established under 75-2-217, approve or disapprove a complete application for an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of filing. Failure of the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(3) The board may by rule provide for a transition schedule for both the submittal to the department of initial applications for operating permits by existing sources and action by the department on these initial permit applications. The board may require that one-third of all operating permit

applications required for existing sources be submitted within the first calendar year after the adoption of rules implementing an operating permit program under 75-2-217. ~~Any transition schedule for action by the department must ensure that all permit applications required under 75-2-217 and this subsection for existing sources will be acted upon by the department before November 15, 1997.~~

(4) If an applicant submits a timely and complete application for an operating permit, the applicant's failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and complete application for an operating permit renewal, the expiration of the applicant's existing operating permit is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The applicant is not entitled to the protection of this subsection if the delay in final action by the department on the application results from the applicant's failure to submit in a timely manner information requested by the department to process the application.

(5) Except as provided in subsection (8), if the department approves or denies an application for an operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any person that participated in the public comment process required under 75-2-217(7) may request a hearing before the board. The request for *a* hearing must be filed within 30 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(6) Except as provided in subsection (8), the department's decision on any application is not final until 30 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for *a* hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

(7) The requirements of subsections (5) and (6) apply to any action initiated by the department to suspend, revoke, modify, or amend an operating permit issued under this section.

(8) The denial by the department of an application under 75-2-217 and this section is not subject to review by the board or judicial review if the basis for denial is the written objection of the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is considered to be ~~in~~ compliance with the requirements of this chapter only if the permit expressly includes those requirements or an express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under 75-2-217."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 1, 2001

CHAPTER NO. 492

[HB 120]

AN ACT GENERALLY REVISING PROFESSIONAL LICENSING LAWS; ELIMINATING THE TWO CONSECUTIVE TERM LIMIT FOR ALTERNATIVE HEALTH CARE BOARD MEMBERS; ALLOCATING THE BOARD OF PSYCHOLOGISTS TO THE DEPARTMENT OF COMMERCE FOR ADMINISTRATIVE PURPOSES; REQUIRING SCREENING PANELS TO PUT CERTAIN FINDINGS IN WRITING; CLARIFYING WHEN BOARD MEMBERS MAY FILE COMPLAINTS WITH THEIR BOARD; REQUIRING THAT NOTICES FOR HEARINGS BE BASED ON WRITTEN FINDINGS OF POSSIBLE VIOLATIONS; INCREASING THE NUMBER OF MEMBERS ON THE BOARD OF REAL ESTATE APPRAISERS AND CLARIFYING REQUIREMENTS FOR SCREENING PANELS; ELIMINATING CERTAIN REQUIREMENTS FOR CERTAIN MEMBERS OF THE BOARD OF REAL ESTATE APPRAISERS; CLARIFYING REQUIREMENTS FOR MEMBERS OF THE BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS; REPEALING THE LICENSE FEE EXEMPTION FOR PERSONS IN MILITARY SERVICE; PROVIDING A GENERAL DEFINITION OF "QUORUM" FOR BOARDS AND ELIMINATING INDIVIDUAL BOARD DEFINITIONS OF "QUORUM"; PROVIDING THAT MENTAL INTENT IS NOT A PREREQUISITE TO UNPROFESSIONAL CONDUCT; ELIMINATING AN EXEMPTION FROM LICENSING REQUIREMENTS FOR COMMISSIONED MEDICAL OFFICERS OF THE ARMED FORCES; CLARIFYING SUPERVISION REQUIREMENTS FOR DENTAL AUXILIARY PERSONNEL; ELIMINATING THE REQUIREMENT THAT THE BOARD OF NURSING ACT JOINTLY WITH THE BOARD OF MEDICAL EXAMINERS IN ADOPTING RULES; ELIMINATING CERTAIN QUALIFICATIONS FOR THE EXECUTIVE DIRECTOR OF THE BOARD OF NURSING; CLARIFYING ISSUING AND RENEWAL PERIODS FOR NURSES' LICENSES; CHANGING THE MEDICAL EVALUATION REQUIREMENTS REGARDING THE DISPENSING OF HEARING AIDS; REVISING THE CALCULATION OF LATE FEES FOR PSYCHOLOGISTS' LICENSE RENEWALS; ELIMINATING SINGEING FROM THE DEFINITION OF "PRACTICE OF BARBERING"; ELIMINATING CERTAIN QUALIFICATIONS FOR THE EXECUTIVE DIRECTOR OF THE BOARD OF OUTFITTERS; ELIMINATING CERTAIN QUALIFICATIONS FOR THE EXECUTIVE SECRETARY OF THE BOARD OF REALTY REGULATION; ELIMINATING BROKER ASSOCIATE AND BROKER OWNER DESIGNATIONS FOR REAL ESTATE; PROVIDING FOR TEMPORARY LICENSURE OF OUT-OF-STATE APPRAISERS; GENERALLY REVISING STATUTES PERTAINING TO ARCHITECTURE AND PROVIDING FOR LICENSE VERIFICATION; CHANGING REQUIREMENTS FOR LANDSCAPE ARCHITECTS; GENERALLY REVISING STATUTES PERTAINING TO PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS AND SUBSTITUTING LICENSURE FOR REGISTRATION; AMENDING SECTIONS 2-15-1840, 2-15-1851, 2-15-1868, 2-15-1873, 23-3-401, 37-1-131, 37-1-307, 37-1-308, 37-1-309, 37-3-103, 37-3-204, 37-3-211, 37-4-202, 37-4-408, 37-8-202, 37-8-204, 37-8-431, 37-12-201, 37-14-201, 37-15-201, 37-16-201, 37-16-303, 37-17-201, 37-17-306, 37-18-201, 37-19-202, 37-24-201, 37-26-202, 37-28-103, 37-30-101, 37-47-202, 37-50-201, 37-51-102, 37-51-209, 37-51-302, 37-51-309, 37-51-315, 37-60-201, 37-65-201, 37-65-303, 37-65-304, 37-65-308, 37-66-301, 37-66-304, 37-67-101, 37-67-102, 37-67-103, 37-67-201, 37-67-204, 37-67-301, 37-67-303, 37-67-304, 37-67-305, 37-67-306, 37-67-308, 37-67-309, 37-67-310, 37-67-311, 37-67-312, 37-67-314, 37-67-315, 37-67-316, 37-67-318, 37-67-320, 37-67-321, 37-67-331, 37-67-332, 37-68-201, 37-69-201, AND 70-22-103, MCA; REPEALING SECTIONS 10-1-605, 37-2-111, AND 37-66-305, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1840, MCA, is amended to read:

"**2-15-1840. Alternative health care board — composition — terms — allocation.** (1) There is an alternative health care board.

(2) The board consists of six members appointed by the governor with the consent of the senate. The members are:

(a) two persons from each of the health care professions regulated by the board who have been actively engaged in the practice of their respective professions for at least 3 years preceding appointment to the board;

(b) one public member who is not a member of a profession regulated by the board; and

(c) one member who is a Montana physician whose practice includes obstetrics.

(3) The members must have been residents of this state for at least 3 years before appointment to the board.

(4) All members shall serve staggered 4-year terms. ~~A member may not be appointed for more than two consecutive terms.~~ The governor may remove a member from the board for neglect of a duty required by law, for incompetency, or for unprofessional or dishonorable conduct.

(5) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121.

(6) The board is designated a quasi-judicial board for the purposes of 2-15-124, except that one member of the board need not be an attorney licensed to practice law in this state."

Section 2. Section 2-15-1851, MCA, is amended to read:

"**2-15-1851. Board of psychologists.** (1) There is a board of psychologists.

(2) The board consists of six members appointed by the governor with the consent of the senate. Two members must be licensed psychologists in private practice, one member must be a licensed psychologist in public health, one member must be a licensed psychologist engaged in the teaching of psychology, and two members must be from the general public. A member may not serve consecutive 5-year terms but may be reappointed after 5 years following the termination of the previous appointment.

(3) Members shall serve staggered 5-year terms.

(4) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121."

Section 3. Section 2-15-1868, MCA, is amended to read:

"**2-15-1868. Board of real estate appraisers.** (1) There is a board of real estate appraisers.

(2) The board consists of ~~five~~ *seven* members appointed by the governor with the consent of the senate.

(3) ~~Three~~ *Five* members must be licensed or certified real estate appraisers, and two members must be representatives of the public who are not engaged in the occupation of real estate appraisal.

(4) A screening panel of the board, established pursuant to 37-1-307, must be composed of at least three members and shall include one member of the board who represents the public and is not engaged in the occupation of real estate appraisal. Any determination that a licensee has violated a statute or rule in a manner that justifies disciplinary proceedings must be concurred in by a majority of the members of the screening panel.

~~(4) Only one member of the board may be primarily affiliated with the same recognized appraisal group defined by the appraisal foundation.~~

~~(5) (a) Before January 1, 1992, a real estate appraiser board member must be a designated member of a national real estate appraisal organization that requires for membership appraisal experience, certain educational qualifications, successful completion of an examination, and adherence to the standards of professional appraisal practice.~~

~~(b) On and after January 1, 1992, three real estate appraiser board members must be certified real estate appraisers.~~

~~(6)~~*(5)* Members shall serve staggered 3-year terms. A member may not serve for more than two consecutive terms.

~~(7)~~*(6)* The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121.

~~(8)~~*(7)* A board member may be removed from the board by the governor for neglect or cause.

~~(9)~~*(8)* The board shall meet at least once each calendar quarter to transact its business. ~~Three members constitute a quorum for transacting business.~~

~~(10)~~*(9)* The board shall elect a ~~chairman~~ *presiding officer* from among its members.

~~(11)~~*(10)* A board member ~~shall~~ *must* receive compensation and travel expenses, as provided in 37-1-133."

Section 4. Section 2-15-1873, MCA, is amended to read:

"**2-15-1873. Board of professional engineers and professional land surveyors.** (1) There is a board of professional engineers and professional land surveyors.

(2) The board consists of nine members appointed by the governor with the consent of the senate. The members are:

(a) five professional engineers who have been engaged in the practice of engineering for at least 12 years and who have been in responsible charge of engineering teaching or important engineering work for at least 5 years and ~~registered~~ *licensed* in Montana for at least 5 years. No more than two of these members may be from the same branch of engineering.

(b) two professional and practicing land surveyors who have been engaged in the practice of land surveying for at least 12 years and who have been in responsible charge of land surveying or important land surveying work for at least 5 years and ~~registered~~ *licensed* in Montana for at least 5 years;

(c) two representatives of the public who are not engaged in or directly connected with the practice of engineering or land surveying.

(3) Each member ~~shall~~ *must* be a citizen of the United States and a resident of this state. A member, after serving three consecutive terms, ~~shall~~ *may* not be reappointed.

(4) (a) Except as provided in subsection (4)(b), each member shall serve for a term of 4 years.

(b) The governor may remove a member for misconduct, incompetency, *or* neglect of duty~~,~~ or for any other sufficient cause and may shorten the term of one public member so that it is not coincident with the term of the other public member.

(5) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121."

Section 5. Section 23-3-401, MCA, is amended to read:

"**23-3-401. Board organization — compensation — ~~meetings —~~ department to keep records.** (1) The board shall annually elect officers as it considers necessary. ~~Two of the members of the board constitute a quorum to do business, and except as provided in 23-3-402, the concurrence of at least two members is necessary to take board action.~~

(2) The members of the board are entitled to compensation and expenses, as provided in 37-1-133.

(3) The department shall keep a record of the board's proceedings, which are public records subject to public inspection."

Section 6. Section 37-1-131, MCA, is amended to read:

"**37-1-131. Duties of boards — *quorum required*.** Each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings must be conducted by a hearing examiner when required under 37-1-121(1).

(3) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (2), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71 or 72;

(4) pay to the department its pro rata share of the assessed costs of the department under 37-1-101(6);

(5) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate

money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(6) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business."

Section 7. Mental intent — unprofessional conduct. A licensee may be found to have violated a provision of 37-1-316 or a rule of professional conduct enacted by a governing board without proof that the licensee acted purposefully, knowingly, or negligently.

Section 8. Section 37-1-307, MCA, is amended to read:

"37-1-307. Board authority. (1) A board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint, issued by a majority vote of board members not serving on the screening panel described in subsection (1)(e), and signed by the presiding officer of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) compel attendance of witnesses and the production of documents. Subpoenas may be enforced as provided in 2-4-104.

(e) establish a screening panel that determines whether there is reasonable cause to believe that a licensee has violated a *particular* statute, ~~or~~ rule, *or standard* justifying disciplinary proceedings. *A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred.* The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(f) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding its licensees and license applicants and regarding possible unlicensed practice.

[(3) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)"

Section 9. Section 37-1-308, MCA, is amended to read:

"37-1-308. Unprofessional conduct — complaint — investigation — immunity — exceptions. (1) Except as provided in ~~subsection (3)~~ *subsections (4) and (5)*, a person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

~~(3)~~*(4)* A person under legal custody of a county detention center or incarcerated under legal custody of the department of corrections may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while detained or confined in a county detention center or incarcerated under legal custody of the department of corrections unless the complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

(5) A board member may file a complaint with the board on which the member serves or otherwise act in concert with a complainant in developing, authoring, or initiating a complaint to be filed with the board if the board member determines that there are reasonable grounds to believe that a particular statute, rule, or standard has been violated."

Section 10. Section 37-1-309, MCA, is amended to read:

"37-1-309. Notice — request for hearing. (1) If a reasonable cause determination is made pursuant to 37-1-307 that a violation of this part has occurred, a notice must be prepared by department legal staff and served on the alleged violator. The notice may be served by certified mail to the current address on file with the board or by other means authorized by the Montana Rules of Civil Procedure. *The notice may not allege a violation of a particular statute, rule, or standard unless the board or the board's screening panel, if one has been established, has made a written determination that there are reasonable grounds to believe that the particular statute, rule, or standard has been violated.*

(2) A licensee or license applicant shall give the board the licensee's or applicant's current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the board may enter a decision on the basis of the facts available to it."

Section 11. Section 37-3-103, MCA, is amended to read:

"37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if the physician has any established or regularly used hospital connections in this state or maintains or is provided with, for the physician's regular use, an office or other place for rendering the services, the physician must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers ~~of the armed forces of the United States,~~ of the United States public health service~~,~~ or of the United States department of veterans affairs of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if the physician otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(m) the rendering of services by a physician assistant-certified in accordance with Title 37, chapter 20;

(n) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;

(o) the execution of a death sentence pursuant to 46-19-103;

(p) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. Except as authorized in 37-27-302, a direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

(q) the use of an automated external defibrillator pursuant to Title 50, chapter 6, part 5.

(2) Licensees referred to in subsection (1) who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 12. Section 37-3-204, MCA, is amended to read:

"**37-3-204. Meetings.** The board shall hold meetings for examinations and for other business properly before the board at least twice annually at times and places set by the board. The president of the board may call special meetings ~~he~~ *that the president* considers advisable or necessary. ~~Four members of the board constitute a quorum.~~"

Section 13. Section 37-3-211, MCA, is amended to read:

"**37-3-211. Executive secretary.** To perform the services provided for in 37-3-203(5), the department shall hire ~~a person~~ *an executive secretary* selected by the board. ~~who:~~

~~(1) is a citizen of the United States;~~

~~(2) is of good moral character; and~~

~~(3) holds at least a postgraduate degree from an accredited college or university or has equivalent experience. The degree or experience need not be in the field of medicine.~~"

Section 14. Section 37-4-202, MCA, is amended to read:

"**37-4-202. Meetings — notice — ~~quorum~~ — records.** (1) The board shall meet at least once each year in this state at the call of the president and secretary-treasurer. Five days' notice must be given by the department to board members of the time and place of the meeting of the board.

(2) Meetings held for the purpose of examining candidates for a license to practice dentistry in this state may not exceed 6 days.

(3) ~~Six members of the board constitute a quorum for the transaction of business. Its~~ *Board* proceedings are open to public inspection ~~in cases of public interest~~ *unless a privacy issue is involved.*

(4) Money collected by the department under this chapter must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(5) The department shall keep a complete record of meetings and proceedings of the board and shall keep a complete account of money received and disbursements made by the department."

Section 15. Section 37-4-408, MCA, is amended to read:

"**37-4-408. Auxiliary personnel — employment, duties, and limitations.** A dental auxiliary is a person other than a licensed dental hygienist employed by a licensed dentist. The board may, within the limitations of this chapter, adopt rules that define the qualifications and outline the tasks of any unlicensed auxiliary personnel to be employed by a licensed dentist in ~~his~~ *the dentist's* office, except that nothing in this section may be construed to allow the board by rule to provide for delegation by a licensed dentist to any ~~such~~ auxiliary personnel any of the duties prohibited to dental hygienists under 37-4-401 or a prophylaxis. The performance of intraoral tasks by all dental auxiliaries, as permitted by board rules, must be under the direct supervision of ~~the~~ *a* licensed dentist ~~employing the personnel~~."

Section 16. Section 37-8-202, MCA, is amended to read:

"**37-8-202. Organization — meetings — powers and duties.** (1) The board shall meet annually and shall elect from among the nine members a president and a secretary. The board shall hold other meetings when necessary to transact its business. ~~A majority of the board constitutes a quorum at any meeting.~~ The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board.

(2) The board may make rules necessary to administer this chapter. The board shall prescribe standards for schools preparing persons for registration and licensure under this chapter. It shall provide for surveys of schools at times it considers necessary. It shall approve programs that meet the requirements of this chapter and of the board. The department shall, subject to 37-1-101, examine and issue to and renew licenses of qualified applicants. The board shall conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. It shall cause the prosecution of persons violating this chapter and may incur necessary expenses for prosecutions.

(3) The board may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms and other appropriate forms and publications convenient for the proper administration of this chapter. The board may fix reasonable fees for incidental services, within the subject matter delegated by this chapter.

(4) The board may participate in and pay fees to a national organization of state boards of nursing to ensure interstate endorsement of licenses.

(5) (a) The board may define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses. Advanced practice registered nurses are nurses who must have additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or its equivalent. The applicant must be certified or in the process of being certified by a certifying body for advanced practice registered nurses. Advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse-anesthetists, and clinical nurse specialists.

(b) The board ~~of nursing and the board of medical examiners, acting jointly,~~ shall adopt rules regarding authorization for prescriptive authority of nurse specialists. If considered appropriate for a nurse specialist who applies to the board for authorization, prescriptive authority must be granted.

(6) The board shall establish a program to assist licensed nurses who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide assistance to licensees in seeking treatment for substance abuse and monitor their efforts toward rehabilitation. For purposes of funding

this program, the board shall adjust the license fee provided for in 37-8-431 commensurate with the cost of the program.

(7) The board may adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons.

(8) The board may fund additional staff, hired by the department, to administer the provisions of this chapter."

Section 17. Section 37-8-204, MCA, is amended to read:

"**37-8-204. Executive director ~~— qualifications~~.** ~~(1)~~ The department shall hire an executive director to provide services to the board in connection with the board's duties of:

~~(a)~~*(1)* prescribing curricula and standards for nursing schools and making surveys of and approving schools and courses;

~~(b)~~*(2)* evaluating and approving courses for affiliation of student nurses; and

~~(c)~~*(3)* reviewing qualifications of applicants for licensure.

~~(2) The executive director must be:~~

~~(a) a citizen of the United States;~~

~~(b) a graduate of an approved school of nursing;~~

~~(c) a holder of at least a master's degree with postgraduate courses in nursing;~~

~~(d) a registered professional nurse with at least 5 years' experience in teaching or administration in an approved school of nursing.~~"

Section 18. Section 37-8-431, MCA, is amended to read:

"**37-8-431. Renewal of license.** (1) The license of a person licensed under this chapter must be renewed on the date set by department rule. At least 30 days prior to the renewal date, the department shall mail an application form for renewal of *a* license to each person to whom a license was issued or renewed ~~during the year~~. The applicant shall carefully complete and ~~subscribe~~ *sign* the application form and return it to the department with a renewal fee prescribed by the board on or before the renewal date.

(2) The board may increase or decrease the license fee so as to maintain in the state special revenue fund at all times an adequate amount to be used for the purpose of administering, policing, and enforcing the provisions of Title 37, chapter 1, and this chapter. On receipt of the application and fee, the department shall verify the accuracy of the application against its record and from other sources the board considers reliable and issue to the applicant a certificate of renewal. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.

(3) A licensee who allows the license to lapse by failing to renew the license may be reinstated by the board on satisfactory explanation for the failure to renew *the* license and on payment of the current renewal fee prescribed by the board.

(4) A person practicing nursing during the time following the date the license has expired is an illegal practitioner and is subject to the penalties provided for violations of this chapter.

(5) The board may establish a reasonable late fee for licensees who fail to renew their license by the renewal date."

Section 19. Section 37-12-201, MCA, is amended to read:

"**37-12-201. Organization of board — meetings — powers and duties.** (1) The board shall elect annually a president, vice president, and secretary-treasurer from its membership.

(2) The board shall hold a regular meeting each year at Helena and shall hold special meetings at times and places as a majority of the board designates. ~~A majority of the board constitutes a quorum.~~

(3) The board shall:

(a) administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board;

(b) adopt a seal that must be affixed to licenses issued;

(c) make a schedule of minimum educational requirements, which are without prejudice, partiality, or discrimination, as to the different schools of chiropractic;

(d) adopt rules necessary for the implementation, administration, continuation, and enforcement of this chapter. The rules must address but are not limited to license applications, form and display of license, license examination format, criteria for and grading of examinations, disciplinary standards for licensees, and the registration of interns and preceptors.

(e) make determinations of the qualifications of applicants under this chapter;

(f) administer the examination for licensure under this chapter;

(g) establish and collect fees, fines, and charges as provided in this chapter;

(h) issue, suspend, or revoke licenses under the conditions prescribed in this chapter; and

(i) certify that a chiropractor who meets the standards that the board by rule adopts is a qualified evaluator for purposes of 39-71-711.

(4) The department shall keep a record of the proceedings of the board, which must at all times be open to public inspection."

Section 20. Section 37-14-201, MCA, is amended to read:

"**37-14-201. Compensation of board members — meetings ~~— quorum~~.** (1) Board members ~~shall~~ *must* receive compensation and travel expenses, as provided for in 37-1-133.

(2) The board shall meet at least twice a year and elect a ~~chairman~~ *presiding officer* at the first meeting of each calendar year.

~~(3) Four members of the board constitute a quorum for the purpose of transacting business.~~"

Section 21. Section 37-15-201, MCA, is amended to read:

"**37-15-201. Meetings.** (1) The board shall meet at least once a year at a place, day, and hour determined by the board. The board shall also meet at other times and places as the bylaws of the board may provide or by call of the ~~chairman~~ *presiding officer* or a majority of the members of the board. ~~A quorum of the board~~

~~shall consist of the majority of its members, but in no instance may a~~ *A* meeting of three board members who are exclusively speech-language pathologists or exclusively audiologists *may not* be considered a quorum.

(2) All meetings of the board for the consideration of and action on matters coming before the board are open to the public except:

(a) *when* matters involving the management of internal affairs of the board may be considered and acted upon by the board in executive meetings under rules prescribed by the board;

(b) sessions to prepare, approve, grade, or administer examinations;

(c) upon request of a person who has failed the licensing examinations and who is appearing to appeal the failure."

Section 22. Section 37-16-201, MCA, is amended to read:

"**37-16-201. Meetings — ~~quorum~~ — organization.** (1) The board shall meet at least once each year at a place and time determined by the ~~chairman~~ *presiding officer* and at other times and places specified by the ~~chairman~~ *presiding officer* to carry out ~~this~~ *the provisions of this* chapter. ~~Three members constitute a quorum.~~

(2) Members of the board shall annually designate one member to serve as ~~chairman~~ *presiding officer* and another member to serve as secretary-treasurer."

Section 23. Section 37-16-303, MCA, is amended to read:

"**37-16-303. Bill of sale — medical evaluation requirements — waiver.** (1) Any person who practices the selling, fitting, or dispensing of hearing aids and related devices shall, upon the sale of a hearing aid or related device, deliver to the customer a bill of sale that must contain:

(a) the seller's signature and license number and the name and address of the seller's permanent place of business;

(b) a description of the make and type of the hearing aid or related device furnished and the amount charged;

(c) any warranty or guaranty and the right to cancel, and the terms of the warranty or guaranty and the right to cancel;

(d) the condition of the hearing aid or related device and whether it is new, used, or reconditioned;

(e) a provision that maintenance service for the hearing aid or related device is available; and

(f) the following statement, in boldface, 12-point type: "If you have any questions regarding your consumer rights with respect to hearing aids and related devices, contact the state Board of Hearing Aid Dispensers." The statement must also list the current telephone number and address of the board's office.

(2) (a) Except as provided in subsection (2)(b), a hearing aid dispenser may not sell a hearing aid to a person unless the person has presented to the hearing aid dispenser a written statement signed by a licensed physician within the previous 6 months that states that the person's hearing loss has been medically evaluated and that ~~the person may benefit from a hearing aid~~ *there are no medical factors or conditions that render hearing aid use inadvisable as a treatment or remedy for hearing loss.*

(b) If the prospective hearing aid purchaser is 18 years of age or older, the hearing aid dispenser may give that person the opportunity to waive the requirements of subsection (2)(a) in accordance with the disclosure, waiver form, and instructional brochure requirements of the U.S. food and drug administration regulations found at 42 CFR 801.420 and 42 CFR 801.421."

Section 24. Section 37-17-201, MCA, is amended to read:

"**37-17-201. Meetings — expenses of members — attorney general as board attorney — seal.** (1) The board shall hold a regular annual meeting in which it shall select from its members a ~~chairman~~ *presiding officer* and a secretary. Other regular meetings ~~shall~~ *must* be held at ~~such~~ *the* times ~~as~~ *that* the rules of the board provide. Special meetings may be held at times considered necessary or advisable by the ~~chairman~~ *presiding officer* and the majority of its members or on the request of the governor. Reasonable notice of meetings ~~shall~~ *must* be given in the manner prescribed by the board. ~~The quorum of the board consists of the majority of its members.~~ The department shall keep a record of the board's proceedings.

(2) Each board member ~~shall~~ *must* receive compensation and travel expenses as provided for in 37-1-133.

(3) The attorney general shall act as attorney for the board. ~~He or his~~ *The attorney general or a* representative *of the attorney general* may sit as an ex officio member of the board in an advisory capacity only.

(4) The board shall adopt an official seal."

Section 25. Section 37-17-306, MCA, is amended to read:

"**37-17-306. Renewal.** (1) The license expires on the date set by department rule. The department shall notify each person licensed under this chapter relative to the date of the expiration and the amount of the renewal fee. This notice must be mailed to each licensed psychologist at the licensee's listed address at least 1 month before the expiration of the license.

(2) Renewal may be made by application during the 60 days prior to the expiration date. Failure on the part of a person licensed to pay the renewal fee by the expiration date does not deprive the person of the right to renew~~,~~. ~~but the fee must be increased 10% for each month or major portion of a month that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee~~ *However, a late fee must be assessed in accordance with board rule.* Application for renewal following a lapse of 1 year or more will be subject to review by the board, and the applicant may be requested to *successfully* complete an examination ~~successfully~~ if the board so determines."

Section 26. Section 37-18-201, MCA, is amended to read:

"**37-18-201. Organization — meetings.** (1) A board member ~~shall~~ *must* receive a certificate of appointment from the governor.

(2) The board shall annually elect from its members a president, ~~vice-president~~ *vice president*, and secretary-treasurer and shall hold at least two regular meetings each year. ~~At a meeting four members of the board constitute a quorum.~~ If a member of the board, without cause, ~~absents himself from two of its regular meetings consecutively, his office is vacant~~ *is absent from two consecutive regular meetings, that member's position on the board is vacated.*"

Section 27. Section 37-19-202, MCA, is amended to read:

"**37-19-202. Meetings — ~~quorum —~~ rulemaking power.** The board shall hold ~~such~~ meetings as may be necessary. ~~Three members constitute a quorum for the transaction of business.~~ The board may adopt and enforce rules to carry out the purposes of this chapter."

Section 28. Section 37-24-201, MCA, is amended to read:

"**37-24-201. Organization — general rulemaking power ~~— quorum.~~** (1) The board of occupational therapy practice shall meet annually and elect a ~~chairman~~ *presiding officer* and a secretary from its members. The board shall hold other meetings when necessary to transact its business.

(2) The board may adopt rules for the conduct of its affairs and the administration of this chapter. Rules adopted by the board may include ~~such~~ rules ~~as~~ *that* are reasonable or necessary for the proper performance of its duties and the regulation of proceedings before it.

~~(3) Three board members constitute a quorum for the transaction of business.~~"

Section 29. Section 37-26-202, MCA, is amended to read:

"**37-26-202. Board meetings.** (1) The board shall meet at least once annually.

(2) Special meetings may be called by any two board members or the presiding officer.

~~(3) A majority of the board constitutes a quorum for the transaction of business.~~"

Section 30. Section 37-28-103, MCA, is amended to read:

"**37-28-103. Board meetings — procedure — seal.** (1) *(a)* The board shall meet at least once a year ~~and shall elect annually a president, vice president, and secretary-treasurer from its membership~~. The board may convene at the request of the ~~president~~ *presiding officer* or at other times the board determines necessary to transact its business.

(b) The governor shall designate the presiding officer of the board.

(2) The board shall adopt a seal by which the board may authenticate its documents."

Section 31. Section 37-30-101, MCA, is amended to read:

"**37-30-101. Definitions — practice of barbering.** (1) Unless the context requires otherwise, as used in this chapter the following definitions apply:

(a) "Barbershop" means a place where a person carries on, engages in, practices, or causes to be carried on, engaged in, or practiced the business of barbering.

(b) "Board" means the board of barbers provided for in 2-15-1856.

(c) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) Any one or any combination of the following practices, when done upon the human body for tonsorial purposes and not for the treatment of disease or

physical or mental ailments and when done for payment, either directly or indirectly, constitutes the practice of barbering:

(a) shaving or trimming the beard;

(b) cutting, styling, coloring, or waving the hair;

(c) straightening of the hair by using chemicals;

(d) giving facial or scalp massage or treatment with oils, creams, lotions, or other preparations, either by hand or mechanical appliances;

(e) ~~singeing or~~ shampooing the hair or applying hair tonic or bleaching or highlighting the hair ~~of male persons~~;

(f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to *the* scalp, face, hands, or neck.

(3) The practice of cosmetology by a licensed cosmetologist, including cutting the hair of any person, does not constitute the practice of barbering."

Section 32. Section 37-47-202, MCA, is amended to read:

"**37-47-202. Executive director — ~~qualifications —~~ powers and duties.** (1) The department may hire an executive director to assist the board in carrying out its duties under this chapter.

~~(2) The executive director must:~~

~~(a) be a citizen of the United States and a resident of Montana;~~

~~(b) have knowledge of outfitting and guiding; and~~

~~(c) have at least 2 years' experience in management or equivalent training or education.~~

~~(3)~~*(2)* The duties of the executive director include:

(a) processing and investigating applications for licensure as an outfitter or guide;

(b) conducting investigations of outfitters and guides that involve violations of this chapter or rules of the board and reporting to the board regarding complaints and investigations of complaints;

(c) coordinating inspections, investigations, and training activities of investigators under this chapter; and

(d) coordinating investigations with other local, state, and federal agencies."

Section 33. Section 37-50-201, MCA, is amended to read:

"**37-50-201. Organization — general rulemaking power — ~~quorum —~~ seal — records.** (1) The board shall elect annually a ~~chairman~~ *presiding officer* and a secretary from its members.

(2) The board may adopt rules for the conduct of its affairs and the administration of this chapter.

~~(3) A quorum for the transaction of business consists of three members of the board.~~

~~(4)~~*(3)* The board ~~shall~~ *must* have a seal ~~which shall~~ *that must* be judicially noticed.

~~(5)~~*(4)* The department shall keep records of the board's proceedings. In a proceeding in court, civil or criminal, arising out of or founded on this chapter, copies of these records certified as correct under the seal of the board are admissible in evidence as tending to prove the content of these records."

Section 34. Section 37-51-102, MCA, is amended to read:

"**37-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

(3) "Board" means the board of realty regulation provided for in 2-15-1867.

(4) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property; or

(g) advertises or represents to the public that the individual is engaged in any of the activities referred to in subsections (4)(a) through (4)(f).

~~(5) "Broker associate" means a broker who associates, as an employee or independent contractor, with a broker owner and does not own an interest in a real estate firm.~~

~~(6) "Broker owner" means a broker who owns or has a financial interest in a real estate firm.~~

~~(7)~~*(5)* "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

~~(8)~~*(6)* "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

~~(9)~~*(7)* "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

~~(10)~~*(8)* "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

~~(11)~~*(9)* "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

~~(12)~~*(10)* "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a dual agent.

~~(13)~~*(11)* "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

~~(14)~~*(12)* "In-house buyer agent designate" means a broker ~~associate~~ or salesperson employed by or associated as an independent contractor with a broker ~~owner~~ and designated by the broker ~~owner~~ as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

~~(15)~~*(13)* "In-house seller agent designate" means a broker ~~associate~~ or salesperson employed by or associated as an independent contractor with a broker ~~owner~~ and designated by the broker ~~owner~~ as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

~~(16)~~*(14)* "Listing agreement" means a written agreement between a seller and broker for the sale of real estate, with the terms and conditions set out in the agreement.

~~(17)~~*(15)* "Negotiations" means:

(a) efforts to act as an intermediary between parties to a real estate transaction;

(b) facilitating and participating in contract discussions;

(c) completing forms for offers, counteroffers, addendums, and other writings; and

(d) presenting offers and counteroffers.

~~(18)~~*(16)* "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

~~(19)~~*(17)* "Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

~~(20)~~*(18)* "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

~~(21)~~*(19)* "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

~~(22)~~*(20)* "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

~~(23)~~*(21)* "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

~~(24)~~*(22)* "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

~~(25)~~*(23)* "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

~~(26)~~*(24)* (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker."

Section 35. Section 37-51-209, MCA, is amended to read:

"**37-51-209. Executive secretary — hiring~~,~~ *and* duties~~, and qualifications~~.** ~~(1)~~ The department of commerce may hire an executive secretary to carry out duties prescribed by the board pursuant to the board's responsibilities and duties established by law.

~~(2) The person hired to be executive secretary:~~

~~(a) shall possess at least a bachelor's degree from an accredited college or university;~~

~~(b) may not be an officer or paid employee of a real estate association or group of real estate dealers or brokers;~~

~~(c) must be a citizen of the United States of America; and~~

~~(d) must be of good moral character.~~"

Section 36. Section 37-51-302, MCA, is amended to read:

"**37-51-302. Broker or salesperson license — qualifications of applicant.** (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesperson in a manner as to safeguard the interests of the public.

(2) An applicant for a broker's license ~~shall~~:

(a) *must* be at least 18 years of age;

(b) *must* have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) *must* have been actively engaged as a licensed real estate salesperson for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesperson because of conditions existing in the area where ~~he~~ *the applicant* resides, the board may waive this experience requirement;

(d) *shall* file an application for *a* license with the department; and

(e) *shall* furnish written evidence that ~~he~~ *the applicant* has completed 60 classroom or equivalent hours, ~~(~~in addition to those required to secure a salesperson's license~~)~~, in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine ~~his~~ honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesperson's license ~~shall~~:

(i) *must* be at least 18 years of age;

(ii) *must* have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;

(iii) *shall* file an application for *a* license with the department; and

(iv) *shall* furnish written evidence that ~~he~~ *the applicant* has completed 60 classroom or equivalent hours in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) ~~His~~ *The* application ~~shall~~ *must* be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesperson a license and a pocket card in a form and size ~~as~~ *that* the board prescribes.

~~(6) A broker's license must indicate whether the broker is a broker owner or a broker associate.~~"

Section 37. Section 37-51-309, MCA, is amended to read:

"**37-51-309. Broker ~~owner — broker associate~~ — salesperson — notice to department of change of association.** (1) A salesperson may not be associated with or under contract to more than one licensed broker ~~owner, nor may he~~ *or* perform services for a broker other than the one designated on the license issued to the salesperson.

(2) When a licensed salesperson desires to change ~~his~~ association or contractual relationship from one licensed broker to another, ~~he~~ *the salesperson* shall notify the department promptly in writing of these facts, pay the required fee, and return ~~his~~ *the salesperson's* license ~~and pocket card~~, and a new license and pocket card ~~shall~~ *must* be issued. ~~No~~ *A* salesperson ~~shall~~ *may not* directly or indirectly work for or with a broker ~~owner~~ until ~~he~~ *the salesperson* has been issued a license to work for or with that broker ~~owner~~. On termination of a salesperson's association or contractual relationship, ~~he~~ *the salesperson* shall surrender ~~his~~ *the salesperson's* license ~~and pocket card~~ to ~~his~~ *the salesperson's* broker, ~~owner~~ who shall return ~~them~~ *it* to the department for cancellation.

(3) Only one license ~~shall~~ *may* be issued to a salesperson to be in effect at one time.

~~(4) A broker associate may not be associated with more than one broker owner.~~"

Section 38. Section 37-51-315, MCA, is amended to read:

"**37-51-315. Vicarious liability.** (1) A party to a real estate transaction is not liable for a misrepresentation made by the party's agent or subagent unless:

(a) the party has actual knowledge of the misrepresentation; or

(b) the agent or subagent is repeating a misrepresentation made by the party.

(2) A broker is not liable for a misrepresentation made by the broker's ~~broker associate or~~ subagent unless:

(a) the broker has actual knowledge of the misrepresentation;

(b) ~~a broker associate~~ *the subagent* making the misrepresentation is an employee of the broker and not an independent contractor ~~or subagent~~; or

(c) a broker ~~associate~~ or subagent is repeating a misrepresentation made by the broker.

(3) An agent is not liable for a misrepresentation made by the principal unless the agent has actual knowledge of the misrepresentation."

Section 39. Temporary registration of certification and licensure of out-of-state appraisers. (1) The board shall recognize on a temporary basis the certificate or license of an appraiser issued by another state if:

(a) the appraiser's business in this state is of a temporary nature; and

(b) the appraiser registers with the board.

(2) The out-of-state appraiser shall submit an application for temporary registration on a form prescribed by the board and pay the required fee. In addition, a letter of good standing or license history indicating that the applicant is currently in good standing must be submitted directly to the board's office from the applicant's state of certification or licensure, or the board may obtain a national registry appraiser license history report.

(3) The temporary registration is valid only for a single appraisal assignment within this state. The temporary registration may be awarded for a 6-month period and renewed one time within the 12-month period following the original date on which the temporary registration was issued.

(4) A single appraisal assignment may include one or more properties under a single contract with a single client.

Section 40. Section 37-60-201, MCA, is amended to read:

"**37-60-201. Organization — meetings — records.** The board shall meet annually and shall elect from among the seven members a president and a secretary. The board shall hold other meetings when necessary to transact its business. ~~A majority of the board constitutes a quorum at any meeting.~~ The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board. Copies of records and papers kept by the department, certified by the ~~chairman~~ *president* and authenticated by the seal of the board, ~~shall~~ *must* be received in evidence in courts with like effect as the original. Records of the board are open to public inspection under rules it prescribes."

Section 41. Section 37-65-201, MCA, is amended to read:

"**37-65-201. Organization — ~~meetings —~~ records.** (1) The board ~~must~~ *shall*, ~~during the first week in April of each year~~ *on an annual basis*, elect from among its number a president, ~~secretary, and treasurer and must have a seal~~ *vice president, and secretary-treasurer.*

~~(2) The president and secretary may administer oaths in the examination of applications for certificates and to witnesses called before the board for the transaction of business under this chapter.~~

~~(3) The board shall meet at places the board determines during the first week of April of each year and at other times.~~

~~(4)~~*(2)* The department ~~must~~ *shall* keep a record of proceedings of the board.

~~(5)~~*(3)* The department ~~must~~ *shall* keep a register of applicants for a certificate, with the name *of the applicant* ~~and age of applicants, the number of years spent in the study of architecture,~~ and whether the applicant was granted a certificate or rejected. The register is prima facie evidence of the matters contained in it."

Section 42. Section 37-65-303, MCA, is amended to read:

"37-65-303. Application — examination — issuance of license. (1) A person wishing to practice architecture in this state shall apply to the department for a license ~~to do so~~. A person applying ~~shall~~ *must* have successfully completed the requirement of prerequisites in education~~,~~ *and* practical experience~~,~~ and a written examination as prescribed by the board. The examination must be in substantial conformance with the standard national council of architectural registration boards examination and grading procedure, except as modified by board rules.

(2) After examination, the department shall, if the candidate has been found qualified, grant a license to the candidate to practice architecture in this state, which may ~~only~~ be granted *only* on the consent of not less than two members of the board~~, attested by the secretary, and have the seal of the board attached~~."

Section 43. Section 37-65-304, MCA, is amended to read:

"37-65-304. Examination fee ~~— deposit of fee~~. ~~(1)~~ Applicants for examination shall pay ~~in advance to the department a fee set by the board, commensurate with the cost, which shall defray the entire examination expense of the candidate. An applicant failing to pass the examination is entitled to reexamination at the next scheduled examination on payment of a reasonable fee prescribed~~ *a fee established by an examination entity and approved* by the board.

~~(2) The money received from the applicant shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).~~"

Section 44. Section 37-65-308, MCA, is amended to read:

"37-65-308. Seal of architect. Every licensed architect ~~shall~~ *must* have a seal~~, the impression of which~~ *that* must contain the name of the architect, ~~his or her~~ *the city and state of the architect's* place of business, *the architect's license number*, and the words "Licensed Architect, State of Montana"~~, with which he or she shall stamp all drawings and specifications issued from his or her office for use in this state~~."

Section 45. License verification. Notification to the board by a board-approved entity that the entity has received verification from a state or jurisdiction in which a person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct must be considered verification in compliance with 37-1-304(2).

Section 46. Section 37-66-301, MCA, is amended to read:

"37-66-301. License required. In order to safeguard human health and property and to promote the public welfare, ~~any~~ *a* person in either *a* public or private capacity practicing or offering to practice landscape architecture ~~for hire shall be~~ *is* required to submit evidence that ~~he~~ *the person* is qualified to ~~so~~ practice and ~~shall~~ *is licensed* ~~be registered~~ under the provisions of this chapter."

Section 47. Section 37-66-304, MCA, is amended to read:

"37-66-304. Qualifications not required — *application for licensure*. *(1) A person wishing to practice landscape architecture in this state shall apply to the department for a license and successfully pass a written examination established by the board.*

(2) Each applicant must be admitted to the examination without prerequisite qualifications."

Section 48. Section 37-66-304, MCA, is amended to read:

"37-66-304. Qualifications ~~not required~~ *and application for licensure.* *(1) A person wishing to practice landscape architecture in this state shall apply to the department for a license.*

(2) Each applicant ~~must be admitted to the examination without prerequisite qualifications~~ *for licensure must have successfully completed the educational, practical experience, and written examination requirements established by the board.*"

Section 49. Section 37-67-101, MCA, is amended to read:

"37-67-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of professional engineers and professional land surveyors provided for in 2-15-1873.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Engineer intern" means a person who complies with the requirements for education, experience, and character and has passed an examination in the fundamental engineering subjects, as provided in this chapter.

(4) "Engineering survey" means all survey activities required to support the sound conception, planning, design, construction, maintenance, operation, and association of engineering projects, but excludes the surveying of real property for the establishment of land boundaries, rights-of-way, easements, and the dependent or independent surveys or resurveys of the public land survey system.

~~(4)~~*(5)* "Land surveyor intern" means a person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying, as provided in this chapter.

~~(5)~~*(6)* (a) "Practice of engineering" means:

(i) any service or creative work the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to the services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of water, teaching of advanced engineering subjects, engineering surveys, and the inspection of construction for the purpose of ensuring compliance with drawings and specifications;

(ii) any of the functions described in subsection ~~(5)(a)(i)~~ *(6)(a)(i)* that embrace the services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of mechanical, electrical, hydraulic, pneumatic, or thermal nature insofar as they involve safeguarding life, health, or property.

(b) The term includes other professional services necessary to the planning, progress, and completion of any engineering services.

(c) The term does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, communication lines, signal circuits, electric powerlines, or pipelines.

~~(6)~~*(7)* “Practice of land surveying” means any service or work, the performance of which requires the application of special knowledge of the principles of mathematics, physical sciences, applied sciences, and:

(a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;

(b) teaching of land surveying subjects;

(c) measurement and allocation of lines, angles, elevations, and coordinate systems;

(d) location of natural and constructed features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, including work for the determination of areas and volumes;

(e) monumenting of property boundaries;

(f) platting and layout of lands and the subdivisions of land, including the alignment and grades of streets and roads in subdivisions; ~~and~~

(g) preparation and perpetuation of maps, plats, field note records, and property descriptions*; and*

(h) locating, relocating, establishing, reestablishing, laying out, or retracing of any property line or boundary of any tract of land or road, right-of-way, easement, right-of-way easement, alignment, or elevation of any of the fixed works embraced within the practice of engineering.

~~(7)~~*(8)* “Professional engineer” means a person who, by reason of special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and engineering experience, is qualified to practice engineering and who has been ~~registered and~~ licensed as a professional engineer by the board.

~~(8)~~*(9)* “Professional land surveyor” means a person who:

(a) has been ~~registered and~~ licensed as a land surveyor by the board;

(b) is a professional specialist in the technique, analysis, and application of measuring land;

(c) is skilled and educated in the principles of mathematically related physical and applied sciences, relevant requirements of law for adequate evidence, and all requisites to the surveying of real property; and

(d) is engaged in the practice of land surveying ~~as defined in this section~~.

~~(9)~~*(10)* “Responsible charge” means direct charge and control and personal supervision either of engineering work or of land surveying. Only a professional engineer or a professional land surveyor may legally assume responsible charge under this chapter.”

Section 50. Section 37-67-102, MCA, is amended to read:

“37-67-102. Representation as practitioner to be ~~construed~~ *considered* as practice. (1) A person ~~shall~~ *must* be ~~construed~~ *considered* to practice or offer to practice engineering, within the meaning and intent of this chapter, who*:*

(a) practices any branch of the profession of engineering*;* ~~or who~~

(b) by verbal claim, sign, advertisement, letterhead, card, or in any other way represents ~~himself to be~~ *that the person is* a professional engineer or through the use of some other title implies that ~~he~~ *the person* is a professional engineer or ~~that he~~ is ~~registered~~ *licensed* under this chapter*;* or

(c) ~~who holds himself out~~ *represents that the person* ~~as~~ *is* able to perform or ~~who~~ does perform any engineering service or work or any other service designated by the practitioner ~~which~~ *that* is recognized as engineering.

(2) ~~Any~~ *A* person ~~shall~~ *must* be ~~construed~~ *considered* to practice or offer to practice land surveying, within the meaning and intent of this chapter, who*:*

(a) engages in land surveying*;* ~~or who~~

(b) by verbal claim, sign, letterhead, card, or in any other way represents ~~himself to be~~ *that the person is* a professional land surveyor or through the use of some other title implies that ~~he~~ *the person* is a professional land surveyor*;* or

(c) ~~who~~ represents ~~himself as~~ *that the person is* able to perform or ~~who~~ does perform any land surveying service or work or any other service designated by the practitioner ~~which~~ *that* is recognized as land surveying."

Section 51. Section 37-67-103, MCA, is amended to read:

"**37-67-103. Exemptions.** The following are exempt from coverage under this chapter:

(1) the practice of any other legally recognized professions or trades;

(2) the mere execution of work by a contractor, as distinguished from its planning or design or the supervision of the construction of work as a ~~foreman~~ *lead supervisor* or superintendent;

(3) the work of an employee or a subordinate of a person holding a ~~certificate of registration~~ *license* under this chapter or an employee of a person practicing lawfully under this chapter~~, provided such~~ *if the* work does not include final engineering or land surveying designs or decisions and is done under the direct supervision of a person holding a ~~certificate of registration~~ *license* under this chapter or a person practicing lawfully under this chapter;

(4) the practice of professional engineering by licensed architects ~~where~~ *when* the practice is purely incidental to their practice of architecture."

Section 52. Section 37-67-201, MCA, is amended to read:

"**37-67-201. Organization — meetings — ~~quorum —~~ seal.** (1) The board shall hold at least two regular meetings each year. Special meetings ~~shall~~ *must* be held at ~~such~~ *the* time ~~as~~ *that* the rules of the board ~~may~~ provide. Notice of all meetings ~~shall~~ *must* be given in ~~such~~ *the* manner ~~as~~ *that* the rules ~~may~~ provide.

(2) The board shall elect annually the following officers: a ~~chairman~~ *presiding officer*, a ~~vice-chairman~~ *vice presiding officer*, and a secretary.

~~(3) A quorum of the board shall consist of not less than five members.~~

~~(4)~~*(3)* The board shall adopt ~~and have~~ an official seal."

Section 53. Section 37-67-204, MCA, is amended to read:

"**37-67-204. Record of proceedings — register of applicants.** (1) The department shall keep a record of its proceedings and a register of the board's proceedings.

(2) The department shall keep a register of applicants for ~~registration~~ *licensure*, which ~~shall~~ *must* show:

(a) the name, age, and residence of each applicant;

(b) the date of the application;

(c) the place of business of the applicant;

(d) ~~his~~ *the applicant's* educational and other qualifications;

(e) the branch or branches of engineering in which the applicant qualified;

(f) whether an examination was required;

(g) whether the applicant was rejected;

(h) whether a ~~certificate of registration~~ *license* was granted;

(i) the date of the action of the board; and

(j) other information considered necessary by the board.

(3) The records of the department are prima facie evidence of the proceedings of the board, and a transcript ~~thereof~~ *of the proceedings*, certified by the department, is admissible in evidence as if the original were produced."

Section 54. Section 37-67-301, MCA, is amended to read:

"**37-67-301. License required to practice or offer to practice.** In order to safeguard life, health, and property and to promote the public welfare, ~~any~~ *a* person in either *a* public or private capacity practicing or offering to practice engineering or land surveying ~~shall hereafter be~~ *is* required to submit evidence that ~~he~~ *the person* is qualified ~~so~~ to practice and ~~shall~~ ~~be registered~~ *is licensed* as ~~hereinafter~~ provided *in this chapter*. ~~From and after January 1, 1958, it shall be~~ *It is* unlawful for ~~any~~ *a* person to practice or to offer to practice in this state engineering or land surveying~~, as defined in this chapter,~~ or to use in connection with ~~his~~ *the person's* name or otherwise assume, use, or advertise any title or description tending to convey the impression that ~~he~~ *the person* is a professional engineer or a professional land surveyor unless ~~such~~ *the* person has been ~~duly registered~~ *licensed* under the provisions of this chapter."

Section 55. Section 37-67-303, MCA, is amended to read:

"**37-67-303. Application — contents — fees.** (1) Applications for ~~registration~~ *licensure* must be on forms prescribed by the board and furnished by the department, must contain statements made under oath showing the applicant's education and a detailed summary of the applicant's technical work, and must contain the required references.

(2) The fee for *an* engineer intern is as prescribed by the board, must accompany the application, and must include the cost of one examination. ~~No~~ *An* additional fee is *not* required for *the* issuance of a certificate.

(3) The application fee for ~~registration~~ *licensure* as a professional engineer is as prescribed by the board for those holding an engineer intern certificate validated for Montana. For those holding a valid engineer intern certificate from some other state, the application fee is as prescribed by the board, which includes *the* cost of verification of engineer intern certification *or licensure* and one examination. Upon approval of *an* application for ~~registration~~ *licensure* as a professional engineer, an additional fee equal to the existing renewal fee must be paid before *the* issuance of a ~~certificate~~ *license* as a professional engineer.

(4) The department, subject to approval by the board, may, on approval of the application, payment of a fee as prescribed by the board, and payment of an additional fee equal to the appropriate renewal fee, issue a ~~certificate of registration~~ *license* as a professional engineer to a person who holds a certificate of qualification or ~~registration~~ *licensure* issued to the person by the committee on national engineering certification of the national council of examiners for engineering and surveying or by a state, territory, or possession of the United States or by another country if the applicant's qualifications meet the requirements of this chapter and the rules of the board.

(5) The fee for *a* land surveyor intern is as prescribed by the board, which must accompany the application and must include the cost of one examination. ~~No~~ *An* additional fee is *not* required for issuance of a certificate.

(6) The application fee for ~~registration~~ *licensure* as a professional land surveyor is as prescribed by the board for those holding a land surveyor intern certificate validated in Montana. For those holding a valid land surveyor intern certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of the certification. Upon approval of *an* application for ~~registration~~ *licensure* as a professional land surveyor, an additional fee equal to the existing renewal fee must be paid before *the* issuance of a ~~certificate~~ *license* as a professional land surveyor.

(7) The application fee for ~~registration~~ *licensure* as both a professional engineer and professional land surveyor is as prescribed by the board for those holding engineer intern and land surveyor intern certificates validated in Montana. For those holding valid engineer intern and land surveyor intern certificates from another jurisdiction, the application fee is as prescribed by the board. The fee must accompany the application. Upon approval of *an* application for ~~registration~~ *licensure* as a professional engineer and professional land surveyor, an additional fee equal to the existing renewal fee must be paid before *the* issuance of a ~~certificate~~ *license*.

(8) If the board denies *the* issuance of a ~~certificate of registration~~ *license* to any applicant, the initial fee deposited must be retained as an application fee."

Section 56. Section 37-67-304, MCA, is amended to read:

"**37-67-304. Local government not to impose fee or examination.** A ~~registration or~~ license fee or examination may not be imposed by a local government on a person ~~registered~~ *licensed* under this chapter to practice engineering or land surveying."

Section 57. Section 37-67-305, MCA, is amended to read:

"**37-67-305. General qualifications of applicants for ~~registration~~ *licensure* as professional engineer or *certification as* engineer intern.** To be eligible for admission to an examination for professional engineer or engineer intern, an applicant must be of good character and reputation. The applicant ~~must~~ *shall* submit five references with the application for ~~registration~~ *licensure* as a professional engineer. Three references must be from professional engineers with personal knowledge of the applicant's engineering experience. In the case of an application for certification as an engineer intern, the applicant shall submit three character references."

Section 58. Section 37-67-306, MCA, is amended to read:

"**37-67-306. Qualifications of applicant for ~~registration~~ *licensure* as professional engineer.** The following is considered minimum evidence satisfactory to the board that the applicant is qualified for ~~registration~~ *licensure* as a professional engineer:

(1) A graduate of an engineering or engineering technology curriculum of 4 years or more approved by the board as being of satisfactory standing, with a specific record of an additional 4 years or more of progressive experience on engineering projects *under the direct supervision of a professional engineer, unless exempt under 37-67-320(2), and who has passed examinations* of a grade and character that indicate to the board that the applicant may be competent to practice engineering, must be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing the examinations, the applicant must be granted a ~~certificate of registration~~ *license* to practice engineering in this state if the applicant is otherwise qualified.

(2) A graduate of a related science curriculum of 4 years or more, other than engineering or engineering technology, with a specific record of 8 years or more of progressive experience on engineering projects of a grade and character that indicate to the board that the applicant may be competent to practice engineering, may be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing the examinations, the applicant must be granted a ~~certificate of registration~~ *license* to practice engineering in this state if the applicant is otherwise qualified.

(3) A graduate of an engineering or related science curriculum of 4 years or more, with a specific record of 20 years or more of progressive experience on engineering projects, of which at least 10 *of those* years ~~have~~ *the applicant has* been in charge of important engineering projects, of a grade and character that indicate to the board that the applicant may be competent to practice engineering, must be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing the examination, the applicant must be granted a ~~certificate of registration~~ *license* to practice engineering in this state if the applicant is otherwise qualified.

(4) Teaching engineering in a college or university offering an approved engineering curriculum of 4 years or more may be considered as engineering experience in these requirements if research, product development, or consulting has been a concurrent activity.

(5) A person who holds a doctorate degree in engineering from an institution with an engineering program approved by the board and the engineering accreditation commission of the accreditation board for engineering and technology or the Canadian engineering accreditation board and who provides a specific record of at least 4 years of progressive experience on engineering projects of a grade and character that indicate to the board that the applicant may be competent to practice engineering must be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing the examination, the applicant must be issued a ~~certificate of registration~~ *license* to practice engineering in this state if the applicant is otherwise qualified."

Section 59. Section 37-67-308, MCA, is amended to read:

"**37-67-308. General qualifications of applicants for ~~registration~~ *licensure* as professional land surveyor or *certification as* land surveyor intern.** (1) To be eligible for admission to an examination for professional land surveyor or land surveyor intern, an applicant must be of good character and reputation. The applicant shall submit five references with the application for ~~registration~~ *licensure* as a professional land surveyor. Three of the references must be from professional land surveyors having personal knowledge of the applicant's land surveying experience. In the case of an application for certification as a land surveyor intern, the applicant shall submit three references, one of ~~whom~~ *which* must be from a professional land surveyor having personal knowledge of the applicant's land surveying experience.

(2) The evaluation of a land surveyor applicant's qualifications involves a consideration of the applicant's education, technical and land surveying experience, exhibits of land surveying projects ~~which~~ *that* the applicant has been in charge of, recommendations by references, and a ~~reviewing~~ *review* of these categories. The board may require an interview if it considers one necessary."

Section 60. Section 37-67-309, MCA, is amended to read:

"**37-67-309. Qualifications of applicant for ~~registration~~ *licensure* as professional land surveyor.** One of the following ~~shall~~ *must* be considered as minimum evidence to the board that the applicant is qualified for ~~registration~~ *licensure* as a professional land surveyor:

(1) ~~have~~ *The applicant has* a bachelor of science degree in a board-approved curriculum that ~~must contain~~ *includes* a minimum of 40 quarter credit hours in surveying techniques, principles, and practices~~, and present~~*;* *the applicant presents* evidence satisfactory to the board that, in addition ~~thereto~~, ~~he~~ *the applicant* has had at least 4 years of combined office and field experience in land surveying, with a minimum of 3 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor~~,~~*;* and ~~have~~ *the applicant has* passed the examinations ~~as~~ required by the board~~;~~.

(2) ~~have~~ *The applicant has* 2 years of formal education in a board-approved curriculum above high school level, with at least 90 quarter credit hours that ~~must contain~~ *include* a minimum of 40 quarter credit hours in surveying techniques, principles, and practices, or equivalent semester hours passed, or the equivalent approved by the board~~, and present~~*;* *the applicant presents* evidence satisfactory to the board that, in addition ~~thereto~~, ~~he~~ *the applicant* has had at least 6 years of combined office and field experience in land surveying satisfactory to the board, with a minimum of 4 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor~~,~~*;* and ~~have~~ *the applicant has* passed the examinations ~~as~~ required by the board~~;~~.

(3) ~~have~~ *The applicant has* a bachelor of science degree in a board-approved curriculum and ~~present~~ *presents* evidence satisfactory to the board that, in addition ~~thereto~~, ~~he~~ *the applicant* has had at least 6 years of combined office and field experience in land surveying, with a minimum of 4 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and ~~have~~ *the applicant has* passed the examinations ~~as~~ required by the board~~; or~~.

(4) ~~present~~ *The applicant presents* evidence satisfactory to the board that ~~he~~ *the applicant* has had at least 10 years of combined office and field experience in land surveying satisfactory to the board, with a minimum of 6 years of progressive

experience on land surveying projects under the direct supervision of a professional land surveyor, and has passed the examinations ~~as~~ required by the board."

Section 61. Section 37-67-310, MCA, is amended to read:

"**37-67-310. Qualifications of applicant for ~~registration~~ *certification* as land surveyor intern.** To qualify for ~~registration~~ *certification* as a land surveyor intern, an applicant ~~must~~ *shall* present as evidence to the board at least one of the following:

(1) a bachelor of science degree in a board-approved curriculum that ~~must contain~~ *includes* a minimum of 27 semester or 40 quarter credit hours in surveying techniques, principles, and practices and evidence of having passed the written examinations required by the board;

(2) at least 2 years of formal education in an approved curriculum that ~~must contain~~ *includes* a minimum of 27 semester or 40 quarter credit hours in surveying techniques, principles, and practices, above high school level, with at least 60 semester or 90 quarter credit hours or equivalent semester hours passed, or the equivalent approved by the board, and evidence of having passed the written examinations required by the board;

(3) a bachelor of science degree in a board-approved curriculum and evidence satisfactory to the board that, in addition, the applicant has had at least 2 years of combined office and field experience in land surveying, with a minimum of 1 year in charge of land surveying projects under the supervision of a professional land surveyor, and evidence of having passed the written examinations required by the board; or

(4) evidence satisfactory to the board that the applicant has had at least 6 years of combined office and field experience in land surveying, with a minimum of 4 years of experience in charge of land surveying projects~~,~~ under the supervision of a professional land surveyor, and evidence of having passed the examinations required by the board."

Section 62. Section 37-67-311, MCA, is amended to read:

"**37-67-311. Examinations.** Examination requirements are as follows:

(1) The examinations must be held at times and places ~~as~~ *that* the board directs. The board shall determine the acceptable grade on examinations.

(2) Written examinations may be taken only after the applicant has met the other minimum requirements as ~~given~~ *provided* in 37-67-305 through 37-67-310 and has been approved by the board for admission to the examinations as follows:

(a) The examination on engineering fundamentals consists of an 8-hour examination ~~on the fundamentals of engineering~~. Passing the examination qualifies the examinee for an engineer intern certificate if the examinee has met all other requirements for certification required by this chapter.

(b) The examination on principles and practice of engineering consists of an 8-hour examination on applied engineering. Passing this examination qualifies the examinee for ~~registration~~ *licensure* as a professional engineer if the examinee has met the other requirements for ~~registration~~ *licensure* required by this chapter.

(c) The examinations for land surveyor intern consist of two 4-hour examinations, designated as parts I and II, on the basic disciplines of land surveying. Passing these examinations qualifies the examinee for a land surveyor intern certificate *if* the examinee has met all other requirements for ~~certificates~~ *certification* required by this chapter.

(d) The requirements and examinations for professional land surveyor consist of being a land surveyor intern, ~~of~~ two examinations, designated as parts III and IV, on the applied disciplines of land surveying, and ~~of~~ an examination specifically related to land surveying in Montana. Passing these examinations qualifies the examinee for ~~registration~~ *licensure* as a professional land surveyor if the examinee has met the other requirements for ~~registration~~ *licensure* required by this chapter.

(3) A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the board. Before readmission to the examination in the event of a second failure, the examinee ~~must~~ *shall* wait 1 year before a third examination.

(4) A candidate failing three examinations may not be allowed readmission to the examination. The candidate may apply for a special circumstance waiver from the board to be readmitted to the examination."

Section 63. Section 37-67-312, MCA, is amended to read:

"37-67-312. Licensure of professional engineers without examination by comity or endorsement. (1) A person holding a certificate of registration to engage in the practice of engineering issued to the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provisions of this chapter and that were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, may upon application be ~~registered~~ *licensed* without further examination.

(2) A person holding a certificate of qualification issued by the committee on national engineering certification of the national council of examiners for engineering and surveying and whose qualifications meet the requirements of this chapter may upon application be ~~registered~~ *licensed* without further examination."

Section 64. Section 37-67-314, MCA, is amended to read:

"37-67-314. Issuance of ~~certificates~~ *licenses* — seal of professional engineer or professional land surveyor — enrollment card for interns. (1) The department shall issue to ~~any~~ *an* applicant who, in the opinion of the board, has met the requirements of this chapter a ~~certificate of registration~~ *license* giving the ~~registrant~~ *licensee* proper authority to engage in the practice of engineering or the practice of land surveying and to assume responsible charge of engineering or land surveying projects in this state. The ~~certificate of registration~~ *license* for a professional engineer must carry the designation "professional engineer" and for a professional land surveyor, "professional land surveyor". It must give the full name and serial number of the ~~registrant~~ *licensee* and must be signed by the presiding officer and the secretary under the seal of the board.

(2) ~~This certificate~~ *A license* is prima facie evidence that the named person is entitled to all rights, privileges, and responsibilities of a professional engineer or professional land surveyor while the ~~certificate of registration~~ *license* remains unrevoked or unexpired.

(3) Each ~~registrant~~ *licensee* may, upon ~~registration~~ *licensure*, obtain a seal of a design authorized by the board, bearing the ~~registrant's~~ *licensee's* name, serial number, and the legend "professional engineer" or "professional land surveyor". Plans, specifications, plats, drawings, reports, design information, and calculations prepared by a ~~registrant~~ *licensee* must ~~when issued~~ be signed with a written signature, dated, and stamped with the seal or a seal facsimile *when issued*. ~~It~~ *After the expiration of a license, it* is unlawful for ~~a registrant~~ *the licensee whose license has lapsed* to affix or permit the seal and signature or seal facsimile to be affixed to any*:*

(a) plans, specifications, plats, drawings, reports, design information, or calculations~~,~~*; or*

(b) projects for which the licensee was not in responsible charge ~~after the expiration of a certificate or for projects for which the registrant was not in responsible charge~~.

(4) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter an enrollment card as an engineer intern or land surveyor intern. The enrollment card must indicate that the applicant's name and status has been recorded with the board. The enrollment card does not authorize the holder to practice as a professional engineer or professional land surveyor."

Section 65. Section 37-67-315, MCA, is amended to read:

"**37-67-315. Biennial renewal — fee — statement of competency.** (1) ~~Certificates of registration~~ *Licenses* expire every second year on the date established by rule of the department and become invalid on that date unless renewed. The department shall notify each person ~~registered~~ *licensed* under this chapter of the date of the expiration of the person's ~~certificate~~ *license* and the amount of the fee required for its renewal for 2 years. This notice must be mailed at least 1 month in advance of the date of the expiration of the ~~certificate~~ *license*. Renewal may be made prior to the expiration date by the payment of a fee as set by the board for either a professional engineer or *a* professional land surveyor. For renewal of a dual license as both a professional engineer and *a* professional land surveyor, the fee must be set by the board.

(2) A ~~certificate~~ *license* may not be renewed unless the registrant submits a statement to the effect and the board is satisfied that the ~~registrant~~ *licensee* has maintained competency by:

(a) the continued practice of engineering or land surveying; and

(b) engaging in other activities that provide for the maintenance of competency if prescribed by board rule, such as continuing education, which may require up to 15 professional development hours as prescribed by board rule and is generally patterned after the model rules of the national council of examiners for engineering and surveying.

(3) Failure on the part of a ~~registrant~~ *licensee* to renew the ~~certificate~~ *license* biennially prior to the expiration date does not deprive the ~~registrant~~ *licensee* of the right of renewal; however, a ~~registrant~~ *licensee* who fails to pay the renewal fee for an additional year of the biennium is considered a new applicant and is required to submit a new application.

(4) The fee for any ~~registrant~~ *licensee* who fails to renew the ~~certificate~~ *license* prior to the expiration date must be increased by an amount not to exceed 50% of the renewal fee. Renewal may not be completed until all fees are paid."

Section 66. Section 37-67-316, MCA, is amended to read:

"**37-67-316. Replacement of lost or destroyed certificate *or license*.** A new certificate ~~of registration~~ *or license* to replace a certificate *or license* revoked, lost, destroyed, or mutilated may be issued by the department, subject to the rules of the board."

Section 67. Section 37-67-318, MCA, is amended to read:

"**37-67-318. Roster of licensees to be published by department.** A roster showing the names and addresses of ~~registered~~ *licensed* professional engineers and ~~registered~~ *licensed* professional land surveyors ~~shall~~ *must* be published by the department. Copies ~~shall~~ *must* be placed on file with the secretary of state~~,~~ *and* the clerk of each incorporated city and town~~,~~ and in the office of each county clerk and recorder within the state and furnished to each person ~~registered~~ *licensed* and to the public, on request, at a fee established by the board."

Section 68. Section 37-67-320, MCA, is amended to read:

"**37-67-320. ~~Firms~~ *Sole proprietorships, firms*, partnerships, and corporations — requirements — exceptions.** (1) A *sole proprietorship,* firm, partnership, or corporation:

(a) may engage in the practice of engineering in this state if *the sole proprietor or* any member of the firm, partnership, or corporation who is in responsible charge of engineering or land surveying work performed in this state is a professional engineer or a professional land surveyor, as appropriate;

(b) must have a professional engineer or professional land surveyor in residence who is in responsible charge of the engineering or land surveying work conducted in the office or place of business if the *sole proprietorship,* firm, partnership, or corporation is engaged in the practice of engineering or the practice of land surveying; and

(c) shall obtain a certificate of authorization from the board before engaging in the practice of engineering or the practice of land surveying.

(2) The provisions of subsection (1) do not apply to *sole proprietorships,* firms, partnerships, or corporations that are engaged in the practice of engineering or the practice of land surveying for their own benefit and do not practice or offer engineering or land surveying services to others."

Section 69. Section 37-67-321, MCA, is amended to read:

"**37-67-321. Emeritus status.** (1) A ~~registrant~~ *licensee* who ~~has terminated his practice of~~ *no longer practices* engineering or land surveying may apply to the board for emeritus status.

(2) Upon receiving an application for emeritus status accompanied by the fee established by the board, the board shall issue a ~~certificate~~ *license* of emeritus status to the applicant and record the applicant's name in the roster as an emeritus ~~registrant~~ *licensee*, along with the date ~~he~~ *on which the licensee* received emeritus status.

(3) An emeritus ~~registrant~~ *licensee* may retain but may not use ~~his~~ *the licensee's* seal and may not practice engineering or land surveying.

(4) The board shall reissue a ~~certificate of registration~~ *license* to an emeritus ~~registrant~~ *licensee* who pays all application fees, meets all current requirements for ~~registration~~ *licensure*, and demonstrates to the board's satisfaction that for the 2 years preceding ~~his~~ *the* application for ~~registration he~~ *licensure, the applicant* has met the requirements for maintaining professional competence established under 37-67-315."

Section 70. Section 37-67-331, MCA, is amended to read:

"**37-67-331. Revocation, suspension, or refusal to renew ~~certificate~~ *license* — grounds — procedure — reinstatement.** (1) The board may reprimand *a licensee* or revoke, suspend, or refuse to renew the ~~certificate~~ *license* of a ~~registrant~~ *licensee* found responsible for:

(a) fraud or deceit in obtaining a ~~certificate of registration~~ *license*;

(b) gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a ~~registered~~ *licensed* professional engineer or professional land surveyor;

(c) a felony;

(d) a violation of rules for professional conduct for professional engineers and professional land surveyors adopted by the board;

(e) failing to comply with the Corner Recordation Act if the person is a professional land surveyor.

(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct against a ~~registrant~~ *licensee*. The charges must be made by affidavit, subscribed and sworn to by the person making them, and filed with the department. The charges must be investigated by the board. For purposes of investigation under this section, the board may require that a ~~registrant~~ *licensee* meet with the board.

(3) The board may require a ~~registrant~~ *licensee* to take a written or oral examination, or both, in a proceeding to reprimand *the licensee* or to revoke, suspend, or refuse to renew the ~~certificate of registration~~ *license*.

(4) If, after a hearing, five or more members of the board vote in favor of sustaining the charges, the board shall reprimand~~,~~ *the licensee or* suspend, refuse to renew, or revoke the ~~certificate of registration~~ *license* of the ~~registered~~ *licensed* professional engineer or professional land surveyor.

(5) The board, for reasons it considers sufficient, may reissue a ~~certificate of registration~~ *license* to a person whose ~~certificate~~ *license* has been revoked if five or more members of the board vote in favor of the reissuance."

Section 71. Section 37-67-332, MCA, is amended to read:

"**37-67-332. Violations — penalties — enforcement.** (1) (a) A person commits a criminal offense if the person knowingly:

(i) practices or offers to practice engineering or land surveying in this state without being ~~registered~~ *licensed* under this chapter;

(ii) presents or attempts to use the ~~certificate of registration~~ *license* or the seal of another person;

(iii) gives false or forged evidence to the board or department in obtaining a ~~certificate of registration~~ *license*;

(iv) impersonates another ~~registrant~~ *licensee*;

(v) attempts to use an expired, revoked, or emeritus ~~certificate of registration~~ *license*; or

(vi) violates a provision of this chapter.

(b) A person convicted under subsection (1)(a) shall ~~on conviction~~ be fined *an amount of* not less than $100 or more than $500 or be incarcerated in the county jail for a period not exceeding 3 months, or both.

(2) All officers of the law of this state or one of its political subdivisions shall enforce this chapter and prosecute persons violating it. The attorney general shall act as legal adviser of the board and render legal assistance necessary in carrying out this chapter.

(3) The board may apply to the appropriate court for an injunction against a person found by the board to have practiced or attempted or offered to practice engineering or land surveying in this state without a valid ~~certificate of registration~~ *license*.

(4) If a person violates an injunction against practice without a valid ~~certificate of registration~~ *license*, the court may impose a fine in an amount not to exceed $25,000."

Section 72. Section 37-68-201, MCA, is amended to read:

"**37-68-201. Organization — meetings — ~~quorum —~~ rulemaking power — seal.** (1) Each July, the board shall elect from its membership a president, vice president, and secretary-treasurer.

(2) The board shall meet quarterly and at other times it considers necessary.

~~(3) A majority of the members of the board shall constitute a quorum for transaction of business.~~

~~(4)~~*(3)* The board may:

(a) adopt rules for the administration of this chapter, for the licensing of electrical contractors, and for the examination and licensing of master and journeymen electricians;

(b) adopt a seal;

(c) cause the prosecution and enjoinder of persons violating this chapter."

Section 73. Section 37-69-201, MCA, is amended to read:

"**37-69-201. ~~Chairman — quorum~~ *Presiding officer*.** ~~(1)~~ The board shall annually select a ~~chairman~~ *presiding officer* from its members.

~~(2) A majority of the board constitutes a quorum.~~"

Section 74. Section 70-22-103, MCA, is amended to read:

"**70-22-103. Definitions.** Except ~~where~~ *when* the context indicates a different meaning, terms used in this part ~~shall~~ *must* be defined as follows:

(1) An "accessory to a corner" ~~is~~ *means* any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be

bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.

(2) The "board" ~~is~~ *means* the board of professional engineers and professional land surveyors~~,~~ provided for in 2-15-1873.

(3) A "corner", unless otherwise qualified, means a property corner or a property controlling corner or a public land survey corner or any combination of these.

(4) A "monument" ~~is~~ *means* an accessory that is presumed to occupy the exact position of a corner.

(5) A "property controlling corner" for a property ~~is~~ *means* a public land survey corner or any property corner ~~which~~ *that* does not lie on a property line of the property in question but ~~which~~ *that* controls the location of one or more of the property corners of the property in question.

(6) A "property corner" ~~is~~ *means* a geographic point on the surface of the earth and is on, *is* a part of, and controls a property line.

(7) A "public land survey corner" ~~is~~ *means* any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for the land to a private person from the United States government.

(8) A "reference monument" ~~is~~ *means* a special monument that does not occupy the same geographical position as the corner itself but whose spatial relationship to the corner is recorded and ~~which~~ *that* serves to witness the corner.

(9) A "~~registered~~ surveyor" ~~is~~ *means* a ~~surveyor~~ *person* who is ~~registered~~ *licensed* to practice land surveying under Title 37, chapter 67, and has a paid-up license for that calendar year or who is authorized under Title 37, chapter 67, to practice land surveying."

Section 75. Repealer. Sections 10-1-605, 37-2-111, and 37-66-305, MCA, are repealed.

Section 76. Codification instruction. (1) [Section 7] is intended to be codified as an integral part of Title 37, chapter 1, part 3, and the provisions of Title 37, chapter 1, part 3, apply to [section 7].

(2) [Section 39] is intended to be codified as an integral part of Title 37, chapter 54, part 2, and the provisions of Title 37, chapter 54, part 2, apply to [section 39].

(3) [Section 45] is intended to be codified as an integral part of Title 37, chapter 65, part 3, and the provisions of Title 37, chapter 65, part 3, apply to [section 45].

Section 77. Effective dates. (1) [Sections 11, 75, and 76 and this section] are effective on passage and approval.

(2) [Sections 1 through 7, 12 through 47, and 49 through 74] are effective October 1, 2001.

(3) [Section 48] is effective October 1, 2005.

Section 78. Termination. [Section 47] terminates September 30, 2005.

Approved May 1, 2001

CHAPTER NO. 493

[HB 151]

AN ACT CLARIFYING THAT THE DEPARTMENT OF CORRECTIONS ONLY SUPERVISES PROBATIONERS WHO ARE FELONY OFFENDERS; CLARIFYING THAT THE DISTRICT COURT MAY ADD CONDITIONS TO OR MODIFY CONDITIONS OF PROBATION; PROVIDING A PROCEDURE FOR ADDING OR MODIFYING CONDITIONS OF PROBATION; CLARIFYING PROVISIONS RELATING TO PROBATION REVOCATION HEARINGS; PROVIDING FOR AN INFORMAL PROBATION VIOLATION INTERVENTION HEARING; AMENDING SECTIONS 46-18-111, 46-18-203, 46-23-1004, 46-23-1011, AND 46-23-1012, MCA; REPEALING SECTION 46-23-1013, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-111, MCA, is amended to read:

"**46-18-111. Presentence investigation — when required.** (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, or 45-5-627, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the ~~offender~~ *defendant* in the least restrictive environment, considering the risk the ~~offender~~ *defendant* presents to the community and ~~offender~~ *the defendant's* needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the professional and occupational licensing bureau of the department of commerce. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(2) The court shall order a presentence report unless the court makes a finding that a report is unnecessary. Unless the court makes ~~such a~~ *that* finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation *and parole* officer is presented to and considered by the district court. *The district court may order a presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in 46-23-502.* ~~The district court may, in its discretion, order a presentence investigation for a defendant convicted of a misdemeanor.~~"

Section 2. Section 46-18-203, MCA, is amended to read:

"**46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence or any condition of a deferred imposition of sentence, the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation *and parole* officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the offender must be brought before the judge, and the offender must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the offender's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified, unless:

(a) the offender admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence. However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any lesser sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit. The judge shall state the reasons for the judge's determination in the order. Credit, however, must be allowed for time served in a detention center or home arrest time already served.

(c) If a judge finds that an offender has not violated a term or condition of a suspended or deferred sentence, that judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, *must be* immediately released."

Section 3. Section 46-23-1004, MCA, is amended to read:

"**46-23-1004. Duties of department.** The department is responsible for any investigation and supervision requested by the board or the courts *for felony offenders*. The department shall:

(1) divide the state into districts and assign probation and parole officers to serve in these districts and courts;

(2) obtain any necessary office quarters for the staff in each district;

(3) assign the secretarial, bookkeeping, and accounting work to the clerical employees, including receipt and disbursement of money;

(4) direct the work of the probation and parole officers and other employees;

(5) formulate methods of investigation, supervision, recordkeeping, and reports;

(6) conduct training courses for the staff;

(7) cooperate with all agencies, public and private, that are concerned with the treatment or welfare of persons on probation or parole;

(8) administer the interstate compact for the supervision of parolees and probationers; and

(9) notify the employer of a probationer or parolee if the probationer or parolee has been convicted of an offense involving theft from an employer."

Section 4. Section 46-23-1011, MCA, is amended to read:

"**46-23-1011. Supervision on probation.** (1) The department shall supervise ~~offenders~~ *probationers* during their probation period in accord with the conditions set by a sentencing judge. *If the sentencing judge did not set conditions of probation at the time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.*

(2) A copy of the conditions of probation must be signed by the probationer ~~and given to the probationer and the probationer's probation and parole officer, who shall report on the probationer's progress under rules of the sentencing judge. Any probation agreement signed by the probationer may contain a clause~~

waiving extradition. *The department may require a probationer to waive extradition for the probationer's return to Montana.*

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage the probationer to improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(4) *(a)* The probation and parole officer may recommend and a judge may modify *or add* any condition of probation or suspension of sentence at any time. ~~Notice must be given to the probation and parole officer before any condition is modified, and the officer must be given an opportunity to present the officer's ideas or recommendations on any modification.~~

(b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with a report that identifies the conditions of probation and the reason why the officer believes that the judge should modify or add the conditions.

(c) The county attorney may file a petition requesting that the court modify or add conditions as requested by the probation and parole officer.

(d) The court may grant the petition if the probationer does not object. If the probationer objects to the petition, the court must hold a hearing pursuant to the provisions of 46-18-203.

(e) The provisions of 46-18-203(7)(a)(ii) do not apply to this section.

(f) ~~A~~ *The probationer shall sign a* copy of ~~a modification of~~ *new or modified* conditions ~~must be delivered to the probation and parole officer and the probationer. Waiver or modification~~ *of probation. The court may waive or modify a condition* of restitution ~~may be ordered~~ only as provided ~~under the provisions of~~ *in* 46-18-246.

~~(5) The probation and parole officer shall keep records as the department or the sentencing judge may require.~~

~~(6)~~*(5)* (a) Upon recommendation of the probation and parole officer, a judge may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if:

(i) the judge determines that a conditional discharge from supervision:

(A) is in the best interests of the probationer and society; and

(B) will not present unreasonable risk of danger to the victim of the offense; and

(ii) the offender has paid all restitution and court-ordered financial obligations in full.

(b) Subsection ~~(6)(a)~~ *(5)(a)* does not prohibit a judge from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

(c) If the department certifies to the sentencing judge that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place an offender on probation under supervision by that district office unless the judge grants a conditional discharge to a probationer being supervised by that district office.

The department may recommend probationers to the judge for conditional discharge. The judge may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

Section 5. Section 46-23-1012, MCA, is amended to read:

"**46-23-1012. Arrest when violations of probation alleged — probation compliance plan — probation violator ~~prison diversion program~~ *intervention*.** (1) At any time during probation ~~or suspension of sentence~~, *if a probation and parole officer reasonably believes that the probationer has violated a condition of probation,* a court may issue a warrant for the arrest of the ~~defendant for violation of any of the conditions of release~~ *probationer* or *a county attorney may issue* a notice to appear to answer to a charge of *probation* violation. The notice must be personally served upon the ~~defendant~~ *probationer*. The warrant must authorize ~~all~~ *law enforcement* officers ~~named in the warrant~~ to return the ~~defendant~~ *probationer* to ~~the custody of the court or to~~ any suitable detention ~~facility designated by the court~~ *center*.

(2) Any probation and parole officer may arrest the ~~defendant~~ *probationer* without a warrant or may *orally* deputize any other officer with power of arrest to do so by giving the officer oral authorization and within 12 hours delivering to the ~~place of~~ detention *center* a written statement setting forth that the ~~defendant~~ *probationer* has, in the judgment of the probation and parole officer, violated the conditions of ~~the defendant's release~~ *probation*. A written statement or oral authorization delivered with the ~~defendant~~ *probationer* by the arresting officer to the official in charge of a ~~county~~ detention center ~~or other place of detention~~ is sufficient warrant for the detention of the ~~defendant~~ *probationer* if the probation and parole officer delivers the written statement within 12 hours of the ~~defendant's~~ *probationer's* arrest. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation.

~~(3) Provisions regarding release on bail of a person charged with a crime are applicable to the defendants arrested under these provisions.~~

~~(4) Any probation and parole officer may hold a defendant arrested under subsection (1) without bail for 72 hours. After the arrest of the defendant pursuant to this subsection, a hearings officer for the probation and parole bureau shall hold a hearing within 36 hours of the defendant's arrest. The hearings officer shall determine whether there is probable cause to believe that the defendant has violated a condition of probation and, if probable cause exists, notify the sentencing court and determine an appropriate plan to ensure the defendant's compliance with the conditions of probation. An appropriate plan may include:~~

~~(a) holding the defendant for a period of time up to 30 days, with credit for any time served from the time of the arrest to the time of the hearing to determine probable cause;~~

~~(b) a request to the court pursuant to 46-23-1011 to modify the defendant's terms or conditions of probation; or~~

~~(c) a notification to the court with jurisdiction over the defendant pursuant to 46-23-1013.~~

~~(5) The department shall adopt policies and procedures to implement a probation violator prison diversion program. If the department is able to sufficiently sanction a defendant with a term in a detention center as provided in subsection (4)(a) for a proven technical violation that could result in the revocation of a suspended or deferred sentence, the department may pay the expense of the detention center costs and pursue payment of costs by the defendant as provided in 7-32-2245. If the action plan developed for the defendant proceeds as provided in subsection (4)(b) or (4)(c), the expenses of the detention must be paid as provided in 7-32-2242.~~

(3) A probation and parole officer may authorize a detention center to hold a probationer arrested under this section without bail for 72 hours. Within 72 hours following the probationer's detention, the probation and parole officer shall:

(a) authorize the detention center to release the probationer;

(b) hold an intervention hearing pursuant to [section 6]; or

(c) arrange for the probationer to appear before a magistrate to set bail. In setting bail, the provisions of chapter 9 of this title regarding release on bail of persons charged with a crime apply.

(4) If the probationer is detained and bond is set, the probation and parole officer shall file a report of violation within 10 days of the arrest of the probationer.

(5) After the probation and parole officer files a report of violation, the court may proceed with revocation of probation in the manner provided in 46-18-203."

Section 6. Informal probation violation intervention hearing. (1) A probation and parole officer who reasonably believes that a probationer has violated a condition of probation may initiate an informal probation violation intervention hearing to gain the probationer's compliance with the conditions of probation without a formal revocation hearing under 46-18-203.

(2) A hearings officer designated by the department shall conduct the intervention hearing.

(3) If the hearings officer determines by a preponderance of the evidence that the probationer has violated a condition of probation, the hearings officer may order the probationer to serve up to 30 days in a county detention center, with credit for time served since the time of arrest, and order the probationer to pay the costs of incarceration. The department shall pay the incarceration costs not paid by the probationer.

(4) The provisions of chapter 9 of this title regarding release on bail of a person charged with a crime are not applicable to a probationer ordered to be held in a county detention center under this section.

Section 7. Repealer. Section 46-23-1013, MCA, is repealed.

Section 8. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 46, chapter 23, part 10, and the provisions of Title 46 apply to [section 6].

Section 9. Effective date. [This act] is effective on passage and approval.

Section 10. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to offenders who are under the custody or supervision of the department of corrections on [the effective date of this act].

Approved May 1, 2001

CHAPTER NO. 494

[HB 154]

AN ACT REVISING THE ACCURACY REQUIREMENTS FOR RECORDING STATE PLANE COORDINATES OF LAND BOUNDARIES IN THE PUBLIC RECORD; AND AMENDING SECTION 70-22-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-22-206, MCA, is amended to read:

"**70-22-206. Conformity to standards required for use of coordinates in recorded instrument.** ~~No coordinates~~ *Coordinates* based on the Montana coordinate ~~systems NAD 27 and~~ *system* NAD 83 purporting to define the position of a point on a land boundary ~~shall~~ *may not* be presented to be recorded in any public land records or deed records unless the coordinates have been ~~established in conformity with the national prescribed standards for third-order class II horizontal control surveys and provided that these surveys have been~~ tied to or originated from monumented ~~first-~~ *first-order* or ~~second-order~~ *higher accuracy* horizontal control ~~stations~~ *points* that are adjusted to and published ~~in~~ *as part of* the national ~~network of geodetic control~~ *spatial reference system* ~~and are within 3 miles of said land boundaries. Standards of accuracy and specifications apply for first-, second-, and third-order geodetic surveying as prepared and published by the federal geodetic control committee (FGCC) of the United States department of commerce or its successors. Publication of the existing control stations or acceptance with intent to publish newly established control stations by the national ocean survey/national geodetic survey constitutes evidence of adherence to FGCC specifications.~~ *Public land or deed records presented for recording that purport to define the position of a point on a land boundary based on coordinates from the Montana coordinate system NAD 83 must contain a statement that identifies the first-order or higher accuracy control stations used in the survey, the specific NAD 83 datum adjustment tag of the coordinates used, and the type of equipment and methods used to perform the survey.*"

Approved May 1, 2001

CHAPTER NO. 495

[HB 179]

AN ACT PROVIDING A PROCEDURE FOR A MILL LEVY ELECTION; PROVIDING FOR THE CONTENT OF A RESOLUTION PROPOSING A MILL LEVY ELECTION; REQUIRING THE RESOLUTION AND THE BALLOT FORM TO INCLUDE A STATEMENT OF THE IMPACT OF THE ELECTION ON HOMES VALUED AT $100,000 AND $200,000 IN THE DISTRICT IN TERMS OF ACTUAL DOLLARS IN ADDITIONAL PROPERTY TAXES THAT WOULD BE IMPOSED ON RESIDENCES WITH THOSE VALUES IF THE MILL LEVY WERE TO PASS; AMENDING SECTIONS 7-6-2314, 7-6-2328, 7-6-2512, 7-6-2531, 7-6-2534, 7-6-2536, 7-6-2537, 7-6-2541, 7-6-4238, 7-6-4272, 7-6-4431, 7-14-1134, 7-14-1633, 7-14-2504, 7-14-4404, 7-16-2102, 7-16-2109, 7-16-2411, 7-16-2412, 7-16-2432, 7-22-2142, 7-32-235, 7-34-102, 7-34-2135, 19-18-504, 20-9-353, 20-9-502, 20-15-241, 20-15-311, 22-1-304, 76-15-531, AND 90-5-112, MCA; AND REPEALING SECTION 7-6-2532, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Mill levy election. (1) A county, consolidated government, incorporated city, incorporated town, school district, or other taxing entity that proposes to impose a mill levy or increase a mill levy that is required to be submitted to the electors shall conduct the election as provided in this section.

(2) An election conducted pursuant to this section may be held in conjunction with a regular or primary election or may be a special election. The governing body shall pass a resolution or receive a petition indicating an intent to impose a new levy or to increase a mill levy on the approval of a majority of the qualified electors voting in the election. The resolution or petition must include:

(a) the specific purpose for which the additional money will be used;

(b) the specific amount to be raised;

(c) the approximate number of mills required; and

(d) the durational limit, if any, on the levy.

(3) Notice of the election must be prepared by the governing body and given as provided by law. The form of the ballot must reflect the content of the resolution and must include a statement of the impact of the election on a home valued at $100,000 and a home valued at $200,000 in the district in terms of actual dollars in additional property taxes that would be imposed on residences with those values if the mill levy were to pass. The ballot may also include a statement of the impact of the election on homes of any other value in the district, if appropriate.

(4) If the majority voting on the question are in favor of the additional levy, the governing body is authorized to impose the levy in the amount specified in the resolution.

Section 2. Section 7-6-2314, MCA, is amended to read:

"**7-6-2314. Classification of estimates, appropriations, and expenditures — exception.** (1) In the tabulation required by 7-6-2313, the estimates, appropriations, and expenditures must be classified as:

(a) salaries and wages;

(b) maintenance and operation;

(c) capital outlay;

(d) interest and debt redemption;

(e) miscellaneous; and

(f) expenditures proposed to be made from bond issues not yet authorized or from the proceeds of a tax levy or levies that are required to be submitted to and approved at an election to be held ~~later~~ *as provided in [section 1].*

(2) (a) Within the general class of salaries and wages, each salary must be set forth separately, together with the title or position of the recipient. An unitemized appropriation may be made to cover the expenses of special deputies or assistants in any office where the services of the special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made, but the proposed rate ~~per~~ *each* day for each class or kind of labor must be set forth.

(b) Expenditures under the general class of maintenance and operation must be classified according to a standard classification to be established by the department of commerce.

(c) Expenditures for capital outlay must set forth and describe each object of expenditure separately.

(d) Under the general class of interest and debt redemption, proposed expenditures for interest and for redemption of principal must be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements must be set forth in a similar manner.

(e) Under the general class of miscellaneous, expenditures for all purposes not listed in or that cannot properly be assigned to any of the general classes must be set forth and itemized in detail.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 3. Section 7-6-2328, MCA, is amended to read:

"**7-6-2328. Restriction on tax-financed expenditures if voter approval of tax levy required.** ~~Where~~ *When* any expenditure program is to be financed from a tax levy required to be authorized and approved at an election *as required in [section 1]*, ~~no~~ *an* expenditure ~~shall~~ *may not* be made or *an* obligation incurred ~~thereunder~~ until ~~such~~ *the* levy is ~~so~~ authorized and approved."

Section 4. Section 7-6-2512, MCA, is amended to read:

"**7-6-2512. County tax levy for health care facilities.** (1) Subject to 15-10-420, the board of county commissioners may, annually, at the time of levying county taxes, fix and levy a tax, not to exceed 10 mills on each dollar of taxable valuation of property, upon all property within the county to erect, furnish, equip, expand, improve, maintain, and operate county-owned or county-operated health care facilities created under 7-8-2102, 7-34-2201, and 7-34-2502. "Health care facilities", as used in this section, has the meaning as defined in 7-34-2201. The combined total number of mills levied under this section and for the county poor fund under 53-2-322 may not exceed 18 mills. A higher levy may be made upon compliance with 7-6-2531 *and 7-6-2533* through 7-6-2537, 15-10-420, or 53-2-322. If a hospital district is created under Title 7, chapter 34, part 21, the mill levy authorized by this section may not be imposed on property within that hospital district.

(2) If a county issues bonds under 7-34-2411 to finance or refinance the costs of a health care facility, the board of county commissioners may covenant to levy the tax authorized by this section during the term of the bonds, to the extent necessary, and to apply the collections of the tax to the costs of erecting, furnishing, equipping, expanding, improving, maintaining, and operating the health care facility or facilities of the county or the payment of principal of or interest on the bonds. The pledge of the taxes to the payment of the bonds may not cause the bonds to be considered indebtedness of the county for the purpose of any statutory limitation or restriction. The pledge may be made by the board only upon authorization of a majority of the electors of the county voting on the pledge at a general or special election as provided in 7-34-2414."

Section 5. Section 7-6-2531, MCA, is amended to read:

"**7-6-2531. County may exceed maximum mill levy — election required.** The governing body of a county may raise money by taxation for the support of county government services, facilities, or other capital projects in excess of the levy or levies allowed by law under the following conditions:

(1) The governing body shall pass a resolution indicating its intent to exceed the current statutory mill levy on the approval of a majority of the qualified electors voting in an election under subsection (2). The resolution must include:

(a) the specific purpose for which the additional money will be used;

(b) the specific amount to be raised;

(c) the approximate number of mills required; ~~and~~

(d) the specific mill levy limitation to be exceeded*; and*

(e) a statement of the impact of the election on a home valued at $100,000 and a home valued at $200,000 in the district in terms of actual dollars in additional property taxes that would be imposed on residences with those values if the mill levy were to pass. The resolution may also include a statement of the impact of the election on homes of any other value in the district, if appropriate.

(2) (a) Except as provided in subsection (2)(b), the governing body shall submit the question of the additional mill levy to the qualified electors of the county at the next regular primary election held in an even-numbered year*, and the election must comply with [section 1].*

(b) If the purpose of the special levy designated pursuant to subsection (1)(a) is for the support of a health care facility as described in 7-6-2512, the governing body may submit the question of the additional mill levy to the qualified electors of the county at a general election, at a school election held pursuant to 20-3-304, or at a regular primary election held in an even-numbered year.

(c) If the majority voting on the question are in favor of the additional levy or levies, the governing body is authorized to exceed the statutory mill levy limit in the amount specified in the resolution ~~for a period not to exceed 2 years~~."

Section 6. Section 7-6-2534, MCA, is amended to read:

"**7-6-2534. Form of ballot.** (1) If at any time it is desired to submit the question of additional levies for more than one purpose, ~~such~~ *the* propositions ~~shall~~ *must* be submitted on separate ballots.

(2) Each of the ballots ~~shall~~ ~~be in substantially the following form:~~

~~Shall the county governing body be authorized to make a levy of (here insert the number) mills taxes in addition to the regular levy now authorized by law for the purpose of (here insert the purpose for which the additional levy is to be made and the period for which it shall be in effect)?~~

~~☐ FOR additional levy~~

~~☐ AGAINST additional levy~~ *must conform to the requirements of [section 1].*"

Section 7. Section 7-6-2536, MCA, is amended to read:

"**7-6-2536. Use of proceeds from additional mill levy.** (1) Except as provided in subsection (2), if authorized, the money raised by the additional levy ~~shall~~ *must* be used only for that specific purpose provided for in ~~7-6-2532~~ *the ballot measure.*

(2) If any balance remains on hand after the purpose for which the levy was made has been accomplished, the balance may by vote of the governing body be transferred to any other fund of the county."

Section 8. Section 7-6-2537, MCA, is amended to read:

"**7-6-2537. Emergency provisions in effect.** Nothing in 7-6-2531 *or 7-6-2533* through 7-6-2536 ~~shall~~ *may* affect the emergency levy as provided by law."

Section 9. Section 7-6-2541, MCA, is amended to read:

"**7-6-2541. County detention center inmate medical costs.** (1) The board of county commissioners shall budget and expend funds for inmate medical care, including but not limited to costs of providing direct medical care, medication, medical services, hospitalization, insurance premiums, self-insured coverage, or contracted services for expenses that must be borne by the county for inmates confined in a county detention center as provided for in 7-32-2222.

(2) If approved at a tax election by a majority of the qualified electors voting on the question, the board may levy up to 2 mills on the taxable value of all property within its jurisdiction for the purpose of subsection (1). *The election must be conducted in compliance with [section 1].*"

Section 10. Section 7-6-4238, MCA, is amended to read:

"**7-6-4238. Restriction on tax-financed expenditures if voter approval of tax levy required.** ~~Where~~ *When* any expenditure program is to be financed from a tax levy required to be authorized and approved at an election *as provided in [section 1]*, ~~no~~ *an* expenditure ~~shall~~ *may not* be made or obligation incurred ~~thereunder~~ until ~~such~~ *the* levy is ~~so~~ authorized and approved."

Section 11. Section 7-6-4272, MCA, is amended to read:

"**7-6-4272. Emergency expenditures.** (1) All emergency expenditures must be charged to the emergency budget appropriations adopted by a three-fourths majority of the members present at a meeting of a governing body.

(2) Emergency expenditures may be made by the issuance of checks or warrants drawn on the municipal treasury. The municipality is authorized and directed to pay the checks or warrants with any money available for that purpose. If at any time there is insufficient money available to pay the emergency expenditures, then emergency warrants must be issued and registered, must bear interest, and must be called for payment in the manner provided by law for other municipal warrants.

(3) The finance officer shall include in the preliminary annual operating budget to be submitted to the governing body the total amount of emergency warrants issued during the preceding fiscal year that remain unpaid. Subject to the provisions of this section, the governing body shall, in the tax levies, include a levy for each fund sufficient to raise an amount equal to the total amount of any emergency warrants remaining unpaid at the close of the preceding fiscal year because of insufficient money in the fund to pay the warrants.

(4) (a) A levy may not be made for any fund in excess of the levy authorized by law to be made for the fund.

(b) The governing body may submit the question of funding the emergency warrants at an election as provided by ~~law~~ *[section 1]*. If possible, the election must be held in conjunction with a regular or primary election. If at the election issuing of funding bonds is authorized, it is not necessary for any levy to be made for the purpose of paying the emergency warrants.

(5) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 12. Section 7-6-4431, MCA, is amended to read:

"**7-6-4431. Authorization to exceed maximum mill levy — election required.** The governing body of a municipality may raise money by taxation for the support of municipal government services, facilities, or other capital projects in excess of the levy or levies allowed by law under the following conditions:

(1) The governing body ~~must~~ *shall* pass a resolution indicating its intent to exceed the current statutory mill levy on the approval of a majority of the qualified electors voting in an election under subsection (2). The resolution must include:

(a) the specific purpose for which the additional money will be used;

(b) the specific dollar amount to be raised;

(c) the approximate number of mills required; and

(d) the specific mill levy limitation to be exceeded.

(2) The governing body ~~must~~ *shall* submit the question of the additional mill levy to the qualified electors of the municipality at ~~the next regular primary or general election on either odd-numbered or even-numbered years~~ *an election as provided in [section 1].* The question may not be submitted more than once in any calendar year. If the majority voting on the question are in favor of the additional levy or levies, the governing body is authorized to ~~exceed~~ *impose* the ~~statutory~~ mill levy ~~limit~~ in the amount specified in the resolution ~~for a period not to exceed 2 years~~."

Section 13. Section 7-14-1134, MCA, is amended to read:

"**7-14-1134. Method of funding deficiency.** (1) Subject to the conditions stated in this section, the governing body of a county or of a municipality having a population in excess of 10,000 may by resolution covenant that if at any time all revenue, including taxes, appropriated and collected for bonds issued pursuant to this part ~~are~~ *is* insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the county or municipality for the payment of the deficiency. The governing body may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on the bonds, it will levy a general tax upon all the taxable property in the county or municipality for the payment of the deficiency. The taxes are not subject to any limitation of rate or amount applicable to other county or municipal taxes but are limited to a rate estimated to be sufficient to produce the amount of the deficiency. If more than one local government is included in an authority issuing bonds pursuant to this part, the local governments may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the revenue appropriated for the bonds in a manner that the local governments may determine.

(2) The resolution must state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies.

(3) (a) A resolution is not effective until the question of its approval has been submitted to the qualified electors of the local government at ~~a special~~ *an* election~~:~~

~~(i)~~ called for that purpose by the governing body of the local government; *and*

~~(ii)~~ held ~~in conjunction with a regular or primary election~~ *as provided in [section 1]*~~;~~ and

~~(iii)~~ *the question is* approved by a majority of the electors voting ~~on the question~~.

(b) The notice and conduct of the election is governed, to the extent applicable, as provided for municipal general obligation bonds in Title 7, chapter 7, part 42, for an election called by cities and towns, and as provided for county general obligation bonds in Title 7, chapter 7, part 22, for an election called by counties. If a majority of the electors voting on the issue vote against approval of the resolution, the local government may not make the covenant or levy a tax for the payment of deficiencies pursuant to this section. The local government or authority may issue bonds under this part payable solely from the sources referred to in 7-14-1133(1)."

Section 14. Section 7-14-1633, MCA, is amended to read:

"7-14-1633. Election required to impose mill levy. (1) Before the levy provided for in 7-14-1632 may be made, the question must be submitted to a vote of the people at ~~the next regular school~~ *an* election held ~~in accordance with 20-3-304 or by mail ballot election as provided by Title 13, chapter 19, in the following form:~~

~~"Shall there be a levy of (specify number, not to exceed 6) mills upon the taxable property of the (specify rail authority) necessary to raise the sum of (specify the approximate amount to be raised by the tax levy) for the purpose of (specify purpose for which the levy is made)?~~

~~☐ FOR the tax levy.~~

~~☐ AGAINST the tax levy~~ *pursuant to [section 1].*~~"~~

(2) Notice of the election, clearly stating the amount and the purpose of the levy, must be given, and the election must be held and conducted and the returns must be made in the manner prescribed by law for the submission of questions to the electors under the general election laws."

Section 15. Section 7-14-2504, MCA, is amended to read:

"7-14-2504. Additional road and bridge construction tax — election required. (1) Each board may make an additional levy upon the taxable property in the county of up to 10 mills for constructing public highways and bridges.

(2) Before the additional levy may be made, the question must be submitted to a vote of the people ~~at a general election or a special election held in conjunction with a regular or primary election~~ *as provided in [section 1].* ~~The question must be in the following form, inserting the number of mills to be levied and the name of the county:~~

~~"Shall there be an additional levy of.... mills upon the taxable property in the county of...., state of Montana, for the purpose of constructing public highways and bridges?~~

~~☐ YES~~

~~☐ NO".~~

(3) A majority of the votes cast is necessary to permit the additional levy, which must be collected in the same manner as other road taxes."

Section 16. Section 7-14-4404, MCA, is amended to read:

"7-14-4404. Tax levy for contracts to operate bus service. For the purpose of raising the necessary money to defray the cost of the transportation service authorized by 7-14-4401(2) pursuant to a contract, lease, or lease and operating agreement with an independent carrier or carriers, the city or town council may annually levy a tax on the taxable value of all taxable property within the limits of the city or town. Whenever the council of the city or town considers it necessary to raise money by taxation for transportation services in excess of the levy allowed by law, the council of the city or town shall in the manner prescribed by law submit the question of the additional levy to the qualified electors of the city or town~~, either~~ at ~~the regular annual~~ *an* election held ~~in the city or town or at a special election that is held in conjunction with a regular or primary election and that is called for that purpose by the council of the city or town~~ *pursuant to [section 1].* The additional levy may not exceed 1 1/2 mills."

Section 17. Section 7-16-2102, MCA, is amended to read:

"7-16-2102. Authorization for tax levy for parks and certain cultural, social, and recreational facilities. (1) Subject to 15-10-420, the board of county commissioners may annually levy on the taxable property of the county, in the same manner and at the same time as other county taxes are levied, a ~~special~~ tax, not to exceed 2 mills on each dollar of the taxable valuation for any 1 year, for the purpose of maintaining, operating, and equipping parks, cultural facilities, and any county-owned civic center, youth center, recreation center, recreational complex, or any combination of purposes, parks, and facilities.

(2) (a) The board of county commissioners shall submit the question of imposing or the continued imposition of the property tax mill levy provided in subsection (1) to the electors of the county at the next general election if a petition requesting an election, signed by at least 15% of the resident taxpayers of the county, is filed with the county clerk. The petition must be filed with the county clerk at least 90 days prior to the date of the general election.

(b) The question must be submitted ~~substantially as follows:~~

~~☐ FOR the imposition (or continued imposition) of a property tax, not to exceed 2 mills, for county parks and for county-owned cultural, social, and recreational facilities.~~

~~☐ AGAINST the imposition (or continued imposition) of a property tax for county parks and for county-owned cultural, social, and recreational facilities~~ *as provided in [section 1].*

(c) The board of county commissioners shall levy the tax ~~for the 2 subsequent fiscal years~~ if the question for the imposition of the tax is approved by a majority of the electors voting on the question.

(3) All laws applicable to the collection of county taxes apply to the collection of the tax provided for in this section."

Section 18. Section 7-16-2109, MCA, is amended to read:

"7-16-2109. Single tax for county fair activities, county parks, and certain cultural, social, and recreational facilities — restriction. (1) Subject to 15-10-420 and except as provided in subsection (2), the county commissioners of a county who have levied taxes pursuant to both 7-16-2102 and 7-21-3410 ~~before January 1, 1993,~~ may combine the two taxes into a single tax that may not exceed 3 1/2 mills on each dollar of the taxable valuation for any 1 year for the purpose of maintaining, operating, and equipping county fair activities, county parks, cultural facilities, and any county-owned civic center, youth center, recreation center, recreational complex, or any combination of purposes, activities, and facilities. The money collected may be distributed among the activities and facilities as determined by the county commissioners.

(2) (a) The board of county commissioners shall submit the question of imposing or continuing the imposition of the single tax provided for in subsection (1) to the electors of the county at the next general election if a petition requesting a vote on the single tax, signed by at least 15% of the resident taxpayers of the county, is filed with the county clerk at least 90 days prior to the date of the general election.

(b) The question must be submitted ~~substantially as follows:~~

~~☐ FOR imposition (or continued imposition) of a property tax, not to exceed 3 1/2 mills, for county fair activities, county parks, and county-owned cultural, social, and recreational facilities.~~

~~☐ AGAINST imposition (or continued imposition) of a property tax, not to exceed 3 1/2 mills, for county fair activities, county parks, and county-owned cultural, social, and recreational facilities~~ *as provided in [section 1].*

(c) The board of county commissioners shall levy the tax ~~for the 2 subsequent fiscal years~~ if the imposition or continued imposition of the single tax is approved by a majority of the electors voting on the question."

Section 19. Section 7-16-2411, MCA, is amended to read:

"**7-16-2411. Creation of county park district.** (1) Proceedings for the creation of a county park district may be initiated by:

(a) a petition signed by 10% or more of the qualified electors of the proposed park district; or

(b) a resolution of intent adopted by the county governing body, calling for the creation of a county park district.

(2) The petition or resolution must contain:

(a) the boundaries of the proposed district;

(b) subject to 15-10-420, the proposed ~~maximum~~ property tax mill levy that could be levied on property owners within the district or the proposed maximum fee on each household within the proposed district for the operation of the district; and

(c) the proposed number of members of the county park district commission. The number of members must be an odd number and may not be less than three.

(3) When the territory to be included in the proposed district lies in more than one county, a petition must be presented to the governing body of each county in which the territory lies. Each petition must be signed by 10% or more of the qualified electors of the territory within the county proposed to be included in the district.

(4) Upon receipt of a petition for the creation of a county park district, the county clerk shall examine it and within 15 days either reject the petition if it is insufficient under the provisions of subsection (1), (2), or (3) or certify that the petition is sufficient and present it to the county governing body at its next meeting.

(5) The text of the petition or resolution must be published, as provided in 7-1-2121, in each county in which the territory of the proposed district lies.

(6) At the hearing, the county governing body shall hear:

(a) testimony of all interested persons on whether a county park district should be created;

(b) testimony regarding the proposed boundary, the property tax mill levy or proposed fee on each household within the proposed district, and the number of members of the district commission: and

(c) any other matter relating to the proposed district.

(7) After the hearing, if the county governing body determines that the proposed park district should be created, it shall by resolution:

(a) set the boundaries of the proposed park district;

(b) set the ~~maximum~~ mill levy or *maximum* fee on each household for the proposed park district;

(c) set the number of members to be on the district commission; and

(d) call for an election on the question of whether to create the county park district. The election must be held ~~in conjunction with a regular or primary election, provided that at least 75 days have elapsed between the adoption of the resolution and the election~~ *as provided in [section 1].*"

Section 20. Section 7-16-2412, MCA, is amended to read:

"**7-16-2412. Election on creation of district.** (1) The election on the question of whether to create a county park district must be conducted as provided in Title 13.

(2) Only qualified electors residing within the proposed park district may vote on the question of whether to create the district.

(3) The question of creating a county park district ~~shall~~ *must* be submitted to the electors ~~in substantially one of the following forms:~~

~~(a)~~

☐ ~~FOR the creation of a county park district that may levy not more than .... mills of property tax for the operation of the district.~~

☐ ~~AGAINST the creation of a county park district.~~

~~(b)~~

☐ ~~FOR the creation of a county park district that may assess a fee on each household of .... dollars for the operation of the district.~~

☐ ~~AGAINST the creation of a county park district~~ *as provided in [section 1].*"

Section 21. Section 7-16-2432, MCA, is amended to read:

"**7-16-2432. Election to change maximum property tax mill levy.** (1) The maximum property tax mill levy authorized for the operation of a county park district may be changed by an election on the question of changing the maximum mill levy.

(2) A vote on the question of raising or lowering the maximum property tax mill levy in the district may be initiated by:

(a) a petition signed by not less than 15% of the electorate of the district; or

(b) a resolution of the county park district commission.

(3) The petition or resolution must ~~set forth the proposed new maximum mill levy for the operation of the district~~ *conform to the requirements of [section 1].*

(4) Upon receipt of a petition for a change in the maximum mill levy, certified by the county clerk as sufficient under this section, or a resolution for ~~such~~ a change *in the maximum mill levy* adopted by the county park district commission, the county governing body shall submit to the electorate of the district, at the

next election at which members are elected to the county park district commission, a ballot question on changing the maximum mill levy. The election on the question of changing the maximum mill levy must be held as provided in Title 13. The question must be submitted to the electors of the district ~~in substantially the following form:~~

~~☐ FOR changing the authorized maximum property tax mill levy for the operation of the county park district from .... to .....~~

~~☐ AGAINST changing the authorized maximum property tax mill levy for the operation of the county park district~~ *as provided in [section 1].*

(5) If a county park district includes one or more municipalities or parts of municipalities, separate majorities of those voting on the question of changing the property tax mill levy are required of those voting who reside within each municipality and of those not residing within a municipality.

(6) The new maximum property tax mill levy is authorized for the following tax year if approved by a simple majority of the votes on the question."

Section 22. Section 7-22-2142, MCA, is amended to read:

"**7-22-2142. Sources of money for noxious weed fund.** (1) The commissioners may create the noxious weed fund and provide sufficient money in the fund for the board to fulfill its duties, as specified in 7-22-2109, by:

(a) appropriating money from the general fund of the county;

(b) subject to 15-10-420 and at any time fixed by law for levy and assessment of taxes, levying a tax not exceeding 2 mills on the dollar of total taxable valuation in the county. The tax levied under this subsection must be identified on the assessment as the tax that will be used for noxious weed control.

(c) levying a tax in excess of 2 mills if authorized by a majority of the qualified electors voting in an election held for this purpose pursuant to 7-6-2531, *7-6-2533* through 7-6-2536, *and [section 1].*

(2) The proceeds of the noxious weed control tax must be used solely for the purpose of managing noxious weeds in the county and must be designated to the noxious weed fund.

(3) Any proceeds from work or chemical sales must revert to the noxious weed fund and must be available for reuse within that fiscal year or any subsequent year.

(4) The commissioners may accept any private, state, or federal gifts, grants, contracts, or other funds to aid in the management of noxious weeds within the district. These funds must be placed in the noxious weed fund."

Section 23. Section 7-32-235, MCA, is amended to read:

"**7-32-235. Search and rescue units authorized — under control of county sheriff — optional funding.** (1) A county may establish or recognize one or more search and rescue units within the county.

(2) Except in time of martial rule as provided in 10-1-106, search and rescue units and their officers are under the operational control and supervision of the county sheriff, or the sheriff's designee, having jurisdiction and whose span of control would be considered within reasonable limits.

(3) A county may, after approval by a majority of the people voting on the question at an election held throughout the county, levy an annual tax of not more than 1 mill on ~~each dollar of~~ *the* taxable value of all taxable property within

the county to support one or more search and rescue units established or recognized under subsection (1). The election must be held ~~in conjunction with a regular or primary election~~ *as provided in [section 1]."*

Section 24. Section 7-34-102, MCA, is amended to read:

"7-34-102. Special mill levy permitted. (1) Subject to 15-10-420 and in addition to all other levies authorized by law, each county, city, or town may levy an annual tax up to 1 mill on ~~the dollar of~~ the taxable value of all taxable property within the county, city, or town to defray the costs incurred in providing ambulance service.

(2) In addition to the levy authorized by subsection (1), a county, city, or town may levy an additional 2 mills for the support of ambulance services if, at a regularly scheduled election *held as provided in [section 1]*, the electorate of the county, city, or town approves the imposition of the additional levy."

Section 25. Section 7-34-2135, MCA, is amended to read:

"7-34-2135. Election required to impose special additional mill levy. (1) Before each additional levy provided for in 7-34-2134 may be made, the question ~~shall~~ *must* be submitted to a vote of the people at the next primary election held in an even-numbered year or on the next regular school election day held in accordance with 20-3-304 or by mail ballot election as provided by Title 13, chapter 19, in ~~the following form:~~

~~"Shall there be an additional levy of (specify number) mills upon the taxable property of the (specify hospital district) for 2 years necessary to raise the sum of (specify the approximate amount to be raised by the additional tax levy) for the purpose of (specify purpose for which the additional levy is made)?~~

☐ ~~FOR an additional levy to raise the sum of (state the approximate amount to be raised by the additional tax levy), and being (give number) mills.~~

☐ ~~AGAINST an additional tax levy to raise the sum of (state the approximate amount to be raised by the additional tax levy), and being (give number) mills~~ *accordance with the provisions of [section 1].*~~"~~

(2) Notice of the election~~, clearly stating the amount and the purpose of the additional levy,~~ must be given and the election *must be* held and conducted and the returns *must be* made in all respects in the manner prescribed by law with regard to the submission of questions to the electors under the general election laws."

Section 26. Section 19-18-504, MCA, is amended to read:

"19-18-504. Amount of ~~special~~ tax levy. Whenever the fund contains an amount that is less than 4% of the taxable valuation of all taxable property in the city or town, the city or town council shall levy an annual ~~special~~ tax of not less than 1 mill and not more than 4 mills on ~~each dollar of~~ *the* taxable valuation of all taxable property within the city or town. When the fund contains an amount that is less than 10% but more than 4% of the taxable valuation of all taxable property in the city or town, the city or town council may, if authorized by the voters *as provided in [section 1]*, levy an annual ~~special~~ tax of not less than 1 mill and not more than 4 mills on ~~each dollar of~~ *the* taxable valuation."

Section 27. Section 20-9-353, MCA, is amended to read:

"20-9-353. Additional financing for general fund — election for authorization to impose. (1) The trustees of a district may propose to adopt:

(a) an over-BASE budget amount for the district general fund that does not exceed the maximum general fund budget for the district or other limitations, as provided in 20-9-308(2); or

(b) a general fund budget amount in excess of the maximum general fund budget amount for the district, as provided in 20-9-308(3).

(2) When the trustees of the district propose to adopt an over-BASE budget under subsection (1)(a), any increase in local property taxes authorized by 20-9-308(5) must be submitted to a vote of the qualified electors of the district, *as provided in [section 1]*. The trustees are not required to submit to the qualified electors any increase in state funding of the basic or per-ANB entitlements approved by the legislature. When the trustees of a district determine that a voted amount of financing is required for the general fund budget, the trustees shall submit the proposition to finance the voted amount to the electors who are qualified under 20-20-301 to vote upon the proposition. The election must be called and conducted in the manner prescribed by this title for school elections *and must conform to the requirements of [section 1]*. The ballot for the election must ~~state the amount of the estimated increase in local property taxes and the estimated impact on the over-BASE mills needed to fund the general fund budget~~ *conform to the requirements of [section 1]*. ~~The ballot must be in the following format:~~

~~PROPOSITION~~

~~The district levied (state the total amount of local property taxes levied in support of the district's prior year's over-BASE general fund budget) dollars and (state the total number of mills levied in support of the district's prior year's over-BASE general fund budget) mills to support the previous year's over-BASE general fund budget. If this proposition is approved, the local property taxes to support the district's proposed over-BASE general fund budget will increase by (state the additional local property taxes) dollars. The mills will (increase or decrease as applicable) by (insert the number of mills) mills.~~

~~Shall the district be authorized to increase the local property taxes by (insert the amount), which will (increase or decrease as applicable) the local mills by approximately (insert the number of mills) mills?~~

~~☐ FOR the additional levy.~~

~~☐ AGAINST the additional levy.~~

(3) When the trustees of a district propose to adopt the general fund budget amount in excess of the maximum general fund budget under subsection (1)(b), the trustees shall submit the proposition to finance the additional amount of general fund budget authority to the electors who are qualified under 20-20-301 to vote upon the proposition. The election must be called and conducted in the manner prescribed by this title for school elections. The ballot for the election must state the amount of the budget to be financed, the approximate number of mills required to fund all or a portion of the budget amount, and the purpose for which the money will be expended. The ballot must be in the following format:

PROPOSITION

Shall the district be authorized to expend the sum of (state the additional amount to be expended) and being approximately (give number) mills for the purpose of (insert the purpose for which the additional financing is made)?

☐ FOR budget authority and any levy.

☐ AGAINST budget authority and any levy.

(4) If the election on any additional financing or budget authority for the general fund is approved by a majority vote of the electors voting at the election, the proposition carries and the trustees may use any portion or all of the authorized amount in adopting the final general fund budget. The trustees shall certify any additional levy amount authorized by the election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy the authorized number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141.

(5) Authorization to levy an additional tax to support a budget amount adopted as allowed by 20-9-308(3) is effective for only 1 school fiscal year.

(6) All levies adopted under this section must be authorized by the election conducted before August 1 of the school fiscal year for which it is effective.

(7) If the trustees of a district are required to submit a proposition to finance an over-BASE budget amount or an amount in excess of the maximum general fund budget amount for the district, as allowed by 20-9-308(3), to the electors of the district, the trustees shall comply with the provisions of subsections (2) through (6) of this section."

Section 28. Section 20-9-502, MCA, is amended to read:

"**20-9-502. Purpose and authorization of a building reserve fund by an election.** (1) The trustees of any district, with the approval of the qualified electors of the district, may establish a building reserve for the purpose of raising money for the future construction, equipping, or enlarging of school buildings or for the purpose of purchasing land needed for school purposes in the district. In order to submit to the qualified electors of the district a building reserve proposition for the establishment of or addition to a building reserve, the trustees shall pass a resolution that specifies:

(a) the purpose or purposes for which the new or addition to the building reserve will be used;

(b) the duration of time over which the new or addition to the building reserve will be raised in annual, equal installments;

(c) the total amount of money that will be raised during the duration of time specified in subsection (1)(b); and

(d) any other requirements under *[section 1] and* 20-20-201 for the calling of an election.

(2) The total amount of building reserve when added to the outstanding indebtedness of the district may not be more than the limitations provided in 20-9-406. A building reserve tax authorization may not be for more than 20 years.

(3) The election must be conducted in accordance with the school election laws of this title, and the electors qualified to vote in the election must be qualified under the provisions of 20-20-301. The ballot for a building reserve proposition must be substantially in ~~the following form:~~

~~OFFICIAL BALLOT~~

~~SCHOOL DISTRICT BUILDING RESERVE ELECTION~~

~~INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BUILDING RESERVE—YES" if you wish to vote for the establishment of a building reserve (addition to the building reserve); if you~~

~~are opposed to the establishment of a building reserve (addition to the building reserve) make an X or similar mark in the square before the words "BUILDING RESERVE—NO".~~

~~Shall the trustees be authorized to impose an additional levy each year for .... years to establish a building reserve (add to the building reserve) of this school district to raise a total amount of .... dollars ($....), for the purpose(s) .... (here state the purpose or purposes for which the building reserve will be used)?~~

~~☐ BUILDING RESERVE—YES.~~

~~☐ BUILDING RESERVE—NO~~ *compliance with [section 1].*

(4) The building reserve proposition is approved if a majority of those electors voting at the election approve the establishment of or addition to the building reserve. The annual budgeting and taxation authority of the trustees for a building reserve is computed by dividing the total authorized amount by the specified number of years. The authority of the trustees to budget and impose the taxation for the annual amount to be raised for the building reserve lapses when, at a later time, a bond issue is approved by the qualified electors of the district for the same purpose or purposes for which the building reserve fund of the district was established. Whenever a subsequent bond issue is made for the same purpose or purposes of a building reserve, the money in the building reserve must be used for ~~such~~ *the* purpose or purposes before any money realized by the bond issue is used."

Section 29. Section 20-15-241, MCA, is amended to read:

"**20-15-241. Community college service regions — creation.** (1) The governing body of an elementary school district, high school district, county, or municipality not within a community college district may designate itself a community college service region, as provided in this section.

(2) A service region may be designated only if, within 12 months preceding any designation, the following conditions are met:

(a) the service plan required by subsection (3) is available;

(b) the board of trustees of the community college district that will offer services within the region has approved the designation;

(c) the electors within the region have approved the designation by a majority of votes cast on the question in an election held on a general election day; and

(d) the board of regents has approved the designation.

(3) (a) At least 90 days prior to the granting of any of the approvals listed in subsections (2)(b) through ~~(d)~~ *(2)(d)*, a written plan must be made available ~~which~~ *that*:

(i) details the services the community college district will offer within the region;

(ii) details who will be eligible to use the services and the charges that will be made to users;

(iii) indicates the facilities that will be used to house the services;

(iv) lists the direct and indirect costs of the services and the apportionment of those costs between the community college district and the governing body designating the service region;

(v) estimates the number of persons expected to use the services within the region; and

(vi) estimates the mill levy necessary to fund the service region *and estimates the impact of the election on a home valued at $100,000 and a home valued at $200,000 in the district in terms of actual dollars in additional property taxes that would be imposed on residences with those values. The plan may also include a statement of the impact of the election on homes of any other value in the district, if appropriate.*

(b) The plan may be revised jointly by the region governing body, board of regents, and the board of trustees of the community college district as ~~such~~ *a* revision may be necessary.

(4) A designation is effective for 5 years and after 5 years is effective unless rescinded by a majority of electors casting votes on the question in an election held on any general election day following expiration of the 5-year period. The question on rescission must be put on the ballot when requested at least 90 days prior to the election by the governing body designating the service region, by the community college board, or by a petition signed by 20% of the registered electors within the service region. The rescission is effective at the end of the first full academic year following the election rescinding the district designation."

Section 30. Section 20-15-311, MCA, is amended to read:

"**20-15-311. Funding sources.** The annual operating budget of a community college district must be financed from the following sources:

(1) the estimated revenue to be realized from student tuition and fees, except revenue related to community service courses, as defined by the board of regents;

(2) subject to 15-10-420, a mandatory mill levy on the community college district;

(3) subject to 15-10-420, the 1-mill adult education levy authorized under provisions of 20-15-305;

(4) the state general fund appropriation;

(5) an optional voted levy on the community college district that must be submitted to the electorate in accordance with general school election laws *and [section 1]*;

(6) all other income, revenue, balances, or reserves not restricted by a source outside the community college district to a specific purpose;

(7) income, revenue, balances, or reserves restricted by a source outside the community college district to a specific purpose. Student fees paid for community service courses, as defined by the board of regents, are considered restricted to a specific purpose~~;~~.

(8) income from a political subdivision that is designated a community college service region under 20-15-241."

Section 31. Section 22-1-304, MCA, is amended to read:

"**22-1-304. Tax levy — special library fund — bonds.** (1) Subject to 15-10-420, the governing body of a city or county that has established a public library may levy in the same manner and at the same time as other taxes are levied a ~~special~~ tax in the amount necessary to maintain adequate public library service. The ~~special~~ tax levy that may be levied by the governing body of a county may not exceed 5 mills ~~on the dollar~~ on *the taxable valuation of* all property in the county. The ~~special~~ tax that may be levied by the governing body of a city may not exceed 7 mills ~~on the dollar~~ on *the taxable valuation of* all property in the city.

(2) (a) The governing body of a city or county may by resolution submit the question of ~~exceeding the maximum~~ *imposing a* tax levy ~~provided in subsection (1)~~ to a vote of the qualified electors at ~~the next appropriate election or at a special election as provided for in Title 13~~ *an election as provided in [section 1].* The resolution must be adopted at least 75 days prior to the election at which the question will be voted on.

(b) Upon a petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election for the purpose of ~~exceeding the maximum~~ *imposing a* mill levy, the governing body shall submit to a vote of the qualified electors at the next election or at a special election, as provided ~~for~~ in ~~Title 13~~ *[section 1],* the question of ~~exceeding~~ *imposing* the ~~maximum~~ mill levy. The petition must be delivered to the governing body at least 90 days prior to the election at which the question will be voted on.

~~(c) The question must be submitted by ballots upon which the words "FOR exceeding the ... mill maximum levy and authorizing an additional ... mill(s) for the library" and "AGAINST exceeding the ... mill maximum library levy" must appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions.~~

~~(d) The ballots must also specify the amount of time during which the proposed increase exceeding the maximum mill levy is to be in effect.~~

~~(e) The votes cast for the adoption or rejection of the question must be canvassed, and:~~

~~(i) if a majority of the voters voting on the question vote to exceed the maximum mill levy, the governing body shall levy the additional tax for the time specified on the ballot; or~~

~~(ii) if a majority of the voters voting on the question vote to not exceed the maximum mill levy, the maximum mill levy may not be exceeded.~~

(3) The municipal tax authorized in this section is in addition to all other taxes authorized by law and is not within the all-purpose mill levy established by 7-6-4451 through 7-6-4453.

(4) The proceeds of the tax constitute a separate fund called the public library fund and may not be used for any purpose except those of the public library.

(5) Money may not be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

(6) Bonds may be issued by the governing body in the manner prescribed by law for the following purposes:

(a) building, altering, repairing, furnishing, or equipping a public library or purchasing land for the library;

(b) buying a bookmobile or bookmobiles; and

(c) funding a judgment against the library."

Section 32. Section 76-15-531, MCA, is amended to read:

"**76-15-531. Special administrative assessment permitted — voter approval.** (1) (a) In addition to the levy authorized in 76-15-515 and 76-15-516(3), the supervisors of a conservation district may levy an annual special administrative assessment, not to exceed the amount determined under subsection (1)(b) each year, for administrative costs and expenses of the district if~~, at a regularly scheduled election or special election,~~ the qualified electors of the district approve the imposition of the additional assessment *at an election held as provided in [section 1].*

(b) The annual levy authorized by this section may not exceed the difference between the amount raised by the annual mill levy authorized under 76-15-515 and $20,000.

(c) Nonmill-levy revenue that is distributed based on the relative proportion of mill levies may not be distributed to the special administrative assessment.

(2) The special administrative assessment question may be presented to the qualified electors of the district by resolution of the supervisors.

(3) If the conservation district is located in more than one county, the special administrative assessment question must be presented to and approved by the qualified electors who reside in the district from each county.

(4) The resolution referring the special administrative assessment question must state:

(a) the rate of the assessment;

(b) the amount of money anticipated to be raised by the assessment; and

(c) the purposes for which the special administrative assessment revenue may be used."

Section 33. Section 90-5-112, MCA, is amended to read:

"**90-5-112. Economic development levy.** (1) Subject to 15-10-420, the governing body of a city, county, or town is authorized to levy up to 1 mill upon the taxable value of all the property in the city, county, or town subject to taxation for the purpose of economic development. The governing body may:

(a) submit the question of the mill levy to the qualified voters ~~voting in a city, county, or town election~~ *as provided in [section 1]*; or

(b) approve the mill levy by a vote of the governing body.

(2) Funds derived from this levy may be used for purchasing land for industrial parks, constructing buildings to house manufacturing and processing operations, conducting preliminary feasibility studies, promoting economic development opportunities in a particular area, and other activities generally associated with economic development. These funds may not be used to directly assist an industry's operations by loan or grant or to pay the salary or salary supplements of government employees.

(3) The governing body of the county, city, or town may use the funds derived from this levy to contract with local development companies and other associations or organizations capable of implementing the economic development function.

(4) A tax authorized by a vote of the electorate, as provided in subsection (1)(a), may be levied for a period not to exceed 6 years."

Section 34. Repealer. Section 7-6-2532, MCA, is repealed.

Section 35. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 10, part 4, and the provisions of Title 15, chapter 10, part 4, apply to [section 1].

Approved May 1, 2001

CHAPTER NO. 496

[HB 208]

AN ACT CLARIFYING CONTEMPT OF COURT PROCEDURE; CLARIFYING THE MEANING OF CIVIL AND CRIMINAL CONTEMPT; PROVIDING FOR DUE PROCESS IN CONTEMPT PROCEEDINGS AS REQUIRED BY MONTANA SUPREME COURT OPINIONS; AMENDING SECTIONS 3-1-501, 3-1-511, 3-1-513, 3-1-518, 3-1-520, 3-10-402, AND 3-11-303, MCA; AND REPEALING SECTIONS 3-1-519, 3-10-403, AND 3-10-404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-501, MCA, is amended to read:

"**3-1-501. What acts or omissions are contempts** — ***civil and criminal contempt.*** (1) The following acts or omissions in respect to a court of justice or proceedings in a court of justice are contempts of the authority of the court:

(a) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(b) a breach of the peace, boisterous conduct, or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding;

(c) misbehavior in office or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service;

(d) deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding;

(e) disobedience of any lawful judgment, order, or process of the court;

(f) assuming to be an officer, attorney, or counsel of a court and acting as ~~such~~ *that individual* without authority;

(g) rescuing any person or property in the custody of an officer by virtue of an order or process of the court;

(h) unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial;

(i) any other unlawful interference with the process or proceedings of a court;

(j) disobedience of a subpoena duly served or refusing to be sworn or answer as a witness;

(k) when summoned as a juror in a court, neglecting to attend or serve as a juror or improperly conversing with a party to an action to be tried at the court or with any other person in relation to the merits of the action or receiving a communication from a party or other person in respect to it without immediately disclosing the ~~same~~ *communication* to the court;

(l) disobedience by a lower tribunal, magistrate, or officer of the lawful judgment, order, or process of a superior court or proceeding in an action or special proceeding contrary to law after the action or special proceeding is removed from the jurisdiction of the lower tribunal, magistrate, or officer.

(2) Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of the officer.

(3) A contempt may be either civil or criminal. A contempt is civil if the sanction imposed seeks to force the contemnor's compliance with a court order. A contempt is criminal if the court's purpose in imposing the penalty is to punish the contemnor for a specific act and to vindicate the authority of the court. If the penalty imposed is incarceration, a fine, or both, the contempt is civil if the contemnor can end the incarceration or avoid the fine by complying with a court order and is criminal if the contemnor cannot end the incarceration or avoid the fine by complying with a court order. If the court's purpose in imposing the sanction is to attempt to compel the contemnor's performance of an act, the court shall impose the sanction under 3-1-520 and may not impose a sanction under 45-7-309.

(4) A person may be found guilty of and penalized for criminal contempt by proof beyond a reasonable doubt. The procedures provided in Title 46 apply to criminal contempt prosecutions, except those under 3-1-511."

Section 2. Section 3-1-511, MCA, is amended to read:

"**3-1-511. Procedure — contempt committed in ~~the~~ presence of ~~the~~ court.** When a contempt is committed in the immediate view and presence of the court or judge at chambers~~;~~ *and the contemptuous conduct requires immediate action in order to restore order, maintain the dignity or authority of the court, or prevent delay,* it may be punished summarily~~;~~. ~~for which an~~ *An* order must be made reciting the facts ~~as occurring~~ *that occurred* in ~~such~~ *the judge's* immediate view and presence and adjudging that the person proceeded against is ~~thereby~~ guilty of a contempt and that ~~he~~ *the person must* be punished as ~~therein~~ prescribed *in the order. An order may not be issued unless the person proceeded against has been informed of the contempt and given an opportunity to defend or explain the person's conduct. A person may be adjudged guilty of and penalized for criminal contempt under this section by a fine in an amount not to exceed $500 or by imprisonment for a term not to exceed 30 days, or both, and by any other reasonable conditions or restrictions that the court may consider appropriate under the circumstances."*

Section 3. Section 3-1-513, MCA, is amended to read:

"**3-1-513. Warrant ~~of attachment or commitment~~ — *statement of charge.*** When the contempt is not committed in the immediate view and presence of the court or judge, a warrant ~~of attachment~~ may be issued to bring the person charged to *the court to* answer ~~or, without a previous arrest, a warrant of commitment may, upon notice or upon an order to show cause, be granted. No warrant of commitment can be issued without such previous attachment to answer or notice or order to show cause~~ *the charge. The warrant must be accompanied by an adequate and specific statement of the charge. The answer to the charge must be followed by a hearing under 3-1-518."*

Section 4. Section 3-1-518, MCA, is amended to read:

"**3-1-518. Hearing *on contempt not committed in immediate view and presence of court or judge at chambers.*** *(1)* When ~~the~~ *a* person arrested *for a contempt not committed in the immediate view and presence of the court or judge at chambers* has been brought up or appeared, the court or judge ~~must~~ *shall* proceed to investigate the charge, ~~must hear~~ *shall schedule and hold a hearing on* any answer ~~which~~ *that* the person arrested may make to the ~~same~~ *charge*, and may examine witnesses for or against ~~him~~ *the person*, for which an adjournment may be had from time to time, if necessary. *The judge investigating the charge and scheduling and presiding over the hearing may not be the judge against whom* *the contempt was allegedly committed, except that if the contempt arose from the violation of an order of the court issued after a hearing on the merits of the subject of the order, the judge who issued the order may punish the contempt or compel compliance with the order unless it is shown that the judge would not be impartial in addressing the contempt.*

(2) The charged person must be given a reasonable opportunity to obtain counsel and prepare a defense or explanation prior to the hearing. The charged person may testify and call witnesses at the hearing."

Section 5. Section 3-1-520, MCA, is amended to read:

"3-1-520. ~~Imprisonment~~ *Penalty* to compel performance. When the *sanction imposed for a* contempt ~~consists in the omission to~~ *seeks to compel the contemnor to* perform an act ~~which~~ *that* is ~~yet~~ in the power of the ~~person~~ *contemnor* to perform, ~~he~~ *the contemnor* may be ~~imprisoned~~ *incarcerated, subjected to a fine in an amount not to exceed $500, or both,* until ~~he shall have performed it~~ *the contemnor has performed the act.* ~~In that case, the~~ *The* act must be specified in the warrant of commitment."

Section 6. Section 3-10-402, MCA, is amended to read:

"3-10-402. Proceedings ~~— contempt committed in presence of court~~. When a contempt is committed, *whether or not it is* in the immediate view and presence of the justice, ~~it may be punished summarily. To that end, an order must be made reciting the facts as they occurred and adjudging that the person proceeded against is thereby guilty of contempt and that he be punished as therein prescribed~~ *the procedures contained in 3-1-501(3) and (4), 3-1-511 through 3-1-518, and 3-1-520 through 3-1-523 apply.*"

Section 7. Section 3-11-303, MCA, is amended to read:

"3-11-303. Contempts a city judge may punish for — *procedure.* *(1)* A city judge may punish for contempt persons guilty of *only* the following acts ~~and no other~~:

~~(1)~~*(a)* disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

~~(2)~~*(b)* a breach of the peace, boisterous conduct, or violent disturbance in the presence of the judge or in the immediate vicinity of the court held by ~~him~~ *the judge* tending to interrupt the due course of a trial or other judicial proceeding;

~~(3)~~*(c)* disobedience or resistance to the execution of a lawful order or process made or issued by the judge;

~~(4)~~*(d)* disobedience to a subpoena ~~duly~~ served or refusal to be sworn or to answer as a witness;

~~(5)~~*(e)* rescuing any person or property in the custody of an officer by virtue of an order or process of the court.

(2) The procedures contained in 3-1-501(3) and (4), 3-1-511 through 3-1-518, and 3-1-520 through 3-1-523 apply."

Section 8. Repealer. Sections 3-1-519, 3-10-403, and 3-10-404, MCA, are repealed.

Approved May 1, 2001

CHAPTER NO. 497

[HB 214]

AN ACT PROVIDING FOR AN ADDITIONAL DISTRICT COURT JUDGE FOR THE 8TH JUDICIAL DISTRICT AND THE 21ST JUDICIAL DISTRICT TO BE ELECTED AT THE NOVEMBER 2002 GENERAL ELECTION; AMENDING SECTION 3-5-102, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-102, MCA, is amended to read:

"**3-5-102. Number of judges.** In each judicial district, there must be the following number of judges of the district court:

(1) in the 2nd, 7th, 16th, 18th, ~~and~~ 20th, *and 21st* districts, two judges each;

(2) in the 1st~~, 8th,~~ and 11th districts, three judges each;

(3) in the 4th ~~district~~ *and 8th districts*, four judges;

(4) in the 13th district, five judges;

(5) in all other districts, one judge each."

Section 2. Effective date. [This act] is effective January 1, 2002.

Section 3. Election of judges. The additional judges for the 8th and 21st judicial districts must be elected at the general election to be held in November 2002 and shall take office in January 2003.

Approved May 1, 2001

CHAPTER NO. 498

[HB 216]

AN ACT REVISING THE LAWS RELATING TO THE PURCHASE OF RESTRICTED SUBSTANCES BY MINORS; INCREASING CERTAIN PENALTIES FOR UNLAWFUL ATTEMPT TO PURCHASE AN INTOXICATING SUBSTANCE BY A PERSON UNDER 21 YEARS OF AGE; MAKING IT UNLAWFUL FOR A PERSON UNDER 18 YEARS OF AGE TO ATTEMPT TO PURCHASE TOBACCO PRODUCTS AND CREATING PENALTIES FOR THE UNLAWFUL ATTEMPT TO PURCHASE TOBACCO PRODUCTS; EXEMPTING FROM LIABILITY MINORS ASSISTING IN ENFORCEMENT OF THE YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT; AND AMENDING SECTIONS 16-3-301, 16-11-310, 45-5-624, AND 45-5-637, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-301, MCA, is amended to read:

"**16-3-301. Unlawful purchases, transfers, sales, or deliveries — presumption of legal age.** (1) It is unlawful for a licensed retailer to purchase or acquire beer from anyone except a brewer or wholesaler licensed under the provisions of this code.

(2) It is unlawful for a licensed retailer to transport beer from one licensed premises or other facility to any other licensed premises owned by the licensee.

(3) It is unlawful for any licensee, ~~his or her~~ *a licensee's* employee ~~or employees~~, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

(a) any person under 21 years of age; *or*

(b) ~~any intoxicated person or~~ any person actually, apparently, or obviously intoxicated.

(4) Any person under 21 years of age or *any* other person who knowingly misrepresents ~~his or her~~ *the person's* qualifications for the purpose of obtaining an alcoholic beverage from ~~such~~ *the* licensee is equally guilty with ~~said~~ *the* licensee and, upon conviction ~~thereof~~, is subject to the penalty provided in ~~45-5-624~~ *45-5-624*. However, nothing ~~herein contained~~ *in this section* may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.

(5) It is ~~further~~ mandatory under the provisions of this code that all licensees display in a prominent place in their premises a placard, as issued by the department, stating fully the consequences for violations of the provisions of this code by persons under 21 years of age.

(6) For purposes of ~~this title and~~ 45-5-623 *and this title*, the establishment of the following facts by a person making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

(a) the purchaser falsely represented and supported with documentary evidence that an ordinary and prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;

(b) the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages; and

(c) the sale was made in good faith and in reasonable reliance upon the representation and appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages. (See compiler's comments for contingent termination of certain text.)"

Section 2. Section 16-11-310, MCA, is amended to read:

"**16-11-310. Minors not liable for possession** ***or attempt to purchase.*** An individual under 18 years of age assisting in the enforcement of this part is not liable under a civil or criminal law for the possession of *or the attempt to purchase* a tobacco product ~~possessed~~ for the purposes of enforcing this part."

Section 3. Section 45-5-624, MCA, is amended to read:

"**45-5-624. Unlawful attempt to purchase or possession of intoxicating substance — interference with sentence or court order.** (1) A person under 21 years of age commits the offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating substance. A person does not commit the offense if the person consumes or gains possession of the beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages.

(2) In addition to any disposition by the youth court under 41-5-1512, a person under 18 years of age who is convicted of the offense of possession of an intoxicating substance:

(a) for the first offense, shall be fined an amount not to exceed ~~$100~~ *$150* and:

(i) must have the person's driver's license confiscated by the court for not less than 30 days and not more than 90 days and shall be ordered not to drive during that period if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred;

(ii) ~~shall~~ *may* be ordered to perform community service ~~if a community service program is available~~; and

(iii) shall be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, ~~if any is available,~~ all costs of participation in a community-based substance abuse information course~~,~~ if one is available;

(b) for a second offense, shall be fined an amount not to exceed ~~$200~~ *$200* and:

(i) must have the person's driver's license suspended for not less than 60 days and not more than 120 days;

(ii) ~~shall~~ *may* be ordered to perform community service ~~if a community service program is available~~; and

(iii) shall be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, ~~if any is available,~~ all costs of participation in a community-based substance abuse information course~~,~~ if one is available;

(c) for a third or subsequent offense, shall be fined an amount not less than ~~$300~~ *$300* or more than $500 and:

(i) must have the person's driver's license suspended for not less than 120 days and not more than 1 year, except that if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred, must have the person's driver's license revoked for 1 year or until the person reaches ~~the age of~~ 18 *years of age*, whichever occurs last;

(ii) shall be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, ~~if any is available,~~ all costs of participation in a community-based substance abuse information course~~,~~ if one is available, which may include alcohol or drug treatment, or both, approved by the department of public health and human services, if determined by the court to be appropriate.

(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance:

(a) for a first offense, shall be fined an amount not to exceed ~~$50~~ *$150* and *may* be ordered to perform community service ~~if a community service program is available~~;

(b) for a second offense, shall be fined an amount not to exceed ~~$100~~ *$200* and:

(i) ~~shall~~ *may* be ordered to perform community service ~~if a community service program is available~~; and

(ii) must have the person's driver's license suspended for not more than 60 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(c) for a third or subsequent offense, shall be fined an amount not to exceed ~~$200~~ *$300* and:

(i) ~~shall~~ *may* be ordered to perform community service ~~if a community service program is available~~;

(ii) must have the person's driver's license suspended for not more than 120 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(iii) shall be ordered to complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both; and

(iv) in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed 6 months.

(4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance ~~shall be fined an amount not to exceed $50 if the person was 18 years of age or older at the time that the offense was committed or $100 if the person was under 18 years of age at the time that the offense was committed.~~ *shall be fined an amount not to exceed $150 if the person was under 21 years of age at the time that the offense was committed and may be ordered to perform community service.*

(5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need of intervention as defined in 41-5-103. The youth court may enter its judgment under 41-5-1512.

(6) A person commits the offense of interference with a sentence or court order if the person purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both.

(7) A conviction or youth court adjudication under this section must be reported by the court to the department of justice under 61-11-101 for the purpose of keeping a record of the number of offenses committed but may not be considered part of the person's driving record for insurance purposes unless a second or subsequent conviction or adjudication under this section occurs. (See compiler's comments for contingent termination of certain text.)"

Section 4. Section 45-5-637, MCA, is amended to read:

"45-5-637. Tobacco possession or consumption by persons under 18 years of age prohibited — *unlawful attempt to purchase* — penalties. (1) A person under 18 years of age who knowingly possesses or consumes a tobacco product, as defined in 16-11-302, commits the offense of possession or consumption of a tobacco product.

(2) A person convicted of possession or consumption of a tobacco product:

(a) shall be fined ~~$35~~ *$50* for a first offense, no less than $75 or more than $100 for a second offense, and no less than $100 or more than $250 for a third or subsequent offense; or

(b) may be adjudicated on a petition alleging the person to be a youth in need of intervention under the provisions of the Montana Youth Court Act provided for in Title 41, chapter 5.

(3) A person convicted of possession or consumption of a tobacco product may also be required to perform community service or to attend a tobacco cessation program.

(4) A person under 18 years of age commits the offense of attempt to purchase a tobacco product if the person knowingly attempts to purchase a tobacco product, as defined in 16-11-302. A person convicted of attempt to purchase a tobacco product:

(a) for a first offense, shall be fined $50 and may be ordered to perform community service;

(b) for a second or subsequent offense, shall be fined an amount not to exceed $100 and may be ordered to perform community service.

~~(4)~~*(5)* The fines collected under ~~subsection (2)~~ *subsections (2) and (4)* must be deposited to the credit of the general fund of the local government that employs the arresting officer, or if the arresting officer is an officer of the highway patrol, the fines must be credited to the county general fund in the county in which the arrest was made."

Section 5. Coordination instruction. If House Bill No. 191 and [this act] are both passed and approved, the insertion of the word "shall" in 45-5-624(3)(a) in House Bill No. 191 is void.

Approved May 1, 2001

CHAPTER NO. 499

[HB 230]

AN ACT REVISING BOILER INSPECTION REQUIREMENTS; AND AMENDING SECTIONS 50-74-209 AND 50-74-219, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-74-209, MCA, is amended to read:

"**50-74-209. Required inspection intervals** — ***failure to comply with safety standards.*** (1) *(a) All manually fired boilers and all boilers and banks of boilers rated with a total input of 400,000 Btu an hour or greater must be inspected at least once each year.*

(b) All *automatically fired* boilers *rated with an input of less than 400,000 Btu an hour* must be inspected at least once ~~in~~ every ~~year~~ *2 years, except that an automatically fired boiler in a school, daycare center, hospital, rest home, retirement center, or place of assembly with a capacity for more than 100 persons must be inspected once a year* ~~except boilers exempt under provisions of 50-74-103~~.

(c) Boilers exempt under the provisions of 50-74-103 do not require inspections.

(d) Upon written application, longer inspection intervals may be authorized by the department.

(2) In addition to the ~~annual~~ inspection *required by subsection (1)*, it is the duty of ~~the inspectors~~ *each inspector* to examine at proper times, when in ~~their~~ *the inspector's* opinion ~~such~~ *an* examination is necessary, all ~~such~~ boilers ~~as shall~~ *that* have become unsafe from any cause and to notify the owner or the person using ~~such~~ *the* boilers of any defect and what repairs are necessary to render them safe.

(3) If a boiler is found, upon inspection, to violate safety standards set forth in rules referred to in 50-74-101, the department shall order the owner of the boiler to comply with the standards. An owner who negligently or knowingly fails to comply with an order is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $50 or more than $100, imprisonment for not more than 60 days in a county detention center, or both."

Section 2. Section 50-74-219, MCA, is amended to read:

"**50-74-219. Fee for inspection.** (1) Whenever a department inspector inspects a boiler, a fee must be charged and collected by the department prior to issuance of ~~an inspection~~ *a boiler operating* certificate in accordance with the following schedule:

(a) operating certificate, $26;

(b) internal inspection, $75;

(c) external inspection:

(i) hot water heating and supply, $30;

(ii) steam heating, $40; and

(iii) power boiler, $55; and

(d) special inspection, $50 ~~per~~ *an* hour plus expenses.

(2) If two or more boilers in the same room are inspected at the same time, the total fee imposed for all boilers must be the fee for inspection of one boiler, and the fee is the amount for the type of boiler with the highest fee.

~~(2)~~*(3)* Fees collected under this section must be deposited in a department state special revenue account for administration of the boiler inspection program."

Approved May 1, 2001

CHAPTER NO. 500

[HB 247]

AN ACT REDUCING THE FEE IN LIEU OF TAX ON HEAVY VEHICLES BY 50 PERCENT OVER A DESIGNATED PERIOD; PROVIDING A REIMBURSEMENT TO LOCAL GOVERNMENTS FOR LOSS OF REVENUE; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 61-3-529, MCA; AND PROVIDING EFFECTIVE DATES AND TERMINATION DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; *[section 5];* 15-23-706; 15-31-702; 15-34-115; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-222; 80-4-416; 80-11-518; 81-5-111; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; and pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005.)"

Section 2. Section 61-3-529, MCA, is amended to read:

"61-3-529. Schedule of fees for buses, motor vehicles having rated capacity of more than 1 ton, and truck tractors — proration — exemption. (1) (a) There is a fee in lieu of property tax imposed on buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors. The fee is in addition to annual registration fees.

(b) The fee imposed by subsection (1)(a) is not required to be paid by a dealer of buses, trucks, or truck tractors that constitute inventory of the dealership.

(2) Subject to the conditions of subsection (4), the owner of a bus, truck with a manufacturer's rated capacity of more than 1 ton, or truck tractor shall pay a fee in lieu of tax based on the age and manufacturer's rated capacity of the vehicle according to the following schedule:

Age of Vehicle (in years)	Rated Capacity (in pounds) 16,999 or less	17,000-26,999	27,000-54,999	55,000 or more
1 or less	~~$234~~ *$195*	~~$334~~ *$278*	~~$568~~ *$473*	~~$750~~ *$625*
2	~~218~~ *182*	~~300~~ *250*	~~500~~ *417*	~~600~~ *500*
3	~~200~~ *167*	~~268~~ *223*	~~440~~ *367*	~~532~~ *443*
4	~~184~~ *153*	~~234~~ *195*	~~368~~ *307*	~~484~~ *403*
5	~~166~~ *138*	~~218~~ *182*	~~320~~ *267*	~~390~~ *325*
6	~~150~~ *125*	~~200~~ *167*	~~268~~ *223*	~~334~~ *278*
7	~~132~~ *110*	~~182~~ *152*	~~234~~ *195*	~~294~~ *245*
8	~~116~~ *97*	~~166~~ *138*	~~200~~ *167*	~~250~~ *208*
9	~~100~~ *83*	~~150~~ *125*	~~184~~ *153*	~~218~~ *182*
10	~~82~~ *68*	~~116~~ *97*	~~158~~ *132*	~~184~~ *153*
11-12	~~66~~ *55*	~~100~~ *83*	~~134~~ *112*	~~152~~ *125*
13-14	~~56~~ *47*	~~74~~ *62*	~~104~~ *87*	~~122~~ *102*
15-16	~~50~~ *42*	~~60~~ *50*	~~76~~ *63*	~~94~~ *78*
17-18	~~36~~ *30*	~~52~~ *43*	~~58~~ *48*	~~72~~ *60*
19-20	~~26~~ *22*	~~38~~ *32*	~~44~~ *37*	~~52~~ *43*
21 or more	~~20~~ *17*	~~24~~ *20*	~~32~~ *27*	~~40~~ *33*

(3) The age of the vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year for which the fee in lieu of tax is due.

(4) (a) The manufacturer's rated capacity for a bus or truck with a manufacturer's rated capacity of more than 1 ton is the manufacturer's rated gross vehicle weight.

(b) The manufacturer's rated capacity for a truck tractor is the manufacturer's rated gross combined weight.

(5) A motor vehicle brought into the state or otherwise used for the exclusive purpose of filming motion pictures or television commercials is exempt from the fee in lieu of tax if the vehicle does not remain in the state for a period in excess of 180 consecutive days in a calendar year.

(6) Except as provided in 61-3-520, the fee in lieu of tax on a vehicle subject to this section that is brought or driven into this state by a nonresident person for hire, compensation, or profit must be prorated according to the ratio that the remaining number of months in the year bears to the total number of months in the year.

(7) (a) The fee in lieu of tax on a vehicle subject to this section that is registered in the state for the first time must be prorated as provided in subsection (6).

(b) The fee in lieu of tax on a vehicle subject to this section that is reregistered in the state is for a full year.

(8) The fee in lieu of tax may not be refunded."

Section 3. Section 61-3-529, MCA, is amended to read:

"**61-3-529. Schedule of fees for buses, motor vehicles having rated capacity of more than 1 ton, and truck tractors — proration — exemption.** (1) (a) There is a fee in lieu of property tax imposed on buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors. The fee is in addition to annual registration fees.

(b) The fee imposed by subsection (1)(a) is not required to be paid by a dealer of buses, trucks, or truck tractors that constitute inventory of the dealership.

(2) Subject to the conditions of subsection (4), the owner of a bus, truck with a manufacturer's rated capacity of more than 1 ton, or truck tractor shall pay a fee in lieu of tax based on the age and manufacturer's rated capacity of the vehicle according to the following schedule:

Age of Vehicle	Rated Capacity (in pounds)			
(in years)	16,999 or less	17,000-26,999	27,000-54,999	55,000 or more
1 or less	~~$234~~ *$156*	~~$334~~ *$222*	~~$568~~ *$378*	~~$750~~ *$500*
2	~~218~~ *146*	~~300~~ *200*	~~500~~ *334*	~~600~~ *400*
3	~~200~~ *134*	~~268~~ *178*	~~440~~ *294*	~~532~~ *354*
4	~~184~~ *122*	~~234~~ *156*	~~368~~ *246*	~~484~~ *322*
5	~~166~~ *110*	~~218~~ *146*	~~320~~ *214*	~~390~~ *260*
6	~~150~~ *100*	~~200~~ *134*	~~268~~ *178*	~~334~~ *222*
7	~~132~~ *88*	~~182~~ *122*	~~234~~ *156*	~~294~~ *196*
8	~~116~~ *78*	~~166~~ *110*	~~200~~ *134*	~~250~~ *166*
9	~~100~~ *66*	~~150~~ *100*	~~184~~ *122*	~~218~~ *146*
10	~~82~~ *54*	~~116~~ *78*	~~158~~ *106*	~~184~~ *122*
11-12	~~66~~ *44*	~~100~~ *66*	~~134~~ *90*	~~152~~ *102*
13-14	~~56~~ *38*	~~74~~ *50*	~~104~~ *70*	~~122~~ *82*
15-16	~~50~~ *34*	~~60~~ *40*	~~76~~ *50*	~~94~~ *62*
17-18	~~36~~ *24*	~~52~~ *34*	~~58~~ *38*	~~72~~ *48*
19-20	~~26~~ *18*	~~38~~ *26*	~~44~~ *30*	~~52~~ *34*
21 or more	~~20~~ *14*	~~24~~ *16*	~~32~~ *22*	~~40~~ *26*

(3) The age of the vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year for which the fee in lieu of tax is due.

(4) (a) The manufacturer's rated capacity for a bus or truck with a manufacturer's rated capacity of more than 1 ton is the manufacturer's rated gross vehicle weight.

(b) The manufacturer's rated capacity for a truck tractor is the manufacturer's rated gross combined weight.

(5) A motor vehicle brought into the state or otherwise used for the exclusive purpose of filming motion pictures or television commercials is exempt from the fee in lieu of tax if the vehicle does not remain in the state for a period in excess of 180 consecutive days in a calendar year.

(6) Except as provided in 61-3-520, the fee in lieu of tax on a vehicle subject to this section that is brought or driven into this state by a nonresident person for hire, compensation, or profit must be prorated according to the ratio that the remaining number of months in the year bears to the total number of months in the year.

(7) (a) The fee in lieu of tax on a vehicle subject to this section that is registered in the state for the first time must be prorated as provided in subsection (6).

(b) The fee in lieu of tax on a vehicle subject to this section that is reregistered in the state is for a full year.

(8) The fee in lieu of tax may not be refunded."

Section 4. Section 61-3-529, MCA, is amended to read:

"**61-3-529. Schedule of fees for buses, motor vehicles having rated capacity of more than 1 ton, and truck tractors — proration — exemption.** (1) (a) There is a fee in lieu of property tax imposed on buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors. The fee is in addition to annual registration fees.

(b) The fee imposed by subsection (1)(a) is not required to be paid by a dealer of buses, trucks, or truck tractors that constitute inventory of the dealership.

(2) Subject to the conditions of subsection (4), the owner of a bus, truck with a manufacturer's rated capacity of more than 1 ton, or truck tractor shall pay a fee in lieu of tax based on the age and manufacturer's rated capacity of the vehicle according to the following schedule:

Age of Vehicle	Rated Capacity (in pounds)			
(in years)	16,999 or less	17,000-26,999	27,000-54,999	55,000 or more
1 or less	~~$234~~ *$117*	~~$334~~ *$167*	~~$568~~ *$284*	~~$750~~ *$375*
2	~~218~~ *109*	~~300~~ *150*	~~500~~ *250*	~~600~~ *300*
3	~~200~~ *100*	~~268~~ *134*	~~440~~ *220*	~~532~~ *266*
4	~~184~~ *92*	~~234~~ *117*	~~368~~ *184*	~~484~~ *242*
5	~~166~~ *83*	~~218~~ *109*	~~320~~ *160*	~~390~~ *195*
6	~~150~~ *75*	~~200~~ *100*	~~268~~ *134*	~~334~~ *167*
7	~~132~~ *66*	~~182~~ *91*	~~234~~ *117*	~~294~~ *147*

8	~~116~~ *58*	~~166~~ *83*	~~200~~ *100*	~~250~~ *125*
9	~~100~~ *50*	~~150~~ *75*	~~184~~ *92*	~~218~~ *109*
10	~~82~~ *41*	~~116~~ *58*	~~158~~ *79*	~~184~~ *92*
11-12	~~66~~ *33*	~~100~~ *50*	~~134~~ *67*	~~152~~ *76*
13-14	~~56~~ *28*	~~74~~ *37*	~~104~~ *52*	~~122~~ *61*
15-16	~~50~~ *25*	~~60~~ *30*	~~76~~ *38*	~~94~~ *47*
17-18	~~36~~ *18*	~~52~~ *26*	~~58~~ *29*	~~72~~ *36*
19-20	~~26~~ *13*	~~38~~ *19*	~~44~~ *22*	~~52~~ *26*
21 or more	~~20~~ *10*	~~24~~ *12*	~~32~~ *16*	~~40~~ *20*

(3) The age of the vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year for which the fee in lieu of tax is due.

(4) (a) The manufacturer's rated capacity for a bus or truck with a manufacturer's rated capacity of more than 1 ton is the manufacturer's rated gross vehicle weight.

(b) The manufacturer's rated capacity for a truck tractor is the manufacturer's rated gross combined weight.

(5) A motor vehicle brought into the state or otherwise used for the exclusive purpose of filming motion pictures or television commercials is exempt from the fee in lieu of tax if the vehicle does not remain in the state for a period in excess of 180 consecutive days in a calendar year.

(6) Except as provided in 61-3-520, the fee in lieu of tax on a vehicle subject to this section that is brought or driven into this state by a nonresident person for hire, compensation, or profit must be prorated according to the ratio that the remaining number of months in the year bears to the total number of months in the year.

(7) (a) The fee in lieu of tax on a vehicle subject to this section that is registered in the state for the first time must be prorated as provided in subsection (6).

(b) The fee in lieu of tax on a vehicle subject to this section that is reregistered in the state is for a full year.

(8) The fee in lieu of tax may not be refunded."

Section 5. Reimbursement payment. (1) The department shall determine the amount of fee in lieu of property tax lost by each local government as a result of the amendments to 61-3-529 contained in [sections 2 through 4]. The department shall use calendar year 2002 as its base year for each determination.

(2) (a) The department shall determine the amount of revenue due each local government for calendar year 2002 from the fee in lieu of property tax imposed in 61-3-529.

(b) The department shall then calculate for each local government for calendar year 2002 the amount of revenue that would have been due from the fee in lieu of tax imposed in [section 2] if [section 2] had been in effect for calendar year 2002.

(3) (a) For fiscal year 2003, the amount of reimbursement is equal to one-half the difference between the amounts calculated under subsection (2).

(b) For fiscal year 2004, the reimbursement is three times the amount calculated in subsection (3)(a).

(c) For fiscal year 2005, the reimbursement is five times the amount calculated in subsection (3)(a).

(d) For fiscal year 2006 and for each succeeding fiscal year, the reimbursement is six times the amount calculated in subsection (3)(a).

(4) The department shall distribute the reimbursement payments to local governments on the following quarterly schedule:

(a) For fiscal 2003, the quarterly payments will be paid on or before March 31, 2003, and June 30, 2003.

(b) For fiscal 2004, and each succeeding fiscal year, the quarterly payments will be paid on or before September 30, December 31, March 31, and June 30 of each year.

(5) As used in this section, "local government" means a county, consolidated local government, incorporated city, incorporated town, or school district.

(6) The local government reimbursements calculated in this section are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments.

Section 6. Proration of fee. The department of transportation shall prorate the new fee in lieu of tax in 61-3-529 for motor vehicles that are proportionally registered, as provided in 61-3-721, and whose annual registration period does not coincide with the calendar year.

Section 7. Codification instruction. (1) [Section 5] is intended to be codified as an integral part of Title 15, chapter 1, part 1, and the provisions of Title 15, chapter 1, part 1, apply to [section 5].

(2) [Section 6] is intended to be codified as an integral part of Title 61, chapter 3, part 7, and the provisions of Title 61, chapter 3, part 7, apply to [section 6].

Section 8. Effective dates. (1) Except as provided in subsections (2) through (4), [this act] is effective January 1, 2002.

(2) [Section 2] is effective January 1, 2003.

(3) [Section 3] is effective January 1, 2004.

(4) [Section 4] is effective January 1, 2005.

Section 9. Termination. (1) [Section 2] terminates December 31, 2003.

(2) [Section 3] terminates December 31, 2004.

Approved May 1, 2001

CHAPTER NO. 501

[HB 266]

AN ACT REVISING THE GOVERNMENT ACCOUNTABILITY ACT TO PROVIDE THAT A GOVERNMENT ACT MAY NOT BE TAKEN UNTIL A STATEMENT OF GOVERNMENT AUTHORITY HAS BEEN PROVIDED TO THE REQUESTOR; AMENDING SECTION 2-11-104, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-11-104, MCA, is amended to read:

"**2-11-104. Statement of government authority required.** (1) ~~When~~ *When* a government entity takes a government act, as defined in 2-11-103, it shall provide upon request to the applicant a written statement of *specific* legal authority upon which the action is based. The statement must be provided within 30 days of the ~~government act~~ *written request by the applicant for the written statement of specific legal authority or within 30 days after the government act, whichever occurs last.*

(2) The statement must clearly cite the *specific* statute, rule, ordinance, resolution, or other legal authority for the government act *and the specific reason for the government act.*"

Section 2. Effective date. [This act] is effective July 1, 2001.

Approved May 1, 2001

CHAPTER NO. 502

[HB 273]

AN ACT TRANSFERRING $3,415,928 OF THE TANF BLOCK GRANT TO THE AFFORDABLE HOUSING REVOLVING LOAN ACCOUNT; CLARIFYING THE USE OF THE TRANSFERRED FUNDS; AMENDING SECTION 90-6-133, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-133, MCA, is amended to read:

"**90-6-133. Revolving loan account — administration.** (1) There is an affordable housing revolving loan account in the state special revenue fund in the state treasury. The money in the loan account is allocated to the board for the purpose of providing loans to eligible applicants.

(2) *(a)* ~~Funds~~ *Except as provided in subsection (2)(b), funds* deposited in the loan account must be used for the program authorized in 90-6-134 and may not be used to pay the expenses of any other program or service administered by the board.

(b) Money transferred to the account pursuant to [section 2] may be used only for the purposes authorized by the temporary assistance for needy families block grant pursuant to Title IV of the Social Security Act, 42 U.S.C. 601, et seq.

(3) The board may determine the rate of interest to be charged for any loan made under the provisions of 90-6-131 through 90-6-136.

(4) The board may accept contributions, gifts, and grants for deposit into the loan account. The money must be used in accordance with the provisions of 90-6-134.

(5) The costs incurred by the board in administering the loan fund must be paid from the loan account.

(6) Interest and principal on loans from the fund must be repaid to the loan fund.

(7) Interest income generated by investment of the principal of the loan fund is retained in the loan fund account."

Section 2. Fund transfer. The department of public health and human services shall transfer $3,415,928 of the TANF block grant received as federal special revenue to the affordable housing revolving loan account provided for in 90-6-133.

Section 3. Effective date. [This act] is effective July 1, 2001.

Approved May 1, 2001

CHAPTER NO. 503

[HB 313]

AN ACT GENERALLY REVISING LAWS RELATING TO DOMESTIC VIOLENCE; PROVIDING FOR INTERVENTION COUNSELING REFERRALS FOR PERSONS CONVICTED OF AN ASSAULT ON A PARTNER OR FAMILY MEMBER; PROVIDING FOR OFFENDER INTERVENTION ASSESSMENTS AND COUNSELING; AUTHORIZING PROTECTIVE ORDERS FOR A PARTNER OR FAMILY MEMBER OF A VICTIM OF DELIBERATE HOMICIDE OR MITIGATED DELIBERATE HOMICIDE; CREATING ENHANCED PENALTIES FOR AN ASSAULT ON A PARTNER OR FAMILY MEMBER THAT IS COMMITTED WITHIN THE VISION OR HEARING OF A MINOR; PROVIDING THAT A SENTENCE FOR AN ASSAULT ON A PARTNER OR FAMILY MEMBER REQUIRES THE OFFENDER TO COMPLETE ALL RECOMMENDATIONS FOR COUNSELING, REFERRALS, ATTENDANCE AT PSYCHOEDUCATIONAL GROUPS, AND TREATMENT, INCLUDING ANY INDICATED CHEMICAL DEPENDENCY TREATMENT; PROVIDING FOR REPORTS TO THE SENTENCING COURT AND PROBATION OFFICER; AND AMENDING SECTIONS 40-15-102 AND 45-5-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 4], unless the context requires otherwise, the following definitions apply:

(1) "Assault on a partner or family member" has the meaning provided in 45-5-206 for partner or family member assault.

(2) "Chemical dependency treatment" means required counseling and treatment related to chemical dependency issues.

(3) "Counseling" means professional counseling as defined in 37-23-102 and includes group counseling for the purposes of [sections 1 through 4].

(4) "Investigative criminal justice report" means the investigative report prepared by a law enforcement agency associated with an offender's arrest for an assault on a partner or family member, excluding any confidential information relating to the victim's location and confidential information not related to the offense.

(5) "Offender" means a person convicted of an assault on a partner or family member.

(6) "Offender intervention program" means the combination of counseling and other services that is organized in a judicial district to provide a preliminary assessment for counseling and other services that are required for an offender.

(7) "Preliminary assessment for counseling" means the counseling assessment completed by a counselor to determine an offender's need for counseling, attendance at psychoeducational groups, and referrals for other treatment. This assessment must be completed either before or within 4 weeks after counseling and psychoeducational groups are started.

(8) "Psychoeducational group" means a group discussion, with instructional content themes, that encourages sharing and feedback, increases self-awareness, and is aimed at facilitating change in group members' daily lives.

(9) "Recreational intoxicant" means a substance, drug, or other chemical that was taken for the purpose of causing a person to be in a different emotional or psychological state and was not taken for a medically recognized therapeutic purpose.

(10) "Victim" means a person against whom the offender committed an assault.

Section 2. Offender intervention counseling referral. (1) The court shall notify the offender intervention program of the court's sentence and the court's judgment ordering the offender to complete a preliminary assessment and all recommended counseling, referrals, and attendance at psychoeducational groups, as well as other recommended treatment, including chemical dependency treatment.

(2) A copy of the investigative criminal justice report related to the offense charged must be sent to the offender intervention program to assist counselors in completing the offender's assessment, counseling, referrals, and psychoeducational group counseling. Before the report is sent, information in the report that relates to the victim's location or does not relate to the charged offense must be deleted.

(3) The referral of the offender's investigative report to the offender intervention program does not violate the confidentiality provisions under Title 44, chapter 5. The court shall adopt and the offender intervention program must include confidentiality procedures to protect the privacy rights of the victim and offender.

Section 3. Report to court or probation officer. (1) The head of the offender intervention program shall report to the court and the offender's probation officer. The report does not breach confidentiality.

(2) The head of the offender intervention program shall report to the court or the offender's probation officer, if the offender is assigned a probation officer, when:

(a) the offender has started the program;

(b) the offender has completed the assessment and the program has established recommendations for counseling, referrals, and attendance at psychoeducational groups, as well as other recommended treatment, including chemical dependency treatment;

(c) the offender has violated the offender intervention program rules related to attendance, the use of violence, and the use of recreational intoxicants; and

(d) the offender has completed the program.

Section 4. Offender intervention counseling confidentiality. (1) Offender intervention programs must have policies and procedures to protect the confidentiality of the offender and the victim. The investigative criminal justice report may be used within the offender intervention counseling sessions and psychoeducational groups after precautions are taken to protect confidentiality.

(2) The counselor may contact the victim of the assault. The counselor may notify the victim that the offender intervention program is not a guarantee that the offender will not be violent. The victim may be asked to provide information about the most recent offense, the offender's history of violence, the offender's use of recreational intoxicants, the offender's use of power and control over the victim, and whether the offender has committed another offense. All precautions must be taken to prevent this contact from increasing the victim's danger.

(3) The counselor shall, when possible, warn the victim if the offender exhibits behavior or makes statements in a group meeting that indicate imminent danger to the victim. If the counselor is unable to tell the victim this information, information about these high-risk behaviors must be given to the local victim advocacy agency. This contact does not violate the offender's right to confidentiality.

Section 5. Section 40-15-102, MCA, is amended to read:

"**40-15-102. Eligibility for order of protection.** (1) A person may file a petition for an order of protection if:

(a) the petitioner is in reasonable apprehension of bodily injury by the petitioner's partner or family member as defined in 45-5-206; or

(b) the petitioner is a victim of one of the following offenses committed by a partner or family member:

(i) assault as defined in 45-5-201;

(ii) aggravated assault as defined in 45-5-202;

(iii) intimidation as defined in 45-5-203;

(iv) partner or family member assault as defined in 45-5-206;

(v) criminal endangerment as defined in 45-5-207;

(vi) negligent endangerment as defined in 45-5-208;

(vii) assault on a minor as defined in 45-5-212;

(viii) assault with a weapon as defined in 45-5-213;

(ix) unlawful restraint as defined in 45-5-301;

(x) kidnapping as defined in 45-5-302;

(xi) aggravated kidnapping as defined in 45-5-303; or

(xii) arson as defined in 45-6-103.

(2) ~~A~~ *The following individuals are eligible to file a petition for an order of protection against the offender regardless of the individual's relationship to the offender:*

(a) a victim of stalking as defined in 45-5-220, incest as defined in 45-5-507, sexual assault as defined in 45-5-502, or sexual intercourse without consent as defined in 45-5-503*; or*

(b) a partner or family member of a victim of deliberate homicide as defined in 45-5-102 or mitigated deliberate homicide as defined in 45-5-103 ~~is eligible for an order of protection against the offender regardless of the petitioner's relationship to the offender~~.

(3) A parent, guardian ad litem, or other representative of the petitioner may file a petition for an order of protection on behalf of a minor petitioner against the petitioner's abuser. At its discretion, a court may appoint a guardian ad litem for a minor petitioner.

(4) A guardian must be appointed for a minor respondent when required by Rule 17(c), Montana Rules of Civil Procedure, or by 25-31-602. An order of protection is effective against a respondent regardless of the respondent's age.

(5) A petitioner is eligible for an order of protection whether or not:

(a) the petitioner reports the abuse to law enforcement;

(b) charges are filed; or

(c) the petitioner participates in a criminal prosecution.

(6) If a petitioner is otherwise entitled to an order of protection, the length of time between the abusive incident and the petitioner's application for an order of protection is irrelevant."

Section 6. Section 45-5-206, MCA, is amended to read:

"**45-5-206. Partner or family member assault — penalty.** (1) A person commits the offense of partner or family member assault if the person:

(a) purposely or knowingly causes bodily injury to a partner or family member;

(b) negligently causes bodily injury to a partner or family member with a weapon; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

(2) For the purposes of *[sections 1 through 4]*, Title 40, chapter 15, 46-6-311, and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

(3) (a) *(i)* An offender convicted of partner or family member assault shall be fined an amount not less than $100 or more than $1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours for a first offense.

(ii) An offender convicted of a second offense under this section shall be fined not less than $300 or more than $1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year.

(iii) Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in 46-23-1005.

(iv) On a third or subsequent conviction for partner or family member assault, the offender shall be fined not less than $500 and not more than $50,000 and be imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

(v) If the offense was committed within the vision or hearing of a minor, the judge shall consider the minor's presence as a factor at the time of sentencing.

(b) (i) For the purpose of determining the number of convictions under this section, a conviction means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated. A prior conviction for domestic abuse under this section is a prior conviction for purposes of subsection (3)(a).

(ii) A conviction for assault with a weapon under 45-5-213, if the offender was a partner or family member of the victim, constitutes a conviction for the purpose of calculating prior convictions under this section.

(4) (a) An offender convicted of partner or family member assault is required to pay for and complete a counseling assessment with a focus on violence, dangerousness, and chemical dependency. *An investigative criminal justice report, as defined in [section 1], must be copied and sent to the offender intervention program, as defined in [section 1], to assist the counseling provider in properly assessing the offender's need for counseling and treatment. Counseling providers shall take all required precautions to ensure the confidentiality of the report. If the report contains confidential information relating to the victim's location or not related to the charged offense, that information must be deleted from the report prior to being sent to the offender intervention program.*

(b) The offender shall ~~follow through on~~ *complete* all recommendations *for counseling, referrals, attendance at psychoeducational groups, or treatment, including any indicated chemical dependency treatment,* made by the counseling provider. The counseling provider must be approved by the court. The counseling must include a ~~counseling~~ *preliminary* assessment *for counseling, as defined in [section 1].* ~~and~~ *The offender shall complete* a minimum of ~~25~~ *40* hours of counseling. *The counseling may include attendance at psychoeducational groups,*

as defined in [section 1], in addition to the assessment. ~~The assessment and the counseling must be:~~

~~(i) with a person licensed under Title 37, chapter 17, 22, or 23;~~

~~(ii) with a professional person as defined in 53-21-102; or~~

~~(iii) in a specialized domestic violence intervention program.~~ *The preliminary assessment and counseling must be:*

(i) with a person licensed under Title 37, chapter 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

~~(b)~~*(c)* The *minimum* counseling *and attendance at psychoeducational groups* provided in subsection ~~(4)(a)~~ *(4)(b)* must be directed to the violent conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum ~~25~~ *40* hours. Subsection ~~(4)(a)~~ *(4)(b)* does not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no available treatment program directed to the violent conduct of the offender.

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs.

(6) In addition to the requirements of subsection (5), if financially able, the offender must be ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

(8) ~~At the time of sentencing, the~~ *The* court shall provide an offender *with* a written copy of the offender's sentence *at the time of sentencing or within 2 weeks of sentencing if the copy is sent electronically or by mail.*"

Section 7. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 45, chapter 5, part 2, and the provisions of Title 45 apply to [sections 1 through 4].

Approved May 1, 2001

CHAPTER NO. 504

[HB 320]

AN ACT CLARIFYING THAT A CIVIL ACTION AGAINST THE BOARD OF LAND COMMISSIONERS OR THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION CONCERNING THE USE OR DISPOSITION OF STATE LANDS REQUIRES A WRITTEN UNDERTAKING; AMENDING SECTION 77-1-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-1-110, MCA, is amended to read:

"77-1-110. Written undertaking required in legal action for challenge to use or disposition of state lands. *(1) The purpose of this section is to advance the legitimate state interest in the protection of state trust assets as provided for in Article X, section 11, of the Montana constitution.*

(2) In any civil action seeking an injunction or restraining order concerning a decision of the board *or department* approving a use or disposition of state lands that would produce revenue for any state lands trust beneficiary, the court shall require a written undertaking for the payment of damages that may be incurred by the trust beneficiary if the board *or the department* is wrongfully enjoined or restrained."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 1, 2001

CHAPTER NO. 505

[HB 324]

AN ACT ALLOWING THE LICENSURE AS DAY-CARE CENTERS OF CERTAIN DAY-CARE FACILITIES PROVIDING DAY CARE ON A REGULAR OR IRREGULAR BASIS TO 13 OR MORE CHILDREN, BUT EXCLUDING DAY CARE PROVIDED ON AN IRREGULAR BASIS IF A PARENT OF A CHILD REMAINS ON THE PREMISES; AMENDING DEFINITIONS; AMENDING SECTIONS 52-2-703, 52-2-704, AND 52-2-721, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-2-703, MCA, is amended to read:

"52-2-703. Definitions. In this part, the following definitions apply:

(1) "Child" means a person under 13 years of age or a person with special needs, as defined by the department, who is under 18 years of age or is 18 years of age and a full-time student expected to complete an educational program by 19 years of age.

(2) "Day care" or "child care" means care for children provided by an adult, other than a parent of the children or other person living with the children as a parent, on a regular *or irregular* basis, *as applicable,* for daily periods of less than 24 hours, whether that care is for daytime or nighttime hours.

(3) *(a)* "Day-care center" means an out-of-home place in which day care is provided to 13 or more children on a regular *or irregular* basis.

(b) The term does not include a place where day care is provided if a parent of a child for whom day care is provided remains on the premises.

(4) "Day-care facility" means a person, association, or place, incorporated or unincorporated, that provides day care on a regular basis or a place licensed or registered to provide day care on an irregular basis, *as provided for in subsection (3)(a), or* for children suffering from illness. ~~It~~ *The term* includes a family day-care home, a day-care center, a group day-care home, or a facility providing care in a

child's home for the purpose of meeting registration requirements for the receipt of payments as provided in 52-2-713. The term does not include:

(a) a person who limits care to children who are related to the person by blood or marriage or under the person's legal guardianship, unless registration or licensure as a day-care facility is required to receive payments as provided in 52-2-713; or

(b) any group facility established chiefly for educational purposes that limits its services to children who are 3 years of age or older.

(5) "Department" means the department of public health and human services provided for in 2-15-2201.

(6) "Family day-care home" means a private residence in which day care is provided to three to six children on a regular basis.

(7) "Group day-care home" means a private residence or other structure in which day care is provided to 7 to 12 children on a regular basis.

(8) "License" means a written document issued by the department that the license holder has complied with this part and the applicable standards and rules for day-care centers.

(9) "Licensee" means the holder of a license issued by the department in accordance with the provisions of this part.

(10) "Professional training" means training for early childhood or school-age care providers that is recognized as professional development by a national education or certification organization or by a higher education institution.

(11) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this part.

(12) "Registration" means the process whereby the department maintains a record of all family day-care homes and group day-care homes, prescribes standards, promulgates rules, and requires the operator of a family day-care home or a group day-care home to certify compliance with the prescribed standards and promulgated rules.

(13) "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department compliance with this part and the applicable standards for family day-care homes and group day-care homes.

(14) "Regular basis" means providing day care to children of separate families for any daily periods of less than 24 hours and within 3 or more consecutive weeks.

(15) (a) "Related by blood or marriage" means the status of a child who is the son, daughter, brother, sister, first cousin, nephew, niece, or grandchild of a person providing child care.

(b) The term includes the status of a child described in subsection (15)(a) in a step or adoptive relationship.

(16) "School age" means a person who is at least 5 years of age and who is younger than 13 years of age or a person with special needs, as defined by the department, who is under 18 years of age or is 18 years of age and a full-time student expected to complete an educational program by 19 years of age.

(17) "School-age care" means an adult-supervised program that is provided for school-age children during nonschool hours."

Section 2. Section 52-2-704, MCA, is amended to read:

"**52-2-704. Duties of department.** (1) The department is responsible for planning, implementing, and coordinating programs under the Montana Child Care Act.

(2) The department shall:

(a) assess child-care needs and resources within the state;

(b) develop a state child-care plan;

(c) coordinate child-care programs administered by all state agencies;

(d) issue licenses to persons to receive children into a day-care center on a regular basis;

(e) prescribe the conditions and publish minimum standards upon which licenses and registration certificates are issued;

(f) adopt rules for day-care facilities consistent with the purposes of this part; ~~and~~

(g) adopt rules for day-care centers that provide day care on an irregular basis, which includes exceptions regarding requirements for immunization records and staffing ratios; and

~~(g)~~*(h)* issue registration certificates to a person or persons to receive children into a family day-care home or group day-care home on a regular basis.

(3) The department may:

(a) enter into interagency agreements to administer and coordinate child-care programs;

(b) accept any federal funds made available for the improvement or promotion of child-care services within the state;

(c) administer any state and federal funds that may be appropriated for the purposes of the part*; and*

(d) issue a license to a person to receive children into a day-care center on an irregular basis if the person chooses to apply for licensure."

Section 3. Section 52-2-721, MCA, is amended to read:

"**52-2-721. License required — registration required — term of license or registration certificate — no fee charged.** (1) A person, group of persons, or corporation may not:

(a) establish or maintain a day-care center for children, *in which day care is provided on a regular basis,* unless licensed to do so by the department;

(b) operate a family day-care home or group day-care home without first procuring a family day-care or group day-care registration certificate from the department.

(2) The license and registration certificate must contain the ages and numbers of children for whom day care may be provided.

(3) The applicant's own children must be included in the manner provided for in department regulations in the total number of children to be cared for under the license or registration certificate.

(4) The department:

(a) may issue a license or registration certificate that remains in effect for a period not to exceed 3 years; and

(b) may not charge a fee to issue a license or registration certificate.

(5) A 3-year license may be issued only to a provider who has not received notice of any deficiencies on the licensing criteria and implementing guidelines that are provided in department rule.

(6) The department may issue a license to a day-care center in which day care is provided on an irregular basis if the person operating the center chooses to apply for licensure."

Section 4. Effective date. [This act] is effective July 1, 2002.

Section 5. Applicability. [This act] applies to day-care centers, as defined in 52-2-703(3)(a)(ii), operated on or after July 1, 2002.

Approved May 1, 2001

CHAPTER NO. 506

[HB 334]

AN ACT REVISING THE TYPE OF PROJECTS THAT ARE ELIGIBLE FOR FUNDING UNDER THE WATER POLLUTION CONTROL STATE REVOLVING FUND ACT; INCLUDING SOLID WASTE MANAGEMENT SYSTEMS AS PROJECTS; AMENDING SECTION 75-5-1102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-1102, MCA, is amended to read:

"75-5-1102. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department and the department of natural resources and conservation in the administration of the program, including but not limited to costs of servicing loans and issuing debt; program startup costs; financial, management, and legal consulting fees; and reimbursement costs for support services from other state agencies.

(2) "Cost" means, with reference to a project, all capital costs incurred or to be incurred by a municipality or a private person, including but not limited to engineering, construction, financing, and other fees, interest during construction, and a reasonable allowance for contingencies to the extent permitted by the federal act and regulations promulgated ~~thereunder~~ *under the federal act.*

(3) "Federal act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. 1251 through 1387, as amended.

(4) "Intended use plan" means the annual plan adopted by the department and submitted to the environmental protection agency that describes how the state intends to use the money in the revolving fund.

(5) "Loan" means a loan of money from the revolving fund to a municipality or a private person.

(6) "Municipality" means any state agency, city, town, or other public body created pursuant to state law, including an authority as defined in 75-6-304.

(7) "Private person" means an individual, corporation, partnership, or other nongovernmental legal entity.

(8) "Program" means the water pollution control state revolving fund program established by this part.

(9) ~~(a)~~ "Project" means an activity that is eligible for financing by the program under the federal act, including treatment works, as defined under section 1292 of the federal act (33 U.S.C. 1292), and nonpoint source pollution control under section 1329 of the federal act (33 U.S.C. 1329), and for which a municipality or private person makes an application for a loan or other financial assistance.

~~(b) "Project" does not include a solid waste management system, as defined in 75-10-203, except for a project that is intended specifically for the closure or postclosure care of or ground water corrective action at a landfill that:~~

~~(i) was in operation on May 5, 1997, and that accepts an annual average of less than 20,000 tons of solid waste a year; or~~

~~(ii) was closed prior to May 5, 1997.~~

(10) "Revolving fund" means the fund established by 75-5-1106."

Section 2. Coordination instruction. If House Bill No. 159 and [this act] are both passed and approved, then House Bill No. 159 is void.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 1, 2001

CHAPTER NO. 507

[HB 345]

AN ACT PROVIDING COUNTIES WITH THE AUTHORITY TO ESTABLISH SALARIES FOR COUNTY OFFICERS; INCLUDING A JUSTICE OF THE PEACE AS A COUNTY OFFICER; REVISING THE BASE SALARY FOR COUNTY ATTORNEYS; ESTABLISHING A COUNTY COMPENSATION BOARD TO MAKE RECOMMENDATIONS TO THE COUNTY COMMISSIONERS FOR ANNUAL SALARY ADJUSTMENTS; PROVIDING FACTORS TO BE CONSIDERED IN MAKING A RECOMMENDATION; PROVIDING THAT A COUNTY OFFICER'S SALARY MAY NOT BE REDUCED BY A RECOMMENDATION; CLARIFYING THAT THE DEPARTMENT OF JUSTICE IS NOT OBLIGATED TO PROVIDE MORE THAN THE AMOUNT APPROPRIATED TO IT FOR THE STATE'S SHARE OF COUNTY ATTORNEY SALARIES; AMENDING SECTIONS 3-10-207, 7-4-2107, 7-4-2503, 7-4-2504, 7-4-2706, 7-14-2126, 41-5-1704, AND 41-5-1705, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-207, MCA, is amended to read:

"3-10-207. Salaries. (1) The board of county commissioners shall set salaries for justices of the peace by resolution and ~~may, for all or the remainder of each fiscal year,~~ in conjunction with setting salaries for other officers as provided in 7-4-2504(1)~~, set their salaries at the prior fiscal year level if that does not result in a reduction in salary~~. ~~Salaries must meet the minimum requirements established by this section.~~

~~(2) If the salary of the justice of the peace was determined on a fee basis for the years 1971 and 1972, he shall receive a monthly salary of not less than one-eighteenth of the total fees, civil and criminal, collected by the justice or his predecessor in office during the 2 years 1971 and 1972.~~

~~(3) If the salary of the justice of the peace was determined on a nonfee basis for the years 1971 and 1972, the justice shall be paid not less than the highest salary earned by the justice or his predecessor for the years 1971 and 1972.~~

~~(4)~~*(2)* The salary of the justice of the peace may not be less than the salary for the district clerk of the court in that county~~, except as provided for in subsections (1) and (5)~~.

~~(5)~~*(3)* ~~In the event his~~ *If the justice's* court is not open for business full time, the justice's salary ~~shall~~ *must* be commensurate to the workload and office hours of the court. *The salary of a justice of the peace may not be reduced during the justice's term of office.*"

Section 2. Section 7-4-2107, MCA, is amended to read:

"7-4-2107. Compensation of county commissioners. (1) ~~Except as provided in subsection (3), each~~ *Subject to subsection (2), each* member of the board of county commissioners ~~in counties of the first, second, third, and fourth class~~ shall receive an annual salary equal to the annual salary established in 7-4-2503 for the clerk and recorder plus $2,000. ~~However, the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level if that level is lower than the level required by this subsection.~~

(2) Each ~~member of the~~ board ~~in all other counties~~ may *elect to serve on a part-time rather than a full-time basis and* receive ~~an~~ *part-time* annual ~~salary equal to~~ *salaries based on* the annual salary established in 7-4-2503(1)(a)~~(ii)~~ for the clerk and recorder ~~or a salary at a per-day rate determined by using the salary established in 7-4-2503(1)(a)(ii) for the clerk and recorder. However, the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level if that level is lower than the level required by this subsection. The salary determined by the board must apply uniformly to all board members.~~

~~(3) Each member of the board of fourth-class counties may receive a salary at a daily rate determined by using the salary established in subsection (1). If a daily rate is used, then all board members must be paid on that basis.~~

~~(4)~~*(3)* This section does not apply to counties that have adopted a charter form of government."

Section 3. Section 7-4-2503, MCA, is amended to read:

"7-4-2503. (Temporary) Salary schedule for certain county officers — ***county compensation board.*** (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, *justice of the peace,* and county auditor in all counties where the office is authorized must be established by the county governing body ~~at no less than 80% of the annual base salary of:~~

~~(i) $25,000 for counties of the first through fifth class added to the population increment of $10 for each 100 persons or major fraction of 100 persons included in the county's population as determined by the 1990 federal decennial census; or~~

~~(ii) $18,000 for counties of the sixth and seventh class added to the population increment of $10 for each 100 persons or major fraction of 100 persons in the county's population as determined by the 1990 federal decennial census~~ *based upon the recommendations of the county compensation board provided for in subsection (4).*

(b) The annual ~~base~~ *salary* established by the county governing body in subsection (1)*(a)* must be uniform for all county officers referred to in subsection (1)*(a).*

(2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of $400 a year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 a year.

(b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of $2,000 a year.

(c) The county sheriff must receive a longevity payment amounting to 1% of the ~~base~~ salary ~~set forth in~~ *determined under* subsection (1) for each year of service with the sheriff's department, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the ~~base~~ salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(3) (a) In each county with a population in excess of 30,000, the county attorney must be a full-time official under 7-4-2704, and the base salary is $50,000 a year, *subject to adjustment as provided in subsection (3)(c).* In counties with a population less than 30,000, the county attorney who is a part-time official ~~for a county of the first, second, or third class~~ is entitled to receive an annual ~~base~~ *base* salary equal to ~~60% of the annual salary of a full-time county attorney~~ *the salary received for the fiscal year ending June 30, 2001.* ~~A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual base salary equal to 50% of the annual base salary of a full-time county attorney.~~

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the ~~base~~ salary of the county attorney is the same as the ~~base~~ salary established for full-time county attorneys in subsection (3)(a).

(c) ~~On August 1 of each year, each~~ *Each* county attorney is entitled to an increase in salary ~~calculated by adding to the annual salary a percentage of up to~~

~~100% of the previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana-Missoula may in the future recognize as the successor to that index~~ *based upon the schedule developed and approved by the county compensation board as provided in subsection (4).* ~~However, the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set the salary at the prior fiscal year level if that level is lower than the level required by this subsection (3)(c). The cost-of-living increment for each fiscal year must be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. Unless restored pursuant to 7-4-2504(2), a cost-of-living increment that would have been received for the fiscal year, computed on the prior fiscal year, may not be added to previous increments.~~

(d) ~~(i)~~ After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of employment as a deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of *additional* service ~~thereafter~~ up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

~~(ii) A county with a full-time county attorney may pay its full-time county attorney the same longevity increase that is provided for under subsection (3)(d)(i) for deputy county attorneys.~~

~~(iii) Unless longevity increases are restored pursuant to 7-4-2504(2), the years of service during a year in which the salary was set at the level of the salary of the prior fiscal year may not be included in a calculation of longevity increases.~~

~~(4) The latest federal decennial census statistics are the basis for computation of population increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year is based on the most current calendar year's estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana-Missoula bureau of business and economic research and the U.S. bureau of the census or other estimate that the bureau of business and economic research may certify.~~

(4) (a) There is a county compensation board consisting of the county commissioners, three of the county officials described in subsection (1) appointed by the board of county commissioners, the county attorney, and two resident taxpayers appointed initially by the board of county commissioners to staggered terms of 3 years, with the initial appointments of one taxpayer member for a 2-year term and one taxpayer member for a 3-year term. The county compensation board shall hold hearings annually for the purpose of reviewing the compensation paid to county officers. The county compensation board may consider the compensation paid to comparable officials in other Montana counties, other states, state government, federal government, and private enterprise.

(b) The county compensation board shall prepare a compensation schedule for the elected county officials, including the county attorney, for the succeeding fiscal

year. The schedule must take into consideration county variations, including population, the number of residents living in unincorporated areas, assessed valuation, motor vehicle registrations, building permits, and other factors considered necessary to reflect the variations in the workloads and responsibilities of county officials as well as the tax resources of the county.

(c) A recommended compensation schedule requires a majority vote of the county compensation board, and at least two county commissioners must be included in the majority. A recommended compensation schedule may not reduce the salary of a county officer that was in effect on [the effective date of this act]. (Terminates July 1, 2001—sec. 4, Ch. 411, L. 1999.)

7-4-2503. (Effective July 1, 2001) Salary schedule for certain county officers — *county compensation board.* (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, *justice of the peace,* and county auditor in all counties where the office is authorized must be established by the county governing body ~~at no less than 80% of the annual base salary of:~~

~~(i) $25,000 for counties of the first through fifth class added to the population increment of $10 for each 100 persons or major fraction of 100 persons included in the county's population as determined by the 1990 federal decennial census; or~~

~~(ii) $18,000 for counties of the sixth and seventh class added to the population increment of $10 per 100 persons or major fraction of 100 persons in the county's population as determined by the 1990 federal decennial census~~ *based upon the recommendations of the county compensation board provided for in subsection (4).*

(b) The annual ~~base~~ *salary* established ~~by the county governing body in~~ *pursuant to* subsection (1)*(a)* must be uniform for all county officers referred to in subsection (1)*(a).*

(2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of $400 per year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 per year.

(b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of $2,000 per year.

(c) The county sheriff must receive a longevity payment amounting to 1% of the ~~base~~ salary ~~set forth in~~ *determined under* subsection (1) for each year of service with the sheriff's department, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the ~~base~~ salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(3) (a) In each county with a population in excess of 30,000, the county attorney must be a full-time official under 7-4-2704, and the salary is $50,000 per year, *subject to adjustment as provided in subsection (3)(c).* In counties with a

population less than 30,000, the county attorney who is a part-time official ~~for a county of the first, second, or third class~~ is entitled to receive an annual *base* salary equal to ~~60% of the annual salary of a full-time county attorney~~ *the salary received for the fiscal year ending June 30, 2001.* ~~A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney.~~

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney is the same as that established for full-time county attorneys in subsection (3)(a).

(c) ~~On August 1 of each year, each~~ *Each* county attorney is entitled to an increase in salary ~~calculated by adding to the annual salary a percentage of up to 100% of the previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana-Missoula may in the future recognize as the successor to that index~~ *based upon the schedule developed and approved by the county compensation board as provided in subsection (4).* ~~However, the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set the salary at the prior fiscal year level if that level is lower than the level required by this subsection (3)(c). The cost-of-living increment for each fiscal year must be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. Unless restored pursuant to 7-4-2504(2), a cost-of-living increment that would have been received for the fiscal year, computed on the prior fiscal year, may not be added to previous increments.~~

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of *additional* service ~~thereafter~~ up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase~~, but, unless longevity increases are restored pursuant to 7-4-2504(2), the years of service during a year in which the salary was set at the level of the salary of the prior fiscal year may not be included in a calculation of longevity increases~~.

~~(4) The latest federal decennial census statistics are the basis for computation of population increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year is based on the most current calendar year's estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana-Missoula bureau of business and economic research and the U.S. bureau of the census or other estimate that the bureau of business and economic research may certify.~~

(4) (a) There is a county compensation board consisting of the county commissioners, three of the county officials described in subsection (1) appointed by the board of county commissioners, the county attorney, and two resident taxpayers appointed initially by the board of county commissioners to staggered terms of 3 years, with the initial appointments of one taxpayer member for a 2-year term and one taxpayer member for a 3-year term. The county compensation board shall hold hearings annually for the purpose of reviewing the compensation paid to county officers. The county compensation board may consider the compensation paid to comparable officials in other Montana counties, other states, state government, federal government, and private enterprise.

(b) The county compensation board shall prepare a compensation schedule for the elected county officials, including the county attorney, for the succeeding fiscal year. The schedule must take into consideration county variations, including population, the number of residents living in unincorporated areas, assessed valuation, motor vehicle registrations, building permits, and other factors considered necessary to reflect the variations in the workloads and responsibilities of county officials as well as the tax resources of the county.

(c) A recommended compensation schedule requires a majority vote of the county compensation board, and at least two county commissioners must be included in the majority. A recommended compensation schedule may not reduce the salary of a county officer that was in effect on [the effective date of this act]."

Section 4. Section 7-4-2504, MCA, is amended to read:

"**7-4-2504. Salaries to be fixed by resolution — cost-of-living increments.** ~~(1)~~ The county governing body shall by resolution on or before August 1 of each year adjust and uniformly fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, clerk of district court, county auditor (if there is one), *justice of the peace,* and county surveyor (if the surveyor receives a salary)~~. The salaries fixed may be no less than 80% of~~ *by adding to* the annual ~~base~~ salary provided for in 7-4-2503(1) ~~plus~~ a cost-of-living increment based ~~on a percentage of up to 100% of the previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana-Missoula may in the future recognize as the successor to that index~~ *upon the schedule developed and approved by the county compensation board provided for in 7-4-2503(4).* ~~The county governing body may, however, for all or the remainder of each fiscal year, in conjunction with setting salaries for the same action on the salaries of justices of the peace (if applicable), the county governing body, the county attorney, and the coroner, set the salary at the prior fiscal year level if that level is lower than the level required by this subsection. The cost-of-living increment for each fiscal year must be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. In such a case, the cost-of-living increment that would have been received for the fiscal year, computed on the prior fiscal year, may not be added to previous increments.~~

~~(2) The county governing body may, in any subsequent fiscal year, restore for 1 or more years the annual cost-of-living increments withheld pursuant to subsection (1). If cost-of-living increments are restored, the longevity increases provided for sheriffs in 7-4-2503, for deputy county attorneys in 7-4-2503(3)(d)(i),~~

~~and for undersheriffs and deputy sheriffs in 7-4-2510 must also be restored for the years for which the cost-of-living increment was restored.~~

~~(3) The county governing body shall by resolution, prior to August 1 of each year, establish the salary of the coroner and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in subsection (1), set the salary at the prior fiscal year level. The salary must be in effect on the first day of each ensuing fiscal year.~~"

Section 5. Section 7-4-2706, MCA, is amended to read:

"**7-4-2706. County attorney to be full or part time — resolution — salary.** (1) In any county with a population of less than 30,000, the county commissioners may, upon the consent of the county attorney, on July 1 of any year by resolution establish the office of county attorney as a full-time position subject to the provisions of 7-4-2701 and 7-4-2704. The salary for this position is the salary ~~provided by~~ *established pursuant to* 7-4-2503 ~~for the office of county attorney in a county with a population in excess of 30,000~~.

(2) In any county in which the office of county attorney has been established as a full-time position under subsection (1), the county commissioners may, by resolution and upon the consent of the county attorney, establish the office as a part-time position on July 1 of any year."

Section 6. Section 7-14-2126, MCA, is amended to read:

"**7-14-2126. Compensation for making inspections.** The person ~~or persons~~ making the inspections authorized by 7-14-2125 shall receive a daily salary equal to ~~that~~ *the equivalent of a daily rate for the salary* established in 7-4-2107(2) and actual expenses if ~~he receives no~~ *the person does not receive* other compensation for that day and is not on an annual salary. The claims ~~shall~~ *must* be audited and allowed in the same manner as other claims against the county."

Section 7. Section 41-5-1704, MCA, is amended to read:

"**41-5-1704. Salary and expenses.** (1) A chief probation officer must receive a salary specified by the court, depending on the formal training and experience of each respective officer; however, the salary may not be lower than $24,000 a year ~~and may not be higher than $29,000 a year~~. In addition to the salary, the court shall, on or before July 1 of each year, adjust and fix the salary of the chief probation officer for a cost-of-living increase by adding to the chief probation officer's annual salary on July 1 of that year an increment, as determined by the county governing body using the applicable formula provided *for* in 7-4-2504~~, of up to 100% of the previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana-Missoula may in the future recognize as the successor to that index~~. ~~The cost-of-living increment for each fiscal year must be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year by the county governing body. If that is the case, the cost-of-living increment that would have been received for the fiscal year, computed on the prior fiscal year, may not be added to previous increments.~~ The salary of a chief probation officer must be apportioned among and paid by each of the counties in which the officer is appointed to act, in proportion to the cost allocation established under 41-5-104, except when the officer is appointed for one county, then that county shall pay the entire salary.

(2) In addition to the compensation provided in subsection (1), each chief probation officer with more than 5 years of service is entitled to receive an annual 1% longevity allowance; however, years of service during any year in which the salary was set at the same level as the salary of the prior fiscal year may not be included in any calculation of longevity increase. Each longevity allowance must be based on the officer's current salary and begins on the officer's annual employment anniversary date. The allowance must be paid in equal monthly installments.

~~(3) If the county governing body, in any subsequent fiscal year, restores for 1 or more years the annual cost-of-living increments withheld pursuant to subsection (1), the longevity increases provided for in subsection (2) must also be restored for those years that the cost-of-living increment was restored.~~

~~(4)~~*(3)* For all authorized travel incident to a chief probation officer's official duties in connection with the investigation, supervision, and transportation of youth, the chief probation officer must, in addition to the officer's salary, be reimbursed as provided in 2-18-501 through 2-18-503."

Section 8. Section 41-5-1705, MCA, is amended to read:

"**41-5-1705. Deputy probation officers — salary.** (1) The judge having jurisdiction of juvenile matters may appoint persons to serve as deputy probation officers ~~as~~ *that* the judge considers necessary, giving preference to persons having the qualifications suggested for appointment as the chief probation officer. The salaries of deputy probation officers must be fixed by the judge. The salaries may not exceed 90% or be less than 60% of the salary of the chief probation officer, excluding the cost-of-living increase provided in subsection (2) and longevity payments provided in 41-5-1704.

(2) In addition to the salary, the judge shall, on or before July 1 of each year, adjust and fix the salary of the deputy probation officer for a cost-of-living increase by adding to the deputy probation officer's annual salary on July 1 of that year an increment, as determined by the county governing body using the applicable formula provided in 7-4-2504~~, of up to 100% of the previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana-Missoula may in the future recognize as the successor to that index~~. ~~The cost-of-living increment for each fiscal year must be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year by the county governing body. If that is the case, the cost-of-living increment that would have been received for the fiscal year, computed on the prior fiscal year, may not be added to previous increments.~~ The salary of a deputy probation officer must be apportioned among and paid by each of the counties in which the officer is appointed to act, in proportion to the cost allocation established under 41-5-104, except when the officer is appointed for one county, then that county shall pay the entire salary.

(3) In addition to the compensation provided in subsections (1) and (2), each deputy probation officer with more than 5 years of service is entitled to receive an annual 1% longevity allowance~~; however, years of service during any year in which the salary was set at the same level as the salary of the prior fiscal year may not be included in any calculation of longevity increase~~. Each longevity allowance must be based on the officer's current salary and begins on the officer's annual employment anniversary date. The allowance must be paid in equal monthly installments.

~~(4) If the county governing body, in any subsequent fiscal year, restores for 1 or more years the annual cost-of-living increments withheld pursuant to subsection (2), the longevity increases provided for in subsection (3) must also be restored for those years that the cost-of-living increment was restored.~~

~~(5)~~*(4)* The salary of a deputy probation officer promoted to chief probation officer may not be decreased by the appointment. The deputy probation officer retains all longevity allowances earned during service as a deputy."

Section 9. Limit on state share of county attorney salary. As provided in 7-4-2502(2)(a), the department of justice is not obligated to provide more than one-half of the salary of a county attorney based on the amount included in the department's budget and appropriated for that purpose.

Section 10. Effective date. [This act] is effective on passage and approval.

Approved May 1, 2001

CHAPTER NO. 508

[HB 348]

AN ACT REVISING THE LAWS GOVERNING STATE AGENCY LIQUOR STORES; INCREASING COMMISSION RATES FOR STATE AGENCY LIQUOR STORES BASED UPON THE ANNUAL SALES VOLUMES OF STORES; PROVIDING FOR RENEWALS AT TERMINATION OF THE 10-YEAR PERIOD OF FRANCHISE AGREEMENTS; AMENDING SECTION 16-2-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-2-101, MCA, is amended to read:

"**16-2-101. Establishment and closure of agency liquor stores — agency franchise agreement — kinds and prices of liquor.** (1) The department shall enter into agency franchise agreements to operate agency liquor stores as the department finds feasible for the wholesale and retail sale of liquor.

(2) (a) The department may from time to time fix the posted prices at which the various classes, varieties, and brands of liquor may be sold, and the posted prices must be the same at all agency liquor stores.

(b) (i) The department shall supply from the state liquor warehouse to agency liquor stores the various classes, varieties, and brands of liquor for resale at the state posted price to persons who hold liquor licenses and to all other persons at the retail price established by the agent.

(ii) (A) According to the ordering and delivery schedule set by the department, an agency liquor store may place a liquor order with the department at its state liquor warehouse in the manner to be established by the department.

(B) The agency liquor store's purchase price is the department's posted price less the agency liquor store's commission rate ~~in the state agency franchise agreement~~ and less the agency liquor store's weighed average discount ratio. For purposes of this subsection (2)(b)(ii)(B), for agency liquor stores or employee-operated state liquor stores that were operating *on* June 30, 1994, the weighted average discount ratio is the ratio between an agency liquor store's or the employee-operated state liquor store's full case discount sales divided by the agency liquor store's or employee-operated state liquor store's gross sales, based on fiscal year 1994 reported sales, times the state discount rate for case lot sales, as provided in 16-2-201, divided by the state discount rate for full case lot sales in effect on June 30, 1994. For all other stores that are placed in service after June 30, 1994, the weighted average discount ratio is the average ratio in fiscal year 1994 for similar sized stores for 1 year of operation. The weighted discount ratio must be computed on the store's first 12 months of operation.

(C) All liquor purchased from the state liquor warehouse by an agency liquor store must be paid for within 60 days of the date on which the department invoices the liquor to the agency liquor store.

(c) An agency liquor store may sell table wine at retail for off-premises consumption.

(3) Agency liquor stores may not be located in or adjacent to grocery stores in communities with populations over 3,000.

(4) Agency liquor stores must receive commissions payable as follows:

(a) *(i)* a 10% commission for agencies in communities with less than 3,000 in population, unless adjusted pursuant to subsection (6) ~~or (8)~~; *or*

~~(b)~~*(ii)* a commission established by competitive bidding unless adjusted pursuant to subsection (6) ~~or (8)~~ for agencies in communities with 3,000 or more in population*; plus*

(b) for agency liquor stores operating under a renewed franchise agreement or that have been operated for at least 3 years under an original franchise agreement, a percentage based upon the total annual dollar volume of sales in the previous fiscal year, as follows:

(i) for agency liquor stores with a volume of sales of $500,000 or more, 0.125% beginning July 1, 2002, 0.5% beginning July 1, 2003, and 0.875% beginning July 1, 2004;

(ii) for agency liquor stores with a volume of sales~~:~~ of less than $500,000, 1.25% beginning July 1, 2002, 1.25% beginning July 1, 2003, and 1.5% beginning July 1, 2004; or

(iii) for a city with more than one agency liquor store, in lieu of the addition to a commission increase provided in subsection (4)(b)(i) or (4)(b)(ii), for each store in the city, an addition to its commission rate equal to the increase granted the store with the lowest commission rate.

(5) An agency franchise agreement must:

(a) be effective for a 10-year period and ~~may~~ *must* be renewed ~~every 10 years~~ *at the existing commission rate for additional 10-year periods* if the requirements of the agency franchise agreement have been satisfactorily performed;

(b) require the agent to maintain comprehensive general liability insurance and liquor liability insurance throughout the term of the agency franchise agreement in an amount established by the department of administration. The insurance policy must:

(i) declare the department as an additional insured; and

(ii) hold the state harmless and agree to defend and indemnify the state in a cause of action arising from or in connection with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement.

(c) provide that upon termination by the department for cause or upon mutual termination, the agent is liable for any outstanding liquor purchase invoices. If payment is not made within the appropriate time, the department may immediately repossess all liquor inventory, wherever located.

(d) specify the reasonable service and space requirements that the agent will provide throughout the term of the agency franchise agreement.

(6) (a) The commission percentage that the department pays the agent under ~~an agency franchise agreement~~ *subsection (4)(a)* may be reviewed on July 1, 1998, and every *succeeding* 3 years ~~thereafter~~ at the request of either party. If the agent concurs, the department may adjust the commission percentage to be paid during the remaining term of the agency franchise agreement or until the next time the commission percentage is reviewed, if that is sooner than the term of the agency franchise agreement, to a commission percentage that is equal to the average commission percentage being paid agents with similar sales volumes if:

(i) the agent's commission percentage is less than the average; and

(ii) all the requirements of the agency franchise agreement have been satisfactorily performed.

(b) The adjusted commission percentage determined under subsection (6)(a) may be greater than the average commission paid agents with similar sales volume:

(i) if the agent demonstrates that:

(A) the agent has experienced cost increases that are beyond the agent's control, including but not limited to increases in the federally established minimum wage or escalation in prevailing rent; and

(B) the average commission percentage is insufficient to yield net income commensurate with net income experienced before the cost increases occurred; and

(ii) if the department demonstrates that it is unable to indicate adjustments in the requirements specified in the agent's franchise agreement that will eliminate the impact of cost increases.

(7) The liability insurance requirement may be reviewed every 3 years after July 1, 1995, at the request of either the agent or the department. If the agent concurs, the department may adjust the requirements to be effective during the remaining term of the agency franchise agreement if the adjustments adequately protect the state from risks associated with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement. The amount of liability insurance coverage may not be less than the minimum requirements of the department of administration.

~~(8) (a) Except as provided in subsection (8)(b), an agency franchise agreement must be renewed for additional 10-year periods if the agent has satisfactorily performed all the requirements of the agency franchise agreement. Except for establishing the new term and except for a commission percentage that may be negotiated as provided in subsection (8)(b), changes in the agency franchise agreement as a result of a renewal may not be made unless the agent and the department mutually agree.~~

~~(b) If at least 90 days prior to the expiration of a 10-year agency franchise agreement, the department determines that an adjustment of the commission percentage paid to the agent is in the best interests of the state, the department shall notify the agent of that determination.~~

~~(c) If the agent does not concur with the department's commission percentage adjustment, the department shall advertise for bids for the agency franchise at the adjusted commission percentage, subject to the provisions of this chapter. If bids from persons who meet the criteria provided in this chapter are received by the department for the agency franchise at the adjusted commission percentage, the agent under the existing franchise agreement has a preference right to renew the franchise agreement by concurring in the adjusted commission percentage.~~

~~(d) If the agent under the existing franchise agreement declines to exercise the preference right under subsection (8)(c), the department shall enter into an agency franchise agreement as provided in this chapter with a person who accepted the adjusted commission percentage.~~

~~(e) If the agent exercises the preference right and believes the adjusted commission percentage to be inadequate or not in the best interests of the state, the agent may request an administrative hearing. The request must contain a statement of reasons why the agent believes the commission percentage to be inadequate or not in the state's best interests. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the adjusted commission percentage is inadequate or not in the state's best interests. The department may, after the hearing, adjust the commission percentage if the agent shows that the commission percentage is inadequate or not in the best interests of the state. If the department increases the commission percentage rate, the department shall set forth its findings and conclusions in writing and inform the agent and the other persons who offered to enter into an agency agreement at the adjusted commission rate.~~

~~(9)~~*(8)* (a) The department may terminate an agency franchise agreement if the agent has not satisfactorily performed the requirements of the agency franchise agreement because the agent:

(i) charges retail prices that are less than the department's posted price for liquor, sells liquor to persons who hold liquor licenses at less than the posted price, or sells liquor at case discounts greater than the discount provided for in 16-2-201 to persons who hold liquor licenses;

(ii) fails to maintain sufficient liability insurance;

(iii) has not maintained a quantity and variety of product available for sale commensurate with demand, delivery cycle, repayment schedule, mixed case shipments from the department, and the ability to purchase special orders;

(iv) at an agency liquor store located 35 miles or more from the nearest agency liquor store, has operated the agency liquor store in a manner that makes the premises unsanitary or inaccessible for the purpose of making purchases of liquor; or

(v) fails to comply with the express terms of the agency franchise agreement.

(b) The department shall give an agent 30 days' notice of its intent to terminate the agency franchise agreement for cause and specify the unmet requirements. The agent may contest the termination and request a hearing within 30 days of the date of notice. If a hearing is requested, the department shall suspend its termination order until after a final decision has been made pursuant to the Montana Administrative Procedure Act.

(c) In the case of failure to make timely payments to the department for liquor purchased, the department may terminate the agency franchise agreement and immediately repossess any liquor purchased and in the possession of the agent. If an agency franchise agreement is terminated, the agent may contest the termination and request a hearing within 30 days of the department's repossession of the liquor. The agency liquor store shall remain closed until a final decision has been reached following a hearing held pursuant to the Montana Administrative Procedure Act.

~~(10)~~*(9)* An agency franchise agreement may be terminated upon mutual agreement by the agent and the department.

~~(11)~~*(10)* An agent may assign an agency franchise agreement to a person who, upon approval of the department, is named agent in the agency franchise agreement, with the rights, privileges, and responsibilities of the original agent for the remaining term of the agency franchise agreement. The agent shall notify the department of an intent to assign the agency franchise agreement 60 days before the intended effective date of the assignment. The department may not unreasonably withhold approval of an assignment request.

~~(12)~~*(11)* A person or entity may not hold an ownership interest in more than one agency liquor store.

~~(13)~~*(12)* The department shall maintain sufficient inventory in the state warehouse in order to meet a monthly service level of at least 97%."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to commissions beginning in calendar year 2002.

Approved May 1, 2001

CHAPTER NO. 509

[HB 360]

AN ACT REVISING THE DEFINITION OF "CRIME OF VIOLENCE" FOR PURPOSES OF CERTAIN CRIMINAL SENTENCING LAWS TO INCLUDE CERTAIN FELONY SEXUAL OFFENSES; AND AMENDING SECTION 46-18-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-104, MCA, is amended to read:

"**46-18-104. Definitions.** As used in 46-18-101, 46-18-105, 46-18-201, 46-18-225, and this section, unless the context requires otherwise, the following definitions apply:

(1) "Community corrections" or "community corrections facility or program" means a community corrections facility or program as defined in 53-30-303.

(2) *(a)* "Crime of violence" means:

~~(a)~~*(i)* a crime in which an offender uses or possesses and threatens to use a deadly weapon during the commission or attempted commission of a crime;

~~(b)~~*(ii)* a crime in which the offender causes a serious bodily injury or death to a person other than the offender; or

~~(c)~~*(iii)* ~~any sexual~~ *an* offense ~~in which the offender causes bodily injury to the victim or uses threat, intimidation, or force against the victim.~~ *under:*

(A) 45-5-502 for which the maximum potential sentence is life imprisonment or imprisonment in a state prison for a term exceeding 1 year;

(B) 45-5-503, except as provided in subsection (2)(b); or

(C) 45-5-507 if the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing the offense.

(b) In a prosecution under 45-5-503, if the sexual intercourse was without consent based solely on the victim's age, the victim willingly participated, and the offender is not more than 3 years older than the victim, the offense is not a crime of violence for purposes of this section.

(3) "Nonviolent felony offender" means a person who has entered a plea of guilty or nolo contendere to a felony offense other than a crime of violence or who has been convicted of a felony offense other than a crime of violence."

Approved May 1, 2001

CHAPTER NO. 510

[HB 395]

AN ACT APPROPRIATING MONEY TO THE BOARD OF REGENTS TO ESTABLISH A DENTAL HYGIENE EDUCATION PROGRAM AT THE MONTANA STATE UNIVERSITY-GREAT FALLS COLLEGE OF TECHNOLOGY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, several areas in Montana have been federally designated as dental health professional shortage areas and 18 other Montana counties are currently being considered for designation; and

WHEREAS, it is anticipated that a large percentage of Montana dentists currently practicing will retire or reduce practice in the coming decade, severely restricting many Montanans' access to dental care; and

WHEREAS, the training and employment of dental hygienists is an effective strategy in expanding access to dental care for the public; and

WHEREAS, Montana is the only state in the nation without an accredited dental hygiene education program; and

WHEREAS, in 1992, the Board of Regents designated the Montana State University-Great Falls College of Technology as a site for a dental hygiene education program.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation — purpose. There is appropriated $119,683 from the general fund to the board of regents for the biennium ending June 30, 2003, to establish a dental hygiene education program at the Montana state university-Great Falls college of technology.

Section 2. Effective date. [This act] is effective July 1, 2001.

Approved May 1, 2001

CHAPTER NO. 511

[HB 409]

AN ACT EXEMPTING INCREASES IN A LOCAL GOVERNMENT'S PROPERTY TAX LEVY FOR THE EMPLOYER'S PREMIUM CONTRIBUTIONS FOR GROUP HEALTH INSURANCE BENEFITS FROM THE MILL LEVY CALCULATION LIMITATION; REQUIRING THAT A PUBLIC HEARING BE HELD PRIOR TO IMPLEMENTING A LEVY; AMENDING SECTIONS 2-9-212, 2-18-703, AND 15-10-420, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-212, MCA, is amended to read:

"**2-9-212. Political subdivision tax levy to pay premiums.** *(1)* Subject to 15-10-420 *and subsection (2) of this section*, a political subdivision, except for a school district, may levy an annual property tax in the amount necessary to fund the premium for insurance, deductible reserve fund, and self-insurance reserve fund as authorized in this section and to pay the principal and interest on bonds or notes issued pursuant to 2-9-211(5).

(2) (a) The increase in a political subdivision's property tax levy for the political subdivision's premium contributions for group benefits under 2-18-703 beyond the amount of contributions in effect on July 1, 1999, is not subject to the mill levy calculation limitation provided for in 15-10-420.

(b) Prior to implementing a levy under subsection (2)(a), a public hearing must be held regarding any proposed increases."

Section 2. Section 2-18-703, MCA, is amended to read:

"**2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, shall contribute the amount specified in this section towards the group benefits cost.

(2) For employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is ~~$270 a month for the period from July 1999 through December 1999, $285 a month for the period from January 2000 through December 2000, and~~ $295 a month for January 2001 and for each succeeding month. For employees of the Montana university system, the employer contribution for group benefits is ~~$285 a month for the period from July 1999 through June 2000 and~~ $295 a month ~~for the period from July 2000 through June 2001 and for each succeeding month~~. When a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 a month. *Subject to the public hearing requirement provided*

in 2-9-212(2)(b), the increase in a local government's property tax levy for premium contributions for group benefits beyond the amount of contributions in effect on July 1, 1999, is not subject to the mill levy calculation limitation provided for in 15-10-420.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(5) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

(6) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents."

Section 3. Section 15-10-420, MCA, is amended to read:

"**15-10-420. Procedure for calculating levy.** (1) A governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year, even if that levy is greater than the levy established by law. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the value of newly taxable property.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1) plus any additional levies authorized by the voters to all property in the governmental unit, including newly taxable property.

(3) For purposes of this section, newly taxable property includes:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) transfer of property from tax-exempt to taxable status; and

(g) revaluations caused by expansion, addition, replacement, or remodeling of improvements.

(4) Subsection (1) does not apply to*:*

(a) school district general fund levies and the school district levy for tuition obligations established in 20-5-324(5)*; or*

(b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703.

(5) For purposes of subsection (1), taxes imposed:

(a) include registration fees imposed on light vehicles under 61-3-561 and distributed under 61-3-509(2); and

(b) do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(6) In determining the maximum number of mills in subsection (1), the governmental entity shall take into account any change from the prior year in the amount of statutory reimbursements for changes in the property tax laws. The amount of motor vehicle disposition under 61-3-509(2), as that section read on December 31, 2000, is an increased statutory reimbursement. It may increase the number of mills to account for a decrease in reimbursements and shall decrease the number of mills to fully account for any increase in reimbursements.

(7) The department shall calculate the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, 20-25-439, and 53-2-813. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections.

(8) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Section 4. Effective date. [This act] is effective July 1, 2001.

Approved May 1, 2001

CHAPTER NO. 512

[HB 418]

AN ACT DESCRIBING THE DUTY TO BUILD AND MAINTAIN FENCES WITH REGARD TO A HERD DISTRICT AND A HORSE HERD DISTRICT; REQUIRING THAT WHEN OWNERS OR POSSESSORS OF LAND THAT IS CONTIGUOUS TO A HERD DISTRICT PETITION TO HAVE THEIR PROPERTY ANNEXED TO THAT DISTRICT, THE OWNERS OR POSSESSORS OF AT LEAST 55 PERCENT OF THE LAND SIGN THE PETITION; AMENDING SECTION 81-4-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Duty to build and maintain fences. Upon creation of a herd district pursuant to 81-4-301, 81-4-304, or 81-4-322, fences must be constructed by the entities creating the herd district. Upon approving an annexation to an existing herd district pursuant to 81-4-310, fences must be constructed by the entities being annexed into the herd district. All fences must be maintained pursuant to 70-16-205. All fences must conform with the requirements of 81-4-101. An action to enforce the provisions of this section may be brought by the aggrieved party in the district court in the county where the land is situated.

Section 2. Section 81-4-310, MCA, is amended to read:

"81-4-310. Annexation into existing herd district. (1) Owners or possessors of land that is contiguous to a herd district may petition to have their property annexed to that district. The petition must be properly signed by ~~all~~ *the* *owners or possessors of at least 55% of the* affected ~~owners or possessors of~~ land and must include the post-office address of all petition signers. The petition must state the outside boundaries and a description of the property to be annexed to the existing district. When the petition is filed with the clerk and recorder in the county in which the existing district lies, the county commissioners of that county shall set a date for hearing protests and verifying petition signatures. The county commissioners shall provide notice of the hearing by publishing the hearing date and a list of the properties proposed to be annexed, at least three times in a newspaper of general circulation in the county, not less than 20 days prior to the hearing date.

(2) At the hearing held pursuant to subsection (1), the county commissioners shall examine the petition and have a map drawn up in order to determine the shape and regularity of the boundaries of the property proposed for annexation. If the county commissioners determine that the boundaries are reasonably regular and symmetrical in shape in relation to the geographical features of the properties proposed for annexation, the county commissioners may declare that those properties are annexed into the existing herd district.

(3) If the county commissioners declare the properties annexed to the existing herd district, they shall give notice of the annexation by four weekly publications in a newspaper of general circulation in the county. Annexation does not become effective until 30 days after the declaration of annexation is made, as provided in subsection (2)."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 81, chapter 4, and the provisions of Title 81, chapter 4, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to herd districts created or annexation actions that occur after [the effective date of this act].

Approved May 1, 2001

CHAPTER NO. 513

[HB 442]

AN ACT CLARIFYING THE PROHIBITION AGAINST LITTERING ON HIGHWAYS; ADDING PLASTIC TO THE LIST OF SUBSTANCES THAT MAY NOT BE THROWN OR DEPOSITED ON A HIGHWAY; INCREASING THE PENALTIES FOR LITTERING; ADDING THE OFFENSE OF THROWING CONTAINERS OF URINE OR FECES UPON A HIGHWAY AND PROVIDING A PENALTY; AND AMENDING SECTIONS 61-8-365 AND 61-8-372, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-365, MCA, is amended to read:

"**61-8-365. Putting refuse on highway prohibited.** (1) A person may not throw or deposit upon a highway glass bottles, glass, nails, tacks, wire, cans, *plastic bottles, plastic, or* paper~~,~~. ~~or~~ *A person may not throw or deposit upon a highway* any ~~other~~ substance likely to injure ~~any~~ *a* person~~;~~ *or* animal~~;~~ or *damage a* vehicle upon the highway.

(2) A person who drops or permits to be dropped or thrown upon a highway destructive or injurious material shall immediately remove the material or cause it to be removed.

(3) A person ~~removing~~ *who removes* a wrecked or damaged vehicle from a highway shall remove glass or *any* other injurious substance dropped upon the highway from the vehicle.

(4) Except as provided in 61-8-372 *and subsection (5) of this section*, a person convicted of violating this section shall be fined not ~~less~~ *more* than ~~$50~~ *$250*. Except for the ~~minimum~~ *maximum* fine of ~~$50~~ *$250* as provided in this subsection and except for the ~~minimum~~ *maximum* fine of ~~$100~~ *$500* as provided in 61-8-372, the penalty provisions of 61-8-711 apply to this section.

(5) A person may not throw or deposit upon a highway plastic bottles or any other containers in which urine or feces have been deposited. A person convicted of violating this subsection shall be fined not more than $500."

Section 2. Section 61-8-372, MCA, is amended to read:

"61-8-372. Littering with lighted matches, cigarettes, and other burning material and dumping ashtray prohibited — penalty — posting. (1) A person may not throw away lighted matches, tobacco, cigarettes, cigars, or other lighted material on a forest road, private road, city street, county road, public highway, or railroad right-of-way, except lighted materials used as safety signaling devices, in this state.

(2) A person may not empty an ashtray containing matches, ashes, cigarette or cigar refuse, or other related material on a forest road, private road, city street, county road, public highway, or railroad right-of-way in this state.

(3) A person convicted of violating subsection (1) or (2) shall be fined a ~~minimum~~ *maximum* of ~~$100~~ *$500*.

(4) Municipalities, the forest service, county governments, property owners, public transit operators, federal highway administrators, and any other appropriate entity may, at their discretion, post copies of this section in conspicuous locations."

Approved May 1, 2001

CHAPTER NO. 514

[HB 452]

AN ACT ESTABLISHING A DEFERRED RETIREMENT OPTION PLAN IN THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; SPECIFYING ELIGIBILITY AND PARTICIPATION CRITERIA; SPECIFYING CONTRIBUTIONS AND THE INTEREST RATE TO BE CREDITED; PROVIDING FOR SURVIVORSHIP BENEFITS AND DISTRIBUTION OPTIONS; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 8] may be cited as the "deferred retirement option plan" or DROP.

Section 2. Definitions. Unless the context requires otherwise, as used in [sections 1 through 8], the following definitions apply:

(1) "DROP" means the deferred retirement option plan established pursuant to [sections 1 through 8].

(2) "DROP benefit" means the lump-sum benefit calculated and distributed as provided in [sections 1 through 8].

(3) "DROP period" means the period of time that a member irrevocably elects to participate in the DROP pursuant to [section 4].

(4) "Participant" means a member of the retirement system who has elected to participate in the DROP pursuant to [sections 1 through 8].

Section 3. Deferred retirement option plan established — compliance with federal law — rulemaking. (1) The board shall establish a DROP for eligible members of the retirement system who elect to participate.

(2) The board shall administer the DROP in compliance with the internal revenue code and the applicable rules, regulations, and determinations of the internal revenue service.

(3) The board may adopt rules to administer [sections 1 through 8].

Section 4. Eligibility — participation criteria — membership status — service interruptions. (1) Any member eligible to retire under 19-9-801(2) is eligible and may elect to participate in the DROP by filing a one-time irrevocable election with the board on a form prescribed by the board.

(2) A member electing to participate in the DROP shall participate for a minimum of 1 month and may not participate for more than 5 years.

(3) A member may participate in the DROP only once.

(4) A participant remains a member of the retirement system, but may not receive membership service or service credit in the system for the duration of the member's DROP period.

(5) If participation is interrupted by military service or disability and the participant has not received any distribution from the DROP, then the duration of the absence may not be included in calculating the DROP period.

Section 5. Retirement system contributions — benefit payments to individual accounts — investment returns. (1) During a member's participation in the DROP, state contributions under 19-9-702, employer contributions under 19-9-703, and member contributions under 19-9-710 must continue to be made to the retirement system.

(2) For each DROP participant, the board shall calculate a DROP benefit equal to the monthly benefit, including any postretirement adjustments, that would have been payable had the participant terminated employment and retired multiplied by each month of the DROP period that the participant completes.

Section 6. Survivorship benefits. (1) If a participant dies prior to the receipt of the DROP benefit pursuant to [section 8], the participant's surviving spouse or dependent child is entitled to receive a lump-sum payment equal to the participant's DROP benefit.

(2) If there is no surviving spouse or dependent child, the designated beneficiary is entitled to receive a lump-sum payment equal to the participant's DROP benefit.

(3) The benefit paid pursuant to this section must include interest reflecting the retirement system's annual investment earnings from the date the member's DROP period commenced.

Section 7. Employment and benefits after DROP period. (1) Except as otherwise provided in this section, if a member continues employment in a covered position after the DROP period ends, the board shall consider the member newly hired as of the date the DROP period ended.

(2) When a member, after the end of the DROP period, continues employment in a covered position, state contributions under 19-9-702, employer contributions under 19-9-703, and member contributions under 19-9-710 must continue to be made to the retirement system.

(3) A member who, after the end of the DROP period, continues employment in a covered position:

(a) is immediately vested for benefits accrued subsequent to the end of the DROP period; and

(b) is, upon terminating covered employment, entitled to:

(i) the member's service retirement benefit earned prior to the DROP period, including any postretirement benefit adjustment for which the member is eligible under this chapter;

(ii) a service retirement benefit based on the member's service and final average compensation during membership subsequent to the end of the DROP period, including any postretirement benefit adjustment for which the member is eligible under this chapter; and

(iii) the member's DROP benefit.

Section 8. Distribution of DROP benefit. (1) Upon termination of covered employment, a participant is entitled to:

(a) receive a lump-sum distribution of the participant's DROP benefit;

(b) roll the participant's DROP benefit into another qualified plan in a manner prescribed and authorized by the board; or

(c) any other distribution or method of payment of the DROP benefit approved by the board.

(2) A distribution pursuant to this section is subject to the provisions of 19-2-907 and 19-2-909 and all other applicable provisions of Title 19.

(3) The amount of a distribution, rollover, transfer, or other payment of a DROP benefit pursuant to this section must include interest reflecting the retirement system's annual investment earnings from the date the member's DROP period commenced.

Section 9. Board to seek commissioner's ruling. The public employees' retirement board shall, as soon as possible, request in writing a ruling from the commissioner of internal revenue as to whether the deferred retirement option plan established pursuant to [sections 1 through 8] constitutes a qualified plan pursuant to section 401(a) of the Internal Revenue Code. The board shall notify the secretary of state and code commissioner when the commissioner of internal revenue has issued a favorable determination.

Section 10. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 19, chapter 9, and the provisions of Title 19, chapter 9, apply to [sections 1 through 8].

Section 11. Effective dates. (1) Except as provided in subsection (2), [this act] is effective contingent on the notification to the secretary of state that the commissioner of internal revenue has made a favorable determination pursuant to [section 9].

(2) [Sections 1 through 3, 9, and 10 and this section] are effective on passage and approval.

Approved May 1, 2001

CHAPTER NO. 515

[HB 496]

AN ACT GENERALLY REVISING THE LAWS RELATING TO PROCEDURES IN CIVIL CASES; CLARIFYING THE LAWS RELATING TO COLLECTIONS IN CIVIL AND CRIMINAL CASES; REVISING PROCEDURES RELATING TO COLLECTION AND JUDGMENT LIENS; ALLOWING A PARTY TO APPEAR IN PRETRIAL CONFERENCES AND HEARINGS BY TELEPHONE CONFERENCE IN MUNICIPAL COURTS, JUSTICES' COURTS, AND SMALL CLAIMS COURTS; ALLOWING JUSTICES' COURTS TO ASSIGN THE COLLECTION OF FINES TO PRIVATE PERSONS OR ENTITIES; EXTENDING THE LIEN CREATED ON REAL PROPERTY BY DOCKETING A JUDGMENT FROM 6 TO 10 YEARS; EXTENDING THE STATUTE OF LIMITATIONS FOR COMMENCING AN ACTION ON A JUDGMENT RENDERED IN A COURT NOT OF RECORD FROM 6 TO 10 YEARS; EXTENDING THE TIME PERIOD IN WHICH A WRIT FOR EXECUTION OF JUDGMENT CAN BE ISSUED FROM 6 TO 10 YEARS; AMENDING THE CONTENT OF THE LEVY NOTICE ON A WRIT OF EXECUTION; MAKING CIVIL PENALTIES FOR ISSUING A BAD CHECK OR STOPPING PAYMENT APPLICABLE TO A CHECK PRESENTED ELECTRONICALLY; REQUIRING FINANCIAL INSTITUTIONS AND OTHER THIRD PARTIES HOLDING ASSETS OF A JUDGMENT DEBTOR TO RESPOND TO THE NOTICE OF LEVY IN A TIMELY MANNER; AMENDING SECTIONS 3-10-222, 3-10-304, 3-10-601, 15-1-704, 25-9-301, 25-13-101, 25-13-301, 25-13-402, 25-30-102, 25-31-914, 27-1-717, 27-2-201, 39-51-1304, 46-17-303, 46-17-402, AND 61-6-123, MCA; AND REPEALING SECTIONS 25-13-102 AND 25-31-407, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Pretrial conferences or hearings — appearance by telephone conference. (1) At the discretion of the court, a party or the party's attorney may make an appearance by telephone conference in a pretrial conference or other hearing under this chapter if:

(a) the party does not need to or intend to offer evidence at the pretrial conference or hearing; and

(b) the party does not reside within the county in which the case is filed or the party's or the party's attorney's principal place of business is not located in that county.

(2) The party requesting the telephone conference is responsible for arranging the telephone conference and paying the associated costs.

Section 2. Section 3-10-222, MCA, is amended to read:

"**3-10-222. Collection and payment of ~~moneys~~ *money*.** ~~Justices~~ *A justice* of the peace ~~must receive from~~ *may require* the sheriff, *levying officer,* or constable of ~~their~~ *any* county *to pay over* all ~~moneys~~ *money* collected on any process or order issued from ~~their courts respectively~~ *the justice's court* and ~~must~~ *to* pay ~~the same and~~ all ~~moneys~~ *money* paid to ~~them~~ *the justice* in ~~their~~ *the justice's* official capacity over to the parties entitled or authorized to receive ~~them~~ *the money,* without delay."

Section 3. Section 3-10-304, MCA, is amended to read:

"**3-10-304. Territorial extent of civil jurisdiction.** The civil jurisdiction of a justice's court extends to the limits of the county in which it is held, and ~~mesne~~ *intermediate* and final process of a justice's court in a county may be issued to and served in any part of the county. A summons of a justice's court may be served ~~as provided in 25-31-407~~ *in any county of the state.*"

Section 4. Section 3-10-601, MCA, is amended to read:

"**3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees.** (1) Each ~~justice of the peace~~ *justice's court* shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county in which the justice of the peace holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) ~~All~~ *Except as provided in subsection (4), all* fines, penalties, and forfeitures that are required to be imposed, collected, or paid in a justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

(3) The county treasurer shall, in the manner provided in 15-1-504, distribute money received under subsection (2) as follows:

(a) 50% to the state treasurer for deposit in the state general fund; and

(b) 50% to the county general fund.

(4) (a) The justice's court may contract with a private person or entity for the collection of any final judgment that requires a payment to the justice's court.

(b) In the event that a private person or entity is retained to collect a judgment, the justice's court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedure and other postjudgment remedies in its own name.

(c) The justice's court may pay the private person or entity a reasonable fee for collecting the judgment."

Section 5. Section 15-1-704, MCA, is amended to read:

"**15-1-704. Filing with district court.** (1) After issuing a warrant, the department may file the warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the name of the taxpayer listed as the judgment debtor.

(2) A copy of the filed warrant may be sent by the department to the sheriff or agent authorized to collect the tax.

(3) A judgment lien filed pursuant to this section may be renewed for another 10-year period ~~pursuant to the methods provided in 25-13-102~~, *upon motion, or by judgment for that purpose founded upon supplemental pleadings*."

Section 6. Section 25-9-301, MCA, is amended to read:

"25-9-301. Docketing of judgment — lien — expiration. (1) Immediately after the entry of the judgment in the judgment book, the clerk shall make entries of the judgment under appropriate heads in the docket kept by the clerk.

(2) From the time the judgment is docketed, it becomes a lien upon all real property of the judgment debtor that is not exempt from execution in the county and that is either owned by the judgment debtor at the time or afterward acquired by the judgment debtor before the lien ceases. Except as provided in ~~subsection (3)~~ *61-6-123*, the lien continues for ~~6~~ *10* years unless the judgment is previously satisfied.

(3) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation or 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, unless the judgment is previously satisfied."

Section 7. Section 25-13-101, MCA, is amended to read:

"25-13-101. Time limit for issuing execution. (1) ~~Except as provided in subsection (2), the~~ *The* party in whose favor the judgment is given may, at any time within ~~6 years after the entry of the judgment~~ *the time period prescribed in 27-2-201(1) and (2)*, have a writ of execution issued for its enforcement.

(2) When the judgment is for the payment of child support, the party in whose favor the judgment is given may, at any time within 10 years after the termination of the support obligation or within 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, have a writ of execution issued for its enforcement."

Section 8. Section 25-13-301, MCA, is amended to read:

"25-13-301. Form and contents of writ. (1) The writ of execution must:

(a) be issued in the name of the state of Montana, sealed with the seal of the court, and subscribed by the clerk;

(b) be directed to the sheriff or levying officer;

(c) intelligibly refer to the judgment, stating the court and the county where it was entered and, if it is for money, the amount of money and the amount actually due on the judgment; and

(d) require the sheriff or levying officer to act substantially as provided in this part.

(2) In executions, the amount of the execution must be computed and stated as near as may be possible in dollars and cents, rejecting fractions of a cent.

(3) A writ of execution served upon an employer of the judgment debtor must be accompanied by a document that reasonably describes the exemptions from execution provided in 25-13-614.

(4) A notice of levy must contain information sufficient to identify the judgment debtor. If the information is not sufficient to identify the judgment debtor, the writ of execution must be returned to the sheriff or levying officer. If the writ of execution is returned to the sheriff or levying officer for lack of sufficient information, the person returning the writ of execution shall indicate the information provided was not sufficient to identify the judgment debtor."

Section 9. Section 25-13-402, MCA, is amended to read:

"25-13-402. How writ executed. (1) *(a)* The sheriff or levying officer shall execute the writ against the property of the judgment debtor no later than ~~60~~ *120* days after receipt of the writ by:

~~(a)~~*(i)* levying on a sufficient amount of property, if there is sufficient property;

~~(b)~~*(ii)* collecting or selling the things in action; ~~and~~ *and*

~~(c)~~*(iii)* selling the other property and paying to the judgment creditor or the judgment creditor's attorney as much of the proceeds as will satisfy the judgment.

(b) (i) If the third party is a corporation or other legal entity, service must be accomplished by personally serving the writ upon an officer or supervising employee of the entity or other department or person designated by the third party or by mail, as provided in subsection (1)(b)(ii).

(ii) Service by mail upon a corporation or other legal entity must be consented to in writing by the corporation or other legal entity and may be made by mailing a copy of the writ to an officer, supervising employee of the third party, or other department or person designated by the third party. If service is by mail, it must be accompanied by a notice that the officer or employee receiving the writ shall forward the writ to the person responsible for processing the levy for the third party if the officer or employee initially receiving the writ is not the proper party to process the levy. The writ will be considered served on the date and time that the writ is received by the officer, supervising employee, or designee of the third party, but no later than 5 business days after it is mailed.

(c) A levy under subsection (1)(b) is effective when the writ is served by personal service or by mail, as provided in subsection (1)(b)(ii).

(2) Any proceeds in excess of the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When the sheriff or levying officer determines that there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, the sheriff or levying officer shall levy only on the part of the property that the judgment debtor may indicate if the property indicated is sufficient to satisfy the judgment and costs.

(3) With respect to earnings of a judgment debtor, an employer shall respond to the levy based upon the earnings accrued to the end of the regular pay period in which the levy occurred.

(4) With respect to property held by a third party, including but not limited to banks, credit unions, and other financial institutions and those parties identified in 25-13-306, the third party shall respond to the levy based on the assets held at the time of levy. Response must be made within 10 business days following the date of the levy by delivering the assets or payments to the sheriff or levying officer.

~~(4)~~*(5)* Except for perishable property, the sheriff or levying officer shall hold any property or money levied upon for 10 days, excluding weekends and holidays, following notification of execution upon the judgment debtor. After that time, the sheriff or levying officer may sell the property and pay the money to the judgment creditor.

~~(5)~~*(6)* If the first levy is not sufficient to satisfy the writ, the sheriff or levying officer may levy, from time to time and as often as necessary, within the ~~60~~ *120* days until the judgment is satisfied or the writ expires."

Section 10. Section 25-30-102, MCA, is amended to read:

"25-30-102. Fees and fines — *collection*. (1) The fees and fines in municipal court must be the same as the fees and fines provided by law or ordinance, and except as provided in subsection (2), all fees and fines collected by the court must be paid into the city treasury.

(2) (a) ~~If a final judgment is entered for a fine and the fine is immediately due, the~~ *The* municipal court may contract with a private person or entity for the collection of ~~the fine~~ *any final judgment that requires a payment to the municipal court*.

(b) In the event that a private person or entity is retained to collect a ~~fine~~ *judgment*, the municipal court ~~is authorized to~~ *may* assign the judgment ~~for the fine~~ to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedure *and other postjudgment remedies* in its own name.

(c) The municipal court, after deducting the charges provided for in 46-18-236, ~~is authorized to~~ *may* pay ~~to~~ the private person or entity a reasonable fee for collecting the ~~fine~~ *judgment*."

Section 11. Section 25-31-914, MCA, is amended to read:

"25-31-914. Lien on real property. The judgment rendered in a justice's court creates a lien upon any lands of the defendant upon the filing of a transcript of the original docket, certified by the clerk of the justice's court, with the office of the clerk of the district court of the county in which the lands are situated. When ~~so~~ filed and from the time of filing, the judgment becomes a lien upon all real property ~~of the judgment debtor, not exempt from execution,~~ in ~~such~~ *that* county~~,~~ *that is* owned by ~~him~~ *the judgment debtor* at the time or ~~which he~~ *that the judgment debtor* may afterwards and before the lien expires acquire *and that is not exempt from execution*. The lien continues for ~~6~~ *10* years unless the judgment ~~be~~ *is* previously satisfied."

Section 12. Section 27-1-717, MCA, is amended to read:

"27-1-717. Issuing a bad check or stopping payment — civil liability. (1) A person who issues a check, draft, or order for the payment of money is liable for a service charge, as provided in subsection (2), or for damages in a civil action, as provided in subsection (3), to the payee to whom the check, draft, or order is issued, or the payee's assignee, if the check, draft, or order is:

(a) dishonored for lack of funds or credit or because the issuer has no account with the drawee; or

(b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer stops payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check.

(2) The person who issues the check, draft, or order is liable to the payee or the payee's assignee for a service charge in a reasonable amount, not greater than $30. The payee or the payee's assignee may waive the service charge. Demand for the service charge must be made in writing by the payee or the payee's assignee

and mailed to the address shown on the check, draft, or order or to the issuer's last-known address. The demand must state that the issuer is required to pay the value of the check, draft, or order and service charge and must state the service charge provided for in this section.

(3) The amount of damages awarded pursuant to subsection (1) must be an amount equal to the service charge plus the greater of $100 or three times the amount for which the check, draft, or order was issued. However, damages may not exceed the value of the check, draft, or order by more than $500.

(4) The remedy provided by subsection (3) is available only if:

(a) the payee or the payee's assignee has made the written demand required in subsection (2) not less than 10 days before commencing the action; and

(b) the issuer has failed to tender an amount of money equal to the amount demanded under subsection (2) prior to the commencement of the action.

(5) The remedy provided by this section:

(a) may be pursued notwithstanding the provisions of 27-1-312;

(b) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute providing a criminal penalty; and

(c) does not affect the obligation of the issuer provided for in 30-3-423 to pay the amount of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the provisions of this section apply.

(6) Upon introduction by the payee or the payee's assignee of evidence sufficient to establish the fact of mailing as required under subsection (2), the failure to receive the written demand is not a defense to the action allowed under subsection (3).

(7) This section applies to all checks, drafts, and orders, including those electronically presented for payment."

Section 13. Section 27-2-201, MCA, is amended to read:

"**27-2-201. Actions upon judgments.** (1) Except as provided in subsections (3) through (5), the period prescribed for the commencement of an action upon a judgment or decree of any court of record of the United States or of any state within the United States is within 10 years.

(2) The period prescribed for the commencement of an action upon a judgment or decree rendered in a court not of record is within 6 *10* years. The cause of action is considered, in that case, to have accrued when final judgment was rendered.

(3) The period prescribed for the commencement of an action to collect past-due child support that has accrued after October 1, 1993, under an order entered by a court of record or administrative authority is within 10 years of the termination of support obligation or within 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later.

(4) The period prescribed for the commencement of an action to collect past-due child support that has accrued under a support order issued in another state, in a foreign country, or in a tribal court is as provided in subsection (3) or as provided in the law of the issuing jurisdiction, whichever period is longer.

(5) An action under 46-18-247(3) to enforce an order of restitution entered by a court of record may be commenced at any time within the offender's lifetime during which restitution remains unpaid."

Section 14. Section 39-51-1304, MCA, is amended to read:

"**39-51-1304. Lien for payment of unpaid taxes — levy and execution.** (1) Unpaid taxes, including penalties and interest assessed on unpaid taxes, have the effect of a judgment against the employer, ~~or~~ against the liable corporate officer or liable member or manager of a limited liability company referred to in 39-51-1105, or *against* a partner in a limited liability partnership~~,~~. ~~arising~~ *The judgment arises* at the time that the payments are due. The department may issue a certificate stating the amount of payments due and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time that the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment through the sheriff or agent authorized to collect the tax in the same manner as prescribed for execution upon a judgment. A notice of levy may be made by means of a certified letter by an agent authorized to collect the tax. The department may enforce the judgment at any time within 10 years of the creation of the lien or the effective date of the lien, whichever is later.

(2) A judgment lien filed pursuant to this section may be renewed for another 10-year period ~~pursuant to the methods provided in 25-13-102~~, *upon motion, or by judgment for that purpose founded upon supplemental pleadings.*

(3) The lien provided for in subsection (1) is not valid against any third party owning an interest in real or personal property against which the judgment is enforced if:

(a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that all taxes, penalties, and interest due from the grantor have been paid.

(4) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed under 39-51-1303, this section, or both, to collect the delinquent taxes, penalties, and interest from the:

(a) employer;

(b) liable corporate officer;

(c) liable member or manager of a limited liability company referred to in 39-51-1105; or

(d) partner in a limited liability partnership.

(5) The lien provided for in subsection (1) must be released upon payment in full of the unpaid taxes, penalties, and accumulated interest. The department may release or may partially release the lien upon partial payment or whenever the department determines that the release or partial release of the lien will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if it determines that the lien is unenforceable."

Section 15. Section 46-17-303, MCA, is amended to read:

"**46-17-303. Deposit of fines — *collection*.** (1) Except as provided in subsection (2), all fines imposed and collected by a city court must be paid to the treasurer of the county, city, or town, as the case may be, within 30 days of receipt.

The city judge shall file a copy of any receipt given for a collected fine with the county, city, or town clerk, as the case may be.

(2) (a) ~~If a final judgment is entered for a fine and the fine is immediately due, the~~ *The* city court may contract with a private person or entity for the collection of ~~the fine~~ *any final judgment that requires a payment to the city court.*

(b) In the event that a private person or entity is retained to collect a ~~fine~~ *judgment*, the city court ~~is authorized to~~ *may* assign the judgment ~~for the fine~~ to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedure *and other postjudgment remedies* in its own name.

(c) The city court, after deducting the charges provided for in 46-18-236, ~~is authorized to~~ *may* pay ~~to~~ the private person or entity a reasonable fee for collecting the ~~fine~~ *judgment.*"

Section 16. Section 46-17-402, MCA, is amended to read:

"**46-17-402. Fees and fines — *collection*.** (1) The fees and fines in municipal court must be the same as the fees and fines provided by law or ordinance, and except as provided in subsection (2), all fees and fines collected by the court must be paid into the city treasury.

(2) (a) ~~If a final judgment is entered for a fine and the fine is immediately due, the~~ *The* municipal court may contract with a private person or entity for the collection of ~~the fine~~ *any final judgment that requires a payment to the municipal court.*

(b) In the event that a private person or entity is retained to collect a ~~fine~~ *judgment*, the municipal court ~~is authorized to~~ *may* assign the judgment ~~for the fine~~ to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedure *and other postjudgment remedies* in its own name.

(c) The municipal court, after deducting the charges provided for in 46-18-236, ~~is authorized to~~ *may* pay ~~to~~ the private person or entity a reasonable fee for collecting the ~~fine~~ *judgment.*"

Section 17. Section 61-6-123, MCA, is amended to read:

"**61-6-123. Suspension to continue until judgments paid and proof given — maximum period of suspension.** A license or nonresident's operating privilege remains suspended and may not be renewed, nor may a license be issued in the name of a judgment debtor, including a judgment debtor not previously licensed, until each judgment is stayed, satisfied in full, or satisfied to the extent provided in this part~~,~~ and until the person gives proof of compliance with 61-6-301 subject to the exemptions provided in 61-6-122 and 61-6-125 or 6 years have passed from date judgment was first entered ~~as provided in 25-9-301~~ and the person has complied with 61-6-301 and 61-6-302."

Section 18. Repealer. Sections 25-13-102 and 25-31-407, MCA, are repealed.

Section 19. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 25, chapter 30, part 1; Title 25, chapter 31, part 7; and Title 25, chapter 35, part 6, and the provisions of Title 25, chapter 30, part 1; Title 25, chapter 31, part 7; and Title 25, chapter 35, part 6, apply to [section 1].

Approved May 1, 2001

CHAPTER NO. 516

[HB 499]

AN ACT ALLOWING A CREDIT AGAINST CERTAIN PERMITTING FEES FOR CERTAIN USES OF POSTCONSUMER GLASS; ESTABLISHING ELIGIBILITY CRITERIA FOR USE OF THE CREDIT; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES TO IMPLEMENT THE CREDIT; PRECLUDING THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE BOARD OF ENVIRONMENTAL REVIEW FROM INCREASING FEE ASSESSMENTS BEYOND LEGISLATIVE APPROPRIATION LEVELS TO OFFSET THE COST OF THE CREDIT; AMENDING SECTION 75-2-220, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 4], unless otherwise required by the context, the following definitions apply:

(1) "Applicant" means a person submitting a permit application for which the person is required to pay a fee under 75-2-220 and includes a permitholder who pays an annual fee.

(2) "Postconsumer glass" means glass or glass-like material that has:

(a) served its final intended use;

(b) been discarded by an individual, commercial enterprise, or other entity after having fulfilled its intended application or use in Montana;

(c) useful physical or chemical properties remaining after having served a specific purpose and that would normally be disposed of as solid waste, as defined in 75-10-203, by a consumer, processor, or manufacturer.

(3) (a) "Recycled material" means a substance, compound, conglomeration, mixture, or the like that is composed, in whole or in part, of postconsumer glass.

(b) Material that contains postconsumer glass is recycled material for the purposes of this section if the postconsumer glass is used as or a component of:

(i) fill, aggregate, or surface material used in construction or road construction;

(ii) sandblasting material;

(iii) landscaping material; or

(iv) a sandstone replacement in the manufacture of cement.

(c) The uses included in subsection (3)(b) are not exclusive, and other uses of postconsumer glass as a substitute for the use or consumption of new material may also be considered by the department as recycled material.

Section 2. Amount and duration of credit — how claimed. (1) An applicant may receive a credit against the fees imposed in 75-2-220 for using postconsumer glass in recycled material if the applicant qualifies under [section 3].

(2) Subject to [section 3(2)], an applicant qualifying for a credit under [section 3] is entitled to claim a credit, as provided in subsection (3) of this section, for using postconsumer glass in recycled material in the calendar year subsequent to the calendar year in which the postconsumer glass was used in recycled material.

If postconsumer glass was used in recycled material prior to January 1, 2002, but on or after January 1, 2001, an applicant is entitled to a credit for calendar year 2002.

(3) (a) The amount of the credit that may be claimed under this section is $7 for each ton of postconsumer glass that was used as a substitute for nonrecycled material in the calendar year prior to the calendar year for which the applicant is paying fees for permits under 75-2-220.

(b) The maximum credit allowable in any calendar year for fees payable under 75-2-220 is $1,500 or the total amount of fees due, whichever is less.

Section 3. Credit for use of postconsumer glass. (1) The following requirements must be met for an applicant to be entitled to a credit for the use of postconsumer glass:

(a) The postconsumer glass must have been used in recycled material in the calendar year prior to the calendar year in which the applicant is applying for and paying for permits under 75-2-220.

(b) (i) The applicant claiming a credit must be a person who, as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that uses postconsumer glass in recycled materials. The use of postconsumer glass as recycled material may be a minor or nonprofit part of a business otherwise engaged in a business activity.

(ii) The applicant may but need not operate or conduct a business that uses postconsumer glass as recycled material. If more than one person has an interest in a business with qualifying uses of postconsumer glass, they may allocate all or any part of the allowable credit among themselves and their successors or assigns.

(c) The business must have been owned or leased by the applicant claiming the credit during the calendar year prior to the calendar year for which the permit fees are due under 75-2-220, except as otherwise provided in subsection (1)(b), and must have used postconsumer glass in recycled material during the calendar year prior to the calendar year for which the credit is claimed.

(d) The postconsumer glass used in recycled material may not be an industrial waste generated by the person claiming the credit unless:

(i) the person generating the waste historically has disposed of the waste onsite or in a licensed landfill; and

(ii) standard industrial practice has not generally included the reuse of the waste in the manufacturing process.

(2) A credit under this section may be claimed by an applicant for a business only if the qualifying postconsumer glass was used in recycled material before January 1, 2006.

(3) The credit provided by this section is not in lieu of any other incentive to which the applicant otherwise may be entitled under Title 15 or this chapter.

(4) A credit otherwise allowable under this section that is not used by the applicant in the calendar year for which the permits are applied may not be:

(a) carried forward to offset an applicant's permit fees for any succeeding calendar year; or

(b) carried back to offset an applicant's permit fees for any preceding calendar year.

Section 4. Postconsumer glass qualifying for credit — rulemaking. (1) The department shall adopt rules describing postconsumer glass and recycled material that qualify for the credit authorized by [section 3].

(2) In addition to the public participation provisions of Title 2, chapter 4, the department shall maintain a register of interested persons and experts in the field of recycling postconsumer glass. The department shall mail a notice to the interested persons identified under this subsection of the department's contemplated actions, soliciting their views on possible solutions or courses of action.

Section 5. Section 75-2-220, MCA, is amended to read:

"75-2-220. Fees — special assessments — late payment assessments — *credit*. (1) Concurrent with the submittal of a permit application required under this chapter and annually for the duration of the permit, the applicant shall submit to the department a fee sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting requirements in this chapter, *including*~~, including~~:

(a) reviewing and acting upon the application;

(b) implementing and enforcing the terms and conditions of the permit. This amount does not include any court costs or other costs associated with an enforcement action. If the permit is not issued, the department shall return this portion of the fee to the applicant.

(c) emissions and ambient monitoring;

(d) preparing generally applicable regulations or guidance;

(e) modeling, analysis, and demonstrations;

(f) preparing inventories and tracking emissions;

(g) providing support to sources under the small business stationary source technical and environmental compliance assistance program; and

(h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

(2) In recovering the costs described in subsection (1), the department may assess an application fee based on estimated actual emissions or an annual fee based on actual emissions of air pollutants regulated under this chapter, including but not limited to volatile organic compounds, each air pollutant regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each air pollutant subject to a national primary ambient air quality standard.

(3) The board shall by rule provide for the annual adjustment of all fees assessed for operating permit applications under 75-2-217 and 75-2-218 to account for changes to the consumer price index, as required by Subchapter V of the federal Clean Air Act.

(4) In addition to the fee required under subsection (1), the board may order the assessment of additional fees required to fund specific activities of the department that are directed at a particular geographic area if the legislature authorizes the activities and appropriates funds for the activities, including emissions or ambient monitoring, modeling analysis or demonstrations, or emissions inventories or tracking. Additional assessments may be levied only on those sources that are within or are believed by the department to be impacting

the geographic area. Before the board may require the fees, it shall first determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or implementation of this chapter, that the amount of the requested fees is appropriate, that the assessments apportion the required funding in an equitable manner, and that the department has obtained the necessary appropriation. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(5) (a) If the applicant or permitholder fails to pay in a timely manner a fee required under subsection (1), in addition to the fee, the department may:

(i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed as provided in 15-1-216; or

(ii) revoke the permit consistent with those procedures established under this chapter for permit revocation.

(b) Within 1 year of revocation, the department may reissue the revoked permit after the applicant or permitholder has paid all outstanding fees required under subsections (1) and (4), including all penalties and interest provided for under this subsection (5). In reissuing the revoked permit, the department may modify the terms and conditions of the permit as necessary to account for changes in air quality occurring since revocation.

(c) The board shall by rule provide for the implementation of this subsection (5), including criteria for imposition of the sanctions described in this subsection (5).

(6) The board may by rule allow the reduction of a fee required under this section for an operating permit or permit renewal to account for the financial resources of a category of small business stationary sources.

(7) As a condition of the continuing validity of a permit issued by the department under this chapter prior to October 1, 1993, the board may by rule require the permitholder to pay the fees under subsections (1) and (4).

(8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air Act and that is not required to hold an air quality permit from the department as of October 1, 1993, the board may, as a condition of continued operation, require by rule that the owner or operator of the source pay the fees under subsections (1) and (4).

(9) (a) The department shall give written notice of the fee to be assessed and the basis for the department's fee assessment under this section to the owner or operator of the air pollutant source. The owner or operator may appeal the department's fee assessment to the board within 20 days after receipt of the written notice.

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive. An appeal may not be based on the amount of the fee contained in the schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice required in subsection (9)(a).

(d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection (9).

(10) The department may not charge more than one fee annually to a source of air pollutants for the costs identified in subsection (1).

(11) The total of the fees charged to an applicant under subsections (1) and (4) must be reduced by the amount of any credit accruing to the applicant under [section 2]. The department may not increase fee assessments beyond legislative appropriation levels to adjust for any credit claimed under [section 2]. The credit applied under [section 2] may not limit the department's ability to collect fees sufficient to cover the reasonable costs, both direct and indirect, of developing and administering the permitting requirements of this chapter."

Section 6. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 75, chapter 2, and the provisions of Title 75, chapter 2, apply to [sections 1 through 4].

Section 7. Effective date. [This act] is effective on passage and approval.

Section 8. Termination. [This act] terminates December 31, 2005.

Approved May 1, 2001

CHAPTER NO. 517

[HB 500]

AN ACT REVISING CERTAIN PROVISIONS OF THE LITTLE DAVIS-BACON LAWS; CHANGING THE PREVAILING WAGE FROM ONE COMPUTED BASED ON A WEIGHTED AVERAGE TO ONE COMPUTED BASED ON WORK PERFORMED; REQUIRING POSTING OF PREVAILING WAGE AND FRINGE BENEFIT RATES; REQUIRING NOTICE TO A PUBLIC WORKS CONTRACTOR OR EMPLOYER OF THE REQUIREMENT TO POST PREVAILING WAGE AND BENEFIT RATES AND THE REQUIREMENT TO KEEP PAYROLL RECORDS FOR 3 YEARS AFTER COMPLETION OF WORK ON A PROJECT; REQUIRING SURVEYS OF CONTRACTORS AND EMPLOYERS; AMENDING SECTIONS 18-2-401, 18-2-406, AND 18-2-422, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-401, MCA, is amended to read:

"18-2-401. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) A "bona fide resident of Montana" is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. ~~Sojourners or persons~~ *Persons* who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) (a) "Construction services" means work performed by an individual in construction, heavy construction, highway construction, and remodeling work.

(b) The term does not include:

(i) engineering, superintendence, management, office, or clerical work on a public works contract; or

(ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.

(4) "Contractor" means any general contractor, subcontractor, firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in construction services.

~~(4)~~*(5)* "Department" means the department of labor and industry provided for in 2-15-1701.

~~(5)~~*(6)* "District" means a prevailing wage rate district established as provided in 18-2-411.

(7) "Employer" means any firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in nonconstruction services.

~~(6)~~*(8)* "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and zone pay and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, utility rights-of-way, staging yards located on or off the right-of-way, or new or reopened pits that produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the general public.

~~(7)~~*(9)* "Nonconstruction services" means work performed by an individual, not including management, office, or clerical work, for:

(a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;

(b) custodial or security services for publicly owned buildings and facilities;

(c) grounds maintenance for publicly owned property;

(d) the operation of public drinking water supply, waste collection, and waste disposal systems;

(e) law enforcement, including janitors and prison guards;

(f) fire protection;

(g) public or school transportation driving;

(h) nursing, nurse's aid services, and medical laboratory technician services;

(i) material and mail handling;

(j) food service and cooking;

(k) motor vehicle and construction equipment repair and servicing; and

(l) appliance and office machine repair and servicing.

~~(8)~~*(10)* "Project location" means the construction site where a public works project involving construction services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and specifications.

~~(9)~~*(11)* (a) "Public works contract" means a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of $25,000. The nonconstruction services classification does not apply to any school district that at any time prior to April 27, 1999, contracted with a private contractor for the provision of nonconstruction services on behalf of the district.

(b) The term does not include contracts entered into by the department of public health and human services for the provision of human services.

~~(10)~~*(12)* "Special circumstances" means all work performed at a facility that is built or developed for a specific Montana public works project and that is located in a prevailing wage district that contains the project location or that is located in a contiguous prevailing wage district.

~~(11)~~*(13)* (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages must be computed ~~from a weighted average wage rate based on all of the hours worked on work~~ *by the department based on work performed by Montana contractors who are registered under Title 39, chapter 9, and whose work is performed according to commercial building codes. The contractor survey must include information pertaining to the number of skilled craftspersons employed in the employer's peak month of employment and the wages and benefits paid for each craft. In setting the prevailing wages from the survey for each craft, the department shall use the weighted average wage for each craft, except in those cases in which the survey shows that 50% of the craftspersons are receiving the same wage. When the survey shows that 50% of the craftspersons are receiving the same wage, that wage is the prevailing wage for that craft. The work performed must be work* of a similar character *to the work* performed in the district unless the *annual* survey ~~of~~ *of construction contractors* ~~employers~~ *and the biennial survey of nonconstruction service employers* in the district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by ~~a~~ *the* survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and require the commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

~~(12)~~*(14)* "Work of a similar character" means work on private ~~or~~ commercial projects as well as work on public projects."

Section 2. Section 18-2-406, MCA, is amended to read:

"**18-2-406. Posting wage scale *and fringe benefits*.** ~~Contractors, subcontractors, and employers who are~~ *The contractor* performing work or providing *construction* services under public works contracts, as provided in this part, shall post in a prominent and accessible site on the project or ~~work area~~ *staging area*, not later than the first day of work *and continuing for the entire duration of the project*, a legible statement of all wages *and fringe benefits* to be paid to the employees ~~employed on such site or work area~~."

Section 3. Section 18-2-422, MCA, is amended to read:

"**18-2-422. Bid specification and public works contract to contain standard prevailing wage rate *and payroll record notification*.** All public works contracts and the bid specifications for those contracts must contain*:*

(1) a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, that the contractors ~~and subcontractors~~ *and employers* shall pay during construction of the project*;*

(2) a provision requiring each contractor and employer to maintain payroll records in a manner readily capable of being certified for submission under 18-2-423, for not less than 3 years after the contractor's or employer's completion of work on the project; and

(3) a provision requiring each contractor to post a statement of all wages and fringe benefits in compliance with 18-2-423."

Section 4. Effective date — applicability. [This act] is effective July 1, 2001, and applies to public works contracts entered into on or after [the effective date of this act].

Approved May 1, 2001

CHAPTER NO. 518

[HB 502]

AN ACT EXEMPTING HAY GRINDERS AND THEIR TOWING UNITS FROM CERTAIN WEIGHT STANDARDS; AND AMENDING SECTION 61-10-128, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-128, MCA, is amended to read:

"**61-10-128. When authorities may restrict right to use roadway.** (1) A local authority may not alter the limitations provided in 61-10-101 through

61-10-104 and 61-10-106 through 61-10-110 or substitute other limitations or requirements, except as provided in this section.

(2) The department of transportation by order, or a local road authority by ordinance or resolution, may prohibit the operation of or impose restrictions on the weight and speed of a vehicle traveling on a public highway under its respective jurisdiction and for which it is responsible for maintenance whenever the highway will be seriously damaged or destroyed by deterioration, rain, snow, or other climatic conditions, unless the use of vehicles on the highway is prohibited or the permissible vehicle weights and speed are reduced. The department of transportation or the authority that enacts the ordinance or resolution shall erect signs designating the department's order or the authority's ordinance or resolution at each end of that portion of the highway affected, and the order, ordinance, or resolution is not effective until the signs are erected. The department of transportation or the authority by ordinance or resolution may prohibit the operation of trucks or other commercial vehicles or impose limitations on their weight on designated highways, subject to the provisions of subsection (3). These prohibitions and limitations must be designated by appropriate signs placed on the highways.

(3) Neither the department of transportation nor a local authority may prohibit the operation of or impose a restriction on the weight of a vehicle loaded with perishable seed potatoes that is traveling on a public highway if:

(a) the vehicle is being operated within its legal licensed gross vehicle weight;

(b) the driver possesses a federal-state inspection certificate issued for the load; and

(c) the vehicle takes the most direct route from the point of loading to the nearest nonrestricted road.

(4) Hay grinders and their towing units are exempt from weight limits imposed by the department of transportation under this section."

Approved May 1, 2001

CHAPTER NO. 519

[HB 454]

AN ACT ENCOURAGING ADDITIONAL FREE PUBLIC HUNTING ON PRIVATE LAND BY ALLOWING THE ISSUANCE OF AN EITHER-SEX OR ANTLERLESS ELK PERMIT TO THE PUBLIC AND TO CERTAIN LANDOWNERS WHO MAKE THEIR PRIVATE PROPERTY AVAILABLE TO THE PUBLIC FOR FREE PUBLIC ELK HUNTING THROUGHOUT THE HUNTING SEASON; SETTING THE TERMS AND CONDITIONS OF THE LANDOWNER EITHER-SEX OR ANTLERLESS ELK PERMIT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, landowner stewards provide important habitat that beneficially contributes to elk herd numbers and health; and

WHEREAS, certain landowners close their land to public hunting, preventing any harvest of big game, while other landowners allow limited hunting access and harvest, creating a problem of uneven distribution of big game; and

WHEREAS, restricted access to private property for public hunting prevents the department from managing big game population numbers and distribution.

Be it enacted by the Legislature of the State of Montana:

Section 1. Either-sex or antlerless elk permit for landowner who offers free public elk hunting — terms, conditions, and issuance of permit. (1) In addition to any elk permits offered for sale, the department may, for wildlife management purposes, issue an either-sex or antlerless elk permit at no cost to a landowner who provides free public elk hunting on the landowner's property and who otherwise meets the conditions of this section. The department may issue elk permits to the public, at regular cost and in the number authorized in subsection (3), for hunting on the property of a landowner who opens property for public elk hunting for wildlife management purposes pursuant to this section.

(2) To be eligible for a permit pursuant to this section, a landowner:

(a) must own occupied elk habitat that is large enough, in the department's determination, to accommodate successful public hunting;

(b) may not have been issued a Class A-7 landowner license pursuant to 87-2-501(3) during the license year;

(c) must have entered into a contractual public elk hunting access agreement with the department that allows public access for free public elk hunting on the landowner's property throughout the regular hunting season and that includes public hunting by permitholders using permits that are valid for the hunting district;

(d) may not receive cash payments under 87-1-267; and

(e) may not charge a fee or authorize a person to charge a fee for hunting access on the landowner's property.

(3) Not more than 20% of permits issued pursuant to this section may be issued at no cost to a landowner, an immediate family member of a landowner, or an authorized full-time employee of a landowner. The remaining permits must be issued to the public on a first-come, first-serve basis.

(4) A permit issued pursuant to this section:

(a) is nontransferable and may not be sold; and

(b) may only be used for hunting conducted on property that is opened to public access pursuant to this section.

(5) The department may prioritize distribution of the permits according to the areas the department determines are most in need of management.

(6) If the department determines that a landowner or landowner's designee has not abided by the restrictions and conditions of a permit issued pursuant to this section, that landowner or landowner's designee is not eligible to receive another permit pursuant to this section during any subsequent license year.

(7) The department, through the commission, may authorize the issuance of permits under this section to a landowner who enters into a contractual public elk hunting access agreement with the department that defines the areas that will be open to public elk hunting, the number of public elk hunting days that will be allowed on the property, and other factors that the department and the landowner consider necessary for the proper management of elk on the landowner's property.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 5, and the provisions of Title 87, chapter 2, part 5, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Termination. [This act] terminates March 1, 2006.

Approved May 1, 2001

CHAPTER NO. 520

[HB 463]

AN ACT ALLOWING AN INDIVIDUAL WHO LEAVES WORK OR IS DISCHARGED BECAUSE OF CIRCUMSTANCES RESULTING FROM DOMESTIC VIOLENCE TO RECEIVE UNEMPLOYMENT BENEFITS TO WHICH THE INDIVIDUAL IS OTHERWISE ENTITLED; PROVIDING THAT THE UNEMPLOYMENT BENEFITS MAY NOT BE CHARGED TO THE EMPLOYER'S ACCOUNT; CAPPING THE BENEFITS AT A MAXIMUM OF 10 WEEKS PER CALENDAR YEAR; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO REPORT TO THE LEGISLATURE ON UNEMPLOYMENT BENEFITS APPLIED FOR AND GRANTED IN RELATION TO DOMESTIC VIOLENCE CLAIMS; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Unemployment benefits for victims of domestic violence. (1) (a) An individual who is otherwise eligible for benefits may not be denied benefits because the individual left work or was discharged because of circumstances resulting from the individual or a child of the individual being a victim of domestic violence or the individual left work or was discharged because of an attempt on the individual's part to protect the individual or the individual's child from domestic abuse.

(b) An employer's account may not be charged for the payment of benefits to an individual who left work or was discharged because of circumstances resulting from domestic violence as provided for in subsection (1)(a).

(c) An individual may not receive more than 10 weeks of unemployment benefits for the 12-month period after the filing of a claim under the provisions of this section. The provisions of this section do not affect the rights of an individual to receive unemployment benefits that the individual is entitled to under other provisions of state law.

(2) For the purposes of subsection (1), an individual must be treated as being a victim of domestic violence if the individual provides one or more of the following:

(a) an order of protection or other documentation of equitable relief issued by a court of competent jurisdiction;

(b) a police record documenting the domestic violence;

(c) medical documentation of domestic violence: or

(d) other documentation or certification of domestic violence provided by a social worker, clergy member, shelter worker, or professional person, as defined in 53-21-102, who has assisted the individual in dealing with domestic violence.

(3) An individual who is otherwise eligible for benefits under this section becomes ineligible if the individual remains in or returns to the abusive situation that caused the individual to leave work or be discharged.

(4) The department shall provide a report to the legislature, as provided in 5-11-210, regarding the benefits applied for and granted under this section, including a summary of the demographics of applicants for and recipients of the benefits and the average and total cost of benefits provided.

(5) For the purposes of this section, "domestic violence" means the physical, sexual, mental, or emotional abuse of an individual or the individual's child by a person with whom that individual or the individual's child lives or has recently lived.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 39, chapter 51, and the provisions of Title 39, chapter 51, apply to [section 1].

Section 3. Effective date — applicability. [This act] is effective July 1, 2001, and applies to an individual who leaves work or is discharged because of circumstances resulting from domestic violence on or after [the effective date of this act].

Section 4. Termination. [This act] terminates July 1, 2003.

Approved May 1, 2001

CHAPTER NO. 521

[HB 492]

AN ACT CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO MANAGE THE PRAIRIE DOG AS A SPECIES IN NEED OF MANAGEMENT; AMENDING SECTION 87-5-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, Montana has a responsibility to ensure that a viable prairie dog population is maintained in the state for the long term, as well as to ensure the long-term existence of species associated with prairie dogs; and

WHEREAS, the Montana Prairie Dog Working Group is developing a conservation plan for prairie dogs in Montana to provide for management of populations and habitats in order to ensure both the long-term existence of prairie dogs and the control of prairie dogs to protect existing land uses; and

WHEREAS, the only existing statutory authority for prairie dog management is to control them as rodents under Title 7, chapter 22, part 22, MCA, and as vertebrate pests under section 80-7-1101, MCA; and

WHEREAS, the U.S. Fish and Wildlife Service (USFWS) has found that the black-tailed prairie dog is warranted for listing under the federal Endangered Species Act (ESA) over an 11-state area that includes Montana, but that listing of this species is precluded at the present time because other candidate species have a higher priority for listing; and

WHEREAS, the USFWS finding is based in part on the inadequacy of regulatory mechanisms that Montana and other states currently possess to ensure maintenance of viable prairie dog populations for the long term; and

WHEREAS, Montana and 10 other states have entered into an agreement to jointly develop management plans that address the needs of the species across virtually its entire range, thus improving the status of the black-tailed prairie dog to the point that it can be removed from consideration for listing under the ESA; and

WHEREAS, the USFWS will review the status of the black-tailed prairie dog on an annual basis; and

WHEREAS, it is desirable to enable the Department of Fish, Wildlife, and Parks and the Department of Agriculture to implement management actions contained in Montana's prairie dog conservation plan while specifically protecting the current ability of landowners to manage prairie dogs on their lands; and

WHEREAS, it is desirable to facilitate long-term conservation of prairie dogs according to the conservation plan for prairie dogs in Montana while simultaneously reducing the likelihood that the black-tailed prairie dog will be listed under the ESA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-5-102, MCA, is amended to read:

"87-5-102. Definitions. As used in this part, the following definitions apply:

(1) "Account" means the nongame wildlife account established in 87-5-121.

(2) "Ecosystem" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life.

(3) "Endangered species" means ~~any~~ *a* species or subspecies of wildlife *that is* actively threatened with extinction due to any of the following factors:

(a) the destruction, drastic modification, or severe curtailment of its habitat;

(b) its overutilization for scientific, commercial, or sporting purposes;

(c) the effect on it of disease, pollution, or predation;

(d) other natural or ~~man-made~~ *artificial* factors affecting its prospects of survival or recruitment within the state; or

(e) any combination of the foregoing factors.

(4) "Management" means the collection and application of biological information for the purposes of ~~increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining such levels~~ *conserving populations of wildlife consistent with other uses of land and habitat.* The term includes the entire range of activities that constitute a modern scientific resource program, including but not limited to research, census, law enforcement, habitat improvement, *control,* and education. ~~Also included within the term, when and where appropriate, is~~ *The term also includes* the periodic ~~or total~~ protection of species or populations as well as regulated taking.

(5) "Nongame wildlife" means ~~any~~ *a* wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other wild animal not otherwise legally classified by statute or regulation of this state. Animals designated by statute or regulation of this state as predatory in nature are not classified as nongame wildlife for purposes of this part. *Prairie dogs are nongame wildlife and may be managed, controlled, and regulated under this part. Management and control by counties and the department of agriculture pursuant to Title 7, chapter 22, part 22 or 25, and Title 80, chapter 7, part 11, and control by the department of natural resources and conservation on state trust lands are permitted as long as the management and control are consistent with any management plan approved by the department, the department of natural resources and conservation, and the department of agriculture. Nothing in this part may be interpreted to limit a landowner's ability to control prairie dog concentrations on private lands.*

(6) "Optimum carrying capacity" means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the habitat to continue that function.

(7) "Person" means ~~any~~ *an* individual, firm, corporation, association, or partnership.

(8) "Take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife.

(9) "Wildlife" means ~~any~~ *a* wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild animal or any part, product, egg, or offspring or the dead body or parts ~~thereof~~ *of the animal*."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Termination. [This act] terminates October 1, 2007.

Approved May 1, 2001

CHAPTER NO. 522

[HB 495]

AN ACT PROVIDING FOR THE TRANSFER OF REVOKED COAL MINE OPERATING PERMITS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, APPLICABILITY DATES, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Operating permit revocation — permit transfer. (1) An operating permit that is revoked in accordance with this part does not terminate until 5 years after revocation or until substantial completion of seeding and planting on disturbed areas, whichever occurs earlier.

(2) A person may apply for the transfer of a revoked permit that has not terminated by submitting an application to the department that contains the information required for a permit applicant in 82-4-222(1)(b) through (1)(i). Upon receipt of an application from a person who is not precluded from holding a permit pursuant to this part, the department shall cease reclamation activities on the permit area.

(3) The department may not require the applicant to submit any additional information unless the department can show that significant changes in the environmental baseline data have occurred during the period of operation or since the revocation of the initial operating permit.

(4) The department may not prepare a review under 75-1-201 for a transfer unless the department can show that the operation has caused or may cause significant impacts that have not been analyzed previously in an environmental review document prepared pursuant to 75-1-201.

(5) The department shall process an application for transfer under the same timeframes as are provided in 82-4-231 for processing of permit applications.

(6) Except as provided in subsection (7), the department shall, after receipt of an application pursuant to subsections (2) through (5) and after public notice and opportunity for comment:

(a) transfer the operating permit to a new operator if the new operator provides proof of site ownership or control and adequate bonding as required by this part; and

(b) require as a condition of permit transfer that, prior to creating additional disturbance at the site, all preexisting permit deficiencies, including modifications necessary because of reclamation that has been conducted at the site, be corrected to the satisfaction of the department and that any preestablished environmental monitoring requirements continue.

(7) The department may not transfer any permit for which it can show that:

(a) the requirements of this part and the rules adopted under this part for operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, and reclamation of the affected area cannot be met;

(b) significant changes in the operating plan or reclamation plan are necessary; or

(c) the department would be precluded from issuing a permit to the applicant by 82-4-227(11) or (12).

(8) The department is not required to reimburse the former permittee or surety for funds expended for reclamation, monitoring, or site maintenance prior to permit transfer.

(9) This section does not apply to the revocation or transfer of an operating permit that authorizes mine operations on federal lands.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 82, chapter 4, part 2, and the provisions of Title 82, chapter 4, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [Section 1] applies to mine operating permits that are in effect as of [the effective date of this act] and applies retroactively, within the meaning of 1-2-109, to permits that were revoked no more than 5 years before [the effective date of this act].

Section 5. Termination — contingent termination. (1) Except as provided in subsection (2), [this act] terminates October 1, 2005.

(2) If the office of surface mining of the United States department of the interior disapproves the changes to Montana's program that are provided in [this act], then [this act] terminates 60 days after the department of environmental quality receives notification of that disapproval. The department of environmental quality shall provide a copy of the document that disapproves the changes to Montana's program to the Montana code commissioner.

Approved May 1, 2001

CHAPTER NO. 523

[HB 517]

AN ACT CLARIFYING THAT THE SMALL BUSINESS INVESTMENT INCENTIVE ACT IS INTENDED TO ATTRACT PRIVATE RISK CAPITAL TO TECHNOLOGY, TECHNOLOGY INFRASTRUCTURE, AND POWER GENERATION COMPANIES AS WELL AS MANUFACTURING, AGRICULTURE, AND TIMBER PRODUCT PROCESSING COMPANIES; AND AMENDING SECTION 15-33-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-33-102, MCA, is amended to read:

"**15-33-102. Purpose.** The purpose of this part is to encourage private sector investment in venture capital firms called small business investment companies~~,~~ ~~which~~ *that* are organized for the purpose of diversifying and strengthening employment opportunities of companies within Montana. This part, by establishing limited tax exemptions, demonstrates a recognition by the legislature that significant incentives must be offered to attract private risk capital to manufacturing, *technology, technology infrastructure, power generation,* agricultural, and timber product processing companies ~~when the alternative investments for private risk capital are natural resource ventures, which often yield extremely high rates of return~~. The legislature further recognizes the necessity of tax incentives for investors in manufacturing, *technology, technology infrastructure, power generation*, agricultural, and timber product processing *companies*~~, given the hardship caused many Montana communities by their reliance on an economic base dominated by single, large industries~~."

Approved May 1, 2001

CHAPTER NO. 524

[HB 521]

AN ACT PROVIDING THAT BEFORE AN ENHANCED INCARCERATION PENALTY MAY BE IMPOSED, THE ENHANCING ACT, OMISSION, OR FACT MUST BE STATED IN THE CHARGING DOCUMENT, SUBMITTED TO A JURY FOR DETERMINATION IF THERE IS A JURY TRIAL, AND FOUND BY THE TRIER OF FACT TO HAVE EXISTED BEYOND A REASONABLE DOUBT; DEFINING ENHANCING ACT, OMISSION, OR FACT; AMENDING SECTIONS 45-5-222, 46-18-115, 46-18-220, 46-18-221, AND 46-18-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Incarceration penalty enhancement — pleading, proof, and mental state requirements. (1) A court may not impose an incarceration penalty enhancement specified in Title 45, Title 46, or any other provision of law unless:

(a) the enhancing act, omission, or fact was charged in the information, complaint, or indictment, with a reference to the statute or statutes containing the enhancing act, omission, or fact and the penalty for the enhancing act, omission, or fact;

(b) if the case was tried before a jury, the jury unanimously found in a separate finding that the enhancing act, omission, or fact occurred beyond a reasonable doubt; and

(c) if the case was tried to the court without a jury, the court finds beyond a reasonable doubt that the enhancing act, omission, or fact occurred.

(2) The enhancement issue may be submitted to a jury on a form separate from the verdict form or may be separately stated on the verdict form. The jury must be instructed that it is to reach a verdict on the offense charged in the information, complaint, or indictment before the jury can consider whether the enhancing act, omission, or fact occurred.

(3) An enhancing act, omission, or fact is an act, omission, or fact, whether stated in the statute defining the charged offense or stated in another statute, that is not included in the statutory definition of the elements of the charged offense and that allows or requires a sentencing court to add to, as provided by statute, an incarceration period provided by statute for the charged offense or to impose the death penalty instead of a statutory incarceration period provided by statute for the charged offense.

(4) Use of the fact of one or more prior convictions for the same type of offense or for one or more other types of offenses to enhance the incarceration penalty for a charged offense is not subject to the requirements of this section.

Section 2. Section 45-5-222, MCA, is amended to read:

"45-5-222. Sentence enhancement — offenses committed because of victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities. (1) A person who has pleaded guilty or nolo contendere to or who has been found guilty of any offense, except malicious intimidation or harassment, that was committed because of the victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities or that involved damage, destruction, or attempted destruction of a building regularly used for religious worship, in addition to the punishment provided for commission of the offense, may, *if the provisions of [section 1] have been complied with,* be sentenced to a term of imprisonment of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) An additional sentence prescribed by subsection (1) ~~shall~~ *must* run consecutively to the sentence, except as provided in 46-18-222."

Section 3. Section 46-18-115, MCA, is amended to read:

"46-18-115. Sentencing hearing — use of two-way electronic audio-video communication. Before imposing sentence or making any other disposition upon acceptance of a plea or upon a verdict or finding of guilty, the court shall conduct a sentencing hearing, without unreasonable delay, as follows:

(1) The court shall afford the parties an opportunity to be heard on any matter relevant to the disposition, including the ~~applicability of sentencing enhancement provisions,~~ *imposition of a sentence enhancement penalty and the applicability of* mandatory minimum sentences, persistent felony offender status, or an exception to these matters.

(2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided by 46-18-301.

(3) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address the defendant personally to ascertain whether the defendant wishes to make a statement and to present any information in mitigation of punishment or reason why the defendant should not be sentenced. If the defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to do so. For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, the requirement that the court address the defendant personally may be satisfied by the use of two-way electronic audio-video communication. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201.

(4) (a) The court shall permit the victim to present a statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's opinion regarding appropriate sentence. At the victim's option, the victim may present the statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or both.

(b) The court shall give copies of any written statements of the victim to the prosecutor and the defendant prior to imposing sentence.

(c) The court shall consider the victim's statement along with other factors. However, if the victim's statement includes new material facts upon which the court intends to rely, the court shall allow the defendant adequate opportunity to respond and may continue the sentencing hearing if necessary.

(5) The court shall impose sentence or make any other disposition authorized by law.

(6) In felony cases, the court shall specifically state all reasons for the sentence, including restrictions, conditions, or enhancements imposed, in open court on the record and in the written judgment."

Section 4. Section 46-18-220, MCA, is amended to read:

"**46-18-220. Sentences for certain offenses committed in official detention — death penalty.** An offender convicted of having committed attempted deliberate homicide, aggravated assault, or aggravated kidnapping while in official detention, as defined in 45-2-101, shall, *if the provisions of [section 1] have been complied with,* be sentenced to death or life imprisonment as provided in 46-18-301 through 46-18-310."

Section 5. Section 46-18-221, MCA, is amended to read:

"**46-18-221. Additional sentence for offenses committed with a dangerous weapon.** (1) ~~A~~ *If the provisions of [section 1] have been complied* *with, a* person who has been found guilty of any offense and who, while engaged in the commission of the offense, knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon shall, in addition to the punishment provided for the commission of such offense, be sentenced to a term of imprisonment in the state prison of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) ~~A~~ *If the provisions of [section 1] have been complied with, a* person convicted of a second or subsequent offense under this section shall, in addition to the punishment provided for the commission of the present offense, be sentenced to a term of imprisonment in the state prison of not less than 4 years or more than 20 years, except as provided in 46-18-222. For the purposes of this subsection, the following persons shall be considered to have been convicted of a previous offense under this section:

(a) a person who has previously been convicted of an offense, committed on a different occasion than the present offense, under 18 U.S.C. 924(c); and

(b) a person who has previously been convicted of an offense in this or another state, committed on a different occasion than the present offense, during the commission of which he knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon.

(3) The imposition or execution of the minimum sentences prescribed by this section may not be deferred or suspended, except as provided in 46-18-222.

(4) An additional sentence prescribed by this section ~~shall~~ *must* run consecutively to the sentence provided for the offense."

Section 6. Section 46-18-224, MCA, is amended to read:

"**46-18-224. Additional sentence for offense committed while carrying a handgun loaded with armor-piercing ammunition.** (1) ~~A~~ *If the provisions of [section 1] have been complied with, a* person who has been found guilty of an offense in which bodily injury occurred or was attempted or threatened and who knowingly used or carried a handgun loaded with armor-piercing ammunition during the commission of the offense must, in addition to the sentence for the offense, be sentenced to a term of imprisonment in the state prison of not less than 5 years or more than 25 years, except as provided in 46-18-222.

(2) An additional sentence prescribed by this section must run consecutively to the sentence provided for the offense, and except as provided in 46-18-222, the sentence may not be suspended and imposition of it may not be deferred.

(3) For purposes of this section:

(a) "armor-piercing ammunition" means ammunition which, if fired from a handgun under the test procedure of the national institute of law enforcement and criminal justice standard for the ballistics resistance of police body armor promulgated December 1978, is capable of penetrating bullet-resistant apparel or body armor meeting the requirements of Type IIA of Standard NILECJ-STD-0101.01 as formulated by the United States department of justice and published in December 1978; and

(b) "handgun" means any firearm, including a pistol or revolver, originally designed to be fired by the use of a single hand."

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 1, and the provisions of Title 46 apply to [section 1].

Section 8. Effective date. [This act] is effective on passage and approval.

Approved May 1, 2001

CHAPTER NO. 525

[HB 526]

AN ACT CREATING THE MONTANA SUMMER YOUTH EMPLOYMENT PROGRAM; ESTABLISHING ELIGIBILITY CRITERIA; PROVIDING FOR PARTICIPANT ASSESSMENT; PROVIDING FOR ADMINISTRATION BY THE DEPARTMENT OF LABOR AND INDUSTRY THROUGH THE LOCAL WORKFORCE INVESTMENT BOARDS; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title — purpose. [Sections 1 through 6] may be cited as the "Montana summer youth employment program", established pursuant to the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.) for the purpose of providing Montana's low-income and other at-risk youth with summer employment and job training that are directly linked to academic and occupational learning.

Section 2. Goals. With the creation of the Montana summer youth employment program, the legislature intends:

(1) to provide to as many eligible youth as possible a quality summer employment experience to assist them in achieving academic and employment success, with effective and comprehensive activities, including a variety of options for improving educational and skill competencies and effective connections to employers in a paid work experience setting;

(2) to provide opportunities for training and supportive services to eligible youth, with emphasis on the 14- to 17-year-old age group;

(3) to provide incentives for recognition and achievement to eligible youth;

(4) to provide opportunities for eligible youth to participate in activities related to leadership, development, decisionmaking, citizenship, and community service; and

(5) to ensure ongoing mentoring opportunities for eligible youth with adults committed to providing those opportunities.

Section 3. Eligibility — exceptions. (1) To participate in the Montana summer youth employment program, a youth who is not funded by the temporary assistance to needy families block grant money must:

(a) be 14 through 17 years of age; and

(b) be economically disadvantaged or must:

(i) have been determined to meet the eligibility requirements for reduced or free meals under the National School Lunch Act during the most recent school year; or

(ii) be participating in a compensatory education program under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965.

(2) A youth funded through the temporary assistance for needy families program must meet all eligibility requirements for that program except enrollment.

(3) Local workforce investment boards shall develop eligibility determination verification guidelines, including but not limited to verification of:

(a) age;

(b) income;

(c) citizenship;

(d) residency;

(e) participation in a reduced or free lunch program.

Section 4. Authorized services. The authorized services provided under the Montana summer youth employment program include:

(1) work experience, which includes planned, structured, work-based learning experiences that may occur in a nonprofit or for-profit, private or public sector workplace for a limited period of time. To the extent feasible, work experience must include contextual learning opportunities that integrate the development of general competencies with the development of academic skills.

(2) basic and remedial education and preemployment and work maturity skills, including but not limited to the job corps, the work opportunity readiness component of the FAIM project, as defined in 53-2-902, youth corps programs, alternative or secondary schools, tutoring, mentoring, or study skills training, and instruction leading to the completion of secondary school, including dropout prevention strategies and leadership development opportunities;

(3) classroom training, which may, to the extent feasible, include opportunities to apply knowledge and skills related to academic subjects pertaining to the work world;

(4) support services, including transportation, child care, medical care, training-related personal supplies, and comprehensive guidance and counseling provided to individuals if the services are reasonable and necessary to enable a participant who cannot otherwise afford to pay for the services to participate. Comprehensive guidance and counseling may include drug and alcohol abuse counseling and referral.

(5) educational linkages with appropriate educational agencies responsible for services to participants. Linkages may include arrangements to ensure that there is a regular exchange of information relating to the progress, problems, and needs of participants, including the results of assessments of the skill levels of participants.

Section 5. Program operation period — participant assessment — performance. (1) Except as provided in subsection (2), the Montana summer youth employment program must be conducted during the school vacation period occurring during the summer months.

(2) In circumstances in which the local education agency operates a school on a year-round, full-time basis, Montana summer youth employment program

activities may be offered to participants during periods that are the equivalent to a school summer vacation period.

(3) (a) The service strategies for each participant must be based on an objective assessment of the academic levels, skill levels, and service needs of each participant.

(b) Except as provided in subsection (3)(c), the assessment must include a review of basic skills, occupational skills, prior work experience, employability, interests, aptitudes, including interests and aptitudes for nontraditional jobs, supportive services needs, and developmental needs of the participant.

(c) A new assessment of a participant is not required if the provider carrying out the program determines that it is appropriate to use a recent assessment of the participant conducted pursuant to another education or training program.

(4) (a) Except as provided in subsection (4)(b), an individual service strategy must be developed for each participant to identify an employment goal, including, if appropriate, nontraditional employment, appropriate achievement objectives, and appropriate services for the participant. The strategy must take into account the assessment conducted pursuant to subsection (3)(a).

(b) A new service strategy for a participant is not required if the provider carrying out the program determines that it is appropriate to use a recent service strategy for the participant conducted pursuant to another education or training program.

(5) Service strategies for each participant must provide:

(a) preparation for postsecondary educational opportunities, if appropriate;

(b) strong linkages between academic and occupational learning;

(c) preparation for unsubsidized employment opportunities, if appropriate; and

(d) effective connections to intermediaries with strong links to the job market and local and regional employers.

(6) The core indicator of performance success for the Montana summer youth employment program is the rate of successful completion by a participant of the program objectives as indicated on each individual's service strategy at the beginning of the program.

Section 6. Administration. The Montana summer youth employment program must be administered by the local workforce investment boards as identified under the Workforce Investment Act of 1998 and as designated by the governor. Implementation is contingent on the availability and appropriation of funding. Oversight of the program must be provided by the bureau of program management in the job service division of the department of labor and industry.

Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 39, and the provisions of Title 39 apply to [sections 1 through 6].

Section 8. Effective date. [This act] is effective May 1, 2001.

Section 9. Termination. [This act] terminates September 15, 2003.

Approved May 1, 2001

CHAPTER NO. 526

[HB 531]

AN ACT REQUIRING THAT SPECIAL MOBILE EQUIPMENT THAT IS A MOTOR VEHICLE OR A TRAILER DESIGNED AND USED TO APPLY FERTILIZER TO AGRICULTURAL LAND AND THAT IS BROUGHT INTO MONTANA FOR DEMONSTRATION PURPOSES CONSPICUOUSLY DISPLAY A SPECIAL DEMONSTRATION PERMIT; REMOVING THE REQUIREMENT THAT PROPERTY TAXES BE PAID ON SPECIAL MOBILE EQUIPMENT THAT IS A MOTOR VEHICLE OR A TRAILER DESIGNED AND USED TO APPLY FERTILIZER TO AGRICULTURAL LAND AND THAT IS BROUGHT INTO THE STATE FOR DEMONSTRATION PURPOSES UNLESS THE EQUIPMENT REMAINS IN MONTANA PAST THE EXPIRATION DATE OF THE PERMIT OR IS LEASED OR SOLD; AMENDING SECTION 61-3-431, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-431, MCA, is amended to read:

"**61-3-431. Special mobile equipment — exemption from registration and payment of fees and charges — identification plate — *special demonstration permit* — publicly owned special mobile equipment.** (1) A person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as defined in 61-1-104 and occasionally moves that equipment on, over, or across the highways of the state is not subject to registration of that equipment or required to pay the fees and charges provided for in 61-4-301 through 61-4-308 or part 2 of chapter 10. Prior to movement on the highways*:*~~; however,~~

(a) each piece of equipment must display an equipment identification plate or a dealer's license plate attached to the equipment*, except for equipment referred to in 61-1-104(2) that is brought into Montana for demonstration purposes;*

(b) each piece of equipment referred to in 61-1-104(2) that is brought into Montana for demonstration purposes must have a special demonstration permit conspicuously displayed.

(2) *(a)* Annual application for the identification plate must be made to the county treasurer before any piece of equipment is moved on the highways. Application must be made on a form furnished by the department ~~of justice~~, together with the payment of a fee of $5. The equipment for which a special mobile equipment plate *or for which a special demonstration permit* is sought is subject to the assessment of personal property taxes on the date application is made for the plate *or the date determined pursuant to subsection (4)*. The personal property taxes assessed against the special mobile equipment must be paid before the issuance of a special mobile equipment plate. The fees collected under this section belong to the county road fund, *except that $25 of the special demonstration permit fee must be remitted to the department of transportation.*

(b) Application must be made for a special demonstration permit as provided in subsection (1)(b). The application must be made to the county treasurer or to a weigh station before the piece of equipment is moved on Montana highways. Application for the special demonstration permit must be made on a form

furnished by the department and must be accompanied by the payment of a fee of $50.

(3) The identification plate expires on December 31 of each year. If the expired identification plate is displayed, an owner of special mobile equipment registered under the provisions of this section is entitled to operate the equipment between January 1 and February 15 following expiration without displaying the identification plate or receipt of the current year.

(4) (a) The special demonstration permit expires 45 days after its issuance. Special mobile equipment that remains in the state past the expiration of the permit is subject to the assessment of personal property taxes, starting on the first day following expiration of the permit.

(b) If the holder of a special demonstration permit leases or sells the piece of equipment during the term that is covered by the permit, the permit is no longer valid and the special mobile equipment is subject to the assessment of personal property taxes, starting on the first day of the lease or the date of the sale.

~~(4)~~*(5)* Publicly owned special mobile equipment and implements of husbandry used exclusively by an owner in the conduct of the owner's farming operations are exempt from this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

Approved May 1, 2001

CHAPTER NO. 527

[HB 543]

AN ACT REVISING THE LAWS RELATED TO REVIEW OF SUBDIVISIONS FOR CONFORMANCE TO LOCAL GROWTH POLICIES; ELIMINATING LOCAL GOVERNMENT AUTHORITY TO REQUIRE SUBDIVISION PLATS TO CONFORM TO GROWTH POLICIES BY ADOPTION OF AN ORDINANCE OR RESOLUTION; REQUIRING THAT SUBDIVISION REGULATIONS BE IN ACCORDANCE WITH THE GROWTH POLICY WHEN A GROWTH POLICY HAS BEEN ADOPTED; AMENDING SECTIONS 76-1-605, 76-1-606, 76-3-504, AND 76-3-604, MCA; AND PROVIDING AN APPLICABILITY DATE.

WHEREAS, section 76-1-606, MCA, allows local governments to require subdivision plats to conform to the provisions of adopted growth policies; and

WHEREAS, section 76-3-604, MCA, has been interpreted to allow local governments to deny or condition the approval of subdivision plats based on the growth policy; and

WHEREAS, many adopted growth policies contain ambiguous and subjective provisions that cannot be applied to subdivisions in an objective manner; and

WHEREAS, it is inconsistent with accepted precepts of planning to authorize a local government to enforce a growth policy without properly adopted land use controls: and

WHEREAS, the Legislature intends to clarify that growth policies should be implemented through the proper adoption of land use controls; and

WHEREAS, a statutory procedure is in place that allows local governments to implement growth policies through properly adopted land use controls; and

WHEREAS, this land use control adoption procedure incorporates the due process and other constitutional protections that are not included under section 76-1-606, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-1-605, MCA, is amended to read:

"**76-1-605. Use of adopted growth policy.** After adoption of the growth policy, the city council, board of county commissioners, or other governing body within the territorial jurisdiction of the board must be guided by and give consideration to the general policy and pattern of development set out in the growth policy in the:

(1) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

(2) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; *and*

~~(3) adoption of subdivision controls; and~~

~~(4)~~*(3)* adoption of zoning ordinances or resolutions."

Section 2. Section 76-1-606, MCA, is amended to read:

"**76-1-606. Effect of growth policy on ~~subdivisions and plats~~ *subdivision regulations*.** ~~(1)~~ When a growth policy has been approved, the ~~city council may by ordinance or the board of county commissioners may by resolution require~~ subdivision ~~plats~~ *regulations adopted pursuant to chapter 3 of this title must be made* ~~to conform to the provisions of~~ *in accordance with* the growth policy.~~. Certified copies of the ordinance must be filed with the city or town clerk and with the county clerk and recorder of the county.~~

~~(2) When the city council has adopted an ordinance pursuant to subsection (1), a plat involving lands within the corporate limits of the city and covered by the growth policy may not be filed without first presenting it to the planning board, which shall make a report to the city council advising as to compliance or noncompliance of the plat with the growth policy. The city council has the final authority to approve the filing of a plat within the city limits.~~

~~(3) When the board of county commissioners has adopted a resolution pursuant to subsection (1), a plat involving lands outside the corporate limits of the city and covered by a growth policy may not be filed without first presenting it to the planning board, which shall make a report to the board of county commissioners advising as to compliance or noncompliance of the plat with the growth policy. The board of county commissioners has the final authority to approve the filing of the plat.~~

~~(4) The planning board may delegate to its staff its responsibility to report to the city council or the board of county commissioners under subsection (2) or (3).~~

~~(5) This section may not be interpreted to limit the present powers of city or county governments.~~

~~(6) The requirements of this section must be met before any plat may be filed of record or entitled to be recorded.~~"

Section 3. Section 76-3-504, MCA, is amended to read:

"**76-3-504. Minimum requirements for subdivision regulations.** The subdivision regulations adopted under this chapter must, at a minimum:

(1) except as provided in 76-3-210 or 76-3-609(3), require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;

(b) grading and drainage;

(c) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, at a minimum, meet the regulations adopted by the department of environmental quality under 76-4-104;

(d) the location and installation of utilities;

(7) provide procedures for the administration of the park and open-space requirements of this chapter;

(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision. A utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body.

(9) require the subdivider to establish ditch easements in the subdivision, in locations of appropriate topographic characteristics and sufficient width, to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots. Establishment of easements pursuant to this subsection (9) is not required if:

(a) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(b) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(10) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights.

(11) if the governing body has adopted a growth policy pursuant to chapter 1 of this title, be made in accordance with the goals and objectives established in the growth policy that are within the scope of 76-3-501 within 1 year of adoption of the growth policy."

Section 4. Section 76-3-604, MCA, is amended to read:

"**76-3-604. Review of preliminary plat.** (1) The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms ~~to the local growth policy if one has been adopted pursuant to chapter 1,~~ to the provisions of this chapter~~,~~ and to rules prescribed or adopted pursuant to this chapter.

(2) The governing body shall approve, conditionally approve, or disapprove the preliminary plat within 60 working days of its presentation unless the subdivider consents to an extension of the review period.

(3) If the governing body disapproves or conditionally approves the preliminary plat, it shall forward one copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for disapproval or enumerating the conditions that must be met to ensure approval of the final plat."

Section 5. Transition — applicability. [This act] applies to jurisdictions that adopted a growth policy pursuant to Title 76, chapter 1, before October 1, 2001, beginning October 1, 2002.

Approved May 1, 2001

CHAPTER NO. 528

[HB 554]

AN ACT INCREASING CERTAIN NONRESIDENT HUNTING AND FISHING FEES; REQUIRING THAT A NONRESIDENT POSSESS A WILDLIFE CONSERVATION LICENSE, RATHER THAN A CLASS B-1 UPLAND GAME BIRD LICENSE, AS A PREREQUISITE TO THE PURCHASE OF A WILD TURKEY TAG; AMENDING SECTIONS 87-2-202, 87-2-302, 87-2-304, 87-2-403, 87-2-504, 87-2-505, 87-2-510, AND 87-2-701, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-202, MCA, is amended to read:

"**87-2-202. Application — fee — expiration.** (1) A wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, social security number, occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license. It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of $4.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of ~~$5~~ *$7*.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.

(6) The department shall delete the applicant's social security number in any electronic database 5 years after the date that application is made for the most recent license."

Section 2. Section 87-2-302, MCA, is amended to read:

"**87-2-302. Class B—nonresident fishing license.** Any person not a resident, as defined in 87-2-102, upon payment of the sum of ~~$40 beginning March 1, 1992, and $45 beginning March 1, 1994,~~ *$60* to any agent of the department authorized to issue fishing and hunting licenses, ~~shall be~~ *is* entitled to a Class B license ~~which shall entitle~~ *that entitles* the holder ~~thereof~~ to fish with hook and line as authorized by the rules and regulations of the department."

Section 3. Section 87-2-304, MCA, is amended to read:

"**87-2-304. Class B-4—two-day nonresident fishing license.** Any person not a resident, as defined in 87-2-102, who is a holder of a valid wildlife conservation license, upon payment of the sum of ~~$10~~ *$15* to any agent of the department authorized to issue fishing and hunting licenses, ~~shall be~~ *is* entitled to a 2-day nonresident fishing license ~~which shall authorize~~ *that authorizes* the holder to fish with hook and line, as prescribed by rules and regulations of the department, for 2 calendar days as indicated on the license."

Section 4. Section 87-2-403, MCA, is amended to read:

"87-2-403. (Temporary) Wild turkey tags and fee. (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or ~~Class B-1~~ *nonresident wildlife conservation* license or as set out in subsection (3). Each tag entitles the holder to hunt one wild turkey and possess the carcass of the turkey, during times and places that the commission authorizes an open season on wild turkey.

(2) The fee for a wild turkey tag is ~~$4 beginning March 1, 1992, and $5 beginning March 1, 1994, for residents and $13 for nonresidents~~ *$5 for a resident and $115 for a nonresident.* Turkey tags must be issued either by a drawing system or in unlimited number as authorized by department rules.

(3) Subject to the provisions of subsection (2), a person who is 62 years of age or older as provided in 87-2-801, certified as disabled under 87-2-803, or a resident minor as described in 87-2-805 may purchase a wild turkey tag upon presentation of that person's wildlife conservation license. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)

87-2-403. (Effective March 1, 2006) Wild turkey tags and fee. (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or ~~Class B-1~~ *nonresident wildlife conservation* license or as set out in subsection (3). Each tag entitles the holder to hunt one wild turkey and possess the carcass of the turkey, during times and places that the commission authorizes an open season on wild turkey.

(2) The fee for a wild turkey tag is $5 *for a resident and $105 for a nonresident.* Turkey tags must be issued either by a drawing system or in unlimited number as authorized by department rules.

(3) Subject to the provisions of subsection (2), a person who is 62 years of age or older as provided in 87-2-801, certified as disabled under 87-2-803, or a resident minor as described in 87-2-805 may purchase a wild turkey tag upon presentation of that person's wildlife conservation license."

Section 5. Section 87-2-504, MCA, is amended to read:

"87-2-504. (Temporary) Class B-7 and B-8—nonresident deer licenses. (1) (a) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish, *wildlife,* and ~~game~~ *parks* office, Helena, Montana, to purchase one each of the following licenses:

(i) Class B-7, deer A tag, ~~$175~~ *$250*;

(ii) Class B-8, deer B tag, $75.

(b) The license entitles a holder who is 12 years of age or older to hunt the game animal or animals authorized by the license and to possess the carcasses of those animals as authorized by commission rules.

(2) Unless purchased as part of a Class B-10 or Class B-11 license, a Class B-7 license may be assigned for use in a specific administrative region or regions or a portion of a specific administrative region or regions or in a specific hunting district or districts or a portion of a specific hunting district or districts. If purchased as part of a Class B-10 or Class B-11 license, the Class B-7 license is valid throughout the state, except as provided in 87-2-512(1)(d). Not more than 5,000 Class B-7 licenses may be sold in any license year.

(3) The commission may prescribe the use of and set quotas for the sale of Class B-8 licenses by hunting districts, portions of a hunting district, groups of districts, or administrative regions. (Terminates October 1, 2001—sec. 6, Ch. 355, L. 1997.)

87-2-504. (Effective October 1, 2001) Class B-7 and B-8—nonresident deer licenses. *(1) (a)* Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish, *wildlife,* and ~~game~~ *parks* office, Helena, Montana, to purchase one each of the following licenses:

(i) Class B-7, deer A tag, ~~$150~~ *$250*;

(ii) Class B-8, deer B tag, $50~~; and will entitle~~.

(b) The license entitles a holder who is 12 years of age or older to hunt the game animal or animals authorized by the license ~~held~~ and to possess the carcasses of those animals as authorized by department rules.

(2) Unless purchased as part of a *Class* B-10 or *Class* B-11 license, a Class B-7 license must be assigned for use in a specific administrative region or portion of a specific administrative region. If purchased as part of a Class B-11 license, the Class B-7 license is valid throughout the state. Not more than 5,000 Class B-7 licenses may be sold in any license year. Money received from the sale of Class B-7 licenses in excess of 1,700 must be used as provided in 87-1-242(1). (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)

87-2-504. (Effective March 1, 2006) Class B-7 and B-8—nonresident deer licenses. *(1) (a)* Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish, *wildlife,* and ~~game~~ *parks* office, Helena, Montana, to purchase one each of the following licenses:

(i) Class B-7, deer A tag, ~~$100~~ *$250*;

(ii) Class B-8, deer B tag, $50~~; and will entitle~~.

(b) The license entitles a holder who is 12 years of age or older to hunt the game animal or animals authorized by the license ~~held~~ and to possess the carcasses of those animals as authorized by department rules.

(2) Unless purchased as part of a *Class* B-10 or *Class* B-11 license, a Class B-7 license must be assigned for use in a specific administrative region or portion of a specific administrative region. If purchased as part of a Class B-11 license, the Class B-7 license is valid throughout the state."

Section 6. Section 87-2-505, MCA, is amended to read:

"**87-2-505. (Temporary) Class B-10—nonresident big game combination license.** (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of the fee of ~~$475~~ *$625* or upon payment of the fee established as provided in 87-1-268 if the license is one of the licenses reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter and subject to the limitations prescribed by law and department regulation, apply to the fish, *wildlife,* and ~~game~~ *parks* office, Helena, Montana, to purchase a B-10 nonresident big game combination license that entitles a holder who is 12 years of age or older to all the privileges of Class B, Class B-1, and Class B-7 licenses and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 11,500 unreserved Class B-10 licenses may be sold in any 1 license year.

(2) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-10 big game combination license drawing may pay a fee of $25 to participate in a preference system for deer and elk permits established by the commission. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993; sec. 6, Ch. 544, L. 1999.)

87-2-505. (Effective March 1, 2006) Class B-10—nonresident big game combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of the fee of ~~$398~~ *$550* ~~or upon payment of the fee of $408 if the license is one of the 5,600 licenses reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter~~ and subject to the limitations prescribed by law and department regulation, apply to the fish, *wildlife,* and ~~game~~ *parks* office, Helena, Montana, to purchase a B-10 nonresident big game combination license which shall entitle a holder who is 12 years of age or older to all the privileges of Class B, Class B-1, and Class B-7 licenses, and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 17,000 Class B-10 licenses may be sold in any ~~one~~ *1* license year.

(2) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-10 big game combination license drawing may pay a fee of $25 to participate in a preference system for deer and elk permits established by the commission."

Section 7. Section 87-2-510, MCA, is amended to read:

"87-2-510. (Temporary) Class B-11—nonresident deer combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of ~~$245~~ *$325* or upon payment of the fee established as provided in 87-1-268 if the license is one of those reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter or upon payment of the fee of ~~$250~~ *$325* if the license is one of those reserved pursuant to 87-2-511 for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor and subject to the limitations prescribed by law and department regulation, apply to the fish, *wildlife,* and ~~game~~ *parks* office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles a holder who is 12 years of age or older to all the privileges of the Class B, Class B-1, and Class B-7 licenses. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(2) Not more than 2,300 unreserved Class B-11 licenses may be sold in any 1 license year.

(3) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-11 deer combination license drawing may pay a fee of $25 to participate in a preference system for deer and elk permits established by the commission. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993; sec. 6, Ch. 544, L. 1999.)

87-2-510. (Effective March 1, 2006) Class B-11—nonresident deer combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of ~~$220 or upon payment of the fee of $225~~ *$300, purchase a Class B-11 nonresident deer combination license that entitles a holder who is 12 years of age or older to all the privileges of the Class B, Class B-1, and Class B-7 licenses. The fee for a Class B-11 license is $300* if the license is one of the 4,000 reserved pursuant to 87-2-511 for applicants indicating their intent either to use the services of a licensed outfitter or to hunt with a resident sponsor on land owned by that sponsor. ~~and~~ *The license is* subject to the limitations prescribed by law and department regulation~~;~~. *A person may* apply *for a license* to the fish, *wildlife,* and ~~game~~ *parks* office, Helena, Montana~~, to purchase a Class B-11 nonresident deer combination license that entitles a holder who is 12 years of age or older to all the privileges of the Class B, Class B-1, and Class B-7 licenses~~. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(2) Six thousand Class B-11 licenses are authorized for sale each license year.

(3) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-11 deer combination license drawing may pay a fee of $25 to participate in a preference system for deer and elk permits established by the commission."

Section 8. Section 87-2-701, MCA, is amended to read:

"**87-2-701. (Temporary) Special licenses.** (1) An applicant who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license that, in the judgment of the department, is to be issued and shall pay the following fees:

(a) moose—resident, $75; nonresident, ~~$475~~ *$750*;

(b) mountain goat—resident, $75; nonresident, ~~$475~~ *$750*;

(c) mountain sheep—resident, $75; nonresident, ~~$475~~ *$750*;

(d) antelope—resident, $11; nonresident, ~~$150~~ *$200*;

(e) grizzly bear—resident, $50; nonresident, $300;

(f) black bear—nonresident, ~~$120~~ *$350*.

(2) If a holder of a valid special grizzly bear license who is 12 years of age or older kills a grizzly bear, the person shall purchase a trophy license for a fee of $25 within 10 days after *the* date of *the* kill. The trophy license authorizes the holder to possess and transport the trophy.

(3) Special licenses must be issued in a manner prescribed by the department. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)

87-2-701. (Effective March 1, 2006) Special licenses. (1) An applicant who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license that, in the judgment of the department, is to be issued and shall pay the following fees:

(a) moose—resident, $75; nonresident, ~~$455~~ *$980*;

(b) mountain goat—resident, $75; nonresident, ~~$455~~ *$980*;

(c) mountain sheep—resident, $75; nonresident, ~~$455~~ *$980*;

(d) antelope—resident, $11; nonresident, ~~$130~~ *$180*;

(e) grizzly bear—resident, $50; nonresident, $300;

(f) black bear—nonresident, ~~$100~~ *$330*.

(2) If a holder of a valid special grizzly bear license who is 12 years of age or older kills a grizzly bear, the person shall purchase a trophy license for a fee of $25 within 10 days after *the* date of *the* kill. The trophy license authorizes the holder to possess and transport the trophy.

(3) Special licenses must be issued in a manner prescribed by the department."

Section 9. Effective date. [This act] is effective March 1, 2002.

Approved May 1, 2001

CHAPTER NO. 529

[HB 560]

AN ACT ENCOURAGING THE SETTLEMENT OF LAWSUITS BY PROVIDING FOR OFFERS OF SETTLEMENT IN CERTAIN CIVIL CASES; PROVIDING FOR ENTRY OF JUDGMENT ON AN ACCEPTED SETTLEMENT OFFER; LIMITING THE ADMISSIBILITY OF A REJECTED SETTLEMENT OFFER; AND PROVIDING FOR THE AWARD OF COSTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Offer of settlement. (1) At any time more than 60 days after service of the complaint and more than 30 days before the trial begins, any party may serve upon the adverse party a written offer to settle a claim for the money or property or to the effect specified in the offer. If within 10 days after the service of the offer, the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service of the offer and notice of acceptance with the clerk of court and the court shall enter judgment. An offer not accepted is considered withdrawn and evidence of the offer is not admissible except in a proceeding to determine costs. If the final judgment is less favorable to the offeree than the offer, the offeree shall pay the costs incurred by the offeror after the offer was made. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(2) When the liability of one party to another has been determined by verdict, order, or judgment, but the amount or extent of the liability remains to be determined by further proceedings, either party may make a written offer of

settlement. The offer has the same effect as an offer before trial, and the applicable provisions of subsection (1) apply if the offer is served within a reasonable time not less than 10 days prior to the commencement of a hearing to determine the amount or extent of liability.

(3) For the purposes of this section, costs include reasonable attorney fees.

(4) This section applies only to an action or claim for which the amount contained in a pleading is $50,000 or less, exclusive of costs, interest, and service charges, and the action or claim:

(a) arises from contract or breach of contract, other than a contract of insurance, bond, surety, or warranty; or

(b) involves real property.

Section 2. Codification instruction. **[Section 1] is intended to be codified as an integral part of Title 25, chapter 7, part 1, and the provisions of Title 25, chapter 7, part 1, apply to [section 1].**

Approved May 1, 2001

CHAPTER NO. 530

[HB 563]

AN ACT INCREASING THE TIME DURING WHICH A PERSON MAY BE CHARGED FOR CERTAIN SEXUAL OFFENSES; AND AMENDING SECTION 45-1-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-1-205, MCA, is amended to read:

"**45-1-205. General time limitations.** (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) A prosecution for a felony offense under 45-5-502, 45-5-503, or 45-5-507(4) may be commenced within 10 years after it is committed, except that it may be commenced within 10 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred. A prosecution for a misdemeanor offense under those provisions may be commenced within 1 year after the offense is committed, except that it may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

~~(b)~~*(c)* A prosecution under ~~45-5-502 through~~ *45-5-504,* 45-5-505, 45-5-507*(1), (2), (3), or (5)*, 45-5-625, or 45-5-627 may be commenced within 5 years after the victim reaches ~~the age of~~ 18 *years of age* if the victim was less than 18 years ~~old~~ *of age* at the time that the offense occurred.

(2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The periods prescribed in subsection (2) are extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination of the minority or incompetency;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.

(7) (a) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized control over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may be commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over the property, except that the prosecution must be commenced within 1 year after the investigating officer discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.

(8) A prosecution is commenced either when an indictment is found or an information or complaint is filed."

Approved May 1, 2001

CHAPTER NO. 531

[HB 572]

AN ACT CREATING A COAL BED METHANE PROTECTION ACCOUNT; CLARIFYING THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES; DEPOSITING A PORTION OF THE OIL AND NATURAL GAS PRODUCTION TAX IN THE COAL BED METHANE PROTECTION ACCOUNT; RESTRICTING EXPENDITURES FROM THE

ACCOUNT UNTIL AFTER JUNE 30, 2005, FOR EMERGENCIES AND UNTIL AFTER JUNE 30, 2011, FOR ALL OTHER PURPOSES; CREATING A COAL BED METHANE PROTECTION PROGRAM TO COMPENSATE LANDOWNERS AND WATER RIGHT HOLDERS FOR DAMAGE CAUSED BY THE DEVELOPMENT OF COAL BED METHANE; AUTHORIZING CONSERVATION DISTRICTS THAT HAVE COAL BED METHANE WITHIN THE DISTRICT TO ADMINISTER THE COAL BED METHANE PROTECTION PROGRAM; REQUIRING CONSERVATION DISTRICTS TO ADOPT PROCEDURES FOR EVALUATING CLAIMS FOR COMPENSATION; LIMITING THE AMOUNT OF COMPENSATION; RESTRICTING THE AWARD OF COMPENSATION UNTIL AFTER JUNE 30, 2005, FOR EMERGENCIES AND UNTIL AFTER JUNE 30, 2011, FOR ALL OTHER PURPOSES; AMENDING SECTION 15-36-324, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 5] may be cited as the "Coal Bed Methane Protection Act".

Section 2. Legislative findings and declaration of purpose. (1) The legislature finds that the need for an economical supply of clean-burning energy is a national and state priority.

(2) The legislature further finds that Montana possesses plentiful reserves of clean-burning natural gas contained in coal beds.

(3) The legislature further finds that the extraction of natural gas from coal beds may result in unanticipated adverse impacts to land and to water quality and availability.

(4) The legislature declares that there is a compelling public need to promote efforts that preserve the environment and protect the right to use and enjoy private property. The legislature further declares that the purpose of [sections 1 through 5] is to establish a long-term coal bed methane protection account and a coal bed methane protection program for the purpose of compensating private landowners and water right holders for damage to land and to water quality and availability that is attributable to the development of coal bed methane wells.

(5) The legislature further declares that the provisions of [sections 1 through 5] do not relieve coal bed methane developers or operators that own, develop, or operate coal bed methane wells and collection systems of their legal obligation to compensate landowners and water right holders for damages caused by the development of coal bed methane.

(6) The legislature further declares that the provisions of [sections 1 through 5] do not relieve coal bed methane developers or operators from:

(a) any liability associated with the exploration or development of coal bed methane; or

(b) the responsibility to comply with any applicable provision of Titles 75, 82, and 85 and any other provision of law applicable to the protection of natural resources or the environment.

Section 3. Definitions. As used in [sections 1 through 5], unless the context requires otherwise, the following definitions apply:

(1) "Agricultural production" means the production of:

(a) any growing grass, crops, or trees attached to the surface of the land; or

(b) farm animals with commercial value.

(2) "Coal bed methane developer or operator" means the person who acquires a lease for the purpose of extracting natural gas from a coal bed.

(3) "Department" means the department of natural resources and conservation as provided for in Title 2, chapter 15, part 33.

(4) "Emergency" means the loss of a water supply that must be replaced immediately to avoid substantial damage to a landowner or a water right holder.

Section 4. Coal bed methane protection account — use. (1) There is a coal bed methane protection account in the state special revenue fund.

(2) At the beginning of each fiscal year, there must be deposited in the account a total of $400,000 of the proceeds from the distribution of oil and natural gas production taxes, as provided in 15-36-324.

(3) All money paid into the account must be invested by the board of investments. Earnings from investments must be deposited in the account.

(4) Subject to the conditions of subsection (5), money deposited in the account must be used to compensate landowners and water right holders for damages attributable to coal bed methane development as provided in [sections 1 through 5].

(5) Money deposited in the fund and earnings of the fund may not be expended until after June 30, 2005. For fiscal years beginning after June 30, 2005, principal and earnings may be expended only in the case of an emergency. For fiscal years beginning after June 30, 2011, principal and earnings in the account may be expended for any purpose authorized pursuant to [sections 1 through 5].

(6) Money in the account must be appropriated to the department for use by conservation districts that have private landowners or water right holders who qualify for compensation as provided in [section 5].

Section 5. Coal bed methane protection program — restrictions. (1) There is a coal bed methane protection program administered by conservation districts that have coal beds within the exterior boundary of the district or whose water sources may be adversely affected by the extraction of coal bed methane. The purpose of the coal bed methane protection program is to compensate private landowners or water right holders for damage caused by coal bed methane development.

(2) A conservation district shall establish procedures, approved by the department, for evaluating claims for compensation submitted by a landowner or water right holder. The procedures must include:

(a) a method for submitting an application for compensation for damages caused by coal bed methane development;

(b) a process for determining the cost of the damage to land, surface water, or ground water, if any, caused by coal bed methane development;

(c) the development of eligibility requirements for receiving compensation that include an applicant's access to existing sources of state funding, including state-mandated payments, that compensate for damages; and

(d) criteria for ranking applications related to available resources.

(3) An eligible recipient for compensation includes private landowners and water right holders who can demonstrate as the result of damage caused by coal bed methane development:

(a) a loss of agricultural production or a loss in the value of land;

(b) a reduction in the quantity or quality of water available from a surface water or ground water source that affects the beneficial use of water; or

(c) the contamination of surface water or ground water that prevents its beneficial use.

(4) (a) Subject to the conditions of subsections (5) through (8), an eligible landowner may be compensated for the damages incurred by the landowner for loss of agricultural production and income, lost land value, and lost value of improvements caused by coal bed methane development. A payment made under this subsection (4)(a) may only cover land directly affected by coal bed methane development.

(b) Subject to the conditions of subsections (5) through (8), an eligible water right holder may be compensated for damages caused by the contamination, diminution, or the interruption of surface water or ground water.

(5) In order to qualify for a payment of damages under this section, the landowner or water right holder must demonstrate that it is unlikely that compensation will be made by the coal bed methane developer or operator who is liable for the damage to land or the reduction in or contamination of surface water or ground water as the result of coal bed methane development.

(6) Compensation made to a landowner or a water right holder under this section may not exceed 75% of the cost of the damages. The maximum amount paid to a landowner or water right holder may not exceed $50,000.

(7) Conservation district administrative expenses for services provided under this section are eligible costs for reimbursement from the coal bed methane protection account.

(8) (a) Except as provided in subsection (8)(b), compensation for damages allowed under this section may be made only after June 30, 2011.

(b) Compensation for an emergency may be made after June 30, 2005.

Section 6. Section 15-36-324, MCA, is amended to read:

"**15-36-324. Distribution of taxes — rules.** (1) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) Except as provided in subsections (3) through (5), oil production taxes must be distributed as follows:

(a) The amount equal to 39.3% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (9).

(b) The remaining 60.7% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on qualifying production occurring during the first 12 months of production must be distributed as provided in subsection (10).

(4) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(b) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (9).

(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the first 10 barrels of stripper oil production wells must be distributed as provided in subsection (10).

(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper well exemption production from ~~pre-1985~~*pre-1999* wells and ~~post-1985~~*post-1999* wells must be distributed as provided in subsection (10).

(6) Except as provided in subsections (7) and (8), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (11).

(b) The remaining 86% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (6)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(7) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from wells occurring during the first 12 months of production must be distributed as provided in subsection (10).

(8) The amount equal to 100% of natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(9) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil production taxes specified in subsections (2)(a) and (4)(b), including late payment interest and penalty collected, as follows:

(a) 86.21% to the state general fund;

(b) 5.17% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 8.62% to be distributed as ~~provided in 15-38-106(2)~~ *follows:*

(i) a total of $400,000, including the proceeds from subsections (10)(b)(i) and (11)(c)(i), to the coal bed methane protection account established in [section 4];

(ii) 50% of the remaining proceeds to the reclamation and development grants special revenue account established in 90-2-1104; and

(iii) 50% of the remaining proceeds to the orphan share account established in 75-10-743.

(10) The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3), (4)(a), (5)(a), (5)(c), (7), and (8), including late payment interest and penalty collected, as follows:

(a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(b) 62.5% to be distributed as ~~provided in 15-38-106(2)~~ *follows:*

(i) a total of $400,000, including the proceeds from subsections (9)(c)(i) and (11)(c)(i), to the coal bed methane protection account established in [section 4];

(ii) 50% of the remaining proceeds to the reclamation and development grants special revenue account established in 90-2-1104; and

(iii) 50% of the remaining proceeds to the orphan share account established in 75-10-743.

(11) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:

(a) 76.8% to the state general fund;

(b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 14.5% to be distributed as ~~provided in 15-38-106(2)~~ *follows:*

(i) a total of $400,000, including the proceeds from subsections (9)(c)(i) and (10)(b)(i), to the coal bed methane protection account established in [section 4];

(ii) 50% of the remaining proceeds to the reclamation and development grants special revenue account established in 90-2-1104; and

(iii) 50% of the remaining proceeds to the orphan share account established in 75-10-743.

(12) (a) By the dates referred to in subsection (13), the department shall, except as provided in subsection (12)(b), calculate and distribute oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) to each eligible county in proportion to the oil and natural gas production taxes received

under subsections (2)(b), (5)(b), and (6)(b) that are attributable to production in that county.

(b) The department shall distribute 5% of the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) from pre-1999 wells to eligible counties in proportion to the underfunding that would have occurred from the tax liability distribution of pre-1985 oil and natural gas production taxes for production in calendar year 1997.

(c) Except as provided in subsection (12)(d), the county treasurer shall distribute the money received under subsection (12)(b) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(d) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (12)(c), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (12)(d)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(e) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (12)(e)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(f) The county treasurer shall distribute oil and natural gas production taxes received under subsection (12)(a) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The allocation to the county in subsection (12)(f) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(h) The money distributed in subsection (12)(f) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(i) The oil and natural gas production taxes distributed under subsection (12)(c) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the state treasurer.

(j) The oil and natural gas production taxes distributed under subsection (12)(f) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the state treasurer.

(k) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (12)(i) and (12)(j) is for the exclusive use and benefit of the county and school taxing units.

(13) The department shall remit the amounts to be distributed in subsection (12) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(14) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes and for county bonding purposes.

(15) (a) In the event that the board of oil and gas conservation revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board of oil and gas conservation for the expenses of the board.

(b) Before the department adopts a rule pursuant to subsection (15)(a), it shall present the proposed rule to the appropriate administrative rule review committee.

(16) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502."

Section 7. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 76, chapter 15, and the provisions of Title 76, chapter 15, apply to [sections 1 through 5].

Section 8. Coordination instruction. If House Bill No. 642 and [this act] are both passed and approved, and both amend 15-36-324(9) through (11), then [section 3] of House Bill No. 642 is void.

Section 9. Contingent effective date. [This act] is effective on July 1 immediately following the date that the governor by executive order certifies to the secretary of state that the resource indemnity trust fund balance has reached $100 million. The secretary of state shall notify the department of revenue, the department of administration, the code commissioner, and the legislative fiscal division of this certification.

Section 10. Termination. [Sections 4(2) and 6] terminate June 30, 2011.

Approved May 1, 2001

CHAPTER NO. 532

[HB 578]

AN ACT EXTENDING THE TAX INCENTIVE OF 30 CENTS A GALLON FOR PRODUCTION OF ALCOHOL; REVISING THE TIME PERIOD FOR SUBMITTING A WRITTEN PLAN TO THE DEPARTMENT OF TRANSPORTATION; AMENDING SECTION 15-70-522, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-522, MCA, is amended to read:

"**15-70-522. Tax incentive for production of alcohol — written plan required — reservation of incentives — rules.** (1) (a) If the alcohol was produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the alcohol was produced from non-Montana agricultural products when Montana products are not available, there is a tax incentive payable to alcohol distributors for distilling alcohol that:

(i) was blended with gasoline for sale as gasohol in Montana;

(ii) was exported from Montana and has been blended with gasoline for sale as gasohol; or

(iii) was used in the production of ethyl butyl ether for use in reformulated gasoline.

(b) Payment must be made by the department out of the amount collected under 15-70-204.

(2) Except as provided in subsections (3) and (4), the tax incentive on each gallon of alcohol distilled in accordance with subsection (1) is 30 cents ~~per~~ *a* gallon for each gallon that is 100% produced from Montana products, with the amount of the tax incentive ~~per~~ *for each* gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used in the production of the alcohol~~,~~. ~~and beginning~~ *Beginning* July 1, ~~2005~~ *2010*, there is no tax incentive.

(3) Regardless of the alcohol tax incentive provided in subsection (2), the total payments made for the incentive under this part may not exceed $6 million in any consecutive 12-month period.

(4) An alcohol distributor may not receive tax incentive payments under subsection (2) that exceed $3 million in any consecutive 12-month period.

(5) An alcohol distributor ~~who begins production after July 1, 1991,~~ may not receive tax incentive payments under subsection (2) unless the distributor has

provided a written plan to the department of transportation at least ~~18~~ *24* months before the distributor's anticipated collection of the tax incentives. The plan must contain the following information:

(a) the source or sources of financing for the acquisition of the plant, land, and equipment used for the production of gasohol;

(b) the anticipated source of agricultural products used in the production of gasohol; and

(c) the anticipated time, quantity, and duration of production of gasohol.

~~(6) An alcohol distributor in production before July 1, 1991, is entitled to apply for the maximum tax incentive payment allowed under subsection (4) without providing a written plan as required in subsection (5).~~

~~(7)~~*(6)* (a) Except as provided in subsection ~~(7)(b)~~ *(6)(b)*, the department shall reserve, in the order that written plans required under subsection (5) are received by the department, alcohol tax incentives based on the anticipated time, quantity, and duration of production. Payment of the alcohol tax incentives must be based on actual production.

(b) No later than 1 year after the written plan is received under subsection (5), the department shall determine whether an alcohol distributor is complying with the written plan. The department may reduce or cancel the reservation of the tax incentive provided in this subsection ~~(7)~~ *(6)* if the department determines that the alcohol distributor has not materially complied with the written plan.

~~(8)~~*(7)* A new tax incentive payment may not be made if the total tax incentive established in subsection (3) has been reserved or paid. If an alcohol tax incentive has been reduced or canceled, the amount by which the tax incentive has been reduced or canceled is available for reservation as provided in subsection ~~(7)(a)~~ *(6)(a)*.

~~(9)~~*(8)* The department shall prescribe rules necessary to carry out the provisions of this section."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved May 1, 2001

CHAPTER NO. 533

[HB 583]

AN ACT PROVIDING FOR A MENTAL HEALTH ADVANCE DIRECTIVE; PROVIDING FOR THE CONTENT OF THE ADVANCE DIRECTIVE; PROVIDING THAT THE DIRECTIVE IS BINDING UPON AN INPATIENT FACILITY FROM THE TIME THE FACILITY IS FURNISHED A COPY OF THE DIRECTIVE; CREATING A CAUSE OF ACTION AGAINST AN INPATIENT FACILITY THAT FAILS TO COMPLY WITH THE DIRECTIVE; PROVIDING DEFINITIONS; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Mental health advance directive authorized — content — cause of action created — definitions. (1) An individual 18 years of age or older with mental capacity may voluntarily execute a mental health advance directive providing that if the individual is treated for a mental disorder at an inpatient facility, the directions concerning who must be notified and who may visit the individual, as provided in this section, are to be followed. An inpatient facility that is furnished a copy of a mental health advance directive shall comply with the directive and shall make the directive a part of the individual's medical record.

(2) The directive may address any combination of the following subjects:

(a) who should be notified promptly in the event of the individual's admission to or treatment at the facility;

(b) who should or should not be allowed to visit the individual at the facility; and

(c) the duration of the directive.

(3) The directive authorized in subsection (1) must be in writing and must contain:

(a) a statement that the individual has the mental capacity to execute the directive and that the directive is executed voluntarily;

(b) a statement that once signed, a directive of which the facility is furnished a copy takes effect upon the determination of the lack of mental capacity by the treating mental health professional of the individual and remains in effect until:

(i) revoked by the individual, orally or in writing, at a time that the individual has the mental capacity to revoke the advance directive, as determined by the treating mental health professional;

(ii) the directive expires by its own terms; or

(iii) the individual dies;

(c) the signature of the individual; and

(d) the signature of two witnesses.

(4) (a) An individual may revoke a mental health advance directive provided that the mental health professional chosen by or provided for the individual determines in good faith that the individual has sufficient mental capacity to revoke the directive. The inpatient facility shall make a valid revocation a part of the individual's medical record.

(b) An advance directive is valid and enforceable only with respect to the matters provided for in subsection (2) even if the directive addresses subjects in addition to those provided for in this section.

(5) If an inpatient facility fails to act in accordance with a mental health advance directive of which the facility was furnished a copy, an individual who has executed the mental health advance directive or who has the right to be notified or to visit the individual at the facility pursuant to a mental health advance directive has a cause of action against the facility for injunctive relief and reasonable costs and attorney fees incurred in bringing the action.

(6) As used in this section, the following definitions apply:

(a) "Advance directive" or "directive" means a writing complying with the requirements of this section.

(b) "Inpatient facility" or "facility" means a health care facility that provides emergency, crisis, or acute care to a person with a mental disorder.

(c) (i) "Lack of mental capacity" means that an individual does not have sufficient ability to make or communicate decisions regarding a need for treatment.

(ii) The lack of mental capacity does not require that a person be legally determined to be an incapacitated person, as defined in 72-5-101. However, a person who is under a current legal determination of being an incapacitated person has a lack of mental capacity.

(d) "Mental capacity" means sufficient ability to make or communicate decisions regarding a need for treatment.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 21, and the provisions of Title 53, chapter 21, apply to [section 1].

Section 3. Applicability. [This act] applies to an advance directive, as defined in [section 1], signed on or after October 1, 2001.

Approved May 1, 2001

CHAPTER NO. 534

[HB 589]

AN ACT REVISING THE EXEMPTIONS FROM THE SUBDIVISION AND PLATTING ACT FOR CONDOMINIUMS; AND AMENDING SECTION 76-3-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-203, MCA, is amended to read:

"76-3-203. Exemption for certain condominiums. Condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter *if:*

(1) the approval of the original division of land expressly contemplated the construction of the condominiums and any applicable park dedication requirements in 76-3-621 are complied with; or

(2) the condominium proposal is in conformance with applicable local zoning regulations where local zoning regulations are in effect."

Approved May 1, 2001

CHAPTER NO. 535

[HB 603]

AN ACT EXPANDING THE REQUIREMENTS FOR NOTICE TO THE ATTORNEY GENERAL WHEN A STATE AGENCY IS A PARTY TO A PROCEEDING FOR WHICH JUDICIAL REVIEW IS SOUGHT; AMENDING SECTION 25-1-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-1-502, MCA, is amended to read:

"**25-1-502. Notice of appeal to be served on attorney general *when state is party to judicial review*.** ~~When a department or board of this state appeals from a judgment or order entered in any court of this state, a copy of the notice of appeal must be served on the attorney general~~ *(1) If the state or a department, officer, or board of the state appeals from a judgment or order entered in any court or files a petition for a writ seeking review of a matter in any appellate court, the attorney representing the state, department, officer, or board shall notify the attorney general within a reasonable time in advance of the filing of the notice or petition. The attorney shall serve a copy of the notice of appeal or of the petition on the attorney general and provide the attorney general on request a copy of the order, judgment, or opinion for which review is sought.*

(2) If a notice of appeal or petition for a writ seeking review in any appellate court is served upon the state or a department, officer, or board of the state, the party serving the notice or petition shall serve a copy on the attorney general as well as on any other counsel required by law to be served.~~.~~"

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to any action or other proceeding for which the time for an appeal has not yet begun to run on [the effective date of this act].

Approved May 1, 2001

CHAPTER NO. 536

[HB 605]

AN ACT REVISING LAWS GOVERNING LOCAL AND STATE AIR QUALITY REGULATION; PROHIBITING THE BOARD OF ENVIRONMENTAL REVIEW OR A LOCAL AIR POLLUTION CONTROL PROGRAM FROM APPROVING OR ADOPTING RULES, ORDINANCES, OR LOCAL LAWS THAT ARE MORE STRINGENT THAN THOSE IMPOSED BY THE STATE OR THE FEDERAL GOVERNMENT UNLESS CERTAIN REQUIREMENTS ARE MET; PROVIDING FOR REVIEW OF RULES, ORDINANCES, OR LOCAL LAWS ADOPTED IN THE LAST 5 YEARS THAT MAY BE MORE STRINGENT THAN FEDERAL OR STATE REQUIREMENTS; REQUIRING LOCAL AIR POLLUTION CONTROL PROGRAMS TO ESTABLISH PROCEDURES FOR PUBLIC NOTICE, PUBLIC COMMENT, PUBLIC HEARING, AND APPEAL; CONFORMING EXISTING LAW PROHIBITING THE STATE FROM ADOPTING REGULATIONS MORE STRINGENT THAN FEDERAL LAW TO THE REVISED PROVISIONS AFFECTING LOCAL PROGRAMS; AMENDING SECTIONS 75-2-207 AND 75-2-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-207, MCA, is amended to read:

"**75-2-207. State regulations no more stringent than federal regulations or guidelines — *exceptions — procedure*.** (1) After April 14, 1995, except as provided in subsections (2) ~~through (5)~~ *and (3)* or unless required by state law, the board or department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The board or department may incorporate by reference comparable federal regulations or guidelines.

(2) *(a)* The board or department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if*:* ~~the board or department makes a written finding after a public hearing and public comment and based on evidence in the record that:~~

~~(a) the proposed state standard or requirement protects public health or the environment of the state; and~~

~~(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.~~

~~(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the board's or department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.~~

~~(4) (a) A person affected by a rule of the board or department adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board or department to review the rule. If the board or department determines that the rule is more stringent than comparable federal regulations or guidelines, the board or department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board or department may charge a petition filing fee in an amount not to exceed $250.~~

~~(b) A person may also petition the board or department for a rule review under subsection (4)(a) if the board or department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board or department rule.~~

(i) a public hearing is held;

(ii) public comment is allowed; and

(iii) the board or the department makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed standard or requirement:

(A) protects public health or the environment;

(B) can mitigate harm to the public health or the environment; and

(C) is achievable with current technology.

(b) The written finding required under subsection (2)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the board's or the department's conclusion. The written finding must

also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed standard or requirement.

(c) (i) A person or entity affected by a rule of the board or department adopted after January 1, 1990, and before April 14, 1995, that the person or entity believes is more stringent than comparable federal regulations or guidelines may petition the board or department to review the rule.

(ii) If the board or department determines that the rule is more stringent than comparable federal regulations or guidelines, the board or department shall either revise the rule to conform to the federal regulations or guidelines or follow the process provided in subsections (2)(a) and (2)(b) within a reasonable period of time, not to exceed 6 months after receiving the petition.

(iii) A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board or department may charge a petition filing fee in an amount not to exceed $250.

(iv) A person may also petition the board or department for a rule review under subsection (2)(a) if the board or department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board or department rule.

~~(5)~~*(3)* This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

Section 2. Section 75-2-301, MCA, is amended to read:

"**75-2-301. Local air pollution control programs — *consistency with state and federal regulations — procedure for public notice and comment required.*** (1) After public hearing, a municipality or county may establish and administer a local air pollution control program if the program is consistent with this chapter and is approved by the board.

(2) If a local air pollution control program established by a county encompasses all or part of a municipality, the county and each municipality shall approve the program in accordance with subsection (1).

(3) (a) Except as provided in subsection ~~(4)~~ *(5)*, the board by order may approve a local air pollution control program that:

(i) *subject to subsection (4),* provides by ~~ordinance~~ *rule, ordinance,* or local law for requirements compatible with, more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217 through 75-2-219, and 75-2-402 and rules adopted under these sections;

(ii) provides for the enforcement of requirements established under subsection (3)(a)(i) by appropriate administrative and judicial processes; and

(iii) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit fee provisions of 75-2-220. The permit fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of permitting activities.

(b) Board approval of ~~an ordinance~~ *a rule, ordinance,* or local law that is more stringent than the comparable state law is subject to the provisions of ~~75-2-207~~ *subsection (4).*

(4) (a) A local air pollution control program may, subject to approval by the board, adopt a rule, ordinance, or local law to implement this chapter that is more stringent than comparable state or federal regulations or guidelines only if:

(i) a public hearing is held;

(ii) public comment is allowed; and

(iii) the board or the local air pollution control program makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed local standard or requirement:

(A) protects public health or the environment of the area;

(B) can mitigate harm to the public health or the environment; and

(C) is achievable with current technology.

(b) The written finding required under subsection (4)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the board's or the local air pollution control program's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(c) (i) A person or entity affected by a rule, ordinance, or local law approved or adopted after January 1, 1996, and before [the effective date of this act] that the person or entity believes is more stringent than comparable state or federal regulations or guidelines may petition the board or the local air pollution control program to review the rule, ordinance, or local law.

(ii) If the board or local air pollution control program determines that the rule, ordinance, or local law is more stringent than state or federal regulations or guidelines, the board or local air pollution control program shall either revise the rule, ordinance, or local law to conform to the state or federal regulations or guidelines or follow the process provided in subsections (4)(a) and (4)(b) within a reasonable period of time, not to exceed 6 months after receiving the petition.

~~(4)~~*(5)* Except for those emergency powers provided for in 75-2-402, the board may not delegate to a local air pollution control program the authority to control any air pollutant source that:

(a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter 1, part 2;

(b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; or

(c) has the potential to emit 250 tons a year or more of any pollutant subject to regulation under this chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air pollution control program prior to January 1, 1991.

~~(5)~~*(6)* If the board finds that the location, character, or extent of particular concentrations of population, air pollutant sources, or geographic, topographic, or meteorological considerations or any combination of these make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

~~(6)~~*(7)* If the board has reason to believe that any part of an air pollution control program in force under this section is either inadequate to prevent and control air pollution in the jurisdiction to which the program relates or is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing on the matter.

~~(7)~~*(8)* If, after the hearing, the board determines that any part of the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

~~(8)~~*(9)* If the jurisdiction fails to take these measures within the time required, the department shall administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any applicable board order, that are necessary to correct the deficiencies found by the board. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

~~(9)~~*(10)* If the board finds that the control of a particular air pollutant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may direct the department to assume and retain control over that air pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

~~(10)~~*(11)* A jurisdiction in which the department administers all or part of its air pollution control program under subsection ~~(8)~~ *(9)* may, with the approval of the board, establish or resume an air pollution control program that meets the requirements of subsection (3).

~~(11)~~*(12)* A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states.

(13) Local air pollution control programs established under this section shall provide procedures for public notice, public hearing, public comment, and appeal for any proposed new or revised rules, ordinances, or local laws adopted pursuant to this section. The procedures must comply with the following requirements:

(a) The local air pollution control program shall create and maintain a list of interested persons who wish to be informed of actions related to rules, ordinances, or local laws adopted by the local air pollution control program.

(b) At least 30 days prior to the adoption, revision, or repeal of a rule, ordinance, or law, the local air pollution control program shall give written notice of its intended action.

(c) The notice required under subsection (13)(b) must include:

(i) a statement of the terms or substance of the intended action or a description of the subjects and issues affected by the intended action;

(ii) an explanation of the procedure for a person to be included on the list of interested persons established pursuant to subsection (13)(a);

(iii) an explanation of the procedures and deadlines for presentation of oral or written comments related to the intended action;

(iv) an explanation of the process for requesting a public hearing as provided in subsection (13)(f); and

(v) the rationale for the intended action. The rationale must:

(A) include an explanation of why the intended action is reasonably necessary to implement the goals and purposes of the local air pollution control program;

(B) specifically address those intended actions for which there are no similar state or federal regulations or guidelines; and

(C) be written in plain, easily understood language.

(d) For the purposes of subsection (13)(c)(v), a statement of authority to adopt a rule, ordinance, or local law does not, standing alone, constitute a showing of reasonable necessity for the intended action.

(e) The local air pollution control program shall mail a copy of the proposed rule, ordinance, or local law to all interested persons on the list established pursuant to subsection (13)(a) who have made timely requests to be included on the list.

(f) If at least 10 of the persons who will be directly affected by the proposed rule, ordinance, or local law request a public hearing, the local air pollution control program shall hold a hearing to hear comments from the public on the intended action.

(g) The local air pollution control program shall prepare a written response to all comments submitted in writing or presented at the public hearing for consideration prior to adoption, revision, or repeal of the proposed rule, ordinance, or local law.

(h) A person who submits a written comment on a proposed action or who attends a public hearing in regard to a proposed action must be informed of the final action."

Section 3. Applicability. [Section 2] does not apply to proposals for new rules, ordinances, or local laws that have been noticed to the public and submitted to the local air pollution control program governing body before [the effective date of this act].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved May 1, 2001

CHAPTER NO. 537

[HB 612]

AN ACT GENERALLY REVISING LAWS RELATING TO ELECTIONS; CLARIFYING WHEN A PRIMARY BALLOT NEED NOT BE PRINTED FOR A POLITICAL PARTY; CLARIFYING THE TIME BY WHICH VACANCY APPOINTMENTS MUST BE MADE; REVISING WHO DETERMINES THE NUMBER OF SIGNATURES REQUIRED FOR A PETITION OF

NOMINATION; CHANGING THE TIME BY WHICH PETITIONS FOR NOMINATION OF CERTAIN MINOR PARTY CANDIDATES MUST BE FILED; CLARIFYING THE TIME BY WHICH THE NAMES OF CERTAIN PRESIDENTIAL ELECTORS MUST BE CERTIFIED TO THE SECRETARY OF STATE; REVISING WHEN THE SECRETARY OF STATE MUST SEND WRITTEN NOTICE TO PERSONS SUBMITTING BALLOT MEASURE PETITION SHEETS OF THE FINAL APPROVAL OF THOSE SHEETS; REQUIRING THAT A RESIDENCE ADDRESS, POST-OFFICE ADDRESS, OR TELEPHONE NUMBER BE SPECIFIED ON BALLOT MEASURE PETITION SHEETS FOR THE PURPOSE OF SIGNATURE VERIFICATION AND PROVIDING THAT AN ADDRESS GIVEN ON A PETITION MAY NOT BE USED AS THE ONLY MEANS TO DISQUALIFY A SIGNATURE; CLARIFYING WHEN THE SECRETARY OF STATE SENDS WRITTEN NOTICE OF FINAL APPROVAL OF A BALLOT MEASURE PETITION SHEET; REVISING THE DATE BY WHICH A PROPONENT OF A BALLOT MEASURE MAY CHALLENGE A DETERMINATION OF LEGAL DEFICIENCY; AND AMENDING SECTIONS 13-10-209, 13-10-327, 13-10-502, 13-10-504, 13-25-101, 13-27-202, 13-27-204, 13-27-205, 13-27-206, 13-27-207, 13-27-208, 13-27-302, 13-27-304, AND 13-27-316, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-10-209, MCA, is amended to read:

"13-10-209. Arrangement *and printing* of *primary* ballots. (1) (a) Ballots for a primary election ~~shall~~ *must* be arranged and printed in the same manner and number as provided in chapter 12 for general election ballots, except there ~~shall~~ *must* be separate ballots for each political party entitled to participate. The name of the political party ~~shall~~ *must* be printed at the top of the separate ballot for that party and need not be printed opposite each candidate's name.

(b) Nonpartisan offices and ballot issues may be printed on separate ballots or may appear on the same ballot as partisan offices if:

(i) each section is clearly identified as separate; and

(ii) ~~such~~ *the* nonpartisan offices and ballot issues appear on each party's ballot.

(2) ~~It is not necessary~~ *An election administrator does not need* to print a primary ballot for a political party ~~which~~ *if:*

(a) the party does not have candidates for more than half of the offices *to be printed* on the ballot ~~in even-year elections if~~*; and*

(b) no more than one candidate files for nomination by that party for any of the offices *to be printed* on the ballot.

(3) ~~The~~ *If, pursuant to subsection (2), a primary ballot for a political party is not printed, the* secretary of state shall certify that ~~no~~ *a* primary election is ~~necessary~~ *unnecessary* for that party ~~if such is the case~~ and shall ~~certify or~~ instruct the election administrator to certify the names of the candidates for that party for the general election ballot only.

~~(3)~~*(4)* The separate ballots for each party ~~shall~~ *must* be the same size and color. The stubs of each set of party ballots ~~shall~~ *must* bear the same number. If printed as a separate ballot, the nonpartisan ballot ~~shall~~ *must* be a different size or color than the party ballots, but the stubs ~~shall~~ *must* be numbered in the same order as the party ballots.

~~(4)~~*(5)* If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may be a different size and color than the other ballots in the election, but the stubs ~~shall~~ *must* be numbered in the same order.

~~(5)~~*(6)* Each elector shall receive a set of party ballots and a nonpartisan and a ballot issue ballot if ~~such~~ *those* ballots are printed."

Section 2. Section 13-10-327, MCA, is amended to read:

"13-10-327. Vacancy after primary and prior to general election. (1) Except as provided in 13-10-328 for a vacancy in the candidacy of either governor or lieutenant governor caused by the death of a candidate, if a party candidate dies or withdraws after the primary and before the general election, the affected political party shall appoint someone to replace the candidate in one of the following ways:

(a) For offices to be filled by the state at large, the state central committee shall make the appointment as provided by the rules of the party.

(b) For offices to be filled in districts including more than one county, a committee appointed by the county central committees of all counties in the district shall make the appointment. Procedures for the appointment of the committee and making the appointment must be provided in party rules.

(c) For offices to be filled in counties, municipalities, or districts wholly within a county, the appointment must be made under rules adopted by the county central committee.

(2) Except as provided in this section, appointments to fill vacancies must be made no later than ~~75~~ *76* days before the election. A candidate may not officially withdraw 85 days or less before a general election. However, if a candidate for partisan office dies less than 85 days before the general election, the affected political party shall appoint a candidate within 5 days after being notified of the vacancy. One of the procedures provided in 13-12-204 must be used to place the name of the appointee on the ballot if necessary.

(3) The appointing committee shall send a certificate to the officer with whom a declaration for nomination for the office would be filed, with the information required on a declaration for nomination and the name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed and acknowledged acceptance of the appointment and the filing fee for the office.

(4) The officer receiving the certificate of appointment, accompanied by a statement of acceptance and the filing fee, shall certify the name of the appointee for the ballot."

Section 3. Section 13-10-502, MCA, is amended to read:

"13-10-502. Signature requirements for petition. (1) The petition for nomination must be signed by electors residing within the state and district or political subdivision in which the officer or officers are to be elected. Each signature line must contain spaces for the signature, post-office address, and printed last name of the signer.

(2) The number of signatures must be 5% or more of the total vote cast for the successful candidate for the same office at the last general election.

(3) If the office sought is a new office or the boundaries of the district or political subdivision in which the election is to be held have changed since the last election for the office, the ~~secretary of state~~ *officer with whom nominations for the office sought are filed* shall determine the number of signatures required for a petition of nomination for that office."

Section 4. Section 13-10-504, MCA, is amended to read:

"**13-10-504. Independent or minor party candidates for president or vice president.** (1) An individual who desires to run for president or vice president as an independent candidate or as a candidate of a party not qualified under 13-10-601 shall file a petition for nomination with the secretary of state ~~90~~ *76* days prior to the date of the general election.

(2) The petition and the affidavits of circulation required by 13-27-302 must first be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306.

(3) The petition must have the signatures of electors equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election or 5,000 electors, whichever is less. The names of the candidates for the required number of presidential electors allowable to Montana must be certified to the secretary of state ~~when the petition for nomination is filed~~ *no later than 76 days before the general election.*

(4) A qualified independent presidential candidate may amend the petition and designate or choose a named vice presidential candidate until the filing date provided in 13-25-101."

Section 5. Section 13-25-101, MCA, is amended to read:

"**13-25-101. Nomination of electors — ballot.** (1) Each political party qualified under 13-10-601 shall nominate presidential electors for this state and file certificates of nomination for these candidates with the secretary of state in a form prescribed by the secretary of state no later than ~~75~~ *76* days before the general election, in the manner and number provided by law. However, in the event of the death of a candidate for president or vice president, a new candidate for president or vice president, or both, may be nominated for the affected political party and certificates of election may be filed with the secretary of state less than ~~75~~ *76* days before a general election.

(2) The secretary of state shall certify to the election administrator the names of the candidates for president and vice president of the several political parties, which must be placed on the ballot by one of the methods provided in 13-12-204. If the name of a new candidate for president or vice president, or both, is certified to the secretary of state in less than ~~75~~ *76* days pursuant to subsection (1), the secretary of state shall immediately certify the new name or names to the election administrators and the new name or names must be placed on the ballot by one of the methods provided in 13-12-204.

(3) The names of candidates for electors of president and vice president may not be printed upon the ballot."

Section 6. Section 13-27-202, MCA, is amended to read:

"**13-27-202. Recommendations — approval of form required.** (1) Before submission of a sample sheet to the secretary of state pursuant to subsection (3), the following requirements must be fulfilled:

(a) The text of the proposed measure must be submitted to the legislative services division for review.

(b) The legislative services division staff shall review the text for clarity, consistency, and any other factors that the staff considers when drafting proposed legislation.

(c) Within 14 days after submission of the text, the legislative services division staff shall make to the person submitting the text written recommendations for changes in the text or a statement that no changes are recommended.

(d) The person submitting the text shall consider the recommendations and respond in writing to the legislative services division, accepting, rejecting, or modifying each of the recommended changes. If no changes are recommended, no response is required.

(2) The legislative services division shall furnish a copy of the correspondence provided for in subsection (1) to the secretary of state, who shall make a copy of the correspondence available to any person upon request.

(3) Before a petition may be circulated for signatures, a sample sheet containing the text of the proposed measure must be submitted to the secretary of state in the form in which it will be circulated. The sample petition may not be submitted to the secretary of state more than 1 year prior to the final date for filing the signed petition with the county election administrator. The secretary of state shall refer a copy of the petition sheet to the attorney general for approval. The secretary of state and attorney general shall each review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, if any. The attorney general shall also review the petition as to its legal sufficiency. If the attorney general determines that the petition is legally deficient, the attorney general shall notify the secretary of state of that fact and provide a copy of the determination to the secretary of state and to the petitioner within the time provided in 13-27-312(8). The petition may not be given final approval by the secretary of state unless the attorney general's determination is overruled pursuant to 13-27-316. As used in this section, "legal sufficiency" means that the petition complies with the statutory prerequisites to submission of the proposed measure to the electors and that the text of the proposed measure complies with constitutional requirements governing submission of ballot measures to the electorate. Review of a petition for legal sufficiency does not include consideration of the merits or application of the measure if adopted by the voters. The secretary of state or the attorney general may not reject the petition solely because the text contains material not submitted to the legislative services division unless the material not submitted to the legislative services division is a substantive change not suggested by the legislative services division.

(4) (a) The secretary of state shall review the comments and statements of the attorney general received pursuant to 13-27-312 and make a final decision as to the approval or rejection of the petition.

(b) The secretary of state shall send written notice to the person who submitted the petition sheet of the approval or rejection of the form of the petition within 28 days after submission of the petition sheet. ~~The secretary of state shall send written notice to the person who submitted the petition sheet of the final approval or rejection of the petition within 5 days of:~~

~~(i) the date on which a final court decision is entered under 13-27-316 if a challenge to the attorney general's review of the petition is filed pursuant to that section; or~~

~~(ii) the expiration of the time for filing a challenge to the attorney general's review under 13-27-316 if no challenge is filed. If the petition is rejected, the notice must include reasons for rejection.~~

(c) If an action is filed challenging the validity of the petition, the secretary of state shall immediately notify the person who submitted the petition sheet.

(5) A petition with technical defects in form may be approved with the condition that those defects will be corrected before the petition is circulated for signatures.

(6) The secretary of state shall upon request provide the person submitting the petition with a sample petition form, including the text of the proposed measure, the statement of purpose, and the statements of implications, all as approved by the secretary of state and the attorney general. The petition may be circulated in the form of the sample prepared by the secretary of state. The petition may be circulated upon approval of the form of the petition by the secretary of state and the attorney general pending a final determination of its legal sufficiency."

Section 7. Section 13-27-204, MCA, is amended to read:

"**13-27-204. Petition for initiative.** (1) The following is substantially the form for a petition calling for a vote to enact a law by initiative:

PETITION TO PLACE INITIATIVE NO.____
ON THE ELECTION BALLOT

(a) If 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing this petition is ....., this measure will appear on the next general election ballot. If a majority of voters vote for this measure at that election, it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following measure on the ...., 20..., general election ballot:

(Title of measure written pursuant to 13-27-312)

(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the measure on the ballot and does not necessarily mean the signer agrees with the measure.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person is required to sign the person's name and *list the person's* address *or telephone number* in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the ~~above~~ heading. Each numbered line must contain spaces for the signature, ~~post-office~~ *residence* address, legislative representative district number, and printed last name of the signer. *In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer.*"

Section 8. Section 13-27-205, MCA, is amended to read:

"**13-27-205. Petition for the referendum.** (1) The following is substantially the form for a petition calling for approval or rejection of an act of the legislature by the referendum:

PETITION TO PLACE REFERENDUM NO.____
ON THE ELECTION BALLOT

(a) If 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing the petition is ...., Senate (House) Bill Number .... will appear on the next general election ballot. If a majority of voters vote for this measure at that election it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following Senate (House) Bill Number ...., passed by the legislature on ...... on the next general election ballot:

(Title of referendum written pursuant to 13-27-312)

(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) on this sheet. A signature on this petition is only to put the measure on the ballot and does not necessarily mean the signer agrees with the measure.

(d)

WARNING

A person who purposefully signs a name other than ~~his/her~~ *the person's* own to this petition or who signs more than once for the same issue at one election or signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person must sign ~~his/her~~ *the person's* name and *list the person's* address *or telephone number* in substantially the same manner as on ~~his/her~~ *the person's* voter registry card, or the signature will not be counted.

(2) Numbered lines ~~shall~~ *must* follow the ~~above~~ heading. Each numbered line ~~shall~~ *must* contain spaces for the signature, ~~post-office~~ *residence* address, legislative representative district number, and printed last name of the signer. *In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter*

registration card may not be used as the only means to disqualify the signature of that petition signer."

Section 9. Section 13-27-206, MCA, is amended to read:

"**13-27-206. Petition for initiative for constitutional convention.** (1) The following is substantially the form for a petition to direct the secretary of state to submit to the qualified voters the question of whether there will be a constitutional convention:

PETITION TO PLACE INITIATIVE NO.____,
CALLING FOR A CONSTITUTIONAL CONVENTION,
ON THE ELECTION BALLOT

(a) If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing this petition is ....., the question of whether to have a constitutional convention will appear on the next general election ballot. If a majority of voters vote for the constitutional convention, the legislature shall call for a constitutional convention at its next session.

(b) We, the undersigned Montana voters, propose that the secretary of state place the question of whether to hold a constitutional convention on the ...., 20..., general election ballot:

(Title of the initiative written pursuant to 13-27-312)

(Statement of implication written pursuant to 13-27-312)

(c) A signature on this petition is only to put the call for a constitutional convention on the ballot and does not necessarily mean the signer is in favor of calling a constitutional convention.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a $500 fine or 6 months in jail, or both.

(e) Each person is required to sign the person's name and *list the person's* address *or telephone number* in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the ~~above~~ heading. Each numbered line must also contain spaces for the signature, ~~post-office~~ *residence* address, legislative representative district number, and printed last name of the signer. *In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer.*"

Section 10. Section 13-27-207, MCA, is amended to read:

"**13-27-207. Petition for initiative for constitutional amendment.** (1) The following is substantially the form for a petition for an initiative to amend the constitution:

PETITION TO PLACE CONSTITUTIONAL AMENDMENT NO.____
ON THE ELECTION BALLOT

(a) If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing the petition is ....., this constitutional amendment will appear on the next general election ballot. If a majority of voters vote for this amendment at that election, it will become part of the constitution.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following constitutional amendment on the ...., 20..., general election ballot:

(Title of the proposed constitutional amendment
written pursuant to 13-27-312)

(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the constitutional amendment on the ballot and does not necessarily mean the signer agrees with the amendment.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person is required to sign the person's name and *list the person's* address *or telephone number* in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the ~~above~~ heading. Each numbered line must contain spaces for the signature, ~~post-office~~ *residence* address, legislative representative district number, and printed last name of the signer. *In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer.*"

Section 11. Section 13-27-208, MCA, is amended to read:

"**13-27-208. Petitions to be made available in each county election administrator's office.** ~~When the secretary of state sends written notice of the~~ *Upon* final approval of a petition as required under 13-27-202(4), the secretary of state shall forward a copy of the petition, along with signature sheets, to the election administrator of each county. The election administrator shall make a copy of each approved petition available for reading and signing in the administrator's office during business hours in an election year until the petitions are submitted under 13-27-301. The secretary of state may charge the person who submitted the petition a fee sufficient to reimburse the secretary of state for the cost of providing copies of the petition and signature sheets to each county election administrator."

Section 12. Section 13-27-302, MCA, is amended to read:

"**13-27-302. Certification of signatures.** An affidavit, in substantially the following form, must be attached to each sheet or section submitted to the county official:

I, (name of person who circulated this petition), swear that I circulated or assisted in circulating the petition to which this affidavit is attached, that I believe the signatures on the petition are genuine, are the signatures of the persons whose names they purport to be, and are the signatures of Montana electors who are registered at the address *or have the telephone number* following ~~their~~ *the person's* signature, and that the signers knew the contents of the petition before signing the petition.

....

(Signature of petition circulator)

....

(Address of petition circulator)

Subscribed and sworn to before me this ... day of ....., 20...

....

Seal (Person authorized to take oaths)

....

(Title or notarial information)"

Section 13. Section 13-27-304, MCA, is amended to read:

"**13-27-304. County official to forward verified sheets.** The county official verifying the number of registered electors signing the petition shall forward it to the secretary of state by certified mail with a certificate in substantially the following form attached:

To the Honorable ......, Secretary of State of the state of Montana:

I, ..., ... (title) of the County of ...., certify that I have examined the attached (section containing .... sheets) or (.... sheets) of the petition for (referendum, initiative, constitutional convention, or constitutional amendment) No. .... in the manner prescribed by law; and I believe that .... (number) signatures in Legislative Representative District No. .... (repeat for each district included in sheet or section) are valid; and I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and the post-office address, *residence address, or telephone number* and legislative representative district number is completed for each valid signature.

Signed: ....(Date) .... (Signature)

Seal ....(Title)"

Section 14. Section 13-27-316, MCA, is amended to read:

"**13-27-316. Court review of attorney general opinion or statements.** (1) If the proponents of a ballot measure believe that the statement of purpose, the statements of implication of a vote, or the fiscal statement formulated by the attorney general pursuant to 13-27-312 do not satisfy the requirements of 13-27-312, or believe that the attorney general was incorrect in determining that the petition was legally deficient, they may, within 10 days of ~~receipt of the notice from~~ the secretary of ~~state~~ *state's* or ~~of the~~ attorney general's determination regarding legal sufficiency provided for in 13-27-202, file an action in the district court in and for the county of Lewis and Clark challenging the adequacy of the statement or the attorney general's determination and requesting the court to alter the statement or modify the attorney general's determination.

(2) If the opponents of a ballot measure believe that the statement of purpose, the statements of implication of a vote, or the fiscal statement formulated by the

attorney general pursuant to 13-27-312 do not satisfy the requirements of 13-27-312, or believe that the attorney general was incorrect in determining that the petition was legally sufficient, they may, within 10 days of the date of certification to the governor that the completed petition has been officially filed, file an action in the district court in and for the county of Lewis and Clark challenging the adequacy of the statement or the attorney general's conclusion and requesting the court to alter the statement or overrule the attorney general's determination concerning the legal sufficiency of the petition.

(3) (a) Notice must be served upon the secretary of state and upon the attorney general. The action takes precedence over other cases and matters in the district court. The court shall examine the proposed measure and the challenged statement or determination of the attorney general and shall as soon as possible render a decision and certify to the secretary of state a statement which the court determines will meet the requirements of 13-27-312 or an opinion as to the correctness of the attorney general's determination.

(b) A statement certified by the court must be placed on the petition for circulation and on the official ballot.

(4) A copy of the petition in final form must be filed in the office of the secretary of state by the proponents.

(5) Any party may appeal the order of the district court to the Montana supreme court by filing a notice of appeal within 5 days of the date of the order of the district court."

Approved May 1, 2001

CHAPTER NO. 538

[HB 619]

AN ACT ALLOWING A TAX CREDIT FOR THE PRESERVATION OF HISTORICALLY SIGNIFICANT PROPERTY, INCLUDING BUILDINGS AND STRUCTURES; ALLOWING FOR TAX CREDITS RESULTING FROM THE IMPOSITION OF CONSERVATION EASEMENTS ON HISTORICALLY SIGNIFICANT PROPERTY, INCLUDING BUILDINGS AND STRUCTURES; ALLOWING CREDIT CARRYOVERS; AMENDING SECTION 15-30-180, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-180, MCA, is amended to read:

"15-30-180. Credit for preservation of historic ~~buildings~~ ***property*****.** (1) There is allowed as a credit against the taxes imposed by 15-30-103 a percentage of the credit allowed for qualified rehabilitation expenditures with respect to any certified historic building located in Montana as provided in 15-31-151.

(2) (a) As an alternative to the credit allowed in subsection (1), there is allowed as a credit against the taxes imposed by 15-30-103 an amount equal to 20% of the cost of creating the conservation easement and the diminution in the value of a historically significant property, including buildings and structures, that may result from a contract that places a conservation easement on the property if:

(i) the conservation easement holder is a qualified private organization as defined in 76-6-104;

(ii) the owner of the property is obligated by the contract creating the easement to maintain and preserve the property to retain its historical significance and characteristics for a period of not less than 29 years; and

(iii) the state historic preservation officer, provided for in 2-15-1512, verifies that a property is listed on the national register of historic places or that the property is historically valuable.

(b) For the purposes of this section, property is historically valuable if the property has, as certified by the state historic preservation office, significant qualities reflecting American history, architecture, engineering, or culture that was achieved prior to the last 50 years and the property possesses integrity of location, design, setting, materials, and workmanship and:

(i) is associated with events that have made a significant contribution to the broad patterns of Montana's or the nation's history;

(ii) is associated with the lives of persons significant in our past;

(iii) embodies the distinctive characteristics of a type, period, or method of construction, represents the work of a master, possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction; or

(iv) has yielded, or may be likely to yield, information important in history.

(c) In addition to any of the tax credit allowed in subsection (2)(a), the owner of a historically significant property, including buildings and structures, that is the subject of a conservation easement contract may take as a credit against the taxes imposed by 15-30-103 an amount equal to 20% of the amount spent by the owner for the direct cost of the protection and the preservation of the property if the preservation efforts are approved as reasonable and necessary by the conservation easement holder. The tax credit may not exceed $25,000 a year.

(3) The maximum tax credit that may be taken under subsection (2) for each historically significant property is $150,000.

(4) The credit allowed by subsection (2) may not be refunded if the taxpayer has a tax liability less than the amount of the credit. If the sum of credit carryovers from the credit, if any, and the amount of credit allowed by subsection (2) for the tax year exceed the taxpayer's tax liability for the current tax year, the excess attributable to the current tax year's credit is a credit carryover to the 6 succeeding tax years. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be used first.

(5) A person may not take a credit against taxes due in any 1 year under both subsection (1) and (2).

~~(2)~~*(6)* The credit *allowed in subsection (1)* may not be allocated between spouses unless the property is used by a small business corporation or a partnership in which they are shareholders or partners."

Section 2. Effective date. [This act] is effective January 1, 2002.

Section 3. Termination. [This act] terminates December 31, 2011.

Approved May 1, 2001

CHAPTER NO. 539

[HB 620]

AN ACT EXEMPTING VETERANS FROM VEHICLE REGISTRATION FEES WHO HAVE BEEN AWARDED THE PURPLE HEART AND HAVE A DEGREE OF DISABILITY; IMPOSING A $5 FEE FOR ORIGINAL OR RENEWAL VEHICLE REGISTRATION FOR A VETERAN WHO HAS BEEN AWARDED THE PURPLE HEART; ALLOWING A SURVIVING SPOUSE TO RETAIN SPECIAL LICENSE PLATES ISSUED TO A VETERAN WHO HAS BEEN AWARDED THE PURPLE HEART UPON PAYMENT OF THE REQUIRED TAXES AND FEES IN LIEU OF TAX; ALLOWING THE ISSUANCE OF ONLY ONE SET OF SPECIAL LICENSE PLATES TO A VETERAN WHO HAS BEEN AWARDED THE PURPLE HEART; ALLOWING A VETERAN WHO HAS BEEN AWARDED THE PURPLE HEART AND HAS A DEGREE OF DISABILITY TO REGISTER FOR A FEE OF $5 ONE MOTOR VEHICLE THAT IS NOT USED FOR COMMERCIAL PURPOSES; PROVIDING FOR THE ISSUANCE OF PERSONALIZED SPECIAL LICENSE PLATES TO A VETERAN WHO HAS BEEN AWARDED THE PURPLE HEART; AMENDING SECTIONS 49-4-302, 61-3-332, 61-3-452, 61-3-453, 61-3-454, AND 61-3-560, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-4-302, MCA, is amended to read:

"49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits — requirements for special parking spaces. (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in a special parking space reserved for a person with a disability, whether on public property or on private property available for public use, when the person for whom the permit was issued is using the special parking space to enter or exit the vehicle.

(2) A vehicle may not be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by a person with a disability unless:

(a) the vehicle is lawfully displaying a parking permit issued under this part, a distinguishing license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring parking privileges similar to those conferred in subsection (1), or a specially inscribed license plate *displaying the letters "DV"* issued under 61-3-332(10)(c)(i)(A) or (10)(g) or 61-3-426(2); and

(b) the reserved parking space is being used by the person for whom the permit, plate, or placard was issued to enter or exit the vehicle.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates *displaying the letters "DV"* issued under 61-3-332(10)(c)(i)(A) or (10)(g) or 61-3-426(2) and parked in public places along public streets from any time limitation imposed upon parking, except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(4) In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for a person with a disability or a permitholder on ways of this state open to the public, as defined in 61-8-101:

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and each other angle parking space designated for a person with a disability must be at least 13 feet wide.

(d) A parking space reserved for a person with a disability must be designated by a sign showing the international symbol of accessibility, indicating that a permit is required, and stating the penalty for a violation. In order to meet the penalty statement requirement, signs existing on October 1, 1993, must have attached a decal stating the penalty for a violation. The sign must be attached to a wall or post in a way that it is not obscured by a vehicle parked in the space."

Section 2. Section 61-3-332, MCA, is amended to read:

"**61-3-332. Number plates.** (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bears the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bears the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bears the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bears the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bears the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned to the dealer, in the position that the department designates.

(2) (a) All number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(b) For light vehicles that are permanently registered as provided in 61-3-527 or 61-3-562, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.

(3) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of $10. The additional fee must be distributed in accordance with the provisions of subsection (10)(f)(iii) and (10)(f)(iv).

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) A resident of Montana who is a veteran of the armed forces of the United States and who *has been awarded the purple heart and is 50% or more disabled because of an injury that has been determined by the department of veterans affairs to be service-connected or who* is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of *documentation required in subsection (10)(f)(i) and* proof of the ~~100%~~ *required* disability, be issued:

(A) a special license plate under this section with *the purple heart decal or* a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the *50% or more disabled veteran who has been awarded the purple heart or the* disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a ~~passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less~~ *motor vehicle, as defined in 61-1-102, that is not used for commercial purposes* is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(iii) The fee for original or renewal registration for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes by a 50% or more disabled veteran who has been awarded the purple heart and who meets the criteria in subsection (10)(c)(i) is $5 and is in lieu of other taxes and fees for that vehicle under this chapter, except for the $10 fee required in subsection (10)(f)(iii), regardless of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i). Special license plates issued to a 50% or more disabled veteran who has been awarded the purple heart under subsection (10)(c) may be retained by a surviving spouse, subject to payment of all taxes and fees required under parts 3 and 4 of this chapter as provided in subsection (10)(f)(iii).

~~(iii)~~*(iv)* Special license plates issued to a disabled veteran *and, except as provided in subsection (10)(c)(iii), to a 50% or more disabled veteran who has been awarded the purple heart* are not transferable to another person.

~~(iv)~~*(v)* A *50% or more disabled veteran who has been awarded the purple heart or a* disabled veteran is not entitled to a special ~~disabled veteran's~~ license plate for more than one vehicle.

~~(v)~~*(vi)* A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(i) Fees required under 61-3-321(1) and (5) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).

(ii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iii) An ex-prisoner of war is exempt from the ~~light vehicle taxes imposed under 61-3-504~~ *registration fees imposed under 61-3-560 through 61-3-562* for one vehicle that displays a set of ex-prisoner of war license plates.

(iv) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.

(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided *for 100% disabled veterans and ex-prisoners of war* in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue account established in 10-2-603 for administration, construction, operation, and maintenance of the state veterans' cemeteries.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.

(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 3. Section 61-3-452, MCA, is amended to read:

"**61-3-452. Disabled veterans' plates nontransferable.** The special license plates for *100%* disabled veterans issued pursuant to 61-3-332(10)(c)(i)(A) or 61-3-426(2) are not transferable."

Section 4. Section 61-3-453, MCA, is amended to read:

"**61-3-453. ~~Disabled veterans'~~ *Disabled veterans who have been awarded purple heart and disabled veterans* — plates limited ~~to one automobile or truck~~ — personalized plates.** (1) A *50% or more disabled veteran who has been awarded the purple heart or a* disabled veteran is ~~not~~ entitled to special license plates ~~for disabled veterans~~ under 61-3-332(10)(c)(i)(A) or 61-3-426(2) for ~~more than~~ *only* one ~~passenger automobile or one truck up to and including 1 ton GVW-rated capacity~~ *motor vehicle, as defined in 61-1-102, as long as that vehicle is not used for commercial purposes.*

(2) Upon submitting the application provided for in 61-3-405 and payment of the $25 fee provided for in 61-3-406, a *50% or more disabled veteran who has been*

awarded the purple heart or a disabled veteran must receive personalized ~~disabled veteran~~ license plates."

Section 5. Section 61-3-454, MCA, is amended to read:

"**61-3-454. Special parking privilege.** A vehicle lawfully displaying specially inscribed license plates *displaying the letters "DV"* issued under 61-3-332(10)(c)(i)(A) or 61-3-426(2) and conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under 49-4-302."

Section 6. Section 61-3-560, MCA, is amended to read:

"**61-3-560. Light vehicle registration fee — exemptions — 24-month registration.** (1) Except as provided in subsection (2), there is a registration fee imposed on light vehicles. The registration fee is in addition to other annual registration fees.

(2) (a) Light vehicles that meet the description of property exempt from taxation under 15-6-201(1)(a), (1)(c) through (1)(e), (1)(g), (1)(m), (1)(o), (1)(q), or (1)(w), 15-6-203, or 15-6-215, except as provided in 61-3-520, are exempt from the fee imposed in subsection (1).

(b) A motor vehicle owned by a *100%* disabled veteran *or by a 50% or more disabled veteran who has been awarded the purple heart* qualifying for special license plates under 61-3-332(10) or a motor vehicle registered under 61-3-456 is exempt from the fee imposed by this section.

(c) A dealer for light vehicles is not required to pay the registration fee for light vehicles that constitute inventory of the dealership and that are reported under 61-3-501.

(3) The owner of a motor vehicle subject to the provisions of 61-3-313 through 61-3-316 may register the light vehicle for a period not to exceed 24 months. The application for registration or reregistration must be accompanied by the registration fee and all other fees required in this chapter for each 12-month period of the 24-month period. However, the registration fees required under 61-3-321(1)(a) or (1)(b) paid at the time of registration or reregistration apply for the entire 24-month registration period."

Section 7. Effective date. [This act] is effective January 1, 2002.

Approved May 1, 2001

CHAPTER NO. 540

[HB 623]

AN ACT PROVIDING TAX CREDITS FOR AMOUNTS PAID OR INCURRED BY THE EMPLOYER FOR DEPENDENT CARE ASSISTANCE; ALLOWING A CREDIT AGAINST MONTANA INCOME TAXES FOR AMOUNTS PAID OR INCURRED BY THE EMPLOYER TO ACQUIRE A DAY-CARE FACILITY FOR THE BENEFIT OF THE EMPLOYER'S EMPLOYEES; PROVIDING LIMITATIONS TO THE CREDIT; INCREASING THE TAX CREDIT FOR DEPENDENT CARE ASSISTANCE; EXPANDING THE TAX CREDIT FOR DEPENDENT CARE ASSISTANCE TO INCLUDE AMOUNTS PAID OR INCURRED BY AN EMPLOYER FOR INFORMATION AND REFERRAL

SERVICES TO ASSIST EMPLOYEES IN OBTAINING DEPENDENT CARE; AMENDING SECTIONS 15-30-186 AND 15-31-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Credit for day-care facilities. (1) There is a credit against the taxes otherwise due under this chapter that is allowable to an employer based on the amounts paid or incurred during the tax year by the employer to acquire, construct, reconstruct, renovate, or otherwise improve real property so that the property may be used primarily as a day-care facility. Subject to the conditions of this section, the amount of the credit is equal to:

(a) the amount of the day-care facility credit determined under subsection (2); and

(b) any day-care facility tax credit carryforwards.

(2) The credit allowed under subsection (1) is the lesser of:

(a) $2,500, multiplied by the number of dependents that the day-care facility is designed to accommodate at the end of the first tax year for which credit is first claimed;

(b) 15% of the cost of the acquisition, construction, reconstruction, renovation, or other improvement; or

(c) $50,000.

(3) The amounts paid or incurred by the employer for the acquisition, construction, reconstruction, renovation, or other improvement to real property that qualify for the credit may be paid or incurred either:

(a) to another person to be used to acquire, construct, reconstruct, renovate, or otherwise improve real property that is operated as a day-care facility and with whom the employer contracts to make day-care assistance payments, and the payments are excluded, or partially excluded, under 26 U.S.C. 129 from the income of the employee for federal tax purposes; or

(b) to acquire, construct, reconstruct, renovate, or otherwise improve real property that is operated by the employer, or a combination of employers, to provide day-care assistance to the employees of the employer under a program or programs, and the program or programs are excluded, or partially excluded, under 26 U.S.C. 129 from the income of the employee for federal tax purposes.

(4) To qualify for the credit allowed under subsection (1), the following conditions apply:

(a) The property must be in actual use in Montana as a day-care facility on the last day of the tax year for which the credit or any carryforward amount of the credit is claimed.

(b) Day-care services assisted by the employer must take place on the property on the last day of the tax year for which the credit or any carryforward amount of the credit is claimed.

(c) The person operating the day-care facility must hold a current license or registration certificate under Title 52, chapter 2, part 7, on the last day of the tax year for which the credit under subsection (1) is claimed.

(d) The day-care facility shall accommodate six or more children.

(e) The day-care facility must be placed in operation before January 1, 2006.

(5) The total amount of the costs upon which the credit allowed under subsection (1) is based and the total amount of the credit must be determined by the employer, subject to rules adopted by the department, during the tax year in which the property acquired, constructed, reconstructed, renovated, or otherwise improved is first placed in operation as a day-care facility.

(6) The amount paid or incurred by the employer upon which the credit allowed under subsection (1) is based must be excluded from the income of an employee subject to the limitations provided in 26 U.S.C. 129(b).

(7) The taxpayer is allowed one-tenth of the total credit determined under subsection (2) in the first tax year in which the taxpayer may claim the credit and one-tenth of the total credit is allowed in each succeeding tax year, not to exceed 9 tax years.

(8) Except as provided in subsections (4)(a) and (4)(b), if the tax credit allowed under subsection (1) exceeds the taxpayer's liability, the credit may be carried forward to the succeeding tax year or years, except that a carryforward amount is not allowed beyond the period allowed for the credit as provided in subsection (7).

(9) The provisions of this section do not affect the computation of depreciation or basis for a day-care facility. However, if the credit allowed under this section is claimed, the amount of any deduction that is allowed or allowable under this chapter for the amounts paid or incurred, or upon which the credit is based, must be reduced by the dollar amount of the credit allowed.

(10) The department shall require evidence from the taxpayer that the person operating the day-care facility on the date that the taxpayer's tax year ends is licensed or registered to operate the facility. The evidence must accompany the tax return in which any amount of tax credit allowed under this section is claimed. If the evidence is not furnished, the credit is not allowed for the tax year for which the evidence is not furnished. Upon request of the department, the department of public health and human services shall report to the department on whether the day-care facility was operated as a licensed or registered day-care facility on the last day of the tax year of the person claiming the credit.

(11) The employer must meet any other requirements or furnish any information to the department that the department requires under rules adopted by the department to carry out the purposes of this section.

(12) If the credit allowed under this section is claimed by a small business corporation, as defined in 15-31-201, or a partnership, the credit must be attributed to shareholders or partners, using the same proportion to report the corporation's or partnership's income or loss for Montana income tax purposes.

(13) For purposes of the credit allowed under subsection (1):

(a) the definitions and special rules contained in 26 U.S.C. 129(e) apply to the extent applicable; and

(b) "employer" means an employer carrying on a business, trade, occupation, or profession in this state.

Section 2. Credit for day-care facilities. There is a credit against the taxes otherwise due under this chapter allowable to an employer based on the amounts paid or incurred during the tax year by the employer to acquire, construct, reconstruct, renovate, or otherwise improve real property to be used primarily as a day-care facility. The credit must be computed in accordance with the provisions of [section 1].

Section 3. Section 15-30-186, MCA, is amended to read:

"15-30-186. Credit for dependent care assistance *and referral services*. *(1)* There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the ~~taxable~~ *tax* year by the employer for dependent care assistance. The credit must be computed in accordance with the provisions of 15-31-131.

(2) In addition to the credit allowed under subsection (1), there is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the tax year by the employer to provide information and referral services to assist employees of the employer employed within this state to obtain dependent care. The credit must be computed in accordance with the provisions of 15-31-131."

Section 4. Section 15-31-131, MCA, is amended to read:

"15-31-131. Credit for dependent care assistance *and referral services*. (1) There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the ~~taxable~~ *tax* year by the employer for dependent care assistance actually provided to or on behalf of an employee if the assistance is furnished by a registered or licensed day-care provider and pursuant to a program that meets the requirements of section 129(d)(2) through (6) of the Internal Revenue Code, ~~(~~26 U.S.C. 129(d)(2) through (d)(6)~~)~~.

(2) (a) The amount of the credit allowed under subsection (1) is ~~20%~~ *25%* of the amount paid or incurred by the employer during the ~~taxable~~ *tax* year, but the credit may not exceed ~~$1,250~~ *$1,575* of day-care assistance actually provided to or on behalf of the employee.

(b) For the purposes of this subsection, marital status must be determined under the rules of section 21(e)(3) and (4) of the Internal Revenue Code, ~~(~~26 U.S.C. 21(e)(3) and (e)(4)~~)~~.

(c) In the case of an onsite facility, the amount upon which the credit allowed under subsection (1) is based, with respect to any dependent, must be based upon utilization and the value of the services provided.

(3) (a) In addition to the credit allowed under subsection (1), there is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the tax year by the employer to provide information and referral services to assist employees of the employer employed within this state to obtain dependent care.

(b) The amount of the credit allowed under subsection (3)(a) is equal to 25% of the amount paid or incurred in the tax year.

~~(3)~~*(4)* An amount paid or incurred during the ~~taxable~~ *tax* year of an employer in providing dependent care assistance to or on behalf of any employee does not qualify for the credit allowed under subsection (1) if the amount was paid or incurred to an individual described in section 129(c)(1) or (2) of the Internal Revenue Code, ~~(~~26 U.S.C. 129(c)(1) or (c)(2)~~)~~.

~~(4)~~*(5)* An amount paid or incurred by an employer to provide dependent care assistance to or on behalf of an employee does not qualify for the credit allowed under subsection (1):

(a) to the extent the amount is paid or incurred pursuant to a salary reduction plan; or

(b) if the amount is paid or incurred for services not performed within this state.

~~(5)~~*(6)* If the credit allowed under subsection (1) *or (3)* is claimed, the amount of any deduction allowed or allowable under this chapter for the amount that qualifies for the credit (or upon which the credit is based) must be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section must be made at the time of filing the tax return.

~~(6)~~*(7)* The amount upon which the credit allowed under subsection (1) is based may not be included in the gross income of the employee to whom the dependent care assistance is provided. However, the amount excluded from the income of an employee under this section may not exceed the limitations provided in section 129(b) of the Internal Revenue Code, ~~(~~26 U.S.C. 129(b)~~)~~. For purposes of Title 15, chapter 30, part 2, with respect to an employee to whom dependent care assistance is provided, "wages" does not include any amount excluded under this subsection. Amounts excluded under this subsection do not qualify as expenses for which a deduction is allowed to the employee under 15-30-121.

~~(7)~~*(8)* Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year~~,~~ and likewise through the fifth year succeeding the tax year in which the credit was first allowed or allowable. A credit may not be carried forward beyond the fifth succeeding tax year.

~~(8)~~*(9)* If the taxpayer is an S. corporation, as defined in section 1361 of the Internal Revenue Code, ~~(~~26 U.S.C. 1361~~)~~, and the taxpayer elects to take tax credit relief, the election may be made on behalf of the corporation's shareholders. A shareholder's credit must be computed using the shareholder's pro rata share of the corporation's costs that qualify for the credit. In all other respects, the effect of the tax credit applies to the corporation as otherwise provided by law.

~~(9)~~*(10)* For purposes of the credit allowed under subsection (1) *or (3)*:

(a) ~~The~~ *the* definitions and special rules contained in section 129(e) of the Internal Revenue Code, ~~(~~26 U.S.C. 129(e)~~)~~, apply to the extent applicable~~.~~*; and*

(b) ~~"Employer"~~ *"employer"* means an employer carrying on a business, trade, occupation, or profession in this state."

Section 5. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 31, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [section 2].

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000, and to day-care facilities acquired by an employer and placed in operation after December 31, 2000.

Approved May 1, 2001

CHAPTER NO. 541

[HB 643]

AN ACT REVISING LAWS RELATED TO ELECTRIC ENERGY; CLARIFYING THE DEFINITION OF "PROJECT" UNDER THE ECONOMIC DEVELOPMENT BOND LAWS TO ALLOW ELECTRIC GENERATION FACILITIES AND TRANSMISSION LINES TO BE FINANCED UNDER THE LAWS; MODIFYING THE CREDIT LIMITATION AND CARRYOVER PROVISIONS FOR WIND-GENERATED ELECTRICITY ON MONTANA RESERVATION LANDS; EXEMPTING ELECTRICITY GENERATED ON MONTANA RESERVATION LANDS FROM THE WHOLESALE ENERGY TAX FOR OUT-OF-STATE DISTRIBUTION; AMENDING SECTIONS 15-32-403, 15-32-404, 15-72-104, AND 90-5-101, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-32-403, MCA, is amended to read:

"15-32-403. Limitation on credit. *(1) Except as provided in subsection (2),* ~~Whenever~~ *whenever* any federal wind energy tax credits for a system that generates electricity by means of wind power are allowed or allowable under section 48(a) of the Internal Revenue Code (26 U.S.C. 48(a)) or any other federal law, the state credit allowed by 15-32-402 must be reduced by the amount of federal credits so that the effective credit does not exceed 60% of the eligible costs.

(2) An individual, corporation, partnership, or small business corporation, as defined in 15-31-201, is exempt from the provisions of subsection (1) of this section if the individual, corporation, partnership, or small business corporation:

(a) invests in a commercial system located within the exterior boundaries of a Montana Indian reservation, which commercial system is 5 megawatts or larger in size;

(b) signs an employment agreement with the tribal government of the reservation where the commercial system would be constructed regarding the training and employment of tribal members in the construction, operation, and maintenance of the commercial system; and

(c) offers contracts with a duration of at least 5 years to sell at least 33% of that commercial system's net generating output at the cost of production plus a reasonable rate of return as designated by the public service commission to customers for use within the state of Montana.

(3) The cost of production must be determined by dividing the cost and operation of the commercial system over an appropriate time period by the kilowatt output of the system."

Section 2. Section 15-32-404. MCA. is amended to read:

"15-32-404. Carryover of credit. *(1)* The tax credit allowed under 15-32-402 is to be deducted from that portion of the taxpayer's tax liability as set forth in 15-32-402(1) for the ~~taxable~~ *tax* year in which the equipment invested in by the taxpayer is placed in service. If the amount of the tax credit exceeds the taxpayer's tax liability for the ~~taxable~~ *tax* year, the amount that exceeds the tax liability may be carried over for credit against the taxpayer's tax liability in the next succeeding ~~taxable~~ *tax* year or years until the total amount of the tax credit, subject to the limitation of 15-32-403, has been deducted from tax liability. However, *except as provided in subsection (2),* ~~no~~ *a* credit may *not* be carried beyond the seventh ~~taxable~~ *tax* year succeeding the ~~taxable~~ *tax* year in which the equipment was placed in service.

(2) A credit may be extended through the 15th tax year succeeding the tax year in which the equipment was placed in service if an individual, corporation, partnership, or small business corporation, as defined in 15-31-201:

(a) invests in a commercial system located within the exterior boundaries of a Montana Indian reservation, which commercial system is 5 megawatts or larger in size; and

(b) signs an employment agreement with the tribal government of the reservation where the commercial system would be constructed regarding the training and employment of tribal members in the construction, operation, and maintenance of the commercial system."

Section 3. Section 15-72-104, MCA, is amended to read:

"15-72-104. Wholesale energy transaction tax — rate of tax — exemptions — cost recovery. (1) (a) Except as provided in subsection (3), a wholesale energy transaction tax is imposed upon electricity transmitted within the state as provided in this section. The tax is imposed at a rate of 0.015 cent per kilowatt hour of electricity transmitted by a transmission services provider in the state.

(b) For electricity produced in the state for delivery outside of the state, the taxpayer is the person owning or operating the electrical generation facility producing the electricity. The transmission services provider shall collect the tax from the person based upon the kilowatt hours introduced onto transmission lines from the electrical generation facility. The amount of kilowatt hours subject to tax must be reduced by 5% to compensate for transmission line losses.

(c) For electricity produced in the state for delivery within the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider. The taxpayer may apply for a refund for overpayment of taxes pursuant to 15-72-116.

(d) For electricity produced outside the state for delivery inside the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.

(e) For electricity delivered to a distribution services provider that is a rural electric cooperative for delivery to purchasers that have opted for customer choice under the provisions of Title 69, chapter 8, part 3, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based on the amount of kilowatt hours of electricity delivered to the distribution services provider that is attributable to customers that have opted for customer choice.

(f) For electricity delivered to a distribution services provider that prior to May 2, 1999, was owned by a public utility as defined in 69-3-101, the tax is imposed on the successor distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.

(2) (a) If more than one transmission services provider transmits electricity, the last transmission services provider transmitting or delivering the electricity shall collect the tax.

(b) If the transmission services provider is an agency of the United States government, the distribution services provider receiving the electricity shall self-assess the tax subject to the provisions of this part.

(c) If an electrical generation facility located within the state produces electricity for sale inside and outside the state, sales within the state are considered to have come from electricity produced within the state for purposes of the tax imposed by this section.

(3) (a) Electricity transmitted through the state that is not produced or delivered in the state is exempt from the tax imposed by this section.

(b) Electricity produced in the state by an agency of the ~~of the~~ United States government *or electricity produced from an electric energy generation facility as defined in 90-5-101(3) constructed after [the effective date of section 4] that is within the exterior boundaries of a Montana Indian reservation* for delivery outside of the state is exempt from the tax imposed by this section.

(c) Electricity delivered to a distribution services provider that is a municipal utility described in 69-8-103(5)(b) or a rural electric cooperative organized under the provisions of Title 35, chapter 18, is exempt from the tax imposed by this section.

(d) Electricity delivered to a purchaser that receives its power directly from a transmission or distribution facility owned by an entity of the United States government on or before May 2, 1997, or electricity that is transmitted exclusively on transmission or distribution facilities owned by an entity of the United States government on or before May 2, 1997, is exempt from the tax imposed by this section.

[(e) Electricity delivered by a distribution services provider to a customer with loads of 1,000 kilowatts or greater that was first served by a public utility after December 31, 1996, is exempt from the tax imposed by this section, provided that the customer purchases the electricity pursuant to a contract or contracts that establish the purchase price or prices of electricity. The exemption allowed by this subsection (3)(e) does not apply to electricity purchased under a renewal or extension of an existing contract or existing contracts.]

(4) A distribution services provider is allowed to recover the tax imposed by this section and the administrative costs to comply with this part in its rates. (Bracketed language terminates January 1, 2003—sec. 40, Ch. 556, L. 1999.)"

Section 4. Section 90-5-101, MCA, is amended to read:

"**90-5-101. Definition of terms.** As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Agricultural enterprises" ~~include~~ *includes* but ~~are~~ *is* not limited to producing, warehousing, storing, fattening, treating, handling, distributing, or selling farm products or livestock.

(2) "Bonds" means bonds, refunding bonds, notes, or other obligations issued by a municipality or county under the authority of this part, including without limitation short-term bonds or notes issued in anticipation of the issuance of long-term bonds or notes.

(3) "Electric energy generation facility" means any combination of a physically connected generator or generators, associated prime movers, and other associated property and transmission facilities and upgrades and improvements of transmission facilities, including appurtenant land and improvements and personal property, that are normally operated together to produce and transfer electric power. The term includes but is not limited to generating facilities that produce and transfer electricity from coal-fired steam turbines, oil or gas turbines, wind turbines, solar power sources, fuel cells, or turbine generators that are driven by falling water.

~~(3)~~*(4)* "Governing body" means the board or body in which the general legislative powers of the municipality or county are vested.

~~(4)~~*(5)* "Higher education facilities" means any real or personal properties required or useful for the operation of an institution of higher education.

~~(5)~~*(6)* "Institution of higher education" means any private, nonprofit corporation or institution within the state of Montana:

(a) authorized to provide or operate educational facilities; and

(b) providing a program of education beyond the high school level.

~~(6)~~*(7)* "Mortgage" means a mortgage or deed of trust or other security device.

~~(7)~~*(8)* "Municipality" means any incorporated city or town in the state.

~~(8)~~*(9)* "Project" means any land; any building or other improvement; and any other real or personal properties considered necessary in connection with the improvement, whether or not now in existence, ~~which~~ *that* must be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing, hospitals, long-term care facilities, community-based facilities for individuals who are persons with developmental disabilities as defined in 53-20-102, or medical facilities; higher education facilities; ~~small-scale hydroelectric production facilities with a capacity of 50 megawatts or less;~~ *electric energy generation facilities;* and any combination of these projects."

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 6. Effective dates. (1) [Sections 4 and 5 and this section] are effective on passage and approval.

(2) [Sections 1 through 3] are effective January 1, 2002.

Approved May 1, 2001

CHAPTER NO. 542

[SB 28]

AN ACT REVISING THE PROCEDURE FOR MODIFICATION OF CHILD SUPPORT ORDERS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AMENDING SECTIONS 40-4-204, 40-5-226, 40-5-272, 40-5-273, AND 40-6-116, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-204, MCA, is amended to read:

"40-4-204. Child support — orders to address health insurance — withholding of child support. (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

(a) the financial resources of the child;

(b) the financial resources of the parents;

(c) the standard of living that the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and the child's educational and medical needs;

(e) the age of the child;

(f) the cost of day care for the child;

(g) any parenting plan that is ordered or decided upon; and

(h) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of the defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or that it is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(d) Child support obligations established under this section are subject to the registration and processing provisions of chapter 5, part 9.

(4) Each temporary or final district court judgment, decree, or order establishing a child support obligation under this title and each modification of a final order for child support must include a medical support order as provided for in Title 40, chapter 5, part 8.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(c) If a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's monthly support obligation if the excess support is a result of annualized withholding.

(d) If an obligor is exempted from paying support through income withholding, the support order must include a requirement that whenever the case is receiving services under Title IV-D of the Social Security Act, support payments must be paid through the department of public health and human services as provided in 40-5-909.

(6) (a) Each district court judgment, decree, or order that establishes paternity or establishes or modifies a child support obligation must include a provision requiring the parties to promptly file with the court and to update, as necessary, information on:

(i) the party's identity, residential and mailing addresses, telephone number, [social security number,] and driver's license number;

(ii) the name, address, and telephone number of the party's employer; and

(iii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the names of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the party's employer.

(b) The court shall keep the information provided under subsection (6)(a) confidential except that the information may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.

(c) The order must also require that in any subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or the department of public health and human services, if the department is providing services under Title IV-D of the Social Security Act, may consider due process requirements for notice and service of process met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the court.

(7) ~~Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of public health and human services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.~~ *A judgment, decree, or order establishing a child support obligation under this part may be modified or adjusted as provided in 40-4-208 or, if the department of public health and human services is providing services under Title IV-D of the Social Security Act, may be modified or adjusted by the department as provided for in 40-5-271 through 40-5-273 and [sections 5 through 7].*

(8) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support obligation to be paid, without need for further court order:

(i) to the person with whom the child resides by legal order;

(ii) if the person with whom the child legally resides voluntarily or involuntarily relinquishes physical care and control of the child to another person, organization, or agency, to the person, organization, or agency to whom physical custody has been relinquished;

(iii) if any other person, organization, or agency is entitled by law, assignment, or similar reason to receive or collect the child support obligation, to the person, organization, or agency having the right to receive or collect the payment; or

(iv) to the court for the benefit of the minor child.

(b) When the department of public health and human services is providing services under Title IV-D of the Social Security Act, payment of support must be made through the department for distribution to the person, organization, or agency entitled to the payment.

(c) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court.

(9) A judgment, decree, or order that establishes or modifies a child support obligation must include a provision that if a parent or guardian is the obligee under a child support order and is obligated to pay a contribution for the same child under 41-3-406, 41-5-1304, or 41-5-1512, the parent or guardian assigns and transfers to the department of public health and human services all rights that the parent or guardian may have to child support that are not otherwise assigned under 53-2-613. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)"

Section 2. Section 40-5-226, MCA, is amended to read:

"**40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

(2) If a hearing is requested, it must initially be conducted by teleconference methods and is subject to the Montana Administrative Procedure Act. At the request of a party or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the hearings officer shall grant a de novo in-person hearing.

(3) The hearings officer shall determine the liability and responsibility, if any, of the parent or parents under the notice and shall enter a final decision and order in accordance with the determination. The order may award support from the date of:

(a) the child's birth if paternity was established under 40-5-231 through 40-5-238 or under Title 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

(b) the parties' separation if support is initially established under 40-5-225; or

(c) notice to the parties of a support modification request under 40-5-273.

(4) (a) Except as provided in subsection (4)(b), if the parent or parents fail to appear at the hearing or to timely file a request for a hearing, the hearings officer, upon a showing of valid service, shall enter a default decision and order declaring the amount stated in the notice to be final.

(b) In a multiple party proceeding under 40-5-225, if one party files a timely request for hearing, the matter must be set for hearing. Notice of the hearing must be served on the parties. If a party refuses to appear for the hearing or participate in the proceedings, the hearings officer shall determine child support and medical support orders based on the notice, information available to the department, and evidence provided at the hearing by the appearing parties. A party's refusal to appear is a consent to entry of child and medical support orders consistent with the hearings officer's determination. However, the default order may not be for more than the support requested in the notice unless the hearings officer finds that the evidence requires a larger amount.

(5) In a hearing to determine financial responsibility, whether temporary or final, and in any proceeding to modify support under *40-5-272,* 40-5-273, *and [sections 5 through 7],* the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the uniform child support guidelines adopted by the department under 40-5-209. The hearings officer is not limited to the amounts stated in the notice. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the order is entered upon the parties' consent. A

verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the hearings officer finds by clear and convincing evidence that the application of the guidelines is unjust to the child or to any of the parties or is inappropriate in a particular case. If the hearings officer finds that the guideline amount is unjust or inappropriate in a particular case, the hearings officer shall state the reasons for finding that the application of the guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar findings must also be made in a case in which the parties have agreed to a support amount that varies from the guideline amount. The hearings officer may vary the application of the guidelines to limit the obligor's liability for past support to the proportion of expenses already incurred that the hearings officer considers just. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(6) In a hearing to enforce a support order or to establish paternity under this chapter, the department shall send a copy of the notice of hearing to the obligee by regular mail addressed to the obligee's last-known address. The obligee may attend and observe the hearing as a nonparty. This subsection does not limit participation of an obligee who is a party to the proceedings or who is called as a witness to testify.

(7) (a) Within 60 days after the hearing has been concluded, any posthearing briefs are received, and all the evidence submitted, except for good cause, the hearings officer shall enter a final decision and order. The determination of the hearings officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act. A copy of the final decision must be delivered or mailed to each party, each party's attorney, and the obligee if the obligee is not a party.

(b) A child support obligation established under this section is subject to the registration and processing provisions of part 9 of this chapter.

(8) A support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the request of the department or a party under ~~40-5-271 through~~ *40-5-272,* 40-5-273, *and [sections 5 through 7]* when the department is providing services under IV-D for the enforcement of the order.

(9) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearings officer.

(10) A child support obligation determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearings officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure. When issuing a support order, the department shall consider whether any of the exceptions to immediate income withholding found ~~at~~ *in* 40-5-411 apply, and, if an exception is applicable, the department shall include the exception in the support order.

(11) (a) Unless the hearings officer makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, each order establishing a child support obligation, whether temporary or final, and each

modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearings officer.

(b) If an obligor is excepted from paying support through income withholding, the support order must include a requirement that whenever a party to the case is receiving IV-D services, support payments must be paid through the department as provided in 40-5-909.

(12) (a) If the department establishes paternity or establishes or modifies a child support obligation, the department's order must include a provision requiring each party other than the department to promptly file with the department and to update, as necessary, information on:

(i) identity of the party;

[(ii) social security number;]

(iii) residential and mailing addresses;

(iv) telephone number;

(v) driver's license number;

(vi) name, address, and telephone number of employer; and

(vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the obligor's and obligee's employer.

(b) The order must further direct that in a subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the department's due process requirements for notice and service of process are met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the department.

(c) The department shall keep the information provided under subsection (12)(a) confidential except as necessary for purposes of Title IV-D of the Social Security Act.

(13) The hearings officer may:

(a) compel obedience to the hearings officer's orders, judgments, and process and to subpoenas and orders issued by the department, including income-withholding orders issued pursuant to 40-5-415;

(b) compel the attendance of witnesses at administrative hearings;

(c) compel obedience of subpoenas for paternity blood tests;

(d) compel the production of accounts, books, documents, and other evidence;

(e) punish for civil contempt. Contempt authority does not prevent the department from proceeding in accordance with the provisions of 2-4-104.

(f) compel the production of information requested by the department or *a* IV-D agency of another state under 40-5-443.

(14) A contempt occurs whenever:

(a) a person acts in disobedience of any lawful order, judgment, or process of the hearings officer or of the department;

(b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for genetic paternity tests fails to do so;

(c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing fails to do so;

(d) an obligor or obligee subject to a discovery order issued by the hearings officer fails to comply with discovery requests;

(e) a person or entity compelled by administrative subpoena from the department or another IV-D agency to produce financial information or other information needed to establish paternity or to establish, modify, or enforce a support order fails to do so;

(f) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time that income is required to be withheld and paid to the department and the payor fails to take the required action.

(g) a payor or labor union fails to provide information to the department or another IV-D agency when requested under 40-5-443[; or]

[(h) a financial institution uses information provided by the department pursuant to 40-5-924 for any other purpose without the authorization of the department].

(15) Before initiating a contempt proceeding, the department shall give the alleged contemnor notice by personal service or certified mail of the alleged infraction and a reasonable opportunity to comply with the law and to cure the alleged infraction. In order to initiate a contempt proceeding, an affidavit of the facts constituting a contempt must be submitted to the hearings officer, who shall review it to determine whether there is cause to believe that a contempt has been committed. If cause is found, the hearings officer shall issue a citation requiring the alleged contemnor to appear and show cause why the alleged contemnor should not be determined to be in contempt and required to pay a penalty of not more than $500 for each count of contempt. The citation, along with a copy of the affidavit, must be served upon the alleged contemnor either by personal service or by certified mail. All other interested persons may be served a copy of the citation by first-class mail.

(16) At the time and date set for hearing, the hearings officer shall proceed to hear witnesses and take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor fails to appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearings officer finds the alleged contemnor in contempt, the hearings officer may impose a penalty of not more than $500 for each count found. The hearings officer's decision constitutes a final agency decision, subject to judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

(17) An amount imposed as a penalty may be collected by any remedy available to the department for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1. The department may retain any penalties collected under this section to offset the costs of administrative hearings conducted under this chapter.

(18) The penalties charged and collected under this section must be paid into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)"

Section 3. Section 40-5-272, MCA, is amended to read:

"**40-5-272. Application for review of child support orders.** (1) Upon the application of the department, the obligor, or the obligee, a ~~hearings officer appointed pursuant to 40-5-273 shall review~~ support ~~orders~~ *order* filed with the support order registry *or a previously issued administrative support order may be reviewed by the department*~~. The purpose of the review is~~ to determine whether the support order should be modified in accordance with the guidelines.

(2) Jurisdiction to conduct the review and to issue a modifying order under 40-5-273 *and [sections 5 through 7]* is authorized when:

(a) the obligor and the obligee reside in this state; or

(b) jurisdiction can be obtained as provided under 40-5-231.

(3) Jurisdiction to review a child support order under this section does not confer jurisdiction for any other purpose, such as custody or visitation disputes.

(4) Criteria constituting sufficient grounds for review of a child support order include:

(a) ~~inconsistency with this state's guidelines, unless the inconsistency is considered negligible under department rules~~ *a substantial change in circumstances as defined by administrative rules*; ~~or~~

(b) availability of health insurance coverage to the obligor's child through the obligor's employment or other group insurance*; or*

(c) a lapse of 36 months from the date that the order was entered or last reviewed.

(5) The department shall make available procedures and forms that allow the obligor or the obligee to complete the review process without legal counsel.

(6) To the extent that they are consistent with this section, the provisions of 40-5-145, 40-5-149, and 40-5-150 apply to this section."

Section 4. Section 40-5-273, MCA, is amended to read:

"**40-5-273. Administrative review of child support orders— ~~modifying orders~~.** (1) ~~A~~ *Upon receipt of a* review application setting forth facts meeting any of the criteria for review of a child support order established in 40-5-272, ~~must be scheduled for an administrative review. Unless the department determines under rules of the department that an in-person review is necessary, the review must be conducted by teleconferencing methods. A~~ *a* notice that an administrative review will be conducted *and an order for the production of* *financial information* must be served either personally or by certified mail on the obligor, ~~and~~ the obligee, *and any other party entitled to notice.* If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. *Service of the notice is effective if, in the absence of a return receipt, the person to whom the notice was mailed requests a hearing or appears at the administrative review.* The notice must include the following information as an exception to 2-4-601:

(a) a statement of the purpose, objectives, and possible consequences of the review, *including that a modified support order may require the obligee to pay a monthly transfer payment to another party*;

(b) a statement of the right of the obligor and the obligee to request the department to issue subpoenas compelling the appearance of witnesses and the production of documents for a hearing; and

(c) a requirement that the obligor and the obligee provide the department with telephone numbers at which they and their witnesses may be contacted for the review.

(2) ~~The department may issue an order commanding the obligor or the obligee, or both, to produce financial information. The order must be served either personally or by certified mail with the notice that a review will be conducted. If service is by certified mail, the department must receive a return receipt signed by the person to whom the order was mailed for the service to be effective. The department may also issue subpoenas ordering the parties to produce information in their possession about the obligor and the obligee that may be reasonably necessary for application of the guidelines. Any information so obtained by the department must be provided to the parties before a hearing.~~ *An order for the production of financial information may be incorporated into the review notice and must state that:*

(a) the financial information must be returned no later than the 20th day after the date the order is served;

(b) if the requested information is not returned as required, the department may:

(i) proceed with the review using the information available to the department;

(ii) cease all proceedings for the review; or

(iii) initiate contempt proceedings in accordance with 40-5-226; and

(c) any information required by the order must be provided to the department and other parties prior to the review session.

(3) If, in the absence of a certified mail return receipt showing the date of service, a person requests a hearing or appears at an administrative review, any financial information ordered produced pursuant to subsection (2) must be provided to the department no later than the 20th day after the person requests the hearing or appears at the administrative review, unless the person requesting the hearing or attending the administrative review waives that date in writing. A person who waives that date in writing shall provide the financial information by the date provided in subsection (2) or by another date established by order of the department.

~~(3) The requested modification of the order must be determined on the evidence submitted to the department under the following conditions:~~

~~(a) If an applicant other than the department fails to provide a telephone number for the review or fails to be at the number provided when telephoned for the review, the failure may be considered a withdrawal of the application.~~

~~(b) If a party other than the applicant fails to provide a telephone number for the review or fails to be at the number provided when telephoned for the review, the failure is considered to mean that the party does not oppose the modification.~~

~~(c) If the department is the applicant and if either the obligor or the obligee, or both, fails to provide a telephone number for the review or fails to be at the number provided when telephoned for the review, the failure may be considered an admission that the party or parties do not oppose the modification.~~

~~(4) (a) An order entered under the circumstances described in subsection (3)(a), (3)(b), or (3)(c) becomes final within 30 days of issuance unless a party provides the hearings officer an affidavit showing good cause for failure to provide a telephone number or failure to be available when telephoned.~~

~~(b) A proposed modification consent order or notice of proposed modification becomes final 30 days after issuance unless during that period a party files with the department a written request for further administrative proceedings.~~

~~(c) The department shall grant a modification hearing if it receives a timely written request by a party aggrieved by the department's determination. The hearing is subject to the provisions of this section relating to a review. The department may adopt rules regulating the fair and efficient conduct of the hearing. Unless the department determines under department rules that an in-person hearing is necessary, the hearing must be conducted by teleconferencing methods.~~

~~(5) A provision of law may not be construed to mean that an obligor or an obligee is a client of the department, and the department is not considered a party to the action.~~

~~(6) (a) In addition to the powers and duties provided by other law, the department shall, to ensure the equitable determination of a support obligation, during a review:~~

~~(i) question witnesses in a nonadversarial manner to elicit full disclosure of all pertinent facts;~~

~~(ii) introduce evidence on behalf of the parties;~~

~~(iii) apply the guidelines to the facts elicited from the review; and~~

~~(iv) inquire as to any circumstances that may require variance from the guidelines.~~

~~(b) If a party is represented by legal counsel, the department may allow the counsel to present that party's case.~~

~~(7) The department shall determine a support obligation in accordance with the guidelines and shall issue a modifying order. A stipulation by the parties in a proceeding under this section may not be contested before entry of the final department order. If the department determines that the difference between the existing support order and the amount determined under the guidelines is negligible under rules issued by the department, the modifying order may not change the amount of the support obligation. Even though the review may indicate that a modification of the support obligation is appropriate, the department may not modify the support order if the department determines,~~

~~after the review, that to do so would not be in the best interests of the child under the rules issued by the department. An increase in child support is presumed to be in the best interests of the child unless, after a review, either the obligor or the obligee demonstrates it would not be in the best interests of the child. The modifying order may modify the underlying support order from the date of service of a notice that an administrative review will be conducted under this section and may modify the underlying order from the date found to be the date that the amount required for support decreased. The obligee may be ordered to repay the obligor for any support amount overpayment found to have been paid since the date that the amount required for support decreased. If the case is a IV-D case, the department shall, on request of the obligor, enforce the obligee's repayment of the overpaid amount using any procedure provided in this chapter for payment, enforcement, and collection of child support or a delinquency.~~

~~(8) The department shall consider whether or not health insurance for the child is available and shall include an appropriate requirement for the provision of the child's health insurance needs in a modifying order in accordance with part 8 of this chapter.~~

~~(9) In addition to complying with other requirements of law, the modifying order must include provisions:~~

~~(a) that each party, other than the department, is required to promptly file with the department and update, as necessary, information on:~~

~~(i) the identity of the party;~~

~~(ii) the party's social security number;~~

~~(iii) the party's residential and mailing addresses;~~

~~(iv) the party's telephone number;~~

~~(v) the party's driver's license number;~~

~~(vi) the name, address, and telephone number of the party's employer; and~~

~~(vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or medical insurance plan, the policy identification number, the names of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to availability of coverage for the child through the obligor's and obligee's employers;~~

~~(b) that in a subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of a party, the department's due process requirements for notice and service of process are met with respect to the party upon delivery of written notice by regular mail to the most recent known address of the party or the party's employer's address reported to the department; and~~

~~(c) that the modifying order is subject to future administrative review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D.~~

~~(10) The department shall keep information provided under subsection (9)(a) confidential except as necessary for purposes of Title IV-D of the Social Security Act.~~

~~(11) An order entered under this section by the department is a final agency decision, subject to judicial review pursuant to the Montana Administrative Procedure Act, except as provided in 40-5-253. An order entered under this section must notify the parties that the order is subject to judicial review under Title 2, chapter 4, part 7. A final order entered under a stipulation of parties waives the stipulating parties' right to judicial review.~~

~~(12) The parties to the support order and the department when it is providing services under IV-D may enforce the support order or modify that order independently, as provided in 40-4-208 and 53-2-613(5)(d).~~"

Section 5. Review session — consent orders — request for hearing. (1) The review session provided for in 40-5-273 must be conducted by telephone and proceed regardless of the failure of a party to provide the department with a telephone number or be present. A party may appear in person at the administrative review session at the party's own expense. The personal appearance of a party at an administrative review session does not require the personal appearance of any other party or witness at the review session.

(2) The department shall identify facts that are at issue and facts that are agreed, calculate a support obligation in accordance with the guidelines, and issue a recommendation regarding the proper child support amount and the effective date of the proposed modification. The department shall consider whether or not health insurance for the child is available and make an appropriate recommendation in accordance with part 8 of this chapter for the provision of the child's health insurance. A support order may not be modified prior to the date of service of the notice of review.

(3) If the department determines that the difference between the existing support order and the amount determined under the guidelines is negligible under rules issued by the department, an administrative modified support order may not change the amount of the support obligation.

(4) The administrative modified support order must include the following notices and warnings:

(a) that the parents must keep the department informed of the name and address of the obligor's current employer and information on health insurance available to the parents through employment or other group insurance; and

(b) that the modified support order is subject to future administrative review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 and [sections 5 through 7] when the department is providing services under Title IV-D of the Social Security Act.

(5) The review session is not a contested case as defined in 2-4-102. If the parties agree with the proposed administrative modified support order, a consent order will be entered modifying the support obligation. A party disagreeing with the proposed order may request an administrative hearing within 10 days after the date that the proposed order is served on the party personally or by certified mail. If service on the party is by certified mail, the 10-day period for a request of an administrative hearing begins to run the day after the certified mail return receipt is signed. A party's failure to request an administrative hearing when presented with a proposed order in the form of a consent order constitutes a consent to entry of an administrative modified support order in accordance with the recommendation.

Section 6. Administrative hearing after review — final order — court approval of order. (1) Upon receipt of a timely request for hearing from a party to a review session, the department shall schedule an administrative hearing. The hearing is a contested case as defined in 2-4-102 and must initially be conducted by teleconferencing methods. At the request of a party or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the department shall grant a de novo in-person hearing. The hearing is subject to Title 2, chapter 4, and 40-5-253, except as otherwise provided in 40-5-272, 40-5-273, and [sections 5 through 7].

(2) The administrative hearing following a review session is limited to resolution of contested facts identified by the parties or the department during the review session.

(3) If additional discovery is requested by a party, the hearings officer may issue subpoenas ordering the department to produce nonprotected information and ordering other parties to produce information in their possession about the obligor and the obligee that may be reasonably necessary for application of the guidelines.

(4) In addition to the powers and duties provided by other law, to ensure the equitable determination of a support obligation, during a review hearing the department shall:

(a) question witnesses in a nonadversarial manner to elicit full disclosure of all pertinent facts in dispute;

(b) hear evidence submitted by the parties and rule on its admissibility; and

(c) apply the guidelines to the facts agreed upon and to those determined at the hearing on disputed matters.

(5) On the basis of evidence presented on the contested facts at the administrative hearing and the agreed facts determined in the review session, the department may:

(a) adopt its own recommendation;

(b) determine a support obligation in accordance with the guidelines and issue a modifying order; or

(c) terminate the review.

(6) If the department determines that the difference between the existing support order and the amount determined under the guidelines is negligible under rules issued by the department, the modified support order may not change the amount of the support obligation. Regardless of the amount of the support order, the department may determine that an order for the provision of health insurance is appropriate.

(7) The department shall consider whether or not health insurance for the child is available and make an appropriate order in accordance with part 8 of this chapter for the provision of the child's health insurance.

(8) In addition to complying with other requirements of law, the modified support order must include the following notices and warnings:

(a) that the parties keep the department informed of the name and address of the obligor's current employer and information on health insurance available to the parties through employment or other group insurance; and

(b) that the modified order is subject to future administrative review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 and [sections 5 through 7] when the department is providing services under Title IV-D of the Social Security Act.

(9) Except as provided in subsection (10), an order entered under this section:

(a) is a final agency decision and is subject to judicial review pursuant to the Montana Administrative Procedure Act; and

(b) must notify the parties that the order is subject to judicial review under Title 2, chapter 4, part 7, and 40-5-253.

(10) An administrative modified support order issued under [section 5] or this section that modifies a support order entered by a Montana court or a court of another jurisdiction is not effective as a final order until the modified order is filed with and approved by the court that entered the order, if that order was entered by a Montana district court. If the order was entered by a court of another jurisdiction, the order must be filed with and approved by a Montana district court that is an appropriate court under the Montana laws or rules of court governing jurisdiction and venue in civil proceedings. The department shall file the proposed modified order with the appropriate court under the Montana laws or rules of court governing jurisdiction and venue in civil proceedings and shall serve the order on the parties and their counsel of record in the administrative and court proceedings personally or by certified mail, return receipt requested. Service is complete upon signing of the return receipt. A party may file a written objection to an administrative modified support order proposed by the department under this section with the court within 20 days after service of a copy of the order on the party. The court shall set a date for a hearing on the objection to the proposed order. If an objection is not filed, the court may without further notice enter its order. The court may adopt an administrative modified support order proposed under [section 5] or this section, modify it, reject it, or remand it to the department with instructions for further hearing. Service of the court order must be in accordance with Rule 5 of the Montana Rules of Civil Procedure. If the court modifies a proposed administrative modified support order proposed under [section 5] or this section without a hearing, a party may file an objection to the court's modification within 10 days of service of the court's order on the party. If an objection is filed, the court shall set a date for hearing the objection and shall enter its final order after the hearing.

Section 7. Limited review of support order. A party may apply for a limited review to address a specific change that occurred after a support order was entered, that is not caused by an increase or decrease in a party's annual net income, and that may have other effects on the existing support order. It is presumed that all other facts relative to the existing support order, including income and deductions from income, remain unchanged. Information gathered is limited to that which is necessary to verify the change, the value of the change, and the expected duration of the change. The department's recommendation must be limited to whether the value of the change should be added to or subtracted from the amount of the existing support order. If a more detailed modification is required in a case presented for limited review, the case becomes subject to the requirements of [section 6]. The circumstances in which a limited review process is available are confined to cases in which:

(1) there is a change in parenting time or residence of a child and a modified support order has not been entered as a result of the change;

(2) a child's need for daycare services has increased or decreased and the increase or decrease is expected to continue for at least 18 months;

(3) a child has developed special needs that did not exist when the existing support order was issued and the needs are expected to continue for at least 18 months or a special need considered in the support order no longer exists;

(4) the cost of health insurance coverage for a child provided by a parent has increased or decreased by 25% of the support order and the increase or decrease is expected to continue for at least 18 months;

(5) there has been the birth of another child to the parties and the child's needs are to be added to the existing support order; or

(6) a child has reached the age of majority, become emancipated, married, entered military service, or died.

Section 8. Section 40-6-116, MCA, is amended to read:

"**40-6-116. Judgment or order.** (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.

(3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.

(b) Except when the financial responsibility of a responsible parent is in the process of being determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision concerning the duty of child support.

(c) The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) (a) Support judgments or orders ordinarily must be for periodic payments, which may vary in amount.

(b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support.

(c) The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court considers just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child, including medical needs;

(b) the standard of living and circumstances of the parents;

(c) the relative financial means of the parents;

(d) the earning ability of the parents;

(e) the need and capacity of the child for education, including higher education;

(f) the age of the child;

(g) the financial resources and the earning ability of the child;

(h) the responsibility of the parents for the support of others;

(i) the value of services contributed by the custodial parent;

(j) the cost of day care for the child; and

(k) any custody arrangement that is ordered or decided upon.

(6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(d) Child support obligations established under this section are subject to the registration and processing provisions of chapter 5, part 9.

(7) The judgment or order, whether temporary or final, concerning child support and each modification of a judgment or order for child support must include a medical support order as defined in 40-5-804.

(8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation made under 40-6-118 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the exception or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period.

(c) If an obligor is excepted from paying support through income withholding, the support order must include as part of the order a requirement that whenever the case is receiving services under Title IV-D of the Social Security Act, support payments must be paid through the department of public health and human services as provided in 40-5-909.

(9) (a) If the district court establishes paternity or establishes or modifies a child support obligation, the judgment, decree, or order must include a provision requiring the parties to promptly file with the court and to update, as necessary, information on:

(i) identity of the party;

[(ii) social security number;]

(iii) residential and mailing addresses;

(iv) telephone number;

(v) driver's license number;

(vi) name, address, and telephone number of the party's employer; and

(vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the party's employer.

(b) The order must further direct that in any subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or the department of public health and human services, if the department is providing services under Title IV-D of the Social Security Act, may consider the due process requirements for notice and service of process to be met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the court.

(10) ~~Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of public health and human services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.~~ *A judgment, decree, or order establishing a child support obligation under this part may be modified or adjusted as provided by 40-4-208 or, if the department of public health and human services is providing services under Title IV-D of the Social Security Act, may be modified or adjusted, by the department as provided for in 40-5-271 through 40-5-273 and [sections 5 through 7].*

[(11) The social security number of a person subject to a paternity determination under this part must be recorded in the records relating to the matter. The recordkeeper shall keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)"

Section 9. Codification instruction. [Sections 5 through 7] are intended to be codified as an integral part of Title 40, chapter 5, part 2, and the provisions of Title 40, chapter 5, part 2, apply to [sections 5 through 7].

Section 10. Effective date. [This act] is effective July 1, 2001.

Approved May 1, 2001

CHAPTER NO. 543

[SB 48]

AN ACT CLARIFYING THAT ALL ALCOHOLIC BEVERAGES TO BE SOLD TO CONSUMERS IN MONTANA MUST BE DISTRIBUTED ACCORDING TO THE MONTANA ALCOHOLIC BEVERAGE CODE; CLARIFYING THAT OUT-OF-STATE SHIPPERS OF ALCOHOLIC BEVERAGES MAY NOT SHIP DIRECTLY TO MONTANA RESIDENTS WHO DO NOT POSSESS A CONNOISSEUR'S LICENSE; CLARIFYING THE MANNER IN WHICH BREWERIES PROVIDE BEER TO THE PUBLIC; ESTABLISHING A CONNOISSEUR'S LICENSE; ALLOWING LIMITED DIRECT SHIPMENT OF BEER AND WINE FROM OUT-OF-STATE BREWERIES AND WINERIES TO CONNOISSEUR'S LICENSE HOLDERS; PROVIDING THAT OUT-OF-STATE BREWERIES AND WINERIES REGISTER WITH THE DEPARTMENT OF REVENUE; LIMITING THE AMOUNT OF BEER OR WINE THAT OUT-OF-STATE BREWERIES AND WINERIES MAY SHIP INTO THE STATE TO CONNOISSEUR'S LICENSE HOLDERS; ESTABLISHING AN OFFENSE OF ILLEGAL IMPORTATION OR DISTRIBUTION OF ALCOHOLIC BEVERAGES; ESTABLISHING PENALTIES FOR ILLEGAL SHIPMENTS; AMENDING SECTIONS 16-1-101, 16-1-104, 16-3-101, 16-3-214, 16-6-301, AND 16-6-302, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-101, MCA, is amended to read:

"**16-1-101. Citation — declaration of policy — subject matters of regulation.** (1) Chapters 1 through 6 of this title may be cited as the "Montana Alcoholic Beverage Code".

(2) It is hereby declared to be the policy of the state of Montana to effectuate and ensure the entire control of the manufacture, sale, *importation,* and distribution of alcoholic beverages within the state of Montana, as that term is defined in this code, subject to the authority of the state of Montana through the Montana department of revenue.

(3) This code is an exercise of the police power of the state, in and for the protection of the welfare, health, peace, morals, and safety of the people of the state, ~~and its provisions shall be construed for the accomplishment of such purposes~~ *and of the state's power under the 21st amendment to the United States constitution to control the transportation and importation of alcoholic beverages into the state. The provisions of this code must be broadly construed to accomplish these purposes.*"

Section 2. Section 16-1-104, MCA, is amended to read:

"**16-1-104. Intent and construction of code.** *(1)* The purpose and intent of this code are to*:*

(a) establish a state licensing system to control the transportation and importation of alcoholic beverages into Montana and the manufacture, sale, transportation, and distribution of alcoholic beverages within the state of Montana; and

(b) prohibit transactions in alcoholic beverages ~~which take place wholly~~ within the state of Montana except under state control as specifically provided by this code~~, and every~~.

(2) Every section and provision of this code ~~shall~~ *must* be construed ~~accordingly~~ *according to subsection (1).* ~~The provisions of this code dealing with the importation, sale, and disposition of alcoholic beverages within the state, through the instrumentality of a department and otherwise, provide the means by which such state control shall be made effective, and nothing in this code shall be construed as forbidding, affecting, or regulating any transaction which is not subject to the legislative authority of the state.~~"

Section 3. Section 16-3-101, MCA, is amended to read:

"**16-3-101. Alcoholic ~~beverages dispensed~~ *beverage transactions* — only in accordance with code.** *(1)* ~~No brewer, beer importer, distiller, or manufacturer of alcoholic beverages shall, within the state, by himself, his clerk, servant, or agent, give~~ *A person who manufactures, imports, distributes, or sells alcoholic beverages or the persons's agent may not give or sell* to any person *within the state* any alcoholic beverage except as may be permitted by and in accordance with the ~~rules made under~~ *provisions of* this code.

(2) (a) Except as otherwise provided by this code, a person or the person's agent may not ship, transport, or consign or cause to be shipped, transported, or consigned:

(i) any alcoholic beverage to any person in this state who does not hold a valid wholesaler's license or connoisseur's license issued by the department; or

(ii) any liquor except to the state liquor warehouse.

(b) The prohibition in subsection (2)(a) includes alcoholic beverages ordered or purchased by telephone, computer, or other device, except by persons holding a valid connoisseur's license provided for in [section 7].

(3) Except as otherwise provided by this code, alcoholic beverages shipped, transported, or consigned pursuant to subsection (2)(a) and intended for sale to any person not licensed under this code must be distributed by the licensed wholesaler to a licensed retailer for sale to the ultimate consumer."

Section 4. Section 16-3-214, MCA, is amended to read:

"**16-3-214. Beer sales by brewers — sample room exception.** (1) Subject to the limitations and restrictions contained in this code, a brewer who manufactures less than 60,000 barrels of beer a year, upon payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the department as required by 16-4-101, must be licensed by the department, in accordance with the provisions of this code and rules prescribed by the department, to:

(a) sell and deliver beer from its storage depot or brewery located in Montana to:

(i) a wholesaler; *or*

(ii) any retail licensees who are entitled to purchase beer from a brewer under this code; or

(iii) the public; or

(b) provide its own products for consumption on its licensed premises without charge or, if it is a small brewery, provide its own products at a sample room as provided in 16-3-213; or

(c) do any one or more of the acts of sale and delivery of beer *as provided in this code.*

(2) A brewery may not use a common carrier for delivery of the brewery's product to the public.

~~(2)~~*(3)* An additional license fee may not be imposed on a brewery providing its own products on its licensed premises for consumption on the premises.

~~(3)~~*(4)* This section does not prohibit a brewer located outside of Montana from shipping and selling beer directly to a wholesaler in this state under the provisions of 16-3-230."

Section 5. Section 16-6-301, MCA, is amended to read:

"16-6-301. Transfer, sale, and possession of alcoholic beverages — when unlawful. (1) Except as provided by this code, a person or the person's agents or employees may not:

(a) expose or keep an alcoholic beverage for sale;

(b) directly or indirectly or upon any pretense or upon any device, sell or offer to sell an alcoholic beverage; or

(c) in consideration of the purchase or transfer of any property or for any other consideration or at the time of the transfer of any property, give to any other person an alcoholic beverage.

(2) A person may not have or keep any alcoholic beverage that has not been purchased within the state of Montana.

(3) This ~~section~~ *code* does not prohibit:

(a) a person entering this state from another state or foreign country from having in the person's *actual physical* possession an amount not to exceed 3 gallons of alcoholic beverage that was purchased in another state or foreign country;

(b) possession of beer produced for personal or family use and not intended for sale that meets the exemptions of 26 U.S.C. 5053(e) and regulations implementing that section, including the brewing of beer, for personal or family use, on premises other than those of the person brewing the beer;

(c) possession of beer or wine purchased from an out-of-state brewery or winery if the person possessing the beer or wine holds a connoisseur's license as provided for in [section 7];

~~(c)~~*(d)* possession of alcoholic beverages by brewers, distillers, and other persons duly licensed by the United States for the manufacture of those alcoholic beverages;

~~(d)~~*(e)* possession of proprietary or patent medicines or of any extracts, essences, tinctures, or preparations if the possession is authorized by this code; or

~~(e)~~*(f)* possession by a sheriff or bailiff of alcoholic beverages seized under execution or other judicial or extrajudicial process or sales under executions or other judicial or extrajudicial process to the department or a licensee.

(4) Except as provided in this code, a person or the person's agents or employees may not:

(a) attempt to purchase any alcoholic beverage;

(b) directly or indirectly or upon any pretense or device, purchase any alcoholic beverage; or

(c) in consideration of the sale or transfer of any property or for any other consideration or at the time of the transfer of any property, take or accept from any other person any alcoholic beverage."

Section 6. Section 16-6-302, MCA, is amended to read:

"16-6-302. ~~**Penalty for sale**~~ ***Sale*** **of alcoholic beverage without license —** ***sale or importation in violation of code — penalty.*** *(1) For the purposes of this section "person" means an individual, partnership, corporation, company, firm, society, association, joint stock company, trust, or other entity capable of holding a legal or beneficial interest in property, but does not include a state or agency of a state.*

(2) ~~Any~~ *A* person who has not been issued a license under this code who sells or keeps for sale *in Montana* any alcoholic beverage ~~is guilty of a felony~~ *commits a criminal offense* and upon conviction ~~thereof~~ is punishable by a fine ~~of~~ not ~~less than $1,000 or more than~~ *to exceed* $5,000 or by imprisonment in the state prison for not less than 1 or more than 5 years or by both ~~such~~ *the* fine and imprisonment.

(3) A person in the business of selling alcoholic beverages in another state or country who imports or distributes alcoholic beverages in violation of this code commits a civil offense.

(4) A person convicted under subsection (3):

(a) for a first offense, must be mailed a certified letter by the department ordering that person to cease and desist any shipments of alcoholic beverages to any person in Montana;

(b) for a second offense, shall be fined a civil penalty not to exceed $5,000;

(c) for a third offense, shall be fined a civil penalty not to exceed $10,000; and

(d) for a fourth or subsequent offense, shall be fined a civil penalty not to exceed $50,000."

Section 7. Connoisseur's licenses — application — fees. (1) A person in this state desiring to receive direct shipments of beer only, wine only, or both beer and wine from an out-of-state brewery or winery for the person's own consumption and not for resale shall file with the department an application for a connoisseur's license. The application must be accompanied by a registration fee in the amount of:

(a) $50 for a beer connoisseur's license;

(b) $50 for a wine connoisseur's license; or

(c) $100 for a beer and wine connoisseur's license.

(2) Each application for a license must be on a form prescribed by the department and must set forth the name of the applicant, the applicant's home or business address, proof that the applicant is at least 21 years of age, and other information that the department may require.

(3) A connoisseur's license expires on June 30 of each calendar year. A licensee may annually renew a license with the department by paying a $25 renewal fee for a beer connoisseur's license or a wine connoisseur's license and a $50 renewal fee for a beer and wine connoisseur's license.

(4) The holder of a connoisseur's license may not sell beer or wine to the public.

(5) The department shall adopt rules to provide procedures for the application for and the provision of a connoisseur's license.

Section 8. Payment of taxes — authority of department. (1) A person holding a connoisseur's license shall pay, on June 30 and December 31, the beer and wine taxes imposed by Title 16, chapter 1, part 4, on beer or wine that is received by direct shipment from an out-of-state brewery or winery during the previous 6-month period.

(2) Each holder of a connoisseur's license shall file with the department a return, on a form provided by the department, and pay the tax for shipments received.

Section 9. Direct shipment of beer or wine — limitations. (1) Subject to the provisions of [section 7], the holder of a connoisseur's license may receive up to 144 bottles or 12 cases of wine or 288 bottles or 12 cases of beer from an out-of-state brewery or winery during a 12-month period for personal use and not for resale. A person wishing to receive both wine and beer under this section must possess a beer and wine connoisseur's license.

(2) A licensee under this section shall forward to the out-of-state brewery or winery a distinctive address label, provided by the department, clearly identifying any package that is shipped as a legal direct-shipment package to the holder of a connoisseur's license.

(3) A licensee shall report to the department, on June 30 and December 31, the total amount of beer or wine received from an out-of-state brewery or winery and pay all applicable excise taxes, as provided for in Title 16, chapter 1, part 4, imposed on the receipt of beer or wine during the previous 6 months.

Section 10. Out-of-state brewery or winery registration — limitation on shipping — penalty. (1) Each out-of-state brewery or winery desiring to ship beer or wine to a person holding a connoisseur's license shall register with the department on forms provided by the department.

(2) The annual limit on out-of-state shipments to all connoisseur's license holders is:

(a) 1,440 bottles or 60 cases of beer for breweries; and

(b) 720 bottles or 60 cases of wine for wineries.

(3) For any shipment into the state that exceeds the limits provided for in subsection (2), the out-of-state brewery or winery shall distribute the brewery's or winery's product through a licensed wholesale distributor.

(4) An out-of-state brewery or winery that violates the provisions of this section is subject to the penalties provided for in 16-6-302.

Section 11. Penalty for noncompliance. (1) Except as provided in [section 10], a person who violates the provisions of [sections 7 through 11] commits a civil offense.

(2) A person convicted under subsection (1):

(a) for a first offense, must be mailed a certified letter by the department ordering that person to cease and desist committing the violation;

(b) for a second offense, shall be fined a civil penalty not to exceed $500; and

(c) for a third or subsequent offense, shall be fined a civil penalty not to exceed $2,500.

Section 12. Codification instruction. [Sections 7 through 11] are intended to be codified as an integral part of Title 16, chapter 4, and the provisions of Title 16, chapter 4, apply to [sections 7 through 11].

Section 13. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 7 through 11] are effective October 1, 2001.

Approved May 1, 2001

CHAPTER NO. 544

[SB 135]

AN ACT GENERALLY REVISING THE STATUTES REGARDING THE MENTAL HEALTH MANAGED CARE OMBUDSMAN; EXPANDING WHOSE INTERESTS THE OMBUDSMAN MAY REPRESENT; PROVIDING CONFIDENTIALITY FOR NAMES AND MATERIAL FROM AN INVESTIGATION; ALLOWING THE OMBUDSMAN TO RECEIVE CONFIDENTIAL MENTAL HEALTH RECORDS; AND AMENDING SECTIONS 2-15-210 AND 53-21-166, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-210, MCA, is amended to read:

"**2-15-210. Mental health ~~managed care~~ ombudsman.** *(1)* There is a mental health ~~managed care~~ ombudsman. The ombudsman must be appointed by the governor for a term of 4 years. The ombudsman is attached to the ~~mental disabilities board of visitors~~ *office of the governor* for administrative purposes.

(2) The ombudsman shall provide an annual report to the governor and to the legislature, as required by 5-11-210, and may include recommendations regarding the mental health system.

(3) The ombudsman shall represent the interests of ~~consumers of~~ *individuals with regard to the need for public mental health* services ~~with the contractor or the department of public health and human services under the mental health~~

~~provisions of Title 53, chapters 6 and 21~~*, including individuals in transition from public to private services. The ombudsman may not provide a legal advocacy service.*

(4) The ombudsman may retain counsel for legal support.

(5) Names of individuals receiving assistance from the ombudsman and information associated with an individual compiled by the ombudsman in the course of conducting an investigation are confidential and privileged information and may not be disclosed unless a court has determined that certain information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the individual's privacy interest or the information is requested pursuant to an investigative subpoena issued under 46-4-301."

Section 2. Section 53-21-166, MCA, is amended to read:

"**53-21-166. Records to be confidential — exceptions.** All information obtained and records prepared in the course of providing any services under this part to individuals under any provision of this part ~~shall be~~ *are* confidential and privileged matter and ~~shall~~ *must* remain confidential and privileged after the individual is discharged from the facility. Except as provided in Title 50, chapter 16, part 5, information and records may be disclosed only:

(1) in communications between qualified professionals in the provision of services or appropriate referrals;

(2) when the recipient of services designates persons to whom information or records may be released~~, provided that~~ *or* if a recipient of services is a ward and ~~his~~ *the recipient's* guardian or conservator designates in writing persons to whom records or information may be disclosed~~, such designation shall be valid in lieu of the designation by the recipient; except that nothing in~~. *However,* this section ~~shall~~ *may not* be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information ~~which~~ *that* has been given to ~~him~~ *the physician, psychologist, social worker, nurse, attorney, or other professional person* in confidence by members of a patient's family~~;~~.

(3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which ~~he~~ *a recipient* may be entitled;

(4) for research if the department has promulgated rules for the conduct of research~~; such rules shall~~. *Rules must* include but *are* not ~~be~~ limited to the requirement that all researchers ~~must~~ *shall* sign an oath of confidentiality~~;~~.

(5) to the courts as necessary ~~to~~ *for* the administration of justice;

(6) to persons authorized by an order of court, after notice and opportunity for hearing to the person to whom the record or information pertains and the custodian of the record or information pursuant to the rules of civil procedure;

(7) to members of the mental disabilities board of visitors or their agents when necessary to perform their functions as set out in 53-21-104*; and*

(8) to the mental health ombudsman when necessary to perform the ombudsman functions as provided in 2-15-210."

Approved May 1, 2001

CHAPTER NO. 545

[SB 151]

AN ACT PROHIBITING UNIVERSITY FITNESS CENTERS, EXCEPT A FITNESS CENTER AT A UNIT OF THE UNIVERSITY SYSTEM WITH LESS THAN 3,500 STUDENTS, FROM SELLING SERVICES TO INDIVIDUAL MEMBERS OF THE GENERAL PUBLIC WHEN THERE IS A FOR-PROFIT FITNESS CENTER OPERATING IN THE COMMUNITY; PROVIDING AN EXCEPTION FOR UNIVERSITIES THAT SELL MEMBERSHIPS TO STUDENTS, EMPLOYEES, AND THEIR IMMEDIATE FAMILIES; ALLOWING THE SALE OF MEMBERSHIPS TO A LIMITED NUMBER OF ALUMNI UNDER CERTAIN CIRCUMSTANCES; ALLOWING THE SALE OF DAY PASSES TO RELATIVES OF STUDENTS AND EMPLOYEES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [section 2], the following definitions apply:

(1) "For-profit fitness center" means a private sector facility that offers instruction, training, consultation, equipment, or space to the public for a fee to maintain, encourage, or develop physical fitness or conditioning.

(2) (a) "University fitness center" means a facility at a university unit, as provided in 20-25-201, that offers instruction, training, consultation, equipment, or space to maintain, encourage, or develop physical fitness or conditioning.

(b) The term does not include a university's swimming pool facilities, golf course facilities, or youth camps.

Section 2. Competition between for-profit fitness centers and university fitness centers prohibited — exception. (1) Except as provided in subsection (2), a university fitness center may not sell a contract or charge a monthly fee to individual members of the general public for the use of fitness center facilities if a for-profit fitness center offering similar services operates in the community where the university fitness center operates.

(2) The provisions of subsection (1) do not apply to:

(a) contracts or monthly fees that may be charged to students, employees, or the immediate family members of a student or an employee of a university;

(b) contracts or monthly fees that may be charged to alumni of the university as long as the number of alumni memberships does not exceed 10% of the total number of alumni who are dues-paying members of the university's alumni association and who reside in the municipality where the university is located and as long as the cost of the alumni membership is at least as much as the average cost of membership in for-profit fitness centers in the municipality; and

(c) daily passes sold to relatives of university students or employees.

(3) The provisions of this section do not apply to units of the university system with less than 3,500 full-time students.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 20, chapter 25, part 3, and the provisions of Title 20, chapter 25, part 3, apply to [sections 1 and 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved May 1, 2001

CHAPTER NO. 546

[SB 242]

AN ACT LIMITING THE MUNICIPAL JURISDICTIONAL AREA FOR A MUNICIPAL BUILDING CODE TO THE AREA WITHIN THE LIMITS OF AN INCORPORATED CITY OR TOWN; PROVIDING THAT THE COUNTY JURISDICTIONAL AREA FOR A COUNTY BUILDING CODE MAY BE AN AREA LESS THAN THE ENTIRE COUNTY; ESTABLISHING PROCEDURES FOR ADOPTION OF A JURISDICTIONAL AREA FOR A COUNTY BUILDING CODE; PROVIDING FOR A COUNTY APPEAL PROCEDURE; SUPERSEDING THE UNFUNDED MANDATE LAWS; AMENDING SECTIONS 13-19-106, 50-60-101, AND 50-60-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-19-106, MCA, is amended to read:

"**13-19-106. General requirements for mail ballot election — *exception for county building code jurisdiction election.*** A mail ballot election must be conducted substantially as follows:

(1) Official ballots must be prepared and all other initial procedures followed as otherwise provided by law, except that mail ballots are not required to have stubs.

(2) *(a) Except as provided in subsection (2)(b), an* ~~An~~ official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

(b) In an election to determine whether to adopt a building code enforcement program within a county jurisdictional area, as defined in 50-60-101 and designated by a board of county commissioners pursuant to [section 4], an official ballot must be mailed to every record owner of real property in the county jurisdictional area.

(3) Each return/verification envelope must contain a form prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot at home and place it in a secrecy envelope.

(5) The elector shall then place the secrecy envelope containing the elector's ballot in a return/verification envelope and shall return it by mailing it or delivering it in person to a place of deposit designated by the election administrator so that it is received before a specified time on election day.

(6) Once returned, election officials shall first qualify the submitted ballot by examining the return/verification envelope to determine whether it is submitted by a qualified elector who has not previously voted.

(7) If the ballot qualifies and is otherwise valid, officials shall then open the return/verification envelope and remove the secrecy envelope, which is then voted by depositing it unopened in an official ballot box.

(8) After the close of polls on election day, voted ballots must be counted and canvassed as otherwise provided by law."

Section 2. Section 50-60-101, MCA, is amended to read:

"**50-60-101. Definitions.** As used in parts 1 through 4 and ~~part~~ 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Alteration" means any change, addition, or modification in construction or occupancy.

(2) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The term must be construed as though followed by the words "or part or parts ~~thereof~~ *of a building*".

(3) (a) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings.

(b) The term does not include zoning ordinances.

(4) "Code enforcement program" means the plan for enforcement of the building regulations adopted by a municipality or county and includes the local building department and the staff associated with executing any aspect of the program's purposes or functions.

(5) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

(6) "County jurisdictional area" means the entire county, or an area or areas within the county, designated by the board of county commissioners as subject to the county building code, excluding any area that is within the limits of an incorporated municipality.

~~(6)~~*(7)* "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

~~(7)~~*(8)* "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

~~(8)~~*(9)* (a) "Factory-built building" means a factory-assembled structure or structures equipped with the necessary service connections but not made so as to be readily movable as a unit or units and designed to be used with a permanent foundation.

(b) The term does not include manufactured housing constructed after June 15, 1976, under the National Mobile Home Construction and Safety Standards Act of 1974, ~~(~~42 U.S.C. 5401, et seq.~~).~~

~~(9)~~*(10)* "Local building department" means the agency or agencies of a municipality charged with the administration, supervision, or enforcement of building regulations, the approval of plans, the inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

~~(10)~~*(11)* "Local legislative body" means the council or commission charged with governing the municipality.

~~(11)~~*(12)* ~~(a)~~ "Municipal jurisdictional area" means the area within the limits of an incorporated municipality ~~unless the area is extended at the written request of a municipality~~.

~~(b) Upon request of a municipality with the written consent of the county in which the municipality is located, the department may approve extension of the jurisdictional area to include:~~

~~(i) all or part of the area within 4 1/2 miles of the corporate limits of a municipality;~~

~~(ii) all of any platted subdivision that is partially within 4 1/2 miles of the corporate limits of a municipality; and~~

~~(iii) all of any zoning district adopted pursuant to Title 76, chapter 2, part 1 or 2, that is partially within 4 1/2 miles of the corporate limits of a municipality.~~

~~(c) Distances must be measured in a straight line on a horizontal plane.~~

~~(d) The initial written consent by a county to an extended municipal jurisdiction area must disclose the scope of the building codes to be enforced, the type of structures to be subject to the building codes, and the schedule of fees to be charged for permits. If after the county's initial written consent, the municipality wishes to change either the scope of the building codes enforced or the type of structures covered, the changes must first be approved in writing by the county. Unapproved changes result in the rescission of the county approval of the extended municipal jurisdiction area.~~

~~(12)~~*(13)* "Municipality" means any incorporated city or town ~~and its jurisdictional area as defined in this section~~.

~~(13)~~*(14)* "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

~~(14)~~*(15) (a)* "Primary function area" means an area of a building or facility in which a major activity for which the building or facility is designed is carried out. Primary function areas include but are not limited to a customer service lobby of a savings institution, a cafeteria dining area, and meeting rooms of a conference center.

(b) Areas that are not primary function areas include but are not limited to boiler rooms, storage rooms, employee lounges, janitorial closets, entrances, corridors, and restrooms.

~~(15)~~*(16)* "Public building" means a building or facility owned or operated by a governmental entity or a private sector building or facility that is open to members of the public.

~~(16)~~*(17)* "Public sidewalk" means a sidewalk located in a public right-of-way.

~~(17)~~*(18)* "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own mode of power or is mounted on or towed by another vehicle, including but not limited to a:

(a) travel trailer;

(b) camping trailer;

(c) truck camper; or

(d) motor home.

~~(18)~~*(19)* "Site" means a parcel of land bounded by property lines or a designated portion of a public right-of-way.

~~(19)~~*(20)* "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

~~(20)~~*(21)* "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments."

Section 3. Section 50-60-303, MCA, is amended to read:

"**50-60-303. Municipal *and county* appeal procedure.** (1) If a municipality *or county* adopts a ~~municipal~~ building code, it shall also establish an appeal procedure by ordinance ~~which~~ *that* is acceptable to the department.

(2) If a municipality *or county* does not adopt a code, appeals on the application of the state building code within the municipal *or county* jurisdictional area ~~shall~~ *must* be made to the department."

Section 4. Designation of county jurisdictional area for county building code. (1) To designate a county jurisdictional area for a county building code, the board of county commissioners:

(a) shall pass a resolution of intent to adopt the county jurisdictional area;

(b) shall give notice to the public as provided in 7-1-2121. The notice must state:

(i) the time and place of the public hearing;

(ii) the boundaries of the proposed county jurisdictional area;

(iii) the procedures and deadlines for filing a written protest; and

(iv) that a map and description of the boundaries of the proposed county jurisdictional area and the names and addresses of the owners of real property in the proposed county jurisdictional area are on file for public inspection at the office of the county clerk and recorder.

(c) shall hold a public hearing no earlier than 30 days or later than 90 days after passage of the resolution of intent;

(d) at the public hearing:

(i) shall accept written protests from owners of real property in the proposed county jurisdictional area; and

(ii) must receive general protests and comments relating to the designation of the boundaries of the proposed county jurisdictional area; and

(e) subject to subsection (2), shall adopt the county jurisdictional area, effective 60 days after passage of the resolution.

(2) If a written protest is submitted by owners of real property in the proposed county jurisdictional area representing more than 10% of the owners of real property in the proposed area, the board of county commissioners may not adopt the county jurisdictional area for a county building code without submitting to an

election, as provided in [section 6], the question of adoption of the code enforcement program as approved by the department of commerce.

Section 5. Approval by department of commerce of code enforcement program. After completion of the public hearing required by [section 4] and receipt of any written protests within the time period provided by the notice required in that section, the board of county commissioners may submit a proposed code enforcement program for that jurisdictional area to the department of commerce for approval. The department shall approve the program if it satisfies the criteria provided in 50-60-302. Upon approval by the department of the proposed code enforcement program, the board of county commissioners shall file with the county clerk and recorder a copy of the approved program and a map showing the county jurisdictional area as designated by the county commission.

Section 6. Election on question of adoption of code enforcement program. (1) After approval of the proposed code enforcement program by the department, the board of county commissioners shall submit the question of whether to adopt the code enforcement program within the county jurisdictional area designated by the county commission to the record owners of real property located within the designated area if 10% or more of the record property owners within the area have submitted written protests to the board pursuant to [section 4]. The election must be a special mail ballot election as defined in 13-19-102.

(2) The election must be initiated by the board of county commissioners by a resolution of the board pursuant to 13-19-202 directed to the county election administrator and must be conducted in accordance with Title 13, chapter 19. If a majority of the electors who return the mail ballot vote in favor of the code enforcement program, the code enforcement program within the jurisdictional area designated by the board of county commissioners is effective 60 days after the day the county board of canvassers declares the results of the election.

(3) (a) Except as provided in this subsection, a building code adopted as part of a code enforcement program approved by the electors may not be modified without submission of the modification to the electors as provided in this section.

(b) A building code may be modified without submitting the modification to the electors if:

(i) the modification consists of a provision taken from a uniform or model building code; and

(ii) the provision does not regulate a wholly new component of a structure, such as wiring, plumbing, or concrete foundation, that was previously unregulated.

Section 7. Petition for designation of county jurisdictional area and adoption of building code. (1) A county jurisdictional area and a building code applicable to that area may be adopted by petition as provided in this section.

(2) A petition may be circulated by the record owner of real property to which the county jurisdictional area will be applied or extended for the purpose of gathering signatures on the petition. Only a record owner of real estate within the proposed county jurisdictional area is qualified to sign a petition.

(3) A petition to designate a county jurisdictional area may also be circulated by the board of county commissioners. A petition circulated by the board of county commissioners is not subject to the requirements of [section 4].

(4) Before a petition may be circulated for signatures, the language of the proposed building code must be approved by the department of commerce and the form of the petition must be approved by the election administrator of the county in which the real property is located. A building code proposed pursuant to this section must be approved by the department of commerce if it meets the criteria provided in 50-60-302 for the approval of a code within a code enforcement program. The election administrator shall approve the form of the petition if the petition meets, and the election administrator shall comply with, the requirements of 7-5-134, 7-5-135, and this section, except that:

(a) the number of valid signatures required for the creation or extension of the county jurisdictional area is a majority of the record owners of real property located within the proposed jurisdictional area; and

(b) a petition containing the number of valid signatures required by this section is not submitted to a vote by electors.

(5) An individual circulating a petition for signatures must make available to individuals who may sign the petition a copy of the building code approved by the department of commerce and a map showing the county jurisdictional area within which the code will apply. The petition must clearly indicate that the individual signing the petition read and understood the provisions of the code and understood the geographic area in which the code would be applied.

(6) The county jurisdictional area and the building code applicable to that area become effective 60 days after the determination by the county election administrator that the petition has been signed by the number of record owners of real property required by this section.

(7) (a) Except as provided in this subsection, once adopted by petition as provided in this section, a county building code may not be amended except by petition in accordance with this section or by submitting the modification to the electors as provided in [section 6].

(b) A county building code adopted by petition may be modified without petition or election if:

(i) the modification consists of a provision taken from a uniform or model building code; and

(ii) the provision does not regulate a wholly new component of a structure, such as wiring, plumbing, or concrete foundation, that was previously unregulated.

Section 8. Special election required — notice — termination of certain municipal jurisdictional areas. (1) No later than December 31, 2001, the county commissioners of a county in which a municipal jurisdictional area, as defined in 50-60-101, has been established beyond the corporate limits of a municipality before [the effective date of this act] shall submit the question of the continuation of the jurisdictional area beyond the corporate limits of the municipality to a vote by the record owners of real property within the jurisdictional area beyond those limits. The election required by this section must be a special election conducted by mail ballot election as defined in 13-19-102.

(2) The election required by subsection (1) must be initiated by the board of county commissioners by a resolution of the board pursuant to 13-19-202 directed to the county election administrator. The election must be conducted in accordance with Title 13, chapter 19, except to the extent that those provisions conflict with the provisions of this section, in which case the provisions of this section apply.

(3) Notice of the election must be given by the county election administrator by publishing a notice at least once in a newspaper of general circulation in the county in which the election is held. The notice must be published at least 15 days before and no more than 45 days before the election is to be held. The notice must contain a clear synopsis of the building code then in effect within the municipal jurisdictional area beyond the corporate limits of the municipality, a description or map of the area outside the corporate limits of the municipality to which that code applies, the fees charged for permits issued for that area, and the effect of a majority vote for and a majority vote against continuation of the municipal jurisdictional area beyond the corporate limits of the municipality.

(4) If a majority of those persons returning the mail ballots vote in favor of retention of the municipal jurisdictional area beyond the corporate limits of the municipality, the area must continue in existence as provided in law. If a majority of those persons returning the ballots vote against retention of the municipal jurisdictional area beyond the corporate limits of the municipality, that area is terminated on the day on which the board of county canvassers declares the results of the election.

(5) If a municipal jurisdictional area beyond the corporate limits of a municipality is terminated pursuant to this section, the following provisions apply to that area on and after the date of termination:

(a) A building permit issued by a municipality before the termination of the area is valid and enforceable by the municipality issuing the permit.

(b) A building permit may not be issued for the area.

(c) A municipality may not request and the department of commerce may not approve the creation of a municipal jurisdictional area beyond the corporate limits of the municipality.

(6) This section does not apply to county jurisdictional areas designated pursuant to [section 4].

Section 9. Unfunded mandate laws superseded. The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116.

Section 10. Codification instruction. [Sections 3 through 9] are intended to be codified as an integral part of Title 50, chapter 60, part 3, and the provisions of Title 50, chapter 60, part 3, apply to [sections 3 through 9].

Section 11. Effective date. [This act] is effective on passage and approval.

Section 12. Retroactive applicability. [Sections 2(12) and 8] apply retroactively, within the meaning of 1-2-109, to a municipal jurisdictional area as defined in 50-60-101 created before [the effective date of this act].

Approved May 1, 2001

CHAPTER NO. 547

[SB 327]

AN ACT RESTRICTING AGENCY AND POLITICAL SUBDIVISION COMPETITION WITH PRIVATE INTERNET SERVICES PROVIDERS; PROVIDING THAT AN AGENCY OR POLITICAL SUBDIVISION MAY

PROVIDE INTERNET SERVICES IF NO PRIVATE INTERNET SERVICES PROVIDER IS AVAILABLE, THE AGENCY OR POLITICAL SUBDIVISION ALREADY PROVIDES SERVICES, OR THE AGENCY OR POLITICAL SUBDIVISION OFFERS ADVANCED SERVICES THAT ARE UNAVAILABLE FROM A PRIVATE PROVIDER; REQUIRING THAT PRIVATE INTERNET SERVICES PROVIDERS INFORM AN AGENCY OR POLITICAL SUBDIVISION OF THE INTENT TO OFFER INTERNET SERVICES; ENCOURAGING AGENCIES AND POLITICAL SUBDIVISIONS TO PUBLICLY ANNOUNCE THE NEED FOR INTERNET SERVICES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Statement of purpose — policy. (1) The legislature recognizes that access to affordable, high-speed internet services is critical to the state's economic future and that the planning, development, and delivery of quality internet services should be a coordinated effort among state government, local governments, and private enterprise.

(2) It is the policy of this state to:

(a) recognize that private sector enterprises engaged in the delivery of internet access and related services should have an opportunity to provide those services without undue interference or competition from the state or its political subdivisions; and

(b) encourage agencies and political subdivisions to publicly announce requirements for internet services and negotiate contracts for internet access with private enterprise to ensure that innovative technology is available to serve the public's needs at the most fair and reasonable cost.

Section 2. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) "Agency" has the meaning provided for in 2-15-102.

(2) "Internet services provider" means a person or an entity that provides a service, available to the public, that enables the person's or entity's customers to access the internet, purchase internet server or file-hosting services, colocate internet equipment, or use data transmission over the internet for a fee.

(3) "Political subdivision" has the meaning provided for in 2-9-101.

Section 3. Government competition with private internet services providers prohibited — exceptions. (1) Except as provided in subsection (2)(a) or (2)(b), an agency or political subdivision of the state may not directly or through another agency or political subdivision be an internet services provider.

(2) (a) An agency or political subdivision may act as an internet services provider if:

(i) no private internet services provider is available within the jurisdiction served by the agency or political subdivision; or

(ii) the agency or political subdivision provided services prior to July 1, 2001.

(b) An agency or political subdivision may act as an internet services provider when providing advanced services that are not otherwise available from a private internet services provider within the jurisdiction served by the agency or political subdivision.

(c) If a private internet services provider elects to provide internet services in a jurisdiction where an agency or political subdivision is providing internet services, the private internet services provider shall inform the agency or the political subdivision in writing at least 30 days in advance of offering internet services.

(3) Upon receiving notice pursuant to subsection (2)(c), the agency or political subdivision shall notify its subscribers within 30 days of the intent of the private internet services provider to begin providing internet services and may choose to discontinue providing internet services within 180 days of the notice.

(4) Nothing in this section may be construed to prohibit an agency or political subdivision from:

(a) offering electronic government services to the general public; or

(b) acquiring access to the internet from a private internet services provider in order to offer electronic government services to the general public.

Section 4. Alternatives to public internet services providers. An agency or political subdivision is encouraged to publish its requirements for internet services and to use, to the maximum extent possible, private internet services providers to deliver internet services to the public.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 2, and the provisions of Title 2 apply to [sections 1 through 4].

Section 6. Effective date. [This act] is effective July 1, 2001.

Approved May 1, 2001

CHAPTER NO. 548

[SB 423]

AN ACT REQUIRING THE BOARD OF TRUSTEES OF A SCHOOL DISTRICT, UPON RECEIPT OF A PETITION SIGNED BY 10 PERCENT OR MORE OF THE QUALIFIED ELECTORS OF A DISTRICT REQUESTING THE CREATION OF A SINGLE-MEMBER TRUSTEE DISTRICT, TO SUBMIT THE PROPOSAL TO THE QUALIFIED ELECTORS OF THE DISTRICT; PROVIDING CRITERIA FOR SUBMISSION OF A PETITION TO THE BOARD; AMENDING SECTIONS 20-3-336 AND 20-3-337, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-336, MCA, is amended to read:

"20-3-336. Single-member trustee districts — legislative intent — minority defined. (1) It is the intent of the legislature to provide a board of trustees of a school district with the option to:

(a) review the voting and population patterns of minorities of the school district, as determined by the most recent federal decennial census, voting records, and other pertinent information; and

(b) create single-member trustee districts within the school district.

(i) if the board determines that the present trustee selection process does not serve the best interests of the electors of the district or ensure that the access of minority populations to the political process is not diluted in contravention of federal law*; or*

(ii) pursuant to a petition as provided in 20-3-337.

(2) "Minority", as used in 20-3-337 and this section, means a minority whose rights are protected under section 2 of the Voting Rights Act of 1965~~,~~ (42 U.S.C. 1973), as amended."

Section 2. Section 20-3-337, MCA, is amended to read:

"**20-3-337. Plan for creating single-member trustee districts —** ***petition election*****.** (1) ~~The~~ *Except as provided in subsection (8), the* board of trustees of a school district may establish a procedure for studying the appropriateness of creating single-member trustee districts within the school district.

(2) If the board considers a single-member district plan, the plan must establish single-member districts that:

(a) are as compact in area and as equal in population as possible; and

(b) provide equitable voting rights for the minorities residing within the school district by ensuring that the access of minorities to the political process is not diluted in contravention of the Voting Rights Act Amendments of 1982, Public Law 97-205.

(3) If the board determines that it is in the best interest of the electors of the school district, it shall:

(a) propose creation of a single-member trustee district plan;

(b) schedule and hold a public hearing on the proposed plan; and

(c) publish in a newspaper of general circulation in the district a notice of the public hearing, including a map of the proposed single-member trustee district plan, and the reasons why the board believes that the plan satisfies the criteria set forth in subsection (2).

(4) After the public hearing is held, the board shall forward a copy of the proposed single-member trustee district plan to the secretary of state and the superintendent of public instruction for review and comment. The copy of the proposed plan must be accompanied by:

(a) a map indicating the circulation of the newspaper in which the notice required in subsection (3) was published;

(b) the published notice of the public hearing;

(c) a map of the proposed single-member trustee district plan; and

(d) a summary of any public comments to the board regarding the proposed plan.

(5) After receiving comments from the secretary of state and the superintendent of public instruction, the board of trustees may amend, revise, approve, or disapprove the proposed plan. If the plan is adopted by the board, it shall:

(a) inform the county superintendent of schools of its adoption;

(b) publish notice of the adoption in a newspaper of general circulation within the district, including identification of the boundaries of each new single-member trustee district and the implementation date of the plan; and

(c) file with the county clerk and recorder a certificate designating the boundary lines and limits of each single-member trustee district.

(6) All successors to the board of trustees must be elected in accordance with the adopted single-member trustee district plan.

(7) ~~No~~ *A* change in the boundaries of a trustee district may *not* be made within 3 months preceding a regular school election day as provided in 20-3-304.

(8) If the board receives a petition signed by 10% or more of the qualified electors of the school district, the board shall submit the request to create a single-member trustee district to the electors who are qualified under 20-20-301 to vote upon the request. The petition submitted to the board must:

(a) conform to the requirements of subsections (2)(a) and (2)(b);

(b) be forwarded to the secretary of state and the superintendent of public instruction for review and comment;

(c) include a map of the proposed single-member trustee district, identifying the boundaries of each new single-member trustee district and the implementation date of the district;

(d) be forwarded to the county clerk and recorder, designating the boundary lines and limits of each single-member trustee district; and

(e) include a plan for election and terms of trustees of the single-member district, who must be residents of the proposed district, and provide for the terms of successors to the board of trustees in a single-member trustee district approved by the electors.

(9) If the petition meets the requirements of subsection (8), the board shall call an election on the question of whether to create a single-member trustee district. The election must be held at the next school election scheduled pursuant to 20-20-105 and must be conducted in the manner prescribed by this title for school elections. The published notice must include a map and a description of the boundaries of the proposed district.

(10) If a majority of the votes cast at the election approve the creation of a single-member trustee district, the election administrator shall, within 10 days of receipt of the official canvass of the result, certify that the district is formed.

(11) When a trustee position becomes vacant in a single-member district, the position must be filled in accordance with the provisions of 20-3-309, except that the position must be filled by a person who resides within the single-member district."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 1, 2001

CHAPTER NO. 549

[SB 457]

AN ACT AUTHORIZING A SCHOOL DISTRICT TO USE UP TO 25 PERCENT OF ITS IMPACT AID FUNDS FOR REPAYMENT OF BONDS; AMENDING SECTIONS 20-9-437, 20-9-439, AND 20-9-443, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-437, MCA, is amended to read:

"**20-9-437. School district liable on bonds.** *(1)* The full faith, credit, and taxable resources of ~~every~~ *a* school district issuing bonds under the provisions of this title are ~~hereby solemnly~~ pledged for the repayment of ~~such~~ *the* bonds with interest according to ~~their~~ *the* terms *of the bonds*. For the purpose of making the provisions of this part enforceable, ~~every~~ *each* school district is ~~hereby declared to be~~ a body corporate ~~which~~ *that* may sue and be sued by or in the name of the trustees of ~~such~~ *the* school district.

(2) A school district may use up to 25% of its federal impact aid funds received pursuant to 20-9-514 for repayment of bonds."

Section 2. Section 20-9-439, MCA, is amended to read:

"**20-9-439. Computation of net levy requirement — procedure when levy inadequate.** (1) The county superintendent shall compute the levy requirement for each school district's debt service fund on the basis of the following procedure:

(a) Determine the total money available in the debt service fund for the reduction of the property tax on the district by totaling:

(i) the end-of-the-year fund balance in the debt service fund, less any limited operating reserve as provided in 20-9-438;

(ii) anticipated interest to be earned by the investment of debt service cash in accordance with the provisions of 20-9-213(4) or by the investment of bond proceeds under the provisions of 20-9-435;

(iii) any state advance for school facilities distributed to a qualified district under the provisions of 20-9-346, 20-9-370, and 20-9-371; ~~and~~

(iv) funds transferred from the impact aid fund established pursuant to 20-9-514 that are used to repay the district's bonds; and

~~(iv)~~*(v)* any other money, including money from federal sources, anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from sources such as legally authorized money transfers into the debt service fund or from rental income, excluding any guaranteed tax base aid.

(b) Subtract the total amount available to reduce the property tax, determined in subsection (1)(a), from the final budget for the debt service fund as established in 20-9-438.

(2) The net debt service fund levy requirement determined in subsection (1)(b) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the net debt service fund levy requirement for the district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) If the board of county commissioners fails in any school fiscal year to make a levy for any issue or series of bonds of a school district sufficient to raise the

money necessary for payment of interest and principal becoming due during the next ensuing school fiscal year, in any amounts established under the provisions of this section, the holder of any bond of the issue or series or any taxpayer of the district may apply to the district court of the county in which the school district is located for a writ of mandate to compel the board of county commissioners of the county to make a sufficient levy for payment purposes. If, upon the hearing of the application, it appears to the satisfaction of the court that the board of county commissioners of the county has failed to make a levy or has made a levy that is insufficient to raise the amount required to be raised as established in the manner provided in this section, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring the board of county commissioners, at the next meeting for the purpose of fixing tax levies for county purposes, to fix and make a levy against all taxable property in the school district that is sufficient to raise the amount of the deficiency. The levy is in addition to any levy required to be made at that time for the ensuing school fiscal year. Any costs that may be allowed or awarded the petitioner in the proceeding must be paid by the members of the board of county commissioners and may not be a charge against the school district or the county."

Section 3. Section 20-9-443, MCA, is amended to read:

"**20-9-443. Disposition of remaining debt service fund.** ~~When~~ *(1) Except as provided in subsection (2), when* all of the bonds and bond interest of ~~any~~ *a* school district have been fully paid, all money remaining in the debt service fund for ~~such~~ *the* school district and all ~~moneys which~~ *money that* may come into ~~such~~ *the* debt service fund from the payment of the delinquent taxes ~~shall~~ *must* be transferred by the county treasurer to the general fund of ~~such~~ *the* school district.

(2) Any federal impact aid funding remaining in the debt service fund of a school district that has fully repaid the bonds and bond interest must revert to the district's impact aid account established pursuant to 20-9-514."

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 5. Effective date. [This act] is effective on passage and approval.

Approved May 1, 2001

CHAPTER NO. 550

[HB 3]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time limit. (1) Except as provided in subsections (2) and (3), the appropriations contained in [section 2] are intended to provide only necessary and ordinary expenditures for the fiscal year ending June 30, 2001. The unspent balance of any appropriation must revert to the fund from which it was appropriated, unless the appropriation is continued by [section 2].

(2) The $25,000 appropriation for the Montana historical society library/archives contained in [section 2] continues into fiscal year 2002 and fiscal year 2003.

(3) The $100,000 appropriation for the department of revenue director's office contained in [section 2] is restricted to legal fees as related to the unisys POINTS II contract and continues into fiscal year 2002 and fiscal year 2003. The $219,100 appropriation for the compliance, valuation, and resolution contained in [section 2] is restricted to costs to upgrade the legacy property tax system and continues into fiscal year 2002 and fiscal year 2003.

Section 2. Appropriations. The following money is appropriated, subject to the terms and conditions of [section 1].

Agency and Program	Amount	Fund
Governor's Office		
Executive Office Program	$76,888	General Fund
Department of Revenue		
Director's Office	$100,000	General Fund
Customer Services Center	$2,700,000	General Fund
Compliance, Valuation, and Resolution	$219,100	General Fund
Department of Public Health & Human Services		
Health Policy & Services/Medicaid	$4,437,807	General Fund
	$11,965,517	Federal Special Revenue
Mental Health	$11,399,341	General Fund
	$32,549,140	Federal Special Revenue
Medicaid Court Judgment	$21,545	General Fund
Department of Natural Resources & Conservation		
Forestry	$4,467,893	General Fund
Forestry	$22,707,695	General Fund
Department of Justice		
Central Services	$41,632	General Fund
	$11,593	State Special Revenue
	$892	Proprietary
Extradition of Prisoners	$45,000	General Fund
Office of Public Instruction		
Malta School District	$21,009	General Fund
Distribution to Public Schools	$8,905,000	General Fund
Distribution to Public Schools	$1,517,800	General Fund

Montana Historical Society		
Museum Program	$249,923	General Fund
Library/Archives	$25,000	General Fund
Department of Corrections		
Secure Facilities	$4,000,000	General Fund
Office of Supreme Court Administrator		
Indigent Victims of Domestic Violence	$175,000	State Special Revenue
Montana University System Appropriation Distribution Program		
Utility Cost Increases	$1,200,000	General Fund

The appropriation contained in the department of public health and human services mental health line item contains a reduction of $395,555 that is contingent upon passage and approval of House Bill No. 615.

The Montana school for the deaf and blind is granted an exemption to the provisions of [section 7] of the General Appropriations Act of 1999 and may move funds from personal services to operating expenses during fiscal year 2001.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 2, 2001

CHAPTER NO. 551

[HB 4]

AN ACT APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2001; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEAR 2002; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time limits. The appropriations contained in [section 2] are intended to provide necessary expenditures for the years for which the appropriations are made. The unspent balance of an appropriation reverts to the fund from which it was appropriated upon conclusion of the final fiscal year for which its expenditure is authorized by [sections 1 and 2].

Section 2. Appropriations. The following money is appropriated, subject to all terms and conditions of [sections 1 and 2]:

Agency and Program	FY	Amount	Fund
Office of Public Instruction			
Distribution to Public Schools			
School district federal aid	2001	$1,500,000	Federal Funds

All remaining fiscal year 2001 federal budget amendment authority for reduced class size is authorized to continue into fiscal year 2002.

Department of Justice

Crime Control Division

FY2001 Underage drinking laws	2001	399,286	Federal Funds

All remaining fiscal year 2001 federal budget amendment authority for the residential substance abuse treatment pass through is authorized to continue into fiscal year 2002.

All remaining fiscal year 2001 federal budget amendment authority for FY2001 underage drinking laws is authorized to continue into federal fiscal year 2002.

Gambling Control Division

Automated accounting system boards	2001	500,000	State Special Revenue

Montana Arts Council

Promotion of the arts

All remaining fiscal year 2001 federal budget amendment authority for the folklife exhibit is authorized to continue into fiscal year 2002.

Montana State Library

NRIS

All remaining fiscal year 2001 federal budget amendment authority for the national hydrograph dataset and the natural resources conservation service-forest is authorized to continue into fiscal year 2002.

All remaining fiscal year 2001 federal budget amendment authority for institute of museum and library services national leadership is authorized to continue into federal fiscal year 2002.

Montana Historical Society

Museum Program

All remaining fiscal year 2001 federal budget amendment authority for the institute of museum and library services general operating expenses is authorized to continue into federal fiscal year 2002.

Historic Sites Preservation Program

All remaining fiscal year 2001 federal budget amendment authority for national historic landmark nomination for Butte-Anaconda, bureau of reclamation, and bureau of land management-5 is authorized to continue into fiscal year 2002.

Heritage Commission

All remaining fiscal year 2000 federal budget amendment authority from the national park service for Virginia City is authorized to continue into fiscal year 2002.

Lewis and Clark Commission

All remaining fiscal year 2001 federal budget amendment authority for national park service projects is authorized to continue into fiscal year 2002.

Department of Fish, Wildlife and Parks

Wildlife Division

Manley ranch phase II	2001	136,699	Federal Funds
Thompson/Fisher	2001	3,794,633	Federal Funds

All remaining fiscal year 2001 federal budget amendment authority for swift fox, Manley ranch phase II, and Thompson/Fisher is authorized to continue into federal fiscal year 2002.

Department of Environmental Quality

Planning, Prevention, and Assistance Division

Environmental monitoring and assessment	2001	185,310	Federal Funds
Industries of the future	2001	4,000	Federal Funds
One stop grant	2001	50,000	Federal Funds
Biomass	2001	42,000	Federal Funds
TMDL special projects	2001	125,000	Federal Funds

All remaining fiscal year 2001 federal budget amendment authority for the environmental monitoring and assessment grant, one stop grant, biomass grant, child health special studies grant, and environmental monitoring for public access and community tracking grant is authorized to continue into fiscal year 2002.

All remaining fiscal year 2000 federal budget amendment authority for small business visibility 2000 is authorized to continue into fiscal year 2002.

All remaining fiscal year 2000 and fiscal year 2001 federal budget amendment authority for industries of the future is authorized to continue into fiscal year 2002.

Remediation Division

All remaining fiscal year 2001 federal budget amendment authority for the Lockwood solvent site is authorized to continue into fiscal year 2002.

Permitting and Compliance Division

BLM supplemental impact statement for Zortman/Landusky	2001	120,000	Federal Funds
Air quality database performance partnership grant	2001	126,856	Federal Funds

EPA supplemental environmental impact statement Zortman/Landusky	2001	50,000	Federal Funds
EPA small grants/special projects	2001	140,000	Federal Funds

All remaining fiscal year 2001 federal budget amendment authority for the air quality database performance partnership grant and the environmental protection agency small grants/special projects is authorized to continue into fiscal year 2002.

All remaining fiscal year 2000 and fiscal year 2001 federal budget amendment authority for the bureau of land management supplemental environmental impact statement for Zortman-Landusky is authorized to continue into fiscal year 2002.

Department of Transportation

General Operations Division

All remaining fiscal year 2001 federal budget amendment authority for the human resources federal 2001 grant is authorized to continue into federal fiscal year 2002.

Department of Livestock

Animal Health Division

Bison federal funds FY01	2001	427,650	Federal Funds

All remaining fiscal year 2001 federal budget amendment authority for bison federal funds FY01 and greater Yellowstone interagency brucellosis committee is authorized to continue into fiscal year 2002.

Department of Natural Resources and Conservation

Water Resources Division

Watershed management	2001	20,000	Federal Funds
Milk River gauging	2001	5,600	Federal Funds
Water Reference Guide	2001	25,000	Federal Funds

All remaining fiscal year 1999, 2000, and 2001 federal budget amendment authority for watershed management is authorized to continue into fiscal year 2002.

All remaining fiscal year 2000 federal budget amendment authority for the Big Hole-Jefferson River studies is authorized to continue into federal fiscal year 2002.

All remaining fiscal year 2000 federal budget amendment authority for the Shields and Smith River analysis is authorized to continue into fiscal year 2002.

All remaining fiscal year 2001 federal budget amendment authority for Milk River gauging, upper Clark Fork, and floodplain mitigation assistance is authorized to continue into fiscal year 2002.

All remaining fiscal year 2001 federal budget amendment authority for the Montana Water Reference Guide is authorized to continue into federal fiscal year 2002.

Forestry Division

Volunteer fire assistance	2001	1,177,049	Federal Funds
State fire assistance	2001	361,781	Federal Funds
Western wildland urban interface	2001	588,701	Federal Funds

All remaining fiscal year 2001 federal budget amendment authority for the United States fish and wildlife service habitat conservation program, volunteer fire assistance, state fire assistance, and western wildland urban interface is authorized to continue into fiscal year 2002.

Department of Agriculture

Agricultural Sciences Division

US forest service weed management	2001	100,000	Federal Funds

All remaining fiscal year 2001 federal budget amendment authority for weed management is authorized to continue into fiscal year 2002.

Department of Labor and Industry

Job Service Division

Workforce Investment Act	2001	1,529,896	Federal Funds
One-stop grant	2001	765,678	Federal Funds

All remaining fiscal year 2001 federal budget amendment authority for the natural resources grant, the Workforce Investment Act, the one-stop grant, and the wildfire disaster grant is authorized to continue into fiscal year 2002.

Unemployment Insurance Division

Unemployment penalties and interest	2001	106,158	Federal Funds

Employment Relations Division

Onsite consultation	2001	102,000	Federal Funds

All remaining fiscal year 2001 federal budget amendment authority for onsite consultation is authorized to continue into fiscal year 2002.

Department of Military Affairs

Army National Guard

All remaining fiscal year 2001 federal budget amendment authority for army equipment is authorized to continue into fiscal year 2002.

Disaster and Emergency Services

FFY01 Terrorism 83.552	2001	116,300	Federal Funds
FFY00 Pass thru 83.552	2001	275,583	Federal Funds
FFY01 Pass thru 83.552	2001	162,931	Federal Funds
Hazardous materials emergency preparedness training and planning grant	2001	117,561	Federal Funds

All remaining fiscal year 2001 federal budget amendment authority for the hazardous materials emergency preparedness training and planning grant is authorized to continue into fiscal year 2002.

All remaining fiscal year 2000 federal budget amendment authority for state domestic preparedness equipment is authorized to continue into federal fiscal year 2002.

Department of Public Health and Human Services

Human and Community Services Division

Heating fuel costs	2001	3,542,173	Federal Funds

All remaining fiscal year 2000 federal budget amendment authority for the commodity supplemental food program and the residential energy assistance challenge options program is authorized to continue into fiscal year 2002.

All remaining fiscal year 2001 federal budget amendment authority for elderly refugees assistance, the TANF evaluation grant, and the building partnership for innovative outreach and enrollment of dual-eligibles grant is authorized to continue into fiscal year 2002.

All remaining fiscal year 2001 federal budget amendment authority for heating fuel costs is authorized to continue into federal fiscal year 2002.

Director's Office

All remaining fiscal year 2001 federal budget amendment authority for the corporation for national services grant for the AmeriCorp VISTA program is authorized to continue into fiscal year 2002.

Child Support Enforcement Division

All remaining fiscal year 2001 federal budget amendment authority for the costs of raising a child study is authorized to continue into fiscal year 2002.

Health Policy and Services Division

Newborn hearing screening - HRSA	2001	171,501	Federal Funds
Pregnancy risk assessment - CDC	2001	81,784	Federal Funds
Public health workforce development	2001	36,579	Federal Funds

All remaining fiscal year 2001 federal budget amendment authority for newborn hearing screening - HRSA, pregnancy risk assessment - CDC, public health workforce development grant, family planning supplemental, diabetes in Native American school children, behavioral risk, viral hepatitis prevention, and birth defects is authorized to continue into fiscal year 2002.

Senior and Long Term Care

Intergovernmental transfer program	2001	4,323,295	Federal Funds

Addictive and Mental Disorders Division

All remaining fiscal year 2001 federal budget amendment authority for summer wildfires crisis counseling is authorized to continue into fiscal year 2002.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 2, 2001

CHAPTER NO. 552

[HB 6]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations from renewable resource grant and loan state special revenue account. (1) There is appropriated to the department of natural resources and conservation up to $125,000 to be used for emergency projects and $100,000 to be used for private grants from the money available in the renewable resource account administered by the department.

(2) There is appropriated to the department of natural resources and conservation $600,741 that is available in the reclamation and development grants state special revenue account and $4 million that is available in the renewable resource grant and loan state special revenue account for grants to political subdivisions and local government entities during the 2003 biennium. The department shall allocate $300,000 of these funds for project planning grants to be awarded over the course of the biennium. The remaining funds appropriated in this section must be awarded by the department to the named entities for the described purposes and in the described grant amounts set out in subsection (3), subject to the conditions set forth in [sections 1 through 4] and the contingencies described in the renewable resource grant and loan program January 2001 report to the 57th legislature. The legislature, pursuant to 85-1-605, approves the grants listed in subsection (3), with grants to be made in the order indicated in the prioritized list of projects and activities. Grants must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted or used by higher-ranked projects must be provided for projects further down the priority list that would not otherwise receive funding. Any projects that are funded by the reclamation and development grants programs may not be funded under [sections 1 through 4].

(3) The following are the prioritized grant projects:

RENEWABLE RESOURCE GRANT AND LOAN PROGRAM	Recommended Funding
Applicant/Project	Grant Amount
Department of Natural Resources and Conservation	$100,000
(Bair Dam Rehabilitation Proposal)	
Department of Natural Resources and Conservation	100,000
(Nevada Creek Dam Rehabilitation)	
Department of Corrections Correctional Enterprises Ranch	94,300
(Rehabilitation of Prison Ranch Dams)	
Canyon Creek Irrigation District	100,000
(Wyant Lake Dam Rehabilitation)	
Canyon Creek Irrigation District	100,000
(Canyon Lake Dam Rehabilitation)	
Alder Water and Sewer District	100,000
(Wastewater Collection and Treatment System)	
Flathead Basin Commission*	99,697
(Implementation of the Flathead Basin Voluntary Nutrient Reduction)	
Cascade County Conservation District	99,230
(Sun River Valley Ditch Company's Water Conservation and Quality Improvement Project)	
Virginia City, Town of	100,000
(Wastewater Treatment System)	
Whitefish County Water and Sewer District*	75,000
(Revisit to the Limnology of Whitefish Lake)	
Florence County Water and Sewer District	100,000
(Wastewater System Improvements)	
Bitterroot Irrigation District*	100,000
(BRID - Water Use and Water Quality Improvement Project - Phase II)	
Manhattan, Town of	100,000
(Wastewater Systems Improvements)	
Glen Lake Irrigation District*	94,500
(Therriault Creek Point of Diversion Infrastructure and Fish Habitat Improvement Project)	
Whitefish, City of	100,000
(Wastewater Aeration System Improvements and Lagoon Solids Removal Project)	

Ruby Valley Conservation District* (Lower Ruby Valley Ground Water Management Plan)	73,764
Charlo Sewer District (Wastewater System Improvements)	100,000
Whitewater Water and Sewer District (Wastewater Systems Improvements)	100,000
Glasgow Irrigation District (Vandalia Diversion Dam Rehabilitation Phase II North Bridge Pier)	100,000
Geraldine, Town of (Water System Improvements Phase I)	100,000
Ashland Water and Sewer District (Wastewater Systems Improvements)	100,000
Milk River Project Joint Board of Control (Saint Mary River Siphon Repair Phase II)	100,000
Stanford, Town of (Wastewater System Improvements)	100,000
LaCasa Grande Water and Sewer District (Water Supply and Distribution System)	100,000
Clyde Park, Town of (Water Systems Improvements Project)	100,000
Nashua, Town of (Wastewater System Improvements)	100,000
Park City/County Water and Sewer District (Wastewater System Improvements)	100,000
Lower Willow Creek Drainage District (Lower Willow Creek Dam Rehabilitation)	100,000
Deer Lodge, City of (Clark Fork River Water Quality Protection Project)	100,000
Lewis and Clark Conservation District* (Willow Creek Erosion/Water Quality Improvement Project)	98,636
Hot Springs, Town of (Water System Improvements)	100,000
Wisdom Sewer District (Wastewater System Improvements)	100,000
Teton County* (Burton Bench Aquifer Evaluation)	74,261

Elk Meadows Ranchettes County Water District (Water Systems Improvements)	100,000
Carbon Conservation District (Whitehorse Ditch Reorganization)	57,200
Choteau, City of (Water System Improvements)	100,000
Beaverhead County* (Big Hole Watershed Management Project)	75,000
Hobson, Town of (Water Exploration)	50,000
Circle, Town of (Well Repair)	60,000
Stillwater County Commissioners (Improving Soil Productivity and Water Quality in South Central Montana Through Land Use Changes)	74,153
Missoula, City of (Rattlesnake Stream Restoration and Flood Control Project)	100,000
Helena Valley Irrigation District (Fixed Wheel Gate and Hydraulic Cylinder Repair)	100,000
Hill County (Beaver Creek Dam Rehabilitation)	75,000
Hinsdale Water and Sewer District (Wastewater System Improvements)	100,000
Richey, Town of (Water System Improvements)	100,000
Charlo Water District (New Water Well)	100,000
Laurel, City of (City of Laurel Ground Water and Salinity Management, Feasibility Project)	100,000
Malta Irrigation District (Replacement and Modification of Check Structures)	68,290
Glen Lake Irrigation District (Costich Drop Improvements Project)	100,000
Montana State University (Married Student Housing Irrigation Project)	100,000

Scobey, City of (Wellfield Rehabilitation Study)	50,704
Power-Teton County Water and Sewer District (Water System Improvements)	100,000
Butte-Silver Bow (Elimination of Combined Sewers)	27,919
Great Falls, City of (Yard Waste Management Facility)	100,000
Lambert County Sewer and Water District (Water System Improvement Project)	100,000
Park Conservation District (Wildlife Assessment: Governor's Upper Yellowstone River Task Force Cumulative Effects Investigation)	75,000
Troy, City of (Water System Improvements)	99,970
Butte-Silver Bow Local Government (Basin Creek Dam #1 and #2 Site Improvements Projects)	100,000
Whitefish, City of (Whitefish City Beach)	58,650
Lockwood Water and Sewer District (Wastewater Collection System)	100,000
Department of Natural Resources and Conservation (Seepage Monitoring Program, DNRC Dams)	75,000
Department of Natural Resources and Conservation (Seepage Monitoring Program, DFWP Dams)	75,000

(4) For grant projects for which the department of natural resources and conservation also has recommended a loan, the authorization for the loan is contained in House Bill No. 8.

(5) The funding provided to the projects approved in this section and identified with an asterisk (*) following the applicant's name is eligible for and may be designated for use as a nonfederal match for the federal funding acquired for the nonpoint source pollution control program administered by the department of environmental quality.

(6) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2003 biennium pursuant to 17-7-302.

Section 2. Conditions of grants. Disbursement of funds under [sections 1 through 4] for grants is subject to the following conditions that must be met by project sponsors:

(1) approval of a scope of work and budget for the project by the department of natural resources and conservation. Changes in the project scope of work or

budget that reduce the public or natural resource benefits as presented in department reports and applicant testimony to the 57th legislature will result in the proportional reduction in grant amount.

(2) documented commitment of other funds required for project completion;

(3) satisfactory completion of conditions described in the recommendation section of the project narrative in the renewable resource grant and loan program project recommendations and biennium report submitted to the 57th legislature for the 2003 biennium or, in the case of emergency applications, conditions specified at the time of written notification of approved grant authority;

(4) execution of a grant agreement with the department; and

(5) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the grant as evidenced from the application to the department or from the proposal to the legislature.

Section 3. Conditions for grants. Notwithstanding the conditions described in [section 2], grant funds are disbursed in the order of priority listed in [section 1] as resource indemnity trust account interest income revenue is received. A project approved by [section 1] is not entitled to receive grant funds that are not collected and allocated to the renewable resource grant and loan program state special revenue account.

Section 4. Appropriations established. (1) For any entity of state government that receives a grant under [sections 1 through 3], an appropriation is established for the amount of the grant listed in [section 1(3)]. Grants to state entities from prior biennia are reauthorized for completion of contract work.

(2) Any funds in excess of the amount appropriated for grants under [sections 1 through 3] are available for appropriation for authorized purposes from the renewable resource grant and loan state special revenue account.

Section 5. Review of previously authorized grants. Recipients of renewable resource grants authorized by previous legislatures that have not completed startup conditions must be notified by the department of natural resources and conservation that the legislature, at the next regular session, will review renewable resource grants to determine if the commitment of the renewable resource grant should be withdrawn.

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective dates. (1) [Sections 2 through 6 and this section] are effective on passage and approval.

(2) [Section 1] is effective July 1, 2001.

Approved May 2, 2001

CHAPTER NO. 553

[HB 13]

AN ACT PROVIDING FOR PAY AND BENEFITS FOR STATE EMPLOYEES IN THE STATEWIDE, TEACHERS', AND BLUE-COLLAR PAY PLANS; REVISING THE DEPARTMENT'S AUTHORITY TO DEVELOP

ALTERNATIVE PAY PLANS; INCREASING THE STATE CONTRIBUTION TO THE EMPLOYEE GROUP BENEFITS PROGRAM; REVISING THE LEGISLATOR DAILY EXPENSE DETERMINATION; APPROPRIATING FUNDS TO IMPLEMENT PAY AND BENEFIT REVISIONS; AMENDING SECTIONS 2-18-301, 2-18-303, 2-18-312, 2-18-313, 2-18-315, 2-18-703, AND 5-2-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-301, MCA, is amended to read:

"**2-18-301. Purpose and intent of part — rules.** (1) The purpose of this part is to provide the market-based compensation necessary to attract and retain competent and qualified employees in order to perform the services that the state is required to provide to its citizens.

(2) It is the intent of the legislature that compensation plans for state employees, excluding those employees excepted under 2-18-103 or 2-18-104 and excluding employees compensated under 2-18-313 and 2-18-315, be based on an analysis of the labor market as provided by the department in a salary survey. The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111.

(3) Except as provided in 2-18-110, pay adjustments and pay schedules provided for in 2-18-303 and in 2-18-312, 2-18-313, and 2-18-315 supersede any other plan or systems established through collective bargaining after the adjournment of the ~~56th~~ *57th* legislature.

(4) Pay levels provided for in 2-18-312~~, 2-18-313,~~, *2-18-313,* and 2-18-315 may not be increased through collective bargaining after adjournment of the ~~56th~~ *57th* legislature.

(5) Total funds required to implement the pay schedules provided for in 2-18-312~~, 2-18-313,~~, *2-18-313,* and 2-18-315 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the ~~56th~~ *57th* legislature.

(6) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(7) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part.

(8) Nothing in this part prohibits the board of regents from engaging in negotiations with the collective bargaining units representing the classified staff of the university system."

Section 2. Section 2-18-303, MCA, is amended to read:

"**2-18-303. Procedures for using pay schedules.** (1) The pay schedules provided in 2-18-312 must be implemented as follows:

(a) The pay schedules provided in 2-18-312 indicate the entry salary and market salary for each grade for positions classified under the provisions of part 2 of this chapter.

(b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections (6) through (9).

(c) On the first day of the first complete pay period in fiscal year ~~2000~~ *2002*, each employee is entitled to the amount of the employee's base salary as it was on June 30, ~~1999~~ *2001*.

(d) Effective on the first day of the pay period that includes an employee's anniversary date during the fiscal years ending June 30, ~~2000~~ *2002*, and June 30, ~~2001~~ *2003*, the employee's base salary must be increased by ~~3%~~ *4%* or by a lesser amount so that the employee's base salary after the increase does not exceed the maximum salary of the pay grade as provided in subsection (1)(f). An employee's base salary increases resulting from subsection (1)(e) and this subsection may not exceed a maximum of ~~3%~~ *4%* in each fiscal year. For employees hired on or before September 30, 1994, the anniversary date is October 1.

(e) An employee's base salary may be no less than the entry salary for the employee's assigned grade.

(f) The maximum salary for each grade is determined by subtracting the entry salary from the market salary and adding that amount to the market salary.

(2) The pay schedules provided in 2-18-312 and the provisions of subsection (1) of this section do not apply to those teachers or blue-collar occupations compensated under ~~the pay schedules provided in~~ *the pay schedules provided in* 2-18-313 and 2-18-315.

(3) The pay schedules provided in ~~2-18-313 and~~ *2-18-313 and* 2-18-315 must be implemented as follows:

~~(a) (i) The pay schedules provided for in 2-18-313 indicate the annual compensation for teachers employed under the authority of the department of corrections or the department of public health and human services for fiscal years 2000 and 2001.~~

~~(ii) The compensation of each teacher on July 1, 1999, is the same as it was on June 30, 1999.~~

~~(iii) On the first day of the first pay period that includes October 1 of each fiscal year, a teacher employed under the authority of the department of public health and human services or the department of corrections before October 1, 1994, shall advance one step on the appropriate pay schedule adopted in 2-18-313. A teacher hired after October 1, 1994, shall advance on the teacher's actual anniversary date.~~

(a) (i) The pay schedules provided for in 2-18-313 indicate the annual compensation for teachers employed under the authority of the department of corrections or the department of public health and human services for fiscal years 2002 and 2003.

(ii) The compensation of each teacher on July 1, 2001, is the same as it was on June 30, 2001.

(iii) On the first day of the first pay period that includes October 1 of each fiscal year, a teacher employed under the authority of the department of public health and human services or the department of corrections before October 1, 1994, shall advance one step on the appropriate pay schedule adopted in 2-18-313. A teacher hired after October 1, 1994, shall advance on the teacher's actual anniversary date.

~~(b)~~*(b)* ~~(i)~~ The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, ~~2000~~ *2002*, and June 30, ~~2001~~ *2003*, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

~~(ii)~~*(c)* The compensation of each employee on the first day of the first pay period in each fiscal year is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) A member of a bargaining unit may not receive a pay increase until the employer's collective bargaining representative receives written notice that the employee's bargaining unit has ratified a completely integrated collective bargaining agreement covering the biennium ending June 30, ~~2001~~ *2003.*

(ii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by July 1, ~~1999~~ *2001,* retroactivity to that date may be negotiated.

(iii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by July 1, ~~1999~~ *2001,* members of the bargaining unit must continue to receive the compensation that they were receiving as of June 30, ~~1999~~ *2001,* until an agreement is ratified.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules and adjustments provided in 2-18-312, ~~2-18-313,~~ *2-18-313,* 2-18-315, and this section may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee may not be reduced by the implementation of the pay schedules provided for in 2-18-312~~, 2-18-313,~~, *2-18-313,* and 2-18-315.

(6) The department may authorize a separate pay schedule for *classes of* medical ~~doctors~~ *professionals* if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified ~~physicians~~ *professionals.*

(7) (a) The department may develop and implement an alternative pay and classification plan ~~through demonstration projects~~ for certain classes, occupations, and work units. Pay for employees in the alternative pay and classification plan may be established and changed based on demonstrated competencies and accomplishments, on the labor market, and on other situations defined by the department.

(b) ~~(i) The department may develop demonstration projects for protective service and public safety classes, information technology classes, brand inspector classes in the department of livestock, managers in the department of commerce, counselors and resident care aides at the Montana chemical dependency center, health care facility surveyors at the department of public health and human services, classes in the department of revenue, and any other class or work unit appropriate for a demonstration project, as determined by the department.~~

~~(ii)~~ To the extent that ~~a project~~ *the plan* applies to employees within a collective bargaining unit, the implementation of the ~~project~~ *plan* is a negotiable subject under 39-31-305.

~~(iii) No employee whose position is excepted from the provisions of this section under this subsection (7)(b) will receive a pay increase for the fiscal years ending 2000 and 2001 less than that prescribed under this section.~~

(8) The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. To the extent that the program applies to employees within a collective bargaining unit, it is a negotiable subject under 39-31-305.

(9) The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. To the extent that these adjustments apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305."

Section 3. Section 2-18-312, MCA, is amended to read:

"2-18-312. Statewide pay schedules. (1) The statewide classification pay schedule for the period beginning on the first day of the first full pay period in fiscal year ~~2000~~ *2002*, is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance

Pay Matrix — State Matrix Type — Annual

Pay Range: Entry Salary to Market Salary

GRADE	ENTRY SALARY	MARKET SALARY
~~1~~	~~9,076~~	~~10,677~~
~~2~~	~~9,776~~	~~11,527~~
~~3~~	~~10,528~~	~~12,446~~
~~4~~	~~11,246~~	~~13,445~~
~~5~~	~~12,261~~	~~14,563~~
~~6~~	~~13,249~~	~~15,774~~
~~7~~	~~14,313~~	~~17,079~~
~~8~~	~~15,514~~	~~18,556~~
~~9~~	~~16,796~~	~~20,140~~
~~10~~	~~18,219~~	~~21,897~~
~~11~~	~~19,766~~	~~23,814~~
~~12~~	~~21,482~~	~~25,944~~
~~13~~	~~23,343~~	~~28,260~~
~~14~~	~~25,403~~	~~30,828~~
~~15~~	~~27,673~~	~~33,664~~
~~16~~	~~30.202~~	~~36.834~~

~~17~~	~~33,025~~	~~40,374~~
~~18~~	~~36,137~~	~~44,286~~
~~19~~	~~39,625~~	~~48,680~~
~~20~~	~~43,517~~	~~53,591~~
~~21~~	~~47,841~~	~~59,063~~
~~22~~	~~52,670~~	~~65,186~~
~~23~~	~~58,118~~	~~72,107~~
~~24~~	~~64,237~~	~~79,895~~
~~25~~	~~71,005~~	~~88,534~~
1	*9,075*	*10,677*
2	*9,776*	*11,527*
3	*10,529*	*12,447*
4	*11,346*	*13,445*
5	*12,262*	*14,562*
6	*13,316*	*15,854*
7	*14,456*	*17,249*
8	*15,748*	*18,834*
9	*17,135*	*20,546*
10	*18,676*	*22,447*
11	*20,365*	*24,534*
12	*22,241*	*26,859*
13	*24,286*	*29,403*
14	*26,560*	*32,230*
15	*29,074*	*35,370*
16	*31,884*	*38,888*
17	*35,036*	*42,833*
18	*38,339*	*46,983*
19	*42,039*	*51,644*
20	*46,170*	*56,885*
21	*50,754*	*62,660*
22	*55.877*	*69.154*

23	*61,655*	*76,498*
24	*68,147*	*84,760*
25	*75,329*	*93,924*

(2) Effective on the first day of the pay period that includes October 1, ~~1999~~ *2001*, the statewide classification pay schedule is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance

Pay Matrix — State Matrix Type -- Annual

Pay Range: Entry Salary to Market Salary

GRADE	ENTRY SALARY	MARKET SALARY
~~1~~	~~9,075~~	~~10,677~~
~~2~~	~~9,776~~	~~11,527~~
~~3~~	~~10,529~~	~~12,447~~
~~4~~	~~11,346~~	~~13,446~~
~~5~~	~~12,262~~	~~14,562~~
~~6~~	~~13,283~~	~~15,814~~
~~7~~	~~14,383~~	~~17,164~~
~~8~~	~~15,631~~	~~18,695~~
~~9~~	~~16,964~~	~~20,342~~
~~10~~	~~18,445~~	~~22,171~~
~~11~~	~~20,064~~	~~24,172~~
~~12~~	~~21,859~~	~~26,397~~
~~13~~	~~23,810~~	~~28,827~~
~~14~~	~~25,975~~	~~31,520~~
~~15~~	~~28,365~~	~~34,507~~
~~16~~	~~31,042~~	~~37,848~~
~~17~~	~~34,014~~	~~41,585~~
~~18~~	~~37,222~~	~~45,614~~
~~19~~	~~40,814~~	~~50,140~~
~~20~~	~~44,824~~	~~55,199~~
~~21~~	~~49,275~~	~~60,836~~
~~22~~	~~54,251~~	~~67,140~~

~~23~~	~~59,860~~	~~74,271~~
~~24~~	~~66,163~~	~~82,201~~
~~25~~	~~73,135~~	~~91,189~~
1	*9,384*	*11,040*
2	*10,108*	*11,919*
3	*10,887*	*12,870*
4	*11,732*	*13,902*
5	*12,679*	*15,057*
6	*13,769*	*16,393*
7	*14,948*	*17,835*
8	*16,283*	*19,474*
9	*17,718*	*21,245*
10	*19,311*	*23,210*
11	*21,057*	*25,368*
12	*22,997*	*27,772*
13	*25,112*	*30,403*
14	*27,463*	*33,326*
15	*30,063*	*36,573*
16	*32,968*	*40,210*
17	*36,227*	*44,289*
18	*39,643*	*48,580*
19	*43,468*	*53,400*
20	*47,740*	*58,819*
21	*52,480*	*64,790*
22	*57,777*	*71,505*
23	*63,751*	*79,099*
24	*70,464*	*87,642*
25	*77,890*	*97,117*

(3) Effective on the first day of the pay period that includes October 1, ~~2000~~ *2002*, the statewide classification pay schedule is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance

Pay Matrix — State Matrix Type — Annual

Pay Range: Entry Salary to Market Salary

GRADE	ENTRY SALARY	MARKET SALARY
~~1~~	~~9,075~~	~~10,677~~
~~2~~	~~9,776~~	~~11,527~~
~~3~~	~~10,529~~	~~12,447~~
~~4~~	~~11,346~~	~~13,445~~
~~5~~	~~12,262~~	~~14,562~~
~~6~~	~~13,316~~	~~15,854~~
~~7~~	~~14,456~~	~~17,249~~
~~8~~	~~15,748~~	~~18,834~~
~~9~~	~~17,135~~	~~20,546~~
~~10~~	~~18,676~~	~~22,447~~
~~11~~	~~20,365~~	~~24,534~~
~~12~~	~~22,241~~	~~26,859~~
~~13~~	~~24,286~~	~~29,403~~
~~14~~	~~26,560~~	~~32,230~~
~~15~~	~~29,074~~	~~35,370~~
~~16~~	~~31,884~~	~~38,888~~
~~17~~	~~35,036~~	~~42,833~~
~~18~~	~~38,339~~	~~46,983~~
~~19~~	~~42,039~~	~~51,644~~
~~20~~	~~46,170~~	~~56,885~~
~~21~~	~~50,754~~	~~62,660~~
~~22~~	~~55,877~~	~~69,154~~
~~23~~	~~61,655~~	~~76,498~~
~~24~~	~~68,147~~	~~84,760~~
~~25~~	~~75,329~~	~~93,924~~
1	*9,703*	*11,415*
2	*10.452*	*12.324*

3	*11,257*	*13,308*
4	*12,131*	*14,375*
5	*13,110*	*15,569*
6	*14,237*	*16,950*
7	*15,456*	*18,442*
8	*16,837*	*20,136*
9	*18,320*	*21,967*
10	*19,968*	*23,999*
11	*21,773*	*26,231*
12	*23,779*	*28,716*
13	*25,966*	*31,436*
14	*28,397*	*34,459*
15	*31,085*	*37,816*
16	*34,089*	*41,577*
17	*37,459*	*45,795*
18	*40,990*	*50,232*
19	*44,946*	*55,215*
20	*49,363*	*60,819*
21	*54,264*	*66,993*
22	*59,741*	*73,936*
23	*65,919*	*81,788*
24	*72,860*	*90,622*
25	*80,538*	*100,419*"

Section 4. Section 2-18-313, MCA, is amended to read:

"2-18-313. Teachers' pay ~~schedules~~ *schedules*. ~~(1)~~ *(1)* The pay schedule for teachers ~~for the period that includes October 1, 1999, until the first day of the pay period that includes October 1, 2000, is as follows:~~ *for the period that includes October 1, 2001, until the first day of the pay period that includes October 1, 2002, is as follows:*

~~Annual Hours — 2080~~ ~~Note: Does Not Include Insurance~~

~~Term — Twelve Months~~ ~~Matrix Type — Annual~~

~~Education Level~~

~~STEP~~	~~BA~~	~~BA+15~~	~~BA+30~~	~~BA+45~~	~~BA+60~~	~~BA+75~~
~~1~~	~~24,351~~	~~25,082~~	~~25,834~~	~~26,609~~	~~27,407~~	~~28,229~~
~~2~~	~~25,082~~	~~25,834~~	~~26,609~~	~~27,407~~	~~28,229~~	~~29,077~~
~~3~~	~~25,834~~	~~26,609~~	~~27,407~~	~~28,229~~	~~29,077~~	~~29,949~~
~~4~~	~~26,609~~	~~27,407~~	~~28,229~~	~~29,077~~	~~29,949~~	~~30,847~~
~~5~~	~~27,407~~	~~28,229~~	~~29,077~~	~~29,949~~	~~30,847~~	~~31,772~~
~~6~~	~~28,229~~	~~29,077~~	~~29,949~~	~~30,847~~	~~31,772~~	~~32,726~~
~~7~~	~~29,077~~	~~29,949~~	~~30,847~~	~~31,772~~	~~32,726~~	~~33,708~~
~~8~~	~~29,949~~	~~30,847~~	~~31,772~~	~~32,726~~	~~33,708~~	~~34,719~~
~~9~~	~~30,847~~	~~31,772~~	~~32,726~~	~~33,708~~	~~34,719~~	~~35,761~~
~~10~~	~~31,772~~	~~32,726~~	~~33,708~~	~~34,719~~	~~35,761~~	~~36,834~~
~~11~~	~~32,726~~	~~33,708~~	~~34,719~~	~~35,761~~	~~36,834~~	~~37,938~~
~~12~~	~~33,708~~	~~34,719~~	~~35,761~~	~~36,834~~	~~37,938~~	~~39,076~~
~~13~~	~~34,719~~	~~35,761~~	~~36,833~~	~~37,939~~	~~39,076~~	~~40,248~~

~~(2) Effective on the first day of the pay period that includes October 1, 2000, the pay schedule for teachers is as follows:~~

~~Annual Hours — 2080~~ ~~Note: Does Not Include Insurance~~

~~Term — Twelve Months~~ ~~Matrix Type — Annual~~

~~Education Level~~

~~STEP~~	~~BA~~	~~BA+15~~	~~BA+30~~	~~BA+45~~	~~BA+60~~	~~BA+75~~
~~1~~	~~25,082~~	~~25,834~~	~~26,609~~	~~27,407~~	~~28,229~~	~~29,076~~
~~2~~	~~25,834~~	~~26,609~~	~~27,407~~	~~28,229~~	~~29,076~~	~~29,949~~
~~3~~	~~26,609~~	~~27,407~~	~~28,229~~	~~29,076~~	~~29,949~~	~~30,848~~
~~4~~	~~27,407~~	~~28,229~~	~~29,076~~	~~29,949~~	~~30,848~~	~~31,773~~
~~5~~	~~28,229~~	~~29,076~~	~~29,949~~	~~30,848~~	~~31,773~~	~~32,726~~
~~6~~	~~29,076~~	~~29,949~~	~~30,848~~	~~31,773~~	~~32,726~~	~~33,708~~
~~7~~	~~29,949~~	~~30,848~~	~~31,773~~	~~32,726~~	~~33,708~~	~~34,719~~
~~8~~	~~30,848~~	~~31,773~~	~~32,726~~	~~33,708~~	~~34,719~~	~~35,761~~
~~9~~	~~31,773~~	~~32,726~~	~~33,708~~	~~34,719~~	~~35,761~~	~~36,833~~

~~10~~	~~32,726~~	~~33,708~~	~~34,719~~	~~35,761~~	~~36,833~~	~~37,939~~
~~11~~	~~33,708~~	~~34,719~~	~~35,761~~	~~36,833~~	~~37,939~~	~~39,076~~
~~12~~	~~34,719~~	~~35,761~~	~~36,833~~	~~37,939~~	~~39,076~~	~~40,248~~
~~13~~	~~35,761~~	~~36,834~~	~~37,938~~	~~39,077~~	~~40,248~~	~~41,456~~

Annual Hours — 2080 *Note: Does Not Include Insurance*

Term — Twelve Months *Matrix Type — Annual*

Education Level

STEP	*BA*	*BA+15*	*BA+30*	*BA+45*	*BA+60*	*BA+75*
1	*26,085*	*26,867*	*27,673*	*28,503*	*29,359*	*30,239*
2	*26,867*	*27,673*	*28,503*	*29,358*	*30,239*	*31,147*
3	*27,673*	*28,503*	*29,358*	*30,239*	*31,147*	*32,082*
4	*28,503*	*29,358*	*30,239*	*31,147*	*32,082*	*33,044*
5	*29,358*	*30,239*	*31,147*	*32,082*	*33,044*	*34,035*
6	*30,239*	*31,147*	*32,082*	*33,044*	*34,035*	*35,056*
7	*31,147*	*32,082*	*33,044*	*34,035*	*35,056*	*36,108*
8	*32,082*	*33,044*	*34,035*	*35,056*	*36,108*	*37,191*
9	*33,044*	*34,035*	*35,056*	*36,108*	*37,191*	*38,307*
10	*34,035*	*35,056*	*36,108*	*37,191*	*38,307*	*39,457*
11	*35,056*	*36,108*	*37,191*	*38,307*	*39,457*	*40,640*
12	*36,108*	*37,191*	*38,307*	*39,457*	*40,640*	*41,858*
13	*37,191*	*38,307*	*39,457*	*40,640*	*41,858*	*43,114*

(2) Effective on the first day of the pay period that includes October 1, 2002, the pay schedule for teachers is as follows:

Annual Hours — 2080 *Note: Does Not Include Insurance*

Term — Twelve Months *Matrix Type — Annual*

Education Level

STEP	*BA*	*BA+15*	*BA+30*	*BA+45*	*BA+60*	*BA+75*
1	*27,129*	*27,942*	*28,780*	*29,643*	*30,532*	*31,449*
2	*27,942*	*28,780*	*29,643*	*30,532*	*31,449*	*32,393*
3	*28,780*	*29,643*	*30,532*	*31,449*	*32,393*	*33,365*
4	*29,643*	*30,532*	*31,449*	*32,393*	*33,365*	*34,366*
5	*30,532*	*31,449*	*32,393*	*33.365*	*34.366*	*35.396*

6	*31,449*	*32,393*	*33,365*	*34,366*	*35,396*	*36,459*
7	*32,393*	*33,365*	*34,366*	*35,396*	*36,459*	*37,552*
8	*33,365*	*34,366*	*35,396*	*36,459*	*37,552*	*38,679*
9	*34,366*	*35,396*	*36,459*	*37,552*	*38,679*	*39,840*
10	*35,396*	*36,459*	*37,552*	*38,679*	*39,840*	*41,035*
11	*36,459*	*37,552*	*38,679*	*39,840*	*41,035*	*42,266*
12	*37,552*	*38,679*	*39,840*	*41,035*	*42,266*	*43,532*
13	*38,679*	*39,840*	*41,035*	*42,266*	*43,532*	*44,839*"

Section 5. Section 2-18-315, MCA, is amended to read:

"**2-18-315. Blue-collar pay schedules.** (1) The pay schedule for blue-collar workers for the period from July 1, ~~1999~~ *2001*, until the first day of the pay period that includes October ~~1999~~ *2001* is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance

Pay Matrix — Blue-Collar Matrix Type — Hourly

Grade	$/Hour
~~B1~~	~~10.515~~
~~B2~~	~~10.915~~
~~B3~~	~~11.315~~
~~B4~~	~~11.715~~
~~B5~~	~~12.115~~
~~B6~~	~~12.515~~
~~B7~~	~~12.915~~
~~B8~~	~~13.315~~
~~B9~~	~~13.715~~
~~B10~~	~~14.115~~
~~B11~~	~~14.515~~
~~B12~~	~~14.915~~
~~B00~~	~~15.315~~
B1	*11.275*
B2	*11.675*
B3	*12.075*
B4	*12.475*

B5	*12.875*
B6	*13.275*
B7	*13.675*
B8	*14.075*
B9	*14.475*
B10	*14.875*
B11	*15.275*
B12	*15.675*
B13	*16.075*
B14	*16.475*

(2) Effective on the first day of the pay period that includes October 1, ~~1999~~ *2001*, until the first day of the pay period that includes October ~~2000~~ *2002*, the pay schedule for blue-collar workers is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance

Pay Matrix — Blue-Collar Matrix Type — Hourly

Grade	$/Hour
~~B1~~	~~10.895~~
~~B2~~	~~11.295~~
~~B3~~	~~11.695~~
~~B4~~	~~12.095~~
~~B5~~	~~12.495~~
~~B6~~	~~12.895~~
~~B7~~	~~13.295~~
~~B8~~	~~13.695~~
~~B9~~	~~14.095~~
~~B10~~	~~14.495~~
~~B11~~	~~14.895~~
~~B12~~	~~15.295~~
~~B00~~	~~15.695~~
B1	*11.835*
B2	*12.235*
B3	*12.635*

B4	*13.035*
B5	*13.435*
B6	*13.835*
B7	*14.235*
B8	*14.635*
B9	*15.035*
B10	*15.435*
B11	*15.835*
B12	*16.235*
B13	*16.635*
B14	*17.035*

(3) Effective on the first day of the pay period that includes October 1, ~~2000~~ *2002*, the pay schedule for blue-collar workers is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance

Pay Matrix — Blue-Collar Matrix Type — Hourly

Grade	$/Hour
~~B1~~	~~11.275~~
~~B2~~	~~11.675~~
~~B3~~	~~12.075~~
~~B4~~	~~12.475~~
~~B5~~	~~12.875~~
~~B6~~	~~13.275~~
~~B7~~	~~13.675~~
~~B8~~	~~14.075~~
~~B9~~	~~14.475~~
~~B10~~	~~14.875~~
~~B11~~	~~15.275~~
~~B12~~	~~15.675~~
~~B00~~	~~16.075~~
B1	*12.395*
B2	*12.795*

B3	*13.195*
B4	*13.595*
B5	*13.995*
B6	*14.395*
B7	*14.795*
B8	*15.195*
B9	*15.595*
B10	*15.995*
B11	*16.395*
B12	*16.795*
B13	*17.195*
B14	*17.595*"

Section 6. Section 2-18-703, MCA, is amended to read:

"**2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, shall contribute the amount specified in this section ~~towards~~ *toward* the group benefits cost.

(2) For employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is ~~$270~~ *$295* a month for the period from July ~~1999~~ *2001* through December ~~1999~~ *2001*, ~~$285~~ *$325* a month for the period from January ~~2000~~ *2002* through December ~~2000~~ *2002*, and ~~$295~~ *$366* a month for January ~~2001~~ *2003* and for each succeeding month. For employees of the Montana university system, the employer contribution for group benefits is ~~$285~~ *$325* a month for the period from July ~~1999~~ *2001* through June ~~2000~~ *2002* and ~~$295~~ *$366* a month for the period from July ~~2000~~ *2002* through June ~~2001~~ *2003* and for each succeeding month. When a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 a month.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(5) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

(6) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents."

Section 7. Section 5-2-301, MCA, is amended to read:

"**5-2-301. Compensation and expenses for members while in session.** (1) Legislators are entitled to a salary commensurate to that of the daily rate of an entry grade 10 classified state employee in effect when the regular session of the legislature in which they serve is convened under 5-2-103 for those days during which the legislature is in session. The president of the senate and the speaker of the house must receive an additional $5 a day in salary for those days during which the legislature is in session.

(2) Legislators may serve for no salary.

(3) Subject to subsection (4), legislators are entitled to a daily allowance, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments must stop when the legislature recesses for more than 3 days and resume when the legislature reconvenes.

(4) After November 15, and prior to December 15 of each even-numbered year, the department of administration shall conduct a survey of the allowance for daily expenses of legislators for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the average daily expense allowance for Montana legislators in determining the average daily rate for legislators. The department shall include only states with specific daily allowances in the calculation of the average. If the average daily rate is greater than the daily rate for legislators in Montana, ~~the average is the~~ *legislators are entitled to a* new daily rate ~~for legislators~~ for those days during which the legislature is in session. *The new daily rate is the daily rate for the prior legislative session, increased by the percentage rate increase as determined by the survey, a cost of living increase to reflect inflation that is calculated pursuant to 15-6-134, or 5%, whichever is less.* The expense allowance is effective when the next regular session of the legislature in which the legislators serve is convened under 5-2-103.

(5) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel to the place of the holding of the session and to return to their place of residence at the conclusion of the session.

(6) In addition to the mileage allowance provided for in subsection (5), legislators, upon submittal of an appropriate claim for mileage reimbursement to the legislative services division, are entitled to:

(a) three additional round trips to their place of residence during each regular session; and

(b) additional round trips as authorized by the legislature during special session.

(7) Legislators are not entitled to any additional mileage allowance under subsection (5) for a special session if it is convened within 7 days of a regular session."

Section 8. Appropriations. (1) The following money for the indicated fiscal years is appropriated to the listed agencies to implement the adjustments provided for in [sections 1 through 6]:

	Fiscal Year 2002		Fiscal Year 2003	
	General Fund	Other Funds	General Fund	Other Funds
Legislative Branch	145,571	29,596	388,359	78,107
Consumer Counsel		9,829		25,902
Judiciary	93,728	10,564	253,634	28,560
University System	3,491,176	3,051,506	8,759,051	7,655,963
OBPP	4,302,871	6,718,472	11,606,426	18,059,051
OBPP-Teacher Pay Plan	41,836		107,216	

(2) The following money is appropriated for the biennium to the office of budget and program planning to be distributed to other agencies when personnel vacancies do not occur, retirement costs exceed agencies resources, or other contingencies arise:

	Fiscal Year 2002	
	General Fund	Other Funds
Personal Services Contingency	1,300,000	3,000,000

(3) The following money is appropriated for the biennium to the legislative branch for use when personnel vacancies do not occur, retirement costs exceed branch resources, or other contingencies arise:

	Fiscal Year 2002
	General Fund
Personal Services Contingency	200,000

(4) The following money is appropriated for the biennium to the legislative branch to reduce the discrepancy between actual branch salaries and statutory market salaries:

	Fiscal Year 2002	
	General Fund	Other Funds
Statutory Market Salary Adjustment	400,000	34,500

Section 9. Coordination instruction. If [this act] is passed and approved, then the amendments to 2-18-703(2) in House Bill No. 409 and Senate Bill No. 145 are void.

Section 10. Effective date. [This act] is effective July 1, 2001.

Approved May 2, 2001

CHAPTER NO. 554

[HB 41]

AN ACT GENERALLY REVISING THE LAWS GOVERNING DEDICATED REVENUE AND STATUTORY APPROPRIATIONS; PROVIDING FOR THE DEPOSIT OF STATE SCHOOL FUND REVENUE INTO A SUBFUND OF THE STATE GENERAL FUND; PROVIDING FOR THE DEPOSIT IN THE STATE GENERAL FUND OF PROCEEDS FROM THE SALE OF PROPERTY USED IN THE THEFT OR TRANSPORTATION OF STOLEN LIVESTOCK; PROVIDING FOR THE DEPOSIT OF TIMBER HARVEST FUNDS IN THE STATE SPECIAL REVENUE FUND; STATUTORILY APPROPRIATING TIMBER HARVEST FUNDS TO SCHOOLS FOR TECHNOLOGY ACQUISITION; ELIMINATING THE REQUIREMENTS FOR REVIEWS OF DEDICATED REVENUE PROVISIONS AND STATUTORY APPROPRIATIONS BY THE LEGISLATIVE FINANCE COMMITTEE; AMENDING SECTIONS 17-1-505, 17-1-508, 17-7-502, 20-9-342, 20-9-343, 20-9-534, 81-5-110, AND 81-5-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-1-505, MCA, is amended to read:

"**17-1-505. Review of dedicated revenue provisions.** ~~(1) Each interim, the legislative finance committee shall review dedicated revenue provisions based upon procedures established under subsection (4) and the principles of revenue dedication set forth in 17-1-507 to ensure that legislative policy is clearly stated.~~

~~(2)~~*(1)* The legislature recognizes that dedicated revenue provisions are subject to review by:

(a) the office of budget and program planning in the development and implementation of the executive budget and analysis of legislation;

(b) the legislative fiscal division in analyzing the executive budget;

(c) the legislative services division in drafting legislation;

(d) the legislative auditor in auditing agencies; and

(e) the department of administration in performing the functions provided for in 17-2-106 and 17-2-111.

~~(3)~~*(2)* To avoid unnecessary use of dedicated revenue provisions, the entities listed in subsection ~~(2)~~ *(1)* shall, in the course of current duties, consider the principles in 17-1-507 and the criteria listed in this subsection for each new or existing dedicated revenue provision. A dedicated revenue provision should not give a program or activity an unfair advantage for funding. The expenditures from a dedicated revenue provision must be based on requirements for meeting a legislatively established outcome. Statutorily mandated programs or activities

funded through dedicated revenue provisions from general revenue sources must be reviewed to the same extent as programs or activities funded from the general fund. The use of a dedicated revenue provision may be justified if it satisfies one or more of the following:

(a) **The program or activity funded provides direct benefits for those who pay the dedicated tax, fee, or assessment, and the tax, fee, or assessment is** commensurate with the costs of the program or activity.

(b) **The use of the dedicated revenue provision provides special information or other advantages that could not be obtained if the revenue were allocated to the general fund.**

(c) The dedicated revenue provision provides program funding at a level equivalent to the expenditures established by the legislature.

(d) The dedicated revenue provision involves collection and allocation formulas that are appropriate to the present circumstances and current priorities in state government.

(e) The dedicated revenue provision does not impair the legislature's ability to scrutinize budgets, control expenditures, and establish priorities for state spending.

(f) The dedicated revenue provision results in an appropriate projected ending fund balance.

(g) The dedicated revenue provision fulfills a continuing, legislatively recognized need.

(h) The dedicated revenue provision does not result in accounting or auditing inefficiency.

~~(4) The committee shall establish procedures to facilitate a biennial review and evaluation of dedicated revenue provisions.~~

~~(5) Upon completion of the review, the committee shall report a summary of its findings to the legislature, including its recommendation of termination or extension, with or without modification, of the dedicated revenue provision.~~"

Section 2. Section 17-1-508, MCA, is amended to read:

"17-1-508. Review of statutory appropriations. ~~(1) Each interim, the legislative finance committee shall, based upon procedures established pursuant to subsection (5), review statutory appropriations that are contained in the sections listed in 17-7-502 to eliminate those that no longer fulfill a legislative need and to ensure that legislative policy is clearly stated concerning the use of statutory appropriations.~~

~~(2)~~*(1)* Each biennium, the office of budget and program planning shall, in development of the executive budget, *review and* identify instances in which statutory appropriations in current law do not appear consistent with the guidelines set forth in subsection ~~(3)~~ *(2)*.

~~(3)~~*(2)* The review of statutory appropriations must determine whether a statutory appropriation meets the requirements of 17-7-502. A statutory appropriation from a continuing and reliable source of revenue may not be used to fund administrative costs. In reviewing and establishing statutory appropriations, the legislature shall consider the following guidelines. A statutory appropriation may be considered appropriate if:

(a) the fund or use requires an appropriation;

(b) the money is not from a continuing, reliable, and estimable source;

(c) the use of the appropriation or the expenditure occurrence is not predictable and reliable;

(d) the authority does not exist elsewhere;

(e) an alternative appropriation method is not available, practical, or effective;

(f) other than for emergency purposes, it does not appropriate money from the state general fund;

(g) the money is dedicated for a specific use;

(h) the legislature wishes the activity to be funded on a continual basis; and

(i) when feasible, an expenditure cap and sunset date are included.

~~(4)~~*(3)* The office of budget and program planning shall prepare a fiscal note for each piece of legislation that proposes to create or amend a statutory appropriation. It shall, consistent with the guidelines in this section, review each of these pieces of legislation. Its findings concerning the statutory appropriation must be contained in the fiscal note accompanying that legislation.

~~(5) The legislative finance committee shall establish procedures to facilitate a biennial review and evaluation of statutory appropriations. Upon completion of the review, the committee shall report a summary of its findings to the legislature, including a recommendation for terminating, extending, or modifying the statutory appropriations reviewed.~~"

Section 3. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-31-702; 15-34-115; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; *20-9-534;* 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-222; 80-4-416; 80-11-518; ~~81-5-111;~~ 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; and pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005.)"

Section 4. Section 20-9-342, MCA, is amended to read:

"**20-9-342. Deposit of interest and income money by state board of land commissioners.** The state board of land commissioners shall annually deposit the interest and income money for each calendar year into *a subfund of* the state ~~general~~ *general* fund for state equalization aid by the last business day of February following the calendar year in which the money was received."

Section 5. Section 20-9-343, MCA, is amended to read:

"**20-9-343. Definition of and revenue for state equalization aid.** (1) As used in this title, the term "state equalization aid" means revenue as required in this section for:

(a) distribution to the public schools for the purposes of payment of systems development and other related costs resulting from the enactment of legislation that requires changes to the automated system used to administer the BASE funding program, guaranteed tax base aid, BASE aid, state reimbursement for school facilities, matching funds for the systemic initiative for Montana mathematics and science grant, and grants for school technology purchases;

(b) negotiated payments authorized under 20-7-420(3) up to $500,000 ~~per~~ *a* biennium; and

(c) the Montana educational telecommunications network as provided in 20-32-101.

(2) The superintendent of public instruction may spend throughout the biennium funds appropriated for the purposes of systems development and other related costs resulting from the enactment of legislation that requires changes to the automated system used to administer the BASE funding program, guaranteed tax base aid, BASE aid for the BASE funding program, state reimbursement for school facilities, negotiated payments authorized under 20-7-420(3), the Montana educational telecommunications network, and school technology purchases.

(3) The following *money* must be ~~paid into the state general fund~~ *paid into a subfund of the state general fund* for the public schools of the state *as indicated*:

(a) (i) subject to subsection (3)(a)(ii), interest and income money described in 20-9-341 and 20-9-342; and

(ii) an amount of money equal to the income money attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year ~~to be~~ *to the school technology account in the state special revenue fund, which is statutorily* appropriated, *pursuant to 20-9-534, to be used* for *the* purposes of 20-9-533;

(b) investment income earned by investing interest and income money described in 20-9-341 and 20-9-342."

Section 6. Section 20-9-534, MCA, is amended to read:

"**20-9-534. School technology purchases.** By September 1, the superintendent of public instruction shall allocate the annual amount ~~appropriated~~ for grants for school technology purchases to each district based on the ratio that each district's BASE budget bears to the statewide BASE budget amount for all school districts multiplied by the amount of money provided in 20-9-343(3)(a)(ii) in the ~~current school~~ *prior fiscal* year. *The grants for school technology purchases are statutorily appropriated, as provided in 17-7-502.*"

Section 7. Section 81-5-110, MCA, is amended to read:

"**81-5-110. Sale at public auction — retention of property.** (1) Vehicles, equipment, and personalty forfeited under 81-5-109 may be sold at public auction in the manner of sales of personal property under execution and may be sold by any sheriff, livestock inspector, or other peace officer.

(2) The department may retain the vehicles, equipment, and personalty forfeited under 81-5-109 for official use by the department, including personnel training. If the department retains forfeited property that it determines to be suitable for everyday use by department personnel, the department shall reduce similar property purchases accordingly.

(3) Money forfeited under 81-5-109 must be ~~placed in the special revenue account created in 81-5-111(2) for use by the department for personnel training or enforcement purposes~~ *deposited in the state general fund.*"

Section 8. Section 81-5-111, MCA, is amended to read:

"**81-5-111. Disposition of proceeds ~~— special revenue account~~.** (1) After deducting the expenses of retaining the vehicle, equipment, or personalty and the cost of the sale, the officer making the sale or the department, if it retains the vehicle, equipment, or personalty, shall pay all liens to the extent *that* the balance of sale proceeds permit, according to the lien priorities that are established by intervention or otherwise. A lien must be bona fide and have been created without the lienor having any notice or reasonable cause to believe that the vehicle, equipment, or personalty was being or was to be used for the theft or illegal transportation.

(2) ~~There is an account in the state special revenue fund.~~ The proceeds from the sale of vehicles, equipment, and personalty provided for in 81-5-110 must be deposited in the ~~account, are statutorily appropriated, as provided in 17-7-502, and must be used by the department for personnel training or enforcement purposes~~ *state general fund.*"

Section 9. Coordination instruction. If House Bill No. 41 and Senate Bill No. 495 are both passed and approved, then:

(1) [section 1(1)] of Senate Bill No. 495 must read as follows:

"(1) As used in [sections 1 through 3], "distributable revenue" means, except for that portion of revenue described in 20-9-343(3)(a)(ii), 77-1-607, and 77-1-613, 95% of all revenue from the management of school trust lands and the permanent fund, including timber sale proceeds, lease fees, interest, dividends, and net realized capital gains."

(2) [section 3(1)] of Senate Bill No. 495 must read as follows:

"(1) There is a guarantee account in a subfund of the state general fund. The guarantee account is intended to stabilize the long-term growth of the permanent fund and to maintain a constant and increasing distributable revenue stream. All realized capital gains and all distributable revenue must be deposited in the guarantee account. Except as provided in subsection (2), the guarantee account must be distributed to school districts through the basic and per-ANB entitlements."

Section 10. Effective date. [This act] is effective July 1, 2001.

Approved May 2, 2001

CHAPTER NO. 555

[HB 42]

AN ACT RECOGNIZING EXCELLENCE IN TEACHING BY PROVIDING ONE-TIME PROFESSIONAL STIPENDS TO TEACHERS WHO OBTAIN CERTIFICATION FROM THE NATIONAL BOARD FOR PROFESSIONAL TEACHING STANDARDS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Professional stipends for teachers certified by national board for professional teaching standards. (1) Pursuant to subsection (4), a one-time stipend of $3,000 must be provided to each teacher who obtains certification from the national board for professional teaching standards if the teacher is:

(a) a full-time classroom teacher, librarian, or other full-time employee serving in an assignment covered by national board certification assessment;

(b) certified to teach in Montana under the provisions of 20-4-103; and

(c) a full-time employee of:

(i) a Montana public school district, as defined in 20-6-101;

(ii) an education cooperative, as described in 20-7-451;

(iii) the Montana school for the deaf and blind, as described in 20-8-101; or

(iv) a state youth correctional facility, as defined in 41-5-103.

(2) A teacher is eligible for the stipend in the school year beginning July 1 after the teacher obtains certification from the national board for professional teaching standards.

(3) By March 1, the superintendent of public instruction shall distribute stipend payments to each eligible teacher.

(4) The obligation for funding the professional stipend is an obligation of the state. This section may not be construed to require a school district to provide a

stipend to a qualifying teacher without a payment from the state to the district. If the funding for professional stipends is less than the total amount for which Montana teachers qualify, the superintendent of public instruction shall prorate the funding to the districts in a manner that provides the same amount of stipend to each qualifying teacher.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 4, part 1, and the provisions of Title 20, chapter 4, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2001.

Approved May 2, 2001

CHAPTER NO. 556

[HB 121]

AN ACT INCREASING THE TOTAL PER-ANB AND BASIC ENTITLEMENTS FOR PUBLIC SCHOOLS FOR SCHOOL FISCAL YEARS BEGINNING ON OR AFTER JULY 1, 2001; INCREASING THE BASIC ENTITLEMENT FOR AN ELEMENTARY SCHOOL DISTRICT OR A K-12 SCHOOL DISTRICT ELEMENTARY PROGRAM TO $18,889, THE BASIC ENTITLEMENT FOR A HIGH SCHOOL DISTRICT TO $209,873, THE TOTAL PER-ANB ENTITLEMENT FOR AN ELEMENTARY SCHOOL DISTRICT OR A K-12 DISTRICT ELEMENTARY PROGRAM TO $3,834, AND THE TOTAL PER-ANB ENTITLEMENT FOR A HIGH SCHOOL DISTRICT OR A K-12 DISTRICT HIGH SCHOOL PROGRAM TO $5,109; FOR SCHOOL FISCAL YEARS BEGINNING ON OR AFTER JULY 1, 2002, CONTINGENTLY INCREASING THE BASIC ENTITLEMENT FOR AN ELEMENTARY SCHOOL DISTRICT OR A K-12 SCHOOL DISTRICT ELEMENTARY PROGRAM TO $19,244, THE BASIC ENTITLEMENT FOR A HIGH SCHOOL DISTRICT TO $213,819, THE TOTAL PER-ANB ENTITLEMENT FOR AN ELEMENTARY SCHOOL DISTRICT OR A K-12 DISTRICT ELEMENTARY PROGRAM TO $3,906, AND THE TOTAL PER-ANB ENTITLEMENT FOR A HIGH SCHOOL DISTRICT OR A K-12 DISTRICT HIGH SCHOOL PROGRAM TO $5,205; PROVIDING FOR A CONTINGENCY BASING INCREASES FOR SCHOOL FISCAL YEARS BEGINNING ON OR AFTER JULY 1, 2002, ON PASSAGE AND APPROVAL OF SENATE BILL NO. 495 AND SENATE BILL NO. 390; AMENDING SECTION 20-9-306, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-306, MCA, is amended to read:

"20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district; and

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and up to 40% of the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and up to 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) ~~$206,000~~ *$209,873* for each high school district;

(b) ~~$18,540~~ *$18,889* for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:

(i) ~~$18,540~~ *$18,889* times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) ~~$206,000~~ *$209,873* times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(8) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and up to 153% of special education allowable cost payments.

(9) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(10) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~$5,015~~ *$5,109* for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of ~~$3,763~~ *$3,834* for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of ~~$3,763~~ *$3,834* for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~$5,015~~ *$5,109* for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB."

Section 2. Coordination instruction. (1) If Senate Bill No. 495 is passed and approved and is not enjoined or determined to be unconstitutional by April 1, 2002, and if Senate Bill No. 390 is passed and approved, then section 20-9-306, MCA, must read as follows:

"**Section 2.** Section 20-9-306, MCA, is amended to read:

"**20-9-306. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district; and

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and up to 40% of the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and up to 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) ~~$206,000~~ *$213,819* for each high school district;

(b) ~~$18,540~~ *$19,244* for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school: and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:

(i) ~~$18,540~~ *$19,244* times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) ~~$206,000~~ *$213,819* times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(8) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and up to 153% of special education allowable cost payments.

(9) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(10) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~$5,015~~ *$5,205* for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of ~~$3,763~~ *$3,906* for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of ~~$3,763~~ *$3,906* for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~$5,015~~ *$5,205* for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.""

(2) If Senate Bill No. 495 is enjoined or declared unconstitutional before April 1, 2002, then section 20-9-306, must read as follows:

"**Section 1.** Section 20-9-306, MCA, is amended to read:

"**20-9-306. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district; and

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and up to 40% of the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and up to 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) ~~$206,000~~ *$209,873* for each high school district;

(b) ~~$18,450~~ *$18,889* for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:

(i) ~~$18,540~~ *$18,889* times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) ~~$206,000~~ *$209,873* times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(8) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and up to 153% of special education allowable cost payments.

(9) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(10) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~$5,015~~ *$5,109* for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of ~~$3,763~~ *$3,834* for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of ~~$3,763~~ *$3,834* for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~$5,015~~ *$5,109* for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.""

"**Section 2.** Section 20-9-306, MCA, is amended to read:

"**20-9-306. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district; and

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and up to 40% of the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and up to 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) ~~$206,000~~ *$211,531* for each high school district;

(b) ~~$18,540~~ *$19,038* for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:

(i) ~~$18,540~~ *$19,038* times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) ~~$206,000~~ *$211,531* times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(8) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and up to 153% of special education allowable cost payments.

(9) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(10) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~$5,015~~ *$5,149* for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of ~~$3,763~~ *$3,864* for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of ~~$3,763~~ *$3,864* for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~$5,015~~ *$5,149* for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.""

Section 3. Effective date — applicability. (1) [This act] is effective on passage and approval, and [section 1] applies to school fiscal years beginning July 1, 2001.

(2) If the contingency in [section 2(1)] occurs, [section 2(1)] applies to school fiscal years beginning on or after July 1, 2002.

(3) If the contingency in [section 2(2)] occurs, the first version of 20-9-306 in [section 2(2)] applies to the school fiscal year beginning July 1, 2001, and the second version of 20-9-306 in [section 2(2)] applies to school fiscal years beginning on or after July 1, 2002.

Approved May 2, 2001

CHAPTER NO. 557

[HB 144]

AN ACT ESTABLISHING A STATE GOVERNMENT BROADCASTING SERVICE TO PROVIDE GAVEL-TO-GAVEL COVERAGE OF LEGISLATIVE AND ADMINISTRATIVE PROCEEDINGS; CREATING A STATE GOVERNMENT BROADCASTING ACCOUNT; INCREASING THE LOBBYIST LICENSE FEE AND USING THE FEE INCREASE TO SUPPORT THE BROADCASTING SERVICE; AUTHORIZING A GENERAL FUND LOAN; PROVIDING AN APPROPRIATION TO THE LEGISLATIVE SERVICES DIVISION; AMENDING SECTIONS 5-7-103 AND 5-11-112, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the citizens of Montana have an inherent right to watch their government at work; and

WHEREAS, public education about the Legislature and its processes is a vital public policy goal that is enhanced by the gavel-to-gavel broadcasting of legislative proceedings; and

WHEREAS, the experience of other states demonstrates that consistent, unedited broadcast coverage mitigates self-serving conduct and elevates the quality of debate among legislators and in related representative bodies; and

WHEREAS, the transparency and accountability of the Legislature and other state government agencies and officials to Montana citizens are increased by unedited, noncommercial public affairs programming; and

WHEREAS, video and related communications technologies provide an accurate and accessible record of legislative activities; and

WHEREAS, the statewide distribution of broadcast services can both alleviate the difficulties of direct participation in the legislative process caused by geographic distance and contribute to economic development initiatives in rural areas of Montana; and

WHEREAS, it is in the public interest to maximize the cost-effectiveness of a state government broadcasting service by including coverage of Legislative, Executive, and Judicial Branch activities.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings and purpose. The legislature finds and declares that:

(1) the purpose of a state-funded public affairs broadcasting program is to provide Montana citizens with increased access to unbiased information about

state government deliberations and public policy events through unedited television coverage and other communications technologies; and

(2) the most efficient and effective means of establishing a state-funded public affairs broadcasting program is to assign the enabling responsibilities to the legislative council and require the division to contract with a qualified operator through a competitive bidding process.

Section 2. Definitions. As used in [sections 1 through 4], unless the context requires otherwise, the following definitions apply:

(1) "Broadcasting" means any application of communication technologies to deliver live or delayed programming to a viewing audience, including but not limited to over-the-air television broadcasts, cable television, and the streaming of compressed audio or video signals over the internet.

(2) "Division" means the legislative services division provided for in 5-11-111.

(3) "Gavel-to-gavel coverage" means that any camera that is used to capture and transmit legislative or administrative proceedings is activated when the presiding officer of a floor session or committee calls the meeting to order and is deactivated on adjournment.

(4) "Operator" means a private, nonprofit organization exempt from taxation under section 501(c) of the Internal Revenue Code.

Section 3. State government broadcasting — structure and governance. (1) There is a state government broadcasting service administered by the division. The division shall:

(a) develop and issue a request for proposals for the provision of gavel-to-gavel coverage of legislative and administrative proceedings as well as other public affairs programming that is approved by the legislative council;

(b) evaluate proposals and, on the basis of selection criteria established by the division, execute a contract for services with the most qualified operator; and

(c) cooperate with executive branch and judicial branch officials to facilitate broadcast coverage of state government activities and events that are pertinent to the purpose set forth in [section 1].

(2) The legislative council shall assist the division in exercising oversight of the contract with the operator to ensure that broadcasts conform with the following principles of good conduct:

(a) Programming must be fair, accurate, and balanced without regard to partisanship or ideology.

(b) Programming must be scheduled in a manner that acknowledges the importance of timeliness in the delivery of information.

(c) Issue coverage and the scheduling of broadcasts must reflect a thoughtful balance of subject areas, geographic sensitivities, and attention to the various committees and other deliberative bodies engaged in the legislative process.

(d) Programming must always be intended to increase public understanding of both the substantive issues and the processes by which the legislature and other bodies seek to resolve problems, address challenges, and seize opportunities for the public good.

(e) Programming must reflect the importance of each branch of government.

(f) Production values must be of the highest attainable quality to accurately convey the genuine pace and tenor of governmental activity.

(g) Camera angles, shot selection, graphic subtitling, and other aspects of broadcast style and audiovisual content must be subject to guidance and monitoring by the division to ensure impartiality and respect for the decorum of the legislature and other governmental institutions.

(3) The division is responsible for ensuring that the audio components of the broadcasting service are maintained in good working order.

(4) Operations and maintenance of the cameras, cabling, wiring, electronics, recording equipment, and associated computer technology in the capitol and the adjacent broadcast production facility are the responsibility of the operator that the division selects, as provided in subsection (1)(b). However, the division and the department of administration shall cooperate with the operator to ensure broadcast system reliability.

(5) The operator and the division shall develop and implement a plan to provide the maximum attainable distribution of broadcasts, and the contract between the operator and the division may require the operator to enter into agreements with one or more Montana public television organizations, telecommunications firms, nonprofit organizations, or state telecommunications networks.

Section 4. State government broadcasting account. (1) There is a state government broadcasting account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) the portion of the lobbyist license fee provided for in 5-7-103(4)(b);

(b) any gift, donation, grant, legacy, bequest, or devise made for the purposes of [sections 1 through 4];

(c) interest or other income earned on the money in the account.

(3) Money in the account is available to the division by appropriation and must be used for the development, operation, and maintenance of a state government broadcasting service as provided for in [sections 1 through 4].

Section 5. Section 5-7-103, MCA, is amended to read:

"5-7-103. Licenses — fees — eligibility — waiver. (1) Any adult of good moral character who is otherwise qualified under this chapter may be licensed as a lobbyist. The commissioner shall provide a license application form. The application form may be obtained from and must be filed in the office of the commissioner. Upon approval of the application and receipt of the license fee by the commissioner, a license must be issued that entitles the licensee to practice lobbying on behalf of one or more enumerated principals. The license fee is ~~$50~~ *$150* for each lobbyist. Each license expires on December 31 of each even-numbered year or may be terminated at the request of the lobbyist. A lobbyist who believes that payment of the license fee may constitute a hardship may apply to the commissioner for a waiver of the fee required by this section. The commissioner may waive *all or a portion of* the license fee upon proof by the lobbyist that payment of the fee constitutes a hardship.

(2) (a) Except as provided in subsection (2)(b), an application may not be disapproved without affording the applicant a hearing. The hearing must be held and the decision entered within 10 days of the date of the filing of the application.

(b) An application may not be approved if a principal has failed to file reports required under 5-7-208.

(3) The fines ~~and license fees~~ collected under this chapter must be deposited in the state treasury.

(4) The commissioner shall deposit the license fee provided for in subsection (1) as follows:

(a) $50 in the general fund; and

(b) $100 in the state special revenue account provided for in [section 4].

~~(4)~~*(5)* The commissioner may adopt rules to implement the waiver provisions of subsection (1)."

Section 6. Section 5-11-112, MCA, is amended to read:

"**5-11-112. Functional organization and responsibilities.** (1) The legislative council may establish a functional organization within the legislative services division in order to effectively and efficiently carry out all of the responsibilities delegated to the division by law or legislative rule. The responsibilities of the legislative services division include the following:

(a) document services:

(i) bill drafting and preparation for introduction;

(ii) engrossing and enrolling;

(iii) distribution of legislative bills and information;

(iv) coordination of legislative printing; and

(v) publication of legislative records;

(b) research and reference services:

(i) general and specialized legislative research; and

(ii) legislative reference and information;

(c) legal services:

(i) legal review of draft bills;

(ii) legal counseling on legislative matters;

(iii) legal support for consolidated entities; and

(iv) support for the functions of the code commissioner provided in 1-11-201;

(d) committee services:

(i) research, legal, and administrative staff support for consolidated committees as assigned, including support for interim committees organized under Title 5, chapter 5, part 2; and

(ii) research and legal support for legislative standing and select committees;

(e) broadcasting services, in accordance with [sections 1 through 4];

~~(e)~~*(f)* management and business services:

(i) financial records;

(ii) claims and payrolls;

(iii) coordination of procurement of printing, supplies, and equipment; and

(iv) maintenance of property inventories;

~~(f)~~*(g)* personnel and administrative services:

(i) rules for classification and pay; and

(ii) personnel and administrative policies; and

~~(g)~~*(h)* information technology services:

(i) legislative branch network support services;

(ii) application support and development;

(iii) communications support and coordination; and

(iv) information technology planning.

(2) The responsibilities of the legislative services division must be fulfilled collaboratively with consolidated entities whenever the efficient operation of the legislative branch is served."

Section 7. General fund loan. (1) The department of administration shall authorize a loan of $60,000 from the general fund to the legislative services division to administer the state government broadcasting service provided for in [sections 1 through 4].

(2) The division shall repay the loan on or before June 30, 2003, from the state government broadcasting account under terms and conditions determined by the department.

Section 8. Appropriation. There is appropriated from the state government broadcasting account to the legislative services division up to $1.3 million for the biennium ending June 30, 2003, to enable the division to seek and expend grants, gifts, donations, and in-kind contributions from private and public sources for the purpose of:

(1) procuring the equipment and related services to enable the broadcasting of interim committee meetings, session committee meetings, floor sessions, public hearings, and other activities of state government during the 2001 through 2003 biennium; and

(2) executing a contract with a qualified operator to plan, manage, and implement broadcasting services in accordance with the general purpose set forth in [section 1].

Section 9. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 5, chapter 11, and the provisions of Title 5, chapter 11, apply to [sections 1 through 4].

Section 10. Effective date. [This act] is effective July 1, 2001.

Approved May 2, 2001

CHAPTER NO. 558

[HB 165]

AN ACT ESTABLISHING THE MONTANA REPATRIATION ACT; PROVIDING A MECHANISM FOR THE RETURN OF HUMAN SKELETAL REMAINS OR FUNERARY OBJECTS TAKEN FROM BURIAL SITES PRIOR

TO JULY 1, 1991, TO A TRIBAL GROUP, NEXT OF KIN, OR DESCENDANT ABLE TO ESTABLISH CULTURAL AFFILIATION; EXEMPTING LITHIC MATERIAL AND OTHER ARTIFACTS OF NONHUMAN DERIVATION REMOVED FROM THE ANZICK SITE ON OR BEFORE JULY 1, 1991, FROM THE PROVISIONS OF THIS ACT; REQUIRING A HEARING PURSUANT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; PROVIDING FOR AN APPEAL OF ANY BURIAL PRESERVATION BOARD DECISION TO DISTRICT COURT; STAYING A BOARD DECISION REGARDING REPATRIATION OR STUDY DURING AN APPEAL; PROVIDING FOR PAYMENT OF TESTING AND REIMBURSEMENT OF COURT COSTS AND REASONABLE ATTORNEY FEES; PROVIDING PROCEDURAL RULEMAKING AUTHORITY TO THE BOARD; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 13] may be cited as the "Montana Repatriation Act".

Section 2. Legislative findings and intent. (1) The legislature of the state of Montana finds that:

(a) since July 1, 1991, and passage of the Human Skeletal Remains and Burial Site Protection Act, Montana law has provided a mechanism to protect marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds discovered on state and private land from pilferage, disturbance, and destruction in an effort to provide equal protection and respect for all burial sites, human skeletal remains, and funerary objects;

(b) despite the state's success in balancing the interests of those persons who have tribal, kinship, cultural, or religious affiliation with a burial site with the interests of scientists, agencies, law enforcement, and private landowners, the 1991 Human Skeletal Remains and Burial Site Protection Act did not provide a mechanism to repatriate culturally affiliated human skeletal remains or funerary objects that were taken from burial sites prior to July 1, 1991;

(c) funerary objects interred with culturally affiliated human skeletal remains are not abandoned when interred. Discoverers, therefore, have no right of ownership, and they cannot confer a right of ownership to another because the person who interred funerary objects with the deceased did not through interment abandon a property interest in the objects, but intended for those objects to remain with the deceased.

(d) the state of Montana has an obligation to avoid infringing upon the right to religious beliefs and practices guaranteed to all citizens under the free exercise clause of the first amendment of the United States constitution and under Article II, section 4, of the Montana constitution and to preserve the cultural integrity of American Indian citizens recognized by the state under Article X, section 1(2), of the Montana constitution;

(e) the state of Montana acknowledges the paramount privacy right of a tribal group, lineal descendant, next of kin, agency, or museum to protect sensitive and sacred information that may be required to be disclosed to demonstrate cultural affiliation or lineal descent and therefore authorizes the protection of that information to the full extent allowed by the Montana constitution; and

(f) the state of Montana acknowledges the right of an agency, museum, or person to maintain possession or control of human skeletal remains or funerary objects that are currently under scientific study or that require testing prior to the effective date of the board's determination regarding repatriation.

(2) It is the intent of the legislature to:

(a) provide a consistent state policy to ensure that all human skeletal remains and all funerary objects interred with those human skeletal remains be treated with dignity and respect;

(b) encourage voluntary disclosure and repatriation of culturally affiliated human skeletal remains and funerary objects by an agency, museum, or person;

(c) provide a mechanism to provide for repatriation of human skeletal remains and funerary objects to a tribal group, lineal descendant, or next of kin establishing cultural affiliation with those human skeletal remains or funerary objects that were taken from unprotected burial sites prior to July 1, 1991, and that are currently in the possession or control of an agency, museum, or person in this state; and

(d) protect the right of privacy guaranteed to tribal groups, lineal descendants, next of kin, agencies, or museums regarding the disclosure of sacred or religious information to the full extent allowed by the Montana constitution.

Section 3. Definitions. As used in [sections 1 through 13], the following definitions apply:

(1) "Agency" means any department, bureau, commission, board, council, or political subdivision of the state of Montana, except an entity that is a cemetery board or has authority over a cemetery.

(2) "Board" means the burial preservation board established in 22-3-804.

(3) "Burial site" has the meaning provided in 22-3-803.

(4) "Claimant" means a claimant for repatriation under [section 5] and includes a tribal group, lineal descendant, or next of kin.

(5) "Control" means having a legal interest in human skeletal remains or funerary objects sufficient to lawfully permit an agency or museum to treat the object as part of its collection for purposes of [sections 1 through 13] whether or not the human skeletal remains or funerary objects are in the physical custody of the agency or museum.

(6) "Cultural affiliation" means the existence of a shared group identity that can reasonably be traced historically or anthropologically between a tribal group and an identifiable earlier tribe. It may also include a shared identity that can reasonably be traced historically between an individual and an identifiable individual lineal descendant or next of kin.

(7) "Funerary objects" means objects that, as part of a death rite or ceremony, are reasonably believed to have been placed with human skeletal remains at a specific burial site either at the time of death or later and which human skeletal remains are currently in the possession or control of an agency, museum, or person, either along with the human skeletal remains or that can be identified by a preponderance of the evidence to be related to specific known human skeletal remains not currently in the possession or control of the agency, museum, or person.

(8) "Human skeletal remains" has the meaning provided in 22-3-803.

(9) "Inventory" means an itemized list that summarizes the collection of human skeletal remains and funerary objects in the possession or control of an agency or museum.

(10) "Marked, unmarked, unrecorded, registered, or unregistered grave or burial ground" has the meaning provided in 22-3-803.

(11) "Museum" means an entity or state or local government agency, including an educational institution, that receives state funding.

(12) "Person" includes a corporation, partnership, joint venture, estate, and any other legal entity, as well as a natural person.

(13) "Possessing entity" means an agency, museum, or person from whom repatriation is requested.

(14) (a) "Possession" means having physical custody of human skeletal remains or funerary objects with a sufficient legal interest to lawfully treat the human skeletal remains or funerary objects as part of a collection.

(b) The term does not include human skeletal remains or funerary objects on loan to an agency or museum.

(15) "Right of possession" means:

(a) possession obtained of nonculturally affiliated human skeletal remains or funerary objects; or

(b) possession obtained with the voluntary consent of a group or individual that had authority of alienation over the human skeletal remains or funerary object.

(16) "Tribal group" has the meaning provided in 22-3-803.

Section 4. Agency and museum inventory of human skeletal remains and funerary objects. (1) An agency or museum that on or after [the effective date of this act] has possession or control over human skeletal remains or funerary objects shall within 6 months complete an inventory of all human skeletal remains and funerary objects and, to the extent possible based on all information possessed by the agency or museum:

(a) identify the circumstances surrounding the acquisition of the human skeletal remains or funerary objects, including any geographical information available pertaining to the original location of the human skeletal remains or funerary objects;

(b) list in the inventory the human skeletal remains or funerary objects that are clearly identifiable as to cultural affiliation; and

(c) list the human skeletal remains or funerary objects that are not clearly identifiable as to cultural affiliation.

(2) Within 3 months of completing the inventory, the agency or museum shall provide a copy of the inventory to:

(a) the board;

(b) the state historical preservation office; and

(c) each tribal government located in Montana.

(3) The agency, museum, board, or state historical preservation office shall provide a copy of an inventory list or a portion of a list to any other requesting

party only after the agency, museum, board, or office, pursuant to Article II, section 9, of the Montana constitution, has balanced the public's right to the information and the individual privacy interest associated with the information and has determined that the right of individual privacy does not clearly exceed the merits of public disclosure.

(4) Following completion of the initial inventory, each agency or museum shall, whenever the agency or museum receives new human skeletal remains or funerary objects through a loan or donation, update its inventory list within 6 months of the loan or donation. Upon completion, the agency or museum shall provide a copy of this update to the entities listed in subsection (2) within 3 months.

Section 5. Claims for repatriation. (1) A claim for repatriation of human skeletal remains or funerary objects must be made by:

(a) filing a written claim for the human skeletal remains or funerary objects with the board and the possessing entity having possession or control of the human skeletal remains or funerary objects; and

(b) proving, by a preponderance of the evidence:

(i) the claimant's cultural affiliation to the human skeletal remains or funerary objects; and

(ii) that the possessing entity does not have the right of possession.

(2) A claim for repatriation under this section may be made by a claimant:

(a) who claims cultural affiliation and requests the return of human skeletal remains or funerary objects listed in the inventory of an agency or museum; or

(b) who requests the repatriation of human skeletal remains or funerary objects that are not listed in the inventory of an agency or museum but are in the possession or control of the possessing entity.

Section 6. Hearing — hearings examiner — evidence — study or testing order and costs — findings. (1) The board shall appoint an attorney licensed to practice law in Montana as a hearings examiner to hold a hearing pursuant to Title 2, chapter 4, part 6, on a claim filed under [section 5]. At a hearing under this section, the hearings examiner shall hear the evidence presented by each party, including evidence presented by a possessing entity or intervenor in support of a request for a temporary delay in repatriation made under [section 7].

(2) Either party or an intervenor may request and is responsible for the cost of genetic or other study or testing necessary to determine cultural affiliation. Upon such a request, the hearings examiner may order any study or testing necessary and may require a surety bond to ensure protection of human skeletal remains or funerary objects. The hearings examiner may grant the study or testing requested along with sufficient time to conduct the study or testing or may deny any study or testing requested upon a finding that the study or testing would not likely be pertinent to the determination of cultural affiliation.

(3) (a) If, based on a preponderance of the evidence, the hearings examiner finds that the claimant has a cultural affiliation with the human skeletal remains or funerary objects and that the possessing entity does not have the right of possession, the hearings examiner shall recommend to the board that the board order repatriation under [section 8]. If the hearings examiner finds that there is a

need to temporarily delay repatriation based on an ongoing scientific study or a good faith effort toward scientific study under [section 7], the hearings examiner shall recommend a delay as provided in [section 7].

(b) If, based on a preponderance of the evidence, the hearings examiner finds that the claimant has not proven that the claimant has a cultural affiliation with the human skeletal remains or funerary objects and that the possessing entity has the right of possession, the hearings examiner shall recommend to the board that the board deny the claimant's request for repatriation and shall recommend that the board order that the possessing entity be granted uncontested control and possession of the human skeletal remains or funerary objects under [section 8].

(c) A recommendation under this subsection (3) shall be made in the form of a proposal for decision as provided in 2-4-621. The provisions of 2-4-621 apply to a recommendation made under this subsection (3).

(4) If the hearings examiner recommends repatriation, the hearings examiner shall issue an order requiring the possessing entity to consult with the claimant to arrange for the expeditious repatriation of the culturally affiliated human skeletal remains or funerary objects to the claimant, upon order of the board under [section 8].

Section 7. Delay of repatriation for scientific study. (1) If repatriation is ordered after a hearing, a possessing entity may request a temporary delay in repatriation because of:

(a) scientific study being conducted on or proposed to be conducted on human skeletal remains or funerary objects in its possession or control; or

(b) good faith efforts to initiate or proceed with a scientific study of human skeletal remains or funerary objects in its possession or control.

(2) If a hearings examiner determines that a possessing entity has provided evidence supporting a good faith effort regarding scientific study, the hearings examiner shall provide a reasonable period of delay to allow completion of the study prior to repatriation.

Section 8. Board decision — order — immunity against aggrieved parties — relinquishment of control by tribal group. (1) Subject to the provisions of 2-4-621 and 2-4-623, at the conclusion of the hearing and upon receipt of the recommendations of the hearings examiner, the board shall:

(a) issue findings of facts and conclusions related to any decision regarding its determination supporting or denying a claimant's written request for the repatriation of human skeletal remains or funerary objects;

(b) issue findings of facts and conclusions related to any decision regarding a possessing entity's or intervenor's request for a temporary delay in repatriation pending completion of ongoing scientific study; and

(c) provide the claimant, respondent, possessing entity, or intervenor with a written copy of its findings and conclusions regarding the specific repatriation request.

(2) A possessing entity that repatriates culturally affiliated human skeletal remains or funerary objects in good faith pursuant to this section is not liable for claims by an aggrieved party or for claims of breach of a fiduciary duty or the public trust or of violation of state law that are inconsistent with [sections 1 through 13].

(3) This section does not prevent the governing body of a tribal group from expressly relinquishing control over any human skeletal remains or control or title to any funerary object. The acquisition of a funerary object from a tribal group or individual with the voluntary consent of the tribal group or individual with authority to alienate the object constitutes the right of possession over that object. Divestiture of culturally affiliated human skeletal remains or funerary objects from a person without a right of possession does not constitute an unconstitutional taking of property.

Section 9. Appeals -- stay of order pending appeal — court costs and attorney fees. (1) Within 30 days of a board decision regarding human skeletal remains or a funerary object located within the jurisdiction of the state, either party may file an appeal in the district court in the county in which the subject of the dispute is located. The court may include a grant of attorney fees to the prevailing party when it would serve the interests of justice. The court shall grant an award of costs to the prevailing party. An appeal under this section is subject to the provisions of Title 2, chapter 4, part 7.

(2) The filing of an appeal by either party automatically stays a board order on repatriation of human skeletal remains or funerary objects.

(3) A protection order issued by the board remains in effect until the issue is finally resolved by a state court.

Section 10. Multiple claims — care and handling of human skeletal remains or funerary objects pending disposition. If multiple requests for repatriation of human skeletal remains or funerary objects occur and the appropriate claimant cannot be determined, the board shall provide for the appropriate care and handling of the human skeletal remains or funerary objects until:

(1) the requesting parties agree upon the disposition;

(2) the dispute is resolved by the board pursuant to [section 8]; or

(3) the issue is finally resolved in a state court of competent jurisdiction.

Section 11. Closure of hearings. To the extent allowed by Montana law, the board shall, upon the request of either party or an intervenor, close any part of a board hearing or any part of a hearing under [section 6] to the public if the board finds that information required at the hearing may include identification of the specific location of a burial site that may lead to compromise of a burial site, human skeletal remains, or funerary objects or that information necessary for a determination regarding repatriation may compromise or interfere with any religious practice or custom.

Section 12. Rules. The board shall adopt rules necessary to provide for filing of claims, procedures for hearings authorized under [sections 1 through 13], and procedures for resolving multiple claims. Hearings may not occur until rules have been adopted. Rules must address, at a minimum, criteria for determining lineal descent, cultural affiliation, standards of evidence, and standards of proof.

Section 13. Exclusions. The provisions of [sections 1 through 13] do not apply to any lithic material or other artifacts of nonhuman derivation removed from the Anzick site (known as Montana historical site No. 24PA506) on or before July 1, 1991, regardless of where the material or artifacts are located or by whom the material or artifacts are controlled or possessed.

Section 14. Codification instruction. [Sections 1 through 13] are intended to be codified as a new part in Title 22, chapter 3.

Section 15. Effective date. [This act] is effective on passage and approval.

Approved May 2, 2001

CHAPTER NO. 559

[HB 172]

AN ACT EXEMPTING EMPLOYEES OF COUNTY HOSPITALS AND COUNTY REST HOMES IN CERTAIN CLASSES OF COUNTIES AND EMPLOYEES OF HOSPITAL DISTRICTS FROM MANDATED LEAVE PROVISIONS; REQUIRING AN INCREASE IN COMPENSATION OR BENEFITS TO OFFSET ANY REDUCTION IN LEAVE BENEFITS; ALLOWING THE GOVERNING BODY OF CERTAIN CLASSES OF COUNTIES AND THE BOARD OF TRUSTEES OF HOSPITAL DISTRICTS TO EXEMPT EMPLOYEES OF COUNTY HOSPITALS, COUNTY REST HOMES, AND HOSPITAL DISTRICTS FROM PARTICIPATION IN SPECIFIED GROUP INSURANCE CONTRACTS OR PLANS; AND AMENDING SECTION 2-18-702, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Exemption. (1) An employee of a county hospital or county rest home in a third, fourth, fifth, sixth, or seventh class county or an employee of a hospital district is exempt from the provisions of this part.

(2) For any reduction in leave benefits for an employee subject to subsection (1), there must be an increase in compensation or benefits.

Section 2. Section 2-18-702, MCA, is amended to read:

"**2-18-702. Group insurance for public employees and officers.** (1) (a) ~~All~~ *Except as provided in subsection (1)(c), all* counties, cities, towns, school districts, and the board of regents shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans for the benefit of their officers and employees and their dependents. The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents.

(b) The governing body of a county, city, or town may, at its discretion, consider the employees of private, nonprofit economic development organizations to be employees of the county, city, or town solely for the purpose of participation in group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans as provided in subsection (1)(a). The governing body of the county, city, or town may require an employee or organization to pay the actual cost of coverage required for participation or may, at its discretion and subject to any restriction on who may be a member of a group, pay all or part of the cost of coverage of the employee of the organization.

(c) The governing body of a third, fourth, fifth, sixth, or seventh class county or the board of trustees of a hospital district may, at its discretion, exempt employees of a county hospital, county rest home, or hospital district from participation in group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans provided pursuant to subsection (1)(a) or (1)(b).

(2) State employees and elected officials, as defined in 2-18-701, may participate in state employee group benefit plans as are provided for under part 8 of this chapter.

(3) For state officers and employees, the premiums required from time to time to maintain the insurance in force must be paid by the insured officers and employees, and the state treasurer shall deduct the premiums from the salary or wages of each officer or employee who elects to become insured, on the officer's or employee's written order, and issue a warrant for the premiums to the insurer.

(4) For the purpose of this section, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health or the services of hospitals, clinics, or sanitariums or both professional and hospital services must be construed as group insurance and the dues payable under the plans must be construed as premiums for group insurance.

(5) If the board of trustees of a school district implements a self-insured group health plan or if the board of regents implements an alternative to conventional insurance to provide group benefits to its employees, the board shall maintain the alternative plan on an actuarially sound basis."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 18, part 6, and the provisions of Title 2, chapter 18, part 6, apply to [section 1].

Approved May 2, 2001

CHAPTER NO. 560

[HB 254]

AN ACT PROVIDING THAT A WRIT OF EXECUTION FOR THE GARNISHMENT OF WAGES REMAINS IN EFFECT FOR 120 DAYS OR UNTIL THE JUDGMENT FOR WHICH THE WRIT WAS ISSUED IS PAID; AMENDING SECTIONS 25-13-402 AND 25-13-404, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-13-402, MCA, is amended to read:

"25-13-402. How writ executed. (1) The sheriff or levying officer shall, *subject to subsection (5),* execute the writ against the property of the judgment debtor no later than ~~60~~ *120* days after receipt of the writ by:

(a) levying on a sufficient amount of property, if there is sufficient property;

(b) collecting or selling the things in action; and

(c) selling the other property and paying to the judgment creditor or the judgment creditor's attorney as much of the proceeds as will satisfy the judgment.

(2) Any proceeds in excess of the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When the sheriff or levying officer determines that there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, the sheriff or levying officer shall levy only on the part of the property that the judgment debtor may indicate if the property indicated is sufficient to satisfy the judgment and costs.

~~(3) With respect to earnings of a judgment debtor, an employer shall respond to the levy based upon the earnings accrued to the end of the regular pay period in which the levy occurred.~~

~~(4)~~*(3)* Except for perishable property, the sheriff or levying officer shall hold any property or money levied upon for 10 days, excluding weekends and holidays, following notification of execution upon the judgment debtor. After that time, the sheriff or levying officer may sell the property and pay the money to the judgment creditor.

~~(5)~~*(4)* ~~If~~ *If* the first levy is not sufficient to satisfy the writ, the sheriff or levying officer may levy, from time to time and as often as necessary, within the ~~60~~ *120* days until the judgment is satisfied or the writ expires.

(5) (a) A levy upon the earnings of a judgment debtor continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to earnings due on or after the date of service through the expiration of the writ.

(b) The sheriff or levying officer shall clearly mark the expiration date upon all served copies of the writ and notice.

(c) Except as provided in subsection (6), multiple levies served under this subsection (5) have priority according to the date and time of service upon the employer.

(d) The return of service on a levy upon the earnings of a judgment debtor is returned in the same manner provided for in 25-13-404.

(6) Nothing in this section is intended to supersede any state or federal laws regarding priority that must be given to certain levies and executions."

Section 2. Section 25-13-404, MCA, is amended to read:

"**25-13-404. Return of the execution.** (1) Except as provided in ~~subsections (2) and~~ *25-13-402(5) and subsection* (3) *of this section*, execution may be made returnable to the clerk of the court in which the judgment was rendered, at any time not less than 10 or more than ~~60~~ *120* days after receipt of the recovery by the sheriff or levying officer following imposition of levy, as provided in 25-13-402.

(2) The writ of execution issued by the county treasurer under 15-16-401 may be made returnable, at any time not less than 10 or more than ~~90~~ *120* days after its receipt by the sheriff ~~or levying officer~~, to the county treasurer of the county in which the writ was issued.

(3) In compliance with the provisions of subsection (1) and in lieu of returning the writ of execution to the clerk of the court, the sheriff may enclose ~~his~~ *the* return of the writ in an envelope to the officer, agent, or attorney who sent it and deposit it in the post office, prepaying the postage."

Section 3. Effective date. [This act] is effective July 1, 2001.

Approved May 2, 2001

CHAPTER NO. 561

[HB 256]

AN ACT INCREASING THE PENALTY FOR THE OFFENSE OF CARELESS OR RECKLESS DRIVING RESULTING IN THE DEATH OR SERIOUS BODILY INJURY OF ANOTHER PERSON; AND AMENDING SECTIONS 61-8-301, 61-8-302, 61-8-715, AND 61-8-716, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-301, MCA, is amended to read:

"**61-8-301. Reckless driving.** (1) A person commits the offense of reckless driving if ~~he~~ *the person*:

(a) operates ~~any~~ *a* vehicle in willful or wanton disregard for the safety of persons or property;

(b) operates ~~any~~ *a* vehicle in willful or wanton disregard for the safety of persons or property while fleeing or attempting to flee from or elude a peace officer who is lawfully in pursuit and whose vehicle is at the time in compliance with the requirements of 61-9-402; or

(c) operates ~~any~~ *a* vehicle in willful or wanton disregard for the safety of persons or property while passing, in either direction, a school bus ~~which~~ *that* has stopped and is displaying the visual flashing red signal, as provided in 61-8-351 and 61-9-402. This subsection (1)(c) does not apply to situations described in 61-8-351(5).

(2) Each municipality in this state may enact and enforce 61-8-715 and subsection (1) of this section as an ordinance.

(3) A person who is convicted of the offense of reckless driving is subject to the penalties provided in 61-8-715."

Section 2. Section 61-8-302, MCA, is amended to read:

"**61-8-302. Careless driving.** *(1)* A person operating or driving a vehicle ~~of any character~~ on a public highway ~~of this state~~ shall drive it in a careful and prudent manner ~~so as~~ *that does* not ~~to~~ unduly or unreasonably endanger the life, limb, property, or other rights of a person entitled to the use of the ~~street or~~ highway.

(2) A person who is convicted of the offense of careless driving is subject to the penalties provided in 61-8-711 or 61-8-716."

Section 3. Section 61-8-715, MCA, is amended to read:

"**61-8-715. Reckless driving — reckless endangerment of highway workers — penalty.** (1) ~~A~~ *Except as provided in subsection (3), a* person convicted of reckless driving under 61-8-301(1)(a) or (1)(c) or convicted of reckless endangerment of highway workers under 61-8-315 shall be punished upon a first conviction by imprisonment for a ~~period~~ *term* of not more than 90 days, by *a* fine of not less than $25 or more than $300, or ~~by~~ both. On a second or subsequent conviction, the person shall be punished by imprisonment for *a term of* not less than 10 days or more than 6 months, by a fine of not less than $50 or more than $500, or ~~by~~ both.

(2) ~~A~~ *Except as provided in subsection (3), a* person convicted of reckless driving under 61-8-301(1)(b) shall be punished by imprisonment in the county or

city jail for *a term of* not less than 10 days or more than 6 months to which may be added, at the discretion of the court, a fine of not less than $300 or more than $500. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year to which may be added, at the discretion of the court, a fine of not less than $500 or more than $1,000.

(3) A person who is convicted of reckless driving under 61-8-301 and whose offense results in the death or serious bodily injury of another person shall be punished by a fine in an amount not exceeding $10,000, by incarceration for a term not to exceed 1 year, or both. Section 61-8-351(6) does not apply to a prosecution under 61-8-301(1)(c) that is punishable under this subsection."

Section 4. Section 61-8-716, MCA, is amended to read:

"**61-8-716. Careless driving — penalty.** *(1)* A person ~~violating~~ *who violates* the provisions of 61-8-302 is guilty of the offense of careless driving and, *except as provided in subsection (2), is* ~~shall be~~ punishable as provided in 61-8-711.

(2) A person whose violation of the provisions of 61-8-302 results in the death or serious bodily injury of another person shall be punished by a fine in an amount not exceeding $5,000, by incarceration for a term not to exceed 6 months, or both."

Approved May 2, 2001

CHAPTER NO. 562

[HB 290]

AN ACT INCLUDING DECEPTION, COERCION, AND SURPRISE IN THE DEFINITION OF "WITHOUT CONSENT" IN THE CONTEXT OF SEXUAL INTERCOURSE WITHOUT CONSENT; AND AMENDING SECTION 45-5-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-501, MCA, is amended to read:

"**45-5-501. Definition.** (1) As used in 45-5-503, the term "without consent" means:

(a) the victim is compelled to submit by force against the victim or another; or

(b) the victim is incapable of consent because the victim is:

(i) mentally defective or incapacitated;

(ii) physically helpless;

(iii) overcome by deception, coercion, or surprise;

~~(iii)~~*(iv)* less than 16 years old; or

~~(iv)~~*(v)* incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search.

(2) As used in subsection (1), the term "force" means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat."

Approved May 2, 2001

CHAPTER NO. 563

[HB 295]

AN ACT GENERALLY REVISING LAWS GOVERNING DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; CLARIFYING THE DEFINITION OF "VEHICLE"; MODIFYING THE DEFINITION OF "UNDER THE INFLUENCE"; EXTENDING THE PERIOD FOR WHICH A SENTENCE MAY BE SUSPENDED PENDING CHEMICAL DEPENDENCY TREATMENT; ALLOWING A SENTENCING JUDGE TO RETAIN JURISDICTION OVER A PERSON ORDERED TO COMPLETE CHEMICAL DEPENDENCY TREATMENT FOR 1 YEAR; AND AMENDING SECTIONS 45-5-205, 61-1-103, 61-5-205, 61-8-401, 61-8-714, AND 61-8-732, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-205, MCA, is amended to read:

"**45-5-205. Negligent vehicular assault — penalty.** (1) A person who negligently operates a ~~motor~~ vehicle, *other than a bicycle as defined in 61-1-123,* while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided for in 61-8-401(1), and who causes bodily injury to another commits the offense of negligent vehicular assault.

(2) Subject to subsection (3), a person convicted of the offense of negligent vehicular assault shall be fined an amount not to exceed $1,000 or shall be imprisoned in the county jail for a term not to exceed 1 year, or both, and shall be ordered to pay restitution as provided in 46-18-241.

(3) (a) A person convicted of the offense of negligent vehicular assault who caused serious bodily injury to another shall be fined an amount not to exceed $10,000 or shall be incarcerated for a term not to exceed 5 years, or both, and shall be ordered to pay restitution as provided in 46-18-241.

(b) If a term of incarceration is imposed, the judge may suspend the term of incarceration upon the condition of payment of any fine imposed and of restitution. If the person does not pay the fine or restitution, the term of incarceration may be imposed."

Section 2. Section 61-1-103, MCA, is amended to read:

"**61-1-103. Vehicle.** *(1)* ~~"Vehicle"~~ *Except as provided in subsection (2), "vehicle"* means every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.

(2) (a) ~~However, in~~ *In* chapters 3 and 4, ~~the term~~ *vehicle* means "motor vehicle" as defined in this part~~; and in~~.

(b) (i) In chapter 8, part 4, ~~this term~~ *vehicle* does not include a bicycle as defined in 61-1-123.

(ii) In chapter 8, part 4, except 61-8-440 through 61-8-442, vehicle includes a snowmobile."

Section 3. Section 61-5-205, MCA, is amended to read:

"**61-5-205. Mandatory revocation of license upon proper authority.** The department upon proper authority shall revoke the driver's license or the operating privilege of any driver upon receiving a record of the driver's conviction or forfeiture of bail not vacated of any of the following offenses, when the conviction or forfeiture has become final:

(1) negligent homicide resulting from the operation of a motor vehicle;

(2) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more;

(3) any felony in the commission of which a motor vehicle is used;

(4) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(5) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(6) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months; or

(7) negligent vehicular assault as defined in 45-5-205 *involving a motor vehicle.*"

Section 4. Section 61-8-401, MCA, is amended to read:

"**61-8-401. Driving under influence of alcohol or drugs.** (1) It is unlawful and punishable, as provided in 61-8-442, 61-8-714, and 61-8-731 through 61-8-734, for a person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a ~~motor~~ vehicle has been diminished.

(4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of

alcohol in the person at the time of a test, as shown by analysis of a sample of the person's blood or breath drawn or taken within a reasonable time after the alleged act, gives rise to the following inferences:

(a) If there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.04 but less than 0.10, that fact may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.10 or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

(5) The provisions of subsection (4) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

(6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-410, 61-8-714, 61-8-722, 61-8-731 through 61-8-734, and subsections (1) through (5) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties provided in the ordinance.

(7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."

Section 5. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under influence of alcohol or drugs — first through third offense. (1) A person convicted of a violation of 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than 6 months and shall be punished by a fine of not less than $100 or more than $500. The initial 24 hours of the imprisonment term must be served in the county jail and may not be served under home arrest. The mandatory imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being. Except for the initial 24 hours of the imprisonment term, *notwithstanding 46-18-201(2),* the imprisonment sentence may be suspended for a period of up to ~~6 months~~ *1 year* pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the defendant.

(2) On a second conviction, the person shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days or more than 6 months. At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not be served under home arrest. Three days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being. Except for the initial 3 days of the imprisonment term, *notwithstanding 46-18-201(2),* the imprisonment sentence may be suspended for a period of up to ~~6 months~~ *1 year* pending successful completion of a chemical dependency treatment program by the defendant.

(3) On the third conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than

$500 or more than $1,000. At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not be served under home arrest. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the defendant."

Section 6. Section 61-8-732, MCA, is amended to read:

"**61-8-732. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — assessment, education, and treatment required.** (1) In addition to the punishments provided in 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation of 61-8-401 or 61-8-406 shall complete:

(a) a chemical dependency assessment;

(b) a chemical dependency education course; and

(c) on a second or subsequent conviction for a violation of 61-8-401 or 61-8-406 or as required by subsection (8) of this section, chemical dependency treatment.

(2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

(3) The chemical dependency assessment and the chemical dependency education course must be completed at a treatment program approved by the department of public health and human services and must be conducted by a certified chemical dependency counselor. The defendant may attend a treatment program of the defendant's choice as long as the treatment services are provided by a certified chemical dependency counselor. The defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment.

(4) The assessment must describe the defendant's level of addiction, if any, and contain a recommendation as to education, treatment, or both. A defendant who disagrees with the initial assessment may, at the defendant's cost, obtain a second assessment provided by a certified chemical dependency counselor or a program approved by the department of public health and human services.

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(6) Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or treatment program. If the defendant fails to attend the education course or treatment program, the counselor shall notify the court of the failure.

(7) A court or counselor may not require attendance at a self-help program other than at an "open meeting", as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

(8) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

(b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional ~~6 months~~ *1 year*.

(10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under 61-8-714 and orders the person to complete chemical dependency treatment under this section, the judge retains jurisdiction to impose any suspended sentence for up to 1 year."

Approved May 2, 2001

CHAPTER NO. 564

[HB 340]

AN ACT REVISING THE PROVISIONS GOVERNING THE CONTENTS OF LOCAL SUBDIVISION REGULATIONS; REQUIRING THE SUBDIVIDER TO RESERVE WATER RIGHTS OR ESTABLISH A LANDOWNER'S WATER USE AGREEMENT FOR CERTAIN SUBDIVISIONS; ESTABLISHING MINIMUM WIDTH REQUIREMENTS FOR DITCH EASEMENTS IN SUBDIVISIONS; PROHIBITING PLACEMENT OF STRUCTURES OR PLANTING OF VEGETATION WITHIN DITCH EASEMENTS WITHOUT PERMISSION; REQUIRING THE SUBDIVIDER TO SHOW UTILITY EASEMENTS OF SUFFICIENT WIDTH TO PROVIDE UTILITY SERVICES ON THE FINAL PLAT; AND AMENDING SECTION 76-3-504, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-504, MCA, is amended to read:

"**76-3-504.** ~~**Minimum requirements for subdivision**~~ ***Subdivision*** **regulations —** ***contents.*** The subdivision regulations adopted under this chapter must, at a minimum:

~~(1)~~*(1)* except as provided in 76-3-210 or 76-3-609(3), require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

~~(2)~~*(2)* establish procedures consistent with this chapter for the submission and review of subdivision plats;

~~(3)~~*(3)* prescribe the form and contents of preliminary plats and the documents to accompany final plats;

~~(4)~~*(4)* provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

~~(5)~~*(5)* prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

~~(6)~~*(6)* prescribe standards for:

~~(a)~~*(a)* the design and arrangement of lots, streets, and roads;

~~(b)~~*(b)* grading and drainage;

~~(c)~~*(c)* subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, at a minimum, meet the regulations adopted by the department of environmental quality under 76-4-104;

~~(d)~~*(d)* the location and installation of utilities;

~~(7)~~*(7)* provide procedures for the administration of the park and open-space requirements of this chapter;

~~(8)~~*(8)* provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision. A utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body.

(9) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(a) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(b) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(c) reserve and sever all surface water rights from the land;

~~(9)~~*(10) except as provided in this subsection,* require the subdivider to establish ditch easements in the subdivision~~,~~ *that are* in locations of appropriate topographic characteristics and sufficient width~~,~~ to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots~~.~~*; are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner*. Establishment of easements pursuant to this subsection ~~(9)~~ is not required if:

~~(a)~~*(a)* the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

~~(b)~~*(b)* the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

~~(10)~~*(11)* require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights~~.~~*;*

(12) require the subdivider to describe, dimension, and show utility easements in the subdivision on the final plat in their true and correct location. The utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of utility facilities for the provision of utility services within the subdivision."

Approved May 2, 2001

CHAPTER NO. 565

[HB 359]

AN ACT EXPANDING THE COLLECTION OF DNA EVIDENCE TO CERTAIN ADULT FELONY OFFENSES; DEFINING "FELONY OFFENSE"; AND AMENDING SECTIONS 44-6-101, 44-6-102, 44-6-103, AND 44-6-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-6-101, MCA, is amended to read:

"**44-6-101. Definitions.** As used in this part, the following definitions apply:

(1) "Biological sample" means cheek cells removed by using a buccal swab of a type authorized by the department or a vial or other container of blood.

(2) "Department" means the department of justice provided for in 2-15-2001.

(3) "DNA" means deoxyribonucleic acid.

(4) "DNA identification index" means the DNA identification record system established under 44-6-102.

(5) "DNA record" means DNA identification information stored in the DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form of the results of a DNA analysis, such as the numerical representation of DNA fragment

lengths, autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.

(6) "DNA testing" means DNA analysis of materials derived from the human body for the purposes of identification consistent with this part.

(7) "Felony offense" means any offense under Title 45, chapter 5 or chapter 9, for which the maximum potential sentence under statute is death or imprisonment in a state prison for a term exceeding 1 year or burglary or aggravated burglary under 45-6-204.

~~(7)~~*(8)* "Forensic DNA laboratory" means any laboratory operated by state government that performs DNA analysis on materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification.

~~(8)~~*(9)* "Marker" means a method of describing individuals by genetic profile, such as blood or DNA type, and has the specific meaning given to the word by department rule, which must take into account the meaning generally given to the word for forensic typing by DNA technologists.

~~(9) "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.~~

~~(10) "Violent offense" has the meaning contained in 46-23-502.~~

(10) "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.

(11) "Violent offense" has the meaning contained in 46-23-502."

Section 2. Section 44-6-102, MCA, is amended to read:

"**44-6-102. Establishment of DNA identification index.** (1) The department shall establish a computerized DNA identification index for the receipt, storage, and exchange of DNA records. The DNA identification index is the central repository for DNA records in the state of Montana.

(2) The DNA identification index must include:

(a) DNA records for an individual convicted of~~,~~ *a felony offense* or a youth found under 41-5-1502 to have committed~~, a sexual offense or violent~~ *a sexual or violent* offense;

(b) DNA records for a person upon order of a sentencing judge under 46-18-202; and

(c) analyses of DNA samples recovered from crime scenes, medical examinations, and unidentified human remains. For purposes of identification of missing persons, the DNA identification index may include DNA records of close biological relatives of a missing person.

(3) The DNA identification index and the DNA testing done by a forensic DNA laboratory must be compatible with the systems of DNA identification used by other criminal justice agencies or private testing laboratories to the extent necessary to permit the exchange of DNA information.

(4) The DNA records collected and stored in the DNA identification index may contain only information relating to the identification of individuals. Information that identifies a person that is the subject of a record must be limited to the information that is necessary to pursue criminal investigations and to support statistical interpretation of results.

(5) The DNA identification index may be used:

(a) by law enforcement agencies for purposes of identification in the course of criminal investigations and proceedings;

(b) to assist in the identification of human remains, including identification of missing persons; and

(c) if information allowing a person to be identified is removed, for a population statistics database and for identification, research, and protocol development for forensic DNA analysis and quality control."

Section 3. Section 44-6-103, MCA, is amended to read:

"44-6-103. Collection of samples and maintenance of data. (1) Following entry of judgment, a person convicted of ~~a sexual offense or violent~~ *a felony* offense, a youth found under 41-5-1502 to have committed ~~a sexual offense or violent~~ *a sexual or violent* offense, or a defendant ordered under 46-18-202 to provide a biological sample for DNA testing shall provide a biological sample for DNA analysis to determine identification characteristics specific to the person. The sample must be provided to the department of corrections if the person is incarcerated in a facility administered by the department of corrections. If the person is not incarcerated in a facility administered by the department of corrections, the sample must be provided to a person or entity designated by the county sheriff.

(2) The biological sample must be collected, stored, and sent by the department of corrections or the person or entity designated by the county sheriff under subsection (1) to the department for entry in the DNA identification index in accordance with rules adopted by the department with the advice of the department of public health and human services.

(3) The offender is responsible, if able to pay, for the cost of the collection of the sample. The fees charged for the collection may not exceed the actual costs of collection.

~~(3)~~*(4)* The forensic DNA laboratory may perform DNA analysis only for those markers that have value for law enforcement identification purposes.

~~(4)~~*(5)* The knowing refusal or failure to provide a biological sample under this part is grounds for revocation of a suspended or deferred imposition of sentence."

Section 4. Section 44-6-107, MCA, is amended to read:

"44-6-107. Expungement of DNA records. If a conviction of ~~a sexual or violent~~ *a felony* offense *or the adjudication of a youth for a sexual or violent offense* is reversed, the record relating to the offense must be expunged from the DNA identification index. The county attorney of the county in which the conviction occurred shall notify the department of a reversal of a conviction for ~~a sexual or violent~~ *the* offense *or adjudication*."

Approved May 2, 2001

CHAPTER NO. 566

[HB 516]

AN ACT APPROPRIATING FUNDS TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO HIRE TWO HALF-TIME EMPLOYEES.

INCLUDING ONE STUDENT FROM THE UNIVERSITY OF MONTANA AND ONE STUDENT FROM MONTANA STATE UNIVERSITY, TO PARTICIPATE IN THE GAME WARDEN TRAINEE PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. (1) The following is appropriated from the general license fund to the department of fish, wildlife, and parks:

Fiscal year 2002$32,331

Fiscal year 200332,968

(2) The appropriation must be used to hire two half-time employees, including one student from the university of Montana and one student from Montana state university, to participate in the game warden trainee program.

Section 2. Effective date. [This act] is effective July 1, 2001.

Approved May 2, 2001

CHAPTER NO. 567

[HB 628]

AN ACT REQUIRING ALTERNATIVE DISPUTE RESOLUTION IN AGRICULTURAL SEED CONTRACT DISPUTES BEFORE INSTITUTING LEGAL ACTION; EXEMPTING SEED POTATOES FROM THE ALTERNATIVE DISPUTE RESOLUTION REQUIREMENT; PROVIDING FOR A NOTICE OF ALTERNATIVE DISPUTE RESOLUTION REQUIREMENT; PROVIDING FOR AN ALTERNATIVE DISPUTE RESOLUTION COUNCIL; ESTABLISHING THE AUTHORITY OF THE ALTERNATIVE DISPUTE RESOLUTION COUNCIL; PROVIDING THE PROCEDURE FOR ALTERNATIVE DISPUTE RESOLUTION IN AGRICULTURAL SEED CONTRACT DISPUTES; DESCRIBING WHAT MUST BE INCLUDED IN THE ALTERNATIVE DISPUTE RESOLUTION FINDINGS; PROVIDING FOR THE ASSESSMENT OF THE COSTS OF ALTERNATIVE DISPUTE RESOLUTION; OUTLINING PROGRAM ADMINISTRATION FOR THE AGRICULTURAL SEED CONTRACT ALTERNATIVE DISPUTE RESOLUTION PROGRAM; PROVIDING FOR A STATUTORY APPROPRIATION; AND AMENDING SECTIONS 17-7-502 AND 80-5-123, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Requirement and effect of alternative dispute resolution — exemption. (1) As a prerequisite to a buyer's rights to maintain legal action against a dealer or any other seller of agricultural seed for a claim as provided in subsection (2), the buyer shall submit the claim to alternative dispute resolution as provided in [section 6] and this section.

(2) A buyer may claim to have been damaged by the failure of agricultural seed to produce or perform:

(a) as represented by the label that is required to be attached pursuant to 80-5-123;

(b) as represented by the bulk certificate if the agricultural seed was purchased in bulk;

(c) by warranty; or

(d) as a result of negligence.

(3) Any applicable period of limitations with respect to the claim must be tolled until 10 days after the filing of the report of alternative dispute resolution with the director of the department as provided in [section 6].

(4) (a) A claim may not be asserted as a counterclaim or defense in any action brought by a seller against a buyer until the buyer has submitted a claim to alternative dispute resolution as provided in [section 6] and this section.

(b) When the buyer files a written notice of intention to assert a claim as a counterclaim or defense in the action and the notice is accompanied by a copy of the buyer's complaint in alternative dispute resolution filed under [section 6], the action must be stayed and any applicable statute of limitations must be suspended with respect to the claim asserted as a counterclaim or defense until 10 days after the filing of the report of alternative dispute resolution with the director of the department as provided in [section 6].

(5) To be eligible for resolution under the alternative dispute resolution process, a complaint must allege damages in excess of the amount established in 25-35-502 for jurisdiction in small claims court.

(6) [Sections 1 through 10] do not apply to seed potatoes.

Section 2. Notice of alternative dispute resolution. A notice calling attention to the requirement for alternative dispute resolution under [section 1] must be included on the label required under 80-5-123, on the bulk certificate, or otherwise attached to or printed on the agricultural seed bag or package. Alternative dispute resolution may not be required unless this notice is included. A notice in the following form or equivalent language is sufficient:

NOTICE

ALTERNATIVE DISPUTE RESOLUTION REQUIRED BY STATE LAW

Under Montana agricultural seed laws, alternative dispute resolution is required as a prerequisite to maintaining a legal action based upon the failure of the agricultural seed to which this notice is attached to produce as represented. The consumer shall file a complaint along with the filing fee, when applicable, with the Director of the Department of Agriculture allowing sufficient time to permit inspection of the crops, plants, or trees by the designated agency and the seller from whom the agricultural seed was purchased. A copy of the complaint must be sent to the seller by certified mail or as otherwise provided by state law.

Section 3. Commencement of legal action — evidence. (1) The buyer or the seller may commence legal proceedings against the other party or assert a claim as a counterclaim or defense in an action brought by the seller or buyers after the receipt of the report of alternative dispute resolution as provided in [section 7].

(2) In litigation involving a complaint that has been subject to alternative dispute resolution under [sections 1 through 10], a party may introduce the report of alternative dispute resolution as evidence of the facts found in the report. The court may give weight to the alternative dispute resolution council's

findings and conclusions of law and recommendations regarding damages and costs. The court may also take into account any findings of the council with respect to the failure of a party to cooperate in the alternative dispute resolution proceedings, including findings regarding the effect that a delay in filing the alternative dispute resolution claim may have had upon the council's ability to determine the facts of the case.

Section 4. Alternative dispute resolution council. (1) The purpose of the alternative dispute resolution council is to conduct alternative dispute resolution as provided in [sections 1 through 10] on an as-needed basis when an alternative dispute resolution complaint has been filed. The council must be called into session by the director of the department or the council presiding officer to consider matters referred to the council by the director or the presiding officer.

(2) The director shall appoint an alternative dispute resolution council, upon the receipt of an alternative dispute resolution complaint, composed of five members and five alternate members. Two of the five appointed members of the alternative dispute resolution council must be Montana production growers. One member and one alternate member must be appointed upon the recommendation of each of the following:

(a) vice provost and director, Montana state university extension service;

(b) director, Montana state university agricultural experiment station;

(c) president, Montana seed trade association;

(d) president, Montana seed growers association; and

(e) director, Montana department of agriculture.

(3) An alternate member may only serve in the absence of the member for whom the person is an alternate.

(4) The council shall elect a presiding officer and a secretary from its membership. The presiding officer conducts meetings and deliberations of the council and directs all of its activities. The secretary shall keep accurate records of all meetings and deliberations and perform other duties for the council as directed by the presiding officer.

Section 5. Authority of alternative dispute resolution council — compensation. (1) The alternative dispute resolution council or its members may:

(a) examine the buyer and the seller on all matters that the council considers relevant;

(b) grow a representative sample of the agricultural seed to production stage under the director's supervision through the facilities of the department or a designated university;

(c) hold informal hearings at the time and place directed by the council presiding officer, provided that reasonable notice was given to all parties; and

(d) delegate all or any part of an investigation to one or more of the council members.

(2) The members of the council may not receive compensation for the performance of their duties with respect to [sections 1 through 10], except for reimbursement for travel expenses and per diem.

Section 6. Alternative dispute resolution procedure. (1) A buyer may institute alternative dispute resolution by filing a sworn complaint and a $250 filing fee with the director of the department. The buyer shall serve a copy of the complaint on the seller by certified mail or as otherwise provided in state law. Except in a case of agricultural seed that has not been planted, the claim must be filed allowing sufficient time to permit effective inspection of the plants under field conditions.

(2) Within 21 days after receipt of a copy of the complaint, the seller shall:

(a) file an answer to the complaint with the director;

(b) submit a $250 filing fee to the department; and

(c) serve a copy of the answer on the buyer by certified mail or as otherwise provided in state law.

(3) The director shall refer the complaint and answer to the alternative dispute resolution council for investigation, findings, and recommendations within 30 days of receiving the answer.

(4) When a complaint is referred to the council for investigation, the council shall make an investigation of the matters contained in the complaint and file a report of its findings and recommendations with the director within 60 days of receiving the referral, unless the parties subject to the alternative dispute resolution agree to a later date.

Section 7. Findings. (1) The report of the alternative dispute resolution council must:

(a) include findings of fact and recommendations regarding costs, if any; and

(b) consider the written summary provided when an investigation is delegated as provided in [section 5].

(2) The director shall send copies of the completed report to the buyer and seller by certified mail.

Section 8. Costs of alternative dispute resolution. Costs of alternative dispute resolution that exceed the amount paid in filing fees must be assessed to the nonprevailing party or equally distributed between the parties to the extent that the parties have agreed in writing to the equal distribution.

Section 9. Program administration and rulemaking. (1) The agricultural seed contract alternative dispute resolution program must be administered by the department.

(2) The department may adopt rules that are necessary for the efficient administration of [sections 1 through 10]. The rules may include but are not limited to:

(a) the content and format of the buyer's claim to alternative dispute resolution and the seller's answer;

(b) procedures for conducting investigations;

(c) a procedure for assessing costs of alternative dispute resolution to the parties; and

(d) types of seed that are exempted from the requirements of [sections 1 through 10].

Section 10. Administration of fees. Filing fees and reimbursed costs must be deposited in the seed account established in 80-5-132 for the purpose of funding costs of investigation and alternative dispute resolution. Funds deposited under this section are statutorily appropriated, as provided in 17-7-502, to pay actual expenses incurred by the department to administer the alternative dispute resolution program provided for in [sections 1 through 10].

Section 11. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-31-702; 15-34-115; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-222; 80-4-416; *[section 10];* 80-11-518; 81-5-111; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; and pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005.)"

Section 12. Section 80-5-123, MCA, is amended to read:

"**80-5-123. Label requirements for agricultural, vegetable, flower, and indigenous seeds.** (1) Each container of agricultural, vegetable, flower, and indigenous seeds sold in this state for sowing purposes must bear a conspicuous, unaltered label or tag, plainly written or printed in English. Bulk sales must be accompanied by the required label information, which must be given to the seed purchaser. The following information, which may not be modified or denied in the labeling or on another label attached to the container, must be included on a label:

(a) name and address of the seed labeler;

(b) lot number identification;

(c) germination rate and date of germination test or a notation of the year for which the seed was packaged for sale;

(d) state or country of origin; ~~and~~

(e) *notice calling attention to the requirement for alternative dispute resolution under [section 1]; and*

(f) seed kind or variety. The department shall establish rules specifying the kinds of seed for which variety must be stated and the kinds of seeds for which the variety may be stated and when the words "variety not stated" may be used. Kinds of seeds not listed by department rule may be stated as kind only or as kind and variety.

(2) In addition to the required label information listed in subsection (1), the department shall establish by rule additional label requirements for agricultural seed, including grass, lawn, and turf seed, and for vegetable, flower, and indigenous seeds. The additional label requirements may include:

(a) percentage of kind or variety of each seed component present in a container;

(b) percentage of weed seed present, both restricted and common weed seed;

(c) amount of inert material present;

(d) warnings for treated seed; and

(e) requirements for coated seed, inoculated seed, seed that is below standard, seed sold in bulk, hybrid seed, seed mixtures, and seed in containers, mats, tapes, and other planting devices."

Section 13. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 80, chapter 5, and the provisions of Title 80, chapter 5, apply to [sections 1 through 10].

Section 14. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved May 2, 2001

CHAPTER NO. 568

[HB 644]

AN ACT ENCOURAGING ECONOMIC DEVELOPMENT BY CREATING AN ENERGY MARKET DEMAND IN MONTANA FOR AGRICULTURAL-BASED BIOFUELS; TAXING GASOHOL AND BIODIESEL AT A PERCENTAGE OF

THE RATE FOR GASOLINE OR SPECIAL FUELS; DEFINING "GASOHOL" AND "BIODIESEL"; PROVIDING THAT BIOFUEL PUMPS BE LABELED WITH A STATEMENT OF THE TAX ADVANTAGE OF THE FUEL; AMENDING SECTIONS 15-70-201, 15-70-202, 15-70-204, 15-70-301, 15-70-304, 15-70-321, 15-70-326, AND 15-70-341, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE AND A CONTINGENT TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-201, MCA, is amended to read:

"15-70-201. (Temporary) Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks, gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline imported into this state and placed in storage at refineries or pipeline terminals is considered to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) "Gasohol" means a fuel blend containing at least 10% alcohol, with the balance being gasoline and other additives. Gasohol is also known as "E-10".

~~(9)~~*(10)* (a) "Gasoline" includes:

(i) all *petroleum* products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) *except for alcohol blended into gasohol,* any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

~~(10)~~*(11)* "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

~~(11)~~*(12)* "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

~~(12)~~*(13)* "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and ~~(9)~~ *(10)* that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

~~(13)~~*(14)* "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

~~(14)~~*(15)* "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

~~(15)~~*(16)* "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state. (Terminates June 30, 2001—sec. 7, Ch. 461, L. 1999.)

15-70-201. (Effective July 1, 2001) Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person whose major endeavor and primary source of earned income is from the business of farming or ranching.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks, gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline imported into this state and placed in storage at refineries or pipeline terminals is considered to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) "Gasohol" means a fuel blend containing at least 10% alcohol, with the balance being gasoline and other additives. Gasohol is also known as "E-10".

~~(9)~~*(10)* (a) "Gasoline" includes:

(i) all *petroleum* products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) *except for alcohol blended into gasohol,* any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

~~(10)~~*(11)* "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

~~(11)~~*(12)* "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

~~(12)~~*(13)* "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and ~~(9)~~ *(10)* that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

~~(13)~~*(14)* "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

~~(14)~~*(15)* "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

~~(15)~~*(16)* "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state."

Section 2. Section 15-70-202, MCA, is amended to read:

"**15-70-202. License and security of gasoline distributors.** (1) (a) All gasoline distributors, including exporters, as defined in 15-70-201, and a person who imports, as defined in 15-70-201, prior to the commencement of doing business, shall file:

(i) an application for a license with the department of transportation on forms prescribed and furnished by the department setting forth the information as may be requested by the department; and

(ii) security with the department in an amount to be determined by the department. The required amount of security may not exceed twice the estimated amount of gasoline taxes the distributor will pay to this state each month.

(b) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or canceled.

(2) "Security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) a deposit made by the distributor with the department, under conditions as the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(3) Failure to obtain a gasoline distributor license as required in this section subjects the distributor to the provisions of 15-70-233 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

(4) A distributor who blends gasohol must be licensed with the department. If a distributor cannot be licensed, the distributor is required to buy preblended gasohol."

Section 3. Section 15-70-204, MCA, is amended to read:

"15-70-204. (Temporary) Gasoline license tax — rate. (1) Every distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents~~, beginning July 1, 1994,~~ for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

~~(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1).~~

(3) Gasohol, as defined in 15-70-201, is subject to 85% of the tax imposed in subsection (1)(b).

(Terminates on occurrence of contingency—sec. 17, Ch. 642, L. 1993.)

15-70-204. (Effective on occurrence of contingency) Gasoline license tax — rate. (1) Every distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 3 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

~~(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1)~~

(3) Gasohol, as defined in 15-70-201, is subject to 85% of the tax imposed in subsection (1)(b)."

Section 4. Tax label on ethanol pumps. A fuel pump at a retail outlet that dispenses gasohol must have a decal designed and produced by the department. The department shall provide the decals, which must be affixed to both sides of the fuel pump and state that the price of the ethanol fuel reflects a 15% reduction in the amount of state taxes when compared to gasoline. The department may impose a civil penalty for failure to mark a pump that dispenses gasohol without the appropriate decal. The penalty for each violation is $100 for each fuel pump. The department shall give notice of a violation and, if requested, hold a hearing pursuant to Title 2, chapter 4, part 6, to determine whether a violation occurred.

Section 5. Section 15-70-301, MCA, is amended to read:

"**15-70-301. (Temporary) Definitions.** As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Biodiesel" means:

(a) (i) a fuel sold for use in motor vehicles operating upon the public roads and highways within the state that contains at least 20% esterified vegetable oil, at least 10% alcohol, or an equivalent mixture of both oil and alcohol, with the balance being diesel fuel or any other petroleum-based volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test and other additives; or

(ii) a monoalkyl ester that:

(A) is derived from domestically produced vegetable oils, renewable lipids, rendered animal fats, or any combination of those ingredients; and

(B) meets the requirements of ASTM PS 121, also known as the Provisional Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society of testing and materials.

(b) Biodiesel is also known as "B-20".

~~(2)~~*(3)* "Bond" means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

~~(3)~~*(4)* "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

~~(4)~~*(5)* "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

~~(5)~~*(6)* "Department" means the department of transportation.

~~(6)~~*(7)* (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

~~(7)~~*(8)* "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter.

~~(8)~~*(9)* "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

~~(9)~~*(10)* "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

~~(10)~~*(11)* "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

~~(11)~~*(12)* "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

~~(12)~~*(13)* "Improperly imported fuel" means special fuel as defined in subsection ~~(16)~~ *(17)* that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

~~(13)~~*(14)* "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

~~(14)~~*(15)* "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

~~(15)~~*(16)* "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain; or

(d) acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision of the state.

~~(16)~~*(17)* "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes *biodiesel and* ~~all other types of~~ additives *of all types* when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

~~(17)~~*(18)* "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

~~(18)~~*(19)* "Special fuel user" means a person other than the U.S. government, a state, or a county, incorporated city or town, or school district of this state who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

~~(19)~~*(20)* "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state. (Terminates June 30, 2001—sec. 7, Ch. 461, L. 1999.)

15-70-301. (Effective July 1, 2001) Definitions. As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person whose major endeavor is the business of farming or ranching and whose primary source of earned income is from the business of farming or ranching.

(2) "Biodiesel" means:

(a) (i) a fuel sold for use in motor vehicles operating upon the public roads and highways within the state that contains at least 20% esterified vegetable oil, at least 10% alcohol, or an equivalent mixture of both oil and alcohol, with the balance being diesel fuel or any other petroleum-based volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test and other additives; or

(ii) a monoalkyl ester that:

(A) is derived from domestically produced vegetable oils, renewable lipids, rendered animal fats, or any combination of those ingredients; and

(B) meets the requirements of ASTM PS 121, also known as the Provisional Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society of testing and materials.

(b) Biodiesel is also known as "B-20".

~~(2)~~*(3)* "Bond" means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

~~(3)~~*(4)* "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

~~(4)~~*(5)* "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

~~(5)~~*(6)* "Department" means the department of transportation.

~~(6)~~*(7)* (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

~~(7)~~*(8)* "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter.

~~(8)~~*(9)* "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

~~(9)~~*(10)* "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

~~(10)~~*(11)* "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

~~(11)~~*(12)* "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

~~(12)~~*(13)* "Improperly imported fuel" means special fuel as defined in subsection ~~(16)~~ *(17)* that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

~~(13)~~*(14)* "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

~~(14)~~*(15)* "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

~~(15)~~*(16)* "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain; or

(d) acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision of the state.

~~(16)~~*(17)* "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes *biodiesel and* ~~all other types of~~ additives *of all types* when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

~~(17)~~*(18)* "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

~~(18)~~*(19)* "Special fuel user" means a person other than the U.S. government, a state, or a county, incorporated city or town, or school district of this state who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

~~(19)~~*(20)* "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state."

Section 6. Section 15-70-304, MCA, is amended to read:

"**15-70-304. Bonding, release of surety, and additional bond.** (1) Except as provided in this section, a special fuel user's permit may not be issued to a person or continued in force unless the person has furnished a bond, as defined in 15-70-301 and in a form as the department may require, to secure its compliance with this part and the payment of any taxes, interest, and penalties due and to become due under this part. The department shall waive the bond requirement of a special fuel user not subject to the provisions of subsection (2)(a) or (2)(b).

(2) The total amount of the bond or bonds required of a special fuel user must be equivalent to twice the special fuel user's estimated quarterly tax payments as provided in this part, determined as the department considers proper; however, the total amount of the bond or bonds may not be less than:

(a) $5,000 for a special fuel user awarded a contract in accordance with 15-70-321; and

(b) $500 for any other special fuel user who:

(i) requests a special fuel user's permit to be reissued after being canceled for cause; or

(ii) fails to file timely reports and pay tax due as required by 15-70-325 and 15-70-327.

(3) A surety on a bond furnished by a special fuel user, as provided in this section, must be released and discharged from any liability to the state accruing on the bond after the expiration of 30 days from the date when the surety has lodged with the department a written request to be released and discharged, but this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. The department shall, promptly upon receiving a release request, notify the special fuel user who furnished the bond, and unless the special fuel user, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as provided in 15-70-301~~(2)~~*(3)*, the department shall cancel the special fuel user's permit.

(4) The department may require a special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301~~(2)~~*(3)* if, in its opinion, the security of the surety bond previously filed by the special fuel user or the market value of the properties deposited as security by the special fuel user becomes impaired or inadequate. Upon failure of the special fuel user to give a new additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel the permit."

Section 7. Section 15-70-321, MCA, is amended to read:

"**15-70-321. Tax on special fuel and volatile liquids.** (1) The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax, as provided in subsection (2):

(a) for each gallon of undyed special fuel or other volatile liquid, except liquid petroleum gas *and biodiesel*, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to operate motor vehicles upon the public roads and highways of this state;

(b) for each gallon of special fuel or other volatile liquid, except liquid petroleum gas *and biodiesel*, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions; ~~and~~

(c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway vehicle, regardless of weight, operating upon the public roads and highways of this state*; and* *(d) for each gallon of biodiesel delivered into the fuel supply tank of a highway vehicle, regardless of weight, operating upon the public roads and highways of this state.*

(2) *(a)* The tax imposed in ~~subsection (1)~~ *subsections (1)(a) through (1)(c)* is 27 3/4 cents per gallon.

(b) The tax imposed in subsection (1)(d) is 85% of the amount provided for in subsection (2)(a)."

Section 8. Tax label on biodiesel pumps. A fuel pump at a retail outlet that dispenses biodiesel must have a decal designed and produced by the department. The department shall provide the decals, which must be affixed to both sides of the fuel pump and state that the price of the biodiesel fuel reflects a 15% reduction in the amount of state taxes when compared to special fuels. The department may impose a civil penalty for failure to mark a pump that dispenses biodiesel without the appropriate decal. The penalty for each violation is $100 for each fuel pump. The department shall give notice of a violation and, if requested, hold a hearing pursuant to Title 2, chapter 4, part 6, to determine whether a violation occurred.

Section 9. Section 15-70-326, MCA, is amended to read:

"**15-70-326. Computation.** The tax imposed by this part must be computed, with respect to special fuel for which the tax has not been paid in this state and that has been consumed by the purchaser as a special fuel user, by multiplying the *appropriate* tax rate per gallon provided in this part by the number of gallons of *the type of* special fuel consumed by the special fuel user in the operation of motor vehicles on the highways of this state."

Section 10. Section 15-70-341, MCA, is amended to read:

"**15-70-341. License, reissuance fee, and security of special fuel distributors.** (1) (a) All special fuel distributors, including importers and exporters as defined in 15-70-301, prior to the commencement of doing business, shall file:

(i) an application for a license with the department, on forms prescribed and furnished by the department, setting forth the information that may be requested by the department; and

(ii) security with the department in an amount to be determined by the department.

(b) The required amount of security may not exceed twice the estimated amount of special fuel taxes the distributor will pay to this state each month.

(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that continues in force until surrendered or revoked.

(2) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of $100.

(3) Failure to obtain a special fuel distributor license as required in this section subjects the distributor to the provisions of 15-70-357 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

(4) As used in this section, "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or

(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(5) A distributor who blends biodiesel must be licensed with the department. If the distributor cannot be licensed, the distributor is required to buy preblended biodiesel."

Section 11. Codification instruction. (1) [Section 4] is intended to be codified as an integral part of Title 15, chapter 70, part 2, and the provisions of Title 15, chapter 70, part 2, apply to [section 4].

(2) [Section 8] is intended to be codified as an integral part of Title 15, chapter 70, part 3, and the provisions of Title 15, chapter 70, part 3, apply to [section 8].

Section 12. Contingent effective date. [This act] is effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least $20 million on June 30 following the date on which the condition in subsection (1) is complied with.

Section 13. Contingent termination. [This act] terminates June 30 of the fourth year following [the effective date of this act].

Approved May 2, 2001

CHAPTER NO. 569

[SB 179]

AN ACT GENERALLY REVISING LAWS GOVERNING BUDGETING AND APPROPRIATIONS; CLARIFYING THE MAXIMUM EXPENDITURE FOR AN EMERGENCY OR DISASTER; REVISING THE LAW GOVERNING ACCRUALS; PROVIDING THAT AGENCY PROGRAM BUDGET REDUCTION PLANS APPLY TO THE BASE BUDGET FOR THE GENERAL APPROPRIATIONS ACT AND THE STATE PAY PLAN; PROVIDING THAT AGENCY GOALS AND OBJECTIVES MAY BE MADE AVAILABLE ELECTRONICALLY; CLARIFYING THE RECORDING OF UNIVERSITY FUNDS UNDER AN OPERATING BUDGET; ALLOWING THE RETRANSFER OF MONEY TRANSFERRED FOR SPRING FIRE COSTS; CLARIFYING THE LAWS GOVERNING THE REVERSION OF FUNDS; CLARIFYING THE PROCEDURE FOR A PROPOSED SUPPLEMENTAL APPROPRIATION TO TRANSFER FUNDS BETWEEN FISCAL YEARS; EXTENDING THE DURATION OF A BUDGET AMENDMENT FOR

FEDERAL FUNDS TO THE END OF THE FEDERAL FISCAL YEAR; PROVIDING THAT CHARGES FOR SERVICES AND SUPPLIES BETWEEN AGENCIES ARE VALID CLAIMS; AMENDING SECTIONS 10-3-312, 17-1-102, 17-7-111, 17-7-123, 17-7-138, 17-7-139, 17-7-304, 17-7-311, 17-7-402, AND 17-8-101, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-312, MCA, is amended to read:

"10-3-312. Maximum expenditure by governor — appropriation. (1) Whenever an emergency or disaster is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and, *subject to subsection (2),* the governor is authorized to expend from the general fund~~,~~ an amount not to exceed $12 million in any biennium, minus any amount appropriated pursuant to 10-3-310 in the same biennium. *The statutory appropriation in this subsection may be used by any state agency designated by the governor.*

(2) In the event of the recovery of money expended under this section, the spending authority must be reinstated to a level reflecting the recovery.

(3) If a disaster is declared by the president of the United States, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund~~,~~ an amount not to exceed $500,000 during the biennium to meet the state's share of the individual and family grant programs as provided in 42 U.S.C. 5178. *The statutory appropriation in this subsection may be used by any state agency designated by the governor."*

Section 2. Section 17-1-102, MCA, is amended to read:

"17-1-102. Uniform accounting system and expenditure control. (1) The department shall establish a system of financial control so that the functioning of the various agencies of the state may be improved, duplications of work by different state agencies and employees may be eliminated, public service may be improved, and the cost of government may be reduced.

(2) The department shall prescribe and install a uniform accounting and reporting system for all state agencies and institutions, reporting the receipt, use, and disposition of all public money and property in accordance with generally accepted accounting principles.

(3) The uniform accounting and reporting system must contain three levels of expenditure. The first level must include general categories, such as personal services, operating expenses, equipment, capital outlay, local assistance, grants, benefits and claims, transfers, and debt service. The second level of expenditure must include specific categories of expenditures within each first-level category. The third level of expenditure must include specific items of expenditure within each category of the second level.

(4) All state agencies, including units of the university system but excluding community colleges, shall input all necessary transactions to the accounting system prescribed in subsection (2) before the accounts are closed at the end of the fiscal year in order to present the receipt, use, and disposition of all money and property for which the agency is accountable in accordance with generally accepted accounting principles, except that for budgetary control purposes,

encumbrances that are required by generally accepted accounting principles to be reported as a reservation of fund balance must be recorded as expenditures and liabilities on the accounting records~~.~~ *in accordance with the following requirements:*

(a) Goods and services, grants, and local assistance that are paid for with the general fund, in whole or in part, may be encumbered. The general fund encumbrances must be reviewed by the department, and a specific extension plan must be presented by the encumbering agency to the department prior to the fiscal yearend. If a valid extension plan is not received and approved, the department shall delete the encumbrance at fiscal yearend. The department shall present a fiscal yearend report to the office of budget and program planning and to the legislative finance committee on each general fund encumbrance remaining at fiscal yearend.

(b) Nongeneral fund encumbrances also require a valid extension plan approved by the department at the end of each fiscal year. After 3 years, approved extensions must be included by the department in its fiscal yearend report to the office of budget and program planning and to the legislative finance committee."

Section 3. Section 17-7-111, MCA, is amended to read:

"**17-7-111. Preparation of state budget — agency program budgets — form distribution and contents.** (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:

(i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and

(ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.

(2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2) or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or the instructions given for completing the forms.

(3) The agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary of funds subject to appropriation or enterprise funds that transfer profits to the general fund or to an account subject to appropriation for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress;

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each ~~accounting entity within each~~ fund for the current biennium and estimated for the subsequent biennium;

(c) a statement of the agency mission and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives.

(d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

(e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

~~(f) a reference, for each program included in the agency budget request, identifying whether the program may be operated at the discretion of the agency or whether the agency is required by federal or state law to operate, administer, or manage the program;~~

~~(g)~~*(f)* for only agencies with more than 20 FTE, a plan to reduce the proposed *base* budget *for the general appropriations act and the proposed state pay plan* to ~~85%~~ *95%* of the current base budget *or lower if directed by the budget director. Each agency plan must include base budget reductions that reflect the required percentage reduction by fund type for the general fund and state special revenue fund types.* The plan must include:

(i) a prioritized list of services that would be eliminated or reduced;

(ii) for each service included in the prioritized list, the savings that would result from the elimination or reduction; and

(iii) the consequences or impacts of the proposed elimination or reduction of each service.

~~(h)~~*(g)* other information the budget director feels is necessary for the preparation of a budget.

(4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

(b) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(c) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(6) The budget director may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns."

Section 4. Section 17-7-123, MCA, is amended to read:

"**17-7-123. Form of executive budget.** *(1)* The budget submitted must set forth a balanced financial plan for funds subject to appropriation and enterprise funds that transfer profits to the general fund or to accounts subject to appropriation for each accounting entity and for the state government for each fiscal year of the ensuing biennium. The base level plan must consist of:

~~(1)~~*(a)* a consolidated budget summary setting forth the aggregate figures of the budget in a manner that shows a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by explanatory schedules or statements.

~~(2)~~*(b)* budget and full-time equivalent personnel position comparisons by agency, program, and appropriated funds for the current and subsequent biennium;

~~(3)~~*(c)* the departmental mission and a statement of goals and objectives for ~~each program of~~ the department;

~~(4)~~*(d)* base budget disbursements for the completed fiscal year of the current biennium, estimated comparable disbursements for the current fiscal year, and the proposed present law base budget plus new proposals, if any, for each department and each program of the department;

~~(5)~~*(e)* a statement containing recommendations of the governor for the ensuing biennium by program and disbursement category, including:

~~(a)~~*(i)* explanations of appropriation and revenue measures included in the budget that involve policy changes; and

~~(b)~~*(ii)* matters not included as a part of the budget bill but included as a part of the executive budget, such as the state employee pay plan, programs funded through separate appropriations measures, and other matters considered necessary for comprehensive public and legislative consideration of the state budget;

~~(6)~~*(f)* a report on:

~~(a)~~*(i)* enterprise funds not subject to the requirements of subsections (1)*(a)* through ~~(5)~~ *(1)(e)*, including retained earnings and contributed capital, projected operations and charges, and projected fund balances; and

~~(b)~~*(ii)* fees and charges in the internal service fund type, including changes in the level of fees and charges, projected use of the fees and charges, and projected fund balances. Fees and charges in the internal service fund type must be approved by the legislature in the general appropriations act. Fees and charges in a biennium may not exceed the level approved by the legislature in the general appropriations act effective for that biennium.

~~(7)~~*(g)* any other financial or budgetary material agreed to by the budget director and the legislative fiscal analyst.

(2) The statement of departmental goals and objectives and the schedule for each fund required in 17-7-111(3)(b) of the executive budget are not required to be printed but must be available in the office of budget and program planning and on the internet."

Section 5. Section 17-7-138, MCA, is amended to read:

"**17-7-138. Operating budget.** (1) (a) Expenditures by a state agency must be made in substantial compliance with the budget approved by the legislature. Substantial compliance may be determined by conformity to legislative intent as established in the narrative accompanying the general appropriations act. An explanation of any significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. If the approving authority certifies that a change is time-sensitive, the approving authority may approve the change prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee. Except as provided in subsection (2), the expenditure of money appropriated in the general appropriations act is contingent upon approval of an operating budget by August 1 of each fiscal year. An approved original operating budget must comply with state law.

(b) For the purposes of this subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:

(i) the ~~expenditure~~ *operating budget* change exceeds $1 million; or

(ii) the ~~expenditure~~ *operating budget* change exceeds 25% of a budget category and the change is greater than $25,000. If there have been other changes to the budget category in the current fiscal year, all the changes, including the change under consideration, must be used in determining the 25% and $25,000 threshold.

(2) The expenditure of money appropriated in the general appropriations act to *the commissioner of higher education for distribution by the board of regents to* the university system units, as defined in 17-7-102, is contingent upon approval of ~~an~~ *a comprehensive* operating budget by October 1 of each fiscal year. ~~All other requirements in this section apply to the university system.~~

(3) The operating budget for money appropriated by the general appropriations act must be separate from the operating budget for money appropriated by another law except a law appropriating money for the state pay plan or any portion of the state pay plan. Each operating budget must include expenditures for each agency program, detailed at least by first-level categories as provided in 17-1-102(3). Each agency shall record its operating budget *for all funds, other than higher education funds,* and any approved changes on the statewide budget and accounting *state financial* system. *Documents implementing approved changes must be signed.* ~~Forms used for changing an operating budget must reference the current, complete, and approved operating budget, show the proposed changes to the operating budget, and reference any other pending documents to change the operating budget.~~ *The operating budget for higher education funds must be recorded on the university financial system, with separate accounting categories for each source or use of state government funds. State sources and university sources of funds may be combined for the general operating portion of the current unrestricted funds.*"

Section 6. Section 17-7-139, MCA, is amended to read:

"**17-7-139. Program transfers.** (1) Unless prohibited by law, the approving authority may approve agency requests to transfer appropriations between programs within each fund type within each fiscal year. An explanation of any transfer that involves a significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. If the approving authority certifies that a request for a transfer representing a significant change in agency or program scope, objectives, activities, or expenditures is time-sensitive, the approving authority may approve the transfer prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee. All program transfers must be completed within the same fund from which the transfer originated. A request for a transfer accompanied by a justification explaining the reason for the transfer must be submitted by the requesting agency to the approving authority and the office of budget and program planning. Upon approval of the transfer, the approving authority shall inform the legislative fiscal analyst of the approved transfer and the justification for the transfer. If money appropriated for a fiscal year is transferred to another fiscal year, the money may not be retransferred, *except that money remaining from projected costs for spring fires estimated in the last quarter of the first year of a biennium may be retransferred.*

(2) For the purposes of subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:

(a) the budget transfer exceeds $1 million; or

(b) the budget transfer exceeds 25% of a program's total operating plan and the transfer is greater than $25,000. If there have been other transfers to or from the program in the current fiscal year, all the transfers, including the transfer under consideration, must be used in determining the 25% and $25,000 threshold."

Section 7. Section 17-7-304, MCA, is amended to read:

"**17-7-304. Disposal of unexpended appropriations.** (1) All money appropriated for any specific purpose except that appropriated for the university system units listed in subsection (2) and except as provided in subsection (4) must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made or may be used to fund the provisions of 2-18-1203 through 2-18-1205 and 19-2-706 in the succeeding year.

(2) Except as provided in 17-2-108 and subsection (3) of this section, all money appropriated for the university of Montana campuses at Missoula, Butte, Dillon, and Helena and the Montana state university campuses at Bozeman, Billings, Havre, and Great Falls, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, and the bureau of mines and geology with central offices in Butte must, after the expiration of the time for which appropriated, revert to an account held by the board of regents. The board of regents is authorized to maintain a fund balance. There is a statutory appropriation, as provided in 17-7-502, to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to 17-7-140. Any amount that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated.

(4) ~~For the 2 years following~~ *After* the end of a fiscal year, 30% of the money appropriated to an agency for that year by the general appropriations act for personal services, operating expenses, and equipment, by fund type, and remaining unexpended and unencumbered at the end of the year may be *reappropriated to be* spent *during the following 2 years* for any purpose that is consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be carried forward and spent must be determined by the office of budget and program planning."

Section 8. Section 17-7-311, MCA, is amended to read:

"**17-7-311. Proposed *fiscal year transfer* supplemental appropriation — procedure.** (1) A proposed supplemental appropriation *to transfer appropriations between fiscal years of a biennium* and all supporting documentation must be submitted to the legislative fiscal analyst. The governor may not approve a proposed *fiscal year transfer* supplemental appropriation until the governor receives the legislative finance committee's written report for that proposed *fiscal year transfer* supplemental appropriation unless:

(a) the report is not received within 90 calendar days from the date the proposed *fiscal year transfer* supplemental appropriation and supporting documentation were forwarded to the legislative finance committee, in which case the governor may approve the proposed *fiscal year transfer* supplemental appropriation; or

(b) there has been a waiver of the review and report requirements, as provided in subsection (4).

(2) The legislative fiscal analyst shall review each proposed *fiscal year transfer* supplemental appropriation submitted by the governor for compliance with statutory requirements and standards and to determine the expenditures that will be reduced in order to contain spending within legislative appropriations. The legislative fiscal analyst shall present a written report of this review to the legislative finance committee. Within 10 days after the legislative finance committee's consideration of the proposed *fiscal year transfer* supplemental appropriation, the legislative fiscal analyst shall submit the legislative finance committee's report to the governor.

(3) Upon receipt of the legislative finance committee's written report, the governor may approve or deny the proposed *fiscal year transfer* supplemental appropriation or may return the proposed *fiscal year transfer* supplemental appropriation to the requesting agency for further information. If the governor has returned the proposed *fiscal year transfer* supplemental appropriation to the requesting agency and the requesting agency resubmits the proposed *fiscal year transfer* supplemental appropriation to the governor, all procedures provided in this section apply to the resubmitted proposed *fiscal year transfer* supplemental appropriation.

(4) (a) If an emergency occurs that poses a serious threat to the life, health, or safety of the public, the legislative fiscal analyst may waive the written review and the legislative finance committee's written report required by this section. After a waiver, the legislative fiscal analyst may complete the written review.

(b) Upon receipt of the waiver, the governor may approve the proposed *fiscal year transfer* supplemental appropriation.

(c) A waiver affects only the legislative fiscal analyst's written review and the legislative finance committee's written report on the proposed *fiscal year transfer* supplemental appropriation. All other proposed *fiscal year transfer* supplemental appropriation requirements and standards remain in effect.

(5) Nothing in this part confers on the legislative finance committee authority to approve or deny a proposed *fiscal year transfer* supplemental appropriation."

Section 9. Section 17-7-402, MCA, is amended to read:

"**17-7-402. Budget amendment requirements.** (1) Except as provided in subsection (7), a budget amendment may not be approved:

(a) by the approving authority, except a budget amendment to spend:

(i) additional federal revenue;

(ii) additional tuition collected by the Montana university system;

(iii) additional revenue deposited in the internal service funds within the department or the office of the commissioner of higher education as a result of increased service demands by state agencies;

(iv) Montana historical society enterprise revenue resulting from sales to the public;

(v) additional revenue that is deposited in funds other than the general fund and that is from the sale of fuel for those agencies participating in the Montana public vehicle fueling program established by Executive Order 22-91;

(vi) revenue resulting from the sale of goods produced or manufactured by the industries program of an institution within the department of corrections; or

(vii) revenue collected for the administration of the state grain laboratory under the provisions of Title 80, chapter 4, part 7;

(b) by the approving authority if the budget amendment contains any significant ascertainable commitment for any present or future increased general fund support;

(c) by the approving authority for the expenditure of money in the state special revenue fund unless an emergency justifies the expenditure or the expenditure is exempt under subsection (5);

(d) by the approving authority unless it will provide additional services;

(e) by the approving authority for any matter of which the requesting agency had knowledge at a time when the proposal could have been presented to an appropriation subcommittee, the house appropriations committee, or the senate finance and claims committee of the most recent legislative session open to that matter, except when the legislative finance committee is given specific notice by the approving authority that significant identifiable events, specific to Montana and pursuant to provisions or requirements of Montana state law, have occurred since the matter was raised with or presented for consideration by the legislature; or

(f) to extend beyond June 30 of the last year of any biennium*, except that budget amendments for federal funds may extend to the end of the federal fiscal year*.

(2) A general fund loan made pursuant to 17-2-107 does not constitute a significant ascertainable commitment of present general fund support.

(3) ~~All~~ *Subject to subsection (1)(f), all* budget amendments must itemize planned expenditures by fiscal year.

(4) Each budget amendment must be submitted by the approving authority to the budget director and the legislative fiscal analyst. ~~The proposed expenditure of money from nonstate or nonfederal sources that is restricted by law must be submitted to the legislative fiscal analyst.~~

(5) Money from nonstate or nonfederal sources that would be deposited in the state special revenue fund and that is restricted by law or by the terms of a written agreement, such as a contract, trust agreement, or donation, is exempt from the requirements of this part.

(6) An appropriation *for a nonrecurring item* that would usually be the subject of a budget amendment ~~that is~~ *must be* submitted to the legislature for approval during a legislative session *between January 1 and the senate hearing on the budget amendment bill. The bill* may ~~not~~ include authority to spend money ~~beyond~~ *in* the ~~first~~ *current* fiscal year *and in both fiscal years* of the next biennium.

(7) A budget amendment to spend state funds, other than from the general fund, required for matching funds in order to receive a grant is exempt from the provisions of subsection (1)."

Section 10. Section 17-8-101, MCA, is amended to read:

"17-8-101. Appropriation and disbursement of money from treasury. (1) For purposes of complying with Article VIII, section 14, of the Montana constitution, money deposited in the general fund, the special revenue fund type (except money deposited in the treasury from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation), and the capital projects fund type, with the exception of refunds authorized in subsection (4), may be paid out of the treasury only on appropriation made by law.

(2) Subject to the provisions of subsection (8), money deposited in the enterprise fund type, debt service fund type, internal service fund type, expendable trust fund type, agency fund type, and state special revenue fund from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation, may be paid out of the treasury:

(a) by appropriation; or

(b) under general laws, or contracts entered into in pursuance of law, permitting the disbursement *if a subclass is established on the state financial system*.

(3) The pension trust fund type is not considered a part of the state treasury for appropriation purposes. Money deposited in the pension trust fund type may be paid out of the treasury pursuant to general laws, trust agreement, or contract.

(4) Money paid into the state treasury through error or under circumstances such that the state is not legally entitled to retain it and a refund procedure is not otherwise provided by law may be refunded upon the submission of a verified claim approved by the department.

(5) Authority to expend appropriated money may be transferred from one state agency to another, provided that the original purpose of the appropriation is maintained. The office of budget and program planning shall report semiannually to the legislative finance committee concerning all appropriations transferred under the provisions of this section.

(6) Fees and charges for services deposited in the internal service fund type must be based upon commensurate costs. The legislative auditor, during regularly scheduled audits of state agencies, shall audit and report on the reasonableness of internal service fund type fees and charges and on the fund equity balances.

(7) The creation of accounts in the enterprise fund or the internal service fund must be approved by the department, using conformity with generally accepted accounting principles as the primary approval criteria. The department shall report annually to the office of budget and program planning and the legislative finance committee on the nature, status, and justification for all new accounts in the enterprise fund and the internal service fund.

(8) Enterprise and internal service funds must be appropriated if they are used as a part of a program that is not an enterprise or internal service function and that otherwise requires an appropriation. An enterprise fund that transfers its ending fund balance to the general fund is subject to appropriation. The payment of funds into an internal service fund must be authorized by law."

Section 11. Charges for services or supplies among agencies — valid claim. (1) Subject to 17-8-242, charges for services and supplies incurred between state agencies are considered a debt that must be paid by the receiving agency as if the amount were owed to a vendor outside of state government.

(2) Agencies shall use all funds at their disposal to pay the bills for specific charges for services or supplies provided by another state agency.

Section 12. Codification instruction. [Section 11] is intended to be codified as an integral part of Title 17, chapter 8, part 3, and the provisions of Title 17, chapter 8, part 3, apply to [section 11].

Section 13. Coordination instruction. If House Bill No. 533 and [this act] are both passed and approved, then the sentence "The forms must be signed." added to section 17-7-138(3) by House Bill No. 533 is void.

Section 14. Effective date. [This act] is effective July 1, 2001.

Section 15. Applicability. [Section 2] applies to fiscal year 2002 and thereafter.

Approved May 2, 2001

CHAPTER NO. 570

[SB 283]

AN ACT REVISING THE LOCAL CITIZEN REVIEW BOARD PILOT PROGRAM ACT; AMENDING SECTIONS 41-3-205, 41-3-1001, 41-3-1003, 41-3-1004, 41-3-1005, 41-3-1006, 41-3-1007, 41-3-1008, 41-3-1010, 41-3-1011, 41-3-1012, 41-3-1013, AND 41-3-1115, MCA; REPEALING SECTIONS 41-3-1002, 41-3-1009, AND 41-3-1014, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality — disclosure exceptions. (1) The case records of the department and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (4) and (5), a person who *purposely or knowingly* permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation:

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group conference for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department~~,~~ if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) ~~a foster care review committee established under 41-3-1115 or, when applicable,~~ *a foster care review committee established under 41-3-1115 or, when applicable,* a ~~local~~ citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(5) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (4) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(6) This section is not intended to affect the confidentiality of criminal court records or records of law enforcement agencies.

(7) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 2. Section 41-3-1001, MCA, is amended to read:

"**41-3-1001. Short title.** This part may be cited as the ~~"Local Citizen~~ *"Citizen* Review Board ~~Pilot~~ Program Act"."

Section 3. Section 41-3-1003, MCA, is amended to read:

"**41-3-1003. Establishment of ~~local citizen review~~ board** — ***definition*** **— membership.** (1) ~~Subject to the availability of funds, the district court judge of a district designated pursuant to 41-3-1002 to operate a pilot program~~ *As used in this part, "board" means a citizen review board appointed as provided in this section.*

(2) Subject to the availability of funds, a district court judge who has indicated in writing an interest in having a board shall establish ~~a local citizen review~~ *at least one* board in the judicial district to review the case of each child ~~assigned to~~ *in the custody of the department and in* foster care ~~by the district court~~. *A board may review a case of a child who remains in or returns to the child's home and for whom the department retains legal custody.*

~~(2)~~*(3)* A ~~local citizen review~~ board is composed of at least three and not more than five members appointed by the district court ~~judge of a judicial district designated pursuant to 41-3-1002~~ *judges*. Each member appointed must be sworn in by a judge of the judicial district to which the member is appointed to serve.

~~(3)~~*(4)* The ~~district court judge of a judicial district designated pursuant to 41-3-1002 shall appoint the local citizen review~~ board *must be appointed* according to the following guidelines:

(a) Members of a ~~local citizen review~~ board must be recruited from groups with special knowledge of or interest in foster care and child welfare~~, which may include but is not limited to adoptive parents and members of the professions of law, medicine, psychology, social work, and education~~.

(b) As far as practicable, members of a ~~local citizen review~~ board shall represent the various socioeconomic and ethnic groups of the area served. *Boards should include tribal representatives whenever possible.*

(c) A person employed by the department ~~of public health and human services, by a private agency regulated, certified, directed, or licensed by or contracting with the department of public health and human services, or by a~~

~~district court~~ *who has a direct conflict of interest* may not serve on a ~~local citizen review~~ board.

(d) A member of a ~~local citizen review~~ board must be a resident of one of the counties of the judicial district that the member is appointed to serve.

~~(4)~~*(5)* The members of a ~~local citizen review~~ board ~~must be willing to serve without compensation.~~*must be willing to serve without compensation.*"

Section 4. Section 41-3-1004, MCA, is amended to read:

"**41-3-1004. Administration — training — oversight — procedures.** (1) ~~Subject to the availability of funds, the court administrator shall:~~ *The office of the court administrator, as provided for in 3-1-701, shall, in accordance with the direction of the supreme court, oversee the program established in this part and shall, at the time prescribed by 5-11-210, prepare a report to the governor, the legislature, and the public regarding:*

(a) state laws, policies, and practices affecting permanence and appropriate care for children in the custody of the department and other agencies; and

(b) the effectiveness of the boards in bringing about permanence and appropriate care for children in the custody of the department and other agencies.

(2) The office of the court administrator shall:

(a) establish policies and procedures for adoption by the Montana supreme court ~~pursuant to subsection (3)~~ for the operation of ~~the local citizen review~~ *a* board, *including procedures for removing members*;

(b) provide training programs for ~~local citizen review~~ board members *consisting of orientation training of at least 16 hours and a minimum of 8 hours of continuing education training annually*;

(c) provide consultation services on request to ~~the local citizen review~~ *a* board; and

(d) employ staff and provide for support services for ~~the local citizen review board~~ *boards*.

~~(2) The office of the supreme court administrator shall, in accordance with the direction of the supreme court, oversee the program established in this part and, at the time prescribed by 5-11-210, prepare a report to the governor, the legislature, and the public regarding:~~

~~(a) state laws, policies, and practices affecting permanence and appropriate care for children in the custody of the department of public health and human services and other agencies; and~~

~~(b) the effectiveness of the local citizen review board in bringing about permanence and appropriate care for children in the custody of the department of public health and human services and other agencies.~~

~~(3) The Montana supreme court shall adopt procedures that have the force of law for the administration of the local citizen review board pilot program regarding:~~

~~(a) the removal of members of the local citizen review board;~~

~~(b) the time, content, and manner in which case plans for and case progress reports on a child assigned to foster care must be provided to the local citizen~~

~~review board by the department of public health and human services, other agencies, or individuals directly responsible for the care of the child;~~

~~(c) the provision of written notice of the review to the department of public health and human services, any other agency directly responsible for the care or placement of a child, the parents or their attorneys, foster parents, surrogate parents, mature children or their attorneys, a court-appointed attorney or special advocate of any child, any county attorney or attorney general actively involved in the case, and other interested persons. The notice must include a statement that persons receiving a notice may participate in the hearing and be accompanied by a representative.~~

~~(d) securing or excusing the presence at the review of caseworkers and other employees of the department of public health and human services or other agencies directly responsible for the care of the child; and~~

~~(e) the manner in which the local citizen review board may remove cases from review when review is not required under federal law.~~"

Section 5. Section 41-3-1005, MCA, is amended to read:

"**41-3-1005. Removal of members — grounds.** Grounds for removal of a member of a ~~local citizen review~~ board under 41-3-1004~~(3)~~ may include but are not limited to the following:

(1) nonparticipation by a ~~local citizen review~~ board member;

(2) a member establishing residence in a judicial district other than the judicial district in which the court the person was appointed to serve is located;

(3) violation of the confidentiality of information established under 41-3-1007; or

(4) other cause or grounds as necessary for the administration of the program."

Section 6. Section 41-3-1006, MCA, is amended to read:

"**41-3-1006. Terms — officers ~~— meetings~~.** (1) A ~~local citizen review~~ board member shall serve at the pleasure of the appointing authority. However, if not otherwise released from service on a ~~local citizen review~~ board, the following provisions apply:

(a) A member shall serve a term of 2 years, except that if a vacancy occurs, a successor must be appointed to serve the unexpired term.

(b) A member may be reappointed and continue to serve until a successor is appointed.

(2) A ~~local citizen review~~ board shall~~:~~

~~(a)~~ elect annually from its membership a presiding officer and vice presiding officer to serve in the absence of the presiding officer~~; and~~

~~(b) meet at the nearest department of public health and human services office or another place mutually agreed to by a majority of the local citizen review board as often as it considers necessary to carry out the duties of the board.~~"

Section 7. Section 41-3-1007, MCA, is amended to read:

"**41-3-1007. Confidentiality of information — penalty.** (1) Before beginning to serve on a ~~local citizen review~~ board, each member shall swear or affirm to the court that the member will keep confidential the information reviewed by the board and its actions and recommendations in individual cases.

(2) A member of a ~~local citizen review~~ board who violates the duty imposed by subsection (1) is guilty of a misdemeanor punishable by a fine not to exceed $1,000."

Section 8. Section 41-3-1008, MCA, is amended to read:

"**41-3-1008. Access to records.** (1) Notwithstanding the provisions of 41-3-205, a ~~local citizen review~~ board has access to:

(a) any records of the district court that are pertinent to the case; and

(b) ~~any~~ *pertinent electronic and paper* records of the department ~~of public health and human services~~ or other agencies that would be admissible in a dispositional review hearing conducted pursuant to 41-3-406, including school records and reports of private service providers contained in the records of the department ~~of public health and human services~~ or other agencies.

(2) All requested records not already before the ~~local citizen review~~ board must be submitted by the department ~~of public health and human services~~ within ~~5~~ *10* working days after receipt of a request. ~~A local citizen review board and any staff provided for the board shall return all records and copies received from the department of public health and human services to the department within 7 working days after completion of the review.~~

(3) A ~~local citizen review~~ board may retain a reference copy of case material used by the board to make its recommendation if:

(a) the material is necessary for the ongoing work of the ~~local citizen review~~ board with regard to the particular case or to work of the board; and

(b) the confidentiality of the material is continued and protected in the same manner as other material received from the department ~~of public health and human services~~. Material retained by the ~~local citizen review~~ boards is not subject to disclosure under the public records law.

(4) If a ~~local citizen review~~ board is denied access to requested records, it may request a hearing. The court may require the organization in possession of the records to show cause why the records should not be made available as provided by this section."

Section 9. Section 41-3-1010, MCA, is amended to read:

"**41-3-1010. Review — scope — procedures — immunity.** (1) *(a)* ~~Except for cases removed from review under procedures established under 41-3-1004, the local citizen review~~ *The* board shall review the case of each child in foster care ~~that is assigned by the district court~~ *focusing on issues that are germane to the goals of permanency and to accessing appropriate services for parents and children. In evaluating the accessibility, availability, and appropriateness of services, the board may consider:*

(i) the safety of the child;

(ii) whether an involved agency has selected services specifically relevant to the problems and needs of the child and family;

(iii) whether caseworkers have diligently provided services;

(iv) whether appropriate services have been available to the child and family on a timely basis; and

(v) the results of intervention.

(b) The board may review the case of a child who remains in or returns to the child's home and for whom the department retains legal custody.

(2) The review must take place at times set by the ~~local citizen review~~ board. ~~The first review may not be more than 6 months after the child is placed in foster care . Subsequent reviews must take place at least once every 6 months until the child is no longer within the jurisdiction of the district court or no longer in foster care~~ *The time limit must comply with the Adoption and Safe Families Act of 1997.*

(3) The district court, by rule of the court or on an individual case basis, may relieve the ~~local citizen review~~ board of its responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next scheduled board review.

(4) ~~The local citizen review board shall review any case in which a petition to terminate parental rights has been denied as soon as practical but no later than 45 days after the denial.~~ *Notice of each review must be sent to the department, any agency directly responsible for the care or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older, the child's attorney, the guardian ad litem, the court-appointed attorney or special advocate of the child, the county attorney or deputy attorney general actively involved in the case, the child's tribe if the child is an Indian, and other interested persons who are authorized by the board to receive notice and who are subject to 41-3-205. The notice must include a statement that persons receiving a notice may participate in the hearing and be accompanied by a representative.*

(5) After reviewing each case, the ~~local citizen review~~ board shall prepare written findings and recommendations with respect to:

(a) whether reasonable efforts were made prior to the placement to prevent or to eliminate the need for removal of the child from the home and to make it possible for the child to be returned home;

(b) the continuing need for *the placement* and *the* appropriateness *and safety* of the placement;

(c) compliance with the case plan;

(d) the progress that has been made toward alleviating the need for placement;

(e) a likely date by which the child may be returned home or placed for adoption;

(f) other problems, solutions, or alternatives that the ~~local citizen review~~ board determines should be explored; and

(g) whether the district court should appoint an attorney or other person as special advocate to represent or appear on behalf of the child pursuant to 41-3-303.

(6) Whenever a member of a ~~local citizen review~~ board has a potential conflict of interest in a case being reviewed, the member shall declare to the board the

nature of the potential conflict prior to participating in the case review. The following provisions apply:

(a) The declaration of the member must be recorded in the official records of the ~~local citizen review~~ board.

(b) If, in the judgment of the majority of the ~~local citizen review~~ board, the potential conflict of interest may prevent the member from fairly and objectively reviewing the case, the board may remove the member from participation in the review.

(7) The ~~local citizen review~~ board shall keep accurate records and retain the records on file. The ~~local citizen review~~ board shall send copies of its written findings and recommendations to the district court, the department ~~of public health and human services~~, and other participants in the review *unless prohibited by the confidentiality provisions of 41-3-205.*

(8) The ~~local citizen review~~ board may hold joint or separate reviews for groups of siblings.

(9) The ~~local citizen review~~ board may disclose to parents and their attorneys, foster parents, ~~mature~~ children *who are 12 years of age or older* ~~and their~~*, childrens'* attorneys, and other persons authorized by the board to participate in the case review the records disclosed to the board pursuant to 41-3-1008. Before participating in a ~~local citizen review~~ board case review, each participant, other than parents and children, shall swear or affirm to the board that the participant will keep confidential the information disclosed by the board in the case review and will disclose it only as authorized by law.

(10) A person who serves on a ~~local citizen review~~ board in a volunteer capacity, as provided in this part, is considered an agent of the judiciary and is entitled to immunity from suit as provided in 2-9-112."

Section 10. Section 41-3-1011, MCA, is amended to read:

"**41-3-1011.** ~~**Recommendations**~~ ***Board recommendations concerning foster care services and policy considerations*** ~~**by board**~~**.** In addition to reviewing individual cases of children in foster care, a ~~local citizen review~~ board may make recommendations to the district court and to the department ~~of public health and human services~~ concerning foster care services, policies, procedures, and laws. *Recommendations must be in writing and must be provided to the department.*"

Section 11. Section 41-3-1012, MCA, is amended to read:

"**41-3-1012. Presence of** ~~**certain**~~ **employees *and participants* at** ~~**meetings**~~ ***reviews and deliberations* of board.** (1) Unless excused from doing so by the ~~local citizen review~~ board, the department ~~of public health and human services~~ and any other agency directly responsible for the care and placement of the child shall require the presence of ~~any~~ employees having knowledge of the case at board ~~meetings~~ *reviews.*

(2) The ~~local citizen review~~ board may require the presence of specific employees of the department ~~of public health and human services~~ or any other agency or other persons at board ~~meetings~~ *reviews.* If an employee fails to be present at the ~~meeting~~ *review*, the ~~local citizen review~~ board may request a court order. The court may require the employee to be present and show cause why the employee should not be compelled to appear before the ~~local citizen review~~ board.

(3) The persons who are allowed to be present at a review include representatives of the department or any agency directly responsible for the care or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older, the child's attorney, the guardian ad litem, the court-appointed attorney or special advocate of the child, the county attorney or deputy attorney general actively involved in the case, a representative of the child's tribe if the child is an Indian, and other interested persons subject to 41-3-205 and authorized to be present by the board.

(4) Deliberations concerning the recommendations that will be made by the board must be open to all present at the review, except that the presiding officer may close all or part of a deliberation if there has been a threat of a reprisal made by someone who will attend the review or if confidentiality laws preclude open deliberations.

(5) For the purposes of bringing criminal charges against a person who threatens a board member or staff, the board members and board staff must be considered public servants as defined in 45-2-101.

~~(3)~~*(6)* As used in this section, ~~"presence"~~ *the following definitions apply:*

(a) "Presence" includes telephone participation, except that ~~the caseworker on~~ *a representative of the department knowledgeable about* the case at the time of the ~~meeting~~ *review* must be physically present if required.

(b) "Open" means that review participants may remain in attendance during the deliberations to observe and be available for questions from the board.

(c) "Close", with regard to deliberations, means that only the board members and board staff may remain in attendance."

Section 12. Section 41-3-1013, MCA, is amended to read:

"41-3-1013. Court review of findings and recommendations of board. (1) Upon receipt of findings and recommendations from the ~~local citizen review~~ board, the district court shall:

(a) review the findings and recommendations of the ~~local citizen review~~ board within ~~10~~ *20* days. If the district court finds it appropriate, the district court may on its own motion schedule a review hearing.

(b) cause the findings and recommendations of the ~~local citizen review~~ board to become part of the district court file; and

(c) give the ~~local citizen review~~ board written notice if the district court modifies, alters, or takes action on a case as a result of the board's recommendations or refuses to take action on the board's recommendations in any case.

(2) Upon receipt of findings and recommendations from the ~~local citizen review~~ board, the department ~~of public health and human services~~ shall:

(a) review the findings and recommendations of the ~~local citizen review~~ board within 10 days. The recommendations must be implemented and the case plan *must be* modified as the department ~~of public health and human services~~ considers appropriate and as resources permit.

(b) give the ~~local citizen review~~ board written notice as soon as practicable, but in no case later than 17 days after receipt of the findings and recommendations, of ~~the action~~ *any reasons why* the department ~~of public health and human services intends to take~~ *objects to or is not able* to implement the recommendations; and

(c) include the findings and recommendations of the ~~local citizen review~~ board as part of the case file of the department ~~of public health and human services~~.

(3) The court may schedule a hearing on any recommendations that the department objects to or contends that it is unable to implement.

~~(3)~~*(4)* Upon its own motion or upon the request of the department ~~of public health and human services~~, the ~~local citizen review~~ board, or any interested party, the district court may appoint an attorney or other person as special advocate to represent or appear on behalf of the child. Subject to the direction of the district court, the court-appointed special advocate shall:

(a) investigate all relevant information about the case;

(b) advocate for the child, ensuring that all relevant facts are brought before the court;

(c) facilitate and negotiate to ensure that the district court, the department ~~of public health and human services~~, and the child's attorney fulfill their obligations to the child in a timely fashion; and

(d) monitor all district court orders to ensure compliance and to bring to the district court's attention any change in circumstance that may require modification of the district court's order."

Section 13. Section 41-3-1115, MCA, is amended to read:

"**41-3-1115. Foster care review committee.** (1) Except as provided in Title 41, chapter 3, part 10, in every judicial district the youth court judge, in consultation with the department, shall appoint a foster care review committee. The members of the committee must be willing to act without compensation. The committee ~~shall~~ *must* be composed of not less than five or more than seven members. The members ~~shall~~ *must* include:

(a) a representative of the department;

(b) a representative of the youth court;

(c) someone knowledgeable in the needs of children in foster care placements who is not employed by the department or the youth court;

(d) a representative of a local school district;

(e) if the child whose care under review is an Indian, someone, preferably an Indian person, knowledgeable about Indian cultural and family matters who is appointed effective only for and during that review; and

(f) if there is one, the foster parent of the child whose care is under review. The foster parent's appointment is effective only for and during that review.

(2) When a child is in foster care under the supervision of the department or if payment for care is made pursuant to 41-3-1122, the committee shall conduct a review of the foster care status of the child. The review must be conducted within a time limit established by the department. ~~The time limit must comply with federal law and may not be later than the 12-month anniversary date of the child's placement into foster care.~~ *The time limit must comply with the Adoption and Safe Families Act of 1997.*

(3) The department shall provide the committee with guidelines for operation of the committee. Within 30 days of the foster care review, the committee shall provide the youth court and the department *with* a written report of its findings and recommendations for further action by the youth court or the department.

(4) The department shall adopt rules necessary to carry out the purposes of this section. *The rules must provide for policies and procedures consistent with the provisions regarding notice, written findings and recommendations, conflict of interest, recordkeeping, sibling reviews, disclosure and immunity under 41-3-1010, and the deliberation provisions of 41-3-1012.*

(5) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members are confidential and subject to the confidentiality requirements of the department.

(6) The committee is subject to the call of the youth court judge to meet and confer with the judge on all matters pertaining to the foster care of a child before the youth court."

Section 14. Repealer. Sections 41-3-1002, 41-3-1009, and 41-3-1014, MCA, are repealed.

Section 15. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 16. Effective date. [This act] is effective July 1, 2001.

Approved May 2, 2001

CHAPTER NO. 571

[SB 339]

AN ACT GENERALLY REVISING THE LAW GOVERNING FUNDING FOR PUBLIC ASSISTANCE, FOSTER CARE, AND PROTECTIVE SERVICES; PROVIDING A UNIFORM METHOD FOR COUNTIES TO PARTICIPATE IN THE FUNDING; PROVIDING FOR THE PAYMENT OF AN ANNUAL ADMINISTRATIVE FEE TO THE STATE FOR PARTIAL REIMBURSEMENT FOR THE COSTS OF ADMINISTERING AND PROVIDING PUBLIC ASSISTANCE, FOSTER CARE, AND PROTECTIVE SERVICES IN THE COUNTY; PROVIDING FOR THE CALCULATION OF THE ADMINISTRATIVE FEE; CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADMINISTER PUBLIC ASSISTANCE; REPLACING COUNTY WELFARE OFFICES WITH LOCAL OFFICES OF PUBLIC ASSISTANCE; PROVIDING FOR THE STAFFING AND SUPERVISION OF LOCAL OFFICES; AMENDING SECTIONS 7-6-2512, 7-6-2523, 7-7-2201, 7-34-2204, 7-34-2303, 15-1-112, 15-10-420, 15-16-117, 41-3-1122, 52-1-103, 52-1-110, 53-2-201, 53-2-203, 53-2-207, 53-2-301, 53-2-304, 53-2-305, 53-2-322, 53-2-602, 53-2-603, 53-2-606, 53-2-609, 53-2-612, 53-2-613, 53-2-801, 53-2-802, 53-2-811, 53-3-111, 53-3-115, 53-3-116, 53-4-213, 53-4-214, 53-4-233, 53-4-244, 53-6-112, 53-6-114, 53-6-121, 53-6-132, 53-6-133, 53-6-155, 53-6-157, AND 53-21-113, MCA; REPEALING SECTIONS 53-2-610, 53-2-813, 53-4-246, AND 53-4-247, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2512, MCA, is amended to read:

"**7-6-2512. County tax levy for health care facilities.** (1) Subject to 15-10-420, the board of county commissioners may, annually at the time of levying county taxes, fix and levy a tax, not to exceed 10 mills on each dollar of taxable valuation of property, upon all property within the county to erect, furnish, equip, expand, improve, maintain, and operate county-owned or county-operated health care facilities created under 7-8-2102, 7-34-2201, and 7-34-2502. "Health care facilities" as used in this section has the meaning as defined in 7-34-2201. ~~The combined total number of mills levied under this section and for the county poor fund under 53-2-322 may not exceed 18 mills.~~ A higher levy may be made upon compliance with 7-6-2531 through 7-6-2537~~,~~ *or* 15-10-420~~, or 53-2-322~~. If a hospital district is created under Title 7, chapter 34, part 21, the mill levy authorized by this section may not be imposed on property within that hospital district.

(2) If a county issues bonds under 7-34-2411 to finance or refinance the costs of a health care facility, the board of county commissioners may covenant to levy the tax authorized by this section during the term of the bonds, to the extent necessary, and to apply the collections of the tax to the costs of erecting, furnishing, equipping, expanding, improving, maintaining, and operating the health care facility or facilities of the county or the payment of principal of or interest on the bonds. The pledge of the taxes to the payment of the bonds may not cause the bonds to be considered indebtedness of the county for the purpose of any statutory limitation or restriction. The pledge may be made by the board only upon authorization of a majority of the electors of the county voting on the pledge at a general or special election as provided in 7-34-2414."

Section 2. Section 7-6-2523, MCA, is amended to read:

"**7-6-2523. Special service levies replaced by all-purpose levy.** A county using the all-purpose levy may not impose any of the following levies:

(1) general fund levy, as provided in 7-6-2501;

(2) bridge levy, as provided in 7-14-2502;

(3) recreation levy, as provided in 7-16-101;

(4) county fair levy, as provided in 7-21-3410;

(5) weed levy, as provided in 7-22-2142;

(6) insect pest levy, as provided in 7-22-2306;

~~(7) poor fund levy, as provided in 53-2-322;~~ or

~~(8)~~*(7)* developmental disabilities facility levy, as provided in 53-20-208."

Section 3. Section 7-7-2201, MCA, is amended to read:

"**7-7-2201. Purposes for which general obligation bonds of a county may be issued.** The board of county commissioners of ~~every~~ *a* county ~~of the state is hereby vested with the power and authority to~~ *may* issue, negotiate, and sell coupon bonds on the credit of the county, as more specifically provided in this part, for any of the following purposes:

(1) acquiring land for sites and grounds for a public building or buildings of any kind within the county and under its control, which the county has lawful authority to acquire or erect, control, and maintain except that if the bonds are

sold to fund a multicounty jail facility, funds ~~so raised~~ may be used in the county in which the multicounty jail facility is located;

(2) acquiring land for any other public use or activity within the county, under its control and authorized by law;

(3) *(a)* constructing, erecting, or acquiring by purchase necessary public buildings within the county, under its control and authorized by law;

(b) making additions to and repairing buildings; and

(c) furnishing and equipping the ~~same~~ *buildings* except that if the bonds are sold to fund a multicounty jail facility, funds ~~so raised~~ may be used in the county in which the multicounty jail facility is located;

(4) building, purchasing, constructing, and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(5) enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of any county boundary line;

(6) funding, paying, and retiring outstanding county warrants lawfully issued against the county general fund, road fund, *or* bridge fund~~, or poor fund~~ when:

(a) there is not sufficient money in the fund against which ~~such~~ *the* warrants are drawn to pay and retire ~~such~~ *the* warrants; and

(b) the levying of taxes sufficient to pay and retire ~~such~~ *the* warrants within a period of 3 years would, in the judgment of the board, work a hardship and be an undue burden upon the taxpayers of the county."

Section 4. Section 7-34-2204, MCA, is amended to read:

"**7-34-2204. Lease of county property for health care purposes.** (1) The board of county commissioners ~~has jurisdiction and power~~ *may*, under the limitations and restrictions prescribed by law, ~~to~~ lease county buildings, equipment, furniture, and fixtures for health care facility purposes, with full power of lessor except as limited in this section, upon the terms and conditions as the board may decide upon. The rentals received under the lease or leases must be paid into the general fund of the county~~, or if the lease is of a long-term care facility or portion of a long-term care facility, the rentals must be paid into the county poor fund, except as provided in subsection (2)(a)~~.

(2) (a) A lease may not be made for a period longer than 5 years except in a case in which bonds are to be or have been issued in accordance with 7-34-2411, in which case the lease may extend until the maturity date of the bonds sold and in which case bond payments may be made from lease receipts.

(b) The board may not enter into a lease without first having advertised in a newspaper published in the county at least once a week for 5 weeks that the health care facility or designated portion of a health care facility, including equipment if applicable, is for lease for health care purposes."

Section 5. Section 7-34-2303, MCA, is amended to read:

"**7-34-2303. Lease of county property for boarding home.** (1) The board of county commissioners may lease county buildings, equipment, furniture, and fixtures for the purpose of operation of a boarding home for aged persons, with full power of lessor except as limited in this part, upon terms and conditions ~~as~~ *that* the board may decide upon.

(2) The rentals received under the lease or leases must be paid into the ~~poor~~ *general* fund of the county, or if bonds have been issued under 7-34-2411 to finance or refinance the costs of a boarding home, the rentals must be applied, as necessary, to the payment of the principal of or interest on the bonds.

(3) (a) Except as provided in subsection (3)(b), the lease may not be made for a period longer than 5 years.

(b) A lease may be made for a period longer than 5 years when bonds are to be or have been issued under 7-34-2411, in which case the lease may extend until the maturity date of the bonds.

(4) The board may not enter into a lease unless it has advertised in a newspaper published in the county at least once a week for 5 weeks that specified buildings and equipment are for lease for the purpose of a boarding home for aged persons."

Section 6. Section 15-1-112, MCA, is amended to read:

"**15-1-112. Business equipment tax rate reduction reimbursement to local government taxing jurisdictions.** (1) On or before January 1, 1996, for the reduction in payment under subsection (4) and by June 1 of 1996, 1997, and 1998 for all other reimbursements in this section, the department of revenue shall determine a reimbursement amount associated with reducing the tax rate in 15-6-138 and provide that information to each county treasurer. The reimbursement amount must be determined for each local government taxing jurisdiction that levied mills on the taxable value of property described in 15-6-138 in the corresponding tax year. However, the reimbursement does not apply to property described in 15-6-138 that has a reduced tax rate under 15-24-1402.

(2) (a) The reimbursement amount to be used as the basis for the payment reduction under subsection (4) is the product of multiplying the tax year 1995 taxable value of property described in 15-6-138 for each local government taxing jurisdiction by the tax year 1995 mill levy for the jurisdiction and then multiplying by 1/9th.

(b) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1996 is the amount determined under subsection (2)(a) unless the tax year 1996 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

(ii) If the tax year 1996 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1996 is the result of subtracting the simulated 1996 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1996 tax for the particular jurisdiction is the actual tax year 1996 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1996 tax is greater than the 1995 tax, the reimbursement amount is zero.

(c) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1997 is the amount determined under subsection (2)(a) multiplied by two unless the tax year 1997 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

(ii) If the tax year 1997 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1997 is the result of subtracting the simulated 1997 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1997 tax for the particular jurisdiction is the actual tax year 1997 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1997 tax is greater than the 1995 tax, the reimbursement amount is zero.

(d) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1998 is the amount determined under subsection (2)(a) multiplied by three unless the tax year 1998 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

(ii) If the tax year 1998 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1998 is the result of subtracting the simulated 1998 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1998 tax for the particular jurisdiction is the actual tax year 1998 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1998 tax is greater than the 1995 tax, the reimbursement amount is zero.

(3) (a) For purposes of this section, "local government taxing jurisdiction" means a local government rather than a state taxing jurisdiction that levied mills against property described in 15-6-138, including county governments, incorporated city and town governments, consolidated county and city governments, tax increment financing districts, local elementary and high school districts, local community college districts, miscellaneous districts, and special districts. The term includes countywide mills levied for equalization of school retirement or transportation.

(b) The term does not include county or state school equalization levies provided for in 20-9-331, 20-9-333, and 20-9-360. ~~It also does not include any state levy for welfare programs provided for in 53-2-813.~~

(c) Each tax increment financing district must receive the benefit of the state mill on the incremental taxable value of the district.

(4) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1996 by an amount equal to 38% of the reimbursement amount determined under subsection (2)(a) for all of the local government taxing jurisdictions in the county.

(5) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1996 by an amount equal to 31% of the reimbursement amount for tax year 1996 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(6) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1997 by an amount equal to 31% of the reimbursement amount for tax year 1996 for all of the local government taxing jurisdictions in the county and by an amount equal to 38% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(7) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1997 by an amount equal to 31% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(8) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1998 by an amount equal to 31% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county and by an amount equal to 38% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(9) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1998 by an amount equal to 31% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(10) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1999 by an amount equal to 69% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(11) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of the years 1999 through 2007 by an amount equal to 31% of the reimbursement amount determined in subsection (13) for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(12) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of the years 2000 through 2008 by an amount equal to 69% of the reimbursement amount determined in subsection (13) for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(13) (a) The reimbursement amount for tax year 1999 and each subsequent tax year for 9 years must be progressively reduced each year by 10% of the reimbursement amount for tax year 1998, according to the following schedule:

Tax Year	Percentage of 1998 Reimbursement Amount
1999	90
2000	80
2001	70
2002	60

2003	50
2004	40
2005	30
2006	20
2007	10
2008 and following years	0

(b) The reimbursement amount for each tax year must be the basis for reducing the amount remitted to the state for the levy imposed under 20-9-360 in December of the same year and June of the following year.

(14) The county treasurer shall use the funds from the reduced payment to the state for the levy imposed under 20-9-360 to reimburse each local government taxing jurisdiction in the amount determined by the department under subsection (2). The reimbursement must be distributed to funds within local government taxing jurisdictions in the same manner as taxes on property described in 15-6-138 are distributed. The reimbursement in June must be distributed based on the prior year's mill levy, and the reimbursement in December must be based on the current year's mill levy.

(15) Each local government taxing jurisdiction receiving reimbursements shall consider the amount of reimbursement that will be received and lower the mill levy otherwise necessary to fund the budget by the amount that would otherwise have to be raised by the mill levy.

(16) A local government taxing jurisdiction that ceases to exist after October 1, 1995, will no longer be considered for revenue loss or reimbursement purposes. A local government taxing jurisdiction that is created after January 1, 1996, will not be considered for revenue loss or reimbursement purposes. If a local government taxing jurisdiction that existed prior to January of 1996 is split between two or more taxing jurisdictions or is annexed to or is consolidated with another taxing jurisdiction, the department shall determine how much of the revenue loss and reimbursement is attributed to the new jurisdictions."

Section 7. Section 15-10-420, MCA, is amended to read:

"**15-10-420. Procedure for calculating levy.** (1) A governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year, even if that levy is greater than the levy established by law. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the value of newly taxable property.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1) plus any additional levies authorized by the voters to all property in the governmental unit, including newly taxable property.

(3) For purposes of this section, newly taxable property includes:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) transfer of property from tax-exempt to taxable status; and

(g) revaluations caused by expansion, addition, replacement, or remodeling of improvements.

(4) Subsection (1) does not apply to school district general fund levies and the school district levy for tuition obligations established in 20-5-324(5).

(5) For purposes of subsection (1), taxes imposed:

(a) include registration fees imposed on light vehicles under 61-3-561 and distributed under 61-3-509(2); and

(b) do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(6) In determining the maximum number of mills in subsection (1), the governmental entity shall take into account any change from the prior year in the amount of statutory reimbursements for changes in the property tax laws. The amount of motor vehicle disposition under 61-3-509(2), as that section read on December 31, 2000, is an increased statutory reimbursement. It may increase the number of mills to account for a decrease in reimbursements and shall decrease the number of mills to fully account for any increase in reimbursements.

(7) The department shall calculate the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, 20-25-439, and ~~53-2-813~~ *53-2-322*. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections.

(8) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Section 8. Section 15-16-117, MCA, is amended to read:

"**15-16-117. Personal property — treasurer's duty to collect certain taxes.** (1) The county treasurer shall demand payment of ~~poor-fund~~ taxes~~,~~ authorized by 53-2-322~~,~~ and road taxes~~,~~ authorized by 7-14-2206 or 7-14-2501 through 7-14-2504~~,~~ from each person liable for the taxes whose name does not appear on the property tax record. On the neglect or refusal of a person to pay the taxes, the treasurer shall collect the taxes by seizure and sale of any property owned by the person.

(2) Subject to 15-10-420, these taxes must be added in the property tax record to other property taxes of persons paying taxes upon real and personal property and must be paid to the county treasurer at the time of payment of other taxes.

(3) The procedure for the sale of property by the county treasurer for the taxes is regulated by 15-16-119 and 15-17-911.

(4) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17."

Section 9. Section 41-3-1122, MCA, is amended to read:

"41-3-1122. Payment for support of youth in need of care, youth in need of intervention, or delinquent youth ~~— reimbursement by county~~. (1) Whenever a youth who is a youth in need of care, a youth in need of intervention, or a delinquent youth is placed by the department of public health and human services or the department of corrections in a youth care facility, the department making the placement shall pay, within the limits of the appropriation for that purpose, a foster care payment to the youth care facility at a rate established by the department of public health and human services for the youth's board, clothing, personal needs, treatment, and room.

(2) ~~On or before the 20th of each month, the department of public health and human services or the department of corrections shall present a claim to the county of residence of the youth for no more than one-half of the nonfederal share of the payments made during the month. The~~ *Each* county shall ~~make reimbursement to the department within 20 days after the claim is presented~~ *pay an administrative fee to the state general fund, in accordance with 53-2-322, to reimburse the department, in part, for the costs of administering and providing foster care payments pursuant to 41-3-1103.*

~~(3) Except as provided in subsection (4), when a county's level of expenditure for any year reaches the level of reimbursement for foster care in fiscal year 1987, the county has no further obligation for foster care expenditures.~~

~~(4) If a county's level of expenditure for foster care in fiscal year 1987 was $10,000 or less, the county's level of expenditure for purposes of determining the county's reimbursement specified in subsection (3) is the level of expenditures for fiscal year 1987 or the average of expenditures for fiscal years 1984 through 1987, whichever is less.~~

~~(5) A county that was state-assumed prior to 1987 but that at a later date reassumes responsibility pursuant to 53-2-811 is responsible for reimbursement of foster care expenditures up to the county's calculated level of expenditures for fiscal year 1987 as if the county had not been state-assumed.~~

~~(6)~~*(3)* The department shall conduct or arrange for the review required under 41-3-1115, or when applicable, 41-3-1010 of a youth placed in a youth care facility if the youth is placed by the department."

Section 10. Section 52-1-103, MCA, is amended to read:

"52-1-103. Powers and duties of department. The department shall:

(1) administer and supervise all forms of child and adult protective services;

(2) act as the lead agency in coordinating and planning services to children with multiagency service needs;

(3) establish a system of councils at the state and local levels to make recommendations and to advise the department on issues, including children's issues;

(4) provide the following functions, as necessary, for youth in need of care:

(a) intake, investigation, case management, and client supervision;

(b) placement in youth care facilities;

(c) contracting for necessary services;

(d) protective services day care; and

(e) adoption;

(5) register or license youth care facilities, child-placing agencies, day-care facilities, community homes for persons with developmental disabilities, community homes for severely disabled persons, and adult foster care facilities;

(6) act as lead agency in implementing and coordinating child-care programs and services under the Montana Child Care Act;

(7) administer the interstate compact for children;

(8) (a) administer child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 41, chapter 3, part 7; and

(b) administer elder abuse prevention services;

(9) develop a statewide youth services and resources plan that takes into consideration local needs;

(10) administer services to the aged;

(11) provide consultant services to:

(a) facilities providing care for adults who are needy, indigent, or dependent or who have disabilities; and

(b) youth care facilities;

(12) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(13) contract, as necessary, ~~with the county board of welfare~~ for administration of child and adult protection services for ~~that~~ *each* county; and

(14) adopt rules necessary to carry out the purposes of 41-3-1126 and this chapter."

Section 11. Section 52-1-110, MCA, is amended to read:

"**52-1-110. ~~County contribution~~ *Payment* for ~~salaries and travel of~~ protective services ~~employees~~.** (1) The ~~salaries and travel expenses, as provided in 2-18-501 through 2-18-503, of protective services employees must be paid by the~~ department ~~of public health and human services~~ *shall pay, within the limits of the appropriation for that purpose, all costs incurred by the department for the purpose of carrying out the duties listed in 52-1-103, including the costs associated with administering and supervising protective services. Each county shall pay an administrative fee to the state general fund, in accordance with 53-2-322, for the purpose of reimbursing the department, in part, for the costs of administering, providing, and supervising protective services to county residents requiring the services.* ~~The board of county commissioners of a county that has not become state-assumed pursuant to 53-2-811 shall reimburse the department of public health and human services from county poor funds in an amount equal to that county's expenditures for salaries, travel expenses, and indirect costs of protective services employees in fiscal year 1987, adjusted for annual inflation.~~

~~(2) A county that was state assumed prior to 1987 but at a later date reassumes responsibility pursuant to 53-2-811 is responsible for reimbursement of salaries, travel expenses, and indirect costs up to the county's calculated level of expenditures for fiscal year 1987 as if the county had not been state-assumed.~~

~~(3) On or before the 20th day of the month following the month for which payments were made for protective services employees' salaries, travel, and indirect costs, the department of public health and human services shall present to the board of county commissioners a claim for the required reimbursement. The board of county commissioners shall make the reimbursement within 20 days after the presentation of the claim.~~

~~(4)~~*(2)* The department is responsible for administrative costs associated with the department's provision of protective services, including costs for rent, telephones, postage, and equipment."

Section 12. Section 53-2-201, MCA, is amended to read:

"53-2-201. Powers and duties of department. (1) The department shall:

(a) administer and supervise public assistance, including the provision of food stamps, food commodities, FAIM financial assistance, as defined in 53-2-902, energy assistance, weatherization, vocational rehabilitation, services for persons with severe disabilities, developmental disability services, medical care payments in behalf of recipients of public assistance, employment and training services for recipients of public assistance, and other programs as necessary to strengthen and preserve families;

(b) give consultant service to private institutions providing care for adults who are needy, indigent, or dependent or who have disabilities;

(c) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(d) ~~provide services in respect to organization~~ *organize* and supervise ~~county departments~~ *the local offices* of public ~~welfare and county boards of public welfare~~ *assistance* in ~~the administration of public assistance functions and for efficiency and economy~~ *an efficient and economical manner*;

(e) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when requested, by performing services in conformity with public assistance purposes;

(f) administer all state and federal funds allocated to the department for public assistance and do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes;

(g) make rules governing payment for services and supplies provided to recipients of public assistance; and

(h) adopt rules regarding assignment of monetary and medical support upon application for FAIM financial assistance, as defined in 53-2-902, and related medical assistance.

(2) The department may:

(a) purchase, exchange, condemn, or receive by gift either real or personal property that is necessary to carry out its public assistance functions. Title to property obtained under this subsection must be taken in the name of the state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its public assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance."

Section 13. Section 53-2-203, MCA, is amended to read:

"**53-2-203. Department to ~~maintain merit system and~~ supervise public assistance personnel.** The department shall~~:~~

~~(1) maintain a merit system pertaining to qualifications for appointment, terms of office, annual merit rating, releases, promotions, and salary schedules for all public assistance personnel; personnel standards must conform as far as possible with general standards established or required by the federal government;~~

~~(2) have examinations held from time to time throughout the state to establish and furnish to county departments lists, in order of merit, of persons eligible for appointment;~~

~~(3) develop policies relating to educational leave of employees and to staff development needs;~~

~~(4)~~ supervise the appointment, dismissal, and entire status of the public assistance personnel attached to ~~county boards in accordance with the merit system~~ *local offices of public assistance*."

Section 14. Section 53-2-207, MCA, is amended to read:

"**53-2-207. Power of department in administering state and federal funds.** In administering or supervising any state or federal funds appropriated or made available to the department for public assistance purposes, the department has the authority to:

(1) require the county to ~~bear the proportion of the total of local~~ *pay an administrative fee to the state general fund, in accordance with 53-2-322, for the purpose of reimbursing the department, in part, for the costs of administering and providing* public assistance ~~as is fixed by law relating to the assistance~~ *to county residents in need*;

(2) make use of all legal processes to enforce the standards prescribed for public assistance purposes by the department; and

(3) require that each part of the public assistance laws be in effect in all counties of the state."

Section 15. Section 53-2-301, MCA, is amended to read:

"**53-2-301. ~~County departments~~ *Local offices of public assistance* to be established.** There ~~shall~~ *must* be established in each county of the state~~, except in a county that has transferred its public assistance and protective services responsibilities to the state under the provisions of part 8 of this chapter, a county department of public welfare, which shall consist of a county board of public welfare and such staff personnel as may be necessary for the efficient performance~~ *one or more offices* of ~~the~~ public assistance ~~activities of the county~~. If conditions warrant ~~and if two or more county boards enter into an agreement~~, two or more counties may ~~combine~~ *be combined* into one administrative unit and *the department may* use the same *local office of public assistance and* staff ~~personnel throughout the administrative unit~~ *to administer public assistance in the combined counties*."

Section 16. Section 53-2-304, MCA, is amended to read:

"**53-2-304. (Temporary) Staff ~~personnel~~ of ~~county department~~ *public assistance programs*.** (1) *(a)* ~~Each county board shall select and appoint from a list of qualified persons furnished by the department staff personnel that are necessary.~~ The staff ~~personnel~~ in each ~~county~~ *local office of public assistance* must consist of at least one qualified staff worker ~~or investigator and clerks and stenographers that may be necessary~~. *The department shall hire and supervise all public assistance staff.* ~~If conditions warrant, the county board, with the approval of the department, may appoint some~~ *A* fully qualified person ~~listed~~ *must be employed* by the department ~~as supervisor of its~~ *pursuant to subsections (1)(b) and (1)(c) to supervise the* staff ~~personnel~~. ~~The staff personnel of each county department are directly responsible to the county board, but the department of public health and human services may supervise the county employees in respect to the efficient and proper performance of their duties. The county board of public welfare may not dismiss any member of the staff personnel without the approval of the department. The department may request the county board to dismiss any member of the staff personnel for inefficiency, incompetence, or similar cause. The final authority for dismissal is the county board. In counties where the department has assumed the administration of welfare duties, the final authority for dismissal is the director of the department.~~

(b) In accordance with subsection (1)(a), the department shall establish a hiring committee for the purpose of choosing a qualified applicant to serve as primary supervisor of the public assistance staff. The hiring committee must consist of two county commissioners from the county where the vacancy exists and two representatives or designees of the department. If the primary supervisor is to supervise staff in more than one county, then the county commissioners from each of the counties shall designate two county commissioners to represent the county as members of the hiring committee.

(c) The department shall screen the applicants who apply for the position of primary supervisor and shall compile a list of the most qualified applicants on the basis of merit. The department shall present the list to the hiring committee. The committee shall rank the applicants in the order it considers most appropriate, and the department shall offer the primary supervisor position to the applicants in the order determined by the hiring committee unless the department is unable to contact a particular applicant after having made a good faith effort. An offer of employment may not be made to a lower-ranking applicant until all available higher-ranking applicants have been offered the primary supervisor position and have either refused the offer or withdrawn their applications.

(2) ~~The department shall pay~~ *Public assistance staff must be paid* from state public assistance funds ~~the~~ *both their* salaries ~~of public assistance staff personnel attached to a county board. The department shall also pay the~~ *and their* travel expenses ~~of those personnel~~, as provided in 2-18-501 through 2-18-503, when ~~those personnel are away from the county seat~~ *traveling* in the performance of their duties. However, the county ~~board~~ shall reimburse the department from county ~~poor~~ funds for ~~those~~ *the full amount of* salaries~~,~~ *and* travel expenses~~, and indirect costs~~ *that are not reimbursed to the department by the federal government* and for the *full amount of the* department's administrative costs *that are* allocated by the department to the county for the administration of ~~county welfare~~ *public assistance* programs~~, as follows:~~

~~(a) The county board shall reimburse the department 50% of all salaries, travel expenses, and allocated direct and indirect administrative costs attributable to cash assistance and emergency assistance programs created pursuant to Title 53, chapter 4. However, a county is not required to reimburse the department more for the salaries, travel expenses, indirect costs, and allocated administrative costs for 1 state fiscal year than the dollar amount that the county paid as its share of cash assistance and emergency assistance programs in 1996.~~

~~(b) The county board shall reimburse the department the full amount of salaries, travel expenses, and allocated direct and indirect administrative costs attributable to any public assistance program other than the cash assistance and emergency assistance programs created pursuant to Title 53, chapter 4,~~ *and* not reimbursed to the department by the federal government. *Under circumstances prescribed by the department, the reimbursement by the county may be less than the county share as prescribed in this subsection. All other administrative costs of the local office of public assistance must be paid from county funds.*

~~(3) All administrative costs of the county department of public welfare other than the costs described in subsections (2)(a) and (2)(b) must be paid from county poor funds.~~

~~(4)~~*(3)* On or before the 20th day of the month following the month for which the payments to the public assistance staff ~~personnel of the county~~ were made, the department shall present to the county ~~department of public welfare~~ a claim for the required reimbursements. The county ~~board~~ shall make reimbursements within 20 days after the presentation of the claim, and the department ~~of public health and human services~~ shall credit all reimbursements to its account for administrative costs.

~~(5) If a county has transferred its public assistance and protective services responsibilities to the state under part 8 of this chapter, the department shall select, appoint, and supervise all necessary public assistance and protective services personnel, including if necessary a supervisor of staff personnel. All personnel are directly responsible to the department.~~ (Terminates June 30, 2001—sec. 6, Ch. 341, L. 1999.)

53-2-304. (Effective July 1, 2001) Staff ~~personnel~~ of ~~county department~~ *public assistance program*. (1) *(a)* ~~Each county board shall select and appoint from a list of qualified persons furnished by the department of public health and human services staff personnel that are necessary.~~ The staff ~~personnel~~ in each ~~county~~ *local office of public assistance* must consist of at least one qualified staff worker ~~or investigator and clerks and stenographers that may be necessary~~. *The department of public health and human services shall hire and supervise all public assistance staff.* ~~If conditions warrant, the county board, with the approval of the department of public health and human services, may appoint some~~ *A* fully qualified person ~~listed~~ *must be employed* by the department ~~as supervisor of its~~ *pursuant to subsections (1)(b) and (1)(c) to supervise the* staff ~~personnel~~. ~~The staff personnel of each county department are directly responsible to the county board, but the department of public health and human services may supervise the county employees in respect to the efficient and proper performance of their duties. The county board of public welfare may not dismiss any member of the staff personnel without the approval of the department of public health and human services. The department may request the county board to dismiss any member of the staff personnel for inefficiency, incompetence, or~~

~~similar cause. The final authority for dismissal is the county board. In counties where the department has assumed the administration of welfare duties, the final authority for dismissal is the director of the department.~~

(b) In accordance with subsection (1)(a), the department shall establish a hiring committee for the purpose of choosing a qualified applicant to serve as primary supervisor of the public assistance staff. The hiring committee must consist of two county commissioners from the county where the vacancy exists and two representatives or designees of the department. If the primary supervisor is to supervise staff in more than one county, then the county commissioners from each of the counties shall designate two county commissioners to represent the county as members of the hiring committee.

(c) The department shall screen the applicants who apply for the position of primary supervisor and shall compile a list of the most qualified applicants on the basis of merit. The department shall present the list to the hiring committee. The committee shall rank the applicants in the order it considers most appropriate, and the department shall offer the primary supervisor position to the applicants in the order determined by the hiring committee unless the department is unable to contact a particular applicant after having made a good faith effort. An offer of employment may not be made to a lower-ranking applicant until all available higher-ranking applicants have been offered the primary supervisor position and have either refused the offer or withdrawn their applications.

(2) Public assistance staff ~~personnel attached to the county board~~ must be paid from state public assistance funds both their salaries and their travel expenses, as provided for in 2-18-501 through 2-18-503, when ~~away from the county seat~~ *traveling* in the performance of their duties~~, but~~. *However,* the county ~~board of public welfare~~ shall reimburse the department ~~of public health and human services~~ from county ~~poor~~ funds *for* the full amount of the salaries and travel expenses *that are* not reimbursed to the department by the federal government and *for* the full amount of the department's administrative costs that are allocated by the department to the county for the administration of ~~county welfare~~ *public assistance* programs and *that are* not reimbursed to the department by the federal government. Under circumstances prescribed by the department ~~of public health and human services~~, the reimbursement by the county ~~board of public welfare~~ may be less than the county share as prescribed in this subsection. All other administrative costs of the ~~county department~~ *local office of public assistance* must be paid from county ~~poor~~ funds.

(3) On or before the 20th day of the month following the month for which the payments to the public assistance staff ~~personnel of the county~~ were made, the department ~~of public health and human services~~ shall present to the county ~~department of public welfare~~ a claim for the required reimbursements. The county ~~board~~ shall make reimbursements within 20 days after the presentation of the claim, and the department ~~of public health and human services~~ shall credit all reimbursements to its account for administrative costs.

~~(4) If a county has transferred its public assistance and protective services responsibilities to the state under part 8 of this chapter, the department shall select, appoint, and supervise all necessary public assistance and protective services personnel, including if necessary a supervisor of staff personnel. All personnel are directly responsible to the department.~~"

Section 17. Section 53-2-305, MCA, is amended to read:

"53-2-305. ~~County departments~~ *Local offices of public assistance* under supervision of department. *(1)* ~~County departments~~ *Local offices of public assistance* are under the supervision of the department ~~of public health and human services~~ and are subject to audit by the department. *However, the department shall enter into agreements with the counties regarding minimum standards of operation, including but not limited to office hours, staffing, significant program changes, administration of county public assistance programs, and office facilities. If the board of county commissioners in a county disagrees with a specific method used, approach taken, or decision made that has a broad impact on the provision of public assistance in the county, the board of county commissioners may present their objections to the department in accordance with subsection (2). Prior to and during the development of an agreement, the department shall ensure the participation of the tribal government in the development of a plan for any county that serves an Indian reservation.*

(2) All objections made by the board of county commissioners pursuant to subsection (1) must be presented to the department in writing. Within 45 days of receiving a written objection, the department shall convene a resolution committee. The committee must be composed of two county commissioners to be appointed for 2-year terms by the Montana association of counties, two representatives or designees of the department, and a fifth member selected by the other members. If the other members cannot agree on the fifth member, the attorney general shall appoint the fifth member. The resolution committee shall review the objections made by the county and shall attempt, in good faith, to develop an alternative method, approach, or resolution that is satisfactory to both the department and the county. The resolution committee shall present the results of its deliberations to the director of the department to carry out the alternative method, approach, or resolution."

Section 18. Section 53-2-322, MCA, is amended to read:

"53-2-322. County to levy taxes, budget, and make expenditures for public assistance activities. (1) Subject to 15-10-420, the board of county commissioners in each county shall levy ~~13.5 mills for the county poor fund~~ *taxes* as provided by law ~~or so much of that~~ *in order to raise the* amount ~~as may be~~ *of funds* necessary *to pay the administrative fee determined in accordance with subsection (2) and all other county expenditures for public assistance activities.* ~~The board may levy up to an additional 12 mills if approved by the voters in the county. Subject to 15-10-420, a county shall levy sufficient mills to reimburse the state for any administrative or operational costs in excess of the administrative and operational costs for the previous fiscal year. The department of public health and human services shall notify the counties of the number of mills required to be levied. Once an additional levy has been approved, the amount of the approved levy may continue to be levied without voter approval.~~

(2) The board shall budget and expend ~~so much of the~~ funds in ~~the county poor fund for~~ *order to*:

(a) ~~public assistance as necessary to reimburse~~ *pay the annual administrative fee to the state general fund for the purpose of reimbursing* the department, *in part,* for the ~~county's proportionate share of the administrative~~ costs ~~and~~ of ~~all~~ *administering and providing* public assistance ~~costs;~~

~~(b) salaries, travel expenses, and indirect costs, as provided in 52-1-110, of protective services employees of the department; and~~

~~(c) the county's proportionate share of any other public assistance activity that may be carried on jointly by the state and~~ *in* the county; *and*

(b) pay the costs of the county's optional indigent assistance program, if any, pursuant to 53-3-116.

(3) (a) Subject to subsection (3)(b), the amount of the administrative fee must equal the average cost that the county was billed for public assistance, protective services, and foster care for fiscal years 1995 through 1999. The county shall pay the annual administrative fee to the state general fund in two equal installments. The county shall pay the first installment in full by July 1 of the fiscal year and shall pay the second installment, constituting the balance of the amount due, by January 1 of the fiscal year.

(b) The administrative fee calculated pursuant to subsection (3)(a) may not exceed the amount that a county was billed for public assistance, protective services, and foster care in fiscal year 2000, excluding any amount previously owed to the state from the county for the enumerated expenses.

~~(3)~~*(4)* The amounts set up in the *county's* budget for the ~~reimbursements~~ *payments* to the department must be sufficient to ~~make all of these reimbursements~~ *pay the administrative fee* in full. ~~The budget must make separate provision for each public assistance activity and for salaries, travel expenses, and indirect costs for protective services activities of the department. Proper accounts must be established for the funds for all the activities.~~

~~(4) The department shall submit to the counties, no later than May 10, the most current county participation percentages that are necessary to establish preliminary county budgets. As soon as the county proposed budget provided for in 7-6-2315 has been agreed upon, a copy must be mailed to the department, and at any time before the final adoption of the budget, the department shall make recommendations with regard to changes in any part of the budget relating to the county poor fund as considered necessary in order to enable the county to discharge its obligations under the public assistance laws.~~

~~(5) The department shall promptly examine the county proposed budget in order to ascertain if the amounts provided for reimbursements to the department are likely to be sufficient and shall notify the county clerk of its findings. The board shall make changes in the amounts provided for reimbursements, if any are required, in order that the county will be able to make the reimbursements in full.~~

~~(6) The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing the department without having first obtained a statement in writing from the department to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.~~

~~(7) The county poor fund, irrespective of the source of any part of the fund, may not be used directly or indirectly for the erection or improvement of any county building as long as the fund is needed for paying the county's proportionate share of public assistance and protective services, as described in 53-1-110, or its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor, except a county hospital or county nursing home, may be made out of money in the county poor fund, whether the money was produced by the mill levy provided for in subsection (1) or from any additional levy authorized by law. The expenditure~~

may be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for the building by the department and when the expenditure has been approved by the department.

~~(8)~~*(5)* Money in the county ~~poor~~ fund may be used as matching funds for the receipt of federal money."

Section 19. Section 53-2-602, MCA, is amended to read:

"**53-2-602. Grants based on need.** ~~Subject to review by the county board, the staff of the county~~ *The* department shall determine grants and changes in grants, based on the needs of each applicant, after ~~investigation~~ *an eligibility determination is made* in accordance with the rules and standards of assistance prescribed by the department ~~of public health and human services~~."

Section 20. Section 53-2-603, MCA, is amended to read:

"**53-2-603. Award of public assistance ~~determined~~ after ~~investigation~~ *eligibility determination*.** ~~(1)~~ Upon completion of an ~~investigation~~ *application*, the ~~county board~~ *department, through the appropriate local office of public assistance,* shall determine whether the applicant is eligible for public assistance under the provisions of this title, the type and amount of public assistance the applicant must receive, and the date upon which the public assistance must begin. This subsection does not apply to any form of public assistance managed by a managed care contractor, as provided in 53-6-116, when a determination of eligibility is made by the managed care contractor.

~~(2) The department, if necessary to conform with the United States Social Security Act, may issue rules to the county welfare departments requiring the use of the declaration method, in a form that the department may prescribe, for the purpose of determining eligibility, regardless of any other investigative provisions under this title, and for all types of assistance. These rules may include any additional investigations the department may require.~~"

Section 21. Section 53-2-606, MCA, is amended to read:

"**53-2-606. Right of appeal.** (1) If an application for assistance for food stamps, FAIM financial assistance, as defined in 53-2-902, or medicaid is not acted upon promptly or if a decision is made ~~with~~ *by* which the applicant or recipient is ~~not satisfied~~ *aggrieved*, the applicant or recipient may appeal to the board of public assistance for a fair hearing by addressing a request for a hearing to the department of public health and human services. The board of public assistance shall, upon receipt of a request for a hearing, give the applicant or recipient prompt notice and opportunity for a fair hearing.

(2) The department may upon its own motion review any decision of a ~~county welfare board~~ *local office of public assistance* and may consider any application upon which a decision has not been made ~~by the county board~~ within a reasonable time from the filing of the decision. The department may have an additional ~~investigation~~ *determination* made and shall make a decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this title.

(3) If the department reviews a ~~county~~ decision on its own motion, applicants or recipients affected by the decisions of the department shall upon request be given reasonable notice and an opportunity for a fair hearing by the board of public assistance.

~~(4) All decisions of the department or the board of public assistance are final and are binding and must be complied with by the county department.~~"

Section 22. Section 53-2-609, MCA, is amended to read:

"**53-2-609. Revocation of assistance.** If the ~~county department or~~ department ~~of public health and human services~~ *or the local office of public assistance* has reason to believe, by reason of a complaint or otherwise, that public assistance under this title has been improperly granted, ~~it~~ *the department or local office of public assistance* shall ~~have~~ *make* an investigation ~~made~~. If it appears as a result of an investigation that the assistance was improperly granted, ~~the department of public health and human services shall notify the county department that~~ further payments may not be authorized for the recipient. The right of appeal is granted *to* recipients whose assistance has been revoked."

Section 23. Section 53-2-612, MCA, is amended to read:

"**53-2-612. Lien of department or county upon third-party recoveries.** (1) Upon notice by the department, a county, or the recipient to a third party or the third party's insurer as provided in subsection (5)(b), the department or county has a lien upon all money paid by a third party or the third party's insurer in satisfaction of a judgment or settlement arising from a recipient's claim for damages or compensation for personal injury, disease, illness, or disability to the extent that the department or county has paid medical assistance on behalf of the recipient for the same personal injury, disease, illness, or disability.

(2) The department or county may, in the name of the recipient on whose behalf medical assistance has been paid by the department or county, commence and prosecute to final conclusion any action that may be necessary to recover from a third party or the third party's insurer compensation or damages for medical assistance paid by the department or county on behalf of the recipient. This section does not affect the right of the recipient to initiate and prosecute to final conclusion an action for damages or compensation in the recipient's own name in accordance with the provisions of this section.

(3) (a) The lien:

(i) applies to all money paid by a third party or a third party's insurer regardless of whether the recovery is allocated by the parties or a court to any particular type or element of damages; and

(ii) is subordinate to the lien of an attorney under 37-61-420.

(b) Unless specifically provided by law, the recipient's right to recover damages or compensation from a third party or a third party's insurer may not be reduced or denied on the ground that the recipient's costs of medical treatment and medical-related services have been paid by the department or county under any public assistance program.

(c) From the amount collected by the department, county, or recipient from legal proceedings or as a result of settlement, reasonable attorney fees and costs must be first deducted and paid. Unless the department or county and the recipient agree to a different settlement, the amount previously paid as medical assistance by the department or county, less a pro rata share of attorney fees and costs, must be deducted next and paid to the department or county. The remainder, if any, must be paid to the recipient.

(d) In all cases of payment to the department or county out of an amount collected from a third party or insurer on a recipient's claim, the amount of the lien must be reduced by a pro rata share of attorney fees and costs as provided in subsection (3)(c), but the department or county may not be required to participate in payment of attorney fees and costs unless the recipient's claim results in recovery out of which the department or county receives full or partial payment of its lien.

(e) Except as provided in subsections (3)(e)(i) and (3)(e)(ii), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

(i) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the medicaid program.

(ii) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

(4) (a) A recipient of medical assistance or the recipient's legal representative shall notify the department or county by certified letter within 30 days if the recipient or the recipient's legal representative asserts a claim against a third party or a third party's insurer for damages or compensation for a personal injury, disease, illness, or disability for which the department or county paid medical assistance in whole or in part or for which the recipient has applied for medical assistance. The notice must be mailed to the director of the department or the ~~director~~ *county commissioners* of the county ~~department~~ that paid medical assistance. At the same time, a copy must be sent by certified mail to the third party or the third party's insurer.

(b) The notice must contain the following information:

(i) the name and address of the recipient and the recipient's legal representative, if any;

(ii) the name and address of the third party alleged to be liable to the recipient;

(iii) the name and address of any known insurer of the third party; and

(iv) the judicial district and docket number of any action filed.

(c) A recipient or the recipient's legal representative who has received actual notice that the department or county has paid medical assistance is liable to the department or county for the amount it is entitled to receive under this section if:

(i) the recipient or the recipient's legal representative fails to timely notify the department or county or fails to mail a copy of the notice to the third party or the third party's insurer; and

(ii) a third party or the third party's insurer that did not receive notice from the department or county as provided for in subsection (5)(b) pays the recipient or the recipient's legal representative without satisfying any lien of the department or county.

(5) (a) If a third party or the third party's insurer that has received notice of the department's or county's lien as provided for in subsection (5)(b) makes payment in whole or in part of the recipient's claim without first satisfying the lien of the department or county, the third party or the third party's insurer is liable to the department or county for the amount the department or county is entitled to receive under this section.

(b) For the purposes of subsection (5)(a), a third party or the third party's insurer has been given notice if:

(i) the department or county mails, by certified mail, to the third party or the third party's insurer:

(A) a statement of the medical assistance paid or that may be paid by the department or county on behalf of the recipient; and

(B) a claim for reimbursement;

(ii) the recipient or the recipient's legal representative mails, by certified mail, to the third party or the third party's insurer:

(A) a copy of the notice required by subsection (4)(a); or

(B) a statement stating that the recipient has applied for or has received medical assistance from the department or county in connection with the same claim; or

(iii) the recipient or the recipient's legal representative has commenced an action against the third party or the third party's insurer for damages or compensation for personal injury, disease, illness, or disability for which the department or county has paid or may pay medical assistance, in whole or in part, and the department or county files in the court in which the action is pending a notice of lien stating that a lien is claimed for medical assistance on any money paid in satisfaction of any judgment in or settlement of the action and that:

(A) medical assistance in a stated amount has been paid by the department or county on behalf of the recipient; or

(B) medical assistance may be paid on behalf of the recipient.

(6) As used in this section, the following definitions apply:

(a) "County" means a county ~~department of welfare in a county~~ that has ~~not transferred its public assistance responsibilities to the state under the provisions of Title 53, chapter 2, part 8~~ *provided medical assistance to a recipient through an indigent assistance program operated at the option of the county.*

(b) "Legal representative" means an attorney having or exercising authority on behalf of a recipient with respect to a claim or action to recover damages or compensation from a third party or a third party's insurer.

(c) "Recipient" means a person on whose behalf the department or a county has paid or may pay medical assistance for the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability. If the context allows, the term includes a recipient's legal representative.

(d) "Third party" means an individual, institution, corporation, or public or private agency that is or may be liable to pay all or part of the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability of a recipient of medical assistance from the department or a county and includes but is not limited to insurers, health service organizations, and parties liable or who may be liable in tort."

Section 24. Section 53-2-613, MCA, is amended to read:

"**53-2-613. Application for assistance — assignment of support rights.** (1) Applications for public assistance, including but not limited to FAIM financial assistance, as defined in 53-2-902, and medical assistance, must be made to the ~~county department~~ *local office* of public ~~welfare~~ *assistance* in the county in which the person is residing. The application must be submitted, in the manner and form prescribed by the department, and must contain information required by the department.

(2) A person who signs an application for FAIM financial assistance, as defined in 53-2-902, or related medical assistance assigns to the state~~, to the department,~~ and to the ~~county welfare~~ department all rights that the applicant may have to monetary and medical support from any other person in the applicant's own behalf or in behalf of any other family member for whom application is made. A person who signs an application for public assistance other than FAIM financial assistance, as defined in 53-2-902, or related medical assistance may, in accordance with rules adopted by the department, be required to assign to the state, to the department, and to the county ~~welfare department~~ all rights that the applicant may have to monetary and medical support from any other person in the applicant's own behalf or on behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for both current and accrued support, including unpaid support that accrued before the applicant received public assistance, and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance; and

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

(4) If a person who is the legal custodian and child support obligee under a support order relinquishes physical custody of a child to a caretaker relative without obtaining a modification of legal custody and the caretaker relative is determined eligible for public assistance on behalf of the child, the child support obligation is transferred by operation of law to the caretaker relative and may be assigned as provided in subsection (2). The transfer and assignment terminate when the caretaker relative no longer has physical custody of the child, except for any unpaid support still owing under the assignment at that time.

(5) Whenever a child support or spousal support obligation is assigned to the department pursuant to this section, the following provisions apply:

(a) If the support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse the cumulative total of public assistance money expended.

(b) A recipient or former recipient of public assistance may not commence or maintain an action to recover or enforce a delinquent support obligation or make any agreements with any other person or agency concerning the support obligation, except as provided in 40-5-202.

(c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department's child support enforcement division has filed a written notice that:

(i) the assignment of current support amounts has been terminated; and

(ii) all assigned support delinquencies, if any, are satisfied or released.

(d) A recipient or former recipient of public assistance may not take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department's child support enforcement division is given written notice under the provisions of 40-5-202. Any modifications or agreements entered into without the participation of the department are void with respect to the state, the department, and the county ~~welfare department~~.

(e) A support obligation assigned under this section may not be terminated, invalidated, waived, set aside, or considered uncollectible by the conduct, misconduct, or failure of a recipient or former recipient of public assistance to take any action or to cease any action required under a decree, judgment, support order, custody order, visitation order, restraining order, or other similar order."

Section 25. Section 53-2-801, MCA, is amended to read:

"**53-2-801. Purpose.** The purpose of this part is to provide for the department ~~of public health and human services~~ to assume all responsibilities for public assistance programs and for protective services for children and adults that, as of July 1, 1983, are provided by the counties pursuant to Titles 41 and 53. ~~The assumption may become effective only at the option and with the express consent of each individual county requesting state assumption. State assumption allows counties to pay the state the proceeds from the 9-mill levy provided for in 53-2-813 rather than an amount based on the actual cost of providing public assistance and protective services in the county.~~ Counties ~~that opt for state assumption~~ may provide other optional services for indigents with money available from funds derived from ~~the difference between the 9-mill~~ *a county mill* levy ~~and the maximum amount of 13.5 mills permitted by 53-2-322~~ *or other funds as authorized by law.*"

Section 26. Section 53-2-802, MCA, is amended to read:

"**53-2-802. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) ~~"County department"~~ *"Local office of public assistance"* means the *local office of the department located in a* county ~~department of public welfare provided for in part 3 of this chapter~~.

~~(2) "Mill levy equivalent" means the prior year's expenditure divided by the value of 1 mill.~~

~~(3) "Needy person" is one who is eligible for public assistance under the laws of this state.~~

~~(4)~~*(2)* "Protective services" means services to children and adults to be provided by the department ~~of public health and human services~~ as permitted by Titles 41 and 53.

~~(5)~~*(3)* "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by ~~a~~ *the* state or ~~county department~~ *a local office of public assistance*, regardless of the original source of assistance.

~~(6)~~*(4)* "State assumption" means the transfer to the department ~~of public health and human services~~ by the board of county commissioners of all powers and duties, including staff ~~personnel~~ as provided in 53-2-301 through 53-2-306 and for public assistance and protective services, respectively, provided by the county ~~department~~ pursuant to Titles 41 and 53, except as otherwise specifically provided in this part. A county may continue to provide optional indigent assistance as provided in 53-3-116 and health care services as provided in 7-6-2512."

Section 27. Section 53-2-811, MCA, is amended to read:

"**53-2-811. Transfer of county public assistance and protective services to the state — reassumption of responsibility.** (1) All responsibility of a county for public assistance and protective services for children and adults pursuant to Titles 41 and 53 may be transferred to the department ~~of public health and human services~~, except that the county attorney shall continue to provide legal assistance and representation for the purposes of adult and child protective services without charge and all debts and obligations incurred prior to the effective date of state assumption continue as the responsibility of the county.

(2) The board of county commissioners, after public hearing, may by resolution or ordinance transfer to the department ~~of public health and human services~~ all powers and duties for public assistance and protective services for children and adults, including the selection, supervision, and termination of staff ~~personnel~~ associated with the performance of these activities. Upon the effective date of the transfer, the department ~~of public health and human services~~ shall assume all powers and duties related to public assistance and protective services and accorded by law to the county ~~welfare department~~. If the notice required in subsection (3) is given, the transfer is effective at the start of the next state fiscal year.

(3) Counties opting for state assumption shall notify the department ~~of public health and human services~~ by October 1 if the county wishes to change its status on the following July 1. A county that has opted for state assumption prior to July 1, 1995, may reassume responsibility for public assistance and protective services on July 1, 1996, if the county notifies the department prior to September 30, 1995.

(4) Counties opting for state assumption shall permit the department ~~of public health and human services~~ to use the same facilities currently occupied by the county ~~department~~ or substantially equal facilities, with fair rental value for the facilities to be paid by the department. Counties opting for state assumption shall transfer to the department all materials, equipment, and supplies *that were* used in the operation of the ~~county department~~ *local office of public assistance* and ~~which~~ *that* were paid for in whole or in part with federal or state funds."

Section 28. Section 53-3-111, MCA, is amended to read:

"**53-3-111. Confidentiality.** (1) Except as provided in 53-2-211, personal information provided to or obtained by the ~~county welfare department or the~~ department for the purposes of this chapter is confidential.

(2) Except as provided in 53-2-211 *or as authorized by law*, disclosure of confidential information concerning applicants for ~~general relief~~ *indigent assistance* is restricted to purposes directly connected with the administration of programs administered by ~~the department~~ *a local office of public assistance* except as otherwise provided in this section.

(3) Confidential information may be released upon written consent of the applicant.

(4) Confidential information concerning an applicant may be released without prior consent if an emergency situation necessitates the release. The applicant must be informed of the release as soon as practicable.

(5) Confidential information may be released without notice or consent for the purpose of fraud investigation, collection of child support, the purposes of 53-2-211, and third-party medical recovery.

(6) Confidential information may be released if directed by a court order."

Section 29. Section 53-3-115, MCA, is amended to read:

"**53-3-115. Legislative findings.** (1) The legislature finds that in order to use the limited resources of the state for the purposes of providing public assistance to persons whom it has determined are in need, certain programs must be eliminated and the provision of public assistance programs must be reorganized for more efficient delivery of services.

(2) The legislature finds that county governments are in the best position to efficiently and effectively deliver services for those in need who are not otherwise eligible for similar services provided by the department of public health and human services.

(3) (a) The legislature finds that the needs of persons who are aged, infirm, or misfortunate are adequately and appropriately provided for through the following programs:

(i) medicaid;

(ii) aid for dependent children;

(iii) food stamps;

(iv) commodities; and

(v) low-income energy assistance.

(b) The legislature further finds that the counties may in their discretion provide other programs of public assistance that they determine are appropriate and that may be funded with money derived from ~~the~~ *a* county ~~poor fund~~ mill levy.

(4) The legislature finds that the effects of eliminating the state program of general relief are not known and that the administration and financing of public assistance programs by each county may not provide uniform assistance throughout the state."

Section 30. Section 53-3-116, MCA, is amended to read:

"**53-3-116. Indigent assistance — optional county program.** (1) A county may provide a program of indigent assistance that it determines necessary. The program may include assistance for food, clothing, shelter, transportation, and medical assistance for individuals not eligible for state or federal programs providing similar assistance. A county may provide for the burial, entombment, or cremation of indigents. The indigent assistance program of the county includes:

(a) job search, job training, work-for-assistance, and employment programs; and

(b) health care, preventive care, and wellness programs as determined by the county commissioners.

(2) A county may establish the criteria for determining eligibility for assistance, including but not limited to residency requirements, limits on income and resources, and the amount, scope, and duration of assistance.

(3) A county may deny assistance for a reasonable period if a person has voluntarily left employment without good cause or is discharged due to misconduct.

(4) The program may be funded with money derived from ~~the~~ *a* county ~~poor fund~~ mill levy ~~established in 53-2-322~~ *as authorized by law.*

(5) A person is indigent for purposes of this subsection if the value of all income and resources available to pay for that person's burial, entombment, or cremation at the time of death is less than the negotiated amount due the funeral home or mortician for an indigent burial. Available income and resources may be determined by the county.

(6) A county may seek reimbursement under 40-6-303, if applicable, for costs paid under this section.

(7) A county may not deduct amounts that may be recovered from an adult child of a deceased indigent or recovered from resources of a deceased indigent from a contract amount due a funeral home or mortician for burial services provided under 7-4-2915 or this section. A funeral home or a mortician that recovers an amount in excess of a contract amount paid under this subsection shall reimburse the county for the amount recovered up to the amount of the contract."

Section 31. Section 53-4-213, MCA, is amended to read:

"**53-4-213. Department rules binding ~~on county welfare departments~~.** All rules of the department made under this part ~~shall be~~ *are* binding upon the ~~county departments~~ *local offices* of public ~~welfare~~ *assistance.*"

Section 32. Section 53-4-214, MCA, is amended to read:

"**53-4-214. Distribution of copies of law and forms by department.** The department shall have printed and shall distribute copies of this part to all ~~county welfare departments~~ *local offices of public assistance* and shall prescribe the form of and print and supply to the ~~county welfare department~~ *local office of public assistance* blanks of applications, reports, and other forms that may be necessary in relation to the FAIM financial assistance and other programs funded under the temporary assistance for needy families block grant."

Section 33. Section 53-4-233, MCA, is amended to read:

"53-4-233. ~~Investigation of applications~~ *Eligibility determination.* Whenever a ~~county department~~ *local office of public assistance* receives an application for assistance under this part, an ~~investigation~~ *eligibility determination* must be promptly made by the ~~county department~~ *local office* of public ~~welfare~~ *assistance.* Each applicant must be informed of the applicant's right to a fair hearing and of the confidential nature of information secured. Upon completion of an ~~investigation~~ *eligibility determination,* aid must be furnished promptly to all eligible persons. Each applicant must receive written notice of the decision concerning the applicant's request for assistance."

Section 34. Section 53-4-244, MCA, is amended to read:

"53-4-244. Payments to person interested in child's welfare in lieu of special guardianship. In lieu of guardianship proceedings, payments may be made in behalf of the child or children to another person found by the ~~county department~~ *local office of public assistance* to be interested in or concerned with the welfare of the needy child or children in accordance with the rules established by the department ~~of public health and human services~~."

Section 35. Section 53-6-112, MCA, is amended to read:

"53-6-112. Department to print and distribute copies of part and certain forms. The department ~~of public health and human services~~ shall have printed and *shall* distribute copies of this part to all ~~county welfare departments~~ *local offices of public assistance* and shall prescribe the form of and print and supply to the ~~county welfare departments~~ *local offices of public assistance* blanks of applications, reports, and other forms ~~as~~ *that* may be necessary in relation to medical assistance."

Section 36. Section 53-6-114, MCA, is amended to read:

"53-6-114. Rules of department binding ~~on county welfare departments~~. All rules of the department ~~of public health and human services~~ made under this part are binding upon the ~~county departments~~ *local offices* of public ~~welfare~~ *assistance.*"

Section 37. Section 53-6-121, MCA, is amended to read:

"53-6-121. ~~County department charged with local~~ *Local* administration of medical assistance. The ~~county department~~ *local offices* of public ~~welfare shall be~~ *assistance are* charged with the local administration and supervision of medical assistance, *including medicaid,* subject to the powers, duties, ~~and functions prescribed for the county department in chapter 2 of this title~~ *rules, and overall supervision of the department.*"

Section 38. Section 53-6-132, MCA, is amended to read:

"53-6-132. Application for assistance — exception. (1) Except as provided in subsection (2), application for assistance under this part must be made to the *local* office of ~~the county department~~ *public assistance* in the county in which the person is residing. The application must be presented in the manner and on the form prescribed by the department ~~of public health and human services~~. All individuals wishing to apply must have the opportunity to do so.

(2) Notwithstanding the provisions of subsection (1), the department may designate an entity other than the ~~county department~~ *local office of public assistance* to determine eligibility for medicaid managed care services."

Section 39. Section 53-6-133, MCA, is amended to read:

"53-6-133. ~~Investigation and~~ *Eligibility* determination ~~of eligibility~~. (1) The ~~county department~~ *local office of public assistance* shall promptly ~~investigate and~~ determine the eligibility of each applicant under this part in accordance with the rules of the department ~~of public health and human services~~. Each applicant must be informed of the right to a fair hearing and of the confidential nature of the information given. The ~~county~~ department, *through the local office of public assistance,* shall, *after the hearing,* determine whether or not the applicant is eligible for assistance under this part, and aid must be furnished promptly to eligible persons. Each applicant ~~shall~~ *must* receive written notice of the decision concerning the applicant's application, and the right of appeal is secured to the applicant under the procedures of 53-2-606.

(2) The ~~county departments~~ *local office* of public ~~welfare~~ *assistance* and the department ~~of public health and human services~~ may accept the federal social security administration's determination of eligibility for supplemental security income, Title XVI of the Social Security Act, as qualifying the eligible individuals to receive medical assistance under this part."

Section 40. Section 53-6-155, MCA, is amended to read:

"53-6-155. Definitions. As used in this part, unless expressly provided otherwise, the following definitions apply:

(1) "Abuse" means conduct by an applicant, recipient, provider, or other person involving disregard of and an unreasonable failure to conform with the statutes, regulations, and rules governing the medical assistance program when the disregard or failure results or may result in an incorrect determination that a person is eligible for medical assistance or payment by a medicaid agency of medical assistance payments to which the provider is not entitled.

(2) "Applicant" means a person:

(a) who has submitted an application for determination of medicaid eligibility to a medicaid agency on the person's own behalf or on behalf of another person; or

(b) on whose behalf an application has been submitted.

(3) "Benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(4) "Claim" means a communication, whether in oral, written, electronic, magnetic, or other form, that is used to claim specific services or items as payable or reimbursable under the medicaid program or that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program. The term includes any documents submitted as part of or in support of the claim.

(5) "Department" means the department of public health and human services provided for in 2-15-2201.

(6) "Document" means any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, or other form.

(7) "Fraud" means any conduct or activity prohibited by statute, regulation, or rule involving purposeful or knowing conduct or omission to perform a duty that results in or may result in medicaid payments or benefits to which the applicant, recipient, or provider is not entitled. Fraud includes but is not limited to any conduct or omission under the medicaid program that would constitute a criminal offense under Title 45, chapter 6 or 7.

(8) "Medicaid" means the Montana medical assistance program established under Title 53, chapter 6.

(9) "Medicaid agency" means any agency or entity of state, county, or local government that administers any part of the medicaid program, whether under direct statutory authority or under contract with an authorized agency of the state or federal government. The term includes but is not limited to the department, the department of corrections, ~~county~~ *local* offices of ~~human services and~~ public ~~welfare~~ *assistance*, and other local and state agencies and their agents, contractors, and employees, when acting with respect to medicaid eligibility, claims processing or payment, utilization review, case management, provider certification, investigation, or other administration of the medicaid program.

(10) "Misappropriation of patient property" means exploitation, deliberate misplacement, or wrongful use or taking of a patient's property, whether temporary or permanent, without authorization by the patient or the patient's designated representative. Misappropriation of patient property includes but is not limited to any conduct with respect to a patient's property that would constitute a criminal offense under Title 45, chapter 6, part 3.

(11) "Patient abuse" means the willful infliction of physical or mental injury of a patient or unreasonable confinement, intimidation, or punishment that results in pain, physical or mental harm, or mental anguish of a patient. Patient abuse includes but is not limited to any conduct with respect to a patient that would constitute a criminal offense under Title 45, chapter 5.

(12) "Patient neglect" means a failure, through inattentiveness, carelessness, or other omission, to provide to a patient goods and services necessary to avoid physical harm, mental anguish, or mental illness when an omission is not caused by factors beyond the person's control or by good faith errors in judgment. Patient neglect includes but is not limited to any conduct with respect to a patient that would constitute a criminal offense under 45-5-208.

(13) "Provider" means an individual, company, partnership, corporation, institution, facility, or other entity or business association that has enrolled or applied to enroll as a provider of services or items under the medical assistance program established under this part.

(14) "Recipient" means a person:

(a) who has been determined by a medicaid agency to be eligible for medicaid benefits, whether or not the person actually has received any benefits; or

(b) who actually receives medicaid benefits, whether or not determined eligible.

(15) (a) "Records" means medical, professional, business, or financial information and documents, whether in written, electronic, magnetic, microfilm, or other form:

(i) pertaining to the provision of treatment, care, services, or items to a recipient;

(ii) pertaining to the income and expenses of the provider; or

(iii) otherwise relating to or pertaining to a determination of eligibility for or entitlement to payment or reimbursement under the medicaid program.

(b) The term includes all records and documents, regardless of whether the records are required by medicaid laws, regulations, rules, or policies to be made and maintained by the provider."

Section 41. Section 53-6-157, MCA, is amended to read:

"**53-6-157. Powers and duties of medicaid fraud control unit.** (1) The medicaid fraud control unit shall:

(a) investigate and prosecute under applicable criminal statutes fraud and abuse by applicants, recipients, providers, or other persons under the medical assistance program established under this chapter, including but not limited to cases referred by the department;

(b) review any complaint of patient abuse, patient neglect, and misappropriation of patient property by providers or their employees or agents and, when appropriate, shall investigate and initiate criminal proceedings or refer the complaint to another state agency for action;

(c) refer to the department for collection and, when appropriate, consideration and imposition of appropriate recipient restrictions or provider sanctions cases involving recipient or provider overpayments, fraud, abuse, inappropriate use of services, or other improper activities discovered by the unit in carrying out its activities;

(d) communicate and cooperate with and, subject to applicable confidentiality laws, provide information to other state and federal agencies involved in the investigation and prosecution of health care fraud, abuse, and other improper activities related to the medicaid program;

(e) transmit to other state and federal agencies, in accordance with law reports of convictions, copies of judgments and sentences imposed and other information and documents for purposes of program exclusions or other sanctions or penalties under medicaid, medicare, or other state or federal benefit or assistance programs; and

(f) recommend to state agencies appropriate or necessary adoption or revision of statutes, regulations, rules, policies, and procedures to prevent fraud, abuse, and other improper activities under the medicaid program and to aid in the investigation and prosecution of fraud, abuse, and other improper activities under the medicaid program.

(2) The medicaid fraud control unit may:

(a) initiate criminal prosecutions related to the medicaid program in any court of competent jurisdiction in the state of Montana;

(b) upon written request, obtain information and records from applicants, recipients, and providers;

(c) exercise the authority granted to prosecutors with respect to criminal investigative subpoenas under Title 46, chapter 4, part 3;

(d) subject to applicable federal confidentiality laws and regulations and for purposes related to any investigation or prosecution related to the medicaid program, obtain from the department, ~~county welfare and human services~~ *local* offices *of public assistance*, and other local, county, or state government departments or agencies records and other information, including but not limited to applicant and recipient applications, provider enrollment forms, claims and reports, individual or entity tax returns, or other information provided to or in the possession of the department of revenue or the state auditor;

(e) refer appropriate cases to other state or federal agencies for investigation, prosecution, or imposition of penalties, restrictions, or sanctions;

(f) enter into agreements with the department and other state and federal agencies in furtherance of the unit's mission; and

(g) do all things necessary to comply with 42 U.S.C. 1396a(a)(61) and 42 U.S.C. 1396b(q) and any implementing federal regulations and policies that require the state to operate a medicaid fraud control unit."

Section 42. Section 53-21-113, MCA, is amended to read:

"**53-21-113. Costs of committing a patient already voluntarily admitted — transportation costs for voluntary admission.** (1) The cost of involuntarily committing a patient who is voluntarily admitted to a mental health facility at the time the involuntary proceedings are commenced ~~shall~~ *must* be ~~borne~~ *paid* by the county of the patient's residence at the time of admission.

(2) The costs of transportation to a mental health facility under 53-21-111 and 53-21-112 ~~shall~~ *must* be provided by the ~~welfare department of~~ *local office of public assistance located in* the county of the patient's residence. However, if protective proceedings under Title 72, chapter 5, have been or are initiated with respect to the person, the ~~welfare department~~ *local office of public assistance* may seek reimbursement. If no one else is available to transport ~~him~~ *the person*, the sheriff shall transport the person."

Section 43. Repealer. Sections 53-2-610, 53-2-813, 53-4-246, and 53-4-247, MCA, are repealed.

Section 44. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 45. Name change — directions to code commissioner. Wherever a reference to a county welfare office appears in legislation enacted by the 2001 legislature, the code commissioner is directed to change it to a reference to a local office of public assistance.

Section 46. Coordination instruction. (1) If House Bill No. 124 is passed and approved and if it includes sections amending or repealing 41-3-1122, 52-1-110, 53-2-207, 53-2-304, and 53-2-322, then [sections 9, 11, 14, 16, and 18 of this act], amending 41-3-1122, 52-1-110, 53-2-207, 53-2-304, and 53-2-322, are void.

(2) If Senate Bill No. 77 is passed and approved and if it includes a section amending or repealing 53-2-613, then [section 24 of this act], amending 53-2-613, is void.

Section 47. Effective date. [This act] is effective July 1, 2001.

Approved May 2, 2001

CHAPTER NO. 572

[HB 2]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 2003; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [This act] may be cited as "The General Appropriations Act of 2001".

Section 2. First level expenditures. The agency and program appropriation tables in the legislative fiscal analyst narrative accompanying this bill, showing first level expenditures and funding for the 2003 biennium, are adopted as legislative intent.

Section 3. Severability. If any section, subsection, sentence, clause, or phrase of [this act] is for any reason held unconstitutional, the decision does not affect the validity of the remaining portions of [this act].

Section 4. Appropriation control. An appropriation item designated as "Biennial" may be spent in either year of the biennium. An appropriation item designated "Restricted" may be used during the biennium only for the purpose designated by its title and as presented to the legislature. An appropriation item designated "One Time Only" or "OTO" may not be included in the present law base for the 2005 biennium. The office of budget and program planning shall establish a separate appropriation on the statewide budgeting and accounting system for any item designated as "Biennial", "Restricted", "One Time Only", or "OTO". The office of budget and program planning shall establish at least one appropriation on the statewide budgeting and accounting system for any appropriation that appears as a separate line item in [this act].

Section 5. Program definition. As used in [this act], "program" has the same meaning as defined in 17-7-102, is consistent with the management and accountability structure established on the statewide budgeting and accounting system, and is identified as a major subdivision of an agency ordinally numbered with an arabic numeral.

Section 6. Personal services funding — 2005 biennium. (1) Except as provided in subsection (2), present law and new proposal funding budget requests for the 2005 biennium submitted under Title 17, chapter 7, part 1, by each executive, judicial, and legislative branch agency must include funding of first level personal services separate from funding of other expenditures. The funding of first level personal services by accounting entity or equivalent for each fiscal year must be shown at the fourth reporting level or equivalent in the budget request for the 2005 biennium submitted by October 30 to the legislative fiscal analyst by the office of budget and program planning.

(2) The provisions of subsection (1) do not apply to the Montana university system.

Section 7. Personal services line item. Funds appropriated for personal services or indicated in legislative intent as having been appropriated for personal services may not be expended under any other category except for contract services (expenditure account 62102) or for the early return to work program. Any transfer of funds from personal services to contract services is to be used to directly substitute for use of personal services. Any transfer for either contract services or for the early return to work program must be reported in writing to the legislative finance committee. The provisions of this section do not apply to the Montana university system.

Section 8. Vacancy savings analysis. The legislature is concerned about the use of the concept of vacancy savings in establishing funding for personal services. It is the intent of the legislature that an analysis of vacancy savings be completed prior to the 2003 legislative session to include the consideration of alternative options for funding of personal services at an appropriate level. The legislative finance committee is requested to include this analysis as part of the House Bill No. 613 personal services study if House Bill No. 613 is passed and approved or to include the analysis in the committee work plan for the legislative fiscal division. The legislative finance committee is encouraged to work cooperatively with the governor's budget director in completing this analysis.

Section 9. FTE reduction. The number of FTE has been reduced for all positions in the executive branch (excluding the university system) that have been identified by the legislature as vacant for over 7 months and that are not seasonal, already filled, or newly classified. The reduction is inclusive in the number of FTE shown in the agency and program tables in the legislative fiscal analyst narrative accompanying this bill. The eliminated positions are not to be funded in the present law base budget submitted by the governor for the 2005 biennium. The Legislative Fiscal Division Fiscal Report shall include a table listing the position numbers of the FTE that are eliminated. The number of FTE eliminated by agency is as follows:

Department of Transportation	49.27
Department of Revenue	2.03
Department of Administration	4.84
Department of Public Health and Human Services	9.26
Department of Fish, Wildlife, and Parks	5.02
Department of Environmental Quality	7.75
Department of Livestock	1.00
Department of Natural Resources and Conservation	9.27
Department of Agriculture	1.00
Department of Commerce	2.00
Department of Justice	4.00
Department of Public Service Regulation	0.50
Department of Corrections	0.65
Department of Labor and Industry	7.25
Office of Public Instruction	1.00

Section 10. Goals, benchmarks, and objectives. Each department, the Montana university system, and, when appropriate, each division of each department shall place their respective specific and measurable goals, benchmarks, and objectives for each year of the 2003 biennium on their respective internet websites or, when appropriate, on the state's internet website. On July 1, 2001, and again on July 1, 2002, each department and the Montana university system shall report progress on the appropriate website in meeting the goals, benchmarks, and objectives and what changes, if any, were made to ensure that those goals, benchmarks, and objectives are attained.

Section 11. Report from governor's office on energy management efforts. The governor's office, in cooperation with the commissioner of higher education, shall provide a report to the 58th legislature that details the efforts of state agencies to address energy costs. The report must include but is not limited to energy management activities of the department of environmental quality, the department of administration, and the Montana university system. The report should enumerate data, activities, and recommendations in the following areas:

(1) projected savings and other benefits from the state building energy conservation program, including building commissioning projects;

(2) potential changes to the conservation program that would encourage agency participation;

(3) other energy conservation efforts of state agencies;

(4) changes needed to encourage state agencies to conserve energy that do not require expending money on energy conservation projects;

(5) other energy conservation options and funding proposals;

(6) progress on the utility bill monitoring pilot project and potential benefits coming from the project;

(7) state government efforts to more efficiently purchase natural gas and electricity, including any plans to include more state facilities under the natural gas term contract and efforts to aggregate state agency electricity demand; and

(8) other recommendations to the legislature that would improve state government energy management efforts.

Section 12. Accruals analysis — 2005 biennium. The legislative fiscal division shall include an analysis of accruals for budget base year fiscal year 2002 and shall include a summary table and narrative in the Legislative Fiscal Division 2005 Biennium Budget Analysis that provides a listing by agency of total accruals and the amount that is recommended to be removed from the base budget.

Section 13. Energy costs reserve. A total of $3.2 million must be set aside in the general fund for contingencies related to cost increases in electricity and natural gas expenditures by state government significantly above the amounts appropriated for this purpose in [this act] or to support litigation to secure affordable electricity or natural gas. The amount is classified as unreserved, designated general fund balance.

Section 14. Totals not appropriations. The totals shown in [this act] are for informational purposes only and are not appropriations.

Section 15. Effective date. [This act] is effective July 1, 2001.

Section 16. Appropriations. The following money is appropriated for the respective fiscal years:

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
A. GENERAL GOVERNMENT AND TRANSPORTATION												
LEGISLATIVE BRANCH (1104)												
1. Legislative Services (20)	4,255,755	905,353	0	0	0	5,161,108	4,558,287	430,738	0	0	0	4,989,025
2. Legislative Committees and Activities (21) (Biennial)	673,484	77,285	0	0	0	750,769	0	0	0	0	0	0
a. Health Care Access (Biennial/OTO)	29,403	0	0	0	0	29,403	0	0	0	0	0	0
b. Northwest River Governance (Biennial/OTO)	10,000	0	0	0	0	10,000	0	0	0	0	0	0
3. Fiscal Analysis and Review (27)	1,041,785	0	0	0	0	1,041,785	1,086,461	0	0	0	0	1,086,461
a. Legislative Finance Committee Interim Studies (Restricted/Biennial)	19,000	0	0	0	0	19,000	0	0	0	0	0	0
4. Audit and Examination (28)	1,788,171	1,386,879	0	0	0	3,175,050	1,827,681	1,321,922	0	0	0	3,149,603
Total	7,817,598	2,369,517	0	0	0	10,187,115	7,472,429	1,752,660	0	0	0	9,225,089
CONSUMER COUNSEL (1112)												
1. Administration Program (01)	0	1,006,011	0	0	0	1,006,011	0	1,008,068	0	0	0	1,008,068
a. Caseload Contingency Fund (Restricted)	0	200,000	0	0	0	200,000	0	200,000	0	0	0	200,000
Total	0	1,206,011	0	0	0	1,206,011	0	1,208,068	0	0	0	1,208,068
JUDICIARY (2110)												
1. Supreme Court Operations (01)	2,955,903	1,150,000	363,725	0	0	4,469,628	2,973,254	1,075,000	363,725	0	0	4,411,979

			Fiscal 2002						Fiscal 2003			
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Legislative Audit (Restricted/Biennial)	26,757	0	0	0	0	26,757	0	0	0	0	0	0
b. Court-Appointed Special Advocate Program (Biennial)	82,182	0	100,000	0	0	182,182	82,182	0	0	0	0	82,182
2. Boards and Commissions (02)	244,559	0	0	0	0	244,559	274,901	0	0	0	0	274,901
3. Law Library (03)	772,001	0	0	0	0	772,001	776,471	0	0	0	0	776,471
4. District Court Operations (04)	4,853,964	0	0	0	0	4,853,964	4,877,311	0	0	0	0	4,877,311
a. SB 282 — Asbestos Court	190,157	0	0	0	0	190,157	186,157	0	0	0	0	186,157
b. District Court Judges for Ravalli and Cascade Counties	0	0	0	0	0	0	129,000	0	0	0	0	129,000
c. State Assumption of District Courts (Restricted/Biennial)	800,500	0	0	0	0	800,500	0	0	0	0	0	0
5. Water Courts Supervision (05)	0	669,691	0	0	0	669,691	0	678,959	0	0	0	678,959
6. Clerk of Court (06)	288,479	0	0	0	0	288,479	337,855	0	0	0	0	337,855
a. *Equipment (OTO)*	3,500	0	0	0	0	3,500	0	0	0	0	0	0
Total	10,218,002	1,819,691	463,725	0	0	12,501,418	9,637,131	1,753,959	363,725	0	0	11,754,815

Item 4a contains general fund money for an asbestos court. If federal funds are received for the purpose of funding a court to manage asbestos cases, the general fund appropriation in item 4a is reduced by a like amount.

Item 4b is contingent upon passage and approval of House Bill No. 214.

Item 4c is contingent upon passage and approval of House Bill No. 124.

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
MONTANA CHIROPRACTIC LEGAL PANEL (2115)												
1. Legal Panel Operations (01)	0	15,000	0	0	0	15,000	0	15,000	0	0	0	15,000
Total	0	15,000	0	0	0	15,000	0	15,000	0	0	0	15,000
GOVERNOR'S OFFICE (3101)												
1. Executive Office Program (01)	1,234,434	286,634	29,605	0	0	1,550,673	1,237,063	287,333	30,104	0	0	1,554,500
a. Legislative Audit (Restricted/Biennial)	24,325	0	0	0	0	24,325	0	0	0	0	0	0
b. Extradition and Transportation of Prisoners	177,724	0	0	0	0	177,724	178,936	0	0	0	0	178,936
c. Consensus Council Matching Funds for Grants (Biennial/OTO)	75,000	0	0	0	0	75,000	75,000	0	0	0	0	75,000
d. Flathead Basin Commission — Flathead Valley Ground Water Quality Assessment (OTO)	0	0	99,992	0	0	99,992	0	0	0	0	0	0
e. Office of Economic Development	850,000	0	0	0	0	850,000	850,000	0	0	0	0	850,000
2. Mansion Maintenance Program (02)	78,882	0	0	0	0	78,882	79,035	0	0	0	0	79,035
3. Air Transportation Program (03)	175,409	16,000	0	0	0	191,409	176,700	16,000	0	0	0	192,700
4. Office of Budget and Program Planning (04)	1,087,033	0	0	0	0	1,087,033	1,081,052	0	0	0	0	1,081,052
a. Legislative Audit (Restricted/Biennial)	22,865	0	0	0	0	22,865	0	0	0	0	0	0
b. Video Projector and Computer (OTO)	5,600	0	0	0	0	5,600	0	0	0	0	0	0

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. Energy Cost Contingency Account (Restricted/Biennial/OTO)												
	0	868,751	387,533	0	0	1,256,284	0	0	0	0	0	0
5. Indian Affairs (05)												
	112,204	0	0	0	0	112,204	112,583	0	0	0	0	112,583
a. Carryover Funds (Restricte												
	0	150,000	2,000,000	0	0	2,150,000	0	0	0	0	0	0
6. Lieutenant Governor (12)												
	223,314	0	0	0	0	223,314	224,893	0	0	0	0	224,893
7. Citizens' Advocate Office (16)												
	65,274	0	15,000	0	0	80,274	65,483	0	15,000	0	0	80,483
8. Mental Disabilities Board of Visitors (20)												
	200,579	7,200	0	0	0	207,779	197,572	7,200	0	0	0	204,772
Total												
	4,332,643	1,328,585	2,532,130	0	0	8,193,358	4,278,317	310,533	45,104	0	0	4,633,954

General fund money up to $51,000 for the 2003 biennium in item 1b not used for the extradition and transportation of prisoners may be used to purchase vans for county sheriffs and peace officers to transport prisoners.

The legislature recognizes that the cost for extradition and transportation of prisoners is dependent upon factors beyond the control of the agency and may exceed the appropriation provided. In that event, the agency will need to request a supplemental appropriation from the 2003 legislature to provide required extradition and transportation of prisoners.

Item 1b and the accompanying language are contingent upon passage and approval of Senate Bill No. 328.

If Senate Bill No. 445 is not passed and approved, the appropriation in item 1e is void and the appropriation in item 4c is increased by $1,700,000 in general fund money in fiscal year 2002.

Item 4c is a contingency biennial account to be managed by the office of budget and program planning to respond to contingencies related to cost increases in electricity and natural gas expenditures by state government significantly above the amounts appropriated in [this act]. Requests for use of this account must be analyzed by the office of budget and program planning and approved by the governor. Distribution of this money to state agencies must be proportional to the overall needs of state agencies relative to the total funds available. Approved expenditures must be reported to the legislative finance committee.

Item 5a is contingent upon passage and approval of House Bill No. 21. Funds in item 5a for the 2003 biennium are limited to the unspent balance of the 2001 appropriation of up to $150,000 in state special revenue and $2 million in federal special revenue.

COMMISSIONER OF POLITICAL PRACTICES (3202)

1. Administration (01)												
	345,738	0	0	0	0	345,738	346,987	0	0	0	0	346,987
a. Legislative Audit (Restricted/Biennial)												
	4,865	0	0	0	0	4,865	0	0	0	0	0	0

	Fiscal 2002 General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	Fiscal 2003 General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total	350,603	0	0	0	0	350,603	346,987	0	0	0	0	346,987

Item 1 includes a reduction in general fund money of $571 in fiscal year 2002 and $571 in fiscal year 2003. This reduction is the equivalent of a 25% reduction in fiscal year 2000 base budget travel expenses.

OFFICE OF THE STATE AUDITOR (3401)

	Fiscal 2002 General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	Fiscal 2003 General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Central Management (01)	0	527,253	0	0	0	527,253	0	525,276	0	0	0	525,276
a. Legislative Audit (Restricted/Biennial)	0	4,368	0	0	0	4,368	0	0	0	0	0	0
2. Insurance Program (03)	0	2,404,683	0	0	0	2,404,683	0	2,418,935	0	0	0	2,418,935
a. Legislative Audit (Restricted/Biennial)	0	19,219	0	0	0	19,219	0	0	0	0	0	0
b. Contract Examinations (Restricted)	0	107,234	0	0	0	107,234	0	52,234	0	0	0	52,234
c. SB 373 — Licensing Captive Insurers (Restricted)	0	20,000	0	0	0	20,000	0	20,000	0	0	0	20,000
d. HB 542 — Surplus Lines Fees (Restricted)	0	52,115	0	0	0	52,115	0	49,615	0	0	0	49,615
3. Securities (04)	334,571	190,212	0	0	0	524,783	336,923	190,269	0	0	0	527,192
a. Legislative Audit (Restricted/Biennial)	3,689	1,844	0	0	0	5,533	0	0	0	0	0	0
b. Contract Examinations (Restricted)	0	12,000	0	0	0	12,000	0	12,000	0	0	0	12,000
Total	338,260	3,338,928	0	0	0	3,677,188	336,923	3,268,329	0	0	0	3,605,252

Item 2c is contingent upon passage and approval of Senate Bill No. 373.

Item 3 includes a reduction of $9,149 in fiscal year 2002 and $9,181 in fiscal year 2003 of general fund money. The office may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 3 includes a reduction in general fund money of $2,890 in fiscal year 2002 and $2,890 in fiscal year 2003. This reduction is the equivalent of a 10% reduction in fiscal year 2000 base budget travel expenses. The office may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
DEPARTMENT OF TRANSPORTATION (5401)												
1. General Operations Program (01)												
	0	16,468,534	1,249,771	0	0	17,718,305	0	16,536,844	1,183,602	0	0	17,720,446
a. Legislative Audit (Restricted/Biennial)												
	0	109,461	0	0	0	109,461	0	0	0	0	0	0
b. General Operations One-Time Costs (OTO)												
	0	457,500	0	0	0	457,500	0	200,000	0	0	0	200,000
2. Construction Program (02) (Biennial)												
	0	71,531,203	296,588,388	0	0	368,119,591	0	74,292,575	305,871,704	0	0	380,164,279
a. Construction Program One-Time Costs (OTO)												
	0	53,000	120,000	0	0	173,000	0	0	0	0	0	0
3. Maintenance Program (03) (Biennial)												
	0	75,870,412	5,090,609	0	0	80,961,021	0	76,230,890	5,090,609	0	0	81,321,499
a. Maintenance Program One-Time Costs (OTO)												
	0	167,700	0	0	0	167,700	0	0	0	0	0	0
4. Motor Carrier Services Division (22)												
	0	4,971,167	0	0	0	4,971,167	0	4,994,990	0	0	0	4,994,990
a. Mobile Officer Vehicle Enforcement Computers (OTO)												
	0	6,200	0	0	0	6,200	0	0	0	0	0	0
5. Aeronautics Program (40)												
	0	752,611	112,500	0	0	865,111	0	767,054	85,500	0	0	852,554
a. Airport Development Grants (Biennial)												
	0	750,000	0	0	0	750,000	0	0	0	0	0	0
b. Airport Pavement Preservation Grants (Biennial)												
	0	250,000	0	0	0	250,000	0	0	0	0	0	0

	Fiscal 2002 General Fund	Fiscal 2002 State Special Revenue	Fiscal 2002 Federal Special Revenue	Fiscal 2002 Proprietary	Fiscal 2002 Other	Fiscal 2002 Total	Fiscal 2003 General Fund	Fiscal 2003 State Special Revenue	Fiscal 2003 Federal Special Revenue	Fiscal 2003 Proprietary	Fiscal 2003 Other	Fiscal 2003 Total
c. Federal Airport Improvement Grants (Biennial)												
	0	16,667	300,000	0	0	316,667	0	0	0	0	0	0
6. Transportation Planning Division (50)												
	0	2,121,160	10,719,595	0	0	12,840,755	0	1,934,325	13,168,607	0	0	15,102,932
a. Software and Field Data Collection (Biennial/OTO)												
	0	60,000	240,000	0	0	300,000	0	0	0	0	0	0
b. Statewide Truck Activity Reporting System (OTO)												
	0	173,212	573,068	0	0	746,280	0	115,323	381,544	0	0	496,867
c. Transportation of Seniors and Persons With Disabilities												
	0	171,093	0	0	0	171,093	0	347,318	0	0	0	347,318
Total												
	0	173,929,920	314,993,931	0	0	488,923,851	0	175,419,319	325,781,566	0	0	501,200,885

The department may adjust appropriations in the construction, maintenance, and transportation planning programs between state special and federal special revenue fund types if the total state special revenue authority for these programs is not increased by more than 10% of the total appropriations established by the legislature for each program. All transfers between fund types must be fully explained and justified by budget documents submitted to the office of budget and program planning, and all fund transfers of more than $1 million in any 30-day period must be communicated to the legislative finance committee in a written report.

All federal special revenue appropriations in the department are biennial.

Item 2 includes a total of $63,690 for the 2003 biennium for the Montana natural resources information system. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.

All appropriations in the construction program are biennial.

All appropriations in the maintenance program are biennial.

Item 5 includes $4,000 of state special revenue in fiscal year 2002 and $4,000 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 430.

Item 5a includes $300,000 of state special revenue in fiscal year 2002 that is contingent upon passage and approval of Senate Bill No. 280.

All appropriations in the transportation planning program are biennial.

Item 6c is contingent upon passage and approval of Senate Bill No. 448.

DEPARTMENT OF REVENUE (5801)

	Fiscal 2002 General Fund	Fiscal 2002 State Special Revenue	Fiscal 2002 Federal Special Revenue	Fiscal 2002 Proprietary	Fiscal 2002 Other	Fiscal 2002 Total	Fiscal 2003 General Fund	Fiscal 2003 State Special Revenue	Fiscal 2003 Federal Special Revenue	Fiscal 2003 Proprietary	Fiscal 2003 Other	Fiscal 2003 Total
1. Director's Office (01)												
	2,315,882	300	800	30,068	0	2,347,050	2,326,931	0	0	30,643	0	2,357,574
a. Legislative Audit (Restricted/Biennial)												
	131,353	0	0	0	0	131,353	0	0	0	0	0	0

	Fiscal 2002 General Fund	Fiscal 2002 State Special Revenue	Fiscal 2002 Federal Special Revenue	Fiscal 2002 Proprietary	Fiscal 2002 Other	Fiscal 2002 Total	Fiscal 2003 General Fund	Fiscal 2003 State Special Revenue	Fiscal 2003 Federal Special Revenue	Fiscal 2003 Proprietary	Fiscal 2003 Other	Fiscal 2003 Total
b. SB 512 — Impose Electrical Energy Excess Revenue Tax (Restricted)												
	123,357	0	0	0	0	123,357	124,856	0	0	0	0	124,856
c. SB 512 — Legal and Litigation Expenses (Restricted/Biennial)												
	150,000	0	0	0	0	150,000	0	0	0	0	0	0
d. SB 512 — Personal Computers and Computer Equipment(Restricted/OTO)												
	19,000	0	0	0	0	19,000	0	0	0	0	0	0
2. Information Technology (02)												
	2,154,374	0	188,941	70,320	0	2,413,635	2,261,282	0	194,652	71,666	0	2,527,600
3. Resource Management (05)												
	1,498,751	0	0	1,085,594	0	2,584,345	1,526,552	0	0	1,090,060	0	2,616,612
4. Customer Service and Information Practices (06)												
	3,715,801	228,844	1,032,135	749,075	0	5,725,855	3,737,041	232,754	1,042,210	739,891	0	5,751,896
a. Unclaimed Property Auditor (OTO)												
	0	43,931	0	0	0	43,931	0	44,098	0	0	0	44,098
5. Compliance Valuation and Resolution (08)												
	17,710,137	186,096	1,079,011	0	0	18,975,244	17,790,775	186,433	1,130,535	0	0	19,107,743
a. Salary Upgrades for Auditors (Biennial)												
	208,144	0	0	0	0	208,144	0	0	0	0	0	0
b. SB 512 — Impose Electrical Energy Excess Revenue Tax (Restricted)												
	193,720	0	0	0	0	193,720	195,845	0	0	0	0	195,845
c. SB 512 — Personal Computers (Restricted/OTO)												
	6,000	0	0	0	0	6,000	0	0	0	0	0	0
Total												
	28,226,519	459,171	2,300,887	1,935,057	0	32,921,634	27,963,282	463,285	2,367,397	1,932,260	0	32,726,224

Liquor division proprietary funds necessary to maintain adequate inventories, pay freight charges, and transfer profit and taxes to appropriate accounts are appropriated to the department in amounts not to exceed $64,200,950 in fiscal year 2002 and $67,857,880 in fiscal year 2003.

Items 1b, 1c, 1d, 5b, and 5c are contingent upon passage and approval of Senate Bill No. 512.

Item 4 includes a reduction of $558,000 in general fund money in fiscal year 2002 and $558,000 in fiscal year 2003 and an increase in proprietary funds of $514,100 in fiscal year 2002 and $514,100 in fiscal year 2003. These reductions and increases are contingent upon passage and approval of House Bill No. 399.

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 5 includes a reduction in general fund money of $15,066 in fiscal year 2002 and $15,066 in fiscal year 2003. This reduction is the equivalent of a 3% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 5 includes reductions of $54,934,392 of general fund money in fiscal year 2002 and of $54,934,392 of general fund money in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

The department shall provide status reports on the POINTS system to the revenue and taxation interim committee at each regularly scheduled committee meeting. The status reports must include work plan benchmark updates, progress on fixing mission-critical and nonmission-critical defects, and the status of implementing and operating all phases of the system.

DEPARTMENT OF ADMINISTRATION (6101)

	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Accounting and Management Support Program (03)												
	1,070,018	5,057	64,315	41,053	0	1,180,443	1,076,779	5,057	62,451	41,224	0	1,185,511
a. Legislative Audit (Restricted/Biennial)												
	53,571	0	0	0	0	53,571	0	0	0	0	0	0
b. Actuarial Study — Police Retirement Fund (Restricted/Biennial)												
	2,450	0	0	0	0	2,450	0	0	0	0	0	0
c. Accounting Bureau Contracted Services (Biennial/OTO)												
	100,000	0	0	0	0	100,000	0	0	0	0	0	0
d. Special Purpose District Reports												
	0	0	0	0	0	0	28,446	0	0	0	0	28,446
e. Local Government Services Division												
	422,204	0	0	0	0	422,204	423,300	0	0	0	0	423,300
f. Consumer Affairs Division												
	266,248	74,505	0	0	0	340,753	266,117	74,503	0	0	0	340,620
g. Telemarketing/Lemon Law Programs Fund Switch (Restricted/OTO)												
	56,354	0	0	0	0	56,354	56,354	0	0	0	0	56,354
2 Architecture and Engineering Program (04)												
	0	1,137,916	0	0	0	1,137,916	0	1,147,932	0	0	0	1,147,932
a. Legislative Audit (Restricted/Biennial)												
	0	1,635	0	0	0	1,635	0	0	0	0	0	0
3. Procurement and Printing Division (06)												
	515,947	0	0	0	0	515,947	518,826	0	0	0	0	518,826
4. Information Services Division (07)												
	127.593	0	800.000	0	0	927.593	126.588	0	0	0	0	126,588

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Legislative Audit (Restricted/Biennial)												
	794	0	0	0	0	794	0	0	0	0	0	0
5. General Services Program (08)												
	394,409	0	0	0	933,055	1,327,464	401,439	0	0	0	933,055	1,334,494
6. Banking and Financial Division (14)												
	0	1,485,063	0	0	0	1,485,063	0	1,490,815	0	0	0	1,490,815
a. Legislative Audit (Restricted/Biennial)												
	0	2,821	0	0	0	2,821	0	0	0	0	0	0
7. Montana State Lottery (15)												
	0	0	0	8,574,656	0	8,574,656	0	0	0	8,904,330	0	8,904,330
a. Legislative Audit (Restricted/Biennial)												
	0	0	0	8,265	0	8,265	0	0	0	0	0	0
b. Online Terminals (OTO)												
	0	0	0	345,000	0	345,000	0	0	0	0	0	0
8. State Personnel Division (23)												
	1,092,389	26,600	0	0	0	1,118,989	1,095,102	27,400	0	0	0	1,122,502
9. State Tax Appeal Board (37)												
	273,523	0	0	0	0	273,523	275,231	0	0	0	0	275,231
Total												
	4,375,500	2,733,597	864,315	8,968,974	933,055	17,875,441	4,268,182	2,745,707	62,451	8,945,554	933,055	16,954,949

For the data network rate, all increases over a rate of $64.59 are one time only. The executive must use $64.59 as the base level and justify all increases requested for the 2005 biennium over this level.

Item 1 includes a reduction in general fund money of $4,122 in fiscal year 2002 and $4,122 in fiscal year 2003. This reduction is the equivalent of an 8% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Items 1e, 1f, 1g, 6, 6a, 7, 7a, and 7b and $1,519 of general fund money in fiscal year 2002 in item 1a are contingent upon passage and approval of Senate Bill No. 445.

The department is appropriated in each of the fiscal years 2002 and 2003 up to $500,000 of state special revenue that is deposited in the account established for the purpose of processing charter applications and for the chartering, examination, and regulation of each foreign capital depository that obtains a charter under the provisions of 32-8-205.

The department is appropriated up to $56,354 in state special revenue authority in each year of the biennium for operations within the telemarketing and lemon law programs and shall seek and use state special revenue received from consumer affairs' settlements as authorized by a district court order to offset and minimize use of the general fund money within the telemarketing and lemon law programs, as provided in 17-2-108.

The department shall report to the 2003 legislature on the status and results related to the purchase and placement of additional online terminals funded in item 7b.

Item 8 includes a reduction of $21,490 in fiscal year 2002 and $21,564 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

APPELLATE DEFENDER COMMISSION (6102)

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Appellate Defender (01)	0	177,534	0	0	0	177,534	178,901	0	0	0	0	178,901
Total	0	177,534	0	0	0	177,534	178,901	0	0	0	0	178,901

Item 1 includes an increase of $178,901 of general fund money in fiscal year 2003 and a reduction of $178,901 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
TOTAL SECTION A	55,659,125	187,377,954	321,154,988	10,904,031	933,055	576,029,153	54,482,152	186,936,860	328,620,243	10,877,814	933,055	581,850,124

B. HEALTH AND HUMAN SERVICES

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES (6901)

	Fiscal 2002 General Fund	Fiscal 2002 State Special Revenue	Fiscal 2002 Federal Special Revenue	Fiscal 2002 Proprietary	Fiscal 2002 Other	Fiscal 2002 Total	Fiscal 2003 General Fund	Fiscal 2003 State Special Revenue	Fiscal 2003 Federal Special Revenue	Fiscal 2003 Proprietary	Fiscal 2003 Other	Fiscal 2003 Total
1. Public Assistance (02)	21,740,259	1,127	135,599,150	0	0	157,340,536	22,040,543	1,129	138,605,750	0	0	160,647,422
a. FAIM II R — Parents as Scholars (Biennial)	0	0	1,331,183	0	0	1,331,183	0	0	0	0	0	0
b. FAIM II R — Tribal Projects (Restricted/Biennial)	0	0	2,489,360	0	0	2,489,360	0	0	0	0	0	0
c. FAIM II R — Tribal NEW (Biennial)	0	0	1,139,093	0	0	1,139,093	0	0	1,116,468	0	0	1,116,468
d. FAIM II R — Nontraditional Job Training (Biennial)	0	0	841,394	0	0	841,394	0	0	0	0	0	0
e. FAIM II R —Nontraditional Job Training — Tribal (Restricted/Biennial)	0	0	989,875	0	0	989,875	0	0	0	0	0	0
f. FAIM II R — Nontraditional Job Training — Nontribal (Biennial)	0	0	494,937	0	0	494,937	0	0	0	0	0	0
g. FAIM II R — Assessment Services — Intensive Case Management (Biennial)	0	0	1,092,974	0	0	1,092,974	0	0	1,071,267	0	0	1,071,267
h. FAIM II R — Chemical Dependency Home (Biennial)	0	0	629,560	0	0	629,560	0	0	0	0	0	0
i. FAIM II R — Learning Disability Services OPI/Tribal Colleges (Biennial)	0	0	593,924	0	0	593,924	0	0	0	0	0	0
j. FAIM II R — Mental Health Services (Biennial)	0	0	494,937	0	0	494,937	0	0	0	0	0	0
k. FAIM II R — Family Drug Court (Biennial)	0	0	395,950	0	0	395,950	0	0	0	0	0	0
l. FAIM II R — Low-Income Housing (Biennial)	0	0	3,464,561	0	0	3,464,561	0	0	0	0	0	0
m. FAIM II R — Transportation (Biennial)	0	0	791,899	0	0	791,899	0	0	0	0	0	0

	Fiscal 2002 General Fund	Fiscal 2002 State Special Revenue	Fiscal 2002 Federal Special Revenue	Fiscal 2002 Proprietary	Fiscal 2002 Other	Fiscal 2002 Total	Fiscal 2003 General Fund	Fiscal 2003 State Special Revenue	Fiscal 2003 Federal Special Revenue	Fiscal 2003 Proprietary	Fiscal 2003 Other	Fiscal 2003 Total
n. FAIM II R — Additional Month Grant for Working Families (Biennial)	0	0	1,228,979	0	0	1,228,979	0	0	1,204,570	0	0	1,204,570
o. FAIM II R — Emergency Supportive Services for Working Families (Biennial)	0	0	1,025,510	0	0	1,025,510	0	0	274,209	0	0	274,209
p. FAIM II R — School Breakfast Program (Biennial)	0	0	178,178	0	0	178,178	0	0	0	0	0	0
q. FAIM II R — Individual Development Accounts (Biennial)	0	0	138,742	0	0	138,742	0	0	135,986	0	0	135,986
r. FAIM II R — Children as Scholars (Head Start) (Biennial)	0	0	1,979,874	0	0	1,979,874	0	0	0	0	0	0
s. FAIM II R — TEAMS Reprocurement/Enhancements (Biennial)	0	0	989,875	0	0	989,875	0	0	485,107	0	0	485,107
t. High-Wage, High-Skill Training (Restricted/Biennial)	0	0	494,937	0	0	494,937	0	0	485,108	0	0	485,108
u. Adult Basic Education (Restricted)	0	0	195,000	0	0	195,000	0	0	195,000	0	0	195,000
v. Children's Trust Fund (Biennial)	0	0	250,000	0	0	250,000	0	0	250,000	0	0	250,000
2. Child and Family Services Division (03)	20,339,215	1,269,954	23,954,881	0	0	45,564,050	21,541,204	1,336,670	24,109,036	0	0	46,986,910
a. Computer Hardware (OTO)	49,800	0	33,200	0	0	83,000	123,504	0	82,336	0	0	205,840
b. Community Collaboration Project and FTE (Biennial/OTO)	25,000	0	3,025,000	0	0	3,050,000	25,000	0	25,000	0	0	50,000
c. Big Brothers Big Sisters (OTO)	25,000	0	0	0	0	25,000	25,000	0	0	0	0	25,000
d. In-Home Services (Restricted)	100,000	0	0	0	0	100,000	0	0	0	0	0	0
3. Director's Office (04)	1.134.318	1.198.077	1.726.992	0	0	4.059.387	1.141.783	1.259.907	1.732.421	0	0	4,134,111

			Fiscal 2002						Fiscal 2003			
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Deputy Director (Restricted)	37,000	15,750	47,250	0	0	100,000	37,000	15,750	47,250	0	0	100,000
4. Child Support Enforcement Division (05)	225,000	2,798,222	6,242,600	0	0	9,265,822	225,000	2,812,929	6,271,998	0	0	9,309,927
a. Voice Response Unit Enhancements (OTO)	0	10,200	19,800	0	0	30,000	0	0	0	0	0	0
b. SEARCHS — Level of Effort Increase (Biennial/OTO)	0	209,104	405,908	0	0	615,012	0	0	0	0	0	0
c. Financial Institutions Data Match (Restricted)	0	51,000	99,000	0	0	150,000	0	51,000	99,000	0	0	150,000
d. Cost Study — Raising a Child in Montana (Restricted/OTO)	0	8,621	113,793	0	0	122,414	0	0	0	0	0	0
5. Health Policy and Services Division (07)	63,683,731	7,188,743	233,165,988	0	0	304,038,462	68,017,693	7,780,885	248,236,170	0	0	324,034,748
a. Assistance to Montanans Exposed to Asbestos (Restricted/OTO)	18,500	0	0	0	0	18,500	18,500	0	0	0	0	18,500
b. Medicaid Provider Rate Increases (RBRVS)	252,524	0	678,614	0	0	931,138	506,681	0	1,371,305	0	0	1,877,986
c. Cardiovascular Grant	0	0	260,902	0	0	260,902	0	0	237,768	0	0	237,768
d. Fiber Optic Rural TeleHealth Equipment (Restricted/Biennial/OTO)	200,000	0	0	0	0	200,000	0	0	0	0	0	0
e. HIV/AIDS Treatment and Coverage (Restricted/Biennial)	84,010	0	0	0	0	84,010	0	0	0	0	0	0
6. Quality Assurance Division (08)	2,006,639	219,622	4,957,197	0	0	7,183,458	2,025,415	209,982	4,980,608	0	0	7,216,005
a. Contracted Licensure Services (OTO)	58,737	0	0	0	0	58,737	58,862	0	0	0	0	58,862
7. Operations and Technology Division (09)	11,430,755	1,530,252	15,881,424	0	0	28,842,431	11,202,569	2,111,463	16,329,740	0	0	29,643,772

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Legislative Audit (Restricted/Biennial)												
	154,465	37,800	151,200	0	0	343,465	0	0	0	0	0	0
8. Disability Services Division (10)												
	42,100,426	97,354	53,417,647	0	0	95,615,427	42,214,056	97,354	53,722,089	0	0	96,033,499
a. Developmental Disabilities Program Federal Funds (Biennial)												
	0	0	4,000,000	0	0	4,000,000	0	0	0	0	0	0
b. Movcment From Institutions to Community Settings (OTO)												
	1,400,277	0	0	0	0	1,400,277	1,400,224	0	0	0	0	1,400,224
c. Direct Care Worker Wage Parity (Restricted)												
	1,551,313	0	1,496,488	0	0	3,047,801	2,445,300	0	2,364,721	0	0	4,810,021
9. Senior and Long-Term Care Division (22)												
	44,035,794	6,265,504	135,666,053	0	0	185,967,351	45,575,083	7,142,437	142,244,588	0	0	194,962,108
a. One-Time Payments to Nursing Homes for Medicaid Services												
	0	1,350,000	3,627,876	0	0	4,977,876	0	1,625,000	4,397,980	0	0	6,022,980
b. Nursing Home and Community Services Improvements (OTO)												
	0	162,720	437,280	0	0	600,000	0	161,880	438,120	0	0	600,000
c. Personal Assistant Wage Increases												
	401,931	0	1,080,114	0	0	1,482,045	638,676	0	1,728,544	0	0	2,367,220
d. Additional Federal Special Revenue												
	0	0	1,000,000	0	0	1,000,000	0	0	1,000,000	0	0	1,000,000
10. Addictive and Mental Disorders Division (33)												
	49,801,020	6,152,612	70,643,821	0	0	126,597,453	51,713,723	6,590,808	75,394,948	0	0	133,699,479
a. Community Incentive/State Hospital (Restricted/Biennial/OTO)												
	1,196,553	0	0	0	0	1,196,553	1,196,553	0	0	0	0	1,196,553
b. Basic Mental Health Services for Children (Restricted)												
	647,952	0	0	0	0	647,952	671,928	0	0	0	0	671,928
c. Regional Mental Health System Planning (Restricted/Biennial)												
	208,531	0	278,041	0	0	486,572	208,530	0	278,040	0	0	486,570
d. Olmstead Planning/Implementation (Restricted)												
	0	0	20.000	0	0	20.000	0	0	20,000	0	0	20,000

	Fiscal 2002 General Fund	Fiscal 2002 State Special Revenue	Fiscal 2002 Federal Special Revenue	Fiscal 2002 Proprietary	Fiscal 2002 Other	Fiscal 2002 Total	Fiscal 2003 General Fund	Fiscal 2003 State Special Revenue	Fiscal 2003 Federal Special Revenue	Fiscal 2003 Proprietary	Fiscal 2003 Other	Fiscal 2003 Total
e. Intergovernmental Transfer — Mental Health Services												
	0	106,155	285,273	0	0	391,428	0	108,564	293,824	0	0	402,388
f. Intergovernmental Transfer — Chemical Dependency (Biennial)												
	0	250,000	671,829	0	0	921,829	0	257,000	695,557	0	0	952,557
g. Law Enforcement/Judicial Training — Mental Illness (Restricted)												
	42,219	0	25,332	0	0	67,551	42,324	0	25,395	0	0	67,719
h. Federal Community Incentive Grant — Chemical Dependency (OTO)												
	0	0	3,594,483	0	0	3,594,483	0	0	3,594,483	0	0	3,594,483
i. SB 107 — Teleconferencing During Mental Health Proceedings												
	7,800	0	0	0	0	7,800	8,190	0	0	0	0	8,190
Total												
	262,968,769	28,922,817	723,837,878	0	0	1,015,719,464	273,103,341	31,562,758	733,544,386	0	0	1,038,210,485

The department shall provide the following information by program to the children, families, health, and human services interim committee and to the legislative finance committee by August 1, 2002:

(1) rates paid by each program for comparable services; and

(2) entry level and average hourly wage and benefit rates paid by community providers for direct care workers and group home employees.

The information must specify how the data was gathered and whether and how the department verified the data and must be presented to allow evaluation among comparable services and jobs.

Funds appropriated for grants or benefits and claims or indicated in legislative intent as having been appropriated for grants or benefits and claims may be expended only as grants or benefits and claims. The office of budget and program planning may authorize a transfer of appropriation authority from grants or benefits and claims to another category of expenditure under one of the following conditions:

(1) the department certifies to the office of budget and program planning that federal law or regulations require that funds appropriated in grants or benefits and claims must be expended in a different category of expenditure; or

(2) the department certifies to the office of budget and program planning that there will be savings if funds appropriated in grants or benefits and claims are transferred and expended in another category of expenditure.

The office of budget and program planning shall report to the legislative finance committee on transfers approved subject to these two conditions.

The department shall report to the legislative finance committee and the children, families, health, and human services interim committee at every meeting of each committee:

(1) the actual amount of federal temporary assistance for needy families (TANF) block grant funds expended in the current biennium;

(2) the actual amount of TANF block grant maintenance of effort funds that have been expended in the current biennium;

(3) the balance of previous fiscal years' TANF block grant funds that remain unexpended; and

(4) the balance of the current fiscal year federal TANF block grant funds that remain unexpended.

		Fiscal 2002						Fiscal 2003			
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The department shall use unexpended previous year federal TANF block grant funds to provide benefits and services that meet the federal definition of assistance. Current year federal TANF block grant funds must be used to fund benefits and services that meet the federal definition of assistance only after all available previous years' federal TANF block grant funds have been expended.

The office of budget and program planning may proportionally reduce the funding in items 1a through 1t and item 1v if any of the following conditions exist:

(1) the department certifies to the office of budget and program planning that the balance of unexpended TANF funds on June 30, 2001, is less than $30 million;

(2) actual or projected cash assistance expenditures are greater than $24,067,328 in fiscal year 2002 or $23,763,854 in fiscal year 2003;

(3) the amount of TANF grant funds awarded to Montana by congress is reduced below the level anticipated by the legislature; or

(4) the department certifies to the office of budget and program planning that the reduction is necessary in order to maintain public assistance programs that were supported by federal TANF and state TANF maintenance of effort funds in fiscal year 2001.

If the TANF block grant funds report given at the March 2002 legislative finance committee meeting indicates that there are FAIM phase II R dollars unexpended and no plan is in place to expend the remaining dollars, there is appropriated up to $1.5 million of these unexpended funds for the summer youth employment program in the 2003 biennium.

Item 1 includes increases of $3,852,988 of general fund money in fiscal year 2002 and of $4,006,121 of general fund money in fiscal year 2003 and reductions of $3,356,606 of state special revenue in fiscal year 2002 and of $3,376,187 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Funds in item 1 include $68,422 in fiscal year 2002 and $69,606 in fiscal year 2003 that the department shall use to reimburse the Montana department of corrections, Montana correctional enterprises, for costs incurred to operate the Montana food bank network canning and wild game processing facility.

Funds included in items 1b and 1e may be used only to fund tribal projects and to provide nontraditional job training to an enrolled tribal member of a federally recognized tribe whose reservation lies within the exterior boundaries of the Montana reservations and to the Little Shell band of Chippewa if the Little Shell band of Chippewa becomes a federally recognized tribe.

Funds in item 1b may be used to fund head start services for tribal members. Tribal members may not access services supported by funds in item 1r because funding for tribal head start projects has been included in item 1b.

The department shall transfer funds in item 1l to the Montana board of housing revolving loan account to fund eligible activities under the federal TANF block grant. The timing and amount of the transfer must comply with federal regulations governing the expenditure and transfer of TANF funds.

Funds included in item 1t may be used only to develop programs for high-wage and high-skill training for single parents, persons who are economically disadvantaged, and displaced homemakers.

Funds included in item 1u may be used only to provide adult basic education services.

The department shall transfer funds in item 1v to the children's trust fund to fund eligible child abuse and neglect prevention activities.

Projects funded in items 1a, 1d, 1f, 1g, 1h, 1i, 1j, 1k, 1l, 1m, 1n, 1o, 1p, 1q, 1r, 1s, 1t, and 1u are considered approved special projects related to welfare reform for the purpose of implementation of 53-4-210. Prior to the expenditure of these funds, the department shall provide notice both verbally and in writing to tribes that have implemented a federally approved tribal family assistance plan that funding for special projects is available. Tribes that operate a tribal family assistance plan may receive the funds in these items, and the department may award all or a portion of these funds to tribes that operate tribal family assistance plans as allowable within federal regulations.

Item 2 includes increases of $2,206,194 of general fund money in fiscal year 2002 and of $2,241,893 of general fund money in fiscal year 2003 and reductions of $2,172,078 of state special revenue in fiscal year 2002 and of $2,135,314 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Funds in item 2d may be used only to support the costs of in-home services for families in the child welfare system. The department estimates that 25 families or 50 children will be served with this funding and that 80% of the families served will not enter the foster care system. If the department achieves this goal, the estimated increase in the foster care caseload will decrease from 3% to 2%. Any savings realized because of a lower than anticipated caseload increase may be used by the department to expand the provision of in-home services or other services within the child welfare system.

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 3 includes $1,482,291 in fiscal year 2002 and $1,482,748 in fiscal year 2003 for the tobacco prevention and control program. It is the intent of the legislature that the interagency coordinating council on prevention administer the tobacco control and prevention program.

Item 3 includes increases of $93,333 of general fund money in fiscal year 2002 and of $96,915 of general fund money in fiscal year 2003 and reductions of $90,463 of state special revenue in fiscal year 2002 and of $91,028 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Funds in item 3a may be used only to fund a deputy director position within the department.

Funds included in item 4c may be used only to support costs for the completion of a financial institution data match.

Funds included in item 4d may be used only to support the costs incurred to complete a study of the costs of raising a child in Montana.

Items 5, 9, and 10 include appropriations of state special revenue for provider rate increases funded from the interest income on the tobacco settlement trust fund provided for in Article XII, section 4, of the Montana constitution. If the interest income on the tobacco settlement trust fund provided for in Article XII, section 4, of the Montana constitution is insufficient to fully fund the state special revenue appropriations in items 5, 9, and 10, the legislature intends that the department find alternative funding sources to fully fund the provider rate increases. Alternative sources may include but are not limited to enhanced medicaid intergovernmental transfer programs and transfers of general fund money from other appropriations.

Item 5 includes increases of $6,717,000 of general fund money in fiscal year 2002 and of $6,862,000 of general fund money in fiscal year 2003 and reductions of $6,717,000 of state special revenue in fiscal year 2002 and of $6,862,000 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

The health policy and services division is authorized to pursue up to $1.5 million in federal special revenue each year of the biennium in item 5 to enhance or improve division services or programs to public schools. This additional federal special revenue may be expended on services by the division as long as those actions do not require or commit the state to additional general fund expenditures beyond the amount appropriated by the legislature to the division.

Item 5a must be spent on services to assist Montanans who have been exposed to asbestos. Funds in item 5a may not be expended for any other purpose.

Implementation of the resource-based relative value scale (RBRVS) provider rate system must continue to be phased in over the 2003 biennium. The department shall use funds in item 5b to raise rates paid to those current procedural terminology (CPT) codes paid the lowest percentage of medicare reimbursement that were restricted to 145% of the level of the state fiscal year 1997 reimbursement in state fiscal year 1999. The department may not change reimbursement for CPT codes, which were paid at 80% of the level of the state fiscal year 1997 reimbursement in state fiscal year 1999.

Item 5c includes funds for 3.5 FTE. Funds for the FTE may not be included in the adjusted base budget for the 2005 biennium unless federal funds or private revenue is available to fund the position.

Funds in item 5d may be used only to purchase equipment to transmit or to facilitate the transmission of medical images and x-rays from rural hospitals to medical specialists. The funds may be granted only to rural hospitals or groups of rural hospitals to purchase the equipment.

The department shall provide to the legislative finance committee each year of the biennium an analysis of the number of medicaid hospital projects completed and associated cost savings because of funding for claims adjudication specialists as approved by the 2001 legislature.

Item 6 includes increases of $211,082 of general fund money in fiscal year 2002 and of $218,916 of general fund money in fiscal year 2003 and reductions of $204,359 of state special revenue in fiscal year 2002 and of $205,400 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Item 7 includes increases of $1,044,768 of general fund money in fiscal year 2002 and of $1,070,319 of general fund money in fiscal year 2003 and reductions of $1,037,443 of state special revenue in fiscal year 2002 and of $1,055,626 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Item 7 includes a reduction in general fund money of $158,038 in fiscal year 2002 and $158,038 in fiscal year 2003. This reduction is the equivalent of a 15% reduction in fiscal 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 7 includes a reduction of $542,660 in fiscal year 2002 and $544,550 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

		Fiscal 2002						Fiscal 2003			
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The department shall make every effort to achieve an unqualified opinion in the financial compliance audit issued by the legislative audit division for the 2 years ending June 30, 2003. The legislature expects the department to take action to ensure that this achievement occurs, including exempting the fiscal bureau from vacancy savings requirements, exempting the fiscal bureau from reductions in staffing, establishing clear and appropriate fiscal policies and processes, and any other management actions that may reasonably be expected to result in the achievement of an unqualified audit opinion.

The developmental disability program is directed to use existing general fund appropriations within the developmental disabilities program budget to refinance services, if possible. General fund money made available through refinancing efforts may be used to:

(1) reduce the developmental disability program waiting list;

(2) improve wages paid by community providers to direct care workers;

(3) provide a provider rate increase to community services providers; and

(4) fund existing plans of care for individuals waiting for residential services.

The developmental disabilities program will report to the legislative fiscal division semiannually in January and July:

(1) the amount of general fund money that was made available through refinancing efforts;

(2) the amount, scope, and nature of services provided by funds made available through refinancing;

(3) the number of consumers, providers, and direct care worker staff benefiting from initiatives funded through refinancing efforts; and

(4) the amount of additional state special and federal funds obtained through refinancing efforts.

Item 8c includes $3,996,613 in general fund money and $3,861,209 in federal funds to begin equalization of wages paid to direct care workers employed by developmental disability community providers with direct care worker wages paid to employees at Eastmont human services center and the Montana developmental center.

The disability services division shall complete a report on the impact that applying income criteria to determine eligibility for developmental disabilities program services and benefits would have on individuals, the waiting list for services, and the budget for the developmental disabilities program. The report must be presented to the legislative finance committee by June 30, 2002. The report to the legislative finance committee should include by age group (0-3, 4-5, 6-18, 18-21, and over 21 years of age) and by residential setting (recipient home, group home, institution, etc.):

(1) the number of nonmedicaid-eligible recipients and the value of services, by funding source, provided to individuals and families with income at or below 200% of the federal poverty level; and

(2) the number of nonmedicaid-eligible recipients and the value of services, by funding source, provided to individuals and families with income at or below 150% of the federal poverty level.

The fiscal year 2003 funds in items 8, 8a, and 8b may not be expended until the report has been presented to the legislative finance committee.

Included in item 8b is general fund money of $1,400,277 in fiscal year 2002 and $1,400,224 in fiscal year 2003. This funding is one time only. The combined population at the two institutions (Eastmont human services center and Montana developmental center) may not exceed 88 individuals at the end of the 2003 biennium. If the disability services division has a population of more than 88 individuals at the two institutions at the end of the 2003 biennium, the division shall certify that a community residential setting was not available for the individuals remaining in the two institutions.

Funds in item 9a may be used only to make one-time payments to nursing homes based on the number of medicaid services provided. State special revenue in item 9a may be expended only after the office of budget and program planning has certified that the department has received $2 million each year from counties participating in the intergovernmental transfer program for nursing homes.

The department shall distribute funds in items 8c and 9c in a way that provides reasonable assurance that the funds are used solely for direct care wage and benefit increases. Not all providers or types of direct care workers must receive the same rate increase for the biennium. Funds appropriated in items 8c and 9c may be used only for direct care worker wage increases. Funds in items 8c and 9c may not be used to fund other programs. In the event that the department finds it necessary to institute program reductions, it is the intent of the legislature that funds in items 8c and 9c be the last items eliminated.

The senior and long-term care division is authorized to pursue up to $2 million in federal special revenue in item 9d over the biennium to enhance or improve division services or programs. This additional federal special revenue may be expended by the division on services as long as those actions do not require or commit the state to additional general fund expenditures beyond the amount appropriated for the 2003 biennium by the legislature to the division in [this act].

The department shall post on the senior and long-term care division website the staffing levels provided in Montana nursing facilities.

The department shall require that area agencies on aging provide a written assessment of the need for increased funding in their nutrition programs prior to expending the additional Title III of the Older Americans Act of 1965 grant funds appropriated in [this act].

The appropriation in item 10 is contingent on the department developing a management plan to:

(1) ensure that the department staff tracking the census of residential treatment of children in Montana communicate in-state service availability to appropriate staff; and

(2) negotiate or issue requests for proposals in compliance with 52-2-306 and 52-2-307 for placement of children with in-state providers in lieu of placing the child in out-of-state treatment. The department shall submit the plan to the children, families, health, and human services interim committee and the legislative finance committee by July 1, 2001.

Item 10 is contingent on the department maintaining $3,539,842 of federal block grant contracts to state-approved chemical dependency programs for treatment and rehabilitation each year of the 2003 biennium.

Item 10 includes $559,560 in general fund money in fiscal year 2002 and $713,907 in fiscal year 2003 that must be used to fund mental health services for persons eligible for the mental health services plan. At least $480,000 of these general fund appropriations must be used for grants to one or more local children's mental health provider coalitions to prevent placement of emotionally disturbed children in out-of-home services.

Funds in item 10a must be used to fund services at Montana state hospital and for staff and utilization review activities to reduce the use of institutional services. Any funds not spent for staff and utilization review activities must be used to fund community services, which will reduce the need for inpatient and institutional care. The funds may not be used for any other purpose.

Funds in item 10b must be used to fund mental health services for low-income children. Funds in item 10b may not be used for any other purpose or transferred to any other program.

Funds in item 10d must be used to contract with the Montana consensus council.

Funds in item 10e must be used to pay one-time increases in reimbursement for services provided in frontier counties by county-funded mental health medicaid service providers.

Funds in item 10g must be used for:

(1) activities related to training and educating law enforcement personnel, judicial personnel, and persons instrumental to the commitment process in recognizing serious mental illness and appropriate approaches to and treatment for persons who exhibit symptoms of mental illness; and

(2) development of screening tools to help identify whether a person may be mentally ill.

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
TOTAL SECTION B	262,958,769	28,922,817	723,837,878	0	0	1,015,719,464	273,103,341	31,562,758	733,544,386	0	0	1,038,210,485

C. NATURAL RESOURCES AND COMMERCE

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
DEPARTMENT OF FISH, WILDLIFE, AND PARKS (5201)												
1. Administration and Finance Division (01)	0	5,683,118	1,199,741	0	0	6,882,859	0	5,715,726	1,196,547	0	0	6,912,273
a. Legislative Audit (Restricted/Biennial)	0	62,028	10,946	0	0	72,974	0	0	0	0	0	0
b. Legislative Contract Authority (Restricted/OTO)	0	0	75,000	0	0	75,000	0	0	75,000	0	0	75,000
2. Field Services Division (02)	0	6,601,562	724,700	0	0	7,326,262	0	6,651,474	729,488	0	0	7,380,962
a. Public Wildlife Interface (Biennial)	0	65,000	0	0	0	65,000	0	0	0	0	0	0
b. Legislative Contract Authority (Restricted/OTO)	0	0	60,000	0	0	60,000	0	0	60,000	0	0	60,000
c. SB 285 — Revise Conservation License Laws (OTO)	0	0	0	0	0	0	0	802,000	0	0	0	802,000
3. Fisheries Division (03)	0	3,314,986	3,786,792	0	0	7,101,778	0	3,338,044	3,799,927	0	0	7,137,971
a. Fishing Access Assistance (Restricted/OTO)	0	50,000	0	0	0	50,000	0	50,000	0	0	0	50,000
b. Recreation Conflict Coordinator (OTO)	0	15,874	37,039	0	0	52,913	0	15,874	37,039	0	0	52,913
c. Legislative Contract Authority (Restricted/OTO)	0	0	1,851,019	0	0	1,851,019	0	0	1,851,019	0	0	1,851,019
d. Echo Lake Fish Planting (OTO)	0	7,500	22,500	0	0	30,000	0	7,500	22,500	0	0	30,000
4. Law Enforcement Division (04)	0	5,983,160	277,002	0	0	6,260,162	0	6,057,818	280,150	0	0	6,337,968
a. Alternative Livestock Environmental Review (Biennial/OTO)	0	96,000	0	0	0	96,000	0	0	0	0	0	0

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. Legislative Contract Authority (Restricted/OTO)												
	0	0	10,000	0	0	10,000	0	0	10,000	0	0	10,000
c. HB 419 — Create Natural Resources Enforcement Program in Attorney General's Office												
	0	41,600	0	0	0	41,600	0	41,600	0	0	0	41,600
5. Wildlife Division (05)												
	0	3,641,942	3,432,582	0	0	7,074,524	0	3,682,843	3,434,308	0	0	7,117,151
a. Mountain Lion Research (Restricted/OTO)												
	0	38,992	116,978	0	0	155,970	0	38,992	116,978	0	0	155,970
b. Black Bear Research (OTO)												
	0	14,830	44,490	0	0	59,320	0	14,830	44,490	0	0	59,320
c. Sage Grouse Monitoring (OTO)												
	0	22,500	67,500	0	0	90,000	0	22,500	67,500	0	0	90,000
d. Legislative Contract Authority (Restricted/OTO)												
	0	0	533,798	0	0	533,798	0	0	533,798	0	0	533,798
6. Parks Division (06)												
	279,256	4,518,999	244,914	0	0	5,043,169	279,255	4,564,968	244,896	0	0	5,089,119
a. Motorboat Site Maintenance (Restricted)												
	0	11,000	40,000	0	0	51,000	0	11,000	40,000	0	0	51,000
b. Snowmobile Equipment (Biennial)												
	0	298,000	0	0	0	298,000	0	0	0	0	0	0
c. Continue Chief Plenty Coups (Restricted/Biennial/OTO)												
	0	214,155	0	0	0	214,155	0	0	0	0	0	0
d. Legislative Contract Authority (Restricted/OTO)												
	0	0	50,000	0	0	50,000	0	0	50,000	0	0	50,000
7. Conservation Education Division (08)												
	2,562	1,699,295	499,481	0	0	2,201,338	2,562	1,711,770	499,472	0	0	2,213,804
a. Aquatic Education/Family Fishing (Restricted)												
	0	0	200,000	0	0	200,000	0	0	200,000	0	0	200,000
b. Shooting Range Grants (Biennial)												
	0	120.000	0	0	0	120.000	0	0	0	0	0	0

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. Shooting Range Grants Enhancement (Biennial/OTO)												
	0	60,000	0	0	0	60,000	0	0	0	0	0	0
d. Legislative Contract Authority (Restricted/OTO)												
	0	0	35,000	0	0	35,000	0	0	35,000	0	0	35,000
8. Department Management (09)												
	0	2,586,380	882,199	0	0	3,468,579	0	2,595,545	880,521	0	0	3,476,066
a. Office Maintenance and Small Equipment (Restricted/OTO)												
	0	25,000	0	0	0	25,000	0	25,000	0	0	0	25,000
b. Cadastral Database (Restricted)												
	0	9,000	0	0	0	9,000	0	9,000	0	0	0	9,000
c. Native Species Conservation (Restricted/OTO)												
	0	0	511,427	0	0	511,427	0	0	511,427	0	0	511,427
d. Hunting and Fishing License Research (Restricted/OTO)												
	0	15,000	0	0	0	15,000	0	10,000	0	0	0	10,000
e. Legislative Contract Authority (Restricted/OTO)												
	0	0	200,000	0	0	200,000	0	0	200,000	0	0	200,000
Total												
	281,818	35,195,921	14,913,108	0	0	50,390,847	281,817	35,366,484	14,920,060	0	0	50,568,361

The appropriations for legislative contract authority are subject to all of the following provisions:

(1) Legislative contract authority applies only to federal funds.

(2) Legislative contract authority expenditures must be reported on the state's accounting system, and the records must be separate from present law operations. In preparing the 2005 biennium budget for legislative consideration, the office of budget and program planning may not include the expenditures from this item in the present law base.

(3) A report must be submitted by the department to the legislative fiscal division following the end of each fiscal year of the biennium. The report must include a list of projects with the related amount of expenditures and FTE for each project.

The department is to report to the natural resources and commerce appropriations subcommittee on the projects funded with federal Sikes Act money and state matching money. The report is to include an analysis of the viability for continuance of the program and a list of projects funded with the money.

If the department is required to adjust personal services expenditure costs between state and federal accounts, the approving authority shall adjust the state special revenue appropriation and the federal appropriation by like amounts. All transfers between fund types must be fully explained and justified on budget documents submitted to the office of budget and program planning.

The department shall determine and quantify any efficiencies generated as a result of incorporating the Smith River drawing process into the automated license system and report its findings to the 2003 legislature.

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 1b legislative contract authority (LCA) is subject to all LCA provisions stated in the agency's language. LCA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. LCA applies only to federal funds.

Item 2b LCA is subject to all LCA provisions stated in the agency's language. LCA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. LCA applies only to federal funds.

Item 3 includes $19,726 in state special revenue funds each fiscal year and $59,178 in federal special revenue funds each fiscal year that are restricted to equipment purchases in the fisheries division and payouts of leave accruals because of retirements in the fisheries division.

Item 3c LCA is subject to all LCA provisions stated in the agency's language. LCA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. LCA applies only to federal funds.

Item 4 includes a reduction in general fund money of $18,339 in fiscal year 2002 and $18,339 in fiscal year 2003. This reduction is the equivalent of a 25% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 4a contains a biennial appropriation of $96,000 for game farm environmental assessment/environmental impact statements.

Item 4b LCA is subject to all LCA provisions stated in the agency's language. LCA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. LCA applies only to federal funds.

Item 4c is contingent upon passage and approval of House Bill No. 419.

Item 5a is a restricted and one-time-only appropriation for mountain lion research.

Item 5d LCA is subject to all LCA provisions stated in the agency's language. LCA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. LCA applies only to federal funds.

Item 6 includes a reduction of $224 in fiscal year 2002 and $225 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 6a is a restricted appropriation for motorboat site maintenance.

Item 6b includes a biennial appropriation of $298,000 for snowmobile equipment.

The department may expend from the appropriation in item 6c no more than one-half of the unspent 2001 biennium appropriation made for this purpose. It is the intent of the legislature for the department to use any funds reverted from the 2001 biennium for the purpose of carrying out various maintenance and construction projects described in the management plan for Chief Plenty Coups state park. Further, the department may pursue up to $214,155 of lodging facility use tax funds appropriated to the department for state park maintenance in addition to the $214,155 appropriated in [this act] for purposes of completing the maintenance and construction projects at Chief Plenty Coups state park. The department shall develop a tracking and reporting method for amounts spent from the lodging facility use tax for this purpose. The department shall report to the legislative finance committee at its June 2002 (or nearest) meeting on factors such as projects completed, dollars spent, and a timeline for completion of the remainder of the projects.

Item 6d LCA is subject to all LCA provisions stated in the agency's language. LCA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. LCA applies only to federal funds.

Item 7a is a restricted appropriation for aquatic education program/family fishing.

Item 7b is a biennial appropriation of $120,000 for shooting range grants.

Item 7c is a biennial and one-time-only appropriation of $60,000 for shooting range grants enhancement.

Item 7d LCA is subject to all LCA provisions stated in the agency's language. LCA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. LCA applies only to federal funds.

Item 8 includes a total of $138,780 for the 2003 biennium for the Montana natural resources information system. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.

Item 8b is a restricted appropriation for the cadastral database.

Item 8e LCA is subject to all LCA provisions stated in the agency's language. LCA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. LCA applies only to federal funds.

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
DEPARTMENT OF ENVIRONMENTAL QUALITY (5301)												
1. Central Management Program (10)	16,918	0	3,381	0	0	20,299	16,926	0	3,381	0	0	20,307
a. Database Development (Restricted/Biennial/OTO)	150,000	0	0	0	0	150,000	0	0	0	0	0	0
b. Legal Challenges (Biennial/OTO)	150,000	0	0	0	0	150,000	0	0	0	0	0	0
2. Planning, Prevention, and Assistance Division (20)	2,152,158	1,063,532	8,703,501	0	0	11,919,191	2,143,501	1,058,511	8,637,953	0	0	11,840,065
a. Technical Assistance to Tribal Air Quality (OTO)	0	0	108,464	0	0	108,464	0	0	103,772	0	0	103,772
b. Particulate Matter (2.5) Monitoring (Restricted)	0	0	250,784	0	0	250,784	0	0	249,099	0	0	249,099
c. One-Stop Grant for Database (Biennial/OTO)	0	0	450,000	0	0	450,000	0	0	0	0	0	0
d. Flathead Lake Biological Monitoring Station	0	0	100,000	0	0	100,000	0	0	0	0	0	0
e. SB 506 — Alternative Energy Revolving Loan Account	0	60,000	0	0	0	60,000	0	60,000	0	0	0	60,000
3. Enforcement Division (30)	537,756	179,012	372,895	0	0	1,089,663	525,799	180,035	374,997	0	0	1,080,831
4. Remediation Division (40)	0	3,212,735	7,164,215	0	0	10,376,950	0	3,244,983	7,173,433	0	0	10,418,416
a. Enterprise Database Development (OTO)	0	200,000	0	0	0	200,000	0	25,000	0	0	0	25,000

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. Cleanup/Lockwood Solvent (Biennial)	0	0	580,450	0	0	580,450	0	0	513,208	0	0	513,208
c. Contracted Services — Legal Support (Restricted/Biennial/OTO)	0	150,000	0	0	0	150,000	0	0	0	0	0	0
d. Leaking Underground Storage Tank Trust — Truck Replacement (OTO)	0	3,000	27,000	0	0	30,000	0	0	0	0	0	0
e. Orphan Share Reimbursement (Restricted/Biennial/OTO)	0	3,500,000	0	0	0	3,500,000	0	0	0	0	0	0
f. Aboveground Storage Tank Survey (Restricted/OTO)	0	25,000	0	0	0	25,000	0	25,000	0	0	0	25,000
g. Petroleum Tank Release Compensation Board Fund Liability Study (Restricted/OTO)	0	75,000	0	0	0	75,000	0	0	0	0	0	0
h. Database Development (Restricted/OTO)	0	18,306	34,294	0	0	52,600	0	18,306	34,294	0	0	52,600
i. Leaking Underground Storage Tank Trust Contracted Services (Restricted/OTO)	0	30,000	270,000	0	0	300,000	0	30,000	270,000	0	0	300,000
5. Permitting and Compliance Division (50)	1,217,914	8,282,151	3,716,638	0	0	13,216,703	1,185,231	8,342,531	3,701,871	0	0	13,229,633
a. Junk Vehicle Database Conversion (Restricted/OTO)	0	60,000	0	0	0	60,000	0	18,000	0	0	0	18,000
b. Asbestos Compliance (Restricted/OTO)	28,300	56,700	0	0	0	85,000	28,300	56,700	0	0	0	85,000
c. Hazardous Waste Contract Service (Restricted/Biennial/OTO)	0	150,000	0	0	0	150,000	0	0	0	0	0	0
d. Bond Forfeitures (Restricted/Biennial)	0	30,500,000	0	0	0	30,500,000	0	0	0	0	0	0
e. Montana Environmental Policy Act Projects (Restricted/Biennial)	0	1,000,000	0	0	0	1,000,000	0	0	0	0	0	0
f. Hard-Rock Federal Funds (Restricted/Biennial/OTO)	0	0	3,000,000	0	0	3,000,000	0	0	0	0	0	0

	Fiscal 2002 General Fund	Fiscal 2002 State Special Revenue	Fiscal 2002 Federal Special Revenue	Fiscal 2002 Proprietary	Fiscal 2002 Other	Fiscal 2002 Total	Fiscal 2003 General Fund	Fiscal 2003 State Special Revenue	Fiscal 2003 Federal Special Revenue	Fiscal 2003 Proprietary	Fiscal 2003 Other	Fiscal 2003 Total
g. SB 449 — Environmental Rehabilitation and Response (Restricted/Biennial)												
	0	125,000	0	0	0	125,000	0	0	0	0	0	0
h. Major Facility Siting Act Projects (Restricted/Biennial/OTO)												
	0	300,000	0	0	0	300,000	0	0	0	0	0	0
i. Abandoned Vehicle Operating Costs (Restricted/OTO)												
	0	172,230	0	0	0	172,230	0	172,230	0	0	0	172,230
j. Public Water Supply Equipment (Restricted/OTO)												
	0	15,000	0	0	0	15,000	0	15,000	0	0	0	15,000
k. Hard-Rock Equipment (Restricted/OTO)												
	0	8,990	0	0	0	8,990	0	0	0	0	0	0
l. Solid Waste Database Conversion (OTO)												
	50,000	50,000	0	0	0	100,000	15,000	15,000	0	0	0	30,000
m. Zortman/Landusky Long-Term Water Treatment Trust (Restricted/OTO)												
	0	0	0	0	0	0	0	540,000	0	0	0	540,000
n. SB 484 — Hard-Rock Mining Reclamation, Operation, and Maintenance (Restricted/Biennial)												
	0	4,000,000	0	0	0	4,000,000	0	0	0	0	0	0
o. SB 167 — Sanitation in Subdivision Grants to Counties (Restricted)												
	0	204,000	0	0	0	204,000	0	204,000	0	0	0	204,000
Total	4,303,046	53,440,656	24,781,622	0	0	82,525,324	3,914,857	14,005,296	21,062,008	0	0	38,982,161

Items 2, 4, and 5 include a total of $177,855 for the 2003 biennium for the Montana natural resources information system. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.

Item 2d is contingent upon receipt of environmental protection agency 104b(3) ecosystem protection grant funds for the purposes of water quality monitoring and assessment activities. Upon receipt, the department shall contract with the Flathead Lake biological monitoring station for up to $100,000 of these funds in support of department priority total maximum daily load monitoring and assessment projects.

Item 2e is contingent upon passage and approval of Senate Bill No. 506. The funds appropriated in item 2d are from the alternative energy revolving loan account created in Senate Bill No. 506. The funding must be spent for administration of the loan program subject to restrictions provided in Senate Bill No. 506.

Item 5 includes a reduction in general fund money of $7,328 in fiscal year 2002 and $7,328 in fiscal year 2003. This reduction is the equivalent of an 8% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 5 includes a reduction of $21,608 in fiscal year 2002 and $21,683 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 5g is contingent upon passage and approval of Senate Bill No. 449.

Item 5m includes a restricted, one-time-only appropriation of up to $540,000 from state special revenue funds in fiscal year 2003 that have been transferred from the resource indemnity trust fund. The appropriation is contingent upon the state treasurer's certification to the office of budget and program planning and to the legislative finance committee that the trust balance is in excess of $100 million. Upon meeting the contingency in fiscal year 2003, the office of budget and program planning is authorized to transfer up to $540,000 in cash from the resource indemnity trust fund to a state special revenue fund to be used to purchase federal debt obligation securities that mature in June 2017 to partially fund the long-term water treatment trust for the former Zortman and Landusky mines.

Item 5n is contingent upon passage and approval of Senate Bill No. 484.

Item 5o is contingent upon passage and approval of Senate Bill No. 167.

The department is authorized to decrease federal special revenue in the pollution control and the drinking water revolving fund loan programs and increase state special revenue by a like amount within the special administration account.

DEPARTMENT OF LIVESTOCK (5603)

	Fiscal 2002 General Fund	Fiscal 2002 State Special Revenue	Fiscal 2002 Federal Special Revenue	Fiscal 2002 Proprietary	Fiscal 2002 Other	Fiscal 2002 Total	Fiscal 2003 General Fund	Fiscal 2003 State Special Revenue	Fiscal 2003 Federal Special Revenue	Fiscal 2003 Proprietary	Fiscal 2003 Other	Fiscal 2003 Total
1. Centralized Services Program (01)												
	14,748	1,028,923	116,009	0	0	1,159,680	17,416	1,054,776	87,157	0	0	1,159,349
a. Legislative Audit (Restricted/Biennial)												
	2,724	26,563	4,768	0	0	34,055	0	0	0	0	0	0
b. Laboratory Information System Equipment/Installation (OTO)												
	0	96,200	10,000	0	0	106,200	0	0	0	0	0	0
c. Board of Horseracing												
	0	237,913	0	0	0	237,913	0	241,877	0	0	0	241,877
d. Legislative Audit — Board of Horseracing (Restricted/Biennial)												
	0	450	0	0	0	450	0	0	0	0	0	0
2. Diagnostic Laboratory Program (03)												
	190,933	1,194,465	11,115	0	0	1,396,513	190,949	1,212,404	17,371	0	0	1,420,724
3. Animal Health Program (04)												
	0	680,445	0	0	0	680,445	0	710,510	0	0	0	710,510
a. Bison Federal Cooperative Agreement (Restricted/OTO)												
	0	0	651,310	0	0	651,310	0	0	651,310	0	0	651,310
b. Disease Outbreak (Restricted/OTO)												
	0	177,823	0	0	0	177,823	0	177,823	0	0	0	177,823

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. Greater Yellowstone Interagency Brucellosis Committee (Restricted/OTO)												
	0	0	127,600	0	0	127,600	0	0	143,211	0	0	143,211
4. Milk and Egg Program (05)												
	0	242,143	24,758	0	0	266,901	0	246,775	24,762	0	0	271,537
5. Inspection and Control Program (06)												
	0	2,608,699	39,244	0	0	2,647,943	0	2,594,838	39,381	0	0	2,634,219
a. Brand Rerecord (Restricted/OTO)												
	0	45,654	0	0	0	45,654	0	0	0	0	0	0
6. Predator Control Program (08)												
	0	435,235	0	0	0	435,235	0	442,718	0	0	0	442,718
7. Meat and Poultry Inspection Program (10)												
	395,716	1,756	397,475	0	0	794,947	400,683	1,756	402,441	0	0	804,880
8. Milk Control Bureau (37)												
	0	186,643	0	0	0	186,643	0	186,501	0	0	0	186,501
Total												
	604,121	6,962,912	1,382,279	0	0	8,949,312	609,048	6,869,978	1,365,633	0	0	8,844,659

The department shall record separately all personal services, operating expenses, equipment, and capital expenditures related to bison control for all programs in which any resources are expended for that purpose on the state accounting, budgeting, and human resources system in a manner so that those expenditures may be readily derived and shall create a summary report. The department shall provide an annual report by program to the legislative fiscal analyst and the office of budget and program planning of all expenditures related to bison control.

Item 1 includes a reduction of $4,398 in fiscal year 2002 and $4,413 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Items 1c and 1d are contingent upon passage and approval of Senate Bill No. 445.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Centralized Services (21)												
	1,542,278	425,067	105,000	0	0	2,072,345	1,553,621	433,259	105,000	0	0	2,091,880
a. Legislative Audit (Restricted/Biennial)												
	80,272	0	0	0	0	80,272	0	0	0	0	0	0
b. Missoula Office Rewiring (Restricted/OTO)												
	0	0	25,750	0	0	25,750	0	0	0	0	0	0

	Fiscal 2002 General Fund	Fiscal 2002 State Special Revenue	Fiscal 2002 Federal Special Revenue	Fiscal 2002 Proprietary	Fiscal 2002 Other	Fiscal 2002 Total	Fiscal 2003 General Fund	Fiscal 2003 State Special Revenue	Fiscal 2003 Federal Special Revenue	Fiscal 2003 Proprietary	Fiscal 2003 Other	Fiscal 2003 Total
c. Debt Service to Reimburse Montana Science Institute (Restricted)												
	0	0	0	0	0	0	38,000	0	0	0	0	38,000
2. Oil and Gas Conservation Division (22)												
	0	1,132,008	0	0	0	1,132,008	0	1,143,052	0	0	0	1,143,052
a. Operating Adjustments (OTO)												
	0	84,243	0	0	0	84,243	0	89,708	0	0	0	89,708
3. Conservation and Resource Development Division (23)												
	1,822,848	1,497,854	161,651	0	0	3,482,353	1,741,762	1,584,972	161,651	0	0	3,488,385
a. Irrigation Assistance (OTO)												
	140,000	0	0	0	0	140,000	150,000	0	0	0	0	150,000
b. Dry Prairie Rural Water Project (OTO)												
	0	99,720	0	0	0	99,720	0	99,720	0	0	0	99,720
c. North Central Montana Regional Water Authority (OTO)												
	125,000	0	0	0	0	125,000	125,000	0	0	0	0	125,000
d. Eastern Plains Resource Conservation and Development (OTO)												
	0	25,000	0	0	0	25,000	0	25,000	0	0	0	25,000
e. Gallatin Resource Conservation and Development (OTO)												
	15,000	0	0	0	0	15,000	15,000	0	0	0	0	15,000
f. Sheridan County Conservation District (OTO)												
	0	0	0	0	0	0	35,000	0	0	0	0	35,000
g. Coal Tax Allocation to Conservation Districts (Biennial)												
	0	100,000	0	0	0	100,000	0	0	0	0	0	0
h. Grass Conservation Commission (Biennial)												
	45,000	51,508	0	0	0	96,508	0	0	0	0	0	0
i. Regional Water System Coordinator (OTO)												
	0	52,054	0	0	0	52,054	0	52,054	0	0	0	52,054
4. Water Resources Division (24)												
	5,930,069	1,016,253	160,035	0	0	7,106,357	5,991,483	1,019,340	160,733	0	0	7,171,556
a. State Water Project Rehabilitation (Restricted/Biennial/OTO)												
	0	3,600,000	0	0	0	3,600,000	0	0	0	0	0	0

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. Dam Safety Improvement (Restricted/OTO)	0	0	81,845	0	0	81,845	0	0	82,177	0	0	82,177
c. Water Well Litigation (Restricted)	0	16,000	0	0	0	16,000	0	16,000	0	0	0	16,000
d. Water Right Permit Verification (OTO)	0	170,000	0	0	0	170,000	0	145,000	0	0	0	145,000
e. Flood Damage Reduction (Restricted/OTO)	0	0	169,748	0	0	169,748	0	0	169,786	0	0	169,786
f. Broadwater Hydropower Facility (OTO)	0	62,000	0	0	0	62,000	0	32,000	0	0	0	32,000
g. HB 397 — Clark Fork River Task Force (OTO)	0	0	0	0	0	0	0	120,000	0	0	0	120,000
5. Reserved Water Rights Compact Commission (25)	724,261	0	0	0	0	724,261	726,624	0	0	0	0	726,624
a. Equipment Replacement (OTO)	6,000	0	0	0	0	6,000	10,500	0	0	0	0	10,500
6. Forestry and Trust Lands (35)	6,056,464	10,922,550	1,055,209	0	0	18,034,223	6,093,328	11,034,040	1,064,587	0	0	18,191,955
a. Fire Protection Assessment Software Rewrite (Restricted/OTO)	79,200	40,800	0	0	0	120,000	0	0	0	0	0	0
b. Federal Fire Reimbursement (Restricted)	0	0	229,684	0	0	229,684	0	0	229,684	0	0	229,684
c. Phase II/ Slash Programming (OTO)	23,600	0	0	0	0	23,600	0	0	0	0	0	0
d. Remote Weather Station (OTO)	8,710	4,290	0	0	0	13,000	0	0	0	0	0	0
e. Forest Health Monitoring Program (Restricted/OTO)	0	0	78,000	0	0	78,000	0	0	78,000	0	0	78,000
f. Forest Rehabilitation (OTO)	0	177.500	0	0	0	177.500	0	140.500	0	0	0	140,500

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
g. Replacement Equipment (OTO)												
	0	15,000	0	0	0	15,000	0	17,000	0	0	0	17,000
h. Habitat Conservation Plan (Restricted/Biennial/OTO)												
	0	0	200,000	0	0	200,000	0	0	0	0	0	0
i. Homeowner Defensible Space Audits (Biennial/OTO)												
	0	0	200,000	0	0	200,000	0	0	0	0	0	0
j. Private Forest Landowner Assistance (Restricted/Biennial/OTO)												
	0	0	350,000	0	0	350,000	0	0	0	0	0	0
k. SB 31 — Revise State Trust Land Laws												
	0	5,000	0	0	0	5,000	0	5,000	0	0	0	5,000
l. SB 354 — Full Compensation for School Trust for Natural Areas												
	0	0	0	0	0	0	0	35,000	0	0	0	35,000
m. SB 495 — Purchase of Public School Fund Mineral Production Rights (Restricted/Biennial/OTO)												
	75,000,000	0	0	0	0	75,000,000	0	0	0	0	0	0
Total												
	91,598,702	19,496,847	2,816,922	0	0	113,912,471	16,480,318	15,991,645	2,051,618	0	0	34,523,581

All remaining proceeds in excess of $100 million in the resource indemnity trust, up to $100,000, must be appropriated in fiscal year 2003 to the department based upon a split of two-thirds for conservation district grant projects and one-third for irrigation grants. The appropriation is contingent upon the governor's certification that the trust balance is in excess of $100 million. Upon meeting the contingency in fiscal year 2003, the office of budget and program planning is authorized to transfer up $100,000 in cash from the resource indemnity trust fund to a state special revenue fund to be used for these purposes. Further, the cash for these purposes cannot be transferred until $500,000 has been transferred for the purpose of weed eradication, $540,000 has been transferred for the purpose of purchasing securities for water treatment at the former Zortman and Landusky mines, and $120,000 has been transferred to conduct the Clark Fork study.

Item 1 includes a reduction in general fund money of $33,468 in fiscal year 2002 and $33,468 in fiscal year 2003. This reduction is the equivalent of a 10% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 1 includes a reduction of $107,169 in fiscal year 2002 and $107,543 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 2 includes a total of $98,310 for the 2003 biennium for the Montana natural resources information system. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.

The department is authorized to decrease state special revenue in the underground injection control program and to increase federal special revenue by a like amount when the amount of federal EPA funds available for the program becomes known. Any federal special revenue funds are to be spent before state special revenue funds.

The department is appropriated up to $600,000 for the 2003 biennium from the state special revenue account established in 85-1-604 for the purchase of prior liens on property held as loan security as provided in 85-1-618.

During the 2003 biennium, up to $100,000 of excess loan loss reserve money in the water pollution control state revolving fund is appropriated to make grants to aid in the feasibility of projects as authorized in 75-5-1113(3)(b).

During the 2003 biennium, up to $100,000 of excess loan loss reserve money in the drinking water state revolving fund is appropriated to make grants to aid in the feasibility of projects as authorized in 75-6-224(3)(b).

The department is authorized to decrease federal special revenue in the pollution control and the drinking water revolving fund loan programs and to increase state special revenue money by a like amount within the special administration account.

During the 2003 biennium, up to $1 million of funds currently in or to be deposited in the Broadwater replacement and renewal account is appropriated to the department for repairing or replacing equipment at the Broadwater hydropower facility.

During the 2003 biennium, up to $70,000 of interest earned on the Broadwater water users account is appropriated to the department for the purpose of repair, improvement, or rehabilitation of the Broadwater-Missouri diversion project.

During the 2003 biennium, up to $500,000 of funds currently in or to be deposited in the state project hydropower earnings account is appropriated for the purpose of repairing, improving, or rehabilitating department state water projects.

The department shall report back to the 2003 legislature to provide an update on the progress of the flood damage reduction project.

The department is appropriated up to $20,000 for the 2003 biennium from the bond proceeds provided for in 76-13-408 for hazard reduction bonds during the 2003 biennium.

Item 4g is contingent upon passage and approval of House Bill No. 397. Item 4g is an appropriation from state special revenue funds in fiscal year 2003 that have been transferred from the resource indemnity trust fund. The appropriation is contingent upon the governor's certification that the trust balance is in excess of $100 million. Upon meeting the contingency in fiscal year 2003, the office of budget and program planning is authorized to transfer the $120,000 in cash from the resource indemnity trust fund to a state special revenue fund to be used for this purpose. The cash for this purpose cannot be transferred until $500,000 has been transferred for the purpose of weed eradication and $540,000 has been transferred for the purpose of purchasing securities for water treatment at the former Zortman and Landusky mines.

State special revenue appropriations in item 6 may be used for firefighting costs. It is the intent of the legislature to replace any state special revenue expenditures with a general fund supplemental appropriation in the next legislative session.

Item 6b includes funds received from nonstate entities for the use of department personnel and equipment to assist them in managing emergency incidents, such as fire suppression activities. Only funds up to $100,000 received as reimbursement of personnel expenses credited against the department's operational budget and up to $250,000 of funds received as payment under equipment use agreements are considered fire reimbursement funds. All other funds received must be deposited in the general fund. Funds reimbursed for the use of department equipment must be expended for the repair, maintenance, and replacement of equipment that supports the state-county cooperative fire program. The department shall report fire reimbursement expenditures on state accounting records, and the records must be separate from present law operations.

Item 6k is contingent upon passage and approval of Senate Bill No. 31.

Item 6l is contingent upon passage and approval of Senate Bill No. 354.

Item 6m is limited to the amount borrowed from the coal tax permanent fund and may be used only for the purpose of purchasing public school fund mineral production rights from the trust and legacy account.

Fiscal 2002 General Fund	Fiscal 2002 State Special Revenue	Fiscal 2002 Federal Special Revenue	Fiscal 2002 Proprietary	Fiscal 2002 Other	Fiscal 2002 Total	Fiscal 2003 General Fund	Fiscal 2003 State Special Revenue	Fiscal 2003 Federal Special Revenue	Fiscal 2003 Proprietary	Fiscal 2003 Other	Fiscal 2003 Total
DEPARTMENT OF AGRICULTURE (6201)											
1. Central Management Division (15)											
165,498	446,473	68,813	48,892	0	729,676	188,279	431,837	68,655	50,973	0	739,744
a. Legislative Audit (Restricted/Biennial)											
34,055	0	0	0	0	34,055	0	0	0	0	0	0

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. Electronic Transactions Strategic Planning Consulting Services (OTO)												
	0	79,000	0	39,000	0	118,000	0	30,414	0	4,000	0	34,414
2. Agricultural Sciences Division (30)												
	95,175	4,554,865	421,962	0	0	5,072,002	97,137	4,537,272	423,377	0	0	5,057,786
a. Federal Special Grants (OTO)												
	0	0	100,000	0	0	100,000	0	0	100,000	0	0	100,000
b. Organic Certification Program (Restricted/OTO)												
	41,567	0	0	0	0	41,567	41,680	0	0	0	0	41,680
c. Federal Special Grants (Biennial)												
	0	0	2,000,000	0	0	2,000,000	0	0	0	0	0	0
d. Weed Control Program (Restricted)												
	101,341	0	0	0	0	101,341	101,337	0	0	0	0	101,337
e. SB 326 — Weed Control Program (Restricted/OTO)												
	0	0	0	0	0	0	0	500,000	0	0	0	500,000
3. Agricultural Development Division (50)												
	353,758	3,184,793	45,710	267,859	0	3,852,120	356,635	3,147,491	45,710	268,174	0	3,818,010
a. Rail Transportation Technical Assistance (Restricted/Biennial/OTO)												
	0	50,000	0	0	0	50,000	0	0	0	0	0	0
Total												
	791,394	8,315,131	2,636,485	355,751	0	12,098,761	785,068	8,647,014	637,742	323,147	0	10,392,971

It is the intent of the legislature that the department use sources other than the general fund to fund operations of the organic certification program in the 2005 biennium.

Item 1 includes a reduction in general fund money of $4,827 in fiscal year 2002 and $4,827 in fiscal year 2003. This reduction is the equivalent of a 13% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 1 includes a reduction of $2,715 in fiscal year 2002 and $2,725 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 2 contains $100,000 each year of the 2003 biennium from the department of transportation highway state special revenue fund for use in the weed control program. This appropriation is contingent upon passage and approval of Senate Bill No. 326.

The funds in item 2d are to be granted to governmental entities through an application process, to mitigate the impact of noxious weeds on private and state lands, except department of fish, wildlife, and parks lands, as a result of the activities of the department of fish, wildlife, and parks.

Item 2e contains a $500,000 appropriation in fiscal year 2003 from state special revenue funds that are to be transferred from the resource indemnity trust fund. The $500,000 appropriation is contingent upon the governor's certification that the trust balance is in excess of $100 million. Upon meeting the contingency in fiscal year 2003, the office of budget and program planning is authorized to transfer the $500,000 in cash from the resource indemnity trust fund to a state special revenue fund to be used for this purpose. Item 2e is contingent upon passage and approval of Senate Bill No. 326.

DEPARTMENT OF COMMERCE (6501)

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Weights and Measures Bureau (02)	0	0	0	0	0	0	0	0	0	0	0	0
2. Banking and Financial Division (36)	0	0	0	0	0	0	0	0	0	0	0	0
3. Professional and Occupational Licensing Bureau (39)	0	0	0	0	0	0	0	0	0	0	0	0
4. Board of Research and Commercialization (50)	119,300	0	0	0	0	119,300	120,469	0	0	0	0	120,469
a. Legislative Audit (Restricted/Biennial)	340	0	0	0	0	340	0	0	0	0	0	0
5. Economic Development Division (51)	1,179,577	247,344	4,069,728	0	0	5,496,649	1,186,368	247,339	4,070,118	0	0	5,503,825
a. Legislative Audit (Restricted/Biennial)	7,051	0	0	0	0	7,051	0	0	0	0	0	0
6. Montana Promotion Division (52)	0	750,000	0	0	0	750,000	0	750,000	0	0	0	750,000
a. Legislative Audit (Restricted/Biennial)	0	15,149	0	0	0	15,149	0	0	0	0	0	0
7. Community Development Division (60)	430,411	1,885,393	8,179,207	0	0	10,495,011	435,204	1,945,408	8,179,673	0	0	10,560,285
a. Legislative Audit (Restricted/Biennial)	4,920	925	0	0	0	5,845	0	0	0	0	0	0
b. Hard-Rock Mining Impact Account Reserve (Restricted)	0	100,000	0	0	0	100,000	0	100,000	0	0	0	100,000
8. Local Government Services Division (62)	0	0	0	0	0	0	0	0	0	0	0	0

	Fiscal 2002 General Fund	Fiscal 2002 State Special Revenue	Fiscal 2002 Federal Special Revenue	Fiscal 2002 Proprietary	Fiscal 2002 Other	Fiscal 2002 Total	Fiscal 2003 General Fund	Fiscal 2003 State Special Revenue	Fiscal 2003 Federal Special Revenue	Fiscal 2003 Proprietary	Fiscal 2003 Other	Fiscal 2003 Total
9. Building Codes Bureau (65)	0	0	0	0	0	0	0	0	0	0	0	0
10. Housing Division (74)	0	0	53,450,673	0	0	53,450,673	0	0	56,320,247	0	0	56,320,247
a. Legislative Audit (Restricted/Biennial)	0	0	11,973	0	0	11,973	0	0	0	0	0	0
11. Montana State Lottery (77)	0	0	0	0	0	0	0	0	0	0	0	0
12. Board of Horseracing (78)	0	0	0	0	0	0	0	0	0	0	0	0
13. Consumer Affairs (79)	0	0	0	0	0	0	0	0	0	0	0	0
14. Director's Office/Management Services Division (81)												
a. Department Server/Hardware Replacement (OTO)	14,389	1,701	18,566	0	0	34,656	0	0	0	0	0	0
b. Federal Building Rent	0	0	0	0	0	0	0	57,838	55,038	0	0	112,876
c. Federal Building/Move (OTO)	0	0	18,000	0	0	18,000	0	30,000	6,000	0	0	36,000
Total	1,755,988	3,000,512	65,748,147	0	0	70,504,647	1,742,041	3,130,585	68,631,076	0	0	73,503,702

The reduction in funding for items 1, 2, 3, 8, 9, 11, 12, and 13 are contingent upon passage and approval of Senate Bill No. 445. If Senate Bill No. 445 is not passed and approved, the department is appropriated $746,325 in general fund money, $11,179,874 in state special revenue, and $8,927,921 in proprietary authority in fiscal year 2002 and $745,771 in general fund money, $11,104,944 in state special revenue, and $8,904,330 in proprietary authority in fiscal year 2003. The allocation among divisions and the realignment of language associated with the reallocation will be outlined in the Legislative Fiscal Division's 2003 Biennium Legislative Fiscal Report if Senate Bill No. 445 is not passed and approved.

Item 5 includes a reduction of $13,252 in fiscal year 2002 and $13,298 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

It is the intent of the legislature that the department use lodging facility use taxes to fund $515,961 in fiscal year 2002 and $511,677 in fiscal year 2003 for the Montana historical society. This would be expended as follows:

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				2002	2003							
Lewis and Clark Bicentennial			$116,477	$111,124								
Scriver Curator			28,484	25,553								
Scriver Rent Storage				96,000	100,000							
Lewis and Clark Bicentennial Commission				200,000	200,000							
Historical Interpretation				75,000	75,000							
TOTAL SECTION C												
	99,335,069	126,411,979	112,278,563	355,751	0	338,381,362	23,813,149	84,011,002	108,668,137	323,147	0	216,815,435

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
D. CORRECTIONS AND PUBLIC SAFETY												
CRIME CONTROL DIVISION (4107)												
1. Justice System Support Service (01)												
	678,872	0	595,273	0	0	1,274,145	691,889	0	593,356	0	0	1,285,245
a. Regional Juvenile Detention (Biennial)												
	1,114,942	0	0	0	0	1,114,942	1,114,942	0	0	0	0	1,114,942
b. Federal Pass-Through Grants (Biennial)												
	0	0	9,525,213	0	0	9,525,213	0	0	9,525,213	0	0	9,525,213
c. Computer Crime Unit (Biennial)												
	0	0	149,670	0	0	149,670	0	0	0	0	0	0
Total												
	1,793,814	0	10,270,156	0	0	12,063,970	1,806,831	0	10,118,569	0	0	11,925,400

All remaining federal pass-through grant appropriations, including reversions, for the 2001 biennium are authorized to continue and are appropriated in fiscal year 2002 and fiscal year 2003.

Item 1 includes a reduction in general fund money of $2,352 in fiscal year 2002 and $2,352 in fiscal year 2003. This reduction is the equivalent of an 11% reduction in fiscal year 2000 base budget travel expenses.

The board of crime control shall update juvenile crime statistics from the child and adult protective services system on the board's web page semiannually.

	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
DEPARTMENT OF JUSTICE (4110)												
1. Legal Services Division (01)												
	2,672,847	327,095	149,680	0	0	3,149,622	2,689,485	328,436	150,137	0	0	3,168,058
a. Major Litigation (Restricted/Biennial)												
	200,000	0	0	0	0	200,000	200,000	0	0	0	0	200,000
b. Crime Victim Benefits (Biennial)												
	579,398	0	225,000	0	0	804,398	581,300	0	225,000	0	0	806,300
c. HB 419 — Natural Resources Enforcement Program												
	0	41,600	0	0	0	41,600	0	41,600	0	0	0	41,600
2. Gambling Control Division (07)												
	380,000	2,258,625	0	611,103	0	3,249,728	380,000	2,268,893	0	613,766	0	3,262,659
3. Motor Vehicle Division (12)												
	8,191,905	432,194	0	0	0	8,624,099	8,240,751	432,194	0	0	0	8,672,945

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. HB 577 — Motor Vehicle IT Account (Biennial)												
	0	960,000	0	0	0	960,000	0	0	0	0	0	0
b. SB 334 — Driver Rehabilitation and Improvement Program												
	0	33,148	0	0	0	33,148	0	32,778	0	0	0	32,778
4. Highway Patrol Division (13)												
	1,039,779	17,050,446	964,494	0	0	19,054,719	1,072,796	17,349,960	971,207	0	0	19,393,963
a. SB 358 — Access to Traffic Accident Reports												
	0	16,574	0	0	0	16,574	0	13,946	0	0	0	13,946
b. HB 256 — Reckless or Careless Driving												
	12,073	0	0	0	0	12,073	12,073	0	0	0	0	12,073
5. Division of Criminal Investigation (18)												
	2,307,322	317,557	1,340,519	0	0	3,965,398	2,321,541	318,802	1,346,416	0	0	3,986,759
6. County Attorney Payroll (19)												
	1,695,751	0	0	0	0	1,695,751	1,749,594	0	0	0	0	1,749,594
7. Law Enforcement Academy Division (22)												
	1,104,721	50,000	199,607	0	0	1,354,328	1,089,970	50,000	199,722	0	0	1,339,692
8. Central Services Division (28)												
	276,527	354,448	0	12,888	0	643,863	275,326	352,914	0	12,831	0	641,071
a. Legislative Audit (Restricted/Biennial)												
	26,149	33,447	0	1,216	0	60,812	0	0	0	0	0	0
9. Information Technology Services Division (29)												
	2,700,395	656,401	771,611	10,199	0	4,138,606	2,714,182	656,387	771,594	10,199	0	4,152,362
10. Forensic Sciences Division (32)												
	2,085,304	303,205	185,673	0	0	2,574,182	2,074,816	303,205	185,973	0	0	2,563,994
a HB 359 — Expand Collection of DNA Evidence												
	24,150	0	0	0	0	24,150	24,150	0	0	0	0	24,150
Total												
	23,296,321	22,834,740	3,836,584	635,406	0	50,603,051	23,425,984	22,149,115	3,850,049	636,796	0	50,061,944

The appropriations for legislative contract authority are subject to all of the following provisions:

		Fiscal 2002						Fiscal 2003			
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(1) Legislative contract authority applies only to federal and private funds.

(2) Legislative contract authority expenditures must be reported on the state accounting records and kept separate from present law operations. In preparing the 2005 biennium executive budget, the office of budget and program planning may not include expenditures from this item in the present law base.

(3) A report must be submitted by the department to the legislative fiscal analyst following the end of each fiscal year, listing legislative contract authority grants received and the amount of expenditures and FTE for each grant.

The legislature recognizes that the costs associated with litigation in which the legal services division is required to provide representation to the state of Montana may exceed the appropriation provided. In that event, the department will need to request a supplemental appropriation from the 2003 legislature to adequately represent the state.

Item 1c is contingent upon passage and approval of House Bill No. 419.

The appropriation for the gambling control division contains funding for the automated accounting and reporting system (AARS). The general fund appropriation of $380,000 in each year of the 2003 biennium reflects continuation of a 5-year general fund commitment for this project through the 2005 biennium. It is the intent of the legislature that an annual general fund commitment of $236,250 be continued in each year of the 2007 biennium. If the long-range building program committee bill, to use intercap funding for AARS implementation, is passed by the 2001 legislature, a portion of these appropriations may be used to make debt service payments.

The department is appropriated up to $2,800,000 for the biennium from state special revenue funds for the purchase of system interface boards to be used for the implementation of the AARS.

Item 2 includes a reduction of $567,203 in general fund money in fiscal year 2002 and $569,866 in fiscal year 2003 and an increase in proprietary funds of $611,103 in fiscal year 2002 and $613,766 in fiscal year 2003. These reductions and increases are contingent upon passage and approval of House Bill No. 399.

Item 3 includes a reduction in general fund money of $31,502 in fiscal year 2002 and $31,502 in fiscal year 2003. This reduction is the equivalent of a 10% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 3 includes $5,738 of general fund money in fiscal year 2002 that is contingent upon passage and approval of House Bill No. 124.

Item 3a is contingent upon passage and approval of House Bill No. 577 and is for:

(1) debt service payments or repayment of any loan incurred for the creation of a new information technology system for motor vehicles; or

(2) payment of costs directly incurred in the creation and support of the new motor vehicle information technology system.

Item 4a is contingent upon passage and approval of Senate Bill No. 358.

Item 4b is contingent upon passage and approval of House Bill No. 256.

There is appropriated from the highway patrol retirement clearing account for payments to the Montana highway patrol pension fund the amount required for this transfer, not to exceed $1,500,000 for each fiscal year.

Item 9 includes a reduction of $127,892 in fiscal year 2002 and $128,336 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

If Senate Bill No. 328 is not passed and approved, the extradition and transportation of prisoners program will remain in the department of justice as program 30 and there is appropriated $177,724 of general fund money in fiscal year 2002 and $178,936 of general fund money in fiscal year 2003. In addition, if Senate Bill No. 328 is not passed and approved, the amendment to the reference copy of [this act] striking the language accompanying the extradition and transportation of prisoners program in the department of justice is void.

Item 10 includes $12,000 in general fund money for fiscal year 2002 for lab accreditation. The use of the funds for accreditation is contingent on passage of a federal requirement that a lab needs to be accredited to receive federal funds.

Item 10a is contingent upon passage and approval of House Bill No. 359.

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
PUBLIC SERVICE REGULATION (4201)												
1. Public Service Regulation Program (01)	0	2,525,654	13,667	0	0	2,539,321	0	2,505,912	13,666	0	0	2,519,578
a. Legislative Audit (Restricted/Biennial)	0	17,027	0	0	0	17,027	0	0	0	0	0	0
b. Consultants (Biennial)	0	100,000	0	0	0	100,000	0	0	0	0	0	0
c. Universal Access Program (Biennial)	0	683,454	0	0	0	683,454	0	0	0	0	0	0
Total	0	3,326,135	13,667	0	0	3,339,802	0	2,505,912	13,666	0	0	2,519,578
DEPARTMENT OF CORRECTIONS (6401)												
1. Administration and Support Services (01)	14,797,936	4,321	0	67,057	0	14,869,314	14,406,654	1,358	0	65,181	0	14,473,193
a. Legislative Audit (Restricted/Biennial)	91,947	0	0	0	0	91,947	0	0	0	0	0	0
b. Establishment of Criteria and Treatment of Hepatitis C	103,510	0	0	0	0	103,510	567,909	0	0	0	0	567,909
2. Community Corrections (02)	32,621,208	573,890	428,987	0	0	33,624,085	34,345,320	573,890	428,987	0	0	35,348,197
3. Secure Facilities (03)	48,134,474	1,152,279	533,362	0	0	49,820,115	47,083,654	1,152,595	556,968	0	0	48,793,217
4. Montana Correctional Enterprises (04)	1,014,403	0	0	516,831	0	1,531,234	1,016,834	0	0	518,241	0	1,535,075
Total	96,703,478	1,730,490	962,349	583,888	0	100,040,205	97,420,371	1,727,843	985,955	583,422	0	100,717,591

Because the percentage of American Indians in our state's correctional system ranges from 17% in the men's prison to up to 40% in the women's prison, it is important that the department maintain open communications and liaisons with the Montana tribes. Therefore, the department shall designate one of its current full-time equivalent employees in the administration and support services division to have included as a part of the employee's job responsibilities the duty to serve as a liaison with the Montana tribes and the department regarding American Indian inmate issues and concerns in all correctional facilities, including contracted bed facilities.

The department is encouraged to use telemedicine technology to the fullest extent possible to effect savings within the department.

Item 1 includes a reduction of $401,402 in fiscal year 2002 and $402,801 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 2 includes a reduction in general fund money of $107,057 in fiscal year 2002 and $107,057 in fiscal year 2003. This reduction is the equivalent of a 24% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

If Senate Bill No. 489 is not passed and approved, general fund money in item 2 is reduced by $667,156 in fiscal year 2002 and by $2,165,633 in fiscal year 2003.

If Senate Bill No. 489 is not passed and approved, general fund money in item 3 is increased by $4 million in fiscal year 2003.

The department shall negotiate with the department of public health and human services and the Montana food bank for any costs incurred by the Montana correctional enterprises in operating the food bank program.

DEPARTMENT OF LABOR AND INDUSTRY (6602)

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Job Service Division (01)	691,355	6,701,113	24,354,444	6,832	0	31,753,744	693,752	6,735,551	24,371,112	6,832	0	31,807,247
a. Legislative Audit (Restricted/Biennial)	958	58,072	6,543	0	0	65,573	0	0	0	0	0	0
b. Research and Analysis Bureau Additional FTE (OTO)	0	0	82,903	0	0	82,903	0	0	83,194	0	0	83,194
c. Displaced Homemaker Program	235,605	0	0	0	0	235,605	235,605	0	0	0	0	235,605
d. SB 322 — Natural Resource Worker Education and Retraining	0	0	0	0	0	0	0	150,000	0	0	0	150,000
2. Unemployment Insurance Division (02)	0	288,653	6,186,716	0	0	6,475,369	0	288,653	6,236,208	0	0	6,524,861
a. Legislative Audit (Restricted/Biennial)	0	0	20,506	0	0	20,506	0	0	0	0	0	0
b. Unemployment Insurance Modified FTE to Permanent (OTO)	0	0	108,206	0	0	108,206	0	0	108,583	0	0	108,583
3. Commissioner's Office/Centralized Services Division (03)	149,746	530,987	445,678	52,540	0	1,178,951	150,348	536,048	447,421	52,819	0	1,186,636

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Legislative Audit (Restricted/Biennial)	196	3,164	0	0	0	3,360	0	0	0	0	0	0
4. Employment Relations Division (04)	886,698	5,815,940	761,902	0	0	7,464,540	891,317	5,849,545	765,250	0	0	7,506,112
a. Legislative Audit (Restricted/Biennial)	2,990	14,812	2,660	0	0	20,462	0	0	0	0	0	0
b. Human Rights Workload (Restricted/OTO)	21,159	0	0	0	0	21,159	21,227	0	0	0	0	21,227
5. Professional and Occupational Licensing (05)	0	5,272,276	0	0	0	5,272,276	0	5,202,573	0	0	0	5,202,573
a. Legal Contingency (Restricted/OTO)	0	70,000	0	0	0	70,000	0	70,000	0	0	0	70,000
6. Weights and Measures Bureau (06)	0	678,238	0	0	0	678,238	0	679,843	0	0	0	679,843
a. Legislative Audit (Restricted/Biennial)	0	1,573	0	0	0	1,573	0	0	0	0	0	0
7. Montana Community Services (07)	24,895	28,191	2,964,714	0	0	3,017,800	24,895	28,200	2,966,472	0	0	3,019,567
a. Legislative Audit (Restricted/Biennial)	0	0	862	0	0	862	0	0	0	0	0	0
8. Building Codes Bureau (08)	0	3,278,325	0	0	0	3,278,325	0	3,295,263	0	0	0	3,295,263
a. Legislative Audit (Restricted/Biennial)	0	6,427	0	0	0	6,427	0	0	0	0	0	0
b. Building Codes Vehicle Replacement (OTO)	0	45,118	0	0	0	45,118	0	46,118	0	0	0	46,118
9. Workers' Compensation Court (09)	0	422,967	0	0	0	422,967	0	428,938	0	0	0	428,938
a. Legislative Audit (Restricted/Biennial)	0	1.034	0	0	0	1.034	0	0	0	0	0	0

	Fiscal 2002 General Fund	Fiscal 2002 State Special Revenue	Fiscal 2002 Federal Special Revenue	Fiscal 2002 Proprietary	Fiscal 2002 Other	Fiscal 2002 Total	Fiscal 2003 General Fund	Fiscal 2003 State Special Revenue	Fiscal 2003 Federal Special Revenue	Fiscal 2003 Proprietary	Fiscal 2003 Other	Fiscal 2003 Total
Total												
	2,013,602	23,216,890	34,935,134	59,372	0	60,224,998	2,017,144	23,310,732	34,978,240	59,651	0	60,365,767

It is the intent of the legislature that the rates charged for centralized services functions be agreed to by the United States department of labor federal cost negotiator. It is anticipated that the assessment will be approximately 9% and 10% of a program's actual personal services costs incurred in fiscal year 2002 and fiscal year 2003.

Item 1d is contingent upon passage and approval of Senate Bill No. 322.

Item 3 includes a reduction in general fund money of $923 in fiscal year 2002 and $923 in fiscal year 2003. This reduction is the equivalent of a 1% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 3 includes a reduction of $7,635 in fiscal year 2002 and $7,661 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

The professional and occupational licensing staff and operating budget designated as proprietary will transfer into this department with professional and occupational licensing (05).

Items 5, 5a, 6, 6a, 8, 8a, and 8b are contingent upon passage and approval of Senate Bill No. 445.

It is the intent of the legislature that the internal service rates charged for program 05, program 06, and program 08 will be approximately 9% and 10% of a program's actual personal services costs incurred in fiscal year 2002 and fiscal year 2003.

The department shall report to the 2003 legislature on options for a fleet management plan to stabilize vehicle replacement costs within the building codes division.

Item 8 contains state special revenue authority of $70,389 in fiscal year 2002 and $52,889 in fiscal year 2003, including funding for 1.5 full-time equivalent employees each year, that is contingent upon passage and approval of House Bill No. 437.

Item 8 contains state special revenue authority of $100,925 in fiscal year 2002 and $151,950 in fiscal year 2003, including funding for 1.5 full-time equivalent employees in fiscal year 2002 and 3 full-time equivalent employees in fiscal year 2003, that is contingent upon passage and approval of Senate Bill No. 242.

DEPARTMENT OF MILITARY AFFAIRS (6701)

	Fiscal 2002 General Fund	Fiscal 2002 State Special Revenue	Fiscal 2002 Federal Special Revenue	Fiscal 2002 Proprietary	Fiscal 2002 Other	Fiscal 2002 Total	Fiscal 2003 General Fund	Fiscal 2003 State Special Revenue	Fiscal 2003 Federal Special Revenue	Fiscal 2003 Proprietary	Fiscal 2003 Other	Fiscal 2003 Total
1. Operations Support (01)												
	367,042	0	45,697	0	0	412,739	365,807	0	50,448	0	0	416,255
a. Legislative Audit (Restricted/Biennial)												
	414	0	0	0	0	414	0	0	0	0	0	0
b. Operations Support Compliance Specialist (OTO)												
	0	0	36,548	0	0	36,548	0	0	37,153	0	0	37,153
2. Challenge Program (02)												
a. Legislative Audit (Restricted/Biennial)												
	4,135	0	6,203	0	0	10,338	0	0	0	0	0	0
b. Youth Challenge Program (OTO)												
	1,114,027	0	1,671,040	0	0	2,785,067	1,118,162	0	1,677,243	0	0	2,795,405

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
3. Scholarship Program (03)												
a. National Guard Scholarship Program (Biennial/OTO)	250,000	0	0	0	0	250,000	0	0	0	0	0	0
4. Army National Guard Program (12)	1,181,699	124,400	3,640,929	0	0	4,947,028	1,240,481	222,800	3,738,366	0	0	5,201,647
a. Legislative Audit (Restricted/Biennial)	6,410	0	16,746	0	0	23,156	0	0	0	0	0	0
5. Air National Guard Program (13)	200,334	0	2,020,763	0	0	2,221,097	208,550	0	2,016,840	0	0	2,225,390
a. Legislative Audit (Restricted/Biennial)	931	0	4,446	0	0	5,377	0	0	0	0	0	0
b. Firefighters Retirement (Restricted/Biennial)	0	0	5,686	0	0	5,686	0	0	0	0	0	0
6. Disaster Coordination Response (21)	505,769	21,597	1,766,785	0	0	2,294,151	508,462	21,597	1,327,478	0	0	1,857,537
a. Legislative Audit (Restricted/Biennial)	620	0	620	0	0	1,240	0	0	0	0	0	0
b. Disaster and Emergency Services Server Replacement (OTO)	0	0	0	0	0	0	12,679	0	4,651	0	0	17,330
7. Veterans' Affairs Program (31)	689,897	161,513	0	0	0	851,410	685,468	161,614	0	0	0	847,082
a. Legislative Audit (Restricted/Biennial)	827	0	0	0	0	827	0	0	0	0	0	0
b. Veterans' Affairs Copier Replacement (OTO)	4,000	0	0	0	0	4,000	0	0	0	0	0	0
Total	4,326,105	307,510	9,215,463	0	0	13,849,078	4,139,609	406,011	8,852,179	0	0	13,397,799

The terrorism/weapons of mass destruction program and the associated 1 FTE are terminated when federal funding for the program is terminated.

The general fund appropriation in item 2b may be used only for matching funds for Montana residents.

Item 4 includes a reduction in general fund money of $14,018 in fiscal year 2002 and $14,018 in fiscal year 2003. This reduction is the equivalent of a 13% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 4 includes a reduction of $20,312 in fiscal year 2002 and $20,381 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 5b is contingent upon passage and approval of Senate Bill No. 289.

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
TOTAL SECTION D												
	128,193,320	51,415,765	59,233,353	1,278,666	0	240,121,104	128,809,939	50,099,613	58,798,658	1,279,869	0	238,988,079

	Fiscal 2002 General Fund	Fiscal 2002 State Special Revenue	Fiscal 2002 Federal Special Revenue	Fiscal 2002 Proprietary	Fiscal 2002 Other	Fiscal 2002 Total	Fiscal 2003 General Fund	Fiscal 2003 State Special Revenue	Fiscal 2003 Federal Special Revenue	Fiscal 2003 Proprietary	Fiscal 2003 Other	Fiscal 2003 Total
E. EDUCATION												
OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION (3501)												
1. OPI Administration (06)	4,328,810	181,100	0	73,133	0	4,583,043	4,323,887	181,178	0	73,133	0	4,578,198
a. Advanced Placement Administration (OTO)	0	0	27,557	0	0	27,557	0	0	39,841	0	0	39,841
b. Emergency Renovation (OTO)	0	0	54,837	0	0	54,837	0	0	54,837	0	0	54,837
c. Federal Funds (Biennial)	0	0	7,537,147	0	0	7,537,147	0	0	7,548,601	0	0	7,548,601
d. National Board Certification Stipends	30,000	0	0	0	0	30,000	30,000	0	0	0	0	30,000
2. Distribution to Public Schools (09)	0	0	82,994,320	0	0	82,994,320	0	0	84,576,071	0	0	84,576,071
a. BASE Aid (Restricted/Biennial)	440,776,000	0	0	0	0	440,776,000	443,890,000	0	0	0	0	443,890,000
b. Special Education (Restricted/Biennial)	33,899,850	0	0	0	0	33,899,850	34,916,846	0	0	0	0	34,916,846
c. Transportation Aid (Restricted/Biennial)	10,787,993	0	0	0	0	10,787,993	10,887,993	0	0	0	0	10,887,993
d. School Facility Reimbursement (Restricted/Biennial)	4,350,000	0	0	0	0	4,350,000	4,700,000	0	0	0	0	4,700,000
e. Instate Treatment (Biennial)	974,897	0	0	0	0	974,897	974,897	0	0	0	0	974,897
f. Secondary Vocational Education (Biennial)	715,000	0	0	0	0	715,000	715,000	0	0	0	0	715,000
g. Adult Basic Education (Biennial)	275,000	0	0	0	0	275,000	275,000	0	0	0	0	275,000
h. Gifted and Talented (Biennial)	150,000	0	0	0	0	150,000	150,000	0	0	0	0	150,000

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
i. School Food (Biennial)	648,653	0	0	0	0	648,653	648,653	0	0	0	0	648,653
j. School District Audits (Biennial)	145,025	0	0	0	0	145,025	149,425	0	0	0	0	149,425
k. Traffic Safety Distribution	0	750,000	0	0	0	750,000	0	750,000	0	0	0	750,000
l. Reduced Class Size (Biennial)	0	0	7,605,780	0	0	7,605,780	0	0	9,492,523	0	0	9,492,523
m. Advanced Placement Incentive (Biennial)	0	0	194,900	0	0	194,900	0	0	238,600	0	0	238,600
n. Comprehensive School Reform (Biennial)	0	0	963,061	0	0	963,061	0	0	963,061	0	0	963,061
o. Emergency School Renovation (Biennial)	0	0	5,428,913	0	0	5,428,913	0	0	5,428,913	0	0	5,428,913
p. SB 390 — Transfer to School Flexibility Account (Restricted/Biennial/OTO)	0	0	0	0	0	0	5,000,000	0	0	0	0	5,000,000
q. School Flexibility Account (Restricted/Biennial/OTO)	0	0	0	0	0	0	0	5,083,000	0	0	0	5,083,000
Total	497,081,228	931,100	104,806,515	73,133	0	602,891,976	506,661,701	6,014,178	108,342,447	73,133	0	621,091,459

It is the intent of the legislature that the advanced driver education program be funded through a proprietary account.

Item 1 includes a reduction in general fund money of $19,069 in fiscal year 2002 and $19,069 in fiscal year 2003. This reduction is the equivalent of a 13.5% reduction in fiscal 2000 base budget travel expenses.

Item 1 includes a reduction of $24,236 in fiscal year 2002 and $24,322 in fiscal year 2003 of general fund money. The office may reallocate this reduction in funding among programs when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 1 includes $37,500 of general fund money in fiscal year 2002 and $12,500 of general fund money in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Item 1c is a biennial appropriation.

Item 1d is to provide up to 10 teachers each fiscal year who obtain certification by the national board for professional teaching standards with a one-time stipend of $3,000.

Items 2a through 2j and items 2l through 2o are biennial appropriations.

Money deposited in the general fund for fiscal year 2001 under 20-9-343(3)(a)(ii) must be transferred to the school technology account in the state special revenue fund in fiscal year 2002.

If House Bill No. 41 is not passed and approved in the form that statutorily appropriates timber harvest funds to schools for technology acquisitions, there is a restricted, biennial general fund appropriation of $1,250,000 in fiscal year 2002 and $1,600,000 in fiscal year 2003. In addition, if House Bill No. 41 is not passed and approved, the amendment to the reference copy of *[this act]* striking the language accompanying the timber harvest appropriation and inserting language is void.

The office of public instruction may distribute funds from the appropriation in item 2e to public school districts for the purpose of providing educational costs of children with significant behavioral or physical needs.

If Senate Bill No. 495 is enjoined before April 1, 2002, items 2p and 2q are void.

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
BOARD OF PUBLIC EDUCATION (5101)												
1. Administration (01)	170,125	12,041	0	0	0	182,166	170,507	12,041	0	0	0	182,548
a. Legislative Audit (Restricted/Biennial)	1,703	0	0	0	0	1,703	0	0	0	0	0	0
2. Advisory Council (03)	0	161,433	0	0	0	161,433	0	161,994	0	0	0	161,994
a. Legislative Audit (Restricted/Biennial)	0	1,702	0	0	0	1,702	0	0	0	0	0	0
Total	171,828	175,176	0	0	0	347,004	170,507	174,035	0	0	0	344,542
SCHOOL FOR THE DEAF AND BLIND (5113)												
1. Administration Program (01)	302,064	0	0	0	0	302,064	300,387	0	0	0	0	300,387
a. Legislative Audit (Restricted/Biennial)	28,127	0	0	0	0	28,127	0	0	0	0	0	0
2. General Services Program (02)	314,080	0	0	0	0	314,080	315,497	0	0	0	0	315,497
3. Student Services (03)	918,708	0	25,000	0	0	943,708	922,187	0	25,000	0	0	947,187
4. Education (04)	1,891,051	235,065	63,898	0	0	2,190,014	1,891,657	235,065	63,898	0	0	2,190,620

			Fiscal 2002						Fiscal 2003			
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total												
	3,454,030	235,065	88,898	0	0	3,777,993	3,429,728	235,065	88,898	0	0	3,753,691

Item 4 includes a reduction of $26,189 in fiscal year 2002 and $26,279 in fiscal year 2003 of general fund money. The school may reallocate this reduction in funding among programs when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

MONTANA ARTS COUNCIL (5114)

1. Promotion of the Arts (01)												
	314,029	140,829	477,500	0	0	932,358	302,551	137,416	477,500	0	0	917,467
a. Legislative Audit (Restricted/Biennial)												
	19,460	0	0	0	0	19,460	0	0	0	0	0	0
Total												
	333,489	140,829	477,500	0	0	951,818	302,551	137,416	477,500	0	0	917,467

All federal funds in item 1 are biennial appropriations.

Item 1 includes a reduction in general fund money of $1,132 in fiscal year 2002 and $1,132 in fiscal year 2003. This reduction is the equivalent of a 16% reduction in fiscal year 2000 base budget travel expenses.

MONTANA STATE LIBRARY COMMISSION (5115)

1. State Library Operations (01)												
	1,790,071	177,710	1,200,694	0	0	3,168,475	1,531,278	177,710	750,694	0	0	2,459,682
a. Legislative Audit (Restricted/Biennial)												
	17,027	0	0	0	0	17,027	0	0	0	0	0	0
b. Periodical Electronic Database (OTO)												
	82,500	117,500	0	0	0	200,000	82,500	117,500	0	0	0	200,000
2. Natural Resources Information System (07)												
	84,838	470,348	30,000	0	0	585,186	88,980	495,341	30,000	0	0	614,321
a. Stable Natural Resources Information System Funding (OTO)												
	4,513	140,487	0	0	0	145,000	4,513	115,487	0	0	0	120,000
b. Legislative Contract Authority (Biennial/OTO)												
	0	25,000	475,000	0	0	500,000	0	0	0	0	0	0

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total	1,978,949	931,045	1,705,694	0	0	4,615,688	1,707,271	906,038	780,694	0	0	3,394,003

Item 1 includes biennial appropriations of $251,138 in general fund money and $889,102 in federal funds for grants to local libraries.

Item 1 includes a reduction in general fund money of $4,561 in fiscal year 2002 and $4,561 in fiscal year 2003. This reduction is the equivalent of a 16% reduction in fiscal year 2000 base budget travel expenses. The commission may reallocate this reduction in funding between programs when developing 2003 biennium operating plans.

Item 2b includes $500,000 for legislative contract authority as a biennial appropriation, subject to the following provisions:

(1) Legislative contract authority applies only to state special revenue funds received from the Montana university system, federal funds, and private funds.

(2) Legislative contract authority expenditures must be reported on the state accounting system. The records must be separate from present law operations. In preparing the 2005 biennium budget for legislative consideration, the office of budget and program planning may not include the expenditures from this item in the present law base.

(3) A report must be submitted by the state library commission to the legislative fiscal division following the end of each fiscal year of the biennium. The report must include a listing of projects with the related amount of expenditures for each project.

(4) Legislative contract authority may be transferred between state and federal special revenue, depending upon the contract received by the Montana state library.

MONTANA HISTORICAL SOCIETY (5117)

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Administration Program (01)	796,224	217,473	56,796	70,000	0	1,140,493	800,573	212,116	57,616	70,000	0	1,140,305
a. Legislative Audit (Restricted/Biennial)	26,757	0	0	0	0	26,757	0	0	0	0	0	0
b. Lewis and Clark Bicentennial (OTO)	31,847	0	0	0	0	31,847	31,715	0	0	0	0	31,715
2. Library Program (02)	585,836	2,808	0	59,447	0	648,091	588,810	2,808	0	59,518	0	651,136
a. Equipment to Read and Print Microfilm (Biennial/OTO)	6,000	0	0	0	0	6,000	0	0	0	0	0	0
3. Museum Program (03)	282,182	251,533	0	7,618	0	541,333	284,383	253,151	0	7,618	0	545,152
4. Publications (04)	53,652	0	0	710,135	0	763,787	53,652	0	0	711,646	0	765,298
5. Historical Sites Preservation (06)	47,381	0	805,481	0	0	852,862	44,451	0	807,864	0	0	852,315

	Fiscal 2002 General Fund	Fiscal 2002 State Special Revenue	Fiscal 2002 Federal Special Revenue	Fiscal 2002 Proprietary	Fiscal 2002 Other	Fiscal 2002 Total	Fiscal 2003 General Fund	Fiscal 2003 State Special Revenue	Fiscal 2003 Federal Special Revenue	Fiscal 2003 Proprietary	Fiscal 2003 Other	Fiscal 2003 Total
6 Lewis and Clark Bicentennial (08)												
a. Grant Funding (Restricted)	0	100,000	0	0	0	100,000	0	100,000	0	0	0	100,000
Total	1,829,879	571,814	862,277	847,200	0	4,111,170	1,803,584	565,075	865,480	848,782	0	4,085,921

Item 1 includes a reduction in general fund money of $5,278 in fiscal year 2002 and $5,278 in fiscal year 2003. This is a reduction in travel funding. The agency may reallocate this reduction in funding among programs when developing 2003 biennium operating plans.

Item 1 includes a reduction of $9,453 in fiscal year 2002 and $9,483 in fiscal year 2003 of general fund money. The society may reallocate this reduction in funding among programs when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

The legislative intent of item 2a is to acquire equipment based on the newest available technology within the available funding limit at the time of purchase.

It is the intent of the legislature that the department of commerce use lodging facility use taxes to fund $515,961 in fiscal year 2002 and $511,677 in fiscal year 2003 for the Montana historical society. This would be expended as follows:

		2002	2003
Lewis and Clark Bicentennial	$116,477	$111,124	
Scriver Curator	28,484	25,553	
Scriver Rent Storage		96,000	100,000
Lewis and Clark Bicentennial Commission		200,000	200,000
Historical Interpretation		75,000	75,000

MONTANA UNIVERSITY SYSTEM, INCLUDING OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION AND EDUCATIONAL UNITS AND AGENCIES (5100)

	Fiscal 2002 General Fund	Fiscal 2002 State Special Revenue	Fiscal 2002 Federal Special Revenue	Fiscal 2002 Proprietary	Fiscal 2002 Other	Fiscal 2002 Total	Fiscal 2003 General Fund	Fiscal 2003 State Special Revenue	Fiscal 2003 Federal Special Revenue	Fiscal 2003 Proprietary	Fiscal 2003 Other	Fiscal 2003 Total
1. OCHE — Administration (01)	1,228,557	0	0	0	0	1,228,557	1,243,480	0	0	0	0	1,243,480
a. Legislative Audit (Restricted/Biennial)	35,514	0	0	0	0	35,514	0	0	0	0	0	0
2. OCHE — Student Assistance (02)	8,299,390	0	151,531	0	0	8,450,921	8,477,208	0	151,531	0	0	8,628,739
3. OCHE — Dwight D. Eisenhower Mathematics and Science Education Act (03)	0	0	312,744	0	0	312,744	0	0	312,744	0	0	312,744
4. OCHE — Community College Assistance (04) (Biennial)	5.651.748	0	0	0	0	5.651.748	5.679.546	0	0	0	0	5,679,546

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Legislative Audit (Restricted/Biennial)											
33,920	0	0	0	0	33,920	0	0	0	0	0	0
5. OCHE — Talent Search (06)											
92,846	0	2,993,405	0	0	3,086,251	93,349	0	3,129,072	0	0	3,222,421
6. OCHE — C.D. Perkins Administration (08)											
78,748	0	7,765,831	0	0	7,844,579	78,746	0	6,125,761	0	0	6,204,507
7. OCHE — Appropriation Distribution Transfers (09)											
99,801,741	12,232,248	0	0	0	112,033,989	100,312,988	12,400,460	0	0	0	112,713,448
a. Legislative Audit (Restricted/Biennial)											
228,503	0	0	0	0	228,503	0	0	0	0	0	0
b. Increase State Support $100 per Resident Student per Year											
2,500,000	0	0	0	0	2,500,000	5,000,000	0	0	0	0	5,000,000
c. Agricultural Experiment Station											
9,830,460	0	0	0	0	9,830,460	9,866,810	0	0	0	0	9,866,810
d. Institute for Biobased Products and Food Science											
200,000	0	0	0	0	200,000	200,000	0	0	0	0	200,000
e. Extension Service											
4,087,026	0	0	0	0	4,087,026	4,102,993	0	0	0	0	4,102,993
f. Montana Beef Network (Restricted/Biennial/OTO)											
90,000	0	0	0	0	90,000	90,000	0	0	0	0	90,000
g. Forestry and Conservation Experiment Station											
897,428	0	0	0	0	897,428	900,784	0	0	0	0	900,784
h. Bureau of Mines and Geology											
1,533,807	600,000	0	0	0	2,133,807	1,538,621	666,000	0	0	0	2,204,621
i. Fire Services Training School											
497,630	0	0	0	0	497,630	507,250	0	0	0	0	507,250
j. Flathead Lake Biological Station — University of Montana-Missoula (Restricted/Biennial/OTO)											
100,000	0	0	0	0	100,000	100,000	0	0	0	0	100,000
8. Tribal College Assistance Program (11) (Biennial)											
100,000	0	0	0	0	100,000	0	0	0	0	0	0

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
9. OCHE — Guaranteed Student Loan (12)												
	0	0	34,668,909	0	0	34,668,909	0	0	37,372,404	0	0	37,372,404
a. Legislative Audit (Restricted/Biennial)												
	0	0	4,379	0	0	4,379	0	0	4,378	0	0	4,378
10. OCHE — Board of Regents (13)												
	43,631	0	0	0	0	43,631	43,631	0	0	0	0	43,631
Total												
	135,330,949	12,832,248	45,896,799	0	0	194,059,996	138,235,406	13,066,460	47,095,890	0	0	198,397,756

Items 1 through 3 and 5 through 7b are a single biennial lump-sum appropriation.

Total audit costs of the office of the commissioner of higher education are estimated to be $35,514.

Item 1 includes a reduction in general fund money of $11,255 in fiscal year 2002 and $11,255 in fiscal year 2003. This reduction is the equivalent of a 17% reduction in fiscal year 2000 base budget travel expenses. The agency may reallocate this reduction in funding among programs when developing 2003 biennium operating plans.

Total Summitnet costs are estimated to be $25,000 each year for the community colleges. The general fund appropriation for the community colleges provides 53% of the total Summitnet costs. The remaining 47% of these costs must be paid from funds other than those appropriated in item 4. Summitnet costs for each year may not exceed $8,000 each for Dawson and Miles community colleges and $9,000 for Flathead Valley community college.

The general fund appropriation in item 4 is calculated to fund education in the community colleges for an estimated 2,030 resident FTE students in fiscal year 2002 and 2,040 resident FTE students in fiscal year 2003. If total resident FTE student enrollment in the community colleges is greater than the estimated number for the biennium, the community colleges shall serve the additional students without a state general fund contribution. If actual resident FTE student enrollment is less than the estimated number for the biennium, the commissioner of higher education shall revert $2,792 in general fund money to the state for each estimated FTE student who did not enroll.

Total audit costs are estimated to be $64,000 for the community colleges for the biennium. The general fund appropriation for each community college provides 53% of the total audit costs in fiscal year 2002. The remaining 47% of these costs must be paid from funds other than those appropriated in item 4a. Audit costs for the biennium may not exceed $20,000 each for Dawson and Miles community colleges and $24,000 for Flathead Valley community college.

Item 7 includes a reduction of $779,826 in fiscal year 2002 and $782,537 in fiscal year 2003 of general fund money. The board of regents may reallocate this reduction in funding among university system units, as defined in 17-7-102(13), when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

The decision of the legislature to deny funds for initiatives or budget requests proposed by the governor and the board of regents for the 2003 biennium does not imply an intent to prohibit the board of regents from implementing those initiatives unless specifically stated otherwise in [this act].

The general fund and millage appropriation in item 7 is calculated to fund education in the 4-year units and the colleges of technology for an estimated 25,004 resident FTE students in fiscal 2002 and 25,207 resident FTE students in fiscal 2003. If actual resident student enrollment is greater than the estimated number for the biennium, the university system shall serve the additional students without a state general fund contribution. If actual resident student enrollment is less than the estimated number for the biennium, the commissioner of higher education shall revert $1,914 in general fund money to the state for each estimated FTE student who did not enroll.

Revenue appropriated to the Montana university system units and colleges of technology includes:

(1) state special revenue from interest earnings of $1,913,590 each year of the 2003 biennium;

		Fiscal 2002						Fiscal 2003			
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(2) tuition revenue of $110,420,878 in fiscal year 2002 and $109,775,339 in fiscal year 2003; and

(3) other revenue of $1,013,738 each year of the 2003 biennium.

These amounts are appropriated for current unrestricted operating expenses as a biennial lump-sum appropriation and are in addition to the funds shown in item 7.

Item 7 includes $428,660 in each year of the biennium that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state energy conservation program. The costs of this transfer in each year of the biennium are: university of Montana-Missoula, $201,100; Montana tech of the university of Montana, $28,000; Montana state university-northern, $97,000; Montana state university-Billings, $91,800; and western Montana college of the university of Montana, $10,760.

Item 7 includes a total of $44,253 of general fund money for the 2003 biennium for the Montana natural resources information system (NRIS). The Montana university system shall pay an additional $44,253 for the 2003 biennium in current funds in support of NRIS. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.

Item 7 includes increases of $194,088 of general fund money in fiscal year 2002 and of $194,088 of general fund money in fiscal year 2003 and reductions of $194,088 of state special revenue in fiscal year 2002 and of $194,088 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Total audit costs are estimated to be $681,092 for the university system other than the office of the commissioner of higher education. Each unit shall pay a percentage of these costs from funds other than those appropriated in item 7a.

Item 7b is intended by the legislature to be used to increase state support for resident student FTE at the university units each year of the 2003 biennium.

University system unit is defined in 17-7-102(13). For all university system units, except the office of the commissioner of higher education, all funds (other than plant funds appropriated in House Bills No. 5 and 14, relating to long-range building, and current unrestricted operating funds) are appropriated contingent on approval of the comprehensive program budget by the board of regents by October 1 of each year. For all university system 4-year units and colleges of technology, all funds, other than funds appropriated in House Bills No. 5 and 14 for long-range building programs, are appropriated as a lump sum for the biennium contingent upon approval of the comprehensive program budget by the board of regents by October 1 of each year. The board of regents shall allocate the appropriations to the individual units according to board policy. The budget must contain detailed revenue and expenditure and anticipated fund balances of current funds, loan funds, endowment funds, and plant funds. After the board of regents approves operating budgets, transfers between units may be made only with the approval of the board of regents. Transfers and related justifications must be submitted to the office of budget and program planning and to the legislative fiscal analyst.

All university system units, except the office of the commissioner of higher education, shall account for expenditures consistently within programs and funds across all units and shall use the standards of accounting and reporting, as described by the national college and university business officers, as a minimum for achieving consistency.

The Montana university system, except the office of the commissioner of higher education and the community colleges, shall allow the office of budget and program planning and the legislative fiscal division banner access to the entire university system's banner information system, including data warehouses, except:

(1) the ability to change data;

(2) portions of the banner information system that are the property of third parties (such as alumni associations or foundations); and

(3) information pertaining to individual students or individual employees that is protected by Article II, sections 9 and 10, of the Montana constitution, 20-25-515, or the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g.

Subsections (1) through (3) in no way limit the power of the legislative fiscal analyst or the budget director to receive and examine copies of any state government information, including confidential records, in accordance with 5-12-303 and 17-1-132.

All financial data recorded in the various funds in banner must agree with the financial data as recorded on the statewide accounting, budgeting, and human resources system (SABHRS), including:

(1) all statutory and restricted appropriations must be clearly segregated on SABHRS; and

(2) the budgeted personal services for current unrestricted operating funds on banner must tie to the operating plan for expenditure of funds appropriated in [this act] and other bills, as approved by the board of regents.

	Fiscal 2002						Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The Montana university system shall provide the electronic data required to upload human resource data for the current unrestricted operating funds into the MBARS system. The salary and benefit data provided must reflect approved board of regents operating budgets.

Revenue appropriated to the agricultural experiment station includes:

(1) state special revenue from interest earnings and other revenue of $184,239 in fiscal year 2002 and $184,705 in fiscal year 2003;

(2) federal revenue of $2,022,369 in fiscal year 2002 and $2,030,499 in fiscal year 2003; and

(3) proprietary revenue from sales of $937,627 in fiscal year 2002 and $942,135 in fiscal year 2003. These amounts are appropriated for current unrestricted operating expenses and are in addition to the funds shown in item 7c.

The general fund money in item 7d is appropriated with the condition that, prior to the expenditure of the general fund money, the Montana agricultural experiment station collect $140,000 of private, nonpublic money each year of the 2003 biennium for the purpose of supporting the institute for biobased products and food science.

Revenue appropriated to the extension service includes:

(1) state special revenue from interest earnings of $46,892 in fiscal year 2002 and $47,070 in fiscal year 2003; and

(2) federal revenue of $2,268,928 in fiscal year 2002 and $2,278,065 in fiscal year 2003. These amounts are appropriated for current unrestricted operating expenses and are in addition to the funds shown in item 7e.

General fund money of $90,000 each year of the 2003 biennium in item 7f is a biennial. one-time-only appropriation for one staff person and for expenses for the Montana beef network within the extension service.

Interest revenue of $4,923 in each year of the 2003 biennium is appropriated to the forestry and conservation experiment station for current unrestricted operating expenses. This amount is in addition to that shown in item 7g.

Proprietary revenue of $27,310 each yeer of the 2003 biennium is appropriated to the bureau of mines and geology for current unrestricted operating expenses. This amount is in addition to that shown in item 7h.

Interest revenue of $4,097 each year of the 2003 biennium is appropriated to the fire services training school for current unrestricted operating expenses. This amount is in addition to that shown in item 7i.

TOTAL SECTION E											
640,180,352	15,817,277	153,837,683	920,333	0	810,755,645	652,310,748	21,101,267	157,650,909	921,915	0	831,984,839
TOTAL STATE FUNDING											
1,186,326,635	409,945,792	1,370,342,465	13,458,781	933,055	2,981,006,728	1,132,519,329	373,711,500	1,387,282,333	13,402,745	933,055	2,907,848,962

Section 17. Rates. Internal service fund type fees and charges established by the legislature for the 2003 biennium in compliance with 17-7-123(6)(b) are as follows:

	Fiscal Year 2002	Fiscal Year 2003
Secretary of State - 3201		
1. Administrative Rules of Montana Fees		
a. Administrative Rules of Montana (per set)	$350.00	$350.00
b. Quarterly Updates of ARM (per year)	$250.00	$250.00
c. Extra Titles (per book)	$50.00	$50.00
d. Quarterly Updates of Extra Titles (per year per title)	$50.00	$50.00
e. Montana Administrative Register (per subscription)	$300.00	$300.00
f. Agency Filing Fee for Pages of Register Publication (per page)	$40.00	$40.00
g. Binders (per binder)	$5.00	$5.00
h. Lapsed Subscription Fee ARM (per subscription)	$50.00	$50.00
i. Lapsed Subscription Fee Extra Title (per title)	$10.00	$10.00
j. Fax Fee - 10 Pages or Less (first 10 pages)	$3.00	$3.00
k Fax Fee - Additional Pages Over 10 Pages (per page)	$0.25	$0.25
l. Research Fee (per hour)	$12.00	$12.00
m. Set Cleanup Fee (per hour)	$12.00	$12.00
n. Missing Page Fee (per page up to cost of set)	$0.50	$0.50
o. Rule Edit Fee (per hour)	$15.00	$15.00
p. Late Filling Fee (less than 2 hours) (per occurrence)	$5.00	$5.00
q. Late Filling Fee (2 hours to 4 hours) (per occurrence)	$10.00	$10.00
r. Late Filling Fee (more than 4 hours) (per occurrence)	$25.00	$25.00
2. Records Management Fees (based on 2-6-203)		
a. 16MM Microfilm		
Less than 250,000	$38.58	$38.58
Nontypical extreme weight and size	$38.58	$38.58
8" x 11"; 8" x 14" paperwork	$30.00	$30.00
8" x 11"; 8" x 14" computer printout	$30.00	$30.00
Extreme size and weight variance	$31.50	$31.50
Cards - fixed weight and color	$15.75	$15.75
Cards - mixed weight and color	$20.25	$26.25
b. 35MM Microfilm		
L (per 12" x 12") aerial photos	$68.25	$68.25
16" x 20" bound books	$63.00	$63.00
24" x 34" newspapers	$115.50	$115.50
24" x 34" bound newspapers	$136.50	$136.50
48" x 48" blueprints/maps	$288.75	$288.75

c. 105MM Microfilm		
8" x 11" paperwork	$68.25	$68.25
8" x 11"; 8" x 14" computer printout	$77.17	$77.17
Cards (per 1,000)	$77.17	$77.17
Minimum filing charge	$37.50	$37.50
d. Film Processing		
16mm, 100 foot roll	$3.62	$3.62
16mm, 215 foot roll	$7.10	$7.10
35mm, 100 foot roll	$6.35	$6.35
16mm, 3M cartridges	$4.73	$4.73
e. Film Inspecting		
100 foot roll inspection (per roll)	$3.65	$3.65
215 foot roll inspection (per roll)	$5.23	$5.23
Film splicing	$0.79	$0.79
3M cartridge loading	$2.25	$2.25
f. Duplication		
16mm, 100 foot roll (per roll)	$6.81	$6.81
16mm, 215 foot roll (per roll)	$13.03	$13.03
35mm, 100 foot roll (per roll)	$9.21	$9.21
105mm, microfiche or jackets	$0.16	$0.16
Reader/printer copies	$0.50	$0.50
Photocopies/own labor	$0.10	$0.10
Photocopies/our labor	$0.50	$0.50
16mm, 100 foot roll (per roll)	$9.92	$9.92
35mm, 100 foot roll (per roll)	$14.54	$14.54
g. Jacket Loading		
16mm, 5 channel jacket	$0.3150	$0.3150
Agency's own jacket	$0.2887	$0.2887
35mm, 1 and 2 channel jacket	$0.3150	$0.3150
Loading 16mm aperture card	$0.2625	$0.2625
Jacket title	$0.2625	$0.2625
Jacket notching	$0.0525	$0.0525
h. Miscellaneous		
Fiche title (per title)	$0.2625	$0.2625
Indexing and document prep/hour (per hour)	$18.00	$18.00
Camera rental (per day)	$95.00	$95.00
i. Supplies		
NMI reader bulbs (per bulb)	$10.75	$10.75
16mm, 100 foot roll film (per roll)	$6.68	$6.68
16mm, 215 foot roll film (per roll)	$12.95	$12.95

35mm, 100 foot roll film (per roll)	$13.95	$13.95
j. Records Center Services		
Storage (per square foot per month)	$0.2565	$0.2565
Storage (per cubic foot per month)	$0.295	$0.295
Retrievals (per occurrence)	$1.50	$1.50
Emergency retrievals (per occurrence)	$6.25	$6.25
Large retrievals, delivery, interfiling (per occurrence)	$22.50	$22.50
Records disposal (per hour)	$22.50	$22.50
Shredding confidential records (per hour)	$23.05	$23.05
k. Records Center Boxes		
Records storage boxes: standard size A (per box)	$1.34	$1.34
Drawing and map storage boxes: size C (per box)	$1.34	$1.34
l. Imaging Services		
Imaging (per image)	$0.055	$0.055
Indexing and document preparation (per hour)	$18.00	$18.00
Department of Transportation - 5401		
1. State Motor Pool		
a. Class 02 (small utilities)		
per hour assigned	$1.597	$1.600
per mile operated	$0.022	$0.022
b. Class 04 (large utilities)		
per hour assigned	$2.116	$2.335
per mile operated	$0.056	$0.056
c. Class 06 (passenger cars)		
per hour assigned	$1.501	$1.643
per mile operated	$0.054	$0.054
d. Class 07 (small and standard size pickups)		
per hour assigned	$1.270	$1.260
per mile operated	$0.030	$0.030
e. Class 11 (large 4X4 pickups)		
per hour assigned	$1.832	$2.334
per mile operated	$0.056	$0.056
f. Class 12 (vans)		
per hour assigned	$1.449	$1.632
per mile operated	$0.071	$0.071
2. Equipment Program		
a. 60-Day Working Capital		

Department of Revenue - 5801		
1. Customer Service Center		
a. Delinquent Account Collection Fee (percent of amount collected)	10.0%	10.0%
Department of Administration - 6101		
1. Accounting and Management Support		
a. Legal Services Unit	Share (percent) of Total Revenue Each Program or Division Will Pay	
Teachers' Retirement	20%	20%
Employee Benefits Program	26%	26%
Risk Management and Tort Defense	2%	2%
General Services Division	7%	7%
Architecture and Engineering	18%	18%
Information Services Division	27%	27%
Total	100%	100%
b. Network Support Unit		
Programming cost	60-day working capital reserve	
Computer support (per computer)	$714	$732
Server support (per server)	$1,072	$1,098
c. Warrant Writing (per warrant)		
Mailer warrants	$0.6170	$0.6145
Nonmailers	$0.2080	$0.2055
Emergency warrant	$4.1329	$4.1320
Duplicate warrant	$5.6632	$5.6624
Direct deposits	$0.1671	$0.1660
Externals - printed from an outside system	$0.1850	$0.1825
d. Personnel Unit		
Allocation to supported divisions (per FTE basis)	$88,262	$92,691

e. SB 445 Indirect Costs - The department is authorized to spend up to $294,208 in fiscal year 2002 and $296,509 in fiscal year 2003 (proprietary funds) to implement the reorganization specified in Senate Bill No. 445.

2. Procurement and Printing		
a. Publications and Graphics	60-day working capital reserve	
b. Central Stores	60-day working capital reserve	
c. Natural Gas Procurement	break-even (no reserve)	
d. Statewide Fueling Network (percent of gross purchases)	5.0%	5.0%
e. Statewide Procurement Card Program (per card)	$1.00	$1.00
3. Information Services Division		
a. Data Network Fee (per connected terminal per month)	$72.60	$72.60
b. Statewide Accounting, Budgeting, and Human Resources System (SABHRS) Allocation to Agencies	$4,168,460	$4,211,734

c. All Remaining Operations of the Division	45-day working capital reserve	
4. General Services Division		
a. Office Space Rent (per square foot)	$4.77	$4.88
b. Warehouse Space Rent (per square foot)	$2.12	$2.12
5. Mail and Distribution Bureau		
a. Interagency Mail (total amount allocated to agencies)	$171,655	$171,655
b. All Other Operations Except for Interagency Mail	60-day working capital reserve	
6. State Personnel Division		
a. Intergovernmental Training (per hour)	$113	$113
b. State Payroll Unit (total amount allocated to agencies)	$356,958	$366,248

c. Employee Benefits Program - Because state employee benefit plans require a large number of individual premiums for a variety of benefit options, because the portion of the premiums paid by the state is statutorily established in 2-18-703, and because the employee-paid portion of these premiums must be adjusted from time to time to meet the requirements of 2-18-812(1) to maintain state employee group benefit plans on an actuarially sound basis, the legislature defines "rates and fees" for state employee benefit programs to mean the state contribution toward employee group benefits provided for in 2-18-703 and the employee contribution toward employee group benefits necessary to meet the requirements of 2-18-812(1).

7. Risk Management and Tort Defense		
a. General Liability (total allocation to agencies)	$5,362,500	$5,775,000
b. Automobile Liability (total allocation to agencies)	$1,137,500	$1,225,000
c. Property (total allocation to agencies)	$1,200,500	$1,270,930
d. Airport/Aircraft (total allocation to agencies)	$116,567	$128,222
e. All Other Lines (total allocation to agencies)	$239,413	$258,508
Fish, Wildlife & Parks - 5201		
1. Administration and Finance (% markup)		
a. Warehouse Overhead	14%	14%
2. Vehicle Account Rates Per Mile		
a. Sedans	$0.20	$0.24
b. Suburban - 4x4	$0.33	$0.35
c. Vans 1/2 Ton	$0.18	$0.21
d. Vans 1/2 Ton Window	$0.27	$0.32
e. Pickup 1/2 Ton 2x4	$0.33	$0.34
f. Pickup 3/4 Ton 4x4 V8	$0.20	$0.22
g. Grounds Maintenance	$0.75	$0.85
h. Bronco 4x4	$0.24	$0.28
i. Pickup 1/2 Ton 4x4	$0.27	$0.34
j. Pickup 3/4 Ton 4x4 HD	$0.30	$0.35
k. Pickup 3/4 Ton 4x4 HD XC	$0.35	$0.38
l. Pickup 1 Ton 4x4	$0.33	$0.37
m. Pickup 3/4 Ton 4x4 MD	$0.24	$0.27

n. Pickup 3/4 Ton 4x4 MD XC	$0.29	$0.33
o. Pickup 1/2 Ton 4x4 LD XC	$0.29	$0.33
3. Aircraft Per Hour Rates		
a. Two-Place Single Engine	$ 54.02	$ 56.72
b. Partnavia	$257.24	$270.10
c. Turbine Helicopters	$313.58	$329.26
4. Parks – Capitol Grounds Maintenance	$0.3696/sq. ft.	$0.3696/sq. ft.
5. Duplicating – Number of Copies (includes paper)		
a. 1-20	$0.045	$0.050
b. 21-100	$0.030	$0.035
c. 101-1000	$0.025	$0.030
d. 1001-5000	$0.020	$0.025
6. Bindery		
a. Collating (per sheet)	$0.005	$0.005
b. Hand Stapling (per set)	$0.015	$0.015
c. Saddle Stitch (per set)	$0.030	$0.030
d. Folding (per sheet)	$0.005	$0.005
e. Punching (per sheet)	$0.001	$0.001
f. Cutting (per minute)	$0.550	$0.550
Department of Environmental Quality - 5301		
1. Central Management		
a. Expenses Against Personal Services	24%	24%
Department of Natural Resources and Conservation - 5706		
1. Air Operations Program		
a. Fixed Wing	$95	$95
b. Bell 206A Helicopter	$355	$355
c. UH-1 Huey Helicopter	$875	$875
Department of Commerce - 6501		
1. Local Government Services Bureau		
a. Local Government Assistance Administration Recharge	1.70%	1.70%
2. Board of Investments		

For purposes of [this act], the legislature defines "rates" as the total collections necessary to operate the board of investments as follows:

a. Administration Charge (total)	$2,860,200	$2,805,200
3. Director's Office/Management Services		
a. Management Services Indirect Charge Rate	15.50%	15.50%
Department of Justice - 4110		
1. Agency Legal Services		
a. Attorney (per hour)	$70	$70
b. Investigator/Paralegal (per hour)	$38	$38

Department of Corrections - 6401		
1. Secure Facilities		
a. Cook/chill rate to MSP	$1.80/meal	$1.78/meal
b. Cook/chill rate to MSH	$1.83/meal	$1.82/meal
c. Cook/chill rate to TSCTC	$1.83/meal	$1.81/meal
d. Cook/chill rate to Riverside	$2.79/meal	$2.86/meal
e. Cook/chill rate to DUI facility	$1.86/meal	$1.84/meal
f. Cook/chill rate to Helena prerelease	$2.43/meal	$2.47/meal
2. Montana Corrections Enterprises		
a. Laundry rate to MSP	$0.39/lb	$0.39/lb
b. Laundry rate to MSH	$0.38/lb	$0.38/lb
c. Laundry rate to MDC	$0.46/lb	$0.46/lb
Department of Labor and Industry - 6602		
1. Centralized Services Division		
a. Cost Allocation Plan	9.44%	10.14%
2. Professional and Occupational Licensing		
a. House Bill No. 2 Programs Recharge Rate	38%	38%
Office of Public Instruction - 3501		
1. OPI Indirect Cost Pool	17%	17%
2. Advanced Driver Education		
a. Workshop Fees		
Full-day workshop/person	$175.00 - $200.00	
Half-day refresher/person	$115.00 - $125.00	
b. Facility Usage Fees		
Montana state government/day	$85.00	
High school driver education		
Per year when track not in use	$500.00	
Per day after hours and not in use	$25.00	
Private nonprofit/day	$200.00	
Commercial use/day	$1,500.00 - $2,000.00	

MONTANA UNIVERSITY SYSTEM - 5100

Because certain employee benefit plans require a large number of individual premiums for a variety of benefit options, because the portion of these premiums paid by the state is statutorily established in 2-18-703, and because the employee-paid portion of these premiums must be adjusted from time to time to maintain employee group benefit plans on an actuarially sound basis, the legislature defines rates and fees for Montana university system employee benefit programs to mean the state contribution toward employee group benefits provided for in 2-18-703 and the employee contribution toward employee group benefits necessary to maintain the employee group benefit plans on an actuarially sound basis.

Approved May 5, 2001

CHAPTER NO. 573

[HB 5]

AN ACT APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2003; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AMENDING SECTION 4, CHAPTER 469, LAWS OF 1997, AND SECTION 2, CHAPTER 557, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 11], unless otherwise stated, the following definitions apply:

(1) "Capital project" means the acquisition of land or improvements or the planning, capital construction, renovation, furnishing, or major repair projects authorized in [sections 1 through 11].

(2) "LRBP" means the long-range building program account in the capital projects fund type.

(3) "Other funding sources" means money other than LRBP money, including special revenue fund money, that accrues to an agency under the provisions of law.

Section 2. Capital projects appropriations. (1) The following money is appropriated for the indicated capital projects from the indicated sources to the department of administration, which is authorized to transfer the appropriated money among the necessary fund types for these projects:

Agency/Project	LRBP	Other Funding Sources	
DEPARTMENT OF ADMINISTRATION			
Life Safety Projects, Statewide	$400,000	$	
Hazardous Material Mitigation Fund	350,000		
Roof Replacements or Repairs, Statewide	499,000		
Project Litigation Fund	475,000		
Capitol Complex Land Acquisition		400,000	Capitol Land Grant Revenue
DEPARTMENT OF CORRECTIONS			
Construction of Central Reception Unit		1,000,000	Federal Special Revenue
DEPARTMENT OF FISH, WILDLIFE, AND PARKS			
Administrative Facility Repair and Maintenance		764,000	State Special Revenue
DEPARTMENT OF JUSTICE			
Upgrade Foundations and Boiler, MLEA	200,000		
DEPARTMENT OF MILITARY AFFAIRS			
Construct New Dillon Armory		3,800,000	Federal Special Revenue

Construct New Kalispell Armory		3,700,000	Federal Special Revenue
MONTANA UNIVERSITIES AND COLLEGES			
Replace Primary Power Distribution System, UM-Dillon	162,750	59,375	Auxiliary
Roof Replacements or Repairs, University System	426,000		
Heating Plant Steam Distribution, Phase II, UM-Tech	438,750	236,250	Auxiliary
Chemistry Building Addition, UM-Missoula		3,200,000	Federal, Donations, Grants, Nonstate Funds, Plant Funds

All operating and maintenance expenses of the chemistry building addition are to be paid by the university of Montana-Missoula. Appropriation authority in excess of funds pledged for this project as of June 30, 2003, must be reverted.

Master Plan Campuses, University System	100,000	150,000	Higher Education Funds, Federal, Donations, Grants, Plant Funds

This project will focus on maximizing use of existing buildings on the campuses.

Animal and Range Science Facility, MSU-Bozeman		5,000,000	Higher Education Funds, Federal, Donations, Grants, Nonstate Funds, Plant Funds
Gaines Hall Renovation/Addition Project Design, MSU-Bozeman		2,000,000	Federal, Donations, Grants, Nonstate Funds, Plant Funds
Agricultural Experiment Station, MSU-Bozeman		1,000,000	Federal, Donations, Grants, Nonstate Funds, Plant Funds
Develop Classroom/Lab Design, MSU-COT, Billings	50,000		
Multi Media Center, Yellow Bay, UM-Missoula		1,350,000	Federal, Donations, Grants, Nonstate Funds, Plant Funds

All construction, operation, and maintenance expenses of the Yellow Bay multi media center are to be paid by the center.

Law Building Renovation/Expansion, UM-Missoula		5,000,000	Federal, Donations, Grants, Nonstate Funds, Plant Funds

All operating and maintenance expenses of the law building addition are to be paid by the university of Montana-Missoula.

School of Journalism Building, UM-Missoula		12,000,000	Federal, Donations, Grants, Nonstate Funds, Plant Funds

Appropriation authority in excess of funds pledged for this project as of June 30, 2005, must be reverted. All operating and maintenance expenses of the school of journalism building are to be paid by the university of Montana-Missoula.

Construct Applied Technology Center, MSU-Northern	3,000,000	Federal, Donations, Grants, Nonstate Funds, Plant Funds
Install PBS Digital Conversion, MSU-Bozeman	3,059,455	Federal, Donations, Grants, Nonstate Funds, Plant Funds

The university system and the information services division of the department of administration will work together to develop network plans or procedures that provide for the highest degree of bandwidth and cost-sharing capability between the university system and the department that is within technical specifications agreed to by the parties and is mutually beneficial to them. This obligation to cooperate and coordinate for the purpose of seeking mutually beneficial network arrangements applies to the intercity transport services acquired by the university system or the department of administration to meet the needs of the public broadcast system, including the utilization and sharing of excess capacity bandwidth to help meet the telecommunication needs of all state agencies in a manner that is both cost-effective and compatible with the efficient operation of the public broadcast system.

Develop Design to Expand COT, UM-COT, Helena	125,000	

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Expand Unit Office, Libby	94,000	

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

Licensure Compliance, MMHNCC	524,000	
Montana Veterans' Home Improvements, Columbia Falls	165,875	State Special Revenue
Eastern Montana Veterans' Home Improvements, Glendive	177,800	State Special Revenue

The legislature consents to the construction of the good shepherd chapel at the Montana developmental center in Boulder with donated funds. The construction of the chapel is exempt from provisions of Title 18.

STATE BOARD OF EDUCATION

Facility Improvements, Montana School for the Deaf and Blind	315,160	

DEPARTMENT OF TRANSPORTATION

Construct Equipment Storage Buildings, Statewide	2,700,000	Highways State Special Revenue

(2) The Montana state university agricultural experiment station shall use these funds to construct and repair various experiment station buildings at the following locations: $1,250,000 for Huntley, $180,000 for Moccasin, $200,000 for Havre, $210,000 for Sidney, and $160,000 for Kalispell. The amount of $1 million for these projects will be funded from non-LRBP sources, and the amount of $1 million will be funded from CPF in House Bill No. 14.

(3) For purposes of obtaining cash for the construction litigation appropriation authority in subsection (1), the architecture and engineering division of the department of administration may transfer any excess LRBP money from an agency as long as the transfer does not move funds required to complete any authorized agency project.

(4) The following projects are appropriated from the LRBP funding to the department of administration, in addition to the projects listed in subsection (1), by the decrease in bond debt service paid from the LRBP in House Bill No. 14:

Agency/Project	LRBP	Other Funding Sources
DEPARTMENT OF ADMINISTRATION		
Life Safety Projects, Statewide	$300,000	
Hazardous Material Mitigation, Statewide	90,000	
Roof Replacements or Repairs, Statewide	150,000	
MONTANA UNIVERSITIES AND COLLEGES		
Code Compliance/Deferred Maintenance, All Campuses	550,000	
Develop Design to Expand COT, UM-COT, Helena	240,000	

Section 3. Land acquisition appropriations. (1) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for purposes of land acquisition, land leasing, easement purchase, or development agreement:

Agency/Project	LRBP		Other Funding Sources
Fishing Access Site Acquisition, Statewide		$600,000	State Special Revenue
Habitat Montana		4,800,000	State Special Revenue
Big Horn Sheep Program		25,000	State Special Revenue

(2) When negotiating the purchase of any conservation easement, except a conservation easement that is cost-shared using a funding source that requires a perpetual conservation easement, the department of fish, wildlife, and parks is to include in the negotiation an alternative for a temporary conservation easement. Selection of cost and time for this alternative must be mutually agreed to by the parties to the easement.

Section 4. Dam. (1) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amount for the following dam:

Agency/Project	LRBP		Other Funding Sources
Park/Bearpaw Lakes Dam Repair		$210,000	State Special Revenue

(2) In accordance with 85-1-101, the department of natural resources and conservation shall coordinate and manage the projects.

Section 5. Capital improvements. (1) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for the purpose of making capital improvements to statewide facilities:

Agency/Project	LRBP		Other Funding Sources
Fishing Access Site Maintenance, Statewide		$275,000	State Special Revenue
Fishing Access Site Protection, Statewide		600,000 100,000	State Special Revenue Federal Special Revenue

Hatchery Maintenance, Statewide	575,000	State Special Revenue
Future Fisheries	2,010,000	State Special Revenue
Valier Boat Ramp	150,000	Federal Special Revenue
Wildlife Habitat Maintenance	750,000	State Special Revenue
Waterfowl Stamp Program	342,950	State Special Revenue

If Senate Bill No. 238 is not passed and approved, the amount listed in state special revenue for this item is reduced by $112,950.

Upland Game Bird Program	1,200,000	State Special Revenue
Cultural and Historic Parks	1,060,000 150,000	State Special Revenue Federal Special Revenue
Motorboat Recreation	1,039,650	State Special Revenue

If House Bill No. 132 is not passed and approved, the amount listed in state special revenue for this item is reduced by $285,000.

	505,000	Federal Special Revenue
Federal WB	745,000	Federal Special Revenue
State Park Roads	400,000	State Special Revenue
Capitol Complex Grounds Improvements	150,000	Capitol Land Grant Revenue
Federal Trails Grants	1,900,000	Federal Special Revenue
OHV Trails Grants	425,000	State Special Revenue
LWCF Grants	2,250,000	Federal Special Revenue

(2) The following money is appropriated to the department of military affairs in the indicated amount for the purpose of making capital improvements to statewide facilities:

Agency/Project	LRBP	Other Funding Sources
Federal Spending Authority	$1,500,000	Federal Special Revenue

(3) The following money is appropriated to the university of Montana in the indicated amounts for the purpose of making capital improvements to campus facilities:

Agency/Project	LRBP	Other Funding Sources
Grant Projects, All Campuses	$1,500,000	Federal, Donations, Grants
ADA Code/Deferred Maintenance, All Campuses	1,000,000	Federal, Donations, Grants

(4) The following money is appropriated to the department of transportation in the indicated amount for the purpose of making capital improvements to statewide facilities:

Agency/Project	LRBP	Other Funding Sources
Maintenance, Repair, and Small Projects, Statewide	$2,300,000	Highways State Special Revenue

Section 6. Transfer of funds. The department of fish, wildlife, and parks and the department of military affairs are authorized to transfer money appropriated in [sections 3 through 5] among fund types.

Section 7. Capital land grant revenue. The appropriations of $400,000 in capitol land grant revenue to the department of administration for capitol complex land acquisition and $150,000 to the department of fish, wildlife, and parks for capitol complex grounds improvements are the last priorities for use of these funds during the 2003 biennium and are dependent upon the availability of revenue. If necessary, the projects may be phased in as capitol land grant revenue becomes available. The department of administration architecture and engineering division will set priorities for revenue available for the two projects.

Section 8. Planning and design. The department of administration may proceed with the planning and design of capital projects prior to the receipt of other funding sources. The department may use interaccount loans in accordance with 17-2-107 to pay planning and design costs incurred before the receipt of other funding sources.

Section 9. Capital projects — contingent funds. If a capital project is financed, in whole or in part, with appropriations contingent upon the receipt of other funding sources, the department of administration may not let the projects for bid until the agency has submitted a financial plan for approval by the director of the department of administration. A financial plan may not be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding level provided in [sections 2 through 5] for that project; or

(2) the scope of the project is substantially altered or revised from the preliminary plans presented for that project in the 2003 biennium long-range building program presented to the 57th legislature.

Section 10. Review by department of environmental quality. The department of environmental quality shall review capital projects authorized in [sections 2 through 5] for potential inclusion in the state energy conservation program. When review shows that a capital project will result in energy improvements, that project must be submitted to the energy conservation program for cofunding consideration. Cofunding provided under the energy conservation program guidelines must be used to offset or add to the authorized funding for the project, and the amount will be dependent on the annual utility savings resulting from the facility improvement. Agencies must be notified of potential cofunding after the review.

Section 11. Legislative consent. The appropriations authorized in [sections 1 through 10] constitute legislative consent for the capital projects contained in [sections 1 through 10] within the meaning of 18-2-102.

Section 12. Section 4(3), Chapter 469, Laws of 1997, is amended to read:

"**Section 4. Capital improvements.**

(3) ~~(a)~~ The following money is appropriated to Montana state university in the indicated amount for the purpose of making capital improvements to campus facilities:

Agency/Project	LRBP		Other Funding Sources
Authority Only Projects, Montana State University	~~$19,000,000~~	*$4,500,000*	Academic Building Fees, Indirect Cost Recovery, Federal, Private, Plant Funds

~~(b) It is the intent of the 55th legislature that 100% of all future operations and maintenance costs for the classroom-laboratory building authorized in the amount of $19,000,000 at MSU-Bozeman be funded by Montana state university and that none be funded with general fund money.~~"

Section 13. Section 2(1), Chapter 557, Laws of 1999, is amended to read:

"**Section 2. Capital projects appropriations.** (1) Except as provided in subsection (4)(c), the following money is appropriated for the indicated capital projects from the indicated sources to the department of administration, which is authorized to transfer the appropriated money among the necessary fund types for these projects:

Agency/Project	LRBP		Other Funding Sources
DEPARTMENT OF ADMINISTRATION			
Health and Safety Projects, Statewide	$730,000	$250,000	Auxiliary
Hazardous Material Remediation, Statewide	300,000		
Roof Replacements or Repairs, Statewide	521,000		
Facility Assessments, Statewide	100,000	50,000 100,000 50,000	State Special Revenue Federal Special Revenue Auxiliary
Capital Renovation		1,000,000	Capitol Land Grant Revenue
Renovate Haynes Gallery Area, Historical Society		1,000,000	Donations
DEPARTMENT OF CORRECTIONS			
Expand Women's Prison, MWP		6,475,000	Federal Special Revenue
Missoula Regional Correctional Facility Supplemental		526,497	Federal Special Revenue
Construct Reception Unit, MSP		5,500,000 170,000	Federal Special Revenue General Fund
DEPARTMENT OF FISH, WILDLIFE, AND PARKS			
Bluewater Hatchery Renovations		200,000	State Special Revenue
Construct Fort Peck Fish Hatchery		14,640,000	Federal Special Revenue
DEPARTMENT OF MILITARY AFFAIRS			
Construct New Armory, Kalispell		3,900,000	Federal Special Revenue
Construct New Armory, Bozeman		4,600,000	Federal Special Revenue
MONTANA UNIVERSITY SYSTEM			
Sprinkle Library, UM-Missoula	657,000		

Ventilate and Update Fine Arts Building, UM-Missoula	450,000		
Boiler Upgrade and Ventilation, UM-Tech	530,000	120,000	Auxiliary
Maintain HVAC Systems, MSU-Billings and COT-Billings	500,000		
Replace Steam Distribution Piping, UM-Dillon	800,000	400,000	Auxiliary
Upgrade Boiler Controls, UM-Missoula	125,000	100,000	Auxiliary
Roof Replacements or Repairs, University System	1,591,000		
Maintain Main Hall Exterior, UM-Dillon	225,000		
Renovate Cowan Hall, MSU-Northern	511,000		
Applied Technology Center Feasibility Study, MSU-Northern	50,000		
Construct Nondenominational Chapel, UM-Tech		1,500,000	Donations
~~Forestry/Journalism Addition~~ *Forestry*, UM-Missoula		10,000,000	Federal, Donations, Grants, Plant Funds
Native American Study Center, UM-Missoula		3,500,000	Higher Education Funds, Federal, Donations, Grants, Plant Funds
Life Sciences Building, UM-Missoula		23,000,000	Federal, State, Donations, Grants, Plant Funds
Rural Technology Education Center, UM-Dillon		350,000	Higher Education Funds, Federal, Donations, Grants, Plant Funds

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Lincoln Unit Office/Quarters and Clearwater Egress	125,000		

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

Sprinkle MMHNCC, Lewistown	300,000		
Construct Special Care Unit, Montana Veterans' Home		1,179,374	State Special Revenue
Improve Eastern Montana Veterans' Home		290,250	State Special Revenue
Improve Montana Veterans' Home		187,530	State Special Revenue

DEPARTMENT OF TRANSPORTATION

Construct Equipment Storage Buildings and Roof Replacement at Helena Headquarters, Statewide	2,100,000	Highways State Special Revenue
Construct Core Drilling Building, Helena	1,000,000	Highways State Special Revenue"

Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. Coordination instruction. If House Bill No. 14 is not passed and approved, projects that are funded by a combination of funding sources in both House Bill No. 5 and House Bill No. 14 will not be authorized by the governor's office of budget and program planning unless an alternative funding source is identified to provide full funding for the project.

Section 16. Effective date. [This act] is effective on passage and approval.

Approved May 5, 2001

CHAPTER NO. 574

[HB 124]

AN ACT GENERALLY REVISING THE LAWS GOVERNING LOCAL GOVERNMENT AND STATE REVENUE COLLECTION AND ALLOCATION; CLARIFYING STATE MANDATES THAT MAY NOT BE IMPOSED ON LOCAL GOVERNMENTS WITHOUT FUNDING; ELIMINATING SPECIFIC STATUTORY MILL LEVY RESTRICTIONS; REVISING THE LIMIT ON PROPERTY TAXES; PROVIDING FOR A UNIFORM ELECTION PROCEDURE TO EXCEED THE MILL LEVY LIMIT; PROVIDING FOR LOCAL GOVERNMENT ENTITLEMENTS TO REPLACE REIMBURSEMENTS AND TO ACCOUNT FOR REVENUE ALLOCATIONS; CALCULATING ENTITLEMENTS BY DEDUCTING DISTRICT COURT COSTS AND PUBLIC ASSISTANCE COSTS; PROVIDING A STATUTORY APPROPRIATION FOR ENTITLEMENT PAYMENTS; PROVIDING FOR FUND TRANSFERS FROM THE GENERAL FUND TO STATE AGENCIES TO ACCOUNT FOR REVISED REVENUE ALLOCATIONS; INCLUDING STATE PAYMENTS IN LIEU OF TAXES FOR STATE LAND IN THE ENTITLEMENT SHARE CALCULATION; PROVIDING FOR CERTAIN UNIFORM VEHICLE FEES; RETAINING VEHICLE FEES, ALCOHOL TAXES, AND GAMBLING TAXES AT THE STATE LEVEL; REVISING THE FUNDING METHOD FOR PROVIDING PUBLIC ASSISTANCE; CONVERTING CERTAIN SPECIAL LEVIES INTO FEES; PROVIDING FOR BLOCK GRANTS FOR SCHOOL DISTRICTS; PROVIDING FOR BLOCK GRANTS TO COUNTIES FOR DISTRIBUTION TO SCHOOL DISTRICTS FOR PURPOSES OF COUNTYWIDE SCHOOL TRANSPORTATION AND COUNTYWIDE SCHOOL RETIREMENT; APPROPRIATING MONEY FOR SCHOOL DISTRICT BLOCK GRANTS, COUNTYWIDE SCHOOL TRANSPORTATION BLOCK GRANTS, COUNTYWIDE SCHOOL RETIREMENT BLOCK GRANTS, AND DISTRICT COURT EXPENSES:

AMENDING SECTIONS 1-2-112, 2-9-316, 3-2-714, 3-5-901,7-2-2730, 7-2-2746, 7-2-4111, 7-2-4918, 7-3-1310, 7-3-1311, 7-3-1313, 7-3-4312, 7-6-502, 7-6-2301, 7-6-2314, 7-6-2319, 7-6-2328, 7-6-2329, 7-6-2345, 7-6-2501, 7-6-2511, 7-6-2512, 7-6-2522, 7-6-2523, 7-6-2541, 7-6-4134, 7-6-4238, 7-6-4261, 7-6-4272, 7-6-4431, 7-6-4451, 7-6-4453, 7-6-4455, 7-7-2202, 7-7-2206, 7-7-2303, 7-14-111, 7-14-232, 7-14-1131, 7-14-1134, 7-14-1632, 7-14-1633, 7-14-2501, 7-14-2502, 7-14-2503, 7-14-2504, 7-14-2523, 7-14-2807, 7-14-4106, 7-14-4404, 7-14-4644, 7-14-4734, 7-15-4293, 7-16-101, 7-16-2102, 7-16-2108, 7-16-2109, 7-16-2205, 7-16-2411, 7-16-2412, 7-16-2431, 7-16-2443, 7-16-4105, 7-16-4113, 7-16-4114, 7-21-3203, 7-21-3433, 7-21-3457, 7-22-2142, 7-22-2222, 7-22-2306, 7-22-2432, 7-22-2512, 7-32-235, 7-32-4117, 7-33-2209, 7-33-4111, 7-33-4130, 7-34-102, 7-34-2131, 7-34-2133, 7-34-2204, 7-34-2303, 7-34-2417, 7-35-2122, 10-2-501, 10-2-603, 13-13-230, 15-1-402, 15-1-501, 15-10-420, 15-16-117, 15-24-303, 15-24-902, 15-24-904, 15-24-921, 15-24-922, 15-24-925, 15-30-121, 15-31-114, 16-1-404, 16-1-406, 16-1-411, 17-7-502, 19-6-709, 19-7-404, 19-9-209, 19-13-214, 19-18-503, 19-18-504, 19-19-301, 20-7-705, 20-7-714, 20-9-141, 20-9-168, 20-9-331, 20-9-333, 20-9-501, 20-10-144, 20-10-146, 20-15-305, 20-15-311, 20-15-326, 20-25-1002, 22-1-304, 23-2-508, 23-2-510, 23-2-512, 23-2-518, 23-2-611, 23-2-612, 23-2-615, 23-2-616, 23-2-803, 23-2-804, 23-2-811, 23-2-812, 23-2-814, 23-2-818, 23-5-610, 25-1-201, 39-71-403, 40-4-215, 40-4-226, 41-3-1122, 42-2-105, 50-2-111, 50-2-114, 52-6-105, 53-2-207, 53-2-301, 53-2-304, 53-2-612, 53-3-115, 53-3-116, 53-20-208, 53-21-204, 61-1-102, 61-3-203, 61-3-321, 61-3-325, 61-3-332, 61-3-406, 61-3-411, 61-3-412, 61-3-426, 61-3-431, 61-3-457, 61-3-465, 61-3-509, 61-3-524, 61-3-527, 61-3-707, 61-3-738, 61-9-312, 61-10-130, 61-10-148, 61-10-225, 67-3-205, 67-10-402, 67-11-301, 67-11-303, 72-16-909, 72-16-912, 75-10-533, 76-1-111, 76-1-403, 76-1-404, 76-1-406, 76-2-102, 76-6-109, 76-13-201, 76-15-505, 76-15-516, 76-15-531, 76-15-623, 77-1-502, 77-1-503, 77-1-504, 80-2-201, 80-2-203, 80-2-204, 80-2-205, 80-2-206, 80-2-207, 80-2-209, 80-2-221, 80-2-222, 80-2-224, 80-2-225, 80-2-226, 80-2-228, 80-2-229, 80-2-230, 80-2-231, 80-2-232, 80-2-244, 80-7-814, 80-7-815, 80-7-816, 80-7-822, 81-6-101, 81-6-104, 81-6-106, 81-6-204, 81-6-205, 81-6-209, 81-6-210, 81-7-104, 81-7-113, 81-7-114, 81-7-118, 81-7-201, 81-7-202, 81-8-503, 81-8-504, 85-3-412, 85-3-422, 85-3-423, AND 90-5-112, MCA, AND SECTION 5, CHAPTER 95, LAWS OF 2001; REPEALING SECTIONS 7-6-2531, 7-6-2532, 7-6-2533, 7-6-2534, 7-6-2535, 7-6-2536, 7-6-2537, 7-6-4432, 7-6-4434, 7-6-4436, 7-6-4437, 7-6-4439, 7-6-4452, 7-16-2432, 7-34-2134, 7-34-2135, 7-34-2136, 15-7-122, 15-31-701, 15-31-702, 17-3-214, 20-25-1007, 52-1-110, 53-2-302, 53-2-306, 53-2-322, 53-2-610, 53-2-801, 53-2-802, 53-2-803, 53-2-811, 53-2-812, 53-2-813, 53-4-246, 53-4-247, 61-3-508, 61-3-510, 61-3-511, 61-3-512, 76-1-405, 76-1-407, 77-1-505, 77-1-506, 77-1-507, 80-2-223, AND 80-7-810, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Entitlement share payment — appropriation. (1) The amount calculated pursuant to this subsection is each local government's base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle and boat taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-321;

(v) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001, and 61-3-537; and

(vi) Title 61, chapter 3, part 7;

(c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);

(d) district court fees pursuant to:

(i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);

(ii) 25-1-202;

(iii) 25-1-1103;

(iv) 25-9-506;

(v) 25-9-804; and

(vi) 27-9-103;

(e) certificate of ownership fees for manufactured homes pursuant to 15-1-116;

(f) financial institution taxes pursuant to Title 15, chapter 31, part 7;

(g) coal severance taxes allocated for county land planning pursuant to 15-35-108;

(h) all beer, liquor, and wine taxes pursuant to:

(i) 16-1-404;

(ii) 16-1-406; and

(iii) 16-1-411;

(i) late filing fees pursuant to 61-3-201;

(j) title and registration fees pursuant to 61-3-203;

(k) disabled veterans' flat license plate fees and purple heart license plate fees pursuant to 61-3-332;

(l) county personalized license plate fees pursuant to 61-3-406;

(m) special mobile equipment fees pursuant to 61-3-431;

(n) single movement permit fees pursuant to 61-4-310;

(o) state aeronautics fees pursuant to 67-3-101; and

(p) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool.

(3) (a) Beginning with fiscal year 2002 and in each succeeding fiscal year, the base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. For fiscal years 2002 and 2003, the growth rate is 3%. Beginning with calendar year 2004, by October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(i)(A).

(ii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A).

(b) (i) For fiscal year 2004 and subsequent fiscal years, the entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(i)(B) and (3)(a)(ii)(B):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(i)(A) and (3)(a)(ii)(A):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for

making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis beginning September 15, 2001.

(b) (i) For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2003 and each succeeding fiscal year, the growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. The growth factor in the entitlement share must be calculated separately for:

(A) counties;

(B) consolidated local governments; and

(C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

Cascade	Great Falls - downtown	$468,966
Deer Lodge	TIF District 1	3,148
Deer Lodge	TIF District 2	3,126
Flathead	Kalispell - District 1	758,359
Flathead	Kalispell - District 2	5,153
Flathead	Kalispell - District 3	41,368
Flathead	Whitefish District	164,660
Gallatin	Bozeman - downtown	34,620
Lewis and Clark	Helena - # 2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507
Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
Yellowstone	Billings	436,815

(c) The entitlement share for industrial tax increment financing districts is as follows:

(i) for fiscal years 2002 and 2003:

Missoula	County Airport Industrial	$4,812
Silver Bow	Ramsay Industrial	597,594;

(ii) for fiscal years 2004 and 2005:

Missoula	County Airport Industrial	$2,406
Silver Bow	Ramsay Industrial	298,797; and

(iii) $0 for all succeeding fiscal years.

(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.

(e) One-half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.

(9) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(p) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection (9)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

(10) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

(11) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(12) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

Section 2. Election to impose new mill levy or exceed limit. (1) A county, consolidated government, incorporated city, or incorporated town may impose a new mill levy or exceed the mill levy limit provided for in 15-10-420 by conducting an election as provided in this section.

(2) An election conducted pursuant to this section may be held in conjunction with a regular or primary election or may be a special election. The governing body shall pass a resolution or amend its self-governing charter indicating its intent to impose a new levy or to exceed the current statutory mill levy provided

for in 15-10-420 on the approval of a majority of the qualified electors voting in the election. The resolution or charter amendment must include:

(a) the specific purpose for which the additional money will be used;

(b) the specific amount to be raised;

(c) the approximate number of mills required; and

(d) the durational limit, if any, on the levy.

(3) Notice of the election must be given as provided by law. The form of the ballot must reflect the content of the resolution or charter amendment.

(4) If the majority of voters voting on the question are in favor of the additional levy, the governing body is authorized to impose the levy in the amount specified in the resolution or charter amendment.

Section 3. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, $36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

(a) $2,873,853 in fiscal year 2002;

(b) $2,916,961 in fiscal year 2003;

(c) $2,960,715 in fiscal year 2004; and

(d) in each succeeding fiscal year, the amount in subsection (2)(c), increased by 1.5% in each succeeding fiscal year.

(3) For fiscal year 2002 and for each succeeding fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) $2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) $1 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to Title 61, chapter 3, part 3. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532;

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) $1 for each off-highway vehicle subject to payment of the fee in lieu of tax, as provided for in 23-2-803; and

(ii) $1.50 for each light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicles weighing more than 1 ton, motorcycle, quadricycle, and motor home subject to registration or reregistration pursuant to 61-3-321;

(c) to the department of fish, wildlife, and parks:

(i) $2.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) $5 for each snowmobile registered under 23-2-616, with $2.50 to be used for enforcing the purposes of 23-2-601 through 23-2-644 and $2.50 designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) $1 for each duplicate snowmobile decal issued under 23-2-617;

(iv) $5 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, $3.50 for each recreational vehicle, camper, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321 or 61-3-524; and

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) to the state veterans' cemetery account, provided for in 10-2-603, $10 for each veteran's license plate issued pursuant to 61-3-332(10)(a)(ii), (10)(f), and (10)(h); and

(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement.

[(f) 25 cents a year for each vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in [section 1 of Senate Bill No. 447].]

(4) For fiscal year 2002, there is transferred from the state general fund to the state special revenue fund to be used for purposes of state funding of district court expenses, as provided in 3-5-901, $5,742,983 in lieu of the amount deposited by the state treasurer under 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001.

(5) For each fiscal year, beginning with fiscal year 2002, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000. Transfer amounts in each succeeding fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available.

(6) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes.

Section 4. Section 1-2-112, MCA, is amended to read:

"**1-2-112. Statutes imposing new local government duties.** (1) ~~Except as~~ *As* provided in ~~this section~~ *subsection (3)*, a law enacted by the legislature that requires a local government unit to perform an activity or provide a service or facility that requires the direct expenditure of additional funds *and that is not expected of local governments in the scope of their usual operations* must provide a specific means to finance the activity, service, or facility other than *a* ~~mill levies or the all-purpose~~ mill levy. Any law that fails to provide a specific means to finance any activity, service, or facility is not effective until specific means of financing are provided by the legislature from state or federal funds.

~~(2) The legislature may fulfill the requirements of this section by providing for an increase in the existing authorized mill levies, the all-purpose mill levy, special mill levies, or the remission of money by the state to local governments. However, an increase in the existing authorized mill levies, the all-purpose mill levy, or any special mill levy must provide an amount necessary to finance the additional costs, and if financing is provided by remission of funds by the state, the remission must bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility.~~

~~(3)~~*(2)* Subsequent legislation may not be considered to supersede or modify any provision of this section~~, whether~~ by implication ~~or otherwise, except to the extent that the~~. *Subsequent legislation may supersede or modify the provisions of this section if the* legislation does so expressly.

(3) The mandates that the legislature is required to fund under subsection (1) are legislatively imposed requirements that are not necessary for the operation of local governments but that provide a valuable service or benefit to Montana citizens, including but not limited to:

(a) entitlement mandates that provide that certain classes of citizens may receive specific benefits;

(b) membership mandates that require local governments to join specific organizations, such as waste districts or a national organization of regulators; and

(c) service level mandates requiring local governments to meet certain minimum standards.

(4) ~~This section~~ *Subsection (1)* does not apply to:

(a) mandates that are required of local governments as a matter of constitutional law or federal statute or that are considered necessary for the operation of local governments, including but not limited to:

(i) due process mandates;

(ii) equal treatment mandates;

(iii) local government ethics mandates;

(iv) personnel and employment mandates;

(v) recordkeeping requirements; or

(vi) mandates concerning the organizational structure of local governments;

~~(a)~~*(b)* any law under which the required expenditure of additional local funds is an insubstantial amount that can be readily absorbed into the budget of an existing program. A required expenditure of the equivalent of approximately ~~0.1~~ *1* mill ~~or less~~ levied on taxable property of the local government unit *or $10,000, whichever is less,* may be considered an insubstantial amount.

~~(b)~~*(c)* a law necessary to implement the National Voter Registration Act of 1993, Public Law 103-31."

Section 5. Section 2-9-316, MCA, is amended to read:

"**2-9-316. Judgments against governmental entities except state.** Except as provided in 15-1-402, a political subdivision of the state shall satisfy a final judgment or settlement out of funds that may be available from the following sources:

(1) insurance;

(2) the general fund or any other funds legally available to the governing body;

(3) a property tax, otherwise properly authorized by law, collected by a special levy authorized by law, in an amount necessary to pay any unpaid portion of the judgment or settlement~~, except that the levy may not exceed 10 mills~~;

(4) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the payment of the judgment or settlement liability. The governing body of a county, city, or school district may issue bonds pursuant to procedures established by law. Property taxes may be levied to amortize the bonds~~, provided the levy for payment of any bonds, settlements, or judgments may not exceed, in the aggregate, 10 mills annually~~."

Section 6. Section 3-2-714, MCA, is amended to read:

"**3-2-714. Civil legal assistance for indigent victims of domestic violence account.** (1) There is a civil legal assistance for indigent victims of domestic violence account in the state special revenue fund. ~~There must be paid into this account the filing fees paid under 25-1-201(4)(a) and (11).~~ *There must be paid into this account the filing fees paid under 25-1-201(3) and (5).* The money in the account must be used solely for the purpose of providing legal representation for indigent victims in civil matters in domestic violence cases and for alternative dispute resolution initiatives in family law cases. Money in the account may not be used for class action lawsuits.

(2) The supreme court administrator shall establish procedures for the distribution and accountability of money in the account. The supreme court administrator may designate nonprofit organizations that ordinarily render or finance legal services to indigent persons in civil matters in domestic violence cases to receive or administer the distribution of the funds."

Section 7. Section 3-5-901, MCA, is amended to read:

"**3-5-901. State assumption of certain district court expenses — designation as district court reimbursement program.** (1) To the extent that revenue is available under ~~61-3-509~~ *61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001*, the state shall fund:

(a) the following district court expenses in criminal cases only:

(i) salaries of court reporters;

(ii) fees for transcripts of proceedings;

(iii) witness fees and necessary expenses;

(iv) juror fees;

(v) expenses for indigent defense; and

(vi) expenses for psychiatric examinations;

(b) the district court expenses, as listed in subsection (1)(a), in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;

(c) the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations; and

(d) the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

(i) transcript fees;

(ii) witness fees;

(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;

(iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth;

(v) expenses for appointed counsel for the youth;

(vi) expenses for appointed counsel for the parent, guardian, or other person having physical or legal custody of the youth; and

(vii) expenses associated with court-ordered alternative dispute resolution.

(2) If revenue received under ~~61-3-509~~ *61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001, for district court expenses* exceeds the amount appropriated by the legislature to fund the expenses of the appellate defender program, the excess amount is statutorily appropriated, as provided in 17-7-502, to the supreme court to fund the expenses described in subsections (1)(a) through (1)(d), the district court grant program as described in subsection (4)(a), and the costs of administering this section.

(3) All revenue disbursed under this section must be deposited in and credited to the district court fund. If a district court fund does not exist, the revenue must be deposited in the county general fund for district court operations.

(4) If money appropriated for the expenses listed in subsection (1)~~:~~

~~(a)~~ exceeds the amount necessary to fully fund those expenses, the remaining excess amounts must be used for district court grants as provided in 7-6-2352~~; or~~

~~(b) is insufficient to fully fund those expenses, the county is responsible for payment of the balance~~."

Section 8. Section 7-2-2730, MCA, is amended to read:

"**7-2-2730. Establishment of special warrant district or special funding bond district in continuing county.** (1) After all warrants have been drawn and issued against the funds of ~~such~~ *the* adjoining county, *referred to in 7-2-2729,* to pay the claims and demands existing against ~~such~~ *the adjoining* county on the date when the territory of ~~such~~ *the* abandoned and abolished county was attached to ~~such~~ *the* adjoining county, all money in the funds of ~~such~~ *the* adjoining county ~~shall~~ *must* be used and applied in payment of the warrants drawn against its respective funds. If ~~such~~ *that* money is not sufficient to pay all of ~~such~~ *the* warrants, with the interest ~~thereon~~ *on the warrants*, then the board of county commissioners shall make an order creating a special warrant district and shall include within ~~such~~ *the* district all of the territory of ~~such~~ *the* adjoining county but ~~shall~~ *may* not include ~~therein~~ *in the district* any of the territory of ~~such~~ *the* abandoned and abolished county. ~~and~~ *The board of county commissioners* shall, *subject to 15-10-420,* ~~thereafter and~~ at the time of making levies for county purposes, levy a special tax against all taxable property in ~~such~~ *the* district to pay the warrants, with interest ~~thereon~~ *on the warrants*, outstanding against the funds of ~~said~~ *the adjoining* county. The board may ~~in its discretion~~ extend ~~such~~ *the* tax levy over a period of not ~~to exceed~~ *more than* 3 years.

(2) (a) If it ~~shall appear~~ *appears* to the board that it will require too large a tax levy to pay ~~such~~ *the* warrant indebtedness, with interest ~~thereon~~, within 3 years, ~~such~~ *the* board, instead of creating a special warrant district, shall create and establish a special funding bond district and shall include within the boundaries ~~thereof~~ *of the district* all of the territory within ~~such~~ *the* adjoining county but ~~shall~~ *may* not include ~~therein~~ *in the district* any of the territory of the abandoned and abolished county attached to ~~such~~ *the* adjoining county. After all money in the several funds of ~~said~~ *the adjoining* county applicable ~~thereto~~ *to payment of the warrants* has been applied in payment of ~~such~~ *the* outstanding warrants and interest ~~thereon~~ *on the warrants* ~~and without submitting the question of doing so to an election~~, ~~such~~ *the* board may issue bonds in an amount sufficient to pay and redeem all ~~such~~ warrants remaining outstanding, with interest ~~thereon~~ *on the warrants. An election is not required to issue the bonds.*

(b) ~~Such~~ *The* bonds ~~shall~~ *must* be issued in the name of ~~said~~ *the* adjoining county and ~~shall~~ *must* contain recitals to the effect that the principal and interest ~~thereof~~ *of the bonds* will be paid by ~~millage~~ tax levies against the property situated within the boundaries of ~~said~~ *the adjoining* county as the ~~same~~ *boundaries* existed before the territory of ~~such~~ *the* abandoned and abolished county was attached ~~thereto~~ *to the adjoining county* and that none of the property within the territory of ~~such~~ *the* abandoned and abolished county will be subjected to ~~such~~ *the* levies. Except as otherwise provided ~~herein~~ *in this section*, ~~said~~ *the* bonds ~~shall~~ *must* be issued and sold and tax levies ~~shall~~ *must* be fixed and made to pay the principal and interest ~~thereof~~ *on the bonds* ~~as the same becomes due~~ in the manner provided by 7-7-107, 7-7-108, 7-7-123, 7-7-124, 7-7-2104, 7-7-2106, and parts 22 and 23 of chapter 7 ~~and all the provisions thereof~~, ~~so~~ *as* far as applicable ~~thereto~~, ~~shall~~ apply to ~~such~~ *the* bonds.

(3) For the purposes of 15-10-420, the adjoining county and the abandoned and abolished county are considered separate taxing jurisdictions with relation to the warrants or bonds described in this section."

Section 9. Section 7-2-2746, MCA, is amended to read:

"**7-2-2746. Details relating to special warrant district.** (1) The board of county commissioners creating a special warrant district shall, ~~thereafter and~~ at the time of making and fixing tax levies for county purposes, *subject to 15-10-420,* make and fix a levy against all taxable property within ~~such~~ *the* special warrant district for the payment of ~~said~~ *the* warrants and the interest ~~thereon~~ *on the warrants*. The proceeds of ~~such~~ *the* levy, when collected, ~~shall~~ *must* be deposited by the county treasurer in a separate fund ~~which shall~~ *that must* be used for the payment of ~~said~~ *the* warrants and interest *on the warrants* ~~and for no other purpose~~.

(2) ~~Said~~ *The* tax levy ~~need~~ *is* not *required to* be made at ~~such~~ a rate ~~as~~ *that* will pay all of ~~said~~ *the* warrants, with interest, in 1 year, but if ~~said~~ *the* board ~~shall deem~~ *considers* it ~~for~~ *in* the best interests of the taxpayers owning property within ~~such~~ *the* special warrant district, ~~such~~ *the* levy may be spread over a term of not more than 3 years."

Section 10. Section 7-2-4111, MCA, is amended to read:

"**7-2-4111. Tax base — maintenance agreements.** When a city or town is incorporated, a county may, *subject to 15-10-420,* retain the property within the city or town as a part of the tax base of the county for purposes of levying taxes against the property for the maintenance of property within the city or town until the city or town imposes and collects a levy for maintenance of the property for which the county mill levy is imposed. The city or town and the county may enter into an agreement for maintenance of property pending an election on a city or town levy."

Section 11. Section 7-2-4918, MCA, is amended to read:

"**7-2-4918. Tax levy in ~~the~~ event of insolvency.** (1) If, at any time after the disincorporation of a city or town, ~~it is found that~~ there is ~~not sufficient~~ *insufficient* money in the treasury to the credit of the special fund ~~of~~ *provided for in* 7-2-4912 with which to pay any indebtedness of the corporation, the board of county commissioners ~~has the power and it is its duty to~~ *shall, subject to 15-10-420,* levy and collect from the territory formerly included within the city or town a tax or taxes sufficient in amount to pay the indebtedness of the corporation as the ~~same shall become~~ *indebtedness becomes* due.

(2) The tax or taxes, assessments, and collections ~~shall~~ *must* be made in the same manner and at the same time that other taxes of the county are levied and collected and are an additional tax upon the property included within ~~said~~ *the* territory or portions ~~thereof~~ *of territory of the disincorporated city or town* for the payment of ~~said~~ *the* debts. *For the purposes of 15-10-420, the levy is considered a levy on the property in the city or town until the debt is paid.*

(3) All money paid into the county treasury under the provisions of this part ~~shall~~ *must* be ~~placed to the credit of~~ *credited to* the special fund."

Section 12. Section 7-3-1310, MCA, is amended to read:

"**7-3-1310. Limitation on tax levy.** (1) An ordinance, conforming to 15-10-420, making the annual tax levy must be passed fixing the rate to be levied upon all property within the municipality to defray current expenses.

(2) ~~Taxes~~ *Subject to 15-10-420, taxes* required to be levied on account of the debt of the municipality or any district are not affected by the limits."

Section 13. Section 7-3-1311, MCA, is amended to read:

"**7-3-1311. Authority for special taxes and special service districts.** (1) Subject to 15-10-420, a municipality may levy special taxes for all purposes that counties, cities, and towns are authorized to levy by general laws of the state, and all of the provisions of those laws are applicable to and govern and control the municipality in the levying and collection of the special taxes.

(2) Subject to 15-10-420, the commission may by ordinance designate clearly specified districts in or for which special services are to be performed and may levy upon the property in the district a tax, in addition to any taxes authorized by 7-3-1310(1), as may be necessary with other available funds and grants to pay the cost of the special service or services. The boundaries of special service districts must be regularly reviewed by the commissioners and may be adjusted upon recommendation by an authorized planning body in response to changing population patterns. ~~An additional levy under this section may not be more than 20 mills.~~"

Section 14. Section 7-3-1313, MCA, is amended to read:

"**7-3-1313. Special taxing districts for indebtedness existing prior to consolidation.** (1) ~~The~~ *A* district comprised within the boundaries of any city, town, or district existing within the county at the time of the adoption of ~~this part and~~ part 12 *and this part* by the electors ~~thereof~~ *of the consolidated government* ~~shall~~ *is*, for the purpose of paying the interest and principal of any debt incurred by ~~such~~ *the* city, town, or district prior to ~~such~~ *the* adoption *of the consolidated government*, ~~be~~ continued as a special district until ~~such~~ *the* debt ~~shall have~~ *has* been paid. ~~The~~ *Subject to 15-10-420, the* commission shall, in the annual tax levy ordinance, levy upon the property within each ~~such~~ district ~~such~~ *a* tax, in addition to all other taxes, ~~as~~ *that* the director of finance ~~shall report~~ *reports* to be necessary to provide for paying the interest on each ~~such~~ debt as it falls due and the principal ~~thereof~~ *of the debt* as it matures, and no other property within the municipality ~~shall be~~ *is* taxable or ~~made~~ liable for the payment of any ~~such~~ *district* debt.

(2) ~~The~~ *Subject to 15-10-420, the* commission shall ~~likewise~~ provide in the annual tax levy ordinance *adopted* for the levy of ~~such~~ *a* tax upon all property within the municipality ~~as~~ *that* the director of finance ~~shall report~~ *reports* to be necessary to provide for paying the interest as it falls due and the principal as it matures of any debt of the municipality as a whole.

(3) The tax levy for the debt of the municipality as a whole and the tax levy for the debt of each ~~such~~ district ~~shall each~~ *must* be a separate levy and ~~shall~~ *must* be distinct from and in addition to all other tax levies. The proceeds of each ~~such~~ tax levy ~~shall~~ *must* be placed in a separate fund for the payment of the interest and principal of the debt for which the tax was levied, and ~~no part of any such~~ *the* fund ~~shall~~ *may not* be used for any other purpose ~~whatever~~."

Section 15. Section 7-3-4312, MCA, is amended to read:

"**7-3-4312. Effect of organization of communities into single municipal district.** (1) Whenever any group of communities ~~shall become~~ *becomes* a single municipal district under the provisions of this ~~law~~ *part*, the commissioners elected at the first election ~~shall~~ have the same functions and authority and municipal procedure ~~in all respects shall~~ *must* be the same as is provided in this ~~law~~ *part* ~~where~~ *when* single communities, cities, or towns adopt the commission-manager form of government~~;~~. ~~and the~~ *The* terms of all municipal officers in any prior city or town ~~which may be~~ *that is* included in ~~such~~ *the* new municipal district ~~shall in like manner~~ cease and terminate as soon as the commissioners ~~shall by resolution so declare~~ *adopt a resolution terminating the terms*, and the corporate functions and existence of any ~~such~~ prior municipal corporation may ~~in like manner~~ be terminated by ~~said~~ *the* commissioners when the need for the further existence of ~~such~~ *the* prior corporation ~~shall be at an end~~ *has ended*.

(2) Whenever any group of communities, including one or more incorporated cities or towns, ~~shall become~~ *becomes* a single municipal district under this ~~law~~ *part*, ~~such~~ *the* municipal district ~~shall bear~~ *has* the same name as the principal incorporated city or town in ~~such~~ *the* district.

(3) Whenever any group of communities, including one or more incorporated cities or towns, ~~shall become~~ *becomes* a single municipal district under this ~~law~~ *part*, the corporate property of each ~~such~~ city or town ~~shall become~~ *becomes* the property of the new municipality, but improvements paid for in whole or in part by special assessments upon abutting property within special improvement districts ~~shall~~ *may* not be ~~deemed~~ *considered* municipal property within the meaning of this ~~law~~ *part* to the extent of *the special assessment* payments ~~so made~~. If ~~such~~ *a* prior city or town ~~shall have~~ *has* an unpaid indebtedness, the commissioners of ~~said~~ *the* new municipality elected at the first municipal election shall inventory and appraise or cause to be inventoried and appraised all of ~~such~~ *the* property, and if the amount of the indebtedness of ~~such~~ *the* prior city or town ~~shall exceed~~ *exceeds* the inventory value of the property surrendered to the new municipality by ~~such~~ *the* prior city or town, then the excess of ~~such~~ *the* indebtedness over the inventory value of ~~said~~ *the* property ~~shall be~~ *is* a charge only against the taxable property within the limits of ~~such~~ *the* prior city or town and, ~~shall be~~ *subject to 15-10-420, must be* paid by levy upon ~~such~~ *the* property ~~alone~~ *located within the prior city or town*."

Section 16. Section 7-6-502, MCA, is amended to read:

"**7-6-502. Levy for juvenile detention programs.** (1) ~~If approved by a majority of the qualified electors voting on the question~~ *Subject to 15-10-420*, a local government may impose a levy on the taxable value of all property within its jurisdiction in an amount determined by the governing body for the purpose of financing the establishment and operation of juvenile detention programs.

(2) Local governments may use the funds derived from a levy authorized in subsection (1) to contract with other units of local government to purchase services from available juvenile detention programs consistent with the purposes of the levy as stated in subsection (1)."

Section 17. Section 7-6-2301, MCA, is amended to read:

"**7-6-2301. Construction of part.** This part ~~shall~~ *may* not be construed to create any new fund or funds or to authorize a levy to be made for any fund in excess of the limitation ~~now prescribed by existing law or acts amendatory thereof~~ *contained in 15-10-420*."

Section 18. Section 7-6-2314, MCA, is amended to read:

"**7-6-2314. Classification of estimates, appropriations, and expenditures — exception.** (1) In the tabulation required by 7-6-2313, the estimates, appropriations, and expenditures must be classified as:

(a) salaries and wages;

(b) maintenance and operation;

(c) capital outlay;

(d) interest and debt redemption;

(e) miscellaneous; and

(f) expenditures proposed to be made from bond issues not yet authorized or from the proceeds of a tax levy or levies that are required to be submitted to and approved at an election to be held ~~later~~ *as provided in [section 2]*.

(2) (a) Within the general class of salaries and wages, each salary must be set forth separately, together with the title or position of the recipient. An unitemized appropriation may be made to cover the expenses of special deputies or assistants in any office where the services of the special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made, but the proposed rate per day for each class or kind of labor must be set forth.

(b) Expenditures under the general class of maintenance and operation must be classified according to a standard classification to be established by the department of commerce.

(c) Expenditures for capital outlay must set forth and describe each object of expenditure separately.

(d) Under the general class of interest and debt redemption, proposed expenditures for interest and for redemption of principal must be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements must be set forth in a similar manner.

(e) Under the general class of miscellaneous, expenditures for all purposes not listed in or that cannot properly be assigned to any of the general classes must be set forth and itemized in detail.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 19. Section 7-6-2319, MCA, is amended to read:

"7-6-2319. Determination of fund requirements to be met by tax levy — exception. (1) Following the determinations required by 7-6-2318, the board shall determine the amount to be raised by tax levy for each fund by adding the cash balance in the fund at the close of the preceding fiscal year and the amount of the estimated revenue to accrue to the fund during the current fiscal year. It shall then deduct the total amount obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the board. The amount remaining is the amount necessary to be raised for the fund by tax levy during the current fiscal year.

(2) The board may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year an additional amount as a reserve to meet expenditures to be made from the fund during the months of July to November of the next fiscal year. The amount that may be added to any fund as the reserve may not exceed one-third of the total amount appropriated and authorized to be spent from the fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency warrants.

(3) The total amount to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve and any amount for payment of election expenses and emergency warrants, may not exceed the total amount that may be raised for the fund by a tax levy ~~that does not exceed the maximum levy permitted by law to be made for the fund and~~ that complies with 15-10-420.

(4) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 20. Section 7-6-2328, MCA, is amended to read:

"**7-6-2328. Restriction on tax-financed expenditures if voter approval of tax levy required.** ~~Where any~~ *When an* expenditure program is to be financed from a tax levy required to be authorized and approved at an election *as provided for in [section 2],* ~~no~~ *an* expenditure ~~shall~~ *may not* be made or *an* obligation incurred ~~thereunder~~ until ~~such~~ *the* levy is ~~so~~ authorized and approved."

Section 21. Section 7-6-2329, MCA, is amended to read:

"**7-6-2329. Procedure when unpaid and outstanding warrants exist at end of fiscal year.** (1) When at the end of ~~any~~ *a* fiscal year ~~any~~ *a* county has outstanding registered emergency warrants against ~~any~~ *a* fund issued by reason of ~~any~~ *an* emergency budget ~~or budgets~~ and is without sufficient cash in ~~such~~ *that* fund to pay the ~~same with~~ *registered warrants plus* interest ~~thereon~~, the board of county commissioners ~~must~~ *shall*, in the annual budget for ~~such~~ *that* fund for the ~~immediately~~ following fiscal year, make an appropriation sufficient to pay ~~such~~ *the registered* warrants ~~with the~~ *plus* interest ~~thereon~~.

(2) When at the end of ~~any~~ *a* fiscal year ~~any~~ *a* county has warrants outstanding and registered against ~~any~~ *a* fund, other than warrants issued by reason of any emergency budget ~~or budgets~~, and is without sufficient cash in ~~such~~ *that* fund to pay the ~~same with~~ *registered warrants plus* interest ~~thereon~~, the board ~~must~~ *shall*, in the annual budget for ~~such~~ *that* fund for the ~~immediately~~ following fiscal year, make an appropriation to pay ~~such~~ *the registered* warrants or a substantial part ~~thereof with the~~ *of the registered warrants plus* interest ~~thereon~~. The amount of ~~such~~ *the* appropriation ~~shall~~ *must* be ~~fixed and~~ determined by the board~~, but must, in any event, be at least 10% of the amount which might be collected by a maximum levy for such fund if the amount of such outstanding and registered warrants, with interest thereon, equals or exceeds such amount~~.

(3) ~~None of the provisions of this~~ *This* section ~~shall~~ *may not* be construed as authorizing a levy to be made ~~for any fund~~ in excess of the limitation ~~prescribed by existing law or acts hereafter enacted amendatory thereof~~ *contained in 15-10-420.*"

Section 22. Section 7-6-2345, MCA, is amended to read:

"**7-6-2345. Use of emergency warrants.** (1) All emergency expenditures ~~shall~~ *must* be made by the issuance of emergency warrants drawn against the fund or funds properly chargeable with ~~such~~ *the* expenditures. The county treasurer ~~is authorized and directed to~~ *may* pay ~~such~~ emergency warrants with any money ~~in such fund or funds~~ available for ~~such~~ *that* purpose. If at any time there ~~shall not be sufficient~~ *is insufficient* money available ~~in such fund or funds~~ to pay ~~such~~ *the* warrants, then ~~such~~ *the* warrants ~~shall~~ *must* be registered, bear interest, and be called in for payment in the manner provided by law for other county warrants.

(2) The county clerk and recorder shall include in ~~his~~ *the* annual tabulation ~~to be~~ submitted to the board of county commissioners the total amount of emergency warrants issued during the preceding fiscal year. Subject to the provisions of subsection (3), the county commissioners shall, in their tax levies,

include a levy for each fund sufficient to raise an amount equal to the total amount of ~~such~~ *registered* warrants~~, if there be any,~~ remaining unpaid at the close of ~~such~~ *the* preceding fiscal year because of insufficient money ~~in such fund~~ to pay the ~~same~~ *registered warrants.*

(3) (a) ~~No~~ *A* levy ~~shall~~ *may not* be made ~~for any fund~~ in excess of the levy ~~authorized by law to be made therefor~~ *limitation provided for in 15-10-420.*

(b) The board may submit the question of funding ~~such~~ emergency warrants at any election as provided by law, and if at ~~any such~~ *the* election the ~~issuing~~ *issuance* of ~~such~~ funding bonds ~~be~~ *is* authorized, ~~it shall not then be necessary for any~~ *a* levy *is not required* to be made for the purpose of paying ~~such~~ *the* emergency warrants."

Section 23. Section 7-6-2501, MCA, is amended to read:

"**7-6-2501. Authorization for county mill levy.** Subject to 15-10-420, the board of county commissioners may levy a tax annually on the taxable property of the county for county purposes ~~as may be~~ *that is* necessary to defray current expenses ~~not exceeding 27 mills on each dollar of the taxable valuation for any 1 year for counties of the fourth, fifth, sixth, and seventh classes and 25 mills on each dollar of the taxable valuation for any 1 year for counties of the first, second, and third classes~~ and may levy taxes ~~as~~ *that* are required to be levied by special or local statutes."

Section 24. Section 7-6-2511, MCA, is amended to read:

"**7-6-2511. County levy for district court expenses.** Subject to 15-10-420, the governing body of each county may each year levy and collect a tax on the taxable property of the county for all *county* district court costs, except those listed in 3-5-211, 3-5-213, and 3-5-215. ~~The tax may not exceed 6 mills in the first- and second-class counties, 5 mills in third- and fourth-class counties, and 4 mills in fifth-, sixth-, and seventh-class counties.~~ District court costs include but are not limited to salary and benefits for court clerks, court reporters, youth probation officers, and other employees of the district court."

Section 25. Section 7-6-2512, MCA, is amended to read:

"**7-6-2512. County tax levy for health care facilities.** (1) Subject to 15-10-420, the board of county commissioners may, annually at the time of levying county taxes, fix and levy a tax~~, not to exceed 10 mills on each dollar of taxable valuation of property,~~ upon all property within the county to erect, furnish, equip, expand, improve, maintain, and operate county-owned or county-operated health care facilities created under 7-8-2102, 7-34-2201, and 7-34-2502. "Health care facilities" as used in this section has the meaning as defined in 7-34-2201. ~~The combined total number of mills levied under this section and for the county poor fund under 53-2-322 may not exceed 18 mills. A higher levy may be made upon compliance with 7-6-2531 through 7-6-2537, 15-10-420, or 53-2-322.~~ If a hospital district is created under Title 7, chapter 34, part 21, the mill levy authorized by this section may not be imposed on property within that hospital district.

(2) If a county issues bonds under 7-34-2411 to finance or refinance the costs of a health care facility, the board of county commissioners may covenant to levy the tax authorized by this section during the term of the bonds, to the extent necessary, and to apply the collections of the tax to the costs of erecting, furnishing, equipping, expanding, improving, maintaining, and operating the

health care facility or facilities of the county or the payment of principal of or interest on the bonds. The pledge of the taxes to the payment of the bonds may not cause the bonds to be considered indebtedness of the county for the purpose of any statutory limitation or restriction. The pledge may be made by the board only upon authorization of a majority of the electors of the county voting on the pledge at a general or special election as provided in 7-34-2414."

Section 26. Section 7-6-2522, MCA, is amended to read:

"**7-6-2522. All-purpose levy ~~— maximum~~.** (1) ~~The~~ *Subject to 15-10-420, the* all-purpose levy is an annual levy upon the taxable value of all property in the county subject to taxation for county purposes in lieu of the levies specified in 7-6-2523. ~~Subject to 15-10-420, the all-purpose levy may not exceed the lesser of:~~

~~(a) 55 mills on the dollar; or~~

~~(b) the total number of mills levied in the prior year pursuant to the levies set forth in 7-6-2523 as certified by the department of revenue under 15-10-202.~~

(2) If the county governing body determines that the interests of the county would be served by an all-purpose levy, it shall specify its intent to impose the all-purpose levy in the resolution approving and adopting the annual budget."

Section 27. Section 7-6-2523, MCA, is amended to read:

"**7-6-2523. Special service levies replaced by all-purpose *mill* levy.** A county using the all-purpose *mill* levy may not impose any of the following levies:

(1) general fund levy, as provided in 7-6-2501;

(2) bridge levy, as provided in 7-14-2502;

(3) recreation levy, as provided in 7-16-101;

(4) county fair levy, as provided in 7-21-3410;

(5) weed levy, as provided in 7-22-2142;

(6) insect pest levy, as provided in 7-22-2306;

~~(7) poor fund levy, as provided in 53-2-322;~~ or

~~(8)~~*(7)* developmental disabilities facility levy, as provided in 53-20-208."

Section 28. Section 7-6-2541, MCA, is amended to read:

"**7-6-2541. County detention center inmate medical costs.** ~~(1)~~ The board of county commissioners shall budget and expend funds for inmate medical care, including but not limited to costs of providing direct medical care, medication, medical services, hospitalization, insurance premiums, self-insured coverage, or contracted services for expenses that must be borne by the county for inmates confined in a county detention center as provided for in 7-32-2222.

~~(2) If approved at a tax election by a majority of the qualified electors voting on the question, the board may levy up to 2 mills on the taxable value of all property within its jurisdiction for the purpose of subsection (1).~~"

Section 29. Section 7-6-4134, MCA, is amended to read:

"**7-6-4134. Capital improvement program fund.** An amount not to exceed 10% of the money received from an all-purpose *mill* levy provided for in ~~7-6-4452~~ *7-6-4451* may be placed in a separate fund, known as the capital improvement program fund~~,~~. ~~to be earmarked~~ *The capital improvement program fund may be used* for the replacement, improvement, and acquisition of property, facilities, or equipment~~, provided that~~ *if* a capital improvement program has been formally adopted by resolution of the city or town governing body."

Section 30. Section 7-6-4238, MCA, is amended to read:

"**7-6-4238. Restriction on tax-financed expenditures if voter approval of tax levy required.** ~~Where any~~ *When an* expenditure program is to be financed from a tax levy required to be authorized and approved at an election *as provided in [section 2]*, ~~no~~ *an* expenditure ~~shall~~ *may not* be made or obligation incurred ~~thereunder~~ until ~~such~~ *the* levy is ~~so~~ authorized and approved."

Section 31. Section 7-6-4261, MCA, is amended to read:

"**7-6-4261. Determination of fund requirements to be met by tax levy.** (1) Following the determinations required by 7-6-4260, the governing body shall determine the amount to be raised for each fund for which a tax levy is to be made by adding the cash balance in excess of outstanding unpaid warrants at the close of the preceding fiscal year and the amount of the estimated revenue, if any, to accrue to the fund during the current fiscal year. It shall then deduct the total amount obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the governing body in the budget adopted and approved. The amount remaining is the amount necessary to be raised for any fund by tax levy during the current fiscal year.

(2) Subject to 15-10-420, the governing body may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year an additional amount as a reserve to meet expenditures to be made from the fund during the months of July to November of the next fiscal year. The undesignated amount held as a reserve may not exceed one-half of the total amount appropriated and authorized to be spent from the fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency and other outstanding warrants.

~~(3) The total amount to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve, may not exceed the total amount that may be raised for the fund by a tax levy that does not exceed the maximum levy permitted by law to be made for the fund.~~

~~(4)~~*(3)* This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 32. Section 7-6-4272, MCA, is amended to read:

"**7-6-4272. Emergency expenditures.** (1) All emergency expenditures must be charged to the emergency budget appropriations adopted by a three-fourths majority of the members present at a meeting of a governing body.

(2) Emergency expenditures may be made by the issuance of checks or warrants drawn on the municipal treasury. The municipality is authorized and directed to pay the checks or warrants with any money available for that purpose. If at any time there is insufficient money available to pay the emergency expenditures, then emergency warrants must be issued and registered, must bear interest, and must be called for payment in the manner provided by law for other municipal warrants.

(3) The finance officer shall include in the preliminary annual operating budget to be submitted to the governing body the total amount of emergency

warrants issued during the preceding fiscal year that remain unpaid. Subject to the provisions of *15-10-420 and* this section, the governing body shall, in the tax levies, include a levy for each fund sufficient to raise an amount equal to the total amount of any emergency warrants remaining unpaid at the close of the preceding fiscal year because of insufficient money in the fund to pay the warrants.

(4) ~~(a) A levy may not be made for any fund in excess of the levy authorized by law to be made for the fund.~~

~~(b)~~ The governing body may submit the question of funding the emergency warrants at an election as provided by ~~law~~ *[section 2]*. If possible, the election must be held in conjunction with a regular or primary election. If at the election ~~issuing~~ *the issuance* of funding bonds is authorized, it is not necessary for any levy to be made for the purpose of paying the emergency warrants.

(5) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 33. Section 7-6-4431, MCA, is amended to read:

"7-6-4431. Authorization to exceed maximum mill levy — election required. The governing body of a municipality may raise money by taxation for the support of municipal government services, facilities, or other capital projects in excess of the levy ~~or levies~~ allowed by ~~law~~ *15-10-420* under the following conditions:

(1) The governing body ~~must~~ *shall* pass a resolution indicating its intent to exceed the current statutory mill levy *limit* on the approval of a majority of the qualified electors voting in an election under subsection (2). The resolution must include:

(a) the specific purpose for which the additional money will be used;

(b) the specific dollar amount to be raised; *and*

(c) the approximate number of mills required~~; and~~

~~(d) the specific mill levy limitation to be exceeded~~.

(2) The governing body ~~must~~ *shall* submit the question of the additional mill levy to the qualified electors of the municipality at ~~the next regular primary or general election on either odd-numbered or even-numbered years~~ *an election as provided in [section 2]*. The question may not be submitted more than once in any calendar year. If the majority *of voters* voting on the question ~~are~~ *is* in favor of the additional levy or levies, the governing body is authorized to ~~exceed~~ *impose* the ~~statutory~~ mill levy ~~limit~~ in the amount specified in the resolution ~~for a period not to exceed 2 years~~."

Section 34. Section 7-6-4451, MCA, is amended to read:

"7-6-4451. All-purpose mill levy authorized. It is the purpose of 7-6-4451 *and 7-6-4453* through 7-6-4455 to authorize ~~and empower~~ the cities and towns of Montana~~, at their option,~~ to make an all-purpose annual mill levy in lieu of the multiple levies ~~now~~ authorized by the statutes of Montana."

Section 35. Section 7-6-4453, MCA, is amended to read:

"7-6-4453. Certain special mill levies also available. (1) The all-purpose mill levy does not include the levies imposed for bonded indebtedness, to pay judgments or tax protest refunds, or for special improvement district revolving funds of municipalities. Subject to 15-10-420, additional levies may be made in addition to the all-purpose *mill* levy, as provided in subsection (2). Sections 7-6-4451, ~~through~~ *7-6-4454,* 7-6-4455, *and this section* may not be construed as repealing those statutes providing for multiple separate levies.

(2) Extraordinary levies otherwise authorized to pay for bonded indebtedness, judgments, tax protest refunds, or special improvement district revolving funds may be made by municipalities in addition to the all-purpose *mill* levy provided for in 7-6-4451, *7-6-4454,* ~~through~~ 7-6-4455, *and this section.*

~~(3) In a third-class city or town, the all-purpose mill levy may not include the special tax levy for the firefighters' disability and pension fund provided for in 19-18-503. This special tax levy must be made in addition to the all-purpose mill levy.~~"

Section 36. Section 7-6-4455, MCA, is amended to read:

"**7-6-4455. Changes from all-purpose *mill* levy method.** Any municipality electing to follow the all-purpose *mill* levy method provided for in ~~7-6-4452 shall be~~ *7-6-4451 is* bound by that election during the ensuing fiscal year but may abandon ~~such~~ *the all-purpose mill levy* method in succeeding fiscal years."

Section 37. Section 7-7-2202, MCA, is amended to read:

"**7-7-2202. Authority to issue general obligation bonds to satisfy judgments.** (1) The board of county commissioners of every county of the state ~~is hereby vested with the power and authority to~~ *may* issue, negotiate, and sell coupon bonds on the credit of the county, as ~~more specifically~~ provided in this part, for the purpose of funding, paying in full, or compromising, settling, and satisfying any judgment ~~which may have been~~ rendered against the county in a court of competent jurisdiction, including the repayment of tax protests lost by the county, when~~:~~

~~(a)~~ there are not sufficient funds available to pay ~~such~~ *the* judgment~~; and~~

~~(b) sufficient money cannot be raised to satisfy such judgment by an annual tax levy of 10 mills levied on all the taxable property within the county through a period of 3 years~~.

(2) The resolution providing for the ~~issue~~ *issuance* of ~~such~~ *the* bonds must recite the facts concerning the judgment to be funded and the terms of any compromise agreement ~~which may have been~~ entered into between the board and the judgment creditor."

Section 38. Section 7-7-2206, MCA, is amended to read:

"**7-7-2206. Term of general obligation bonds.** (1) Bonds issued for any of the purposes designated in 7-7-2201(1) through (4) may not be for a longer term than 20 years.

(2) Bonds issued for any of the purposes designated in 7-7-2201(5) and (6) may not be for a longer term than 10 years.

(3) Bonds issued for any of the purposes designated in 7-7-2202 may not be for a longer term than ~~will be required to repay the bonds with interest through a tax levy of 10 mills on all the property within the county subject to taxation, and the term may not exceed~~ 20 years.

(4) The length of the term required must be estimated and calculated by the board of county commissioners, based upon the percentage of valuation of the property upon which taxes are levied and paid within the county as ascertained from the ~~last completed~~ *last-completed* assessment for state and county taxes, taking into account probable changes in the taxable valuation and losses in tax collections. Irrespective of any miscalculation by the county commissioners in fixing the term of the bonds, the county shall from year to year make a sufficient tax levy to pay the interest and installments on principal on the bonds as the ~~same fall~~ *payments are* due.

(5) For purposes of this section, the term of a bond issue commences on July 1 of the fiscal year in which the county first levies taxes to pay principal and interest on the bonds."

Section 39. Section 7-7-2303, MCA, is amended to read:

"**7-7-2303. Term of refunding general obligation bonds.** (1) (a) The following *term* limitations ~~as to term shall~~ apply to all bonds issued under 7-7-2301(1). Except as provided in subsection (1)(b), ~~no~~ bonds ~~shall~~ *may not* be issued for a longer term than 10 years.

(b) ~~(i)~~ If the unexpired term of the bonds to be refunded ~~shall be~~ *is* more than 10 years, the refunding bonds may be issued for ~~such~~ *the* unexpired term.

~~(ii) If such 10-year term will require an annual tax levy for payment of such refunding bonds exceeding 10 mills on all property subject to taxation in the county, the term may be so extended as to reduce the required annual levy to 10 mills; provided, however, that the term shall not under any circumstances exceed 20 years.~~

(2) Bonds issued for any of the purposes designated in 7-7-2301(2) ~~shall~~ *may* not be for a longer term than ~~will be required to repay the bonds with interest through a tax levy of 10 mills on all the property within the county subject to taxation, and the term shall not exceed~~ 20 years.

(3) The length of the term required ~~shall~~ *must* be estimated and calculated by the board of county commissioners, based upon the percentage of valuation of the property upon which taxes are levied and paid within ~~such~~ *the* county as ascertained from the ~~last completed~~ *last-completed* assessment for state and county taxes, taking into account probable changes in the taxable valuation and losses in tax collections. Irrespective of any miscalculation by the county commissioners in fixing the term of the bonds, the county ~~must~~ *shall* from year to year make a sufficient tax levy to pay the interest and installments on principal on the bonds as the ~~same fall~~ *payments are* due."

Section 40. Section 7-14-111, MCA, is amended to read:

"**7-14-111. Transportation for senior citizens and persons with disabilities.** (1) Subject to 15-10-420, a county, urban transportation district, or municipality may~~, in addition to all other property tax levies authorized by law,~~ levy ~~up to 1 mill of~~ property taxes to fund special transportation services for senior citizens and persons with disabilities.

(2) The proceeds of the levy may be used to:

(a) contract with public or private transportation providers for services to senior citizens and individuals with disabilities; or

(b) augment or subsidize provisions for the transportation of senior citizens and individuals with disabilities provided by public transportation providers.

(3) If the taxing jurisdiction determines that it is not in the best interest of senior citizens and individuals with disabilities to use the tax levy as provided for in subsection (2), the taxing jurisdiction may use the proceeds of the levy to establish and operate an independent transportation system for senior citizens and individuals with disabilities.

(4) Counties, urban transportation districts, and municipalities are encouraged to enter into interlocal agreements to provide regional transportation services to senior citizens and persons with disabilities and may create regional advisory committees to coordinate regional transportation services."

Section 41. Section 7-14-232, MCA, is amended to read:

"7-14-232. Mill levy authorized ~~— limitation~~. ~~(1)~~ Subject to 15-10-420, the commissioners shall annually, at the time of levying county taxes, fix and levy a tax in mills upon all property within the transportation district ~~clearly~~ sufficient to ~~raise the amount certified~~ *operate the district, taking into account the amount requested* by the board.

~~(2) The tax levied for all district purposes other than payment of bonded indebtedness may not in any year exceed 12 mills on each dollar of taxable valuation of property within the district.~~"

Section 42. Section 7-14-1131, MCA, is amended to read:

"7-14-1131. Municipal tax levy. Subject to 15-10-420, the port authority may request annually from the governing bodies the amount of tax to be levied by each municipality participating in the creation of the port authority, and the municipality may levy the amount requested, pursuant to provisions of law authorizing cities and other political subdivisions of this state to levy taxes. ~~The levy made may not exceed the maximum levy permitted by 67-10-402 for port purposes or any lower limit that may have been established by the municipality or municipalities in the resolution creating the authority.~~ The municipality shall collect the taxes requested by a port authority that it has authorized in the same manner as other taxes are levied and collected and make payment to the port authority. The proceeds of the taxes when and as paid to the port authority must be deposited in a special account or accounts in which other revenue of the authority is deposited and may be expended by the authority as provided for in this part. Prior to the issuance of bonds under 7-14-1133 and 7-14-1134, the port authority or the municipality may by resolution covenant and agree that the total amount of taxes then authorized by law, or the portion of the taxes that may be specified by the resolution, will be requested, levied, and deposited annually as provided in this section until the bonds and interest are fully paid."

Section 43. Section 7-14-1134, MCA, is amended to read:

"7-14-1134. Method of funding deficiency. (1) Subject to the conditions stated in this section, the governing body of a county or of a municipality having a population in excess of 10,000 may by resolution covenant that if at any time all revenue, including taxes, appropriated and collected for bonds issued pursuant to this part ~~are~~ *is* insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the county or municipality for the payment of the deficiency. The governing body may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on the bonds, it will levy a general tax upon all the taxable property in the county or municipality for the payment of the deficiency. The taxes are not subject to any limitation of rate or amount applicable to other county or municipal taxes but are limited to a rate estimated to be sufficient to produce the amount of the deficiency. If more than one local government is included in an authority issuing bonds pursuant to this part, the local governments may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the revenue appropriated for the bonds in a manner that the local governments may determine.

(2) The resolution must state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies.

(3) (a) A resolution is not effective until the question of its approval has been submitted to the qualified electors of the local government at ~~a special~~ *an* election~~:~~

~~(i)~~ called for that purpose by the governing body of the local government~~;~~ *and*

~~(ii)~~ held ~~in conjunction with a regular or primary election~~ *pursuant to [section 2]*~~;~~ and

~~(iii)~~ *the question is* approved by a majority of the electors voting ~~on the question~~.

(b) The notice and conduct of the election is governed, to the extent applicable, as provided for municipal general obligation bonds in Title 7, chapter 7, part 42, for an election called by cities and towns, and as provided for county general obligation bonds in Title 7, chapter 7, part 22, for an election called by counties. If a majority of the electors voting on the issue vote against approval of the resolution, the local government may not make the covenant or levy a tax for the payment of deficiencies pursuant to this section. The local government or authority may issue bonds under this part payable solely from the sources referred to in 7-14-1133(1)."

Section 44. Section 7-14-1632, MCA, is amended to read:

"**7-14-1632. Mill levy authorized ~~— limitation~~.** The authority may certify annually to the board of county commissioners the amount of money necessary for the operation of the authority. Upon approval by the electorate, the board shall annually, at the time of levying county taxes, fix and levy a tax in mills upon all property within the boundaries of the authority clearly sufficient to raise the amount certified by the authority. ~~The tax levied for authority purposes other than for payment of bonded indebtedness may not in a year exceed 6 mills on each dollar of taxable valuation of property within the authority.~~"

Section 45. Section 7-14-1633, MCA, is amended to read:

"**7-14-1633. Election required to impose mill levy.** (1) Before the levy provided for in 7-14-1632 may be made, the question must be submitted to a vote of the people at ~~the next regular school~~ *an* election held ~~in accordance with 20-3-304 or by mail ballot election as provided by Title 13, chapter 19, in the following form:~~

~~"Shall there be a levy of (specify number, not to exceed 6) mills upon the taxable property of the (specify rail authority) necessary to raise the sum of (specify the approximate amount to be raised by the tax levy) for the purpose of (specify purpose for which the levy is made)?~~

~~☐ FOR the tax levy.~~

~~☐ AGAINST the tax levy~~ *pursuant to [section 2].*"

(2) Notice of the election, clearly stating the amount and the purpose of the levy, must be given and the election must be held and conducted and the returns must be made in the manner prescribed by law for the submission of questions to the electors under the general election laws."

Section 46. Section 7-14-2501, MCA, is amended to read:

"**7-14-2501. General road tax authorized.** (1) Subject to 15-10-420 and to raise revenue for the construction, maintenance, or improvement of public highways, each board of county commissioners may levy a ~~general~~ tax upon the taxable property in the county ~~of not more than 20 mills, except in counties of the fourth, fifth, sixth, and seventh class, which may levy not more than 23 mills, payable to the county treasurer~~. The tax must be collected the same as other taxes as the board may direct.

(2) This section does not apply to incorporated cities and towns that by ordinance provide for the levy of a tax for road, street, or alley purposes.

(3) All money collected under this section must be deposited in the county road fund."

Section 47. Section 7-14-2502, MCA, is amended to read:

"**7-14-2502. Special bridge tax authorized — combined ferry and bridge fund.** (1) Subject to 15-10-420, a board may levy a special tax ~~not to exceed 8 mills~~ on all taxable property in the county for the purpose of constructing, maintaining, and repairing free public bridges, which includes those bridges within the municipalities.

~~(2) Subject to 15-10-420, an additional levy for these purposes may be made under the following conditions:~~

~~(a) In any county where the taxable value of property in that county is $20 million or less, the board may, if necessary, levy 1 mill.~~

~~(b) In counties where the taxable value of property in that county is not less than $20 million or more than $40 million, the board may, if necessary, levy 2 mills.~~

~~(3)~~*(2)* For the purposes of this section, a free public bridge is defined as any drainage structure located on, over, or through any road or highway.

~~(4)~~*(3)* These taxes must be levied and collected in the same manner as other taxes. Except *that* when the county has a combined ferry and bridge fund, the money must be kept as a special bridge fund, subject to the order of the board for use as provided in this section~~;~~ and may not be transferable to any other fund.

~~(5)~~*(4)* If a county owns or operates a public ferry, the board may combine into a single fund the revenue from the county public ferry tax levy authorized in 7-14-2807, the revenue from the special municipal bridge levy authorized in 7-14-2503, and the revenue from the levy authorized by this section. The fund may be used for any lawful purpose authorized for bridges in this part or in Title 7, chapter 14, part 22, or for public ferries in Title 7, chapter 14, part 28."

Section 48. Section 7-14-2503, MCA, is amended to read:

"7-14-2503. Special municipal bridge tax authorized. Subject to 15-10-420, a board may levy a special tax ~~not to exceed 5 mills~~ on the taxable property in the county to defray the costs of any bridge required to be constructed and maintained by the county in any city or town."

Section 49. Section 7-14-2504, MCA, is amended to read:

"7-14-2504. Additional road and bridge construction tax — election required. (1) Each board may make an additional levy upon the taxable property in the county ~~of up to 10 mills~~ for constructing public highways and bridges.

(2) Before the additional levy may be made, the question must be submitted to a vote of the people ~~at a general election or a special election held in conjunction with a regular or primary election~~ *as provided in [section 2]*. ~~The question must be in the following form, inserting the number of mills to be levied and the name of the county:~~

~~"Shall there be an additional levy of.... mills upon the taxable property in the county of...., state of Montana, for the purpose of constructing public highways and bridges?~~

~~☐ YES~~

~~☐ NO".~~

(3) A majority of the votes cast is necessary to permit the additional levy, which must be collected in the same manner as other road taxes."

Section 50. Section 7-14-2523, MCA, is amended to read:

"7-14-2523. Term of county road and bridge bonds. (1) Bonds issued under 7-14-2522(1) may not be issued for a ~~longer~~ term *longer* than 20 years.

(2) A bond issued under 7-14-2522(1)(b) may not be issued for a term longer than 10 years, except that~~:~~

~~(a)~~ if the unexpired term of the bonds to be refunded is greater than 10 years, the refunding bonds may be issued for the unexpired term~~; or~~

~~(b) if the 10-year term requires an annual tax levy for payment of the refunding bonds which exceeds 10 mills on all property subject to taxation, the term may be so extended as to reduce the annual levy to 10 mills~~."

Section 51. Section 7-14-2807, MCA, is amended to read:

"7-14-2807. Tax levy for public ferry — combined ferry and bridge fund. (1) Subject to 15-10-420, if a county owns or operates a public ferry, the board of county commissioners may levy a ~~special~~ tax~~, not to exceed 2 mills on the dollar,~~ on the *taxable value of all* taxable property of the county for the purpose of constructing, maintaining, and repairing public ferries.

(2) The board may combine the revenue from the tax authorized in this section with revenue from taxes to support bridges as provided in 7-14-2502."

Section 52. Section 7-14-4106, MCA, is amended to read:

"7-14-4106. Payment for cost of removing waste. ~~(1)~~ The city or town council ~~has power to provide for levying~~ *may levy* the cost of the removal provided for in 7-14-4105(2) as a special ~~tax~~ *charge* against the property from which ~~such~~ *the* matter was deposited.

~~(2) The city or town council may further, until full liquidation is realized, include in such tax an amount not to exceed 20% of any floating indebtedness consisting of valid outstanding warrants drawn and issued against the fund or funds used to defray the expense of removing such matter, existing at the close of business on June 30, 1943, together with not to exceed such per centum of the current interest thereon from such last-mentioned date. The money derived from such portion of such levy and assessment for such additional amount, if included in such tax, may only be expended toward liquidating such floating indebtedness, together with the interest thereon, and not otherwise.~~"

Section 53. Section 7-14-4404, MCA, is amended to read:

"**7-14-4404. Tax levy for contracts to operate bus service.** For the purpose of raising the necessary money to defray the cost of the transportation service authorized by 7-14-4401(2) pursuant to a contract, lease, or lease and operating agreement with an independent carrier or carriers, the city or town council may annually levy a tax on the taxable value of all taxable property within the limits of the city or town. Whenever the council of the city or town considers it necessary to raise money by taxation for transportation services in excess of the levy allowed by ~~law~~ *15-10-420*, the council of the city or town shall in the manner prescribed by law submit the question of the additional levy to the qualified electors of the city or town~~, either at the regular annual election held in the city or town or at a special election that is held in conjunction with a regular or primary election and that is called for that purpose by the council of the city or town. The additional levy may not exceed 1 1/2 mills~~ *as provided in [section 2].*"

Section 54. Section 7-14-4644, MCA, is amended to read:

"**7-14-4644. Restrictions on use of reserve to make payments on revenue bonds.** The funds from which the transfers authorized by 7-14-4643(2)(g) are made ~~shall~~ *must* be reimbursed from the next collections of other ~~revenues~~ *revenue* enumerated in 7-14-4643 ~~which are~~ *that is* not needed for full compliance with provisions of indentures securing all outstanding obligations of the commission. ~~Nothing herein shall~~ *This section does not* permit the levy of taxes at any time in excess of the deficiency ~~then~~ existing in the reserve, but ~~such~~ *subject to 15-10-420, a* tax as may be needed, with other funds determined by the legislative body to be available to meet the deficiency, may ~~and shall~~ be levied ~~and shall not be subject to any limitation of rate or amount provided in any other law~~."

Section 55. Section 7-14-4734, MCA, is amended to read:

"**7-14-4734. Expense estimate — assessments and tax levy.** (1) The governing body shall:

(a) make annual statements and estimates of the expenses of the district that are provided for by the levy and collection of ad valorem taxes upon the assessed value of all the real and personal property in the district;

(b) publish notice of the estimates; and

(c) have hearings and adopt an ordinance on the estimates at the times and in the manner provided for incorporated cities and towns by the applicable portions of 7-12-4175.

(2) Subject to 15-10-420, the governing body, on or before the second Monday in August of each year, shall fix, levy, and assess the amount to be raised by ad valorem taxes upon all of the property of the district. All statutes providing for the

levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, are applicable to the district taxes provided for under this section.

~~(3) An assessment for district purposes against the property within the district may not exceed 12 mills upon each dollar of taxable valuation in any tax year.~~"

Section 56. Section 7-15-4293, MCA, is amended to read:

"**7-15-4293. Adjustment of base taxable value following change of law.** If the base taxable value of an urban renewal area or an industrial district is affected after its original determination by a statutory, administrative, or judicial change in the method of appraising property, the tax rate applied to it, the tax exemption status of property, or the taxable valuation of property if the change in taxable valuation is based on conditions existing at the time the base year was established, the governing body of the municipality may request the department of revenue or its agents to ~~calculate~~ *estimate* the base taxable value ~~as it would have been on the date of the original determination had the change been in effect on that date. The governing body may adjust the base taxable value to that value reported by the department of revenue, under the provisions of 7-15-4287~~ *so that the tax increment resulting from the increased incremental value is sufficient to pay all principal and interest on the bonds as those payments become due.*"

Section 57. Section 7-16-101, MCA, is amended to read:

"**7-16-101. Creation of funds for recreational and other activities of elderly by local governments.** (1) Subject to 15-10-420, the governing body of a city, county, town, or municipality may in its discretion establish a fund to promote, establish, and maintain recreational, educational, and other activities of the elderly by a levy ~~of up to 1 mill~~ on ~~each dollar of~~ taxable property. The tax levy is in addition to all other tax levies.

(2) The governing body may, by resolution, make expenditures from the fund as it may from time to time determine. Expenditures must be made for the promotion and development of recreational, educational, and other activities of the elderly, including motivation of the use of the talents of the elderly.

(3) The governing body may make payment of expenditures to nonprofit corporations or associations engaged in aiding the activities."

Section 58. Section 7-16-2102, MCA, is amended to read:

"**7-16-2102. Authorization for tax levy for parks and certain cultural, social, and recreational facilities.** (1) Subject to 15-10-420, the board of county commissioners may annually levy on the taxable property of the county, in the same manner and at the same time as other county taxes are levied, a ~~special~~ tax~~, not to exceed 2 mills on each dollar of the taxable valuation for any 1 year,~~ for the purpose of maintaining, operating, and equipping parks, cultural facilities, and any county-owned civic center, youth center, recreation center, recreational complex, or any combination of purposes, parks, and facilities.

(2) (a) The board of county commissioners shall submit the question of imposing or the continued imposition of the property tax mill levy provided in subsection (1) to the electors of the county at the next general election if a petition requesting an election, signed by at least 15% of the resident taxpayers of the county, is filed with the county clerk. The petition must be filed with the county clerk at least 90 days prior to the date of the general election.

(b) The question must be submitted ~~substantially as follows:~~

~~☐ FOR the imposition (or continued imposition) of a property tax, not to exceed 2 mills, for county parks and for county-owned cultural, social, and recreational facilities.~~

~~☐ AGAINST the imposition (or continued imposition) of a property tax for county parks and for county-owned cultural, social, and recreational facilities~~ *as provided in [section 2].*

(c) The board of county commissioners shall levy the tax ~~for the 2 subsequent fiscal years~~ if the question for the imposition of the tax is approved by a majority of the electors voting on the question.

(3) All laws applicable to the collection of county taxes apply to the collection of the tax provided for in this section."

Section 59. Section 7-16-2108, MCA, is amended to read:

"**7-16-2108. Authorization to levy tax and establish fund for establishment and maintenance of programs and employee training for day-care facilities.** (1) Subject to 15-10-420, the governing body of a county, city, town, or municipality may establish a fund to establish and maintain programs for the operation of licensed day-care centers and homes within the geographic boundaries of the governing body by a levy ~~of up to 1 mill~~ on ~~each dollar of~~ *the* taxable property within the county, city, town, or municipality. The tax levy is in addition to all other tax levies.

(2) The governing body may, by resolution, make expenditures from the fund as it may from time to time determine, provided that expenditures must be made solely for the establishment, maintenance, and development of programs for and training of operators and employees of day-care centers and homes."

Section 60. Section 7-16-2109, MCA, is amended to read:

"**7-16-2109. Single tax for county fair activities, county parks, and certain cultural, social, and recreational facilities — restriction.** (1) Subject to 15-10-420 and except as provided in subsection (2), the county commissioners of a county who have levied taxes pursuant to both 7-16-2102 and 7-21-3410 ~~before January 1, 1993,~~ may combine the two taxes into a single tax ~~that may not exceed 3 1/2 mills on each dollar of the taxable valuation for any 1 year~~ for the purpose of maintaining, operating, and equipping county fair activities, county parks, cultural facilities, and any county-owned civic center, youth center, recreation center, recreational complex, or any combination of purposes, activities, and facilities. The money collected may be distributed among the activities and facilities as determined by the county commissioners.

(2) (a) The board of county commissioners shall submit the question of imposing or continuing the imposition of the single tax provided for in subsection (1) to the electors of the county at the next general election if a petition requesting a vote on the single tax, signed by at least 15% of the resident taxpayers of the county, is filed with the county clerk at least 90 days prior to the date of the general election.

(b) The question must be submitted ~~substantially as follows:~~

~~☐ FOR imposition (or continued imposition) of a property tax, not to exceed 3 1/2 mills, for county fair activities, county parks, and county-owned cultural, social, and recreational facilities.~~

☐ ~~AGAINST imposition (or continued imposition) of a property tax, not to exceed 3 1/2 mills, for county fair activities, county parks, and county-owned cultural, social, and recreational facilities~~ *as provided in [section 2].*

(c) The board of county commissioners shall levy the tax ~~for the 2 subsequent fiscal years~~ if the imposition or continued imposition of the single tax is approved by a majority of the electors voting on the question."

Section 61. Section 7-16-2205, MCA, is amended to read:

"**7-16-2205. Authorization for mill levy.** (1) The board of county commissioners of any county owning, acquiring, contributing, or making a grant to any museum, facility for the arts and the humanities, or collection of exhibits as set forth in 7-16-2202:

(a) (i) may make an appropriation in its annual budget for the upkeep, care, maintenance, operation, and support of the museum, facility, or collection;

(ii) may make an appropriation in its annual budget for a grant program for private, nonprofit museums and private, nonprofit facilities for the arts and the humanities; and

(b) in order to fund the appropriation or grant program, may, subject to 15-10-420, annually levy a tax ~~not to exceed 2 mills~~ on ~~each dollar of~~ the taxable valuation of the property subject to taxation in the county.

(2) The levy must be made at the same time as other levies are made for county and school purposes.

(3) The proceeds from the collection of the levy must be kept in a special fund by the county treasurer and used, at the discretion of the board of county commissioners, solely for the purpose for which the levy was made."

Section 62. Section 7-16-2411, MCA, is amended to read:

"**7-16-2411. Creation of county park district.** (1) Proceedings for the creation of a county park district may be initiated by:

(a) a petition signed by 10% or more of the qualified electors of the proposed park district; or

(b) a resolution of intent adopted by the county governing body, calling for the creation of a county park district.

(2) The petition or resolution must contain:

(a) the boundaries of the proposed district;

(b) subject to 15-10-420, the proposed ~~maximum~~ property tax mill levy that could be levied on property owners within the district or the proposed maximum fee on each household within the proposed district for the operation of the district; and

(c) the proposed number of members of the county park district commission. The number of members must be an odd number and may not be less than three.

(3) When the territory to be included in the proposed district lies in more than one county, a petition must be presented to the governing body of each county in which the territory lies. Each petition must be signed by 10% or more of the qualified electors of the territory within the county proposed to be included in the district.

(4) Upon receipt of a petition for the creation of a county park district, the county clerk shall examine it and within 15 days either reject the petition if it is insufficient under the provisions of subsection (1), (2), or (3) or certify that the petition is sufficient and present it to the county governing body at its next meeting.

(5) The text of the petition or resolution must be published as provided in 7-1-2121 in each county in which the territory of the proposed district lies.

(6) At the hearing, the county governing body shall hear:

(a) testimony of all interested persons on whether a county park district should be created;

(b) testimony regarding the proposed boundary, the property tax mill levy or proposed fee on each household within the proposed district, and the number of members of the district commission; and

(c) any other matter relating to the proposed district.

(7) After the hearing, if the county governing body determines that the proposed park district should be created, it shall by resolution:

(a) set the boundaries of the proposed park district;

(b) set the ~~maximum~~ mill levy or fee on each household for the proposed park district;

(c) set the number of members to be on the district commission; and

(d) call for an election on the question of whether to create the county park district. The election must be held ~~in conjunction with a regular or primary election, provided that at least 75 days have elapsed between the adoption of the resolution and the election~~ *as provided in [section 2].*"

Section 63. Section 7-16-2412, MCA, is amended to read:

"**7-16-2412. Election on creation of district.** (1) The election on the question of whether to create a county park district must be conducted as provided in Title 13.

(2) Only qualified electors residing within the proposed park district may vote on the question of whether to create the district.

(3) The question of creating a county park district shall be submitted to the electors ~~in substantially one of the following forms:~~

~~(a)~~

~~☐ FOR the creation of a county park district that may levy not more than .... mills of property tax for the operation of the district.~~

~~☐ AGAINST the creation of a county park district.~~

~~(b)~~

~~☐ FOR the creation of a county park district that may assess a fee on each household of .... dollars for the operation of the district.~~

~~☐ AGAINST the creation of a county park district~~ *as provided in [section 2].*"

Section 64. Section 7-16-2431, MCA, is amended to read:

"7-16-2431. District budget — property tax levy or fee on household. (1) The county park district commission shall annually prepare a budget for the ensuing fiscal year and present the budget to the governing body of each county with territory included in the district at the regular budget meetings as prescribed in Title 7, chapter 6, part 23, and certify the amount of money necessary for the operation of the district for the ensuing fiscal year.

(2) (a) Subject to 15-10-420, the county governing body shall, annually at the time of levying county taxes, fix and levy a tax in mills on all taxable property within the district ~~sufficient to raise~~ *taking into account* the amount certified by the county park district commission. ~~The tax levied may not in any year exceed the maximum amount approved by the electorate in 7-16-2411 or 7-16-2432.~~

(b) The county governing body shall annually assess a fee on each household ~~that is sufficient to raise~~ *taking into account* the amount certified by the county park district commission. ~~The fee assessed may not exceed the maximum amount approved by the electorate.~~ The fee must be assessed at the time of levying county taxes."

Section 65. Section 7-16-2443, MCA, is amended to read:

"7-16-2443. Effect of dissolution. (1) If dissolution of a county park district is authorized by a majority of the electorate of the district, the county governing body shall order the dissolution and file the order with the county clerk. The dissolution is effective upon the earlier of the following:

(a) 6 months after the date of filing of the order; or

(b) certification by the members of the county park commission that all debts and obligations of the district have been paid, discharged, or irrevocably settled.

(2) (a) If debts or obligations of the district remain unsatisfied after the dissolution of the district, the county governing body shall, subject to 15-10-420 and for as long as necessary, levy ~~a property tax or~~ a fee on each household~~, in an amount not to exceed the voted maximum authorized by the district,~~ *or a property tax* on all taxable property that is in the territory formerly comprising the district~~,~~ *in a sufficient amount* to be used to discharge the debts of the former district.

(b) If the electors of the district lowered the ~~maximum~~ amount to be levied for the operation of the district within 2 calendar years prior to the election authorizing the dissolution, the county governing body may, subject to 15-10-420, levy a property tax not to exceed the ~~maximum~~ levy authorized prior to the reduction of the ~~maximum~~ levy for the discharge of the district's obligations if the obligations are bonds.

(3) Any assets of the district remaining after all debts and obligations have been discharged become the property of the county."

Section 66. Section 7-16-4105, MCA, is amended to read:

"7-16-4105. Authorization to levy tax for various cultural, social, and recreational facilities. Subject to 15-10-420 and for the purpose of procuring, equipping, and maintaining public parks, swimming pools, skating rinks, playgrounds, civic centers, youth centers, museums, and combination of purposes and facilities, the council or commission in any city or town may levy, in addition to the levy for general municipal or administrative purposes, ~~an amount not exceeding 7 mills on the dollar~~ *a tax* on the taxable value of ~~the~~ *all taxable* property ~~to be taxed~~ in the city or town."

Section 67. Section 7-16-4113, MCA, is amended to read:

"**7-16-4113. Tax levy for band concerts.** Subject to 15-10-420 and for the purpose of providing band concerts, the council or other governing body in any city of the first, second, or third class or of any incorporated town may assess and levy, in addition to the levy for general municipal or administrative purposes, ~~an amount not to exceed 1 mill~~ *a tax* on ~~the dollar on~~ the taxable value of ~~the~~ *all taxable* property of the city or town ~~subject to taxation~~."

Section 68. Section 7-16-4114, MCA, is amended to read:

"**7-16-4114. Authorization to levy tax and establish fund for establishment and maintenance of programs and employee training for day-care facilities.** (1) Subject to 15-10-420, the governing body of a county, city, town, or municipality may establish a fund to establish and maintain programs for the operation of licensed day-care centers and homes within the geographic boundaries of the governing body by a levy ~~of up to 1 mill~~ on ~~each dollar of~~ *the* taxable property in the county, city, town, or municipality. The tax levy is in addition to all other tax levies.

(2) The governing body may, by resolution, make expenditures from the fund as it may from time to time determine, provided that expenditures must be made solely for the establishment, maintenance, and development of programs for and training of operators and employees of day-care centers and homes."

Section 69. Section 7-21-3203, MCA, is amended to read:

"**7-21-3203. Support of extension work in agriculture and home economics.** (1) The county commissioners of any county may appropriate money from the general funds of the county treasury or from funds provided by ~~special~~ *a* levy for the purpose of carrying on extension work in agriculture and home economics within the county in cooperation with Montana state university-Bozeman and the United States department of agriculture. Subject to 15-10-420, the county commissioners may impose the levy for the purpose of this section at the same time as other levies for county purposes are imposed.

(2) The amount of an appropriation in any county, its method of expenditure, the responsibility for the direction of the work, and the procedure of appointing agents and the compensation and conditions of service of agents must be covered in memoranda of agreement between the county commissioners and Montana state university-Bozeman."

Section 70. Section 7-21-3433, MCA, is amended to read:

"**7-21-3433. Authorization for mill levy.** ~~(1)~~ For the purpose of raising the revenue provided for in 7-21-3432, the board of county commissioners of each county in the district shall, subject to 15-10-420, annually make a levy to raise the required sum apportioned to the respective county.

~~(2) The levy provided for in subsection (1) may not exceed 1 mill on the dollar of the taxable value of all the taxable property in the county, except in the case of the county in which the fair is being conducted. In that county, the levy may not exceed 1 1/2 mills on the dollar of taxable property in the county.~~"

Section 71. Section 7-21-3457, MCA, is amended to read:

"**7-21-3457. Effect of failure of county commissioners to meet or take action.** If the county commissioners fail to hold a joint meeting or fail to take any action, the budget certified by the secretary of the fair commission or the joint fair and civic center commission must be approved without further action and the sum of money apportioned to the county must be the sum to be raised by ~~special~~ *a* levy for this purpose under 7-21-3410 through 7-21-3412."

Section 72. Section 7-22-2142, MCA, is amended to read:

"**7-22-2142. Sources of money for noxious weed fund.** (1) The commissioners may create the noxious weed fund and provide sufficient money in the fund for the board to fulfill its duties, as specified in 7-22-2109, by:

(a) appropriating money from the general fund of the county;

(b) subject to 15-10-420 and at any time fixed by law for levy and assessment of taxes, levying a tax ~~not exceeding 2 mills~~ on the ~~dollar of total~~ taxable ~~valuation~~ *value of all taxable property* in the county. The tax levied under this subsection must be identified on the assessment as the tax that will be used for noxious weed control.

~~(c) levying a tax in excess of 2 mills if authorized by a majority of the qualified electors voting in an election held for this purpose pursuant to 7-6-2531 through 7-6-2536.~~

(2) The proceeds of the noxious weed control tax must be used solely for the purpose of managing noxious weeds in the county and must be designated to the noxious weed fund.

(3) Any proceeds from work or chemical sales must revert to the noxious weed fund and must be available for reuse within that fiscal year or any subsequent year.

(4) The commissioners may accept any private, state, or federal gifts, grants, contracts, or other funds to aid in the management of noxious weeds within the district. These funds must be placed in the noxious weed fund."

Section 73. Section 7-22-2222, MCA, is amended to read:

"**7-22-2222. Mill levy authorized.** To administer and implement a rodent abatement program, the governing body may, subject to 15-10-420, levy a tax~~, not to exceed 2 mills,~~ on the taxable value of the horticultural, farming, grazing, forest, and railroad lands within the district. The proceeds of the levy are to be placed in the district fund."

Section 74. Section 7-22-2306, MCA, is amended to read:

"**7-22-2306. Financing of insect pest control program.** (1) The governing body of the county shall annually determine the amount of the warrants drawn on the general fund for the purposes of controlling insect pests under a control program approved by the department of agriculture.

(2) Subject to 15-10-420, in the succeeding year, the governing body shall levy a tax for the purpose of insect pest extermination sufficient to reimburse the general fund for the money paid out on the warrants. The tax must be levied ~~upon~~ *on* all ~~the~~ *taxable* property in the county ~~and may not exceed 2 mills on each dollar of taxable value~~.

(3) If there is no money in the general fund with which to pay the warrants, they must be registered and bear interest in the same manner as other county warrants. In this case, the interest must be computed and added to the amount for which the tax is levied."

Section 75. Section 7-22-2432, MCA, is amended to read:

"7-22-2432. Financing of mosquito control district — levy of district taxes — ~~limit on mill levy —~~ fee on structures. (1) Subject to 15-10-420, the board of county commissioners of any county within which a mosquito control board has been created shall finance the operation of the district by levying a tax ~~not exceeding 5 mills~~ on the ~~dollar of the total~~ taxable ~~valuation in the district on~~ *value of* all *taxable* property situated within the district at the time fixed by law for levy and assessment of taxes.

(2) Instead of or in addition to imposing the levy authorized in subsection (1), the county commissioners may, upon an affirmative vote of a majority of the qualified voters residing in the mosquito control district, collect an annual fee from the owners of structures that are benefited by the mosquito control services offered by the district. ~~The schedule of fees is as follows:~~

~~(a) up to $20 per single-unit dwelling;~~

~~(b) up to $20 per unit in a duplex dwelling;~~

~~(c) up to $5 per unit in a multiple-unit dwelling;~~

~~(d) up to $75 per commercial establishment;~~

~~(e) up to $50 on each irrigated parcel of property that does not contain a dwelling; and~~

~~(f) up to $15 on each nonirrigated parcel of property that does not contain a dwelling.~~

(3) A countywide mosquito control district may be financed by a property tax pursuant to subsection (1) or a fee under subsection (2), but not by both a tax and a fee.

(4) The fees provided for in subsection (2) must be collected with the general taxes of the county. The assessments are a lien on the property assessed.

(5) The proceeds from the tax and the fees must be placed in a separate fund with the county treasurer of the county and must be used solely for the purpose for which the mosquito control district was created."

Section 76. Section 7-22-2512, MCA, is amended to read:

"7-22-2512. Financing of vertebrate pest management program — tax. (1) A governing body may:

(a) appropriate from the county general fund an amount ~~not in excess of $10,000 annually~~ *to fund vertebrate pest management* and transfer it to the county vertebrate pest management fund; and

(b) subject to 15-10-420, levy a vertebrate pest management tax ~~not to exceed 2 mills~~ on the taxable valuation of all agricultural, horticultural, grazing, and timber lands and their improvements. Land within a rodent control district may not be taxed in any given year under both 7-22-2222 and this section for the control of rodents as defined in 7-22-2207. Land within a rodent control district may be taxed under this section only a dollar amount that is proportional to the part of the vertebrate pest program's projected fiscal year budget that is allocated to the management and suppression of vertebrate pests other than rodents.

(2) The tax provided for in subsection (1) must be collected as other county taxes and credited to the county vertebrate pest management fund."

Section 77. Section 7-32-235, MCA, is amended to read:

"7-32-235. Search and rescue units authorized — under control of county sheriff — optional funding. (1) A county may establish or recognize one or more search and rescue units within the county.

(2) Except in time of martial rule as provided in 10-1-106, search and rescue units and their officers are under the operational control and supervision of the county sheriff, or the sheriff's designee, having jurisdiction and whose span of control would be considered within reasonable limits.

(3) ~~A~~ *Subject to 15-10-420, a* county may, after approval by a majority of the people voting on the question at an election held throughout the county, levy an annual tax ~~of not more than 1 mill~~ on ~~each dollar of~~ *the* taxable value of all taxable property within the county to support one or more search and rescue units established or recognized under subsection (1). The election must be held ~~in conjunction with a regular or primary election~~ *as provided in [section 2]."*

Section 78. Section 7-32-4117, MCA, is amended to read:

"7-32-4117. Group insurance for police officers — funding. (1) Cities of all classes, if they provide insurance for other city employees under Title 2, chapter 18, part 7, shall:

(a) provide the same insurance to their respective police officers;

(b) notwithstanding Title 2, chapter 18, part 7, pay no less than the premium rate in effect as of July 1, 1980, for insurance coverage for police officers and their dependents;

(c) provide for collective bargaining or other agreement processes to negotiate additional premium payments beyond the amount guaranteed by subsection (1)(b).

(2) ~~In compliance with 1-2-112 and subject~~ *Subject* to 15-10-420, the administration of this section is declared a public purpose of a city, which may be paid out of the general fund of the governing body and financed by a levy ~~not to exceed 2 mills~~ on the taxable value of *all taxable* property within the city or town."

Section 79. Section 7-33-2209, MCA, is amended to read:

"7-33-2209. Finance of fire control activities. (1) The county governing body may appropriate funds for the purchase, care, and maintenance of firefighting equipment or for the payment of wages in prevention, detection, and suppression of fires.

(2) Subject to 15-10-420, if the general fund is budgeted to the full limit, the county governing body may, at any time fixed by law for levy and assessment of taxes, levy a tax ~~of up to 2 mills or at a rate that will raise $15,000, whichever is higher~~ *for the purposes of subsection (1)."*

Section 80. Section 7-33-4111, MCA, is amended to read:

"7-33-4111. Tax levy for volunteer fire departments. For the purpose of supporting volunteer fire departments in any city or town that does not have a paid fire department and for the purpose of purchasing the necessary equipment for them, the council in any city or town may, subject to 15-10-420, levy, in addition to other levies permitted by law, a ~~special~~ tax ~~not exceeding 4 mills upon~~ *on the taxable value of* all ~~of the~~ *taxable* property ~~of~~ *in* the city or town ~~subject to taxation~~."

Section 81. Section 7-33-4130, MCA, is amended to read:

"**7-33-4130. Group insurance for firefighters — funding.** (1) Cities of the first and second class, if they provide insurance for other city employees under Title 2, chapter 18, part 7, shall:

(a) provide the same insurance to their respective firefighters;

(b) pay no less than the premium rate in effect as of July 1, 1980, for insurance coverage for firefighters and their dependents notwithstanding the provisions of Title 2, chapter 18, part 7;

(c) provide for collective bargaining or other agreement processes to negotiate additional premium payments beyond the amount guaranteed by subsection (1)(b).

(2) Subject to 15-10-420, those incorporated cities and towns that require additional funds to finance the provisions of this section may levy ~~on property~~, by the amount required to meet these provisions, a tax ~~not to exceed 2 mills on the dollar upon~~ *on the taxable value of* all *taxable* property in the respective city or town. This levy must be collected in the same manner and at the same time as other taxes are levied."

Section 82. Section 7-34-102, MCA, is amended to read:

"**7-34-102. ~~Special~~ *Ambulance service* mill levy permitted.** ~~(1)~~ Subject to 15-10-420 and in addition to all other levies authorized by law, each county, city, or town may levy an annual tax ~~up to 1 mill~~ on ~~the dollar of~~ the taxable value of all taxable property within the county, city, or town to defray the costs incurred in providing ambulance service.

~~(2) In addition to the levy authorized by subsection (1), a county, city, or town may levy an additional 2 mills for the support of ambulance services if, at a regularly scheduled election, the electorate of the county, city, or town approves the imposition of the additional levy.~~"

Section 83. Section 7-34-2131, MCA, is amended to read:

"**7-34-2131. Hospital district bonds and notes authorized.** (1) (a) A hospital district may borrow money by the issuance of its bonds to provide funds for payment of part or all of the cost of acquisition, furnishing, equipment, improvement, extension, and betterment of hospital facilities and to provide an adequate working capital for a new hospital.

(b) The amount of bonds issued for such purpose and outstanding at any time may not exceed 22.5% of the taxable value of the property ~~therein~~ *in the district* as ascertained by the last assessment for state and county taxes ~~previous~~ *prior* to the issuance of ~~such~~ *the* bonds.

(c) ~~Such~~ *The* bonds ~~shall~~ *must* be authorized, sold, and issued and provisions made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of school districts by Title 20, chapter 9, part 4.

(2) (a) A hospital district may borrow money by the issuance of notes to provide funds to finance the costs described in subsection (1) and to finance the working capital requirements of the district. The notes must be authorized and in a form and terms prescribed by a resolution adopted by the board of trustees. The notes must mature over a term not to exceed 15 years.

(b) The principal and interest on the notes must be paid from the taxes levied pursuant to 7-34-2133 ~~and 7-34-2134~~, exclusive of the taxes levied to pay bonds issued in accordance with subsection (1), and all other revenue of the district. The

annual amount of principal and interest payable on notes in any fiscal year must be included in the district's budget for that year.

(c) The notes may be secured by a mortgage of or a security interest in all or part of the district's assets and by a pledge of the taxes and revenue of the district, or either of them.

(d) Notes may not be issued unless the projected annual revenue of the district, including the taxes levied pursuant to 7-34-2133 ~~and 7-34-2134~~ but exclusive of the taxes levied to pay bonds, is at least equal to the sum of the cost of operating and maintaining the hospital district plus the maximum amount of principal and interest due in any future fiscal year on the notes proposed to be issued and all notes outstanding upon the issuance of the proposed notes.

(3) ~~Nothing herein shall~~ *This section may not* be construed to ~~preclude~~ *amend or repeal* the provisions of Title 50, chapter 6, part 1, allowing the state to apply for and accept federal funds."

Section 84. Section 7-34-2133, MCA, is amended to read:

"**7-34-2133. Levy of district taxes** ~~— limit on mill levy.~~ ~~(1)~~ Subject to 15-10-420, the board of county commissioners shall, annually at the time of levying county taxes, fix and levy a tax ~~upon~~ *on the taxable value of* all *taxable* property within the hospital district clearly sufficient to raise the amount certified by the board of hospital trustees under 7-34-2132.

~~(2) The tax levied for all hospital district purposes other than payment of bonded indebtedness may not in any year exceed 3 mills on each dollar of taxable valuation of property within the district.~~"

Section 85. Section 7-34-2204, MCA, is amended to read:

"**7-34-2204.** ~~**Lease**~~ ***Use*** **of county property *and funds* for health care purposes.** (1) The board of county commissioners ~~has jurisdiction and power~~ *may*, under the limitations and restrictions prescribed by law, ~~to~~ lease county buildings, equipment, furniture, and fixtures for health care facility purposes, with full power of lessor except as limited in this section, upon the terms and conditions ~~as~~ *that* the board may decide upon. The rentals received under the lease or leases must be paid into the general fund of the county, ~~or if the lease is of a long-term care facility or portion of a long-term care facility, the rentals must be paid into the county poor fund,~~ except as provided in subsection (2)(a).

(2) (a) A lease may not be made for a period longer than 5 years except in a case in which bonds are to be or have been issued in accordance with 7-34-2411, in which case the lease may extend until the maturity date of the bonds sold and in which case bond payments may be made from lease receipts.

(b) The board may not enter into a lease without first having advertised in a newspaper published in the county at least once a week for 5 weeks that the health care facility or designated portion of a health care facility, including equipment if applicable, is for lease for health care purposes.

(3) Money in the county general fund may be transferred to a state agency to be used as matching funds for the receipt of federal money for health care purposes."

Section 86. Section 7-34-2303, MCA, is amended to read:

"**7-34-2303. Lease of county property for boarding home.** (1) The board of county commissioners may lease county buildings, equipment, furniture, and fixtures for the purpose of operation of a boarding home for aged persons, with *the* full power of *a* lessor except as limited in this part, upon terms and conditions ~~as~~ *that* the board may decide upon.

(2) The rentals received under the lease or leases must be paid into the ~~poor~~ *general* fund of the county, or if bonds have been issued under 7-34-2411 to finance or refinance the costs of a boarding home, the rentals must be applied, as necessary, to the payment of the principal of or interest on the bonds.

(3) (a) Except as provided in subsection (3)(b), the lease may not be made for a period longer than 5 years.

(b) A lease may be made for a period longer than 5 years when bonds are ~~to be or have been~~ issued under 7-34-2411, in which case the lease may extend until the maturity date of the bonds.

(4) The board may not enter into a lease unless it has advertised in a newspaper published in the county at least once a week for 5 weeks that specified buildings and equipment are for lease for the purpose of a boarding home for aged persons."

Section 87. Section 7-34-2417, MCA, is amended to read:

"**7-34-2417.** ~~**Special**~~ ***Health care facility*** **tax levy authorized.** ~~In the event~~ *If* the bonds are not paid or are not expected to be paid from ordinary revenue of the facility, a county that has issued bonds under 7-34-2411 for a health care facility may, subject to 15-10-420, levy taxes on *the taxable value of* all taxable property within the county in the manner provided for public hospital districts under 7-34-2133~~, 7-34-2134, 7-34-2135(1), and 7-34-2136, up to a maximum of 3 mills not submitted to a vote of the people and 3 additional mills approved by a vote of the people~~."

Section 88. Section 7-35-2122, MCA, is amended to read:

"**7-35-2122. County *cemetery* tax levy.** Subject to 15-10-420, the board of county commissioners shall, annually at the time of levying county taxes, fix and levy ~~upon~~ *a tax on the taxable value of* all *taxable* property within the cemetery district, ~~an amount sufficient to raise~~ *taking into account* the amount certified by the board of cemetery trustees to be raised by a tax on the property of the district. ~~The tax may not exceed 4 mills on each dollar of taxable valuation on the property of the district.~~"

Section 89. Section 10-2-501, MCA, is amended to read:

"**10-2-501. Interment allowance for veterans — payment by county of residence — veterans' interment supervisor — definitions.** (1) The board of commissioners of each county in this state shall designate a person in the county, preferably a veteran, as veterans' interment supervisor.

(2) The veterans' interment supervisor shall cause to be decently interred the body or cremated remains of any veteran who was a resident of the state of Montana at the time of death. In performing this duty, the veterans' interment supervisor shall ensure that the desires of the veteran's personal representative or heirs are not violated. The veterans' interment supervisor may not receive any compensation for duties performed in compliance with this part.

(3) The interment may not be made in a burial ground or cemetery or in a portion of a burial ground or cemetery used exclusively for the interment of pauper dead.

(4) A sum not to exceed $250 to defer interment expenses must be paid by the veteran's county of residence.

(5) The interment benefits are not available in the case of a veteran whose personal representative or heirs waive the benefits.

(6) Whenever interment is of a resident of a Montana veterans' home, a sum not to exceed $250 to defer interment expenses must be paid by the veteran's county of residence.

(7) If a veteran dies while temporarily absent from the state or county of residence, the provisions of this section apply and the interment expenses not exceeding the amount specified in this section must be paid in the same manner as provided in this section.

(8) When a veteran dies at an institution of the state of Montana, other than a Montana veterans' home, at a federal institution, or at a private facility and interment for any cause is not made in the veteran's county of residence, the officers of the institution or facility shall provide the proper interment prescribed in this section. The reimbursement for the expense of each interment may not exceed $250. The expense must be paid by the veteran's county of residence.

(9) An interment may not be covered by any special or standing contract under which the cost of interment is reduced below the maximum amount fixed in this section, to the disparagement of proper interment.

(10) The veterans' interment supervisor shall, upon request of the deceased veteran's personal representative or heirs, assist in applying to the proper authority for a suitable headstone, as provided by act of congress, and in placing the headstone on the veteran's grave. The reimbursement costs for the shipping and raising of the headstone may not exceed *an amount equal to the actual cost paid, up to* $70, and must be paid by the veteran's county of residence at the time of death. The expense must be audited and paid as provided in this section for interment expenses.

~~(11) After payment of the first $30 from county funds, the county treasurer may withhold an amount of the county total monthly remittance to the state treasurer equal to the actual cost paid, up to $40, for the shipping and raising of each headstone.~~

~~(12)~~*(11)* As used in this part, the following definitions apply:

(a) "Interment" has the meaning provided in 37-19-101.

(b) "Residence" is determined as provided in 13-1-112. If the intent of the veteran regarding residence cannot be determined under 13-1-112, the costs of interment must be paid by the veteran's county of residence at the time of admittance into a Montana veterans' home, a state or federal institution, or a private facility."

Section 90. Section 10-2-603, MCA, is amended to read:

"**10-2-603. Special revenue account — use of funds — solicitation.** (1) There is an account in the special revenue fund to the credit of the department of military affairs for the state veterans' cemeteries.

(2) Plot allowances~~,~~ *and* donations~~, and, as provided in 61-3-332, revenue from veterans' license plate sales~~ must be deposited into the account.

(3) As appropriated by the legislature, money in the account may be used only for the construction, maintenance, operation, and administration of the state veterans' cemeteries.

(4) The department of military affairs may solicit veterans' license plate sales and donations on behalf of the state veterans' cemeteries."

Section 91. Section 13-13-230, MCA, is amended to read:

"**13-13-230. Authorization to increase county mill levy.** Subject to 15-10-420, a county may levy an amount ~~not exceeding 1 mill as may be~~ necessary to finance the additional cost of administering a special absentee election board program pursuant to 13-13-225 through 13-13-229. The mill levy may not be included as part of any existing mill levy or special mill levy assessed by the county. The amount of any mill levy adopted under this section must be reasonably related to the actual cost of providing services as required by 13-13-225 through 13-13-229."

Section 92. Section 15-1-402, MCA, is amended to read:

"**15-1-402. Payment of taxes under protest.** (1) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested. The protested payment must:

(a) be made to the officer designated and authorized to collect it;

(b) specify the grounds of protest; and

(c) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(2) A person appealing a property tax or fee pursuant to chapter 2 or 15 shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) All property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(5) The governing board of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the protested portions of the property tax or fee must be taken from the protest fund and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged *to* the local government units.

(b) If the action is finally determined adversely to the department of revenue, a county, a municipality, or the treasurer of a county or a municipality, then the treasurer shall, upon receiving a certified copy of the final judgment in the action from the state tax appeal board or from the district or supreme court, as appropriate, if the final action of the state tax appeal board is appealed in the time prescribed, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee deposited in the protest fund, and not released pursuant to subsection (5), as the person holding the judgment is entitled to recover, together with interest from the date of payment under protest, at the greater of:

(i) the rate of interest generated from the pooled investment fund provided for in 17-6-203 for the applicable period; or

(ii) 6% a year.

(c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then *to* interest owed, and lastly to costs.

(d) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible.

(e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the greater of the rates referred to in subsections (6)(b)(i) and (6)(b)(ii) from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus four percentage points, from the date of final resolution of the protest until refund is made.

(7) A taxing jurisdiction may satisfy the requirements of this section by use of funds from one or more of the following sources:

(a) ~~subject to 15-10-420,~~ imposition of a property tax to be collected by a special tax protest refund levy;

(b) the general fund~~, except that amount generated by the all-purpose mill levy,~~ or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. ~~Subject to 15-10-420, property~~ *Property* taxes may be levied to amortize the bonds.

(8) If the department revises an assessment that results in a refund of taxes of $5 or less, a refund is not owed."

Section 93. Section 15-1-501, MCA, is amended to read:

"**15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

(a) income taxes, interest, and penalties collected under chapter 30;

(b) ~~except as provided in 15-31-702,~~ all taxes, interest, and penalties collected under chapter 31;

(c) oil and natural gas production taxes allocated under 15-36-324~~(8)(a)~~*(9)(a)* and ~~(10)(a)~~ *(11)(a)*;

(d) electrical energy producer's license taxes under chapter 51;

(e) ~~[an amount equal to 25% of]~~ the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;

(f) liquor license taxes under Title 16;

(g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(h) estate taxes under Title 72, chapter 16; and

(i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.

(2) The department shall also deposit to the credit of the state general fund all money received from the collection of license taxes and fees and all net revenue and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded."

Section 94. Section 15-10-420, MCA, is amended to read:

"**15-10-420. Procedure for calculating levy.** (1) *(a)* ~~A~~ *Subject to the provisions of this section, a* governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year~~, even if that levy is greater than the levy established by law~~ *plus one-half of the average rate of inflation for the prior 3 years*. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the *current year's* value of newly taxable property, *plus one-half of the average rate of inflation for the prior 3 years.*

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1) plus any additional levies authorized by the voters *as provided in [section 2]* to all property in the governmental unit, including newly taxable property.

(3) For purposes of this section, newly taxable property includes:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property; *and*

~~(e) reclassification of property;~~

~~(f)~~*(e)* transfer of property from tax-exempt to taxable status~~; and~~

~~(g) revaluations caused by expansion, addition, replacement, or remodeling of improvements~~.

(4) *(a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:*

(i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

(iii) the termination of a tax increment financing district.

(b) For the purpose of subsection (3)(d), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonagricultural land as described in 15-6-133(1)(c).

(c) For the purposes of this section, newly taxable property does not include an increase in appraised value of land that was previously valued at 75% of the value of improvements on the land, as provided in 15-7-111(4) and (5), as those subsections applied on December 31, 2001.

~~(4)~~*(5)* Subsection (1) does not apply to school district general fund levies and the school district levy for tuition obligations established in 20-5-324(5) *or 20-6-413.*

~~(5)~~*(6)* For purposes of subsection (1), taxes imposed~~:~~

~~(a) include registration fees imposed on light vehicles under 61-3-561 and distributed under 61-3-509(2); and~~

~~(b)~~ do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

~~(6) In determining the maximum number of mills in subsection (1), the governmental entity shall take into account any change from the prior year in the amount of statutory reimbursements for changes in the property tax laws. The amount of motor vehicle disposition under 61-3-509(2), as that section read on December 31, 2000, is an increased statutory reimbursement. It may increase the number of mills to account for a decrease in reimbursements and shall decrease the number of mills to fully account for any increase in reimbursements.~~

(7) In determining the maximum number of mills in subsection (1), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

~~(7)~~*(8)* The department shall calculate, *on a statewide basis,* the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, *and* 20-25-439~~, and 53-2-813~~. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. *The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.*

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4209, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402; or

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

~~(8)~~*(10)* The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Section 95. Section 15-16-117, MCA, is amended to read:

"15-16-117. Personal property — treasurer's duty to collect certain taxes. (1) The county treasurer shall demand payment of ~~poor fund taxes, authorized by 53-2-322, and~~ road taxes, authorized by 7-14-2206 or 7-14-2501 through 7-14-2504, from each person liable for the taxes whose name does not appear on the property tax record. On the neglect or refusal of a person to pay the taxes, the treasurer shall collect the taxes by seizure and sale of any property owned by the person.

(2) Subject to 15-10-420, these taxes must be added in the property tax record to other property taxes of persons paying taxes upon real and personal property and must be paid to the county treasurer at the time of payment of other taxes.

(3) The procedure for the sale of property by the county treasurer for the taxes is regulated by 15-16-119 and 15-17-911.

(4) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17."

Section 96. Section 15-24-303, MCA, is amended to read:

"**15-24-303. (Temporary) Proration of tax on personal property — refund.** (1) The tax on personal property brought, driven, coming into, or otherwise located in the state on or after the assessment date must be prorated according to the ratio that the remaining number of months in the year bears to the total number of months in the year. This section does not apply to motor vehicles taxed under Title 61, chapter 3, part 5, or to livestock ~~assessed~~ *for which a fee is imposed* under 15-24-902(2).

(2) If property upon which taxes have been paid is removed from the state, the taxpayer may obtain a refund of a prorated portion of the taxes, subject to the requirements of 15-16-613.

15-24-303. (Effective January 1, 2003) Proration of tax on personal property — refund. (1) The tax on personal property brought, driven, coming into, or otherwise located in the state on or after the assessment date must be prorated according to the ratio that the remaining number of months in the year bears to the total number of months in the year. This section does not apply to motor vehicles taxed under Title 61, chapter 3, part 5, or to livestock subject to the per capita ~~levy~~ *fee* under 15-24-921.

(2) If property upon which taxes have been paid is removed from the state, the taxpayer may obtain a refund of a prorated portion of the taxes, subject to the requirements of 15-16-613."

Section 97. Section 15-24-902, MCA, is amended to read:

"**15-24-902. (Temporary) ~~Assessment~~ *Number* of livestock ~~— election for assessment on average inventory basis~~.** (1) Except as provided in subsection (2), the department of revenue shall ~~assess~~ *determine the number of* all nonexempt livestock in each county where they are located on February 1 of each year. The livestock must be ~~assessed~~ *assigned* to the person by whom they were owned or claimed or in whose possession or control they were at midnight of February 1 in that year.

(2) An owner of livestock may elect to have *a fee imposed on* nonexempt livestock ~~assessed~~ on the average inventory basis as provided in 15-24-927. The owner shall file an election with the department on the statement required under 15-24-903. An owner of livestock making an election to have *a fee imposed on* nonexempt livestock ~~assessed~~ on the average inventory basis is bound by that election for 6 years. After 6 years, the election to have *a fee imposed on* nonexempt livestock ~~assessed~~ on the average inventory basis remains in effect unless the owner otherwise notifies the department before February 1.

15-24-902. (Effective January 1, 2003) ~~Assessment~~ *Number* of livestock. The department shall ~~assess~~ *determine the number of* livestock for the purposes of the per capita ~~levy~~ *fee* imposed under 15-24-921 in each county where they are located on February 1 of each year. The livestock must be ~~assessed~~ *assigned* to the person by whom they were owned or claimed or in whose possession or control they were at midnight of February 1 in that year."

Section 98. Section 15-24-904, MCA, is amended to read:

"**15-24-904. (Temporary) Penalty for violation of law.** If any person, company, or corporation who is the owner or is in charge of any livestock within this state fails to make the statement or statements as provided in 15-24-903, the department shall, after 10 days' notice to the person who failed to file the report, assess the penalty provided in 15-8-309.

15-24-904. (Effective January 1, 2003) Penalty for violation of law. If a person, company, or corporation who is the owner or is in charge of livestock within this state fails to make the statement or statements as provided in 15-24-903, the department shall, after 10 days' notice to the person who failed to file the report, access the penalty provided in 15-8-309 ~~{on the}~~ *on the* per capita ~~levy~~ *fee*, as provided in 15-24-921."

Section 99. Section 15-24-921, MCA, is amended to read:

"**15-24-921. Per capita ~~tax levy~~ *fee* to pay expenses of enforcing livestock laws.** (1) In addition to appropriations made for those purposes, a per capita ~~tax~~ *fee* is authorized and directed to be ~~levied~~ *imposed* by the department on all poultry and bees, all swine 3 months of age or older, and all other livestock 9 months of age or older in each county of this state for the purpose of aiding in the payment of the salaries and all expenses connected with the enforcement of the livestock laws of the state and for the payment of bounties on wild animals as provided in 81-7-104.

(2) As used in this section, "livestock" means cattle, sheep, swine, poultry, bees, goats, horses, mules, asses, llamas, alpacas, domestic bison, ostriches, rheas, and emus, and domestic ungulates."

Section 100. Section 15-24-922, MCA, is amended to read:

"**15-24-922. (Temporary) Board of livestock to prescribe per capita ~~levy~~ *fee* — refunds — per capita ~~levy~~ *fee* on average inventory.** (1) The board of livestock shall annually prescribe the amount of the per capita ~~levy~~ *fee* to be made against livestock of all classes for the purpose indicated in 15-24-921.

(2) The per capita ~~tax levy~~ *fee* must be calculated each year to provide not more than 110% of the average annual revenue that was generated in the 3 previous years. The calculation must apply a reasonable factor for nonpayment and late payment of ~~taxes~~ *fees* and for reimbursement to the ~~counties~~ *department* pursuant to 15-24-925 for collection of the ~~levy~~ *fee*.

(3) (a) A livestock owner taxed under 15-24-920 is entitled to a refund of the per capita ~~levy~~ *fee* collected under 15-24-921 based on the number of months the livestock have taxable situs in the state. The amount of the refund is equal to the ratio of the number of months that the livestock do not have taxable situs in the state to the number of months in the tax year, multiplied by the original per capita ~~levy~~ *fee* due. A taxpayer shall apply to the board of livestock on a form prescribed by the board for a refund allowed under this subsection by January 31

following the ~~taxable~~ *tax* year. The application must include a statement showing the date when the livestock were moved out of the state.

(b) Except as provided in subsection (3)(c), for the purposes of 15-24-921 and this section, the per capita ~~levy~~ *fee* may not be prorated.

(c) A taxpayer whose livestock are taxed on the average inventory basis for property tax purposes must also be ~~taxed~~ *subject to the fee* on an average inventory basis for the purposes of 15-24-921 and this section. All other livestock subject to the per capita ~~tax levy~~ *fee* must be reported on February 1 of each year.

15-24-922. (Effective January 1, 2003) Board of livestock to prescribe per capita ~~levy~~ *fee* — refunds. (1) The board of livestock shall annually prescribe the amount of the per capita ~~levy~~ *fee* to be made against livestock of all classes for the purpose indicated in 15-24-921.

(2) The per capita ~~tax levy~~ *fee* must be calculated each year to provide not more than 110% of the average annual revenue that was generated in the 3 previous years. The calculation must apply a reasonable factor for nonpayment and late payment of ~~taxes~~ *fees* and for reimbursement to the ~~counties~~ *department* pursuant to 15-24-925 for collection of the ~~levy~~ *fee*.

(3) (a) A livestock owner who moves livestock between states is entitled to a refund of the per capita ~~levy~~ *fee* collected under 15-24-921 based on the number of months that the livestock have ~~taxable~~ situs in Montana. The amount of the refund is equal to the ratio of the number of months that the livestock do not have ~~taxable~~ situs in the state to the number of months in the ~~tax~~ year, multiplied by the original per capita ~~levy~~ *fee* due. A taxpayer shall apply to the board of livestock on a form prescribed by the board for a refund allowed under this subsection by January 31 *of the* following ~~the taxable~~ year. The application must include a statement showing the date when the livestock were moved out of the state.

(b) For the purposes of 15-24-921 and this section, the per capita ~~levy~~ *fee* may not be prorated."

Section 101. Section 15-24-925, MCA, is amended to read:

"**15-24-925. Reimbursement to ~~county~~ *department* — transmission of ~~taxes~~ *fees* ~~from county~~ to state ~~treasurer~~.** (1) The ~~county treasurer~~ *department* may withhold 2% of the money received under 15-24-921 as reimbursement ~~to the county~~ for the collection of the ~~levy~~ *fee* on livestock.

(2) ~~Except for the amount withheld under subsection (1), the taxes levied and the money collected pursuant to the provisions of 15-24-922 must be transmitted to the state treasury by the county treasurer of each county, as provided in 15-1-504, but not later than July 1 following assessment.~~ The ~~county treasurer~~ *department* shall designate the amount received from the ~~tax levied~~ *fee imposed* on sheep and the amount received from the ~~tax levied~~ *fee imposed* on all other livestock and shall specify the separate amounts in the report to the ~~state treasurer~~ *department of livestock*. The money, when received by the ~~state treasurer~~ *department*, must be deposited in an account in the special revenue fund to the credit of the department of livestock. The money in the account must be kept separate from other funds received by the department of livestock."

Section 102. Section 15-30-121, MCA, is amended to read:

"**15-30-121. Deductions allowed in computing net income.** (1) In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954 (26 U.S.C. 161 and 211), or as sections 161 and 211 are labeled or amended, subject to the following exceptions, which are not deductible:

(i) items provided for in 15-30-123;

(ii) state income tax paid;

(iii) premium payments for medical care as provided in subsection (1)(g)(i);

(iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii);

(b) federal income tax paid within the tax year;

(c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as follows:

(i) expenses for household and dependent care services necessary for gainful employment incurred for:

(A) a dependent under 15 years of age for whom an exemption can be claimed;

(B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(C) a spouse who is unable to provide self-care because of physical or mental illness;

(ii) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

(A) household services that are attributable to the care of the qualifying individual; and

(B) care of an individual who qualifies under subsection (1)(c)(i);

(iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:

(A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed $4,800;

(B) expenses for services in the household are deductible under subsection (1)(c)(i) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the expenses incurred during the year do not exceed:

(I) $2,400 in the case of one qualifying individual;

(II) $3,600 in the case of two qualifying individuals; and

(III) $4,800 in the case of three or more qualifying individuals;

(v) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(vi) for purposes of this subsection (1)(c):

(A) married couples shall file a joint return or file separately on the same form;

(B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:

(I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

(C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(d) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code (now repealed) that were in effect for the tax year ended December 31, 1978;

(e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(f) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156;

(g) the entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128, for:

(i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and

(ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:

(A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or

(B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996;

(h) contributions to the Montana drug abuse resistance education program provided for in 44-2-702, subject to the conditions set forth in 15-30-159; ~~and~~

(i) light vehicle registration fees, as provided for in 61-3-560 through 61-3-562, paid during the tax year*; and*

(j) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (2). (Subsection (1)(h) terminates on occurrence of contingency—sec. 12, Ch. 808, L. 1991.)"

Section 103. Section 15-31-114, MCA, is amended to read:

"15-31-114. Deductions allowed in computing income. (1) In computing the net income, the following deductions are allowed from the gross income received by the corporation within the year from all sources:

(a) all the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation contained in this section, and rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for salaries paid upon which the recipient has not paid Montana state income tax. However, when domestic corporations are taxed on income derived from outside the state, salaries of officers paid in connection with securing the income are deductible.

(b) (i) all losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business. The allowance is determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation must be the same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and a deduction may not be made for any amount of expense of restoring property or making good the exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105(15).

(ii) There is allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of 15-31-119.

(c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements. The reasonable allowance must be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes must be the same as the elections made for federal income tax purposes.

(d) The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived. Interest may not be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from the property or business would be taxable under this part.

(e) (i) taxes paid within the year, except the following:

(A) taxes imposed by this part;

(B) taxes assessed against local benefits of a kind tending to increase the value of the property assessed;

(C) taxes on or according to or measured by net income or profits imposed by authority of the government of the United States;

(D) taxes imposed by any other state or country upon or measured by net income or profits.

(ii) Taxes deductible under this part must be construed to include taxes imposed by any county, school district, or municipality of this state.

(f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

(g) (i) except as provided in subsection (1)(g)(ii), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

(ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2)(b).

(3) In the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(h) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the Internal

Revenue Code of 1986, as that section may be amended or renumbered, except that the deduction for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax under this chapter when earned by the regulated investment company. For the purposes of computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered, apply. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered."

Section 104. Section 16-1-404, MCA, is amended to read:

"**16-1-404. License tax on liquor — amount — distribution of proceeds.** (1) The department shall collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of:

(a) 10% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 8.6% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The license tax must be charged and collected on all liquor brought into the state and taxed by the department. The retail selling price must be computed by adding to the cost of the liquor the state markup as designated by the department. The license tax must be figured in the same manner as the state excise tax and is in addition to the state excise tax. The department shall retain in a separate account the amount of the license tax received. The department, in accordance with the provisions of 15-1-501, shall allocate the revenue as follows:

(a) ~~Thirty percent is allocated to the counties according to the amount of liquor purchased in each county to be distributed to the incorporated cities and towns, as provided in subsection (4).~~

~~(b) Four and one-half percent is allocated to the counties according to the amount of liquor purchased in each county, and this money may be used for county purposes.~~ *Thirty-four and one-half percent is allocated to the state general fund.*

~~(c)~~*(b)* Sixty-five and one-half percent must be deposited in the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism.

~~(3) (a) In the case of purchases of liquor by a retail liquor licensee for use in the licensee's business, the department shall make regulations necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in 16-1-405.~~

~~(b) The department shall pay quarterly to each county treasurer the proportion of the license tax due each county, in accordance with the provisions of 15-1-501, to be allocated to the incorporated cities and towns of the county. The payments to counties under this section are statutorily appropriated, as provided in 17-7-502.~~

~~(4) The license tax proceeds allocated to the county under subsection (2) for use by cities and towns must be distributed by the county treasurer to the incorporated cities and towns within 30 days of receipt from the department. The distribution of funds to the cities and towns must be based on the proportion that the gross sale of liquor in each city or town is to the gross sale of liquor in all of the cities and towns of the county.~~

~~(5)~~*(3)* The license tax proceeds that are allocated to the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism must be credited quarterly to the department of public health and human services. The legislature may appropriate a portion of the license tax proceeds to support alcohol programs. The remainder must be distributed as provided in 53-24-206."

Section 105. Section 16-1-406, MCA, is amended to read:

"**16-1-406. Taxes on beer.** (1) A tax of $4.30 per barrel of 31 gallons is imposed on each barrel of beer sold in Montana by a wholesaler. The tax is due at the end of each month from the wholesaler upon beer sold by the wholesaler during that month. The department shall compute the tax due on beer sold in containers other than barrels or in barrels of more or less capacity than 31 gallons.

(2) Each quarter, in accordance with the provisions of 15-1-501, of the tax collected pursuant to subsection (1), an amount equal to:

(a) $1 must be deposited in the state treasury to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism; *and*

(b) ~~50 cents~~ *the remainder* must be deposited in the state general fund~~; and~~

~~(c) $2.80 must be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the state special revenue fund.~~

~~(3) (a) The money in the incorporated cities and towns beer tax account is statutorily appropriated, as provided in 17-7-502, to the department, which shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census. For cities and towns incorporated after the latest official federal census, the census must be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it may not receive any funds under this section and the amount previously distributed to the city or town must be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section must be expended for state purposes, such as law enforcement, maintenance of the transportation system, and public health.~~

~~(b) The department may adjust population estimates only on the July 1 following the date of publication of the estimates by the U.S. bureau of the census. The adjusted distribution formula must remain in effect for the entire fiscal year.~~"

Section 106. Section 16-1-411, MCA, is amended to read:

"16-1-411. Tax on wine and hard cider — penalty and interest. (1) (a) A tax of 27 cents per liter is imposed on table wine, except hard cider, imported by a table wine distributor or the department.

(b) A tax of 3.7 cents per liter is imposed on hard cider imported by a table wine distributor or the department.

(2) The tax imposed in subsection (1) must be paid by the table wine distributor by the 15th day of the month following sale of the table wine or hard cider from the table wine distributor's warehouse. Failure to file a tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 15-1-216.

(3) The tax paid by a table wine distributor in accordance with subsection (2) must, in accordance with the provisions of 15-1-501, be distributed as follows:

(a) ~~59%~~ *69%* to the state general fund; *and*

(b) 31% to the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism~~;~~

~~(c) 5% is statutorily appropriated, as provided in 17-7-502, to the department for allocation to the counties, based on population, for the purpose established in 16-1-404; and~~

~~(d) 5% is statutorily appropriated, as provided in 17-7-502, to the department for allocation to the cities and towns, based on population, for the purpose established in 16-1-405~~.

(4) The tax computed and paid in accordance with this section is the only tax imposed by the state or any of its subdivisions, including cities and towns.

(5) For purposes of this section, ~~the following definitions apply:~~

~~(a) "Based on population" means:~~

~~(i) for counties, the direct proportion that the population of each county bears to the total population of all counties as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census as provided in 16-1-406; and~~

~~(ii) for cities, the distribution described in 16-1-406; and~~

~~(b)~~ ~~"Table~~ *"table* wine" has the meaning assigned in 16-1-106, but does not include hard cider."

Section 107. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; *[section 1];* 15-1-111; 15-23-706; ~~15-31-702;~~ 15-34-115; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; ~~16-1-404; 16-1-406; 16-1-411;~~ 17-3-106; 17-3-212; ~~17-3-222;~~ *17-3-222;* 17-6-101; 17-7-304; 18-11-112; 19-3-319; ~~19-6-709;~~ 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; ~~23-5-610; 23-5-612;~~ *23-5-612;* 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; ~~67-3-205;~~ 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; ~~77-1-505;~~ 80-2-222; 80-4-416; 80-11-518; 81-5-111; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; and pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005.)"

Section 108. Section 19-6-709, MCA, is amended to read:

"19-6-709. (Temporary) Supplemental benefits for certain retirees. (1) In addition to any retirement benefit payable under this chapter, a retired member or a survivor determined by the board to be eligible under subsection (2) must receive an annual lump-sum benefit payment beginning in September 1991 and each succeeding year as long as the member remains eligible.

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, may not be covered by 19-6-710, and must be:

(a) a retired member who is 55 years of age or older and who has been receiving a service retirement benefit for at least 5 years prior to the date of distribution;

(b) a survivor of a member who would have been eligible under subsection (2)(a); or

(c) a recipient of a disability or survivorship benefit under 19-6-601 or 19-6-901.

(3) A retired member otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19 is ineligible to receive any lump-sum benefit payments provided for in this section until the member's service in the covered position is terminated. Upon termination of the member's covered service, the retired member becomes eligible in the next fiscal year succeeding the member's termination.

(4) ~~(a) An amount equal to 25 cents of each motor vehicle registration fee provided for in 61-3-321(5) must be paid from the general fund to the pension trust fund at the end of each fiscal year. The payment is statutorily appropriated, as provided in 17-7-502, to the pension fund for payment of benefits to eligible recipients. The total funds must be distributed by the board in lump-sum payments to eligible recipients along with their normal retirement benefit payment.~~

~~(b)~~ The lump-sum payment must be distributed proportionally to all eligible recipients based on service credit at the time of retirement, subject to the following:

~~(i)~~*(a)* a recipient under subsection (2)(c) is considered to have 20 years of service for the purposes of the distributions;

~~(ii)~~*(b)* any recipient of a service retirement benefit exceeding the maximum monthly benefit under 19-6-707(2)(a) must have the recipient's service credit reduced 25% for the purposes of the distributions;

~~(iii)~~*(c)* the maximum annual increase in the amount of supplemental benefits paid to each individual under this section is the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency.

~~(c) Any amount deposited in the pension trust fund under subsection (4)(a) for the payment of supplemental benefits under this section that exceeds the limitation of subsection (4)(b)(iii) must be used to amortize unfunded liabilities of the retirement system.~~

~~(5) Every 10 years following July 1, 1991, the board shall review the size of the additional fee collected under 61-3-321(5) and paid to the pension trust fund in accordance with subsection (4)(a) and recommend to each legislature following the board's review any legislation necessary to reduce the fee to the minimum amount necessary to provide the supplemental benefits provided by this section.~~ (Terminates upon death of last eligible recipient—sec. 1, Ch. 567, L. 1991.)"

Section 109. Section 19-7-404, MCA, is amended to read:

"**19-7-404. Employer contributions.** (1) The employer shall pay monthly 9.535% of each member's gross compensation into the pension trust fund created by this chapter.

(2) If the required contribution to the retirement system exceeds the funds available to a county from general revenue sources, a county may, *subject to 15-10-420,* budget, levy, and collect annually a ~~special~~ tax on the ~~assessable~~ *taxable value of all taxable* property within the county that is sufficient to raise the amount of revenue needed to meet the county's obligation. ~~This tax may be in addition to the annual rate of taxation allowed by law to be levied by the county.~~"

Section 110. Section 19-9-209, MCA, is amended to read:

"**19-9-209. Taxing authority of employers.** ~~(1)~~ For the purpose of making contributions required of a city under this chapter, ~~when the demand for deposits of such contributions cannot be met within the general taxing authority and other revenues available to the city for that purpose,~~ the appropriate authority of the city may, *subject to 15-10-420,* levy ~~any additional~~ *a* tax ~~authorized by law until the general taxing authority and~~ *that along with* other revenue available for that purpose is sufficient to meet the demand.

~~(2) "General taxing authority", as used in this section, means that levy which the city may make under the all-purpose levy or under multiple-purpose levies, if the city is using multiple-purpose levies.~~

~~(3) No provision of any statute relating to the all-purpose levy may be so construed as to limit the additional taxing authority created by this section.~~"

Section 111. Section 19-13-214, MCA, is amended to read:

"**19-13-214. Taxing authority of employers.** ~~(1)~~ For the purpose of making contributions required of a city under this chapter, ~~whenever the demand for deposits of such contributions cannot be met within the general taxing authority and other revenues available to the city for that purpose,~~ the appropriate authority of the city may, *subject to 15-10-420,* levy ~~any additional~~ *a* tax ~~authorized by law until the general taxing authority and~~ *that along with* other revenue available for that purpose is sufficient to meet the demand.

~~(2) "General taxing authority", as used in this section, means that levy which the city may make under the all-purpose levy or under multiple-purpose levies, if the city is using multiple-purpose levies.~~

~~(3) No provision of any statute relating to the all-purpose levy may be so construed as to limit the additional taxing authority created by this section.~~"

Section 112. Section 19-18-503, MCA, is amended to read:

"**19-18-503. Special tax levy for fund required.** (1) The purpose of this section is to provide a means by which each disability and pension fund may be maintained at a level equal to at least 4% but no more than 10% of the taxable valuation of all taxable property within the limits of the city or town.

(2) ~~Whenever~~ *Subject to 15-10-420, if* the fund contains less than 4% of the taxable ~~valuation~~ *value* of all taxable property within the limits of the city or town, the governing body of the city or town shall, at the time of the levy of the annual tax, levy a ~~special~~ tax as provided in 19-18-504. The ~~special~~ tax must be collected as other taxes are collected and, when collected, must be paid into the disability and pension fund.

~~(3) If a special tax for the disability and pension fund is levied by a third-class city or town using the all-purpose mill levy, the special tax levy must be made in addition to the all-purpose levy.~~"

Section 113. Section 19-18-504, MCA, is amended to read:

"**19-18-504. Amount of ~~special~~ tax levy.** Whenever the fund contains an amount that is less than 4% of the taxable ~~valuation~~ *value* of all taxable property in the city or town, the city or town council shall, *subject to 15-10-420,* levy an annual ~~special~~ tax ~~of not less than 1 mill and not more than 4 mills~~ on ~~each dollar of~~ *the* taxable ~~valuation~~ *value* of all taxable property ~~within~~ *in* the city or town. When the fund contains an amount that is less than 10% but more than 4% of the taxable ~~valuation~~ *value* of all taxable property in the city or town, the city or town council may, if authorized by the voters *as provided in [section 2]*, levy an annual ~~special~~ tax ~~of not less than 1 mill and not more than 4 mills on each dollar of taxable valuation~~."

Section 114. Section 19-19-301, MCA, is amended to read:

"**19-19-301. City's contribution to fund.** Each city, other than one of the first or second class, ~~which~~ *that* has a police retirement fund and ~~which~~ *that* did not elect to join the statewide police reserve fund provided for in Chapter 335, Laws of 1974, and has not elected to participate in the plan under 19-9-207 shall deposit in its fund monthly an amount equal to 11% of the total salaries for the preceding month paid to active police officers of ~~such~~ *the* city, exclusive of overtime and payments in lieu of sick leave and annual leave. If the demand against a city for deposits in its fund ~~is such that it~~ cannot be met ~~within the general taxing authority of~~ the city, *subject to 15-10-420, may impose* an additional levy ~~not to exceed 3 mills may be made until the general taxing authority~~ *in an amount that* is sufficient to meet the demand."

Section 115. Section 20-7-705, MCA, is amended to read:

"**20-7-705. Adult education fund.** (1) A separate adult education fund must be established when an adult education program is operated by a district or community college district. The financial administration of the fund must comply with the budgeting, financing, and expenditure provisions of the laws governing the schools.

(2) Whenever the trustees of a district establish an adult education program under the provisions of 20-7-702, they shall establish an adult education fund under the provisions of this section. The adult education fund is the depository for all district money received by the district in support of the adult education program. Federal and state adult education program money must be deposited in the miscellaneous programs fund.

(3) Subject to 15-10-420, the trustees of a district may authorize the levy of a tax ~~of not more than 1 mill~~ on the *taxable value of all taxable property within the* district~~, except that trustees of a county high school district may, whether or not the county high school district is unified with an elementary district under the provisions of 20-6-312, authorize a levy of not more than 2 mills on the district and a K-12 school district formed under the provisions of 20-6-701 may authorize a levy of not more than 3 mills on the district,~~ for the operation of an adult education program.

(4) Whenever the trustees of a district decide to offer an adult education program during the ensuing school fiscal year, they shall budget for the cost of the program in the adult education fund of the final budget. Any expenditures in support of the adult education program under the final adult education budget must be made in accordance with the financial administration provisions of this title for a budgeted fund.

(5) When a tax levy for an adult education program is included as a revenue item on the final adult education budget, the county superintendent shall report the levy requirement to the county commissioners on the fourth Monday of August and a levy on the district must be made by the county commissioners in accordance with 20-9-142."

Section 116. Section 20-7-714, MCA, is amended to read:

"20-7-714. County adult literacy programs — authorization to levy tax and establish fund. (1) (a) Subject to 15-10-420, the governing body of a county may, in its discretion, establish a fund and levy ~~up to 1 mill on each dollar of~~ *a tax on the* taxable *value of all taxable* property in the county for the support of county literacy programs that give first priority to providing direct instruction to adults. The tax levy is in addition to all other tax levies and is subject to limitations on property taxes set forth in 15-10-402.

(b) The fund may be used only for the support of adult literacy programs within the county.

(2) (a) If a county levies a property tax for adult literacy programs, the county governing body shall appoint a county adult literacy board to administer the expenditure of funds from the county adult literacy fund established in subsection (1).

(b) The county adult literacy board shall coordinate all adult literacy programs receiving county adult literacy funds. The board may adopt policies concerning program standards and financial accountability for organizations receiving adult literacy funds. The board may require that adult literacy programs match adult literacy funds with federal, state, or private money. The board may, with the concurrence of the appropriate county officials, arrange for county in-kind services to support adult literacy programs.

(c) County adult literacy funding may be expended only on literacy programs for persons who are 16 years of age or older and who are not regularly enrolled, full-time pupils for the purposes of ANB computation."

Section 117. Section 20-9-141, MCA, is amended to read:

"20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353, including any additional funding for a general fund budget that exceeds the maximum general fund budget.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

~~(ii) 98% of actual amounts received in fiscal year 1999 for light vehicle taxes under 61-3-504;~~

~~(iii)~~*(ii)* amounts received in the last fiscal year for which revenue reporting was required for each of the following:

~~(A) revenue from taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204;~~

~~(B)~~*(A)* interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

~~(C)~~*(B)* any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid;

~~(iv)~~*(iii)* anticipated tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2);

~~(v)~~*(iv)* anticipated oil and natural gas production taxes;

~~(vi)~~*(v)* pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703*; and*

(vi) school district block grants distributed under [section 244] ~~and property tax reimbursements under 15-1-111, 15-1-112, and section 167, Chapter 584, Laws of 1999; and~~

~~(vii) anticipated revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702~~.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703 ~~and property tax reimbursements under 15-1-111, 15-1-112, and section 167, Chapter 584, Laws of 1999~~."

Section 118. Section 20-9-168, MCA, is amended to read:

"20-9-168. Emergency budget amendment tax levy. When a budget amendment has been adopted by the board of trustees under 20-9-161(2) and a district does not have sufficient funds, including insurance proceeds and reserves, to finance the budget amendment, the district may~~, subject to 15-10-420,~~ levy a tax in the ensuing school year to fund the expenditures authorized by the budget amendment. The amount levied may not exceed the unfunded amount of the budget amendment."

Section 119. Section 20-9-331, MCA, is amended to read:

"20-9-331. Basic county tax for elementary equalization and other revenue for county equalization of elementary BASE funding program. (1) Subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204, for the purposes of elementary equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the elementary BASE funding programs of the school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the BASE funding programs of all elementary districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be used for the equalization of the elementary BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the elementary county equalization fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703; *and*

(g) oil and natural gas production taxes~~; and~~

~~(h) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-529, 61-3-537, 61-3-570, and 67-3-204~~."

Section 120. Section 20-9-333, MCA, is amended to read:

"20-9-333. Basic county tax for high school equalization and other revenue for county equalization of high school BASE funding program. (1) Subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204, for the purposes of high school equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the BASE funding programs of high school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation and the total of the BASE funding programs of all high school districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be used for the equalization of the high school BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(c) gross proceeds taxes from coal under 15-23-703; *and*

(d) oil and natural gas production taxes~~; and~~

~~(e) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-529, 61-3-537, 61-3-570, and 67-3-204~~."

Section 121. Section 20-9-501, MCA, is amended to read:

"**20-9-501. Retirement fund.** (1) The trustees of a district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems. The district's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year~~, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204~~;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) countywide school retirement block grants distributed under [section 245];

~~(iv)~~*(v)* any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

~~(v)~~*(vi)* any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (8), subtracting the money available for reduction of the levy requirement, as determined in subsection (3)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(5) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

(6) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(8) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (4)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(9) The levy for a community college district may be applied only to property within the district."

Section 122. Section 20-10-144, MCA, is amended to read:

"**20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget.** Before the second Monday of August, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate for each bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by the district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted in the budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the budget must be reduced to the limitation amount and used in this determination of the schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of fund balance for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and fund balance reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of 20 U.S.C. 7701, et seq., or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

~~(e) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204;~~

~~(f)~~*(e)* anticipated revenue from coal gross proceeds under 15-23-703;

~~(g)~~*(f)* anticipated oil and natural gas production taxes;

~~(h)~~*(g)* anticipated local government severance tax payments for calendar year 1995 production;

~~(i)~~*(h)* anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

(i) school district block grants distributed under [section 244];

(j) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(k) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142."

Section 123. Section 20-10-146, MCA, is amended to read:

"**20-10-146. County transportation reimbursement.** (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment, except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount;

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration; and

(c) when county transportation reimbursement is required under the mandatory attendance agreement provisions of 20-5-321.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts or reimbursements under the mandatory attendance agreement provisions of 20-5-321;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year~~, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204~~;

(ii) oil and natural gas production taxes;

(iii) anticipated local government severance tax payments for calendar year 1995 production;

(iv) coal gross proceeds taxes under 15-23-703;

(v) countywide school transportation block grants distributed under [section 246];

~~(v)~~*(vi)* any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund;

~~(vi)~~*(vii)* federal forest reserve funds allocated under the provisions of 17-3-213; and

~~(vii)~~*(viii)* other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) subtracting the money available, as determined in subsection (2)(b), to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on the fourth Monday of August by the county superintendent, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments."

Section 124. Section 20-15-305, MCA, is amended to read:

"**20-15-305. Adult education tax levy.** A community college is considered a district for the purposes of adult education and under the provisions for adult education may, subject to 15-10-420, levy a ~~1-mill~~ tax for the support of its adult education program when the superintendent of public instruction approves the program."

Section 125. Section 20-15-311, MCA, is amended to read:

"**20-15-311. Funding sources.** The annual operating budget of a community college district must be financed from the following sources:

(1) the estimated revenue to be realized from student tuition and fees, except revenue related to community service courses as defined by the board of regents;

(2) subject to 15-10-420, a mandatory mill levy on the community college district;

(3) subject to 15-10-420, the ~~1-mill~~ adult education levy authorized under provisions of 20-15-305;

(4) the state general fund appropriation;

(5) an optional voted levy on the community college district that must be submitted to the electorate in accordance with general school election laws;

(6) all other income, revenue, balances, or reserves not restricted by a source outside the community college district to a specific purpose;

(7) income, revenue, balances, or reserves restricted by a source outside the community college district to a specific purpose. Student fees paid for community service courses as defined by the board of regents are considered restricted to a specific purpose;

(8) income from a political subdivision that is designated a community college service region under 20-15-241."

Section 126. Section 20-15-326, MCA, is amended to read:

"**20-15-326. Determination of available financing — fixing and levying property taxation for emergency budget.** (1) After the last day of the fiscal year for which an emergency budget has been adopted, the board of trustees shall determine the amount of the cash balance that is available to finance the emergency budget's outstanding warrants or registered warrants for each fund included on the emergency budget. The available amount of the cash balance of each fund must be determined by deducting from the county treasurer's yearend cash balance for the fund the outstanding warrants or registered warrants issued under the regularly adopted final budget for the fund and the cash reserve for the fund that the trustees have established, within the limitations of law, for the following fiscal year.

(2) The county treasurer shall prepare and deliver a statement on the financial cash status of each fund included on an emergency budget for a district that had an emergency budget during the preceding year to the board of county commissioners by the first Monday in August. The statement for each district emergency budget must include:

(a) the total amount of emergency warrants that are registered against each fund of the district; and

(b) the additional amount of money that is required to finance the registered warrants and interest on the warrants and that must be raised by a tax levy.

(3) For each fund of the emergency budget of each district requiring a tax levy as established by subsection (2)(b), the board of county commissioners shall~~;~~

~~subject to 15-10-420 and~~ at the time all other district and county taxes are fixed and levied, levy a tax on the *taxable value of all* taxable property of each applicable district that will raise sufficient financing to pay the amount established by the county treasurer."

Section 127. Section 20-25-1002, MCA, is amended to read:

"**20-25-1002. State motorcycle safety account — proceeds earmarked for account.** (1) There is a state motorcycle safety account in the treasury of the state of Montana.

(2) Money collected and accrued from motorcycle safety training courses, motorcycle endorsement fees, motorcycle ~~registration~~ *safety* fees, and designated grants or an amount equal to that amount must be deposited in the state motorcycle safety account and must be available to support only approved motorcycle safety training courses, appropriate instructor of motorcycle safety training, and other related motorcycle safety training activities."

Section 128. Section 22-1-304, MCA, is amended to read:

"**22-1-304. Tax levy — special library fund — bonds.** (1) Subject to 15-10-420, the governing body of a city or county that has established a public library may levy in the same manner and at the same time as other taxes are levied a special tax in the amount necessary to maintain adequate public library service. ~~The special tax levy that may be levied by the governing body of a county may not exceed 5 mills on the dollar on all property in the county. The special tax that may be levied by the governing body of a city may not exceed 7 mills on the dollar on all property in the city.~~

(2) (a) The governing body of a city or county may by resolution submit the question of ~~exceeding the maximum~~ *imposing a* tax levy ~~provided in subsection (1)~~ to a vote of the qualified electors at ~~the next appropriate election or at a special election as provided for in Title 13~~ *an election as provided in [section 2]*. The resolution must be adopted at least 75 days prior to the election at which the question will be voted on.

(b) Upon a petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election for the purpose of ~~exceeding the maximum~~ *imposing a* mill levy, the governing body shall submit to a vote of the qualified electors at the next election or at a special election as provided ~~for~~ in ~~Title 13~~ *[section 2]* the question of ~~exceeding~~ *imposing* the ~~maximum~~ mill levy. The petition must be delivered to the governing body at least 90 days prior to the election at which the question will be voted on.

~~(c) The question must be submitted by ballots upon which the words "FOR exceeding the ... mill maximum levy and authorizing an additional ... mill(s) for the library" and "AGAINST exceeding the ... mill maximum library levy" must appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions.~~

~~(d) The ballots must also specify the amount of time during which the proposed increase exceeding the maximum mill levy is to be in effect.~~

~~(e) The votes cast for the adoption or rejection of the question must be canvassed, and:~~

~~(i) if a majority of the voters voting on the question vote to exceed the maximum mill levy, the governing body shall levy the additional tax for the time specified on the ballot; or~~

~~(ii) if a majority of the voters voting on the question vote to not exceed the maximum mill levy, the maximum mill levy may not be exceeded.~~

(3) The municipal tax authorized in this section is in addition to all other taxes authorized by law and is not within the all-purpose mill levy established by 7-6-4451 ~~through~~ *and* 7-6-4453.

(4) The proceeds of the tax constitute a separate fund called the public library fund and may not be used for any purpose except those of the public library.

(5) Money may not be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

(6) Bonds may be issued by the governing body in the manner prescribed by law for the following purposes:

(a) building, altering, repairing, furnishing, or equipping a public library or purchasing land for the library;

(b) buying a bookmobile or bookmobiles; and

(c) funding a judgment against the library."

Section 129. Section 23-2-508, MCA, is amended to read:

"**23-2-508. Certificate of ownership — filing of security interests.** (1) Except as provided in subsection (9), a motorboat or sailboat 12 feet in length or longer may not be operated upon the waters of the state unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a motorboat or sailboat 12 feet in length or longer shall apply for a certificate of ownership and a certificate of number with the county treasurer of the county in which the owner resides, upon forms furnished by the department of justice. The forms must require the following information:

(a) name of the owner;

(b) residence of the owner, by town or county;

(c) business or home address of the owner;

(d) name and address of any lienholder;

(e) amount due under any contract or lien;

(f) name of the manufacturer;

(g) model number or name;

(h) identification number;

(i) name and address of the dealer or other person from whom acquired, if known; and

(j) other information ~~as~~ *that* the department of justice may require.

(3) The application is to be accompanied by documentation of ownership, such as an invoice, a bill of sale, a foreign title, an official certificate of boat number, a fee in lieu of tax receipt, or a certificate of ownership of a trailer purchased with the motorboat or sailboat. An applicant who fails to provide proof of ownership shall provide a certified statement describing how the motorboat or sailboat 12 feet in length or longer was acquired, from whom acquired, if known, and other information requested by the department of justice.

(4) If a certificate of ownership has previously been issued under the provisions of this part, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to motorboats or sailboats 12 feet in length or longer that are purchased as new and unused vessels or that were operated when the provisions of this part were not in force and effect.

(5) A motorboat or sailboat 12 feet in length or longer that does not have a manufacturer's or other identifying number on the motorboat or sailboat must be assigned an identification number by the department ~~of fish, wildlife, and parks~~. A fee of $1 must be paid to the department for an assignment of number.

(6) Upon completion of the application, the county treasurer shall issue to the applicant two copies of the certificate of number application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application for a certificate of ownership to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office and shall furnish the applicant a certificate of ownership containing that information in the application considered necessary by the department and a permanent boat number. The certificate of ownership need not be renewed annually and is valid as long as the person holding it owns the vessel.

(7) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(8) Upon application for a certificate of ownership, a fee of $5 must be paid to the county treasurer, ~~$3.50 of~~ which must be forwarded by the county treasurer to the department of justice and deposited in the general fund.

(9) A person who, on July 1, 1988, is the owner of a motorboat or sailboat 12 feet in length or longer with a valid certificate of number issued by the state is not required to file an application for a certificate of ownership for the motorboat or sailboat unless the person transfers a part of the person's interest in the motorboat or sailboat or renews the certificate of number for the motorboat or sailboat.

(10) The department of justice may not file a voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the boat encumbered. If the approved lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete boat description, the amount of the lien, and the signature of the debtor. The department of justice shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the boat encumbered. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county in which the boat is to be registered. The owner of a boat is the person entitled to operate and possess the boat.

(11) A security interest in a boat held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9.

(12) Whenever a security interest or lien is filed against a boat that is subject to two security interests previously perfected under this section, the department of justice shall endorse on the face of the certificate of ownership: "NOTICE. This boat is subject to additional security interest on file with the Department of Justice." No other information regarding the additional security interests need be endorsed on the certificate.

(13) Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.

(14) Except as provided in subsection (15), a voluntary security interest or lien is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(15) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department of justice. On that date, the department of justice shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department of justice, of the existence of the security interest.

(16) Upon default under a chattel mortgage or conditional sales contract covering a boat, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a boat, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

(17) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of $1 for each day that the person fails to file the satisfaction.

(18) Upon receipt of notice of any involuntary liens or attachments against the record of any boat registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

(19) It is not necessary to refile with the department of justice any instruments on file in the office of the county clerk and recorder on October 1, 1989.

(20) A fee of $4 must be paid to the department of justice to file any security interest or other lien against a boat. The $4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the

endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of any security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the *state* general fund in accordance with 15-1-504."

Section 130. Section 23-2-510, MCA, is amended to read:

"**23-2-510. Transfer of interest.** (1) Except as provided in subsection (3), upon a transfer of a certificate of ownership to a motorboat or sailboat 12 feet in length or longer registered as required under the provisions of this part, the person whose title or interest is to be transferred shall sign the certificate of ownership issued for the motorboat or sailboat in the appropriate space provided on the reverse side of the certificate, and the signature must be acknowledged before the county treasurer, a deputy county treasurer, or a notary public.

(2) Within 30 calendar days after endorsement, the transferee shall make application for transfer of the certificate of ownership with the county treasurer of the county in which the transferee resides and also make application for registration of the motorboat or sailboat. The county treasurer shall forward the application to the department of justice, which shall file the application upon receipt. A certificate of ownership may not be issued by the department *of justice* until any outstanding certificate is surrendered to the department or its loss is established to the department's reasonable satisfaction. The county treasurer shall collect a fee of $5 for each application for transfer of ownership, ~~of~~ which ~~$3.50~~ must be forwarded to the department of justice for deposit in the general fund.

(3) A purchaser of a new or used motorboat or sailboat 12 feet in length or longer from a licensed dealer has a grace period of 30 calendar days from the date of purchase to register the motorboat or sailboat, make application for a certificate of ownership, and obtain a decal indicating that the fee in lieu of property tax has been paid on the vessel for the current year. It is not a violation of this part or any other law for the purchaser to operate a newly acquired motorboat or sailboat 12 feet in length or longer without a certificate of ownership, certificate of registration, and decal during the 30-day grace period. During this period the sticker provided for in subsection (4) must remain affixed to the motorboat or sailboat.

(4) Prior to the delivery of a motorboat or sailboat 12 feet in length or longer to the purchaser, the dealer shall issue and affix to a motorboat or sailboat constructed after October 31, 1972, a sticker as prescribed by the department of justice. The sticker must contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the motorboat or sailboat, including its serial number. The dealer shall keep a copy of the sticker for ~~his~~ *the dealer's* records and shall send a copy of the sticker to the department of justice.

(5) A purchaser of a new or used motorboat or sailboat who is unable to record a transfer of ownership with the county treasurer at the time ~~he makes~~ *of making an* application for registration of the motorboat or sailboat because the certificate of ownership is lost, in the possession of third parties, or in the process of reissuance in this state or elsewhere may, upon making affidavit to that effect upon a form prescribed by the department of justice and upon the payment of the

applicable fee in lieu of tax plus a fee of $2 to be collected by the county treasurer and remitted to the department of justice *for deposit in the general fund*, obtain from the county treasurer of the county in which the boat is to be registered a temporary boat sticker of a size, color, and design as the department of justice may prescribe, to be validated by the county treasurer for a period of 60 days from the date of issuance. The purchaser, upon displaying the sticker conspicuously on the motorboat or sailboat, may operate the motorboat or sailboat during the period for which the boat sticker has been validated without displaying the numbers and license decal for the current year. The county treasurer may not sell, and a person may not purchase, more than one 60-day temporary boat sticker for any motorboat or sailboat, the ownership of which has not changed since the issuance of the previous 60-day boat sticker.

(6) The provisions of subsection (2) do not apply in the event of the transfer of a motorboat or sailboat 12 feet in length or longer to a ~~duly~~ licensed dealer intending to resell the motorboat or sailboat and who operates it only for demonstration purposes, but ~~every~~ *a* dealer, upon transferring ~~his~~ *the dealer's* interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of this part. The department of justice, upon receipt of the certificate of ownership and application for a new certificate containing notice of a security interest, if any, shall issue a new certificate of ownership, together with a statement of any conditional sales contract, mortgage, or other lien.

(7) When the names and addresses of more than one owner who are members of the same immediate family are listed on the certificate of ownership, joint ownership with right of survivorship, and not as tenants in common, is presumed.

(8) The provisions of 61-3-201(3) through (7) that apply to motor vehicles also apply to any certificate of ownership transferred under this section."

Section 131. Section 23-2-512, MCA, is amended to read:

"**23-2-512. Identification number.** (1) The owner of each motorboat, sailboat, or personal watercraft requiring numbering by this state shall file an application for number in the office of the county treasurer where the motorboat, sailboat, or personal watercraft is owned, on forms prepared and furnished by the department of justice. The application must be signed by the owner of the motorboat, sailboat, or personal watercraft and be accompanied by a fee of ~~$2.50~~ *$3.50*. Any alteration, change, or false statement contained in the application will render the certificate of number void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the department of justice, stating the number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner.

(2) The applicant, upon the filing of the application, shall pay to the county treasurer the fee in lieu of tax required for a motorboat 10 feet in length or longer, a sailboat 12 feet in length or longer, or a personal watercraft for the current year of certification before the application for certification or recertification may be accepted by the county treasurer.

(3) Should the ownership of a motorboat, sailboat, or personal watercraft change, a new application form with the certification fee must be filed within a reasonable time with the county treasurer and a new certificate of number

assigned in the same manner as provided for in an original assignment of number.

(4) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this part by the department of justice must be in conformity.

(5) Every certificate of number and the license decals assigned under this part continues in effect for a period not to exceed 1 year unless terminated or discontinued in accordance with the provisions of this part. Certificates of number and license decals must show the date of expiration and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.

(6) Certificates of number expire on December 31 of each year and may not be in effect unless renewed under this part.

(7) In *the* event of *a* transfer of ownership, the purchaser shall furnish the county treasurer notice within a reasonable time of the acquisition of all or any part of the purchaser's interest, other than the creation of a security interest, in a motorboat, sailboat, or personal watercraft numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat, sailboat, or personal watercraft. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat, sailboat, or personal watercraft. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat, sailboat, or personal watercraft does not terminate the certificate of number.

(8) A holder of a certificate of number shall notify the county treasurer within reasonable time if the holder's address no longer conforms to the address appearing on the certificate and shall furnish the county treasurer with the new address. The department of justice may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(9) (a) The number assigned must be painted on or attached to each outboard side of the forward half of the motorboat, sailboat, or personal watercraft or, if there are no sides, at a corresponding location on both outboard sides of the foredeck of the motorboat, sailboat, or personal watercraft. The number assigned must read from left to right in Arabic numerals and block characters of good proportion at least 3 inches tall excluding border or trim of a color that contrasts with the color of the background and be so maintained as to be clearly visible and legible. The number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore. Numerals, letters, or devices other than those used in connection with the identifying number issued may not be placed in the proximity of the identifying number. Numerals, letters, or devices that might interfere with the ready identification of the motorboat, sailboat, or personal watercraft by its identifying number may not be carried in a manner that interferes with the motorboat's, sailboat's, or personal watercraft's identification. A number other than the number and license decal assigned to a motorboat, sailboat, or personal watercraft or granted reciprocity under this part may not be painted, attached, or otherwise displayed on either side of the forward half of the motorboat, sailboat, or personal watercraft.

(b) The certificate of number must be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat, sailboat, or personal watercraft whenever the motorboat, sailboat, or personal watercraft is on waters of this state.

(c) Boat liveries are not required to have the certificate of number on board each motorboat, sailboat, or personal watercraft, but a rental agreement must be carried on board livery motorboats, sailboats, or personal watercraft in place of the certificate of number.

(10) ~~(a) Except as provided in subsection (10)(b), fees~~ *Fees*, other than the fee in lieu of tax, collected under this section must be transmitted to the state treasurer, who shall deposit the fees in the ~~motorboat or sailboat certificate identification account of the~~ state ~~special revenue~~ *general* fund. ~~These fees must be used only for the administration and enforcement of this part, as amended.~~

~~(b) Of the fee collected under the provisions of subsection (1), 20% must be deposited by the state treasurer in an account in the state special revenue fund to the credit of the department to be used to acquire and maintain marine sewage pumpout equipment and other boat facilities.~~

(11) An owner of a motorboat, sailboat, or personal watercraft ~~must~~ *shall* within a reasonable time notify the department of justice, giving the motorboat's, sailboat's, or personal watercraft's identifying number and the owner's name when the motorboat, sailboat, or personal watercraft is transferred, lost, destroyed, *or* abandoned~~, or frauded~~ or within 60 days after *a* change of state of principal use or if a motorboat becomes documented as a vessel of the United States."

Section 132. Section 23-2-518, MCA, is amended to read:

"**23-2-518. (Temporary) Disposition of fees in lieu of tax.** ~~(1) Except for fees allocated under subsection (2), the~~ *The* county treasurer shall ~~distribute~~ *transfer* all fees in lieu of tax collected on motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, personal watercraft, motorized canoes, motorized rubber rafts, and motorized pontoons pursuant to 23-2-516 and 23-2-517 ~~in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed~~ *to the state general fund.*

~~(2) The county treasurer shall allocate 20% of all fees in lieu of tax collected under this section to the motorboat account in the state special revenue fund for use by the department as provided in 23-2-533.~~ (Terminates June 30, 2002—sec. 9, Ch. 476, L. 1995.)

23-2-518. (Effective July 1, 2002) Disposition of fees in lieu of tax. The county treasurer shall ~~distribute~~ *transfer* all fees in lieu of tax collected on motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, personal watercraft, motorized canoes, motorized rubber rafts, and motorized pontoons pursuant to 23-2-516 and 23-2-517 ~~in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed~~ *to the state general fund.*"

Section 133. Section 23-2-611, MCA, is amended to read:

"**23-2-611. Certificate of ownership — filing of security interests.** (1) A snowmobile may not be operated upon any private or public lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets, or highways unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state. A certificate of ownership is not required for a snowmobile purchased prior to April 16, 1993, if use of the snowmobile is restricted to private land.

(2) The owner of a snowmobile shall apply for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose. The forms must require the following information:

(a) the name of the owner;

(b) the residence of the owner, by town and county;

(c) the business or home mailing address of the owner;

(d) the name and address of any lienholder;

(e) the amount due under any contract or lien;

(f) the name of the manufacturer;

(g) the model number or name;

(h) the identification number; and

(i) the name and address of the dealer or other person from whom acquired.

(3) The application must be accompanied by documentation of ownership, such as an invoice, notarized bill of sale from the immediately previous owner, foreign title, official certificate of snowmobile number, or fee in lieu of tax receipt.

(4) The application must be signed by at least one owner or by a properly authorized officer or representative of the owner.

(5) If a certificate of ownership has previously been issued under the provisions of 23-2-601 through 23-2-644, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of 23-2-601 through 23-2-644 were not in force and effect.

(6) Upon completion of the application, on forms furnished by the department of justice, the county treasurer shall issue to the applicant two copies of the application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office and shall furnish the applicant *with* a certificate of ownership, which must contain that information in the application considered necessary by the department of justice, and a permanent ownership number. The certificate of ownership is not to be renewed annually and is valid as long as the person holding it owns the snowmobile.

(7) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(8) Upon application for a certificate of ownership, a fee of $5 must be paid to the county treasurer, ~~$3.50 of~~ which must be forwarded by the county treasurer to the department of justice and deposited in the general fund.

(9) The department of justice may not file a voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of

ownership of the snowmobile encumbered. If the approved lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete snowmobile description, the amount of the lien, and the signature of the debtor. The department of justice shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the snowmobile encumbered. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county in which the snowmobile is to be registered. The owner of a snowmobile is the person entitled to operate and possess the snowmobile.

(10) A security interest in a snowmobile held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9.

(11) Whenever a security interest or lien is filed against a snowmobile that is subject to two security interests previously perfected under this section, the department of justice shall endorse on the face of the certificate of ownership: "NOTICE. This snowmobile is subject to additional security interest on file with the Department of Justice"." Other information regarding the additional security interests need not be endorsed on the certificate.

(12) Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.

(13) Except as provided in subsection (14), a voluntary security interest or lien is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(14) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department of justice. On that date, the department of justice shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department of justice, of the existence of the security interest.

(15) Upon default under a chattel mortgage or conditional sales contract covering a snowmobile, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a snowmobile, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

(16) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract

within 15 days after receiving final payment is required to pay the department of justice the sum of $1 for each day that the satisfaction is not filed.

(17) Upon receipt of notice of any involuntary liens or attachments against the record of any snowmobile registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

(18) It is not necessary to refile with the department of justice any instruments on file in the office of the county clerk and recorder on October 1, 1989.

(19) A fee of $4 must be paid to the department of justice to file any security interest or other lien against a snowmobile. The $4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of a security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the *state* general fund in accordance with 15-1-504."

Section 134. Section 23-2-612, MCA, is amended to read:

"**23-2-612. Transfer of interest.** (1) Except as provided in subsection (3), upon a transfer of any certificate of ownership to a snowmobile registered as required under the provisions of 23-2-601 through 23-2-644, the person whose title or interest is to be transferred shall ~~write his signature with pen and ink upon~~ *sign* the certificate of ownership issued for the snowmobile in the appropriate space provided upon the reverse side of the certificate, and the signature ~~shall~~ *must* be acknowledged before the county treasurer, a deputy county treasurer, or a notary public.

(2) Within 20 calendar days after endorsement, the transferee shall make application for transfer of the certificate of ownership with the county treasurer of the county in which the transferee resides and also make application for registration of the snowmobile. The county treasurer shall forward the application to the department of justice, which shall file the application upon receipt. A certificate of ownership may not be issued by the department of justice until the outstanding certificates are surrendered to that office or their loss is established to ~~its~~ *the department's* reasonable satisfaction. The county treasurer shall collect a fee of $5 for each application for transfer of ownership, ~~of~~ which ~~$3.50~~ must be forwarded to the department of justice for deposit in the general fund.

(3) A purchaser of a new or used snowmobile from a licensed snowmobile dealer has a grace period of 20 calendar days from the date of purchase to register the snowmobile, make application for a certificate of ownership, and obtain a decal indicating that the fee in lieu of property tax has been paid on the snowmobile for the current year. It is not a violation of 23-2-601 through 23-2-644 or any other law for the purchaser to operate a newly acquired snowmobile

without a certificate of ownership, *a* certificate of registration, and a decal during the 20-day period. During this period, the sticker provided for in subsection (4) ~~shall~~ *must* remain affixed to the snowmobile.

(4) Prior to the delivery of the snowmobile to the purchaser, the dealer shall issue and affix to the snowmobile a sticker (in a form to be prescribed by the department of justice). The sticker shall contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the snowmobile, including its serial number. The dealer shall keep a copy of the sticker for ~~his~~ *the dealer's* records and shall send a copy of the sticker to the department of justice.

(5) The provisions of subsection (2) do not apply in the event of the transfer of a snowmobile to a ~~duly~~ licensed snowmobile dealer *who is* intending to resell the snowmobile and who operates it only for demonstration purposes, but ~~every~~ *a* dealer, upon transferring ~~his~~ *the dealer's* interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of 23-2-601 through 23-2-644. The department of justice, upon receipt of the certificate of ownership and application for a new certificate containing notice of a security interest, if any, shall issue a new certificate of ownership, together with a statement of any conditional sales contract, mortgage, or other lien.

(6) When the names and addresses of more than one owner who are members of the same immediate family are listed on the certificate of ownership, joint ownership with right of survivorship, and not as tenants in common, is presumed.

(7) The provisions of 61-3-201(3) through (7) that apply to motor vehicles also apply to any certificate of ownership transferred under this section."

Section 135. Section 23-2-615, MCA, is amended to read:

"**23-2-615. Nonresident temporary-use permits — use of fees.** (1) The requirements pertaining to the nonresident temporary-snowmobile-use permit are as follows:

(a) Application for the issuance of the permit must be made at locations and upon forms prescribed by the department. The forms must include but are not limited to:

(i) the applicant's name and permanent address;

(ii) the make, model, year, and serial number of the snowmobile; and

(iii) an affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of $6, a nonresident temporary-snowmobile-use sticker must be issued. The sticker must be displayed in a conspicuous manner on the snowmobile.

(2) The temporary permit is valid for a consecutive 30-day period as designated by the permit.

(3) The permit is not proof of ownership, and a certificate of ownership may not be issued.

(4) A nonresident temporary-snowmobile-use permit is not required for a snowmobile that qualifies as a racing snowmobile under 23-2-622.

(5) All money collected by payment of fees under this section must be ~~turned over~~ *transferred* to the state treasurer and ~~placed~~ *deposited* in the state ~~special~~

~~revenue~~ *general* fund ~~to the credit of the department of fish, wildlife, and parks, with one-half to be used in administering this section and one-half to be used in the development, maintenance, and operation of snowmobile facilities~~.

(6) The failure to display the permit as required by this section or the making of false statements in obtaining the permit is a misdemeanor, punishable by a fine of not less than $25 or more than $100."

Section 136. Section 23-2-616, MCA, is amended to read:

"**23-2-616. Registration and decals — application and issuance — use of certain fees.** (1) Except for a snowmobile registered under 23-2-621, a snowmobile may not be operated on public lands by any person in Montana unless it has been registered and there is displayed in a conspicuous place on both sides of the cowl a decal as visual proof that the fee in lieu of property tax has been paid on it for the current year and the immediately previous year as required by 15-16-202.

(2) Application for registration must be made to the county treasurer upon forms to be furnished by the department of justice for this purpose, which may be obtained at the county treasurer's office in the county where the owner resides. The application shall contain the following information:

(a) the name and address of the owner;

(b) the certificate of ownership number;

(c) the make of the snowmobile;

(d) the model name of the snowmobile;

(e) the year of manufacture;

(f) a statement evidencing payment of the fee in lieu of property tax as required by 15-16-202; and

(g) other information as the department of justice may require.

(3) The application must be accompanied by a ~~decal~~ *decal-registration* fee of ~~$5, a registration fee of 50 cents~~ *$6.50*, and, if the snowmobile has previously been registered, by the registration certificate for the most recent year in which the snowmobile was registered. The treasurer shall sign the application and issue a registration receipt that must contain information considered necessary by the department of justice and a listing of fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(4) The county treasurer shall forward the signed application to the department of justice and shall issue to the applicant a decal in the style and design prescribed by the department of justice and of a different color than the preceding year, numbered in sequence.

(5) The county treasurer may not accept any application under this section until the applicant has paid the ~~decal~~ *decal-registration* ~~and registration fees~~ *fee* and the fee in lieu of property tax on the snowmobile for the current year and the immediately previous year as required by 15-16-202.

(6) All money collected from payment of ~~the decal~~ *decal-registration* fees and all interest accruing from use of this money must be forwarded to the state treasurer and placed in the state ~~special revenue~~ *general* fund ~~to the credit of the~~

~~department, with $2.50 designated for use in enforcing the purposes of 23-2-601 through 23-2-644 and $2.50 designated for use in the development, maintenance, and operation of snowmobile facilities. All money collected from payment of the registration fee must be forwarded to the state treasurer and deposited in the general fund~~.

(7) The county treasurer shall credit all fees in lieu of tax collected on snowmobiles to the ~~county motor vehicle suspense fund provided for in 61-3-509~~ *state general fund.*"

Section 137. Section 23-2-803, MCA, is amended to read:

"**23-2-803. Fee in lieu of tax on off-highway vehicles — exception — disposition of fees.** (1) There is a fee in lieu of tax on off-highway vehicles, other than off-highway vehicles constituting the inventory of a dealership licensed under 23-2-818, to be paid to the county treasurer of the county in which the owner of the off-highway vehicle resides.

(a) The fee for an off-highway vehicle less than 3 years old is $19. In all other cases the fee is $9.

(b) Except as provided in subsection (1)(c), the age of an off-highway vehicle is determined by subtracting the manufacturer's designated model year from the current calendar year.

(c) If the purchase year of an off-highway vehicle precedes the designated model year of the off-highway vehicle and the off-highway vehicle is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

(2) ~~(a) Except as provided in subsection (2)(b), the~~ *The* county treasurer shall ~~distribute~~ *transfer* all fees in lieu of tax collected on off-highway vehicles pursuant to this section ~~in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed~~ *to the state general fund.*

~~(b) The county treasurer shall remit $1 of the fee in lieu of tax collected on an off-highway vehicle to the department of agriculture for deposit in the noxious weed management trust fund provided for in 80-7-811.~~"

Section 138. Section 23-2-804, MCA, is amended to read:

"**23-2-804. Decal required ~~— fee — disposition~~.** (1) Except as provided in 23-2-802, an off-highway vehicle may not be operated by any person for off-road recreation on public lands in Montana unless there is displayed in a conspicuous place a decal, in a form prescribed by the department of justice and issued by the county treasurer, as visual proof that the following fees have been paid for the current year:

(a) (i) the fee in lieu of tax provided for in 23-2-803; and

(ii) the registration fee provided for in ~~23-2-817~~ *61-3-321*; or

(b) when the vehicle will be used as provided in this section, the registration and taxation fees for motorcycles and quadricycles subject to licensure under 61-3-321, as evidenced by presentation of an owner's certificate of registration and payment receipt~~; and~~

~~(c) the off-highway decal fee provided for in this section~~.

(2) The decal will be serially numbered and have the expiration date of December 31 of the appropriate year printed thereon.

~~(3) The off-highway decal fee is $5, which the county treasurer shall collect and transmit to the state treasurer, who shall deposit the money in an interest-bearing account in the state special revenue fund to the credit of the department of fish, wildlife, and parks. The decal fee and the interest and income to the account must be spent as follows:~~

~~(a) 40% must be used to enforce the provisions of this section; and~~

~~(b) 60% must be spent to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreation use except that:~~

~~(i) no money may be spent for this purpose before January 1, 1991; and~~

~~(ii) evaluation for development of a program plan must begin January 1, 1991.~~"

Section 139. Section 23-2-811, MCA, is amended to read:

"**23-2-811. Certificate of ownership — procedure — fee — filing security interest.** (1) An off-highway vehicle may not be operated upon any public lands, trails, easements, lakes, rivers, or streams unless a certificate of ownership has first been obtained from the department of justice.

(2) The owner of an off-highway vehicle shall apply for a certificate of ownership to the county treasurer of the county in which the owner resides, on a form furnished by the department of justice for that purpose. The form must include:

(a) the name of the owner;

(b) the residence of the owner, by town and county;

(c) the business address or home mailing address of the owner;

(d) the name and address of any lienholder;

(e) the amount due under any contract, mortgage, or lien;

(f) the name of the manufacturer;

(g) the model number or name;

(h) the identification number; and

(i) the name and address of the dealer or other person from whom the off-highway vehicle was acquired.

(3) The application must be signed by at least one owner or by a properly authorized agent of the owner.

(4) The application for a new certificate of ownership must be accompanied by the immediately previous certificate. This subsection does not apply to off-highway vehicles that are purchased as new and unused machines or that were operated before January 1, 1990.

(5) (a) After the owner completes the application form, the county treasurer shall issue to the applicant two copies of the completed application, with one marked "file copy", and shall forward one copy and the original application to the department of justice. The department of justice shall enter the information contained in the application upon the corresponding records of its office and shall send the applicant a certificate of ownership containing a permanent ownership

number and information from the application considered necessary by the department of justice.

(b) The certificate of ownership is not required to be renewed annually and is valid as long as the person holding it owns the off-highway vehicle.

(6) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(7) Upon application for a certificate of ownership, a fee of $5 must be paid to the county treasurer, ~~of~~ which~~:~~

~~(a) $3.50~~ must be forwarded to the department of justice for deposit in the general fund~~; and~~

~~(b) $1.50 must be retained by the county treasurer for the cost of administering this section~~.

(8) The department of justice may not file a voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the encumbered off-highway vehicle. If the approved lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, a complete description of the off-highway vehicle, the amount of the lien, and the signature of the debtor. The department of justice shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the off-highway vehicle encumbered. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate. However, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county where the vehicle is to be registered. The owner of an off-highway vehicle is the person entitled to operate and possess the vehicle.

(9) A security interest in an off-highway vehicle held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9.

(10) Whenever a security interest or lien is filed against an off-highway vehicle that is subject to two or more security interests previously perfected under this section, the department of justice shall endorse on the face of the certificate of ownership: "Notice. This off-highway vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(11) Satisfaction or statements of release filed with the department of justice under this section must be retained for a period of 8 years from the date of receipt, after which they may be destroyed.

(12) Except as provided in subsection (13), a voluntary security interest or lien is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive

notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(13) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department of justice. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest.

(14) Upon default under a chattel mortgage or conditional sales contract covering an off-highway vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In the case of attachment of an off-highway vehicle, the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

(15) A conditional sales vendor, chattel mortgagee, or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sale contract within 15 days after receiving final payment shall pay to the department of justice the sum of $1 for each day after the expiration of the 15-day period that the person fails to file the satisfaction.

(16) Upon receipt of notice of any involuntary liens or attachments against the record of an off-highway vehicle in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice of the lien, showing the date of execution of the lien and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

(17) It is not necessary to refile with the department of justice instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(18) A fee of $4 must be paid to the department of justice to file a security interest or other lien against an off-highway vehicle. The $4 fee includes and covers the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department of justice or for filing an assignment of a security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504."

Section 140. Section 23-2-812, MCA, is amended to read:

"23-2-812. Transfer of interest. (1) To transfer a certificate of ownership for an off-highway vehicle registered under 23-2-817, the person whose title or interest is to be transferred shall endorse the certificate of ownership in the appropriate space on the reverse side of the certificate and *must* have the signature acknowledged before a notary public.

(2) (a) Within 20 calendar days after the date of notarization, the transferee shall apply to the county treasurer of the county in which the transferee resides for:

(i) transfer of the endorsed certificate of ownership;

(ii) registration of the off-highway vehicle; and

(iii) issuance of a decal as required by 23-2-804.

(b) The county treasurer shall forward the application and the original certificate of ownership to the department of justice, which shall file the application upon receipt.

(c) A certificate of ownership may not be issued by the department until the outstanding certificates are surrendered to that office or their loss is established.

(d) The county treasurer shall collect a fee of $5 for each application for transfer of ownership, ~~of~~ which~~:~~

~~(i) $3.50~~ must be forwarded to the department of justice for deposit in the general fund~~; and~~

~~(ii) $1.50 must be retained by the county treasurer for the cost of administering this section~~.

(3) To effect by operation of law a transfer of interest in an off-highway vehicle, the provisions of 61-3-201(3) are applicable.

(4) (a) A person who purchases a new or used off-highway vehicle from an off-highway vehicle dealer licensed under 23-2-818 shall, within 20 calendar days after the purchase date, apply to the county treasurer of the county in which the person resides for:

(i) a certificate of ownership;

(ii) registration of the off-highway vehicle; and

(iii) a decal as required by 23-2-804.

(b) During this period, the sticker provided for in subsection (6) must remain affixed to the off-highway vehicle.

(5) It is not a violation of this part for a purchaser to operate a newly acquired off-highway vehicle without a certificate of ownership, a certificate of registration, and a decal during the first 20 days of ownership.

(6) Prior to the delivery of the off-highway vehicle to the purchaser, the dealer shall issue and affix to the off-highway vehicle a sticker, in a form to be prescribed by the department of justice, containing the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the off-highway vehicle, including its identification number. The dealer shall keep a copy of the sticker for the dealer's records and shall send a copy of the sticker to the department of justice.

(7) The provisions of subsection (2) do not apply to the transfer of an off-highway vehicle to an off-highway vehicle dealer licensed under 23-2-818 who intends to resell the vehicle and who operates it only for demonstration purposes. Every dealer, upon a transfer of interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of this part. The department of justice, upon receipt of the certificate of ownership and application for a new certificate, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership showing the name of the lienholder and the amount due under the contract, mortgage, or lien as required by 23-2-811(2)(d) and (2)(e)."

Section 141. Section 23-2-814, MCA, is amended to read:

"**23-2-814. Nonresident temporary-use permits ~~— use of fees~~.** (1) An off-highway vehicle that is owned by a nonresident and that is not registered in another state of the United States or in another country may not be operated by a person in Montana unless a nonresident temporary-use permit is obtained.

(2) The requirements pertaining to a nonresident temporary-use permit for an off-highway vehicle are as follows:

(a) Application for the issuance of the permit must be made at locations and upon forms prescribed by the department of fish, wildlife, and parks. The forms must include but are not limited to:

(i) the applicant's name and permanent address;

(ii) the make, model, year, and serial number of the off-highway vehicle; and

(iii) an affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of $5, a nonresident off-highway vehicle temporary-use sticker must be issued. The sticker must be displayed in a conspicuous manner on the off-highway vehicle. The sticker is the temporary-use permit.

(3) The temporary-use permit is valid for the calendar year designated on the permit.

(4) The permit is not proof of ownership, and a certificate of ownership may not be issued.

(5) All money collected by payment of fees under this section must be transmitted to the state treasurer, who shall deposit the money in the ~~account created under 23-2-804(3)~~ *state general fund*. ~~The money collected by payment of fees under this section must be spent as follows:~~

~~(a) 40% to be used in administering this section; and~~

~~(b) 60% to be used to plan, develop, and implement a comprehensive program for appropriate off-highway vehicle recreation use.~~

(6) Failure to display the permit as required by this section or making false statements in obtaining the permit is a misdemeanor and is punishable by a fine of not less than $25 or more than $100. All fines collected under this section must be transmitted to the state treasurer, who shall deposit the money in the ~~account created under 23-2-804(3)~~ *state general fund*. ~~Fifty percent of this money and the interest earned on it must be used for off-highway vehicle safety and education. The remaining 50% of the money and the interest earned on it must be used for enforcement.~~"

Section 142. Section 23-2-818, MCA, is amended to read:

"**23-2-818. Dealer registration certificate ~~— use of fees~~.** (1) (a) Unless the dealer is licensed under the provisions of 61-4-101, a dealer may not sell off-highway vehicles unless the dealer has first obtained a dealer registration certificate from the department of justice under the provisions of this section.

(b) To qualify as a dealer the applicant, when registering or renewing a registration, shall:

(i) complete an application:

(A) stating the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock is displayed;

(B) stating the name, address, date of birth, and social security number of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(C) identifying other dealerships owned by the applicant, identifying all persons in Montana or in another state having an interest in another dealership owned by the applicant, and disclosing whether the applicant or any other person with interest in a dealership owned by the applicant has been convicted of a felony; and

(D) stating the name and make of all off-highway vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written franchise or sales agreement;

(ii) provide an affidavit certifying that the applicant has acquired and shall maintain liability insurance for any off-highway vehicle offered for demonstration or loan to a customer;

(iii) execute a certificate to the effect that the applicant has a permanent building for the display and sale of off-highway vehicles at the location of the premises where sales are conducted;

(iv) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of off-highway vehicles; and

(v) execute a certificate to the effect that the applicant is a bona fide dealer in off-highway vehicles and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in off-highway vehicles.

(2) The dealer application for registration or renewal of registration must be accompanied by an application or renewal fee of $5 and a registration fee of $5. To qualify for the fees in this subsection, the applicant for renewal shall certify that the applicant has sold three or more off-highway vehicles during the preceding year. Upon receipt of the dealer application or renewal and payment of fees, the dealer must be issued two dealer off-highway identification cards to be carried by the dealer or the dealer's customer when demonstrating the dealer's off-highway vehicles. Additional dealer off-highway vehicle identification cards may be purchased by the dealer from the department of justice for a fee of $2 each.

(3) (a) A dealer shall file a bond in the amount of $5,000.

(b) The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(c) A person who suffers loss or damage because of the unlawful conduct of a dealer registered under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. Before payment on the bond is required, the judgment must determine a specific loss or damage amount and conclude that the dealer's unlawful operation caused the loss or damage.

(4) The dealer shall have a principal place of business where the dealer maintains all business records and where the dealer displays and sells merchandise.

(5) An applicant for renewal of an off-highway vehicle dealer registration who does not qualify under subsection (2) shall:

(a) pay an additional $50 renewal registration fee; and

(b) provide a copy of a new off-highway vehicle franchise or sales agreement that the applicant has with a manufacturer, importer, or distributor.

(6) Dealer registration certificates and identification cards expire on December 31 following the date of issuance.

(7) (a) The dealer application fees and all interest accruing from use of this money must be deposited in the general fund to be used by the department of justice for the administration of this part.

(b) All dealer registration fees and renewal fees collected must be deposited in the ~~account provided in 23-2-804(3). This money and the interest earned on it must be used for off-highway vehicle safety and education programs~~ *state general fund.*"

Section 143. Section 23-5-610, MCA, is amended to read:

"**23-5-610. (Temporary) Video gambling machine gross income tax — records — distribution — quarterly statement and payment.** (1) A licensed machine owner shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine issued a permit under this part. A licensed machine owner may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

(2) (a) A licensed machine owner is entitled to a tax credit for each video gambling machine for which a permit has been issued under this part if:

(i) the permit was active for the video gambling machine on December 31, 2000;

(ii) the department determines that the video gambling machine is incapable, in the form in which it was approved by the department, of communicating with the automated accounting and reporting system authorized by 23-5-637; and

(iii) the licensed machine owner participates in the automated accounting and reporting system and incurs actual hardware or software costs prior to December 31, 2003, for conversion of the video gambling machine to make it compatible with the automated system.

(b) The amount of the tax credit allowed under subsection (2)(a) is $250 for each video gambling machine or the actual hardware and software cost necessary for conversion of the video gambling machine to the automated accounting and reporting system, whichever is less.

(3) If a tax credit is claimed under subsection (2)(a), the credit is deducted from the tax due for the quarter or quarters that begin after the video gambling

machine for which the tax credit is claimed is connected to the automated accounting and reporting system authorized by 23-5-637.

(4) A licensed machine owner shall keep a record of the gross income from each video gambling machine issued a permit under this part in the form the department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(5) (a) For each video gambling machine issued a permit under this part but not connected to the department's automated accounting and reporting system, a licensed machine owner shall, within 15 days after the end of each quarter and in the manner prescribed by the department, complete and deliver to the department a statement showing the total gross income, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information that the department requires.

(b) For each video gambling machine issued a permit under this part that is connected to the department's automated accounting and reporting system, the department shall, within 5 working days after the end of each quarter, complete and deliver to the licensed machine owner (with a copy sent to the licensed operator, if different from the licensed machine owner, on whose premises the machine is placed) a statement showing the total gross income from the video gambling machine, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The licensed machine owner shall remit the total amount due the state under this subsection within 25 days after the end of each quarter.

(6) ~~(a)~~ Except as provided in subsection (7), the department shall, in accordance with the provisions of 15-1-501, forward ~~one-third of~~ the tax collected under subsection (5) to the general fund.

~~(b) The department shall, in accordance with the provisions of 15-1-501, forward the remaining two-thirds of the tax collected under subsection (5) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video gambling machines located in incorporated cities and towns. The two-thirds local government portion of tax collected under subsection (5) is statutorily appropriated, as provided in 17-7-502, to the department for deposit to the county or municipal treasury.~~

(7) Receipts from the ~~state's share of~~ taxes collected under this section are pledged and dedicated to guarantee repayment of loans participated in under 23-5-638 in an amount sufficient to meet the prepayment obligation for the fiscal year during which the loans are made. The amount of taxes pledged by this subsection is the dollar amount of loan participation under 23-5-638 and must be allocated to a separate account in the short-term investment pool. The board of investments is not entitled to use the proceeds from taxes collected under this section to repay a loan made under 23-5-638 unless the board certifies that all other commercially available means of collection on the loan have been exhausted. (Terminates December 31, 2005—sec. 10, Ch. 424, L. 1999.)

23-5-610. (Effective January 1, 2006) Video gambling machine gross income tax — records — distribution — quarterly statement and payment. (1) A licensed machine owner shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine issued a permit under this part. A licensed machine owner may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

(2) (a) A licensed machine owner is entitled to a tax credit for each video gambling machine for which a permit has been issued under this part if:

(i) the permit was active for the video gambling machine on December 31, 2000;

(ii) the department determines that the video gambling machine is incapable, in the form in which it was approved by the department, of communicating with the automated accounting and reporting system authorized by 23-5-637; and

(iii) the licensed machine owner participates in the automated accounting and reporting system and incurs actual hardware or software costs prior to December 31, 2003, for conversion of the video gambling machine to make it compatible with the automated system.

(b) The amount of the tax credit allowed under subsection (2)(a) is $250 for each video gambling machine or the actual hardware and software cost necessary for conversion of the video gambling machine to the automated accounting and reporting system, whichever is less.

(3) If a tax credit is claimed under subsection (2)(a), the credit is deducted from the tax due for the quarter or quarters that begin after the video gambling machine for which the tax credit is claimed is connected to the automated accounting and reporting system authorized by 23-5-637.

(4) A licensed machine owner shall keep a record of the gross income from each video gambling machine issued a permit under this part in the form the department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(5) (a) For each video gambling machine issued a permit under this part but not connected to the department's automated accounting and reporting system, a licensed machine owner shall, within 15 days after the end of each quarter and in the manner prescribed by the department, complete and deliver to the department a statement showing the total gross income, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information that the department requires.

(b) For each video gambling machine issued a permit under this part that is connected to the department's automated accounting and reporting system, the department shall, within 5 working days after the end of each quarter, complete and deliver to the licensed machine owner (with a copy sent to the licensed operator, if different from the licensed machine owner, on whose premises the machine is placed) a statement showing the total gross income from the video gambling machine, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The licensed machine owner shall remit the total amount due the state under this subsection within 25 days after the end of each quarter.

(6) ~~(a)~~ The department shall, in accordance with the provisions of 15-1-501, forward ~~one-third of~~ the tax collected under subsection (5) to the general fund.

~~(b) The department shall, in accordance with the provisions of 15-1-501, forward the remaining two-thirds of the tax collected under subsection (5) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video gambling machines located in incorporated cities and towns. The two-thirds local government portion of tax collected under subsection (5) is statutorily appropriated, as provided in 17-7-502, to the department for deposit to the county or municipal treasury.~~"

Section 144. Section 25-1-201, MCA, is amended to read:

"**25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, $90; for filing a complaint in intervention, from the intervenor, $80; for filing a petition for dissolution of marriage, $160; for filing a petition for legal separation, $150; and for filing a petition for a contested amendment of a final parenting plan, $120;

(b) from each defendant or respondent, on appearance, $60;

(c) on the entry of judgment, from the prevailing party, $45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents a page for the first five pages of each file, for each request, and 25 cents for each additional page;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for a search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $55;

(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100;

(q) for filing a petition for adoption, $75.

(2) ~~Except as provided in subsections (3) through (11), 35% of all~~ *Except as provided in subsections (3), (5), and (6), all* fees collected by the clerk of the district court must be deposited in ~~and credited to the district court~~ *the state general* fund. ~~If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must be remitted to the state general fund.~~

~~(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $23.60 must be deposited in and credited to the state general fund and $6.40 must be deposited in and credited to the county general fund.~~

~~(4) (a) Of the fee for filing a petition for dissolution of marriage, $75 must be deposited in the state general fund, $5 must be deposited in the children's trust fund account established in 41-3-702, $9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714, $30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110, and $21 must be deposited in and credited to the district court fund. If no district court fund exists, the $21 must be deposited in the general fund for district court operations.~~

~~(b) Of the fee for filing a petition for legal separation, $75 must be deposited in the state general fund, $5 must be deposited in the children's trust fund account established in 41-3-702, $30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110, and $20 must be deposited in and credited to the district court fund. If no district court fund exists, the $20 must be deposited in the general fund for district court operations.~~

~~(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the district court fund or the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:~~

~~(i) at the commencement of each action or proceeding and for filing a complaint in intervention, as provided in subsection (1)(a), $35;~~

~~(ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), $25;~~

~~(iii) on the entry of judgment, as provided in subsection (1)(c), $15; and~~

~~(iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), $15.~~

~~(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.~~

~~(6) The fee for filing a motion for substitution of a judge, as provided in subsection (1)(p), must be remitted to the state general fund.~~

~~(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.~~

~~(8) The clerk of the district court shall remit to the credit of the state general fund $20 of each fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of judicial salaries.~~

~~(9) (a) The fee for filing a petition for a contested amendment of a parenting plan must be remitted by the clerk of the district court to the credit of the district court to defray the costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and to defray the expense of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a).~~

~~(b) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of the district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).~~

~~(10) The clerk of district court shall remit to the credit of the special revenue account established in 42-2-105 $70 of the filing fee required in subsection (1)(q), and $5 of the filing fee must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.~~

~~(11) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, $9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714 and $1 must be deposited in and credited to the district court fund for mitigation of administrative costs incurred by the court in the collection of the fee. If a district court fund does not exist, the $1 must be deposited in the county general fund for district court operations.~~

(3) Of the fee for filing a petition for dissolution of marriage, $9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.

(4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).

(5) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, $9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.

(6) The fees collected under subsections (1)(d), (1)(g), and (1)(j) must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund for district court operations."

Section 145. Section 39-71-403, MCA, is amended to read:

"**39-71-403. Plan three exclusive for state agencies — election of plan by public corporations — financing of self-insurance fund — exemption for university system — definition.** (1) Except as provided in subsection (5), if a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, are exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by a state agency are considered to be ordinary and necessary expenses of the agency. The agency shall make appropriation of and pay the sums into the state fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate the ordinary and necessary expense in a budget, estimate of expenses, appropriations, ordinances, or otherwise.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, plan No. 2, or plan No. 3, separately or jointly with any other public corporation other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance or issue bonds or notes pursuant to subsection (3)(b). A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) (a) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and chapter 72 and to discharge all liabilities that are reasonably incurred during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and chapter 72 and for actual and necessary expenses required for the efficient administration of the fund, including debt service on any bonds and notes issued pursuant to subsection (3)(b).

(b) (i) A public corporation, other than a state agency, separately or jointly with another public corporation, other than a state agency, may issue and sell its bonds and notes for the purpose of establishing, in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a) and to pay the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an amount not exceeding 3% of the taxable valuation of the public corporation as of the date of issue. The bonds and notes must be authorized by resolution of the governing body of the public corporation and are payable from an annual property tax levied in the amount necessary to pay principal and interest on the bonds or notes. This authority to levy an annual property tax exists despite any provision of law or maximum levy limitation, *including 15-10-420,* to the contrary. The revenue derived from the sale of the bonds and notes may not be used for any other purpose.

(ii) The bonds and notes:

(A) may be sold at public or private sale;

(B) do not constitute debt within the meaning of any statutory debt limitation; and

(C) may contain other terms and provisions as the governing body determines.

(iii) Two or more public corporations, other than state agencies, may agree to exercise their respective borrowing powers jointly under this subsection (3)(b) or may authorize a joint board to exercise the powers on their behalf.

(iv) The fund established from the proceeds of bonds and notes issued and sold under this subsection (3)(b) may, if sufficient, be used in lieu of a surety bond, reinsurance, specific and aggregate excess insurance, or any other form of additional security necessary to demonstrate the public corporation's ability to discharge all liabilities as provided in subsection (3)(a). Subject to the 3% of taxable valuation limitation in subsection (3)(b)(i), a public corporation may issue bonds and notes to establish a fund sufficient to discharge liabilities for periods greater than 1 year.

(4) All money in the fund established under subsection (3)(a) not needed to meet immediate expenditures must be invested by the governing body of the public corporation or the joint board created by two or more public corporations as provided in subsection (3)(b)(iii), and all proceeds of the investment must be credited to the fund.

(5) The provisions of subsection (1) do not apply to the Montana university system.

(6) As used in subsections (2) through (4), "public corporation" includes the Montana university system."

Section 146. Section 40-4-215, MCA, is amended to read:

"**40-4-215. Investigations and reports.** (1) If a parent or a court-appointed third party requests~~,~~ or if the court finds that a parenting proceeding is contested, the court may order an investigation and report concerning parenting arrangements for the child. The investigator may be the child's guardian ad litem or other professional considered appropriate by the court. The department of public health and human services may not be ordered to conduct the investigation or draft a report unless the person requesting the investigation is a recipient of cash assistance under the temporary assistance for needy families block grant, FAIM financial assistance, as defined in 53-2-902, food stamps, or public assistance and all reasonable options for payment of the investigation, if conducted by a person not employed by the department, are exhausted. The department may consult with any investigator and share information relevant to the child's best interests. The cost of the investigation and report must be paid according to the final order. ~~The cost of the educational evaluation under subsection (2)(a) must be paid from the fees for filing petitions for contested amendment of a parenting plan, as provided in 25-1-201(9).~~

(2) The court shall determine, if appropriate, the level of evaluation necessary for adequate investigation and preparation of the report, which may include one or more of the following:

(a) parenting education;

(b) mediation pursuant to 40-4-301;

(c) factfinding by the investigator; and

(d) psychological evaluation of the parties.

(3) In preparing a report concerning a child, the investigator may consult any person who has information about the child and the child's potential parenting arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. Except as required for children 16 years of age or older, the investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the persons or entities authorized by law to grant or withhold access to the records. The child's consent must be obtained if the child has reached ~~the age of~~ 16 *years of age* unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (4) are fulfilled, the investigator's report may be received in evidence at the hearing.

(4) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. When consistent with state and federal law, the investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (3), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing. The results of the investigation must be included in the court record and may, without objection, be sealed."

Section 147. Section 40-4-226, MCA, is amended to read:

"**40-4-226. Court-sanctioned educational program on effects of dissolution of marriage on children.** (1) In a proceeding for dissolution of marriage involving a minor child or in a parenting plan proceeding involving a minor child, a court shall inform the parties, excluding the minor child, of available educational programs concerning the effects of dissolution of marriage on children and, if the court finds that it would be in the best interest of the minor child, shall order the parties to attend a court-sanctioned program. The program may be divided into sessions. The program must be educational in nature and may not be designed for individual therapy.

(2) The cost of ~~implementing~~ the court-sanctioned educational program for each district court, provided for in subsection (1), ~~must be paid from the fees for filing petitions for contested amendment of a parenting plan, provided for in 25-1-201(9). Costs~~ may include parenting evaluation and guardian ad litem services."

Section 148. Section 41-3-1122, MCA, is amended to read:

"**41-3-1122. Payment for support of youth in need of care, youth in need of intervention, or delinquent youth ~~— reimbursement by county~~.** (1) Whenever a youth who is a youth in need of care, a youth in need of intervention, or a delinquent youth is placed by the department of public health and human services or the department of corrections in a youth care facility, the department making the placement shall pay, within the limits of the appropriation for that purpose, a foster care payment to the youth care facility at a rate established by the department of public health and human services for the youth's board, clothing, personal needs, treatment, and room.

~~(2) On or before the 20th of each month, the department of public health and human services or the department of corrections shall present a claim to the county of residence of the youth for no more than one-half of the nonfederal share of the payments made during the month. The county shall make reimbursement to the department within 20 days after the claim is presented.~~

~~(3) Except as provided in subsection (4), when a county's level of expenditure for any year reaches the level of reimbursement for foster care in fiscal year 1987, the county has no further obligation for foster care expenditures.~~

~~(4) If a county's level of expenditure for foster care in fiscal year 1987 was $10,000 or less, the county's level of expenditure for purposes of determining the county's reimbursement specified in subsection (3) is the level of expenditures for fiscal year 1987 or the average of expenditures for fiscal years 1984 through 1987, whichever is less.~~

~~(5) A county that was state-assumed prior to 1987 but that at a later date reassumes responsibility pursuant to 53-2-811 is responsible for reimbursement of foster care expenditures up to the county's calculated level of expenditures for fiscal year 1987 as if the county had not been state-assumed.~~

~~(6)~~*(2)* The department shall conduct or arrange for the review required under 41-3-1115~~,~~ or, when applicable, *under* 41-3-1010 of a youth placed in a youth care facility if the youth is placed by the department."

Section 149. Section 42-2-105, MCA, is amended to read:

"**42-2-105. Fees for services — special revenue account — statutory appropriation.** (1) The department shall establish fees that it may charge and that are reasonably related to the cost incurred by the department in completing or contracting for adoption services.

(2) The department may contract with licensed social workers or licensed child-placing agencies for the purposes of completing the preplacement or postplacement evaluation or for providing postplacement supervision.

(3) An agency contracting to perform the services may set and charge a reasonable fee commensurate with the services provided.

(4) There is an adoption services account in the state special revenue fund. The fees collected by the department under this title ~~and from the district court filing fee pursuant to 25-1-201(1)(q)~~ must be deposited into this account and may be used by the department for adoption services. The money in the account is statutorily appropriated, as provided in 17-7-502, to the department."

Section 150. Section 50-2-111, MCA, is amended to read:

"**50-2-111. City-county board appropriations.** If a city-county board is created, it is financed by one of the following methods:

(1) (a) The county commissioners and governing body of each participating city may mutually agree upon the division of expenses.

(b) The county's part of the total expenses is financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 23.

(c) Each participating city's part of the total expenses is financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 42.

(d) All money must be deposited with the county treasurer who shall disburse the money as county funds.

(2) (a) The county commissioners and governing body of each participating city may mutually agree upon the division of the expenses.

(b) Subject to 15-10-420, the county's part of the total expenses is financed by a ~~special~~ levy ~~of not more than 5 mills~~ on the taxable ~~valuation~~ *value* of all *taxable* property outside the incorporated limits of each participating city after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 23. If the ~~5-mill~~ levy is not sufficient to fund the county's share, the county commissioners may supplement it with an appropriation from the county general fund.

(c) Subject to 15-10-420, each participating city's part of the total expenses is financed by a ~~special~~ levy ~~of not more than 5 mills~~ on the taxable ~~valuation~~ of all *taxable* property within the incorporated limits of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 42.

(d) All money must be deposited with the county treasurer who shall disburse the money as county funds.

(e) The ~~special~~ levies authorized by this subsection *(2)* are in addition to all other levies authorized by law."

Section 151. Section 50-2-114, MCA, is amended to read:

"**50-2-114. ~~Special mill~~ *Mill* levy.** Subject to 15-10-420, if the general fund of a city or county is not sufficient to meet the approved budget, a levy ~~of not more than 1 mill~~ may be made on the taxable ~~valuation~~ *value* of all *taxable* property in the city or county in addition to all other levies authorized by law. This section does not apply when the board has been financed under 50-2-111(2)."

Section 152. Section 52-6-105, MCA, is amended to read:

"**52-6-105. Funding.** ~~(1) Revenue from the marriage license fee and the fee collected for filing a declaration of marriage without solemnization is the primary source of funding for the battered spouses and domestic violence program. The disposition of the marriage license fee is as established in 25-1-201.~~

~~(2)~~ Twenty percent of the operational costs of a battered spouses and domestic violence program must come from the local community served by the program. The local contribution may include in-kind contributions."

Section 153. Section 53-2-207, MCA, is amended to read:

"**53-2-207. Power of department in administering state and federal funds.** In administering or supervising any state or federal funds appropriated or made available to the department for public assistance purposes, the department has the authority to:

~~(1) require the county to bear the proportion of the total of local public assistance as is fixed by law relating to the assistance;~~

~~(2)~~*(1)* make use of all legal processes to enforce the standards prescribed for public assistance purposes by the department; and

~~(3)~~*(2)* require that each part of the public assistance laws be in effect in all counties of the state."

Section 154. Section 53-2-301, MCA, is amended to read:

"**53-2-301. County ~~departments~~ *offices of public assistance* to be established.** There ~~shall~~ *must* be established in each county of the state~~, except in a county that has transferred its public assistance and protective services responsibilities to the state under the provisions of part 8 of this chapter, a county department of public welfare, which shall consist of a county board of public welfare and such staff personnel as may be necessary for the efficient performance of the~~ *one or more local offices of* public assistance ~~activities of the county~~. If conditions warrant ~~and if two or more county boards enter into an agreement~~, two or more counties may ~~combine~~ *be combined* into one administrative unit and *the department may* use the same *local office of public* *assistance and* staff ~~personnel throughout the administrative unit~~ *to administer public assistance in the combined counties.*"

Section 155. Section 53-2-304, MCA, is amended to read:

"**53-2-304. (Temporary) Staff ~~personnel~~ of county department.** (1) Each county board shall select and appoint, from a list of qualified persons furnished by the department, staff ~~personnel~~ that ~~are~~ *is* necessary. The staff ~~personnel~~ in each county must consist of at least one qualified staff worker or investigator and clerks and stenographers that may be necessary. If conditions warrant, the county board, with the approval of the department, may appoint some fully qualified person listed by the department as supervisor of its staff ~~personnel~~. The staff ~~personnel~~ of each county department ~~are~~ *is* directly responsible to the county board, but the department ~~of public health and human services,~~ may supervise the county employees in respect to the efficient and proper performance of their duties. The county board of public welfare may not dismiss any member of the staff ~~personnel~~ without the approval of the department. The department may request the county board to dismiss any member of the staff ~~personnel~~ for inefficiency, incompetence, or similar cause. The final authority for dismissal is the county board. In counties where the department has assumed the administration of welfare duties, the final authority for dismissal is the director of the department.

~~(2) The department shall pay from state public assistance funds the salaries of public assistance staff personnel attached to a county board. The department shall also pay the travel expenses of those personnel, as provided in 2-18-501 through 2-18-503, when those personnel are away from the county seat in the performance of their duties. However, the county board shall reimburse the department from county poor funds for those salaries, travel expenses, and indirect costs and for the department's administrative costs allocated by the department to the county for the administration of county welfare programs, as follows:~~

~~(a) The county board shall reimburse the department 50% of all salaries, travel expenses, and allocated direct and indirect administrative costs attributable to cash assistance and emergency assistance programs created pursuant to Title 53, chapter 4. However, a county is not required to reimburse the department more for the salaries, travel expenses, indirect costs, and allocated administrative costs for 1 state fiscal year than the dollar amount that the county paid as its share of cash assistance and emergency assistance programs in 1996.~~

~~(b) The county board shall reimburse the department the full amount of salaries, travel expenses, and allocated direct and indirect administrative costs attributable to any public assistance program other than the cash assistance and emergency assistance programs created pursuant to Title 53, chapter 4, not reimbursed to the department by the federal government.~~

~~(3) All administrative costs of the county department of public welfare other than the costs described in subsections (2)(a) and (2)(b) must be paid from county poor funds.~~

~~(4) On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the department shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make reimbursements~~

~~within 20 days after the presentation of the claim, and the department of public health and human services shall credit all reimbursements to its account for administrative costs.~~

~~(5)~~*(2)* ~~If a county has transferred its public assistance and protective services responsibilities to the state under part 8 of this chapter, the~~ *The* department shall select, appoint, and supervise all necessary public assistance and protective services ~~personnel~~ *staff*, including if necessary a supervisor of staff ~~personnel~~. All personnel are directly responsible to the department. (Terminates June 30, 2001—sec. 6, Ch. 341, L. 1999.)

53-2-304. (Effective July 1, 2001) Staff ~~personnel~~ of county department. (1) Each county board shall select and appoint, from a list of qualified persons furnished by the department, ~~of public health and human services~~ staff ~~personnel~~ that ~~are~~ *is* necessary. The staff ~~personnel~~ in each county must consist of at least one qualified staff worker or investigator and clerks and stenographers that may be necessary. If conditions warrant, the county board, with the approval of the department ~~of public health and human services~~, may appoint some fully qualified person listed by the department as supervisor of its staff ~~personnel~~. The staff ~~personnel~~ of each county department ~~are~~ *is* directly responsible to the county board, but the department ~~of public health and human services~~ may supervise the county employees in respect to the efficient and proper performance of their duties. The county board of public welfare may not dismiss any member of the staff ~~personnel~~ without the approval of the department ~~of public health and human services~~. The department may request the county board to dismiss any member of the staff ~~personnel~~ for inefficiency, incompetence, or similar cause. The final authority for dismissal is the county board. In counties where the department has assumed the administration of welfare duties, the final authority for dismissal is the director of the department.

~~(2) Public assistance staff personnel attached to the county board must be paid from state public assistance funds both their salaries and their travel expenses as provided for in 2-18-501 through 2-18-503 when away from the county seat in the performance of their duties, but the county board of public welfare shall reimburse the department of public health and human services from county poor funds the full amount of the salaries and travel expenses not reimbursed to the department by the federal government and the full amount of the department's administrative costs that are allocated by the department to the county for the administration of county welfare programs and not reimbursed to the department by the federal government. Under circumstances prescribed by the department of public health and human services, the reimbursement by the county board of public welfare may be less than the county share as prescribed in this subsection. All other administrative costs of the county department must be paid from county poor funds.~~

~~(3) On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the department of public health and human services shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make reimbursements within 20 days after the presentation of the claim, and the department of public health and human services shall credit all reimbursements to its account for administrative costs.~~

~~(4)~~*(2)* ~~If a county has transferred its public assistance and protective services responsibilities to the state under part 8 of this chapter, the~~ *The* department shall select, appoint, and supervise all necessary public assistance and protective services ~~personnel~~ *staff*, including if necessary a supervisor of staff ~~personnel~~. All personnel are directly responsible to the department."

Section 156. Section 53-2-612, MCA, is amended to read:

"53-2-612. Lien of department or county upon third-party recoveries. (1) Upon notice by the department, a county, or the recipient to a third party or the third party's insurer as provided in subsection (5)(b), the department or county has a lien upon all money paid by a third party or the third party's insurer in satisfaction of a judgment or settlement arising from a recipient's claim for damages or compensation for personal injury, disease, illness, or disability to the extent that the department or county has paid medical assistance on behalf of the recipient for the same personal injury, disease, illness, or disability.

(2) The department or county may, in the name of the recipient on whose behalf medical assistance has been paid by the department or county, commence and prosecute to final conclusion any action that may be necessary to recover from a third party or the third party's insurer compensation or damages for medical assistance paid by the department or county on behalf of the recipient. This section does not affect the right of the recipient to initiate and prosecute to final conclusion an action for damages or compensation in the recipient's own name in accordance with the provisions of this section.

(3) (a) The lien:

(i) applies to all money paid by a third party or a third party's insurer regardless of whether the recovery is allocated by the parties or a court to any particular type or element of damages; and

(ii) is subordinate to the lien of an attorney under 37-61-420.

(b) Unless specifically provided by law, the recipient's right to recover damages or compensation from a third party or a third party's insurer may not be reduced or denied on the ground that the recipient's costs of medical treatment and medical-related services have been paid by the department or county under any public assistance program.

(c) From the amount collected by the department, county, or recipient from legal proceedings or as a result of settlement, reasonable attorney fees and costs must be first deducted and paid. Unless the department or county and the recipient agree to a different settlement, the amount previously paid as medical assistance by the department or county, less a pro rata share of attorney fees and costs, must be deducted next and paid to the department or county. The remainder, if any, must be paid to the recipient.

(d) In all cases of payment to the department or county out of an amount collected from a third party or insurer on a recipient's claim, the amount of the lien must be reduced by a pro rata share of attorney fees and costs as provided in subsection (3)(c), but the department or county may not be required to participate in payment of attorney fees and costs unless the recipient's claim results in recovery out of which the department or county receives full or partial payment of its lien.

(e) Except as provided in subsections (3)(e)(i) and (3)(e)(ii), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

(i) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the medicaid program.

(ii) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

(4) (a) A recipient of medical assistance or the recipient's legal representative shall notify the department or county by certified letter within 30 days if the recipient or the recipient's legal representative asserts a claim against a third party or a third party's insurer for damages or compensation for a personal injury, disease, illness, or disability for which the department or county paid medical assistance in whole or in part or for which the recipient has applied for medical assistance. The notice must be mailed to the director of the department or the director of the county department that paid medical assistance. At the same time, a copy must be sent by certified mail to the third party or the third party's insurer.

(b) The notice must contain the following information:

(i) the name and address of the recipient and the recipient's legal representative, if any;

(ii) the name and address of the third party alleged to be liable to the recipient;

(iii) the name and address of any known insurer of the third party; and

(iv) the judicial district and docket number of any action filed.

(c) A recipient or the recipient's legal representative who has received actual notice that the department or county has paid medical assistance is liable to the department or county for the amount it is entitled to receive under this section if:

(i) the recipient or the recipient's legal representative fails to timely notify the department or county or fails to mail a copy of the notice to the third party or the third party's insurer; and

(ii) a third party or the third party's insurer that did not receive notice from the department or county as provided for in subsection (5)(b) pays the recipient or the recipient's legal representative without satisfying any lien of the department or county.

(5) (a) If a third party or the third party's insurer that has received notice of the department's or county's lien as provided for in subsection (5)(b) makes payment in whole or in part of the recipient's claim without first satisfying the lien of the department or county, the third party or the third party's insurer is liable to the department or county for the amount the department or county is entitled to receive under this section.

(b) For the purposes of subsection (5)(a), a third party or the third party's insurer has been given notice if:

(i) the department or county mails, by certified mail, to the third party or the third party's insurer:

(A) a statement of the medical assistance paid or that may be paid by the department or county on behalf of the recipient; and

(B) a claim for reimbursement;

(ii) the recipient or the recipient's legal representative mails, by certified mail, to the third party or the third party's insurer:

(A) a copy of the notice required by subsection (4)(a); or

(B) a statement stating that the recipient has applied for or has received medical assistance from the department or county in connection with the same claim; or

(iii) the recipient or the recipient's legal representative has commenced an action against the third party or the third party's insurer for damages or compensation for personal injury, disease, illness, or disability for which the department or county has paid or may pay medical assistance, in whole or in part, and the department or county files in the court in which the action is pending a notice of lien stating that a lien is claimed for medical assistance on any money paid in satisfaction of any judgment in or settlement of the action and that:

(A) medical assistance in a stated amount has been paid by the department or county on behalf of the recipient; or

(B) medical assistance may be paid on behalf of the recipient.

(6) As used in this section, the following definitions apply:

(a) "County" means a county ~~department of welfare in a county~~ that has ~~not transferred its public assistance responsibilities to the state under the provisions of Title 53, chapter 2, part 8~~ *provided medical assistance to a recipient through an indigent assistance program operated at the option of the county.*

(b) "Legal representative" means an attorney having or exercising authority on behalf of a recipient with respect to a claim or action to recover damages or compensation from a third party or a third party's insurer.

(c) "Recipient" means a person on whose behalf the department or a county has paid or may pay medical assistance for the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability. If the context allows, the term includes a recipient's legal representative.

(d) "Third party" means an individual, institution, corporation, or public or private agency that is or may be liable to pay all or part of the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability of a recipient of medical assistance from the department or a county and includes but is not limited to insurers, health service organizations, and parties liable or who may be liable in tort."

Section 157. Section 53-3-115, MCA, is amended to read:

"**53-3-115. Legislative findings.** (1) The legislature finds that in order to use the limited resources of the state for the purposes of providing public assistance to persons whom it has determined are in need, certain programs must be eliminated and the provision of public assistance programs must be reorganized for more efficient delivery of services.

(2) The legislature finds that county governments are in the best position to efficiently and effectively deliver services for those in need who are not otherwise eligible for similar services provided by the department of public health and human services.

(3) (a) The legislature finds that the needs of persons who are aged, infirm, or misfortunate are adequately and appropriately provided for through the following programs:

(i) medicaid;

(ii) aid for dependent children;

(iii) food stamps;

(iv) commodities; and

(v) low-income energy assistance.

(b) The legislature further finds that the counties may in their discretion provide other programs of public assistance that they determine are appropriate and that may be funded with money derived from ~~the~~ *a* county ~~poor fund~~ mill levy.

(4) The legislature finds that the effects of eliminating the state program of general relief are not known and that the administration and financing of public assistance programs by each county may not provide uniform assistance throughout the state."

Section 158. Section 53-3-116, MCA, is amended to read:

"53-3-116. Indigent assistance — optional county program. (1) A county may provide a program of indigent assistance that it determines necessary. The program may include assistance for food, clothing, shelter, transportation, and medical assistance for individuals not eligible for state or federal programs providing similar assistance. A county may provide for the burial, entombment, or cremation of indigents. The indigent assistance program of the county includes:

(a) job search, job training, work-for-assistance, and employment programs; and

(b) health care, preventive care, and wellness programs as determined by the county commissioners.

(2) A county may establish the criteria for determining eligibility for assistance, including but not limited to residency requirements, limits on income and resources, and the amount, scope, and duration of assistance.

(3) A county may deny assistance for a reasonable period if a person has voluntarily left employment without good cause or is discharged due to misconduct.

(4) The program may be funded with money derived from ~~the~~ *a* county ~~poor fund~~ mill levy ~~established in 53-2-322~~.

(5) A person is indigent for purposes of this subsection if the value of all income and resources available to pay for that person's burial, entombment, or cremation at the time of death is less than the negotiated amount due the funeral home or mortician for an indigent burial. Available income and resources may be determined by the county.

(6) A county may seek reimbursement under 40-6-303, if applicable, for costs paid under this section.

(7) A county may not deduct amounts that may be recovered from an adult child of a deceased indigent or recovered from resources of a deceased indigent from a contract amount due a funeral home or mortician for burial services provided under 7-4-2915 or this section. A funeral home or a mortician that recovers an amount in excess of a contract amount paid under this subsection shall reimburse the county for the amount recovered up to the amount of the contract."

Section 159. Section 53-20-208, MCA, is amended to read:

"53-20-208. Contributions of counties and municipalities. (1) The boards of county commissioners of the several counties and the governing bodies of municipalities of this state may~~, in their discretion,~~ contribute to any developmental disabilities facility approved by the department, without regard to whether the facility is within or outside of their respective jurisdictions. Subject to 15-10-420, the boards of county commissioners of the counties may levy a tax ~~up to but not to exceed 1 mill~~ on ~~each dollar of~~ *the* taxable *value of all taxable* property within the county. The tax is in addition to all other county tax levies. All proceeds of the tax, if levied, must be used for the sole purpose of support of developmental disabilities services.

(2) For the purpose of carrying out the provisions of this section, boards of county commissioners and governing bodies of municipalities may appropriate out of the general fund of their respective counties or municipalities."

Section 160. Section 53-21-204, MCA, is amended to read:

"53-21-204. Mental health corporations. (1) Mental health regions must be established in the state mental health plan and must conform to the mental health regions as established in the state mental health construction plan promulgated by the department under the federal Community Mental Health Centers Act.

(2) The mental health regions must be established under Title 35, chapter 2. Upon incorporation, a mental health region may enter into contracts with the department in order to carry out the department's comprehensive plan for mental health. These nonprofit corporations may not be considered agencies of the department or the state of Montana.

(3) Upon the establishment of the mental health regions, the county commissioners in each of the counties in the region designated as participating counties pursuant to subsection (8) shall appoint a person from their respective county to serve as a representative of the county on the regional mental health corporation board. In addition, unless the groups in subsections (3)(a) and (3)(b) are already represented, the board consists of three members-at-large who must be chosen according to the corporate bylaws, as follows:

(a) Two members must be chosen, one from each of the following groups:

(i) persons with severe and disabling mental illnesses; and

(ii) family members of persons with severe and disabling mental illnesses.

(b) One person must be chosen from among the following four groups:

(i) parents of children with emotional disturbances;

(ii) advocates of mental health services for the elderly;

(iii) health care professionals; or

(iv) organizations that provide community support services, such as food, housing, and clothing, to persons with severe and disabling mental illnesses.

(4) This section does not prohibit a regional mental health corporation from voluntarily expanding its board membership to include members-at-large, appointed by the board, from any of the groups described in subsections (3)(a) and (3)(b).

(5) The board must be established under guidelines adopted by the bylaws of the corporation. All appointments to the board must be for terms of 2 years, and the department must be notified in writing of all appointments.

(6) The duties of an organized regional mental health corporation board include:

(a) annual review and evaluation of mental health needs and services within the region;

(b) preparation and submission to the department and to each of the counties in the region of plans and budget proposals to provide and support mental health services within the region;

(c) establishment of a recommended proportionate level of financial participation of each of the counties within the region in the provision of mental health services within the limits of this section;

(d) receipt and administration of money and other support made available for the purposes of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, taxes, gifts, donations, and any other type of support or income. All funds received by the board in accordance with this part must be used to carry out the purposes of this part.

(e) supervision of appropriate administrative staff personnel of the operation of community mental health services within the region;

(f) keeping all records of the board and making reports required by the department.

(7) Regional mental health board members must be reimbursed from funds of the board for actual and necessary expenses incurred in attending meetings and in the discharge of board duties when assigned by the board.

(8) Prior to June 10 of each year, the board of mental health shall submit to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recommended proportionate share. If the board of county commissioners includes in the county budget the county's proportionate share of the regional board's budget, it must be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region must be derived from the county's general fund. ~~If~~ *Subject to 15-10-420, if* the general fund is insufficient to meet the approved budget, a levy ~~not to exceed 1 mill~~ may be made on the taxable valuation of the county in addition to all other taxes allowed by law to be levied on that property.

(9) The regional board of mental health, with the approval of the department, shall establish a schedule of fees for mental health services. The fees may be received by the board and used to implement the budget in accordance with subsection (6)(d)."

Section 161. Section 61-1-102, MCA, is amended to read:

"**61-1-102. Motor vehicle.** "Motor vehicle" means a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state. For the purpose of chapter 3, the term also includes trailers~~,~~ *and* semitrailers~~, and housetrailers~~. For the purpose of chapter 3, parts 1 and 2, the term also includes campers. The term does not include a bicycle as defined in 61-1-123."

Section 162. Section 61-3-203, MCA, is amended to read:

"**61-3-203. Fee for original certificate of ownership and transfer of registration — disposition.** ~~(1) Except as provided in subsection (2), a~~ *A* charge of $5 must be made for issuance of an original certificate of ownership of title and for a transfer of registration, which must be collected by the county treasurer. *An additional fee of $2 must be paid for light vehicles, trucks and buses weighing less than 1 ton, and logging trucks.* The fees must be ~~distributed as follows:~~

~~(a) The amount of $3.50 of each fee must be remitted to the department by the county treasurer, as provided in 15-1-504, for each application for original certificate of ownership or transfer of registration.~~

~~(b) Each March, the county commissioners of each county shall divide the fees retained by the county to:~~

~~(i) the city road fund of each city and town within the county based on the number of motor vehicles registered inside the corporate limits of each city or town; and~~

~~(ii) the county road fund based on the number of motor vehicles registered outside the corporate limits of cities and towns~~ *deposited in the state general fund.*

~~(2) Upon transfer of any interest in a used motor vehicle by a dealer, broker, or wholesaler as provided in 61-4-111(1), a charge of $5 must be paid to the department.~~"

Section 163. Section 61-3-321, MCA, is amended to read:

"**61-3-321. Registration fees of vehicles — certain vehicles exempt from license or registration fees — disposition of fees.** (1) Registration or license fees must be paid upon registration or reregistration of motor vehicles, trailers, ~~housetrailers,~~ and semitrailers, in accordance with this chapter, as follows:

(a) ~~motor vehicles weighing 2,850 pounds or under (other than motortrucks), $5~~ *light vehicles under 2,850 pounds, $13.75*;

~~(b) motor vehicles weighing over 2,850 pounds (other than motortrucks), $10;~~

~~(c) electrically driven passenger vehicles, $10;~~

~~(d) all motorcycles and quadricycles, $2;~~

~~(e) tractors or trucks, $10;~~

~~(f) buses, which are classed as motortrucks, licensed accordingly;~~

~~(g)~~*(b)* trailers *with a declared weight of less than 2,500 pounds* and semitrailers, ~~less than 2,500 pounds declared weight and housetrailers of all weights, $2~~ *$8.25*;

~~(h) trailers and semitrailers over 2,500 up to 6,000 pounds declared weight (except housetrailers), $5;~~

~~(i) trailers and semitrailers over 6,000 pounds declared weight, $10, except trailers and semitrailers registered in other jurisdictions through a proportional registration agreement;~~

~~(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or bridge materials, new and secondhand, $15 annually, regardless of size or capacity~~

(c) motor vehicles registered pursuant to 61-3-411 that are:

(i) over 2,850 pounds, $10; and

(ii) under 2,850 pounds, $5;

(d) off-highway vehicles registered pursuant to 23-2-817, $9;

(e) light vehicles over 2,850 pounds, trucks and buses less than 1 ton, and heavy trucks in excess of 1 ton, $18.75;

(f) logging trucks less than 1 ton, $23.75;

(g) motor homes, $22.25;

(h) motorcycles and quadricycles, $9.75;

(i) trailers and semitrailers between 2,500 and 6,000 pounds, $11.25;

(j) trailers and semitrailers in excess of 6,000 pounds, $16.25;

(k) travel trailers, $11.75; and

(l) recreational vehicles, $3.50.

~~(2) All rates are 25% higher for motor vehicles, trailers, and semitrailers that are not equipped with pneumatic tires.~~

~~(3) "Tractor", as specified in this section, means any motor vehicle, except a passenger car, that is used for towing a trailer or semitrailer.~~

~~(4)~~*(2)* If a motor vehicle, ~~housetrailer,~~ trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee ~~except for trailers or semitrailers registered as provided in 61-3-721(6)~~.

~~(5) An additional fee of $5.25 a year for each registration of a vehicle, except trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, must be collected as a registration fee. Revenue from this fee must be forwarded by the respective county treasurers to the state treasurer for deposit in the general fund. The department shall pay an amount equal to 25 cents from each motor vehicle registration fee from the general fund to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.~~

(3) An additional fee of $5 must be collected for the registration of each motorcycle as a safety fee and must be deposited in the state motorcycle safety account provided for in 20-25-1002.

~~(6)~~*(4)* A fee of $2 for each set of new number plates must be collected when number plates provided for under 61-3-332(3) are issued. ~~Revenue from this fee must be deposited as provided in subsection (5).~~

~~(7)~~*(5)* The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

[(6) (a) Except as provided in subsection (6)(b) and 61-3-562, a fee of 25 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The revenue derived from this fee must be forwarded by the county treasurer for deposit in the general fund for transfer to the credit of the senior citizens and persons with disabilities transportation services account provided for in [section 1 of Senate Bill No. 448].

(b) The following vehicles are not subject to the fee imposed in subsection (6)(a):

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) travel trailers, recreational vehicles, and off-highway vehicles registered pursuant to 23-2-817.]

~~(8)~~*(7)* The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.

~~(9)~~*(8)* A person qualifying under 61-3-332(10)(d) or 61-3-504 is exempt from the fees required under ~~subsections (1) and (5) of~~ this section.

(9) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund. (See compiler's comments for contingent termination of certain text.)"

Section 164. Section 61-3-325, MCA, is amended to read:

"**61-3-325. Vehicles subject to staggered registration — fees and taxes — disposition.** (1) Any motor vehicle in the fleet that is subject to staggered registration under 61-3-313 through 61-3-316 may be registered as part of the fleet on the following fleet renewal date. The department of transportation shall collect the remaining fees and taxes due for the registration year after crediting the registrant for the period that was previously paid.

(2) (a) The department of transportation shall compute fees and taxes due on each motor vehicle in the fleet as provided in part 5 of this chapter, based on its domicile.

(b) The department of transportation shall also collect a registration fee of $7.50 for each motor vehicle in the fleet in lieu of the registration fee provided for in 61-3-321. The department shall retain $4.50 of each registration fee for administrative costs and forward the remaining $3 to the state treasurer for deposit in the general fund ~~in lieu of the fee provided in 61-3-321(5)~~.

(c) All fees and taxes must be paid no later than February 15 each year.

~~(d) The fees and taxes collected must be distributed by the department of transportation as provided in 61-3-321 and part 5 of this chapter, based on the domicile of each motor vehicle.~~"

Section 165. Section 61-3-332, MCA, is amended to read:

"61-3-332. Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bears the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bears the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bears the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bears the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bears the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned to the dealer, in the position that the department designates.

(2) (a) All number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(b) For light vehicles that are permanently registered as provided in 61-3-527 or 61-3-562, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.

(3) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of

plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of $10. The additional fee must be distributed in accordance with the provisions of subsection ~~(10)(f)(iii) and (10)(f)(iv)~~ *(12)*.

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued:

(A) a special license plate under this section with a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(iii) Special license plates issued to a disabled veteran are not transferable to another person.

(iv) A disabled veteran is not entitled to a special disabled veteran's license plate for more than one vehicle.

(v) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(i) Fees required under 61-3-321(1) ~~and (5)~~ may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).

(ii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iii) An ex-prisoner of war is exempt from the ~~light vehicle taxes~~ *registration fees* imposed under ~~61-3-504~~ *61-3-560 through 61-3-562* for one vehicle that displays a set of ex-prisoner of war license plates.

(iv) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.

(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. ~~Upon an original application for a license under this subsection (10)(f), the county treasurer shall:~~

~~(A) deposit $3 of the special fee in the county general fund;~~

~~(B) remit $1 for deposit in the state general fund; and~~

~~(C) deposit the remainder of the special fee in the state special revenue account established in 10-2-603 for administration, construction, operation, and maintenance of the state veterans' cemeteries.~~

~~(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).~~

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.

(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733.

(12) Fees collected under this section must be deposited in the state general fund."

Section 166. Section 61-3-406, MCA, is amended to read:

"**61-3-406. Fees for personalized plates — disposition.** (1) In addition to all other fees and taxes imposed by law, the applicant for a personalized license plate shall pay a fee of $25 for the original personalized license plate and a fee of $10 for each transfer or renewal ~~thereof~~ *of the personalized license plate.*

(2) The revenue derived from the fee ~~as provided herein~~ must be deposited ~~as follows:~~

~~(a) $5 of the application fee and $5 of the transfer or renewal fee in the county general fund; and~~

~~(b) $20 of the application fee and $5 of the transfer or renewal fee~~ in the state general fund."

Section 167. Section 61-3-411, MCA, is amended to read:

"**61-3-411. Registration of a motor vehicle owned and operated solely as a collector's item.** (1) An owner of a motor vehicle *that is* more than 30 years old~~,~~ *and that is* used solely as a collector's item and not for general transportation purposes~~,~~ may file with the department an application for the registration of the motor vehicle. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the name and address of the person from whom purchased;

(c) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle; and

(d) that the vehicle is owned and operated solely as a collector's item and not for general transportation purposes.

~~(2) The registration fee for a motor vehicle registered under subsection (1) is:~~

~~(a) for a vehicle weighing 2,850 pounds or less, $5; and~~

~~(b) for a vehicle weighing more than 2,850 pounds, $10.~~

~~(3)~~*(2)* Upon receipt of the application for registration and payment of the registration fee, the department shall file the application and register the motor vehicle ~~therein described~~ in the manner specified in 61-3-101 and, unless the applicant chooses to exercise the option allowed in 61-3-412, shall deliver to the applicant:

(a) for a motor vehicle manufactured in 1933 or earlier, two license plates bearing the inscription "Pioneer—Montana" and the registration number; or

(b) for a motor vehicle manufactured in 1934 or later and more than 30 years old, two license plates bearing the inscription "Vintage—Montana" and the registration number.

~~(4)~~*(3)* The year of issuance may not be shown on the plates.

~~(5)~~*(4)* Annual renewal of the registration of a motor vehicle registered under this section is not required, and the registration is valid as long as the vehicle is in existence *and owned by the initial registrant.*~~; provided, however, that upon~~ *Upon* sale of the motor vehicle, the purchaser shall renew the registration and pay ~~the~~ *a* license ~~fees~~ *renewal fee* ~~provided in subsection (2)~~ *of $10 for a vehicle weighing more than 2,850 pounds and $5 for a vehicle weighing 2,850 pounds or less.*"

Section 168. Section 61-3-412, MCA, is amended to read:

"**61-3-412. Display of original Montana license plates on collector's item vehicle — definition — validation.** (1) As used in this section, "original Montana license plate" means a license plate issued according to the provisions of

61-3-331; section 53-116, R.C.M. 1947; section 1759.1, R.C.M. 1935; or section 1759, R.C.M. 1921; whichever section was effective during the year of the manufacture of the motor vehicle on which the license plate is authorized to be displayed.

(2) Notwithstanding the provisions of 61-3-332, the department shall authorize the owner of a motor vehicle registered as provided in 61-3-411 to display original Montana license plates, with validation as required in subsection (3), after:

(a) payment of the fee required in subsection (5);

(b) inspection by a highway patrol officer of the original Montana license plate to be displayed on the motor vehicle and, upon payment of a $5 fee, receipt of the highway ~~patrolman's~~ *patrol officer's* certification that ~~he~~ *the officer* has determined *that* the license plate is legible and meets the requirements of subsection (1); and

(c) receipt of an application by the owner of the motor vehicle as provided for in 61-3-411.

(3) If the owner of a vehicle registered under the provisions of 61-3-314 meets the requirements of subsection (2), the department shall:

(a) file the application and register information on the motor vehicle in the manner prescribed in 61-3-101; and

(b) issue a validating decal inscribed with:

(i) a unique number; and

(ii) the letter:

(A) "P" to designate vehicles described in ~~61-3-411(3)(a)~~ *61-3-411(2)(a)*; or

(B) "V" to designate vehicles described in ~~61-3-411(3)(b)~~ *61-3-411(2)(b).*

(4) The owner of the motor vehicle shall permanently affix the validating decal to the windshield of the collector's item motor vehicle or, if ~~no~~ *a* windshield ~~exists~~ *does not exist*, to another prominent and visible position on the vehicle.

(5) The owner of the motor vehicle shall pay to the department with the application required under this section a one-time special collector's item motor vehicle license fee of $20."

Section 169. Section 61-3-426, MCA, is amended to read:

"**61-3-426. Combined license plates.** (1) An application for license plates for amateur radio operators may be combined with an application for the special license plates issued to veterans of the armed services who comply with the provisions in 61-3-332(10)(d), (10)(e), and (10)(f) or with an application for special license plates issued to a person with a disability who complies with the provisions in 61-3-332(10)(g). The applicant for the combined license plates is liable for the payment of all taxes and fees applicable to regular motor vehicle license plates and shall pay an additional fee of $5 for the original issuance as provided in 61-3-422.

(2) An application for license plates for amateur radio operators may be combined with an application for license plates for disabled veterans as provided in 61-3-332(10)(c). The fees for the registration of the combined license plates are

the fees provided for in 61-3-332(10)(c) and in 61-3-422. The fees are in lieu of all other fees and taxes for that vehicle under this chapter.

(3) An application for license plates for amateur radio operators may be combined with an application for license plates for ex-prisoners of war as provided in 61-3-332(10)(d). The fees required under 61-3-321(1) ~~and (5)~~ may not be assessed upon one set of combination license plates issued to an ex-prisoner of war. An ex-prisoner of war receiving combination license plates under this section is liable for the fees required under 61-3-422.

(4) The combined license plates must be stamped with the official amateur radio call letters of the owner as assigned to the owner by the federal communications commission. The plates must also be stamped with the design or decal provided for in 61-3-332(10)(c), (10)(d), (10)(e), (10)(f), or (10)(g)."

Section 170. Section 61-3-431, MCA, is amended to read:

"**61-3-431. Special mobile equipment — exemption from registration and payment of fees and charges — identification plate — publicly owned special mobile equipment.** (1) A person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as defined in 61-1-104 and occasionally moves that equipment on, over, or across the highways of the state is not subject to registration of that equipment or required to pay the fees and charges provided for in 61-4-301 through 61-4-308 or part 2 of chapter 10. Prior to movement on the highways, however, each piece of equipment must display an equipment identification plate or a dealer's license plate attached to the equipment.

(2) Annual application for the identification plate must be made to the county treasurer before any piece of equipment is moved on the highways. Application must be made on a form furnished by the department of justice, together with the payment of a fee of $5. The equipment for which a special mobile equipment plate is sought is subject to the assessment of personal property taxes on the date application is made for the plate. The personal property taxes assessed against the special mobile equipment must be paid before ~~the issuance of~~ a special mobile equipment plate *may be issued*. The fees collected under this section ~~belong to the county road~~ *must be deposited in the state general* fund.

(3) The identification plate expires on December 31 of each year. If the expired identification plate is displayed, an owner of special mobile equipment registered under the provisions of this section is entitled to operate the equipment between January 1 and February 15 following expiration without displaying the identification plate or receipt of the current year.

(4) Publicly owned special mobile equipment and implements of husbandry used exclusively by an owner in the conduct of the owner's farming operations are exempt from this section."

Section 171. Section 61-3-457, MCA, is amended to read:

"**61-3-457. Ex-prisoner of war license plates transferable to spouse — conditions.** Upon the death of an ex-prisoner of war and providing that the surviving spouse does not remarry, the spouse of an ex-prisoner of war may retain and renew the one set of special license plates issued under 61-3-332(10)(d) and is not liable for light vehicle taxes under 61-3-504, for the fees required under 61-3-321(1) ~~and (5)~~, or for the special license plate fees required under 61-3-332."

Section 172. Section 61-3-465, MCA, is amended to read:

"61-3-465. Issuance — application — additional fee — disposition. (1) The department shall issue or renew collegiate license plates upon receipt of an application that shows:

(a) compliance with 61-3-303, 61-3-311, and 61-3-312; and

(b) payment to the county treasurer of:

(i) an initial application and manufacturing fee of $2.50, when required; and

(ii) an annual scholarship donation of $20 for the benefit of the institution named in the application.

(2) Once each month the county treasurer shall transfer to the state treasurer the total of the amounts collected for:

(a) the initial application and manufacturing fee for deposit in the ~~Montana state prison industries account in the proprietary fund for appropriation by the legislature to pay the cost of manufacturing collegiate license plates~~ *state general fund*; and

(b) scholarship donations provided for in subsection (1)(b)(ii), along with a schedule showing the number of collegiate license plates issued and the total donations received for the benefit of each institution.

(3) Once each month the state treasurer shall distribute to the student academic scholarship fund or foundation of each institution an amount equal to the total donations credited to that institution and transferred to the state treasurer by the county treasurers during the preceding month."

Section 173. Section 61-3-509, MCA, is amended to read:

"61-3-509. Disposition of ~~taxes~~ *fees*. ~~(1)~~ All registration fees imposed by 61-3-561 from light vehicles, all registration fees imposed by 61-3-522 from motor homes, all fees in lieu of tax imposed by 61-3-527 from motorcycles and quadricycles, and all fees imposed by 61-3-529 from buses, motor vehicles having a manufacturer's rated capacity of more than 1 ton, and truck tractors, for which a license is sought and an original application for title that includes a manufacturer's statement of origin is made, must be remitted to the state treasurer every 30 days. The state treasurer shall credit the payments to the ~~highway restricted state special revenue account~~ *state general fund*.

~~(2) Except as provided in subsections (1) and (3), the county treasurer shall, after deducting the district court fee, credit all taxes on motor vehicles, registration fees on light vehicles, and fees in lieu of tax on motorcycles, quadricycles, motor homes, travel trailers, campers, trailers, pole trailers, semitrailers, buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors collected under 61-3-521, 61-3-527, 61-3-529, 61-3-537, and 61-3-560 through 61-3-562 to a motor vehicle suspense fund. At some time between March 1 and March 10 of each year and every 60 days after that date, the county treasurer shall distribute the money in the motor vehicle suspense fund. Except for registration fees collected under 61-3-560 through 61-3-562, the county treasurer shall distribute the money in the fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed. For money in the fund collected under 61-3-527 and 61-3-560 through 61-3-562, the county treasurer shall disregard the statewide mills levied for the university system, county elementary and high school equalization under 20-9-331 and 20-9-333, the mills levied for state equalization aid under 20-9-360, and the mills~~

levied for state assumption of public assistance under 53-2-813 in determining distribution proportions of the money and may not distribute money collected under 61-3-527 and 61-3-560 through 61-3-562 to the state for those levies.

~~(3) The county treasurer shall deduct as a district court fee 10% of the amount of the registration fee collected on light vehicles under 61-3-560 through 61-3-562. The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward the amount in the account to the state treasurer at the time that the county treasurer distributes money from the motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to the state special revenue fund to be used for purposes of state funding of district court expenses as provided in 3-5-901.~~"

Section 174. Section 61-3-524, MCA, is amended to read:

"61-3-524. Decal required on camper — application for decal — application fee — issuance. (1) A camper~~,~~ *that is* subject to the fee in lieu of tax imposed under 61-3-521~~,~~ may not be operated by a person on the public highways or streets in this state unless there is displayed in a conspicuous place on the camper a decal as visual proof that the fee has been paid on the camper for the current year.

(2) Application for the issuance of the decal must be made to the county treasurer in the county of the owner's residence, accompanied by an application fee of ~~$1~~ *$4.50*, on a form furnished by the department, which may be obtained at the county treasurer's office. The form must provide for substantially the following information:

(a) name of owner;

(b) address;

(c) name of manufacturer;

(d) model number;

(e) make;

(f) year of manufacture; and

(g) other information that the department may require.

(3) (a) The county treasurer shall sign the application and transmit the application *and the fee* to the department. *The fee must be deposited in the state general fund.*

(b) Upon receipt of the application in approved form and payment of the fee in lieu of tax by the applicant, the county treasurer shall issue to the applicant a numbered decal in the style and design prescribed by the department and of a different color than the preceding year."

Section 175. Section 61-3-527, MCA, is amended to read:

"61-3-527. Fee in lieu of tax for motorcycles and quadricycles — schedule of fees — permanent registration. (1) (a) There is a fee in lieu of property tax imposed on motorcycles and quadricycles. The fee is in addition to annual registration fees.

(b) The fee imposed by subsection (1)(a) is not required to be paid by a dealer for motorcycles or quadricycles that constitute inventory of the dealership.

(2) The owner of a motorcycle or quadricycle shall pay a fee based on the age of the motorcycle or quadricycle and the size of the engine, as follows:

(a) The fee schedule for a motorcycle or quadricycle with an engine that measures from 1 cubic centimeter to 600 cubic centimeters is as follows:

(i) less than 5 years old, $30;

(ii) 5 years old and less than 11 years old, $15; and

(iii) 11 years old and older, $6.

(b) The fee schedule for a motorcycle or quadricycle with an engine that measures from 601 cubic centimeters to 1,000 cubic centimeters is as follows:

(i) less than 5 years old, $55;

(ii) 5 years old and less than 11 years old, $20; and

(iii) 11 years old and older, $6.

(c) The fee schedule for a motorcycle or quadricycle with an engine that measures 1,001 cubic centimeters and larger is as follows:

(i) less than 5 years old, $90;

(ii) 5 years old and less than 11 years old, $50; and

(iii) 11 years old and older, $6.

(3) (a) Except as provided in subsection (3)(b), the age of a motorcycle or quadricycle is determined by subtracting the manufacturer s designated model year from the current calendar year.

(b) If the purchase year of a motorcycle or quadricycle precedes the designated model year of the motorcycle or quadricycle and the motorcycle or quadricycle is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

(4) (a) The owner of a motorcycle or quadricycle *that is* 11 years old or older *and that is* subject to the fee in lieu of tax under this section may permanently register the motorcycle or quadricycle upon payment of a $30 fee in lieu of tax, the applicable registration and license fees under 61-3-321, and an amount equal to five times the applicable fees imposed *or amounts calculated* for each of the following:

(i) the motorcycle safety ~~training~~ fee under ~~20-25-1007~~ *61-3-321 to be deposited in the account provided for in 20-25-1002*;

(ii) weed control ~~fees~~ under ~~61-3-510~~ *[section 3(3)(b)]*;

(iii) *$1 for the former* county motor vehicle computer ~~fees under 61-3-511~~ *fee*; and

(iv) if applicable, renewal fees for personalized plates under 61-3-406.

(b) A person who permanently registers a motorcycle or quadricycle as provided in this subsection (4) shall pay an additional $2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the $2 fee collected under this subsection (4)(b) from each vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709."

Section 176. Section 61-3-707, MCA, is amended to read:

"61-3-707. Foreign vehicles used for transportation in connection with employment. (1) (a) Before a motor vehicle *that has been* assessed a fee pursuant to 15-24-301(4) may be operated in Montana for a calendar quarter, the person responsible for payment of fees shall apply for and obtain a window decal provided by the department.

(b) Decals must be color-coded to distinguish the four quarterly registration periods of the year.

(c) An applicant may purchase a decal for more than one registration quarter at a time by paying the appropriate amount.

(d) There is a $2 fee for each decal, and money collected from this fee must be deposited to the ~~county~~ *state* general fund. The $2 fee is in addition to the registration fee.

(e) A current window decal must be displayed on the lower right-hand corner of the windshield.

(2) (a) Before a motor vehicle exempted pursuant to 15-6-217 may be operated in Montana, the person responsible for the motor vehicle shall apply for and obtain a window decal from the county treasurer. The department shall supply the decals to the county treasurers.

(b) An application approved by the department must include a verification from the employer that the person is employed by a health care facility in a rural, medically underserved area that experiences difficulty in recruiting and retention of health care professionals.

(c) Decals expire each year on December 31 of the year in which issued, and application for reregistration must be filed with the county treasurer no later than February 15 of each year. Decals must be color-coded to distinguish the year.

(d) A current window decal must be displayed on the lower right-hand corner of the windshield."

Section 177. Section 61-3-738, MCA, is amended to read:

"61-3-738. Deposit and distribution of fees on proportionally registered fleets. The fees in lieu of tax and license fees collected under this part must be deposited with the state treasurer ~~for distribution to the general fund of each county on the following basis:~~

~~(1) for fleet vehicle fees in lieu of tax, according to the ratio of the taxable valuation of each county to the total state taxable valuation; and~~

~~(2) for fleet vehicle license fees, according to the ratio of vehicle license fees, other than fees derived from interstate motor vehicle fleets, collected in each county to the sum of all fleet vehicle fees collected in all the counties~~ *in the highway nonrestricted account.*"

Section 178. Section 61-9-312, MCA, is amended to read:

"61-9-312. Performance ability of brakes. On a dry, hard, approximately level stretch of highway free from loose material, a motor vehicle or combination of vehicles, upon application of the service brake, must be capable of stopping at a speed of 20 miles an hour within the following distances:

(1) 25 feet for passenger motor vehicles, except buses and pioneer vehicles;

(2) 40 feet for buses, trucks, and tractor trucks;

(3) 45 feet for motor vehicles registered or qualified to be registered as pioneer vehicles under ~~61-3-411(3)(a)~~ *61-3-411(2)(a)* when equipped with two-wheel brakes or 25 feet when equipped with four-wheel brakes;

(4) 40 feet for all combinations of vehicles; and

(5) 30 feet for motorcycles, quadricycles, and motor-driven cycles."

Section 179. Section 61-10-130, MCA, is amended to read:

"61-10-130. Custom combiner's special permit — fee — collection — distribution — not transferable. (1) In lieu of the taxes required by 15-24-301 and in lieu of motor vehicle license fees, gross vehicle weight fees, and overwidth, overlength, and overheight permits provided for in Title 61, a nonresident engaged in the business of custom combining who brings equipment into the state may pay a special permit fee of $40 per unit. A unit ~~shall include~~ *includes*:

(a) one truck suitable for hauling grain;

(b) one header trailer or one combine trailer; and

(c) pickup trucks and all other equipment, except combines, used by a nonresident and brought into the state as part of ~~his~~ *the nonresident's* business of custom combining.

(2) In lieu of gross vehicle weight fees and overwidth, overlength, and overheight permits, Montana residents engaged in the business of custom combining may pay the annual farm gross vehicle weight fees and a special permit fee of $20 per unit. A unit includes:

(a) one truck suitable for hauling grain;

(b) one header trailer or one combine trailer; and

(c) pickup trucks used by the resident in ~~his~~ *the resident's* business of custom combining.

(3) When used to transport agricultural products, a truck authorized to be used under a custom combiner's special permit may be operated only within a 50-mile radius from the harvested field to the point of first unloading. The truck may not haul agricultural products from one commercial elevator to another commercial elevator. The truck may be operated on any highway, except a highway that is part of the federal-aid interstate system, without incurring excess weight penalties under 61-10-145 if the total gross weight of the truck does not exceed allowable weight limitations by more than 20% per axle and the maximum load per inch of tire width does not exceed 670 pounds. The truck may not be operated in excess of 40 miles per hour. ~~No~~ *A* trip permit is *not* required. If the truck exceeds the tolerance provided under this subsection, the fine or penalty imposed applies to all weight over the legal limit allowed by 61-10-107.

(4) A combine trailer authorized to be used under subsection (1)(b) or (2)(b) may be operated under the same limitations ~~and until July 1, 1991, may be operated within the same tolerances granted trucks under subsection (3)~~, except that the 50-mile limitation does not apply and the combine trailer may be used upon any highway of the state, including a highway that is part of the federal-aid interstate system. If the combine trailer exceeds the tolerance provided under subsection (3), the fine or penalty imposed applies to all weight over the legal limit allowed by 61-10-107.

(5) The fee required by this section must be collected by the department of transportation. Upon payment of the fee, the department of transportation ~~must~~ *shall* provide an identifying device to be displayed on each truck, header trailer, or combine trailer and other equipment used by the nonresident or resident in ~~his~~ *the person's* business of custom combining in the state~~,~~. ~~which~~ *The* device is valid for the calendar year in which the fee is collected.

(6) All fees collected under this section must be distributed not later than January 31 immediately following the period of ~~license~~ *licensure* as follows:

(a) 62 1/2% to the ~~county~~ *state* general fund ~~in the county in which the permittee declares the greatest amount of time will be spent to operate,~~*; and*

(b) 37 1/2% to the state special revenue fund for the department of transportation.

(7) The identifying devices and fee paid for each unit are not transferable from one vehicle to another or transferable on the sale or change of ownership.

(8) The department of transportation may adopt rules, as provided in Title 2, chapter 4, to implement the provisions of this section."

Section 180. Section 61-10-148, MCA, is amended to read:

"**61-10-148. Disposition of fines and forfeited bonds.** (1) Except as provided in 61-12-701 and subsection (2) of this section, ~~one-half of~~ all the money collected as fines and forfeited bonds for violations of Title 61, chapter 10, must be remitted monthly by the county treasurer to the state treasurer for deposit in the state general fund. ~~The remaining half, less the deductions required by law, must be deposited in the county road fund.~~ This subsection does not apply to fines and forfeited bonds paid to justices' courts.

(2) If the apprehension or arrest was for a violation of Title 61, chapter 10, and if the offense occurred on a road or highway not included under the provisions of 60-2-128 and 60-2-203, all money collected as fines and forfeited bonds must be distributed to the county treasurer for deposit in the county road fund."

Section 181. Section 61-10-225, MCA, is amended to read:

"**61-10-225. Disposition of fees collected by county treasurer.** ~~At the time of collecting~~ *The county treasurer shall transmit* the fees provided for in 61-10-222~~, each county treasurer shall retain 5% of the fees for the cost of administration and for deposit in the general fund of the county. The remaining 95% must be remitted monthly~~ to the state treasurer for deposit to the credit of the department of transportation in the highway revenue account. The remittance must be made on forms furnished to the county treasurer by the department."

Section 182. Section 67-3-205, MCA, is amended to read:

"**67-3-205. Aircraft registration account — source of funds — allocation.** (1) There is an account in the state special revenue fund to which must be credited all money received from fees paid in lieu of tax on aircraft as required in this part and 15-24-304 and all penalties collected for registration violations as provided in 67-3-202.

(2) Money in the account is allocated as follows:

(a) 90% to the ~~counties in the proportion that each county's collections bear to the total collections statewide~~ *state general fund*; and

(b) 10% to the department for the purpose of administering and enforcing aircraft registration.

(3) The allocations required in subsection (2)(a) must be made twice annually by the department. The first allocation must be made between March 15 and March 30 and the second allocation must be made between July 1 and July 15.

(4) The allocation required in subsection (2)(b) must be made on July 1 of each year.

~~(5) On receipt of the money allocated as provided in subsection (2)(a), the county treasurer shall distribute the money in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.~~

~~(6) The allocations required in subsection (2)(a) are considered statutory appropriations as described in 17-7-502.~~"

Section 183. Section 67-10-402, MCA, is amended to read:

"**67-10-402. Tax levy.** (1) Subject to 15-10-420 and for the purpose of establishing, constructing, equipping, maintaining, and operating airports, landing fields, and ports under the provisions of this chapter and as provided in Title 7, chapter 14, part 11, the county commissioners or the city or town council may each year assess and levy, in addition to the annual levy for general administrative purposes or the all-purpose *mill* levy authorized by 7-6-4451 ~~and 7-6-4452~~, a tax on the ~~dollar of~~ taxable value of ~~the~~ *all taxable* property ~~of said~~ *in the* county, city, or town~~:~~

~~(a) not to exceed 2 mills~~ for airports and landing fields~~;~~ and

~~(b) not to exceed 2 mills~~ for ports.

(2) In the event of a jointly established airport, landing field, or port, the county commissioners and the *city or town* council or councils involved shall determine in advance the levy necessary for those purposes and the proportion *that* each political subdivision joining in the venture is required to pay.

(3) ~~Property within any political subdivision may not be subject to a tax pursuant to this section at an annual rate in excess of 2 mills for airports, landing fields, or ports unless it is found that~~ *If* the levy is insufficient for the purposes enumerated~~. In that case~~ *in subsection (1),* the commissioners and councils are authorized and empowered to contract an indebtedness on behalf of the county, city, or town by borrowing money or issuing bonds for those purposes. However, bonds may not be issued until the proposition has been submitted to the qualified electors and approved by a majority vote, except as provided in subsection (4).

(4) For the purpose of establishing a reserve fund to resurface, overlay, or improve existing runways, taxiways, and ramps, the governing bodies may set up annual reserve funds in their annual budget if:

(a) the reserve is approved by the governing bodies during the normal budgeting procedure;

(b) the necessity to resurface or improve runways by overlays or similar methods ~~every so many years~~ *periodically* is based upon competent engineering estimates; and

(c) the funds are expended at least within each 10-year period.

(5) The reserve fund may not exceed at any time a competent engineering estimate of the cost of resurfacing or overlaying the existing runways, taxiways, and ramps of any one airport for each fund. The governing body of the airport or port, if in its judgment it considers it advantageous, may invest the fund in any interest-bearing deposits in a state or national bank insured by the FDIC or obligations of the United States of America, either short-term or long-term. Interest earned from the investments must be credited to the operations and maintenance budget of the airport or port governing body. Due to the uniqueness of the subject matter, the provisions of this section are declared necessary in the interests of the public health and safety."

Section 184. Section 67-11-301, MCA, is amended to read:

"**67-11-301. Municipal tax levy.** The airport authority may certify annually to the governing bodies the amount of tax *requested* to be levied by each municipality participating in the creation of the airport authority, and subject to 15-10-420, the municipality shall levy the amount certified, pursuant to provisions of law authorizing cities and other political subdivisions of this state to levy taxes for airport purposes. The levy may not exceed the maximum levy ~~permitted by the laws of this state for airport purposes or any lower limit~~ that may have been established by the municipality or municipalities in the resolution creating the authority. The municipality shall collect the taxes certified by an airport authority in the same manner as other taxes are levied and collected and make payment to the airport authority. The proceeds of the taxes ~~when and as~~ paid to the airport authority must be deposited in a special account or accounts in which other revenue of the authority ~~are~~ *is* deposited and may be expended by the authority as provided for in this chapter. Prior to the issuance of bonds under 67-11-303, the airport authority or the municipality may by resolution covenant ~~and agree~~ that the total amount of the taxes ~~then~~ authorized by law or the portion of the taxes ~~as may be~~ specified by the resolution will, subject to 15-10-420, be certified, levied, and deposited annually until the bonds and interest are fully paid."

Section 185. Section 67-11-303, MCA, is amended to read:

"**67-11-303. Bonds and obligations.** (1) An authority may borrow money for any of its corporate purposes and issue its bonds for those purposes, including refunding bonds, in the form and upon the terms that it may determine, payable out of any revenue of the authority, including revenue derived from:

(a) an airport or air navigation facility or facilities;

(b) taxes levied pursuant to 67-11-301 or other law for airport purposes;

(c) grants or contributions from the federal government; or

(d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that bonds may not be issued at any time if the total amount of principal and interest to become due in any year on the bonds and on any ~~then outstanding~~ *then-outstanding* bonds for which revenue from the same source or sources ~~are~~ *is* pledged exceeds the amount of revenue to be received in that year as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any

~~are~~ *is* pledged, sufficient to make the revenue from the pledged source in the year at least equal to the amount of principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Except as otherwise provided in this section, any bonds issued pursuant to this chapter by an authority may be payable as to principal and interest solely from revenue of the authority and must state on their face the applicable limitations or restrictions regarding the source from which the principal and interest are payable.

(4) Bonds issued by an authority or municipality pursuant to the provisions of this chapter are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) For the security of bonds, the authority or municipality may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any ~~revenues~~ *revenue* referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities.

(6) Subject to the conditions stated in this subsection, the governing body of any municipality having a population in excess of 10,000, with respect to bonds issued pursuant to this chapter by the municipality or by an authority in which the municipality is included, may by resolution covenant that in the event that at any time all revenue, including taxes, appropriated and collected for the bonds is insufficient to pay principal or interest then due, it ~~will~~ *shall, subject to 15-10-420,* levy a general tax upon all of the taxable property in the municipality for the payment of the deficiency. The governing body may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on ~~such~~ *the* bonds, it ~~will~~ *shall, subject to 15-10-420,* levy a general tax upon all the taxable property in the municipality for the payment of the deficiency, and the taxes are ~~not subject to any limitation of rate or amount applicable to other municipal taxes but are~~ limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event that more than one municipality having a population in excess of 10,000 is included in an authority issuing bonds pursuant to this chapter, the municipalities may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the revenue appropriated for the bonds in a manner that the municipalities may determine. The resolution must state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies. A resolution may not be effective until the question of its approval has been submitted to the qualified electors of the municipality at a special election called for that purpose by the governing body of the municipality and a majority of the electors voting on the question have voted in favor of the resolution. The special election must be held in conjunction with a regular or primary election. The notice and conduct of the election is governed, to the extent applicable, as provided for municipal general obligation bonds in Title 7, chapter 7, part 42, for an election called by cities and towns and as provided for county general obligation bonds in Title 7, chapter 7, part 22, for an election called by counties. If a majority of the electors voting on the issue vote against approval of the resolution, the municipality may not make the covenant or levy a tax for the payment of deficiencies pursuant to this section, but the municipality or

authority may issue bonds under this chapter payable solely from the sources referred to in subsection (1)."

Section 186. Section 72-16-909, MCA, is amended to read:

"**72-16-909. When and where tax payable — interest.** (1) The estate tax is payable to the ~~county treasurer of the county in which the estate is being probated~~ *department of revenue.*

(2) If the tax is not paid within 18 months of the death of the decedent, interest must be charged and collected at the rate of 10% a year from the time that the tax accrued, unless because of claims made upon the estate, necessary litigation, or other unavoidable cause of delay, the tax is not determined and paid on time. Interest at the rate of 6% must be charged upon the amount of tax due from the time of accrual until the cause of the delay is removed, and after that time, interest at the rate of 10% must be charged.

(3) Litigation to defeat the payment of the tax is not necessary litigation.

(4) When permission has been granted to defer payment of tax under 72-16-910, interest must be charged at the rate of 6% after 1 year from the date of death until the date of payment."

Section 187. Section 72-16-912, MCA, is amended to read:

"**72-16-912. Collection and deposit of tax.** The tax imposed ~~herein shall~~ *by this part must* be collected by the ~~several county treasurers or the~~ department of revenue for deposit with the state treasurer."

Section 188. Section 75-10-533, MCA, is amended to read:

"**75-10-533. Department to report fees.** The department shall report to the office of budget and program planning, as a part of the information required by 17-7-111, the amount collected under this part ~~and 61-3-508~~ and the cost of administration of this part, except 75-10-520, to date so that any necessary adjustment of the amount of the fee may be made to ~~assure~~ *ensure* that no more than the actual cost of operation of the program is collected."

Section 189. Section 76-1-111, MCA, is amended to read:

"**76-1-111. Representation of county or additional cities or towns on existing boards.** (1) Any city, county, or town or any combination of cities, counties, or towns wishing to be represented upon an existing planning board may, by agreement of the governing body or bodies then represented on the board, obtain representation on the board and share in the membership duties and costs of the board upon a basis agreeable to the governing body or bodies creating the board.

(2) The membership, as well as the jurisdictional area of any board, may be increased to provide for representation and planning of any additional cities, counties, or towns seeking representation.

(3) Any city, county, or town that becomes represented upon an existing planning board pursuant to this section may appropriate funds for expenses necessary to cover the costs of representation. Subject to 15-10-420, the governing bodies of any represented city, ~~or~~ county, *or town* may levy on all property that is added to the jurisdictional area of an existing board by representation a tax for planning board purposes under procedures set forth in Title 7, chapter 6, part 23 or part 42, whichever is applicable. ~~The tax may not exceed the maximum levy authorized in 76-1-402 through 76-1-407.~~"

Section 190. Section 76-1-403, MCA, is amended to read:

"**76-1-403. Tax levy by county for certain county planning districts authorized.** When a county planning board has been established, the board of county commissioners may create a planning district that must include the property that lies outside the limits of the jurisdictional area, as established pursuant to 76-1-504 through 76-1-507 or as modified pursuant to 76-1-501 through 76-1-503 in counties where a city-county planning board has been established, as well as that property that lies outside the limits of any incorporated cities and towns. Subject to 15-10-420, the board of county commissioners may levy *a tax* on *the taxable value of* all *taxable* property located within the planning district ~~a tax not to exceed the maximum levy authorized by 76-1-405~~ for planning board purposes, under procedures set forth in Title 7, chapter 6, part 23."

Section 191. Section 76-1-404, MCA, is amended to read:

"**76-1-404. Tax levy by county for city-county planning board authorized.** When a city-county planning board has been established, the board of county commissioners may create a planning district that must include the property within the jurisdictional areas as established pursuant to 76-1-504 through 76-1-507 that lies outside the limits of any incorporated cities and towns. Subject to 15-10-420, the board of county commissioners may levy on *the taxable value of* all *taxable* property located within the planning district a tax for planning board purposes, under procedures set forth in Title 7, chapter 6, part 23. ~~The tax may not exceed the maximum levy authorized in 76-1-405.~~"

Section 192. Section 76-1-406, MCA, is amended to read:

"**76-1-406. Tax levy by municipalities authorized.** Subject to 15-10-420, the governing body of any city or town represented on a planning board may levy a tax upon the *taxable value of all taxable* property located within the city or town for planning board purposes, under procedures set forth in Title 7, chapter 6, part 42. ~~The tax may not exceed the maximum levy authorized in 76-1-407.~~"

Section 193. Section 76-2-102, MCA, is amended to read:

"**76-2-102. Organization and operation of commission.** (1) The planning and zoning commission consists of the three county commissioners, the county surveyor, and a county official appointed by the county commissioners. Members of the commission shall serve without compensation other than reimbursement for authorized expenses and must be residents of the county in which they serve.

(2) The commission may appoint necessary employees and fix their compensation with the approval of the board of county commissioners, select a presiding officer to serve for 1 year, appoint a secretary to keep permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.

(3) Subject to 15-10-420, the finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the members of the board must be paid from a levy ~~of not to exceed 1 mill~~ on the taxable ~~valuation~~ *value* of ~~the real~~ *all taxable* property within the district."

Section 194. Section 76-6-109, MCA, is amended to read:

"**76-6-109. Powers of public bodies.** (1) A public body has all the powers necessary or convenient to carry out the purposes and provisions of this chapter, including the following powers in addition to others granted by this chapter:

(a) to borrow funds and make expenditures necessary to carry out the purposes of this chapter;

(b) to advance or accept advances of public funds;

(c) to apply for and accept and utilize grants and any other assistance from the federal government and any other public or private sources, to give security as may be required, to enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government conditions imposed pursuant to federal laws as the public body may consider reasonable and appropriate and that are not inconsistent with the purposes of this chapter;

(d) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter;

(e) in connection with the real property acquired or designated for the purposes of this chapter, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities or structures that may be necessary to the provision, preservation, maintenance, and management of the property as open-space land;

(f) to insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance;

(g) to demolish or dispose of any structures or facilities that may be detrimental to or inconsistent with the use of real property as open-space land; and

(h) to exercise any or all of its functions and powers under this chapter jointly or cooperatively with public bodies of one or more states, if they are authorized by state law, and with one or more public bodies of this state and to enter into agreements for joint or cooperative action.

(2) For the purposes of this chapter, the state, ~~or~~ a city, town, *or* other municipality, or *a* county may:

(a) appropriate funds;

(b) subject to 15-10-420, levy taxes and assessments according to existing codes and statutes ~~not to exceed 1 mill~~;

(c) issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the state; and

(d) exercise its powers under this chapter through a board or commission or through the office or officers that its governing body by resolution determines or as the governor determines in the case of the state."

Section 195. Section 76-13-201, MCA, is amended to read:

"**76-13-201. Duty of owner to protect against fire.** (1) An owner of *land classified as* forest land ~~classified as such~~ by the department shall protect against the starting or existence and suppress the spread of fire on that land. This protection and suppression must be in conformity with reasonable rules and standards for adequate fire protection adopted by the department.

(2) If the owner does not provide for the protection and suppression, the department may provide it at a cost to the landowner of not more than $30 for each landowner in the protection district and of not more than an additional 20 cents per acre per year for each acre in excess of 20 acres owned by each landowner in each protection district, as necessary to yield the amount of money provided for in 76-13-207. The owner of the land shall pay ~~to the county treasurer of the county in which the land is situated~~ the charge ~~for the same~~ approved by the department in accordance with ~~this~~ part *1* and *this* part ~~1~~ *to the department of revenue. Payments to the department of revenue are due on or before November 30 of each year.*

(3) ~~No other~~ *Other* charges may *not* be assessed ~~those~~ *to a participating landowner* ~~landowners participating~~ except in cases of proven negligence on the part of the landowner or the landowner's agent."

Section 196. Section 76-15-505, MCA, is amended to read:

"**76-15-505. Authorization to borrow money — limitations.** (1) If, after the levy of the annual assessments for the current year, the board of supervisors finds that, because of some unusual or unforeseen cause, funds raised through the collection of the assessments and from other sources will not be sufficient for the proper maintenance and operation of the district and the works in the district, the board of supervisors may:

(a) borrow additional funds needed ~~to~~ *in* an amount not to exceed 50 cents per acre for the lands within the district and may pledge the credit of the district for the payment of the funds; or

(b) request the county commissioners to issue and register warrants in anticipation of further collections.

(2) ~~The~~ *Subject to 15-10-420, the* board of supervisors shall include in the levy for the ensuing year the amount required to pay the loan or to retire the warrants. The warrants may not exceed 90% of the assessment for the year."

Section 197. Section 76-15-516, MCA, is amended to read:

"**76-15-516. Levy of regular and special assessments.** (1) Subject to 15-10-420, the board of county commissioners of each county in which any portion of the district lies may, annually at the time of levying county taxes, levy an assessment on the taxable real property within the district. The levy must be known as the".... (name of district) conservation district regular assessment" and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors.

(2) Subject to the conditions of 15-10-420, 76-15-531, and 76-15-532, the board of county commissioners of each county in which any portion of the district lies may, annually at the time of levying county taxes, levy an assessment on the taxable real property within the district. The levy must be known as the".... (name of district) conservation district special administrative assessment" and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors.

(3) Subject to 15-10-420, the board of county commissioners of each county in which any portion of a project area lies may, annually at the time of levying county taxes, levy an assessment ~~not to exceed 3 mills~~ on the taxable ~~real~~ *value of*

all taxable property *located* within the project area. The levy must be known as"…. (name of the project area) special assessment" and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors."

Section 198. Section 76-15-531, MCA, is amended to read:

"**76-15-531. Special administrative assessment permitted — voter approval.** (1) (a) In addition to the levy authorized in 76-15-515 and 76-15-516(3), the supervisors of a conservation district may levy an annual special administrative assessment~~, not to exceed the amount determined under subsection (1)(b) each year,~~ for administrative costs and expenses of the district if~~, at a regularly scheduled election or special election,~~ the qualified electors of the district approve the imposition of the additional assessment *at an election held as provided in [section 2]*.

~~(b) The annual levy authorized by this section may not exceed the difference between the amount raised by the annual mill levy authorized under 76-15-515 and $20,000.~~

~~(c)~~*(b)* Nonmill-levy revenue that is distributed based on the relative proportion of mill levies may not be distributed to the special administrative assessment.

(2) The special administrative assessment question may be presented to the qualified electors of the district by resolution of the supervisors.

(3) If the conservation district is located in more than one county, the special administrative assessment question must be presented to and approved by the qualified electors who reside in the district from each county.

(4) The resolution referring the special administrative assessment question must state:

(a) the rate of the assessment;

(b) the amount of money anticipated to be raised by the assessment; and

(c) the purposes for which the special administrative assessment revenue may be used."

Section 199. Section 76-15-623, MCA, is amended to read:

"**76-15-623. Administration of special assessment.** (1) Subject to 15-10-420, when the board or boards of supervisors have determined that a special assessment is necessary, the board of county commissioners of the county in which there lies any portion of a project area ~~shall~~ *may* annually at the time of levying county taxes levy a special assessment ~~of~~ *on* the taxable ~~real~~ *value of all taxable* property in the project area~~, not to exceed 3 mills~~. The levy must be known as the"…. (name of district) soil and water conservation district special assessment" and must be sufficient to raise the income reported to it in the estimate of the supervisors.

(2) Each lot or parcel of land to be assessed must be assessed with that part of the amount of money required that its taxable ~~valuation~~ *value* bears to the total taxable ~~valuation~~ *value* of all the lands to be assessed."

Section 200. Section 77-1-502, MCA, is amended to read:

"**77-1-502. Computation of state land equalization ~~payment~~ *amount*.** (1) The department of revenue shall compute the amount of taxes ~~which~~ *that* would be payable on the county assessments of ~~said~~ *state-owned grazing, agricultural, or forest* property as if it were owned by and taxable to a taxpayer of ~~such~~ *the* county.

(2) If the land is not classified, the sum ~~to be listed shall~~ *must* be determined by the average tax payment made on like property within the county ~~where said~~ *in which the* land is situated, not to exceed 12 cents per grazing acre, 35 cents per agricultural acre, and 12 cents per forest acre. The average tax may be derived from the most recent biennial report of the department of revenue. The total figure arrived at by this method ~~shall~~ *must* be called the gross assessment figure.

(3) The county exemption factor ~~shall~~ *must* be determined by dividing the percentage *that* the state-owned land bears to the total land area of the county into 6%. This quotient ~~shall~~ *must* be multiplied by the gross assessment figure, and the product is called the state exemption figure.

(4) The state exemption figure ~~shall~~ *must* be subtracted from the gross assessment to give the state land equalization ~~payment~~ *amount*."

Section 201. Section 77-1-503, MCA, is amended to read:

"**77-1-503. Form to be completed by department of revenue.** The department shall provide a form for each county to be followed and completed by the department of revenue. The department of revenue shall, before October 1, make the computations required and submit to the department the completed forms, which must show the computations and method used in arriving at the state land equalization ~~payment~~ *amount*."

Section 202. Section 77-1-504, MCA, is amended to read:

"**77-1-504. Processing of statements.** The department shall examine for accuracy the statement returned by the department of revenue, and the state land equalization ~~payment~~ *amount* may not be approved unless the state exemption figure is deducted from the gross assessment figure in the statement. The department shall, before November 1 of each year, prepare and file a claim with the department of administration for all counties that are eligible for state land equalization ~~payments~~ *amounts*, and this claim must show the amount of money *that* each eligible county ~~will receive~~ *receives through the entitlement share provided for in [section 1]*."

Section 203. Section 80-2-201, MCA, is amended to read:

"**80-2-201. Powers and duties of board of hail insurance.** The board of hail insurance provided for in 2-15-3003:

(1) shall hold meetings when necessary ~~and essential~~ for the ~~proper~~ conduct of its business;

(2) ~~is hereby authorized, directed, and empowered to make~~ *may adopt* rules ~~as it may from time to time find practical, necessary, and beneficial~~ for the administration of this part;

(3) shall prescribe blank forms for all purposes necessary, proper, and incidental to the effective operation and enforcement of this part; and

(4) shall use any appropriate means of communication to inform Montana producers of the purposes, scope, and benefits of this part in furnishing protection against loss by hail at the actual cost of the risk to all ~~taxpayers~~ *persons* who may elect to become subject to the provisions of this part."

Section 204. Section 80-2-203, MCA, is amended to read:

"**80-2-203. Participation in program — tax.** (1) A ~~taxpayer~~ *person* or an association of ~~taxpayers~~ *persons* engaged in the growing of crops other than those specified in this part or other agricultural or horticultural products subject to injury or destruction by hail may, by individual or joint election filed with and approved by the board of hail insurance, accept the provisions of this part and elect to become subject to this part. The risks may be classified by the board, and suitable ~~levies~~ *fees* may be imposed as agreed upon by the board and the ~~taxpayers~~ *persons*. The ~~taxpayers~~ *persons* are entitled to the benefits and protection afforded by the insurance provisions of this part.

(2) Each ~~farmer taxpayer~~ *person* who signifies a desire to become subject to the provisions of this part shall file with the department of revenue the properly filled out form not later than August 15. The ~~taxpayer~~ *person* is chargeable with the ~~tax~~ *fee* provided for on lands growing crops subject to injury or destruction by hail and shall share in the protection and benefits under the hail insurance provisions of this part. The application for hail insurance is in full force and effect at 12:01 a.m. the day immediately following the acceptance of the application by the department of revenue.

(3) This part may not be construed to empower anyone except the actual owner of the land to make the land subject to the hail ~~tax~~ *fee* provided in this part."

Section 205. Section 80-2-204, MCA, is amended to read:

"**80-2-204. Duty of department of revenue — election of benefits of law.** The department of revenue shall upon request explain to each ~~taxpayer~~ *person* engaged in the growing of crops subject to injury or destruction by hail the provisions of this part. The department of revenue shall issue hail insurance policies to each ~~taxpayer~~ *person* who desires to become subject to this part, to become liable for the ~~tax levies~~ *fee* provided in this part, and to be eligible for the benefits and protection of this part. A ~~taxpayer~~ *person* who elects to become subject to this part is liable for the ~~taxes levied~~ *fees* for hail insurance and shall participate in the benefits and protection afforded by this part. ~~Either the~~ *The* owners of lands worked by others under lease or contract may make the election for hail insurance, or the lessee of the land may tender payment, *in cash,* of the ~~tax~~ *fee* levied for hail insurance ~~to protect the lessee's crops, in cash,~~ to the officer authorized to receive payment."

Section 206. Section 80-2-205, MCA, is amended to read:

"**80-2-205. What crops subject to provisions of law.** The crops grown on the lands of all ~~taxpayers~~ *persons* who ~~shall~~ elect to become subject to this part ~~shall~~ *must* be insured under the provisions of this part for the acreage and the kind of crop for which ~~taxes~~ *fees* for hail insurance ~~will~~ have been ~~levied,~~ *imposed.* ~~which~~ *The* insurance ~~shall~~ *must* be provided for, determined, and adjusted and paid for as provided by this part."

Section 207. Section 80-2-206, MCA, is amended to read:

"**80-2-206. Cash payment.** When an applicant for hail insurance tenders cash for the insurance to the department of revenue, the applicant is allowed a discount of 4%. The hail insurance must be issued upon the cash payment less the 4%. The charge for the insurance must be based on the maximum rates shown on the application for hail insurance. If the current rates are reduced later, the board of hail insurance shall arrange for the proper refund to the insured. All cash received by the department of revenue must be ~~promptly turned over to the county treasurer, who shall furnish the insured with a current receipt and place the money in the hail insurance fund~~ *deposited with the state treasurer.*"

Section 208. Section 80-2-207, MCA, is amended to read:

"**80-2-207. Delinquent ~~taxes~~ *fees* — application by delinquent — crop lien.** (1) An owner of land who has more than 1 year's delinquent ~~taxes~~ *fees* on the land may not be allowed hail insurance under the provisions of this part, unless the owner's application is accompanied by a cash payment for the amount that would be due on the application ~~in the event of a maximum levy~~ for that year.

(2) Any grain grower unable to secure state hail insurance under the provisions of this part because of delinquent ~~taxes~~ *fees* or for other reasons may make *an* application to the department of revenue, and the department of revenue may receive and accept the ~~applications~~ *application* when the applicant furnishes a sufficient crop lien that is subject only to a seed lien. The crop lien may be accepted only under rules and requirements that may be prescribed by the board of hail insurance and under the provision that the board may cancel any hail insurance accepted in violation of the rules and requirements. Upon receipt of the application, the department of revenue shall make a record of the application and shall file the original in the office of the clerk and recorder of the county. The department of revenue shall also ~~cause an assessment~~ *send a bill to the grain grower* for the proper amount ~~to be made on the property tax record in the same manner provided for in the case of other special levies or assessments~~ *due for hail insurance under the provisions of this part.*

(3) A tenant who has delinquent hail insurance that was secured by a crop lien ~~only~~ and *was* not secured by real estate may not be allowed another policy in any succeeding year until the delinquent ~~account or accounts are~~ *amount is* paid or until the tenant pays cash for the current hail insurance.

(4) If a tenant becomes delinquent for hail insurance after having failed to apply for relief as provided by the board under 80-2-229, the tenant may apply to the board for a reduction. If the reasons for requesting a reduction are approved by the board, the board may reduce the charge to not less than one-half the original amount charged."

Section 209. Section 80-2-209, MCA, is amended to read:

"**80-2-209. Reinsurance.** Because of the unusual or unexpected variation in the severity of damage to grain crops ~~which occur~~ *that occurs* from year to year and in order to enable the hail insurance board to spread the effect of these variations more evenly over all years, the board ~~is hereby authorized to~~ *may* negotiate for and ~~to~~ secure reinsurance of a part of the risk in any year when the need ~~of such~~ *for* reinsurance appears advisable to the board. The board is ~~hereby authorized to~~ *may* use ~~moneys~~ *money* from hail insurance ~~levies~~ *fees* for the purchase of ~~such~~ reinsurance whenever it appears to the board that ~~such~~ reinsurance is necessary and advisable."

Section 210. Section 80-2-221, MCA, is amended to read:

"**80-2-221. ~~Tax~~ *Fee* for hail insurance.** (1) A ~~tax is hereby authorized and directed to be levied~~ *fee is imposed* on all lands in this state growing crops subject to injury or destruction by hail, the owners of which have elected to become subject to the provisions of this part.

(2) The board of hail insurance shall annually estimate, as accurately as possible, the amount required to pay all losses, interest on warrants, and costs of administration and shall recommend a ~~levy~~ *fee* to be ~~made~~ *imposed* on each kind of land respectively, subject to the provisions of this part, to the department of revenue. The rates recommended to apply on the lands of owners ~~shall~~ *must* be applied in the same proportions to the crops of those insured on a personal ~~assessment~~ basis."

Section 211. Section 80-2-222, MCA, is amended to read:

"**80-2-222. Board to establish amount of ~~levy~~ *rates* — disposition of funds.** (1) The board of hail insurance may, when it considers it advisable, establish as many districts as it considers advisable and may maintain maximum rates in various parts of the ~~state,~~ *state.* ~~which~~ *The* rates must be commensurate with the risk incurred as nearly as it can determine from past experiences or from any records available.

(2) Notice of the various rates established for any year must be plainly printed on the application for hail insurance, and the rates for the year must be determined and ~~levied~~ *imposed* by the board of hail insurance for each of the various districts as established, in ~~such~~ proportions ~~as~~ *that* will in ~~its~~ *the board's* judgment be fair and equitable.

(3) The board of hail insurance ~~has authority to~~ *may* accept and expend all funds received by it, including amounts repaid as principal and interest on investments. The funds are statutorily appropriated, as provided in 17-7-502, to the board of hail insurance for the purposes of this chapter. Expenditures for actual and necessary expenses required for the efficient administration of this part must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(4) In ~~making the levy~~ *establishing the rates* provided in this section ~~and 80-2-223~~, the board of hail insurance shall provide for:

(a) the payment of all expenses of administration, together with all interest owed or to be owing on registered warrants;

(b) that portion of the losses incurred during the current year that are not paid from funds drawn from the reserve;

(c) the maintenance of the reserve, a part or all of which may be used in any ~~one~~ *1* year for the purpose of paying the costs of administration, interest on the warrants, and losses as settled and adjusted by the board, including the losses sustained in any prior year or years under the hail insurance law that have not been paid.

(5) If at the end of any hail insurance season the board determines that more funds are accumulating from the current year's ~~levies~~ *rates* than were estimated when the ~~levy was made~~ *rates were established* and are in excess of the need for the payment of losses and expenses and maintenance of the reserve, the board may, at its discretion, refund the excess to the ~~farmers~~ *persons* insured for the year, on a pro rata or percentage basis.

(6) The board of hail insurance may direct the board of investments to invest funds from the enterprise fund pursuant to the provisions of the unified investment program for state funds. The income from the investments must be credited to the board of hail insurance account in the enterprise fund."

Section 212. Section 80-2-224, MCA, is amended to read:

"80-2-224. ~~Assessment~~ *Fee* — notice — when payable. Notice of ~~such assessment shall~~ *the fee must* be mailed by the ~~county treasurer~~ *department of revenue* to each person insured in the same manner and at the same time as notices of property taxes due. The ~~assessment~~ *fee* ~~shall be~~ *is* payable ~~at the office of the county treasurer of each respective county~~ *to the department of revenue.*"

Section 213. Section 80-2-225, MCA, is amended to read:

"80-2-225. Real estate lien — creation. The ~~tax levies are~~ *hail insurance fees* chargeable to the lands of each ~~taxpayer~~ *person* who elects to become subject to this part ~~and~~ must be ~~entered in the property tax record and~~ collected by the ~~officers charged with such duties in the manner and form as are other property taxes~~ *department of revenue.* If the ~~levies~~ *fees* are not paid, they are a lien on the lands against which they are ~~levied in the same manner as are other property taxes~~ *imposed.*"

Section 214. Section 80-2-226, MCA, is amended to read:

"80-2-226. Crop lien — when created — assessment. (1) In addition to the lien created in 80-2-225 on the land of the insured, the ~~levy~~ *fee* for ~~such~~ hail insurance ~~shall constitute~~ *is* a lien on the crops insured with the exception that the crop lien may not apply to owners of unencumbered land or to the land or crops of those who pay cash for hail insurance. The applications of these persons may not be filed with the county clerk and recorded as provided for in 80-2-207. ~~The~~ *Except as provided in this subsection, the* crop lien ~~shall~~ *must* be included in all applications for hail insurance~~, with the above exceptions,~~ and ~~shall~~ *must* be enforced as provided in 80-2-230 and 80-2-231 against all *applicable persons* insured ~~except those owning unencumbered land or those who have paid cash for hail insurance~~.

(2) All applicants securing hail insurance on crop liens as ~~heretofore~~ provided ~~shall be~~ *in this section are* subject to the same charges per acre ~~as provided herein to be~~ *that are* made on land."

Section 215. Section 80-2-228, MCA, is amended to read:

"80-2-228. Reserve fund. (1) Each year when the hail board ~~makes~~ *sets* its annual ~~levy~~ *fee* for the payment of current losses, *for* expenses of administration, and for an addition to the reserve if conditions permit, it may not increase the ~~levy~~ *fee* enough in any year so that the addition to the reserve will exceed 5% of the maximum risk written for that year.

(2) The board may engage the services of a qualified actuary to conduct an actuarial valuation of the reserve. This valuation ~~shall~~ *may* include the actuary's determination of the amount of reserve necessary to absorb all reasonably anticipated catastrophic losses. This amount is the maximum permissible reserve fund for the next year.

(3) The reserve must be deposited in an enterprise fund.

(4) The board may not draw on the reserve for any purpose unless the amount required for the payment of losses for the current year, including interest on warrants and costs of administration, exceeds the amount of the estimate made by the board for the current year pursuant to 80-2-221."

Section 216. Section 80-2-229, MCA, is amended to read:

"80-2-229. Withdrawal of crop in case of destruction through other means. When any crop insured under this part ~~shall have been~~ *is* destroyed by any other cause than hail, the applicant may, by furnishing the proof required by the board of hail insurance, cause the crop to be ~~withdrawn~~ *exempted* from the regular ~~levy~~ *fee* of the board for the current year. ~~Such~~ *The* proof ~~shall~~ *must* be submitted to the board of hail insurance in accordance with its rules. ~~Said~~ *The* rules ~~shall~~ *must* be plainly printed on the applications and policies issued by the department. ~~They shall~~ *The rules must* provide that the cost for ~~such~~ withdrawn insurance ~~shall~~ *must* be varied as nearly as practical according to the time the insurance is in force and according to the risk carried."

Section 217. Section 80-2-230, MCA, is amended to read:

"80-2-230. Collection of ~~levies~~ *fees* — release of lien. (1) The ~~county treasurer in each county in the state~~ *department of revenue* shall collect all ~~levies made~~ *fees imposed* under this part ~~in the same manner as other property taxes are collected and shall keep all moneys collected by him or for him for hail insurance in a separate fund to be known as the hail insurance fund and~~. *The department of revenue shall* ~~remit~~ *deposit* the ~~same~~ *money* ~~to~~ *with* the state treasurer ~~in the same manner as provided by law for the remittance of other moneys due to the state~~. ~~All county treasurers~~ *The department of revenue* shall use due diligence in making the collections of the ~~levies~~ *fees* provided ~~herein~~ *in this part*. ~~Also the board may furnish assistance needed at any time in making collections or may take over the collection of any levy at any time, depositing any collections therefrom with the treasurer of the county where the levy therefor was made.~~

(2) All insurance ~~levies~~ *fees*, whether ~~levied~~ *imposed* against land or in the form of special assessments secured by crop liens, ~~shall be~~ *are* payable in full and not in semiannual payments on or before November 30 of each year in which ~~such levies~~ *the fees* are ~~made~~ *imposed*.

(3) Whenever the amount due on any hail insurance secured by a crop lien is paid, the ~~treasurer~~ *department of revenue* shall promptly endorse on the lien on file in the office of the county clerk and recorder the amount paid ~~thereon~~ with the date of payment and ~~such~~ *the* endorsement ~~shall be~~ *is* a satisfaction and release of ~~such~~ *the* lien."

Section 218. Section 80-2-231, MCA, is amended to read:

"80-2-231. Foreclosure of lien. If the person receiving hail insurance secured by a crop lien fails to pay ~~said~~ *the fee for* insurance to the ~~county treasurer~~ *department of revenue* by December 1 of the year in which the crop ~~so insured~~ is grown, the ~~county treasurer~~ *department* shall on that day or as soon as possible ~~thereafter~~ *after that day* deliver to the sheriff of ~~said~~ *the* county a full, true, and correct copy of the lien on file in the office of the clerk and recorder and ~~such~~ *the* sheriff ~~must~~ *shall* immediately demand from the person or persons signing ~~such~~ *the* lien payment of the amount due. ~~thereon and, if the same~~ *If the fee* is not paid to the sheriff upon ~~such~~ demand being made, the sheriff ~~must forthwith~~ *shall* seize and sell in the manner provided by law for the sale of personal property under execution a sufficient amount of grain belonging to ~~such~~ *the* person to pay the amount due for hail insurance together with interest and costs and expenses of seizure and sale."

Section 219. Section 80-2-232, MCA, is amended to read:

"80-2-232. ~~State treasurer's~~ *Department of revenue's* duty — warrants — transfers to ~~county and~~ state general fund. (1) The ~~state treasurer~~ *department of revenue* shall receive all money paid under this part and shall place the money in trust for the hail insurance program to the credit of the enterprise fund. All money collected by the board must be deposited in the enterprise fund, and all losses must be paid from that fund. All other costs are administrative expenses and must be paid from the board's enterprise fund. If registered warrants are presented and there is no money to pay the warrants, the warrants must be registered and bear interest at the rate of 4% ~~per annum~~ *a year* until called for payment by the state treasurer.

~~(2) Upon warrants drawn by order of the board, the state treasurer shall pay out of the board's enterprise fund to the county treasurer of each county where state hail insurance coverage is in force 2% of the gross annual levies made and collected in that county under this part for the use of the county as the board of county commissioners may determine.~~

(2) The department of revenue may retain 2% of the gross annual fees imposed and collected under this part for administrative costs associated with billing and collection of hail insurance premiums.

(3) Upon authorization from the board of hail insurance, the state treasurer shall transfer out of the board's enterprise fund to the general fund of the state of Montana 1.5% of the gross annual ~~levies made~~ *fees imposed* and collected in the state of Montana."

Section 220. Section 80-2-244, MCA, is amended to read:

"**80-2-244. Payment of losses.** (1) The board of hail insurance shall, as soon as practicable after the loss has been sustained, arrange for the payment of the loss in the following manner. From the amount of the loss as adjusted for each claimant, the board shall deduct the amount *that* the claimant then owes as *a* delinquent hail insurance ~~tax~~ *fee* and the maximum amount assessed as *a* hail insurance ~~tax~~ *fee* for the current year.

(2) The board shall on or before November 1 order payment for the amount ~~so~~ deducted~~,~~. ~~which~~ *The* payment ~~shall~~ *must* be remitted to the county treasurer of the county in which the ~~tax~~ *fee* was ~~assessed~~ *imposed.* The board shall then order payment for the balance of the adjustment to be sent to the claimant, provided that ~~in no case may~~ the payment for loss *may not* exceed $24 per acre for grain crops on nonirrigated lands~~,~~ *or* $48 per acre on irrigated lands. ~~No~~ *A* claimant may *not* receive payment for any loss incurred ~~where~~ *if* the loss does not equal or exceed 5% of the total value of the crop insured. If the losses in any year exceed the current ~~levy~~ *fees* plus the reserve, ~~if any,~~ then the payment of all losses ~~shall~~ *must* be prorated~~, share and share alike,~~ among all grain growers having loss claims adjusted and approved, and the unpaid balance of the losses ~~shall~~ *must* be paid out of the reserve without interest in ~~such~~ *the* order ~~as~~ *that* the board directs, when in the judgment of the board there ~~are~~ *is* sufficient ~~moneys~~ *money* to provide for the payment of the ~~same~~ *claims* and other items payable out of the reserve. In any year the board may by resolution authorize its ~~chairman~~ *presiding officer* and secretary to borrow ~~as needed from any person, bank, or corporation such sum or sums of~~ money ~~as~~ *that* the board may consider necessary for the purpose of paying all warrants as issued.

(3) For any ~~moneys~~ *money* borrowed under the provisions of this part, the board shall cause warrants to be drawn. The warrants ~~shall~~ *must* bear interest at *a rate* not to exceed 6% a year, and the warrants and the interest ~~thereon shall~~ *on the warrants must* be paid out of funds from the state hail insurance program as they are collected from the various counties in the state. The board may not at any time borrow a total sum greater than the amount of ~~levies as made for taxes~~ *the*

fees imposed for the current year together with ~~such~~ delinquent ~~taxes as~~ *fees that* remain unpaid on the books of the county treasurer."

Section 221. Section 80-7-814, MCA, is amended to read:

"**80-7-814. Administration and expenditure of funds.** (1) (a) Except as provided in subsection (1)(b), money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches $2.5 million, except in case of a noxious weed emergency as provided in 80-7-815. Once this amount is accumulated, interest or revenue generated by the trust fund and by other funding measures provided by this part must be deposited in the special revenue fund and may be expended for noxious weed management projects in accordance with this section, as long as the principal of the trust fund remains at least $2.5 million.

(b) Money deposited as principal in the trust fund from 80-7-822 ~~pursuant to 80-7-810(2)~~ may not be expended until the principal of the trust fund reaches $10 million. However, interest or revenue generated by the trust fund must be deposited in the special revenue fund and may be expended for noxious weed management projects in accordance with this section.

(2) The department may expend funds under this section through grants or contracts to communities, weed control districts, or other entities *that* it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program with a levy in an amount not less than 1.6 mills or an equivalent amount from another source or by an amount of not less than $100,000 for first-class counties, as defined in 7-1-2111.

(3) The department may expend funds without the restrictions specified in subsection (2) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. The expenditures must be on a cost-share basis with the organizations.

(b) cost-share noxious weed management programs with local weed control districts;

(c) special grants to local weed control districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

(d) administrative expenses of the department for managing the noxious weed management program and other provisions of this part. The cost of administering the program may not exceed 12% of the total program expenses.

(e) administrative expenses incurred by the noxious weed management advisory council;

(f) a project recommended by the noxious weed management advisory council, if the department determines *that* the project will significantly contribute to the management of noxious weeds within the state; and

(g) grants to the agricultural experiment station and the cooperative extension service for crop weed management research, evaluation, and education.

(4) The agricultural experiment station and cooperative extension service shall submit annual reports on current projects and future plans to the noxious weed management advisory council.

(5) In making expenditures under subsections (2) and (3), the department shall give preference to weed control districts and community groups.

(6) If the noxious weed management trust fund is terminated by law, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose."

Section 222. Section 80-7-815, MCA, is amended to read:

"**80-7-815. Noxious weed emergency — expenditure authorized.** (1) If a new and potentially harmful noxious weed is discovered growing in the state and is verified by the department, the governor may declare a noxious weed emergency. In the absence of necessary funding from other sources, this declaration authorizes the department to allocate up to $150,000 of the principal of the noxious weed management trust fund to government agencies for emergency relief to eradicate or confine the new noxious weed species.

(2) If the expenditure causes the principal of the trust fund to fall below $2.5 million, it must be replenished by the interest or revenue generated by the trust fund~~,~~ *or* by the other revenue provided by this part, ~~or by revenue obtained from the fee imposed by 61-3-510,~~ as determined by the department."

Section 223. Section 80-7-816, MCA, is amended to read:

"**80-7-816. Account — deposit — investment.** (1) There is an account in the state special revenue fund established in 17-2-102. The interest from the noxious weed trust fund ~~and the fee imposed in 61-3-510~~ must be deposited in the account and must be expended as provided in 80-7-814.

(2) The department may direct the board of investments to invest the funds collected under subsection (1) pursuant to the provisions of 17-6-201. The income from the investments must be credited to the account in the state special revenue fund."

Section 224. Section 80-7-822, MCA, is amended to read:

"**80-7-822. (Temporary) Transfer of funds.** There is transferred $1,125,000 annually from the highway nonrestricted account established in 15-70-125 to the noxious weed management trust fund, provided for in ~~80-7-810(2)~~ *80-7-811*, for noxious weed management. (Terminates July 1, 2001—sec. 7, Ch. 493, L. 1999.)"

Section 225. Section 81-6-101, MCA, is amended to read:

"**81-6-101. Petition for county livestock protective committee — members — term.** (1) The board of county commissioners ~~must~~ *shall*, upon receipt of a petition or petitions to do so, set up a county livestock protective committee of three members. The petition or petitions must be signed by at least 51% of the owners of cattle in the county, and ~~such petitioners must own~~ at least 55% of the cattle in the county *must be owned by the petitioners*.

(2) Members appointed to serve on ~~such~~ *the* committee ~~shall~~ *must* be residents of the county engaged in the business of raising cattle. If there ~~be~~ *is* in the county any organization of cattle growers, the county commissioners shall give preference to names submitted by ~~any such~~ *the* group for appointment to ~~such~~ *the* committee. The term for which ~~said~~ *the* committee members ~~shall be~~ *are*

appointed ~~shall be~~ *is* 2 years, with two members of the first committee named to serve for 2 years~~,~~ *and* one member to serve for 1 year. Members of ~~such~~ *the* committee ~~shall~~ *may not* receive ~~no~~ remuneration or reimbursement for expenses for serving on ~~said~~ *the* committee.

(3) ~~By~~ *As used in this section*, “organization of cattle growers”~~, as used in this section, is meant~~ *means* any group or organization holding regular meetings at least annually, having officers, and composed predominantly of cattle growers resident in the county, with its membership open to cattle growers willing to abide by its governing rules or bylaws~~;~~. ~~and its~~ *The* general purpose ~~being~~ *of the organization must be* the promotion of the interests of its members in matters pertaining to the cattle or livestock industry.

(4) If *the* owners of sheep in the county desire to come under the provisions of this part in cooperation with owners of cattle, they shall file a ~~like~~ petition ~~to that set out herein for owners of cattle~~ *meeting the requirements of subsection (1) with the county commissioners*, and in ~~such~~ *that* case, at least one member of ~~said~~ *the* livestock protective committee ~~shall~~ *must* be a sheep grower and where the word “cattle” appears in this part, it ~~shall be deemed to comprehend also~~ *includes* the word “sheep”.

(5) Owners of sheep ~~alone~~ may form a county livestock protective committee, in which case the word “cattle” as *used* in this part ~~contained shall be~~ *is* considered ~~as if it were the word~~ *to mean* “sheep”~~; and provided further that the levy as provided in 81-6-104 hereof shall, in the case of sheep, not exceed 5 cents per head~~.”

Section 226. Section 81-6-104, MCA, is amended to read:

“**81-6-104. ~~Tax levy~~ *Fee* — special fund.** The county livestock protective committee may recommend to the board of county commissioners the ~~levy~~ *imposition* of a ~~tax~~ *fee* in an amount not to exceed 50 cents per head on all cattle 9 months of age or older in the county on January 1, and the board of county commissioners shall ~~thereupon be empowered to levy such tax~~ *impose the fee*, to be collected ~~as other taxes on personal property~~ and ~~when collected to be~~ deposited by the county treasurer in a special fund to be known as the ~~stockmen's~~ *livestock* special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part.”

Section 227. Section 81-6-106, MCA, is amended to read:

“**81-6-106. Discontinuing county livestock protective committee.** Upon receipt of a petition or petitions signed as provided in 81-6-101, the board of county commissioners shall discontinue ~~said~~ *a* county livestock protective committee~~,~~. ~~provided, however, that such action in discontinuing said~~ *The discontinuance of the* committee ~~shall~~ *does* not affect any ~~levy made~~ *fee imposed* prior to the receipt of ~~such~~ *the* petition or petitions and the proceeds of any ~~levy made shall~~ *fee imposed must* be used for the purposes ~~as in~~ *of* this part ~~set out~~. ~~No~~ *A* district ~~shall~~ *may not* be discontinued ~~so~~ *as* long as there is any outstanding indebtedness against it.”

Section 228. Section 81-6-204, MCA, is amended to read:

“**81-6-204. ~~Tax levy~~ *Fee* — deposit of proceeds.** The district cattle protective committee may recommend to the board of county commissioners the ~~levy~~ *imposition* of a ~~tax~~ *fee* in an amount not to exceed 50 cents per head on all cattle 9 months of age or older in the district on January 1, and the board of county commissioners shall ~~thereupon be empowered to levy such tax~~ *impose the fee*, to be collected ~~as other taxes on personal property~~ and ~~when collected to be~~ deposited in the county treasury of one of the counties in the district, ~~to be~~ selected by the district cattle protective committee, in a special fund to be known as the ~~stockmen's~~ *livestock* special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part."

Section 229. Section 81-6-205, MCA, is amended to read:

"81-6-205. Removal of area from protective district — discontinuance of district — ~~levy~~ *fee* saved. Upon receipt of a petition or petitions signed in the same number and the same manner as the petition to form the district provided for in 81-6-201, a board of county commissioners shall remove the area in its county from the cattle protective district or the boards of county commissioners of all of the counties affected may discontinue the entire cattle protective district~~,~~. ~~provided, however, that such action in discontinuing said~~ *The discontinuance of a* district or part of *a* district ~~shall~~ *does* not affect any ~~levy made~~ *fee imposed* prior to the receipt of ~~such~~ *the* petition or petitions and the proceeds of any ~~levy made shall~~ *fee imposed must* be used for the purposes ~~as in~~ *of* this part ~~set out~~. ~~No~~ *A* district or portion of ~~such~~ *a* district ~~shall~~ *may not* be discontinued ~~so~~ *as* long as there is any outstanding indebtedness against it."

Section 230. Section 81-6-209, MCA, is amended to read:

"81-6-209. ~~Tax levy~~ *Fee* — deposit of proceeds. The district cattle protective committee may recommend to the board of county commissioners the ~~levy~~ *imposition* of a ~~tax~~ *fee* in an amount not to exceed 50 cents per head on all cattle 9 months of age or older in the district on January 1, and the board of county commissioners shall ~~thereupon be empowered to levy such tax~~ *impose the fee*, to be collected ~~as other taxes on personal property~~ and ~~when collected to be~~ deposited in the county treasury in a special fund to be known as the ~~stockmen's~~ *livestock* special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part."

Section 231. Section 81-6-210, MCA, is amended to read:

"81-6-210. Discontinuance of district — ~~levy~~ *fee* saved. Upon receipt of a petition or ~~of~~ petitions signed in the same number and in the same manner as the petition to form the district, ~~as herein provided,~~ the board of county commissioners shall discontinue the cattle protective district~~,~~. ~~provided, however, that such action in discontinuing said~~ *The discontinuance of the* district ~~shall~~ *does* not affect any ~~levy made~~ *fee imposed* prior to the receipt of ~~such~~ *the* petition or petitions, and the proceeds of any ~~levy made shall~~ *fee imposed must* be used for the purposes ~~as in~~ *of* this part ~~set out~~. ~~No~~ *A* district or portion of ~~such~~ *a* district ~~shall~~ *may not* be discontinued ~~so~~ *as* long as there is any outstanding indebtedness against it."

Section 232. Section 81-7-104, MCA, is amended to read:

"81-7-104. (Temporary) Predator control ~~moneys~~ *money* — use of proceeds. (1) The department ~~of livestock~~ shall allocate a portion of the money from the ~~levy~~ *fee* under 15-24-921 for the purpose of protecting livestock in the state against destruction, depredation, and injury by wild animals, whether the livestock is on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. This protection may be by any means of effective predatory animal destruction, extermination, and control, including systematic hunting and trapping and payment of bounties.

(2) Money ~~shall~~ *may* be paid out only on claims ~~duly and regularly~~ presented to the department ~~of livestock~~ and approved by the department in accordance with the law applicable either to claims for bounties or for other expenditures ~~necessary and proper~~ for predatory animal control ~~by means and~~ methods other than payment of bounties, as determined by the department. Money designated for predator control ~~shall~~ *must* be available for the payment of bounty claims and for expenditures for planned, seasonal, or other campaigns directed or operated by the department in cooperation with other agencies for the systematic destruction, extermination, and control of predatory wild animals, as determined by the department and its advisory committee. ~~No claims~~ *Claims* may *not* be approved in excess of ~~moneys~~ *money* available for ~~such purposes~~ *that purpose*, and ~~no~~ warrants may *not* be registered against the ~~moneys~~ *money*.

81-7-104. (Effective on occurrence of contingency) Predator control money — use of proceeds. (1) The department ~~of livestock~~ shall allocate a portion of the money from the ~~levy~~ *fee* under 15-24-921 for the purpose of protecting livestock in the state against destruction, depredation, and injury by predatory animals, whether the livestock is on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. This protection may be by any means of effective predatory animal destruction, extermination, and control, including systematic hunting and trapping and payment of bounties.

(2) Money ~~must~~ *may* be paid out only on claims ~~duly and regularly~~ presented to the department ~~of livestock~~ and approved by the department in accordance with the law applicable either to claims for bounties or for other expenditures ~~necessary and proper~~ for predatory animal control by ~~means and~~ methods other than payment of bounties, as determined by the department. Money designated for predator control must be available for the payment of bounty claims and for expenditures for planned, seasonal, or other campaigns directed or operated by the department in cooperation with other agencies for the systematic destruction, extermination, and control of predatory animals, as determined by the department and its advisory committee. Claims may not be approved in excess of money available for ~~those purposes~~ *that purpose*, and warrants may not be registered against the money."

Section 233. Section 81-7-113, MCA, is amended to read:

"81-7-113. Claim for bounty. (1) A sheriff, undersheriff, and deputy sheriff, to prevent fraud, shall carefully examine each skin presented. If the examination discloses that the scalp and ears with the skin from the entire head of the animal have not been severed, punched, patched, or marked, ~~he~~ *the officer* shall, in the presence of the person presenting the skin, mark the skin by severing the skin from the head, including the ears, and then redeliver the skin to the person presenting it. ~~and~~ *The officer* shall require an affidavit from the claimant that the claimant killed the animal. The affidavit ~~shall~~ *must* be on forms prescribed by the department and contain information the department requires.

(2) The officer shall require affidavits from two ~~resident taxpayers~~ *residents* residing in the vicinity in which the animal was killed, setting forth that they are ~~resident taxpayers~~ *residents paying fees* on livestock, giving their post-office addresses, and stating that they are personally acquainted with the person presenting the skin and, to their knowledge, the person did kill the animal from

which the skin was taken within 30 days preceding the offering of the skin for a bounty to the sheriff, undersheriff, or deputy sheriff to which it is presented. ~~A taxpayer~~ *An individual* who makes a false certificate or affidavit under this section in a material portion is guilty of a felony, punishable the same as for the crime of perjury."

Section 234. Section 81-7-114, MCA, is amended to read:

"**81-7-114. Certificate and record of sheriff.** (1) Upon receiving the affidavit required pursuant to 81-7-113, the officer shall deliver to the person claiming a bounty a certificate addressed to the county clerk of the officer's county and immediately deliver to the county clerk a duplicate of the certificate, showing the date, number, and kind of skins marked for severing and the name of the person presenting the skins. The certificate must also recite that the filing of the affidavits ~~of taxpayers~~ required by 81-7-113 has been done and the examination of the skins has been made as required. The certificate must be signed by the officer in the officer's official capacity. ~~When a doubt exists as to the kind of skin presented, whether wolf or coyote, the certificate must be issued for the lesser bounty.~~ Each sheriff shall keep a record of all skins marked and severed, showing the date, number, and kinds and the names of the persons presenting the skins. This record is an official record. The sheriff, undersheriff, or deputy sheriff may not perform any duties under 81-7-111 through 81-7-118 and 81-7-120 through 81-7-122 except at the county seat.

(2) The sheriff shall, not later than the 15th of each month, give to the county clerk and recorder a report setting forth the names of the persons presenting skins, with the number of the certificate and the kind and number of the skins presented. The sheriff shall report for each certificate issued during the month."

Section 235. Section 81-7-118, MCA, is amended to read:

"**81-7-118. (Temporary) ~~Levy of tax~~ *Fee* for purpose of paying bounty claims — limitation on ~~levy~~ *fee*.** The department of revenue shall annually prescribe the ~~levy~~ *fee* recommended by the department to be ~~made~~ *assessed* against livestock of all classes for paying for the destruction of wild animals killed in this state. ~~The tax in any 1 year may not exceed 7.5 mills on the taxable value of the livestock.~~ The money received must be used only for the payment of claims approved by the department for the destruction of wild animals and for the administration of 81-7-111 through 81-7-118 and 81-7-120 through 81-7-122. The money received for the ~~taxes levied~~ *fees imposed* must be sent annually ~~with other taxes~~ to the state treasurer by the county treasurer of each county. When the money is received by the state treasurer, it must be placed in the state special revenue fund and may then be paid out on claims approved under the law governing the payment of claims.

81-7-118. (Effective on occurrence of contingency) ~~Levy of tax~~ *Fee* for purpose of paying bounty claims — limitation on ~~levy~~ *fee*. The department of revenue shall annually prescribe the ~~levy~~ *fee* recommended by the department to be ~~made~~ *assessed* against livestock of all classes for paying for the destruction of predatory animals killed in this state. ~~The tax in any 1 year may not exceed 7.5 mills on the taxable value of the livestock.~~ The money received must be used only for the payment of claims approved by the department for the destruction of predatory animals and for the administration of 81-7-111 through 81-7-118 and 81-7-120 through 81-7-122. The money received for the ~~taxes levied~~ *fees imposed* must be sent annually ~~with other taxes~~ to the state treasurer by the county treasurer of each county. When the money is received by the state treasurer, it must be placed in the state special revenue fund and may then be paid out on claims approved under the law governing the payment of claims."

Section 236. Section 81-7-201, MCA, is amended to read:

"81-7-201. County ~~levy~~ *fee* for bounties on predatory animals. Whenever the owners~~, agent,~~ or agents of the owners ~~representing~~ *of not less than* 51% of the livestock of any county in this state present a petition to the board of county commissioners ~~of such county~~ asking for the ~~levy~~ *imposition* of a ~~tax~~ *fee* upon the livestock of the county for the purpose of paying bounties on predatory animals killed in the county, ~~it is the duty of the~~ *the* board of county commissioners ~~to make the levy, which may not exceed 50 mills on the dollar of the taxable value of~~ *shall impose the fee on* all livestock in the county. ~~The tax shall be assessed and collected in the same manner as all other state and county taxes.~~"

Section 237. Section 81-7-202, MCA, is amended to read:

"81-7-202. Signers of petition — time for presenting — limitation on bounties — bounty inspectors. (1) The petition provided for in 81-7-201 ~~shall~~ *must* be signed by the owners~~, agent,~~ or agents *of the owners* of not less than 51% of the livestock of ~~such~~ *the* county ~~as ascertained from the assessment books of such county~~ and ~~shall~~ *must* recommend to the board of county commissioners the bounties to be paid on ~~such~~ predatory animals, which ~~shall~~ *may* not exceed the following:

(a) on each wolf or mountain lion, $100;

(b) on each wolf pup or mountain lion kitten, $20;

(c) on one coyote, $5; *and*

(d) on each coyote pup, $2.50.

(2) ~~Such~~ *A* petition ~~shall~~ *must* be presented not later than August 1 of each year, and the board of county commissioners on determining the sufficiency of ~~such~~ *the* petition shall make an order granting ~~such~~ *the* petition~~;~~. ~~which~~ *The* order ~~shall~~ *must* fix the ~~levy~~ *fee* for that year and the amount of the bounties to be paid for the killing of each ~~such~~ predatory animal, which ~~shall~~ *may* not exceed the amounts recommended in ~~such~~ *the* petition~~;~~. *The order may also* ~~and~~ appoint not less than 10 or more than 20 stockowners of ~~such~~ *the* county to be bounty inspectors under this part, without compensation, who shall hold their offices for 1 year."

Section 238. Section 81-8-503, MCA, is amended to read:

"81-8-503. Expenditures for purebred livestock shows and sales. ~~The boards~~ *A board* of county commissioners ~~of the several counties of the state of Montana~~ may ~~and they are hereby authorized to~~ expend annually from the general fund of the county~~, not to exceed a sum equal to a levy of one-fourth mill on the taxable property of the county,~~ *an amount* for the purpose of conducting special purebred livestock shows and special purebred livestock sales within the county."

Section 239. Section 81-8-504, MCA, is amended to read:

"81-8-504. Tax levy authorized. For the purpose of defraying the costs of ~~such~~ purebred livestock shows and purebred livestock sales, the county commissioners ~~are authorized~~ *may*, subject to 15-10-420, ~~to~~ levy ~~annually~~ a tax ~~not to exceed one-fourth mill~~ on the taxable *value of all taxable* property ~~of~~ *in* the county, in excess of the amount levied for county purposes. The taxes must be paid into the general fund of the county."

Section 240. Section 85-3-412, MCA, is amended to read:

"85-3-412. Petition content. (1) The petition for the creation of a weather modification authority and for appointment of commissioners ~~shall~~ *must* contain:

(a) a title with the heading "Petition for Creation of (insert name of county) Weather Modification Authority";

(b) the following paragraph: We, the undersigned qualified electors of (name of county), state of Montana, request that the (name of county) board of county commissioners create by resolution a (name of county) weather modification authority and appoint the following five qualified electors of the county to 5-year terms of office as commissioners for the (name of county) weather modification authority:

(Here insert the name and address of each proposed commissioner for the (name of county) weather modification authority.)

(c) the following paragraph: We, the undersigned qualified electors of the (name of county), state of Montana, are notified that the creation of the (name of county) weather modification authority and the appointment of its commissioners by the (name of county) board of county commissioners will grant the authority the power to certify to the board of county commissioners a mill levy tax ~~not to exceed 2 mills~~ upon the ~~net~~ taxable ~~valuation~~ *value* of *all taxable* property in the county for a weather modification fund~~;~~. ~~which~~ *The* tax ~~may be levied in excess of the mill levy limit fixed by law for taxes for general county purposes and that such~~ *is subject to 15-10-420. The weather modification* fund must be used for weather modification activities as provided by 85-3-424. We, the undersigned, understand that the authority requested in this petition expires 5 years after the creation of the weather modification authority, except that the board of county commissioners may by resolution create a weather modification authority and all its powers, including the power to certify a tax levy as provided in 85-3-422, for one or more 5-year periods in accordance with 85-3-414.

(d) a heading, "Committee for Petitioners", followed by this statement: The following electors of (name of county), state of Montana, are authorized to represent and act for us and shall constitute the "Committee for the Petitioners" in the matter of this petition and all acts subsequent ~~thereto~~ *to this petition*.

(2) All signatures to ~~such~~ *the* petition must be numbered and dated by month, day, and year. The name must be written, with residence address and post-office address, including the county of residence.

(3) An affidavit must be attached to each petition and sworn to under oath before a notary public by the person circulating each petition, attesting to the fact that ~~he~~ *the person* circulated the petition and that each of the signatures to the petition is the genuine signature of the person whose name it purports to be and that each ~~such~~ person is a qualified elector in the county in which the petition was circulated."

Section 241. Section 85-3-422, MCA, is amended to read:

"85-3-422. Tax certified by weather modification authority — disposition of proceeds. (1) The authority may certify annually to the board of county commissioners a tax ~~of not to exceed 2 mills upon~~ *on* the taxable ~~valuation~~ *value* of ~~the~~ *all taxable* property in the county for a weather modification fund.

Subject to 15-10-420, the tax ~~must~~ *may* be levied by the board of county commissioners ~~and may be levied in excess of the mill levy limit fixed by law for taxes for general county purposes~~. The weather modification fund may be used only for weather modification activities as provided by 85-3-424. The tax certified by the authority is limited to the period of existence of the authority.

(2) The money in the weather modification fund must be invested to earn interest at the rate most advantageous to the fund, consistent with law and prudent business practice."

Section 242. Section 85-3-423, MCA, is amended to read:

"**85-3-423. County budget waived for first appropriation — conditions.** The provisions of 7-6-2342 apply if an emergency condition requiring prompt expenditure occurs immediately after an authority has been created by resolution of the board of county commissioners and after certification of a mill levy by the authority. In that case and only for the initial or first appropriation for the authority, the county commissioners may appropriate, from money not otherwise appropriated in the general fund, money necessary to carry out the provisions of this part. ~~However, the appropriation may not exceed an amount equal to the amount that would be raised by a 2-mill levy upon the taxable valuation of the property in the county.~~"

Section 243. Section 90-5-112, MCA, is amended to read:

"**90-5-112. Economic development levy.** (1) Subject to 15-10-420, the governing body of a city, county, or town is authorized to levy ~~up to 1 mill~~ *a tax* upon the taxable value of all ~~the~~ *taxable* property in the city, county, or town ~~subject to taxation~~ for the purpose of economic development. The governing body may:

(a) submit the question of the mill levy to the qualified voters ~~voting in a city, county, or town election~~ *as provided in [section 2]*; or

(b) approve the mill levy by a vote of the governing body.

(2) Funds derived from this levy may be used for purchasing land for industrial parks, constructing buildings to house manufacturing and processing operations, conducting preliminary feasibility studies, promoting economic development opportunities in a particular area, and other activities generally associated with economic development. These funds may not be used to directly assist an industry's operations by loan or grant or to pay the salary or salary supplements of government employees.

(3) The governing body of the county, city, or town may use the funds derived from this levy to contract with local development companies and other associations or organizations capable of implementing the economic development function.

~~(4) A tax authorized by a vote of the electorate, as provided in subsection (1)(a), may be levied for a period not to exceed 6 years.~~"

Section 244. School district block grants. (1) (a) The office of public instruction shall provide a block grant to each school district based on the revenue received by each district in fiscal year 2001 from vehicle taxes and fees, corporate license taxes paid by financial institutions, aeronautics fees, state land payments in lieu of taxes, and property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999.

(b) Block grants must be calculated using the electronic reporting system that is used by the office of public instruction and school districts. The electronic reporting system must be used to allocate a portion of the block grant amount into each district's fiscal year 2002 budget as an anticipated revenue source by fund.

(c) With the exception of vehicle taxes and fees, the office of public instruction shall use the amount actually received from the sources listed in subsection (1)(a) in fiscal year 2001 in its calculation of the block grant for fiscal year 2002 budgeting purposes. For vehicle taxes and fees, the office of public instruction shall use 93.4% of the amount actually received in fiscal year 2001 in calculating the block grant for fiscal year 2002.

(2) If the biennial appropriation provided in [section 248(1)] is insufficient to fund the school district block grants in fiscal year 2003 at the fiscal year 2002 level, the office of public instruction shall prorate the block grants to meet the remaining appropriation. School districts shall anticipate the prorated block grant amounts provided by the office of public instruction in their budgets for fiscal year 2003.

(3) Each year, 70% of each district's block grant must be distributed in November and 30% of each district's block grant must be distributed in May at the same time that guaranteed tax base aid is distributed. If the appropriation for block grants is greater than or less than the amount received by schools from the sources enumerated in subsection (1), the office of public instruction shall prorate the amount appropriated based upon the fiscal year 2001 revenue.

(4) The average amount of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% in each succeeding fiscal year.

Section 245. Countywide school retirement block grants. (1) The office of public instruction shall distribute one-half of the amount appropriated for countywide school retirement in November and the remainder in May. The total amount for each county is as follows:

	FY 2002	FY2002	FY2003	FY2003
	Elementary Payment	High School Payment	Elementary Payment	High School Payment
Beaverhead	$86,692	$50,789	$87,351	$51,175
Big Horn	62,668	36,963	63,144	37,244
Blaine	61,160	10,193	61,624	10,271
Broadwater	0	92,686	0	93,390
Carbon	43,451	82,110	43,782	82,734
Carter	9,751	5,453	9,825	5,495
Cascade	349,056	192,848	351,709	194,314
Chouteau	75,384	41,034	75,957	41,346
Custer	78,925	36,930	79,525	37,211
Daniels	0	37,994	0	38.283

Dawson	85,568	38,722	86,219	39,016
Deer Lodge	39,980	17,059	40,284	17,189
Fallon	0	0	0	0
Fergus	119,028	78,809	119,932	79,408
Flathead	558,861	296,410	563,108	298,662
Gallatin	383,035	181,743	385,946	183,125
Garfield	12,337	10,170	12,431	10,247
Glacier	79,924	34,016	80,532	34,275
Golden Valley	0	16,716	0	16,843
Granite	14,074	48,026	14,180	48,391
Hill	142,867	82,538	143,953	83,165
Jefferson	116,679	59,523	117,565	59,976
Judith Basin	6,149	21,359	6,196	21,521
Lake	173,584	139,990	174,903	141,054
Lewis & Clark	344,112	211,726	346,728	213,335
Liberty	20,144	16,786	20,297	16,914
Lincoln	73,001	98,835	73,556	99,586
Madison	0	103,163	0	103,947
Mccone	23,214	15,824	23,390	15,945
Meagher	13,654	10,678	13,758	10,759
Mineral	0	32,206	0	32,451
Missoula	487,129	362,756	490,832	365,513
Musselshell	30,675	21,577	30,908	21,741
Park	154,192	81,696	155,364	82,317
Petroleum	0	16,897	0	17,026
Phillips	10,502	95,084	10,582	95,806
Pondera	79,805	60,307	80,411	60,765
Powder River	18,815	15,011	18,958	15,125
Powell	69,695	22,666	70,225	22,838
Prairie	0	26,791	0	26,995
Ravalli	85,333	169,769	85.981	171.059

Richland	83,671	30,302	84,307	30,533
Roosevelt	71,090	60,329	71,630	60,787
Rosebud	359,662	286,411	362,395	288,588
Sanders	203,863	127,694	205,413	128,665
Sheridan	0	46,231	0	46,583
Silver Bow	249,821	141,541	251,719	142,617
Stillwater	91,487	75,926	92,182	76,503
Sweet Grass	36,996	36,327	37,277	36,603
Teton	57,760	41,547	58,199	41,863
Toole	43,323	51,399	43,652	51,790
Treasure	0	18,947	0	19,091
Valley	15,824	90,532	15,944	91,220
Wheatland	20,946	12,103	21,105	12,195
Wibaux	0	14,585	0	14,696
Yellowstone	1,125,488	643,136	1,134,042	648,024
Total	6,269,374	4,650,865	6,317,022	4,686,212

(2) The average amount of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% in each succeeding fiscal year.

Section 246. Countywide school transportation block grants. (1) The office of public instruction shall distribute one-half of the amount appropriated for countywide school transportation in November and the remainder in May. The total amount for each county is as follows:

	FY 2002 Payment	FY2003 Payment
Beaverhead	$29,924	$30,151
Big Horn	43,635	43,966
Blaine	3,727	3,756
Broadwater	14,935	15,048
Carbon	23,493	23,671
Carter	8,675	8,741
Cascade	84,382	85,024
Chouteau	33.063	33.314

Custer	7,069	7,123
Daniels	16,771	16,899
Dawson	21,356	21,518
Deer Lodge	14,392	14,502
Fallon	20,447	20,603
Fergus	58,765	59,211
Flathead	89,846	90,529
Gallatin	81,262	81,879
Garfield	17,284	17,415
Glacier	37,740	38,027
Golden Valley	3,547	3,574
Granite	8,153	8,215
Hill	46,409	46,762
Jefferson	36,329	36,605
Judith Basin	16,878	17,007
Lake	69,756	70,286
Lewis & Clark	58,287	58,730
Liberty	15,874	15,995
Lincoln	50,388	50,771
Madison	21,263	21,424
Mccone	12,498	12,593
Meagher	4,237	4,269
Mineral	7,478	7,534
Missoula	93,969	94,683
Musselshell	12,945	13,043
Park	31,904	32,147
Petroleum	9,854	9,929
Phillips	31,080	31,316
Pondera	22,599	22,771
Powder River	21,304	21,465
Powell	16,622	16,748

Prairie	8,544	8,609
Ravalli	60,579	61,040
Richland	32,995	33,246
Roosevelt	25,740	25,935
Rosebud	97,820	98,564
Sanders	71,581	72,125
Sheridan	12,946	13,045
Silver Bow	21,872	22,038
Stillwater	27,358	27,566
Sweet Grass	14,996	15,110
Teton	28,202	28,416
Toole	17,208	17,339
Treasure	5,446	5,487
Valley	26,677	26,880
Wheatland	9,142	9,212
Wibaux	6,198	6,246
Yellowstone	149,314	150,448
Total	1,814,759	1,828,551

(2) The average amount of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% in each succeeding fiscal year.

Section 247. Section 5, Chapter 95, Laws of 2001, is amended to read:

"**Section 5. Coordination instruction.** If both House Bill No. 124 and [this act] are passed and approved:

(1) then [section 1 of this act] must read as follows:

"**23-2-533.** ~~**(Temporary)**~~ **Use of** ~~**percentage of boat fees**~~ ***allocated funds*** **for** ~~**boat**~~ ***boating*** **facilities** ~~**— designation of fees for regional use**~~**.** (1) ~~At the time the fee in lieu of tax imposed under 23-2-516 is collected, the payor shall designate the fish, wildlife, and parks administrative region in which the majority of the payor's boating activities take place. Upon receipt of the fee in the motorboat account in the state special revenue fund, the department shall earmark the fee for use in the designated region.~~

~~(2) All fees designated~~ *Funds allocated* to the motorboat account ~~by 23-2-518(2)~~ must be used by the department to*:*

(a) improve, *operate, or maintain* ~~regional~~ boating facilities ~~under the control of the department and, in conjunction with other funds in the motorboat account, to~~*: and*

(b) cover costs associated with the boating advisory council created in 23-2-536.

(2) The department may use the ~~fees~~ *funds* to match available federal funds to the extent possible. Expenditure of ~~fees~~ *funds* must be made after consideration of recommendations by the boating advisory council. ~~(Terminates June 30, 2002—sec. 9, Ch. 476, L. 1995.)~~"

(2) then 23-2-534, MCA, is amended to read:

"**23-2-534. ~~(Temporary)~~ Funding of state recreational boating safety program — certification of county programs — administration by counties.** (1) The department may in its discretion use available state funds and federal matching funds to contract with counties to implement designated parts of the state recreational boating safety program. If a county accepts a grant, the county shall agree to implement a program that is certified by the department as fulfilling the requirements of the state recreational boating safety program.

(2) A county may ~~designate any amount of boat fees in lieu of tax, unless otherwise allocated by 23-2-518(2), or other~~ *allocate* funds ~~for collection by~~ *to* the department for the recreational boating safety program. This money must be used by the department for contracts with counties for the recreational boating safety program. ~~(Terminates June 30, 2002—sec. 10, Ch. 476, L. 1995.)~~""

Section 248. Appropriations. (1) There is appropriated from the general fund to the office of public instruction $114,394,755 for the biennium ending June 30, 2003, for the purpose of school district block grants as provided in [section 244].

(2) There is appropriated from the general fund to the office of public instruction $10,920,239 for fiscal year 2002 and $11,003,234 for fiscal year 2003 for the purpose of countywide school retirement block grants as provided in [section 245].

(3) There is appropriated from the general fund to the office of public instruction $1,814,759 for fiscal year 2002 and $1,828,551 for fiscal year 2003 for the purpose of countywide school transportation block grants as provided in [section 246].

(4) If Senate Bill No. 176 is passed and approved, then there is appropriated from the general fund to the supreme court for fiscal year 2003 the amount deducted from the entitlement share payment in [section 1(2)] plus an additional 6%. The amount appropriated is up to $25 million to be used for the purpose of implementing Senate Bill No. 176.

Section 249. Inclusion of appropriations in budget. The governor shall include the appropriation in [section 248(1)] in the present law base budget prepared for the 58th legislative session for continued funding of the school district budget items funded by that appropriation.

Section 250. Reservation of funds. The amount of $7,447,018 must be reserved for countywide retirement and countywide transportation in fiscal year 2004 and the amount of $4,812,299 must be reserved for countywide retirement and countywide transportation in fiscal year 2005.

Section 251. Policy and purpose. (1) The purpose of [House Bill No. 124] is to establish a financial partnership between state and local governments.

(2) This partnership is founded on trust and is committed to protecting and promoting the financial interests of cities, towns, counties, local schools, special districts, and state government.

(3) Local governments agree to relinquish dedicated revenue in exchange for an entitlement share of the state general fund based on a formula that responds to the performance of the Montana economy.

(4) The legislature agrees to fund the entitlement share in accordance with the provisions of [section 1].

Section 252. Coordination with school funding study. If an interim study of school funding is conducted during the interim commencing July 1, 2001, the study must include recommendations for retaining or repealing the block grants provided for in [sections 244 through 246].

Section 253. Repealer.(1) Sections 7-6-2531, 7-6-2532, 7-6-2533, 7-6-2534, 7-6-2535, 7-6-2536, 7-6-2537, 7-6-4432, 7-6-4434, 7-6-4436, 7-6-4437, 7-6-4439, 7-6-4452, 7-16-2432, 7-34-2134, 7-34-2135, 7-34-2136, 15-7-122, 17-3-214, 20-25-1007, 52-1-110, 53-2-302, 53-2-306, 53-2-322, 53-2-610, 53-2-801, 53-2-802, 53-2-803, 53-2-811, 53-2-812, 53-2-813, 53-4-246, 53-4-247, 61-3-508, 61-3-510, 61-3-511, 61-3-512, 76-1-405, 76-1-407, 77-1-505, 77-1-506, 77-1-507, 80-2-223, and 80-7-810, MCA, are repealed.

(2) Sections 15-31-701 and 15-31-702, MCA, are repealed.

Section 254. Codification instruction. (1) [Sections 1, 3, and 251] are intended to be codified as an integral part of Title 15, chapter 1, part 1, and the provisions of Title 15, chapter 1, part 1, apply to [sections 1, 3, and 251].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 1, part 4, and the provisions of Title 15, chapter 1, part 4, apply to [section 2].

Section 255. Coordination instructions. (1) If House Bill No. 179 and [this act] are both passed and approved:

(a) [section 1 of House Bill No. 179] and [section 2 of this act] are intended to be codified as the same section; and

(b) [section 9 of House Bill No. 179] amending 7-6-2541 is void.

(2) If Senate Bill No. 176 is not passed and approved:

(a) [section 1(1)(d) of this act] is void;

(b) the phrase "the fiscal year 2001 increased costs for the state assumption of district court expenses provided for in 3-5-901 and" in [section 1(2) of this act] is void; and

(c) the amendments to 3-2-714, 3-5-901, 25-1-201, 40-4-215, 40-4-226, 42-2-105, and 52-6-105 in [this act] are void.

(3) If Senate Bill No. 176 and [this act] are both passed and approved, then the amendments to 3-2-714, 3-5-901, 25-1-201, 40-4-215, and 40-4-226, in [this act] are void and the amendments to 42-2-105 and 61-3-509 in Senate Bill No. 176 are void.

(4) If Senate Bill No. 73 and [this act] are both passed and approved, then the amendments to 23-2-518, 23-2-618, 23-2-803, 61-3-509,and 67-3-205 in Senate Bill No. 73 are void.

(5) If Senate Bill No. 144 and [this act] are both passed and approved, then the amendment to 72-16-912 in Senate Bill No. 144 is void.

(6) If Senate Bill No. 175 and [this act] are both passed and approved then the amendments to 23-2-616, 61-3-321, and 61-3-509 in Senate Bill No. 175 are void.

(7) If Senate Bill No. 317 and [this act] are passed and approved, then 16-1-406 must read as follows:

Section 105. Section 16-1-406, MCA, is amended to read:

"**16-1-406. Taxes on beer.** (1) *(a)* A tax ~~of $4.30 per~~ is imposed *on each barrel* of 31 gallons ~~is imposed on each barrel~~ of beer sold in Montana by a wholesaler. *A barrel of beer equals 31 gallons. The tax is based upon the total number of barrels of beer produced by a brewer in a year. A brewer who produces less than 20,000 barrels of beer a year is taxed on the following increments of production:*

(i) up to 5,000 barrels, $1.30;

(ii) 5,001 barrels to 10,000 barrels, $2.30; and

(iii) 10,001 barrels to 20,000 barrels, $3.30.

(b) The tax on beer sold for a brewer who produces over 20,000 barrels is $4.30.

(2) The tax *imposed pursuant to subsection (1)* is due at the end of each month from the wholesaler upon beer sold by the wholesaler during that month. The department shall compute the tax due on beer sold in containers other than barrels or in barrels of more or less capacity than 31 gallons.

~~(2)~~*(3)* Each quarter, in accordance with the provisions of 15-1-501, of the tax collected pursuant to subsection (1), an amount equal to:

(a) ~~$1~~ *23.26%* must be deposited in the state treasury to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism; *and*

(b) ~~50 cents~~ *the balance* must be deposited in the state general fund~~; and~~

~~(c) $2.80 must be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the state special revenue fund.~~

~~(3) (a) The money in the incorporated cities and towns beer tax account is statutorily appropriated, as provided in 17-7-502, to the department, which shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census. For cities and towns incorporated after the latest official federal census, the census must be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it may not receive any funds under this section and the amount previously distributed to the city or town must be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section must be expended for state purposes, such as law enforcement, maintenance of the transportation system, and public health.~~

~~(b) The department may adjust population estimates only on the July 1 following the date of publication of the estimates by the U.S. bureau of the census.~~

~~The adjusted distribution formula must remain in effect for the entire fiscal year.~~"

(8) If Senate Bill No. 339 and [this act] are both passed and approved, then the amendments to 41-3-1122, 53-2-207, and 53-2-304 in [this act] are void.

(9) If Senate Bill No. 389 and [this act] are both passed and approved, then 80-2-232 must read as follows:

Section 219. Section 80-2-232, MCA, is amended to read:

"**80-2-232. ~~State treasurer's~~ *Department of revenue's* duty — warrants — transfers to ~~county and~~ state general fund.** (1) The ~~state treasurer~~ *department of revenue* ~~shall~~ *must* receive all money paid under this part and shall place the money in trust for the hail insurance program to the credit of the enterprise fund. All money collected by the board must be deposited in the enterprise fund, and all losses must be paid from that fund. All other costs are administrative expenses and must be paid from the board's enterprise fund. If registered warrants are presented and there is no money to pay the warrants, the warrants must be registered and bear interest at the rate of 4% ~~per annum~~ *a year* until called for payment by the state treasurer.

(2) ~~Upon warrants drawn by order of the board, the state treasurer shall pay out of the board's enterprise fund to the county treasurer of each county where state hail insurance coverage is in force 2% of the gross annual levies made and collected in that county under this part for the use of the county as the board of county commissioners may determine.~~ *The department of revenue may retain 2% of the gross annual fees imposed and collected under this part for administrative costs associated with billing and collection of hail and fire insurance premiums.*

(3) Upon authorization from the board of hail insurance, the state treasurer shall transfer out of the board's enterprise fund to the general fund of the state of Montana 1.5% of the gross annual ~~levies made~~ *fees imposed* and collected in the state of Montana."

(10) (a) If Senate Bill No. 448 and [this act] are both passed and approved then [section 2 of Senate Bill No. 448], amending 61-3-321, is void.

(b) If Senate Bill No. 448 is not passed and approved then:

(i) in [section 3 of this act], the bracketed subsection (3)(f) relating to a fee for transportation for senior citizens and persons with disabilities is void; and

(ii) in [section 163 of this act], the bracketed subsection (6) of 61-3-321, relating to a fee for transportation for senior citizens and persons with disabilities is void.

(11) If Senate Bill No. 501 and [this act] are both passed and approved, then the amendment to 15-10-420 in Senate Bill No. 501 is void.

Section 256. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective July 1, 2001.

(2) [Section 253(2) and this section] are effective on passage and approval.

(3) [Sections 6, 7, and 144] are effective July 1, 2002.

Section 257. Retroactive applicability. (1) [Section 253(2)] applies retroactively, within the meaning of 1-2-109, to July 1, 2000.

(2) [Section 143] applies retroactively, within the meaning of 1-2-109, to April 1, 2000.

Approved May 5, 2001

CHAPTER NO. 575

[HB 142]

AN ACT GRANTING THE FISH, WILDLIFE, AND PARKS COMMISSION AUTHORITY TO ADOPT RULES RESTRICTING NONRESIDENT MOUNTAIN LION HUNTERS IN DESIGNATED HUNTING DISTRICTS IN ADMINISTRATIVE REGION 1; AMENDING SECTION 87-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the Legislature finds that there are unique and special circumstances associated with lion hunting in Region 1 that have created intense hunting pressure, competition, and biological management problems that are unacceptable to the general public.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-301, MCA, is amended to read:

"87-1-301. (Temporary) Powers of commission. (1) The commission:

(a) shall set the policies for the protection, preservation, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water;

(f) shall review and approve the budget of the department prior to its transmittal to the budget office; and

(g) shall review and approve construction projects ~~whose~~ *that have an* estimated cost ~~is~~ *of* more than $1,000 but less than $5,000.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders for the biologically sound management of big game populations of deer and elk and to control the impacts of those deer and elk populations on uses of private property.

(5) The commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts in the administrative region designated by the department as region 1; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts in the administrative region designated by the department as region 1, which may include limiting the number of nonresident hound handler permits.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters. (Terminates October 1, 2001—sec. 6, Ch. 355, L. 1997.)

87-1-301. (Effective October 1, 2001) Powers of commission. (1) The commission:

(a) shall set the policies for the protection, preservation, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water;

(f) shall review and approve the budget of the department prior to its transmittal to the budget office; and

(g) shall review and approve construction projects ~~whose~~ *that have an* estimated cost ~~is~~ *of* more than $1,000 but less than $5,000.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

(4) The commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(b) giving a qualifying landowner a preference in drawings. As used in this subsection (4)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(5) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts in the administrative region designated by the department as region 1; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts in the administrative region designated by the department as region 1, which may include limiting the number of nonresident hound handler permits.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Termination. [This act] terminates April 30, 2004.

Approved May 5, 2001

CHAPTER NO. 576

[HB 146]

AN ACT REVISING THE YOUTH COURT ACT TO GENERALLY REVISE LAWS RELATING TO THE DETENTION AND PLACEMENT OF YOUTH; AMENDING SECTIONS 41-5-103, 41-5-203, 41-5-206, AND 52-5-129, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-103, MCA, is amended to read:

"**41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

(4) "Commit" means to transfer ~~to~~ legal custody *of a youth to the department or to the youth court.*

(5) "Correctional facility" means a public or private, *physically secure* residential facility ~~used for the placement of delinquent youth or individuals convicted of criminal offenses~~ *under contract with the department and operated solely for the purpose of housing adjudicated delinquent youth.*

(6) "Court", when used without further qualification, means the youth court of the district court.

(7) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to 41-5-206.

(8) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(9) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who has been placed on probation as a delinquent youth or a youth in need of intervention and who has violated any condition of probation.

(10) "Department" means the department of corrections provided for in 2-15-2301.

(11) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed ~~to the department~~ under 41-5-1512(3) or 41-5-1513(1)(b) or (1)(c) or who are under parole supervision. Department records do not include information provided by the department to the department of public health and human services' management information system.

(12) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of a youth parole agreement.

(13) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(14) "Emergency placement" means placement of a youth in a youth care facility for less than 45 days to protect the youth when there is no alternative placement available.

~~(14)~~*(15)* "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

~~(15)~~*(16)* "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

~~(16)~~*(17)* "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

~~(17)~~*(18)* "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

~~(18)~~*(19)* "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.

~~(19)~~*(20)* "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

~~(20)~~*(21)* "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest but does not include a collocated juvenile detention facility that complies with 28 CFR, part 31.

~~(21)~~*(22)* "Judge", when used without further qualification, means the judge of the youth court.

~~(22)~~*(23)* "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

~~(23)~~*(24)* "Law enforcement records" means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

~~(24)~~*(25)* (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

~~(25)~~*(26)* "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

~~(26)~~*(27)* "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

~~(27)~~*(28)* "Probable cause hearing" means the hearing provided for in 41-5-332.

~~(28)~~*(29)* "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

~~(29)~~*(30)* "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

~~(30)~~*(31)* "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

~~(31)~~*(32)* "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

~~(32)~~*(33)* "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

~~(33)~~*(34)* "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

~~(34)~~*(35)* "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in ~~41-5-344~~ *41-5-347*.

~~(35)~~*(36)* "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

~~(36)~~*(37)* "State youth correctional facility" means ~~a residential facility used for the placement and rehabilitation of delinquent youth, such as~~ the Pine Hills youth correctional facility in Miles City *or the Riverside youth correctional facility in Boulder*.

~~(37)~~*(38)* "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

~~(38)~~*(39)* "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection ~~(38)(a)~~ *(39)(a)*, if the victim is a minor; and

(c) an adult relative of a homicide victim.

~~(39)~~*(40)* "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

~~(40)~~*(41)* "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1201.

~~(41)~~*(42)* "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

~~(42)~~*(43)* "Youth care facility" has the meaning provided in 41-3-1102.

~~(43)~~*(44)* "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of intervention, or a youth in need of care and includes the youth court judge, probation officers, and assessment officers.

~~(44)~~*(45)* "Youth court records" means information or data, either in written or electronic form, maintained by the youth court pertaining to a youth under jurisdiction of the youth court and includes reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, youth assessment materials, predispositional studies, and supervision records of probationers. Youth court records do not include information provided by the youth court to the department of public health and human services' management information system.

~~(45)~~*(46)* "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a) (i) operated, administered, and staffed separately and independently of a jail; or

(ii) a collocated secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

~~(46)~~*(47)* "Youth in need of care" has the meaning provided for in 41-3-102.

~~(47)~~*(48)* "Youth in need of intervention" means a youth who is adjudicated as a youth and who commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding alcoholic beverages;

(b) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention."

Section 2. Section 41-5-203, MCA, is amended to read:

"**41-5-203. Jurisdiction of court.** (1) Except as provided in subsection (2) and for cases filed in the district court under 41-5-206, the court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of intervention, or a youth in need of care or concerning any person under 21 years of age charged with having violated any law of the state or any ordinance of a city or town other than a traffic or fish and game law prior to having become 18 years of age.

(2) ~~Justice~~ *Justices'*, municipal, and city courts have concurrent jurisdiction with the youth court over all alcoholic beverage, tobacco products, and gambling violations alleged to have been committed by a youth.

(3) The court has jurisdiction to:

(a) transfer a youth court case to the district court after notice and hearing; ~~and~~

(b) with respect to extended jurisdiction juvenile cases:

(i) designate a proceeding as an extended jurisdiction juvenile prosecution;

(ii) conduct a hearing, receive admissions, and impose upon a youth who is adjudicated as an extended jurisdiction juvenile a sentence that may extend beyond the youth's age of majority;

(iii) stay that portion of an extended jurisdiction sentence that is extended beyond a youth's majority, subject to the performance of the juvenile portion of the sentence;

(iv) continue, modify, or revoke the stay after notice and hearing;

(v) after revocation, transfer execution of the stayed sentence to the department;

(vi) transfer supervision of any juvenile sentence if, after notice and hearing, the court determines by a preponderance of the evidence that the juvenile has violated or failed to perform the juvenile portion of an extended jurisdiction sentence; and

(vii) transfer a juvenile case to district court after notice and hearing~~.~~*; and*

(c) impose criminal sanctions on a juvenile as authorized by the Extended Jurisdiction Prosecution Act, Title 41, chapter 5, part 16."

Section 3. Section 41-5-206, MCA, is amended to read:

"**41-5-206. Filing in district court prior to formal proceedings in youth court.** (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103;

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) assault with a weapon as defined in 45-5-213;

(v) robbery as defined in 45-5-401;

(vi) burglary or aggravated burglary as defined in 45-6-204;

(vii) aggravated kidnapping as defined in 45-5-303;

(viii) possession of explosives as defined in 45-8-335;

(ix) criminal distribution of dangerous drugs as defined in 45-9-101;

(x) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

(xi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(iii) and (1)(b)(v) through (1)(b)(xii);

(xii) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership, as defined in 45-8-403;

(xiii) escape as defined in 45-7-306.

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court ~~if~~ *unless* the district court finds, by a preponderance of the evidence, that*:*

(a) a youth court proceeding and disposition will ~~not~~ serve the interests of community protection ~~and~~*;*

(b) that the nature of the offense does not warrant prosecution in district court; and

(c) it would be in the best interests of the youth~~, and that, considering the seriousness of the offense, the case should remain in the district court~~ *if the matter was prosecuted in youth court.*

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent

with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) ~~A youth whose~~ *If a youth's* case is filed in the district court *and remains in the district court after the transfer hearing, the youth* may ~~not~~ be detained ~~or otherwise placed~~ in a jail or other adult detention facility ~~before~~ *pending* final disposition of the youth's case ~~unless:~~

~~(a) alternative facilities do not provide adequate security; and~~

~~(b)~~ *if* the youth is kept in an area that provides physical separation ~~as well as sight and sound separation~~ from adults accused or convicted of criminal offenses."

Section 4. Section 52-5-129, MCA, is amended to read:

"**52-5-129. Hearing on alleged violation of parole agreement — right to appeal outcome.** (1) When it is alleged by a juvenile parole officer that a youth has violated the terms of the youth's parole agreement, the youth must be granted a hearing at the site of the alleged violation or in the county in which the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. At the discretion of the hearings officer, this hearing may be held by means of interactive video transmission. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that the youth should be returned to ~~the~~ *a* youth correctional facility ~~from which the youth was released~~ or whether a different plan for custody and supervision of the youth should be pursued by the department of corrections.

(2) Pending the hearing on a violation and pending the department's decision, a youth may not be detained except when the youth's detention or care is required to protect the person or property of the youth or of others or when the youth may abscond or be removed from the community. The department shall determine the place and manner of detention pursuant to 41-5-348 and is responsible for the cost of the detention. Procedures for taking a youth into custody and detention of a youth charged with violation of the youth's parole agreement are as provided in 41-5-321.

~~(2)~~*(3)* The youth, upon advice of an attorney, may waive the right to a hearing.

~~(3)~~*(4)* With regard to this hearing, the youth must be given:

(a) written notice of the alleged violation of the parole agreement, including notice of the purpose of the hearing;

(b) a disclosure of the evidence against the youth and the facts constituting the alleged violation;

(c) the opportunity to be heard in person or by interactive video transmission and to present witnesses and documentary evidence to controvert the evidence against the youth and to show that there are compelling reasons that justify or mitigate the violation;

(d) the opportunity to have the hearings officer subpoena witnesses;

(e) the right to confront and cross-examine adverse witnesses in person or by means of interactive video transmission;

(f) the right to be represented by an attorney;

(g) a record of the hearing; and

(h) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will be provided by the hearings officer.

~~(4)~~*(5)* The department shall provide a hearings officer to conduct the hearing. The department shall adopt rules necessary to effect a prompt and full review.

~~(5)~~*(6)* If the hearings officer finds, by a preponderance of the evidence, that the youth did in fact commit the violation, the hearings officer shall make a ~~recommendation to the department~~ *decision* for the placement of the youth. In making this ~~recommendation~~ *decision*, the hearings officer may consider mitigating or aggravating circumstances. The youth or the youth's attorney may appeal the hearings officer's decision to the department director. The appeal must be made in writing within 5 days of the hearing. The department director or designee shall grant or deny the appeal within 5 days of receipt of the appeal.

~~(6)~~*(7)* The youth may appeal the decision of the department director to the district court of the county in which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the department director's decision. The youth may obtain a written transcript of the hearing from the department by giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the department may not be altered except for abuse of discretion or manifest injustice.

~~(7) Pending the hearing on a violation and pending the department's decision, a youth may not be detained except when the youth's detention or care is required to protect the person or property of the youth or of others or the youth may abscond or be removed from the community. The department shall determine the place and manner of detention pursuant to 41-5-348 and is responsible for the cost of the detention. Procedures for taking into custody and detention of a youth charged with violation of the youth's parole agreement are as provided in 41-5-321.~~

(8) If the decision ~~is~~ made *under subsection (6) is* to return the youth to ~~the~~ *a* youth correctional facility ~~from which the youth was released~~ and the youth appeals that decision, the youth shall await the outcome of the appeal at the facility.

(9) If a decision is made under subsection (6) to revoke the parole of a youth who was placed in and released from an alternative facility under 41-5-355 because of overcrowding in a state youth correctional facility, the youth may be placed in a state youth correctional facility if the state youth correctional facility is no longer overcrowded."

Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. Effective date. [This act] is effective July 1, 2001.

Approved May 5, 2001

CHAPTER NO. 577

[HB 474]

AN ACT REVISING LAWS RELATING TO ELECTRICAL ENERGY; ALLOWING CUSTOMERS WHO ELECTED AN ALTERNATIVE ELECTRICAL ENERGY SUPPLIER AN OPPORTUNITY TO RECEIVE ELECTRICAL ENERGY FROM THE DEFAULT SUPPLIER; PROVIDING THAT ELECTRICAL ENERGY PURCHASED FROM THE DEFAULT SUPPLIER BY A DEFAULT CUSTOMER MUST BE USED FOR A CONSUMPTIVE PURPOSE AND MAY NOT BE REMARKETED; AUTHORIZING THE BOARD OF INVESTMENTS TO INVEST IN NEW GENERATION PROJECTS THAT MEET CERTAIN CRITERIA; PROVIDING ELIGIBILITY CRITERIA FOR THE PROJECTS, INCLUDING LONG-TERM CONTRACTS WITH THE DEFAULT SUPPLIER OR A MONTANA INDUSTRY FOR THE PURCHASE OF THE ELECTRICAL ENERGY GENERATED BY THE PROJECTS; REQUIRING A PLEDGE OF THE CONTRACT PROCEEDS AS A REPAYMENT OPTION FOR THE INVESTMENTS; MAKING THE STATE A PARTY TO THE CONTRACT IN THE EVENT OF DEFAULT IN PAYMENT BY DEFAULT SUPPLIER; EXTENDING THE DURATION OF THE UNIVERSAL SYSTEM BENEFITS CHARGE; MODIFYING THE DEFAULT SUPPLIER LICENSING RULES; CREATING A CONSUMER ELECTRICITY SUPPORT PROGRAM; PROVIDING THAT AN ELECTRICITY BUYING COOPERATIVE MAY SERVE AS A SUPPLIER OR PROMOTER OF ALTERNATIVE ENERGY AND CONSERVATION PROGRAMS; DEFINING "ELECTRICITY SUPPLY COSTS"; CLARIFYING THE DEFINITION OF "UNIVERSAL SYSTEM BENEFITS PROGRAMS" TO INCLUDE IRRIGATED AGRICULTURE; PROVIDING FOR PROCEDURES FOR A TRANSITION TO CUSTOMER CHOICE; PROVIDING FOR THE DEFAULT SUPPLIER'S RECOVERY OF ELECTRICITY SUPPLY COSTS; REVISING THE UNIVERSAL SYSTEM BENEFITS PROGRAMS FUNDING LEVEL TO INCLUDE IRRIGATED AGRICULTURE; ESTABLISHING A MONTANA POWER AUTHORITY; ALLOWING THE AUTHORITY TO PURCHASE, CONSTRUCT, AND OPERATE ELECTRICAL GENERATION FACILITIES OR ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEMS AND TO ENTER INTO JOINT VENTURES FOR THESE PURPOSES; AUTHORIZING THE BOARD OF EXAMINERS TO ISSUE REVENUE BONDS FOR THE MONTANA POWER AUTHORITY TO ACQUIRE ELECTRICAL GENERATION FACILITIES AND TO BUILD ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEMS; PROVIDING THAT THE PRINCIPAL AND INTEREST ON THE BONDS IS PAYABLE FROM THE SALE OF ELECTRICAL ENERGY FROM THE FACILITIES AND FROM ELECTRICAL ENERGY TRANSMISSION AND DISTRIBUTION CHARGES; AMENDING SECTIONS 17-7-502, 35-19-104, 69-8-103, 69-8-104, 69-8-201, 69-8-203, 69-8-210, 69-8-211, 69-8-402, 69-8-403, 69-8-412, AND 69-8-414, MCA; REPEALING SECTIONS 35-19-103, 69-8-416, AND 69-8-417, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purposes of [sections 1 through 5] are to:

(1) create up tc 450 megawatts of electrical energy from new generation projects in Montana; and

(2) permit the purchase of up to 120 megawatts of electrical energy from existing qualified facilities that are located in Montana for the purpose of providing consumers with low-cost, reliable electrical energy.

Section 2. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "Default supplier" has the meaning provided in 69-8-103.

(2) "Montana industry" means a commercial enterprise located within Montana that would have consumed more than 5 megawatts of electrical energy on an average during the last 12 months if the enterprise had not closed due to electrical prices.

(3) "Qualified facility" means an electrical generation facility owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a, or as provided for in 16 U.S.C. 796(17)(A).

Section 3. Qualification date. In order to participate in [sections 1 through 5], a new generation project must commence or have completed construction by July 1, 2003, or be an existing qualified facility choosing to participate in the contract portion of the program provided for in [section 5].

Section 4. Investment criteria. (1) The board of investments shall review applications from proposed new electrical generation facilities and existing qualified facilities for in-state investments pursuant to Title 17, chapter 6, part 3. In order to make an investment in a new electrical generation facility or an existing qualified facility, the board shall determine that:

(a) the project promotes economic development in Montana and creates or maintains employment opportunities in Montana;

(b) the construction of the project will provide stable electrical energy rates for Montanans who rely on the default supplier for electrical energy;

(c) the project will maintain environmental quality consistent with state and federal standards; and

(d) the project possesses long-term economic prospects consistent with the obligation to provide electrical energy generation capacity and electrical energy for the term of the contracts as required in [section 5].

(2) A project selected by the board must be collateralized by payments for the sale of the electricity produced by the project to the default supplier or a Montana industry at rates not in excess of 5 cents per kilowatt hour plus annual escalations equal to the inflation rate. A payment may be made from the assets of the state if the default supplier or its assignee or a Montana industry fails to pay the approved project for energy delivered in order to maintain the supply of energy to Montana. The state must be a party to the contract and may bring a cause of action against the default supplier or a Montana industry for nonpayment.

Section 5. Term of contract — pledge. (1) A project is not eligible for an investment under [section 4] unless the applicant has signed an assignable electrical energy sales agreement with the default supplier or its successor in interest or with a Montana industry for a term of not less than 15 years or more than 25 years.

(2) The proceeds of the contract must be pledged as security for the repayment of the investment.

Section 6. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-31-702; 15-34-115; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; *[section 19];* 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-222; 80-4-416; 80-11-518; 81-5-111; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; and pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005.)"

Section 7. Section 35-19-104, MCA, is amended to read:

"**35-19-104. Permissible purpose of incorporation.** A buying cooperative may be organized under this chapter only for the purpose of supplying electricity to small customers as ~~a default~~ *an electrical energy* supplier, pursuant to ~~69-8-403~~ *Title 69, chapter 8, parts 1 through 5, or for serving as a supplier or promoter of alternative energy and conservation programs*."

Section 8. Section 69-8-103, MCA, is amended to read:

"**69-8-103. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers, purchases ~~electric~~ *electrical* energy, and takes title to ~~electric~~ *electrical* energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of ~~electric~~ *electrical* energy but that does not take title to ~~electric~~ *electrical* energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Customer-generator" means a user of a net metering system.

(8) "Default supplier" means a *customer's* distribution services provider ~~or a person that has received a default supplier license from the commission~~.

(9) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(10) "Distribution services provider" means a utility owning distribution facilities for distribution of electricity to the public.

(11) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

(12) (a) "Electricity supply costs" means actual costs of the electricity. Actual costs include fuel, ancillary service costs, transmission costs including congestion and losses, and any other costs directly related to the purchase of electricity and management of electricity costs or a related service.

(b) Revenue from the sale of surplus electricity must be deducted from the costs included under subsection (12)(a). Total transmission costs are recoverable only once in electricity supply costs.

(c) The terms used in this subsection (12) must be construed according to industry standards.

~~(12)~~*(13)* "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

~~(13)~~*(14)* (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and of acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

~~(14)~~*(15)* "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

~~(15)~~*(16)* "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-201, the commission, or a utility.

~~(16)~~*(17)* "Large customer" means, for universal system benefits programs purposes, a customer with an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that individual load.

~~(17)~~*(18)* "Local governing body" means a local board of trustees of a rural electric cooperative.

~~(18)~~*(19)* "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

~~(19)~~*(20)* "Net metering" means measuring the difference between the electricity distributed to and the electricity generated by a customer-generator that is fed back to the distribution system during the applicable billing period.

~~(20)~~*(21)* "Net metering system" means a facility for the production of ~~electric~~ *electrical* energy that:

(a) uses as its fuel solar, wind, or hydropower;

(b) has a generating capacity of not more than 50 kilowatts;

(c) is located on the customer-generator's premises;

(d) operates in parallel with the distribution services provider's distribution facilities; and

(e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

~~(21)~~*(22)* "Nonbypassable rates or charges" means rates or charges that are approved by the commission and imposed on a customer to pay the customer's share of transition costs or universal system benefits programs costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

~~(22)~~*(23)* "Pilot program" means a program using a representative sample of residential and small commercial customers to assist in developing and offering customer choice of electricity supply for all residential and commercial customers.

~~(23)~~*(24)* "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

~~(24)~~*(25)* "Qualifying load" means, for payments and credits associated with universal system benefits programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in which the customer qualifies as a large customer.

~~(25)~~*(26)* "Small customer" means a residential customer or a small commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts of a public utility distribution services provider that has opened access on its distribution system pursuant to Title 35, chapter 19, or this chapter.

~~(26)~~*(27)* "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents, and other entities acting for the benefit of that holder.

~~(27)~~*(28)* "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

~~(28)~~*(29)* "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

~~(29)~~*(30)* "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

~~(30)~~*(31)* "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

~~(31)~~*(32)* "Transition period" means the period beginning on July 1, 1998, and ending on July 1, ~~2002, unless otherwise extended pursuant to this chapter, during which utilities may phase in customer choice of electricity supplier~~ *2007*.

~~(32)~~*(33)* "Transition property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order, including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

~~(33)~~*(34)* "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

(35) "Transmission services provider" means a person controlling or operating transmission facilities.

~~(35)~~*(36)* "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits programs costs.

~~(36)~~*(37)* "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) reducing energy costs of irrigated agriculture in Montana through conservation and efficiency measures;

~~(c)~~*(d)* renewable resource projects and applications, including those that capture unique social and energy system benefits or that provide transmission and distribution system benefits;

~~(d)~~*(e)* research and development programs related to energy conservation and renewables:

~~(e)~~*(f)* market transformation designed to encourage competitive markets for public purpose programs; and

~~(f)~~*(g)* low-income energy assistance.

~~(37)~~*(38)* "Utility" means any public utility or cooperative utility."

Section 9. Section 69-8-104, MCA, is amended to read:

"**69-8-104. Pilot programs.** (1) Except as provided in ~~69-8-201(4)~~ *69-8-201(5)* and 69-8-311, beginning July 1, 1998, utilities shall conduct pilot programs using a representative sample of their residential and small commercial customers. A report describing and analyzing the results of the pilot programs must be submitted to the commission and the transition advisory committee established in 69-8-501 on or before July 1, 2000.

(2) Utilities shall use pilot programs to gather necessary information to determine the most effective and timely options for providing customer choice. Necessary information includes but is not limited to:

(a) the level of demand for electricity supply choice and the availability of market prices for smaller customers;

(b) the best means to encourage and support the development of sufficient markets and bargaining power for the benefit of smaller customers;

(c) the electricity suppliers' interest in serving smaller customers and the opportunities in providing service to smaller customers; and

(d) experience in the broad range of technical and administrative support matters involved in designing and delivering unbundled retail services to smaller customers."

Section 10. Section 69-8-201, MCA, is amended to read:

"**69-8-201. Public utility — transition to customer choice — waiver.** (1) A public utility shall, except as provided in this section, adhere to the following deadlines:

(a) ~~On~~ *Subject to subsection (4), on* or before July 1, 1998, all customers with individual loads greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts or greater must have the opportunity to choose an electricity supplier.

(b) Subject to subsection (2), and as soon as is administratively feasible but before July 1, 2002, all other public utility customers must have the opportunity to choose an electricity supplier.

(2) ~~(a) Except as provided for in subsection (4), the commission may determine that additional time is necessary for customers identified in subsection (1)(b); however, the implementation of full customer choice may not be delayed beyond July 1, 2004.~~

~~(b)~~ A determination by the commission that additional time is necessary for subsection (1)(b) customers must be made at least 60 days in advance of the scheduled date and must be based on one or more of the following considerations:

~~(i)~~*(a)* implementation would not be administratively feasible;

~~(ii)~~*(b)* implementation would materially affect the reliability of the electric system; or

~~(iii)~~*(c)* Montana customers or electricity suppliers would be disadvantaged due to lack of a competitive electricity supply market.

(3) The commission shall designate the public utility or one or more default suppliers to provide regulated default service for those ~~small~~ customers *described in subsections (1)(a) and (1)(b)* of a public utility that are not being served by a competitive electricity supplier *and those customers who elect to receive service from the default supplier.* ~~The transition advisory committee shall review and address the need for continued default supply service and make recommendation to the 57th legislature.~~ *A customer who elects to receive service from the default supplier may only use the electricity for consumptive purposes and shall enter into a contract with the default supplier that prohibits the customer from remarketing the electricity. A distribution services provider has an ongoing regulated default supply obligation beyond the end of the transition period.*

(4) The commission shall establish procedures and terms under which customers may choose an electricity supplier other than the default supplier or may choose to be served by the default supplier. The choice must be available for the period beginning July 1, 2002. The procedures must provide for an orderly process of choice during the transition period and provide conditions for leaving and returning to the default supplier. The procedures must take into account electricity supply contracts for supplying customers during the transition period. The procedures must provide for the recovery of costs associated with those customers who choose an alternative electricity supplier and who wish to return to the default supplier.

~~(4)~~*(5)* Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, and 69-8-402, a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, may:

(a) defer compliance with this chapter until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory, except that the public utility shall file a transition plan pursuant to 69-8-202 to provide transition to customer choice on or before July 1, 2002, and must have completed the transition period to customer choice by July 1, 2006; and

(b) petition the commission to delay the public utility's transition plan filing until July 1, 2004.

~~(5)~~*(6)* Upon a request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of 69-8-104, 69-8-202 through 69-8-204, 69-8-208 through 69-8-211, 69-8-402, and this section."

Section 11. Section 69-8-203, MCA, is amended to read:

"69-8-203. Public utility — customer choice — ~~continued service~~ — education of customers. (1) A customer is permitted to choose an electricity supplier pursuant to the deadlines established in 69-8-201. Public utilities shall propose a method for customers to choose an electricity supplier.

~~(2) If a customer has not chosen an electricity supplier by the end of the transition period, a city, county, or consolidated government that is licensed as an electricity supplier may, upon application to and approval by the commission, become the default supplier to residential and commercial customers of a public utility within its jurisdiction. For customers that are not within the jurisdiction of~~

~~a licensed and approved city, county, or consolidated government electricity supplier area, a public utility shall propose a method in the public utility's transition plans for assigning that customer to an electricity supplier. The commission shall establish an application process and guidelines for the designation of one or more default suppliers for the distribution area of each public utility.~~

~~(3) A public utility may phase in customer choice to promote the orderly transition to a competitive market environment pursuant to the deadlines in 69-8-201.~~

~~(4)~~*(2)* Public utilities shall educate their customers about customer choice so that customers may make an informed choice of an electricity supplier. This education process must give special emphasis to education efforts during the transition period."

Section 12. Section 69-8-210, MCA, is amended to read:

"**69-8-210. Public utilities — electricity supply.** (1) On the effective date of a commission order implementing a public utility's transition plan pursuant to 69-8-202, the public utility shall remove its generation assets from the rate base.

~~(2) During the transition period, the commission may establish cost-based prices for electricity supply service for customers that do not have a choice of electricity supply service or that have not yet chosen an electricity supplier.~~

~~(3)~~*(2)* ~~If~~ *During* the transition period, ~~is extended, then~~ the customers' distribution services provider, *acting as the default supplier,* shall:

(a) *beginning July 1, 2002,* extend any cost-based contract with the distribution services provider's affiliate supplier for a term *of* not more than 3 years; or

(b) purchase electricity from the market; and

(c) use a mechanism that recovers electricity supply costs in rates ~~to ensure that those costs are fully recovered~~ *as provided in subsection (4).*

(3) (a) The default supplier shall provide for the full electricity supply requirements of all default supply customers. To meet these requirements, the default supplier shall procure a portfolio of electricity supply using industry-accepted procurement practices, which may include negotiated contracts or competitive bidding. The commission may develop reasonable requirements for the use of competitive bidding in the procurement process.

(b) A default supplier may submit material related to proposed bids or contracts concerning electricity supply to the commission before the default supplier enters into the contract. The commission may comment on the material.

(c) In reviewing electricity supply contracts, the commission shall consider only those facts that were known or should reasonably have been known by the default supplier at the time the contract was entered into and that would have materially affected the cost or reliability of the electricity supply to be procured.

(4) (a) The commission shall use an electricity cost recovery mechanism that ensures that all prudently incurred electricity supply costs are fully recoverable in rates. The cost recovery mechanism must provide for prospective rate adjustments for cost differences resulting from cost changes, load changes, and the time value of money on the differences.

(b) The default supplier shall submit a proposed electricity supply cost recovery mechanism to the commission for approval on or before July 1, 2001. A mechanism must be adopted by the commission before March 30, 2002.

(c) The commission shall establish a method to provide for the full recovery of electricity supply costs that extend beyond the end of the transition period.

~~(4)~~*(5)* If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to 69-8-404.

(6) A public utility shall offer its customers an opportunity to purchase a separately marketed product composed of power from renewable resources. This product may be priced differently from the standard electricity product authorized in this section. For the purposes of this section, "renewable resources" means biomass, wind, solar, or geothermal resources."

Section 13. Section 69-8-211, MCA, is amended to read:

"**69-8-211. Public utilities — transition costs and charges — rate moratorium.** (1) Subject to the provisions of this section, the commission shall allow recovery of the following categories of transition costs:

(a) the unmitigable costs of qualifying facility contracts, including reasonable buyout or buydown costs, for which the contract price of generation is above the market price for generation;

(b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist because of current regulatory practices and that can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan, including costs, expenses, and reasonable fees related to issuing of transition bonds;

(c) the unmitigable transition costs related to public utility-owned generation and other power purchase contracts, except that recovery of those costs is limited to the amount accruing during the first 4 years after the commission enters an order pursuant to 69-8-202(3); and

(d) other transition costs as may qualify for recovery under this section.

(2) Transition costs as determined by the commission upon an affirmative showing by a public utility must meet the following requirements:

(a) Transition costs must reflect all reasonable mitigation by the public utility, including but not limited to good faith efforts to renegotiate contracts, buying out or buying down contracts, and refinancing through transition bonds.

(b) The value of all generation-related assets and liabilities and electricity supply costs must be reasonably demonstrable and must be considered on a net basis, and methods for determining value must include but are not limited to:

(i) estimating future market values of electricity and ancillary services provided by the assets;

(ii) appraisal by independent third-party professionals; or

(iii) a competitive bid sale.

(c) Investments and power purchase contracts must have been previously allowed in rates or, if not previously in rates, must be determined to be used and useful to ratepayers in connection with the commission's approval of the utility's transition plan.

(d) Unless otherwise provided for in this chapter, only costs related to existing investments and power purchase contracts identified in subsection (2)(c) and costs arising from those investments and power purchase contracts may be included as transition costs.

(3) (a) On commission approval of the amount of a public utility's transition costs, those costs must be recovered through the imposition of a transition charge.

(b) A transition charge may not be collected from customers for:

(i) new or additional loads of 1,000 kilowatts or greater that were first served by the public utility after December 31, 1996; or

(ii) loads served by that customer's own generation.

(c) Subject to commission approval, a utility and a customer may agree to alter the customer's transition charge payment schedule. Public utilities may file with the commission tariffs for electric service rates that foster economic development or retention of existing customers within the state, including generally available rate schedules. Transition charges are the only charges that may be imposed upon a customer class to recover transition costs under this section. A separate exit fee may not be charged.

(4) Transition charges must be imposed within a transition cost recovery period approved by the commission on a case-by-case basis. Except for transition costs recovered under subsection (1)(c), categories of transition costs may have varying transition cost recovery periods.

(5) Approval of transition costs and collection of those transition costs through transition charges is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition costs through any means not authorized by this chapter may not collect transition charges with respect to these transition costs.

(6) Except as provided in subsection (7), public utilities shall implement a rate moratorium ~~during the transition period as follows:~~

~~(a) From July 1, 1998, through June 30, 2000, public utilities may not charge rates higher than those rates in effect on July 1, 1998.~~

~~(b) From~~ *from* July 1, 2000, through June 30, 2002, ~~and~~ only for those customers subject to the provisions of 69-8-201(1)(b)~~,~~*.* *During that period,* public utilities may not increase that increment of rates normally allocated to electric supply-related costs above the increment associated with electric supply-related costs reflected in rates in effect on July 1, 1998. Beginning on July 1, 2000, public utilities may propose increases to those increments of rates normally allocated to transmission and distribution costs.

(7) Excepted from the provisions of subsection (6) are:

(a) increased costs related to universal system benefits programs greater than those currently in rates, including the treatment of universal system benefits program costs as an expense;

(b) increased costs necessary to implement full customer choice, including but not limited to metering, billing, and technology. Those costs must be recovered from the customers on whose behalf the increased costs are incurred.

(c) subject to commission approval, an extraordinary event resulting in either:

(i) a 4% annual revenue requirement increase from July 1, 1998, through June 30, 2000; or

(ii) an 8% power supply-related annual revenue requirement increase from July 1, 2000, through June 30, 2002;

(d) the increase or decrease in the annual state and local property tax expense that has occurred since May 2, 1997..

(8) Notwithstanding subsections (6) and (7), during the transition period, public utilities may not charge rates or collect costs that include costs reallocated to transition costs at a level higher than the public utility would reasonably expect to recover in rates had the current regulatory system remained intact.

(9) Public utilities shall apply savings resulting under 69-8-503 toward the rate moratorium pursuant to subsection (6).

(10) ~~During the 4-year transition period~~ *Before July 1, 2002*, public utilities may accelerate the amortization of accumulated deferred investment tax credits associated with transmission, distribution, and the general plant as an adjustment to earnings if electric earnings fall below 9.5% earned return on average equity. The public utility may include the flow through of investment tax credits so that the public utility's earned return on equity is maintained at 9.5%. Accumulated deferred investment tax credits amortized under this subsection may not be reflected in operating income for ratemaking purposes.

(11) The commission shall issue the accounting orders necessary to align rate moratorium timing and requirements to actual transition bonds savings."

Section 14. Section 69-8-402, MCA, is amended to read:

"**69-8-402. Universal system benefits programs.** (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, *energy conservation measures for irrigated agriculture,* and low-income energy assistance during the transition period and into the future.

(2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits programs. To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives. Except as provided in subsection ~~(7)~~ *(8)*, these universal system benefits charge rates must remain in effect until ~~July 1, 2003~~ *December 31, 2005.*

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) Utilities must receive credit toward annual funding requirements for a utility's internal programs or activities that qualify as universal system benefits programs, including those portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, *conservation and efficiency measures for irrigated agriculture,* or low-income energy assistance, and for large customers' programs or activities as provided in subsection ~~(7)~~ *(8)*. The department of revenue shall review claimed credits of the utilities and large customers pursuant to 69-8-414.

(c) A utility's distribution services provider at which the sale of power for final end use occurs is the utility that receives credit for the universal system benefits programs expenditure.

(d) A customer's distribution services provider shall collect universal system benefits funds less any allowable credits.

(e) For a utility to receive credit for low-income related expenditures *and conservation and efficiency measures for irrigated agriculture*, the activity must have taken place in Montana.

(f) If a utility's or a large customer's credit for internal activities does not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund established in 69-8-412 for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs, *conservation and efficiency measures for irrigated agriculture,* and low-income energy assistance.

(4) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) A utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) (a) Except for those utilities that have not filed a transition plan, a utility's minimum annual funding requirement for reducing energy costs through conservation and efficiency measures for irrigated agriculture is established at 6% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(b) A utility must receive credit toward the utility's irrigated agriculture assistance annual funding requirement for the utility's internal irrigated agriculture assistance programs or activities.

(c) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the irrigated agriculture energy assistance fund established in 69-8-412.

~~(7)~~*(8)* (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) $500,000, less the large customer credits provided for in this subsection ~~(7)~~ *(8)*; or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection ~~(7)~~ *(8)*;

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Large customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that large customer's universal system benefits charges.

~~(8)~~*(9)* A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission, the department of revenue, and the transition advisory committee provided for in 69-8-501. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the transition advisory committee. The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of revenue and to the transition advisory committee. The annual report of a public utility or of the statewide cooperative utility office must include but is not limited to:

(a) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

(b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

~~(9)~~*(10)* A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

~~(10)~~*(11)* (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the department of revenue or the utility is not required, except as provided in subsection ~~(10)(b)~~ *(11)(b)*.

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility approves the large customer credit, the utility may be financially responsible for any subsequent disallowance."

Section 15. Section 69-8-403, MCA, is amended to read:

"69-8-403. Commission authority — rulemaking authority. (1) Beginning on the effective date of a commission order regarding a public utility's transition plan, the commission shall regulate the public utility's retail transmission and distribution services within the state of Montana, as provided in this chapter, and may not regulate the price of electricity supply except as electricity supply may be procured as provided in this section:

(a) by one or more default suppliers for those customers not being served by a competitive supplier; or

(b) by the distribution function of a public utility for those customers that are not being served by a competitive electricity supplier as provided by commission rules. During the transition period, those procurements may include a cost-based contract from a supply affiliate or an unregulated division.

(2) The commission shall decide if there is workable competition in the electricity supply market by determining whether competition is sufficient to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market share estimates.

(3) The commission shall license electricity suppliers and enforce licensing provisions pursuant to 69-8-404.

(4) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

(5) The commission shall establish just and reasonable rates through established ratemaking principles for public utility distribution and transmission services and shall regulate these services. The commission may approve rates and charges for electricity distribution and transmission services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with this chapter, and on the public utility's transition plan.

(6) The commission shall certify that a cooperative utility has adopted a transition plan that complies with this chapter. A cooperative utility's transition

plan is considered certified 60 days after the cooperative utility files for certification.

(7) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

~~(8) The commission shall license default suppliers and enforce default licensing provisions pursuant to 69-8-416.~~

~~(9) The commission shall promulgate rules for the licensing of default suppliers on or before December 1, 1999.~~

(8) The commission shall establish electricity supply rates for individual customer classes, which may vary based on cost factors associated with classifications of service or customers and any other reasonable consideration. Collectively, the individual electricity supply rates must reflect the full level of electricity supply costs that the default supplier incurs on behalf of its customers.

~~(10)~~*(9)* Until the commission has determined that workable competition has developed for small customers, a default supplier's obligation to serve remains.

~~(11)~~*(10)* In addition to promulgating rules expressly provided for in this chapter, the commission may promulgate any other rules necessary to carry out the provision of this chapter.

~~(12)~~*(11)* This chapter does not give the commission the authority to:

(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with this chapter; or

(b) compel any change to a cooperative utility's certification filing made pursuant to this chapter."

Section 16. Section 69-8-412, MCA, is amended to read:

"**69-8-412. Funds established — fund administrators designated — purpose of funds — department rulemaking authority to administer funds.** (1) If, pursuant to 69-8-402(2)(f) or (5)(b), there is any positive difference between credits and the annual funding requirement, the department of revenue shall establish one or ~~both~~ *all* of the following funds:

(a) a fund to provide for universal system benefits programs other than low-income energy assistance. The department of environmental quality shall administer this fund.

(b) a fund to provide universal low-income energy assistance. The department of public health and human services shall administer this fund.

(c) a fund to provide for reductions in the energy costs of irrigated agriculture through energy conservation and efficiency measures. The department of agriculture shall administer this fund.

(2) The purpose of these funds is to fund universal system benefits programs.

(3) The department of environmental quality and the department of public health and human services may adopt rules that administer and expend the money in each respective fund based on an annual statewide funding assessment that identifies funding needs in universal system benefits programs. The annual assessment must take into account existing utility and large customer universal system benefits programs expenditures."

Section 17. Section 69-8-414, MCA, is amended to read:

"**69-8-414. Universal system benefits programs credit review process.** (1) All annual reports required pursuant to ~~69-8-402(8) and (10)~~ *69-8-402(9) and (11)* must be filed with the department of revenue on March 1 of each year.

(2) Except as provided in 69-8-413, upon a challenge by an interested person, the department of revenue shall ensure that the credit claimed is consistent with this chapter. An interested person may file comments challenging the claim, including supporting documentation, with the department of revenue. A challenge of any claimed credit must be filed within 60 days of the department of revenue's receipt of the credit claimant's annual reports required pursuant to ~~69-8-402(8) and (10)~~ *69-8-402(9) and (11).*

(3) Claimed credits are presumed to be correct unless challenged by an interested person. If a challenge is filed by an interested person, the department of revenue shall conduct an initial review of a challenged credit and shall make a determination as to the likelihood that the challenged credit qualifies for universal system benefits programs. If the department of revenue finds that the challenged credit is not likely to qualify for universal system benefits programs, the department of revenue shall formally review the challenge; otherwise, the department of revenue shall dismiss the challenge and provide a statement of the reasons supporting dismissal of the challenge. The department of revenue may request additional information from the credit claimant or interested person. The department of revenue shall complete the initial review within 30 days of the challenge.

(4) If the department of revenue determines that a formal review of a challenged credit is necessary, the department of revenue shall provide public notice of the opportunity to comment to the credit claimant and interested persons. The department of revenue may also schedule an oral hearing. If a hearing is scheduled, the department of revenue shall provide public notice of the hearing to the credit claimant and interested persons.

(5) For a formal credit review challenge, the following procedures apply:

(a) The credit claimant shall provide documentation supporting the credit claimed to the department of revenue and to all interested persons, subject to department of revenue protective orders for confidential or sensitive materials, upon a showing of a privacy interest by the credit claimant.

(b) The department of revenue shall make all materials related to the claim, the challenge, and the submitted comments available to the credit claimant and for public inspection and photocopying, subject to any department of revenue protective orders.

(c) The credit claimant may respond in writing to any comments and other documents filed by an interested person.

(d) The department of revenue may ask for additional detailed information to implement this section.

(6) Upon completing a formal review of a challenged credit, the department of revenue shall make a decision to certify or to deny the credit claimed, providing a statement of the reasons supporting the department of revenue's decision. The formal review of a challenged credit, including the department of revenue's final

decision, must be completed within 60 days of the department of revenue's public notice of the opportunity to comment on the challenged credit."

Section 18. Consumer electricity support program. (1) There is a consumer electricity support program. The purpose of the program is to provide an affordable and reliable electricity supply to customers of the default supplier from July 1, 2002, until June 30, 2007. The consumer electricity support program consists of financial support or the assignment and subsequent disposition of electricity supply.

(2) There is a consumer electricity support account in the state special revenue fund. The account must be used for the deposit of any of the financial sources dedicated to the account. Distributions from the account must be in accordance with rules adopted by the department of administration for the program. Financial sources for funding the account may include:

(a) allocations from the state as provided by law; and

(b) other financial sources as identified in rules adopted by the department of administration.

(3) Electricity supply made available for the program must be either disposed of, with the resulting revenue deposited to the consumer electricity support account, or assigned to the distribution services provider to serve default supply customers. The electricity supply providers must be reimbursed for electricity supply contributed and used in accordance with rules adopted by the department of administration for this program. Electricity supply sources include:

(a) electricity provided by electricity suppliers;

(b) electricity available in the electrical energy pool established in [section 1 of House Bill No. 645];

(c) government power authorities;

(d) qualifying facility electricity supply as provided by law; and

(e) any other source of electricity supply as identified in rules adopted by the department of administration.

(4) The consumer electricity support program must be administered by the department of administration. The department shall adopt rules necessary to operate the program and to allocate the consumer electricity support resources beginning July 1, 2002. The rules must provide for the equitable distribution of program resources for default supply customers and for the reimbursement of the electricity supply providers. The rules must balance the short-term considerations of cost mitigation with the longer-term interests of encouraging customer demand response by establishing accurate electricity supply price signals. The department shall implement the consumer electricity support program in coordination with the default supplier.

(5) The department of administration may recover the costs of administering the program from the consumer electricity support account.

Section 19. Funding of consumer electricity support program. (1) Up to $100 million each year from the revenue derived from the electrical energy excess revenue tax imposed by [sections 1 through 10 of Senate Bill No. 512] must be transferred from the general fund into the consumer electricity support account.

(2) Pursuant to rules adopted by the department of administration under [section 18], at least 80% of the money in the account must be used to promote price stability of the supply of electrical energy in Montana:

(a) for default customers of a public utility that has submitted a transition plan pursuant to parts 1 through 5 of this chapter on or before July 1, 2001; and

(b) for customers that chose an electrical energy supplier as provided in Title 69, chapter 8, part 2.

(3) Pursuant to rules adopted by the department of administration under [section 18], the amount remaining in the account after promoting price stability of the supply of electrical energy under subsection (2) of this section may be used for the following purposes:

(a) assisting in the recruitment of new employers with 100 employees or more and in the promotion of the expansion of employment by 100 employees or more by existing employers who need a reasonable and stable supply of electrical energy;

(b) funding universal system benefits programs provided for in this chapter;

(c) providing low-interest loans for new transmission facilities or for improvements to existing transmission facilities;

(d) providing low-interest loans for the construction of new temporary or permanent electrical generation facilities and for the expansion of the net generation capacity of existing electrical generation facilities. The electrical generation facilities referred to in this subsection must have an electrical generation capacity of 60 megawatts or less.

(4) In adopting rules, the department of administration shall consult with the commission and the consumer counsel. The department may contract with the commission for the administration of portions of the program.

(5) The funds deposited in the account under this section but not expended for the purposes established in this section must be transferred to the general fund after the end of each biennium.

(6) The money in the state special revenue account is statutorily appropriated, as provided in 17-7-502, for the purposes of [section 18] and this section.

Section 20. Short title. [Sections 20 through 28] may be cited as the "Montana Power Authority Act".

Section 21. Purpose. The legislature finds and declares that:

(1) the economic viability and security of the state of Montana is directly linked to reliable and affordable electrical energy;

(2) electrical energy has become a basic and irreplaceable necessity that impacts the public health, safety, and welfare of all Montana citizens;

(3) Montana's residential, agricultural, governmental, commercial, and industrial consumers of electrical energy are entitled to cost-based prices for electrical energy; and

(4) it is in the public interest that the Montana power authority have the ability to:

(a) purchase electrical energy from any supplier in the wholesale market for the purpose of providing reliable, cost-based power exclusively to Montana consumers;

(b) construct, acquire, or enter into joint ventures to construct or acquire electrical generation facilities that will provide cost-based power to consumers in Montana;

(c) construct, acquire, or enter into joint ventures to construct or acquire electrical energy transmission or distribution systems;

(d) sell electrical energy to a default supplier and to any municipal utility, cooperative utility, or investor-owned utility that serves Montana customers;

(e) contract with public or private entities for the operation and maintenance of state-owned power facilities; and

(f) encourage and support energy conservation to mitigate consumer costs and detrimental impacts on the environment.

Section 22. Definitions. As used in [sections 20 through 28], unless the context requires otherwise, the following definitions apply:

(1) "Cost-based" means the price charged to a distribution services provider that is sufficient to meet the operating costs, including commodity costs, of the Montana power authority and to ensure timely repayment of bonds issued on behalf of or any other debt incurred by the Montana power authority.

(2) "Default supplier" means a distribution services provider.

(3) "Department" means the department of natural resources and conservation established in 2-15-3301.

(4) "Montana power authority" or "authority" means the citizen board established in [section 23].

Section 23. Montana power authority — board composition — procedures. (1) There is a Montana power authority consisting of a seven-member citizen board appointed by the governor with the consent of the senate.

(2) In selecting the members, the governor shall:

(a) consider each prospective member's knowledge and understanding of the structural and financial dimensions of the electrical energy sector of the state's economy;

(b) ensure that two of the members broadly represent, as evidenced by their background, experience, and livelihood, the following categories of electrical energy consumption:

(i) irrigated agriculture;

(ii) commercial and industrial enterprise; and

(iii) residential;

(c) choose an at-large member with academic or business credentials that indicate that the person has substantial experience in energy markets in the region of the western states; and

(d) choose an at-large member with substantial experience in financial, banking, and bonding matters.

(3) The members shall elect the presiding officer by majority vote.

(4) Members of the Montana power authority shall serve staggered 4-year terms. The governor shall designate two of the initial members to serve 2-year terms and three of the initial members to serve 3-year terms. Vacancies must be filled by appointment for the unexpired term. A member may not serve more than two consecutive terms.

(5) The Montana power authority shall meet at least twice a year and may meet more frequently as required by circumstances or at the request of any two or more members of the authority.

(6) Decisions of the Montana power authority require a simple majority of the whole membership.

(7) The Montana power authority is attached to the department for administrative purposes, and the department shall provide staff support and a liaison between the authority and other state or federal agencies.

Section 24. Powers and duties. (1) The Montana power authority may:

(a) purchase electrical energy from any wholesale power supplier, on a contractual basis, without limitation on the duration of any contract, to meet the aggregated load requirements of consumers in the service territory of a distribution services provider in Montana;

(b) purchase, construct, and operate electrical generation facilities or electrical energy transmission or distribution systems in the state;

(c) enter into joint ventures with any municipality, a cooperative, an investor-owned utility, or any other public or licensed private entity in Montana for the purpose of financing the construction of an electrical generation facility or an electrical energy transmission or distribution system;

(d) request that the legislature authorize revenue bonds to be issued by the board of examiners pursuant to Title 17, chapter 5, for the purpose of:

(i) constructing electrical generation facilities or electrical energy transmission or distribution systems in the state; or

(ii) purchasing an electrical generation facility or an electrical energy transmission or distribution system; or

(e) sell electrical energy to any distribution services provider in the state;

(f) participate in a regional transmission organization established in response to or in compliance with an order of the federal energy regulatory commission; and

(g) participate with any municipality in an electrical energy generation project as provided in Title 90, chapter 5, part 1. The bonds may be publicly or privately sold, bear interest at rates and times, and mature at times not exceeding 40 years from the date of issuance as the board shall determine. The board may issue the bonds pursuant to a resolution or indenture of trust with a financial institution having the powers of a trust company. The resolution or indenture may contain provisions for protecting and enforcing the rights of bondholders that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the state, the board of examiners, the authority, or agencies of the state in relation to the acquisition, construction, improvements, maintenance, operation, repair, and insurance of the project financed with the proceeds of the bonds and the custody and application of all money. The trust indenture may set forth the rights and remedies of the bondholders as is customary in trust indentures, deeds of trust, and mortgages securing bonds.

(2) The Montana power authority shall, subsequent to the purchase of electrical energy from the wholesale market or the generation of power from an in-state generation facility, offer cost-based electrical energy to Montana consumers, including to a default supplier and to any municipal utility, cooperative utility, or investor-owned utility in the state.

Section 25. Bond authorization. (1) The board of examiners may issue and sell bonds of the state in an aggregate principal amount not to exceed $500 million for the purposes authorized in [section 26]. The bonds are revenue obligations in which the net revenue from the sale of the electrical energy produced from the electrical generation facilities acquired or built pursuant to [section 26] or revenue from electrical energy transmission and distribution charges is pledged for payment of the principal and interest on the bonds. The board may issue the bonds in accordance with the applicable provisions contained in 17-5-921 through 17-5-930.

(2) The proceeds of the bonds, other than any premiums and accrued interest received must be deposited in an account in the state special revenue fund. Premiums and accrued interest must be deposited in the debt service fund established in 17-2-102. Proceeds of bonds deposited in the account may be used to pay the costs of issuing the bonds and to fulfill the purposes authorized in [section 26]. For the purposes of 17-5-803 and 17-5-804, the account constitutes a capital projects account. The bond proceeds must be available to the Montana power authority and may be used for the purposes authorized in this section without further budgetary authorization.

(3) (a) In authorizing the sale and issuance of the bonds, the board of examiners, upon request of the Montana power authority, may create separate accounts or subaccounts to provide for the payment and security of the bonds, including a debt service reserve account. The net revenue from the sale of the electrical energy produced from the electrical generation facilities acquired pursuant to [section 26] must be pledged to these accounts.

(b) The electrical energy produced from the electrical generation facilities must be offered to in-state customers before the electrical energy may be offered to other customers.

Section 26. Use of bond proceeds. The Montana power authority shall use the proceeds of the bonds authorized in [section 25] to purchase the electrical generation facilities and associated water rights for those facilities, to build electrical energy generation facilities, to design and build new state-owned electrical energy transmission or distribution systems, or to pay capitalized interest during construction, to fund a debt service reserve, and to pay costs associated with the sale and security of the bonds. The Montana power authority may not acquire a facility or system that is associated with a superfund project.

Section 27. Interagency cooperation. (1) State agencies shall cooperate with the Montana power authority in the planning of electrical energy purchases or the permitting or constructing of electrical generation facilities.

(2) Within the limits of available resources, state agencies shall provide scientific, economic, and other relevant data requested by the Montana power authority.

Section 28. Pledge. In accordance with constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the state and the holders of the bonds issued by the state.

Section 29. Adoption of rules. Because the supply and price of electricity constitute a threat to the public health, safety, and welfare, the commission and the department of administration may begin proceedings to adopt rules immediately upon passage and approval of [this act]. The rules must be adopted by July 1, 2001.

Section 30. Repealer. Sections 35-19-103, 69-8-416, and 69-8-417, MCA, are repealed.

Section 31. Codification instruction. (1) [Sections 1 through 5] are intended to be codified as an integral part of Title 17, chapter 6, and the provisions of Title 17, chapter 6, apply to [sections 1 through 5].

(2) [Sections 18 and 19] are intended to be codified as an integral part of Title 69, chapter 8, and the provisions of Title 69, chapter 8, apply to [sections 18 and 19].

(3) [Sections 20 through 28] are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 20 through 28].

Section 32. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2001.

(2) [Sections 29 and 31 and this section] are effective on passage and approval.

Approved May 5, 2001

CHAPTER NO. 578

[HB 573]

AN ACT AUTHORIZING THE BOARD OF OIL AND GAS CONSERVATION TO PERMIT CERTAIN COAL BED METHANE GAS WELLS; PROVIDING REQUIREMENTS FOR COAL BED METHANE WELLS THAT INVOLVE PRODUCTION OF GROUND WATER; PROVIDING THAT CERTAIN MANAGEMENT PRACTICES FOR GROUND WATER PRODUCED IN ASSOCIATION WITH A COAL BED METHANE WELL MAY NOT BE CONSTRUED AS WASTE; AMENDING SECTION 85-2-505, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 3] may be known as the "Coal Bed Methane Production Offset Act".

Section 2. Legislative findings — purpose. (1) The legislature finds that a delay in the development of certain coal bed methane wells may inadvertently result in the loss of coal bed methane resources.

(2) The legislature further finds that because of the nature of this subsurface mineral resource, it is highly susceptible to collateral extraction and use through development efforts on adjacent federal, tribal, or other states' lands to the economic detriment of Montana and its citizens.

(3) The legislature further finds that there is a compelling state interest to authorize the board through this limited program to act in a timely and expeditious manner to permit coal bed methane wells to offset the collateral permitting of wells by other entities on nonjurisdictional lands that are not subject to permitting by the board under 82-11-103 in order to:

(a) protect coal bed methane mineral reserves from collateral extraction by others;

(b) provide economic benefits to the state;

(c) protect the private property rights of the owners of the mineral reserves;

(d) promote the balanced development of state lands and protect the mineral reserve interest held in trust for the benefit of state schools; and

(e) assist in providing much needed energy resources to the region.

Section 3. Offset permitting — geographic requirements. The board is authorized and directed to issue upon application and subject to the regulatory requirements of the program and [section 4] permits for coal bed methane production wells that will offset permitting by federal agencies, tribal agencies, or agencies of other states of coal bed methane wells that are located within 1 mile of the perimeter of lands that are under the jurisdiction of the board.

Section 4. Coal bed methane wells — requirements. (1) Coal bed methane production wells that involve the production of ground water must comply with this section.

(2) Ground water produced in association with a coal bed methane well must be managed in any of the following ways:

(a) for use as irrigation or stock water or other beneficial uses in compliance with Title 85, chapter 2, part 3;

(b) reinjected to an acceptable subsurface strata or aquifer pursuant to applicable law;

(c) discharged to the surface or surface waters subject to the permit requirements of Title 75, chapter 5; or

(d) managed through other methods allowed by law.

(3) (a) Prior to the development of a coal bed methane well that involves the production of ground water from an aquifer that is a source of supply for appropriation rights or permits to appropriate under this chapter, the developer of the coal bed methane well shall notify and offer a reasonable mitigation agreement to each appropriator of water who holds an appropriation right or a permit to appropriate under this chapter that is for ground water and for which the point of diversion is within:

(i) 1 mile of the coal bed methane well; or

(ii) one-half mile of a well that is adversely affected by the coal bed methane well.

(b) The mitigation agreement must address the reduction or loss of water resources and must provide for prompt supplementation or replacement of water from any natural spring or water well adversely affected by the coal bed methane well. The mitigation agreement is not required to address a loss of water well productivity that does not result from a reduction in the amount of available water because of production of ground water from the coal bed methane well.

Section 5. Section 85-2-505, MCA, is amended to read:

"**85-2-505. Waste and contamination of ground water prohibited.** (1) No ground water may be wasted. The department shall require all wells producing waters ~~which~~ *that* contaminate other waters to be plugged or capped. It shall also require all flowing wells to be so capped or equipped with valves that the flow of water can be stopped when the water is not being put to beneficial use. Likewise, both flowing and nonflowing wells ~~shall~~ *must* be so constructed and maintained as to prevent the waste, contamination, or pollution of ground water through leaky casings, pipes, fittings, valves, or pumps either above or below the land surface~~, provided, however~~. *However,* in the following cases the withdrawal or use of ground water ~~shall~~ *may* not be construed as waste under this part:

(a) the withdrawal of reasonable quantities of ground water in connection with the construction, development, testing, or repair of a well or other means of withdrawal of ground water;

(b) the inadvertent loss of ground water owing to breakage of a pump, valve, pipe, or fitting, if reasonable diligence is shown by the person in effecting the necessary repair;

(c) the disposal of ground water without further beneficial use that must be withdrawn for the sole purpose of improving or preserving the utility of land by draining the same or that must be removed from a mine to permit mining operations or to preserve the mine in good condition;

(d) the disposal of ground water used in connection with producing, reducing, smelting, and milling metallic ores and industrial minerals or that displaced from an aquifer by the storage of other mineral resources~~.~~*; and*

(e) the management, discharge, or reinjection of ground water produced in association with a coal bed methane well in accordance with [section 4(2)(b) through (2)(d)].

(2) The department at any time may hold a hearing on its own motion or upon petition signed by a representative body of users of ground water in any area or subarea to determine whether the water supply within ~~such~~ *that* area or subarea is used in compliance with this part."

Section 6. Notification to federal and tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations, to the Little Shell band of Chippewa, and to the U.S. secretary of the interior.

Section 7. Codification instruction. (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to [sections 1 through 3].

(2) [Section 4] is intended to be codified as an integral part of Title 85, chapter 2, part 5, and the provisions of Title 85, chapter 2, part 5, apply to [section 4].

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective dates — contingency. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 3] is effective when the director of the department of environmental quality and the administrator or the presiding officer of the board of oil and gas conservation certify to the governor that a final environmental impact statement on coal bed methane development has been prepared and a record of decision has been signed. The director of the department of environmental quality and the administrator or the presiding officer of the board of oil and gas conservation shall provide a copy of the certification to the Montana code commissioner.

Approved May 5, 2001

CHAPTER NO. 579

[HB 600]

AN ACT EXEMPTING CERTAIN NONCOMMERCIAL ELECTRICAL GENERATION MACHINERY AND EQUIPMENT FROM PROPERTY TAXATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Tax exemption for noncommercial generation machinery and equipment. (1) (a) Subject to the conditions of this section, noncommercial electrical generation machinery and equipment that are owned or leased by a person and that are used for the production of electrical energy for use by the person in the person's business are exempt from taxation.

(b) The exemption allowed by this section applies to electrical energy produced from electrical generation machinery and equipment owned or leased by a person if more than 80% of the electrical energy generated is used by the person in the person's business even if the person sells a portion of the electrical energy produced to another entity. However, the amount of the exemption is proportional to the ratio of kilowatt hours used by the person in the person's business to the total kilowatt hours produced.

(2) (a) For the purposes of this section, "electrical generation machinery and equipment" means any combination of a physically connected generator or generators, associated prime movers, and other associated machinery and equipment that has a generating capacity of less than 80 megawatts. The term is limited to electrical generation machinery and equipment that are powered by fossil fuels.

(b) The term does not include personal property used in the normal course of the person's business.

(3) For the purposes of controlling emissions of air pollutants, electrical generation machinery and equipment are, if applicable, subject to the provisions of 75-2-211 and 75-2-215. Before granting the exemption allowed by this section,

the department shall obtain information from the department of environmental quality to ensure that the electrical generation machinery and equipment comply with the provisions of 75-2-211 and 75-2-215.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000.

Section 5. Termination. [This act] terminates December 31, 2004.

Approved May 5, 2001

CHAPTER NO. 580

[HB 625]

AN ACT REQUIRING THE GOVERNOR AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO CONDUCT A STUDY OF K-12 PUBLIC SCHOOL FUNDING AND RELATED ISSUES; REQUIRING THE GOVERNOR TO PREPARE AND SUBMIT A PRELIMINARY AND FINAL STUDY REPORT TO THE EDUCATION INTERIM COMMITTEE AND, IF APPROPRIATE, PROPOSE LEGISLATION FOR THE 2003 LEGISLATURE; AUTHORIZING RECEIPT OF DONATIONS; PROVIDING APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. K-12 public school funding study — duties — hearings. (1) The governor and the superintendent of public instruction shall, within the provisions of the Montana constitution, conduct a study of funding for K-12 public schools, including but not limited to:

(a) analyzing the factors currently in law that are used to compute budget authority for schools to determine if additional factors or changes in those factors are necessary to equitably provide budget authority to public schools;

(b) determining the appropriate allocation of funding to adequately fund elementary, middle school, seventh and eighth grade, and high school programs;

(c) determining if a statewide salary schedule for school staff is possible under the constitutional provision for trustee management of school districts;

(d) determining if the current budget computations are prohibiting or discouraging local decisions to consolidate school districts;

(e) determining the adequacy and equity of the current statutory authority for public schools to access the funds necessary to provide facilities for school districts and state support for school facility costs;

(f) determining the adequacy and equity of current funding for pupil transportation;

(g) determining if appropriate disparity exists in the current local tax effort necessary to fund school districts;

(h) analyzing the current allocation of state funds to public schools to determine its equity;

(i) analyzing the relationship between increasing staffing levels in the classroom in the face of declining enrollment and the resulting financial impacts to school districts and the state;

(j) analyzing appropriate means for school districts to calculate ANB regarding nontraditional, part-time, or distance-learning students;

(k) determining if issues not listed in this section are affecting the equity of school funding in Montana and analyzing those issues;

(l) analyzing the school district structure that currently exists and determining if reducing the number of districts could provide efficiency in the operations of the districts and make existing resources available for classroom activities; and

(m) determining if the existence of 25 budgeted and nonbudgeted funds unreasonably restricts local decisionmakers.

(2) The governor, after consultation with the superintendent of public instruction, shall prepare and submit a preliminary report by December 31, 2001, on the findings and recommendations of the study to the education interim committee.

(3) (a) The education interim committee shall hold hearings and take public comment on the preliminary report prepared and submitted by the governor. The hearings may be held at various locations around the state to facilitate public comment on the governor's report.

(b) by August 1, 2002, the education interim committee shall provide to the governor for the governor's consideration a summary of the hearings and recommendations for changes to the report.

(c) The education interim committee may make any other recommendations on school funding that the committee considers appropriate. The education interim committee shall submit its recommendations and, if appropriate, prepare legislation for consideration by the 2003 legislature.

(4) Upon receipt of the summary and recommendations from the education interim committee, the governor shall issue a final report and, if appropriate, prepare legislation for consideration by the 2003 legislature.

(5) The governor may:

(a) appoint one or more advisory councils pursuant to 2-15-122 to assist in conducting the study;

(b) coordinate with any other legislative interim committee, as appropriate;

(c) request assistance from other legislative and executive branch agencies; and

(d) in addition to any legislative appropriation, accept donations for purposes of the study required in this section.

Section 2. Appropriations. (1) There is appropriated $10,000 from the general fund to the superintendent of public instruction for the biennium beginning July 1, 2001, to conduct the study provided for in [section 1].

(2) There is appropriated $10,000 from the general fund to the legislative services division for the biennium beginning July 1, 2001, for the expenses of the education interim committee.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 5, 2001

CHAPTER NO. 581

[HB 637]

AN ACT PROVIDING FOR AN OFFICE OF RESTORATIVE JUSTICE IN THE DEPARTMENT OF JUSTICE TO PROMOTE THE USE OF RESTORATIVE JUSTICE AND TO PROVIDE TECHNICAL ASSISTANCE AND GRANTS FOR RESTORATIVE JUSTICE PROGRAMS; PROVIDING FOR RESTORATIVE JUSTICE PRINCIPLES IN THE CORRECTIONAL AND SENTENCING POLICY; CREATING A FUND IN THE STATE SPECIAL REVENUE ACCOUNT; AUTHORIZING THE BOARD OF CRIME CONTROL TO MAKE GRANTS FROM THE FUND; PROVIDING AN APPROPRIATION; AMENDING SECTION 46-18-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Intent. The legislature recognizes that incarcerating offenders carries an extremely high cost and may not be the most effective strategy for restoring victims, reforming offenders, and reducing recidivism. It is the intent of [section 2] to divert appropriate offenders who are at low risk for violence from incarceration to community programs based on restorative justice and to divert funds from the department of corrections to the department of justice to support an office of restorative justice and to support community programs based on restorative justice.

Section 2. Office of restorative justice. (1) There is an office of restorative justice in the department of justice.

(2) The purposes of the office of restorative justice are to:

(a) promote the use of restorative justice throughout the state by balancing the needs of victims, communities, and juvenile and adult offenders;

(b) provide technical assistance to jurisdictions and organizations interested in implementing the principles of restorative justice; and

(c) bring additional resources to Montana communities for restorative justice programs.

(3) (a) For the purposes of [sections 1 and 2], the term "restorative justice" means the philosophy of promoting and supporting practices, policies, and programs that focus on repairing the harm of crime, strengthening communities around the state, emphasizing accountability, and providing alternatives to incarceration for offenders who are at low risk for violence.

(b) Restorative justice is intended to improve the ability of the justice system to meet the needs of victims, to encourage community and victim participation in the criminal justice process, to reduce crime and increase the public sense of safety, to hold offenders accountable, and to provide rehabilitation and reintegration of offenders back into the community.

(c) Restorative justice programs include but are not limited to victim-offender meetings, family group conferencing, sentencing circles, use of victim and community impact statements, restitution programs, constructive community service, victim awareness education, victim empathy programs, school expulsion alternatives, peer mediation, diversion programs, and community panels.

(4) Efforts of the office of restorative justice may include but are not limited to:

(a) providing educational programs on the philosophical framework of restorative justice;

(b) providing technical assistance to schools, law enforcement, youth courts, probation and parole officers, juvenile corrections programs, and prisons in designing and implementing applications of restorative justice;

(c) housing a repository for resources and information to coordinate expertise in restorative justice;

(d) serving as a liaison between victims, the judiciary, and state agencies, such as the department of justice and the department of corrections, that are involved in criminal and juvenile justice efforts including victim compensation programs;

(e) providing information to schools, local governments, law enforcement, state agencies, the judiciary, and the legislature regarding systemic changes that may be necessary to enhance further development of restorative justice in the state; and

(f) securing additional resources for restorative justice programs through a grant program administered by the board of crime control, which may be coordinated with other appropriate grant programs of agencies, and providing sustained funding for successful community programs.

Section 3. Restorative justice fund created — source of funding — use of fund. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the restorative justice fund.

(2) There must be deposited in the account:

(a) money received from legislative allocations;

(b) a transfer of money from a state or local agency for the purposes of [section 2]; and

(c) a gift, donation, grant, legacy, bequest, or devise made for the purposes of [section 2].

(3) The fund may be used only to provide grants for restorative justice programs as provided in [section 2] to community-based, including faith-based, organizations.

Section 4. Section 46-18-101, MCA, is amended to read:

"46-18-101. Correctional and sentencing policy. (1) It is the purpose of this section to establish the correctional and sentencing policy of the state of Montana. Laws for the punishment of crime are drawn to implement the policy established by this section.

(2) The correctional and sentencing policy of the state of Montana is to:

(a) punish each offender commensurate with the nature and degree of harm caused by the offense *and to hold an offender accountable*;

(b) protect the public, *reduce crime, and increase the public sense of safety* by incarcerating violent offenders and serious repeat offenders;

(c) provide restitution, reparation, and restoration to the victim of the offense; and

(d) encourage and provide opportunities for the offender's self-improvement *to provide rehabilitation and reintegration of offenders back into the community*.

(3) To achieve the policy outlined in subsection (2), the state of Montana adopts the following principles:

(a) Sentencing and punishment must be certain, timely, consistent, and understandable.

(b) Sentences should be commensurate with the punishment imposed on other persons committing the same offenses.

(c) Sentencing practices must be neutral with respect to the offender's race, gender, religion, national origin, or social or economic status.

(d) Sentencing practices must permit judicial discretion to consider aggravating and mitigating circumstances.

(e) Sentencing practices must include punishing violent and serious repeat felony offenders with incarceration.

(f) Sentencing practices must provide alternatives to imprisonment for the punishment of those nonviolent felony offenders who do not have serious criminal records.

(g) Sentencing and correctional practices must emphasize that the offender is responsible for obeying the law and must hold the offender accountable for the offender's actions.

(h) Sentencing practices must emphasize restitution to the victim by the offender. A sentence must require an offender who is financially able to do so to pay restitution, costs as provided in 46-18-232, costs of court-appointed counsel as provided in 46-8-113, and, if the offender is a sex offender, costs of any chemical treatment.

(i) Sentencing practices should promote and support practices, policies, and programs that focus on restorative justice principles."

Section 5. Appropriation. There is appropriated up to $200,000 from the state special revenue account established in [section 3] to the board of crime control for the biennium beginning July 1, 2001, for providing grants to communities for restorative justice programs.

Section 6. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 2, chapter 15, part 20, and the provisions of Title 2, chapter 15, part 20, apply to [sections 1 through 3].

Section 7. Effective date. [This act] is effective July 1, 2001.

Approved May 5, 2001

CHAPTER NO. 582

[HB 645]

AN ACT IMPLEMENTING AN ELECTRICAL ENERGY POOL; AUTHORIZING THE PUBLIC SERVICE COMMISSION TO REQUIRE A DEFAULT SUPPLIER, A DISTRIBUTION SERVICES PROVIDER, AND A PUBLIC UTILITY SERVING MONTANA CUSTOMERS TO PARTICIPATE IN THE ELECTRICAL ENERGY POOL; PROVIDING EXCEPTIONS; REQUIRING THE DEFAULT SUPPLIER, THE DISTRIBUTION SERVICES PROVIDER, AND THE PUBLIC UTILITY TO ALLOW CUSTOMERS TO PARTICIPATE IN THE ELECTRICAL ENERGY POOL; AUTHORIZING THE ELECTRICAL ENERGY POOL TO MARKET THE ELECTRICAL ENERGY MADE AVAILABLE BY THE CUSTOMERS PARTICIPATING IN THE POOL TO OTHER MONTANA CUSTOMERS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Electrical energy pool — exchange program — exceptions. (1) (a) Except as provided in subsection (1)(b), the public service commission may require a default supplier, a distribution services provider, and a public utility to participate in an electrical energy pool. The purpose of the electrical energy pool is to make electrical energy available for resale through the conservation efforts of the customers contracting to become members of the electrical energy pool. The electrical energy pool must be administered by a public utility that has filed a transition plan with the commission.

(b) This section does not apply to a rural electric cooperative organized under the provisions of Title 35, chapter 18, or to a municipal electric utility described in 69-8-103(5)(b).

(2) During the transition period, an electrical energy supplier that is providing electrical energy to customers who are being served by a default supplier and who are participating in the electrical energy pool shall allow the electrical energy that is curtailed or conserved by those customers to be assigned to or sold to the electrical energy pool.

(3) A default supplier, a distribution services provider, and a public utility shall make participation in the electrical energy pool available to all customers. The electrical energy pool must include electrical energy made available by reduced consumption by customers and may include electrical energy from a generator or supplier selling or assigning electrical energy to the electrical energy pool.

(4) If a generator or supplier offers to sell or assign electrical energy to the electrical energy pool for distribution to Montana customers who are paying market rates or rates under another class, the commission shall determine whether to accept the electrical energy into the pool and may place conditions upon the sale or assignment.

(5) If a customer receiving electrical energy at or below regulated rates reduces the customer's electrical energy use from the customer's base period consumption, the distribution services provider shall assign the electrical energy to the electrical energy pool, as required by the commission.

(6) A customer's base period consumption is equal to the customer's weather-normalized electrical energy consumption during the same month in the base year. A customer reducing electrical energy usage from the base period consumption must receive a credit on the customer's electrical energy bill for the month equal to the amount of reduction in electrical energy use multiplied by a rate established by the commission. The rate established by the commission must be established to provide a sufficient incentive to the customer while maintaining an electrical energy pool rate beneficial to the Montana customer purchasing the electrical energy.

(7) A default supplier, a distribution services provider, or a public utility that provides services to administer the electrical energy pool must be allowed to recover its costs for providing the services in the manner determined by the commission.

(8) All electrical energy purchased from the electrical energy pool must be used by the customer for its facilities or operations in Montana. Electrical energy purchased from the electrical energy pool may not be resold by a customer for a profit. A customer receiving electrical energy from the electrical energy pool and providing onsite generation may not use the energy received from the pool to augment or supplement off-system sales of the electrical energy generated at the site.

(9) Subject to subsections (2) through (8), the commission:

(a) shall determine the rate for electrical energy pool sales and purchases of electrical energy from customer curtailments or conservation, the criteria for participation by buyers and sellers, and the method for allocation of available electrical energy to participating buying customers. The method of allocation must provide a preference for irrigation.

(b) shall adopt guidelines, criteria, methods, rates, and rules that it considers necessary to implement the electrical energy pool on an urgent basis in a manner that will afford relief to customers paying market rates as soon as possible; and

(c) may not discriminate among customers buying from the electrical energy pool by price or customer operating cost, but may take into account existing rate classes.

(10) The rules or tariffs to administer the electrical energy pool must be developed before July 1, 2001.

(11) The resale rate from the electrical energy pool to be paid by purchasing customers, as determined by the commission, must be sufficient to cover the full amount of the incentives paid to contracting customers and any other costs of the electrical energy pool.

(12) The default supplier is the successor in interest to the electrical energy pool. The default supplier may allocate any electrical energy or cash remaining in the electrical energy pool on June 30, 2002, among its customers.

(13) As used in this section, "conservation efforts" means demand reductions on the utility system achieved by the contracting customer through improving efficiency or reducing energy use. The term does not include shifting demand from the utility to a nonutility supply source.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 69, chapter 8, and the provisions of Title 69, chapter 8, apply to [section 1].

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Termination. [This act] terminates June 30, 2002.

Approved May 5, 2001

CHAPTER NO. 583

[SB 4]

AN ACT CLARIFYING THAT DURING A PROBATIONARY PERIOD, EMPLOYMENT MAY BE TERMINATED FOR ANY REASON OR FOR NO REASON; CREATING A PRESUMPTIVE PROBATIONARY PERIOD; CLARIFYING THAT THE TERMINATION OF NONPROBATIONARY EMPLOYMENT MUST BE FOR CAUSE; AMENDING SECTIONS 39-2-902, 39-2-904, AND 39-2-905, MCA; AND REPEALING SECTION 39-2-503, MCA.

WHEREAS, in Whidden v. John S. Nerison, Inc., 1999 MT 110, 294 Mont. 346, 981 P.2d 271 (1999), the Montana Supreme Court held that the at-will employment statute, section 39-2-503, MCA, had been impliedly repealed by the Wrongful Discharge From Employment Act, Title 39, chapter 2, part 9, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-2-902, MCA, is amended to read:

"39-2-902. Purpose. This part sets forth certain rights and remedies with respect to wrongful discharge. ~~Except as limited in this part, employment having no specified term may be terminated at the will of either the employer or the employee on notice to the other for any reason considered sufficient by the terminating party.~~ Except as provided in 39-2-912, this part provides the exclusive remedy for a wrongful discharge from employment."

Section 2. Section 39-2-904, MCA, is amended to read:

"39-2-904. Elements of wrongful discharge — *presumptive probationary period.* *(1)* A discharge is wrongful only if:

~~(1)~~*(a)* it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy;

~~(2)~~*(b)* the discharge was not for good cause and the employee had completed the employer's probationary period of employment; or

~~(3)~~*(c)* the employer violated the express provisions of its own written personnel policy.

(2) (a) During a probationary period of employment, the employment may be terminated at the will of either the employer or the employee on notice to the other for any reason or for no reason.

(b) If an employer does not establish a specific probationary period or provide that there is no probationary period prior to or at the time of hire, there is a probationary period of 6 months from the date of hire."

Section 3. Section 39-2-905, MCA, is amended to read:

"**39-2-905. Remedies.** (1) If an employer has committed a wrongful discharge, the employee may be awarded lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge, together with interest ~~thereon~~ *on the lost wages and fringe benefits*. Interim earnings, including amounts the employee could have earned with reasonable diligence, must be deducted from the amount awarded for lost wages. Before interim earnings are deducted from lost wages, there must be deducted from the interim earnings any reasonable amounts expended by the employee in searching for, obtaining, or relocating to new employment.

(2) The employee may recover punitive damages otherwise allowed by law if it is established by clear and convincing evidence that the employer engaged in actual fraud or actual malice in the discharge of the employee in violation of 39-2-904(1)*(a)*.

(3) There is no right under any legal theory to damages for wrongful discharge under this part for pain and suffering, emotional distress, compensatory damages, punitive damages, or any other form of damages, except as provided for in subsections (1) and (2)."

Section 4. Repealer. Section 39-2-503, MCA, is repealed.

Approved May 5, 2001

CHAPTER NO. 584

[SB 19]

AN ACT REVISING THE LAWS GOVERNING CUSTOMER CHOICE IN ELECTRIC ENERGY SUPPLY; EXTENDING THE TRANSITION PERIOD; EXTENDING THE DATES REQUIRING RESIDENTIAL AND SMALL COMMERCIAL CUSTOMER PARTICIPATION IN THE SELECTION OF AN ELECTRICITY SUPPLIER; EXTENDING PILOT PROGRAM REPORT DATE REQUIREMENTS; EXTENDING TRANSITION PLAN DATE REQUIREMENTS; EXTENDING THE TERMINATION DATE OF THE TRANSITION ADVISORY COMMITTEE; AMENDING SECTIONS 69-8-103, 69-8-104, 69-8-201, 69-8-211, 69-8-301, AND 69-8-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-8-103, MCA, is amended to read:

"**69-8-103. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers, purchases electric energy, and takes title to electric energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or

transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electric energy but that does not take title to electric energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Customer-generator" means a user of a net metering system.

(8) "Default supplier" means a distribution services provider or a person that has received a default supplier license from the commission.

(9) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(10) "Distribution services provider" means a utility owning distribution facilities for distribution of electricity to the public.

(11) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

(12) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

(13) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and of acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

(14) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

(15) "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-201, the commission, or a utility.

(16) "Large customer" means, for universal system benefits programs purposes, a customer with an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that individual load.

(17) "Local governing body" means a local board of trustees of a rural electric cooperative.

(18) "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

(19) "Net metering" means measuring the difference between the electricity distributed to and the electricity generated by a customer-generator that is fed back to the distribution system during the applicable billing period.

(20) "Net metering system" means a facility for the production of electric energy that:

(a) uses as its fuel solar, wind, or hydropower;

(b) has a generating capacity of not more than 50 kilowatts;

(c) is located on the customer-generator's premises;

(d) operates in parallel with the distribution services provider's distribution facilities; and

(e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(21) "Nonbypassable rates or charges" means rates or charges that are approved by the commission and imposed on a customer to pay the customer's share of transition costs or universal system benefits programs costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

(22) "Pilot program" means a program using a representative sample of residential and small commercial customers to assist in developing and offering customer choice of electricity supply for all residential and commercial customers.

(23) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

(24) "Qualifying load" means, for payments and credits associated with universal system benefits programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in which the customer qualifies as a large customer.

(25) "Small customer" means a residential customer or a small commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts of a public

utility distribution services provider that has opened access on its distribution system pursuant to Title 35, chapter 19, or this chapter.

(26) "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents, and other entities acting for the benefit of that holder.

(27) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

(28) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

(29) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

(30) "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(31) "Transition period" means the period ~~beginning on July 1, 1998, and~~ ending ~~on~~ July 1, ~~2002, unless otherwise extended pursuant to this chapter, during which utilities may phase in customer choice of electricity supplier~~ *2007*.

(32) "Transition property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order, including those nonbypassable

rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

(33) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

~~(35)~~*(34)* "Transmission services provider" means a person controlling or operating transmission facilities.

(35) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits programs costs.

(36) "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) renewable resource projects and applications, including those that capture unique social and energy system benefits or that provide transmission and distribution system benefits;

(d) research and development programs related to energy conservation and renewables;

(e) market transformation designed to encourage competitive markets for public purpose programs; and

(f) low-income energy assistance.

(37) "Utility" means any public utility or cooperative utility."

Section 2. Section 69-8-104, MCA, is amended to read:

"**69-8-104. Pilot programs.** (1) Except as provided in ~~69-8-201(4)~~ *69-8-201(3)* and 69-8-311, ~~beginning July 1, 1998,~~ utilities shall conduct pilot programs using a representative sample of their residential and small commercial customers. A report describing and analyzing the results of the pilot programs must be submitted to the commission and the transition advisory committee established in 69-8-501 on or before July 1, ~~2000~~ *2005*.

(2) Utilities shall use pilot programs to gather necessary information to determine the most effective and timely options for providing customer choice. Necessary information includes but is not limited to:

(a) the level of demand for electricity supply choice and the availability of market prices for ~~smaller~~ *small* customers;

(b) the best means to encourage and support the development of sufficient markets and bargaining power for the benefit of ~~smaller~~ *small* customers;

(c) the electricity suppliers' interest in serving ~~smaller~~ *small* customers and the opportunities in providing service to ~~smaller~~ *small* customers; and

(d) experience in the broad range of technical and administrative support matters involved in designing and delivering unbundled retail services to ~~smaller~~ *small* customers."

Section 3. Section 69-8-201, MCA, is amended to read:

"69-8-201. Public utility — transition to customer choice — waiver. (1) A public utility shall, except as provided in this section, adhere to the following deadlines:

(a) ~~On or before July 1, 1998, all~~ *All* customers with individual loads greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts or greater must have the opportunity to choose an electricity supplier.

(b) ~~Subject to subsection (2), and as soon as is administratively feasible but before~~ *Before* July 1, ~~2002~~ *2007*, all other public utility customers must have the opportunity to choose an electricity supplier.

~~(2) (a) Except as provided for in subsection (4), the commission may determine that additional time is necessary for customers identified in subsection (1)(b); however, the implementation of full customer choice may not be delayed beyond July 1, 2004.~~

~~(b) A determination by the commission that additional time is necessary for subsection (1)(b) customers must be made at least 60 days in advance of the scheduled date and must be based on one or more of the following considerations:~~

~~(i) implementation would not be administratively feasible;~~

~~(ii) implementation would materially affect the reliability of the electric system; or~~

~~(iii) Montana customers or electricity suppliers would be disadvantaged due to lack of a competitive electricity supply market.~~

~~(3)~~*(2)* The commission shall designate the public utility or one or more default suppliers to provide regulated default service for those small customers of a public utility that are not being served by a competitive electricity supplier. ~~The transition advisory committee shall review and address the need for continued default supply service and make recommendation to the 57th legislature.~~

~~(4)~~*(3)* Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, and 69-8-402, a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, may~~:~~

~~(a)~~ defer compliance with this chapter until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory~~, except that the public utility shall file a transition plan pursuant to 69-8-202 to provide transition to customer choice on or before July 1, 2002, and must have completed the transition period to customer choice by July 1, 2006; and~~

~~(b) petition the commission to delay the public utility's transition plan filing until July 1, 2004~~.

~~(5)~~*(4)* Upon a request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of 69-8-104, 69-8-202 through 69-8-204, 69-8-208 through 69-8-211, 69-8-402, and this section."

Section 4. Section 69-8-211, MCA, is amended to read:

"**69-8-211. Public utilities — transition costs and charges — rate moratorium.** (1) Subject to the provisions of this section, the commission shall allow recovery of the following categories of transition costs:

(a) the unmitigable costs of qualifying facility contracts, including reasonable buyout or buydown costs, for which the contract price of generation is above the market price for generation;

(b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist because of current regulatory practices and that can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan, including costs, expenses, and reasonable fees related to issuing of transition bonds;

(c) the unmitigable transition costs related to public utility-owned generation and other power purchase contracts, except that recovery of those costs is limited to the amount accruing during the first 4 years after the commission enters an order pursuant to 69-8-202(3); and

(d) other transition costs as may qualify for recovery under this section.

(2) Transition costs as determined by the commission upon an affirmative showing by a public utility must meet the following requirements:

(a) Transition costs must reflect all reasonable mitigation by the public utility, including but not limited to good faith efforts to renegotiate contracts, buying out or buying down contracts, and refinancing through transition bonds.

(b) The value of all generation-related assets and liabilities and electricity supply costs must be reasonably demonstrable and must be considered on a net basis, and methods for determining value must include but are not limited to:

(i) estimating future market values of electricity and ancillary services provided by the assets;

(ii) appraisal by independent third-party professionals; or

(iii) a competitive bid sale.

(c) Investments and power purchase contracts must have been previously allowed in rates or, if not previously in rates, must be determined to be used and useful to ratepayers in connection with the commission's approval of the utility's transition plan.

(d) Unless otherwise provided for in this chapter, only costs related to existing investments and power purchase contracts identified in subsection (2)(c) and costs arising from those investments and power purchase contracts may be included as transition costs.

(3) (a) On commission approval of the amount of a public utility's transition costs, those costs must be recovered through the imposition of a transition charge.

(b) A transition charge may not be collected from customers for:

(i) new or additional loads of 1,000 kilowatts or greater that were first served by the public utility after December 31, 1996; or

(ii) loads served by that customer's own generation.

(c) Subject to commission approval, a *public* utility and a customer may agree to alter the customer's transition charge payment schedule. Public utilities may file with the commission tariffs for electric service rates that foster economic development or retention of existing customers within the state, including generally available rate schedules. Transition charges are the only charges that may be imposed upon a customer class to recover transition costs under this section. A separate exit fee may not be charged.

(4) Transition charges must be imposed within a transition cost recovery period approved by the commission on a case-by-case basis. Except for transition costs recovered under subsection (1)(c), categories of transition costs may have varying transition cost recovery periods.

(5) Approval of transition costs and collection of those transition costs through transition charges is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition costs through any means not authorized by this chapter may not collect transition charges with respect to these transition costs.

(6) Except as provided in subsection (7), public utilities shall implement a rate moratorium during the transition period ~~as follows:~~

~~(a) From July 1, 1998, through June 30, 2000, public utilities may not charge rates higher than those rates in effect on July 1, 1998.~~

~~(b) From~~ *from* July 1, 2000, through June 30, 2002, and only for those customers subject to the provisions of 69-8-201(1)(b), public utilities may not increase that increment of rates normally allocated to electric supply-related costs above the increment associated with electric supply-related costs reflected in rates in effect on July 1, 1998. ~~Beginning on July 1, 2000, public~~ *Public* utilities may propose increases to those increments of rates normally allocated to transmission and distribution costs.

(7) Excepted from the provisions of subsection (6) are:

(a) increased costs related to universal system benefits programs greater than those currently in rates, including the treatment of universal system benefits program costs as an expense;

(b) increased costs necessary to implement full customer choice, including but not limited to metering, billing, and technology. Those costs must be recovered from the customers on whose behalf the increased costs are incurred.

(c) subject to commission approval, an extraordinary event resulting in ~~either:~~

~~(i) a 4% annual revenue requirement increase from July 1, 1998, through June 30, 2000; or~~

~~(ii)~~ an 8% power supply-related annual revenue requirement increase from July 1, 2000, through June 30, 2002;

(d) the increase or decrease in the annual state and local property tax expense that has occurred since May 2, 1997.

(8) Notwithstanding subsections (6) and (7), during the transition period, public utilities may not charge rates or collect costs that include costs reallocated to transition costs at a level higher than the public utility would reasonably expect to recover in rates had the current regulatory system remained intact.

(9) Public utilities shall apply savings resulting under 69-8-503 toward the rate moratorium pursuant to subsection (6).

(10) ~~During the 4-year transition period~~ *Before July 1, 2002,* public utilities may accelerate the amortization of accumulated deferred investment tax credits associated with transmission, distribution, and the general plant as an adjustment to earnings if electric earnings fall below 9.5% earned return on average equity. The public utility may include the flow through of investment tax credits so that the public utility's earned return on equity is maintained at 9.5%. Accumulated deferred investment tax credits amortized under this subsection may not be reflected in operating income for ratemaking purposes.

(11) The commission shall issue the accounting orders necessary to align rate moratorium timing and requirements to actual transition bonds savings."

Section 5. Section 69-8-301, MCA, is amended to read:

"**69-8-301. Cooperative utility — transition plan for customer choice.** (1) Except as provided in 69-8-311, on or before July 1, ~~2001~~ *2006,* the local governing body of a cooperative utility shall adopt a transition plan.

(2) (a) Except as provided in subsection (2)(b), transition plans must contain a transition period that may not end later than July 1, ~~2002~~ *2007.* At the conclusion of the transition period, all customers must have the opportunity to choose an electricity supplier.

(b) If after a pilot program for customers of a cooperative utility with loads less than 1,000 kilowatts~~,~~ a competitive market, technology, or other conditions precedent to full customer choice have not developed, then the transition plan may be altered by the cooperative utility's governing body for those customers.

(3) This chapter does not require the cooperative utility to divest itself of any generation, transmission, or distribution assets or prohibit a cooperative utility from divesting itself voluntarily of those assets.

(4) A cooperative utility's local governing body shall certify to the commission that the local governing body has adopted a transition plan. In the cooperative utility's certification filing, the cooperative utility shall provide to the commission documentation that the cooperative utility's transition plan is consistent with this chapter."

Section 6. Section 69-8-501, MCA, is amended to read:

"**69-8-501. Transition advisory committee.** (1) A transition advisory committee on electric utility industry restructuring is created. The transition advisory committee is composed of twelve voting members who are appointed as follows:

(a) The speaker of the house shall appoint six members from the house of representatives, not more than three of whom may be from one political party.

(b) The president of the senate shall appoint six members from the senate, not more than three of whom may be from one political party.

(2) The following entities shall appoint nonvoting advisory representatives to the transition advisory committee:

(a) The director of the department of environmental quality shall appoint one department representative.

(b) The legislative consumer committee shall appoint one representative.

(c) One representative of the cooperative utility industry is appointed as designated by the Montana electrical cooperative association.

(d) The public utilities in the state of Montana shall appoint one member.

(e) The commission shall appoint one member.

(f) The governor shall appoint the following nonvoting committee members:

(i) one representative from the industrial community with an interest in the restructuring of the electric utility industry;

(ii) one representative from the nonindustrial retail electric consumer sector;

(iii) one representative from organized labor;

(iv) one representative from the community comprising environmental and conservation interests;

(v) one representative from a low-income program provider;

(vi) one representative of Montana's Indian tribes; and

(vii) one representative of the electric power market industry.

(3) In case of a vacancy, a replacement must be selected in the manner of the original appointment.

(4) Legislative members are entitled to salary and expenses as provided in 5-2-302.

(5) The public service commission, legislative services division, and appropriate state agencies shall provide staff assistance as requested by the committee.

(6) Transition advisory committee members must be appointed ~~within 60 days of May 2, 1997,~~ to ~~an initial term expiring on December 31, 1999. Subsequent~~ terms ~~must be~~ for up to 2 years, expiring on January 1 of odd-numbered years.

(7) The voting members shall select a transition advisory committee presiding officer.

(8) The transition advisory committee on electric utility industry restructuring must dissolve on ~~the earlier of either the date that full transition to retail competition is completed or~~ December 31, ~~2004~~ *2007*.

(9) The transition advisory committee shall provide an annual report on the status of electric utility restructuring on or before November 1 to the governor, the speaker of the house, the president of the senate, and the commission ~~and shall provide quarterly interim summary reports to the members of the legislature through January 1, 1999~~.

(10) The transition advisory committee shall meet at least quarterly or as often as is necessary to conduct its business.

(11) The transition advisory committee shall analyze and report on the transition to effective competition in the competitive electricity supply market. ~~The annual report made in the year 2000 must evaluate specifically the pilot programs for customers with loads under 1,000 kilowatts and must include legislative recommendations, if it appears appropriate, about the best means to further encourage the development of customer choice and meaningful market access for the benefit of smaller customers. The annual report for the year 2000~~

~~must also address the need, if any, for additional consumer protection including protection from abusive or anticompetitive practices.~~

(12) The criteria that the transition advisory committee must use to evaluate effective competition in the electricity supply market include but are not limited to the following:

(a) the level of demand for power supply choice and the availability of market prices for smaller customers;

(b) the existence of sufficient markets and bargaining power to the benefit of smaller customers and the best means to encourage and support the development of sufficient markets;

(c) the level of interest among electricity suppliers and the opportunity for electricity suppliers to serve smaller customers; and

(d) the existence of the requisite technical and administrative support that enables smaller customers to have choice of electricity supply.

(13) The transition advisory committee shall recommend legislation if necessary to promote electric utility restructuring and retail choice of electricity suppliers.

~~(14) The transition advisory committee shall make recommendations to the governor, regarding the implementation of statewide universal system benefits and universal energy assistance funds, in time to allow for those funds to be created on or before January 1, 1999. This may include recommendations regarding the assignment of an existing government agency or private, nonprofit entity as the fund administrator and administration guidelines for the funds, including the means by which funds may be made available for use.~~

~~(15)~~*(14)* The transition advisory committee shall monitor and evaluate the universal system benefits programs and comparable levels of funding for the region and make recommendations to the 58th legislature to adjust the funding level provided for in 69-8-402 to coincide with the related activities of the region at that time.

~~(16)~~*(15)* On or before July 1, 2002, the transition advisory committee, in coordination with the commission, shall conduct a reevaluation of the ongoing need for universal system benefits programs and annual funding requirements and shall make recommendations to the 58th legislature regarding the future need for those programs. The determination must focus specifically on the existence of markets to provide for any or all of the universal system benefits programs or whether other means for funding those programs have developed. These recommendations may also address how future reevaluations will be provided for, if necessary.

~~(17)~~*(16)* On or before November 1~~, 2001~~ *of each odd-numbered year*, the transition advisory committee shall collect information to determine whether Montana utilities or their affiliates have an opportunity to sell electricity to customers outside of the state of Montana comparable to the opportunity provided pursuant to this chapter to utilities or their affiliates located outside the state of Montana. That information must be included in ~~the~~ *a* report to ~~the 58th~~ *each* legislature.

~~(18) On or before November 1, 1998, the transition advisory committee shall make recommendations to the governor and the legislature regarding the~~

~~provision of low-income energy assistance programs in Montana by all energy providers.~~"

Section 7. Effective date. [This act] is effective on passage and approval.

Approved May 5, 2001

CHAPTER NO. 585

[SB 176]

AN ACT PROVIDING FOR STATE ASSUMPTION OF THE COSTS OF FUNDING DISTRICT COURTS; EXCLUDING COUNTY ATTORNEYS, PUBLIC DEFENDERS, AND CLERKS OF DISTRICT COURT FROM STATE ASSUMPTION; PROVIDING FOR THE ADOPTION BY THE SUPREME COURT OF A JUDICIAL BRANCH PERSONNEL PLAN; PROVIDING FOR A DISTRICT COURT COUNCIL; ELIMINATING THE PROVISION ALLOWING THE DISTRICT COURT TO DIRECT THE COUNTY SHERIFF TO PROVIDE COURT FACILITIES AT COUNTY EXPENSE; PROVIDING THAT COURT REPORTERS MAY BE STATE EMPLOYEES OR INDEPENDENT CONTRACTORS; PROVIDING THAT NONELECTED EMPLOYEES OF THE DISTRICT COURT BE STATE EMPLOYEES, INCLUDING CERTAIN COURT REPORTERS, PUBLIC DEFENDERS, AND JUVENILE PROBATION OFFICERS AND ASSESSMENT OFFICERS; PROVIDING FOR TRANSFER OF DISTRICT COURT EMPLOYEES FROM COUNTY EMPLOYMENT TO STATE EMPLOYMENT WITH FULL BENEFITS AND PROTECTIONS; DELINEATING THE USES FOR THE COUNTY LEVY FOR COURT EXPENSES; REQUIRING THAT MOST FEES COLLECTED BY THE CLERK OF DISTRICT COURT BE FORWARDED TO THE STATE TREASURER FOR DEPOSIT IN THE STATE GENERAL FUND; REPEALING STATUTORY SALARY AMOUNTS FOR COURT REPORTERS AND JUVENILE PROBATION OFFICERS; REQUIRING THE DISTRICT COURT COUNCIL TO PROVIDE A RECOMMENDATION REGARDING ENUMERATING AS DISTRICT COURT EXPENSES SPECIFIC EXPENSES REGARDING PROCEEDINGS FOR INVOLUNTARY COMMITMENTS AND YOUTH COURT; AMENDING SECTIONS 3-1-702, 3-2-501, 3-2-714, 3-5-511, 3-5-515, 3-5-601, 3-5-602, 3-5-604, 3-5-901, 3-5-902, 3-15-204, 3-15-205, 7-6-2324, 7-6-2426, 7-6-2511, 17-7-502, 22-1-504, 25-1-201, 25-1-202, 25-1-1103, 25-9-506, 25-9-804, 27-9-103, 40-4-215, 40-4-226, 41-5-1701, 41-5-1702, 41-5-1706, 41-5-1707, 42-2-105, 46-8-114, 46-8-201, 46-8-202, 46-11-319, 46-14-202, 46-14-221, 46-15-116, 46-18-235, 46-18-603, 52-6-105, 53-9-104, AND 61-3-509, MCA; REPEALING SECTIONS 3-5-404, 3-5-903, 7-6-2352, 7-6-2427, 7-6-2428, 25-2-205, 41-5-1704, AND 41-5-1705, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Supreme court — adoption of judicial branch personnel plan. (1) The supreme court shall adopt a plan of personnel administration for employees of the judicial branch, other than justices, judges, the supreme court administrator, the librarian of the state law library, the clerk of the supreme court, county attorneys, deputy county attorneys, salaried public defenders, assistant public defenders, employees of the offices of public defenders, clerks of district court, and employees of the offices of the clerks of district court. The plan must include but not be limited to classification and pay, recruitment and selection, performance appraisal, training, and promotion.

(2) The court administrator appointed under 3-1-701 shall, under the direction of the supreme court, administer the judicial branch personnel plan adopted under this section.

Section 2. County to provide district court office space. (1) Each county or consolidated city-county government shall provide office, courtroom, and other space for district court operations.

(2) Costs of providing office, courtroom, and other space for district court operations are a district court expense within the meaning of 7-6-2351 and 7-6-2511.

Section 3. Local government authority to supplement district court budget. A local government may contract with the supreme court administrator's office to provide funds to supplement the budget of a district court in the county's jurisdiction.

Section 4. District court council — administration of state funding of district courts. (1) The district court council shall adopt policies and procedures to administer the state-funded district court program as established in 3-5-901.

(2) The court administrator appointed under 3-1-701 shall administer the policies and procedures adopted under this section.

(3) Money appropriated for the district court program may not be used for any other purpose.

Section 5. District court council — appointment — composition — duties — staggered terms — staff. (1) There is a district court council. The council must be composed of nine members as follows:

(a) the chief justice of the supreme court or a designee of the chief justice;

(b) four district court judges elected by district court judges, one of whom must be from a judicial district that does not contain a first-class city as provided in 7-1-4111; and

(c) the following ex officio, nonvoting members appointed by the supreme court:

(i) one chief juvenile probation officer nominated by the Montana juvenile probation officers association;

(ii) one clerk of the district court nominated by the Montana association of clerks of district courts;

(iii) one county commissioner nominated by the Montana association of counties; and

(iv) one court reporter nominated by the Montana court reporters association.

(2) The chief justice or the chief justice's designee shall serve as the presiding officer of the council and shall appoint a vice presiding officer to act in the absence of the presiding officer.

(3) The district court council shall develop and adopt policies and procedures, subject to review by the supreme court, to administer the state funding of district

courts. The policies and procedures must address but not be limited to the following issues related to district courts:

(a) workload;

(b) resource allocation among the district courts;

(c) hiring policies;

(d) court procedures;

(e) information technology;

(f) for court reporters, work schedules, transcript fees, and equipment; and

(g) other issues regarding the state funding of district courts.

(4) Each district court judge shall retain the inherent power to select and appoint the judge's own necessary assistants and employees and to direct the performance of their duties.

(5) The chief justice of the supreme court shall serve on the council during the term of election or appointment. Other members shall serve staggered 3-year terms.

(6) The court administrator shall provide sufficient support to the council to allow it to carry out its statutory duties.

(7) The council shall provide reports to the legislature and supreme court upon request.

Section 6. District court council vacancies. (1) In the event that a vacancy on the district court council occurs, the supreme court shall appoint a replacement for the remainder of the term. The replacement must be a member of the same group as the member replaced.

(2) Appointments provided for in this section must be made within 30 days of the occurrence of the vacancy.

Section 7. District court council meetings — quorum. (1) The district court council may determine the time and place of its meetings and shall meet at least once each quarter.

(2) A majority of the voting members of the council constitutes a quorum. A quorum may call a meeting upon reasonable notice to the other council members.

Section 8. No compensation — travel expenses. The members of the district court council are not entitled to compensation for their services, but are entitled to travel expenses, as provided for in 2-18-501 through 2-18-503, while engaged in the discharge of council duties.

Section 9. Section 3-1-702, MCA, is amended to read:

"**3-1-702. Duties.** The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

(1) prepare and present judicial budget requests to the legislature, *including the costs of the state-funded district court program*;

(2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide the information to the legislature on request;

(3) recommend to the supreme court improvements in the judiciary;

(4) administer legal assistance for indigent victims of domestic violence, as provided in 3-2-714;

~~(4)~~*(5)* administer state funding for district courts, as provided in chapter 5, part 9; ~~and~~

(6) administer the judicial branch personnel plan; and

~~(5)~~*(7)* perform other duties that the supreme court may assign."

Section 10. Section 3-2-501, MCA, is amended to read:

"**3-2-501. Appointment of marshal and other employees.** *(1)* The supreme court ~~must~~ *shall* appoint a marshal of the supreme court and may appoint ~~such~~ other attendants, reporters, and clerks ~~as~~ *that* are necessary, who hold office at the pleasure of the court.

(2) The marshal and other persons appointed under subsection (1) are employees of the judicial branch of state government, are subject to classification and compensation as determined by the judicial branch personnel plan adopted by the supreme court under [section 1], and must receive state employee benefits and expenses as provided in Title 2, chapter 18."

Section 11. Section 3-2-714, MCA, is amended to read:

"**3-2-714. Civil legal assistance for indigent victims of domestic violence account.** (1) There is a civil legal assistance for indigent victims of domestic violence account in the state special revenue fund. There must be paid into this account the filing fees paid under 25-1-201~~(4)(a)~~*(3)(a)* and ~~(11)~~ *(6)*. The money in the account must be used solely for the purpose of providing legal representation for indigent victims in civil matters in domestic violence cases and for alternative dispute resolution initiatives in family law cases. Money in the account may not be used for class action lawsuits.

(2) The supreme court administrator shall establish procedures for the distribution and accountability of money in the account. The supreme court administrator may designate nonprofit organizations that ordinarily render or finance legal services to indigent persons in civil matters in domestic violence cases to receive or administer the distribution of the funds."

Section 12. Section 3-5-511, MCA, is amended to read:

"**3-5-511. Procedure in reference to witnesses' warrants.** (1) The witnesses in criminal actions ~~must~~ *shall* report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk ~~must~~ *shall* give to the witness a warrant taken from a book containing a carbon copy of the ~~same~~ *warrant*, signed by the clerk, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due.

(3) ~~On presentation of such warrant to the county treasurer, the~~ *The* amount specified in the warrant must be paid ~~out of the general fund unless the county has a district court fund. If the county has a district court fund, the amount must be paid out of such fund~~ *by the state as provided in 3-5-901 and 3-5-902.*"

Section 13. Section 3-5-515, MCA, is amended to read:

"**3-5-515. Fees for naturalization.** The clerk of the district court shall collect from every person to whom a final certificate of naturalization is issued, at the time *that* the ~~same~~ *certificate* is issued, all fees authorized by law. All fees must be accounted for and ~~paid to the county treasurer, as provided by 7-4-2511(1), and shall be credited to the general fund of the county~~ *forwarded to the state treasurer for deposit in the state general fund.*"

Section 14. Section 3-5-601, MCA, is amended to read:

"**3-5-601. ~~Appointment~~ *Court reporters — appointment* — oath — *employment status.*** *(1)* The judge of a district court may appoint a reporter for ~~such~~ *the* court who is an officer of the court and holds ~~his~~ office ~~during~~ *at* the pleasure of the *appointing* judge ~~appointing him~~. ~~He must subscribe~~ *The court reporter shall take* the constitutional oath of office and file ~~the same~~ *it* with the clerk of ~~the~~ court. In districts where there are two or more judges, each judge may appoint a reporter. *The judge shall direct the performance of the court reporter's duties.*

(2) Court reporter services may be provided by a court reporter appointed:

(a) as a state employee foregoing transcription fees;

(b) as a state employee retaining transcription fees; or

(c) as an independent contractor.

(3) A court reporter appointed under subsection (2)(a) or (2)(b) is subject to classification and compensation as determined by the judicial branch personnel plan adopted under [section 1] and must receive state employee benefits and expenses as provided in Title 2, chapter 18.

(4) (a) If a court reporter is appointed under subsection (2)(a), the state shall provide all equipment and supplies for the reporter's use. Any transcription fees paid for the reporter's transcription services must be forwarded to the state treasurer for deposit in the state general fund.

(b) If a court reporter is appointed under subsection (2)(b), the state shall provide equipment and supplies for the reporter's use, except that the reporter shall provide and maintain all equipment and supplies for performance of transcription duties unless equipment is shared, as provided in subsection (5). A reporter may not receive overtime for time spent on preparation of transcripts for which the reporter retains fees. The reporter shall retain all transcription fees paid for the reporter's transcription services.

(c) A court reporter appointed under subsection (2)(c) shall contract with the judicial branch as an independent contractor. The reporter shall provide and maintain the reporter's necessary equipment and supplies, retain all transcription fees paid for the reporter's transcript preparation services, and maintain professional liability insurance and workers' compensation coverage.

(5) A court reporter may use state-owned equipment under policies adopted by the district court council under [section 5] to avoid duplication of equipment costs. Use of shared equipment under this subsection is not a violation of 2-2-121(2)(a)."

Section 15. Section 3-5-602, MCA, is amended to read:

"**3-5-602. ~~Salary~~ *Court reporter as independent contractor — compensation* and expenses ~~— apportionment~~.** (1) Each *court* reporter *who is an independent contractor under 3-5-601* is entitled to ~~receive a base annual salary of not less than $28,000 or more than $35,000 and no other compensation~~

~~except as provided in 3-5-604, unless the judge decides to solicit bids for the work performed by the reporter, in which case the salary must be for the amount specified in the bid accepted by the judge. The salary must be set by the judge for whom the reporter works. The salary is payable in monthly installments out of the general funds of the counties composing the district for which the reporter is appointed and out of an appropriation made to the supreme court administrator as provided in subsection (2)~~ *compensation as provided in the contract.*

(2) The supreme court administrator shall ~~determine the total number of civil and criminal actions commenced in the preceding year in the district court or courts in the judicial district for which a reporter is appointed. The state shall pay its portion of the reporter's salary based on the proportion of the total number of criminal actions commenced in the district court or courts in the district and the amount appropriated for that purpose. Each county shall pay its portion of the remainder of the salary based on its proportion of the total number of civil and criminal actions commenced in the district courts in the district. The judge or judges of the district shall, on January 1 of each year or as soon thereafter as possible, apportion the amount of the salary to be paid by each county in the district on the basis prescribed in this subsection. The portion of the salary payable by a county is a district court expense within the meaning of 7-6-2351, 7-6-2352, and 7-6-2511~~ *pay the compensation due under subsection (1) as provided in 3-5-901 and 3-5-902.*

(3) In judicial districts comprising more than one county, the *court* reporter is allowed, in addition to the ~~salary and fees~~ *compensation* provided for in subsection (1) *and fees*, actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, when on official business to a county of the reporter's judicial district other than the county in which the reporter resides. The expenses ~~must be apportioned and are payable in the same way as the salary~~ *are payable as provided in subsection (2).*"

Section 16. Section 3-5-604, MCA, is amended to read:

"**3-5-604.** ~~**Transcript**~~ ***Court reporters — transcript* of proceedings — *costs*.** (1) Each *court* reporter shall furnish, upon request, with all reasonable diligence, to a party or a party's attorney in a case in which the *court* reporter has attended the trial or hearing a transcript from stenographic notes of the testimony and proceedings of the trial or hearing or a part of a trial or hearing upon payment by the person requiring the transcript of $2 a page for the original transcript, 50 cents a page for the first copy, and 25 cents a page for each additional copy.

(2) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees required by subsection (1) must be paid to the clerk of district court who shall forward the amount to the state treasurer for deposit in the state general fund.

~~(2)~~*(3)* If the county attorney, attorney general, or judge requires a transcript in a criminal case, ~~the reporter is entitled to the reporter's fees for the transcript, but~~ the reporter shall furnish it. ~~Upon furnishing it, the reporter must receive a certificate for the sum to which the reporter is entitled. The reporter shall submit the certificate to the supreme court administrator who, in accordance with 3-5-902, is responsible for the prompt payment of all or a portion of the amount due the reporter. If the state, in accordance with 3-5-902, pays none or only a portion of the amount due, the county shall pay the balance upon receipt of a~~

~~statement from the reporter.~~ *The transcription fee must be paid by the state as provided in 3-5-901.*

~~(3)~~*(4)* If the judge requires a copy in a civil case to assist in rendering a decision, the reporter shall furnish the copy without charge. In civil cases, all transcripts required by the county must be furnished, and only the reporter's actual costs of preparation may be paid by the county.

~~(4)~~*(5)* If it appears to the judge that a defendant in a criminal case or a parent or guardian in a proceeding brought pursuant to Title 41, chapter 3, part 4 or 6, is unable to pay for a transcript, it must be furnished to the party and paid for by the state ~~in the manner provided in subsection (2) to the extent funds are available. The county shall pay the remainder as required~~ *as provided* in 3-5-901."

Section 17. Section 3-5-901, MCA, is amended to read:

"3-5-901. State assumption of ~~certain~~ district court expenses — ~~designation as district court reimbursement program.~~ (1) ~~To the extent that revenue is available under 61-3-509, the~~ *There is a state-funded district court program. Under this program, the* state shall fund~~:~~

~~(a) the following district court expenses in criminal cases only:~~

~~(i) salaries of court reporters;~~

~~(ii) fees for transcripts of proceedings;~~

~~(iii) witness fees and necessary expenses;~~

~~(iv) juror fees;~~

~~(v) expenses for indigent defense; and~~

~~(vi) expenses for psychiatric examinations;~~ *all district court costs, except as provided in subsection (2). These costs include but are not limited to:*

(a) salaries and benefits for:

(i) district court judges;

(ii) law clerks;

(iii) court reporters, as provided in 3-5-601;

(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and

(v) other employees of the district court;

(b) in criminal cases, fees for transcripts of proceedings, as provided in 3-5-604, witness fees and necessary expenses, juror fees, and expenses for psychiatric examinations;

~~(b)~~*(c)* the district court expenses~~, as listed in subsection (1)(a),~~ in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;

~~(c)~~*(d)* the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations; ~~and~~

~~(d)~~*(e)* the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

(i) transcript fees;

(ii) witness fees;

(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;

(iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; *and*

~~(v) expenses for appointed counsel for the youth;~~

~~(vi) expenses for appointed counsel for the parent, guardian, or other person having physical or legal custody of the youth; and~~

~~(vii)~~*(v)* expenses associated with court-ordered alternative dispute resolution~~.~~*;*

(f) costs of juror and witness fees and witness expenses before a grand jury;

(g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

(h) all district court expenses associated with civil jury trials if those expenses were paid out of the district court budget in fiscal year 1998 or fiscal year 1999; and

(i) all other costs associated with the operation and maintenance of the district court, including contract costs for court reporters who are independent contractors, costs of the youth court and youth division offices, and costs of training for persons listed in subsections (1)(a)(i) through (1)(a)(v), but excluding the cost of providing district court office, courtroom, and other space as provided in [section 2].

~~(2) If revenue received under 61-3-509 exceeds the amount appropriated by the legislature to fund the expenses of the appellate defender program, the excess amount is statutorily appropriated, as provided in 17-7-502, to the supreme court to fund the expenses described in subsections (1)(a) through (1)(d), the district court grant program as described in subsection (4)(a), and the costs of administering this section.~~

~~(3) All revenue disbursed under this section must be deposited in and credited to the district court fund. If a district court fund does not exist, the revenue must be deposited in the county general fund for district court operations.~~

~~(4) If money appropriated for the expenses listed in subsection (1):~~

~~(a) exceeds the amount necessary to fully fund those expenses, the remaining excess amounts must be used for district court grants as provided in 7-6-2352; or~~

~~(b) is insufficient to fully fund those expenses, the county is responsible for payment of the balance.~~

(2) For the purposes of subsection (1), district court costs do not include:

(a) one-half of the salaries of county attorneys;

(b) salaries of deputy county attorneys;

(c) salaries of employees and expenses of the office of county attorney;

(d) costs for clerks of district court and employees and expenses of the office of the clerks of district court; or

(e) costs of providing district court office space.

(3) In addition to the costs assumed under the state-funded district court program, as provided in subsection (1), the state shall fund[:

(a)] the expenses of the appellate defender program. These costs must be allocated to and paid by the appellate defender program.

[(b) district court expenses related to involuntary commitment proceedings and youth court proceedings in an annual amount not to exceed the district court expense for those proceedings in fiscal year 2001 plus a 3% growth factor each year. Any amount that exceeds the district court expense for those proceedings is the responsibility of the county.]

(4) (a) In addition to the costs assumed under the state-funded district court program, as provided in subsection (1), the state shall reimburse counties:

(i) in district court criminal cases only, expenses for indigent defense; and

(ii) in proceedings under subsection (1)(e):

(A) expenses for appointed counsel for the youth; and

(B) expenses for appointed counsel for the parent, guardian, or other person having physical or legal custody of the youth.

[(b) If money appropriated for the expenses listed in subsection (4)(a) is insufficient to fully fund those expenses, the county is responsible for payment of the balance.]"

Section 18. Section 3-5-902, MCA, is amended to read:

"**3-5-902. Fiscal administration for payment of court expenses.** The supreme court administrator shall~~:~~

~~(1)~~ establish procedures for disbursement of funds for payment of district court expenses listed in 3-5-901~~, including prorating of those funds if they are insufficient to cover all expenses listed in 3-5-901; and~~

~~(2) require the use of a uniform accounting system in accordance with 2-7-504 by the counties in reporting court expenses at a detailed level for budgeting and auditing purposes~~ *and record payments at a detailed level for budgeting and auditing purposes.*"

Section 19. Section 3-15-204, MCA, is amended to read:

"**3-15-204. Duties of clerk as to jurors.** (1) The clerk ~~must~~ *shall* keep a record of the attendance of jurors and compute the amount due for mileage. The distance from any point to the county seat must be determined by the shortest traveled route.

(2) The clerk ~~must~~ *shall* give to each juror, at the time ~~he~~ *that the juror* is excused from further service, a warrant signed by ~~himself~~ *the clerk*, in which must

be stated the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due.

(3) ~~On presentation of such warrant to the county treasurer, the~~ *The* amount specified in the warrant must be paid ~~out of the general fund unless the county has a district court fund. If the county has a district court fund, the amount must be paid out of such fund~~ *by the state as provided in 3-5-901 and 3-5-902.*

~~(4) The clerk must make a detailed statement containing a list of the jurors and the amount of fees and mileage earned by each and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board. No quarterly salary must be paid the clerk until such statement is filed. The board must examine such statement and see that it is correct.~~"

Section 20. Section 3-15-205, MCA, is amended to read:

"**3-15-205. Costs of impaneling jury.** (1) In a civil action before a court of record in which the parties substantially agree to a settlement of the issues prior to impanelment of the jury and either settle the action or stipulate to a continuance and then fail or refuse to inform the court or clerk of court of the settlement or request a continuance and a jury is impaneled, the court may, upon hearing, assess the reasonable public expenses of impaneling the jury, including jury fees and mileage expenses paid or owing under 3-15-201, against any party.

(2) In civil actions, the court may assess against a party the reasonable public expenses of impaneling a jury, including jury fees and mileage expenses paid or owing under 3-15-201, if the court on an issue of law or the jury on an issue of fact determines that the party's case is frivolous or maintained for purposes of harassment. The court shall instruct the jury regarding the provisions of this subsection.

(3) Costs collected under this section must be ~~deposited in the county general fund unless the county has a district court fund. If the county has a district court fund, the costs must be deposited in the district court fund~~ *forwarded to the state treasurer for deposit in the state general fund.*"

Section 21. Section 7-6-2324, MCA, is amended to read:

"**7-6-2324. Limitations on appropriations after budget adopted — exception.** (1) The estimates of expenditures, itemized and classified as required in 7-6-2313 and 7-6-2314 and as finally fixed and adopted and as may be amended as provided in 7-6-2320 by the board of county commissioners, constitutes the appropriations for the county for the fiscal year intended to be covered by the estimates.

(2) Except as provided in ~~3-5-404,~~ 7-6-2325~~,~~ and 7-31-2101, the county commissioners and every other county official, including judges of the district court, ~~is~~ *are* limited in the making of expenditures or incurring of liabilities to the amount of the detailed appropriations and classifications, respectively.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 22. Section 7-6-2426, MCA, is amended to read:

"**7-6-2426. Enumeration of county charges.** *(1)* The following are county charges:

~~(1)~~*(a)* charges incurred against the county by virtue of any provision of this title;

~~(2)~~*(b)* one-half of the salary of the county attorney and all expenses necessarily incurred by ~~him~~ *the county attorney* in criminal cases arising within the county*, except as provided in subsection (2)*;

~~(3)~~*(c)* the salary and actual expenses for traveling, when on official duty, allowed by law to sheriffs and the compensation allowed by law to constables for executing process on persons charged with criminal offenses;

~~(4)~~*(d)* the board of prisoners confined in jail;

~~(5)~~*(e)* the accounts of the coroner of the county for ~~such~~ services ~~as~~ *that* are provided by law;

~~(6)~~*(f)* all charges and accounts for services rendered by any justice of the peace for services in the examination or trial of persons charged with crime as provided for by law;

~~(7)~~*(g)* the necessary expenses incurred in the support of county hospitals and poorfarms and in the support of the indigent sick and the otherwise dependent poor whose support is chargeable to the county;

~~(8)~~*(h)* the contingent expenses necessarily incurred for the use and benefit of the county;

~~(9)~~*(i)* every other sum directed by law to be raised for any county purpose under the direction of the board of county commissioners or declared to be a county charge.

(2) The costs of subsection (1)(b) arising from the criminal prosecution of escape or of an offense committed in the state prison must be paid by the department of corrections as provided in 53-30-110."

Section 23. Section 7-6-2511, MCA, is amended to read:

"**7-6-2511. County levy for ~~district~~ *certain* court expenses.** *(1)* Subject to 15-10-420, the governing body of each county may each year levy and collect a tax on the taxable property of the county for ~~all~~ *certain* district court costs, ~~except those listed in 3-5-211, 3-5-213, and 3-5-215~~ *as provided in subsection (2)*. The tax may not exceed 6 mills in the first- and second-class counties, 5 mills in third- and fourth-class counties, and 4 mills in fifth-, sixth-, and seventh-class counties. ~~District court costs~~

(2) District court costs for which a tax may be levied under subsection (1) are the:

(a) costs of the office of the clerk of district court;

(b) costs of providing office, courtroom, and other space for district court operations under [section 2]; and

(c) contracted costs of supplementing a district court budget, as provided in [section 3], if incurred in the discretion of the county commissioners.

(3) Costs of the office of the clerk of district court include but are not limited to salary and benefits for ~~court clerks, court reporters, youth probation officers~~ *clerks of district court, deputy clerks of district court,* and other employees of the *office of the clerk of* district court *and expenses of the office.*

(4) If remaining funds are available after paying the costs provided for in subsection (2), the county commissioners, in their discretion, may use the remaining funds to pay the expenses of the office of county attorney.

(5) This section may not be construed as a limitation on the authority or ability of a county or district court to apply for, receive, or administer grants from state, federal, or private funds."

Section 24. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; ~~3-5-901;~~ 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-31-702; 15-34-115; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-222; 80-4-416; 80-11-518; 81-5-111; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; and pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005.)"

Section 25. Section 22-1-504, MCA, is amended to read:

"**22-1-504. Duties of librarian — *library staff state employees.*** *(1)* The librarian shall develop and maintain an adequate collection and services to fulfill the needs of library users and shall establish procedures for the maintenance and control of the collection.

(2) The members of the staff of the state law library, except the librarian, are employees of the judicial branch of state government, are subject to classification and compensation as determined by the judicial branch personnel plan adopted by the supreme court under [section 1], and must receive state employee benefits and expenses as provided in Title 2, chapter 18."

Section 26. Section 25-1-201, MCA, is amended to read:

"**25-1-201. Fees of clerk of district court.** (1) The clerk of ~~the~~ district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, $90; for filing a complaint in intervention, from the intervenor, $80; for filing a petition for dissolution of marriage, $160; for filing a petition for legal separation, $150; and for filing a petition for a contested amendment of a final parenting plan, $120;

(b) from each defendant or respondent, on appearance, $60;

(c) on the entry of judgment, from the prevailing party, $45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents a page for the first five pages of each file, for each request, and 25 cents for each additional page;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for a search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $55;

(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100;

(q) for filing a petition for adoption, $75.

(2) Except as provided in subsections (3) ~~through (11)~~ *and (5) through (7),* ~~32% of all~~ fees collected by the clerk of ~~the~~ district court must be ~~deposited in and credited to the district court fund. If no district court fund exists, that portion of~~

~~the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must be remitted to~~ *forwarded to the state treasurer for deposit in* the state general fund.

~~(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $23.60 must be deposited in and credited to the state general fund and $6.40 must be deposited in and credited to the county general fund.~~

~~(4)~~*(3)* (a) Of the fee for filing a petition for dissolution of marriage, ~~$75 must be deposited in the state general fund,~~ $5 must be deposited in the children's trust fund account established in 41-3-702, $9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714, *and* $30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110~~, and $21 must be deposited in and credited to the district court fund. If no district court fund exists, the $21 must be deposited in the general fund for district court operations~~.

(b) Of the fee for filing a petition for legal separation, ~~$75 must be deposited in the state general fund,~~ $5 must be deposited in the children's trust fund account established in 41-3-702~~,~~ *and* $30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110~~, and $20 must be deposited in and credited to the district court fund. If no district court fund exists, the $20 must be deposited in the general fund for district court operations~~.

~~(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the district court fund or the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:~~

~~(i) at the commencement of each action or proceeding and for filing a complaint in intervention, as provided in subsection (1)(a), $35;~~

~~(ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), $25;~~

~~(iii) on the entry of judgment, as provided in subsection (1)(c), $15; and~~

~~(iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), $15.~~

~~(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.~~

~~(6) The fee for filing a motion for substitution of a judge, as provided in subsection (1)(p), must be remitted to the state general fund.~~

~~(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.~~

~~(8) The clerk of the district court shall remit to the credit of the state general fund $20 of each fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of judicial salaries.~~

~~(9) (a) The fee for filing a petition for a contested amendment of a parenting plan must be remitted by the clerk of the district court to the credit of the district court to defray the costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and to defray the expense of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a).~~

~~(b)~~*(4)* If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of ~~the~~ district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).

~~(10)~~*(5)* The clerk of district court shall remit to the credit of the special revenue account established in 42-2-105 $70 of the filing fee required in subsection (1)(q)~~, and $5 of the filing fee must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations~~.

~~(11)~~*(6)* Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, $9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714 ~~and $1 must be deposited in and credited to the district court fund for mitigation of administrative costs incurred by the court in the collection of the fee. If a district court fund does not exist, the $1 must be deposited in the county general fund for district court operations~~.

(7) The fees collected under subsections (1)(d), (1)(g), and (1)(j) must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund for district court operations."

Section 27. Section 25-1-202, MCA, is amended to read:

"**25-1-202. ~~Fee for court reporter~~ *Additional filing fee.*** In addition to other filing fees, a fee of $20 must be paid to the clerk of ~~the~~ district court at the time of filing a civil action in the district court. The fee must be ~~paid~~ *forwarded* by the clerk ~~into the treasury of the county where the action is filed, to be applied to the payment of the salary of the reporter~~ *to the state treasurer for deposit in the state general fund.* The prevailing party may have the amount paid by the prevailing party taxed in the bill of costs as proper disbursements."

Section 28. Section 25-1-1103, MCA, is amended to read:

"**25-1-1103. Fee — duration of certificate.** (1) A certificate of registration as a process server must be accompanied by a fee of $100 at the time the certificate is filed. The fee must be ~~deposited in the county general fund for district court operations, unless the county has a district court fund. If the county has a district court fund, the fee must be deposited in that~~ *forwarded by the clerk of district court to the state treasurer for deposit in the state general* fund.

(2) A certificate of registration is effective for a period of 2 years from the date of filing. A new certificate must be filed upon expiration of a certificate, and a new registration fee must accompany the new certificate."

Section 29. Section 25-9-506, MCA, is amended to read:

"**25-9-506. Fees.** (1) Except as provided for in subsection (2), a person filing a foreign judgment shall pay to the clerk of court a fee of $60.

(2) A person filing a judgment against a customer of a foreign capital depository, as defined in 32-8-103, shall pay to the clerk of court a fee of $2,500.

(3) Fees for docketing, transcription, or other enforcement proceedings must be as provided for judgments of the district court.

(4) Fees collected by the clerk of district court must be forwarded to the state treasurer for deposit in the state general fund."

Section 30. Section 25-9-804, MCA, is amended to read:

"**25-9-804. Filing fee.** A person seeking recognition of a foreign judgment rendered in a foreign state against a customer of the foreign capital depository shall pay a filing fee of $2,500 to the clerk of ~~the~~ court in which the judgment is filed. *Fees collected by the clerk of district court must be forwarded to the state treasurer for deposit in the state general fund.*"

Section 31. Section 27-9-103, MCA, is amended to read:

"**27-9-103. Filing and costs — district court.** The statement must be filed with the clerk of ~~the~~ court in which the judgment is to be entered, who shall endorse upon it and enter in the judgment book a judgment of the court for the amount confessed, with $45 costs. The clerk of ~~the~~ district court shall ~~deposit the fee in the district court fund. If no district court fund exists, the fee must be deposited in the general fund for district court operations~~ *forward the costs to the state treasurer for deposit in the state general fund.*"

Section 32. Section 40-4-215, MCA, is amended to read:

"**40-4-215. Investigations and reports.** (1) If a parent or a court-appointed third party requests, or if the court finds that a parenting proceeding is contested, the court may order an investigation and report concerning parenting arrangements for the child. The investigator may be the child's guardian ad litem or other professional considered appropriate by the court. The department of public health and human services may not be ordered to conduct the investigation or draft a report unless the person requesting the investigation is a recipient of cash assistance under the temporary assistance for needy families block grant, FAIM financial assistance, as defined in 53-2-902, food stamps, or public assistance and all reasonable options for payment of the investigation, if conducted by a person not employed by the department, are exhausted. The department may consult with any investigator and share information relevant to the child's best interests. The cost of the investigation and report must be paid according to the final order. The cost of the educational evaluation under subsection (2)(a) must be paid ~~from the fees for filing petitions for contested amendment of a parenting plan, as provided in 25-1-201(9)~~ *by the state as provided in 3-5-901.*

(2) The court shall determine, if appropriate, the level of evaluation necessary for adequate investigation and preparation of the report, which may include one or more of the following:

(a) parenting education;

(b) mediation pursuant to 40-4-301;

(c) factfinding by the investigator; and

(d) psychological evaluation of the parties.

(3) In preparing a report concerning a child, the investigator may consult any person who has information about the child and the child's potential parenting arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. Except as required for children 16 years of age or older, the investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the persons or entities authorized by law to grant or withhold access to the records. The child's consent must be obtained if the child has reached the age of 16 unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (4) are fulfilled, the investigator's report may be received in evidence at the hearing.

(4) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. When consistent with state and federal law, the investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (3), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing. The results of the investigation must be included in the court record and may, without objection, be sealed."

Section 33. Section 40-4-226, MCA, is amended to read:

"**40-4-226. Court-sanctioned educational program on effects of dissolution of marriage on children.** (1) In a proceeding for dissolution of marriage involving a minor child or in a parenting plan proceeding involving a minor child, a court shall inform the parties, excluding the minor child, of available educational programs concerning the effects of dissolution of marriage on children and, if the court finds that it would be in the best interest of the minor child, shall order the parties to attend a court-sanctioned program. The program may be divided into sessions. The program must be educational in nature and may not be designed for individual therapy.

(2) The cost of implementing the court-sanctioned educational program for each district court, provided for in subsection (1), must be paid ~~from the fees for filing petitions for contested amendment of a parenting plan, provided for in 25-1-201(9)~~ *by the state as provided in 3-5-901*. Costs may include parenting evaluation and guardian ad litem services."

Section 34. Section 41-5-1701, MCA, is amended to read:

"**41-5-1701. Appointment of *juvenile* probation officers.** *(1)* The youth court judge of each judicial district shall appoint ~~such necessary~~ probation officers ~~as are required to carry out the purpose and intent of~~, *deputy probation officers, and part-time probation officers necessary to administer* this chapter. ~~He shall appoint such part-time probation officers as shall be required.~~ The qualifications for part-time probation officers must approximate those required for probation officers insofar as possible. A chief probation officer must be appointed by the judge to supervise the youth division offices in the judicial district. The judge shall also ~~insure~~ *ensure* that the youth division offices are staffed with necessary office personnel and that the offices are properly equipped to effectively carry out the purpose and intent of this chapter. ~~No~~ *A* person while serving as a law enforcement officer may *not* be appointed or perform the duties of a full-time or part-time probation officer.

(2) All probation officers and youth division office staff hired or appointed under subsection (1) are employees of the judicial branch of state government. The employees are subject to classification and compensation as determined by the judicial branch personnel plan adopted by the supreme court under [section 1] and must receive state employee benefits and expenses as provided in Title 2, chapter 18."

Section 35. Section 41-5-1702, MCA, is amended to read:

"**41-5-1702. Qualifications of probation officers.** (1) Any person appointed as a chief probation officer must have the following qualifications:

(a) a master's degree in the behavioral sciences;

(b) a bachelor's degree from an accredited college or university in the behavioral sciences and at least 1 year's experience in work of a nature related to the duties of a probation officer as set forth in 41-5-1703; or

(c) a bachelor's degree in any field and at least 3 years' experience in work related to the duties of a probation officer as set forth in 41-5-1703.

(2) The judge may appoint any reputable person as a probation officer who has had experience in work of a nature related to the duties of a chief probation officer~~, provided~~. *However,* preference must be given to persons with the qualifications set forth in subsection (1).

(3) Each person appointed as a chief probation officer ~~or~~, probation officer ~~under this section~~, or ~~as a~~ deputy probation officer ~~under 41-5-1705 must~~ *shall* obtain 16 hours a year of training in subjects relating to the powers and duties of probation officers in a program or course conducted by the department of justice or approved by the board of crime control under 41-5-1706."

Section 36. Section 41-5-1706, MCA, is amended to read:

"**41-5-1706. Juvenile probation officer training.** (1) The department of justice may conduct a 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers. A 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers may be offered by another public agency or by a private entity if the program or course is approved by the board of crime control. If funding is available, the department shall conduct a 40-hour basic training program once a year.

(2) A juvenile probation officer who successfully completes the 40-hour basic training program or another program or course must be issued a certificate by the board.

(3) A juvenile probation officer is entitled to the officer's salary *and expenses, as provided in 2-18-501 through 2-18-503,* while attending a program or training course ~~and must be paid, by the district court, expenses as provided in 2-18-501~~. The court shall also pay any program or course registration fee.

(4) The board may adopt rules to implement this section."

Section 37. Section 41-5-1707, MCA, is amended to read:

"**41-5-1707. Designation of assessment officers — ~~qualifications — salary —~~ duties.** (1) The youth court judge of each judicial district may appoint and supervise ~~the necessary~~ assessment officers ~~as are required to carry out the purpose and intent of~~ *necessary to administer* this chapter. ~~The qualifications for assessment officers must be established by the appointing judge. Assessment officers are county employees, and assessment officers' salaries must be fixed by the judge. An assessment officer may work out of the local police department or other local law enforcement office.~~ *Assessment officers appointed under this section are employees of the judicial branch of state government. The employees are subject to classification and compensation as determined by the judicial branch personnel plan adopted by the supreme court under [section 1] and must receive state employee benefits and expenses as provided in Title 2, chapter 18.*

(2) An assessment officer shall perform the duties set out in 41-5-1201 and 41-5-1302.

(3) Proceedings under 41-5-1201 and 41-5-1302 that are held prior to adjudication satisfy the requirements of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. Montana school districts may release education records to assessment officers. The assessment officer is responsible for ensuring that officials and authorities to whom ~~such~~ *that* information is disclosed certify in writing to the school district that is releasing the education records that the education records or information from the education records will not be disclosed to any other party without the prior written consent of the parent of the student."

Section 38. Section 42-2-105, MCA, is amended to read:

"**42-2-105. Fees for services — special revenue account — statutory appropriation.** (1) The department shall establish fees that it may charge and that are reasonably related to the cost incurred by the department in completing or contracting for adoption services.

(2) The department may contract with licensed social workers or licensed child-placing agencies for the purposes of completing the preplacement or postplacement evaluation or for providing postplacement supervision.

(3) An agency contracting to perform the services may set and charge a reasonable fee commensurate with the services provided.

(4) There is an adoption services account in the state special revenue fund. The fees collected by the department under this title and from the district court filing fee pursuant to 25-1-201~~(1)(q)~~*(5)* must be deposited into this account and may be used by the department for adoption services. The money in the account is statutorily appropriated, as provided in 17-7-502, to the department."

Section 39. Section 46-8-114, MCA, is amended to read:

"**46-8-114. Time and method of payment.** When a defendant is sentenced to pay the costs of court-appointed counsel, the court may order payment to be made within a specified period of time or in specified installments. Payments must be made to the clerk of ~~the~~ district court. The clerk of the district court shall ~~distribute~~ *forward* the payments to the ~~government agency responsible for the expense of court-appointed counsel as provided for in 46-8-201~~ *state treasurer for deposit in the state general fund.*"

Section 40. Section 46-8-201, MCA, is amended to read:

"**46-8-201. Remuneration of appointed counsel.** (1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the attorney must be paid for the services a sum as a judge or justice of the state supreme court certifies to be a reasonable compensation and be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) ~~is chargeable as provided in 3-5-901 to the county in which the proceeding arose,~~ *must be paid by* the state *as provided in 3-5-901*, ~~or both,~~ except that:

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city court, the expense is chargeable to the city or town in which the proceeding arose; or

(b) when there has been an arrest by agents of the department of fish, wildlife, and parks or agents of the department of justice and the charge is prosecuted by personnel of the state agency that made the charge, the expense must be borne by the prosecuting state agency."

Section 41. Section 46-8-202, MCA, is amended to read:

"**46-8-202. Public defender's office.** Any county through its board of county commissioners may provide for the creation of a public defender's office and the appointment of a salaried public defender and ~~such~~ assistant public defenders ~~as~~ *that* may be necessary to satisfy the legal requirements in providing counsel for defendants unable to employ counsel. The costs of ~~such~~ *the* office ~~shall~~ *must* be at state expense payable according to procedures established under ~~3-5-902(1)~~ *3-5-901(4)* and, to the extent those costs are not paid by the state, at county expense in accordance with 3-5-901~~(3)~~*(4)* ~~and 3-5-902(1)~~."

Section 42. Section 46-11-319, MCA, is amended to read:

"**46-11-319. Expenses of grand jury.** (1) Except as provided in subsection (2), all expenses of the grand jury, including expenses for special prosecutors, experts, investigators, and interpreters, if any, must be paid by the *county. The* treasurer of the county *shall pay the expenses* out of the general fund of the county *or out of the district court fund, if any,* upon warrants drawn by the county auditor or by the clerk of ~~the~~ district court upon a written order of the judge of the district court of the county.

~~(2) If the county has a district court fund, all expenses of a grand jury must be paid out of that fund.~~

~~(3)~~*(2)* ~~Subject to the procedures established by law, the state shall reimburse the court for~~ *The state shall pay the expenses of* juror and witness fees and witness expenses~~. The county shall deposit the amount reimbursed in its general fund unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in that fund~~ *as provided in 3-5-901 and 3-5-902.*"

Section 43. Section 46-14-202, MCA, is amended to read:

"**46-14-202. Examination of defendant.** (1) If the defendant or the defendant's counsel files a written motion requesting an examination or if the issue of the defendant's fitness to proceed is raised by the district court, prosecution, or defense counsel, the district court shall appoint at least one qualified psychiatrist or licensed clinical psychologist or shall request the superintendent of the Montana state hospital to designate at least one qualified psychiatrist or licensed clinical psychologist, which designation may be or include the superintendent, to examine and report upon the defendant's mental condition.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding 60 days or a longer period ~~as~~ *that* the court determines to be necessary for the purpose and may direct that a qualified psychiatrist or licensed clinical psychologist retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination, any method may be employed that is accepted by the medical or psychological profession for the examination of those alleged to be suffering from mental disease or defect.

(4) If the defendant is indigent or the examination occurs at the request of the prosecution, the cost of the examination must be paid by ~~the county or~~ the state~~, or both, according to procedures established under 3-5-902(1)~~ *as provided in 3-5-901*."

Section 44. Section 46-14-221, MCA, is amended to read:

"**46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses.** (1) The issue of the defendant's fitness to proceed may be raised by the court, by the defendant or the defendant's counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If neither the prosecutor nor the defendant's counsel contests the finding of the report filed under 46-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) (a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate institution of the department of public health and human services for so long as the unfitness endures.

(b) The institution shall develop an individualized treatment plan to assist the defendant to gain fitness to proceed. The treatment plan may include a physician's prescription of reasonable and appropriate medication that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan, the institution may petition the court for an order requiring compliance. The defendant has a right to a hearing on the petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific findings that the state has ~~proven~~*proved* an overriding justification for the order and that the treatment being ordered is medically appropriate.

(c) The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4), and the prosecutor shall petition the court in the manner provided in ~~chapter 20 or 21 of~~ Title 53, *chapter*

20 or 21, whichever is appropriate, to determine the disposition of the defendant pursuant to those provisions.

(3) If the court determines that the defendant lacks fitness to proceed because the defendant has a developmental disability as provided in 53-20-102(5), the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in ~~chapter 20 of~~ Title 53, *chapter 20*.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution that is susceptible to fair determination prior to trial and that is made without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate institution of the department of corrections, of keeping the defendant there, and of bringing the defendant back are ~~chargeable to~~ *payable by* the state ~~and payable according to procedures established under 3-5-902(1)~~ *as a district court expense*."

Section 45. Section 46-15-116, MCA, is amended to read:

"**46-15-116. Fees, costs, and expenses.** (1) When a person attends before a judge, grand jury, or court as a witness in a criminal case upon a subpoena, the witness ~~shall~~ *must* receive the witness fee prescribed by Title 26, chapter 2, part 5. The court, on motion by either party, may allow additional fees for expert witnesses.

(2) The court may determine the reasonable and necessary expenses of subpoenaed witnesses and order the clerk of ~~the~~ court to pay the expenses ~~from the appropriate city or county treasury~~.

(3) When a person is subpoenaed in this state to testify in another state or is subpoenaed from another state to testify in this state, the person must be paid for lodging, mileage or travel, and per diem, the sum equal to that allowed by Title 2, chapter 18, part 5, for each day that the person is required to travel and attend as a witness. If the state where the witness is found has by statutory enactment required that the subpoenaed witness be paid an amount in excess of the amount specified in this section, the witness may be paid the amount required by that state.

(4) ~~According~~ *The witness fees, costs, and expenses must be paid by the state according* to procedures required by the supreme court administrator~~,~~ under 3-5-902~~, the clerk of the district court shall submit to the administrator a detailed statement containing a list of witnesses and the amount of expenses paid to each witness by the county. Upon receipt and verification of the statement, the administrator shall promptly reimburse the designated county for all or a portion of the witness expenses. The county shall deposit the amount reimbursed in its general fund unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in the district court fund~~."

Section 46. Section 46-18-235, MCA, is amended to read:

"**46-18-235. Disposition of money collected as fines and costs.** The money collected by a court as a result of the imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 must be paid:

(1) by ~~a~~ *the clerk of* district court to ~~the county general fund of the county in which the court is held, except that:~~

~~(a) if the costs assessed include any district court expense listed in 3-5-901, the money collected from assessment of these costs must be paid to the~~:

(a) the state *treasurer* for deposit into the state general fund ~~to the extent that the expenses were paid by the state~~; ~~and~~ *or*

(b) if the fine was imposed for a violation of Title 45, chapter 9 or 10, ~~the court may order the money paid into~~ *and at the court's discretion,* the drug forfeiture account maintained under 44-12-206 for the law enforcement agency that made the arrest from which the conviction and fine arose; and

(2) by a justice's court pursuant to 3-10-601."

Section 47. Section 46-18-603, MCA, is amended to read:

"**46-18-603. Disposition of fines and forfeitures.** All fines and forfeitures collected in any court except city courts must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred. After ~~such~~ *those* costs are paid, the ~~residue~~ *remainder*, if not paid to a justice's court or otherwise provided by law, must be ~~paid to the county treasurer of the county in which the court is held and by him credited as provided by law. If the fine or forfeiture is paid to the county treasurer, at the time of such payment there shall be filed with the county treasurer a complete statement showing the total of the fine or forfeiture received or incurred with an itemized statement of the costs incurred by the county in such action. The statement shall give the title of the cause and be subscribed by the person or officer making such payment~~ *forwarded to the state treasurer for deposit in the state general fund.*"

Section 48. Section 52-6-105, MCA, is amended to read:

"**52-6-105. Funding.** (1) Revenue from the marriage license fee and the fee collected for filing a declaration of marriage without solemnization is the primary source of funding for the battered spouses and domestic violence program. ~~The disposition of the marriage license fee is as established in 25-1-201.~~

(2) Twenty percent of the operational costs of a battered spouses and domestic violence program must come from the local community served by the program. The local contribution may include in-kind contributions."

Section 49. Section 53-9-104, MCA, is amended to read:

"**53-9-104. Powers and duties of division.** (1) The division shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, book, photograph, movie, television production, play, or article relating to ~~such~~ *the* crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, if the individual is convicted of the crime, to be held for ~~such~~ *a* period of time ~~as~~ *that* the division may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to pay the costs and attorney fees of court-appointed counsel for the charged person. Each victim and dependent of a deceased victim is entitled to ~~his~~ actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the ~~county as reimbursement~~ *state* for any public defender or any attorney appointed for the charged person must be deposited in the account established in 53-9-109.

(2) The division may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the division to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant~~, provided that~~ *if* the division has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection *(2)*(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims' assistance coordinating and planning program."

Section 50. Section 61-3-509, MCA, is amended to read:

"61-3-509. Disposition of taxes. (1) All registration fees imposed by 61-3-561 from light vehicles, all registration fees imposed by 61-3-522 from motor homes, all fees in lieu of tax imposed by 61-3-527 from motorcycles and quadricycles, and all fees imposed by 61-3-529 from buses, motor vehicles having a manufacturer's rated capacity of more than 1 ton, and truck tractors, for which a license is sought and an original application for title that includes a manufacturer's statement of origin is made, must be remitted to the state treasurer every 30 days. The state treasurer shall credit the payments to the highway restricted state special revenue account.

(2) Except as provided in subsections (1) and (3), the county treasurer shall, after deducting the district court fee, credit all taxes on motor vehicles, registration fees on light vehicles, and fees in lieu of tax on motorcycles, quadricycles, motor homes, travel trailers, campers, trailers, pole trailers, semitrailers, buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors collected under 61-3-521, 61-3-527, 61-3-529, 61-3-537, and 61-3-560 through 61-3-562 to a motor vehicle suspense fund. At some time between March 1 and March 10 of each year and every 60 days after that date, the county treasurer shall distribute the money in the motor vehicle suspense fund. Except for registration fees collected under 61-3-560 through 61-3-562, the county treasurer shall distribute the money in the fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed. For

money in the fund collected under 61-3-527 and 61-3-560 through 61-3-562, the county treasurer shall disregard the statewide mills levied for the university system, county elementary and high school equalization under 20-9-331 and 20-9-333, the mills levied for state equalization aid under 20-9-360, and the mills levied for state assumption of public assistance under 53-2-813 in determining distribution proportions of the money and may not distribute money collected under 61-3-527 and 61-3-560 through 61-3-562 to the state for those levies.

(3) The county treasurer shall deduct as a district court fee 10% of the amount of the registration fee collected on light vehicles under 61-3-560 through 61-3-562. The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward the amount in the account to the state treasurer at the time that the county treasurer distributes money from the motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to the state ~~special revenue~~ *general* fund to be used for purposes of state funding of district court ~~expenses~~ *costs* as provided in 3-5-901."

Section 51. Transition. The provisions of 2-15-131 through 2-15-137 apply to [this act].

Section 52. Repealer. (1) Sections 3-5-404, 3-5-903, 7-6-2352, 7-6-2427, 7-6-2428, 25-2-205, 41-5-1704, and 41-5-1705, MCA, are repealed.

(2) Section 3-5-404, MCA, is repealed.

Section 53. Codification instruction. (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 3, chapter 1, part 1, and the provisions of Title 3, chapter 1, part 1, apply to [sections 1 through 3].

(2) [Sections 4 through 8] are intended to be codified as an integral part of Title 3, chapter 1, and the provisions of Title 3, chapter 1, apply to [sections 4 through 8].

Section 54. Coordination instruction. (1) If House Bill No. 124 is not passed and approved, then [sections 1 through 51, 53, 55 through 62, 64, and 65 of this act] are void and [section 52 of this act] is amended to read:

"NEW SECTION. **Section 52. Repealer.** Section 3-5-404, MCA, is repealed."

(2) If Senate Bill No. 144 and [this act] are both passed and approved, then 61-3-509(3) in [this act] is amended to read:

"(3) The county treasurer shall deduct as a district court fee 10% of the amount of the registration fee collected on light vehicles under 61-3-560 through 61-3-562. The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward the amount in the account to the ~~state treasurer~~ *department of revenue* at the time that the county treasurer distributes money from the motor vehicle suspense fund. The ~~state treasurer~~ *department of revenue* shall credit amounts received under this subsection to the state ~~special revenue~~ *general* fund to be used for purposes of state funding of district court ~~expenses~~ *costs* as provided in 3-5-901."

(3) If House Bill No. 62 and [this act] are both passed and approved, then House Bill No. 62 is void.

(4) If Senate Bill No. 66 and [this act] are both passed and approved, then 3-5-901(2)(a) in [this act] is amended to read:

"(2) For the purposes of subsection (1), district court costs do not include:

(a) the percentage of the salaries of county attorneys payable by counties under 7-4-2503;".

(5) If Senate Bill No. 386 and [this act] are both passed and approved, then 52-5-109(1) in Senate Bill No. 386 is amended to read:

"(1) The expenses of committing a youth to the department or to the youth court must be borne by the committing youth court."

Section 55. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 56. District court council — implementation of staggered terms. (1) The members of the district court council, other than the chief justice of the supreme court or the designee of the chief justice, must be elected or appointed as follows:

(a) one district court judge and juvenile probation officer to terms that begin July 1, 2001, and expire June 30, 2004;

(b) one district court judge and clerk of district court to terms that begin July 1, 2001, and expire June 30, 2003;

(c) two district court judges, a county commissioner, and a court reporter to terms that begin July 1, 2001, and expire June 30, 2002.

(2) After expiration of the original terms established by this section, the succeeding terms must be 3-year terms.

Section 57. Transition — transfer of county employees to state employment — preservation of rights. (1) District court employees who are employed by the county on June 30, 2002, and who are transferred to state employment by [this act] become state employees on July 1, 2002, except for purposes of application of the judiciary branch personnel plan, as provided in [section 63].

(2) The compensation of former county employees who become state employees under [this act] may not be impaired. This subsection does not preserve the right of any former county employee to any salary or compensation, including longevity benefits, that was payable while the employee was employed by the county and that was not accrued and payable as of June 30, 2002.

(3) An employee who is transferred from county employment to state employment under [this act] may elect to become a member of the state employee benefit plan on July 1, 2002, or remain on the employee's county benefit plan through the remainder of the plan year in effect on June 30, 2002. For an employee who elects to remain on a county benefit plan, the monthly state contribution toward insurance benefits must be transferred to the county benefit plan. Any benefit costs in excess of the state contribution must be paid by the employee.

(4) Accumulated sick and vacation leave and years of service with a county must be transferred fully to the state as of July 1, 2002, and become an obligation of the state at that time. Any liability for accumulated compensatory time of employees who are transferred from county employment to state employment under [this act] is not transferred to the state and remains an obligation of the county that employed the employee prior to the transfer, subject to federal law and the county's personnel policies.

(5) The state becomes a successor employer with regard to any collective bargaining agreement existing on July 1, 2002, that prior to July 1, 2002, covered any employee transferred from county employment to state employment by [this act]. The responsibilities and obligations of the parties to an agreement to which the state becomes a successor employer must, as applied to a transferred employee, continue until the expiration date of the agreement.

(6) In the development of a plan of personnel administration for employees of the judicial branch, the supreme court may recognize an appropriate bargaining unit.

Section 58. Rights to property. A district court that becomes state-funded under [this act] retains the rights to all personal property relating to the functions of the court. The property includes records, office equipment, computer equipment, supplies, contracts, books, papers, documents, maps, grant and earmarked account balances, vehicles, and all other similar property. However, the district court may not use or divert money in a fund or account for a purpose other than as provided by law. The county commission and the court administrator shall resolve any conflict as to the proper disposition of property. There is no appeal from the decision of the administrator and county commission regarding disposition of property under this section. This section does not apply to property owned by the federal government.

Section 59. Transition — delayed application of judicial branch personnel plan — salaries for FY 2003. (1) All judicial branch employees, including district court employees, become subject to the judiciary branch personnel plan adopted by the supreme court, as required by [section 1], on July 1, 2003.

(2) During fiscal year 2003, each district court employee who was a former county employee and who becomes a state employee under [this act] is entitled to the person's salary and compensation, including longevity payments, that the person is entitled to on June 30, 2002. In addition, the person is entitled to an increase equal to the average pay increase for judicial branch employees if any pay increase is granted for fiscal year 2003.

(3) An employee's compensation may not be reduced by transfer to the judicial branch personnel plan. If application of the judicial branch personnel plan would reduce an employee's compensation, the employee shall remain at the compensation earned at the time of transfer until compensation under the plan requires an increase in the employee's compensation.

Section 60. Transition — purchase of court reporters' equipment. The state may:

(1) during fiscal year 2003, on a one-time basis, offer to purchase reporting and transcription equipment from a court reporter who becomes a state employee under 3-5-601(2)(a); or

(2) offer to purchase the equipment of a court reporter who becomes a state employee under 3-5-601(2)(b) under guidelines adopted by the supreme court and recommended by the district court council under [section 5].

Section 61. Guarantee share. (1) (a) For fiscal year 2003, the district court council shall calculate each judicial district's fixed budget component and variable budget component. The council shall determine the statewide percentage that the statewide district court fixed budget component is to the statewide total district court budget. The council shall take that percentage of the total district court appropriation and allocate that percentage among each judicial district in proportion to each judicial district's fixed budget component of the total district court fixed budget component.

(b) The remainder of the district court appropriation after the allocations required by subsection (1)(a) is the variable budget. The variable budget must be allocated during the year among the judicial districts based upon caseload need and other factors as determined by the district court council.

(2) As used in this section:

(a) "fixed budget component" means a district court's costs that are not variable with caseload based on the fiscal year 1999 FTEs and estimated vacancy savings, plus estimated costs associated with the three judgeships created by Chapter 454, Laws of 1999, and related operating costs, including but not limited to salaries for permanent employees of the court and the costs of contracted professional services.

(b) "variable budget component" means a district court's costs that are variable with caseload, including but not limited to witness fees and necessary expenses, juror fees, and indigent defense costs.

Section 62. Direction to district court council. The district court council provided for in [section 5] shall address any inequities in disbursements of district court expenses for involuntary commitment proceedings and youth court proceedings and shall present to the 58th legislature a proposal to enumerate specific expenses of those proceedings that are recommended to be designated as district court expenses in 3-5-901.

Section 63. Effective dates. (1) [Sections 21, 52(2), 53 through 55, 64, and 65 and this section] are effective on passage and approval.

(2) [Sections 1, 4 through 8, and 62] are effective July 1, 2001.

(3) [Sections 2, 3, 9 through 20, 22 through 51, 52(1), and 56 through 61] are effective July 1, 2002.

Section 64. Applicability. The judiciary branch personnel plan adopted under [section 1] applies to fiscal years beginning July 1, 2003.

Section 65. Termination. [Section 62] and the bracketed language in 3-5-901(3) and (4) terminate June 30, 2003.

Approved May 5, 2001

CHAPTER NO. 586

[SB 322]

AN ACT CREATING THE NATURAL RESOURCE WORKERS' EDUCATION PROGRAM; PROVIDING TUITION SCHOLARSHIPS FOR NATURAL RESOURCE WORKERS UNEMPLOYED DUE TO A CLOSURE OR A PERMANENT REDUCTION IN FORCE ON OR AFTER JANUARY 1, 1998, TO OBTAIN AN EDUCATIONAL DEVELOPMENT EQUIVALENCY DIPLOMA OR TO RECEIVE EDUCATION OR RETRAINING IN A TRAINING, CERTIFICATE, OR DEGREE PROGRAM FOR A MAXIMUM OF TWO YEARS AT A COMMUNITY COLLEGE, TRIBAL COLLEGE, OR UNIT OF THE

MONTANA UNIVERSITY SYSTEM; PROVIDING FOR ELIGIBILITY CRITERIA FOR A TUITION SCHOLARSHIP; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO ACCEPT PRIVATE DONATIONS AND GRANTS FOR SUPPORT OF THE PROGRAM; DEPOSITING A PORTION OF THE RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAXES IN THE NATURAL RESOURCE WORKERS' TUITION SCHOLARSHIP ACCOUNT; REQUIRING EXPENDITURE OF PRIVATE DONATIONS AND GRANTS PRIOR TO USE OF RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAXES; AMENDING SECTION 15-38-106, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

WHEREAS, the economy of Montana is in transition to a new economy that will necessitate a workforce trained for the new economy; and

WHEREAS, since 1995, the closure of timber mills, such as American Timber, JD Timber, Darby Lumber, Crown Pacific, Louisiana Pacific, Missoula White Pine, and others, has resulted in the loss of approximately 1,500 jobs in the timber industry; and

WHEREAS, since 1995, an estimated 200 jobs have been lost in the oil and gas industry with the closure of Equitable Resources and JN Oil and Gas; and

WHEREAS, another estimated 1,175 jobs have been lost since 1995 in the mining industry as a result of reductions at Montana Resources International, Mineral Hill Mine, Zortman-Landusky Mine, Basin Creek Mine, Beal Mountain Mine, and Diamond Hill Mine; and

WHEREAS, the shift has left many hard-working Montanans, who are the state's greatest asset, without employment and unqualified to fill positions created in the new economy.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 6] may be cited as the "Natural Resource Workers' Education Program".

Section 2. Purpose. It is the intent of the legislature to:

(1) provide the natural resource workers in Montana who have lost their jobs in the natural resource industry an opportunity to obtain the education and training necessary to find employment in the state that will allow the workers to support their families, save and invest for retirement, and enjoy the recreational opportunities that Montana offers; and

(2) help retain a workforce that has made valuable contributions to the state and that will continue to be a valuable asset as Montana moves into the new economy.

Section 3. Definitions. As used in [sections 1 through 6], the following definitions apply:

(1) "Book allowance" means a payment of $150 a semester for an eligible student who is enrolled at least half-time or $75 a semester for a student who is enrolled less than half-time that must be used to purchase books or supplies for the student's course of study.

(2) "Full-time, permanent employee" means a person who worked at least an average of 32 hours each week during the traditional work season.

(3) "Natural resource industry" means the fields of oil and gas development, mining, smelting, or timber harvester processing or industries directly related to oil and gas development, mining, smelting, or timber harvester processing.

(4) "Tuition scholarship" means tuition and mandatory fees, excluding room and board, rounded up to the nearest dollar, and a book allowance that are not covered by the federal Pell grant program, federal supplemental educational grant program, or Workforce Investment Act of 1998.

Section 4. Program administration. (1) The department of labor and industry shall administer the natural resource workers' education program and shall adopt rules to implement the requirements of [sections 1 through 6], including but not limited to:

(a) procedures regarding the application process for eligible individuals to obtain tuition and notification of the office of public instruction, the board of regents, community colleges, tribal colleges, and the state job service of all criteria, procedures, and timelines;

(b) procedures for disbursement of tuition scholarships and for developing a formula for proration of scholarships from the natural resource workers' tuition scholarship account established in [section 6] to the office of public instruction, community colleges, tribal colleges, or the board of regents to pay for tuition scholarships awarded to eligible individuals; and

(c) procedures to limit the training available to each eligible individual to a maximum of 2 years.

(2) Before the registration period each semester, the department of labor and industry shall:

(a) submit to the office of public instruction, community colleges, tribal colleges, and the board of regents the names of those who have applied for the program and have met the eligibility requirements prescribed in [section 5]; and

(b) transmit from the natural resource workers' tuition scholarship account to the office of public instruction, community colleges, tribal colleges, or the board of regents the total amount necessary for payment of all tuition scholarships. The office of public instruction or the board of regents shall transmit the payment for each scholarship to the financial officer of the school district or the unit of the university system in which the eligible student is enrolled.

(c) enter into a contract or state-tribal cooperative agreement, pursuant to Title 18, chapter 11, with tribal governments to provide the department with information required under this section for participation in the program.

(3) Within 30 days after the end of registration each semester, the school district, community college, tribal college, or unit of the university system shall certify to the superintendent of public instruction, the board of regents, or the department, as applicable, the eligibility status of each individual who receives a tuition scholarship. After the end of the drop and add period, the school district, community college, tribal college, or unit of the university system is not required to reevaluate or revise an individual's eligibility status, but shall make a refund to the department of labor and industry if a student who receives a scholarship terminates enrollment for any reason during an academic term.

(4) A school district, community college, tribal college, or unit of the university system that receives a tuition scholarship payment shall prepare and

submit to the department of labor and industry by March 1 of each year a report that includes an audit of the district's, college's, or unit's administration of the tuition scholarships and a complete accounting of the tuition funds.

(5) If a tuition scholarship recipient transfers from one school district, community college, tribal college, or unit of the university system to another and continues to meet eligibility requirements, the tuition scholarship must be transferred with the recipient.

(6) A tuition scholarship recipient may apply the tuition scholarship to any training, certificate, or degree program offered at a community college, tribal college, or unit of the university system.

(7) By June 30 of each even-numbered year, the department of labor and industry shall report the following to the legislative finance committee:

(a) the number of persons participating in the program;

(b) the training, certificate, or degree program in which each participant is enrolled or that each participant has completed and the location of the program;

(c) the number of job placements and the average salary received; and

(d) the agency costs associated with administering the program.

Section 5. Eligibility requirements. (1) To be eligible to receive a tuition scholarship through the natural resource workers' education program, an individual seeking a general educational development equivalency diploma through a program approved for funding by the superintendent of public instruction or enrolled in a training, certificate, or degree program offered at a community college or tribal college located in Montana or a unit of the Montana university system, as identified in 20-25-201, must:

(a) be classified as a Montana resident for in-state tuition at the time of application;

(b) have proof of employment through pay stubs, W-2 records, or records of the department of labor and industry that the individual was employed as a full-time, permanent employee for a minimum of 3 years in succession in a natural resource industry located in Montana; and

(c) have been unemployed in a natural resource industry due to a closure or a permanent reduction in force occurring on or after January 1, 1998, by an employer in a natural resource industry located in Montana. A worker who has been affected only by a temporary or seasonal layoff is not eligible for a tuition scholarship.

(2) An individual who meets the requirements of subsection (1) and who is seeking a general educational development equivalency diploma shall enroll in a program that has been approved for funding by the office of public instruction.

(3) An individual who meets the requirements of subsection (1) and who is seeking a scholarship for a training or certificate program shall enroll in a program that has been approved by a community college, tribal college, or unit of the university system.

(4) A freshman student who meets the requirements of subsection (1) and has been admitted, enrolled, or classified as an undergraduate student in a matriculated status is eligible to receive a retroactive scholarship to be paid at the end of the freshman year if the student earns a cumulative grade point average of

at least 2.0 at the end of the school term in which the student attempted 30 semester hours.

(5) To be eligible to receive a scholarship, a sophomore student seeking an associate or baccalaureate degree at a postsecondary institution must meet the requirements of subsection (1) and:

(a) must have attempted a minimum of 30 semester hours at a postsecondary school;

(b) must have earned a cumulative grade point average of at least 2.0 at the end of the school term in which the student attempted 30 semester hours;

(c) must have maintained satisfactory academic progress in a course of study pursuant to the standards and practices used for federal Title IV programs by the postsecondary institution in which the student is enrolled; and

(d) must meet enrollment standards by being admitted, enrolled, and classified as an undergraduate student in a matriculated status.

(6) To be eligible to receive a scholarship, a junior student seeking a baccalaureate degree at a postsecondary institution must meet the requirements of subsection (1) and:

(a) must have earned a cumulative grade point average of at least 2.0 at the end of the school term in which the student attempted 60 semester hours;

(b) must have maintained satisfactory academic progress in a course of study pursuant to standards and practices used for federal Title IV programs by the postsecondary institution in which the student is enrolled; and

(c) must meet enrollment standards by being admitted, enrolled, and classified as an undergraduate student in a matriculated status.

(7) To be eligible to receive a scholarship, a senior student seeking a baccalaureate degree at a postsecondary institution must meet the requirements of subsection (1) and:

(a) must have earned a cumulative grade point average of at least 2.0 at the end of the school term in which the student attempted 90 semester hours;

(b) must have maintained satisfactory academic progress in a course of study pursuant to the standards and practices used for federal Title IV programs by the postsecondary institution in which the student is enrolled; and

(c) must meet enrollment standards by being admitted, enrolled, and classified as an undergraduate student in a matriculated status.

(8) If a student fails to maintain a cumulative grade point average of at least 2.0 at the end of the school term in which the student attempted 30 semester hours, the scholarship is terminated.

(9) An otherwise eligible student who regains a cumulative grade point average of at least 2.0 at the end of a school term in which the student attempted 60 semester hours may requalify for a scholarship.

(10) A student is ineligible to receive a scholarship if the student:

(a) if a male, failed to meet the federal Title IV selective service system registration requirements;

(b) is in default on a federal Title IV or state of Montana educational loan or owes a refund on a federal Title IV or state of Montana student financial aid program;

(c) has been convicted for committing certain felony offenses involving marijuana, controlled substances, or dangerous drugs; or

(d) is incarcerated. Upon release, the student may begin receiving scholarship payments if the student meets all other eligibility requirements. If approved by the board of regents, credits earned during incarceration may be counted toward eligibility.

Section 6. Natural resource workers' tuition scholarship account — proration of tuition scholarships. (1) There is a natural resource workers' tuition scholarship account in the state special revenue fund provided for in 17-2-102.

(2) Money received by the department of labor and industry from private donations or grants must be deposited into the account and expended to fund tuition scholarships and to pay costs associated with administering the program prior to expenditure of money allocated and deposited in the account from the resource indemnity and ground water assessment taxes pursuant to subsection (3).

(3) Money allocated from the resource indemnity and ground water assessment taxes under 15-38-106 must be deposited into the account to the credit of the department of labor and industry to fund tuition scholarships awarded pursuant to [sections 1 through 6]. The department shall transfer funds to the adult education account in the office of public instruction, to the appropriate fund in a community college or tribal college located in Montana, or to the appropriate tuition fund in the appropriate unit of the university system.

(4) Money on deposit in the account may not revert to the general fund at the close of any fiscal year. After the initial allocation of money from 15-38-106 in the first year following [the effective date of this section], the amount of money allocated under 15-38-106 at the beginning of each succeeding fiscal year may be only the amount necessary to restore the balance of the scholarship to $150,000, including any private donations or grants.

(5) If funds appropriated are not adequate to provide the maximum allowable tuition scholarships to each eligible individual, the tuition scholarships must be prorated for all eligible individuals, using a percentage reduction adopted by the department of labor and industry.

Section 7. Section 15-38-106, MCA, is amended to read:

"**15-38-106. (Temporary) Payment of tax — records — collection of taxes — refunds.** (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit in the following order:

(a) 50% of the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type;

(b) $300,000 of the ~~remaining~~ proceeds *of the resource indemnity and ground water assessment taxes* in the ground water assessment account established by 85-2-905;

(c) 50% of the remaining proceeds in the reclamation and development grants account established by 90-2-1104; and

(d) all remaining proceeds in the orphan share account established in 75-10-743.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer.

15-38-106. (Effective on occurrence of contingency) Payment of tax — records — collection of taxes — refunds. (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit in the following order:

(a) $366,000 of the proceeds *of the resource indemnity and ground water assessment taxes* in the ground water assessment account established by 85-2-905;

(b) 50% of the remaining proceeds in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects;

(c) $150,000 of the remaining proceeds of the resource indemnity and ground water assessment taxes in the natural resource workers' tuition scholarship account established in [section 6] for the first fiscal year following [the effective date of this section] and for succeeding fiscal years, the amount required under [section 6(4)];

~~(b)~~*(d)* ~~50% of the~~ *all* remaining proceeds in the orphan share account established in 75-10-743~~; and~~

~~(c) all remaining proceeds in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects~~.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed,

assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

Section 8. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 39, and the provisions of Title 39 apply to [sections 1 through 6].

Section 9. Effective dates — contingency. (1) Except as provided in subsections (2) and (3), [this act] is effective on July 1, 2001.

(2) [Section 7] is effective on July 1 immediately following the date that the governor by executive order certifies to the secretary of state that the resource indemnity trust fund balance has reached $100 million and applies to the then-current academic year. The secretary of state shall forward a copy of the executive order to the code commissioner.

(3) [Section 4(1) and this section] are effective on passage and approval.

Section 10. Termination. [This act] terminates on June 30, 5 years after [the effective date provided in section 9(2)].

Approved May 5, 2001

CHAPTER NO. 587

[SB 386]

AN ACT MAKING THE INTERVENTION IN DELINQUENCY PILOT PROGRAM PERMANENT; MAKING PARTICIPATION BY JUDICIAL DISTRICTS IN THE PROGRAM DISCRETIONARY; CHANGING THE MEMBERSHIP OF YOUTH PLACEMENT COMMITTEES; REQUIRING THE DEPARTMENT OF CORRECTIONS TO CREATE ACCOUNTS FOR JUDICIAL DISTRICTS; AMENDING SECTIONS 41-5-103, 41-5-121, 41-5-122, 41-5-123, 41-5-124, 41-5-205, 41-5-1503, 41-5-1512, 41-5-1513, AND 52-5-109, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-103, MCA, is amended to read:

"41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

(4) "Commit" means to transfer to legal custody.

(5) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.

(6) "Cost containment funds" means funds retained by the department under [section 20] for distribution by the cost containment review panel.

(7) "Cost containment review panel" means the panel established in [section 17].

~~(6)~~*(8)* "Court", when used without further qualification, means the youth court of the district court.

~~(7)~~*(9)* "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to 41-5-206.

~~(8)~~*(10)* "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

~~(9)~~*(11)* "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who has been placed on probation as a delinquent youth or a youth in need of intervention and who has violated any condition of probation.

~~(10)~~*(12)* "Department" means the department of corrections provided for in 2-15-2301.

~~(11)~~*(13)* "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed to the department under 41-5-1512~~(3)~~*(1)(c)* or 41-5-1513(1)(b) or (1)(c) or who are under parole supervision. Department records do not include information provided by the department to the department of public health and human services' management information system.

~~(12)~~*(14)* "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of a youth parole agreement.

~~(13)~~*(15)* "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

~~(14)~~*(16)* "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

~~(15)~~*(17)* "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

~~(16)~~*(18)* "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

~~(17)~~*(19)* "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

~~(18)~~*(20)* "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.

~~(19)~~*(21)* "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

~~(20)~~*(22)* "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest but does not include a collocated juvenile detention facility that complies with 28 CFR, part 31.

~~(21)~~*(23)* "Judge", when used without further qualification, means the judge of the youth court.

~~(22)~~*(24)* "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

~~(23)~~*(25)* "Law enforcement records" means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

~~(24)~~*(26)* (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

~~(25)~~*(27)* "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

(28) "Out-of-home placement" means placement of a youth in a program, facility, or home, other than a custodial parent's home, for purposes other than preadjudicatory detention. The term does not include shelter care or emergency placement of less than 45 days.

~~(26)~~*(29)* "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

~~(27)~~*(30)* "Probable cause hearing" means the hearing provided for in 41-5-332.

~~(28)~~*(31)* "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

~~(29)~~*(32)* "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

~~(30)~~*(33)* "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

~~(31)~~*(34)* "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

~~(32)~~*(35)* "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

~~(33)~~*(36)* "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

~~(34)~~*(37)* "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-344.

~~(35)~~*(38)* "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

~~(36)~~*(39)* "State youth correctional facility" means a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills youth correctional facility in Miles City.

~~(37)~~*(40)* "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

~~(38)~~*(41)* "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection ~~(38)(a)~~*(41)(a)*, if the victim is a minor; and

(c) an adult relative of a homicide victim.

~~(39)~~*(42)* "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

~~(40)~~*(43)* "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1201.

~~(41)~~*(44)* "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

~~(42)~~*(45)* "Youth care facility" has the meaning provided in 41-3-1102.

~~(43)~~*(46)* "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of intervention, or a youth in need of care and includes the youth court judge, probation officers, and assessment officers.

~~(44)~~*(47)* "Youth court records" means information or data, either in written or electronic form, maintained by the youth court pertaining to a youth under jurisdiction of the youth court and includes reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, youth assessment materials, predispositional studies, and supervision records of probationers. Youth court records do not include information provided by the youth court to the department of public health and human services' management information system.

~~(45)~~*(48)* "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a) (i) operated, administered, and staffed separately and independently of a jail; or

(ii) a collocated secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

~~(46)~~*(49)* "Youth in need of care" has the meaning provided for in 41-3-102.

~~(47)~~*(50)* "Youth in need of intervention" means a youth who is adjudicated as a youth and who commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding alcoholic beverages;

(b) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention."

Section 2. Section 41-5-121, MCA, is amended to read:

"**41-5-121. Youth placement committees — composition.** (1) In each judicial district, the ~~department~~ *youth court* shall establish a youth placement committee for the purposes of:

(a) recommending an appropriate placement of a youth referred to the *youth court or the* department under 41-5-1512 and 41-5-1513; or

(b) recommending available community services or alternative placements whenever a change is required in the placement of a youth who is currently in the custody of the department under 41-5-1512 or 41-5-1513. However, the committee may not substitute its judgment for that of the superintendent of a state youth correctional facility regarding the discharge of a youth from the facility.

(2) *(a)* The committee consists of not less than five members and must include persons who are knowledgeable about the youth, treatment and placement options, and other resources appropriate to address the needs of the youth.

(b) ~~Members may~~ *The committee must* include:

~~(a)~~*(i)* ~~two representatives of~~ *a juvenile parole officer employed by* the department;

~~(b)~~*(ii)* a representative of the department of public health and human services;

~~(c)~~*(iii)* ~~either~~ the chief probation officer ~~or the youth's probation officer~~ *or the chief probation officer's designee, who is the presiding officer of the committee*;

~~(d)~~*(iv)* a mental health professional; *and*

(v) if an Indian youth is involved, a person, preferably an Indian, knowledgeable about Indian culture and Indian family matters.

~~(e)~~*(c) The committee may include:*

(i) a representative of a school district located within the boundaries of the judicial district who ~~must have personal~~ *has* knowledge of and experience with ~~the~~ youth;

~~(f) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable about Indian culture and family matters;~~

~~(g)~~*(ii)* ~~a~~ *the youth's* parent or guardian; ~~and~~

~~(h)~~*(iii)* a youth services provider*; and*

(iv) the youth's probation officer.

(3) Committee members serve without compensation.

(4) Notwithstanding the provisions of 41-5-123, the committee may be convened by the department or the probation officer of the youth court.

(5) If a representative of the school district within the boundaries of which the youth is recommended to be placed and will be attending school is not included on the committee, the person who convened the committee shall inform the school district of the final placement decision for the youth.

(6) The department may not disburse funds from the budget allocation accounts established pursuant to [section 11] unless the youth court has established a youth placement committee as provided in this section."

Section 3. Section 41-5-122, MCA, is amended to read:

"**41-5-122. Duties of ~~the~~ youth placement committee.** A youth placement committee shall:

(1) review all information relevant to the placement of a youth ~~referred or committed to the department~~;

(2) consider available resources appropriate to meet the needs of the youth;

(3) consider the treatment recommendations of any professional person who has evaluated the youth;

(4) consider options for the financial support of the youth;

(5) recommend in writing to the *youth court judge or the* department an appropriate placement for the youth, considering the age and treatment needs of the youth and the relative costs of care in facilities considered appropriate for placement. A committee shall consider placement in a licensed facility, at a state youth correctional facility, or with a parent, other family member, or guardian.

(6) review temporary and emergency placements as required under 41-5-124; and

(7) conduct placement reviews at least ~~semiannually~~ *every 6 months* and at other times as requested by the *youth court* ~~department~~."

Section 4. Section 41-5-123, MCA, is amended to read:

"**41-5-123. ~~Youth~~ *Judicial districts not participating in juvenile delinquency intervention program — youth* placement committee to submit recommendation to department — acceptance or rejection of recommendation by department.** (1) Prior to commitment of a youth to the department pursuant to 41-5-1512 or 41-5-1513, a youth placement committee must be convened. The committee shall submit in writing to the department and to the youth court judge its primary and alternative recommendations for placement of the youth.

(2) If the department accepts either of the committee's recommendations, it shall promptly notify the committee in writing.

(3) If the department rejects both of the committee's recommendations, it shall promptly notify the committee in writing of the reasons for rejecting the recommendations and shall make an appropriate placement for the youth.

(4) Within 72 hours after making a decision on a placement or change of placement, the department shall notify the youth court of the decision and of the placement or change of placement.

(5) This section applies only in judicial districts that do not participate in the juvenile delinquency intervention program administered by the department under [section 14]."

Section 5. Section 41-5-124, MCA, is amended to read:

"**41-5-124. Temporary and emergency placements — limit.** (1) A temporary placement of a youth in a shelter care facility or an emergency placement of a youth in a youth care facility is exempt from the requirements of 41-5-123.

(2) If a temporary or emergency placement of a youth continues for 45 or more days, the department shall refer the placement of the youth to the appropriate youth placement committee for review. The committee shall make a

recommendation for placement to the ~~department~~*youth court* in accordance with 41-5-123."

Section 6. Section 41-5-205, MCA, is amended to read:

"41-5-205. Retention of jurisdiction — termination. (1) The court may dismiss a petition or otherwise terminate jurisdiction on its own motion or on the motion or petition of any interested party at any time. Unless terminated by the court and except as provided in subsections (2) and (3), the jurisdiction of the court continues until the individual becomes 21 years of age.

(2) Court jurisdiction terminates when:

(a) the proceedings are transferred to district court under 41-5-208 or an information is filed concerning the offense in district court pursuant to 41-5-206;

(b) the youth is discharged by the department; or

(c) execution of a sentence is ordered under 41-5-1605(2)(b)(iii) and the supervisory responsibilities are transferred to the district court under 41-5-1605.

(3) The jurisdiction of the court over an extended jurisdiction juvenile, with respect to the offense for which the youth was convicted as an extended jurisdiction juvenile, extends until the offender becomes 25 years of age unless the court terminates jurisdiction before that date.

(4) The jurisdiction of the court is not terminated if the department issues a release from supervision due to the expiration of a commitment pursuant to 41-5-1522."

Section 7. Section 41-5-1503, MCA, is amended to read:

"41-5-1503. Medical or psychological evaluation of youth — urinalysis. (1) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-331. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (2). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(2) The youth court shall determine the financial ability of the youth's parents or guardians to pay the cost of an evaluation ordered by the court under subsection (1). If they are financially able, the court shall order the youth's parents or guardians to pay all or part of the cost of the evaluation.

(3) Subject to 41-5-1512~~(15)(a)~~*(1)(o)(i)*, the youth court may not order an evaluation or placement of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is listed under 41-5-206.

(4) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-208 or 41-5-1605 or the jurisdiction of the youth court is terminated following the filing of an information in district court pursuant to 41-5-206.

(5) In a proceeding alleging a youth to be a delinquent youth, upon a finding of an offense related to use of alcohol or illegal drugs, the court may order the youth to undergo urinalysis for the purpose of determining whether the youth is using alcoholic beverages or illegal drugs."

Section 8. Section 41-5-1512, MCA, is amended to read:

"**41-5-1512. Disposition of youth in need of intervention or youth who violate consent adjustments.** *(1)* If a youth is found to be a youth in need of intervention or to have violated a consent adjustment, the youth court may enter its judgment making one or more of the following dispositions:

~~(1)~~*(a)* place the youth on probation. The youth court shall retain jurisdiction in a disposition under this subsection.

~~(2)~~*(b)* place the youth in a residence that ensures that the youth is accountable, that provides for rehabilitation, and that protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee. ~~The judge may not place the youth in a residence unless the department informs the judge that resources are available for placement of the youth at that residence.~~

~~(3)~~*(c)* commit the youth to the department *in jurisdictions that do not participate in the juvenile delinquency intervention program or to the youth court in jurisdictions that participate in the juvenile delinquency intervention program* for the purposes of funding a private, out-of-home, residential placement subject to the conditions in 41-5-1522. In an order committing a youth to the department *or to the youth court*, the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home.

~~(4)~~*(d)* order restitution for damages that result from the offense for which the youth is disposed by the youth or by the person that contributed to the delinquency of the youth;

~~(5)~~*(e)* require the performance of community service;

~~(6)~~*(f)* require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

~~(7)~~*(g)* require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

~~(8)~~*(h)* require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

~~(9)~~*(i)* order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community ~~and that does not obligate funding from the department for services outside the state of Montana without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (3) of this section, place a youth in a residential treatment facility.~~*;*

~~(10)~~*(j)* subject to the provisions of 41-5-1504, commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is found to be suffering from a mental disorder, as defined in 53-21-102, and meets the criteria in 53-21-126(1);

~~(11)~~*(k)* place the youth under home arrest as provided in Title 46, chapter 18, part 10;

~~(12)~~*(l)* order confiscation of the youth's driver's license, if the youth has one, by the probation officer for a specified period of time, not to exceed 90 days. The probation officer shall notify the department of justice of the confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving record. The probation officer shall notify the department of justice when the confiscated driver's license has been returned to the youth. A youth's driver's license may be confiscated under this subsection more than once. The probation officer may, in the probation officer's discretion and with the concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination of the time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth, nor may it be used as grounds for denying coverage for an accident or other occurrence under an existing policy.

~~(13)~~*(m)* order the youth to pay a contribution covering all or a part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;

~~(14)~~*(n)* order the youth to pay a contribution covering all or a part of the costs of a victim's counseling;

~~(15)~~*(o)* defer imposition of sentence for up to 45 days for a placement evaluation at a suitable program or facility with the following conditions:

~~(a)~~*(i)* The court may not order placement for evaluation at a youth correctional facility of a youth who has committed an offense that would not be a criminal offense if committed by an adult or a youth who has violated a consent adjustment.

~~(b)~~*(ii)* The placement for evaluation must be on a space-available basis at the county's expense, which is not reimbursable under part 19 of this chapter.

~~(c)~~*(iii)* The court may require the youth's parents or guardians to pay a contribution covering all or a part of the costs of the evaluation if the court determines after an examination of financial ability that the parents or guardians are able to pay the contribution. Any remaining unpaid costs of evaluation are the financial responsibility of the judicial district of the court that ordered the evaluation.

~~(16)~~*(p)* order placement of a youth in a youth assessment center for up to 10 days;

~~(17)~~*(q)* order the youth to participate in mediation that is appropriate for the offense committed.

(2) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may order a local government entity to pay for evaluation and in-state transportation of a youth.

(3) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the account established for that district under [section 11] without approval from the cost containment review panel."

Section 9. Section 41-5-1513, MCA, is amended to read:

"**41-5-1513. Disposition — delinquent youth — restrictions.** (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) subject to 41-5-1504, 41-5-1512~~(15)(a)~~*(1)(o)(i)*, and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. The court may not place a youth adjudicated delinquent in a state youth correctional facility for an offense that would be a misdemeanor if committed by an adult unless the court finds that the youth presents a danger to the public safety and that the placement is recommended by a mental health professional after evaluation of the youth. *The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b).*

(c) require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a sexual offense or violent offense, as defined in 46-23-502, if committed by an adult, to register as a sexual or violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection.

(d) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

(e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a sex offense, the youth court may require completion of sex offender treatment before a youth is discharged.

(3) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may order a local government entity to pay for evaluation and in-state transportation of a youth.

(4) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the account established for that district under [section 11] without approval from the cost containment review panel."

Section 10. Section 52-5-109, MCA, is amended to read:

"52-5-109. Commitment expenses — *transportation costs —* arrangement for transportation. ~~The expenses of committing a youth to the Pine Hills youth correctional facility or the department of corrections and transporting the youth to the Pine Hills youth correctional facility or the place designated by the department for it to receive custody, as well as the expense of returning the youth to the county of residence, must be borne by the county of residence. The district judge shall arrange for transportation of the youth to the place where the department has directed that it will receive custody of the youth.~~

(1) The expenses of committing a youth to the department or to the youth court must be borne by the committing county.

(2) (a) After adjudication, the costs of transporting a youth to and from an out-of-home placement within the state must be paid as follows:

(i) in a jurisdiction that does not participate in the juvenile delinquency intervention program, the county shall pay the costs;

(ii) in a jurisdiction that participates in the juvenile delinquency intervention program, the youth court shall pay the costs from the account established under [section 11] or out of county funds of the committing county.

(b) After adjudication, the costs of transporting a youth to and from an out-of-home placement in another state must be paid by the youth court and must be paid for out of the account established under [section 11], except that the department shall pay transportation costs in a case in which a youth is placed in an out-of-state correctional facility pursuant to 41-5-355.

(3) The youth court probation office shall arrange for all transportation to and from an out-of-home placement except when the youth is under the parole supervision of the department."

Section 11. Participating and nonparticipating jurisdictions. (1) Each judicial district may elect to participate in the juvenile delinquency intervention program.

(2) A jurisdiction that elects to participate in the program may expend funds from a juvenile placement fund for out-of-home placements or for other services intended to reduce or prevent juvenile delinquency subject to restrictions in this chapter and administrative rules adopted by the department.

(3) A jurisdiction that does not elect to participate in the program may commit youth to the department for out-of-home placements pursuant to this chapter.

(4) A jurisdiction that has not previously participated in the program may elect to participate in the program prior to the start of a new biennium. Participation must be for a complete biennium. A jurisdiction may elect to discontinue participation in future bienniums upon 3 months' written notice to the department prior to the beginning of the next biennium.

(5) A youth court that does not participate in the program may not expend any juvenile placement funds for placements or services unless approved by the department pursuant to 41-5-123.

(6) The department shall establish an account for each judicial district in order to administer a juvenile placement fund as appropriated by the legislature. The accounts must be used by the youth courts for funding out-of-home placements.

Section 12. Short title. [Sections 12 through 16 and 18] may be cited as the "Juvenile Delinquency Intervention Act".

Section 13. Purpose. The purposes of [sections 12 through 16 and 18] are to:

(1) provide an alternate method of funding juvenile placement and services;

(2) increase the ability of local government to respond to juvenile delinquency through early intervention and expanded community alternatives; and

(3) enhance the ability of local government to control costs.

Section 14. Establishment of program — department duties. (1) (a) There is a juvenile delinquency intervention program.

(b) Participation in the juvenile delinquency intervention program is voluntary.

(2) The department and the youth court shall monitor the youth court's account created under [section 11] to ensure that the youth court does not exceed its allocated account budget.

(3) Account funds not used by the youth court for placements must be distributed to participating youth courts in accordance with rules adopted by the department to be used for placement alternatives and early intervention alternatives.

(4) The department shall provide technical assistance to each youth court for the monitoring of account funds and the evaluation and development of placement alternatives and effective intervention programming.

(5) The department shall review and monitor each youth court to enable the development of placement alternatives by the youth courts and the development of early intervention alternatives by the youth courts. The department shall report to the legislature on the results of its monitoring.

Section 15. Youth court duties. Each youth court shall:

(1) use available resources to develop alternatives for the placement of youth;

(2) use available resources for early intervention strategies for troubled youth;

(3) use a risk assessment instrument approved by the department for the measurement of risk assessment and effectiveness of treatment or intervention for youth adjudicated pursuant to 41-5-1512 or 41-5-1513;

(4) submit quarterly reports to the department documenting the use of diversionary and prevention programs and the use of placement services;

(5) participate in the cost containment review panel established under [section 17]; and

(6) provide the department and the legislative auditor with access to all records maintained by the youth court.

Section 16. Judicial districts participating in juvenile delinquency intervention program — youth placement committee to submit recommendation to department — acceptance or rejection of recommendation by department. (1) Prior to commitment of a youth to the custody of the youth court or to the department pursuant to 41-5-1512 or 41-5-1513, a youth placement committee must be convened. The committee shall submit in writing to the youth court judge its primary and alternative recommendations for placement of the youth.

(2) The committee shall first consider placement of the youth in a community-based facility or program and shall give priority to placement of the youth in a facility or program located in the state of Montana.

(3) If in-state alternatives for placement of the youth are inappropriate, the committee may recommend an out-of-state placement. The committee shall state in its recommendation the reasons why in-state services are not appropriate.

(4) The primary and alternative recommendations of the youth placement committee must be for similar facilities or programs. The youth court may

require a youth placement committee to reevaluate a youth if the recommended placements are dissimilar.

(5) If the youth court rejects both of the committee's recommendations, it shall promptly notify the committee in writing of the reasons for rejecting the recommendations and shall make an appropriate placement for the youth.

(6) The youth court may not order a placement or change of placement that results in a deficit in the account established for that district under [section 11] without approval from the cost containment review panel.

(7) The youth court shall evaluate the cost of the placement or change of placement and ensure that the placement or change of placement will not overspend the budget allocation provided by the department under [section 11].

(8) This section applies only to those judicial districts that elect to participate in the juvenile delinquency intervention program administered by the department.

Section 17. Cost containment review panel. (1) The department shall establish a cost containment review panel.

(2) The cost containment review panel shall consist of the following members appointed by the department:

(a) two members from the department of corrections;

(b) a member from the department of public health and human services;

(c) a representative from the field of mental health;

(d) a youth court judge;

(e) two chief juvenile probation officers;

(f) a county commissioner; and

(g) a representative of the youth justice council.

(3) Decisions of the cost containment review panel must be by majority vote.

(4) The cost containment review panel shall determine the distribution of funds allocated in [section 20].

(5) The cost containment review panel may evaluate the effectiveness of new or innovative programs for the treatment of troubled youth and make recommendations to the youth courts and the department.

(6) A youth court shall request funds from the cost containment review panel prior to exceeding its account allocation under [section 11]. If a panel member referred to in subsections (2)(d) through (2)(g) is a resident of or is employed in the judicial district of a youth court requesting cost containment funds, the panel member may not serve as a panel member for purposes of a decision regarding disbursement of cost containment funds to the youth court and an alternate panel member must be appointed by the department for purposes of the decision.

Section 18. Rulemaking authority. (1) The department shall adopt rules necessary for the implementation of [sections 11 through 18 and 20], including but not limited to:

(a) defining and establishing criteria for early intervention regarding troubled youth and the development of community alternatives;

(b) evaluating each youth court to ensure the court is using early intervention strategies and community alternatives and is effectively controlling costs for youth placements;

(c) distributing unused account funds to the youth courts;

(d) determining the allocation of funds to the accounts for the youth courts;

(e) determining the amount of funds to be withheld by the department as cost containment funds;

(f) monitoring and auditing each youth court to ensure that account funds are being used as required by law;

(g) distributing cost containment funds to youth courts;

(h) monitoring youth courts to promote consistency and uniformity in the placement of juvenile offenders;

(i) developing procedures for the operation of the cost containment review panel;

(j) developing of one or more risk assessment tools; and

(k) developing procedures for removing youth with serious mental illness from the juvenile correctional system.

(2) It is the intent of the legislature that rules adopted by the department encourage the use of local, regional, and state resources for the placement of troubled youth.

Section 19. Allocation of first-year funding. The department of corrections shall use data gathered during the administration of the intervention in delinquency pilot program established under section 73, Chapter 550, Laws of 1997, to assist in determining the allocations to the accounts created under [section 11] during the first year of operation of the juvenile delinquency intervention program established by [section 14].

Section 20. Cost containment fund — allocation of appropriated funds — use of funds. (1) The department of corrections shall establish a cost containment fund for the purposes of [section 17] and shall allocate to the fund not less than $1 million each fiscal year from the funds appropriated for the juvenile placement budget for the fiscal biennium beginning July 1, 2001, to be used for the purposes of [section 17].

(2) The department shall determine the amount of the cost containment fund at the beginning of each fiscal year. The cost containment review panel shall submit a recommended amount to be allocated to the cost containment fund at least 1 month prior to the start of a new fiscal year.

Section 21. Program progress and report. The department of corrections shall develop a system of outcome measures during the first 6 months of the operation of the program established in [section 14], use the system to evaluate the progress of the program, and report to the legislature in the manner provided in 5-11-210.

Section 22. Codification instruction. (1) [Sections 11, 17, and 20] are intended to be codified as an integral part of Title 41, chapter 5, part 1, and the provisions of Title 41, chapter 5, part 1, apply to [sections 11, 17, and 20].

(2) [Sections 12 through 16 and 18] are intended to be codified as a new part of Title 41, chapter 5, and the provisions of Title 41, chapter 5, apply to [sections 12 through 16 and 18].

Section 23. Coordination instruction. If House Bill No. 30 and [this act] are both passed and approved, then House Bill No. 30 is void.

Section 24. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 25. Effective date. [This act] is effective July 1, 2001.

Approved May 5, 2001

CHAPTER NO. 588

[SB 398]

AN ACT PROVIDING FOR OPERATION OF TEMPORARY POWER GENERATION UNITS UNDER THE AIR QUALITY PERMITTING LAWS; AMENDING SECTION 75-2-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

WHEREAS, the Legislature finds that it is necessary to meet Montana's constitutional mandate of a clean and healthful environment; and

WHEREAS, the Legislature finds it necessary to allow, in certain limited and controlled circumstances, temporary emergency operation of power generation units pending the completion of the state's air quality permitting process, as long as ambient air quality standards are not violated.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-211, MCA, is amended to read:

"75-2-211. Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department *except as provided in subsection (12)*.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) If an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement: or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application. The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department on request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(c) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall act on the permit application within the time period provided for in 75-2-215(3)(e).

(d) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

(12) (a) Except as provided in subsections (12)(b) and (12)(c), an applicant who has received a written notice that its application is considered filed pursuant to subsection (8) may:

(i) for a temporary power generation unit or units with a total electrical generation capacity of not more than 125 megawatts, construct the unit or units. Operation of the unit or units may commence upon the department's issuance of a permit under this section.

(ii) for a temporary power generation unit or units with a total electrical generating capacity of 10 megawatts or less, construct and operate the unit or units.

(b) The construction or operation of a temporary power generation unit or units described in subsection (12)(a) is not in violation of this part unless the operation of the temporary power generation unit or units continues after a department decision to deny the permit application becomes final as provided in this section.

(c) (i) A permit applicant shall discontinue construction or operation of a temporary power generation unit or units if the applicant is notified by the department in writing that the applicant has failed to submit by the department's deadline any additional information that is necessary to process the permit application.

(ii) The operation of a permit applicant's temporary power generation unit or units described in subsection (12)(a) may not violate ambient air quality standards.

(d) A permit issued under this part and pursuant to the provisions of this subsection (12) must expire no later than 2 years from the date that the department received the permit application and must require removal of the temporary power generation unit or units upon expiration of the permit unless an air quality permit for permanent operation has been issued."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to applications filed on or after January 1, 2001.

Section 4. Termination. [This act] terminates July 1, 2005.

Approved May 5, 2001

CHAPTER NO. 589

[SB 432]

AN ACT REVISING AND CLARIFYING THE PURPOSE FOR WHICH GENERAL OBLIGATION BONDS MAY BE ISSUED FOR FINANCING INFRASTRUCTURE IMPROVEMENTS AND EQUIPMENT FOR AEROSPACE TRANSPORTATION AND TECHNOLOGY PROJECTS; AMENDING SECTION 5, CHAPTER 269, LAWS OF 1999, AND SECTION 1, CHAPTER 6, SPECIAL LAWS OF MAY 2000; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Montana continues to lag behind the rest of the nation in average per capita income; and

WHEREAS, the state has determined that it is in the best interest of the citizens and taxpayers of the state to promote and induce the creation of higher paying jobs in the state; and

WHEREAS, the Legislature has determined that the state may need to provide more direct inducements to private industry to achieve the creation of better paying jobs; and

WHEREAS, the Legislature has determined that the inducement of private industry to create jobs in Montana is a public purpose in that it will provide more and better employment opportunities for its citizens, particularly its college-educated young citizens who frequently leave the state in search of good jobs, and it will increase the tax base for both state and local government and in general enhance the opportunities for greater prosperity for the state; and

WHEREAS, given the state's location and other reasons, the Legislature has determined that aerospace transportation and technology projects represent the best potential for good, quality jobs.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1, Chapter 6, Special Laws of May 2000, is amended to read:

"**Section 1.** Section 5, Chapter 269, Laws of 1999, is amended to read:

"**Section 5. Authorization of bonds.** (1) The board of examiners is authorized to issue and sell general obligation bonds in an amount not exceeding $20 million ~~for aerospace transportation and technology infrastructure development projects, as defined in 7-15-4288, except as provided in subsection (2) of this section,~~ in accordance with the terms and in the manner required by Title 17, chapter 5, part 8, ~~and upon the authority granted to the board by this section~~ *for the purpose of financing infrastructure improvements as enumerated in 7-15-4288 and equipment for aerospace transportation and technology projects recommended by the department of commerce in accordance with the authority granted to the board by this section.* The bonds are in addition to any other authorization to the board to issue and sell general obligation bonds and subject to the conditions set forth in this section.

(2) ~~For purposes of the general obligation bonds authorized in this section, 7-15-4288(5) and (7) are excluded from the definition of aerospace transportation and technology infrastructure development projects. Bond proceeds are appropriated to the department of commerce for assisting in funding authorized aerospace transportation and technology infrastructure development projects.~~ The department *of commerce* may request the board of examiners to issue the bonds for *one or more* specified projects ~~for a single or multiple entities~~ *in one or more series*, but the total amount of bonds issued may not exceed $20 million. *Bond proceeds are appropriated to the department, and the department is authorized to construct the infrastructure improvements or acquire the equipment, to contract with the city or county in which a project is located, to contract with a certified community lead organization, as defined in 90-1-116, or to contract with the developer of an approved project for the construction of the infrastructure improvement or the acquisition of equipment upon a determination that it is in the best interest of the project. The plans and specifications for the infrastructure and equipment to be financed from the proceeds of the bonds must be approved by and be acceptable to the department following a review of the plans and specifications of the infrastructure by the architecture and engineering division of the department of administration, but the design and construction of the infrastructure and the acquisition of equipment for approved projects are not, with the exception of Title 18, chapter 2, part 4, subject to the public procurement requirements contained in Title 18.* ~~The portions of aerospace transportation and technology infrastructure development projects that are~~ *Infrastructure and equipment* financed with bond proceeds ~~are~~ *are* owned by the state, and ~~may be leased to the local government creating the tax increment financing district or to the entity for whom the project is created at a fair value, taking into consideration job creation and overall tax revenue generated by the project~~ *the use must be governed by a development agreement between the state and the developer of the project. The agreement may provide for the use of the infrastructure and equipment at less than fair market value, taking into consideration the number of jobs to be created by the project, the salary range of the jobs, the amount of capital contributed by the developer, and the projected tax revenue to be received by the state and local governments from the project over the term of the lease or use agreement.* For purposes of this section, state and local governments may not

provide telecommunications or other services in competition with private providers unless private providers cannot provide the services.

(3) It is the intent of the legislature that debt service payments for the bonds authorized by this section will be covered by the totality of the taxes generated by the aerospace transportation and technology ~~infrastructure~~ development projects to be calculated by an economic impact analysis of the projects on state tax revenue. *Prior to requesting the board of examiners to issue the bonds, the department of commerce shall determine that the developer of a proposed project has the financial ability to construct and implement the project based upon audited financial statements.* When requesting the board ~~of examiners~~ to issue the bonds, the department ~~of commerce~~ shall present to the department of administration for presentation to the board ~~of examiners~~ the following:

(a) evidence satisfactory to the board that each aerospace transportation and technology ~~infrastructure~~ development project has committed itself to locate its project in Montana ~~and has acquired a site for the project~~; and

(b) a certificate signed by the director of the office of budget and program planning that the tax revenue to be received by the state from each aerospace transportation and technology ~~infrastructure~~ development project *over the term of the bonds* will be sufficient to pay the principal *amount* of ~~and interest on~~ *and interest on* the bonds *issued to assist with the specific project.*

(4) For the purposes of this section, "equipment" means machinery used in the design, manufacture, repair, and maintenance of aerospace transportation and technology projects.""

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 5, 2001

CHAPTER NO. 590

[SB 437]

AN ACT PROVIDING FOR THE ISSUANCE OF SUPPLEMENTAL GAME DAMAGE HUNTING LICENSES IF NECESSARY FOR GAME MANAGEMENT PURPOSES; SETTING THE TERMS AND CONDITIONS OF SUPPLEMENTAL GAME DAMAGE HUNTING LICENSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Supplemental game damage license — terms and conditions. (1) If at any time the department determines, in conjunction with a landowner or a designated lessee acting as an agent for a landowner, that game animals on the property are causing a level of damage to crops or other vegetation that merits removal of a specific number of game animals or that the taking of a specific number of game animals is advisable for game management purposes, the department may issue nontransferable resident and nonresident supplemental game damage hunting licenses for game management purposes on the property.

(2) Supplemental game damage hunting licenses may be issued only for antlerless animals and may be issued only for use on lands eligible for game

damage assistance pursuant to 87-1-225. A landowner may not charge a fee to a hunter using a license obtained pursuant to this section.

(3) Supplemental game damage licenses may be issued to hunters as an alternative to issuing a kill permit to a landowner.

(4) (a) In a hunting district with unlimited license quotas, a landowner may designate the resident supplemental game damage license recipient upon approval of issuance.

(b) In a hunting district with limited permit quotas, a landowner may designate up to 75% of the resident supplemental game damage license recipients, with the remainder offered to hunters in a manner prescribed by the department.

(5) If additional supplemental game damage licenses are available, the department may issue those licenses to resident and nonresident hunters.

(6) A licensee shall pay the regular license price or an adjusted price set by the commission for any supplemental game management license issued pursuant to subsection (1). Issuance of a supplemental game damage license authorizes the licensee to hunt, take, and possess the game animal designated on the license. All hunting under a supplemental game damage license must be conducted on the property designated on the license and in accordance with department regulations.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, and the provisions of Title 87, chapter 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Termination. [This act] terminates March 1, 2006.

Approved May 5, 2001

CHAPTER NO. 591

[SB 506]

AN ACT AMENDING THE LAWS RELATING TO ALTERNATIVE ENERGY AND OTHER ENERGY SYSTEMS; PROVIDING A REVOLVING LOAN FUND TO FINANCE ALTERNATIVE ENERGY SYSTEMS; PROVIDING THAT AIR QUALITY NONCOMPLIANCE PENALTY FEES BE DEPOSITED IN THE REVOLVING FUND; ELIMINATING BUSINESS PROPERTY TAXES ON CERTAIN GENERATING EQUIPMENT; PROVIDING A 5-YEAR ABATEMENT OF BUSINESS PROPERTY TAXES ON SMALL GENERATING EQUIPMENT; AMENDING VARIOUS TAX AND BONDING INCENTIVE LAWS TO ENCOURAGE PRODUCTION OF ENERGY BY USING ALTERNATIVE RENEWABLE ENERGY SOURCES; ALLOWING A CONDITIONAL TAX CREDIT FOR WIND ENERGY PRODUCED ON STATE LAND; ALLOWING AN ELECTRICITY BUYING COOPERATIVE TO SUPPLY OR PROMOTE ALTERNATIVE ENERGY; AMENDING SECTIONS 7-12-4102, 15-6-156, 15-24-1401, 15-31-124, 15-32-102, 15-32-109, 15-32-115, 15-32-201, 15-32-401, 15-32-402, 15-32-403, 15-72-104, 17-6-403, 17-6-503, 30-16-103, 35-19-104, 75-2-401, 75-2-413, 80-12-201, 90-4-102, 90-5-101, AND

90-8-104, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Alternative energy revolving loan account. (1) There is a special revenue account called the alternative energy revolving loan account to the credit of the department of environmental quality.

(2) The alternative energy revolving loan account consists of money deposited into the account from air quality penalties from 75-2-401 and 75-2-413 and money from any other source. Any interest earned by the account and any interest that is generated from a loan repayment must be deposited into the account and used to sustain the program.

(3) Funds from the alternative energy revolving loan account may be used to provide loans to individuals and small businesses for the purpose of building alternative energy systems, as defined in 15-32-102, for residences and small businesses to generate energy for their own use and for net metering as defined in 69-8-103.

(4) The amount of a loan may not exceed $10,000, and the loan must be repaid within 5 years.

Section 2. Administration of revolving loan account — rulemaking authority. (1) The department of environmental quality shall adopt rules establishing:

(a) eligibility criteria, including criteria for defining residences and small businesses, ownership of the alternative energy facility, financial capacity to repay the loans, estimated return on investment in the alternative energy, and other matters that the department considers necessary to ensure repayment of loans and to encourage maximum use of the fund for alternative energy and net metering uses;

(b) processes and procedures for disbursing loans, including the agencies or organizations that are allowed to process the loan application for the department; and

(c) terms and conditions for the loans, including repayment schedules and interest.

(2) The department shall solicit assistance in the development and operation of the program from individuals familiar with financial services and persons knowledgeable in alternative energy systems.

(3) Administrative costs may not exceed 10% of the total loans. Legal fees and costs associated with collection of debt on principal are not considered administrative fees.

(4) The loan repayment period may not exceed 5 years. The loans must be made at a low interest rate. The department may set the interest rate at an amount that will cover its administrative costs, but the rate may not be less than 1% per year. The department may seek recovery of the amount of principal loaned in the event of default.

Section 3. Outcome measures. The department of environmental quality shall develop reasonable outcome measures by which the success of the alternative energy system loan program provided for in [sections 1 through 3] must be measured on an annual basis. Minimal outcome that must be measured includes:

(1) a loan loss ratio of under 5%;

(2) the types of alternative energy systems that provided the best overall results for residences and those for small businesses; and

(3) a determination of the amount of energy that was produced because of participation in the program.

Section 4. Section 7-12-4102, MCA, is amended to read:

"7-12-4102. Authorization for creation of special improvement districts. (1) The city or town council ~~has power to~~ *may:*

(a) create special improvement districts, designating them by number;

(b) ~~to~~ extend the time for payment of assessments levied upon the districts for district improvements for a period not exceeding 20 years or, if refunding bonds are issued pursuant to 7-12-4194, for a period not exceeding 30 years;

(c) ~~to~~ make the assessments payable in installments; and

(d) ~~to~~ pay all expenses of whatever character incurred in making the improvements with special improvement warrants or bonds.

(2) Whenever the public interest or convenience requires, the city council may:

(a) create special improvement districts for acquiring by purchase, building, constructing, or maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(b) create special improvement districts for acquiring by purchase or building and constructing municipal swimming pools and other recreation facilities;

(c) create special improvement districts and order the whole or a portion, either in length or width, of one or more of the streets, avenues, alleys, or places or public ways of the city:

(i) graded or regraded to the official grade;

(ii) planked or replanked;

(iii) paved or repaved;

(iv) macadamized or remacadamized;

(v) graveled or regraveled;

(vi) piled or repiled;

(vii) capped or recapped;

(viii) surfaced or resurfaced;

(ix) oiled or reoiled;

(d) create special improvement districts and order the acquisition, construction, or reconstruction within the districts of:

(i) sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings (including the planting of grassplots and setting out of trees);

(ii) sewers, ditches, drains, conduits, and channels for sanitary ~~and/or~~ *or* drainage purposes, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances;

(iii) waterworks, water mains, and extensions of water mains;

(iv) pipes, hydrants, *and* hose connections for irrigating purposes;

(v) appliances for fire protection;

(vi) tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect them from overflow or injury by water;

(vii) the opening of streets, avenues, and alleys and the planting of trees on the streets, avenues, and alleys;

(e) create special improvement districts and order the construction or reconstruction in, over, or through property or rights-of-way owned by the city of:

(i) tunnels, sewers, ditches, drains, conduits, and channels for sanitary ~~and/or~~ *or* drainage purposes, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances;

(ii) pipes and hose connections for irrigating~~;~~ *and* hydrants and appliances for fire protection;

(iii) breakwaters, levees, retaining walls, and bulkheads; and

(iv) walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in the city from overflow by water;

(f) create special improvement districts to make monetary advances or contributions to aid in the construction of additional natural gas and electric distribution lines and telecommunications facilities in order to extend those public utility services;

(g) create special improvement districts and order work to be done that is considered necessary to improve the whole or a portion of the streets, avenues, sidewalks, alleys, places, or public ways, property, or right-of-way of the city;

(h) create special improvement districts to acquire and improve by purchase, gift, bequest, lease, or other means land to be designated as public park or open-space land;

(i) create special improvement districts for the conversion of overhead utilities to underground locations in accordance with 69-4-311 through 69-4-314; ~~and~~

(j) create special improvement districts for the purchase, installation, maintenance, and management of alternative energy production facilities; and

~~(j)~~*(k)* maintain, preserve, and care for any of the improvements authorized in this section.

(3) The city governing body may order and create special improvement districts covering projects abutting the city limits and include properties outside the city ~~where~~ *when* the special improvement district abuts and benefits that property. Property owners within the proposed district boundaries outside the

city may not be included in the special improvement district if 40% of those property owners protest the creation of the special improvement district. The property outside the city must be treated in a similar manner as to improvements, notices, and assessments as the property inside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the special improvement district prior to passing the resolution of intention or the resolution creating the special improvement district. A copy of the resolution of intention and the resolution creating the special improvement district must be provided to the county commissioners upon the passage of the respective resolutions."

Section 5. Section 15-6-156, MCA, is amended to read:

"**15-6-156. Class thirteen property — description — taxable percentage.** (1) Except as provided in subsections (2)(a) through ~~(2)(f)~~ *(2)(g)*, class thirteen property includes:

(a) electrical generation facilities of a centrally assessed electric power company;

(b) electrical generation facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a;

(c) noncentrally assessed electrical generation facilities owned or operated by any electrical energy producer; and

(d) allocations of centrally assessed telecommunications services companies.

(2) Class thirteen property does not include:

(a) property owned by cooperative rural electric cooperative associations classified under 15-6-135;

(b) property owned by cooperative rural electric cooperative associations classified under 15-6-137;

(c) allocations of electric power company property under 15-6-141;

(d) electrical generation facilities included in another class of property;

(e) property owned by cooperative rural telephone associations and classified in class five; ~~and~~

(f) property owned by organizations providing telecommunications services and classified in class five*; and*

(g) generation facilities that are exempt under [section 6].

(3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power. The term includes but is not limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

(b) The term does not include electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes.

(c) The term also does not include a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and classified under 15-6-134 and 15-6-138.

(4) Class thirteen property is taxed at 6% of its market value."

Section 6. Energy equipment exemption. (1) (a) Except as provided in subsection (1)(b), the machinery and equipment used in qualifying generation facilities built and operated after [the effective date of this section] are exempt from taxation.

(b) A generation facility that has a nameplate capacity of less than 1 megawatt of electrical energy is exempt from taxation for 5 years after the generation of electricity begins.

(2) (a) For the purposes of this section, "generation facility" includes any combination of a generator or generators, associated prime movers, and other associated machinery and equipment that are normally operated together to produce electric power, but does not include the owner's business improvements and personal property.

(b) To qualify for the exemption under this section, the generation facilities must be powered by an alternative renewable energy source, as defined in 90-4-102.

Section 7. Section 15-24-1401, MCA, is amended to read:

"15-24-1401. Definitions. The following definitions apply to 15-24-1402 unless the context requires otherwise:

(1) "Expansion" means that the industry has added after July 1, 1987, at least $50,000 worth of qualifying improvements or modernized processes to its property within the same jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.

(2) "Industry" includes but is not limited to a firm that:

(a) engages in the mechanical or chemical transformation of materials or substances into products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States office of management and budget;

(b) engages in the extraction or harvesting of minerals, ore, or forestry products;

(c) engages in the processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products;

(d) engages in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of the industry's gross sales or receipts are earned from outside the state; ~~or~~

(e) earns 50% or more of its annual gross income from out-of-state sales*; or*

(f) engages in the production of electrical energy in an amount of 1 megawatt or more by means of an alternative renewable energy source as defined in 90-4-102.

(3) "New" means that the firm is new to the jurisdiction approving the resolution provided for in 15-24-1402(2) and has invested after July 1, 1987, at least $125,000 worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in

15-24-1402 are to be received or in the preceding tax year. New industry does not include property treated as new industrial property under 15-6-135.

(4) "Qualifying" means meeting all the terms, conditions, and requirements for a reduction in taxable value under 15-24-1402 and this section."

Section 8. Section 15-31-124, MCA, is amended to read:

"15-31-124. New or expanded industry credit — definitions. As used in 15-31-124 through 15-31-127, the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Expanding" means to expand or diversify a present operation to increase total full-time jobs by 30% or more.

(3) "Manufacturing" means:

(a) the process of mechanical or chemical transformation of materials or substances into new products, as described in the North American Industry Classification System Manual prepared by the United States office of management and budget; *or*

(b) the production of energy by means of an alternative renewable energy source as defined in 90-4-102.

(4) (a) "New corporation" means a corporation engaging in manufacturing for the first time in this state. A new corporation includes:

(i) a manufacturing corporation existing outside of Montana that enters into manufacturing in the state;

(ii) a nonmanufacturing corporation within the state that enters into manufacturing in the state; or

(iii) a corporation newly formed in Montana and entering into manufacturing operations in the state.

(b) A new corporation does not include:

(i) a corporation reorganized from a previously existing corporation that has been engaged in manufacturing in this state; or

(ii) a corporation created as a parent, subsidiary, or affiliate of an existing corporation that has been engaged in manufacturing in this state of which 20% or more of the ownership is held by the corporation or by the stockholders of the corporation."

Section 9. Section 15-32-102, MCA, is amended to read:

"15-32-102. Definitions. As used in this part, the following definitions apply:

(1) "Alternative energy system" means the generation system or equipment used to convert energy sources into usable sources using fuel cells that do not require hydrocarbon fuel, geothermal systems, low emission wood or biomass, wind, photovoltaics, geothermal, small hydropower plants under 1 megawatt, and other recognized nonfossil forms of energy generation.

~~(1)~~*(2)* "Building" means:

(a) a single or multiple dwelling, including a mobile home or manufactured home: or

(b) a building used for commercial, industrial, or agricultural purposes that is enclosed with walls and a roof.

~~(2)~~*(3)* "Capital investment" means any material or equipment purchased and installed in a building or land with or without improvements.

~~(3)~~*(4)* "Energy conservation purpose" means one or both of the following results of an investment:

(a) reducing the waste or dissipation of energy; or

(b) reducing the amount of energy required to accomplish a given quantity of work.

~~(4)~~*(5)* "Geothermal system" means a system that transfers energy either from the ground, by way of a closed loop, or from ground water, by way of an open loop, for the purpose of heating or cooling a residential building.

~~(5)~~*(6)* "Low emission wood or biomass combustion device" means a noncatalytic stove or furnace that:

(a) (i) is specifically designed to burn wood pellets or other nonfossil biomass pellets; and

(ii) has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of environmental quality pursuant to 15-32-203; or

(iii) has an air-to-fuel ratio of 35 to 1 or greater when tested in conformance with the standard method for measuring the air-to-fuel ratio and minimum achievable burn rates for wood-fired appliances, as adopted by the department of environmental quality pursuant to 15-32-203; or

(b) burns wood or other nonfossil biomass and has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of environmental quality pursuant to 15-32-203.

~~(6)~~*(7)* "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. It includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building.

~~(7)~~*(8)* "Recognized nonfossil forms of energy generation" means:

(a) a system that captures energy or converts energy sources into usable sources, *including electricity,* by using:

(i) solar energy, including passive solar systems;

(ii) wind;

(iii) solid waste; ~~or~~

(iv) the decomposition of organic wastes;

(v) geothermal;

(vi) fuel cells that do not require hydrocarbon fuel; or

(vii) an alternative energy system;

(b) a system that produces electric power from *biomass or* solid wood wastes; or

(c) a small system that uses water power by means of an impoundment that is not over 20 acres in surface area."

Section 10. Section 15-32-109, MCA, is amended to read:

"**15-32-109. Credit for energy-conserving expenditures.** (1) Subject to the restrictions of subsections (2) and (3), a resident individual taxpayer may take ~~as~~ a credit against the taxpayer's tax liability under chapter 30 *for* ~~a portion~~ *25%* of ~~his~~ *the taxpayer's* expenditure for a capital investment in *the physical attributes of* a building *or the installation of a water, heating, or cooling system in the building, so long as either type of investment is* for an energy conservation purpose~~, determined as follows:~~

~~(a) in the case of an expenditure for a residential building, the lesser of:~~

~~(i) $150; or~~

~~(ii) 5% of the expenditure; and~~

~~(b) in the case of an expenditure for a building not used as a residence, the lesser of:~~

~~(i) $300; or~~

~~(ii) 5% of the expenditure~~ *in an amount not to exceed $500.*

(2) The credit or the sum of the credits under subsection (1):

(a) may not exceed the taxpayer's tax liability; and

(b) is subject to the provisions of 15-32-104.

(3) ~~There is no carryback or~~ *The credit allowed under this section may be used as a* carry-forward ~~of the credit permitted under this section, and the credit must be applied in the year the expenditure is incurred, as determined by the taxpayer's accounting method~~ *against taxes imposed under chapter 30 for the 7 succeeding tax years. The entire amount of the credit not used in the year that it was earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.*"

Section 11. Section 15-32-115, MCA, is amended to read:

"**15-32-115. Credit for geothermal system — to whom available — eligible costs — limitations.** (1) A resident individual taxpayer who completes installation of a geothermal system, as defined in 15-32-102, in the taxpayer's principal dwelling is entitled to claim a tax credit, as provided in subsection (3), against the taxpayer's tax liability under chapter 30 for a portion of the installation costs of the system, ~~up to $250 per year for 4 years~~ *not to exceed $1,500.* ~~The credit may not exceed the taxpayer's income tax liability for the taxable year in which the credit is claimed~~ *The amount of the credit not used in the year in which the installation is made may be carried forward against taxes imposed under chapter 30 for the 7 succeeding tax years. The entire amount of the credit not used in the year that it was earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.*

(2) For the purposes of this section, installation costs include the cost of:

(a) trenching, well drilling, casing, and downhole heat exchangers;

(b) piping, control devices, and pumps that move heat from the earth to heat or cool the building;

(c) ground source or ground coupled heat pumps;

(d) liquid-to-air heat exchanger, ductwork, and fans installed with a ground heat well that pump heat from a well into a building; and

(e) design and labor.

~~(3) The tax credit allowed under this section is deductible from the taxpayer's income tax liability for the taxable year in which the installation costs were incurred and for the next 3 taxable years succeeding the taxable year in which the installation costs were incurred. There is no carryback or carryforward of the credit permitted under this section.~~"

Section 12. Section 15-32-201, MCA, is amended to read:

"**15-32-201. Amount of credit — to whom available.** (1) A resident individual taxpayer who completes installation of an energy system using a recognized nonfossil form of energy generation, as defined in 15-32-102, in the taxpayer's principal dwelling ~~prior to January 1, 1993~~ *after December 31, 2001*, ~~or who acquires title to a dwelling prior to January 1, 1993, that is to be used as the taxpayer's principal dwelling and is equipped with an energy system for which the credit allowed by this part has never been claimed~~ is entitled to claim a tax credit in an amount equal to ~~10% of the first $1,000 and 5% of the next $3,000 of~~ the cost of the system, including installation costs, less grants received, *not to exceed $500,* ~~or, if the federal government provides for a tax credit substantially similar in kind (not in amount), then a tax credit in an amount equal to 5% of the first $1,000 and 2 1/2% of the next $3,000 of the cost of the system, including installation costs, less grants received,~~ against the income tax liability imposed against the taxpayer pursuant to chapter 30.

(2) A resident individual taxpayer who completes installation of an energy system using a low emission wood or biomass combustion device, as defined in 15-32-102~~(5)(a)~~, in the taxpayer's principal dwelling ~~prior to January 1, 1996~~ *after December 31, 2001*, is entitled to claim a tax credit in an amount equal to ~~20% of the first $1,000 and 10% of the next $3,000 of~~ the cost of the system, including the installation costs, *not to exceed $500,* against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30.

~~(3) A resident individual taxpayer who completes installation of an energy system that uses a low emission wood or biomass combustion device, as defined in 15-32-102(5)(b), in the taxpayer's principal dwelling prior to January 1, 1996, is entitled to claim a tax credit in an amount equal to 10% of the first $1,000 and 5% of the next $3,000 of the cost of the system, including the installation costs, against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30.~~"

Section 13. Section 15-32-401, MCA, is amended to read:

"**15-32-401. Purpose and statement of policy.** The purpose of this part is to encourage the development of ~~a wind~~ *the alternative* energy industry in Montana without adversely affecting tax ~~revenues~~ *revenue* received from existing economic activity in the state. Because of the ~~wind~~ *alternative* energy potential within the state, it is desirable to encourage ~~wind~~ *alternative* energy generation for the purpose of attracting ~~wind~~ *alternative* energy manufacturing industries to the state. It is also desirable for new or expanded industry to secure ~~wind-generated~~ *alternatively generated* electricity on a direct contract sales basis without adversely affecting rates charged to other electricity users. Sound fiscal policy requires that encouragement be given to ~~a~~ ~~wind~~ *an alternative* energy industry without subtracting from existing sources of revenue to the state."

Section 14. Section 15-32-402, MCA, is amended to read:

"**15-32-402. Commercial *or net metering system* investment credit — ~~wind-generated electricity~~ *alternative energy systems.*** (1) An individual, corporation, partnership, or small business corporation as defined in 15-31-201 that makes an investment of $5,000 or more in certain depreciable property qualifying under section 38 of the Internal Revenue Code of 1954, as amended, for a commercial system *or a net metering system, as defined in 69-8-103, that is* located in Montana ~~which~~ *and that* generates ~~electricity~~ *energy* by means of ~~wind power~~ *an alternative renewable energy source, as defined in 90-4-102,* is entitled to a tax credit against taxes imposed by 15-30-103 or 15-31-121 in an amount equal to ~~35%~~ *35%* of the eligible costs, to be taken as a credit only against taxes due as a consequence of taxable or net income produced by one of the following:

(a) manufacturing plants located in Montana that produce ~~wind~~ *alternative* energy generating equipment;

(b) a new business facility or the expanded portion of an existing business facility for which the ~~wind~~ *alternative* energy generating equipment supplies, on a direct contract sales basis, the basic energy needed; or

(c) the ~~wind~~ *alternative* energy generating equipment in which the investment for which a credit is being claimed was made.

(2) For purposes of determining the amount of the tax credit that may be claimed under subsection (1), eligible costs include only those expenditures that qualify under section 38 of the Internal Revenue Code of 1954, as amended, and that are associated with the purchase, installation, or upgrading of:

(a) generating equipment;

(b) safety devices and storage components;

(c) transmission lines necessary to connect with existing transmission facilities; and

(d) transmission lines necessary to connect directly to the purchaser of the electricity when no other transmission facilities are available.

(3) Eligible costs under subsection (2) must be reduced by the amount of any grants provided by the state or federal government for the system."

Section 15. Section 15-32-403, MCA, is amended to read:

"**15-32-403. Limitation on credit.** *(1)* ~~Whenever~~ *Except as provided in subsection (2), whenever* any federal wind energy tax credits for a system that generates electricity by means of wind power are allowed or allowable under section 48(a) of the Internal Revenue Code (26 U.S.C. 48(a)) or any other federal law, the state credit allowed by 15-32-402 must be reduced by the amount of federal credits so that the effective credit does not exceed 60% of the eligible costs.

(2) An individual, corporation, partnership, or small business corporation, as defined in 15-31-201, is exempt from the provisions of subsection (1) of this section if the individual, corporation, partnership, or small business corporation:

(a) invests in a commercial system located on state trust land;

(b) signs a lease agreement with the state to make annual lease payments to the permanent school trust fund; and

(c) offers contracts with a duration of at least 5 years to sell at least 33% of that commercial system's net generating output at the cost of production plus a rate of return not to exceed 12%.

(3) The cost of production must be determined by dividing the cost and operation of the commercial system over an appropriate time period by the kilowatt-hour output of the system."

Section 16. Section 15-72-104, MCA, is amended to read:

"15-72-104. Wholesale energy transaction tax — rate of tax — exemptions — cost recovery. (1) (a) Except as provided in subsection (3), a wholesale energy transaction tax is imposed upon electricity transmitted within the state as provided in this section. The tax is imposed at a rate of 0.015 cent per kilowatt hour of electricity transmitted by a transmission services provider in the state.

(b) For electricity produced in the state for delivery outside of the state, the taxpayer is the person owning or operating the electrical generation facility producing the electricity. The transmission services provider shall collect the tax from the person based upon the kilowatt hours introduced onto transmission lines from the electrical generation facility. The amount of kilowatt hours subject to tax must be reduced by 5% to compensate for transmission line losses.

(c) For electricity produced in the state for delivery within the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider. The taxpayer may apply for a refund for overpayment of taxes pursuant to 15-72-116.

(d) For electricity produced outside the state for delivery inside the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.

(e) For electricity delivered to a distribution services provider that is a rural electric cooperative for delivery to purchasers that have opted for customer choice under the provisions of Title 69, chapter 8, part 3, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based on the amount of kilowatt hours of electricity delivered to the distribution services provider that is attributable to customers that have opted for customer choice.

(f) For electricity delivered to a distribution services provider that prior to May 2, 1999, was owned by a public utility as defined in 69-3-101, the tax is imposed on the successor distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.

(2) (a) If more than one transmission services provider transmits electricity, the last transmission services provider transmitting or delivering the electricity shall collect the tax.

(b) If the transmission services provider is an agency of the United States government, the distribution services provider receiving the electricity shall self-assess the tax subject to the provisions of this part.

(c) If an electrical generation facility located within the state produces electricity for sale inside and outside the state, sales within the state are considered to have come from electricity produced within the state for purposes of the tax imposed by this section.

(3) (a) Electricity transmitted through the state that is not produced or delivered in the state is exempt from the tax imposed by this section.

(b) Electricity produced in the state by an agency of the of the United States government for delivery outside of the state is exempt from the tax imposed by this section.

(c) Electricity produced by wind turbines erected on state land for which annual lease payments are made to the permanent school trust fund is exempt from the tax imposed by this section.

~~(c)~~*(d)* Electricity delivered to a distribution services provider that is a municipal utility described in 69-8-103(5)(b) or a rural electric cooperative organized under the provisions of Title 35, chapter 18, is exempt from the tax imposed by this section.

~~(d)~~*(e)* Electricity delivered to a purchaser that receives its power directly from a transmission or distribution facility owned by an entity of the United States government on or before May 2, 1997, or electricity that is transmitted exclusively on transmission or distribution facilities owned by an entity of the United States government on or before May 2, 1997, is exempt from the tax imposed by this section.

~~(e)~~*(f)* Electricity delivered by a distribution services provider to a customer with loads of 1,000 kilowatts or greater that was first served by a public utility after December 31, 1996, is exempt from the tax imposed by this section, provided that the customer purchases the electricity pursuant to a contract or contracts that establish the purchase price or prices of electricity. The exemption allowed by this subsection ~~(3)(e)~~ *(3)(f)* does not apply to electricity purchased under a renewal or extension of an existing contract or existing contracts.]

(4) A distribution services provider is allowed to recover the tax imposed by this section and the administrative costs to comply with this part in its rates. (Bracketed language terminates January 1, 2003—sec. 40, Ch. 556, L. 1999.)"

Section 17. Section 17-6-403, MCA, is amended to read:

"**17-6-403. Definitions.** As used in this part, the following definitions apply:

(1) "Certified community lead organization" means an organization that has sponsored community certification under the certified communities program of the department.

(2) "Certified microbusiness development corporation" means a microbusiness development corporation certified pursuant to 17-6-408.

(3) "Council" means the microbusiness advisory council established in 17-6-411.

(4) "Department" means the department of commerce provided for in 2-15-1801.

(5) "Development loan" means money loaned to a certified microbusiness development corporation by the department for the purpose of making microbusiness loans under the provisions of this part.

(6) "Microbusiness development corporation" means a nonprofit corporation organized and existing under the laws of the state to provide training, technical assistance, and access to capital for the startup or expansion of qualified microbusinesses.

(7) "Microbusiness loan" means a loan made from or guaranteed by a revolving loan fund contributed to by the microbusiness finance program.

(8) "Program" means the microbusiness finance program established in 17-6-406.

(9) "Qualified microbusiness" means a business enterprise located in the state that*:*

(a) produces goods or provides services and has fewer than 10 full-time equivalent employees and annual gross revenues of less than $500,000*; or*

(b) produces energy using an alternative renewable energy source as defined in 90-4-102.

(10) "Revolving loan fund" means a fund required to be established by a certified microbusiness development corporation that receives a development loan."

Section 18. Section 17-6-503, MCA, is amended to read:

"**17-6-503. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of commerce provided for in 2-15-1801.

(2) "Job investment administrative account" means the account established in 17-6-509.

(3) "Loan review committee" means the committee that is established by the department to consider economic development loan applications for funding by the federal community development block grant program and that is responsible for reviewing and recommending to the department the approval or denial of job investment loans subject to this part and rules implementing this part.

(4) "Qualified business" means a business enterprise that either is or will be located in the state, ~~and~~ that produces goods, ~~or~~ provides services, *or produces energy using an alternative renewable energy source, as defined in 90-4-102, and* that will, as a result of receiving a job investment loan, create jobs for Montana workers."

Section 19. Section 30-16-103, MCA, is amended to read:

"**30-16-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Board of review" means the body established to provide policy direction to the department of revenue in designing and recommending to the legislature the implementation of a plan for a business registration and licensing system.

(2) "Department" means the department of revenue established in 2-15-1301.

(3) (a) "License" means the whole or part of any agency permit, license, certificate, approval, registration, or charter or any form or permission required by law or administrative rule to engage in any retail, wholesale, consumer service, manufacturing, or distributing activity, *including the production of energy using an alternative renewable energy source as defined in 90-4-102.*

(b) License does not include licenses, permits, or registrations issued under Title 30, chapter 10, parts 1 through 3, Title 33, Title 37, and Title 75, chapters 1 through 3, 5 through 7, 10, 15, 16, and 20, which are excluded from the coverage of this chapter.

(4) "Person" means an individual, sole proprietorship, partnership, association, cooperative, limited liability company, corporation, nonprofit organization, state or local government agency, or any other organization required to register with the state to do business in Montana and to obtain one or more licenses from the state or any of its agencies.

(5) "Plan" means the business registration and licensing system and the procedures developed by the board of review that are under the administrative control of the department."

Section 20. Section 35-19-104, MCA, is amended to read:

"**35-19-104. Permissible purpose of incorporation.** A buying cooperative may be organized under this chapter only for the purpose of supplying electricity to small customers as a default supplier, pursuant to 69-8-403, *and for serving as a supplier or promoter of alternative energy and conservation programs.*"

Section 21. Section 75-2-401, MCA, is amended to read:

"**75-2-401. Enforcement — notice — order for corrective action — administrative penalty.** (1) When the department believes that a violation of this chapter, a rule adopted under this chapter, or a condition or limitation imposed by a permit issued pursuant to this chapter has occurred, it may cause written notice to be served personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this chapter, the rule, or the permit condition or limitation alleged to be violated and the facts alleged to constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order or an order to pay an administrative penalty, or both. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing.

(2) If, after a hearing held under subsection (1), the board finds that violations have occurred, it shall issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action or assess an administrative penalty, or both. As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease; time limits for particular action in preventing, abating, or controlling the emissions; or the date by which the administrative penalty must be paid. If, after a hearing on an order contained in a notice, the board finds that a violation has not occurred or is not occurring, it shall rescind the order.

(3) (a) An action initiated under this section may include an administrative civil penalty of not more than $10,000 for each day of each violation, not to exceed

a total of $80,000. If an order issued by the board under this section requires the payment of an administrative civil penalty, the board shall state findings and conclusions describing the basis for its penalty assessment.

(b) Administrative penalties collected under this section must be deposited in the ~~state general fund~~ *alternative energy revolving loan account established in [section 1].*

(c) Penalties imposed by an administrative order under this section may not be assessed for any day of violation that occurred more than 12 months prior to the issuance of the initial notice and order by the department under subsection (1).

(d) In determining the amount of penalty to be assessed for an alleged violation under this section, the department or board, as appropriate, shall consider:

(i) the alleged violator's ability to pay and the economic impact of the penalty on the alleged violator;

(ii) the alleged violator's full compliance history and good faith efforts to comply;

(iii) the duration of the violation as established by any credible evidence, including evidence other than the applicable test method;

(iv) payment by the violator of penalties previously assessed for the same violation;

(v) the economic benefit of noncompliance;

(vi) the seriousness of the violation; and

(vii) other matters as justice may require.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

(5) Instead of issuing the order provided for in subsection (1), the department may either:

(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 75-2-412 or 75-2-413.

(6) This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(7) In connection with a hearing held under this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties."

Section 22. Section 75-2-413, MCA, is amended to read:

"75-2-413. Civil penalties — out-of-state litigants — effect of action — presumption of continuing violation under certain circumstances. (1) A person who violates any provision of this chapter, a rule adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil penalty not to exceed $10,000 per violation. Each day of each violation constitutes a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the operating permit program required by Subchapter V of the federal Clean Air Act.

(2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under this chapter by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or issued under this chapter may be brought in the district court of any county where a violation occurs or is threatened if the defendant cannot be located in Montana.

(3) If the department has notified a person operating a commercial hazardous waste incinerator of a violation and if the department makes a prima facie showing that the conduct or events giving rise to the violations are likely to have continued or recurred past the date of notice, the days of violation are presumed to include the date of the notice and every day after the notice until the person establishes that continuous compliance has been achieved. This presumption may be overcome to the extent that the person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that there were intervening days when a violation did not occur, that the violation was not continuing in nature, or that the telemetering device was compromised or otherwise tampered with.

(4) Money collected under this section must be deposited in the ~~state general fund~~ *alternative energy revolving loan account established in [section 1].* This subsection does not apply to money collected by an approved local air pollution control program."

Section 23. Section 80-12-201, MCA, is amended to read:

"**80-12-201. Loan agreements — general provisions.** (1) Each loan approved by the authority for issuance of a bond must include a loan agreement providing a payment schedule that may not exceed 30 years.

(2) The agreement must specify a reasonable rate of interest, which rate may be a variable rate provided the method of determination is contained in the loan agreement.

(3) Loans approved by the authority for issuance of a bond may be secured by any liens or collateral the financial institution considers necessary.

(4) The money received under a loan agreement may be used for:

(a) acquisition of farm or ranch land;

(b) a down payment on the acquisition of farm or ranch land; ~~or~~

(c) acquisition or construction of depreciable property used in the operation of a farm or ranch*; or*

(d) production of energy using an alternative renewable energy source as defined in 90-4-102."

Section 24. Section 90-4-102, MCA, is amended to read:

"**90-4-102. Definitions.** As used in this part, the following definitions apply:

(1) "Alternative renewable energy source" means a form of energy or matter, such as solar energy, wind energy, *geothermal energy, conversion of biomass, fuel cells that do not require hydrocarbon fuel, small hydroelectric generators producing less than 1 megawatt,* or methane from solid waste, that is capable of being converted into forms of energy useful to mankind, *including electricity*, and the technology necessary to make this conversion, when the source is not exhaustible in terms of this planet and when the source or the technology are not in general commercial use.

(2) "Department" means the department of environmental quality.

(3) "Energy conservation" means reducing waste or dissipation of energy or reducing the amount of energy required to accomplish a given quantity of work through increases in efficiency of energy use, production, or distribution.

(4) "Person" means a natural person~~;~~, a corporation, partnership, or other business entity~~;~~, an association, trust, or foundation~~;~~, any educational or scientific institution~~;~~, or any governmental unit.

(5) (a) "State governmental unit" means:

(i) the state;

(ii) the legislature;

(iii) any executive branch department, office, or agency;

(iv) the university system; or

(v) the supreme court or any office of the supreme court.

(b) The term does not include:

(i) a county, incorporated city, town, or other local governmental unit or a public corporation or district created pursuant to state law; or

(ii) any other public body of the state not described in subsection (5)(a)."

Section 25. Section 90-5-101, MCA, is amended to read:

"**90-5-101. Definition of terms.** As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Agricultural enterprises" include but are not limited to producing, warehousing, storing, fattening, treating, handling, distributing, or selling farm products or livestock.

(2) "Bonds" means bonds, refunding bonds, notes, or other obligations issued by a municipality or county under the authority of this part, including without limitation short-term bonds or notes issued in anticipation of the issuance of long-term bonds or notes.

(3) "Governing body" means the board or body in which the general legislative powers of the municipality or county are vested.

(4) "Higher education facilities" means any real or personal properties required or useful for the operation of an institution of higher education.

(5) "Institution of higher education" means any private, nonprofit corporation or institution within the state of Montana:

(a) authorized to provide or operate educational facilities; and

(b) providing a program of education beyond the high school level.

(6) "Mortgage" means a mortgage or deed of trust or other security device.

(7) "Municipality" means any incorporated city or town in the state.

(8) "Project" means any land; any building or other improvement; and any other real or personal properties considered necessary in connection with the improvement, whether or not now in existence, which must be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing, hospitals, long-term care facilities, community-based facilities for individuals who are persons with developmental disabilities as defined in 53-20-102, or medical facilities; higher education facilities; ~~small-scale~~ hydroelectric production facilities with a capacity of ~~50~~ *50* megawatts or less; *the production of energy using an alternative renewable energy source as defined in 90-4-102;* and any combination of these projects."

Section 26. Section 90-8-104, MCA, is amended to read:

"**90-8-104. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Capital base" means equity capital raised by a certified Montana capital company or by a certified Montana small business investment capital company for which tax credits were claimed under this chapter.

(2) "Certified Montana capital company" or "certified Montana small business investment capital company" means:

(a) a development credit corporation created pursuant to Title 32, chapter 4; or

(b) a profit or nonprofit entity organized and existing under the laws of Montana, created for the purpose of making venture or risk capital available for qualified investments and that has been certified by the department.

(3) "Department" means the department of commerce.

(4) "Montana business" means a business ~~which~~ *that* is located or principally based within Montana.

(5) "Qualified investment" means an investment that does not violate any of the provisions of this chapter, *that* does not displace other sources of equity or debt financing that are available to the project unless the department determines that the investment furthers the purposes of this chapter, and *that* is:

(a) a debt or equity financing of a Montana business that meets both of the following criteria:

(i) the business is engaged in one or more of the following activities:

(A) manufacturing;

(B) agricultural, fishery, or forestry production and processing;

(C) mineral production and processing, except for conventional oil and gas exploration;

(D) recognized nonfossil forms of energy generation or the manufacture of low emission wood or biomass combustion devices as defined in 15-32-102;

(E) transportation;

(F) research and development of products or processes associated with any of the activities enumerated in ~~(A) through (E) above~~ *subsections (5)(a)(i)(A) through (5)(a)(i)(E)*;

(G) wholesale or retail distribution activities for which products produced in Montana comprise 50% or more of the gross sales receipts;

(H) any activity conducted in the state for which 50% or more of the gross receipts are derived from the sale of products or services outside Montana; ~~and~~

(I) tourism; and

(J) the production of energy using an alternative renewable energy source as defined in 90-4-102; and

(ii) the business is a small business as defined in rules adopted by the department and is a small business pursuant to the regulations promulgated by the United States small business administration at 13 CFR 121, et seq.;

(b) a debt or equity financing of a business outside Montana if the investment is likely to produce a qualified investment in Montana, as long as the investment does not exceed 25% of the capital base of the capital company; or

(c) a debt or equity financing of an acquisition of a non-Montana business that will be relocated in Montana.

(6) "Qualified Montana capital company" means a certified Montana capital company that has been designated a qualified capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202.

(7) "Qualified Montana small business investment capital company" means a certified Montana small business investment capital company that has been designated *as* a qualified small business investment capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202."

Section 27. Codification instruction. (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 through 3].

(2) [Section 6] is intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [section 6].

Section 28. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 29. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2001.

(2) [Sections 1 through 3, 21, 22, and 27 and this section] are effective on passage and approval.

Section 30. Applicability. [Sections 6 through 12 and 14] apply to tax years beginning after December 31, 2001.

Approved May 5, 2001

CHAPTER NO. 592

[SB 508]

AN ACT REVISING PROPERTY TAX LAWS RELATED TO ELECTRICAL GENERATION FACILITIES; EXEMPTING AN ELECTRICAL GENERATION FACILITY AND RELATED DELIVERY FACILITIES THAT OFFER 50 PERCENT OF THEIR NET GENERATING OUTPUT AT A COST-BASED RATE FROM PROPERTY TAXATION FOR A SPECIFIC PERIOD OF TIME; AUTHORIZING A LOCAL GOVERNMENTAL UNIT TO ASSESS AN IMPACT FEE FOR LOCAL GOVERNMENTAL UNITS AND SCHOOL DISTRICTS THAT ARE IMPACTED BY A FACILITY EXEMPTED FROM PROPERTY TAXATION; PROVIDING FOR INTERLOCAL IMPACT AGREEMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Electrical generation and transmission facility exemption — definitions. (1) (a) Except as provided in subsections (1)(b) and (3), an electrical generation facility and related delivery facilities constructed in the state of Montana after [the effective date of this act] and before January 1, 2006, may be exempt from property taxation for a 10-year period beginning on the date that an owner or operator of an electrical generation facility and related delivery facilities commences to construct the facility as defined in 75-20-104(6)(a) and (6)(b). In order to be exempt from property taxation, an owner and operator of an electrical generation facility and related delivery facilities shall offer contracts to sell 50% of that facility's net generating output at a cost-based rate, which includes a rate of return not to exceed 12%, to customers for a 20-year period from the date of the facility's completion.

(b) The property tax exemption allowed under subsection (1)(a) is limited to a 5-year period for generation facilities powered by oil or gas turbines.

(2) To the extent that 50% of the net generating output of the facility is not contracted for delivery to consumers for a contract term extending 5 years to 20 years from the completion of the facility, as determined by the owner, surplus capacity must be offered on a declining contract term basis for the remainder of the contract period at a cost-based rate that includes a rate of return not to exceed 12%. Surplus capacity that is not contracted for in this fashion may be sold at market rates.

(3) (a) Except as provided in subsection (3)(c), if an owner or operator of property exempt from taxation under subsection (1)(a) signs a contract to sell power as required in subsection (1) and then fails to perform the contract during the first 10-year period, the 10-year property tax exemption in subsection (1) is void and the property is subject to a rollback tax as provided in [section 2].

(b) Except as provided in subsection (3)(c), if an owner or operator of property exempt from taxation under subsection (1)(b) signs a contract to sell power as required in subsection (1) and then fails to perform the contract during the first 5-year period, the 5-year property tax exemption in subsection (1) is void and the property is subject to a rollback tax as provided in [section 2].

(c) If an owner or operator fails to perform the contract due to earthquakes or other acts of God, theft, sabotage, acts of war, other social instabilities, or equipment failure, the property tax exemption in subsection (1)(a) or (1)(b) is not void and the owner or operator is not subject to the rollback tax as provided in [section 2].

(4) For the purposes of this section, the following definitions apply:

(a) (i) "Electrical generation facility" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce 20 average megawatts or more of electric power. The term is limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

(ii) The term does not include:

(A) electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes; or

(B) a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and that is classified under 15-6-134 and 15-6-138.

(b) "Related delivery facilities" means transmission facilities necessary to deliver the energy from the electrical generation facility to the existing network transmission system.

(c) "Surplus capacity" means that portion of the 50% of net generating output not contracted for use.

(5) The department shall appraise exempt electrical generation facilities for each year that the property is exempt and determine the taxable value of the property as if it were subject to property taxation. The taxable value determined by the department must be included as taxable valuation for the purposes of county classification under 7-1-2111.

Section 2. Rollback tax — computation. (1) (a) If an owner or operator fails to perform the contract pursuant to [section 1(1)], the property is subject to a rollback tax in addition to the property tax levied on the property. The rollback tax is a lien on the property and is due and payable by the owner of the property within 180 days after failure to perform the contract.

(b) As used in this section, "rollback" means the period of time that an owner or operator of an electrical generation facility was exempt from property taxes pursuant to [section 1].

(2) The department shall determine the amount of rollback tax due on the property by:

(a) determining the taxable value of the property;

(b) multiplying this value by the sum of the annual mill levies that would have been levied had the property exemption pursuant to [section 1] not been applied in the taxing jurisdiction in which the electrical generation property is located during the rollback period; and

(c) subtracting from this figure the actual property tax paid on the property during this period less any impact fee paid pursuant to [section 3], if any.

Section 3. Electrical generation facility impact fee for local government units and school districts. (1) (a) If an owner or operator of an electrical generation facility as defined in [section 1] is exempt from property taxation pursuant to [section 1], the owner or operator of the facility is subject to an initial local government and local school impact fee. In the first 2 years of construction, the impact fee may not exceed 0.75% of the total cost of constructing the electrical generation facility.

(b) In the case of a generation facility powered by oil or gas turbines, the impact fee may not exceed 0.1% of the total construction cost in the remaining 3 years of the tax exemption period as provided in [section 1].

(c) In the case of any other generation facility, the impact fee may not exceed 0.1% of the total construction cost in the subsequent 4 years and may not exceed 0.08% of the total construction cost in the remaining 4 years of the tax exemption period as provided in [section 1].

(2) Except as provided in subsection (4), the jurisdictional area of a local government unit in which an electrical generation facility is located is the local governmental unit that is authorized to assess the impact fee pursuant to subsection (1).

(3) The impact fee must be distributed to the local governmental unit for local impacts and the impacted school districts.

(4) Subject to the conditions of subsection (5) and [section 4], if the facility is located within the jurisdictional areas of multiple local governmental units of the county or contiguous counties, the local governmental units may enter into an interlocal agreement under Title 7, chapter 11, part 1, to determine how the fee should be distributed among the various local governmental units and impacted school districts pursuant to the percentage allocation required in subsection (3). The county in which the electrical generation facility is located is authorized to assess the fee under the interlocal agreement.

(5) For purposes of this section, a "local governmental unit" means a county, city, or town. If an exempt electrical generation facility is located within a tax increment financing district, the tax increment financing district is considered a local government unit and is entitled to the distribution of impact fees under this section. A tax increment financing district may not receive a distribution of impact fees if an exempt electrical generation facility is not located within the district.

(6) Impact fees imposed under subsection (4) must be deposited in the county electrical energy generation reserve account established in [section 4] for the county in which the electrical generation facility is located. Money in the account may not be expended until the multiple local governments have entered into an interlocal agreement.

Section 4. Electrical energy generation impact fee reserve account. (1) The governing body of a county receiving impact fees under [section 3(4)] shall establish an electrical energy generation impact fee reserve account to be used to hold the collections. Money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(2) Money may be expended from the account for any purpose of an interlocal agreement provided for in [section 3]. The county treasurer shall distribute money in the account to each local government unit according to the terms of the interlocal agreement.

(3) Money in the account must be invested as provided by law. Interest and income from the investment of the electrical energy generation reserve account must be credited to the account.

Section 5. Electrical generation impact fund. (1) A local government unit, as defined in [section 3], and a school district that receives impact fees pursuant to [section 3(2)] or [section 4] shall establish an electrical generation impact fund for the deposit of the fees. A local government unit or school district may retain the money in the fund for any time period considered appropriate by the governing body of the local government unit or school district. Money retained in the fund may not be considered as fund balance for the purpose of reducing mill levies.

(2) Money may be expended from the fund for any purpose allowed by law.

(3) Money in the fund must be invested as provided by law. Interest and income earned on the investment of money in the fund must be credited to the fund.

(4) The fund must be financially administered as a nonbudgeted fund by a county under the provisions of Title 7, chapter 6, part 23, by a city or town under the provisions of Title 7, chapter 6, part 42, or by a school district under the provisions of Title 20, chapter 9, part 5.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 15, chapter 24, and the provisions of Title 15, chapter 24, apply to [sections 1 through 5].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved May 5, 2001

CHAPTER NO. 593

[SB 521]

AN ACT GENERALLY REVISING THE EMERGENCY POWERS OF THE GOVERNOR; REVISING THE DEFINITION OF "ENERGY EMERGENCY"; CLARIFYING THE ENERGY EMERGENCY POWERS OF THE GOVERNOR; EXTENDING THE DURATION OF AN ENERGY EMERGENCY; CLARIFYING THAT PROCEEDINGS UNDERTAKEN DURING AN ENERGY EMERGENCY MAY BE COMPLETED; AMENDING SECTIONS 90-4-302, 90-4-310, AND 90-4-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-302, MCA, is amended to read:

"**90-4-302. Definitions.** As used in this part, the following definitions apply:

(1) "Bulk pipeline terminal" means a facility that is primarily used for storage for *the* marketing of petroleum products and that has *a* total bulk storage capacity of 50,000 gallons or more.

(2) "Distributor" means any person, private corporation, partnership, producer, individual proprietorship, public utility, joint operating agency, or cooperative that engages in or is authorized to engage in the activity of generating, producing, transmitting, or distributing energy in this state.

(3) "Energy" means petroleum or other liquid fuels, natural or synthetic fuel gas, or electricity.

(4) "Energy emergency" means an existing or imminent domestic, regional, or national shortage of energy *or a price of energy* that will result in curtailment of essential services or production of essential goods or the disruption of significant sectors of the economy unless action is taken to conserve or limit the use of the energy form involved and the allocation of available energy supplies among users *or to increase the available supply of energy.*

(5) "Energy facility" means a facility that produces, extracts, converts, transports, or stores energy.

(6) "Energy supply alert" means a condition of energy supply on a national, regional, state, or local basis that foreseeably will affect significantly the availability of essential energy supplies *or the price of energy* within the ensuing 90-day period unless action is taken under 90-4-309 to reduce energy usage by state agencies and political subdivisions *or action is taken to increase the supply of energy.*

(7) "Person" means an individual, partnership, joint venture, private or public corporation, cooperative, association, firm, public utility, political subdivision, municipal corporation, government agency, joint operating agency, or any other entity, public or private, however organized.

(8) "Petroleum pipeline company" means a person who owns or operates in Montana any pipeline used for the transportation of petroleum products or their derivatives. This definition does not include pipelines used to transport crude petroleum from producing wells to refineries.

(9) "Petroleum products" means propane, butane, propane/butane mix, motor gasoline, kerosene and other middle distillates, aviation gasoline, jet fuel, number 4 fuel oil, residual fuel oil, and alcohol fuels, whether in natural or synthetic form.

(10) "Prime petroleum supplier" means the person who makes the first sale of a petroleum product into the state distribution system. Any person who is considered to be a Montana prime supplier by the U.S. department of energy is included in this definition.

(11) "Refiner" means a person that owns, operates, or controls the operations of one or more refineries located in Montana.

(12) "Refinery" means an industrial plant, regardless of capacity, that processes fossil or renewable feedstock or manufactures refined petroleum products, except when the plant exclusively produces petrochemicals."

Section 2. Section 90-4-310, MCA, is amended to read:

"90-4-310. Energy emergency powers of governor. In addition to existing powers and duties, the governor has the following duties and special energy emergency powers, subject to the definitions and limitations in this part:

(1) The governor may, upon finding that a situation exists that threatens to seriously disrupt or diminish energy supplies to the extent that life, health, or property may be jeopardized, declare a condition or state of energy emergency, at which time all of the general and specific emergency powers enumerated in this section become effective.

(2) The condition of energy emergency terminates after ~~45~~ *90* consecutive days unless extended by a declaration of the legislature by joint resolution of a continuing condition of energy emergency of a duration to be established by the legislature.

(3) The conditions of an energy emergency alternatively cease to exist upon a declaration to that effect by either of the following:

(a) the governor; or

(b) the legislature, by joint resolution if in regular or special session.

(4) In a declared state of energy emergency, the governor may:

(a) implement programs, controls, standards, priorities, and quotas for the production, allocation, conservation, and consumption of energy, including plans for the curtailment of energy. However, in so doing, the governor ~~shall~~ *may* impose controls, quotas, or curtailments according to the nature of the end use to be made of the energy consistent with existing transmission and distribution systems serving the geographic area affected by the energy emergency.

(b) suspend and modify existing pollution control standards and requirements or any other standards or requirements affecting or affected by the use of energy, including those relating to air or water quality control; and

(c) establish and implement regional programs and agreements for the purposes of coordinating the energy programs and actions of the state with those of the federal government and of other states, localities, and other persons.

(5) ~~This~~ *Except as provided in 90-4-313, this* part does not mean that any program, control, standard, priority quota, or other policy created under the authority of the emergency powers authorized by this part has any continuing legal effect after the cessation of a declared state of energy emergency.

(6) Because of the emergency nature of this part, all actions authorized or required under this part or taken pursuant to any order issued by the governor are exempted from all requirements and provisions of the Montana Environmental Policy Act, including but not limited to the requirement for environmental impact statements.

(7) Except as provided in this section, this part does not exempt a person from compliance with the provisions of any other law, rule, or directive unless specifically ordered by the governor~~,~~ or unless impossibility of compliance is a direct result of an order of the governor."

Section 3. Section 90-4-313, MCA, is amended to read:

"**90-4-313. Compliance.** Notwithstanding any provision of law or contract to the contrary, all persons who are specifically ordered by the governor to comply with an order issued or action taken pursuant to this part shall comply. *A proceeding or project that is commenced under an energy emergency may proceed to completion even if the completion occurs after the termination of the emergency.*"

Section 4. Effective date. [This act] is effective on passage and approval.

Approved May 5, 2001

CHAPTER NO. 594

[HB 226]

AN ACT PROVIDING FOR THE ALLOCATION OF A PORTION OF FEDERAL MINERAL ROYALTY INCOME TO COUNTIES WHERE THE DEVELOPMENT OF THE FEDERALLY OWNED MINERALS HAS OCCURRED; PROVIDING FOR THE ALLOCATION OF A PORTION OF FEDERAL MINERAL ROYALTY INCOME TO A MINERAL IMPACT ACCOUNT TO BE USED FOR COUNTIES; PROVIDING A STATUTORY APPROPRIATION FOR THE PAYMENT OF ALLOCATIONS OF FEDERAL MINERAL ROYALTY INCOME TO COUNTIES; AMENDING SECTION 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

WHEREAS, in Montana, the royalty revenue from federal Bureau of Land Management land currently accrues only to the state, while similar revenue from forest service land is shared between the state and the counties; and

WHEREAS, 30 U.S.C. 191 provides that money paid to any state is to be used by the state as the legislature of the state may direct, giving priority to those subdivisions of the state socially or economically impacted by development of minerals; and

WHEREAS, county governments located within the counties that generate the money derived from federal mineral leasing are impacted by the development of the minerals; and

WHEREAS, the state does not have a mechanism to return federal mineral leasing funds to the impacted counties of the state as federal law requires.

Be it enacted by the Legislature of the State of Montana:

Section 1. Federal mineral leasing funds. (1) All money paid to the state pursuant to 30 U.S.C. 191 must be deposited in the state general fund and must be distributed as provided in subsections (2) and (3).

(2) At the conclusion of fiscal year 2002, the state treasurer shall distribute all money received in fiscal year 2002 in excess of $21,756,000 pursuant to subsection (3). At the conclusion of fiscal year 2003, the state treasurer shall distribute all money received in fiscal year 2003 in excess of $20,474,000 pursuant to subsection (3). At the conclusion of fiscal year 2004, the state treasurer shall distribute 12.5% of all money received pursuant to subsection (3). At the conclusion of fiscal year 2005 and each fiscal year thereafter, the state treasurer shall distribute 25% of all money received pursuant to subsection (3).

(3) On August 15 following the close of the fiscal year, the state treasurer shall distribute the distributions in subsection (2) to the mineral impact account established in [section 2]. The distribution to the eligible counties must be allocated based on the proportion that the total amount of revenue generated by mineral extraction in an eligible county bears to the total amount of money received by the state.

Section 2. Mineral impact account. There is a mineral impact account. Money must be deposited in the impact account as provided in [section 1]. The money in the impact account must be distributed to counties from which the minerals were produced that resulted in the deposit of the mineral royalty revenue in the impact account. Beginning July 1, 2003, the impact account is statutorily appropriated, as provided in 17-7-502.

Section 3. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-31-702; 15-34-115; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 17-3-106; 17-3-212; 17-3-222; *[section 2];* 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-222; 80-4-416; 80-11-518; 81-5-111; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; and pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005.)"

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 17, chapter 3, part 2, and the provisions of Title 17, chapter 3, part 2, apply to [sections 1 and 2].

Section 5. Effective dates — applicability. (1) [Section 4 and this section] are effective on passage and approval.

(2) [Sections 1 through 3] are effective January 1, 2002, and apply to mineral royalties received after December 31, 2001.

Approved May 3, 2001

RESOLUTIONS

Passed by the

FIFTY-SEVENTH LEGISLATURE IN REGULAR SESSION

Held at Helena, the Seat of Government
January 3, 2001, through April 21, 2001

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

Senate Joint Resolutions

SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REVISING AND ADOPTING THE JOINT LEGISLATIVE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following Joint Rules be adopted:

JOINT RULES OF THE MONTANA SENATE AND HOUSE OF REPRESENTATIVES

CHAPTER 10

Administration

10-10. Time of meeting. Each house may order its time of meeting.

10-20. Legislative day — duration. (1) If either house is in session on a given day, that day constitutes a legislative day.

(2) A legislative day for a house ends either 24 hours after that house convenes for the day or at the time the house convenes for the following legislative day, whichever is earlier.

10-30. Schedules. The presiding officer of each house shall coordinate its schedule to accommodate the workload of the other house.

10-40. Adjournment — recess — meeting place. A house may not, without the consent of the other, adjourn or recess for more than 3 days or to any place other than that in which the two houses are sitting (Montana Constitution, Art. V, Sec. 10(5)).

10-50. Access of press. Subject to the presiding officer's discretion on issues of decorum and order, an accredited press representative may not be prohibited from photographing, televising, or recording a legislative meeting or hearing.

10-60. Conflict of interest. A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature shall disclose the fact to the house to which the member belongs.

10-70. Telephone calls and internet access. (1) Long-distance telephone calls made by a member while the Legislature is in session or while the member is in travel status are considered official legislative business. These include but are not limited to calls made to constituencies, places of business, and family members. A member's access to the internet through a permissible server is a proper use of the state communication system if the use is for legislative business or is within the scope of permissible use of long-distance telephone calls.

(2) Session staff, including aides and interns, may use telephones for long-distance calls only if specifically authorized to do so by their legislative sponsor or supervisor. Sponsoring members and supervisors are accountable for use of state telephones and internet access by their staff, including aides and

interns, and may not authorize others to use state phones or state servers to access the internet.

(3) Permanent staff of the Legislature shall comply with executive branch rules applying to the use of state telephones.

10-80. Joint employees. The presiding officers of each house, acting together, shall:

(1) hire joint employees; and

(2) review a dispute or complaint involving the competency or decorum of a joint employee, and dismiss, suspend, or retain the employee.

10-85. Harassment prohibited. (1) Legislators and legislative employees have the right to work free of harassment on account of race, color, sex, culture, social origin or condition, or religious ideas when performing services in furtherance of legislative responsibilities, whether the offender is an employer, employee, legislator, lobbyist, or member of the public.

(2) A violation of this policy must be reported to the party leader in the appropriate house if the offended party is a legislator or to the presiding officer if the offended party is the party leader. The presiding officer may refer the matter to the rules committee of the applicable house, and the offender is subject to discipline or censure, as appropriate.

(3) If the offended party is an employee, the violation must be reported to the employee's supervisor or, if the offender is the supervisor, the report should be made to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate.

(4) If the offended party is a supervisor, the violation must be reported to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate.

(5) The chief clerk or the secretary shall report the violation to the presiding officer. The presiding officer may refer the matter to the rules committee. If the offender is an employee, the employee is subject to discipline or discharge.

10-90. Legislative interns. Qualifications for legislative interns are specified in Title 5, chapter 6, MCA.

10-100. Legislative Services Division. (1) The staff of the Legislative Services Division shall serve both houses as required.

(2) Staff members shall:

(a) maintain personnel files for legislative employees; and

(b) prepare payrolls for certification and signature by the presiding officer and prepare a monthly financial report.

10-110. Compensation of legislative employees. The Legislature by joint resolution shall prescribe the compensation of the employees of each house.

10-120. Engrossing and enrolling staff — duties. (1) The Legislative Services Division shall provide all engrossing and enrolling staff.

(2) The duties of the engrossing and enrolling staff are:

(a) to engross or enroll any bill or resolution delivered to them within 48 hours after it has been received, unless further time is granted in writing by the presiding officer of the house in which the bill originated; and

(b) to correct clerical errors, absent the objection of the sponsor of a bill, resolution, or amendment and the Secretary of the Senate or the Chief Clerk of the House of Representatives in any bill or amendment originating in the house by which the Clerk or Secretary is employed. The following kinds of clerical errors may be corrected:

(i) errors in spelling;

(ii) errors in numbering sections;

(iii) additions or deletions of underlining or lines through matter to be stricken;

(iv) material copied incorrectly from the Montana Code Annotated;

(v) errors in outlining or in internal references;

(vi) an error in a title caused by an amendment;

(vii) an error in a catchline caused by an amendment;

(viii) errors in references to the Montana Code Annotated; and

(ix) other nonconformities of an amendment with Bill Drafting Manual form.

(3) The engrossing and enrolling staff shall give notice in writing of the clerical correction to the Secretary of the Senate or the Chief Clerk of the House and to the sponsor of the bill or amendment. The sponsor shall sign the clerical form to acknowledge notification of the clerical correction. The signed form must be filed in the office of the amendments coordinator. A party receiving notice may register an objection to the correction by filing the objection in writing within 24 hours after receipt of the notice.

(4) If a committee is the sponsor of a bill or resolution, any committee member designated by the chair may be the principal sponsor for the purpose of this section. If a committee has proposed an amendment, the chair is the principal sponsor for the purpose of this section.

10-130. Bills. (1) A bill draft request must be sponsored by a member of the Legislature.

(2) A bill must be:

(a) printed on paper with numbered lines;

(b) numbered at the foot of each page (except page 1);

(c) covered with a cover page of substantial material; and

(d) introduced.

(3) In a section amending an existing statute, matter to be stricken out must be indicated with a line through the words or part to be deleted, and new matter must be underlined.

(4) Sections of the Montana Code Annotated repealed or amended in a bill must be stated in the title.

(5) Introduced bills must be reproduced on white paper and distributed to members.

(6) An introduced bill may not be withdrawn.

10-140. Voting. (1) A bill may not become a law except by vote of the constitutionally required majority of all the members present and voting in each house (Montana Constitution, Art. V, Sec. 11(1)). On final passage, the vote must be taken by ayes and noes and the names of those voting entered on the journal (Montana Constitution, Art. V, Sec. 11(2)).

(2) Any vote in one house on a bill proposing an amendment to The Constitution of the State of Montana under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

10-150. Recording and publication of voting. (1) Every vote of each member on each substantive question in the Legislature, in any committee, or in Committee of the Whole must be recorded and made public. On final passage of any bill or joint resolution, the vote must be taken by ayes and noes and the names entered on the journal.

(2) (a) Roll call votes must be taken by ayes and noes and the names entered on the journal on adopting an adverse committee report and on those motions made in Committee of the Whole to:

(i) amend;

(ii) recommend passage or nonpassage;

(iii) recommend concurrence or nonconcurrence; or

(iv) indefinitely postpone.

(b) The text of all proposed amendments must be recorded.

(3) A roll call vote must be taken on nonsubstantive questions on the request of two members who may, on any vote, request that the ayes and noes be spread upon the journal.

(4) Roll call votes and other votes that are to be made public but are not specifically required to be spread upon the journal must be entered in the minutes of the appropriate committee or of the appropriate house (Montana Constitution, Art. V, Sec. 11(2)). A copy of the minutes must be filed with the Montana Historical Society.

10-160. Journal. Each house shall:

(1) supply the Legislative Services Division with the contents of the daily journal to be stored on an automated system;

(2) examine its journal and order correction of any errors; and

(3) distribute a daily journal to all members.

10-170. Journals — authentication — availability. (1) The journal of the Senate must be authenticated by the signature of the President and the journal of the House of Representatives by the signature of the Speaker.

(2) The Legislative Services Division shall make the completed journals available to the public (sections 5-11-201 through 5-11-203, MCA).

CHAPTER 30

Committees

30-10. Committee chair. Except as provided in Joint Rule 30-50, the chair of the Senate committee is the chair of all joint committees.

30-20. Voting in joint committees. (1) Except for Rules Committees and conference committees, a member of a joint committee votes individually and not by the house to which the committee member belongs.

(2) Because the Rules Committees and conference committees are joint meetings of separate committees, in those committees the committees from each house vote separately. A majority of each committee shall agree before any action may be taken, unless otherwise specified by individual house rules.

30-30. Conference committees. (1) If either house requests a conference and appoints a committee for the purpose of discussing an amendment on which the two houses cannot agree, the other house shall appoint a committee for the same purpose. The time and place of all conference committee meetings must be agreed upon by their chairs and announced from the rostrum. This announcement is in order at any time. Failure to make this announcement does not affect the validity of the legislation being considered.

(2) A conference committee, having conferred, shall report to the respective houses the result of its conference. A conference committee shall confine itself to consideration of the disputed amendment. The committee may recommend:

(a) acceptance or rejection of each disputed amendment in its entirety; or

(b) further amendment of the disputed amendment.

(3) If either house requests a free conference committee and the other house concurs, appointments must be made in the same manner as above. A free conference committee may discuss a bill in its entirety and is not confined to a particular amendment.

30-40. Conference committee — enrolling. A conference committee report must give clerical instructions for a corrected reference bill and for enrolling by referring to the reference bill version.

30-50. Committee consideration of appropriation bills. (1) All bills providing for an appropriation of public money may first be considered by a joint committee composed of the members of the Senate Finance Committee and the House Appropriations Committee, and then by each separately.

(2) Meetings of the joint committee must be held upon call of the chair of the House Appropriations Committee, who is chair of the joint committee.

(3) The committee chair of the Senate Finance Committee or of the House Appropriations Committee may be a voting member in the joint subcommittees if:

(a) either house has fewer members on the joint subcommittees;

(b) the chair represents the house with fewer members on the subcommittees; and

(c) the chair is present for the vote.

30-60. Estimation of revenue. The Revenue and Taxation Committee shall introduce a House joint resolution for the purpose of estimating revenue that may be available for appropriation by the Legislature.

30-70. Appointment of interim committees. As provided for in section 5-5-211(6), MCA, 50% of interim committees must be selected from the following legislative standing committees:

(1) Business and Labor Interim Committee:

(a) Senate Agriculture, Livestock, and Irrigation Committee;

(b) Senate Business and Labor Committee;

(c) Senate Energy and Telecommunications Committee;

(d) Senate Finance Committee;

(e) House Agriculture Committee;

(f) House Business and Labor Committee;

(g) House Federal Relations, Energy, and Telecommunications Committee; and

(h) House Appropriations Committee;

(2) Education Interim Committee:

(a) Senate Education and Cultural Resources Committee;

(b) Senate Local Government Committee;

(c) Senate Finance Committee;

(d) House Education Committee;

(e) House Local Government Committee; and

(f) House Appropriations Committee;

(3) Children, Families, Health, and Human Services Interim Committee:

(a) Senate Public Health, Welfare, and Safety Committee;

(b) Senate Finance Committee;

(c) House Human Services Committee; and

(d) House Appropriations Committee;

(4) Law, Justice, and Indian Affairs Interim Committee:

(a) Senate Judiciary Committee;

(b) Senate Finance Committee;

(c) House Judiciary Committee; and

(d) House Appropriations Committee;

(5) Revenue and Taxation Interim Committee:

(a) Senate Taxation Committee;

(b) Senate Highways and Transportation Committee;

(c) Senate Finance Committee;

(d) House Taxation Committee;

(e) House Transportation Committee; and

(f) House Appropriations Committee;

(6) State Administration, Public Retirement Systems, and Veterans' Affairs Interim Committee:

(a) Senate State Administration Committee;

(b) Senate Finance Committee;

(c) House State Administration Committee; and

(d) House Appropriations Committee.

CHAPTER 40

Legislation

40-10. Amendment to state constitution. A bill must be used to propose an amendment to The Constitution of the State of Montana. The bill is not subject to the veto of the Governor (Montana Constitution, Art. VI, Sec. 10(1)).

40-20. Appropriation bills. (1) All appropriation bills must originate in the House of Representatives.

(2) Appropriation bills for the operation of the Legislature must be introduced by the chair of the House Appropriations Committee.

40-30. Effective dates. (1) Except as provided in subsections (2) through (4), a statute takes effect on October 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(2) A law appropriating public funds for a public purpose takes effect on July 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(3) A statute providing for the taxation or imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed in the enacting legislation.

(4) A joint resolution takes effect on its passage unless a different time is prescribed therein (sections 1-2-201 and 1-2-202, MCA).

40-40. Bill requests and introduction — limits and procedures. (1) Prior to a regular session, a person entitled to serve in that session, hereafter referred to as a "member", is entitled to request bill drafting services from the Legislative Services Division, subject to the following limits:

(a) Prior to 5 p.m. on December 5 preceding a regular session of the Legislature, a member may request an unlimited number of bills and resolutions to be prepared by the Legislative Services Division for introduction in the regular session.

(b) After 5 p.m. on December 5, a member may request no more than seven bills or resolutions to be prepared by the Legislative Services Division. At least five of the seven bills or resolutions must be requested before the regular session convenes.

(c) After December 5, a member, in the member's discretion, may grant to any other member any of the remaining bill or resolution requests the granting member has not used. A bill requested by an individual may not be transferred to another legislator but may be introduced by another legislator.

(d) These limitations on bill and resolution requests do not apply to:

(i) Code Commissioner bills;

(ii) a bill or resolution requested by a standing committee; and

(iii) a bill or resolution requested by a member at the request of a newly elected state official if so designated.

(2) The staff of the Legislative Services Division shall work on bill draft requests in the order received. After a member has requested the drafting of five bills, the sixth bill request and all subsequent bill requests of that member must receive a lower drafting priority than all other bills of members not in excess of five per member. A bill requested pursuant to subsection (5) must receive a lower drafting priority than all bills requested by members, unless the requesting member assigns that request to the member's five-request priority. A legislator draft must receive priority at each step of the drafting process. A legislator draft must be delivered to the Legislative Services Division by the 20th legislative day or the request is canceled. The Speaker of the House, the minority leader of the House, the President of the Senate, and the minority leader of the Senate may each direct the staff of the Legislative Services Division to assign a higher priority to 10 draft requests. The staff of the Legislative Services Division shall assign a higher priority to any bill draft request when jointly directed by:

(a) the President of the Senate, the minority leader of the Senate, the Speaker of the House, and the minority leader of the House; or

(b) the House and the Senate.

(3) Bills and resolutions must be reviewed by the staff of the Legislative Services Division prior to introduction for proper format, style, and legal form. The staff of the Legislative Services Division shall store bills on the automated bill drafting equipment and shall print and deliver them to the requesting members. The original bill cover must be signed to indicate review by the Legislative Services Division. A bill may not be introduced unless it is so signed.

(4) During a session, a bill may be introduced by endorsing it with the name of a member and presenting it to the Chief Clerk of the House of Representatives or the Secretary of the Senate. Bills or joint resolutions may be sponsored jointly by Senate and House members. A jointly sponsored bill must be introduced in the house in which the member whose name appears first on the bill is a member. The chief joint sponsor's name must appear immediately to the right of the first sponsor's name. In each session of the Legislature, bills, joint resolutions, and simple resolutions must be numbered consecutively in separate series in the order of their receipt.

(5) (a) Any bill proposed by an interim or statutory legislative committee or introduced by request of an administrative or executive agency or department must be so indicated by placing after the names of the sponsors the phrase "By Request of the.......... (Name of committee or agency)". The phrase may not be added to an introduced bill and may not be placed on a bill whose subject matter was requested by an agency or statutory or interim committee prior to the convening of the session. Unless requested by an individual member, a bill draft request submitted at the request of an agency must be submitted to, reviewed by, and requested by the appropriate interim or statutory committee. A bill draft request submitted at the request of an agency or committee prior to December 23 must be requested by an individual member by December 23 or the request is placed on hold. After December 23, an agency or committee bill must be requested by an individual member. Except as provided in subsection (5)(b), an

agency or committee bill request must be preintroduced or the request is canceled. Preintroduction must occur no later than 5 p.m. on the fifth working day prior to the convening of a legislative session. Preintroduction is accomplished when the Legislative Services Division receives a signed preintroduction form.

(b) The preintroduction requirement does not apply to an office held by an elected official during the official's first year in that office or to bills requested by a joint select or joint special committee appointed prior to the convening of the legislative session to address a specific issue.

(6) Bills may be preintroduced, numbered, and reproduced prior to a legislative session by the staff of the Legislative Services Division. Actual signatures of persons entitled to serve as members in the ensuing session may appear on the face of the preintroduced bill, or signatures may be obtained on a consent form from the Legislative Services Division and the sponsor's name printed on the bill. Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill. These names will be forwarded to the Legislative Services Division to be included on the face of the bill following standing committee approval.

40-50. Schedules for drafting requests and bill introduction. The following schedules must be followed for submission of drafting requests and introduction of bills and resolutions.

	Request Deadline 5:00 P.M. Legislative Day
• General Bills and Resolutions	10
• Revenue Bills	17
• Committee Bills and Resolutions	36
• Committee Revenue Bills	62
• Committee Bills implementing provisions of a general appropriation act	75
• Bills and Resolutions must be introduced within 2 legislative days after delivery.	
• Appropriation Bills	No Deadline
• Interim study resolutions	75
• Resolutions to express confirmation of appointments	No Deadline
• Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules	No Deadline

40-60. Joint resolutions. (1) A joint resolution must be adopted by both houses and is not approved by the Governor. It may be used to:

(a) express desire, opinion, sympathy, or request of the Legislature;

(b) request, but not require, a legislative entity to conduct an interim study;

(c) adopt, amend, or repeal the joint rules;

(d) set salaries and other terms of employment for legislative employees;

(e) approve construction of a state building under section 18-2-102 or 20-25-302, MCA;

(f) deal with disasters and emergencies under Title 10, specifically as provided in sections 10-3-302(3), 10-3-303(3), 10-3-303(4), and 10-3-505(5), MCA;

(g) submit a negotiated settlement under section 39-31-305(3), MCA;

(h) declare or terminate an energy emergency under section 90-4-310, MCA;

(i) ratify or propose amendments to the United States Constitution; or

(j) advise or request the repeal, amendment, or adoption of a rule in the Administrative Rules of Montana.

(2) A joint resolution may not be used for purposes of congratulating or recognizing an individual or group achievement. Recognition of individual or group achievements is handled on special orders of the day.

(3) Except as otherwise provided in these rules or The Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

(4) A copy of every joint resolution must be transmitted after adoption to the Secretary of State by the Secretary of the Senate or the Chief Clerk of the House.

40-65. Appropriation required for bills requesting interim studies. A bill including a request for an interim study may not be transmitted to the Governor unless the bill contains an appropriation sufficient to conduct the study. A fiscal note may be requested for a bill requesting an interim study if the appropriation does not appear to be sufficient.

40-70. Bills with same purpose — vetoes. (1) A bill may not be introduced or received in a house after that house, during that session, has finally rejected a bill designed to accomplish the same purpose, except with the approval of the Rules Committee of the house in which the bill is offered for introduction or reception.

(2) Failure to override a veto does not constitute final rejection.

40-80. Reproduction of full statute required. A statute may not be amended or its provisions extended by reference to its title only, but the statute section that is amended or extended must be reproduced or published at length.

40-90. Bills — original purpose. A law may not be passed except by bill. A bill may not be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution, Art. V, Sec. 11(1)).

40-100. Fiscal notes. (1) As provided in Title 5, chapter 4, part 2, MCA, all bills reported out of a committee of the Legislature having a potential effect on the revenues, expenditures, or fiscal liability of the state, local governments, or public schools, except appropriation measures carrying specific dollar amounts, must include a fiscal note incorporating an estimate of the fiscal effect. The

Legislative Services Division staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes must be requested by the presiding officer of either house, who, at the time of introduction or after adoption of substantive amendments to an introduced bill, shall determine the need for the note, based on the Legislative Services Division staff recommendation.

(2) Unless the chief sponsor directs otherwise, the Legislative Services Division shall make available an electronic copy of any bill for which it has been determined a fiscal note may be necessary to the Budget Director immediately after the bill has been prepared for introduction and delivered to the requesting member. The Budget Director may proceed with the preparation of a fiscal note in anticipation of a subsequent formal request. A bill with financial implications for a local government or school district must comply with subsection (4).

(3) The Budget Director, in cooperation with the governmental entity or entities affected by the bill, is responsible for the preparation of the fiscal note. Except as provided in subsection (4), the Budget Director shall return the fiscal note within 6 days unless further time is granted by the presiding officer or committee making the request, based upon a written statement from the Budget Director that additional time is necessary to properly prepare the note.

(4) (a) A bill that may require a local government or school district to perform an activity or provide a service or facility that requires the direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of section 1-2-112 or 1-2-113, MCA, must be accompanied, at the time that the bill is presented for introduction, by an estimate of all direct and indirect fiscal impacts on the local government or school district. The estimate of the fiscal impacts must be prepared by the Budget Director in cooperation with a local government or school district affected by the bill.

(b) The Budget Director has 8 days to prepare the estimate unless further time is granted by the presiding officer, based upon a written statement from the Budget Director that additional time is necessary to properly prepare the estimate. Upon completion of the estimate, the Budget Director shall submit it to the presiding officer and the chief sponsor of the bill.

(5) A completed fiscal note must be submitted by the Budget Director to the presiding officer who requested it. The presiding officer shall notify the bill's chief sponsor of the completed fiscal note and request the chief sponsor's signature. The chief sponsor has 1 legislative day after delivery to review the fiscal note and to discuss the findings with the Budget Director, if necessary. After the legislative day has elapsed, all fiscal notes must be reproduced and placed on the members' desks, either with or without the chief sponsor's signature.

(6) A fiscal note must, if possible, show in dollar amounts:

(a) the estimated increase or decrease in revenues or expenditures;

(b) costs that may be absorbed without additional funds; and

(c) long-range financial implications.

(7) The fiscal note may not include any comment or opinion relative to merits of the bill. However, technical or mechanical defects in the bill may be noted.

(8) A fiscal note also may be requested, through the presiding officer, on a bill and on an amended bill by:

(a) a committee considering the bill;

(b) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or

(c) the chief sponsor.

(9) The Budget Director shall make available on request to any member of the Legislature all background information used in developing a fiscal note.

(10) If a bill requires a fiscal note, the bill may not be reported from a committee for second reading unless the bill is accompanied by the fiscal note.

40-110. Sponsor's fiscal note. (1) If a sponsor elects to request the preparation of a sponsor's fiscal note pursuant to section 5-4-204, MCA, the sponsor shall make the election as provided and return the completed sponsor's fiscal note to the presiding officer within 4 days of the election.

(2) The presiding officer may grant additional time to the sponsor for preparation of the sponsor's fiscal note.

(3) Upon receipt of the completed sponsor's fiscal note, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the note must be identified as a sponsor's fiscal note, reproduced, and placed on the members' desks.

(4) The Legislative Services Division shall provide forms for preparation of sponsors' fiscal notes and shall print the completed sponsors' fiscal notes on a different color paper than the fiscal notes prepared by the Budget Director.

40-120. Substitute bills. (1) A committee may recommend that every clause in a bill be changed and that entirely new material be substituted so long as the new material is relevant to the title and subject of the original bill. The substitute bill is considered an amendment and not a new bill.

(2) The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the material following the enacting clause, to substitute the new material, and to recommend any necessary changes in the title of the bill.

(3) If a committee report is adopted that recommends a substitute for a bill originating in the other house, the substitute bill must be printed and reproduced.

40-130. Reading of bills. Prior to passage, a bill, other than a bill requested by a joint select or joint special committee as provided in 40-40(5)(b), must be read three times in the house in which it is under consideration. It may be read either by title or by summary of title.

40-140. Second reading — bill reproduction. (1) If the majority of a house adopts a recommendation for the passage of a bill originating in that house after the bill has been returned from a committee with amendments, the bill must be reproduced on yellow paper with all amendments incorporated into the copies.

(2) If a bill has been returned from a committee without amendments, only the first sheet must be reproduced on yellow paper, and the remainder of the text may be incorporated by reference to the preceding version of the entire bill.

(3) A bill requested by and heard by a joint select or joint special committee, as provided in 40-40(5)(b), may be referred directly to second reading. If the bill is passed by the house of origin, the bill must be transmitted to the other house, and

if the bill was not amended, it may be placed on second reading without the need for referral to a committee.

40-150. Engrossing. (1) When a bill has been reported favorably by Committee of the Whole of the house in which it originated and the report has been adopted, the bill must be engrossed. Committee of the Whole amendments must be included in the engrossed bill. The bill must be placed on the calendar for third reading on the legislative day after receipt.

(2) Copies of the engrossed bill to be distributed to members are reproduced on blue paper. If a bill is unamended by the Committee of the Whole and contains no clerical errors, it is not required to be reprinted. Only the first sheet must be reproduced on blue paper, with the remainder of the text incorporated by reference to the preceding version of the entire bill.

(3) If a bill is amended by a standing committee in the second house, the amendments must be included in a tan-colored bill and distributed in the second house for second reading consideration. If the bill is amended in Committee of the Whole, the amendments must be included in a salmon-colored reference bill and distributed in the second house for third reading. If the bill passes on third reading, copies of the reference bill must be distributed in the original house. The original house may request from the second house a specified number of copies of the amendments to be printed.

40-160. Enrolling. (1) When a bill has passed both houses, it must be enrolled. An original and two duplicate printed copies of the bill must be enrolled, free from all errors, with a margin of two inches at the top and one inch on each side. In sections amending existing statutes, new matter must be underlined and deleted matter must be shown as stricken.

(2) When the enrolling is completed, the bill must be examined by the sponsor.

(3) The correctly enrolled bill must be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall sign the original and two copies of each bill not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the last legislative day, in which case the presiding officer shall sign it that day. The fact of signing must be announced by the presiding officer and entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies a desire to examine the bill, the member must be permitted to do so. The bill then must be transmitted to the other house where the same procedure must be followed.

(4) A bill that has passed both houses of the Legislature by the 90th day may be:

(a) enrolled;

(b) clerically corrected by the presiding officers, if necessary;

(c) signed by the presiding officers; and

(d) delivered to the Governor or, in the case of a bill proposing a referendum, to the Secretary of State, not later than 5 working days after the 90th legislative day.

(5) All journal entries authorized under this rule must be entered on the journal for the 90th day.

(6) The original and two copies signed by the presiding officer of each house must be presented to the Governor or the Secretary of State, as applicable, in return for a receipt. A report then must be made to the house of the day of the presentation, which must be entered on the journal.

(7) The original must be filed with the Secretary of State. Signed copies with chapter numbers assigned pursuant to section 5-11-204, MCA, must be filed with the Clerk of the Supreme Court and the Legislative Services Division.

40-170. Amendment by second house. (1) Amendments to a bill by the second house may not be further amended by the house in which the bill originated, but must be either accepted or rejected. If the amendments are rejected, a conference committee may be requested by the house in which the bill originated. If the amendments are accepted and the bill is of a type requiring more than a majority vote for passage, the bill again must be placed on third reading in the house of origin.

(2) The vote on third reading after concurrence in amendments is the vote of the house of origin that must be used to determine if the required number of votes has been cast.

40-180. Final action on a bill. (1) When a bill being heard by the second house has received its third reading or has been rejected, the second house shall transmit it as soon as possible to the original house with notice of the second house's action.

(2) A bill that reduces revenue and that contains a contingent voidness provision may not be transmitted to the Governor unless there is an identified corresponding reduction in an appropriation contained in the general appropriations act.

40-190. Transmittal of bills between houses. (1) Each house shall transmit to the other with any bill all relevant papers.

(2) When a House bill is transmitted to the Senate, the Secretary of the Senate shall give a dated receipt for the bill to the Chief Clerk of the House. When a Senate bill is transmitted to the House of Representatives, the Chief Clerk of the House shall give a dated receipt to the Secretary of the Senate.

40-200. Transmittal deadlines. (1) (a) A bill or amendment transmitted after the deadline established in this subsection (1) may be considered by the receiving house only upon approval of two-thirds of its members present and voting. If the receiving house does not so vote, the bill or amendment must be held pending in the house to which it was transmitted.

(b) (i) A bill, except for an appropriation bill, a revenue bill, or amendments considered by joint committee, must be transmitted from one house to the other on or before the 45th legislative day.

(ii) Amendments, except to appropriation bills and revenue bills, must be transmitted from one house to the other on or before the 73rd legislative day.

(c) (i) Revenue bills originating in the Senate must be transmitted to the House on or before the 71st legislative day.

(ii) House amendments to Senate revenue bills must be transmitted by the House to the Senate on or before the 82nd legislative day.

(iii) Revenue bills originating in the House must be transmitted to the Senate on or before the 71st legislative day.

(iv) Senate amendments to House revenue bills must be transmitted by the Senate to the House on or before the 82nd legislative day.

(v) A revenue bill is one that either increases or decreases revenue.

(d) (i) Appropriation bills and any bill implementing provisions of a general appropriation bill must be transmitted to the Senate on or before the 67th legislative day.

(ii) Senate amendments to appropriation bills must be transmitted by the Senate to the House on or before the 80th legislative day.

(2) (a) A joint resolution introduced for the purpose of estimating revenue available for appropriation by the Legislature must be transmitted no later than the 60th legislative day.

(b) Amendments to the resolutions must be transmitted to the house of origin no later than the 82nd legislative day.

(3) Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules may be transmitted at any time during a session.

(4) Interim study resolutions must be transmitted from one house to the other on or before the 85th legislative day.

40-210. Governor's veto. (1) Except as provided in 40-65 and 40-180, each bill passed by the Legislature must be submitted to the Governor for the Governor's signature. This does not apply to:

(a) bills proposing amendments to The Constitution of the State of Montana;

(b) bills ratifying proposed amendments to the United States Constitution;

(c) resolutions; and

(d) referendum measures of the Legislature.

(2) If the Governor does not sign or veto the bill within 10 days after its delivery, the bill becomes law.

(3) The Governor shall return a vetoed bill to the Legislature with a statement of reasons for the veto.

(4) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it becomes law.

(5) If the Legislature is not in session when the Governor vetoes a bill, the Governor shall return the bill with reasons for the veto to the Legislature as provided by law. The Legislature may be polled on a bill that it approved by two-thirds of the members present or it may be reconvened to reconsider any bill so vetoed (Montana Constitution, Art. VI, Sec. 10).

(6) The Governor may veto items in appropriation bills, and in these instances the procedure must be the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

40-220. Response to Governor's veto. (1) When the presiding officer receives a veto message, the presiding officer shall read it to the members over the rostrum. After the reading, a member may move that the Governor's veto be overridden.

(2) A vote on the motion is determined by roll call. If two-thirds of the members present vote "aye", the veto is overridden. If two-thirds of the members present do not vote "aye", the veto is sustained.

40-230. Governor's recommendations for amendment. (1) The Governor may return any bill to the Legislature with recommendations for amendment.

(2) If the Legislature passes the bill in accordance with the Governor's recommendations, it shall return the bill to the Governor for reconsideration. The Governor may not return a bill to the Legislature a second time for amendment.

(3) If the Governor returns a bill to the originating house with recommendations for amendment, the house shall reconsider the bill under its rules relating to amendments offered in Committee of the Whole.

(4) The bill then is subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in Committee of the Whole, the bill and the originating house's approval or disapproval of the Governor's recommendations.

(b) If both houses approve the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(c) If both houses disapprove the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(d) If one house disapproves the Governor's recommendations and the other house approves, then either house may request a conference committee, which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report must be returned to the Governor for reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the Governor's recommendations must be considered not approved and the bill must be returned to the Governor for further consideration.

CHAPTER 60

Rules

60-10. Suspension of joint rule — change in rules. (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any Rules Committee report recommending a change in the joint rules must be referred to the other house. Any new rule or any change in the rules of either house must be transmitted to the other house for informational purposes.

(4) Upon adoption of any change, the Secretary of the Senate and the Chief Clerk of the House of Representatives shall provide the office of the Legislative Services Division:

(a) one copy of all motions or resolutions amending Senate, House, or joint rules; and

(b) copies of all minutes and reports of the Rules Committees.

60-20. Reference to Mason's Manual. Mason's Manual of Legislative Procedure (2000) governs the proceedings of the Senate and the House of Representatives in all cases not covered by these rules.

60-30. Publication and distribution of joint rules. (1) The Legislative Services Division shall codify and publish in one volume:

(a) the rules of the Senate;

(b) the rules of the House of Representatives; and

(c) the joint rules of the Senate and the House of Representatives.

(2) After the rules have been published, the Legislative Services Division shall distribute copies as directed by the Senate and the House of Representatives.

Adopted January 10, 2001

SENATE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND THE DEPARTMENT OF CORRECTIONS TO COORDINATE AND COLLABORATE WITH STATE AGENCIES, LOCAL GOVERNMENTS, AND THE JUDICIARY REGARDING TRAINING AND EDUCATION PROGRAMS ON ISSUES SURROUNDING PERSONS WITH MENTAL ILLNESS AND THE CRIMINAL JUSTICE AND CORRECTIONS SYSTEMS.

WHEREAS, the United States Constitution and the Montana Constitution have been interpreted to protect the rights of persons with mental illness and to require that appropriate medical and mental health care and correctional standards provide guidance in this area; and

WHEREAS, the United States Department of Justice concluded in a 1999 study that 16% of inmates in prisons and jails suffer from a mental or emotional condition and have been identified as mentally ill and that only 6 in 10 mentally ill state prison inmates report receiving treatment for mental illness since admission to prison; and

WHEREAS, in Montana, it is estimated that there are between 300 and 400 male inmates at Montana State Prison and other inmates at the Montana Women's Prison and the regional correctional facilities who suffer from mental illness and who have all been arrested, detained, adjudicated, and incarcerated at the county level; and

WHEREAS, law enforcement officers are often the first responders when a disturbance occurs in the community, and without training in recognizing mental illness, appropriate action may not be taken and appropriate diversion or treatment may not be initiated; and

WHEREAS, recently, the Montana Law Enforcement Academy changed its curriculum to provide a 2-hour session on mental illness in its 35 hours of basic training on police function and human behavior, but no further training or continuing education on mental illness is required; and

WHEREAS, deinstitutionalization of state mental hospitals over the past 35 years, the lack of development of sufficient community services, and heightened law enforcement in response to increased crime rates have led to a criminalization of people with mental illness; and

WHEREAS, incarceration in jails and prisons has consumed greater federal, state, and local resources, while further development and maintenance of existing crisis beds, community diversion, and treatment programs could be more humane and cost-effective; and

WHEREAS, the Mental Health Oversight Advisory Council, created by Senate Bill No. 534 (Chapter 577, Laws of 1999) to advise the Department of Public Health and Human Services, recommended training for law enforcement personnel, education for other groups that interface with the mentally ill, and a standardized screening tool for use in state and local detention facilities; and

WHEREAS, the Department of Public Health and Human Services has requested funding for a mental health law enforcement liaison and has been working with the Department of Corrections.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Public Health and Human Services and the Department of Corrections are requested to coordinate and collaborate with the Department of Justice, the Montana Board of Crime Control, the Peace Officer Standards and Training Council, District Courts, courts of limited jurisdiction, the State Bar of Montana, the Community Mental Health Centers, and other mental health professionals to develop, coordinate, and integrate training on issues regarding mental illness and other co-occurring disorders that present themselves in persons at various stages of the criminal justice system. This training is necessary to protect the rights of persons with mental illness, to provide appropriate treatment in the least restrictive setting, to protect all members of society, and to use the resources of local and state government in the most effective manner.

BE IT FURTHER RESOLVED, that it is requested that the administrators and line staff in law enforcement, adult and juvenile detention, courts of limited jurisdiction, District Courts, prosecution and defense counsel, adult and juvenile corrections, and adult and juvenile probation and parole receive training and education on issues regarding persons with mental illness and co-occurring disorders. The mental health community, including the Community Mental Health Centers and other mental health professionals, should receive training on the issues from the legal, criminal justice, and corrections' perspectives. Advocacy groups for persons with mental illness, victims, and family members of victims and offenders should be involved in the training and education.

BE IT FURTHER RESOLVED, that it is requested that training and education issues include signs and symptoms of mental illness, emotional disturbance, and co-occurring disorders; the response towards and management of persons suffering from mental illness, emotional disturbance, and co-occurring disorders; crisis intervention; assessment and screening; suicide prevention and education; medication and treatment; the distinct needs of males and females, children, and adults; community resources; appropriate resources and referrals; and discharge planning.

BE IT FURTHER RESOLVED, that it is requested that training and education issues include discussions of the misperceptions, stereotypes, and stigma attached to mental illness and discussions of training needed to assist professionals in their day-to-day practice.

BE IT FURTHER RESOLVED, that it is requested that training and education issues include legal processes and alternatives available, such as involuntary commitments, advance directives, or a commitment to a community facility, program, or course of treatment; legal protections of persons with mental illness; constitutional and statutory responsibilities; and potential liabilities of state and local governments in incarcerating persons with mental illness.

BE IT FURTHER RESOLVED, that the legal community should be involved in specific training on changes in statutes and practices, in standardizing practices across the state, and in awareness of current processes that exist but that have been ignored or underused.

BE IT FURTHER RESOLVED, that it is requested that other groups, such as the mental health community, the developmental disabilities community, vocational rehabilitation providers, public assistance and child protective caseworkers, substance abuse counselors, and others whose clients are affected by mental illness, receive training and education on issues regarding mental illness and co-occurring disorders.

BE IT FURTHER RESOLVED, that it is requested that training of law enforcement administration and line staff be coordinated and certified by the Peace Officers and Standards Training Council and integrated into a continuum of training and education for new officers and for officers who have been in law enforcement for whom continuing education is more appropriate.

BE IT FURTHER RESOLVED, that it is requested that training be delivered in home communities or regionally, to the extent possible, to assist in the development of community integration and to mitigate costs to local governments.

Adopted March 31, 2001

SENATE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE FEDERAL GOVERNMENT TO CONTINUE TO ENTER INTO AGREEMENTS WITH LOCAL GROUPS AND AGENCIES TO PROMOTE THE CONTROL OF NOXIOUS WEEDS IN A MANNER THAT ADDRESSES LOCALLY IDENTIFIED PRIORITIES, TO CONTINUE TO PROVIDE FUNDING FOR LOCAL WEED CONTROL PROGRAMS ON AN ANNUAL AND CONTINUING BASIS, AND TO PROVIDE ASSISTANCE IN HELPING LOCAL GROUPS AND AGENCIES ACCESS FEDERAL WEED CONTROL PROGRAMS AND PROCURE AVAILABLE FEDERAL WEED CONTROL FUNDS.

WHEREAS, noxious weeds are invasive species that are very difficult to contain or eliminate once they are established; and

WHEREAS, noxious weeds are invading Montana's rangeland, forest land, waterways, cities, towns, private lands, and public lands, including National Parks and monuments; and

WHEREAS, noxious weeds replace native species on lands regardless of land ownership and land ownership boundaries; and

WHEREAS, Montana's citizens and Legislature have made significant contributions and commitments toward reducing the acreage infested by noxious weeds and controlling any new invasions; and

WHEREAS, current working agreements between public land management agencies and county weed districts and other local groups are generally successful in addressing the control or containment of noxious weeds on public lands; and

WHEREAS, noxious weeds are a continuous problem that must be addressed on an annual basis and are never truly eradicated from the ecosystem; and

WHEREAS, public land management agencies should, at a minimum, contribute financially to the control of noxious weeds in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the federal government be strongly urged to:

(1) enter into agreements with local groups and agencies to promote the control of noxious weeds in a manner that addresses locally identified priorities;

(2) continue to provide funding for local weed control programs on an annual and continuing basis; and

(3) provide assistance in helping local groups and agencies access federal weed control programs and procure available federal weed control funds.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the President of the United States, the Vice President of the United States, the Secretary of Agriculture, the Secretary of the Interior, the presiding officers of the Appropriations Committees of the U.S. Senate and U.S. House of Representatives, the Montana Congressional Delegation, the Chief of the Forest Service, the Director of the Bureau of Reclamation, and the Director of the Bureau of Land Management.

Adopted March 17, 2001

SENATE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A LEGISLATIVE STUDY OF CERTAIN VETERANS' ISSUES; URGING THE APPROPRIATE INTERIM COMMITTEE TO INCLUDE VETERANS' ORGANIZATIONS IN THE STUDY PROCESS; REQUESTING STAFF SUPPORT; AND REQUESTING A REPORT OF FINDINGS AND RECOMMENDATIONS.

WHEREAS, Montana is home to more than 100,000 veterans potentially eligible for federal benefits, which ranks Montana 10th in the number of veterans per capita; and

WHEREAS, resource allocation decisions limit the funding available to the U.S. Department of Veterans Affairs (VA) Montana health care system and require local administrators to set priorities; and

WHEREAS, the Montana Legislature appropriates public funds for programs that encompass services to Montana's veterans and also sets priorities; and

WHEREAS, some resource allocation decisions may inadvertently shift costs to other programs; and

WHEREAS, the Subcommittee on Military and Veterans' Affairs has found that veteran participation in discussions about fiscal and policy priorities is not only desirable for proper consideration of veterans' concerns but essential to bridging the gulf between service providers and veterans whose disabilities make it difficult for them to access those services; and

WHEREAS, the Subcommittee on Military and Veterans' Affairs has found that federal grant money may be available to help coordinate federal, state, and local services and to maximize the effective use of current resources; and

WHEREAS, the Subcommittee on Military and Veterans' Affairs has found that the release of VA medical records to the Federal Bureau of Investigation is a matter of concern; and

WHEREAS, twice as many veterans as nonveterans experience homelessness at some time during the course of a year and, because of complex and overlapping needs, a broader range of service coordination, advocacy, and intervention is required; and

WHEREAS, the Subcommittee on Military and Veterans' Affairs has found that an in-depth and systematic legislative examination of these issues is desirable.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee pursuant to section 5-5-217, MCA, to:

(1) identify how regional priorities are set and local resource allocation decisions are made by the U.S. Department of Veterans Affairs (VA) and the VA Montana health care system;

(2) consider the extent to which certain resource allocation decisions may shift costs and explore what actions could be taken to assess and mitigate unintended consequences;

(3) explore how the concerns of Montana's veterans can best be represented when fiscal and policy priorities are set;

(4) stay informed about whether veterans are being denied rights as a result of VA medical records being released to the Federal Bureau of Investigation;

(5) explore options for establishing a statewide homeless veterans' coordinator, a veterans' ombudsman, or other veterans' program to coordinate veteran-related services and identify the state agency under which the coordinator, ombudsman, or other program should be established;

(6) explore options for designing a grant program to capture available federal funds to support Montana's veterans' services;

(7) examine the state statutory definitions of "veteran" in context with more recent U.S. military operations, such as the peacekeeping mission in Kosovo; and

(8) study other emerging issues relevant to veterans' needs.

BE IT FURTHER RESOLVED, that in order to facilitate a broad-based study process, the interim committee be encouraged to seek out and welcome the participation of representatives of Congressionally chartered and recognized veterans' service organizations.

BE IT FURTHER RESOLVED, that the U.S. Department of Veterans Affairs, the Montana Veterans' Affairs Division, the Montana Department of Military Affairs, the Montana Department of Public Health and Human Services, and other appropriate public and private entities be urged to cooperate with and participate in this study process.

BE IT FURTHER RESOLVED, that the interim committee receive legislative staff support not only from the Legislative Services Division, but also from the Legislative Audit and Legislative Fiscal Divisions; that legislative staff be encouraged to interface with the staff of Montana's Congressional Delegation as appropriate; and that the interim committee report its findings, conclusions, and any recommended legislation to the 58th Legislature and to Montana's Congressional Delegation.

Adopted March 1, 2001

SENATE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA THAT AN INTERIM COMMITTEE BE ASSIGNED OR SUFFICIENT STAFF RESOURCES BE DIRECTED TO STUDY AND REVISE TRAFFIC CODES TO PROVIDE CLARITY AND UNIFORMITY; AND REQUESTING THAT A BILL BE PREPARED CONTAINING THE PROPOSED REVISIONS TO PRESENT TO THE 58TH LEGISLATURE.

WHEREAS, traffic regulation statutes found in Title 61, chapter 8, of the Montana Code Annotated have ambiguities that warrant clarification; and

WHEREAS, the traffic codes have not been kept current with the revisions in the Uniform Vehicle Code; and

WHEREAS, it is in the public's interest for there to be clarity and uniformity in the state's traffic laws.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council designate an appropriate interim committee or direct sufficient staff resources to:

(1) study the existing traffic laws contained in Title 61, chapter 8, Montana Code Annotated, to identify areas of ambiguity;

(2) compare the existing traffic laws to the currently existing Uniform Vehicle Code;

(3) identify differences between the laws contained in Title 61, chapter 8, Montana Code Annotated, and the provisions of the Uniform Vehicle Code for the purposes of preparing legislation to present to the 58th Legislature.

BE IT FURTHER RESOLVED, that the constructive input of the Department of Transportation, the Department of Justice, local government representatives, and other interested persons be sought in the process of evaluating the current traffic laws and recommending changes to those laws.

BE IT FURTHER RESOLVED, if staff resources are directed to conduct the study, that the staff assigned to the study report on a regular basis to an appropriate interim committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that draft legislation be prepared for presentation to the 58th Legislature that encompasses any proposed changes to the current laws resulting from this study.

Adopted April 5, 2001

SENATE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A LEGISLATIVE INTERIM STUDY OF THE PRIVATIZATION OF FOSTER CARE AND ADOPTION SERVICES.

WHEREAS, Montana has approximately 2,100 children in out-of-home placement served by a child and protective services agency that is underfunded and understaffed and this has adverse affects on the length of time that children stay in foster care;

WHEREAS, states such as Michigan, Texas, Kansas, and North Dakota have various examples of privatization in foster care and adoption services that have resulted in increased permanent placements in shorter periods of time at reduced costs; and

WHEREAS, although most of the provider placements in Montana are in the private sector, the administration of foster care and adoption services is under government control; and

WHEREAS, research has found that outcome orientation, competition, rewards for good performance, and outside monitoring and independent evaluation are factors that are most closely associated with success in the privatization of foster care and adoption services; and

WHEREAS, privatization of additional foster care and adoption services should be studied to determine whether Montana should pilot a privatization program in foster care and adoption services.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study the privatization of foster care and adoption services.

BE IT FURTHER RESOLVED, that the study may consider but not be limited to a review of:

(1) what other states have done;

(2) which types of foster care and adoption services are already privatized and which may be appropriate to privatize, including adoption, foster care, family preservation services, case management, training, information management, administration, licensing, and regulation;

(3) the types of private or public organizations that would be allowed to conduct privatized foster care and adoption services;

(4) performance standards, such as permanency placement rates, child safety, client satisfaction, minimal placement and movement for children, and rate of sibling placement together;

(5) nonrecidivism by juvenile offenders who are foster children;

(6) contract standards and enforcement;

(7) payment and reimbursement issues, including incentives and adjustments for performance;

(8) impacts on the current state employees involved in foster care and adoption administration and services;

(9) the extent to which changes in the state agency, based on findings regarding privatization, may provide the same benefits as privatization; and

(10) other issues such as access to state databases and data transfer issues.

BE IT FURTHER RESOLVED, that input from representatives of the Montana State Foster/Adoptive Parent Association, the Montana Chapter of the National Association of Social Workers, licensed child-placing agencies, licensed adoption agencies, and mental health centers be sought in conducting the study.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate interim committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2002.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate interim committee, be reported to the 58th Legislature.

Adopted April 5, 2001

SENATE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMEMORATING THE 20TH ANNIVERSARY OF THE SISTER STATE RELATIONSHIP BETWEEN MONTANA AND THE JAPANESE PREFECTURE OF KUMAMOTO ON JULY 22, 2002.

WHEREAS, in 1979, Ambassador to Japan Mike Mansfield and his wife Maureen began discussions between the State of Montana and the Japanese

Prefecture of Kumamoto, eventually leading to the signing of a sister state agreement between Montana and Kumamoto on July 22, 1982; and

WHEREAS, the governments of Montana and Kumamoto have participated in a staff exchange program since 1984, leading to the establishment of a Montana trade representative office in Kumamoto in 1990 and the establishment of Kumamoto Plaza, a Japanese cultural resource center, in Helena in 1992; and

WHEREAS, formal agreements have been created between institutions of higher education, including The University of Montana-Missoula, Montana State University-Bozeman, and Carroll College, numerous public schools, and radio and television stations in Kumamoto and Montana; and

WHEREAS, delegations traveling between Montana and Kumamoto since 1982 have included citizens, government leaders, legislators, Native Americans, people with disabilities, college professors and students, public school teachers and students, business and medical professionals, environmental specialists, artists, performers, and journalists in the print and broadcast media; and

WHEREAS, private nonprofit and community service entities in Montana, including Rotary International District 5390, the Japan Friendship Club, the Missoula Children's Theater, the Helena Youth Choir, the Dillon Fiddlers, and the Helena Babe Ruth Baseball program, have sent delegations to Kumamoto and, in return, welcomed Kumamoto delegations to Montana; and

WHEREAS, citizens in Montana and Kumamoto have opened their homes to visitors, housed students, and otherwise demonstrated their friendship and generosity to people from their sister state; and

WHEREAS, the citizens of Kumamoto, especially those of the Montana Club, have made extraordinary contributions to the sister state relationship by raising money for Montana forest fire relief, by helping commission a statue of Mike Mansfield for the Capitol in Helena, and by facilitating the decoration of Kumamoto city buses with images by Montana artist Monte Dolack; and

WHEREAS, Kumamoto has helped Montana broaden its presence in Asia by hosting the 2000 Mansfield Retreat, by promoting Montana-made products, and by facilitating Montana's new sister state relationship with the Guangxi Zhuang Autonomous Region in China; and

WHEREAS, it is important that the Montana Legislature act to commemorate the upcoming 20th anniversary of the Montana-Kumamoto sister state relationship on July 22, 2002.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature sends its warm greetings and a message of sincere appreciation to the people of Kumamoto Prefecture for the generosity, international assistance, and many other acts of kindness they have extended to the people of Montana since the beginning of the sister state relationship.

BE IT FURTHER RESOLVED, that the people of Kumamoto are encouraged to continue their participation in exchanges, visits, and other communications with the government and the people of Montana in order to foster an even greater appreciation and understanding of our cultures and people and the natural beauty of our respective lands.

BE IT FURTHER RESOLVED, that, by the passage of this resolution, the creation of the Montana-Kumamoto sister state relationship in 1982 is celebrated by the Montana Legislature as Montana and Kumamoto Prefecture approach the 20th anniversary of that relationship on July 22, 2002.

BE IT FURTHER RESOLVED, that the Secretary of State send an original copy of this resolution to the Honorable Tsuyoshi Kurashige, Chairman of the Prefectural Assembly of Kumamoto Prefecture, with a request that this resolution be brought to the attention of the Assembly, Governor Yoshiko Shiotani, and the people of Kumamoto.

Adopted April 2, 2001

SENATE JOINT RESOLUTION NO. 10

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF REGENTS AND THE CHANCELLOR OF MONTANA TECH OF THE UNIVERSITY OF MONTANA TO DIRECT THE SCHOOL OF MINES AND ENGINEERING TO STUDY AN ECONOMICAL PROCESS FOR MINING GOLD AND SILVER THAT DOES NOT REQUIRE THE USE OF CYANIDE HEAP LEACHING AND TO ENCOURAGE STUDENTS ATTENDING THE SCHOOL OF MINES AND ENGINEERING IN THE FIELDS OF GEOLOGICAL ENGINEERING, METALLURGICAL AND MATERIALS ENGINEERING, AND MINING ENGINEERING AT MONTANA TECH OF THE UNIVERSITY OF MONTANA TO PARTICIPATE IN AN INTERNSHIP PROGRAM AT A MONTANA GOLD OR SILVER MINE OPERATION.

WHEREAS, with approval of Initiative Measure No. 137 on November 3, 1998, the people of Montana statutorily prohibited all mines permitted after November 3, 1998, from using heap leaching or vat leaching with cyanide ore-processing reagents in open-pit mining for gold or silver; and

WHEREAS, as a result of passage of Initiative Measure No. 137, it is critical for the economy of the State of Montana that a new and economical process be developed to mine gold and silver without use of cyanide ore-processing reagents; and

WHEREAS, it is also critical that students graduating from the School of Mines and Engineering at Montana Tech of the University of Montana be provided with opportunities to develop and apply new mining and reclamation technology through required internship at gold and silver mining operations in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Board of Regents and the Chancellor of Montana Tech of the University of Montana direct the School of Mines and Engineering to:

(1) encourage the study of an economical process for mining gold and silver that does not require the use of cyanide heap leaching; and

(2) encourage each student attending the School of Mines and Engineering in the fields of geological engineering, metallurgical and materials engineering, and

mining engineering to participate in an internship program at a Montana gold or silver mine operation.

Adopted March 31, 2001

SENATE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA OPPOSING THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION'S PROPOSED HOURS OF SERVICE REGULATIONS.

WHEREAS, the trucking industry employs more than 9 million people, delivers 80% of the national freight measured by value, and is the exclusive provider of freight services to 75% of the communities in the United States; and

WHEREAS, the trucking industry is a critical component of the United States economy; and

WHEREAS, truck safety is an important public policy concern; and

WHEREAS, the current federal regulations that are meant to reduce truck driver fatigue are outdated, counterproductive, and in need of revision; and

WHEREAS, the Federal Motor Carrier Safety Administration (FMCSA) recently issued a Notice of Proposed Rulemaking regarding the federal hours of service rules for commercial drivers; and

WHEREAS, the FMCSA's proposal would decrease the overall number of hours that a truck driver could work, requiring the addition of more trucks and drivers to deliver the nation's freight; and

WHEREAS, this impact would likely compromise safety by generating more exposure to crashes, putting less experienced drivers on the road, exacerbating the shortage of rest area parking spaces, and creating long periods of idle time for truck drivers; and

WHEREAS, under the proposed changes, the increased costs generated by the need for additional trucks and drivers, as well as operational changes, would inflate delivery expenses and raise business and consumer costs; and

WHEREAS, the proposal requires some trucks to carry on-board recorders for enforcing the hours of service regulations; and

WHEREAS, this requirement is unlikely to impact safety and raises serious, legitimate concerns regarding privacy and the potential for abuse of the information and would place additional financial burdens on the trucking industry, with small businesses being the most severely and disproportionately affected; and

WHEREAS, the proposal rescinds current provisions that give states the flexibility to address certain unique requirements, such as the ability to effectively respond to emergencies and to meet seasonal agricultural needs, that cannot be met under the limitations of a general hours of service regulation; and

WHEREAS, the proposal unjustifiably removes exemptions for agricultural transporters that are critical to farmers during the harvest season and will severely disrupt the carefully orchestrated system of transporting fresh food from farm to market; and

WHEREAS, the proposal unjustifiably removes exemptions for intrastate operations that currently give states a measure of flexibility to address special circumstances within their own borders; and

WHEREAS, the FMCSA inexplicably removes the exemptions for drivers engaged in emergency operations, including exemptions for drivers of utility service vehicles and for drivers of snow and ice removal vehicles; and

WHEREAS, the loss of these exemptions will prevent workers engaged in emergency operations from properly carrying out their duties, possibly putting public safety at risk; and

WHEREAS, the law enforcement community has raised concerns about the ability of commercial vehicle safety inspectors to effectively enforce the proposed regulations; and

WHEREAS, the FMCSA's cost-benefit analysis of the proposal is incomplete and fails to completely account for all trucking industry and economywide costs and inflates the safety benefits of the proposal.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature oppose the Federal Motor Carrier Safety Administration's proposed hours of service rule and urge the Federal Motor Carrier Safety Administration to issue a new proposal that is based on sound science, enhances public safety, and strengthens the ability of the trucking industry to meet the needs of the American economy.

BE IT FURTHER RESOLVED, that a copy of this resolution be transmitted to the United States Secretary of Transportation, the Administrator of the Federal Motor Carrier Safety Administration, the chairs and ranking members of the relevant committees of the United States Senate and House of Representatives, the Western Governors' Association, Senators Max Baucus and Conrad Burns, and Representative Dennis Rehberg.

Adopted March 21, 2001

SENATE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AUTHORIZING THE PERMANENT PLACEMENT OF CERTAIN BUSTS, STATUES, MEMORIALS, MONUMENTS, AND ART DISPLAYS IN THE CAPITOL.

WHEREAS, section 2-17-804(1)(b), MCA, requires the Capitol Complex Advisory Council to advise the Legislature on the placement of busts, statues, memorials, monuments, or art displays of a permanent nature within public areas of the Capitol Complex; and

WHEREAS, the Capitol Complex Advisory Council recognizes that recent renovation, repair, and restoration have resulted in changes to the configuration and nature of the Capitol that require a thorough assessment of the placement or replacement of items within the building; and

WHEREAS, the Capitol Complex Advisory Council advises that the items listed in this resolution be permanently placed or retained in the locations indicated; and

WHEREAS, the Capitol Complex Advisory Council further advises that other items that have been removed over the years because of building modifications be entrusted to the Montana Historical Society for storage, temporary display, or recommendation for permanent placement at a future date in the Capitol or other state buildings.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the following busts, statues, memorials, monuments, and art displays be retained as permanent placements in their current locations within the Capitol or on the Capitol Complex grounds:

(a) the busts of Thomas J. Walsh, Burton K. Wheeler, and Joseph Dixon;

(b) the memorial to First Montana Volunteers (Spanish-American War);

(c) the plaque of Theodore Brantley;

(d) the murals by Edgar S. Paxson, Ralph E. DeCamp, Charles M. Russell, Amedee Joullin, and F. Pedretti and Sons;

(e) the portraits of Joseph K. Toole and Wilbur Fiske Sanders;

(f) the statue of Jeanette Rankin;

(g) the statue by Bob Scriver entitled "Symbol of the Pros"; and

(h) the statue of General Thomas Francis Meagher.

(2) That the Gallery of Outstanding Montanans, nine individual, rotating displays, be permanently placed in the third floor hallways of the Capitol.

(3) That the Montana Statehood Centennial Bell be permanently placed in the eastside niche on the third floor of the Capitol.

(4) That the plaque commemorating Montana's centennial be permanently placed in the Capitol in a location to be determined by the Department of Administration upon consultation with the Capitol Complex Advisory Council.

(5) That the plaque commemorating Montana's women legislators be permanently placed in the Capitol in a location to be determined by the Department of Administration upon consultation with the Capitol Complex Advisory Council.

(6) That, upon completion, the commissioned statue of Mike and Maureen Mansfield be permanently placed in the southside niche on the third floor of the Capitol.

(7) That all busts, statues, memorials, monuments, and art displays not identified in this resolution that may have been associated with the Capitol be entrusted to the Montana Historical Society for storage or temporary display until a suitable location is identified and approved by the Legislature for permanent placement.

Adopted March 31, 2001

SENATE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING RECIPROCITY BETWEEN IDAHO AND MONTANA ON BIDDING PROCEDURES FOR STATE TIMBER SALES.

WHEREAS, it is the policy of the State of Montana to secure the full, fair market value of timber sold from state-owned forests held in trust for specific beneficiary institutions; and

WHEREAS, the various states in close proximity to Montana were all granted lands from the federal government as part of their respective enabling acts, with similar mandates that they be used exclusively for the benefit of public schools and institutions; and

WHEREAS, the State of Montana allows fair and open competitive bidding for timber sales on state-owned trust lands, with no discrimination as to the geographic location of processing facilities; and

WHEREAS, the State of Idaho has placed into statute highly discriminatory prohibitions on out-of-state purchasers bidding on timber held in trust for public schools and institutions of Idaho; and

WHEREAS, Montanans would rather cooperate than retaliate with laws to similarly protect our in-state industries.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature request the Governor and each member of the Montana Congressional Delegation to urge the Idaho Legislature to repeal its laws that:

(1) restrict or discourage Montana companies from bidding on Idaho state timber sales; or

(2) treat Montana companies in any way differently from Idaho companies.

BE IT FURTHER RESOLVED, that if the Idaho legislature has not repealed the type of laws referenced in subsections (1) and (2) by October 1, 2002, the Montana Department of Natural Resources and Conservation be encouraged to propose legislation that will similarly favor Montana companies in the sale of timber in a manner that will ensure full, fair compensation to beneficiary institutions.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to each member of the Montana Congressional Delegation, the Idaho Legislature, and the Governor of Idaho.

Adopted April 4, 2001

SENATE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE FEDERAL GOVERNMENT TO SUPPORT THE EFFORTS OF THE LOWER YELLOWSTONE CONSERVATION DISTRICT DEVELOPMENT

COMMITTEE TO OBTAIN THE PROMISED BENEFITS OF THE PICK-SLOAN MISSOURI RIVER PLAN AND RETAIN LOW-COST ENERGY FOR NEW AND EXISTING IRRIGATION AND TO ASSIST THE CONSERVATION DISTRICT IN DRAFTING AND PASSING FEDERAL LEGISLATION OUTLINING BENEFITS NEEDED TO SUSTAIN EXISTING IRRIGATION AND DEVELOP NEW IRRIGATION IN MONTANA'S YELLOWSTONE AND MISSOURI RIVER BASINS.

WHEREAS, Montana lost 590,000 acres of land to reservoir flooding under the Pick-Sloan plan, as set out in the federal Flood Control Act of 1944, and was in return promised 1,313,930 acres of new irrigation, but only 76,200 acres were ever developed for irrigation under the plan; and

WHEREAS, over 16,500,000 acre-feet of water leave Montana annually in the Missouri and Yellowstone Rivers—water that is abundant but underused in this time of need for growth in Montana; and

WHEREAS, Montana's conservation districts have reserved over 853,000 acre-feet of water for new irrigation development, and the state has completed water rights compacts with several tribes that enable tribes to develop many acres of new irrigation as well; and

WHEREAS, Montana's agricultural sector continues to shrink along with the population of rural communities; and

WHEREAS, Montana consumes less than 30% of the hydropower that is generated in the state under the Pick-Sloan plan; and

WHEREAS, Montana's Vision 2005 program identified the goal of doubling the value of irrigated agriculture by the year 2005 by developing 500,000 acres of new irrigation, which is less than one-half of the number of acres promised under the Pick-Sloan plan; and

WHEREAS, costs for power may double or triple, and without low-cost power, it will become impossible to irrigate new lands and even existing irrigated lands identified in the original Pick-Sloan plan; and

WHEREAS, agriculture is Montana's largest industry, and any increase in values from irrigation would benefit the entire state and region.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the federal government be strongly urged to:

(1) assist the efforts of the Lower Yellowstone Conservation District Development Committee in obtaining the promised benefits of the Pick-Sloan Missouri River plan, as set out in the federal Flood Control Act of 1944; and

(2) assist the efforts of the Lower Yellowstone Conservation District Development Committee in drafting and passing the proposed federal Montana Water Resources Act, which will outline benefits promised in the Flood Control Act that are needed to sustain existing irrigation and the development of new irrigation throughout Montana's Yellowstone and Missouri River basins.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the Vice President of the United States, the Secretary of the United States Department of Agriculture, the Secretary of the Interior, the presiding officers of the Energy and Natural

Resources Committees of the United States Senate and House of Representatives, the Montana Congressional Delegation, and the Commissioner of the federal Bureau of Reclamation.

Adopted April 5, 2001

SENATE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING MONTANA'S CONGRESSIONAL DELEGATION TO SUPPORT AND WORK TO PASS PRESIDENT BUSH'S TAX RELIEF PLAN.

WHEREAS, federal tax collections are the highest they have ever been during peacetime; and

WHEREAS, all taxpayers should be allowed to keep more of their own money; and

WHEREAS, the best way to encourage economic growth is to reduce marginal tax rates across all tax brackets; and

WHEREAS, President Bush's tax relief plan will contribute to raising the standard of living for all Americans; and

WHEREAS, President Bush's tax relief plan will increase the spendable income of hard-working families, treat all families fairly, encourage entrepreneurship and economic growth, and promote charitable giving and education; and

WHEREAS, under President Bush's tax relief plan, the largest percentage reductions will go to those earning the lowest incomes.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature requests that our elected representatives in the United States Congress support and work to pass the tax relief plan introduced by President Bush.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to President Bush, Senator Baucus, Senator Burns, and Representative Rehberg.

Adopted March 26, 2001

SENATE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR DIRECT SUFFICIENT STAFF RESOURCES TO STUDY THE PROPERTY TAXATION OF AGRICULTURAL LAND AND NONAGRICULTURAL LAND IN MONTANA; AND REQUIRING A REPORT TO THE 58TH LEGISLATURE.

WHEREAS, agricultural land is increasingly being taken out of production for development and other nonagricultural purposes and is thereby becoming unavailable for agricultural production; and

WHEREAS, the Montana Legislature has long recognized that speculative land purchases and the encroachment of rural subdivisions has contributed, in part, to agricultural land being taken out of production; and

WHEREAS, existing property tax laws may have the unintended consequence of taxing certain agricultural land at a higher effective tax rate than rural nonagricultural land; and

WHEREAS, many large and small tracts of land qualify as agricultural land regardless of the use of the land, which may result in a shifting of tax burden to bona fide agricultural land; and

WHEREAS, the current property taxation of bona fide agricultural land and of rural nonagricultural land may contribute, in part, to agricultural land being taken out of production; and

WHEREAS, the Montana Legislature's goal is to maintain and encourage agricultural production as a viable component of the state's economy; and

WHEREAS, the Montana Legislature has consistently tried to achieve the goal of a fair, balanced, and equitable tax policy for rural land and agricultural land; and

WHEREAS, that goal has not been achieved and, therefore, a systematic study of the taxation of all rural land is appropriate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study the taxation of agricultural lands and rural nonagricultural land, including but not limited to:

(1) an examination of the changing patterns of agricultural uses to nonagricultural uses of rural land in Montana;

(2) an analysis of the underlying causes of these changing patterns;

(3) a review of recent tax policy initiatives related to the taxation of agricultural land and rural nonagricultural land, including changes to the methods of valuation and classification;

(4) a determination of whether existing tax policy related to the taxation of agricultural land and rural nonagricultural land is neutral with respect to whether the land remains in agricultural use;

(5) a determination of whether existing tax policy results in a shifting tax burden to remaining agricultural land and other property in a jurisdiction in which agricultural land is taken out of production and subsequently used for nonagricultural purposes;

(6) an evaluation of whether existing tax policy related to rural land unintentionally subsidizes some nonagricultural uses of rural land and whether that may lead to corresponding impacts on traditional local economies;

(7) an analysis of whether tax policy is an effective method of promoting continued use of rural land as agricultural land;

(8) an evaluation of alternative tax policies, including changes to property tax rates and property classification, that promote an equitable and efficient tax burden on both agricultural land and rural nonagricultural land; and

(9) an evaluation of whether agricultural income thresholds are appropriately used to substantiate agricultural use of rural land and an investigation of alternative methods that may be more appropriate or accurate.

BE IT FURTHER RESOLVED, that interested citizens, groups, and state agencies with specialized knowledge in rural land use patterns and taxation policy be encouraged to participate in the study.

BE IT FURTHER RESOLVED, that, if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2002.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 58th Legislature.

Adopted April 19, 2001

SENATE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN APPROPRIATE INTERIM COMMITTEE OR SUFFICIENT STAFF RESOURCES BE DIRECTED TO STUDY HEALTH CARE AND THE INCREASING COST OF HEALTH INSURANCE.

WHEREAS, rising health care costs are detrimental to stable lifestyles and the well-being of families; and

WHEREAS, health care costs and health insurance rates are increasing above the rate of inflation; and

WHEREAS, rising health insurance costs have a significant impact on the overall personnel and salary budgets of governmental agencies; and

WHEREAS, uncompensated care is a burden on all taxpayers, insurance carriers, and insurance consumers; and

WHEREAS, prescription drug costs may be driven by advertising that extols the virtues of the newest expensive drug; and

WHEREAS, because of the increased cost, a large percentage of employers in Montana no longer offer insurance benefits to their employees and many employees who have insurance have dropped dependents from coverage; and

WHEREAS, all Montanans should have the opportunity to have health insurance coverage, yet 20% are not covered; and

WHEREAS, mandating coverage for certain health care services and providers adds to the cost of insurance; and

WHEREAS, the 58th Legislature will likely have numerous health care and health insurance issues to address; and

WHEREAS, a study of health care and health insurance and how the state might deal with rising costs will provide the members of the 58th Legislature with a head start in handling this complex problem.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study:

(1) purchasing pools for individual and small group insurance;

(2) provider reimbursement rates and cost shifting of health care costs;

(3) access to affordable prescription drugs;

(4) strategies to decrease the number of uninsured Montanans;

(5) factors causing health insurance rates to increase above the rate of inflation;

(6) the feasibility of recreating the Health Care Advisory Council; and

(7) any other issues that the committee or the staff deem appropriate and relevant to the problem.

BE IT FURTHER RESOLVED, that the interim committee or the staff designated to conduct the study seek the participation and input of the Office of the Insurance Commissioner, health care and health insurance consumers, provider organizations, insurers, the Department of Public Health and Human Services, representatives of public employee and private sector health benefit plans, local government representatives, hospitals, and any other appropriate individuals or entities.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2002.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 58th Legislature.

Adopted April 19, 2001

Senate Resolutions

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REVISING AND ADOPTING THE SENATE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following rules be adopted:

RULES OF THE MONTANA SENATE

CHAPTER 1

Administration

S10-10. Officers of the Senate. The officers of the Senate are the officers listed and elected in accordance with Title 5, chapter 2, part 2, MCA.

S10-20. Term of office. The term of office for the officers and employees of the Senate established by law shall be until the succeeding Legislature is organized. Nothing in this rule shall be construed to mean the staff will be full-time employees during an interim.

S10-30. President pro tempore and other officers. (1) The Senate shall, at the beginning of each regular session, and at such other times as may be necessary, elect a Senator President pro tempore.

(2) The Senate shall choose its other officers and shall be the judge of the elections, returns, and qualifications of the Senators.

S10-40. Voting by presiding officer. Any Senator, when acting as presiding officer of the Senate, shall vote as any other Senator.

S10-50. Presiding officer and duties. (1) The presiding officer of the Senate shall be the President of the Senate who shall be chosen in accordance with law.

(2) The President shall take the chair on every legislative day at the hour to which the Senate adjourned at the last sitting.

(3) The President may name a Senator to perform the duties of the chair when the President pro tempore is not present in the Senate chamber. The Senator who is named is vested during such time with all the powers of the President.

(4) The President shall have general control over the assignment of rooms for the Senate and shall preserve order and decorum. The President may order the galleries and lobbies cleared in case of disturbance or disorderly conduct.

(5) The President shall issue cards to the media to allow floor access, and reporters holding such passes shall be subject to placement on the floor by the President. The President may administer this rule through the office of the Secretary of the Senate.

(6) The President shall sign all necessary certifications of the Senate, including enrolled bills and resolutions, journals, subpoenas, and payrolls. The President's signature must be attested by the Secretary of the Senate.

(7) The President shall approve the calendar for each legislative day.

(8) The President is the chief administrative officer of the Senate, with authority for the general supervision of all Senate employees. The President may seek the advice and counsel of the Legislative Administration Committee.

(9) The President of the Senate is the authorized approving authority of the Senate during the term of election to that office.

(10) The President shall refer bills to committee upon introduction or reception in the office of the Secretary of the Senate.

S10-60. Succession. (1) In case of the absence or disqualification of the President, the President pro tempore of the Senate shall perform the duties of the President until the vacancy is filled or the disability removed.

(2) Whenever the President pro tempore of the Senate is of the opposite political party from that of the President, the following procedure applies:

(a) If the President dies while in office, the members of the President's political party shall have the right to immediately nominate and elect an acting President of the same party.

(b) If the President is absent for two or more legislative days or at any time after the 85th legislative day or at any time during special session of the Legislature but able and desirous of appointing an acting President to act when the President is absent, the President may do so, or the members of the President's political party shall have the right to immediately nominate and elect an acting President of the same party.

(c) An acting President of the Senate shall have the powers of the President and supersede the powers of the President pro tempore.

S10-70. President-elect. The President-elect nominated by the appropriate party caucus held in accordance with section 5-2-201, MCA, shall have the responsibility and authority to assume the duties of President of the Senate.

S10-80. Legislative Administration Committee duties. (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee shall have authority to act in the interim to prepare for future legislative sessions.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the Senate, subject to the approval of the President.

(4) The committee shall consider disputes or complaints involving the competency or decorum of legislative employees referred to it by the President and recommend dismissal, suspension and/or retention of such employees.

(5) The chair of the Legislative Administration Committee may, upon approval of the President, have purchase orders and requisitions prepared and forwarded to the accounting office in the Legislative Services Division.

S10-90. Senate employees. (1) In addition to the employees appointed by the President in accordance with section 5-2-221, MCA, the Senate shall employ staff recommended by the leadership and the Legislative Administration Committee as necessary to perform the functions of the Senate.

(2) A standing committee chair shall designate a secretary to take and transcribe minutes of committee meetings. A committee secretary is immediately responsible to the chair, but shall work under the overall direction of the Secretary of the Senate, subject to authority of the committee chair.

(3) (a) The President and floor leaders may each appoint a private secretary.

(b) The whips may each appoint a private secretary whose duties will include assisting other staff on an assigned basis when authorized by the secretary's respective whip.

S10-100. Secretary of the Senate and duties. The Secretary of the Senate works under the direction of the President. The responsibilities of the Secretary of the Senate include:

(1) performing the duties prescribed by law or other provisions of these rules;

(2) serving as parliamentary advisor to the Senate;

(3) compiling and maintaining the calendar for approval by the President;

(4) keeping the leadership informed on the progress and workload of the Senate;

(5) transmitting bills with appropriate messages to the House of Representatives as instructed by action of the Senate;

(6) keeping and maintaining records of the Senate; and

(7) supervision of the Senate employees, except as otherwise provided.

S10-110. Sergeant-at-Arms duties. Under the direction of the President, the Sergeant-at-Arms shall:

(1) maintain order as directed by the President or chair of the Committee of the Whole;

(2) enforce the lobbying rules of the Senate;

(3) supervise the employees assigned to the Sergeant's office;

(4) receive, distribute, and maintain supplies, equipment, and other inventory of the Senate, along with records of purchase and disposal in accordance with law;

(5) perform such duties as required by other rules and the Senate.

S10-120. Legislative aides. Each Senator may designate one person of legal age to serve as an aide during the session. Exceptions to this policy may be approved by the Rules Committee. The Senator shall register an aide with the Secretary of the Senate and arrange for the purchase of a name tag with the Sergeant-at-Arms.

S10-130. Senate journal. (1) The Senate shall keep and authenticate a journal of its proceedings as required by law and the rules.

(2) The Secretary of the Senate will supervise the preparation of the journal under the direction of the President.

(3) In addition to the proceedings required by law to be recorded, the journal must include:

(a) committee reports;

(b) every motion, the name of the Senator presenting it, and its disposition;

(c) the introduction of legislation in the Senate;

(d) consideration of legislation subsequent to introduction;

(e) roll call votes;

(f) messages from the Governor and the House of Representatives;

(g) every amendment, the name of the Senator presenting it, and its disposition;

(h) the names of Senators and their votes on any question upon a request by two Senators before a vote is taken; and

(i) any other records the Senate directs by rule or action.

(4) The Secretary of the Senate shall provide such information as may be necessary for the preparation of the daily journal for printing by the Legislative Services Division. Upon approval by the President, the daily journal must be reproduced and distributed.

(5) Any Senator may examine the daily journal and propose corrections. Without objection by the Senate, the President may direct the correction to be made.

(6) The President shall authenticate the original daily journal, from time to time, and the Secretary of the Senate shall, as appropriate, deliver it to the Legislative Services Division to be prepared for publication and distribution in accordance with law.

CHAPTER 2

Decorum

S20-10. Questions of order. The President of the Senate shall decide all questions of order, subject to an appeal by any Senator seconded by two other Senators. No Senator may speak more than once on an appeal without the consent of a majority of the Senate.

S20-20. Questions of privilege. Questions of privilege in order of precedence are those:

(1) affecting the collective rights, safety, dignity, or integrity of the proceedings of the Senate; and

(2) affecting the rights, reputation, or conduct of individual Senators in their capacity as Senators.

S20-30. Recognition by chair. A Senator desiring to speak shall rise and address the presiding officer and, once being recognized, shall speak standing in place. The presiding officer may grant permission for a speaker to speak from elsewhere in the chamber. When two or more Senators rise at the same time, the presiding officer shall name the order of the speakers.

S20-40. Senators called to order. When a Senator has been called to order, the Senator shall sit down until the presiding officer determines whether the

Senator is in order or not. If the Senator is called to order for words spoken in debate, the language excepted to shall be taken down in writing by the Secretary of the Senate.

S20-50. Communications to Senate. A communication to the Senate shall be addressed to the President and shall bear the name of the person submitting it. The President shall decide if the communication bears including in the calendar.

S20-60. Floor privileges. (1) When the Senate is in session no person is permitted in the chambers except:

(a) legislators;

(b) legislative officers and employees whose presence is necessary for the conduct of business of the session;

(c) accredited members of the news media; and

(d) former legislators (not currently registered as lobbyists).

(2) The President may make exceptions for visiting dignitaries.

(3) Beginning 1 hour before and ending one-half hour after adjournment, no person is permitted in the chambers except those authorized as exceptions under subsection (1).

S20-70. Distribution of materials on floor. No materials may be distributed on the Senators' desks in the chamber unless the material bears the signature of the bearer and a Senator and has been approved by the President.

CHAPTER 3

Committees

S30-10. Committee appointments. (1) The Senate shall elect a Committee on Committees consisting of six members. If the Senate is evenly divided between parties, the committee shall consist of six Senators, three from each party.

(2) The Committee on Committees shall, with the approval of the Senate, appoint the members of Senate standing committees, select committees, and joint committees.

(3) The President of the Senate shall appoint all conference committees and special committees, with the advice of the floor leaders.

(4) The Senate may change the membership of any committee on 1 day's notice.

S30-20. Standing committees. The standing committees of the Senate are as follows:

(1) Agriculture, Livestock, and Irrigation

(2) Bills and Journal

(3) Business and Labor

(4) Education and Cultural Resources

(5) Energy and Telecommunications

(6) Ethics

(7) Finance

(8) Fish and Game

(9) Highways and Transportation

(10) Judiciary

(11) Legislative Administration

(12) Local Government

(13) Natural Resources

(14) Public Health, Welfare, and Safety

(15) Rules

(16) State Administration

(17) Taxation

S30-30. Members of Select Committee on Long-Range Planning. Members of the Select Committee on Long-Range Planning may participate and vote as members of the Finance Committee on issues considered by them as members of the select committee.

S30-40. Ex officio members. Each floor leader is an ex officio member of all committees in order to establish a quorum.

S30-50. Chair's duties. (1) The chair of a committee is the presiding officer of that committee and is responsible for maintaining order within the committee room and its environs, scheduling hearings and executive action, supervising committee work, and authenticating committee reports and minutes by signing them.

(2) After adjournment of the session, the chair shall turn the original and two complete copies of the minutes over to the Secretary of the Senate who shall deliver them unbound to the Legislative Services Division librarian who will arrange to have them copied on microform. A microform copy will be provided to the Legislative Services Division and the State Law Library of Montana. The Legislative Fiscal Analyst will receive a microform copy of the minutes of the Finance Committee. After microforming, the original minutes will be delivered to the Montana Historical Society.

S30-60. Committee reports to Senate. (1) Reports of standing committees shall be read on Order of Business No. 2, and no debate may be had on any report unless a minority report has been submitted. A minority report is submitted after a majority report.

(2) Committee reports may recommend approval or disapproval, with or without amendment. They may not be reported to the Senate without recommendation.

(3) Any Senator seeking a reconsideration of the Senate's action on the adoption of a committee report shall do so on Order of Business No. 6 by motion to reconsider. Any Senator may make such motion and need not have voted on the prevailing side. This rule applies notwithstanding any joint rule to the contrary.

(4) The Rules Committee and conference committees may report at any time, except during a call of the Senate or when a vote is being taken.

S30-70. Pairs. Pairs in standing committee are prohibited. Standing and select committees may by a majority vote of the committee authorize Senators to vote in absentia while engaged in other legislative business. Authorization for such voting shall be reflected in the committee minutes.

S30-80. Committee hearings. (1) No bill or resolution shall be considered or become a law unless referred to a committee and returned therefrom.

(2) A bill may be rereferred at any time before its passage.

S30-90. Notice of committee hearings — exceptions. (1) Notice of a committee hearing must be made by posting the date, time, and subject of the hearing in a conspicuous public place not less than 3 legislative days in advance of the hearing. This 3-day notice requirement does not apply to hearings scheduled:

(a) prior to the 3rd legislative day;

(b) less than 7 legislative days before the transmittal deadline applicable to the subject of the hearing; or

(c) to consider confirmation of a gubernatorial appointment received less than 10 legislative days before the last scheduled day of a legislative session.

(2) When a committee hearing is scheduled with less than 3 days' notice, the committee chair shall use all practical means to disseminate notice of the hearing to the public.

(3) Notice of conference committee hearings must be given as provided in Joint Rule 30-30.

S30-100. Majority/minority reports. If the members of a committee cannot agree on a report, the majority and minority of the committee present at a committee meeting may submit separate reports. Only one minority report may be submitted. Such reports shall be entered at length on the journal, unless otherwise ordered by the Senate.

S30-110. Reconsideration in committee. Except for the Committee of the Whole, a committee may at any time prior to submitting a report to the Secretary of the Senate reconsider its previous action on legislation.

S30-120. Committee requested legislation. (1) At least three-fourths of all the members of a standing committee must have voted in favor of the question to allow the committee to request the introduction of legislation.

(2) The chair of a committee shall introduce, or shall designate a member of the committee to introduce, legislation requested by the committee.

(3) When a committee has proposed an amendment, the chair is the principal sponsor.

S30-130. Ethics Committee. (1) The Ethics Committee shall meet only upon the call of the chair after the referral of an issue from the Rules Committee. The Rules Committee may be convened to consider the referral of a matter to the Ethics Committee upon the request of a Senator. The Rules Committee shall prepare a written statement of the specific question or issue to be addressed by the Ethics Committee. The issues referred to the Ethics Committee must be related to the actions of a Senator during a legislative session.

(2) The matters that may be referred to the Ethics Committee are:

(a) a violation of:

(i) 2-2-103;

(ii) 2-2-104;

(iii) 2-2-111;

(iv) 2-2-112;

(b) the use or threatened use of a Senator's position for personal or personal business benefit or advantage; or

(c) any other violation of law by a Senator while acting in the capacity of Senator.

(3) If there is a recommendation from the Ethics Committee, the recommendation is made to the Senate.

CHAPTER 4

Legislation

S40-10. Types of legislation. The only types of legislation that may be introduced in the Senate are those that have been drafted and approved by the Legislative Services Division and signed by a Senator. The types of legislation allowed include:

(1) bills of any subject, except appropriations;

(2) joint resolutions, which may:

(a) express desire, opinion, sympathy, or request of the Legislature;

(b) request an interim study by a legislative subcommittee;

(c) adopt or amend the joint rules;

(d) set salaries and other terms of employment for legislative employees; and

(e) accomplish other legislative duties required by law; and

(3) simple resolutions, which may:

(a) adopt or amend Senate rules;

(b) provide for the internal affairs of the Senate;

(c) express confirmation of the Governor's appointments;

(d) make recommendations concerning the districting and apportionment plan as provided by Article V, section 14(4), of the Montana Constitution.

S40-20. Introduction. (1) Upon receiving a bill or resolution from a Senator, the Secretary of the Senate shall assign an appropriate sequential number, which constitutes introduction of the legislation.

(2) Bills and resolutions may be preintroduced, assigned to committee, and printed prior to the legislative session. The Legislative Services Division shall be responsible for assuring the preintroduction intent from each Senator and presenting such legislation to the Secretary of the Senate.

(3) Upon referral to committee, the Secretary of the Senate shall publicly post a listing of the bill or resolution by a summary of its title, together with a notation of the committee to which it has been assigned.

S40-30. Additional sponsors. (1) Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill or resolution. Forms for adding sponsors will be supplied on request by the Secretary of the Senate.

(2) Upon passage of the motion, the names of the additional sponsors will be printed in the journal and the form containing the signatures of the additional sponsors will be forwarded to the Legislative Services Division with the original bill for the inclusion of the names in subsequent printings of the bill or resolution.

S40-40. Reading limitations. (1) Every bill shall be read three times prior to passage, either by title or by summary of title as provided in these rules.

(2) No bill or resolution shall have more than one reading on the same day except the last legislative day.

(3) No amendment may be offered on third reading.

S40-50. Rules for questions requiring other than a majority vote. (1) When a question requires more than a majority vote for final passage, a majority vote is sufficient to decide any question relating to the question prior to third reading.

(2) Any vote in the Senate on a bill proposing an amendment to the Montana Constitution under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

(3) If a bill has been amended in the House of Representatives and the amendments are accepted by the Senate, the bill shall again be placed on third reading in the Senate to determine if the required number of votes has been cast.

S40-60. Scheduling for second reading. (1) All bills and resolutions that have been reported by a committee, accepted by the Senate, and reproduced shall be scheduled for consideration by Committee of the Whole.

(2) Until the 50th legislative day, 1 day must elapse between receiving the legislation from printing and scheduling for second reading for consideration by Committee of the Whole.

(3) Legislation shall be arranged on the agenda in numerical order unless bills are grouped as companion bills or are placed in order otherwise by the Senate or Committee of the Whole.

CHAPTER 5

Floor Action

S50-10. Attendance. Unless excused, Senators shall be present at every sitting of the Senate and shall vote on questions put before the Senate.

S50-20. Orders of business. After prayer, roll call, and report on the journal, the order of business of the Senate is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Governor;

(5) messages from the House of Representatives;

(6) motions;

(7) first reading and commitment of bills;

(8) second reading of bills (Committee of the Whole);

(9) third reading of bills;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the Senate shall revert to Order of Business No. 1 when reconvening after a recess.

S50-30. Limitations on debate. No Senator may speak more than twice on any one motion or question without unanimous consent of the Senate, unless the Senator has introduced or proposed the motion or question under debate, in which case the Senator may speak twice and also close the debate. However, a Senator who has spoken may not speak again on the same motion or question to the exclusion of a Senator who has not spoken.

S50-40. Procedure upon offering a motion. (1) When a motion is offered it shall be restated by the presiding officer. If requested by the presiding officer or a Senator, it shall be reduced to writing, presented at the rostrum, and read aloud by the Secretary.

(2) A motion may be withdrawn by the Senator offering it at any time before it is amended or voted upon.

S50-50. Precedence of motions. (1) When a question is under debate only the following privileged and subsidiary motions shall be made:

(a) to adjourn;

(b) for a call of the Senate;

(c) to recess;

(d) question of privilege;

(e) to lay on the table;

(f) for the previous question;

(g) to postpone to a certain day;

(h) to refer or commit;

(i) to amend; and

(j) to postpone indefinitely.

(2) The motions listed in subsection (1) have precedence in the order listed.

(3) A question may be indefinitely postponed by a majority roll call of all Senators present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again during the biennium except upon a motion of reconsideration.

(4) No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment or substitute.

S50-60. Nondebatable motions. The following motions are not debatable:

(1) to adjourn;

(2) for a call of the Senate;

(3) to recess;

(4) for parliamentary inquiry;

(5) for suspension of the rules;

(6) to lay on the table;

(7) for the previous question;

(8) to limit, extend the limits of, or to close debate;

(9) to amend an undebatable motion;

(10) to divide a question;

(11) to pass business in Committee of the Whole;

(12) to take from the table;

(13) a decision of the presiding officer, unless appealed or unless the presiding officer submits the question to the Senate for advice or decision; and

(14) all incidental motions, such as motions relating to voting or other questions of a general procedural nature.

S50-70. Amending motions. No more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

S50-80. Previous question. (1) Except as provided in subsection (2), the effect of calling for the previous question, if adopted, is to close debate immediately, to prevent the offering of amendments or other subsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise.

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour, one-half of such time to be given to the proponents and one-half to the opponents.

(3) A call of the Senate is not in order after the previous question is ordered unless it appears upon an actual count by the presiding officer that a quorum is not present.

S50-90. Reconsideration. (1) Any Senator may, on the day the vote was taken or on the next day the Senate is in session, move to reconsider the question. A motion to reconsider is a debatable motion, but the debate is limited to the motion. The debate on a motion to reconsider may not address the substance of the matter for which reconsideration is sought.

(2) A motion to reconsider may not be withdrawn after such next legislative day without the unanimous consent of the Senate, and thereafter any Senator may call it up for consideration; however, a motion to reconsider made after the 54th day of the session shall be disposed of when made.

(3) A motion to recall a bill from the House of Representatives constitutes notice to reconsider and shall be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the House of Representatives may be made only under Order of Business No. 6 and, under that order of business, takes precedence over all motions except motions to recess or adjourn.

(4) When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

(5) If a motion to reconsider third reading action is carried, there shall be no further action until the succeeding legislative day.

S50-100. Dividing a question. A Senator may move to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain.

S50-110. Conference committee reports. When a conference committee report is filed with the Secretary of the Senate, the same shall be read under Order of Business No. 3, select committees, and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the Committee of the Whole, it may be considered on third reading the same legislative day.

S50-120. Second reading. (1) The Senate may resolve itself into a Committee of the Whole for consideration of business on second reading, by approval of a motion for that purpose.

(2) After a Committee of the Whole has been formed, the President shall appoint a chair to preside.

(3) All legislation considered in the Committee of the Whole shall be read by a summary of its title. Proposed amendments shall be considered; then the bill shall be considered in its entirety.

(4) Prior to adoption of the Committee of the Whole report, a Senator may move to segregate legislation. If the motion prevails, the legislation remains on second reading.

(5) When a Committee of the Whole report on legislation is rejected, the legislation shall remain on second reading.

S50-130. Committee of the Whole amendments. (1) All Committee of the Whole amendments shall be prepared, stipulating the date and time of preparation and staff approval, and delivered to the Secretary of the Senate for reading before the amendment is voted on.

(2) Each amendment, rejected or adopted, shall be printed in the journal, along with the name of the sponsor and the vote on each.

S50-140. Motions in Committee of the Whole. (1) All proper motions on second reading are debatable.

(2) The only motions in order during Committee of the Whole are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) indefinitely postpone;

(e) pass consideration;

(f) rise;

(g) rise and report; or

(h) rise and report progress and ask leave to sit again.

S50-150. Committee of the Whole — generally. (1) The committee may not appoint subcommittees.

(2) The committee may not punish its members for misconduct, but may report disorder to the Senate.

S50-160. Voting on second reading. (1) On Order of Business No. 8, in addition to other methods, a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The Secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as such. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

(2) A motion on second reading must be disposed of by a positive vote.

S50-170. Third reading procedure. (1) All legislation passing second reading shall be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) On Order of Business No. 9 the Secretary shall read the title and the President shall state the question as follows: "Senate bill number (or other appropriate identification)..... having been read three several times, the question is, shall the bill (or other appropriate identification) pass the Senate?"

(3) If an electronic voting system is used, the President shall state "Those in favor vote yes and those opposed vote no" and the Secretary will sound the signal and open the board for voting. After a reasonable pause the presiding officer asks "Has every member voted?" (reasonable pause), "Does any member wish to change his or her vote?" (reasonable pause), "The Secretary will record the vote."

S50-180. Senate voting. (1) A roll call vote shall be taken on the request of two Senators, if the request occurs before the vote is taken.

(2) On a roll call vote the names of the Senators shall be called alphabetically, unless an electronic voting system is used. A Senator may not vote or change a vote after the decision is announced from the chair. A Senator may not explain a vote until after the decision is announced from the chair.

S50-190. Pairs. (1) Two Senators may pair on a question that will be determined by a majority vote. On a question requiring a two-thirds vote for adoption, three Senators may pair, with two Senators for the question and one Senator against. Pairing is permitted only when one of the paired Senators is excused when the vote is taken.

(2) An agreement to pair must be in writing and dated and signed by the Senators agreeing to be bound and must specify the duration of the pair. When an agreement to pair is filed with the Secretary of the Senate, it shall bind the Senators signing until the expiration of time for which it was signed, unless the paired Senators sooner appear and ask that the agreement be canceled.

(3) Pairs in Committee of the Whole are prohibited.

S50-200. Call of the Senate. (1) In the absence of a quorum, a majority of Senators present may compel the attendance of absent Senators by ordering a call of the Senate.

(2) If a quorum is present, five Senators may order a call of the Senate.

(3) On a call of the Senate, a Senator who refuses to attend may be arrested by the Sergeant-at-Arms or any other person, as the majority of such Senators present shall direct. When the attendance of an absent Senator is secured and the Senate refuses to excuse the Senator's absence, the Senator shall not be paid any expense payments while absent and is liable for the expenses incurred in procuring the Senator's attendance.

(4) During a call of the Senate, all business shall be suspended. After a call has been ordered, no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote.

S50-210. House amendments to Senate legislation. (1) When the House has properly returned Senate legislation with House amendments, the Senate shall announce the amendments on Order of Business No. 5 and the President shall place them on second reading for debate. The President may rerefer Senate legislation with House amendments to a committee for a hearing if the House amendments constitute a significant change in the Senate legislation. The second reading vote is limited to consideration of the House amendments.

(2) If the Senate accepts House amendments, the Senate shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

(3) If the Senate rejects the House amendments, the Senate may request the House to recede from its amendments or may direct appointment of a conference committee and request the House to appoint a like committee.

CHAPTER 6

Rules

S60-10. Senate rules. (1) A motion to amend or adopt a rule of the Senate shall be referred to the Rules Committee without debate. A rule of the Senate may be amended or adopted only with the concurrence of a majority of the Senate and after 1 day's notice.

(2) A rule may be suspended temporarily by a two-thirds vote.

S60-20. Mason's Manual of Legislative Procedure. Mason's Manual of Legislative Procedure (2000) governs the proceedings of the Senate in all cases not covered by these rules.

S60-30. Quorum. A majority of the Senate shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent Senators, in such manner and under such penalties as the Senate may prescribe (Montana Constitution, Art. V, Sec. 10(2)).

CHAPTER 7

Nominations from the Governor

S70-10. Nominations. (1) The Governor shall nominate and, by and with the consent of the Senate, appoint all officers whose offices are established by the Montana Constitution or which may be created by law and for whom appointment or election is not otherwise provided.

(2) If during a recess of the Senate a vacancy occurs in any such office, the Governor shall appoint some fit person to discharge the duties thereof until the

next meeting of the Senate, when the Governor shall nominate a person to fill such office.

S70-20. Introduction and first reading of nominations. (1) Nominations received from the Governor are:

(a) received by the President;

(b) delivered to the Secretary of the Senate;

(c) read under Order of Business No. 4, messages from the Governor; and

(d) referred to committee.

(2) The above procedure constitutes introduction and first reading of the nominations.

(3) The Secretary shall distribute a copy of the list of nominations to each Senator.

S70-30. Committee process. (1) (a) The committee shall research each nominee and may request biographical information from the Governor for each nominee if none has been provided.

(b) The committee chair shall submit a bill draft request for a simple resolution to include the nominees specified by the committee chair. These bill draft requests will not count against any bill draft request limit imposed on members. When the resolution has been prepared and introduced, the committee shall hold a hearing on the resolution after appropriate public notice has been made.

(2) Following the hearings, the committee shall issue preliminary standing committee reports to be distributed to each Senator, stating the committee's recommendations concerning the nominees.

(3) (a) If a Senator wishes to have an individual nominee, or group of nominees, considered by the Senate separately from the group of nominees recommended by the committee, the Senator may request of the chair of the committee that the nominee or nominees be considered by a separate resolution.

(b) A Senator shall request separate consideration of a nominee within 3 days of receipt of the preliminary standing committee report. The committee chair shall honor this request.

(4) After waiting 3 days from the day of distribution of the preliminary standing committee report, the committee chair shall issue a final standing committee report and deliver the report to the Secretary of the Senate.

(a) If a nominee is to be separated from the resolution, the final standing committee report shall include an amendment deleting that nominee.

(b) When a nominee has been separated at the request of a Senator, the committee chair shall submit a bill draft request for a simple resolution to include only the nominee so separated. When the resolution has been prepared and introduced, the committee shall take executive action on the resolution. When a hearing on the separated nomination was held prior to the committee's preliminary standing committee report, no additional hearing need be held before the committee takes action on the separate resolution. After the committee's executive action, the committee chair shall issue a standing committee report.

(5) If a resolution contains only one nominee, the committee shall dispense with the preliminary standing committee report and shall issue a final standing committee report to be distributed to each Senator stating the committee's recommendation concerning the nominee.

(6) The Secretary will read the reports under Order of Business No. 2, reports of standing committees.

(7) Thereafter, the resolution must be placed on Order of Business No. 11 the next legislative day for consideration by the Senate. Motions to approve or disapprove of the resolution are in order and may be debated.

Appendix A

List of Questions Requiring Other Than a Majority Vote

The following questions require the vote specified:

(1) a call of the Senate with a quorum (five Senators);

(2) a motion to lift a call of the Senate (two-thirds of the members present and voting);

(3) a motion to amend or suspend rules (two-thirds);

(4) a motion to override the Governor's veto (two-thirds);

(5) a motion to approve a bill to appropriate the principal of the coal trust fund (three-fourths of each house);

(6) a motion to approve a bill to appropriate highway revenue as described in Article VIII, section 6, of the Montana Constitution for purposes other than therein described (three-fifths of each house);

(7) a motion to approve a bill proposing to amend the Montana Constitution (two-thirds of the entire Legislature);

(8) an appeal of the ruling of the presiding officer (one Senator, seconded by two other Senators); and

(9) a motion to approve a bill conferring immunity from suit as described in Article II, section 18, of the Montana Constitution (two-thirds).

Adopted January 6, 2001

SENATE RESOLUTION NO. 2

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA OPPOSING ANY NEW DESIGNATION FOR THE MISSOURI RIVER OR THE MISSOURI RIVER BREAKS.

WHEREAS, surveys indicate that a majority of Montanans oppose a new designation for the Missouri River or the Missouri River Breaks; and

WHEREAS, the Missouri River and the Missouri River Breaks are protected by the federal Wild and Scenic Rivers Act, Montana subdivision law, and county development regulations; and

WHEREAS, expanding the designation will incorporate more private and state land holdings under federal management plans; and

WHEREAS, Article IV, section 3, of the Constitution of the United States gives authority over public lands to Congress; and

WHEREAS, the vast number of acres being considered for designation as a monument does not meet guidelines of the intent of the federal enabling legislation for monument designations, the Antiquities Act of 1906, which states that the President of the United States is authorized to declare national monuments and "may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected"; and

WHEREAS, Secretary of the Interior Bruce Babbitt has violated the pledge that he made during his preliminary trip to Montana in the summer of 2000 to return for further analysis and input prior to any recommendations for a change in designation for this area; and

WHEREAS, the Clinton administration has made an "11th hour" rush to create a legacy in land policy without due diligence in properly analyzing the negative impacts on local and state governmental divisions as well as on state and local inhabitants; and

WHEREAS, existing and valid grazing rights need to be recognized and enforced; and

WHEREAS, existing and valid oil and gas rights need to be enforced; and

WHEREAS, the Department of Fish, Wildlife, and Parks needs to continue to manage fish and game issues pertaining to the Missouri River.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the State of Montana respectfully requests that the Secretary of the Interior, Mr. Bruce Babbitt, set aside any new proposed designation for the Missouri River or the Missouri River Breaks and support the proved management practices that have maintained the pristine conditions of the Missouri River and the Missouri River Breaks since first traversed by the Corps of Discovery in 1804.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Secretary of the Interior, the Montana Congressional Delegation, President William Clinton, President Elect George W. Bush, and the members of the Central Montana Resource Advisory Council.

Adopted January 18, 2001

SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2001, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointment, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Pacific Northwest Electric Power and Conservation Planning Council, in accordance with the provisions of section 90-4-402, MCA:

Mr. Stan Grace, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

Mr. Leo Giacometto, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 57th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted January 29, 2001

SENATE RESOLUTION NO. 4

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2001, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Transportation, in accordance with the provisions of sections 2-15-111 and 2-15-2501, MCA:

Mr. Dave Galt, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 57th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted January 26, 2001

SENATE RESOLUTION NO. 6

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2001, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Agriculture, in accordance with the provisions of sections 2-15-111 and 2-15-3001, MCA:

Mr. Ralph Peck, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 57th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted February 2, 2001

SENATE RESOLUTION NO. 7

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO SOME OF THE NOMINATIONS OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 4, 2001, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the governor pursuant to section 5-5-302, MCA:

As members of the Board of Regents of Higher Education, in accordance with section 2-15-1508, MCA:

(1) Ms. Deborah Wetsit, Billings, Montana, for a term ending February 1, 2001.

(2) Ms. Jessica Kobos, Missoula, Montana, for a term ending July 1, 2001.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 57th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 20, 2001

SENATE RESOLUTION NO. 8

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2001, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Public Health and Human Services, in accordance with the provisions of sections 2-15-111 and 2-15-2201, MCA:

Ms. Gail Gray, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 57th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted February 2, 2001

SENATE RESOLUTION NO. 10

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2001, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Military Affairs, in accordance with the provisions of sections 2-15-111 and 2-15-1201, MCA:

Major General John Prendergast, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 57th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted February 2, 2001

SENATE RESOLUTION NO. 16

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 4, 2001, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Public Education, in accordance with section 2-15-1508, MCA:

(1) Ms. Patty Myers, Great Falls, Montana, for a term ending February 1, 2007.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 57th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 19, 2001

SENATE RESOLUTION NO. 17

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2001, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Revenue, in accordance with the provisions of sections 2-15-111 and 2-15-1302, MCA:

Mr. Kurt Alme, Billings, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 57th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted February 8, 2001

SENATE RESOLUTION NO. 18

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA URGING THE SENATE IN THE 58TH LEGISLATURE TO ABOLISH THE SENATE BILLS AND JOURNAL COMMITTEE.

WHEREAS, the Senate of the 57th Legislature desires to ensure that the Senate operates in an efficient and effective manner in the future; and

WHEREAS, technology has reduced the need for a committee to oversee the processing and filing of bills and Senate journals; and

WHEREAS, the Senate consistently hires the most qualified, efficient, and friendly staff for the processing and filing of bills and the Senate journal; and

WHEREAS, the powerful and prestigious Senate Bills and Journal Committee rarely meets and for several sessions has been unable to find sufficient time or support for an awards banquet at the conclusion of the legislative session.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate in the 58th Legislature be urged to abolish the Senate Bills and Journal Committee and to assign the oversight of the processing and filing of bills and the Senate journal to the President of the Senate.

Adopted March 3, 2001

SENATE RESOLUTION NO. 19

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 4, 2001, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Alternative Health Care Board, in accordance with section 2-15-1840, MCA:

Dr. Nancy Dunne-Boggs, Missoula, Montana, appointed for a term ending September 1, 2003.

Dr. Marshall White, Jr., Hamilton, Montana, appointed for a term ending September 1, 2003.

Dr. Margaret Beeson, Billings, Montana, appointed for a term ending September 1, 2004.

(2) As a member of the Board of Athletics, in accordance with section 2-15-1882, MCA:

Ms. Anita Vandolah, Conrad, Montana, appointed for a term ending April 25, 2003.

(3) As a member of the Board of Architects, in accordance with section 2-15-1871, MCA:

Mr. John Peterson, Kalispell, Montana, appointed for a term ending March 27, 2003.

(4) As members of the State Banking Board, in accordance with section 2-15-1803, MCA:

Mr. Wayne Edwards, Denton, Montana, appointed for a term ending July 1, 2002.

Mr. Max Agather, Kalispell, Montana, appointed for a term ending July 1, 2002.

Mr. James Drummond, Bozeman, Montana, appointed for a term ending July 1, 2003.

Ms. Barbara Skelton, Butte, Montana, appointed for a term ending July 1, 2003.

Mr. Ted Goodwin, appointed for a term ending July 1, 2001.

(5) As members of the Board of Barbers, in accordance with section 2-15-1856, MCA:

Ms. Delores Lund, Reserve, Montana, appointed for a term ending July 1, 2002.

Ms. Monica Eisenzimer, Columbia Falls, Montana, appointed for a term ending July 1, 2002.

Mr. Terrance Luff, Billings, Montana, appointed for a term ending July 1, 2003.

(6) As members of the Board of Chiropractors, in accordance with section 2-15-1847, MCA:

Ms. Pamela Blanchard, Great Falls, Montana, appointed for a term ending January 1, 2003.

Ms. Jo Ausk, Terry, Montana, appointed for a term ending January 1, 2003.

(7) As members of the Board of Clinical Laboratory Science Practitioners, in accordance with section 2-15-1863, MCA:

Ms. Susan Pullman, Butte, Montana, appointed for a term ending April 16, 2003.

Ms. Karen McNutt, Sidney, Montana, appointed for a term ending April 16, 2003.

Ms. Doris Knox, Winifred, Montana, appointed for a term ending April 16, 2003.

(8) As members of the Board of Cosmetologists, in accordance with section 2-15-1857, MCA:

Mr. John Reichelt, Billings, Montana, appointed for a term ending July 1, 2003.

Mr. Wendell Peterson, Missoula, Montana, appointed for a term ending July 1, 2004.

(9) As a member of the Board of Dentistry, in accordance with section 2-15-1842, MCA:

Dr. Paul Sims, Butte, Montana, appointed for a term ending March 29, 2005.

(10) As members of the State Electrical Board, in accordance with section 2-15-1874, MCA:

Mr. Ron Van Diest, Helena, Montana, appointed for a term ending July 1, 2004.

Mr. Tony Martel, Bozeman, Montana, appointed for a term ending July 1, 2001.

Mr. Joe Wolfe, Jr., Helena, Montana, appointed for a term ending July 1, 2005.

(11) As members of the Board of Funeral Service, in accordance with section 2-15-1853, MCA:

Mr. David Fulkerson, Plentywood, Montana, appointed for a term ending July 1, 2004.

Mr. John Michelotti, Billings, Montana, appointed for a term ending July 1, 2005.

(12) As a member of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:

Mr. Larry Barbie, Inverness, Montana, appointed for a term ending April 18, 2003.

(13) As a member of the Montana Health Facility Authority, in accordance with section 2-15-1815, MCA:

Mr. John Bartos, Corvallis, Montana, appointed for a term ending January 1, 2003.

(14) As members of the Board of Hearing Aid Dispensers, in accordance with section 2-15-1850, MCA:

Mr. Paul J. Byorth, Billings, Montana, appointed for a term ending July 1, 2003.

Ms. Stacia Moore, Kalispell, Montana, appointed for a term ending July 1, 2002.

Mr. John Delano, Helena, Montana, appointed for a term ending July 1, 2002.

Ms. Marlene Tash, Dillon, Montana, appointed for a term ending July 1, 2003.

Ms. Cindy Burk, Helena, Montana, appointed for a term ending July 1, 2003.

Ms. Beckie Hoffmann, Butte, Montana, appointed for a term ending July 1, 2003.

(15) As members of the Board of Trustees of the Montana Historical Society, in accordance with section 22-3-104, MCA:

Mr. Ed Henrich, Anaconda, Montana, appointed for a term ending July 1, 2004.

Ms. Lee Rostad, Martinsdale, Montana, appointed for a term ending July 1, 2004.

Mr. James Utterback, Helena, Montana, appointed for a term ending July 1, 2004.

Mr. Larry McRae, Missoula, Montana, appointed for a term ending July 1, 2001.

Ms. Ana Brenden, Scobey, Montana, appointed for a term ending July 1, 2005.

Mr. Burton Bosch, Havre, Montana, appointed for a term ending July 1, 2005.

Mr. Tim Fox, Helena, Montana, appointed for a term ending July 1, 2005.

(16) As members of the Preservation Review Board, in accordance with section 2-15-1512, MCA:

Mr. Chris King, Winnett, Montana, appointed for a term ending October 1, 2003.

Ms. Kathy Doeden, Miles City, Montana, appointed for a term ending October 1, 2003.

Ms. Germaine White, St. Ignatius, Montana, appointed for a term ending October 1, 2003.

Mr. Steve Aaberg, Billings, Montana, appointed for a term ending October 1, 2004.

Mr. Paul Filicetti, Missoula, Montana, appointed for a term ending October 1, 2004.

Mr. Rafael Chacon, Lolo, Montana, appointed for a term ending October 1, 2004.

Ms. Becky Kallevig, Sidney, Montana, appointed for a term ending October 1, 2001.

(17) As members of the Board of Horseracing, in accordance with section 2-15-1881, MCA:

Mr. Tim Donnelly, Miles City, Montana, appointed for a term ending January 20, 2003.

Ms. Barbara Cole, Shelby, Montana, appointed for a term ending January 20, 2003.

(18) As a member of the Board of Landscape Architects, in accordance with section 2-15-1872, MCA:

Mr. Stacey Robinson, Billings, Montana, appointed for a term ending July 1, 2004.

(19) As members of the State Library Commission, in accordance with section 22-1-101, MCA:

Ms. Dorothy Laird, Whitefish, Montana, appointed for a term ending May 22, 2002.

Mr. Alvin Randall, Troy, Montana, appointed for a term ending May 22, 2002.

Ms. Rosemary Garvey, Butte, Montana, appointed for a term ending May 22, 2003.

Mr. David Johnson, Billings, Montana, appointed for a term ending May 22, 2003.

(20) As members of the Board of Medical Examiners, in accordance with section 2-15-1841, MCA:

Dr. Lawrence McEvoy, Clancy, Montana, appointed for a term ending September 1, 2003.

Dr. Faust Alvarez, Helena, Montana, appointed for a term ending September 1, 2003.

Dr. Van Kirke Nelson, Kalispell, Montana, appointed for a term ending September 1, 2001.

Dr. Beth Thompson, Missoula, Montana, appointed for a term ending September 1, 2004.

(21) As members of the Montana Arts Council, in accordance with section 22-2-102, MCA:

Ms. Linda Reed, Helena, Montana, appointed for a term ending February 1, 2005.

Ms. Marilyn Olson, Sidney, Montana, appointed for a term ending February 1, 2005.

Ms. Jennifer Earle Seifert, Troy, Montana, appointed for a term ending February 1, 2005.

Mr. Bill Frazier, Livingston, Montana, appointed for a term ending February 1, 2005.

(22) As members of the Board of Nursing, in accordance with section 2-15-1844, MCA:

Mr. John Burke, Missoula, Montana, appointed for a term ending July 1, 2003.

Ms. Sharon Dschaak, Wolf Point, Montana, appointed for a term ending July 1, 2003.

Ms. A. Gretchen McNeely, Bozeman, Montana, appointed for a term ending July 1, 2004.

Ms. Vickie Badgley, Stevensville, Montana, appointed for a term ending July 1, 2004.

(23) As members of the Board of Nursing Home Administrators, in accordance with section 2-15-1845, MCA:

Mr. Fred Patten, Helena, Montana, appointed for a term ending May 28, 2004.

Ms. Donna Kay Jennings, Missoula, Montana, appointed for a term ending May 28, 2001.

Ms. Deborah M. Wilson, Kalispell, Montana, appointed for a term ending May 28, 2005.

Ms. Lori Henderson, Havre, Montana, appointed for a term ending May 28, 2003.

(24) As a member of the Board of Occupational Therapy Practice, in accordance with section 2-15-1859, MCA:

Ms. Debra Ammondson, Great Falls, Montana, appointed for a term ending December 31, 2003.

(25) As a member of the Board of Optometry, in accordance with section 2-15-1846, MCA:

Dr. Douglas McBride, Billings, Montana, appointed for a term ending April 3, 2004.

(26) As members of the Board of Outfitters, in accordance with section 2-15-1883, MCA:

Mr. Richard Pasquale, Cascade, Montana, appointed for a term ending October 1, 2003.

Mr. Raymond Rugg, Superior, Montana, appointed for a term ending October 1, 2003.

(27) As a member of the Board of Personnel Appeals, in accordance with section 2-15-1705, MCA:

Mr. Jack Holstrom, Clancy, Montana, appointed for a term ending January 1, 2004.

(28) As members of the Board of Pharmacy, in accordance with section 2-15-1843, MCA:

Mr. Albert Fisher, Billings, Montana, appointed for a term ending July 1, 2004.

Mr. Robert Mann, Plentywood, Montana, appointed for a term ending July 1, 2005.

(29) As members of the Board of Physical Therapy Examiners, in accordance with section 2-15-1858, MCA:

Ms. Linda Stordahl, Butte, Montana, appointed for a term ending July 1, 2001.

Mr. Jeff Swift, Great Falls, Montana, appointed for a term ending July 1, 2002.

Dr. John Heetderks, Belgrade, Montana, appointed for a term ending July 1, 2003.

Ms. Brenda Mahlum, Missoula, Montana, appointed for a term ending July 1, 2003.

Ms. Judy Cole, Hysham, Montana, appointed for a term ending July 1, 2003.

(30) As members of the Board of Plumbers, in accordance with section 2-15-1875, MCA:

Mr. Robert Metcalf, Bozeman, Montana, appointed for a term ending May 4, 2003.

Mr. Stephen Nelson, Great Falls, Montana, appointed for a term ending May 4, 2003.

Mr. Elver Madsen, East Helena, Montana, appointed for a term ending May 4, 2003.

Ms. Jo Hawkins, Helena, Montana, appointed for a term ending May 4, 2003.

Mr. Greg Butts, Kalispell, Montana, appointed for a term ending May 4, 2003.

Mr. Kim Beaudry, Billings, Montana, appointed for a term ending May 4, 2004.

(31) As members of the Board of Private Security Patrol Officers and Investigators, in accordance with section 2-15-1891, MCA:

Ms. Francine Britton, Billings, Montana, appointed for a term ending August 1, 2002.

Mr. Donald Houghton, Bozeman, Montana, appointed for a term ending August 1, 2002.

Mr. Gary Dent, Conrad, Montana, appointed for a term ending August 1, 2003.

Mr. Jeffrey Patterson, Missoula, Montana, appointed for a term ending August 1, 2003.

Mr. Ronald Rowton, Lewistown, Montana, appointed for a term ending August 1, 2003.

(32) As members of the Board of Professional Engineers and Professional Land Surveyors, in accordance with section 2-15-1873, MCA:

Mr. Haley Beaudry, Butte, Montana, appointed for a term ending July 1, 2003.

Mr. Ronald Allen, Bozeman, Montana, appointed for a term ending July 1, 2003.

Ms. Paulette Ferguson, Missoula, Montana, appointed for a term ending July 1, 2003.

Dr. Warren Scarrah, Bozeman, Montana, appointed for a term ending July 1, 2003.

(33) As members of the Board of Psychologists, in accordance with section 2-15-1851, MCA:

Dr. Paul Silverman, Missoula, Montana, appointed for a term ending September 1, 2004.

Dr. Dawn Birk, Miles City, Montana, appointed for a term ending September 1, 2004.

Dr. Michael McLaughlin, Great Falls, Montana, appointed for a term ending September 1, 2001.

Ms. Nancy McLees, Bozeman, Montana, appointed for a term ending September 1, 2005.

(34) As members of the Board of Public Accountants, in accordance with section 2-15-1866, MCA:

Mr. Patrick Hanley, Billings, Montana, appointed for a term ending July 1, 2004.

Mr. Russell Fillner, Helena, Montana, appointed for a term ending July 1, 2005.

(35) As members of the Board of Radiologic Technologists, in accordance with section 2-15-1848, MCA:

Dr. Martin Kurland, Glasgow, Montana, appointed for a term ending July 1, 2002.

Ms. Debbie Sanford, Lewistown, Montana, appointed for a term ending July 1, 2002.

Mr. Alan Sevier, Glendive, Montana, appointed for a term ending July 1, 2002.

Ms. Cynthia Smith Finch, Billings, Montana, appointed for a term ending July 1, 2002.

Ms. Jane Christman, Dutton, Montana, appointed for a term ending July 1, 2003.

(36) As members of the Board of Real Estate Appraisers, in accordance with section 2-15-1868, MCA:

Mr. Roger Jacobson, Kalispell, Montana, appointed for a term ending May 1, 2002.

Mr. Tim Moore, Helena, Montana, appointed for a term ending May 1, 2001.

Mr. David Heine, Kalispell, Montana, appointed for a term ending May 1, 2003.

Ms. Janeth Martin, Helena, Montana, appointed for a term ending May 1, 2003.

Mr. Thomas Moss, Billings, Montana, appointed for a term ending May 1, 2002.

Ms. Jennifer Seitz, Billings, Montana, appointed for a term ending May 1, 2001.

(37) As members of the Board of Realty Regulation, in accordance with section 2-15-1867, MCA:

Ms. Teddye Beebe, Libby, Montana, appointed for a term ending May 9, 2002.

Mr. John Beagle, Sidney, Montana, appointed for a term ending May 9, 2002.

Ms. Laura Odegaard, Billings, Montana, appointed for a term ending May 9, 2004.

(38) As members of the Board of Respiratory Care Practitioners, in accordance with section 2-15-1860, MCA:

Dr. Robert Pueringer, Billings, Montana, appointed for a term ending January 1, 2004.

Mr. Robert Kirtley, Bozeman, Montana, appointed for a term ending January 1, 2002.

(39) As members of the Board of Sanitarians, in accordance with section 2-15-1861, MCA:

Mr. John Shea, Missoula, Montana, appointed for a term ending July 1, 2002.

Ms. Denise Moldroski, Livingston, Montana, appointed for a term ending July 1, 2003.

(40) As members of the Board of Speech-Language Pathologists and Audiologists, in accordance with section 2-15-1849, MCA:

Ms. Marilyn Thaden, Miles City, Montana, appointed for a term ending December 31, 2002.

Ms. Jennifer Hartze, Belgrade, Montana, appointed for a term ending December 31, 2002.

(41) As a member of the Board of Directors of the State Compensation Insurance Fund, in accordance with section 2-15-1019, MCA:

Ms. Wendy Susott, Missoula, Montana, appointed for a term ending April 28, 2003.

(42) As a member of the Teachers' Retirement Board, in accordance with section 2-15-1010, MCA:

Mr. Tim Ryan, Great Falls, Montana, appointed for a term ending July 1, 2004.

(43) As a member of the Transportation Commission, in accordance with section 2-15-2502, MCA:

Mr. Dan Larson, Libby, Montana, appointed for a term ending January 1, 2003.

(44) As members of the Board of Veterans' Affairs, in accordance with section 2-15-1205, MCA:

Mr. Johnny Buck, Glendive, Montana, appointed for a term ending May 18, 2004.

Mr. Ruben McKinney, Havre, Montana, appointed for a term ending May 18, 2005.

(45) As members of the Board of Veterinary Medicine, in accordance with section 2-15-1852, MCA:

Dr. John Smith, Three Forks, Montana, appointed for a term ending July 31, 2004.

Ms. Mary Hinebauch, Miles City, Montana, appointed for a term ending July 31, 2005.

Ms. Linda Kauffman, Stevensville, Montana, appointed for a term ending July 31, 2005.

(46) As a member of the Water Pollution Control Advisory Council, in accordance with section 2-15-2107, MCA:

Mr. Don Halverson, Missoula, Montana, appointed for a term ending at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 57th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 21, 2001

SENATE RESOLUTION NO. 20

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE OF HONORABLE JAMES A. RICE AS JUSTICE OF THE MONTANA SUPREME COURT.

WHEREAS, the Governor of the State of Montana has made the nomination, below designated, of an appointment that has been submitted to the Senate by the Governor. to wit:

James A. Rice as Justice of the Montana Supreme Court, to serve the remainder of the term vacated by the Honorable Karla Gray upon her election as Chief Justice of the Montana Supreme Court.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 57th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and Secretary of the Senate, to the Secretary of State and a copy, certified by the Secretary of the Senate, to the Governor pursuant to section 5-5-303, MCA.

Adopted March 14, 2001

SENATE RESOLUTION NO. 21

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE OF HONORABLE GREGORY R. TODD AS DISTRICT JUDGE OF THE THIRTEENTH JUDICIAL DISTRICT, BILLINGS, MONTANA.

WHEREAS, the Governor of the State of Montana has made the nomination, below designated, of an appointment that has been submitted to the Senate by the Governor, to wit:

Gregory R. Todd, as District Judge, Thirteenth Judicial District, Billings, Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 57th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and Secretary of the Senate, to the Secretary of State and a copy, certified by the Secretary of the Senate, to the Governor pursuant to section 5-5-303, MCA.

Adopted March 23, 2001

SENATE RESOLUTION NO. 22

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 6, 2001, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Aeronautics, in accordance with section 2-15-2506, MCA:

Mr. Kenneth Tolliver, Billings, Montana, appointed for a term ending January 1, 2005.

Mr. William Metz, Laurel, Montana, appointed for a term ending January 1, 2005.

Mr. George Warner, Dillon, Montana, appointed for a term ending January 1, 2005.

Mr. Lanny Hanson, Glasgow, Montana, appointed for a term ending January 1, 2005.

Mr. Frank Bass, Moore, Montana, appointed for a term ending January 1, 2005.

(2) As a member of the Board of Chiropractors, in accordance with section 2-15-1847, MCA:

Dr. Gregory Hoell, Bozeman, Montana, appointed for a term ending January 1, 2004.

(3) As members of the Fish, Wildlife, and Parks Commission, in accordance with section 2-15-3402, MCA:

Mr. Rich Lane, Missoula, Montana, appointed for a term ending January 1, 2005.

Mr. John Lane, Cascade, Montana, appointed for a term ending January 1, 2005.

Mr. Dan Walker, Billings, Montana, appointed for a term ending January 1, 2005.

(4) As members of the Board of Horseracing, in accordance with section 2-15-1881, MCA:

Mr. Jay C. Clark, Sweetgrass, Montana, appointed for a term ending January 20, 2004.

Mr. Charles Carruthers, Butte, Montana, appointed for a term ending January 20, 2004.

Ms. Brenda Koch, Lewistown, Montana, appointed for a term ending January 20. 2004.

Ms. Susan Austin, Kalispell, Montana, appointed for a term ending January 20, 2004.

(5) As members of the Board of Housing, in accordance with section 2-15-1814, MCA:

Mr. Thomas Welch, Dillon, Montana, appointed for a term ending January 1, 2005.

Mr. Robert Savage, Sidney, Montana, appointed for a term ending January 1, 2005.

Mr. William Oser, Billings, Montana, appointed for a term ending January 1, 2005.

Mr. Stephen Redinger, Billings, Montana, appointed for a term ending January 1, 2005.

(6) As members of the Board of Investments, in accordance with section 2-15-1808, MCA:

Mr. Joel Long, Billings, Montana, appointed for a term ending January 1, 2005.

Mr. Dennis Beams, Kalispell, Montana, appointed for a term ending January 1, 2005.

Mr. Jay Klawon, Hamilton, Montana, appointed for a term ending January 1, 2005.

Mr. Dick Anderson, Helena, Montana, appointed for a term ending January 1, 2005.

Mr. Tim Ryan, Great Falls, Montana, appointed for a term ending January 1, 2005.

(7) As members of the Board of Labor Appeals, in accordance with section 2-15-1704, MCA:

Ms. Carol Vega, Butte, Montana, appointed for a term ending January 1, 2005.

Mr. Joseph Thares, Helena, Montana, appointed for a term ending January 1, 2005.

(8) As a member of the Board of Medical Examiners, in accordance with section 2-15-1841, MCA:

Ms. Susan McRae, Dillon, Montana, appointed for a term ending September 1, 2001.

(9) As members of the Board of Milk Control, in accordance with section 2-15-3105, MCA:

Mr. Jesse Russell Gleason, Fairfield, Montana, appointed for a term ending January 1, 2005.

Ms. Dixie Hertel, Moore, Montana, appointed for a term ending January 1, 2005.

Mr. Milton Olson, Whitewater, Montana, appointed for a term ending January 1, 2005.

(10) As a member of the Board of Occupational Therapy Practice, in accordance with section 2-15-1859, MCA:

Ms. Shelbi Berg, Marion, Montana, appointed for a term ending December 31, 2004.

(11) As members of the Board of Pardons and Parole, in accordance with section 2-15-2302, MCA:

Mr. Michael McKee, Hamilton, Montana, appointed for a term ending January 1, 2003.

Ms. Roxanne Wilson, Busby, Montana, appointed for a term ending January 1, 2005.

Mr. Mark Fournier, Hamilton, Montana, appointed for a term ending January 1, 2005.

(12) As a member of the Board of Plumbers, in accordance with section 2-15-1875, MCA:

Mr. Terry Tatchell, Helena, Montana, appointed for a term ending May 4, 2002.

(13) As members of the Board of Public Assistance, in accordance with section 2-15-2203, MCA:

Ms. Mary Belcher, Clancy, Montana, appointed for a term ending January 1, 2005.

Ms. Julie Ann Millam, Helena, Montana, appointed for a term ending January 1, 2005.

(14) As members of the Board of Respiratory Care Practitioners, in accordance with section 2-15-1860, MCA:

Ms. Shirley Pollard, Stevensville, Montana, appointed for a term ending January 1, 2005.

Mr. Gregory Paulauskis, Great Falls, Montana, appointed for a term ending January 1, 2005.

Ms. Linda Davis, Townsend, Montana, appointed for a term ending January 1, 2005.

(15) As members of the Board of Social Work Examiners and Professional Counselors, in accordance with section 2-15-1854, MCA:

Ms. Rashell Jeffrey, Missoula, Montana, appointed for a term ending January 1, 2005.

Mr. Ervin Booth, Roundup, Montana, appointed for a term ending January 1, 2005.

Ms. Mary Meis, Shelby, Montana, appointed for a term ending January 1, 2005.

Mr. Patrick Wolberd, Livingston, Montana, appointed for a term ending January 1, 2005.

(16) As a member of the State Tax Appeal Board, in accordance with section 15-2-101, MCA:

Mr. Larry Brown, Butte, Montana, appointed for a term ending January 1, 2007.

(17) As members of the Transportation Commission, in accordance with section 2-15-2502, MCA:

Mr. Shiell Anderson, Livingston, Montana, appointed for a term ending January 1, 2005.

Mr. Daniel Rice, Great Falls, Montana, appointed for a term ending January 1. 2005.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 57th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 9, 2001

SENATE RESOLUTION NO. 23

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 4, 2001, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As a member of the Board of Athletics, in accordance with section 2-15-1882, MCA:

Mr. Gary Langley, Helena, Montana, appointed for a term ending April 25, 2004.

(2) As members of the Board of Dentistry, in accordance with section 2-15-1842, MCA:

Dr. James Johnson, Billings, Montana, appointed for a term ending March 29, 2006.

Ms. Jean Hagan, Bigfork, Montana, appointed for a term ending March 29, 2006.

(3) As a member of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:

Mr. Keith Arntzen, Hilger, Montana, appointed for a term ending April 18, 2004.

(4) As members of the Montana Health Facility Authority, in accordance with section 2-15-1815, MCA:

Ms. Joyce Asay, Forsyth, Montana, appointed for a term ending January 1, 2005.

Ms. Gayle Carpenter, Helena, Montana, appointed for a term ending January 1, 2005.

Mr. Lee Jockers, Billings, Montana, appointed for a term ending January 1, 2005.

Ms. Kelley Evans, Red Lodge, Montana, appointed for a term ending January 1, 2005.

(5) As members of the Commission for Human Rights, in accordance with section 2-15-1706. MCA:

Ms. Evelyn Stevenson, Pablo, Montana, appointed for a term ending January 1, 2005.

Mr. Gary Hindoien, Clancy, Montana, appointed for a term ending January 1, 2005.

Ms. Arleah Shechtman, Kalispell, Montana, appointed for a term ending January 1, 2005.

(6) As members of the Board of Livestock, in accordance with section 2-15-3102, MCA:

Mr. Lee Cornwell, Glasgow, Montana, appointed for a term ending March 1, 2007.

Mr. John Paugh, Bozeman, Montana, appointed for a term ending March 1, 2007.

(7) As members of the Board of Oil and Gas Conservation, in accordance with section 2-15-3303, MCA:

Mr. Jerry Kennedy, Shelby, Montana, appointed for a term ending January 1, 2005.

Mr. Gary Willis, Helena, Montana, appointed for a term ending January 1, 2005.

Mr. Allen Kolstad, Chester, Montana, appointed for a term ending January 1, 2005.

Mr. David Ballard, Billings, Montana, appointed for a term ending January 1, 2005.

(8) As a member of the Board of Optometry, in accordance with section 2-15-1846, MCA:

Dr. Cynthia Johnson, Bozeman, Montana, appointed for a term ending April 4, 2005.

(9) As members of the Board of Public Education, in accordance with section 2-15-1508, MCA:

Mr. John Fuller, Whitefish, Montana, appointed for a term ending February 2, 2008.

Ms. Joyce Silverthorne, Dixon, Montana, appointed for a term ending February 1, 2004.

(10) As a member of the Transportation Commission, in accordance with 2-15-2502, MCA:

Mr. Meredith Reiter, Billings, Montana, appointed for a term ending January 1, 2005.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 57th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 17, 2001

SENATE RESOLUTION NO. 24

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 12, 2001, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Architects, in accordance with section 2-15-1871, MCA:

Mr. Larry Chaffin, Dillon, Montana, appointed for a term ending March 27, 2004.

Mr. Tom Wood, Bozeman, Montana, appointed for a term ending March 27, 2004.

(2) As a member of the State Banking Board, in accordance with section 2-15-1803, MCA:

Ms. Jamie Doggett, White Sulphur Springs, Montana, appointed for a term ending July 1, 2001.

(3) As members of the Coal Board, in accordance with section 2-15-1821, MCA:

Mr. Alan Evans, Roundup, Montana, appointed for a term ending January 1, 2005.

Mr. Gerald Feda, Glasgow, Montana, appointed for a term ending January 1, 2005.

Mr. Roger Knapp, Hysham, Montana, appointed for a term ending January 1, 2005.

Mr. James Royan, Missoula, Montana, appointed for a term ending January 1, 2005.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 57th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 19, 2001

SENATE RESOLUTION NO. 25

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 4, 2001, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Regents of Higher Education, in accordance with section 2-15-1508, MCA:

Mr. Mark Semmens, Great Falls, Montana, for a term ending February 1, 2007.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 57th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 20, 2001

House Joint Resolutions

HOUSE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA PROVIDING FOR A MENTAL HEALTH SERVICES OVERSIGHT SUBCOMMITTEE OF THE LEGISLATIVE FINANCE COMMITTEE FOR THE 2001-02 INTERIM.

WHEREAS, the Legislative Finance Committee's House Joint Resolution No. 35 Subcommittee on Mental Health has monitored the change from a managed care contract back to a fee-for-service reimbursement for public mental health services and has studied many issues relating to the care of persons with serious mental illness and of children with serious emotional disturbances; and

WHEREAS, the ultimate public policy goal of the integration of mental health services within the various divisions of the Department of Public Health and Human Services, between state agencies, and in cooperation with local governments will require integration of study between multiple legislative interim committees in fulfillment of their respective statutory responsibilities; and

WHEREAS, the Department of Public Health and Human Services has a Mental Health Oversight Advisory Council that provides input to the Department in the development and management of any public mental health system and is required to provide to the Legislative Finance Committee and other appropriate interim committees copies of meeting summaries and recommendations made to the Department by the Advisory Council and the Department is required to report its response to those recommendations; and

WHEREAS, the Children, Families, Health, and Human Services Interim Committee and the Legislative Finance Committee are both involved in various aspects of monitoring the Department of Public Health and Human Services, including the Addictive and Mental Disorders Division; and

WHEREAS, many of the issues that have been raised involve the corrections and criminal justice systems that are under the purview of the Law, Justice, and Indian Affairs Interim Committee and affect agencies monitored by the Legislative Finance Committee; and

WHEREAS, mental health issues arise in the context of veterans' health care needs encountered by the State Administration, Public Retirement Systems, and Veterans' Affairs Interim Committee and interact with various aspects monitored by the Legislative Finance Committee; and

WHEREAS, the issues revolving around mental illness touch many areas of government, and many resources must be brought to bear to understand the issues, to work towards resolution, and to provide strong public policy direction for the further integration and delivery of public mental health care services.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That a joint interim subcommittee of the Legislative Finance Committee be formed with members of the Legislative Finance Committee; the Legislative Audit Committee; and the Interim Committees of Children, Families, Health, and Human Services; Law, Justice, and Indian Affairs; and State Administration, Public Retirement Systems, and Veterans' Affairs and that the subcommittee continue the monitoring and oversight of the further integration and delivery of public mental health services.

BE IT FURTHER RESOLVED, that the goal of the study be the integration of services within the Department of Public Health and Human Services and across all state agencies that serve adults with mental illness or children with serious emotional disturbances and adults or children with other coexisting disorders in cooperation with local governments and school districts and include the following areas of concern:

(1) the continued development of appropriate and effective community services to serve persons in the least restrictive environment;

(2) the development of methods to ensure maximum leverage of federal funds, the cost-effective provision of services, and the use of best practices, including the evolution of more sophisticated case management;

(3) the issues of commitment to community facilities, programs, and treatment and involuntary medication identified in the 1999-2000 interim process;

(4) the interaction of mental health services and the courts and criminal justice and corrections systems in terms of training those who come in contact with persons with mental illness, diversion of persons with mental illness from the criminal justice system to mental health services, appropriate treatment in jails and prisons, local government responsibilities for transportation of persons with mental illness, the differences in the incidence of mental illness and the treatment offered to male and female inmates, and cost-shifting between state agencies for mental health services;

(5) the structure and financing of mental health services available for veterans and the extent to which U.S. Department of Veterans Affairs resource allocation decisions may shift costs to state and local services and the consideration of options for mitigating the consequences;

(6) children needing mental health services and the child mental health services system; and

(7) other emergent issues regarding mental health services.

BE IT FURTHER RESOLVED, that the Department of Public Health and Human Services has the responsibility to administer the public mental health system and the Mental Health Oversight Advisory Council is intended to provide input to the Department in the further development of the public mental health system. The purpose of the joint interim subcommittee is to monitor the Department's progress, including the activities and recommendations of the Advisory Council or other consultants, in the development of a more integrated continuum of mental health services, especially regarding the areas of concern mentioned in this resolution. It is the purpose of the joint interim subcommittee to monitor and analyze the expenditures of the public mental health system as one of its responsibilities as a subcommittee of the Legislative Finance Committee. The joint interim subcommittee is requested to monitor and limit to the extent possible any redundancies between the various committees and agencies studying mental health services provided by public agencies.

BE IT FURTHER RESOLVED, that the Legislative Finance Committee and the Legislative Council cooperate to determine the appropriate staffing of the subcommittee from the staff of the Legislative Fiscal Division and the Legislative Services Division. The subcommittee shall report its findings and recommendations to the Legislative Finance Committee.

Adopted March 20, 2001

HOUSE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ESTABLISHING AN OFFICIAL ESTIMATE OF THE STATE'S ANTICIPATED GENERAL FUND REVENUE FOR EACH YEAR OF THE 2002-03 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED GENERAL FUND BUDGET AS MANDATED BY ARTICLE VIII, SECTION 9, OF THE MONTANA CONSTITUTION; ACCEPTING A JUNE 30, 2000, UNRESERVED GENERAL FUND BALANCE THAT WAS ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; ESTABLISHING OFFICIAL ESTIMATES OF CERTAIN NONGENERAL FUND REVENUE; AND REQUESTING THAT THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING USE THE REVENUE ESTIMATES CONTAINED IN THIS RESOLUTION AS OFFICIAL REVENUE ESTIMATES FOR FISCAL YEARS 2001, 2002, AND 2003.

WHEREAS, Article VI, section 9, of the Montana Constitution requires the Governor to submit to the Legislature a budget for the ensuing fiscal period, containing in detail for all operating funds the proposed expenditures and estimated revenue of the state; and

WHEREAS, Article VIII, section 9, of the Montana Constitution prohibits the Legislature from appropriating funds in excess of the anticipated revenue of the state; and

WHEREAS, section 5-18-107, MCA, requires the Revenue and Taxation Interim Committee to estimate the amount of revenue projected to be available for legislative appropriation and to introduce a resolution setting forth the Committee's current revenue estimate for the biennium; and

WHEREAS, the Legislature intends that its revenue estimates and the underlying assumptions used to derive those estimates be used by all agencies in the development of fiscal notes; and

WHEREAS, section 5-12-302(6), MCA, requires the Legislative Fiscal Analyst to assist the Revenue and Taxation Interim Committee in its revenue estimating duties; and

WHEREAS, the Revenue and Taxation Interim Committee obtains the assistance of Executive Branch agencies in the development of the revenue estimates; and

WHEREAS, the Revenue and Taxation Interim Committee has adopted revenue estimates for the general fund and for specific nongeneral fund sources that are significant in the development of the state budget for the 2003 biennium; and

WHEREAS, the amount of estimated revenue and the general fund balance affects policy decisions of the Executive Branch and the Legislative Branch; and

WHEREAS, the revenue estimates and the underlying assumptions contained in this resolution provide the basis for a comprehensive analysis of the state's financial condition.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the state general fund revenue for fiscal years 2001, 2002, and 2003 be estimated to be $1,200,186,000, $1,198,729,000, and $1,210,972,000, respectively.

BE IT FURTHER RESOLVED, that the Legislature accept for budget purposes the unreserved fiscal year 2000 fund balance of $176,000,000 for the general fund, prepared according to generally accepted accounting principles.

BE IT FURTHER RESOLVED, that the Governor's Office of Budget and Program Planning use the revenue estimates and the underlying assumptions contained in this resolution as the official revenue estimates for fiscal years 2001, 2002, and 2003.

BE IT FURTHER RESOLVED, that the Department of Revenue provide the Legislative Fiscal Division with reports at least quarterly concerning aggregate audit collections for the individual income tax, corporation license tax, coal severance tax, telecommunications tax, and oil and natural gas production tax, beginning with the quarter ending September 2001. The reports must include for each tax type the amount of tax, penalty, and interest. The Department shall also on a quarterly basis notify the Legislative Fiscal Division by tax type of aggregate audit settlements greater than $250,000.

BE IT FURTHER RESOLVED, that the Legislature recognize the competing priorities of implementing POINTS and encourage the Department to recognize the importance of providing audit collections in SABHRS on a monthly basis.

BE IT FURTHER RESOLVED, that the Department report to the Revenue and Taxation Interim Committee at each meeting during the 2003 biennium on the progress of integrating POINTS with the state accounting system to enable the reporting of audits, penalties, and interest collections separately on SABHRS.

GENERAL FUND REVENUE

The projections for total general fund revenue during the 2003 biennium (FY 2002 and FY 2003) are based on the assumption of a continuation of Montana law as it existed on January 1, 2001. The revenue estimates contained in the following tables are based on the assumptions listed in the tables that follow the general fund estimates and the assumptions contained in the "Revenue Estimates as Adopted by the Revenue and Taxation Committee" report prepared by the Legislative Fiscal Division.

Current Law

General Fund Revenue Estimates

(In Millions of Dollars)

Adjusted

Source of Revenue	Actual FY 2000	Estimated FY 2001	Estimated FY 2002	Estimated FY 2003
Individual Income Tax	$516.262	$545.350	$575.077	$598.531
Statewide and Vo-Tech Property Taxes	194.197	175.065	173.754	178.828
Corporation Income Tax	90.683	74.626	72.903	74.394
Common School Interest and Income	44.296	47.924	42.621	43.600
Insurance Tax and License Fees	39.334	40.810	42.656	44.030
Permanent Coal Trust Interest Earnings	39.195	39.117	39.133	39.043
U.S. Mineral Royalty	19.243	27.845	21.756	20.474
All Other Revenue	20.488	19.562	19.662	19.462
Wildfire Reimbursements	0.000	28.878	14.570	0.000
Tobacco Settlement Revenue	34.804	15.677	18.925	19.147
Telecommunications Excise Tax	6.366	21.523	18.756	19.113
Video Gambling Machine Tax	13.851	13.828	13.796	15.107
Treasury Cash Account Interest	16.088	17.703	14.696	14.127
Inheritance Tax and Estate Tax	19.039	19.691	17.118	10.097
Oil and Natural Gas Production Tax	11.363	14.188	12.407	11.985
Motor Vehicle Fees	11.716	12.954	11.772	12.004
Public Institution Reimbursements	11.345	11.755	12.521	12.932
Coal Severance Tax	9.502	8.918	9.073	9.058
Liquor Excise and License Tax	7.172	7.534	7.925	8.383
Cigarette Tax	8.464	8.222	8.057	7.889
Investment License Fee	5.390	6.081	6.580	7.119
Lottery Profits	5.841	6.197	6.281	6.372
Liquor Profits	5.900	5.659	5.977	6.267
Nursing Facilities Fee	6.055	5.533	5.547	5.575
Foreign Capital Depository Tax	0.000	0.000	0.000	0.000
Electrical Energy Producers' License Tax	4.829	4.562	4.644	4.664
Metalliferous Mines Tax	2.703	4.063	4.706	4.553
Highway Patrol Fines	4.028	4.096	4.168	4.237
Public Contractors Tax	2.162	1.887	2.441	2.478
Wholesale Energy Transaction Tax	1.895	3.500	3.568	3.614
Tobacco Tax	2.017	2.137	2.265	2.400
Driver's License Fee	2.333	2.165	2.178	2.194

Railroad Car Tax	2.101	1.665	1.688	1.718
Wine Tax	1.017	1.059	1.107	1.156
Beer Tax	0.370	0.386	0.403	0.421
Telephone License Tax	3.491	0.000	0.000	0.000
Long-Range Bond Excess	0.101	0.000	0.000	0.000
Total General Fund	$1,163.641	$1,200.186	$1,198.729	$1,210.972

SIGNIFICANT ASSUMPTIONS FOR GENERAL FUND REVENUE ESTIMATES

Revenue and Taxation Interim Committee

Year	Assumption	2000	2001	2002	2003
Individual Income Tax					
CY	Taxpayer Population (Percent Change)	1.85%	1.85%	1.85%	1.85%
	Income Indicators				
CY	Wage and Salary Income (Percent Change)	5.57%	4.57%	4.51%	4.79%
CY	Net Farm Income (Percent Change)	0.00%	0.00%	0.00%	0.00%
CY	Interest Income (Percent Change)	(0.60%)	11.20%	4.30%	(1.70%)
CY	Dividend Income (Percent Change)	6.40%	4.10%	2.20%	1.30%
CY	Rent, Royalty, and Partnership Income (Percent Change)	1.70%	5.18%	4.92%	4.69%
CY	Net Business Income (Percent Change)	(0.60%)	1.40%	1.40%	1.40%
CY	Capital Gains and Losses (Percent Change)	7.90%	1.70%	1.30%	(0.10%)
CY	Supplemental Gains (Percent Change)	16.10%	4.10%	3.90%	3.80%
CY	Social Security Income (Percent Change)	10.00%	8.30%	7.70%	7.10%
CY	IRA Income (Percent Change)	10.90%	9.90%	9.90%	9.90%
CY	Pension Income (Percent Change)	10.90%	9.90%	9.90%	9.90%
CY	Other Income (Percent Change)	0.00%	0.00%	0.00%	0.00%
CY	Additions to Income (Percent Change)	19.13%	3.44%	2.87%	2.32%
CY	IRA Deduction (Percent Change)	6.81%	6.81%	6.81%	6.81%
CY	Reductions to Income (Percent Change)	2.05%	3.98%	2.83%	1.80%
	Deductions From Income				
CY	Medical Costs and Premiums (Percent Change)	5.80%	6.40%	6.00%	6.60%
CY	Property Tax (Percent Change)	2.95%	4.95%	5.49%	5.49%
CY	Motor Vehicle Taxes and Fees (Percent Change)	0.00%	(50.00%)	0.00%	0.00%
CY	Home Mortgage (Percent Change)	8.40%	7.10%	6.60%	6.20%
CY	Contributions (Percent Change)	7.43%	7.43%	7.43%	7.43%
CY	Gambling Losses (Percent Change)	5.00%	5.00%	5.00%	5.00%

	Credits				
CY	Home Owner and Renter Credit (Millions)	$8.936	$9.000	$9.056	$9.117
CY	Foreign Capital Depository Taxes (Millions)	$0.000	$0.000	$0.000	$0.000
CY	Credit for Taxes Paid in Other States (Percent Change)	(4.11%)	6.08%	5.73%	5.42%
CY	All Other Credits (Percent Change)	0.00%	0.00%	0.00%	0.00%
CY	Planned Gifts (Percent Change)	36.91%	18.45%	(100.00%)	0.00%
	Other Individual Income Tax Assumptions				
FY	Penalty and Interest (Millions)	$3.415	$0.000	$0.000	$0.000
FY	Income Tax Audit Collections (Millions)	$5.760	$10.500	$14.000	$15.000
FY	Amended Returns (Millions)	$(0.014)	$0.000	$0.000	$0.000
CY	Nonresident Tax Liability (Millions)	$32.318	$33.927	$35.826	$37.166
CY	Current Calendar Year to Fiscal Year Conversion	52.1%	52.1%	52.1%	52.1%
CY	Previous Calendar Year to Fiscal Year Conversion	47.9%	47.9%	47.9%	47.9%
FY	Fiscal Year 2000 Base (Millions)	$516.262			
Property Taxes: Taxable Value and Other Property Tax Indicators					
	Taxable Value—40-Mill, 55-Mill, and 1.5-Mill Levies				
FY	Property Class One (Millions)	$7.027	$5.179	$5.179	$5.179
FY	Property Class Two (Millions)	$8.282	$8.461	$12.708	$14.720
FY	Property Class Three (Millions)	$139.192	$139.319	$139.250	$138.864
FY	Property Class Four (Millions)	$894.188	$920.536	$966.097	$1,019.148
FY	Property Class Five (Millions)	$37.015	$39.009	$39.774	$41.121
FY	Property Class Six (Millions)	$22.571	$15.695	$9.705	$3.714
FY	Property Class Seven (Millions)	$1.882	$0.156	$0.151	$0.149
FY	Property Class Eight (Millions)	$215.748	$112.783	$117.181	$121.751
FY	Property Class Nine (Millions)	$498.030	$230.833	$223.782	$221.099
FY	Property Class Ten (Millions)	$8.520	$8.709	$8.313	$7.301
FY	Property Class Twelve (Millions)	$68.193	$49.641	$49.142	$49.475
FY	Property Class Thirteen (Millions)	$0.000	$147.143	$139.082	$135.172
FY	Total Taxable Value (Millions)	$1,863.987	$1,652.914	$1,684.706	$1,737.291
	Other Property Tax Indicators				
FY	Tax Increment Finance Value (Millions)	$44.536	$28.429	$29.538	$30.690
FY	Property Tax Abatement Value (Millions)	$7.875	$3.880	$3.880	$3.880
FY	Taxable Value in Vo-Tech Counties (Millions)	$618.047	$576.691	$587.783	$603.893
FY	Reduction in Taxable Value of Intangible Property (Millions)	$0.000	($4.312)	($29.328)	($44.903)
FY	Value Increase Because of Land Cap Sunset	$0.000	$0.000	$0.000	$6.410

	Property Tax Nonlevy Revenue				
FY	40-Mill Nonlevy Revenue (Millions)	$10.569	$5.317	$4.812	$4.442
FY	40-Mill Adjustments (Millions)	($12.713)	($11.300)	($9.888)	($8.475)
FY	55-Mill Nonlevy Revenue (Millions)	$23.089	$18.031	$17.720	$17.351
FY	55-Mill Adjustments (Millions)	$0.274	$4.934	$0.000	$0.000
FY	1.5-Mill Nonlevy Revenue (Millions)	$0.121	$0.152	$0.147	$0.142
FY	1.5-Mill Adjustments (Millions)	$0.000	$0.039	$0.034	$0.029
Corporation License Tax					
FY	MT Corporate Taxable Income (Millions)	$1,146.150	$1,135.535	$1,152.673	$1,165.016
FY	Penalty and Interest (Millions)	$0.661	$0.000	$0.000	$0.000
FY	Corporate Income Tax Audits (Millions)	$0.546	$6.500	$3.750	$4.500
Insurance Premiums Tax and License Fees					
FY	General Fund Fee Revenue (Millions)	$1.028	$0.000	$0.000	$0.000
FY	Genetics Fee (Millions)	$0.542	$0.550	$0.555	$0.560
FY	Premiums Tax (Millions)	$40.121	$41.398	$42.715	$44.074
FY	Offsets (Millions)	$2.083	$0.908	$0.384	$0.374
FY	Refunds (Millions)	$1.881	$0.230	$0.230	$0.230
Federal Mineral Royalty					
CY	Oil Production (Millions of Barrels)	2.858	2.778	2.841	2.899
CY	Coal Production (Millions of Tons)	25.253	25.194	22.350	22.045
CY	Natural Gas Production (MMCF)	15.080	14.758	15.320	15.698
CY	Oil Price (Per Barrel)	$22.188	$16.722	$16.160	$15.906
CY	Coal Price (Per Ton)	$9.207	$9.175	$9.550	$9.499
CY	Natural Gas Price (Per MCF)	$3.566	$3.838	$3.185	$2.649
CY	Oil Royalty Rate (Percent)	10.95%	10.96%	10.97%	10.94%
CY	Coal Royalty Rate (Percent)	12.28%	12.35%	12.34%	12.32%
CY	Natural Gas Royalty Rate (Percent)	12.32%	12.32%	12.28%	12.29%
CY	Other Royalties (Millions)	$0.106	$0.110	$0.108	$0.108
CY	Rent and Bonus (Millions)	$2.539	$4.702	$4.084	$4.019
CY	Administration Fee (Millions)	$1.039	$0.260	$0.000	$0.000
FY	One-Time Settlement (Millions)	$0.000	$6.038	$0.000	$0.000
Treasurer's Cash Account					
FY	TCA Average Balance w/TRANS (Millions)	$303.628	$268.829	$222.703	$222.703
FY	TCA Average Yield (Percent)	5.30%	6.59%	6.60%	6.34%
FY	TRANS Issue Size (Millions)	$0.000	$0.000	$20.000	$20.000
Inheritance Tax and Estate Tax					
FY	Annual Change in Tax (Percent Change)	4.03%	3.43%	(13.07%)	(41.02%)

Video Gambling Machine Tax					
FY	Video Machine Net Income (Millions)	$269.857	$276.551	$283.412	$297.473
Motor Vehicle License Fee—General Fund Allocations					
FY	Motor Vehicle Registration Fee (Millions)	$6.233	$6.354	$6.477	$6.602
FY	Recording of Liens Fee (Millions)	$0.629	$0.638	$0.646	$0.655
FY	Title Fee (Millions)	$1.292	$1.299	$1.306	$1.313
FY	Personal License Plate Fee (Millions)	$0.728	$0.751	$0.775	$0.799
FY	New License Plate Fee (Millions)	$0.857	$1.874	$0.465	$0.465
FY	Computer Fee (Millions)	$1.304	$1.344	$1.385	$1.427
FY	Highway Patrol Fee (Millions)	$0.300	$0.310	$0.320	$0.330
FY	Other Fees (Millions)	$0.372	$0.385	$0.399	$0.413
Public Institution Reimbursements					
FY	Private Payments (Millions)	$0.512	$2.468	$2.797	$2.904
FY	Insurance Payments (Millions)	$0.000	$0.583	$0.524	$0.524
FY	Medicaid Payments (Millions)	$12.491	$10.952	$11.190	$11.500
FY	Medicare Payments (Millions)	$0.003	$0.741	$0.997	$0.992
FY	Debt Service MT Developmental Center (Millions)	($0.965)	($1.079)	($1.075)	($1.075)
FY	Debt Service MT State Hospital (Millions)	$0.000	($1.909)	($1.911)	($1.911)
Cigarette Tax					
FY	Cigarette Packs (Millions)	71.801	70.504	69.088	67.665
FY	Effective Tax Rate Per Pack (Cents)	16.39	16.39	16.39	16.39
FY	Tribal Distribution (Millions)	($0.178)	($0.297)	($0.291)	($0.287)
Coal Severance Tax					
CY	Severance Tax Coal Production (Million Tons)	33.915	34.417	34.803	34.313
CY	Montana Contract Sales Price (Weighted CSP/Ton)	$6.497	$6.545	$6.550	$6.544
Oil Severance Tax					
CY	Severance Tax Oil Production (Million Barrels)	15.772	16.171	16.538	16.875
CY	Montana Oil Price (Weighted Price/Barrel)	$26.38	$19.88	$19.20	$18.91
CY	Exempt Value of Production (Millions)	$15.178	$11.560	$11.274	$11.202
CY	Effective Tax Rate (Percent)	10.68%	10.53%	10.40%	10.28%
Lottery Profit					
FY	Total Lottery Sales (Millions)	$29.900	$30.318	$30.554	$30.825
FY	Lottery Interest Earnings (Millions)	$0.279	$0.322	$0.328	$0.314
FY	Other Revenue (Millions)	$0.075	$0.085	$0.082	$0.082
FY	Lottery Operating Budget (Millions)	$7.008	$6.964	$6.983	$6.991
FY	Lottery Prizes and Commissions (Millions)	$17.321	$17.563	$17.700	$17.857

Liquor Excise Tax					
FY	Tribal Distributions (Millions)	($0.119)	($0.124)	($0.131)	($0.138)
Nursing Facilities Fee					
FY	Bed Days (Millions)	2.020	1.976	1.981	1.991
Telephone License Tax					
FY	Total Taxable Gross Receipts (Millions)	$193.922	$0.000	$0.000	$0.000
Liquor Profits					
FY	Gross Liquor Sales (Millions)	$57.359	$60.281	$63.414	$67.080
FY	Cost of Goods Sold (Millions)	$32.846	$34.519	$36.313	$38.412
FY	Liquor Discounts and Commissions (Millions)	$5.895	$6.195	$6.517	$6.894
FY	Liquor Operating Costs (Millions)	$1.167	$1.194	$1.275	$1.284
FY	Other Income (Millions)	$0.043	$0.043	$0.043	$0.043
Electrical Energy Producers' License Tax					
FY	Kilowatt Hours Produced (Millions)	22,937.762	22,808.460	23,220.332	23,320.932
Investment License Fees					
FY	License Registration (Percent Change)	22.12%	12.84%	8.20%	8.20%
Highway Patrol Fines					
FY	Highway Patrol Fines (Percent Change)	7.16%	1.71%	1.71%	1.71%
Driver's License Fees					
FY	Driver's License Fees (Millions)	$1.893	$1.594	$1.606	$1.620
FY	Duplicate License Fees (Millions)	$0.033	$0.067	$0.069	$0.071
FY	Motorcycle Endorsement Fees (Millions)	$0.014	$0.021	$0.021	$0.021
FY	Interstate Commercial Vehicle Endorsement (Millions)	$0.289	$0.395	$0.395	$0.395
FY	Intrastate Commercial Vehicle Endorsement (Millions)	$0.065	$0.087	$0.087	$0.087
Metal Mines Tax					
CY	Copper Production (Million lb)	1.898	3.080	3.196	3.196
CY	Silver Production (Million oz)	1.106	1.585	0.846	0.835
CY	Gold Production (Million oz)	0.312	0.283	0.082	0.010
CY	Lead Production (Million lb)	13.054	13.764	2.294	0.000
CY	Zinc Production (Million lb)	33.218	41.486	6.914	0.000
CY	Molybdenum Production (Million lb)	3.800	6.300	7.400	7.700
CY	Palladium Production (Million oz)	0.341	0.379	0.447	0.504
CY	Platinum Production (Million oz)	0.102	0.114	0.134	0.151
CY	Nickel Production (Million lb)	0.353	0.392	0.463	0.521
CY	Rhodium Production (Million oz)	0.002	0.002	0.002	0.003
CY	Sapphire Production (Million oz)	0.000	0.000	0.000	0.000
CY	Iron Oxide Production (Million lb)	0.000	0.000	0.000	0.000

CY	Copper Sulfide Production (Million lb)	47.202	76.620	79.504	79.504
CY	Copper Price (Per lb)	$0.508	$0.508	$0.508	$0.508
CY	Silver Price (Per oz)	$4.915	$5.018	$5.220	$5.297
CY	Gold Price (Per oz)	$273.000	$281.950	$298.450	$312.800
CY	Lead Price (Per lb)	$0.223	$0.223	$0.223	$0.223
CY	Zinc Price (Per lb)	$0.527	$0.527	$0.527	$0.527
CY	Molybdenum Price (Per lb)	$2.065	$2.065	$2.065	$2.065
CY	Palladium Price (Per oz)	$700.000	$745.000	$745.000	$745.000
CY	Platinum Price (Per oz)	$545.000	$545.000	$545.000	$545.000
CY	Nickel Price (Per lb)	$3.831	$3.831	$3.831	$3.831
CY	Rhodium Price (Per oz)	$551.571	$551.571	$551.571	$551.571
CY	Sapphire Price (Per oz)	$0.000	$0.000	$0.000	$0.000
CY	Iron Oxide Price (Per lb)	$0.000	$0.000	$0.000	$0.000
CY	Copper Sulfide Price (Per lb)	$0.368	$0.368	$0.368	$0.368
FY	Effective Tax Rate (Percent)	1.65%	1.65%	1.65%	1.65%
Contractor's Gross Receipts Tax					
FY	Tax Before Credits (Millions)	$5.516	$5.003	$5.265	$5.359
FY	Credits and Refunds (Millions)	$3.445	$3.116	$2.824	$2.881
Railroad Car Tax					
CY	Total MT Market Value of Fleets (Millions)	$95.627	$97.075	$99.036	$101.025
CY	Taxable Value Rate (Percent)	6.08%	4.27%	4.16%	4.07%
CY	95% of Industrial and Commercial Mill Levy	380.057	401.720	409.755	417.950
Tobacco Products Tax					
FY	Value of Tobacco Products (Millions)	$16.338	$17.316	$18.352	$19.451
FY	Tribal Distribution (Millions)	($0.025)	($0.027)	($0.029)	($0.031)
Natural Gas Severance Tax					
CY	Severance Tax Natural Gas Production (MMCF)	61.502	64.914	67.387	69.049
CY	Montana Natural Gas Price (Weighted Price/MCF)	$2.741	$2.950	$2.488	$2.036
CY	Exempt Value of Production (Millions)	$8.773	$9.633	$8.076	$6.732
CY	Effective Tax Rate (Percent)	11.16%	11.02%	10.90%	10.81%
Wine Tax					
FY	Wine Liters (Million)	6.547	6.825	7.129	7.448
FY	Tribal Distribution (Million)	($0.027)	($0.028)	($0.029)	($0.030)
Beer Tax					
FY	Beer Barrels (Million)	0.840	0.876	0.913	0.953
FY	Tribal Distribution (Million)	($0.050)	($0.052)	($0.054)	($0.056)

Foreign Capital Depository					
FY	November Average Balance (Million)	$0.000	$0.000	$0.000	$0.000
FY	May Average Balance (Million)	$0.000	$0.000	$0.000	$0.000
Tobacco Settlement					
FY	Volume Change (Percent Change)	(14.01%)	(2.53%)	(1.67%)	(1.84%)
FY	Cumulative Volume Change (Percent Change)	(14.01%)	(16.19%)	(17.58%)	(19.10%)
FY	CPI Change (Percent Change)	3.00%	3.30%	3.00%	3.00%
FY	Cumulative CPI Change (Percent Change)	3.00%	6.40%	9.59%	12.88%
FY	Operating Income Adjustment (Millions)	$40.788	$42.134	$43.399	$44.701
FY	Subsequent Manufacturer's Payment (Millions)	$46.572	$48.196	$49.838	$51.634
Wholesale Energy Transaction Tax					
CY	Kilowatt Hours (Millions)	22,630.597	23,564.316	23,562.631	23,562.631
FY	Kilowatt Hours (Millions)	11,714.972	23,335.510	23,788.606	24,097.858
FY	Credits for Taxes Paid (Million)	$0.000	$0.000	$0.000	$0.000
Telecommunications Excise Tax					
FY	Taxable Gross Receipts (Millions)	$190.390	$552.000	$558.507	$563.013
FY	Credits (Millions)	$0.000	$0.997	$2.188	$2.000

SELECTED NONGENERAL FUND REVENUE

The projections for selected nongeneral fund revenue during the 2003 biennium are based on the assumption of a continuation of Montana law as it existed on January 1, 2001. The revenue estimates contained in the following table are based on the assumptions listed in the tables that follow the nongeneral fund estimates and the assumptions contained in the "Revenue Estimates as Adopted by the Revenue and Taxation Committee" report prepared by the Legislative Fiscal Division.

Current Law

Selected Nongeneral Fund Revenue Estimates

(In Millions of Dollars)

Adjusted

Source of Revenue	Actual FY 2000	Estimated FY 2001	Estimated FY 2002	Estimated FY 2003
Diesel Tax	$54.259	$55.345	$56.452	$58.145
Diesel Storage Tank Fee	2.196	2.239	2.284	2.353
Gas Tax	126.764	123.452	124.793	125.447
Gas Storage Tank Fee	3.788	3.807	3.847	3.867
Nongeneral Fund GVW and Other Fees	33.935	32.366	29.666	29.821

Resource Indemnity Trust Tax	6.793	3.140	2.904	2.809
Arts Trust Interest Earnings	0.254	0.301	0.317	0.331
Capital Land Grant Interest and Income	1.914	0.425	0.570	0.889
Deaf and Blind Trust Interest and Income	0.248	0.243	0.250	0.256
Parks Trust Interest Earnings	1.051	1.091	1.123	1.152
Pine Hills Interest and Income	0.300	0.308	0.316	0.328
Resource Indemnity Trust Earnings	9.184	7.467	7.582	7.609
Tobacco Trust Interest Earnings	0.000	0.225	1.044	1.983
Treasure State Endowment Interest Earnings	5.123	6.173	7.088	7.952
Treasure State Endowment Regional Water System Interest Earnings	0.032	0.473	0.775	1.078
6-Mill Property Tax	13.189	12.484	11.889	12.131
9-Mill Property Tax	8.481	6.585	6.687	6.854

SELECTED ASSUMPTIONS FOR NONGENERAL FUND REVENUE ESTIMATES

Revenue and Taxation Interim Committee

Year	Assumption	2000	2001	2002	2003
Diesel Tax					
FY	Taxable Gallons of Diesel (Millions)	209.610	213.802	218.078	224.621
FY	Taxable Gallons of Diesel—Storage Tank Cleanup (Millions)	292.739	298.594	304.566	313.703
FY	Refunds (Millions)	($3.326)	($3.392)	($3.460)	($3.564)
Gasoline Tax					
FY	Taxable Gallons of Gasoline (Millions)	499.783	487.082	492.225	494.734
FY	Taxable Gallons of Gasoline—Storage Tank Cleanup (Millions)	505.010	507.580	512.939	515.554
FY	Refunds (Millions)	($3.268)	($3.185)	($3.218)	($3.235)
FY	Tribal Distribution (Millions)	($3.560)	($3.560)	($3.560)	($3.560)
FY	Alcohol Incentive (Millions)	$0.000	$0.000	$0.000	$1.500
GVW Fees					
FY	GVW Fees (Millions)	$8.853	$8.853	$8.853	$8.853
FY	Form 3 GVW Fees (Millions)	$0.856	$0.858	$0.858	$0.858
FY	Trip Permit Fees (Millions)	$0.881	$0.881	$0.881	$0.881
FY	County GVW Fees (Millions)	$7.321	$7.428	$7.500	$7.501
FY	New Car Sales Tax (Millions)	$12.534	$6.945	$0.000	$0.000
FY	Motor Vehicle Fee Distribution (Millions)	$0.000	$3.847	$7.961	$8.080
FY	Overweight Trip Permit Fees (Millions)	$1.459	$1.508	$1.550	$1.568

FY	Special Permit Fees (Millions)	$0.919	$0.931	$0.950	$0.966
FY	Temporary Fuel Permits (Millions)	$0.105	$0.107	$0.107	$0.107
FY	Other Fees (Millions)	$1.008	$1.008	$1.008	$1.008
Other 6-Mill Levy Indicators (See General Fund Property Tax Assumptions for Other Detail)					
FY	Taxable Value (Millions)	$1,900.648	$1,677.463	$1,710.364	$1,764.101
FY	Nonlevy Revenue (Millions)	$2.545	$1.761	$1.627	$1.546
FY	6-Mill Adjustments (Millions)	$0.000	$0.658	$0.000	$0.000
9-Mill Levy Indicators					
FY	Taxable Value (Millions)	$710.004	$695.816	$709.630	$730.692
FY	Nonlevy Revenue (Millions)	$0.861	$0.319	$0.296	$0.274
FY	9-Mill Adjustments (Millions)	$0.000	$0.000	$0.000	$0.000

Adopted April 11, 2001

HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING SUPPORT FOR AN AMTRAK ROUTE FROM DENVER TO SPOKANE THAT PASSES THROUGH SOUTHERN AND WESTERN MONTANA.

WHEREAS, there is a need for passenger rail service between Denver and Spokane that would cross southern and western Montana; and

WHEREAS, this route would pass through some of the most spectacular scenery in the western United States by winding through the spectacular Wind River Canyon, climbing over the majestic Continental Divide, gently meandering along the flowing tributaries of the Clark's Fork River, and skirting beautiful Pend d'Oreille Lake; and

WHEREAS, the Denver-Spokane corridor provides access to three major national parks and numerous winter ski resorts; and

WHEREAS, the increasing price of gasoline and the high cost of airline service have left many Montana citizens without a suitable transportation alternative; and

WHEREAS, passenger train service would bring needed jobs to Montana, both in the rail industry and in the tourism industry; and

WHEREAS, this route would provide a much needed and safer mode of transportation to fit the lifestyle of the westerner.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature support the development of an AMTRAK route between Denver and Spokane that passes through southern and western Montana.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation, to the Montana/Wyoming

Association of Railroad Passengers, and to the National Railroad Passenger Corporation in Washington, D.C.

Adopted March 3, 2001

HOUSE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO REQUIRE STANDARDIZED POLLING HOURS TO SELECT PRESIDENTIAL ELECTORS WHEN A PRESIDENTIAL GENERAL ELECTION IS HELD.

WHEREAS, on November 7, 2000, the national media called the presidential election at 7:20 p.m., Eastern Standard Time, giving Florida and the election to a candidate prior to the polls closing in Florida and 4 hours and 40 minutes prior to the polls closing in California; and

WHEREAS, we cannot let the election process and the foundation of our republic form of government be manipulated and diminished by the lack of standardized polling hours and an irresponsible and reckless national media; and

WHEREAS, it must be the will of the people, the voter, and the electors that determines the outcome of each election, not the state and federal courts; and

WHEREAS, we need not reinvent the wheel, and adoption of these simple changes will not only be effective, but is bipartisan and will restore faith in our election process and our government.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Congress be strongly urged to pursue federal legislation requiring standardized polling hours for selecting presidential electors when a presidential general election is being conducted.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation, the major broadcast networks, and the publisher of each newspaper in the state.

Adopted March 3, 2001

HOUSE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA STRONGLY URGING THE MONTANA DEPARTMENT OF LABOR AND INDUSTRY TO REVIEW STATE LAWS AND ADMINISTRATIVE RULES REGARDING PAYMENT OF EMPLOYEE TRAVEL TIME AND TO MEET AND JOINTLY WORK WITH REPRESENTATIVES OF THE UNITED STATES DEPARTMENT OF LABOR FOR THE PURPOSE OF CLARIFYING AND SIMPLIFYING STATE AND FEDERAL LAWS REGARDING COMPENSABILITY OF EMPLOYEE TRAVEL TIME.

WHEREAS, Montana's employment-related statutes and federal laws regarding compensability of employee travel time constitute a complex and confusing body of law requiring specialized understanding and application of specific fact patterns and knowledge of numerous court interpretations; and

WHEREAS, the complexity and breadth of the overlapping and often contradictory provisions of federal and state law make it difficult for employers to find readily available information regarding the proper application of the laws; and

WHEREAS, the maze of state and federal laws, regulations, and court interpretations regarding compensability of travel time is confusing and cumbersome, often resulting in overpayment or underpayment of wages, which may result in subjecting employers to litigation for honestly but incorrectly interpreting state or federal law.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Department of Labor and Industry is strongly urged to:

(1) review state laws and administrative rules to simplify and clarify laws related to the compensability of employee travel time;

(2) meet jointly with representatives of the United States Department of Labor and other interested employer and employee representatives to discuss streamlining and reducing the complexity of federal and state laws regarding the compensability of employee travel time; and

(3) report to the Business and Labor Interim Committee on its joint meetings and progress to clarify and simplify the myriad of cumbersome and confusing laws and regulations regarding an employer's responsibility to pay employee travel time.

BE IT FURTHER RESOLVED, that copies of this resolution and a report prepared by the Department of Labor and Industry be sent by the Secretary of State to the Montana Congressional Delegation and to the United States Secretary of Labor.

Adopted March 3, 2001

HOUSE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE COUNCIL DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR ASSIGN SUFFICIENT STAFF RESOURCES TO STUDY MONTANA'S VOTING SYSTEMS AND PROCEDURES AND TO MAKE RECOMMENDATIONS TO THE 58TH LEGISLATURE.

WHEREAS, the closeness of the November 7, 2000, presidential election illuminates the need to inventory existing voting systems and evaluate how improvements and modernizations can impact state and local voting systems;

WHEREAS, other states and even other nations have already implemented some updates, which have included the use of kiosk voting machines as well as Internet voting systems; and

WHEREAS, current federal legislation, including a bill in the U.S. Senate proposing a $100 million annual matching grant program, is being contemplated as a means of assisting states and localities that want to improve and modernize their voting systems; and

WHEREAS, several agencies, including the Federal Elections Commission, the National Conference of State Legislatures, the General Accounting Office, and the National Association of Secretaries of State, have already begun to examine options for modernizing voting methods in the states; and

WHEREAS, the Montana Legislature should be proactive rather than reactive so that current methods can be carefully assessed, options can be systematically investigated, and local voting systems can be modernized in a manner that makes sense for Montana, is fiscally responsible, and will enhance accuracy, security, and participation in the voting process; and

WHEREAS, the U.S. Supreme Court suggested that irregular voting procedures could violate the guarantee of equal protection as set forth in the U.S. Constitution.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) identify current voting methods and systems used in Montana localities and assess what problems, if any, have been encountered or may be anticipated;

(2) examine the experiences of other states and nations that have updated their voting systems;

(3) conduct an assessment of the following:

(a) the capabilities and costs for installation and operation of the various technologies available to improve voting systems;

(b) the advantages and disadvantages of those systems; and

(c) potential impacts on the state and its localities;

(4) evaluate the findings and recommendations of the various federal and state study commissions on how best to improve and update state voting systems, recount procedures, and methods of identifying voter intent on disputed ballots;

(5) consider options that make sense for Montana's local communities;

(6) develop recommendations and legislation, as appropriate, to address:

(a) identified issues in a manner that will enhance the accuracy, security, and accessibility of voting systems in Montana; and

(b) problems associated with recounts and resolution of voter intent with respect to disputed ballots.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2002.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 58th Legislature.

Adopted March 7, 2001

HOUSE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO BRING EQUITABLE FUNDING OF HEALTH CARE SERVICES AND BENEFITS TO ALL MEDICARE RECIPIENTS, REGARDLESS OF WHERE THEY LIVE.

WHEREAS, Medicare, the nation's largest health insurance program serving approximately 39 million elderly and disabled Americans, was enacted in 1965 as a uniform, nondiscriminatory, nationwide program based on a 1.45% payroll tax for the provision of a standardized package of health benefits to beneficiaries, regardless of where they resided; and

WHEREAS, since 1984, Medicare beneficiaries have been able to join health maintenance organizations, and in 1997, Congress created Medicare+Choice that consisted of private risk-based plans, mostly managed care organizations, and these different programs use a different reimbursement formula than the other two Medicare plans that varies substantially depending on the county and the state in which a beneficiary resides; and

WHEREAS, the Medicare+Choice managed care reimbursement formula is based on historical costs within each county, and plans are operated by different private entities, resulting in a reimbursement rate in 1999 of $676.64 in Broward County, Florida, and a rate of only $360 in Stillwater County, Montana; a senior citizen participating in a Medicare-managed care health plan in Broward County pays no annual premium, no copayment for visiting a doctor, and nothing for prescription drug coverage; by contrast, a Montana senior citizen enrolled in a Medicare-managed care plan pays an annual premium of $480, incurs a $10 copayment for each doctor visit, and incurs out-of-pocket costs for prescription drugs, and in many areas, and a Medicare-managed care program is not even available;

WHEREAS, St. Vincent Hospital in Billings chose to discontinue participation in its GoldChoice Medicare+Choice health maintenance organization medical plan because the federal government failed to provide annual increases in payments and because of Montana's rural nature and the Medicare reimbursement system, which resulted in inadequate funding and the hospital losing at least $2.5 million; and

WHEREAS, a similar situation exists in the State of Minnesota in which its citizens are not receiving equal funding, and Minnesota Attorney General Mike Hatch and the Minnesota Senior Federation have filed suit against the United States of America and Donna E. Shalala, Secretary of Health and Human Services, in order to bring about change in the present funding system to ensure equitable funding to all Medicare recipients. A federal judge has ruled that this situation is wrong and unfair but that it is Congress's role to change it, not the courts.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Congress be requested to bring equitable funding of health care services and benefits to all Medicare recipients, regardless of where they live, to allow citizens in rural states the same health benefits.

Adopted March 9, 2001

HOUSE JOINT RESOLUTION NO. 10

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE NATIONAL PARK SERVICE TO WITHDRAW ITS DECISION TO IMPLEMENT A WINTER USE PLAN THAT WOULD ELIMINATE SNOWMOBILE USE IN YELLOWSTONE NATIONAL PARK AND TO SUBSTITUTE A PLAN THAT ENSURES THE OPPORTUNITY FOR FUTURE SELF-DIRECTED SNOWMOBILE ACCESS TO YELLOWSTONE NATIONAL PARK; AND URGING CONGRESS TO PROVIDE ADEQUATE FUNDING TO THE NATIONAL PARK SERVICE TO PROVIDE ADEQUATE PERSONNEL TO ENSURE HEALTH AND SAFETY.

WHEREAS, the National Park Service and the U.S. Department of the Interior have announced a new winter use plan to implement severe restrictions on snowmobile use in Yellowstone National Park, culminating in a ban on snowmobiles in the park for other than administrative purposes beginning with the 2003-2004 winter season, citing negative impacts on the park environment as a result of emissions and noise, despite recent scientific studies showing that the data used in making the decision was antiquated and in some cases flawed; and

WHEREAS, the Montana Legislature is concerned about the management of internationally known resource values found in Montana while maintaining the economic well-being of communities surrounding Yellowstone National Park that are heavily dependent on recreation to provide revenue for both public and private economic activity; and

WHEREAS, over 75,000 people annually visit Yellowstone National Park on snowmobiles to see and enjoy the scenery, wildlife, and spectacles of nature in a winter setting, including many people who consider the snowmobile to be not only a form of transportation, but also a desirable part of the winter experience; and

WHEREAS, a large percentage of more than $44 million in annual expenditures by nonresident snowmobile users in Montana is related to the West Yellowstone, Montana, area, providing approximately 600 jobs while allowing sustainable use and enjoyment of the Park's resources; and

WHEREAS, West Yellowstone, Montana, and other gateway communities may experience a significant decline in winter visitors, which could result in a significant adverse impact on the economy of the three counties of Montana surrounding Yellowstone National Park; and

WHEREAS, the new winter use plan fails to adequately consider alternatives to snowmobile regulation short of absolute prohibition, despite recent and ongoing advancements in snowmobile technology, such as the four-stroke

"Yellowstone Special" snowmobile now in use, that reduce noise and emission levels; and

WHEREAS, the new winter use plan is contrary to the intent of the state of Montana and the wishes of most of the snowmobiling public and many members of the general public, denying certain members of the public their preferred access to publicly funded and managed lands for valid educational and pleasuring purposes; and

WHEREAS, the overall economy of the state is of significant concern to the Montana Legislature; and

WHEREAS, the states of Montana, Idaho, and Wyoming and many affected counties were originally considered cooperators in the process leading to adoption of the new winter use plan, but have been unable to have their input as cooperators and participants in the decisionmaking process considered in a meaningful manner by the National Park Service and other federal officials.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the National Park Service be urged to:

(a) withdraw its decision ultimately banning snowmobile use in Yellowstone National Park and replace its new winter use plan with a plan that:

(i) maintains and enhances historic winter visitor use levels;

(ii) ensures the opportunity for future self-directed access to Yellowstone National Park by snowmobile;

(iii) fully considers the economic impacts on surrounding communities; and

(iv) ensures that the interests of the governments of Montana, Idaho, and Wyoming and their affected counties and cities near Yellowstone National Park are fully considered and accounted for; and

(b) provide adequate personnel to ensure the health and safety of all winter users and the health and safety of park wildlife.

(2) That the President of the United States, Montana's Congressional delegation, and Congress as a whole be urged to bring about legislative or regulatory reform that ensures future self-directed snowmobile access to Yellowstone National Park, subject to appropriate regulations governing equipment, time of use, and visitor numbers that are consistent with the legislation that created the National Park System, and that is necessary to accomplish the management goals of Yellowstone National Park and be urged to provide adequate funding to achieve the purpose of subsection (1)(b).

(3) That the Secretary of State send copies of this resolution to the President of the United States, members of the United States Congress, the U.S. Secretary of the Interior, and the Director of the National Park Service.

Adopted March 31, 2001

HOUSE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE

UNITED STATES DEPARTMENT OF THE INTERIOR TO GRANT FINAL RECOGNITION TO THE LITTLE SHELL TRIBE OF CHIPPEWA INDIANS OF MONTANA.

WHEREAS, the Little Shell Tribe of Chippewa Indians of Montana has been waiting for over 100 years to become a federally recognized Indian tribe; and

WHEREAS, on Friday, May 26, 2000, the Little Shell Tribe received notice that the Department of the Interior had issued a ruling, qualifying the Tribe for federal recognition; and

WHEREAS, federal recognition will bring long-awaited benefits and services to the Little Shell people, including health care, child welfare services, and their own court system; and

WHEREAS, the Little Shell Tribe now waits for word from the Secretary of the Interior that its long-awaited dream of recognition has become a reality.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature urge the United States Department of the Interior to recognize the Little Shell Tribe of Chippewa Indians so that tribal members may begin to partake of the services available to all federally recognized Indian tribes.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to:

(1) the members of the Montana Congressional Delegation;

(2) the Secretary of the Department of the Interior;

(3) each tribal government located on the seven Montana reservations; and

(4) the Little Shell Tribal Council.

Adopted March 9, 2001

HOUSE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE ENVIRONMENTAL PROTECTION AGENCY AND THE CONGRESS OF THE UNITED STATES TO INCREASE RESOURCES FOR AND SUPPORT THE EFFORTS OF THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) TECHNICAL WORKING GROUP ON PESTICIDES TO HARMONIZE PESTICIDE REGULATIONS BETWEEN CANADA AND THE UNITED STATES, TO COMMIT MORE RESOURCES FOR AND SUPPORT EFFORTS TOWARD ESTABLISHING TOLERANCES FOR PESTICIDES REGISTERED FOR USE IN CANADA BUT NOT IN THE UNITED STATES, AND TO ACCEPT REGISTRATION DATA CURRENTLY ACCEPTED BY CANADIAN OFFICIALS IN SUPPORT OF CANADIAN PESTICIDE REGISTRATIONS.

WHEREAS, it is the intent of the Legislature that Montana become the trusted provider of the highest-quality food in the world with prosperous family farms, thriving rural communities, and world-class stewardship of resources, and it is further the intent of the Legislature to significantly increase net farm income, improve the quality of rural life, and increase Montana's rural population; and

WHEREAS, the Legislature seeks to achieve the goals by making Montana agricultural products synonymous with high quality, by increasing value-added agricultural processing, by diversifying and increasing the value of agricultural production, by increasing farm and nonfarm cooperation that supports thriving rural communities and enhances our natural resources, and by creating a political, regulatory, economic, trade, financial, and natural resource environment in which Montana producers can compete in the global marketplace; and

WHEREAS, Montana farmers are forced to compete with farmers from other countries, especially Canada, who are able to use pesticide products that are not registered for use in the United States; and

WHEREAS, Canadian pesticides are often available at substantially reduced prices in formulations that are almost identical to those available to Montana producers but are not registered for use in the United States, and as a result, Montana farmers are unable to realize similar savings and are at a competitive disadvantage; and

WHEREAS, the Environmental Protection Agency needs to put more resources into the harmonization of the registration of crop protection chemicals with Canada; and

WHEREAS, use of the Canadian registration data by the Environmental Protection Agency could accelerate its registration process for appropriate crop protection chemicals.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature urges the Environmental Protection Agency and the Congress of the United States to:

(1) increase resources for and support the efforts of the North American Free Trade Agreement (NAFTA) Technical Working Group on Pesticides to harmonize pesticide regulations between Canada and the United States;

(2) commit more resources for and support efforts toward establishing tolerances for pesticides registered for use in Canada but not in the United States; and

(3) accept registration data currently accepted by Canadian officials in support of Canadian pesticide registrations.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the President of the United States, the Administrator of the Environmental Protection Agency, the presiding officers of the Agriculture Committees of the U.S. Senate and U.S. House of Representatives, and the Montana Congressional Delegation.

Adopted March 19, 2001

HOUSE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING A STATE ROLE IN MANAGING THE COLUMBIA RIVER BASIN; AND CALLING FOR A PUBLIC FORUM TO DEVELOP A CONSENSUS-BASED APPROACH TO MANAGEMENT.

WHEREAS, the Legislative Council on River Governance has been established to assert the legitimate authority that the state legislatures of Montana, Idaho, Oregon, and Washington have with respect to the governance of the hydroelectric system and appurtenant natural resources of the Columbia River Basin; and

WHEREAS, the legislatures of the four Pacific Northwest states acknowledge that they can achieve common goals and objectives more effectively by working in concert than separately; and

WHEREAS, these legislative bodies recognize the practical necessity that they work cooperatively with Governors and other state Executive Branch agencies to form an effective alliance for the protection and advancement of regional interests; and

WHEREAS, cost-based electricity and preference for Northwest customers are crucial to the economic sustainability of the region, and any attempt to remove these benefits is inimical to the future prospects for economic development and diversification in each of the Pacific Northwest states; and

WHEREAS, the continued dominance of federal agencies in the governance of the Columbia River and its associated infrastructure will impose unnecessarily costly and complicated burdens on the inhabitants of the region; and

WHEREAS, the four Pacific Northwest states have demonstrated in the past and continue to manifest the competence and capacity to exercise joint responsibility for the management of complex relationships in the Columbia River Basin; and

WHEREAS, the residents and consumers of the region continue to pay the costs of the electric power system on the Columbia River, including the debt to the U.S. Treasury, and are therefore entitled to the economic and environmental benefits resulting from best management practices in the basin.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council on River Governance make a concerted effort to preserve cost-based electricity rates and regional preference for the residents and businesses of the Pacific Northwest.

BE IT FURTHER RESOLVED, that a public forum be established to develop a consensus-based approach to the above-stated goals that includes the active participation of state legislatures in the management of natural resources in the Columbia River Basin.

BE IT FURTHER RESOLVED, that the public forum include representation from the Legislative Council on River Governance, the Governors and members of the Northwest Power Planning Council from each of the four states in the region, the respective state delegations in the U.S. Senate and U.S. House of

Representatives, Indian tribes, and other governmental organizations with a stake in the Federal Columbia River Power System.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation, to tribal governments in Montana, and to the publisher of each newspaper in the state.

Adopted March 12, 2001

HOUSE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE LAWS GOVERNING COMMUNITY COLLEGES; REQUESTING THE ASSISTANCE OF STATE AND LOCAL GOVERNMENT AGENCIES; AND REQUIRING A REPORT ON THE STUDY'S FINDINGS AND RECOMMENDATIONS TO THE 58TH LEGISLATURE.

WHEREAS, the 21st century promises new challenges, new expectations, and new opportunities for community colleges; and

WHEREAS, Montana's community colleges labor under state laws that often conflict with and are duplicative of the laws for the K-12 school system and are unrelated to postsecondary institutions; and

WHEREAS, the Legislature is the branch of government authorized to provide clear, modern, effective, and flexible guidelines, in the form of laws, to pilot community college officials in carrying out the duties and responsibilities that citizens come to expect; and

WHEREAS, the Legislature recognizes its responsibility to provide clear statutory authority and direction to local community colleges; and

WHEREAS, the Legislature wishes to embark on a collaborative effort to revise, refine, and clarify state laws affecting community colleges.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) develop an understanding of the origins of state laws affecting community colleges and how the original intent of the laws may no longer be relevant or consistent;

(2) work with individuals who are knowledgeable about and experienced in the practical, legal, financial, educational, and related issues confronting community colleges; and

(3) develop a set of recommendations for Montana's community colleges that will guide these colleges into the 21st century and beyond.

BE IT FURTHER RESOLVED, that the committee or the staff may request the assistance of the community colleges, the Commissioner of Higher Education, the various agencies of state government, and local governments in the conduct of the study.

BE IT FURTHER RESOLVED, that, if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2002.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 58th Legislature.

Adopted March 12, 2001

HOUSE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS, IN COOPERATION WITH THE DEPARTMENTS OF AGRICULTURE, LIVESTOCK, AND PUBLIC HEALTH AND HUMAN SERVICES, CONDUCT A STUDY ON THE IMPORTATION AND POSSESSION OF EXOTIC WILDLIFE AND REPORT THE RESULTS OF THE STUDY AND RECOMMENDATIONS TO THE GOVERNOR AND THE 58TH LEGISLATURE.

WHEREAS, there is an escalating international trend of possession and trade in exotic wildlife for personal use as well as for commercial purposes; and

WHEREAS, the introduction of some exotic wildlife into Montana may have undesirable or damaging effects on native wildlife and plant species, agricultural production, and human health and safety; and

WHEREAS, in order to minimize or avoid economic, ecological, and human health and safety impacts from some exotic wildlife, it may be necessary to control the importation into Montana and possession in Montana of exotic wildlife; and

WHEREAS, the Department of Fish, Wildlife, and Parks, the Department of Agriculture, the Department of Livestock, and the Department of Public Health and Human Services have longstanding involvement in and statutory obligations regarding the protection of native wildlife and plants, agricultural production, and human health and safety.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Department of Fish, Wildlife, and Parks, in cooperation with the Departments of Agriculture, Livestock, and Public Health and Human Services, be requested to give priority to a study of the following issues:

(a) evaluation of the threats that exotic wildlife may pose to the State of Montana;

(b) evaluation of laws that protect Montana from the importation and possession of potentially harmful exotic wildlife;

(c) evaluation of the successful and efficient implementation of laws from other states addressing importation and possession of exotic wildlife;

(d) compilation of a list of specific exotic wildlife that poses a threat or potential threat; and

(e) identification of possible solutions for the State of Montana to minimize the potentially harmful impacts of the importation and possession of exotic wildlife.

(2) That the Department of Fish, Wildlife, and Parks, in cooperation with the Departments of Agriculture, Livestock, and Public Health and Human Services, convene a working group of various stakeholders to assist the Departments in evaluating the issues listed in subsection (1).

(3) That the Department of Fish, Wildlife, and Parks, in cooperation with the Departments of Agriculture, Livestock, and Public Health and Human Services, actively solicit the participation of groups and individuals whose activities include the importation or possession of exotic wildlife, of Montana citizens, of state and local officials, and of any other persons or groups with interest in the outcome of the study.

(4) That the Department of Fish, Wildlife, and Parks, in cooperation with the Departments of Agriculture, Livestock, and Public Health and Human Services, be requested to:

(a) prepare, by October 1, 2002, a report of its findings and conclusions regarding the importation or possession of exotic wildlife; and

(b) identify options and make recommendations, including suggestions for legislation if appropriate, to the Governor and the 58th Legislature.

Adopted March 24, 2001

HOUSE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING THE 200TH ANNIVERSARY OF THE LEWIS AND CLARK EXPEDITION AND URGING NATIONAL RECOGNITION AND SUPPORT BY CONGRESS AND THE PRESIDENT.

WHEREAS, it was nearly 200 years ago that Thomas Jefferson envisioned a greater potential for the fledgling United States of America, and in pursuit of that vision negotiated the Louisiana Purchase; and

WHEREAS, in 1803, President Jefferson commissioned Captain Meriwether Lewis and William Clark to explore the Union's new holdings, including a search for a Northwest Passage to the Pacific Ocean; and

WHEREAS, in the spring of 1804, the undaunted Lewis and Clark and their 30-odd-member Corps of Discovery set out from the confluence of the Missouri and Mississippi Rivers on their intimidating quest; and

WHEREAS, over the next 1 1/2 years, the Lewis and Clark-led Corps, which included Sacajawea, explored the entire reach of the Missouri River, crossed the Continental Divide, met with many Indian nations that provided the Corps with guidance and support, and, as a result, found their way to the Pacific Ocean via the Columbia River and its tributaries: and

WHEREAS, after wintering near the mouth of the Columbia River, the band of explorers retraced their steps inland, again crossing the Continental Divide, and navigated the Missouri River and its tributaries to the expedition's place of beginning near St. Louis, Missouri; and

WHEREAS, the bicentennial anniversary of the Lewis and Clark Expedition will soon arrive, and with it thousands or even millions, of historians, reenacters, vacationers, sightseers, and modern-day explorers of various types who will follow the paths taken and visit the sites explored by the Corps of Discovery; and

WHEREAS, the 200th anniversary of the Lewis and Clark Expedition is as much a national celebration as it is a celebration within the states whose reaches the Corps of Discovery surveyed.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Congress and President Bush be urged to formally recognize the bicentennial anniversary of the Lewis and Clark Expedition and actively plan for and support appropriate celebrations of events commemorating the Expedition, an adventure that is unprecedented in America's history.

BE IT FURTHER RESOLVED, that the United States Congress and President Bush be urged to not only honor the Expedition at the national level, but also to provide financial support to the states that are likely to be visited by thousands, perhaps millions, of fellow Lewis and Clark enthusiasts.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation, to the Congressional Delegations of the States of Illinois, Missouri, Nebraska, South Dakota, North Dakota, Idaho, and Oregon, and to President George W. Bush.

Adopted March 19, 2001

HOUSE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE MULTIPLE USE OF NATIONAL FORESTS AND PUBLIC LANDS AND URGING CONGRESS AND THE PRESIDENT TO OVERTURN THE FEDERAL ROADLESS INITIATIVE.

WHEREAS, the wise multiple use of national forests and public lands is necessary for the economic stability and growth of communities in Montana and in other western states; and

WHEREAS, under the federal Roadless Area Conservation Rule adopted by the United States Department of Agriculture, the use of millions of acres of inventoried "roadless" areas will be severely limited; and

WHEREAS, under the National Forest System Road Management Rule and the National Forest System Land Resource Management Planning Rule, the use of national forest lands will be severely limited; and

WHEREAS, these rules effectively make lands unavailable for wise multiple use: and

WHEREAS, according to the United States Forest Service, tens of millions of acres of the national forest system, including land in Montana and other western states, are currently at high risk of catastrophic wildfire or are diseased and insect-infested; and

WHEREAS, these rules limit the ability of the United States Forest Service to address these problems; and

WHEREAS, while wilderness designation is the responsibility of the United States Congress, these rules and executive actions pursuant to these rules will make lands essentially de facto wilderness; and

WHEREAS, these rules significantly restrict the use of national forest lands for the purposes for which the national forests were created; and

WHEREAS, these rules severely limit national forest planning; and

WHEREAS, access to the affected national forests and public lands in Montana and other western states for recreation, timber harvesting, mining, and other activities will be seriously curtailed.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature supports the multiple use, including responsible economic uses, of national forests and public lands.

BE IT FURTHER RESOLVED, that the Montana Legislature urges Congress and the President to overturn the federal "roadless initiative", especially with respect to the public lands of Montana.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to President George W. Bush, the Montana Congressional Delegation, the Idaho Congressional Delegation, the Washington Congressional Delegation, the Oregon Congressional Delegation, the California Congressional Delegation, and the Wyoming Congressional Delegation.

Adopted March 31, 2001

HOUSE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A COLLABORATIVE PROCESS STUDY TO ADDRESS ISSUES REGARDING THE NEED TO BALANCE THE NECESSARY MANAGEMENT OF FOREST FUELS WITH THE AIR QUALITY CONCERNS RESULTING FROM PRESCRIBED WILDLAND OPEN BURNING AND TO PROVIDE SOLUTIONS TO THE 58TH LEGISLATURE.

WHEREAS, the constitutional right to a clean and healthful environment includes being free from unreasonable degradation having a significant impact on the environment, and this right is anticipatory and interpreted in conjunction with Article II, section 3, of the Montana Constitution, Article IX, section 1, of the Montana Constitution, and the preamble of the Montana Constitution; and

WHEREAS, the year 2000 drought and fire season resulted in catastrophic wildfires that consumed over 1 million acres of private, state, tribal, and federal lands and resulted in significant impacts on air quality and other aspects of the physical and human environment; and

WHEREAS, given the requisite climatic circumstances, all forests and wildlands will eventually burn, and the severity of those burns and the impacts on the physical and human environment are directly dependent on the amount of fuel buildup within those forest and wildland environments; and

WHEREAS, the reduction of fuel loading in forests and wildlands, particularly those within urban-rural interface areas, on a planned and incremental basis can reduce the potential for catastrophic wildfires and the unavoidable significant impacts to air quality that result; and

WHEREAS, prescribed wildland open burning is a necessary and valuable tool for managing the buildup of forest fuels; and

WHEREAS, government restrictions on the use of open burning to manage air quality may inadvertently contribute to the buildup of forest and wildland fuels, which may result in catastrophic wildfire events and the uncontrolled significant degradation to air quality and other serious impacts on the physical and human environment.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to conduct a study that addresses the issues regarding the need to reduce forest and wildland fuel loading through a more flexible open burning policy when fire danger is at an acceptable level.

(2) That the study be conducted through a collaborative process that includes participants from the forest industry, the Legislature, and other appropriate state and federal agencies.

(3) That the study include but not be limited to an analysis of the following issues:

(a) evaluating when the limited degradation of air quality from prescribed wildland open burning may be preferred and permitted in order to minimize the buildup of forest and wildland fuels and the potential for catastrophic fires and the resulting significant environmental impacts;

(b) analyzing when the limited degradation of air quality may be authorized if there are no economically, environmentally, or technologically feasible alternatives available that would result in no degradation;

(c) evaluating when important long-term social or economic benefits of forest fuel reduction and management projects exceed the short-term limited degradation of air quality;

(d) determining whether there are discriminatory practices in the authorization of prescribed wildland open burning between private, state, and federal landowners; and

(e) determining whether prescribed open burning exemptions can be made for certain agricultural and private property fuel management burns.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2002.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, recommendations of the appropriate committee, legislative proposals, and recommendations for administrative rules, be reported to the 58th Legislature.

Adopted March 24, 2001

HOUSE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE REDUCTION OF AN OVERABUNDANCE OF FOREST FUELS.

WHEREAS, the United States Forest Service was first organized to protect the national forests from fire and to provide a sustainable supply of timber, water, goods, and services for the people of the United States; and

WHEREAS, citizens of Montana and communities throughout the western United States still depend on the prudent stewardship, the sustained utilization of resources, and the steady production of goods and services from the multiple use management of public lands in those western states; and

WHEREAS, the April 1999 U.S. General Accounting Office report, "Western National Forests, a Cohesive Strategy is Needed to Address Catastrophic Wildfire Threats" states, "the most extensive and serious problem related to the health of national forests in the interior West is the overaccumulation of vegetation, which has caused an increasing number of large, intense, uncontrollable, and catastrophically destructive wildfires"; and

WHEREAS, the April 2000 U.S. Forest Service report, "Protecting People and Sustaining Resources in Fire-Adapted Ecosystems: A Cohesive Strategy" in response to the General Accounting Office report, confirmed the conclusion stated above and further warns "Without increased restoration treatments in these ecosystems wildland fire suppression costs, natural resource losses, private property losses, and environmental damage are certain to escalate as fuels continue to accumulate and more acres become high-risk.", and the report also specifies that, at a low intensity, fire is ecologically beneficial and has positive effects on biodiversity, soil productivity, and water quality; and

WHEREAS, the U.S. Forest Service further acknowledges that 39 million acres of national forest are at significant risk of catastrophic wildfire and an additional 26 million acres will be at similar risk due to increases in the mortality of trees and brush caused by insects and disease; and

WHEREAS, catastrophic wildfires, such as those in California in 1993, Florida in 1998, and Montana and Idaho in 2000, are recognized as among the defining natural disasters of the past decade; and

WHEREAS, the conflagrations that engulfed hundreds of thousands of acres in Montana during 2000 caused millions of dollars of damage to the property of residents; and

WHEREAS, catastrophic wildfires not only cause damage to the forests and other lands, but place the lives of firefighters at risk and pose threats to human health, personal property, sustainable ecosystems, air quality, and water quality; and

WHEREAS, the escaped Cerro Grande Prescribed Fire in May, 2000, which consumed 48,000 acres and destroyed 400 homes with losses exceeding $1 billion in Los Alamos, New Mexico, and the escaped Lowden Prescribed Fire in 1999 that destroyed 23 homes in Lewiston, California, highlight the unacceptable risks of using prescribed burning if prescribed burning, as reported, was the sole forest management practice of the subject federal land management agencies; and

WHEREAS, high-risk forest fuel has accumulated in combination with reduced fire response capability by federal agencies during the 1990s, resulting in catastrophic wildfires becoming more difficult and expensive to extinguish with a disproportionate burden being placed on state and local resources, the costs to fight these fires has increased by 150% between 1986 and 1994, and the costs of maintaining a readiness force has increased by 70% between 1992 and 1997; and

WHEREAS, current planning efforts of the U.S. Forest Service, such as the Sierra Nevada Framework, the Interior Columbia Basin Ecosystem Management Project, the Roadless Initiative, and the federal monument proclamations rely primarily on the extensive use of prescribed fire, which will further exacerbate the risk of catastrophic wildfires on federal lands throughout the West.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That in the interest of protecting the integrity and posterity of Montana's forests, wild lands, wildlife habitat, watersheds, air quality, human health and safety, and private property, the U.S. Forest Service and other federal land management agencies are urged to immediately implement a cohesive strategy to reduce the overabundance of forest fuels that place these resources at high risk of catastrophic wildfire.

(2) That the agencies are urged to utilize an appropriate mix of fire suppression activities and forest management methodologies, including selective thinning, selective harvesting, grazing, the removal of excessive ground fuels, small-scale prescribed burns, and the increased use of private, local, and state contracts for prefire treatments on federal forest lands.

(3) That the Legislature urges that more effective fire suppression in federal forest lands be pursued through increased funding of mutual aid agreements with state and local public firefighting agencies.

(4) That in the interest of forest protection and rural community safety, the federal Department of Agriculture and the Department of Interior are urged to immediately draft, for public review and adoption, a national prescribed fire strategy for public lands that creates a process for the evaluation of worst case scenarios that present a risk of escaped prescribed fires and identifies alternatives that will achieve the land management objectives while minimizing the risk and use of prescribed fire, and that this strategy be incorporated into any

regulatory land use planning program that proposes the use of prescribed fire as a management practice.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to President George W. Bush, Vice President Richard Cheney, Department of Interior Secretary Gale Norton, Department of Agriculture Secretary Ann Veneman, the Governors of Montana, Idaho, Washington, Oregon, California, Nevada, Utah, Wyoming, South Dakota, Colorado, Arizona, and New Mexico, Montana's Congressional Delegation, the Chief of the U.S. Forest Service, the Director of the U.S. Park Service, and the Director of the Bureau of Land Management.

Adopted March 12, 2001

HOUSE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING THE LEGISLATURE'S SUPPORT FOR THE DEVELOPMENT OF A MOTOR CARRIER SAFETY PROGRAM AND FOR THE SUBMISSION OF A GRANT PROPOSAL TO THE UNITED STATES DEPARTMENT OF TRANSPORTATION TO STUDY PROGRAM IMPLEMENTATION.

WHEREAS, improved commercial motor vehicle and driver safety serves the best interests of the public, the commercial motor carrier industry, and the state and federal governments; and

WHEREAS, the commercial motor carrier industry agrees that full compliance with state and federal commercial vehicle and driver safety laws and regulations is a critical industry responsibility; and

WHEREAS, the commercial motor carrier industry is experiencing increased fuel costs, insurance costs, driver hiring and training costs, and other operating costs; and

WHEREAS, commercial motor vehicle crashes significantly impact national health care costs, insurance costs, and the lives of victims and their families; and

WHEREAS, the United States Department of Transportation is committed to achieving a 50% reduction in fatalities resulting from commercial motor vehicle crashes; and

WHEREAS, the government's ability to substantially improve commercial motor vehicle safety through enforcement may have already reached peak effectiveness; and

WHEREAS, a commercial motor carrier safety program combining education with financial incentives may represent the most effective remaining opportunity to significantly improve commercial motor vehicle and driver safety.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature support development of:

(1) a Motor Carrier Safety Program for the New Millennium that includes focused safety education and financial incentives for commercial motor carriers who implement a program that results in safer vehicles and drivers; and

(2) a grant proposal requesting funding from the United States Department of Transportation to study and evaluate the safety program envisioned and described in this resolution.

Adopted March 26, 2001

HOUSE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A STUDY OF ANNEXATION TO DEVELOP A GUIDING POLICY ON ANNEXATION AND TO GENERATE RECOMMENDATIONS BASED ON THE STUDY'S FINDINGS.

WHEREAS, certain areas of Montana continue to experience significant growth, forcing communities to struggle with a growing population's effect on city services, the city infrastructure, and open space, as well as the tax implications that accompany growth outside city limits; and

WHEREAS, Montana law provides for five different methods for a municipality to annex property; and

WHEREAS, a review of the five different methods reveals no consistent guiding policy governing annexation; and

WHEREAS, annexation continues to be a controversial issue, as evidenced by the number of bills dealing with the subject that have been requested in the last several sessions; and

WHEREAS, new proposals for types of annexation, such as phased-in services and phased-in taxes, have recently been proposed; and

WHEREAS, a thorough review and analysis of annexation and the procedures used should be conducted in order to develop a guiding policy and consistent methods that will be effective for the varying types of communities scattered throughout Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) review the existing types of annexation found in Title 7, chapter 2, MCA;

(2) determine how often the different methods for annexation are used and whether some of the methods are used at all;

(3) identify emerging trends in annexation methods, growth patterns around the state, and how the two may relate;

(4) study how other western states that are experiencing growth are addressing annexation and whether those strategies may be applied to communities in Montana;

(5) gather any other information and conduct any other activity relevant to annexation that may be useful in developing a statewide guiding policy on annexation: and

(6) propose changes to existing law, if appropriate, that reflect the study's findings.

BE IT FURTHER RESOLVED, that, if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2002.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 58th Legislature.

Adopted March 27, 2001

HOUSE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE DEVELOPMENT OF A TIMBER SALVAGE AND FOREST RESTORATION PROGRAM.

WHEREAS, the year 2000 drought and fire season resulted in catastrophic wildfires that consumed nearly 1 million acres of private, state, tribal, and federal lands within the state of Montana; and

WHEREAS, approximately 600,000 acres of the burned land consists of federal land; and

WHEREAS, much of this burned-over federal land is forest land already accessible by forest roads; and

WHEREAS, the merchantable value of burned timber decreases rapidly as decomposition from insects and fungal disease develops over the following 12 to 24 months; and

WHEREAS, the standing burned trees pose a significant threat to public safety in many areas; and

WHEREAS, the Department of Natural Resources and Conservation has moved rapidly to harvest an estimated 21 million board feet of timber from 4,000 acres of burned land in the Sula State Forest, thus employing hundreds of Montanans and salvaging some of the remaining timber value of the forest; and

WHEREAS, federal land management agencies should not miss an opportunity through benign neglect to produce some positive benefits from last summer's fire disaster.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the federal agencies responsible for forest management in Montana be strongly urged to develop and initiate an aggressive timber salvage and forest restoration program that would:

(a) expedite the removal of as much merchantable timber as possible while it still has some marketable value:

(b) protect the remaining resources and ecological systems in the forest lands; and

(c) begin the restoration and reforestation process as rapidly as possible.

(2) That the federal forest management agencies in Montana, with the support and cooperation of all Montanans, actively solicit the financial, legal, and administrative support of Congress and the President in this emergency effort to salvage timber and restore the forest lands affected by last summer's fires.

(3) That copies of this resolution be sent by the Secretary of State to the Governor, the Montana Congressional Delegation, the Secretary of Agriculture, the Secretary of the Department of Interior, the Chief of the United States Forest Service, the Director of the Bureau of Land Management, and the President of the United States.

Adopted March 28, 2001

HOUSE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE ENVIRONMENTAL QUALITY COUNCIL PROVIDE OVERSIGHT FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT REGARDING THE PROPOSED DEVELOPMENT OF COAL-BED NATURAL GAS RESOURCES IN MONTANA AND PROVIDE FINDINGS TO THE LEGISLATURE.

WHEREAS, the need for an economical supply of clean burning energy is a national and state priority, Montana possesses reserves of clean-burning coal-bed natural gas, and the timely development of those resources is important; and

WHEREAS, it is the policy of this state to promote efforts that will minimize damage to the human environment, prevent unreasonable depletion and degradation of natural resources, maintain and improve a clean and healthful environment, and protect the right to use and enjoy private property; and

WHEREAS, with the enactment of the Montana Environmental Policy Act (MEPA), the Legislature intends that state agencies consider the consequences of agency actions prior to acting and to consider those consequences in a thorough, yet efficient, manner; and

WHEREAS, the state has determined that prior to authorizing further development of Montana coal-bed natural gas, a comprehensive environmental impact statement (EIS) addressing the impacts of the development must be completed by the Department of Environmental Quality and the Board of Oil and Gas Conservation in cooperation with other state and federal agencies; and

WHEREAS, the Environmental Quality Council has longstanding and statutorily required involvement in MEPA issues and has demonstrated strong bipartisan expertise in analyzing and reviewing MEPA implementation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Environmental Quality Council (EQC) be requested to provide oversight for the state's preparation or involvement in the preparation of the coal-bed natural gas development EIS as required by MEPA.

(2) That staff from the Department of Environmental Quality and the Board of Oil and Gas Conservation be requested to provide status reports on the progress and preparation of the coal-bed natural gas development EIS to the EQC on at least a quarterly basis until the EIS is complete.

(3) That the EQC serve as a forum for members of the public to present any concerns regarding the timing and cost-effectiveness of the coal-bed natural gas development EIS.

BE IT FURTHER RESOLVED, that all aspects of the oversight functions, including presentation, conclusions and reporting, be concluded prior to September 15, 2002.

BE IT FURTHER RESOLVED, that the EQC prepare a brief report of its findings and conclusions concerning the coal-bed natural gas MEPA process and present the report, including any findings, conclusions, comments, or recommendations of the EQC, to the Governor and to the 58th Legislature.

Adopted March 31, 2001

HOUSE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY ESTABLISH A TASK FORCE TO DEVELOP AN ASSAY METHOD FOR THE MEASUREMENT OF ASBESTOS TO ASSIST IN THE ESTABLISHMENT OF AN AMBIENT AIR STANDARD BASED ON HUMAN HEALTH RISKS FROM CHRONIC EXPOSURE TO ASBESTOS.

WHEREAS, the residents of Libby, Montana, have been afflicted with health concerns and human mortality resulting from occupational and secondary exposure to tremolite asbestos fibers discharged into the environment by the mining of vermiculite at the nearby W.R. Grace mine facilities; and

WHEREAS, considerable research is currently underway in Libby by several state and federal agencies to analyze the threat to human health and the environment from asbestos; and

WHEREAS, there is currently no federal or state ambient air standard established for identifying a safe level for the chronic exposure of humans to airborne asbestos fibers; and

WHEREAS, the federal Environmental Protection Agency is in the process of developing a particulate sampling method and protocol for measuring fine airborne particles that may also be useful in developing an assay method for airborne asbestos fibers and ultimately useful in establishing an ambient air quality standard or guidance threshold based on human health risk and exposure; and

WHEREAS, the Montana University System can provide the intellectual and technical capability to assist in the development of an asbestos assay method that would significantly contribute to the further scientific understanding of the risks of asbestos exposure and assist in the development of an ambient air standard for asbestos.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Department of Environmental Quality be urged to establish and oversee a task force of health and environmental officials and scientists from the State of Montana, federal health and environmental agencies, and the Montana University System and of other interested persons, with the goal of developing a credible scientific method to measure airborne asbestos that would assist in the development of an ambient air standard for asbestos based on the human health risks from chronic exposure.

(2) That the Department, with the active participation of the task force, be urged to aggressively pursue and solicit funding to support this effort, to act as a clearinghouse for current and future research on the subject, and to distribute any grants and funds received by the Department.

(3) That the University System be urged to participate in and provide the scientific research that would achieve the goals of this resolution.

(4) That the members of Montana's Congressional Delegation be urged to assist the Department in providing federal resources, funds, and guidance to the task force, recognizing that the knowledge gained from the Libby experience can be of significant value to the entire nation.

(5) That, for the next 2 years, the Department provide the Environmental Quality Council with an annual progress report on efforts made toward achieving the goal of developing an asbestos assay method that could assist in the development of ambient air standards for asbestos.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the Montana Congressional Delegation, the Commissioner of Higher Education, the Presidents of Montana State University-Bozeman and the University of Montana-Missoula, the Mayor of Libby, the Director of the Montana Office of the Environmental Protection Agency, and the Director of the Department of Environmental Quality.

Adopted March 27, 2001

HOUSE JOINT RESOLUTION NO. 30

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING THE DEPARTMENT OF TRANSPORTATION TO WORK WITH THE LEGISLATURE, THE GOVERNOR'S OFFICE, AND OTHER STATE AGENCIES IN INCORPORATING ECONOMIC DEVELOPMENT CRITERIA INTO THE TRANSPORTATION PLAN UPDATE.

WHEREAS, the development of Montana's economy is a critical matter that every Legislature faces; and

WHEREAS, highway construction and highway funding contribute significantly to Montana's economy; and

WHEREAS, the planning and development of Montana's highway and urban transportation systems can enhance the state's ability to develop, retain, and attract business; and

WHEREAS, the Department of Transportation is preparing to update its Transportation Plan; and

WHEREAS, issues that link transportation system development to present and future economic activities must be addressed in transportation planning and funding; and

WHEREAS, the Legislature, Governor's Office, and other state agencies need to be involved in the development of the state transportation plan.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Transportation work with both the Senate Highways and Transportation Standing Committee and the House Transportation Standing Committee to ensure that economic development criteria are included among the items to be addressed in preparing the request for proposals for the Transportation Plan update.

BE IT FURTHER RESOLVED, that the Transportation Commission, the Department of Transportation, the Governor's Office, and any other appropriate state agencies work together and seek the input of the Revenue and Taxation Interim Committee in studying and implementing methods for including economic development criteria in the Department of Transportation's ranking and funding apportionment process.

Adopted March 5, 2001

HOUSE JOINT RESOLUTION NO. 31

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO WORK WITH OTHER AGENCIES IN EXAMINING THE PROBLEM OF TEEN USE OF ALCOHOL AND DRUGS BOTH IN GENERAL AND WHILE THE TEENAGER IS DRIVING OR RIDING IN A MOTOR VEHICLE; AND ENCOURAGING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO REPORT ANY FINDINGS OR RECOMMENDATIONS TO THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE.

WHEREAS, teenagers, with their ready access to motor vehicles, have become increasingly mobile; and

WHEREAS, in 1998, 1,695 15- to 19-year-old teens were killed in alcohol-related traffic accidents nationwide; and

WHEREAS, in May 2000, a project called Aluminum Anonymous surveyed 700 miles of Montana roadsides for alcohol beverage containers, beginning at Gardiner and traveling through Bozeman, Helena, Lincoln, Great Falls, Harlowton, and Billings, finishing at the Wyoming state line; and

WHEREAS, the surveyors estimated that an average of 800 beer cans and beer bottles a mile are thrown on the highway annually; and

WHEREAS, Aluminum Anonymous interviewed professionals working with teenagers and adults in alcohol- and drug-related matters who collectively estimated that approximately 50% of the discarded containers came from teenagers; and

WHEREAS, in spite of a January 2001 national survey of teenagers by the National Institute on Alcohol Abuse and Alcoholism that included questions on drinking and drug use while driving and riding, too little is known about teenage alcohol and drug behavior after the car door closes; and

WHEREAS, a January 2001 report by the National Center on Addiction and Substance Abuse entitled "Shoveling Up: Impact of Substance Abuse on State Budgets" states that most of the money that Montana dedicates to substance abuse problems is spent on cleaning up the wreckage caused by addiction and substance abuse, rather than on prevention and treatment; and

WHEREAS, the same study reports that in 1998, 15.4% or nearly $256,000 of Montana's budget affecting justice and corrections, education, health, child and family assistance, mental health, public safety, and the state workforce was spent on substance abuse; and

WHEREAS, not only does in-vehicle alcohol use impact the health of the state's teenagers, it also impacts the environment, contributing to the problem of roadside litter; and

WHEREAS, the incidence of teenagers operating motor vehicles while using alcohol or drugs is evidence of the serious problem of teenage alcohol and drug use in general; and

WHEREAS, any investigation of in-vehicle teenage alcohol or drug use must also take into account the wider-ranging issue of substance abuse among teenagers, its causes and ramifications, and its cost to the state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature encourage the Department of Public Health and Human Services to work with the Department of Transportation and the Department of Justice in examining the problem of teenage drinking and drug use both in general and while operating a motor vehicle by:

(1) assembling the information that is known about this behavior, its causes, and its prevalence; and

(2) identifying gaps in knowledge, state law, policy, agency programs, and agency interaction.

BE IT FURTHER RESOLVED that the Department of Public Health and Human Services report to the Children, Families, Health, and Human Services Interim Committee, if appropriate, with any findings, recommendations, suggested legislation, or plans for incorporating prevention of the problems articulated in this resolution into the scope of the state's overall prevention strategies.

Adopted March 27, 2001

HOUSE JOINT RESOLUTION NO. 32

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A PERFORMANCE AUDIT OF THE CHILD PROTECTIVE SERVICES SYSTEM BY THE LEGISLATIVE AUDIT DIVISION.

WHEREAS, it is the policy of the State of Montana, as stated in section 41-3-101, MCA, to protect family unity, to provide for the protection of children who may be adversely affected by those responsible for their care and protection, and to ensure that whenever removal from a home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage, whenever appropriate; and

WHEREAS, Congress enacted the Indian Child Welfare Act of 1978 (ICWA) to prevent the breakup of Indian families and to give Indian tribes a role in matters concerning custody of Indian children, and the ICWA must be recognized in child custody proceedings, such as foster care placement, termination of parental rights, and adoptive or preadoptive placements, that involve Indian children; and

WHEREAS, although section 41-3-109, MCA, states that proceedings that involve an Indian child are subject to the ICWA, there are numerous exceptions in the ICWA that allow exclusive or concurrent jurisdiction of either the state or the Indian tribe, dependent on domicile, custody, parental petition, and "good cause", which may lead to uneven interpretation and application of the law and occurrences in which the Indian tribes are denied jurisdiction; and

WHEREAS, the federal Adoption and Safe Families Act of 1997 was also enacted to provide for child safety and for an accelerated resolution of issues to facilitate fewer temporary placements and to lead, ideally, to permanent placements for children in need of foster care and protective services; and

WHEREAS, the application of the power of the state to intervene in families is a difficult judgment call that the Department of Public Health and Human Services is required to make in order to protect children and families; and

WHEREAS, the social workers who make those judgment calls do so within the context of a local community with law enforcement, the County Attorney's office, and the court, but those decisions must be reviewed to ensure that the law is being applied equally statewide; and

WHEREAS, significant concerns have been raised regarding the operation and inadequate funding of the child protective services system, and in response, the Legislature considers that it is appropriate to call for a performance audit by the Legislative Audit Division.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Audit Committee prioritize a performance audit of child protective services in the Department of Public Health and Human Services, including but not limited to:

(1) the provision of child protective services across the state in regard to family-based services, intervention and treatment, investigations of abuse and neglect reports, out-of-home placements, especially with a noncustodial parent or kin, and the extent to which those practices are uniform statewide;

(2) policies and procedures regarding the application of the Indian Child Welfare Act of 1978 across the state and especially in the urban jurisdictions, many of which are near Indian reservations and all of which may involve Indian children. The audit may include a review of the Guidelines for State Courts for Indian child custody proceedings of the Bureau of Indian Affairs that the Montana Supreme Court has held are applicable and should be considered in ICWA cases.

(3) the extent to which the Department's policies and procedures, such as family group conferencing and foster care home recruiting, reflect cultural needs and are conducted in a manner that considers cultural practices and language;

(4) the extent to which the training of social workers, County Attorneys, and courts is relevant regarding the state and federal provisions pertaining to child protective services; and

(5) the provision of recommendations regarding management, personnel, and training needs of the Department for child protective services.

Adopted March 20, 2001

HOUSE JOINT RESOLUTION NO. 33

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING THE IMPORTANCE OF THE SUGAR INDUSTRY TO MONTANA'S ECONOMY; URGING THE MONTANA BOARD OF INVESTMENTS, THE DEPARTMENT OF COMMERCE, AND OTHER AGENCIES TO UTILIZE RESOURCES AND PROGRAMS TO ASSIST MONTANA'S SUGAR INDUSTRY; AND STATING THAT THE MONTANA LEGISLATURE IS COMMITTED TO HELPING SUGAR BEET PRODUCERS MAINTAIN A STRONG MONTANA PRESENCE.

WHEREAS, the sugar industry in Montana employs over 5,900 people as producers, refinery workers, and others involved in the production of sugar from "beet to sweet" in the state of Montana; and

WHEREAS, over 500 Montana farmers spend over $40.3 million annually to grow and harvest sugar beets, producing 61,800 acres of sugar beets in 1999 at an approximate yield of 23.8 tons of beets per acre; and

WHEREAS, the sugar industry is important to the economy of Montana and the dollars invested by the sugar industry energize the state's rural economy, generating over $260 million annually in economic activity; and

WHEREAS, sugar beets rank fourth in overall cash receipts among crops grown in Montana, generating cash receipts of $54,169,000 in 1999, making up 3.2% of the total receipts from all Montana commodities that year; and

WHEREAS, irrigated acreage and the consistent production of sugar beets add value to Montana agriculture and play a key role in the viability of many rural communities; and

WHEREAS, sugar beets are a high-value field crop that rotates well with other crops that are produced competitively and the byproducts of the sugar beet crop can provide feed for cattle and sheep; and

WHEREAS, the two sugar processing facilities in Montana, the Imperial Holly Sugar Corporation in Sidney, Montana, and the Western Sugar Company in Billings, Montana, process nearly 1.5 million tons of sugar beets grown in Montana and have payrolls of almost $10 million and pay $871,000 in property taxes.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature applauds the hard-working people who comprise Montana's sugar industry and recognizes the importance of the industry to Montana's economy.

BE IT FURTHER RESOLVED, that the Montana Legislature urges the Montana Board of Investments, the Department of Commerce, and other agencies to utilize all possible financial resources and programs to assist Montana's sugar industry in retaining and expanding this viable economic industry in the state of Montana.

BE IT FURTHER RESOLVED, that the Montana Legislature is committed to helping sugar beet producers maintain a strong Montana presence and to keeping a strong agriculture economy.

Adopted March 28, 2001

HOUSE JOINT RESOLUTION NO. 34

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE DEPARTMENT OF ADMINISTRATION TO CONDUCT AN ANALYSIS AND PROPOSE METHODS OF FUNDING THE UNFUNDED LEAVE LIABILITY OF STATE EMPLOYEES; AND DIRECTING THE DEPARTMENT TO SUBMIT ITS PROPOSALS TO THE LEGISLATIVE AUDIT COMMITTEE BY JULY 1, 2002.

WHEREAS, Title 2, chapter 18, part 6, MCA, provides that state employees are entitled to earn vacation and sick leave and may accrue up to two times their annual vacation leave and accrue unlimited sick leave; and

WHEREAS, upon termination state employees are entitled to cash compensation for all unused vacation leave and 25% of unused sick leave; and

WHEREAS, the liability for unused vacation and sick leave is not currently funded and must be paid from each agency's current operating budget at the time of termination; and

WHEREAS, the unfunded liability on June 30, 1999, was approximately $51 million for general government funds and $25 million for higher education funds; and

WHEREAS, the Governmental Accounting Standards Board (GASB) has issued GASB 34, which will affect the financial reporting for the state beginning June 30, 2001, in part by requiring the reporting of the amount of compensated absence liability in governmental funds, which will have a significant impact on fund balance: and

WHEREAS, the federal Office of Management and Budget (OMB) has stated in OMB circular A-87 that the federal government will no longer allow agencies to pay leave termination costs with federal funds if the obligation to pay those costs was not incurred while working on a federal program, which means that the costs will have to be paid with state funds.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Administration conduct an analysis of the issues involved in the funding of past and future accrued vacation and sick leave benefits for state employees.

BE IT FURTHER RESOLVED, that:

(1) the analysis include, but not be limited to, methods of creating a funded statewide leave pool, with acceptable methods of amortizing the current unfunded leave liability, that comply with GASB 34 and OMB Circular A-87 requirements;

(2) the Department of Administration work with the Legislative Audit Division to ensure compliance with GASB reporting requirements and OMB eligibility requirements; and

(3) the Department of Administration submit a detailed, written report of its findings, conclusions, and recommendations, including the positives and negatives of alternatives reviewed or recommended, to the Legislative Audit Committee by July 1, 2002.

Adopted March 31, 2001

HOUSE JOINT RESOLUTION NO. 35

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE FEASIBILITY OF ESTABLISHING A TUITION PREPAYMENT PROGRAM WITHIN THE MONTANA UNIVERSITY SYSTEM.

WHEREAS, the tuition for resident students in the Montana University System more than doubled from 1992 to 2000; and

WHEREAS, the tuition rates for all students, resident and nonresident, will increase by 3% annually in the 2003 biennium from the fiscal 2001 level; and

WHEREAS, today a postsecondary degree or certificate is advantageous for students seeking work that will provide a living wage; and

WHEREAS, parents need to be able to find ways to pay for their children's education.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to conduct a study of the feasibility of establishing a tuition prepayment program within the Montana University System.

BE IT FURTHER RESOLVED, that the committee or the staff consider the inclusion of the following components of a tuition prepayment program in the study:

(1) the prepayment would cover at least 2 years of a full course load at the selected institution;

(2) the prepayment would be the amount of tuition in the year that the prepayment is made;

(3) the prepayment would cover the tuition of a student enrolled not earlier than 3 years after the prepayment is made; and

(4) the prepayment could be made by any person on behalf of that person or on behalf of another person.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2002.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 58th Legislature.

Adopted April 18, 2001

HOUSE JOINT RESOLUTION NO. 37

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE COUNCIL DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR ASSIGN SUFFICIENT STAFF RESOURCES TO STUDY, IN THE CONTEXT OF PROVIDING FOR BICYCLE TRAFFIC SAFETY, THE PLANNING, DESIGN, AND CONSTRUCTION OF MONTANA HIGHWAYS AND ANY PROGRAMS OR REQUIREMENTS FOR DRIVER EDUCATION, TRAINING, OR LICENSING OR FOR CYCLIST SAFETY EQUIPMENT OR CLOTHING.

WHEREAS, there is a growing trend in the use of bicycles as a primary mode of transportation; and

WHEREAS, bicycles are increasingly a vehicle of choice for tourists, recreationists, and commuters; and

WHEREAS, the presence of bicycles on highways and other high-volume thoroughfares presents certain challenges and dangers to cyclists and other highway users alike; and

WHEREAS, the challenges and dangers may be reduced through enhanced cyclist responsibility, including certain highway use requirements that may include lights or mirrors or special safety equipment or clothing; and

WHEREAS, the challenges and dangers to cyclists and other users of highways can be mitigated through thoughtful planning, design, and construction of highways; and

WHEREAS, the challenges and dangers to all highway users may be further mitigated with new or additional driver education and training or through certain regulation of highway traffic or highway users.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to investigate:

(1) the planning, design, and construction criteria and processes followed by the Department of Transportation in regard to accommodating bicycle traffic on Montana highways and other high-volume thoroughfares; and

(2) the education and training programs and requirements specifically focused on bicycle and other traffic safety issues, if any, employed in:

(a) elementary and secondary education, including driver education courses; and

(b) the licensing of drivers.

BE IT FURTHER RESOLVED, that the investigation include an examination of the potential cost of enhancing bicycle safety through:

(1) improved planning, design, and construction or reconstruction of highways and other high-volume thoroughfares;

(2) establishing or enhancing cyclist responsibility with respect to the use of safety equipment and clothing; and

(3) enhanced education and training of highway users, including cyclists and other highway users.

BE IT FURTHER RESOLVED, that, if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2002.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, if any, be reported to the 58th Legislature.

Adopted April 18, 2001

HOUSE JOINT RESOLUTION NO. 38

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE ERECTION OF A MONTANA PURPLE HEART MEMORIAL.

WHEREAS, many Montanans, both men and women, have served and are now serving with distinction in the armed forces of the United States; and

WHEREAS, these Montana men and women have made and continue to make many significant and often heroic sacrifices in support of our beloved Nation and its people; and

WHEREAS, many of these Montanans have suffered wounds incurred in combat, some having given their last full measure of devotion in defense of our Nation and its interests; and

WHEREAS, the Military Order of the Purple Heart is erecting a Montana Purple Heart Memorial that recognizes the sacrifices of our Montana, combat-wounded veterans who have valiantly served our Nation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of this great state recognize the tremendous sacrifices made by all Montanans who have served in our armed forces and wholeheartedly support the erection of a Montana Purple Heart Memorial that commemorates those Montanans who have suffered wounds and even death in defense of our freedom, our state, and our great Nation.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Commander, Chapter 343, Military Order of the Purple Heart, in Billings, Montana.

Adopted April 7, 2001

HOUSE JOINT RESOLUTION NO. 39

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A LEGISLATIVE INTERIM STUDY OF CRIMINAL OFFENSES, OFFENSE SENTENCING AND RELEASE, AND RELATED ISSUES.

WHEREAS, the Law, Justice, and Indian Affairs Interim Committee began a sentencing study in fulfillment of Senate Joint Resolution No. 14 (1999) but was not able to fulfill all of the necessary elements of the study; and

WHEREAS, numerous pieces of legislation have been introduced and are being considered this legislative session that deal with criminal justice and corrections issues that affect the sentencing statutes, such as new criminal offenses, changes in the length of sentences, and changes in criminal procedures.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) review current criminal sentencing and criminal procedure statutes in Titles 45 and 46 and statutes in other titles of the Montana Code Annotated that contain criminal sentences and determine the extent to which the sentence ranges and penalties conform to Article II, section 28, of the Montana Constitution, the correctional and sentencing policy in section 46-18-101, MCA, and the crime seriousness ranking;

(2) review and update the sentencing tools and the crime seriousness ranking adopted by the Law, Justice, and Indian Affairs Interim Committee in 2000:

(3) compare the criminal statutes with the crime seriousness ranking to determine how closely the statutes reflect the ranking and recommend changes as necessary;

(4) build on the progress accomplished by the Correctional Standards and Oversight Committee during the 1997-98 interim, which culminated in revisions to Title 46, chapter 18, in Chapter 52, Laws of 1999, based on an analysis that sought to streamline the criminal procedure statutes and to eliminate redundancies and conflicts;

(5) analyze the offenses and the different types of sentences in statute and the legislative action on those statutes over the past 10 years. Statutory issues that require review are: a determination if obsolete or inconsistent sentences or related procedures in the statutes exist, mandatory minimum sentences, truth in sentencing, two and three strikes, sentences for violations of 61-8-401 and 61-8-406, the effects of the elimination of good time credits on inmate population, the use and effect of deferred sentences, the use and effect of sentences for offenses that must be committed multiple times to reach felony status, sentencing enhancements for use of certain weapons or ammunition or for persistent felony offenders, intermediate and alternative sanctions, and the effect on the correctional system of the commitment of certain offenders to the Department of Corrections. An analysis of sentence types may consider information on research in regard to the effects of different types of sentences on criminal justice and correctional resources.

(6) monitor the continued development and integration of databases containing criminal justice or juvenile justice information in the Department of Justice, the Department of Corrections, the Department of Public Health and Human Services, and the Judiciary, including issues of access and use of data and quality of data;

(7) develop recommendations for modification or enactment of sentencing and related statutes that are necessary or advisable to carry out a consistent, effective, humane, and rational correctional and sentencing policy that is within the available resources of the state and that are necessary or advisable to address recidivism and the growth of the populations in secure facilities; and

(8) research and pursue grant opportunities for any of the committee's related activities in order to further the efficient operation of the criminal justice and correctional systems and for the education of the public on issues related to the costs and benefits of the systems.

BE IT FURTHER RESOLVED, that, if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2002.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 58th Legislature.

Adopted April 13, 2001

HOUSE JOINT RESOLUTION NO. 40

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE BOARD OF PUBLIC EDUCATION STUDY THE USE OF THE PRE-PROFESSIONAL SKILLS TEST AS AN ENTRY TEST FOR ADMISSION INTO THE TEACHER EDUCATION PROGRAMS IN MONTANA AND MAKE RECOMMENDATIONS TO THE 58TH LEGISLATURE.

WHEREAS, national reports estimate that the United States will need 1.7 to 2.7 million new teachers between 2000 and 2010; and

WHEREAS, next year in Montana, because of retirements and turnover, there will be approximately 900 teaching positions to fill with teachers who are not currently in the system; and

WHEREAS, American Indians make up about 11% of the public school population, but American Indian teachers compose only 2% of the public school certified staff; and

WHEREAS, an examination of teacher certification in Montana may reveal some areas for improvement that will result in more teachers, especially American Indian teachers, being certified.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Board of Public Education be requested to study the use of the Pre-Professional Skills Test (PPST) as an entry test for admission into the teacher education programs in the Montana University System, including programs in partnership with tribal colleges, and in private colleges, with specific attention to the following:

(1) the number of candidates taking the PPST every year, with particular attention paid to the ethnicity, gender, socioeconomic status, and age of the candidates;

(2) the pass/fail rate on the separate content areas of the test of the candidates taking the test, disaggregated by ethnicity, gender, socioeconomic status, and age of the candidates;

(3) the number of candidates who pass or fail the PPST and in which college or university they are enrolled;

(4) the number of candidates who take the PPST more than once and the number of times that the test is taken;

(5) what teacher education programs do to prepare candidates to take the PPST;

(6) the number of candidates who pass the PPST and who go on to complete the teacher education programs and become certified;

(7) the college programs or career paths taken by those candidates who fail the PPST;

(8) a review of any state or national studies that look at problems with cultural biases in the PPST or any other problems with the test; and

(9) a comparison of the use of the PPST with the National Teacher Examination in determining the certification of teachers.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to December 15, 2002.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 58th Legislature.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent by the Secretary of State to the Board of Public Education.

Adopted April 19, 2001

HOUSE JOINT RESOLUTION NO. 41

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE COUNCIL DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR ASSIGN SUFFICIENT STAFF RESOURCES TO STUDY THE LAWS GOVERNING SCHOOL BOUNDARY TRANSFERS AND TO MAKE RECOMMENDATIONS TO THE 58TH LEGISLATURE.

WHEREAS, current state law grants County Superintendents of Schools broad discretion to transfer territory from one district to another and to alter school district boundaries; and

WHEREAS, the Montana Supreme Court, in its decision in the case of "In the Petition to Transfer Territory from High School District No. 6, Lame Deer, Rosebud County, Montana, to High School District No. 1, Hardin, Montana" held that because the Legislature had not provided County Superintendents with specific criteria to be weighed when deciding to grant or deny a territory transfer petition, the state's statutes constituted an unconstitutional delegation of legislative power; and

WHEREAS, Senate Bill No. 111 was introduced in the 57th Montana Legislature to restore constitutionality to the territory transfer statutes by providing an objective process for effectuating a transfer of territory; and

WHEREAS, Senate Bill No. 111 was eventually tabled in the House Judiciary Committee; and

WHEREAS, as a result of the Supreme Court decision and the failure of Senate Bill No. 111, school boundary transfers cannot take place until a new law that addresses the constitutional issues is adopted and approved by the Montana Legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to conduct a study of the laws governing the transfer of school district territory from one district to another in order to develop a procedure that addresses the constitutional issues raised by the Montana Supreme Court.

BE IT FURTHER RESOLVED, that the study address the following issues, as well as any other issues considered appropriate:

(1) the procedure for asking for a transfer of territory;

(2) the requirements to be met before a transfer can be considered;

(3) the role of the boards of trustees involved in a territory transfer;

(4) the role of the County Superintendent in a territory transfer;

(5) the criteria to be used in deciding if a territory transfer should take place; and

(6) an appeals process.

BE IT FURTHER RESOLVED, that, if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2002.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 58th Legislature.

Adopted April 18, 2001

HOUSE JOINT RESOLUTION NO. 42

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE COUNCIL DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR DIRECT SUFFICIENT STAFF RESOURCES TO STUDY ALTERNATIVES FOR FUNDING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S OVERALL FIRE MANAGEMENT PROGRAM, INCLUDING THE COSTS RELATED TO WILDFIRE SUPPRESSION.

WHEREAS, the population of Montana is increasing, and this increased population is beginning to inhabit areas that have historically been wildlands; and

WHEREAS, the costs associated with fire suppression and fire control increase dramatically when firefighters must protect homes and other structures; and

WHEREAS, the state currently relies on the Department of Natural Resources and Conservation's normal general appropriations act funding and general fund money through a supplemental appropriation to pay for the costs associated with fire suppression; and

WHEREAS, it appears the state will continue to incur large expenses as a result of fire suppression; and

WHEREAS, the state does not have a funding system established, other than through a supplemental appropriation, to address the costs of fire suppression; and

WHEREAS, the Department of Natural Resources and Conservation has recently received the final report from a private contractor who independently analyzed the Department's fire management program and identified inequities in how the program is currently funded.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study the current statutes that establish and define the Department of Natural Resources and Conservation's fire management program and source of funding and recommend alternatives for funding:

(1) the Department's overall fire management program, including both the direct protection program and the county assistance program; and

(2) the costs for fire suppression under both the direct protection program and the county assistance program.

BE IT FURTHER RESOLVED, that if this study or the study requested by House Joint Resolution No. 21 is assigned by the Legislative Council, then both studies should be incorporated together and conducted jointly.

BE IT FURTHER RESOLVED, that, if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2002.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 58th Legislature.

Adopted April 20, 2001

HOUSE JOINT RESOLUTION NO. 44

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING FEDERAL INTERVENTION TO STABILIZE WHOLESALE ELECTRICITY PRICES IN THE WEST.

WHEREAS, wholesale prices of electricity have soared to unprecedented levels, reaching as high as 30 times the prices of a year ago; and

WHEREAS, many of the state's largest businesses purchase power at rates tied to wholesale price indices, and a growing number of these businesses have been compelled to curtail production or cease operations altogether and lay off hundreds of workers because of high energy costs; and

WHEREAS, wholesale price increases will lead to sharp increases in retail electricity prices for business, agricultural, and residential consumers in Montana in the near future, with potentially devastating economic consequences; and

WHEREAS, high wholesale energy prices threaten the solvency of utilities in Montana and throughout the Northwest region; and

WHEREAS, taxpayer-supported public entities such as the Montana university system, other public schools, and local governments face unanticipated cost increases for energy and may have to scale back their operations to meet these costs; and

WHEREAS, the Federal Energy Regulatory Commission exercises jurisdiction over wholesale power generation sold in interstate commerce; and

WHEREAS, actions taken to date by the federal Department of Energy and the Federal Energy Regulatory Commission to address problems in the wholesale market have not resulted in any meaningful reduction in wholesale power prices; and

WHEREAS, in December 2000 and in January, 2001 the United States Secretary of Energy issued orders requiring certain energy entities to generate, deliver, interchange, and transmit electrical energy when requested by the California independent system operator, and these orders have been extended on repeated additional occasions; and

WHEREAS, several of the companies that received the energy from these entities are in an unstable financial condition, and there are serious questions about their ability to meet their obligations to pay for this electricity; and

WHEREAS, without strong and immediate action by the federal government to lower wholesale power prices, Montana and other western states could suffer long-term and irreversible economic harm.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the President of the United States, the U.S. Department of Energy, and the Federal Energy Regulatory Commission take strong, short-term measures to reduce wholesale prices throughout the Western region.

BE IT FURTHER RESOLVED, that the new administration act immediately to develop and implement a long-term strategy to reform the wholesale energy market to avoid continued price spikes that threaten to undermine the prosperity of the western United States.

BE IT FURTHER RESOLVED, that the new administration commit to providing assistance to low-income citizens who are most at risk from volatile energy prices.

BE IT FURTHER RESOLVED, that the federal government commit to allowing the western states to work toward fulfilling the region's energy supply needs through existing relationships and to refraining from any additional orders directing suppliers to provide electricity to California.

BE IT FURTHER RESOLVED, that copies of this resolution be immediately transmitted to the Honorable George W. Bush, President of the United States, the Honorable Spencer Abraham, Secretary of Energy, the members of the Federal Energy Regulatory Commission, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the state of Montana.

Adopted April 20, 2001

House Resolutions

HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REVISING AND ADOPTING THE HOUSE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following rules be adopted:

RULES OF THE MONTANA HOUSE OF REPRESENTATIVES

CHAPTER 1

Administration

H10-10. House officers. (1) House officers include a Speaker, a Speaker pro tempore, majority and minority floor leaders, and majority and minority whips (section 5-2-221, MCA).

(2) A majority of representatives voting elects the Speaker and Speaker pro tempore from the House membership. A majority of each caucus voting nominates House members to the remaining offices, and those nominees are considered to have been elected by a majority vote of the House.

H10-20. Speaker's duties. (1) The Speaker is the presiding officer of the House, with authority for administration, order, decorum, and the interpretation and enforcement of rules in all House deliberations.

(2) The Speaker shall see that all members conduct themselves in a civil manner in accordance with accepted standards of parliamentary conduct. The Speaker may, when necessary, order the Sergeant-at-Arms to clear the aisles and seat the members of the House so that business may be conducted in an orderly manner.

(3) Signs, placards, or other objects of a similar nature are not permitted in the rooms, lobby, gallery, or on the floor of the House. The Speaker may order the galleries, lobbies, or hallway cleared in case of disturbance or disorderly conduct.

(4) The Speaker shall appoint and may remove the members of all standing and select committees not otherwise specified by law or rule. Prior to making committee assignments, the Speaker shall take into consideration the recommendations of the minority leader for minority committee assignments and the appointment of the minority vicechairmen. For the Rules Committee, the Speaker shall determine the total number of members and the party division, but each party shall appoint its own members. The Speaker may appoint an additional at-large member to the Rules Committee from either party.

(5) The Speaker shall sign all necessary certifications by the House, including enrolled bills and resolutions, journals (section 5-11-201, MCA), subpoenas, and payrolls.

(6) The Speaker shall arrange the agendas for second and third readings each legislative day. Representatives may amend the agendas as provided in H40-130.

(7) The Speaker is the chief officer of the House, with authority for all House employees. The Speaker may seek the advice and counsel of the Legislative Administration Committee regarding employees.

(8) The Speaker may name any member to perform the duties of the chair. If the House is not in session and the Speaker pro tempore is not available, the Speaker shall name a member who shall call the House to order and preside during the Speaker's absence.

H10-30. Speaker-elect. During the transition period between the party organization caucuses and the election of House officers, the Speaker-elect has the responsibilities and authority appropriate to organize the House (section 5-2-202, MCA). Authority includes approving presession expenditures.

H10-40. Speaker pro tempore duties. The Speaker pro tempore shall, in the absence or inability of the Speaker, call the House to order and perform all other duties of the chair in presiding over the deliberations of the House and shall perform other duties and exercise other responsibilities as may be assigned by the Speaker.

H10-50. Legislative Administration Committee duties. (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee shall have authority to act in the interim to prepare for future legislative sessions. It may delegate specific duties to a legislative agency.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the House, subject to the approval of the Speaker.

(4) The committee shall comprise the House membership of the Joint Legislative Administration Committee.

H10-60. Employees. (1) The Speaker shall appoint a Chief Clerk, Sergeant-at-Arms, and Chaplain, subject to confirmation of the House (section 5-2-221, MCA).

(2) The Speaker shall recommend to the Legislative Administration Committee employment of necessary staff.

(3) The secretary for a standing or select committee is generally responsible to the committee chair but shall work under the direction of the Chief Clerk.

(4) The Speaker and majority and minority floor leaders may each appoint a private secretary.

H10-70. Chief Clerk's duties. The Chief Clerk, under the supervision of the Speaker, is the chief administrative officer of the House and is responsible to:

(1) supervise all House employees;

(2) have custody of all records and documents of the House;

(3) supervise the handling of legislation in the House, the House journal, and other House publications; deliver to the Secretary of State at the close of each session the House journal, bill and resolution records, and all original House bills and joint resolutions; collect minutes and exhibits from all House committees and subcommittees and deliver them, unbound, to the Legislative Services Division librarian, who shall arrange to have them copied in an archivable format. A copy will be provided to the Legislative Services Division and the State Law Library of

Montana. The Legislative Fiscal Analyst will receive a copy of the minutes from the appropriation committee and subcommittees. After copying, the original minutes will be delivered to the Montana Historical Society.

H10-80. Sergeant-at-Arms duties. The Sergeant-at-Arms shall:

(1) under the direction of the Speaker and the Chief Clerk, have charge of and maintain order in the House, its lobbies, galleries, and hallways and all other rooms in the Capitol assigned for the use of the House;

(2) be present whenever the House is in session and at any other time as directed by the presiding officer;

(3) execute the commands of the House and serve the writs and processes issued by the authority of the House and directed by the Speaker;

(4) supervise assistants to the Sergeant-at-Arms, who shall aid in the performance of prescribed duties and who have the same authority, subject to the control of the Speaker;

(5) clear the floor and anteroom of the House of all persons not entitled to the privileges of the floor prior to the convening of each session of the House;

(6) bring in absent members when so directed under a call of the House;

(7) enforce the distribution of any printed matter in the House chambers and anteroom in accordance with H20-80;

(8) enforce parking regulations applicable to areas of the Capitol complex under the control of the House;

(9) supervise the doorkeeper; and

(10) supervise the pages.

H10-90. Legislative aides. (1) A legislative aide is a person specifically designated by a representative to assist that representative in performing legislative duties. A representative may sponsor one legislative aide a session by written notification to the Sergeant-at-Arms.

(2) No representative may designate a second legislative aide in the same session without the approval of the House Rules Committee.

(3) A legislative aide must be of legal age unless otherwise approved by the House Rules Committee.

(4) The Sergeant-at-Arms shall issue distinctive identification tags to legislative aides. The cost must be paid by the sponsoring representative.

H10-100. Legislative interns. A legislative intern is a person designated under Title 5, chapter 6, MCA.

H10-110. House journal. (1) The House shall keep a journal, which is the official record of House actions (Montana Constitution, Art. V, Sec. 10). The journal must be prepared under the direction of the Speaker.

(2) Records of the following proceedings must be entered on the journal:

(a) the taking and subscription of the constitutional oath by representatives (Montana Constitution, Art. III, Sec. 3; 5-2-214);

(b) committee reports;

(c) messages from the Governor;

(d) messages from the Senate;

(e) every motion, the name of the representative presenting it, and its disposition;

(f) the introduction of legislation in the House;

(g) consideration of legislation subsequent to introduction;

(h) on final passage of legislation, the names of the representatives and their vote on the question (Montana Constitution, Art. V, Sec. 11);

(i) roll call votes; and

(j) upon a request by two representatives before a vote is taken, the names of the representatives and their votes on the question.

(3) The Chief Clerk shall provide to the Legislative Services Division such information as may be required for the publication of the daily journal.

(4) Any representative may examine the daily journal and propose corrections. The Speaker may direct a correction to be made when suggested subject to objection by the House.

(5) The Speaker shall authenticate the House journal after the close of the session (section 5-11-201, MCA).

(6) The Legislative Services Division shall publish and distribute the House journal (sections 5-11-202 and 5-11-203, MCA). The title of each bill must be listed in the index of the published session journal.

H10-120. Votes recorded and public. Every vote of each representative on each substantive question in the House, in any committee, or in Committee of the Whole must be recorded and made public (Montana Constitution, Art. V, Sec. 11).

H10-130. Duration of legislative day. A legislative day ends either 24 hours after the House convenes for that day or at the time the House convenes for the following legislative day, whichever is earlier.

CHAPTER 2

Decorum

H20-10. Addressing the House — recognition. (1) When a member desires to speak to or address any matter to the House, the member should rise and respectfully address the Speaker or the presiding officer.

(2) The Speaker or presiding officer may ask, "For what purpose does the member rise?" or "For what purpose does the member seek recognition?" and may then decide if recognition is to be granted. There is no appeal from the Speaker's or presiding officer's decision.

H20-20. Questions of order and privilege. (1) The Speaker shall decide all questions of order and privilege, subject to an appeal by any representative seconded by two representatives. The question on appeal is, "Shall the decision of the chairman be sustained?".

(2) Responses to parliamentary inquiries and decisions of recognition may not be appealed.

(3) Questions of order and privilege, in order of precedence, are:

(a) those affecting the collective rights, safety, dignity, and integrity of the House; and

(b) those affecting the rights, reputation, and conduct of individual representatives.

(4) A member may not address the House on a question of privilege between the time:

(a) an undebatable motion is offered and the vote is taken on the motion;

(b) the previous question is ordered and the vote is taken on the proposition included under the previous question; or

(c) a motion to lay on the table is offered and the vote is taken on the motion.

H20-30. Limits on lobbying. Lobbying on the House floor and in the anteroom is prohibited during a daily session, 2 hours before the session, and 2 hours after the session.

H20-40. Admittance to the House floor. (1) The following persons may be admitted to the House floor during a daily session: present and former legislators; legislative employees necessary for the conduct of the session; accredited news staff; and members' spouses and children. The Speaker may allow exceptions to this rule.

(2) Only a member may sit in a member's chair when the House is in session.

H20-50. Dilatory motions or questions. The House has a right to protect itself from dilatory motions or questions used for the purpose of delaying or obstructing business. The presiding officer shall decide if motions (except a call of the House) or questions are dilatory. This decision may be appealed to the House.

H20-60. Opening and order of business. The opening of each legislative day must include an invocation, the pledge of allegiance, and roll call. Following the opening, the order of business of the House is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Senate;

(5) messages from the Governor;

(6) first reading and commitment of bills;

(7) second reading of bills;

(8) third reading of bills;

(9) motions;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

H20-70. Lobbying by employees. (1) A legislative employee, intern, or aide of either house is prohibited from lobbying, although a legislative committee may request testimony from a person so restricted.

(2) The Speaker or the Legislative Administration Committee may discipline or discharge any House employee violating this prohibition. The Speaker or the committee may withdraw the privileges of any House aide or intern violating this prohibition.

H20-80. Papers distributed on desks. A paper concerning proposed legislation may not be placed on representatives' desks unless it is authorized by a member and permission has been granted by the Speaker. The Sergeant-at-Arms shall direct its distribution.

H20-90. Violation of rules. (1) If a member, in speaking or otherwise, violates the rules of the House, the Speaker shall, or the majority or minority floor leader may, call the member to order, in which case the member called to order must be seated immediately.

(2) The member called to order may move for an appeal to the House and if the motion is seconded by two members, the matter must be submitted to the House for determination by majority vote. The motion is nondebatable.

(3) If the decision of the House is in favor of the member called to order, the member may proceed. If the decision is against the member, the member may not proceed.

(4) If a member is called to order, the matter may be referred to the Rules Committee by the minority or majority leader. The Committee may recommend to the House that the member be censured or be subject to other action. The House shall act upon the recommendation of the Committee.

CHAPTER 3

Committees

H30-10. House standing committees — appointments. (1) The Speaker shall determine the total number of members and the party division and shall appoint the members to the following standing committees: Agriculture; Appropriations; Business and Labor; Education; Ethics; Federal Relations, Energy, and Telecommunications; Fish, Wildlife, and Parks; Transportation; Human Services; Judiciary; Legislative Administration; Local Government; Natural Resources; Rules; State Administration; and Taxation.

(2) The Speaker shall appoint the chairman, vice chairman, and minority vice chairman of each standing committee while retaining the authority to remove and replace any chairman, vice chairman, or minority vice chairman at any time. The appointment or removal of a minority vice chairman requires the consent of the minority leader. The Speaker shall give notice of each appointment to the Chief Clerk for publication.

(3) The Speaker may, in the Speaker's discretion or as authorized by the House, create and appoint select committees, designating the chairman and vice chairman of the select committee. Select committees may request or receive legislation in the same manner as a standing committee and are subject to the rules of standing committees.

H30-20. Chairman's duties. The principal duties of the chairman of standing or select committees are to:

(1) preside over meetings of the committee and to put all questions;

(2) maintain order and decide all questions of order subject to appeal to the committee;

(3) supervise and direct staff of the committee;

(4) have the committee secretary keep the official record of the minutes;

(5) sign reports of the committee and submit them promptly to the Chief Clerk;

(6) appoint subcommittees to perform on a formal or an informal basis; and

(7) inform the Speaker of committee activity.

H30-30. Quorum — officers as members. (1) A quorum of a committee is a majority of the members of the committee. A quorum of a committee must be present at a meeting to act officially. A quorum of a committee may transact business, and a majority of the quorum, even though it is a minority of the committee, is sufficient for committee action.

(2) The Speaker, majority leader, and minority leader are ex officio, nonvoting members of all House committees. They may count toward establishing a quorum.

H30-40. Meetings. (1) All meetings of committees must be open to the public at all times, subject always to the power and authority of the chairman to maintain safety, order, and decorum. The date, time, and place of committee meetings must be posted.

(2) A committee or subcommittee may be assembled for:

(a) a public hearing at which testimony is to be heard and at which official action may be taken on bills, resolutions, or other matters;

(b) a formal meeting at which the committees may discuss and take official action on bills, resolutions, or other matters without testimony; or

(c) a work session at which the committee may discuss bills, resolutions, or other matters but take no formal action.

(3) All committees meet at the call of the chairman or upon the request of a majority of the members of the committee directed to and with the approval of the Speaker.

(4) All committees shall provide for and give public notice, reasonably calculated to give actual notice to interested persons, of the time, place, and subject matter of regular and special meetings. All committees are encouraged to provide at least 3 legislative days notice to members of committees and the general public. However, a meeting may be held upon notice appropriate to the circumstances.

(5) A committee may not meet during the time the House is in session without leave of the Speaker. Any member attending such a meeting must be considered excused to attend business of the House subject to a call of the House.

(6) All meetings of committees must be recorded and the transcribed minutes must be available to the public within a reasonable time after the meeting. The official record must contain at least the following information:

(a) the time and place of each meeting of the committee;

(b) committee members present, excused, or absent;

(c) the names and addresses of persons appearing before the committee, whom each represents, and whether the person is a proponent, opponent, or other witness;

(d) all motions and their disposition;

(e) the results of all votes;

(f) references to the recording log, sufficient to serve as an index to the original recording; and

(g) testimony and exhibits submitted in writing.

H30-50. Procedures. (1) The chairman shall notify the sponsor of any bill pending before the committee of the time and place it will be considered.

(2) A standing or select committee may not take up referred legislation unless the sponsor or one of the cosponsors is present or unless the sponsor has given written consent.

(3) The committee shall act on each bill in its possession:

(a) by reporting the bill out of the committee:

(i) with the recommendation that it be referred to another committee;

(ii) favorably as to passage; or

(iii) unfavorably; or

(b) by tabling the measure in committee.

(4) The committee may not report a bill to the House without recommendation.

(5) The committee may recommend that a bill on which it has made a favorable recommendation by unanimous vote be placed on the consent calendar.

(6) In reporting a measure out of committee, a committee shall include in its report:

(a) the measure in the form reported out;

(b) the recommendation of the committee;

(c) an identification of all substantive changes; and

(d) a fiscal note, if required.

(7) If a measure is withdrawn from a committee and brought to the House floor for debate on second reading on that day without a committee recommendation, the bill does not include amendments formally adopted by the committee.

(8) A second to any motion offered in a committee is not required in order for the motion to be considered by the committee.

(9) The vote of each member on all committee actions must be recorded. All motions may be adopted only on the affirmative vote of a majority of the members voting.

(10) A motion to take a bill from the table may be adopted by the affirmative vote of a majority of the members present at any meeting of the committee.

(11) An action formally taken by a committee may not be altered in the committee except by reconsideration and further formal action of the committee.

(12) A committee may reconsider any action as long as the matter remains in the possession of the committee. A committee member need not have voted with the prevailing side in order to move reconsideration.

(13) Any legislation requested by a committee requires three-fourths of all members of the committee to vote in favor of the question to allow the committee to request the drafting or introduction of legislation. Votes requesting drafting and introduction of committee legislation may be taken jointly or separately.

(14) The chairman shall decide points of order.

(15) The privileges of committee members include the following:

(a) to participate freely in committee discussions and debate;

(b) to offer motions;

(c) to assert points of order and privilege;

(d) to question witnesses upon recognition by the chairman;

(e) to offer any amendment to any bill; and

(f) to vote, either by being present or by proxy, using a standard form or through the vice chairman or minority vice chairman.

(16) Any meeting of a committee held through the use of telephone or other electronic communication must be conducted in accordance with Chapter 3 of the House Rules.

(17) A committee may consolidate into one bill any two or more related bills referred to it whenever legislation may be simplified by the consolidation.

(18) Committee procedure must be informal, but when any questions arise on committee procedure, the rules or practices of the House are applicable except as stated in the House Rules.

H30-60. Public testimony. (1) Testimony from proponents, opponents, and informational witnesses must be allowed on every bill or resolution before a standing or select committee. All persons, other than the sponsor, offering testimony shall complete a "Witness Form" and submit it to the committee secretary.

(2) Any person wishing to offer testimony to a committee hearing a bill or resolution must be given a reasonable opportunity to do so, orally or in writing. Written testimony may not be required of any witness, but all witnesses must be encouraged to submit a statement in writing for the committee's official record.

(3) The chairman may order the committee room cleared of visitors if there is disorderly conduct. During committee meetings, visitors may not speak unless called upon by the chairman. Restrictions on time available for testimony may be announced.

(4) The number of people in a committee room may not exceed the maximum posted by the State Fire Marshall. The chairman shall maintain that limit.

(5) In any committee meeting, the use of cameras, television, radio, or any form of telecommunication equipment is allowed, but the chairman may designate the areas of the hearing room from which the equipment must be operated.

CHAPTER 4

Legislation

H40-10. Introduction deadlines. (1) Except as provided in subsection (2), if a representative accepts drafted legislation from the Legislative Services Division after the deadline for introduction, the representative may not introduce that legislation after 48 hours from the time the bill was accepted from the Legislative Services Division.

(2) No bill or resolution may be introduced any later than 5 p.m. 5 legislative days prior to the appropriate transmittal deadline.

H40-20. House resolutions. (1) A House resolution is used to adopt or amend House rules, make recommendations on the districting and apportionment plan (Montana Constitution, Art. V, Sec. 14), express the sentiment of the House, or assist House operations.

(2) As to drafting, introduction, and referral, a House resolution is treated as a bill. A House resolution may be requested and introduced at any time. Final passage of a House resolution is determined by the Committee of the Whole report. A House resolution does not progress to third reading.

(3) The Chief Clerk shall transmit a copy of each passed House resolution to the Senate and the Secretary of State.

H40-30. Cosponsors. (1) Prior to submitting legislation to the Chief Clerk for introduction, the chief sponsor may add representatives and senators as cosponsors by having them sign the legislation.

(2) After legislation is submitted for introduction but before the legislation returns from the first House committee, the chief sponsor may add or remove cosponsors by filing a cosponsor form with the Chief Clerk. This filing must be noted by the Chief Clerk for the record on Order of Business No. 11.

H40-40. Introduction — receipt. (1) During a session, proposed House legislation may be introduced in the House by submitting it, endorsed with the signature of a representative as chief sponsor, to the Chief Clerk for introduction. In each session of the Legislature, the proposed legislation must be numbered consecutively by type in the order of receipt. Submission and numbering of properly endorsed legislation constitutes introduction.

(2) Preintroduction of legislation prior to a session under provisions of the joint rules constitutes introduction in the House.

(3) Acknowledgment by the Chief Clerk of receipt of legislation or other matters transmitted from the Senate for consideration by the House constitutes introduction of the Senate legislation in the House or receipt by the House for purposes of applying time limits contained in the House rules. All legislation may be referred to a committee prior to being read across the rostrum as provided in H40-50.

(4) Acknowledgment by the Chief Clerk of receipt of messages from the Senate or other elected officials constitutes receipt by the House for purposes of any applicable time limit. Senate legislation or messages received from the Senate or elected officials are subject to all other rules.

H40-50. First reading. Legislation properly introduced or received in the House must be announced across the rostrum and public notice provided. This announcement constitutes first reading, and no debate or motion is in order except that a representative may question adherence to rules. Acknowledgment by the Chief Clerk of receipt of legislation transmitted from the Senate commences the time limit for consideration of the legislation. All legislation received by the House may be referred to a committee prior to being read across the rostrum.

H40-60. One reading per day. Except on the final legislative day, legislation may receive no more than one reading per legislative day. On the final legislative day, legislation may receive more than one reading.

H40-70. Referral. (1) The Speaker shall refer to a House committee all properly introduced House legislation and transmitted Senate legislation.

(2) Legislation may not receive final passage and approval unless it has been referred to a House committee.

H40-80. Rereferral. (1) Except as provided in subsection (2), legislation that is in the possession of the House and that has not been finally disposed of may be rereferred to a House committee by House motion approved by not less than three-fifths of the members present and voting.

(2) Legislation that is in the possession of the House and that has been reported from a committee with a do pass or be concurred in recommendation may be rereferred to a House committee by a majority vote.

H40-90. Legislation withdrawn from committee. Legislation may be withdrawn from a House committee by House motion approved by not less than three-fifths of the members present and voting.

H40-100. Standing committee reports. (1) A House standing committee recommendation of "do pass" or "be concurred in" must be announced across the rostrum and, if there is no objection to form, is considered adopted.

(2) A recommendation of "do not pass" or "be not concurred in" must be announced across the rostrum and, on the following legislative day, may be debated and adopted or rejected on Order of Business No. 2. A motion to reject an adverse committee report must be approved by not less than three-fifths of the members voting. Failure to adopt a motion to reject an adverse committee report constitutes adoption of the report.

(3) If the House rejects an adverse committee report, the bill progresses to second reading, as scheduled by the Speaker, with any amendments recommended by the committee.

H40-110. Consent calendar procedure. (1) Noncontroversial bills and simple and joint resolutions may be recommended for the consent calendar by a standing committee and processed according to the following provisions:

(a) To be eligible for the consent calendar, the legislation must receive a unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended). In addition, a motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report. Appropriation or revenue bills may not be recommended for the consent calendar.

(b) The legislation must then be sent to be processed and reproduced as a third reading version and specifically marked as a "consent calendar" item.

(2) Other legislation may be placed on the consent calendar by agreement between the Speaker and the minority leader following a positive recommendation by a standing committee. The legislation must be sent to be processed as a second reading version but must be specifically announced and posted as a "consent calendar" item.

(3) Legislation must be posted immediately (as soon as it is received appropriately printed) on the consent calendar and must remain there for 1 legislative day before consideration under Order of Business No. 11, special orders of the day. At that time, the presiding officer shall announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate is allowed.

(4) If any one representative submits a written objection to the placement of legislation on the consent calendar, the legislation must be removed from the consent calendar and added to the regular second reading board.

(5) Consent calendar legislation will be considered on Order of Business No. 8, third reading of bills, following the regular third reading agenda, as separately noted on the agenda.

(6) Legislation on the consent calendar must be considered individually with the roll call vote spread on the journal as the final vote in the House.

(7) Legislation passed on the consent calendar must then be transmitted to the Senate. Legislation must be appropriately printed prior to transmittal.

H40-120. Legislation requiring other than a majority vote. Legislation that requires other than a majority vote for final passage needs only a majority vote for any action that is taken prior to third reading and that normally requires a majority vote.

H40-130. Amending House second and third reading agendas. (1) A majority of representatives present may rearrange or remove legislation from either the second or third reading agenda on that legislative day.

(2) Legislation may be added to the second or third reading agenda on that legislative day on a motion approved by not less than three-fifths of the members present and voting.

H40-140. Second reading. (1) Legislation returned from committee may be placed on second reading unless otherwise ordered by the House.

(2) The House shall form itself into a Committee of the Whole to consider business on second reading. The Committee of the Whole may debate legislation, attach amendments, and recommend approval or disapproval of legislation.

(3) Except on the final legislative day, at least 1 legislative day must elapse between the time legislation is reported from committee and the time it is considered on second reading.

(4) If a motion to recommend that a bill "do pass" or "be concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do not pass" or "be not concurred in", is considered to have passed. If a motion to recommend that a bill "do not pass" or "be not concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do pass" or "be concurred in", is considered to have passed.

(5) An amendment attached to legislation by the Committee of the Whole remains unless removed by further legislative action.

(6) When the Committee of the Whole reports to the House, the House shall adopt or reject the Committee of the Whole report. If the House rejects the Committee of the Whole report, the legislation remains on second reading, as amended by the Committee of the Whole, unless the House orders otherwise.

(7) A representative may move to segregate legislation from the Committee of the Whole report before the report is adopted. Segregated legislation, as amended by the Committee of the Whole, must be placed on second reading unless the House orders otherwise.

H40-150. Amendments in the Committee of the Whole. (1) All Committee of the Whole amendments must be checked by the House amendments coordinator for format, style, clarity, consistency, and other factors, in accordance with the most recent Bill Drafting Manual published by the Legislative Services Division, before the amendment may be accepted at the rostrum. The amendment form must include the date and time the amendment is submitted for that check.

(2) An amendment submitted to the rostrum for consideration by the Committee of the Whole must be marked as checked by the amendments coordinator and signed by a representative. Unless the majority leader, the minority leader, and sponsor agree, amendments must be printed and placed on the members' desks prior to consideration.

(3) An amendment may not be proposed until the sponsor has opened on a bill.

(4) A copy of every amendment rejected by the Committee of the Whole must be kept as part of the official records.

(5) An amendment may not change the original purpose of the bill.

H40-160. Motions in the Committee of the Whole. (1) When the House resolves itself into a Committee of the Whole, the only motions in order are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) reconsider;

(e) pass consideration;

(f) call for cloture;

(g) rise, rise and report, or rise and report progress and beg leave to sit again; and

(h) to change the order in which legislation is placed on the agenda.

(2) Subsections (1)(d) through (1)(g) are nondebatable but may be amended. Once a motion under subsection (1)(b) or (1)(c) is made, a contrary motion is not in order.

(3) If a quorum of representatives is not present during second reading, the Committee of the Whole may conduct no business on legislation and a motion for a call of the House without a quorum is in order.

H40-170. Limits on debate in the Committee of the Whole. (1) A representative may not speak more than once on the motion and may speak for no more than 5 minutes. The representative who makes the motion may speak a second time for 5 minutes in order to close.

(2) After at least two proponents and two opponents have spoken on a question and 30 minutes have elapsed, a motion to call for cloture is in order. Approval by not less than two-thirds of the members present and voting is required to sustain a motion for cloture. Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

(3) By previous agreement of the majority leader and the minority floor leader:

(a) a lead proponent and a lead opponent may be granted additional time to speak on a bill;

(b) a bill or resolution may be allocated a predetermined amount of time for debate and number of speakers.

H40-180. Special provisions for debate on the general appropriations bill. (1) The Appropriations Committee chairman, in presenting the bill, is not subject to the 5-minute speaking limitation.

(2) Each appropriations subcommittee chairman shall fully present the chairman's portion of the bill. A subcommittee chairman is not subject to the 5-minute speaking limitation.

(3) After the presentation by the subcommittee chairman, the respective section of the bill is open for debate, questions, and amendments. A proposed amendment to the general appropriations act may not be divided.

(4) An amendment that affects more than one section of the bill must be offered when the first section affected is considered.

(5) Following completion of the debate on each section, that section is closed and may not be reopened except by majority vote.

(6) If a member moves to reopen a section for amendment, only the amendment of that member may be entertained. Another member wishing to amend the same section shall make a separate motion to reopen the section.

(7) Debate on the motion to reopen a section is limited to the question of reopening the section. The amendment itself may not be debated at that time. This limitation does not prohibit the member from explaining the amendment to be considered.

(8) A motion for cloture is not in order during debate on the general appropriations bill.

H40-190. Engrossing. (1) After legislation is passed on second reading, it must be engrossed within 48 hours under the direction of the Speaker. The Speaker may grant additional time for engrossing.

(2) When the legislation that has passed second reading has been correctly engrossed, it may be placed on third reading on the following legislative day. On the final legislative day, the correctly engrossed legislation may be placed on third reading on the same legislative day.

H40-200. Third reading. (1) All bills, joint resolutions, and Senate amendments to House bills and resolutions passing second reading must be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) Legislation on third reading may not be amended or debated.

(3) The Speaker shall state the question on legislation on third reading. If a majority of the representatives voting does not approve the legislation, it fails to pass third reading.

H40-210. Senate legislation in the House. Senate legislation properly transmitted to the House must be treated as House legislation.

H40-220. Senate amendments to House legislation. (1) When the Senate has properly returned House legislation with Senate amendments, the House shall announce the amendments on Order of Business No. 4, and the Speaker shall place them on second reading for debate. The Speaker may rerefer House legislation with Senate amendments to a committee for a hearing if the Senate amendments constitute a significant change in the House legislation. The second reading vote is limited to consideration of the Senate amendments.

(2) If the House accepts Senate amendments, the House shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

(3) If the House rejects the Senate amendments, the House may request the Senate to recede from its amendments or may direct appointment of a conference committee and request the Senate to appoint a like committee.

H40-230. Conference committee reports. (1) When a House conference committee files a report, the report must be announced under Order of Business No. 3.

(2) The House may debate and adopt or reject the conference committee report on second reading on any legislative day. The House may reconsider its action in rejecting a conference committee report under rules for reconsideration, H50-160.

(3) If both the House and the Senate adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the House, following approval of the conference committee report on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(4) If the House rejects a conference committee report, the committee continues to exist unless dissolved by the Speaker or by motion. The committee may file a subsequent report.

(5) A House conference committee may confer regarding matters assigned to it with any Senate conference committee with like jurisdiction and submit recommendations for consideration of the House.

H40-240. Enrolling. (1) When House legislation has passed both houses, it must be enrolled within 48 hours under the direction of the Speaker. The Speaker may grant additional time for enrolling.

(2) The chief sponsor of the legislation shall examine the enrolled legislation and, if it has no enrolling errors, shall, within 1 legislative day, certify the legislation as correctly enrolled.

(3) The correctly enrolled legislation must be delivered to the Speaker, who shall sign the legislation.

(4) After the legislation has been reported correctly enrolled but before it is signed, any representative may examine the legislation.

H40-250. Governor's amendments. (1) When the Governor returns a bill with recommended amendments, the House shall announce the amendments under Order of Business No. 5.

(2) The House may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the House and the Senate accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the House shall place the final form of the legislation on third reading to determine if the required vote is obtained.

H40-260. Governor's veto. (1) When the Governor returns a bill with a veto, the House shall announce the veto under Order of Business No. 5.

(2) On any legislative day, a representative may move to override the Governor's veto by a two-thirds vote under Order of Business No. 9.

CHAPTER 5

Floor Actions

H50-10. Attendance. (1) A representative, unless excused, is required to be present at every sitting of the House.

(2) A representative may request in writing to be excused for a specified cause by the representative's party leader. This excused absence is not a leave with cause from a call of the House.

H50-20. Quorum. (1) A quorum of the House is fifty-one representatives (Montana Constitution, Art. V, Sec. 10).

(2) Any representative may question the lack of a quorum at any time a vote is not being taken. The question is nondebatable, may not be amended, and is resolved by a roll call.

(3) The House may conduct no business without a quorum, except that representatives present may convene, compel the attendance of absent representatives, or adjourn.

H50-30. Call of the House without a quorum. (1) In the absence of a quorum, a majority of the representatives present may compel the attendance of absent representatives through a call of the House without a quorum. The motion for the call is nondebatable, may not be amended, and is in order at any time it has been established that a quorum is not present.

(2) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(3) When a quorum has been achieved under the call, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

H50-40. Call of the House with a quorum. (1) If a quorum is present but at least one representative is excused or absent, one-third of the representatives present and voting may order a call of the House with a quorum.

(2) The motion for a call is nondebatable, may not be amended, and is in order at any time a vote is not being taken, except that a call of the House with a quorum is not allowed in the Committee of the Whole.

(3) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(4) When all representatives are present, except those on leave with cause, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

H50-50. Leave with cause. (1) During a call of the House, a representative with an overriding medical or personal reason may request a leave with cause.

(2) If the representative is present at the time of the call, the Speaker may approve a request for a leave with cause.

(3) If the representative is not present at the time of the call, two-thirds of the representatives present and voting may approve a request for leave with cause.

(4) During a call of the House, a representative on leave with cause may not cast an absentee vote.

H50-60. Motions. (1) Any representative may propose a motion allowed by the rules for the order of business under which the motion is offered for the consideration of the House. Unless otherwise specified in rule or law, a majority of representatives voting is necessary and sufficient to decide a motion.

(2) Seconds to motions on the House floor are not required.

(3) Absentee votes are not allowed on votes that are specified as "representatives present and voting".

H50-70. Limits on debate of debatable motions. (1) Except for the representative who places a debatable motion before the body, no representative may speak more than once on the question unless a unanimous House consents. The representative who places the motion may close.

(2) No representative may speak for more than 10 minutes on the same question, except that a representative may have 5 minutes to close.

H50-80. Nondebatable motions. (1) A representative has the right to understand any question before the House and, usually under the administration of the presiding officer, may ask questions to exercise this right.

(2) The following motions are nondebatable:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for parliamentary inquiry;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

(g) to amend a nondebatable motion;

(h) to divide a question;

(i) to postpone consideration to a day certain;

(j) to suspend the rules;

(k) all incidental motions, such as motions relating to voting or of a general procedural nature; and

(l) to appeal a call to order.

H50-90. Questions. A representative may, through the presiding officer, ask questions of another representative during a floor session. There is no limit on questions and answers, except as provided in H20-50.

H50-100. Amending motions — limitations. (1) A representative may move to amend the specific provisions of a motion without changing its substance.

(2) No more than one motion to amend a motion is in order at any one time.

(3) A motion for a call of the House, for the previous question, to table, or to take from the table may not be amended.

H50-110. Substitute motions. (1) When a question is before the House, no substitute motion may be made except the following, which have precedence in the order listed:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for a question of privilege;

(e) to table;

(f) to call for the previous question or cloture;

(g) to postpone consideration to a day certain;

(h) to refer to a committee; and

(i) to propose amendments.

(2) Nothing in this section allows a motion that would not otherwise be allowed under a particular order of business.

(3) No more than one substitute motion is in order at any one time.

H50-120. Withdrawing motions. A representative who proposes a motion may withdraw it before it is voted on or amended.

H50-130. Dividing a question. Except as provided in H40-180, a representative may request to divide a question as a matter of right if it includes two or more propositions so distinct that they can be separated and if at least one substantive question remains after one substantive question is removed.

H50-140. Previous question. (1) If a majority of representatives present and voting adopts a motion for the previous question, debate is closed on the question and it must be brought to a vote. The Speaker may not entertain a motion to end debate unless at least one proponent and one opponent have spoken on the question.

(2) Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

H50-150. Questions requiring other than a majority vote. The following questions require the vote specified for each condition:

100 House Members

(1) a motion to override the Governor's veto (two-thirds);

(2) a motion to approve a bill to appropriate the principal of the coal severance tax trust fund (three-fourths);

(3) a motion to approve a bill to appropriate highway revenue, as described in Article VIII, section 6, of the Montana Constitution, for purposes other than therein described (three-fifths);

(4) a motion to approve a bill to authorize creation of state debt (two-thirds);

(5) a motion to temporarily suspend a joint rule governing the procedure for handling bills (two-thirds).

Members Present and Voting

(1) a call of the House with a quorum (one-third);

(2) a motion to lift a call of the House (two-thirds);

(3) a motion to rerefer a bill from one committee to another pursuant to Rule 40-80(1) (three-fifths);

(4) a motion to withdraw a bill from a committee (three-fifths);

(5) a motion to add legislation to the second or third reading agenda (three-fifths);

(6) a motion to remove legislation from its normal progress through the House as provided under these rules and reassign it unless otherwise specifically provided by these rules (three-fifths);

(7) a motion to change a vote (unanimous);

(8) a motion to call for cloture (two-thirds);

(9) a motion to take from the table in Committee of the Whole (three-fifths).

Members Voting

(1) a motion to amend or suspend rules (two-thirds);

(2) a motion to overturn an adverse committee report (three-fifths);

(3) a motion to record a vote (one representative);

(4) a motion to spread a vote on the journal (two representatives);

(5) an appeal of the ruling of the presiding officer (three representatives);

(6) a motion to speak more than once on a debatable motion (unanimous vote);

(7) a motion to appeal the presiding officer's interpretation of the rules to the House Rules Committee (15 representatives).

Entire Legislature

(1) a motion to approve a bill proposing to amend the Montana Constitution (two-thirds of the entire Legislature).

H50-160. Reconsideration. (1) Any representative may, within 1 legislative day of a vote, move to reconsider the House vote on any matter still within the control of the House.

(2) A motion for reconsideration, unless tabled or replaced by a substitute motion, must be disposed of when made.

(3) When a motion for reconsideration fails, the question is finally settled. A motion for reconsideration may not be renewed or reconsidered.

(4) A motion to recall legislation from the Senate constitutes a motion to reconsider and is subject to the same rules.

(5) A motion for reconsideration is not in order on a vote to postpone to a day certain or to table legislation.

(6) There may be only one reconsideration vote on a specific issue on a legislative day.

H50-170. Renewing procedural motions. The House may renew a procedural motion if further House business has intervened.

H50-180. Tabling. (1) Under Order of Business No. 9, a representative may move to table any question, motion, or legislation before the House except the question of a quorum or a call of the House. The motion is nondebatable and may not be amended.

(2) When a matter has been tabled, a representative may move to take it from the table under Order of Business No. 9 on any legislative day.

H50-190. Voting. (1) The representatives shall vote to decide any motion or question properly before the House. Each representative has one vote.

(2) The House may, without objection, use a voice vote on procedural motions that are not required to be recorded in the journal. If a representative rises and objects, the House shall record the vote.

(3) The House shall record the vote on all substantive questions. If the voting system is inoperable, the Chief Clerk shall record the representatives' votes by other means.

(4) A member who is present shall vote unless the member has disclosed a conflict of interest to the House.

H50-200. Changing a vote. (1) A representative may move to change the representative's vote within 1 legislative day of the vote. The motion is nondebatable. The motion must be made on Order of Business No. 9, motions. All of the members present and voting are required to consent to the change in order for it to be effective.

(2) The representative making the motion shall first specify the bill number, the question, and the original vote tally. A vote may not be changed if it would affect the outcome of legislation.

(3) A vote change must be entered into the journal as a notation that the member's vote was changed. The original printed vote will not be reprinted to reflect the change.

(4) An error caused by a malfunction of the voting system may be corrected without a vote.

H50-210. Absentee votes. (1) An excused representative may file an absentee vote authorization form to vote during the excused absence on any vote for which absentee voting is allowed.

(2) An excused representative shall sign an absentee vote authorization form that specifies the motion and the desired vote.

(3) The absentee vote authorization form must be handed in at the rostrum by the party whip or designated representative before voting on the motion has commenced.

(4) The absentee vote authorization may be revoked before the vote by the member who signed the authorization.

H50-220. Recess. The House may stand at ease or recess under any order of business by order of the Speaker or a majority vote. The recess may be ended at the call of the chair or at a time specified.

H50-230. Adjournment for a legislative day. (1) A representative may move that the House adjourn for that legislative day. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

(2) A motion to adjourn for a legislative day must specify a date and time for the House to convene on the subsequent legislative day.

H50-240. Adjournment sine die. A representative may move that the House adjourn for the session. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

CHAPTER 6

Motions

H60-10. Proposal for consideration. (1) Every question presented to the House or a committee must be submitted as a definite proposition.

(2) A representative has the right to understand any question before the House and, under the authority of the presiding officer, may ask questions to exercise this right.

H60-20. Nondebatable motions. The following motions, in addition to any other motion specifically designated, must be decided without debate:

(1) to adjourn;

(2) for a call of the House;

(3) to recess or rise;

(4) for parliamentary inquiry;

(5) to table or to take from the table;

(6) to call for the previous question or for cloture;

(7) to amend a nondebatable motion;

(8) to divide a question;

(9) to postpone consideration to a day certain;

(10) to suspend the rules; and

(11) all incidental motions, such as motions relating to voting or of a general procedural nature.

H60-30. Motions allowed during debate. (1) When a question is under debate, only the following motions are in order. The motions have precedence in the following order:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for a question of privilege;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

(g) to postpone consideration to a day certain;

(h) to refer or rerefer; and

(i) to propose amendments.

(2) This section does not allow a motion that would not otherwise be allowed under a particular order of business.

(3) Only one substitute motion is in order at any time.

H60-40. Motions to adjourn or recess. (1) A motion to adjourn or recess is always in order, except:

(a) when the House is voting on another motion;

(b) when the previous question has been ordered and before the final vote;

(c) when a member entitled to the floor has not yielded for that purpose; or

(d) when business has not been transacted after the defeat of a motion to adjourn or recess.

(2) The vote by which a motion to adjourn or recess is carried or fails is not subject to a motion to reconsider.

H60-50. Motion to table. (1) A motion to table, if carried, has the effect of postponing action on the proposition to which it was applied until superseded by a motion to take from the table.

(2) The vote by which a motion to table is carried or fails cannot be reconsidered.

(3) A motion to table is not in order after the previous question has been ordered.

H60-60. Motion to postpone. A motion to postpone to a day certain may be amended and is debatable within narrow limits. The merits of the proposition that is the subject of the motion to postpone may not be debated.

H60-70. Motion to refer. When a motion is made to refer a subject to a standing committee or select committee, the question on the referral to a standing committee must be put first.

H60-80. Terms of debate on motion to refer or rerefer. (1) A motion to refer or rerefer is debatable within narrow limits. The merits of the proposition that is the subject of the motion may not be debated.

(2) A motion to refer or rerefer with instructions is fully debatable.

H60-100. Moving the previous question after a motion to table. (1) If a motion to table is made directly to a main motion, a motion for the previous question is not in order.

(2) If an amendment to a main motion is pending and a motion to table is made, the previous question may be called on the main motion, the pending amendment, and the motion to table the amendment.

H60-110. Standard motions. The following are standard motions:

(1) moving House bills or resolutions on second reading, "Mister/Madam Chairman, I move that when this committee does rise and report after having

under consideration House Bill ___, that it recommend the same (do pass)/(do pass as amended)/(do not pass)."

(2) moving Senate bills and Senate amendments to House bills, "Mister/Madam Chairman, I move that when this committee does rise and report after having under consideration Senate Bill ___/Senate amendments to House Bill ___, that it recommend the same (be concurred in)/(be not concurred in)."

(3) Committee of the Whole floor amendments, "Mister/Madam Chairman, I move that House Bill ___/Senate Bill ___ be amended and request that the amendment be posted and deemed read."

(4) introducing visitors, "Mister/Madam Speaker/Chairman, I request that we be off the record and out of the journal."

(5) changing a vote, "Mister Speaker, I would like my vote changed on House Bill ___/Senate Bill ___ from (yes/no) to (yes/no). The question on the bill was ( ) with a vote tally of ____for and ____ against."

(6) question another representative, "Mister/Madam Speaker/Chairman, would Representative ___ yield to a question?"

CHAPTER 7

Rules

H70-10. House rules. (1) The House may adopt, through a House resolution passed by a majority of its members, rules to govern its proceedings.

(2) After adoption of the House rules, two-thirds of the representatives voting must vote in favor of the question to amend the rules.

(3) The Speaker shall refer to the House Rules Committee all resolutions for House rules.

(4) The House Rules Committee shall report all resolutions for House rules within 1 legislative day of referral.

H70-20. Tenure of rules. Rules adopted by the House remain in effect until removed by House resolution or until a new House is elected and takes office.

H70-30. Suspension of rules. The House may suspend a House rule on a motion approved by not less than two-thirds of the members voting.

H70-40. Supplementary rules. Mason's Manual of Legislative Procedure (2000) governs House proceedings in all cases not covered by House rules.

H70-50. Interpreting rules. The Speaker shall interpret all questions on House rules, subject to appeal by any 15 representatives to the House Rules Committee. Unless the delay would cause legislation to fail to meet a scheduled deadline, the House Rules Committee may consider and report on the appeal on the next legislative day. The decision of the House Rules Committee may be appealed to the House by any representative.

H70-60. Joint rules superseded. A House rule, insofar as it relates to the internal proceedings of the House, supersedes a joint rule.

Adopted January 9, 2001

HOUSE RESOLUTION NO. 2

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA OPPOSING ANY NEW DESIGNATION FOR THE MISSOURI RIVER OR THE MISSOURI RIVER BREAKS.

WHEREAS, a majority of Montanans oppose a new designation for the Missouri River or the Missouri River Breaks; and

WHEREAS, the Missouri River and the Missouri River Breaks are protected by the federal Wild and Scenic Rivers Act, Montana subdivision law, and county development regulations; and

WHEREAS, expanding the designation will incorporate more private and state land holdings under federal management plans; and

WHEREAS, Article IV, section 3, of the Constitution of the United States gives authority over public lands to Congress; and

WHEREAS, the vast number of acres being considered for designation as a monument does not meet guidelines of the intent of the federal enabling legislation for monument designations, the Antiquities Act of 1906, which states that the President of the United States is authorized to declare national monuments and "may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected"; and

WHEREAS, House Resolution No. 1487 requires the President of the United States of America to seek public input and to consult with elected officials of the affected state at least 60 days before taking any action; and

WHEREAS, Secretary of the Interior Bruce Babbitt has violated the pledge that he made during his preliminary trip to Montana in the summer of 2000 to return for further analysis and input prior to any recommendations for a change in designation for this area; and

WHEREAS, the Clinton administration has made an "11th hour" rush to create a legacy in land policy without due diligence in properly analyzing the negative impacts on local and state governmental divisions as well as on state and local inhabitants.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana respectfully request that the Secretary of the Interior, Mr. Bruce Babbitt, withdraw any new proposed designation for the Missouri River or the Missouri River Breaks and support the proven management practices that have maintained the pristine conditions of the Missouri River and the Missouri River Breaks.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Secretary of the Interior, the Montana Congressional Delegation, President William Clinton, and President Elect George W. Bush.

Adopted January 16, 2001

2000 BALLOT ISSUES

CONSTITUTIONAL AMENDMENT NO. 34

The Legislature submitted this proposal for a vote. It would amend the Montana Constitution to allow monies in the state workers' compensation insurance fund to be invested in private corporate capital stock. Up to 25% of the state fund's assets could be invested in the stock market. Currently, the constitution prohibits such investment of public funds except for monies contributed to retirement funds. Like pension funds, workers' compensation investments would be managed by the State Board of Investments in accordance with recognized standards of financial management.

This measure authorizes the Board of Investments to invest no more than 25% of the workers' compensation fund in the stock market. Average return on investments is expected to be higher over the long term if the measure is passed.

Constitutional Amendment No. 34 was approved by the following vote at the General Election held November 7, 2000:

For:	197,399
Against:	180,850

The text of the Amendment follows:

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VIII, section 13, of The Constitution of the State of Montana is amended to read:

"**Section 13. Investment of public funds and public retirement system *and state compensation insurance fund* assets.** (1) The legislature shall provide for a unified investment program for public funds and public retirement system *and state compensation insurance fund* assets and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except as provided in ~~subsection~~ *subsections* (3) *and (4)*, no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other safe investments bearing a fixed rate of interest as may be provided by law.

(3) Investment of public retirement system assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of an enterprise of a similar character with similar aims. Public retirement system assets may be invested in private corporate capital stock.

(4) Investment of state compensation insurance fund assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a

fiduciary capacity and familiar with the circumstances would use in the conduct of a private insurance organization. State compensation insurance fund assets may be invested in private corporate capital stock. However, the stock investments shall not exceed 25 percent of the book value of the state compensation insurance fund's total invested assets."

Section 2. Effective date. If approved by the electorate, the amendments in section 1 are effective January 1, 2001.

Section 3. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 2000 by printing on the ballot the full title of this act and the following:

☐ FOR allowing a maximum of 25% of state compensation insurance fund assets to be invested in private corporate capital stock.

☐ AGAINST allowing a maximum of 25% of state compensation insurance fund assets to be invested in private corporate capital stock.

CONSTITUTIONAL AMENDMENT NO. 35

This proposal, submitted by the Legislature, would amend the Montana Constitution to dedicate not less than 40% of Montana's share of the settlement with major tobacco companies to a permanent trust fund. Ninety percent of the trust fund's interest would be used for health care benefits, services or coverage and tobacco disease prevention. The remaining 10% would be deposited in the trust. The trust's principal could only be spent for these same programs if approved by a 2/3 vote of each house of the legislature. The trust's interest and principal cannot be used to replace current funding for these programs.

Montana's share of the nationwide settlement with the tobacco companies is expected to average $30 million annually for the next 25 years. Current law places settlement payments in the general fund. This initiative would reduce tobacco settlement funds going to the general fund by as much as $12 million annually.

Constitutional Amendment No. 35 was approved by the following vote at the General Election held November 7, 2000:

For:	287,432
Against:	103,979

The text of the Amendment follows:

Be it enacted by the Legislature of the State of Montana:

Section 1. Article XII of The Constitution of the State of Montana is amended by adding a new section 4 that reads:

Section 4. Montana tobacco settlement trust fund. (1) The legislature shall dedicate not less than two-fifths of any tobacco settlement proceeds received on or after January 1, 2001, to a trust fund, nine-tenths of the interest and income of which may be appropriated. One-tenth of the interest and income derived from the trust fund on or after January 1, 2001, shall be deposited in the trust fund. The principal of the trust fund and one-tenth of the interest and income deposited in the trust fund shall remain forever inviolate unless appropriated by a vote of two-thirds of the members of each house of the legislature.

(2) Appropriations of the interest, income, or principal from the trust fund shall be used only for tobacco disease prevention programs and state programs providing benefits, services, or coverage that are related to the health care needs of the people of Montana and may not be used for other purposes.

(3) Appropriations of the interest, income, or principal from the trust fund shall not be used to replace state or federal money used to fund tobacco disease prevention programs and state programs that existed on December 31, 1999, providing benefits, services, or coverage of the health care needs of the people of Montana.

Section 2. Effective date. This act is effective upon approval by the electorate.

Section 3. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 2000 by printing on the ballot the full title of this act and the following:

☐ FOR dedicating not less than 40% of the tobacco settlement to a trust fund for health care benefits, services, or coverage and tobacco disease prevention.

☐ AGAINST dedicating not less than 40% of the tobacco settlement to a trust fund for health care benefits, services, or coverage and tobacco disease prevention.

INITIATIVE NO. 143

This initiative would amend state law to prohibit all new alternative livestock ranches, also known as game farms. Existing game farms would be allowed to continue operating, but would be prohibited from transferring their licenses to any other party. They would also be prohibited from allowing shooting of game farm animals for any type of fee. The proposal also repeals provisions of the law concerning applications for expansion of game farms. If approved by the voters, the measure would take effect immediately.

This measure would eliminate $104,000 in annual costs of review of game farm applications and expansions, as well as $3,850 yearly revenues from application fees. Abolishing fee shooting may force closure of some game farms, which could result in less revenue to the state and in lower overall regulation costs.

Initiative No. 143 was approved by the following vote at the General Election held November 7, 2000:

For:	204,282
Against:	193,079

The text of the Initiative follows:

Be it enacted by the People of the State of Montana:

Section 1. Section 87-4-407, MCA, is amended to read:

"87-4-407. License required — ~~moratorium~~ — penalty — seizure of illegally possessed animals. (1) A person may not operate an alternative livestock ranch in this state without *having* first ~~obtaining~~ *obtained* an alternative livestock ranch license from the department *prior to [the effective date of this act]. A person may not apply for or be granted a license after that date.* ~~The~~

~~department may not accept any new applications for an initial alternative livestock ranch license until a live test for chronic wasting disease is developed and is approved by the department of livestock.~~

(2) A person who operates an alternative livestock ranch without a license or possesses, transports, buys, or sells animals whose importation into the state is restricted pursuant to 87-4-424 is guilty of a misdemeanor and is subject to the penalties provided in 87-4-427(4).

(3) Any animal held in violation of subsection (2) or otherwise illegally possessed may be immediately seized by the department and is subject to disposal by the department. Costs of seizure may be charged to the person in possession of the animal."

Section 2. Section 87-4-408, MCA, is amended to read:

"**87-4-408. Jurisdiction.** (1) The department has primary jurisdiction over alternative livestock ranches with regard to licensing, reports, recordkeeping, exterior fencing, classification of certain species under 87-4-424, ~~removal of game animals under 87-4-410,~~ unlawful capture under 87-4-418, inspection under 87-4-413, and enforcement of the functions listed in this subsection.

(2) The department of livestock has primary jurisdiction over alternative livestock ranches with regard to marking, inspection, transportation, importation, quarantine, hold orders, interior facilities, health, and enforcement of the functions listed in this subsection."

Section 3. Section 87-4-411, MCA, is amended to read:

"**87-4-411. License ~~and~~ renewal fees — deposit of fees.** (1) *The* ~~Except as provided in 87-4-407(1), the~~ department shall charge an ~~initial~~ *annual renewal* alternative livestock ranch license fee ~~and an annual renewal fee~~ based on the following scale:

(a) an alternative livestock ranch with 1 to 20 alternative livestock, ~~an initial license fee of $200 and an annual renewal~~ *a* fee of $100;

(b) an alternative livestock ranch with 21 to 60 alternative livestock, ~~an initial license fee of $300 and an annual renewal~~ *a* fee of $200; and

(c) an alternative livestock ranch with more than 60 alternative livestock, ~~an initial license fee of $400 and an annual renewal~~ *a* fee of $400.

~~(2) In addition to the fees assessed under subsection (1), the department shall charge applicants a fee of $4 an acre based on the total number of acres indicated in the application for a license. In cases of an application for a license modification, the fee applies only if an acreage expansion is proposed.~~

~~(3)~~*(2)* The department of livestock shall assess a fee, not to exceed $50, for each alternative livestock imported into the state.

~~(4)~~*(3)* (a) One-half of the fees collected pursuant to subsection (1) ~~and all of the fees collected pursuant to subsection (2)~~ must be deposited in the state special revenue fund for the use of the department for purposes of this part.

(b) One-half of the fees collected pursuant to subsection (1) and all import fees collected pursuant to subsection ~~(3)~~ *(2)* must be deposited in the state special revenue fund for the use of the department of livestock for purposes of this part."

Section 4. Section 87-4-412, MCA, is amended to read:

"**87-4-412. Term of license — renewal — ~~transferability~~ *transfer prohibited*.** (1) An alternative livestock ranch license expires on March 1 of the year succeeding the year of issuance. Application for renewal must be made before a license expires. The department shall renew the license upon payment of the renewal fee if the licensee has complied with all recording and reporting requirements.

(2) An alternative livestock ranch license for a specific facility is *not* transferable ~~with the consent of the department. The department's consent must be given if:~~

~~(a) the transferee meets the requirements of 87-4-426(1);~~

~~(b) the alternative livestock ranch and facilities are in compliance with requirements in place at the time the license was issued;~~

~~(c) the alternative livestock ranch is not under quarantine by the department;~~

~~(d) alternative livestock to be transferred are not prohibited under this part and department rules; and~~

~~(e) the transfer is not proposed as a means to evade a requirement imposed on the licensee.~~"

Section 5. Section 87-4-413, MCA, is amended to read:

"**87-4-413. Inspection.** ~~(1) Upon receipt of an application for an alternative livestock ranch license, the department shall inspect the land proposed to be covered by the license.~~

~~(2)~~ The department may inspect the alternative livestock ranch or the licensee's alternative livestock ranch records on a scheduled basis or on another reasonable basis as may be determined necessary."

Section 6. Section 87-4-414, MCA, is amended to read:

"**87-4-414. Alternative livestock as private property — source — marking — *fee shooting prohibited*.** (1) All alternative livestock lawfully possessed on a licensed alternative livestock ranch are private property for which the licensee is responsible as provided by law.

(2) The licensee may acquire, breed, grow, keep, pursue, handle, harvest, use, sell, or dispose of the alternative livestock and their progeny in any quantity and at any time of year as long as the licensee complies with the requirements of this part, *except that the licensee may not allow the shooting of game animals or alternative livestock, as defined in 87-2-101 or 87-4-406, or of any exotic big game species for a fee or other remuneration on an alternative livestock facility*.

(3) A licensee shall mark alternative livestock in a manner approved by the department of livestock, as required under subsection (4), and that indicates ownership and provides individual identification of animals for inspection, transportation, reporting, and taxation purposes.

(4) The department of livestock is responsible for the control, tracking, and distribution of identification tags used for the marking of alternative livestock. The department of livestock shall require that all imported alternative livestock are marked within 30 days of importation and that all other alternative livestock are marked prior to January 1 of each year. Each alternative livestock must be marked with identification that:

(a) is unique to the animal;

(b) is nontransferable;

(c) has an emblem owned and registered by the department of livestock that is embossed on each identification tag; and

(d) allows for the identification of alternative livestock from a distance.

(5) Upon the request of a licensee, the department of livestock may grant a temporary waiver as to the time for identification and to the manner of identification if necessary to address a special circumstance.

(6) Alternative livestock must be lawfully acquired by the licensee. Alternative livestock may be kept only on a licensed alternative livestock ranch. A licensee who keeps alternative livestock owned by, leased to, or leased from another person shall comply with all of the requirements of this part as if the animal belonged to the licensee. Records and reports submitted by the licensee pursuant to 87-4-417 must identify any alternative livestock kept by the licensee during the reporting period and the name and address of the owner or lessee.

(7) Except as otherwise provided in this part, laws applicable to game animals do not apply to alternative livestock raised on a licensed alternative livestock ranch."

Section 7. Section 87-4-428, MCA, is amended to read:

"**87-4-428. Right to administrative hearing.** ~~(1) An applicant must be given notice and an opportunity for a hearing on a proposed denial or issuance with stipulations of an alternative livestock ranch license pursuant to 87-4-426 before the department may deny a license or grant a license with stipulations.~~

~~(2)~~*(1)* A licensee must be given notice and an opportunity for a hearing before the department may refuse to renew a license, ~~withhold consent to the transfer of a license,~~ revoke a license, or discipline a licensee.

~~(3)~~*(2)* The notice and an opportunity for a hearing and any judicial appeal must be conducted as provided in Title 2, chapter 4, parts 6 and 7."

Section 8. Section 87-4-433, MCA, is amended to read:

"**87-4-433. Programmatic environmental review.** (1) The department, in cooperation with the department of livestock, shall, by July 1, 2001, conduct a programmatic review of environmental impacts that may be associated with the granting of a license to operate an alternative livestock ranch.

(2) In consultation with the department of livestock, the department shall select a contractor to prepare the programmatic environmental review, which must be in the form of an environmental impact statement.

(3) In addition to the department of livestock, the department shall seek the assistance and participation of other governmental agencies that have special expertise in areas that should be addressed in the programmatic.

~~(4) For an alternative livestock ranch license application that is received after July 1, 2001, the department shall conduct an environmental review, if required, using the programmatic and tiering environmental impacts to the programmatic.~~"

NEW SECTION. **Section 9. Repealer.** Sections 87-4-409, 87-4-410, 87-4-426, and 87-4-431, MCA, are repealed.

NEW SECTION. **Section 10. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 11. Effective date.** This act is effective upon approval of the electorate.

LEGISLATIVE REFERENDUM NO. 115

The Legislature submitted this proposal for a vote. It would repeal the sales tax on new motor vehicles and replace the current light vehicle tax system with a registration fee based on the vehicle's age. In addition to other statutory fees, such as junk vehicle fees, etc., annual fees would be:

	Light vehicle age
$195	4 years old or less
$65	5 to 10 years old
$6	11 years old or older

Upon payment of specified fees, light vehicles could be registered for a 24-month period and some vehicles 11 years old or older could be permanently registered.

It is estimated that replacement of the vehicle tax with a flat fee will generate approximately the same amount of total revenue. However, elimination of the new car sales tax will result in approximately $5.5 million less revenue to the state.

Legislative Referendum No. 115 was approved by the following vote at the General Election held November 7, 2000:

For:	228,737
Against:	168,396

The text of the Referendum follows:

Be it enacted by the Legislature of the State of Montana:

Section 1. Light vehicle registration fee — exemptions — 24-month registration. (1) Except as provided in subsection (2), there is a registration fee imposed on light vehicles. The registration fee is in addition to other annual registration fees.

(2) (a) Light vehicles that meet the description of property exempt from taxation under 15-6-201(1)(a), (1)(c) through (1)(e), (1)(g), (1)(m), (1)(o), (1)(q), or (1)(w), 15-6-203, or 15-6-215, except as provided in 61-3-520, are exempt from the fee imposed in subsection (1).

(b) A motor vehicle owned by a disabled veteran qualifying for special license plates under 61-3-332(10) or a motor vehicle registered under 61-3-456 is exempt from the fee imposed by this section.

(c) A dealer for light vehicles is not required to pay the registration fee for light vehicles that constitute inventory of the dealership and that are reported under 61-3-501.

(3) The owner of a motor vehicle subject to the provisions of 61-3-313 through 61-3-316 may register the light vehicle for a period not to exceed 24 months. The application for registration or reregistration must be accompanied by the registration fee and all other fees required in this chapter for each 12-month period of the 24-month period. However, the registration fees required under 61-3-321 (1)(a) or (1)(b) paid at the time of registration or reregistration apply for the entire 24-month registration period.

Section 2. Schedule of fees for light vehicles — limitation on fee — payment of fee required for operation. (1) The following schedule, based on vehicle age, is used to determine the annual registration fee imposed by [section 1]:

Vehicle Age (in years)	Annual Fee
4 or less	$195
5-10	65
11 or more	6

(2) A light vehicle subject to the registration fee imposed by [section 1] may not be operated unless the fee has been paid and the vehicle is licensed. A lien for fees due on the vehicle occurs on the anniversary date of the registration and continues until the fees have been paid.

(3) For the purposes of this section, "vehicle age" means the age of the vehicle determined by subtracting the manufacturer's model year of the vehicle from the calendar year for which the registration fee is due.

Section 3. Permanent registration — transfer of vehicle ownership — rules. (1) (a) The owner of a light vehicle 11 years old or older subject to the registration fee, as provided in [section 2], may permanently register the vehicle upon payment of a $50 registration fee, the applicable registration and license fees under 61-3-321, and an amount equal to five times the applicable fees imposed for each of the following:

(i) junk vehicle disposal fees under 61-3-508;

(ii) weed control fees under 61-3-510;

(iii) county motor vehicle computer fees under 61-3-511;

(iv) the local option vehicle tax or flat fee on vehicles under 61-3-537;

(v) if applicable, license plate fees under 61-3-332 and renewal fees for personalized plates under 61-3-406;

(vi) if applicable, the amateur radio operator license plate fee under 61-3-422; and

(vii) if applicable, the annual scholarship donation fee under 61-3-465.

(b) A person who permanently registers a vehicle as provided in subsection (1)(a) shall pay an additional $2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the $2 fee collected under this subsection (1)(b) from each motor vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(2) In addition to the fees described in subsection (1), an owner of a truck with a manufacturer's rated capacity of 1 ton or less that is permanently registered shall pay five times the applicable fees imposed under 61-10-201.

(3) The owner of a vehicle that is permanently registered under this section is not subject to additional fees under [section 2] or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle.

(4) The county treasurer shall:

(a) disburse the $50 registration fee collected under this section as provided in 61-3-509;

(b) once each month, remit to the state treasurer the amounts collected under this section for the purposes of 61-3-121(5), 61-3-508, 61-3-510, 61-3-511, and 61-10-201.

(5) (a) The permanent registration of a vehicle allowed by this section may not be transferred to a new owner. If the vehicle is transferred to a new owner, the department shall cancel the vehicle's permanent registration.

(b) Upon transfer of a vehicle registered under this section to a new owner, the new owner shall apply for a certificate of ownership under 61-3-201 and file an application for registration under 61-3-303.

Section 4. Section 7-1-2111, MCA, is amended to read:

"7-1-2111. Classification of counties. (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upon which the tax levy is made~~, except for vehicles subject to taxation under 61-3-504,~~ as follows:

(a) first class—all counties having a taxable valuation of $50 million or more;

(b) second class—all counties having a taxable valuation of $30 million or more and less than $50 million;

(c) third class—all counties having a taxable valuation of $20 million or more and less than $30 million;

(d) fourth class—all counties having a taxable valuation of $15 million or more and less than $20 million;

(e) fifth class—all counties having a taxable valuation of $10 million or more and less than $15 million;

(f) sixth class—all counties having a taxable valuation of $5 million or more and less than $10 million;

(g) seventh class—all counties having a taxable valuation of less than $5 million.

(2) As used in this section, "taxable valuation" means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less:

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a manufacturer's rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) that portion of the taxable value of the county on December 31, 1997, attributable to buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors;

(d) that portion of the taxable value of the county on December 31, 1997, attributable to trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds;

(e) the value provided by the department of revenue under 15-36-324(13); and

(f) 6% of the taxable value of the county on January 1 of each tax year."

Section 5. Section 15-6-201, MCA, is amended to read:

"**15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i); ~~and~~

(y) motorcycles and quadricycles; *and*

(z) light vehicles as defined in 61-1-139.

(2) (a) For the purposes of subsection (1)(e), the term "institutions of purely public charity" includes any organization that meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 6. Section 15-6-215, MCA, is amended to read:

"**15-6-215. Exemption for motion picture and television commercial property.** Except as provided in 15-24-305 and 61-3-520, all property, including vehicles, brought into the state or otherwise used for the exclusive purpose of filming motion pictures or television commercials is exempt from property taxation *and registration fees under [sections 1 and 2]*, provided that the property does not remain in the state for a period in excess of 180 consecutive days in a calendar year."

Section 7. Section 15-8-202, MCA, is amended to read:

"**15-8-202. Motor vehicle assessment by department of justice.** (1) (a) *The department of justice shall determine the registration fee on light vehicles in accordance with [sections 1 through 3].*

(b) ~~The~~ *For the purposes of the local option vehicle tax under 61-3-537, the* department of justice shall assess all light vehicles, subject to 61-3-313 through 61-3-316 and 61-3-501, for taxation in accordance with 61-3-503.

~~(b)~~*(c)* The department of justice shall determine the fee in lieu of tax for all buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors in accordance with 61-3-528 and 61-3-529.

~~(c)~~*(d)* Taxes, *registration fees,* or fees in lieu of tax on motor vehicles under this subsection (1) must be assessed or imposed in each year on the persons who owned or claimed the motor vehicles or in whose possession or control the motor vehicle was on the anniversary registration date.

(2) A tax or fee in lieu of tax may not be assessed or imposed against motor vehicles subject to taxation or to a fee in lieu of tax that constitute inventory of motor vehicle dealers as of January 1. These vehicles and all other motor vehicles subject to taxation or a fee in lieu of tax that are brought into the state after January 1 as motor vehicle dealers' inventories must be assessed to their respective purchasers as of the dates the vehicles are registered by the purchasers.

(3) "Purchasers" includes dealers who apply for registration or reregistration of motor vehicles~~, except as otherwise provided by 61-3-502~~.

(4) Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, must be assessed at market value as of January 1."

Section 8. Section 15-24-301, MCA, is amended to read:

"**15-24-301. Personal property brought into ~~the~~ state — assessment — exceptions — custom combine equipment.** (1) Except as provided in subsections (2) through (5), property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) ~~any~~ personal property, ~~(~~including livestock~~)~~, brought~~, driven, or coming~~ into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property whose owner or user is engaged in gainful occupation or business enterprise in the state; or

(c) property ~~which comes to rest and~~ *that* becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner ~~and to the same extent~~, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) ~~Nothing in this~~ *This* section ~~shall~~ *may not* be construed to levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer.

(4) ~~Any~~ *A* ~~motor vehicle not subject to a fee in lieu of tax~~ *motor vehicle subject to the registration fee imposed by [sections 1 and 2] that is* brought~~, driven, or coming~~ into this state by ~~any~~ *a* nonresident person temporarily employed in Montana and used exclusively for transportation of ~~such~~ *the* person is subject to ~~taxation and assessment for taxes~~ *registration fees* as follows:

(a) The motor vehicle ~~is taxed~~ *fee is imposed* by the county in which it is located.

(b) One-fourth of the annual ~~tax liability~~ *fee* of the motor vehicle must be paid for each quarter or portion of a quarter of the year that the motor vehicle is located in Montana.

(c) The quarterly ~~taxes~~ *fees* are due the first day of the quarter.

(5) Agricultural harvesting machinery classified under class eight, licensed in ~~other states~~ *another state*, and operated on the ~~lands~~ *land* of ~~persons~~ *a person* other than the owner of the machinery under ~~contracts~~ *a contract* for hire ~~shall be~~ *is* subject to a fee in lieu of ~~taxation~~ *tax* of $35 ~~per~~ *for each* machine for the calendar year in which the fee is collected. The ~~machines~~ *machinery* ~~shall be~~ *is* subject to taxation under class eight only if ~~they are~~ *the machinery is* sold in Montana."

Section 9. Section 15-24-302, MCA, is amended to read:

"**15-24-302. Collection procedure.** All property mentioned in 15-24-301 is assessed at the same value as property of like kind and character, and the assessment, levy, and collection of the tax are governed by the provisions of 15-8-408, 15-16-115, 15-16-119, 15-16-404, 15-17-911, and 15-24-202, ~~as amended,~~ except:

(1) ~~taxation of~~ *the imposition of registration fees on* motor vehicles under 15-24-301(4) to the extent that subsection varies from the general provisions cited in this section; and

(2) livestock taxation governed by 81-7-104 and Title 81, chapter 7, part 2."

Section 10. Section 15-30-121, MCA, is amended to read:

"**15-30-121. Deductions allowed in computing net income.** (1) In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954 (26 U.S.C. 161 and 211), or as sections 161 and 211 are labeled or amended, subject to the following exceptions, which are not deductible:

(i) items provided for in 15-30-123;

(ii) state income tax paid;

(iii) premium payments for medical care as provided in subsection (1)(g)(i);

(iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii);

(b) federal income tax paid within the tax year;

(c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as follows:

(i) expenses for household and dependent care services necessary for gainful employment incurred for:

(A) a dependent under 15 years of age for whom an exemption can be claimed;

(B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(C) a spouse who is unable to provide self-care because of physical or mental illness;

(ii) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

(A) household services that are attributable to the care of the qualifying individual; and

(B) care of an individual who qualifies under subsection (1)(c)(i);

(iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:

(A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed $4,800;

(B)' expenses for services in the household are deductible under subsection (1)(c)(i) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the expenses incurred during the year do not exceed:

(I) $2,400 in the case of one qualifying individual;

(II) $3,600 in the case of two qualifying individuals; and

(III) $4,800 in the case of three or more qualifying individuals;

(v) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(vi) for purposes of this subsection (1)(c):

(A) married couples shall file a joint return or file separately on the same form:

(B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:

(I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

(C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(d) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code (now repealed) that were in effect for the tax year ended December 31, 1978;

(e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(f) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156;

(g) the entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128, for:

(i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and

(ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:

(A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or

(B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996; ~~and~~

(h) contributions to the Montana drug abuse resistance education program provided for in 44-2-702, subject to the conditions set forth in 15-30-159*; and*

(i) light vehicle registration fees, as provided for in [sections 1 through 3], paid during the tax year.

(2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (2). (Subsection (1)(h) terminates on occurrence of contingency—sec. 12, Ch. 808, L. 1991.)"

Section 11. Section 15-50-207, MCA, is amended to read:

"15-50-207. Credit against other taxes — credit for personal property taxes and certain fees. (1) The additional license fees withheld or otherwise paid as provided in this chapter may be used as a credit on the contractor's corporation license tax provided for in chapter 31 of this title or on the contractor's income tax provided for in chapter 30, depending upon the type of tax the contractor is required to pay under the laws of the state.

(2) Personal property taxes and the fee in lieu of tax on buses, trucks having a manufacturer's rated capacity of more than 1 ton, or truck tractors, as provided in 61-3-529, *and the registration fee on light vehicles, as provided in [sections 1 through 3],* paid in Montana on any personal property or vehicle of the contractor that is used in the business of the contractor and is located within this state may be credited against the license fees required under this chapter. However, in computing the tax credit allowed by this section against the contractor's corporation license tax or income tax, the tax credit against the license fees required under this chapter may not be considered as license fees paid for the purpose of the income tax or corporation license tax credit."

Section 12. Section 15-70-101, MCA, is amended to read:

"15-70-101. Disposition of funds. (1) All taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be placed in a highway revenue account in the state special revenue fund to the credit of the department of transportation. *Beginning July 1, 2001, all interest and income earned on the account must be deposited to the credit of the account and any unexpended balance in the account must remain in the account.* Those funds allocated to cities, towns, counties, and consolidated city-county governments in this section must, in accordance with the provisions of 15-1-501, be paid by the department of transportation from the state special revenue fund to the cities, towns, counties, and consolidated city-county governments.

(2) The amount of $16,766,000 of the taxes collected under this chapter is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis to the counties, incorporated cities and towns, and consolidated city-county governments in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (2)(a) through (2)(c):

(a) The amount of $54,000 must be designated for the purposes and functions of the Montana local technical assistance transportation program in Bozeman.

(b) The amount of $6,323,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the national highway system and the primary system, bears to the total rural road mileage in the state, exclusive of the national highway system and the primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state.

(c) The amount of $10,389,000 must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the national highway system and the primary system, within corporate limits bears to the total street and alley mileage, exclusive of the national highway system and primary system, within the corporate limits of all cities and towns in Montana.

(3) (a) For the purpose of allocating the funds in subsections (2)(b) and (2)(c) to a consolidated city-county government, each entity must be considered to have separate city and county boundaries The city limit boundaries are the last official city limit boundaries for the former city and must be used to determine city and county populations and road mileages in the following manner:

(i) Percentage factors must be calculated to determine separate populations for the city and rural county by using the last official decennial federal census population figures that recognized an incorporated city and the rural county. The factors must be based on the ratio of the city to the rural county population, considering the total population in the county minus the population of any other incorporated city or town in the county.

(ii) The city and county populations must be calculated by multiplying the total county population, as determined by the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census, minus the population of any other incorporated city or town in that county, by the factors established in subsection (3)(a)(i).

(b) The amount allocated by this method for the city and the county must be combined, and single monthly payments must be made to the consolidated city-county government.

(4) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, county, or consolidated city-county government might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the primary or secondary highway system or urban extensions to those systems. The governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the

purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.

(5) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.

(6) For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined annually for counties and biennially for cities according to the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(7) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, counties, and consolidated city-county governments to furnish to the department of transportation a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

(8) Except by a town or third-class city as provided in subsection (4), the funds authorized by this section may not be used for the purchase of capital equipment.

(9) Funds authorized by this section must be used for construction and maintenance programs."

Section 13. Section 15-70-125, MCA, is amended to read:

"**15-70-125. Highway nonrestricted account.** There is a highway nonrestricted account in the state special revenue fund. All interest and penalties collected under this chapter, except those collected by a justice's court, must, in accordance with the provisions of 15-1-501, be placed in the highway nonrestricted account. *Beginning July 1, 2001, all interest and income earned on the account must be deposited to the credit of the account and any unexpended balance in the account must remain in the account.*"

Section 14. Section 20-9-141, MCA, is amended to read:

"**20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353, including any additional funding for a general fund budget that exceeds the maximum general fund budget.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323, except the amount of tuition received for a pupil who is a child with disabilities in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2);

(B) revenue from taxes and fees imposed under 23-2-517, 23-2-803, ~~61-3-504,~~ 61-3-521, 61-3-527, 61-3-529, 61-3-537, *[sections 1 through 3], [section 38],* and 67-3-204;

(C) oil and natural gas production taxes;

(D) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4);

(E) revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702; and

(F) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid; and

(iii) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703."

Section 15. Section 20-9-331, MCA, is amended to read:

"**20-9-331. Basic county tax for elementary equalization and other revenue for county equalization of elementary BASE funding program.** (1) The county commissioners of each county shall levy an annual basic county tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, ~~61-3-504,~~ 61-3-521, 61-3-527, 61-3-529, 61-3-537, *[sections 1 through 3]*, *[section 38]*, and 67-3-204, for the purposes of elementary equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the elementary BASE funding programs of the school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the BASE funding programs of all elementary districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be used for the equalization of the elementary BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the elementary county equalization fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703;

(g) oil and natural gas production taxes;

(h) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325; and

(i) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, ~~61-3-504,~~ 61-3-521, ~~61-3-527,~~ 61-3-529, 61-3-537, *[section 38]*, and 67-3-204."

Section 16. Section 20-9-333, MCA, is amended to read:

"20-9-333. Basic county tax for high school equalization and other revenue for county equalization of high school BASE funding program. (1) The county commissioners of each county shall levy an annual basic county tax of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, ~~61-3-504,~~ 61-3-521, 61-3-527, 61-3-529, 61-3-537, *[sections 1 through 3]*, *[section 38]*, and 67-3-204, for the purposes of high school equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the BASE funding programs of high school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation and the total of the BASE funding programs of all high school districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be used for the equalization of the high school BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(c) gross proceeds taxes from coal under 15-23-703;

(d) oil and natural gas production taxes;

(e) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325; and

(f) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, ~~61-3-504,~~ 61-3-521, ~~61-3-527,~~ 61-3-529, 61-3-537, *[section 38]*, and 67-3-204."

Section 17. Section 20-9-360, MCA, is amended to read:

"20-9-360. State equalization aid levy. There is a levy of 40 mills imposed by the county commissioners of each county on all taxable property within the state, except property for which a tax or fee is required under 23-2-517, 23-2-803,

~~61-3-504,~~ 61-3-521, 61-3-527, 61-3-529, 61-3-537, *[sections 1 through 3], [section 38],* and 67-3-204. Proceeds of the levy must be remitted to the state treasurer and must be deposited to the credit of the state general fund for state equalization aid to the public schools of Montana."

Section 18. Section 20-9-501, MCA, is amended to read:

"**20-9-501. Retirement fund.** (1) The trustees of a district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems. The district's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, ~~61-3-504,~~ 61-3-521, 61-3-527, 61-3-529, 61-3-537, *[sections 1 through 3], [section 38],* and 67-3-204;

(ii) oil and natural gas production taxes;

(iii) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325;

(iv) coal gross proceeds taxes under 15-23-703;

(v) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (8), subtracting the money available for reduction of the levy requirement, as determined in subsection (3)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(5) The county commissioners shall fix and set the county levy in accordance with 20-9-142.

(6) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(8) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (4)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000."

Section 19. Section 20-10-144, MCA, is amended to read:

"**20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget.** Before the second Monday of August, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate ~~per~~ *for each* bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by the district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted in the budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the budget must be reduced to the limitation amount and used in this determination of the schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of fund balance for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and fund balance reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of 20 U.S.C. 7701, et seq., or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, ~~61-3-504,~~ 61-3-521, 61-3-527, 61-3-529, 61-3-537, *[sections 1 through 3], [section 38],* and 67-3-204;

(f) anticipated revenue from coal gross proceeds under 15-23-703;

(g) anticipated oil and natural gas production taxes;

(h) anticipated local government severance tax payments for calendar year 1995 production;

(i) anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

(j) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(k) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142."

Section 20. Section 20-10-146, MCA, is amended to read:

"20-10-146. County transportation reimbursement. (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment, except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount;

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration; and

(c) when county transportation reimbursement is required under the mandatory attendance agreement provisions of 20-5-321.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts or reimbursements under the mandatory attendance agreement provisions of 20-5-321;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, ~~61-3-504,~~ 61-3-521, 61-3-527, 61-3-529, 61-3-537, *[sections 1 through 3], [section 38],* and 67-3-204;

(ii) oil and natural gas production taxes;

(iii) anticipated local government severance tax payments for calendar year 1995 production;

(iv) coal gross proceeds taxes under 15-23-703;

(v) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund;

(vi) federal forest reserve funds allocated under the provisions of 17-3-213; and

(vii) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) subtracting the money available, as determined in subsection (2)(b), to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on the fourth Monday of August by the county superintendent, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments."

Section 21. Section 27-1-306, MCA, is amended to read:

"27-1-306. When replacement value to be allowed. The measure of damages in a case in which the cost of repairing a motor vehicle exceeds its value is the actual replacement value of the motor vehicle rather than its "book" value unless, after the damages arise, the parties agree to use the "book" value. "Book" value must be determined by referring to the ~~used car~~ *national appraisal* guides ~~listed in 61-3-503(1)(c)~~ *referred to in 61-3-208*. Actual replacement value is the actual cash value of the motor vehicle immediately prior to the damage. "Book" value may be used to assist in determining the actual replacement value of the motor vehicle."

Section 22. Section 61-3-101, MCA, is amended to read:

"**61-3-101. Duties of department — records.** (1) The department shall keep a record as specified in this section of all motor vehicles, trailers, and semitrailers of every kind, of certificates of registration and ownership of those vehicles, and of all manufacturers and dealers in motor vehicles.

(2) The record must show the following:

(a) *the* name of *the* owner, *the* residence address by street or rural route, *the* town, and *the* county~~,~~ and *the* mailing address if different ~~than~~ *from the* residence address;

(b) *the* name and address of *the* conditional sales vendor, mortgagee, or other lienholder and *the* amount due under *the* contract or lien;

(c) *the* manufacturer of *the* vehicle;

(d) *the* manufacturer's designation of style of *the* vehicle;

(e) *the* identifying number;

(f) *the* year of manufacture;

(g) *the* character of motive power and shipping weight of *the* vehicle as shown by the manufacturer;

(h) the distinctive license number assigned to the vehicle, if any;

(i) if a truck or trailer, the number of ~~tons'~~ *tons* capacity or GVW if imprinted on *the* manufacturer's identification plate;

(j) except as provided in 61-3-103, the name and complete address of any holder of a perfected security interest in the vehicle; and

(k) other information that may from time to time be found desirable.

(3) The department shall file applications for registration received by it from county treasurers and register the vehicles and the vehicle owners as follows:

(a) under the distinctive license number assigned to the vehicle by the county treasurer;

(b) alphabetically under the name of the owner;

(c) numerically under make and identifying number of the vehicle; and

(d) another index of registration as the department considers expedient.

(4) The department shall determine the amount of ~~motor vehicle taxes and~~ fees, *including local option taxes or fees*, to be collected at the time of registration for each light vehicle subject to ~~tax~~ *a registration fee* under ~~61-3-503~~ *[sections 1 through 3]* and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-528 and 61-3-529. The county treasurer shall collect the ~~taxes and~~ *registration fee, other appropriate* fees, *and local option taxes or fees, if applicable,* on each motor vehicle at the time of its registration.

(5) Vehicle registration records and indexes and driver's license records and indexes may be maintained by electronic recording and storage media.

(6) In the case of dealers, the records must show the information contained in the application for a dealer's license, as required by 61-4-101 through 61-4-105, as well as the distinctive license number assigned to the dealer.

(7) In order to prevent an accumulation of unneeded records and files, regardless of any other statutory requirements, the department may destroy all records and files that relate to vehicles that have not been registered within the preceding 4 years and that do not have an active lien.

(8) All records must be open to inspection during reasonable business hours, and the department shall furnish any information from the records upon payment by the applicant of the cost of the information requested. Prior to providing the information, the department may require the applicant to provide identification. However, the department may, by rule, reasonably restrict disclosure of information on an owner or the owner's vehicle if the owner has requested in writing that the department not disclose the information."

Section 23. Section 61-3-301, MCA, is amended to read:

"**61-3-301. Registration — license plate required — display.** (1) Except as otherwise provided in this chapter, ~~no~~ *a* person may *not* operate a motor vehicle upon the public highways of Montana unless the vehicle is properly registered and has the proper number plates conspicuously displayed, one on the front and one on the rear of the vehicle, each securely fastened to prevent it from swinging and unobstructed from plain view, except that trailers, semitrailers, quadricycles, motorcycles, and vehicles authorized in 61-4-102(6) to display demonstrator plates may have but one number plate conspicuously displayed on the rear. ~~No~~ *A* person may *not* display on a vehicle at the same time a number assigned to it under any motor vehicle law except as provided in this chapter. A junk vehicle, as defined in Title 75, chapter 10, part 5, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

(2) ~~No~~ *A* person may *not* purchase or display on a vehicle a license plate bearing the number assigned to any county, as provided in 61-3-332, other than the county of ~~his~~ *the person's* permanent residence at the time of application for registration. However, the owner of ~~any~~ *a* motor vehicle requiring a license plate on ~~any~~ *a* motor vehicle used in the public transportation of persons or property may make application for the license in any county through which the motor vehicle passes in its regularly scheduled route, and the license plate issued bearing the number assigned to that county may be displayed on the motor vehicle in any other county of the state.

(3) It is unlawful to use license plates issued to one vehicle on any other vehicle, trailer, or semitrailer unless legally transferred as provided by statute~~,~~ or to repaint old license plates to resemble current license plates.

(4) This section does not apply to a vehicle exempt from taxation under 15-6-215 or subject to ~~taxation~~ *the registration fee or fee in lieu of tax* under 61-3-520.

(5) ~~Any~~ *A* person violating these provisions is guilty of a misdemeanor and subject to the penalty prescribed in 61-3-601."

Section 24. Section 61-3-303, MCA, is amended to read:

"**61-3-303. Application for registration.** (1) Each owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as otherwise provided in this section, file or cause to be filed in the office of the county treasurer *in the county* where the owner permanently resides at the time of making the application or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the taxing jurisdiction of the county where the vehicle is permanently assigned an application for registration or reregistration on a form prescribed by the department. The application must contain:

(a) the name and address of the owner, giving the county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) the name and address of the holder of any security interest in the motor vehicle;

(c) a description of the motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, declared weight on all trucks for which the manufacturer's rated capacity is 1 ton or less, and type of body and, if a truck, the manufacturer's rated capacity;

(d) the declared weight on all trailers operating intrastate, except travel trailers or trailers and semitrailers registered as provided in 61-3-711 through 61-3-733; and

(e) other information that the department may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home or a manufactured home as those terms are defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321 or 61-3-456; and

(b) except as provided in 61-3-456 or unless it has been previously paid~~:~~,

~~(i)~~ the motor vehicle ~~taxes or~~ fees in lieu of tax ~~assessed~~ or *registration fees under [sections 1 through 3]* imposed against the vehicle for the current year of registration and the immediately previous year~~; or~~

~~(ii) the new motor vehicle sales tax against the vehicle for the current year of registration~~.

(3) The application may not be accepted by the county treasurer unless the payments required by subsection (2) accompany the application. ~~The~~ *Except as provided in [sections 1 and 3], the* department may not assess or impose and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) the immediately previous year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

(4) The department may make full and complete investigation of the ~~tax~~ status of the vehicle. An applicant for registration or reregistration shall submit proof from ~~the tax or other~~ appropriate records of the proper county at the request of the department."

Section 25. Section 61-3-314, MCA, is amended to read:

"61-3-314. Registration period. (1) ~~Notwithstanding any other provisions of this title regarding the registration of motor vehicles~~ *Except as provided in 61-3-315,* each vehicle subject to the provisions of 61-3-313 through 61-3-316 must be registered for a 12-month period based upon the date it is first registered in this state pursuant to 61-3-313 through 61-3-316.

(2) There are 12 registration periods, each of which commences on the first day of a calendar month. The periods are:

(a) January 1 through January 31	1st period
(b) February 1 through February 28/29	2nd period
(c) March 1 through March 31	3rd period
(d) April 1 through April 30	4th period
(e) May 1 through May 31	5th period
(f) June 1 through June 30	6th period
(g) July 1 through July 31	7th period
(h) August 1 through August 31	8th period
(i) September 1 through September 30	9th period
(j) October 1 through October 31	10th period
(k) November 1 through November 30	11th period
(l) December 1 through December 31	12th period"

Section 26. Section 61-3-315, MCA, is amended to read:

"61-3-315. Reregistration on anniversary date — department to make rules. *(1)* A vehicle that has ~~once~~ been registered for any of the periods designated in 61-3-314 must ~~thereafter~~ be reregistered for ~~a like~~ *the same* period on or before the anniversary date of the initial registration unless that period is changed as provided in ~~this section~~ *subsections (2) and (4).* The anniversary date for reregistration is the last day of the month for the designated registration period.

(2) (a) The owner of a motor vehicle subject to the provisions of 61-3-313 through 61-3-316 and subject to the registration fee, as provided in [sections 1 and 2], may register the motor vehicle for a period not to exceed 24 months. The registration expires on the last day of the 24th month commencing from the date of the designated registration period under 61-3-314 for which the vehicle is registered.

(b) The owner of a motor vehicle 11 years old or older subject to the provisions of 61-3-313 through 61-3-316 and subject to the registration fee, as provided in [sections 1 and 2], may permanently register the motor vehicle as provided in [section 3]. The registration remains in effect until ownership of the vehicle is transferred to another person by the registered owner.

(3) The department shall adopt rules for the implementation and administration of 61-3-313 through 61-3-316 and for the identification of the registration on the vehicles.

(4) The department shall provide for simultaneous registration of multiple vehicles that have common ownership. The rules must provide for a change of the

registration period to coincide with the date an owner desires to register ~~his~~ *the* vehicles."

Section 27. Section 61-3-316, MCA, is amended to read:

"61-3-316. New registrations under staggered registration. ~~Vehicles which are~~ *A vehicle that is* registered for the first time in this state ~~shall~~ *must* be assigned a registration period corresponding to when ~~they are~~ *the vehicle is* first registered in this state. ~~The~~ *Except as provided in 61-3-315, the* registration period for a vehicle ~~shall thereafter~~ *must* remain the same from year to year."

Section 28. Section 61-3-317, MCA, is amended to read:

"61-3-317. New registration required for transferred vehicle — grace period — penalty — display of proof of purchase. Except as otherwise provided ~~herein~~ *in this section*, the new owner of a transferred motor vehicle ~~shall have~~ *has* a grace period of 20 calendar days from the date of purchase to make application and pay the ~~taxes or~~ *registration* fees~~, or both, provided~~, *fees in lieu of tax and other fees required* by part 5 of this chapter, *and local option taxes, if applicable,* unless the ~~tax or fee~~ *fees and taxes* ~~has~~ *have* been paid for the year *or for the 24-month period as provided in 61-3-315,* as if the vehicle were being registered for the first time in that registration year. If the motor vehicle was not purchased from a ~~duly~~ licensed motor vehicle dealer as provided in this chapter, it is not a violation of this chapter or any other law for the purchaser to operate the vehicle upon the streets and highways of this state without a certificate of registration during the 20-day period, provided that at all times during that period, a vehicle purchase sticker in a form prescribed and furnished by the department, obtained from the county treasurer or a law enforcement officer as authorized by the department, reciting the date of purchase is clearly displayed in the rear window of the motor vehicle. Registration and license fees collected under 61-3-321 are not required to be paid when a license plate is transferred under ~~this section and~~ 61-3-335 *and this section*. Failure to make application within the time provided ~~herein~~ *in this section* subjects the purchaser to a penalty of $10. The penalty ~~shall~~ *must* be collected by the county treasurer at the time of registration and ~~shall be~~ *is* in addition to the fees otherwise provided by law."

Section 29. Section 61-3-332, MCA, is amended to read:

"61-3-332. Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that ~~bear~~ *bears* the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that ~~bear~~ *bears* the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that ~~bear~~ *bears* the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that ~~bear~~ *bears* the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that ~~bear~~ *bears* the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned to the dealer, in the position that the department designates.

(2) *(a)* All number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(b) For light vehicles that are permanently registered as provided in [section 3] or 61-3-527, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.

(3) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of ~~tax-exempt~~ *exempt* motor vehicles *and motor vehicles that are exempt from the registration fee as provided in [section 1(2)(a)]*, in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued:

(A) a special license plate under this section with a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(iii) Special license plates issued to a disabled veteran are not transferable to another person.

(iv) A disabled veteran is not entitled to a special disabled veteran's license plate for more than one vehicle.

(v) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(e) Except as provided in subsection (10)(c), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or *was* offshore at a distance of not more than 3 miles~~,~~ and received an honorable discharge from the United States armed forces. If special license plates issued under this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided in subsection (10)(c), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue account established in 10-2-603 for administration, construction, operation, and maintenance of the state veterans' cemeteries.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 30. Section 61-3-431, MCA, is amended to read:

"61-3-431. Special mobile equipment — exemption from registration and payment of fees and charges — identification plate — publicly owned special mobile equipment. (1) A person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as defined in 61-1-104 and occasionally moves that equipment on, over, or across the highways of the state is not subject to registration of that equipment or required to pay the fees and charges provided for in ~~61-3-502,~~ 61-4-301 through 61-4-308~~,~~ or part 2 of chapter 10. Prior to movement on the highways, however, each piece of equipment ~~shall~~ *must* display an equipment identification plate or a dealer's license plate attached to the equipment.

(2) Annual application for the identification plate ~~shall~~ *must* be made to the county treasurer before any piece of equipment is moved on the highways. Application ~~shall~~ *must* be made on a form furnished by the department of justice, together with the payment of a fee of $5. The equipment for which a special mobile equipment plate is sought is subject to the assessment of personal property taxes on the date application is made for the plate. The personal property taxes assessed against the special mobile equipment must be paid before the issuance of a special mobile equipment plate. The fees collected under this section belong to the county road fund.

(3) The identification plate expires on December 31 of each year. If the expired identification plate is displayed, an owner of special mobile equipment registered under the provisions of this section is entitled to operate the equipment between January 1 and February 15 following expiration without displaying the identification plate or receipt of the current year.

(4) Publicly owned special mobile equipment and implements of husbandry used exclusively by an owner in the conduct of ~~his own~~ *the owner's* farming operations are exempt from this section."

Section 31. Section 61-3-456, MCA, is amended to read:

"**61-3-456. Registration of motor vehicle owned and operated by Montana resident on active military duty stationed outside Montana.** (1) As an incentive for military service, an owner of a motor vehicle who is a Montana resident who entered active military duty from Montana and who is stationed outside Montana may file with the department an application for the registration of the motor vehicle. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle; and

(c) that the vehicle is owned and operated by a Montana resident who meets the qualifications of subsection (1) and is on active military duty and stationed outside Montana.

(2) The registration fee for a motor vehicle registered under subsection (1) is as provided in 61-3-311 and 61-3-321.

(3) A vehicle registered under this section is not subject to:

(a) the taxes described in 61-3-303(2)(b);

(b) assessment under 15-8-202 or 61-3-503, ~~or~~ the fee in lieu of tax under 61-3-529, *or the registration fee under [sections 1 through 3]*; or

(c) any of the fees provided in part 5 of this chapter."

Section 32. Section 61-3-503, MCA, is amended to read:

"**61-3-503. Assessment.** (1) Except as provided in 61-3-520 and subsection (4) of this section, the following apply to the taxation of motor vehicles:

(a) ~~Vehicles~~ *For the purposes of imposing the local option vehicle tax under 61-3-537, light vehicles* subject to the provisions of 61-3-313 through 61-3-316 must be assessed as of the first day of the registration period, using the depreciated value of the manufacturer's suggested retail price as determined in subsection (2).

(b) A lien for taxes and fees due on the vehicle occurs on the anniversary date of the registration and continues until the fees and taxes have been paid. If the depreciated value is less than $500, the department shall value the vehicle at $500.

(2) (a) Except as provided in subsections (2)(c) and (2)(d), the depreciated value for the taxation of light vehicles is computed by multiplying the manufacturer's suggested retail price by a percentage multiplier based on the type and age of the vehicle determined from the following table:

Age of Vehicle	Type of Vehicle			
(in years)	Automobile	Truck	Van	Sport Utility
-1	100%	100%	100%	100%
0	90	96	93	98
1	80	91	86	94
2	69	86	78	90
3	58	80	69	84
4	49	73	60	76
5	41	66	52	67
6	33	57	45	57
7	26	49	38	48
8	21	43	32	39
9	17	37	27	33
10	14	31	22	29
11	12	26	18	25
12	10	22	15	22
13	09	18	13	21
14	09	15	11	19
15	09	13	09	17
16	09	12	09	15

(b) The age for the light vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year for which the tax is due.

(c) If the value of the vehicle determined under subsection (2)(a) is $500 or less, the value of the vehicle is $500 and the value must remain at that amount as long as the vehicle is registered.

(d) The depreciated value of a light vehicle that is 17 years old or older is computed by depreciating the value obtained for the vehicle at 16 years old, as determined under subsection (2)(a), by 10% a year until a minimum value of $500 is attained. The value must remain at that amount as long as the vehicle is registered.

(3) (a) For the purposes of this section, "manufacturer's suggested retail price" means the price suggested by the manufacturer for each given type, style, or model of light vehicle produced and first made available for retail sale by the manufacturer.

(b) The manufacturer's suggested retail price is based on standard equipment of a vehicle and does not contain price additions or deductions for optional accessories.

(c) When a manufacturer's suggested retail price is unavailable for a motor vehicle, the department shall determine an alternative valuation for the vehicle.

(4) The provisions of subsections (1) through (3) do not apply to buses, trucks having a manufacturer's rated capacity of more than 1 ton, truck tractors, motorcycles, motor homes, quadricycles, travel trailers, campers, mobile homes or manufactured homes as those terms are defined in 15-1-101(1)."

Section 33. Section 61-3-506, MCA, is amended to read:

"**61-3-506. Rules.** ~~(1) The department of transportation shall adopt rules for the payment of new car taxes under the provisions of 61-3-313 through 61-3-316, 61-3-501, and 61-3-520.~~

~~(2)~~ The department of justice may adopt rules:

~~(a)~~*(1)* for the assessment and collection of taxes and *registration* fees *under [sections 1 through 3], including the proration of fees under 61-3-520,* on light vehicles, including ~~the proration of taxes under 61-3-520~~ *criteria for determining the vehicle's age*;

~~(b)~~*(2)* for the imposition and collection of fees in lieu of tax, including the proration of fees in lieu of tax under 61-3-520, on buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including criteria for determining the vehicle's age and manufacturer's rated capacity; and

~~(c)~~*(3)* ~~The department of justice may adopt rules~~ for the administration of fees for trailers, pole trailers, and semitrailers, including criteria for determining a trailer's age and weight."

Section 34. Section 61-3-509, MCA, is amended to read:

"**61-3-509. Disposition of taxes *and fees*.** *(1) All registration fees from vehicles for which an original application for title or the original Montana registration is sought must be remitted to the state treasurer every 30 days. The state treasurer shall credit the payments to the highway restricted state special revenue account.*

~~(1)~~*(2)* Except as provided in ~~subsection~~ *subsection* ~~(2)~~ *(3)*~~;~~, the county treasurer shall, after deducting the district court fee, credit all taxes on motor vehicles ~~and~~, *registration* fees ~~in lieu of tax~~ on *light vehicles under [sections 1* *through 3], and fees in lieu of tax on* motorcycles, quadricycles, motor homes, travel trailers, campers, trailers, pole trailers, semitrailers, buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors collected under ~~61-3-504,~~ 61-3-521, 61-3-527, 61-3-529, ~~and~~ *and* 61-3-537~~;~~ to a motor vehicle suspense fund. At some time between March 1 and March 10 of each year and every 60 days after that date, the county treasurer shall distribute the money in the motor vehicle suspense fund. *Except for registration fees collected under [sections 1 through 3], the county treasurer shall distribute money in the fund* in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed. *For money in the fund collected under [sections 1 through 3] and 61-3-527, the county treasurer shall disregard the statewide mills levied for county elementary and high school equalization under 20-9-331 and 20-9-333, the statewide mills levied for state equalization aid under 20-9-360, the statewide mills levied for the university system, and mills levied for state assumption of public assistance under 53-2-813 in determining distribution proportions of the money and may not distribute money from [sections 1 through 3] and 61-3-527 to the state for these levies. If the distribution of money collected under [sections 1 through 3] and 61-3-527 to a school district general fund results in a lower revenue than the district received in fiscal year 1999 and the district has, for each year after fiscal year 1999, received less revenue than fiscal year 1999, then the district general fund is entitled to state reimbursement for the amount of the difference between the fiscal year 1999 revenue under 61-3-504, as that section read on September 30, 1999, and the current year distributions of collections under [sections 1 through 3] and 61-3-527.*

~~(2)~~*(3)* The county treasurer shall deduct as a district court fee ~~7%~~ *10%* of the amount of the ~~2% tax~~ *registration fee* collected on light vehicles. The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward the amount in the account to the state treasurer at the time that the county treasurer distributes money from the motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to the state special revenue fund to be used for purposes of state funding of district court expenses as provided in 3-5-901."

Section 35. Section 61-3-520, MCA, is amended to read:

"61-3-520. ~~Taxes and fees~~ *Fees* on vehicles used exclusively in filming motion pictures or television commercials. (1) A vehicle used exclusively in the filming of motion pictures or television commercials that has been in the state for a period exceeding 180 consecutive days in a calendar year is subject to ~~assessment~~ *a registration fee under [sections 1 and 2]* or a fee in lieu of tax as if the vehicle were not used exclusively for filming motion pictures or television commercials, but the ~~assessment~~ *registration fee* or fee in lieu of tax must be prorated as provided in subsection (2).

(2) *(a)* The ~~taxes assessed~~ *registration fees* or the fees in lieu of tax imposed under subsection (1) must be prorated by dividing the number of days in excess of 180 consecutive days in the calendar year by 365.

~~(3) (a) Taxes on a vehicle imposed pursuant to this section must be collected as provided in Title 15, chapter 16, part 1, for the collection of personal property taxes generally.~~

(b) Fees on a vehicle imposed pursuant to this section must be collected as provided in this chapter."

Section 36. Section 61-3-527, MCA, is amended to read:

"**61-3-527. Fee in lieu of tax for motorcycles and quadricycles — schedule of fees — *permanent registration.*** (1) (a) There is a fee in lieu of property tax imposed on motorcycles and quadricycles. The fee is in addition to annual registration fees.

(b) The fee imposed by subsection (1)(a) is not required to be paid by a dealer for motorcycles or quadricycles that constitute inventory of the dealership.

(2) The owner of a motorcycle or quadricycle shall pay a fee based on the age of the motorcycle or quadricycle and the size of the engine, as follows:

(a) The fee schedule for a motorcycle or quadricycle with an engine that measures from 1 cubic centimeter to 600 cubic centimeters is as follows:

(i) less than ~~2~~ *5* years old, $30;

(ii) ~~2 years old and less than 5 years old, $25;~~

~~(iii)~~ 5 years old and less than 11 years old, $15; and

~~(iv)~~*(iii)* 11 years old and older, ~~$10~~ *$6.*

(b) The fee schedule for a motorcycle or quadricycle with an engine that measures from 601 cubic centimeters to 1,000 cubic centimeters is as follows:

(i) less than ~~2~~ *5* years old, ~~$70~~ *$55*;

(ii) ~~2 years old and less than 5 years old, $55;~~

~~(iii)~~ 5 years old and less than 11 years old, ~~$40~~ *$20*; and

~~(iv)~~*(iii)* 11 years old and older, ~~$30~~ *$6.*

(c) The fee schedule for a motorcycle or quadricycle with an engine that measures 1,001 cubic centimeters and larger is as follows:

(i) less than ~~2~~ *5* years old, ~~$110~~ *$90*;

(ii) ~~2 years old and less than 5 years old, $90;~~

~~(iii)~~ 5 years old and less than 11 years old, ~~$65~~ *$50*; and

~~(iv)~~*(iii)* 11 years old and older, ~~$40~~ *$6.*

(3) (a) Except as provided in subsection (3)(b), the age of a motorcycle or quadricycle is determined by subtracting the manufacturer's designated model year from the current calendar year.

(b) If the purchase year of a motorcycle or quadricycle precedes the designated model year of the motorcycle or quadricycle and the motorcycle or quadricycle is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

(4) (a) The owner of a motorcycle or quadricycle 11 years old or older subject to the fee in lieu of tax under this section may permanently register the motorcycle or quadricycle upon payment of a $30 fee in lieu of tax, the applicable registration and license fees under 61-3-321, and an amount equal to five times the applicable fees imposed for each of the following:

(i) the motorcycle safety training fee under 20-7-514;

(ii) weed control fees under 61-3-510;

(iii) county motor vehicle computer fees under 61-3-511; and

(iv) if applicable, renewal fees for personalized plates under 61-3-406.

(b) A person who permanently registers a motorcycle or quadricycle as provided in this subsection (4) shall pay an additional $2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the $2 fee collected under this subsection (4)(b) from each vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709."

Section 37. Section 61-3-537, MCA, is amended to read:

"**61-3-537. (Temporary) Local option vehicle tax.** (1) A county may impose a local vehicle tax *or a flat fee* on vehicles subject to ~~a tax~~ *the registration fee* under ~~61-3-504~~ *[sections 1 through 3] as provided in [section 38] or this section.*

(2) A county may impose a local option tax at a rate of up to 0.5% of the value determined under 61-3-503, in addition to the ~~tax~~ *registration fee* imposed under ~~61-3-504~~ *[sections 1 through 3].*

(3) A county that imposes a local option tax in addition to the registration fee imposed under [sections 1 through 3] shall collect the local option tax on a vehicle for which an original application for title or the original Montana registration is sought.

~~(2)~~*(4)* A local vehicle tax *or flat fee* is payable at the same time and in the same manner as the ~~tax~~ *registration fee* imposed under ~~61-3-504~~ *[sections 1 through 3].* The first priority of the local vehicle tax *or flat fee* is for district court funding, and the tax *or flat fee* is distributed as follows:

(a) 50% to the county; and

(b) the remaining 50% to the county and the incorporated cities and towns within the county, apportioned on the basis of population. The distribution to a city or town is determined by multiplying the amount of money available by the ratio of the population of the city or town to the total county population. The distribution to the county is determined by multiplying the amount of money available by the ratio of the population of unincorporated areas within the county to the total county population.

(5) The proceeds of the tax collected under [section 3] must be remitted to the state treasurer every 30 days. The state treasurer shall credit the payments to the highway restricted state special revenue account.

~~(3)~~*(6)* The governing body of a county may impose, revise, or revoke a local vehicle tax by adopting a resolution before July 1, after conducting a public hearing on the proposed resolution. The resolution may provide for the distribution of the local vehicle tax. (Terminates June 30, 2005—sec. 2, 3, Ch. 217, L. 1995.)

61-3-537. (Effective July 1, 2005) Local option vehicle tax. (1) A county may impose a local vehicle tax *or a flat fee* on vehicles subject to ~~a tax~~ *the registration fee* under ~~61-3-504~~ *[sections 1 through 3] as provided in [section 38] or this section.*

(2) A county may impose a local option tax at a rate of up to 0.5% of the value determined under 61-3-503, in addition to the ~~tax~~ *registration fee* imposed under ~~61-3-504~~ *[sections 1 through 3].*

(3) A county that imposes a local option tax in addition to the registration fee imposed under [sections 1 through 3] shall collect the local option tax on a vehicle

for which an original application for title or the original Montana registration is sought.

~~(2)~~*(4)* A local vehicle tax *or flat fee* is payable at the same time and in the same manner as the ~~tax~~ *registration fee* imposed under ~~61-3-504~~ *[sections 1 through 3]* and is distributed in the same manner, based on the registration address of the owner of the motor vehicle.

(5) The proceeds of the tax collected under [section 3] must be remitted to the state treasurer every 30 days. The state treasurer shall credit the payments to the highway restricted state special revenue account.

~~(3)~~*(6)* The governing body of a county may impose, revise, or revoke a local vehicle tax by adopting a resolution before July 1, after conducting a public hearing on the proposed resolution."

Section 38. Local option flat fee. (1) A flat fee for each vehicle may be imposed within a county by the board of county commissioners by adoption of a resolution and referral to the electorate. The imposition of the fee must be approved by the majority of the electorate voting in the election.

(2) The flat fee is distributed as provided in 61-3-537.

Section 39. Section 61-3-701, MCA, is amended to read:

"61-3-701. Foreign vehicles used in gainful occupation to be registered — reciprocity. (1) Before a foreign licensed motor vehicle may be operated on the highways of this state for hire, compensation, or profit or before the owner or user of the vehicle uses the vehicle if the owner or user is engaged in gainful occupation or business enterprise in the state, including highway work, the owner of the vehicle shall apply to a county treasurer for registration upon an application form furnished by the department. Upon satisfactory evidence of ownership submitted to the county treasurer and the payment of ~~motor vehicle taxes or~~ fees in lieu of taxes *or registration fees*, if appropriate, as required by 15-8-201, 15-8-202, 15-24-301, ~~61-3-504,~~ 61-3-529, ~~or~~ 61-3-537, *or [sections 1 and 2],* the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle.

(2) Upon payment of the fees or taxes, the treasurer shall issue to the applicant a copy of the certificate entitled "Owner's Certificate of Registration and Payment Receipt" and forward a duplicate copy of the certificate to the department. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which must at all times be displayed upon the vehicle when operated or driven upon roads and highways of this state during the effective period of the license.

(3) The registration receipt does not constitute evidence of ownership but must be used only for registration purposes. A Montana certificate of ownership may not be issued for this type of registration.

(4) This section is not applicable to a vehicle covered by a valid and existing reciprocal agreement or declaration entered into under the provisions of the laws of Montana."

Section 40. Section 61-3-707, MCA, is amended to read:

"61-3-707. Foreign vehicles used for transportation in connection with employment. (1) Before a motor vehicle ~~taxed~~ *assessed a fee* pursuant to 15-24-301(4) may be operated in Montana for a calendar quarter, the person responsible for payment of ~~taxes must~~ *fees shall* apply for and obtain a window decal.

(2) Decals must be color-coded to distinguish the four quarterly registration periods of the year.

(3) An applicant may purchase a decal for more than one registration quarter at a time by paying the appropriate amount.

(4) There is a $2 fee for each decal, and money collected from this fee ~~shall~~ *must* be deposited to the county general fund. The $2 fee is in addition to the ~~tax~~ *registration fee.*

(5) A current window decal must be displayed on the lower right-hand corner of the windshield."

Section 41. Section 61-3-736, MCA, is amended to read:

"61-3-736. Assessment of proportionally registered interstate motor vehicle fleets — payment of ~~tax or~~ fee in lieu of tax required for registration. (1) (a) ~~Except as provided in subsection (2), the~~ *The* department of transportation shall determine the fee for the purpose of imposing the fee in lieu of tax as provided in 61-3-528 and 61-3-529 *and the registration fee under [sections 1 and 2]* on *light vehicles,* buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, in interstate motor vehicle fleets that are proportionally registered under the provisions of 61-3-711 through 61-3-733. The fee must be apportioned on the ratio of total miles traveled to in-state miles traveled as prescribed by 61-3-721. The fee in lieu of tax *or registration fee* on interstate motor vehicle fleets is imposed upon application for proportional registration and must be paid by the persons who own or claim the fleet or in whose possession or control the fleet is at the time of the application.

(b) With respect to an original application for a fleet that has a situs in Montana for the purpose of the fee in lieu of tax under this part or any other provision of the laws of Montana, the fee in lieu of tax *or registration fee* on fleet vehicles must be prorated according to the ratio that the remaining number of months in the year bears to the total number of months in the year.

~~(2) For the purpose of taxation, the department of transportation shall assess light vehicles, as defined in 61-1-139, that are part of an interstate motor vehicle fleet as follows:~~

~~(a) The value of each vehicle is determined in the same manner as provided in 61-3-503.~~

~~(b) The value determined under subsection (2)(a) multiplied by the percent of miles traveled in Montana, as prescribed by 61-3-721, is the market value.~~

~~(c) The sum of the market value of all vehicles subject to tax under this subsection (2) multiplied by 2% is the tax for the entire fleet.~~

~~(d) With respect to an original application for a fleet that has a situs in Montana for the purpose of taxation under this part or any other provision of the laws of Montana, the taxes on taxable vehicles are determined as provided in subsection (2)(b).~~

~~(e)~~*(c)* Vehicles taxed as part of a fleet under this subsection (2) are not subject to the local option tax *or flat fee* imposed under 61-3-537 *or [section 38].*

~~(3)~~*(2)* With respect to a renewal application for a fleet, ~~taxable vehicles are assessed and taxed for a full year and for all other vehicles~~ the fee in lieu of tax is imposed for a full year.

~~(4)~~*(3)* Vehicles contained in a fleet for which current ~~taxes or~~ fees~~, or both,~~ have been assessed and paid may not be assessed or charged fees under this section upon presentation to the department of proof of payment of ~~taxes,~~ fees~~, or both~~ for the current registration year. The payment of fleet vehicle ~~taxes,~~ fees in lieu of tax~~,~~ and license fees is a condition precedent to proportional registration or reregistration of an interstate motor vehicle fleet.

~~(5)~~*(4)* All ~~taxes and~~ fees collected on motor vehicle fleets under this chapter must be deposited and distributed as provided in 61-3-738."

Section 42. Section 61-3-737, MCA, is amended to read:

"61-3-737. Situs in state of proportionally registered fleets — collection of ~~taxes and~~ fees. (1) For the purposes of this part, any vehicle previously registered or that has had application for registration made under the provisions of 61-3-711 through 61-3-733 has a situs in Montana for the purposes of ~~taxation or~~ the fee in lieu of tax.

(2) The department of transportation shall collect the fleet vehicle ~~taxes, the~~ fees in lieu of tax~~,~~ and license fees prescribed in this part."

Section 43. Section 61-3-738, MCA, is amended to read:

"61-3-738. Deposit and distribution of ~~taxes and~~ fees on proportionally registered fleets. The ~~taxes,~~ fees in lieu of tax~~,~~ and license fees collected under this part must be deposited with the state treasurer for distribution to the general fund of each county on the following basis:

(1) for fleet vehicle ~~taxes and~~ fees in lieu of tax, according to the ratio of the taxable valuation of each county to the total state taxable valuation; and

(2) for fleet vehicle license fees, according to the ratio of vehicle license fees, other than fees derived from interstate motor vehicle fleets, collected in each county to the sum of all fleet vehicle fees collected in all the counties."

Section 44. Section 61-4-112, MCA, is amended to read:

"61-4-112. New motor vehicles — transfers by dealers. (1) When a motor vehicle dealer transfers a new motor vehicle to a purchaser or other recipient, the dealer shall:

(a) issue and affix a permit as prescribed in 61-4-111(2)(a) for transfers of used motor vehicles and retain a copy of the permit;

(b) within 4 working days following the date of delivery of the new motor vehicle, forward to the county treasurer of the county where the purchaser or recipient resides:

(i) one copy of the permit issued under subsection (1)(a);

(ii) an application for certificate of title with a notice of security interest, if any, executed by the purchaser or recipient; and

(iii) a statement of origin ~~as prescribed in 61-3-502(8)~~ *that shows that the vehicle has not previously been registered or owned, except as otherwise provided in this section, by any person, firm, corporation, or association other than a new* *motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.*

(2) Upon receipt from the county treasurer of the documents required under subsection (1), the department shall issue a certificate of ownership and certificate of registration, together with a statement of lien as provided in 61-3-202."

Section 45. Section 61-10-231, MCA, is amended to read:

"61-10-231. Enforcement. The highway patrol and any designated employee of the department of transportation shall enforce this part ~~and 61-3-502(1)~~, and those persons shall examine and inspect the motor vehicles operating upon the highways in this state and regulated by this part ~~and 61-3-502(1)~~ to ascertain whether or not those laws are being complied with."

Section 46. Repealer. Sections 61-3-502, 61-3-504, and 61-3-605, MCA, are repealed.

Section 47. Submission to electorate. The question of whether this act will become effective shall be submitted to the qualified electors of Montana at the general election to be held in November 2000 by printing on the ballot the full title of this act and the following:

☐ FOR reducing the taxation of light vehicles and eliminating the sales tax on new motor vehicles.

☐ AGAINST reducing the taxation of light vehicles and eliminating the sales tax on new motor vehicles.

Section 48. Codification instruction. [Sections 1, 2, 3, and 38] are intended to be codified as an integral part of Title 61, chapter 3, part 5, and the provisions of Title 61, chapter 3, part 5, apply to [sections 1, 2, 3, and 38].

Section 49. Coordination instruction. If this act is approved by the electorate and Senate Bill No. 260 is passed and approved, then [section 3 of Senate Bill No. 260] terminates on January 1, 2002.

Section 50. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 51. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 52. Effective dates — applicability. (1) If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000.

(2) [Sections 12, 13, and 46] are effective January 1, 2001.

LEGISLATIVE REFERENDUM NO. 116

This proposal, submitted by the Legislature for a vote, would repeal Montana's inheritance tax. Currently, the inheritance tax is imposed on the transfer of property when a person dies, except that property passed to a surviving spouse, children, step-children, and other lineal descendants is exempt. Current law also exempts family-held business property transferred to most relatives of the deceased, as well as property passed to charitable or governmental organizations. The inheritance tax affects an estimated 800-900 estates yearly. If passed, this measure would apply to deaths occurring after December 31, 2000. State and federal estate taxes would not be affected.

Inheritance taxes are due within 18 months of the date of death, so some collections will continue after the effective date. Therefore, state revenue will be reduced by $6.3 million in 2002 and by $12.7 million in 2003. Revenue from inheritance tax has been growing at 6.5% per year.

Legislative Referendum No. 116 was approved by the following vote at the General Election held November 7, 2000:

For:	265,951
Against:	126,274

The text of the Referendum follows:

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2613, MCA, is amended to read:

"**7-4-2613. Documents subject to recording.** The county clerk shall, upon the payment of the appropriate fees, record by printing, typewriting, or photographic, micrographic, or electronic process or by the use of prepared blank forms:

(1) (a) subject to subsection (1)(b), deeds, grants, transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property any part of which is situated in the county, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, leases that have been acknowledged or proved, and abstracts of the instruments that have been acknowledged or proved;

(b) an instrument or deed evidencing either a division of real property or a merger of real property only if the instrument or deed is accompanied by a certification from the county treasurer that taxes and special assessments that have been assessed and levied have been paid;

(2) notices of buyer's interest in real property, notwithstanding any other requirement of law or rule relating to eligibility for recording of the deed, contract for deed, or other document relating to the notice of buyer's interest. However, if the instrument of conveyance underlying a notice of buyer's interest would be unrecordable, the clerk and recorder shall notify the buyer by certified mail that the underlying instrument is unrecordable and may be void;

(3) except as provided in 72-16-503, a document on a form provided by the department of revenue certifying that the holder of a nonprobate interest in real property is deceased and that the deceased's interest is terminated. A nonprobate interest in real property is a joint tenancy interest, a life estate interest, or any other interest not requiring probate. The document may be on the form used by the department of revenue for responding to the application for determination of ~~inheritance or~~ estate tax. It must contain:

(a) a statement that the holder of the nonprobate interest has died and that the holder's interest in the property is terminated;

(b) a certification by the county treasurer that the ~~inheritance or~~ estate tax, if any tax was due, has been paid or that ~~inheritance or~~ estate tax was not due;

(c) a description of the property;

(4) certificates of births and deaths;

(5) wills devising real estate admitted to probate;

(6) official bonds;

(7) transcripts of judgments that by law are made liens upon real estate;

(8) instruments describing or relating to the individual property of married persons;

(9) all orders and decrees made by the district court in probate matters affecting real estate and that are required to be recorded;

(10) notice of preemption claims;

(11) notice and declaration of water rights;

(12) assignments for the benefit of creditors;

(13) affidavits of annual work done on mining claims;

(14) notices of mining locations and declaratory statements;

(15) estrays and lost property;

(16) a book containing appraisement of state lands; and

(17) other writings that are required or permitted by law to be recorded."

Section 2. Section 7-7-4607, MCA, is amended to read:

"7-7-4607. Exemption from certain taxes for refunding revenue bonds. ~~The refunding~~ *Refunding* bonds *issued pursuant to this part* and the income ~~therefrom shall be~~ *from those bonds are* exempt from taxation, except ~~inheritance,~~ estate~~, and transfer~~ taxes."

Section 3. Section 7-14-4654, MCA, is amended to read:

"7-14-4654. Exemption from certain state taxes. ~~All such revenue~~ *Revenue* bonds *issued pursuant to this part* and the interest or income ~~therefrom~~ *from those bonds* are exempt from all taxation in this state, other than ~~gift, inheritance, and~~ estate taxes."

Section 4. Section 15-1-211, MCA, is amended to read:

"15-1-211. Uniform dispute review procedure — notice — appeal. (1) The department ~~of revenue~~ shall provide a uniform review procedure for all persons or other entities, except as provided in subsection (1)(a).

(a) The department's dispute review procedure must be adopted by administrative rule and applies to all matters administered by the department and to all issues arising from the administration of the department, except ~~inheritance taxes,~~ estate taxes, property taxes, and the issue of whether an employer-employee relationship existed between the person or other entity and individuals subjecting the person or other entity to the requirements of chapter 30, part 2, or whether the employment relationship was that of an independent contractor. The procedure applies to assessments of centrally assessed property taxed pursuant to chapter 23.

(b) (i) The term "other entity", as used in this section, includes all businesses, corporations, and similar enterprises.

(ii) The term "person" as used in this section includes all individuals.

(2) (a) Persons or other entities having a dispute with the department have the right to have the dispute resolved by appropriate means, including consideration of alternative dispute resolution procedures such as mediation.

(b) The department shall establish a dispute resolution office to resolve disputes between the department and persons or other entities.

(c) Disputes must be resolved by a final department decision within 180 days of the referral to the dispute resolution office, unless extended by mutual consent of the parties. If a final department decision is not issued within the required time period, the remedy is an appeal to the appropriate forum as provided by law.

(3) (a) The department shall provide written notice to a person or other entity advising them of a dispute over matters administered by the department.

(b) The person or other entity shall have the opportunity to resolve the dispute with the department employee who is responsible for the notice, as indicated on the notice.

(c) If the dispute cannot be resolved, either the department or the other party may refer the dispute to the dispute resolution office.

(d) The notice must advise the person or other entity of their opportunity to resolve the dispute with the person responsible for the notice and their right to refer the dispute to the dispute resolution office.

(4) Written notice must be sent to the persons or other entities involved in a dispute with the department indicating that the matter has been referred to the dispute resolution office. The written notice must include:

(a) a summary of the department's position regarding the dispute;

(b) an explanation of the right to the resolution of the dispute with a clear description of all procedures and options available;

(c) the right to obtain a final department decision within 180 days of the date that the dispute was referred to the dispute resolution office;

(d) the right to appeal should the department fail to meet the required deadline for issuing a final department decision; and

(e) the right to have the department consider alternative dispute resolution methods, including mediation.

(5) The department shall:

(a) develop guidelines that must be followed by employees of the department in dispute resolution matters;

(b) develop policies concerning the authority of an employee to resolve disputes; and

(c) establish procedures for reviewing and approving disputes resolved by an employee or the dispute resolution office.

(6) (a) (i) The director of revenue or the director's designee is authorized to enter into an agreement with a person or other entity relating to a matter administered by the department.

(ii) The director or the director's designee has no authority to bind a future legislature through the terms of an agreement.

(b) Subject to subsection (6)(a)(ii), an agreement under the provisions of subsection (6)(a)(i) is final and conclusive, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(i) the agreement may not be reopened as to matters agreed upon or be modified by any officer, employee, or agent of this state; and

(ii) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded."

Section 5. Section 15-1-406, MCA, is amended to read:

"**15-1-406. Declaratory judgment.** (1) An aggrieved taxpayer may bring a declaratory judgment action in the district court seeking a declaration that:

(a) an administrative rule or method or procedure of assessment or imposition of tax adopted or used by the department ~~of revenue~~ is illegal or improper; or

(b) a tax authorized by the state or one of its subdivisions was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax.

(2) The action must be brought within 90 days of the date the notice of the tax due was sent to the taxpayer or, in the case of an assessment covered by the uniform dispute review procedure set forth in 15-1-211, within 90 days of the date of the department director's final decision. The court shall consolidate all actions brought under subsection (1) that challenge the same tax. The decision of the court applies to all similarly situated taxpayers, except those taxpayers who are excluded under 15-1-407.

(3) The taxes that are being challenged under this section must be paid under protest when due as a condition of continuing the action. Property taxes are paid under protest as provided in 15-1-402. All other taxes administered by the department, except ~~inheritance and~~ estate taxes, are paid under protest by filing timely claims for refund and by following the uniform dispute review procedures of 15-1-211. ~~Inheritance and estate taxes are paid under protest by following the procedures set forth in Title 72.~~ *Estate taxes are paid under protest by following the procedures set forth in Title 72.*

(4) The remedy authorized by this section may not be used to challenge the:

(a) market value of property under a property tax unless the challenge is to the legality of a particular methodology that is being applied to similarly situated taxpayers; or

(b) legality of a tax other than a property tax~~, inheritance tax,~~ or estate tax unless the review pursuant to 15-1-211 has been completed.

(5) The remedy authorized by this section is the exclusive method of obtaining a declaratory judgment concerning a tax authorized by the state or one of its subdivisions. The remedy authorized by this section supersedes the Uniform Declaratory Judgments Act established in Title 27, chapter 8. This section does not affect actions for declaratory judgments under 2-4-506."

Section 6. Section 15-1-501, MCA, is amended to read:

"**15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

(a) income taxes, interest, and penalties collected under chapter 30;

(b) except as provided in 15-31-702, all taxes, interest, and penalties collected under chapter 31;

(c) oil and natural gas production taxes allocated under 15-36-324(8)(a) and (10)(a);

(d) electrical energy producer's license taxes under chapter 51;

(e) [an amount equal to 25% of] the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;

(f) liquor license taxes under Title 16;

(g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(h) ~~inheritance and~~ estate taxes under Title 72, chapter 16; and

(i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.

(2) The department ~~of revenue~~ shall also deposit to the credit of the state general fund all money received from the collection of license taxes and fees and all net revenue and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded."

Section 7. Section 15-1-503, MCA, is amended to read:

"**15-1-503. Refund of overpayment — procedure.** (1) When there has been an overpayment of the ~~inheritance~~ *estate* tax collected by county treasurers or any other tax collected by the department ~~of revenue~~ and there is no law providing for a refund, the department shall refund the amount of the overpayment to the taxpayer, plus any interest and penalty due the taxpayer, as provided in subsection (2) ~~of this section~~.

(2) ~~No~~ *A* refund or payment ~~shall be~~ *is not* allowed unless a claim is filed by the taxpayer before the expiration of 5 years from the time *that* the tax was paid. Within 6 months after the claim is filed, the department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund ~~shall~~ *must* be made to the taxpayer within 60 days after the claim is approved~~;~~. ~~if~~ *If*

the claim is disallowed, the department shall ~~so~~ notify the taxpayer and shall grant a hearing on the claim. If the department disapproves a claim after holding a hearing, the determination of the department may be reviewed as provided by 15-30-148."

Section 8. Section 15-30-136, MCA, is amended to read:

"**15-30-136. Computation of income of estates or trusts — exemption.** (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the ~~taxable~~ *tax* year, including but not limited to the following items:

(a) dividends;

(b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision of the state, but excluding interest income from obligations of:

(i) the United States government or the state of Montana;

(ii) a school district; or

(iii) a county, municipality, district, or other political subdivision of the state;

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

(e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954, as amended;

(f) gross profit from trade or business; and

(g) refunds recovered on federal income tax, to the extent *that* the deduction of the tax resulted in a reduction of Montana income tax liability.

(2) In computing net income, there are allowed as deductions:

(a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code of 1954, as amended;

(b) taxes paid or accrued within the ~~taxable~~ *tax* year, including but not limited to federal income tax, but excluding Montana income tax;

(c) that fiduciary's portion of depreciation or depletion ~~which~~ *that* is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code of 1954, as amended;

(d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of the Internal Revenue Code of 1954, as amended;

(e) administrative expenses claimed for federal income tax purposes, according to sections 212 and 642(g) of the Internal Revenue Code of 1954, as amended~~, if the expenses were not claimed as a deduction in the determination of Montana inheritance tax~~;

(f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal Revenue Code of 1954, as amended;

(g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal Revenue Code of 1954, as amended, except estates may not claim losses that are deductible on the decedent's final return;

(h) Montana income tax refunds or tax refund credits.

(3) The following additional deductions are allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the ~~taxable~~ *tax* year currently required to be distributed to beneficiaries for the year;

(b) any other amounts properly paid or credited or required to be distributed for the ~~taxable~~ *tax* year.

(4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and (6)."

Section 9. Section 17-5-718, MCA, is amended to read:

"**17-5-718. Tax exemption of bonds — legal investments.** (1) All bonds or notes issued under this part, their transfer, and their income, including any profits made on their sale, are exempt from taxation by the state or any political ~~subdivisions~~ *subdivision* or other instrumentality of the state, ~~excepting inheritance,~~ *except for* estate~~, and gift~~ taxes.

(2) Bonds or notes issued under this part are legal investments for any person or board charged with investment of public funds and are acceptable as security for any deposit of public money."

Section 10. Section 17-5-930, MCA, is amended to read:

"**17-5-930. Tax exemption of bonds — legal investments.** (1) All bonds issued under this part, their transfer, and their income, including any profits made on their sale, are exempt from taxation by the state or any political subdivision or other instrumentality of the state, ~~excepting inheritance,~~ *except for* estate~~, and gift~~ taxes.

(2) Bonds issued under this part are legal investments for any person or board charged with investment of public funds and are acceptable as security for any deposit of public money."

Section 11. Section 17-5-1518, MCA, is amended to read:

"**17-5-1518. Tax exemption of bonds.** Bonds, notes, or other obligations issued by the board under this part and their transfer and income (including any profits made on their sale) are free from taxation by the state or any political subdivision or other instrumentality of the state, except for ~~inheritance,~~ estate~~, and gift~~ taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it."

Section 12. Section 17-5-1629, MCA, is amended to read:

"**17-5-1629. Tax exemption of bonds.** Bonds, notes, or other obligations issued by the board under this part, their transfer, and their income (including any profits made on their sale) are free from taxation by the state or any political subdivision or other instrumentality of the state, ~~excepting inheritance,~~ *except for* estate~~, and gift~~ taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it."

Section 13. Section 35-21-827, MCA, is amended to read:

"35-21-827. Property interests in plot — ~~inheritance~~ *estate* tax. (1) All plots conveyed to individuals are presumed to be the sole and separate property of the owner named in the instrument of conveyance.

(2) The spouse of an owner of a plot containing more than one interment space has a vested right to be interred in the plot, and a person becoming the spouse of the plot owner has a vested right to be interred in the plot if an interment space not subject to the vested right of interment for previous spouses is unoccupied at the time that the person becomes the spouse of the owner.

(3) A conveyance or other action of the owner without the written consent or joinder of the spouse of the owner may not divest the spouse of a vested right of interment, except that a final decree of dissolution of marriage between the owner and the spouse terminates the vested right of interment unless otherwise provided in the decree.

(4) If an interment is not made in a plot that has been transferred by deed or certificate of ownership to an individual owner or if all remains previously interred in the plot are lawfully removed, the plot descends upon the death of the owner to the owner's heirs-at-law, subject to the rights of interment of the decedent and the owner's surviving spouse unless the owner has disposed of the plot either in a will by a specific devise or by a written declaration filed and recorded in the office of the mausoleum-columbarium authority.

(5) Mausoleum or columbarium property passing to an individual by reason of the death of the owner is exempt from all ~~inheritance~~ *estate* taxes."

Section 14. Section 60-11-1110, MCA, is amended to read:

"60-11-1110. Tax exemption. Bonds and refunding bonds, their transfer, and their income (including any profits made on their sale) are free from taxation by the state or any political subdivision or instrumentality of the state, except for ~~inheritance and~~ estate taxes."

Section 15. Section 60-11-1210, MCA, is amended to read:

"60-11-1210. Tax exemption. Bonds and refunding bonds, their transfer, and their income (including any profits made on their sale) are free from taxation by the state or any political subdivision or instrumentality of the state, except for ~~inheritance and~~ estate taxes."

Section 16. Section 72-1-103, MCA, is amended to read:

"72-1-103. General definitions. Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise requires, in chapters 1 through 5, the following definitions apply:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

(2) "Application" means a written request to the clerk for an order of informal probate or appointment under chapter 3, part 2.

(3) "Beneficiary", as it relates to:

(a) a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer;

(b) a charitable trust, includes any person entitled to enforce the trust;

(c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

(i) an account with POD designation or a security registered in beneficiary form (TOD); or

(ii) any other nonprobate transfer at death; and

(d) a beneficiary designated in a governing instrument, includes a grantee of a deed; a devisee; a trust beneficiary; a beneficiary of a beneficiary designation; a donee; and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:

(a) an account with POD designation or a security registered in beneficiary form (TOD); or

(b) any other nonprobate transfer at death.

(5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) (a) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration.

(b) The term does not include estate ~~or inheritance~~ taxes or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) "Clerk" or "clerk of court" means the clerk of the district court.

(8) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(9) "Court" means the district court in this state having jurisdiction in matters relating to the affairs of decedents.

(10) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this section.

(11) "Devise" when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.

(12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3, in the case of a devise to an existing trust or trustee or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(13) "Disability" means cause for a protective order as described by 72-5-409.

(14) "Distributee" means any person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment ~~thereto~~ *to distributed assets* remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

(16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

(17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

(18) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

(19) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

(20) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type.

(21) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

(22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

(23) "Incapacitated person" has the meaning provided in 72-5-101.

(24) "Informal proceedings" means proceedings conducted without notice to interested persons by the clerk of court for probate of a will or appointment of a personal representative.

(25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The term also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

(26) "Issue" of a person means a descendant ~~as defined in subsection (10)~~.

(27) "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the

property on the death of the other or others but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

(28) "Lease" includes an oil, gas, coal, or other mineral lease.

(29) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(30) "Minor" means a person who is under 18 years of age.

(31) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

(32) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

(33) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

(34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under chapters 1 through 5 by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(36) "Person" means an individual, a corporation, an organization, or other legal entity.

(37) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(38) "Petition" means a written request to the court for an order after notice.

(39) "Proceeding" includes action at law and suit in equity.

(40) "Property" includes both real and personal property or any interest in that property and means anything that may be the subject of ownership.

(41) "Protected person" has the meaning provided in 72-5-101.

(42) "Protective proceeding" has the meaning provided in 72-5-101.

(43) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; transferable share; voting trust certificate; in general, any interest or instrument commonly known as a security; any certificate of interest or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing.

(44) "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(45) "Special administrator" means a personal representative as described by chapter 3, part 7.

(46) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(47) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(48) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or chapters 1 through 5.

(49) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

(50) "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under 72-2-114 or 72-2-712. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

(51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(52) "Testator" includes an individual of either sex.

(53) "Trust" includes an express trust, private or charitable, with additions ~~thereto~~ *to the trust*, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined in 72-6-111 and Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26 ~~of this title~~; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

(54) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(55) "Ward" means an individual described in 72-5-101.

(56) "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession."

Section 17. Section 72-3-607, MCA, is amended to read:

"72-3-607. Inventory — appraisal — copy to department of revenue. (1) ~~Within~~ *If the estate must file a United States estate tax return, within* the time required for the filing of ~~a~~ *the* United States estate tax return plus any extensions granted by the internal revenue service, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory~~,~~. ~~which~~ *The* inventory ~~shall~~ *must* include *a* listing of all property ~~which~~ *that*:

(a) the decedent owned, had an interest in or control over, individually, in common, or jointly, or otherwise had at the time of ~~his~~ *the decedent's* death;

(b) the decedent had possessory or dispository rights over at the time of ~~his~~ death or had disposed of for less than its fair market value within 3 years of ~~his~~ *the decedent's* death; or

(c) was affected by the decedent's death for the purpose of ~~inheritance or~~ estate taxes.

(2) The inventory ~~shall~~ *must* include a statement of the full and true value of the decedent's interest in every item listed in ~~such~~ *the* inventory. In this connection, the personal representative shall appoint one or more qualified and disinterested persons to assist ~~him~~ *the personal representative* in ascertaining the fair market value as of the date of the decedent's death of all assets included in the estate. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser ~~shall~~ *must* be indicated on the inventory with the item or items ~~he~~ appraised.

(3) The personal representative shall send a copy of the inventory to interested persons who request it, or ~~he~~ *the personal representative* may file the original of the inventory with the court. In any event, a copy of the inventory and statement of value ~~shall~~ *must* be mailed to the department of revenue."

Section 18. Section 72-3-618, MCA, is amended to read:

"**72-3-618. Persons dealing with personal representative — protection.** (1) A person who in good faith and without notice either assists a personal representative or deals with ~~him~~ *a personal representative* for value is protected as if the personal representative properly exercised ~~his~~ *the personal representative's* power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives ~~which~~ *that* are endorsed on letters as provided in 72-3-404(3), ~~no~~ *a* provision in any will or order of court purporting to limit the power of a personal representative is *not* effective except as to persons with actual knowledge ~~thereof~~ *of the provision*.

(2) A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative.

(3) The protection ~~here~~ expressed *in this section* extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection ~~here~~ expressed *in this section* is not ~~by~~ *a* substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries~~, nor does it in any way limit the provisions of 72-16-432 and 72-16-433~~."

Section 19. Section 72-3-631, MCA, is amended to read:

"**72-3-631. Compensation of personal representative.** (1) A personal representative is entitled to reasonable compensation for ~~his~~ services. ~~Such~~ *The* compensation ~~shall~~ *may* not exceed 3% of the first $40,000 of the value of the estate as reported for federal estate tax ~~or state inheritance tax~~ purposes~~, whichever is larger,~~ and 2% of the value of the estate in excess of $40,000 as reported for federal estate tax ~~or state inheritance tax~~ purposes~~, whichever is~~

~~larger~~. However, a personal representative is entitled to a minimum compensation of the lesser of $100 or the value of the gross estate.

(2) In proceedings conducted for the termination of joint tenancies, the compensation of the personal representative ~~shall~~ *may* not exceed 2% of the interest passing.

(3) In proceedings conducted for the termination of a life estate, the compensation allowed the personal representative ~~shall~~ *may* not exceed 2% of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the personal representative's compensation ~~shall~~ *may* not exceed 2% of the value of the estate, except that it ~~shall~~ *may* not be less than $100.

(4) If there is more than one personal representative, only one compensation is allowed.

(5) The court may allow additional compensation for extraordinary services. ~~Such~~ *The* additional compensation ~~shall~~ *may* not be greater than the amount ~~which~~ *that* is allowed for the original compensation.

(6) If the will provides for the compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to compensation under the terms of this section. A personal representative also may renounce ~~his~~ *the* right to all or any part of the compensation. A written renunciation of fee may be filed with the court."

Section 20. Section 72-3-807, MCA, is amended to read:

"**72-3-807. Classification of claims as to priority of payment.** (1) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(a) costs and expenses of administration;

(b) reasonable funeral expenses and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent;

(c) federal estate and Montana state estate ~~and inheritance~~ taxes;

(d) debt for a current support obligation and past-due support for *the* decedent's children pursuant to a support order as defined in 40-5-201;

(e) debts with preference under federal and Montana law;

(f) other federal and Montana state taxes;

(g) all other claims.

(2) A preference may not be given in the payment of any claim over any other claim of the same class, and a claim due and payable may not be entitled to a preference over claims not due."

Section 21. Section 72-3-1004, MCA, is amended to read:

"**72-3-1004. Closing estate by sworn statement of personal representative.** (1) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than 6 months after the date of original appointment of a general personal representative for the estate~~,~~ a verified statement stating that ~~he~~ *the personal representative*, or a prior personal representative ~~whom he has succeeded~~, has:

(a) determined that the time limitation for presentation of creditors' claims has expired;

(b) fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims ~~which~~ *that* were presented, expenses of administration, and estate~~, inheritance,~~ and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled; if any claims remain undischarged, the statement ~~shall~~ *must* state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees~~,~~ or it ~~shall~~ *must* state in detail other arrangements ~~which~~ *that* have been made to accommodate outstanding liabilities; *and*

(c) sent a copy ~~thereof~~ *of the statement* to all distributees of the estate and to all creditors or other claimants of whom ~~he~~ *the personal representative* is aware whose claims are neither paid nor barred and has furnished a full account in writing of ~~his~~ *the* administration to the distributees whose interests are affected ~~thereby; and~~

~~(d) complied with the provisions of 72-3-1006~~ *by the accounting.*

(2) If ~~no~~ proceedings involving the personal representative are *not* pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates."

Section 22. Section 72-3-1006, MCA, is amended to read:

"**72-3-1006. Certificate or receipt showing taxes paid required to close estate.** (1) In all probate proceedings under this code, before final distribution to successors is made and before any petition is granted under 72-3-1001, 72-3-1002, 72-3-1003, or 72-3-1004, there ~~shall~~ *must* have been filed with the clerk:

(a) a certificate from the department of revenue stating that any ~~inheritance~~ *estate* tax due on the assets of the estate has been paid; ~~or~~

(b) an agreement with the department of revenue for extension of time for payment of ~~inheritance~~ *estate* taxes; or

(c) a receipt from the county treasurer stating that any ~~inheritance~~ *estate* tax due on the assets of the estate has been paid.

(2) This section ~~shall~~ *does* not prohibit ~~such~~ *a* partial distribution ~~as~~ *that* may become necessary in the course of administration."

Section 23. Section 72-3-1104, MCA, is amended to read:

"**72-3-1104. Small estates — closing by sworn statement of personal representative.** (1) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of 72-3-1103 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(a) to the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;

(b) the personal representative has fully administered the estate by payment of ~~inheritance~~ *estate* taxes and by disbursing and distributing it to the persons entitled ~~thereto~~ *to it*; and

(c) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom ~~he~~ *the personal representative* is aware whose claims are neither paid nor barred and has furnished a full account in writing of ~~his~~ *the* administration to the distributees whose interests are affected.

(2) If ~~no~~ actions or proceedings involving the personal representative are *not* pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates.

(3) A closing statement filed under this section has the same effect as one filed under 72-3-1004."

Section 24. Section 72-16-215, MCA, is amended to read:

"72-16-215. County treasurer — monthly report — payment of collections to state treasurer — interest on unpaid amounts. Between the 1st and 20th days of each month, each county treasurer shall make a report under oath to the department of revenue listing all payments received ~~by him~~ under the ~~inheritance~~ *estate* tax laws during the preceding month and stating for what estate, by whom, and when paid. The form of ~~such~~ *the* report ~~shall~~ *must* be prescribed by the department. ~~He~~ *The county treasurer* shall at the same time pay the state treasurer all the payments received ~~by him~~ under the ~~inheritance~~ *estate* tax laws and not previously paid to the state treasurer.~~, and for all such~~ *For* payments collected ~~by him and~~ *but* not paid to the state treasurer within 5 days from the time ~~herein~~ required, ~~he~~ *the county treasurer* shall pay interest at the rate of 10% ~~per annum~~ *a year*."

Section 25. Section 72-16-502, MCA, is amended to read:

"72-16-502. ~~Determination and payment of tax when no personal representative — procedure — exception~~ *Definition of decedent.* ~~(1)~~ For the purposes of this ~~section~~ *part*, a decedent is one who dies leaving no property that requires the appointment of a personal representative and who:

~~(a)~~*(1)* was the owner of a life estate that terminated at death; *or*

~~(b)~~*(2)* was the owner of property with another or others as a joint tenant with right of survivorship and not as a tenant in common~~; or~~

~~(c) was the owner of any other interest in property requiring the determination of inheritance tax because of death~~.

~~(2) Except as provided in subsection (6), a remainderman, surviving joint tenant, or other interested party shall, upon the death of a decedent, file with the department of revenue:~~

~~(a) a copy of the death certificate;~~

~~(b) a verified application, in a form prescribed by the department, containing information that the department considers necessary; and~~

~~(c) evidence of the instruments that created the life estate, joint tenancy, or other interest requiring determination of inheritance tax, if required by the department.~~

~~(3) Upon receipt of the application, the department shall:~~

~~(a) stamp the filing date upon the application;~~

~~(b) issue a certificate showing the inheritance tax due, if any;~~

~~(c) affix the certificate to a certified copy of the application and return the certificate and copy to the applicant or the applicant's attorney; and~~

~~(d) affix a copy of the certificate to the original application and keep it on file with the department.~~

~~(4) The applicant shall pay the inheritance tax determined to the county treasurer for transmittal to the state treasurer. The county treasurer shall issue a receipt for the payment of the tax.~~

~~(5) If disputes arise as to tax computation, they must be resolved as provided under the laws applicable to the determination of inheritance taxes in estates.~~

~~(6) A surviving joint tenant described in 72-16-313(1) or (2) of a decedent whose aggregate value of the interest in the joint property is less than the federal estate tax filing requirement is not required to file under subsection (2).~~"

Section 26. Section 72-16-503, MCA, is amended to read:

"**72-16-503. Additional filings required when real property involved and no representative ~~— release of lien~~.** (1) If an interest in real property is involved under 72-16-502, the applicant shall record with the clerk and recorder of each county in which the real property or any part of the property is located a document containing those matters required by 7-4-2613(3). A surviving joint tenant described in 72-16-313(1) or (2) is not subject to the recording requirements under 7-4-2613(3).

(2) A surviving joint tenant described in 72-16-313(1) or (2) with an interest in real property under 72-16-502 shall record with the clerk and recorder of each county in which the real property is located an acknowledged statement that the holder of the nonprobate interest has died and that the holder's interest in the property is terminated. The acknowledged statement must include a legal description of the real property.

~~(3) The recording of the documents under subsection (1) or (2) constitutes release of any lien for inheritance taxes.~~"

Section 27. Section 72-16-903, MCA, is amended to read:

"**72-16-903. Taxable situs of property.** For the purpose of ~~this~~ *the estate* tax, the *following have* taxable situs ~~of property shall be the same as the taxable situs for inheritance tax purposes~~ *in this state:*

(1) real property located in this state;

(2) tangible personal property located in this state; and

(3) intangible personal property owned by a resident regardless of where it is located."

Section 28. Section 72-16-904. MCA. is amended to read:

"**72-16-904. Estate tax imposed.** ~~In addition to the inheritance taxes hereinabove imposed, an~~ *An* estate tax is ~~hereby~~ imposed upon the transfer of the estate of every decedent leaving an estate ~~which~~ *that* is subject to the federal estate tax imposed by the United States of America under the applicable provisions of the Internal Revenue Code and ~~which~~ *that* has, in whole or in part, a taxable situs in this state."

Section 29. Section 72-16-905, MCA, is amended to read:

"**72-16-905. Estate tax — how computed.** The tax ~~hereby~~ imposed upon the transfer of each ~~such~~ estate ~~shall be~~ *is* equal to the maximum tax credit allowable for state death taxes against the federal estate tax imposed with respect to the portion of the decedent's estate having a taxable situs in this state~~, less the inheritance taxes, if any, due this state, it being~~. *It is* the purpose and intent of this part to impose only ~~such~~ *those* additional taxes ~~hereunder as~~ *that* may be necessary to give this state the full benefit of the maximum tax credit allowable against the federal estate tax imposed with respect to a decedent's estate ~~which~~ *that* has a taxable situs in this state. If only a portion of a decedent's estate has a taxable situs in this state, ~~such~~ *the* maximum tax credit ~~shall~~ *must* be determined by multiplying the entire amount of the credit allowable against the federal estate tax for state death taxes by the percentage ~~which~~ *that* the value of the portion of the decedent's estate ~~which~~ *that* has a taxable situs in this state bears to the value of the entire estate."

Section 30. Section 72-16-907, MCA, is amended to read:

"**72-16-907. Department to determine tax — rehearing and appeal — *rulemaking*.** (1) *(a)* The department of revenue shall enter an order determining ~~such~~ *the* state estate tax and the amount ~~thereof so~~ due and payable.

~~(2)~~*(b)* Any person ~~in~~ *with an* interest aggrieved by ~~such~~ *the department's* determination ~~shall have the same right to apply for~~ *may appeal the determination to* district court ~~determination and of rehearing and appeal as is now provided for in the determination of inheritance taxes~~.

(2) The department shall adopt rules necessary for the administration and enforcement of this part."

Section 31. Section 72-16-909, MCA, is amended to read:

"**72-16-909. When and where tax payable — interest.** *(1)* The estate tax ~~shall be~~ *is* payable to the county treasurer of the county in which ~~such~~ *the* estate is being probated ~~in the same manner provided for the payment of inheritance taxes in 72-16-441~~.

(2) If the tax is not paid within 18 months of the death of the decedent, interest must be charged and collected at the rate of 10% a year from the time that the tax accrued, unless because of claims made upon the estate, necessary litigation, or other unavoidable cause of delay, the tax is not determined and paid on time. Interest at the rate of 6% must be charged upon the amount of tax due from the time of accrual until the cause of the delay is removed, and after that time, interest at the rate of 10% must be charged.

(3) Litigation to defeat the payment of the tax is not necessary litigation.

(4) When permission has been granted to defer payment of tax under 72-16-910, interest must be charged at the rate of 6% after 1 year from the date of death until the date of payment."

Section 32. Section 72-16-1007, MCA, is amended to read:

"**72-16-1007.** ~~**Applicability of other taxes — rulemaking**~~ ***Rulemaking.*** ~~The provisions of Title 72, chapter 16, parts 1 through 8, relating to the tax on inheritances and transfers, apply to 72-16-1001 through 72-16-1006 unless they are in conflict with this part.~~ The department shall adopt rules necessary for the administration and enforcement of this part."

Section 33. Section 80-12-305, MCA, is amended to read:

"**80-12-305. Tax exemption of bonds.** Bonds issued by the authority under this chapter and their transfer and income, including any profits made on their sale, are exempt from taxation by the state or any political subdivision or other instrumentality of the state, except for ~~inheritance,~~ estate~~, and gift~~ taxes. The authority is not required to pay recording or transfer fees or taxes on instruments recorded by it."

Section 34. Section 90-6-125, MCA, is amended to read:

"**90-6-125. Tax exemption of bonds.** Bonds, notes, or other obligations issued by the board under this part or by local housing authorities under Title 7, chapter 15, parts 21, 44, and 45, their transfer, and their income (including any profits made on their sale) ~~shall be~~ *are* free from taxation by the state or any political subdivision or other instrumentality of the state, ~~excepting inheritance,~~ *except for* estate~~, and gift~~ taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it."

Section 35. Code commissioner instruction. The code commissioner shall renumber 72-16-217 as an integral part of Title 50, chapter 15.

Section 36. Repealer. Sections 72-4-304, 72-14-303, 72-16-101, 72-16-102, 72-16-201, 72-16-203, 72-16-204, 72-16-205, 72-16-206, 72-16-207, 72-16-208, 72-16-209, 72-16-210, 72-16-211, 72-16-212, 72-16-213, 72-16-214, 72-16-216, 72-16-218, 72-16-301, 72-16-302, 72-16-303, 72-16-304, 72-16-305, 72-16-306, 72-16-307, 72-16-308, 72-16-311, 72-16-312, 72-16-313, 72-16-314, 72-16-315, 72-16-316, 72-16-317, 72-16-318, 72-16-319, 72-16-321, 72-16-322, 72-16-323, 72-16-331, 72-16-332, 72-16-333, 72-16-334, 72-16-335, 72-16-336, 72-16-337, 72-16-338, 72-16-339, 72-16-340, 72-16-341, 72-16-342, 72-16-343, 72-16-344, 72-16-345, 72-16-346, 72-16-347, 72-16-348, 72-16-349, 72-16-401, 72-16-402, 72-16-403, 72-16-411, 72-16-412, 72-16-413, 72-16-414, 72-16-415, 72-16-416, 72-16-417, 72-16-418, 72-16-419, 72-16-420, 72-16-421, 72-16-422, 72-16-423, 72-16-424, 72-16-425, 72-16-431, 72-16-432, 72-16-433, 72-16-434, 72-16-435, 72-16-436, 72-16-437, 72-16-438, 72-16-439, 72-16-440, 72-16-441, 72-16-442, 72-16-443, 72-16-445, 72-16-446, 72-16-447, 72-16-448, 72-16-449, 72-16-450, 72-16-451, 72-16-452, 72-16-453, 72-16-454, 72-16-455, 72-16-456, 72-16-457, 72-16-458, 72-16-459, 72-16-460, 72-16-461, 72-16-462, 72-16-463, 72-16-464, 72-16-465, 72-16-471, 72-16-472, 72-16-473, 72-16-474, 72-16-475, 72-16-476, 72-16-477, 72-16-478, 72-16-479, 72-16-480, 72-16-481, 72-16-482, 72-16-491, 72-16-492, 72-16-493, 72-16-504, 72-16-505, 72-16-701, 72-16-702, 72-16-703, 72-16-704, 72-16-705, 72-16-706, 72-16-801, 72-16-802, 72-16-803, 72-16-804, 72-16-805, and 72-16-902, MCA, are repealed.

Section 37. Effective date. This act is effective upon approval by the electorate.

Section 38. Applicability. This act applies to deaths occurring after December 31, 2000.

Section 39. Submission to electorate. This act shall be submitted to the qualified electors of Montana at the general election to be held in November 2000 by printing on the ballot the full title of this act and the following:

☐ FOR repealing state inheritance taxes.

☐ AGAINST repealing state inheritance taxes.

INDEX TO APPROPRIATIONS

INDEX TO APPROPRIATIONS

ADMINISTRATION, DEPARTMENT OF
  Capital projects, Ch. 573
  General appropriation, Ch. 572
AGRICULTURE, DEPARTMENT OF
  General appropriation, Ch. 572
  Supplemental, Ch. 551
AGRICULTURE, GROWTH THROUGH AGRICULTURE PROGRAM
  Coal severance tax permanent fund interest income to fund, Ch. 10, Special Laws, May 2000(Appendix)
APPELLATE DEFENDER COMMISSION
  General appropriation, Ch. 572
BUDGET AND PROGRAM PLANNING, OFFICE OF
  State employee pay plan, Ch. 553
CAPITAL PROJECTS, Ch. 486, Ch. 573
COMMERCE, DEPARTMENT OF
  General appropriation, Ch. 572
  Local government infrastructure projects, financial assistance for and emergency grants, Ch. 435
CONSUMER COUNSEL
  General appropriation, Ch. 572
  State employee pay plan, Ch. 553
CORRECTIONS, DEPARTMENT OF
  Capital projects, Ch. 486, Ch. 573
  General appropriation, Ch. 572
  Generic specialty license plates, manufacture, Ch. 402
  Lewis and Clark bicentennial license plates, manufacture, Ch. 414
  Supplemental, Ch. 550
CRIME CONTROL, BOARD OF
  Restorative justice, grants for community programs, Ch. 581
CRIME CONTROL, DIVISION OF
  General appropriation, Ch. 572
  Supplemental, Ch. 551
CRIME VICTIMS COMPENSATION AND ASSISTANCE
  General fund appropriations, dependent upon — clarification, Ch. 118
CULTURAL AND AESTHETIC PROJECT GRANTS, Ch. 434
DEAF AND BLIND, MONTANA SCHOOL FOR THE
  Exemption to certain provisions of General Appropriations Act of 1999, Ch. 550
  General appropriation, Ch. 572
ECONOMIC DEVELOPMENT PROGRAMS
  Coal severance tax permanent fund interest income to fund, Ch. 10, Special Laws, May 2000(Appendix)
EDUCATION, STATE BOARD OF
  Capital projects, Ch. 573

ENVIRONMENTAL QUALITY, DEPARTMENT OF
  Environmental rehabilitation and response account funds, Ch. 338
  General appropriation, Ch. 572
  Oil overcharge money, Ch. 239
  State building energy conservation program bond proceeds, Ch. 240
  Supplemental, Ch. 551

FISH, WILDLIFE, AND PARKS — DEPARTMENT OF
  Capital projects, Ch. 573
  Game warden trainee program, Ch. 566
  General appropriation, Ch. 572
  USDA-APHIS wildlife services program, transfer for predator control, Ch. 426
  Supplemental, Ch. 551

GENERAL APPROPRIATIONS ACT OF 2001, Ch. 572

GOVERNOR
  General appropriation, Ch. 572
  Supplemental, Ch. 550

HISTORICAL SOCIETY
  Cultural and aesthetic project grants, Ch. 434
  General appropriation, Ch. 572
  Supplemental, Ch. 550, Ch. 551

JUDICIAL BRANCH
  General appropriation, Ch. 572
  State employee pay plan, Ch. 553

JUSTICE, DEPARTMENT OF
  Capital projects, Ch. 573
  General appropriation, Ch. 572
  Generic specialty license place computer programming costs, Ch. 402
  Motor vehicle information technology system, Ch. 394
  Natural resource damage assessment and litigation program in Clark Fork River basin, Ch. 247
  Supplemental, Ch. 550, Ch. 551
  Video gambling automated accounting and reporting system data collection units, Ch. 394

LABOR AND INDUSTRY, DEPARTMENT OF
  General appropriation, Ch. 572
  Supplemental, Ch. 551

LEGISLATIVE BRANCH
  General appropriation, Ch. 572
  State employee pay plan, Ch. 553

LEGISLATIVE SERVICES DIVISION, Ch. 1; Ch. 2, Special Laws, May 2000(Appendix)
  Broadcasting service, Ch. 557
  Education Interim Committee, for, Ch. 580

LEGISLATURE, Ch. 1; Ch. 2, Special Laws, May 2000(Appendix)

LIVESTOCK, DEPARTMENT OF
  General appropriation, Ch. 572
  Supplemental, Ch. 551

MILITARY AFFAIRS, DEPARTMENT OF
  Capital projects, Ch. 486, Ch. 573
  General appropriation, Ch. 572
  Supplemental, Ch. 551
MONTANA ARTS COUNCIL
  Cultural and aesthetic project grants, Ch. 434
  General appropriation, Ch. 572
  Supplemental, Ch. 551
MONTANA CHIROPRACTIC LEGAL PANEL, Ch. 5
  General appropriation, Ch. 572
NATURAL RESOURCES AND CONSERVATION, DEPARTMENT OF
  Capital projects, Ch. 573
  Fire suppression costs, Ch. 2
  General appropriation, Ch. 572
  Milk River basin economic development plan, facilitation of development, Ch. 256
  Mineral production rights, loan proceeds to purchase, Ch. 418
  Reclamation and development grants and projects, Ch. 232
  Renewable resource grant and loan program grants and loans, Ch. 266, Ch. 552
  Supplemental, Ch. 550, Ch. 551
OIL OVERCHARGE MONEY, Ch. 239, Ch. 240
OPERATING BUDGETS AND FUND TRANSFERS
  Conformance to conditions contained in General Appropriations Act, restriction on use of funds appropriated for personal services, and changes to be approved in writing, Ch. 255
POLITICAL PRACTICES, COMMISSIONER OF
  General appropriation, Ch. 572
PUBLIC EDUCATION, BOARD OF
  General appropriation, Ch. 572
PUBLIC HEALTH AND HUMAN SERVICES, DEPARTMENT OF
  Breast and cervical cancer victims' treatment, matching funds, Ch. 440
  Capital projects, Ch. 573
  General appropriation, Ch. 572
  Oil overcharge money, Ch. 239
  Supplemental, Ch. 550, Ch. 551
  Universal newborn hearing screening program, Ch. 250
PUBLIC SERVICE REGULATION, DEPARTMENT OF
  General appropriation, Ch. 572
REAPPROPRIATION, Ch. 239, Ch. 240
REGENTS OF HIGHER EDUCATION, BOARD OF
  Dental hygiene education program at Montana State University-Great Falls College of Technology, for establishment, Ch. 510
  Research programs, coal severance tax permanent fund interest income to fund, Ch. 10, Special Laws, May 2000(Appendix)
RESEARCH AND COMMERCIALIZATION PROJECTS
  Coal severance tax permanent fund interest income to fund, Ch. 10, Special Laws, May 2000(Appendix)

REVENUE, DEPARTMENT OF
  General appropriation, Ch. 572
  Supplemental, Ch. 550
REVERSION, Ch. 434, Ch. 550, Ch. 551, Ch. 569; Ch. 2, Special Laws, May 2000(Appendix)
  University system, funded resident enrollment growth — calculation of reversions, Ch. 253
REVISION OF PROVISIONS GENERALLY, Ch. 569
STATE AUDITOR
  General appropriation, Ch. 572
STATE LIBRARY COMMISSION
  General appropriation, Ch. 572
  Supplemental, Ch. 551
STATUTORY
  Economic development programs, Ch. 10, Special Laws, May 2000(Appendix)
  Lewis and Clark bicentennial license plate sales and loan proceeds, Ch. 414
  Local government entitlement share pools and block grants, Ch. 574
  Local government reimbursements for fee in lieu of tax reduction on heavy vehicles, Ch. 500
  Mineral impact account, Ch. 594
  Revision of provisions generally, Ch. 554
  Seed account, deposits of filing fees and reimbursed costs, Ch. 567
SUPERINTENDENT OF PUBLIC INSTRUCTION
  General appropriation, Ch. 572
  K-12 BASE aid, Ch. 11, Special Laws, May 2000(Appendix)
  K-12 public school funding and related issues, for study, Ch. 580
  School district, countywide school retirement, and countywide school transportation block grants, Ch. 574
  Supplemental, Ch. 550, Ch. 551
SUPPLEMENTAL, Ch. 550, Ch. 551, Ch. 569
SUPREME COURT
  Administrator, supplemental, Ch. 550
  District court expenses, Ch. 574
TRANSPORTATION, DEPARTMENT OF
  Capital projects, Ch. 573
  General appropriation, Ch. 572
  Road from State Secondary Highway 279 to Marysville, plan for reconstruction and paving, Ch. 304
  Supplemental, Ch. 551
TREASURE STATE ENDOWMENT PROGRAM AND PROJECTS
  Coal severance tax permanent fund interest income to fund, Ch. 10, Special Laws, May 2000(Appendix)
UNIVERSITY SYSTEM
  Capital projects, Ch. 486, Ch. 573
  General appropriation, Ch. 572
  State employee pay plan, Ch. 553
  Supplemental, Ch. 550

GENERAL INDEX

GENERAL INDEX

A

ACCOUNTANTS
  Partnerships or corporations, allowing persons not licensed or certified as accountants to have minority ownership interest in, Ch. 123

ADDICTION COUNSELORS
  Formerly chemical dependency counselors, Ch. 23

ADMINISTRATION, DEPARTMENT OF
  Appropriations, Ch. 572, Ch. 573
  Commerce, Department of — financial institutions, local government audit and assistance, lottery, consumer affairs, and board of county printing functions transferred, Ch. 483
  Director, appointment, SR 5
  Electronic Government Services Act, responsibilities, Ch. 265
  Employee welfare benefit plan consisting of individual health care expense trust accounts, establishment, Ch. 272
  Financial responsibilities, specific — transferred to department of revenue, Ch. 257
  Internal service fund type fees and charges for 2003 biennium, Ch. 572
  Military Selective Service Act — rules for compliance as prerequisite for state agency or university system employment, payment of state student financial aid, and enrollment in postsecondary educational institution of student receiving financial assistance, Ch. 320
  Motor vehicle purchase requisitions, manner of submission to be specified by, Ch. 181
  State employees, unfunded leave liability — department directed to conduct analysis and propose methods of funding, HJR 34
  Volume cap bonds, establishment of state's volume cap on private activity and governmental bonds, Ch. 32
  Workers' compensation state fund, alternative personal leave plans — consultations for establishment, Ch. 314

ADMINISTRATIVE PROCEDURE
  Broadcasting service, establishment and funding, Ch. 557
  Contested cases, nonmonetary settlements — procedure for recording, Ch. 305

ADMINISTRATIVE RULES
  Adoption date clarified, Ch. 210
  Employee travel time compensability, urging department of labor and industry to review state laws and administrative rules and to work with federal department of labor to clarify and simplify state and federal laws regarding, HJR 7
  Laws not yet effective, allowing rulemaking authority for, Ch. 185
  Personal care facilities, review of rules pertaining to, Ch. 331
  Safety Culture Act, safety recommendation to employers for noncompliance with rules implementing, Ch. 58
  Statements of reasonable necessity, providing committee review, Ch. 210

ADMINISTRATIVE RULES (Continued)
  Workers' compensation insurer, reimbursement of worker and exception for reasonable expenses in travel to medical provider for treatment of injury — rules for, Ch. 138

ADOPTION
  Foster care and adoption services, privatization — interim study requested, SJR 8
  Revision of provisions generally, Ch. 311

AERONAUTICS
  Air carriers, aviation fuel tax increase extended, Ch. 8, Special Laws, May 2000(Appendix)

AERONAUTICS, BOARD OF
  Appointments to, SR 22

AEROSPACE TRANSPORTATION AND TECHNOLOGY INFRASTRUCTURE DEVELOPMENT PROJECTS
  General obligation bond provisions, revision and clarification, Ch. 589; Ch. 6, Special Laws, May 2000(Appendix)

AGING AND AGED PERSONS
  Fishing, revision of certain provisions and allowing purchase of paddlefish tags when, Ch. 3
  Transportation services, funding, Ch. 337

AGRICULTURAL CHEMICAL GROUND WATER PROTECTION
  Pesticide registration fee, increase, Ch. 141

AGRICULTURAL COMMODITIES
  Bailment defined and clarification that bailment transactions are commodity dealer transactions, Ch. 168

AGRICULTURAL SEEDS
  Contract disputes, alternative dispute resolution program, Ch. 567

AGRICULTURE
  Biofuels, creating energy market demand for, Ch. 568
  Crop Research Facilities Protection Act, Ch. 441
  Elevators, escalators, dumbwaiters, moving walks, material lifts, wheelchair lifts, and stairway chairlifts — inspection requirements revised and exemption provided, Ch. 439
  Ethanol manufacturing facilities — property tax exemption for all manufacturing machinery, fixtures, equipment, and tools used during course of construction and for 10 years after initial production of ethanol from facility, Ch. 438
  Gasoline and special fuel tax refunds process, termination provision removed, Ch. 127
  Growth through agriculture program
    coal severance tax permanent fund interest income to fund, Ch. 10, Special Laws, May 2000(Appendix)
    revision generally, Ch. 171
  Hay grinders and their towing units, exemption from certain weight standards, Ch. 518
  Industrial hemp, production as agricultural crop authorized, Ch. 360
  Irrigated agriculture, inclusion in electric utility industry universal system benefits programs, Ch. 577

AGRICULTURE (Continued)
  Montana Agricultural Center and Museum of the Northern Great Plains, lease provisions revised, Ch. 97
  Production agriculture research and commercialization project grants, clarification that research and commercialization expendable trust fund may be used for, Ch. 431
  Risk management accounts, farm and ranch — creation, Ch. 262
  Special mobile equipment used to apply fertilizer to land and brought into state for demonstration purposes, permit requirement and removing property tax requirement when, Ch. 526
  Sugar industry — recognition of importance to economy, urging state agencies to utilize resources and programs to assist, and stating legislature's commitment to helping sugar beet producers maintain strong Montana presence, HJR 33
  Vehicles
    harvest season, operated on highway during — 40 mph speed limit eliminated and increasing distance vehicles may travel from harvested field, Ch. 369
    overweight farm vehicles traveling from harvested field, increasing distance that may be traveled without incurring penalties and eliminating requirement that vehicle may not exceed 40 mph, Ch. 254

AGRICULTURE, DEPARTMENT OF
  Appropriations, Ch. 551, Ch. 572
  Director, appointment, SR 6
  Exotic wildlife, certain departments requested to study importation and possession, HJR 16
  Montana Agricultural Heritage Commission, allocation transferred from, Ch. 189
  Noxious weed provisions, revision generally, Ch. 407

AIRPORTS AND LANDING FIELDS
  Aviation fuel tax, reinstatement of 1-cent tax — deposit to airport grant account for municipalities, Ch. 404
  Courtesy cars at certain airports, grants to municipality for, Ch. 452
  Pavement preservation projects, increase in funding through aviation gasoline license tax increase, Ch. 8, Special Laws, May 2000(Appendix)

AIR QUALITY
  Alternative energy revolving loan fund, noncompliance penalty fees to fund, Ch. 591
  Asbestos, assay method for measurement to assist in establishment of ambient air standard based on health risks from chronic exposure to — department of environmental quality requested to establish task force to develop, HJR 29
  Forest fuels management, need to balance with air quality concerns resulting from prescribed wildland open burning — interim study to address issues, HJR 21
  Local and state regulations, revision generally, Ch. 536
  Postconsumer glass used in recycled material, allowing credit against certain permitting fees and precluding increase of fee assessments beyond appropriation levels to offset cost of credit, Ch. 516

AIR QUALITY (Continued)
  Small business stationary source representative allowed to be located within departmental nonregulatory program and removal of requirement that department act on operating permit applications by a specific date, Ch. 491
  Temporary power generation units, providing for operation under permitting laws, Ch. 588

ALCOHOLIC BEVERAGES
  Agency liquor stores, revision of provisions generally, Ch. 508
  All-beverages liquor licenses transferred between quota areas — reduction in time period in which license may not be transferred, mortgaged, or pledged as security following, Ch. 85
  Beer and table wine sales by veterans' or fraternal organizations, special permit provisions revised, Ch. 89
  Beer brewers, revision of provisions generally, Ch. 405
  Breweries providing beer to public, clarification of provisions, Ch. 543
  Connoisseur's license provisions, Ch. 543
  Distribution provisions clarified, Ch. 543
  Driving under the influence, See specific entries in MOTOR VEHICLES AND TRAFFIC REGULATIONS
  Golf course beer and wine license, private golf course to qualify for, Ch. 458
  Illegal importation or distribution, offense established, Ch. 543
  Liquor license provisions revised, Ch. 448
  Out-of-state shippers shipping beverages directly to residents, clarifying, Ch. 543
  Taxes
    chemical dependency treatment programs, private for-profit — allowing taxes to be used for funding and for medicaid matching funds for alcoholism and chemical dependency programs, Ch. 470
    retention at state level, Ch. 574
  Teen use of alcohol and drugs both in general and while teenager is driving or riding in motor vehicle, encouraging department of public health and human services to work with other agencies in examining the problem, HJR 31
  United States, liquor licensed owned by — procedure for transfer, Ch. 90
  Wineries, Montana — licensure provisions, Ch. 163

ALTERNATIVE DISPUTE RESOLUTION
  Agricultural seed contract disputes, Ch. 567
  Child abuse and neglect cases, allowing, Ch. 281

ALTERNATIVE HEALTH CARE BOARD
  Appointments to, SR 19
  Term limit for members, elimination, Ch. 492

AMBULANCE SERVICES
  Local government, exception to insurance code, Ch. 13

ANTIQUITIES
  Burial Preservation Board, revision of provisions, Ch. 558
  Historic property preservation, income tax credit allowed for, Ch. 538
  Human skeletal remains or funerary objects taken from burial sites, mechanism for return. Ch. 558

ANTIQUITIES (Continued)
  Montana Heritage Preservation and Development Commission, management responsibilities clarified, Ch. 308

APPELLATE DEFENDER COMMISSION
  Appropriation, Ch. 572

APPROPRIATIONS, See INDEX TO APPROPRIATIONS, printed separately in this volume

ARCHITECTS, BOARD OF
  Appointments to, SR 19, SR 24

ARCHITECTURE AND ARCHITECTS
  Revision of provisions generally and providing for license verification, Ch. 492

ARREST
  Pretrial services agency, authorization to arrest person for failure to comply with condition of release, Ch. 332

ARTS AND CULTURE
  Cultural and aesthetic grant awards and appropriations, Ch. 434
  Cultural and aesthetic projects trust fund, income distribution — clarification, Ch. 61

ASBESTOS
  Assay method for measurement to assist in establishment of ambient air standard based on health risks from chronic exposure to asbestos, department of environmental quality requested to establish task force to develop, HJR 29
  Commerce, Department of — duties related to regulation in building construction and demolition eliminated, Ch. 128

ASBESTOS CLAIMS COURT
  Creation, Ch. 473

ASSAULT AND BATTERY, See PARTNER OR FAMILY MEMBER ASSAULT; See also DOMESTIC VIOLENCE

ASSUMED BUSINESS NAME REGISTRATION
  Business name identifiers, definition and prohibiting use, Ch. 27

ATHLETICS, BOARD OF
  Appointments to, SR 19, SR 23

ATTORNEY GENERAL
  Fish, wildlife, and parks enforcement program — creation, Ch. 246
  Offenders, expenses for transportation and extradition — transfer of responsibilities relating to auditing and payment, Ch. 371
  State agency as party to proceeding for which judicial review sought, notice requirements expanded, Ch. 535

B

BALLOT ISSUES, See also ELECTIONS
  Constitutional amendments, See CONSTITUTION OF MONTANA, AMENDMENT
  Game farms - prohibitions on new farms, transfer of existing licenses, and fee shooting of animals, Initiative No.143(Appendix)

BALLOT ISSUES (Continued)
- Inheritance taxes, repeal, Ch. 9, Special Laws, May 2000(Appendix); Legislative Referendum No.116(Appendix)
- Initiatives
  - constitutional, signatures to be gathered in one-half the counties rather than two-fifths of legislative districts — constitutional amendment requiring, Ch. 329
  - statutory, constitutional amendment requiring signatures to be gathered in one-half the counties rather than one-third of legislative districts, Ch. 330
- Light vehicles, registration fee to replace current system of taxation, Legislative Referendum No.115(Appendix)
- Local government ordinance, petition requesting referendum on — extending time period for filing, Ch. 374
- Petition sheets, provisions revised, Ch. 537
- Reporting requirements clarified, Ch. 401
- State compensation insurance fund assets, constitutional amendment to allow investment, Constitutional Amendment No.34(Appendix)
- Tobacco settlement trust fund, constitutional amendment to establish, Ch. 5, Special Laws, May 2000(Appendix); Constitutional Amendment No.35(Appendix)

BANKING BOARD, STATE
- Appointments to, SR 19, SR 24

BANKS AND TRUST COMPANIES
- Branch banks, distance limitations on placement eliminated, Ch. 36
- Capital stock, redemption allowed with approval, Ch. 36
- Commerce, Department of — allowing director to be interested in or to borrow money from any state bank, Ch. 483
- Federal home loan banks, expanding uses for which funds may be borrowed from and allowing acquisition by bank of account shares of stock, Ch. 36
- Financial holding companies added to definition of bank holding company, Ch. 36

BARBERING AND BARBERS
- "Singeing" eliminated from definition of practice of barbering, Ch. 492

BARBERS, BOARD OF
- Appointments to, SR 19

BICYCLES
- Driver's license for operators of certain kind of bicycle, requirement eliminated, Ch. 415
- Traffic safety issues, interim study requested, HJR 37

BIRTH
- Abandoned newborns, safe haven for, Ch. 277
- Telecommunications access program for persons with disabilities to include infant screening equipment, Ch. 297
- Universal newborn hearing screening program, Ch. 250

BLINDNESS OR LOW VISION, PERSONS WITH
- Information technology, providing for access to, Ch. 429

BOATING ADVISORY COUNCIL
- Revision of provisions generally, Ch. 95

BOATS AND BOATING
  Canoe or kayak propelled by wind is not a sailboat subject to a fee, clarification, Ch. 55
  Fee in lieu of tax, allocation and disposition — certain provisions revised, Ch. 95

BOILERS AND STEAM ENGINES
  Inspection requirements revised, Ch. 499
  Traction engine license requirements, revision, Ch. 65

BONDS AND BOND ISSUES
  Aerospace transportation and technology infrastructure development projects, general obligation bond provisions — revision and clarification, Ch. 589; Ch. 6, Special Laws, May 2000(Appendix)
  Bond Validating Act, application extended, Ch. 8
  Coal severance tax bonds, issuance for renewable resource projects, Ch. 266
  County general obligation bonds, limited — authorization to finance road construction and maintenance, Ch. 479
  Electric generation facilities and transmission lines, allowing financing under economic development bond laws, Ch. 541
  Energy production by use of alternative renewable energy sources, revision of bonding incentive laws to encourage, Ch. 591
  Family services provider facilities, bond proceeds to fund as industrial development project, Ch. 353
  Hard-rock mining reclamation general obligation bonds, issuance and sale allowed, Ch. 460
  Long-range building program bonds, issuance for capital projects, Ch. 486
  Montana Power Authority, revenue bonds — purpose and issuance, Ch. 577
  Municipal finance consolidation bonds and notes, debt limits for board of investments increased, Ch. 394
  Self-insurance for political subdivision, issued for — substituting assessed value for taxable value, Ch. 29
  Special improvement district and rural special improvement district bonds authorized to bear interest at variable rate, providing adjustments in interest rates on special assessments securing bonds, and providing for sale of variable rate bonds, Ch. 162
  State building energy conservation program bonds, authorization and appropriation of proceeds, Ch. 240
  Volume cap bonds, allocation of private activity and governmental bonds — provisions for, Ch. 32
  Workers' compensation state fund, bonds and notes for self-insurance fund — substituting assessed value for taxable value, Ch. 29

BUDGET AND BUDGETING, See also APPROPRIATIONS
  Operating budgets and fund transfers — conformance to conditions contained in general appropriations act, legislature's restriction on use of funds appropriated for personal services, and changes to be approved in writing, Ch. 255
  Revision of provisions generally, Ch. 569

BUDGET AND PROGRAM PLANNING, OFFICE OF
  Appropriation, Ch. 553
  Revenue estimates for fiscal years 2001, 2002, and 2003, HJR 2

BUILDINGS AND BUILDING REGULATIONS, See also CAPITOL AND OTHER STATE BUILDINGS
  Asbestos regulation in construction and demolition, duties of department of commerce eliminated, Ch. 128
  Building code functions transferred from Department of Commerce, Ch. 483
  County building code, jurisdictional area may be less than entire county and providing appeal procedure, Ch. 546
  Elevators, escalators, dumbwaiters, moving walks, material lifts, wheelchair lifts, and stairway chairlifts — inspection requirements revised and exemption provided, Ch. 439
  Local governments, adoption of state-approved codes by ordinance authorizing adoption by administrative action, Ch. 150
  Montana Heritage Preservation and Development Commission, management responsibilities clarified, Ch. 308
  Municipal building code, limiting jurisdictional area to area within city limits, Ch. 546
  Smoke-free, state policy, Ch. 271
  State building code, term clarified, Ch. 47
  State electrical code, revision of provisions generally, Ch. 47

BUSINESS ENTERPRISES
  Loans to, private financial institutions participating with board of investments to provide, Ch. 4, Special Laws, May 2000(Appendix)

BUTTERFLY, STATE — OFFICIAL
  Designation, Ch. 155

C

CANADA
  Nurses, provisional practice permits, Ch. 408
  Pesticides, NAFTA Technical Working Group on — epa and congress urged to increase resources and support efforts to harmonize regulations between canada and united states, HJR 13

CANALS, DITCHES, AND FLUMES
  Subdivisions, local regulations — ditch easement provisions, Ch. 564

CANCER
  Breast and cervical cancer health program, medicaid eligibility for individuals who have participated in, Ch. 440

CAPITOL AND OTHER STATE BUILDINGS, See also BUILDINGS AND BUILDING REGULATIONS
  Permanent placement of certain busts, statues, memorials, monuments, and art displays — authorization for, SJR 12
  Smoke-free, state policy, Ch. 271
  State building energy conservation program, bond issue to fund and approval of projects, Ch. 240

CAPTIVE INSURANCE COMPANIES
  Provisions for, Ch. 298

CHAPTER NUMBER TO BILL NUMBER TABLE, See TABLE OF CHAPTER NUMBER TO BILL NUMBER, printed separately in this volume

CHEMICAL DEPENDENCY
- Counselors, changing certification to licensure of addiction counselors, Ch. 23
- Driving under the influence of alcohol or drugs and driving with excessive alcohol concentration, penalty for fourth or subsequent offense to allow that a person complete a residential alcohol dependency treatment program, Ch. 417
- Driving under the influence of alcohol or drugs, suspension of sentence pending treatment — time period extended and sentencing judge to retain jurisdiction when, Ch. 563
- Medical malpractice claims against licensed facilities subject to Medical Legal Panel Act, Ch. 370
- Partner or family member assault offenders, requiring completion of treatment, Ch. 503
- Treatment programs, private for-profit — allowing alcoholic beverage taxes to be used for funding, Ch. 470

CHILD ABUSE AND NEGLECT
- Abandonment as basis for proceedings and determination that child is youth in need of care, Ch. 194
- Jurisdiction of youth court and district court, inconsistencies between — correction, Ch. 114
- Revision of provisions generally, Ch. 281, Ch. 311
- Service of process provisions revised, Ch. 83

CHILD CUSTODY
- Abandoned newborns, action by biological parent within 60 days of surrender, Ch. 277
- Foreign orders of protection, enforcement provisions, Ch. 223

CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP), See also PUBLIC ASSISTANCE
- Eligibility criteria revised, limitation of services, and allowing direct payment to health care providers and contract on fee-for-service basis, Ch. 476

CHILD SUPPORT ENFORCEMENT
- Medical support notice, revision to comply with federal law for issuance, Ch. 211
- Orders for support, modification by department — procedures revised, Ch. 542
- Revision of provisions to improve efficiency and effectiveness, Ch. 352

CHIROPRACTORS, BOARD OF
- Appointments to, SR 19, SR 22

CIGARETTES OR TOBACCO PRODUCTS
- Manufacture or sale of cigarettes in package containing fewer than 20 cigarettes or rolling tobacco in package having net weight less than 0.6 oz. of tobacco, prohibiting, Ch. 56
- Unlawful for person under age 18 to purchase tobacco products, creating penalties, and exempting from liability minors assisting in enforcement of youth access to tobacco products control act, Ch. 498

CITIES AND TOWNS, See also LOCAL GOVERNMENT
- Airports, courtesy cars for — grants to municipality, Ch. 452

CITIES AND TOWNS (Continued)
  Annexation
    districts, creation authorized, Ch. 324
    interim study requested to develop guiding policy on and to generate recommendations based on findings, HJR 24
  Aviation fuel tax, reinstatement of 1-cent tax — deposit to airport grant account for municipalities, Ch. 404
  Building code, limiting jurisdictional area to area within city limits, Ch. 546
  Curfew ordinance for minors, county governing body may create — exclusion of areas within boundaries of city or town, Ch. 131
  District weed boards, completion of cooperative agreements required, Ch. 407

CITY-COUNTY CONSOLIDATED GOVERNMENTS
  Mill levy election, procedure provided, Ch. 495

CITY COURTS
  Clerk of the court, role clarified, Ch. 6

CITY FINANCE
  Family services provider facilities, bond proceeds to fund as industrial development project, Ch. 353
  Gasoline and vehicle fuel tax allocated to, redistribution, Ch. 158
  Mill levy
    allowing imposition of less than maximum mills authorized and to carry forward authority to impose maximum number of mills in subsequent tax year, Ch. 361
    election, procedure provided, Ch. 495

CIVIL PROCEDURE
  Revision of provisions generally, Ch. 515
  Settlement offers, provision for in certain cases, Ch. 529

CLERK OF THE DISTRICT COURT
  District court funding, state assumption — exclusion from provisions, Ch. 585
  Fees collected by, deposit in state general fund required, Ch. 585
  Naturalization records and fees, abolishing obsolete provisions requiring, Ch. 39

CLINICAL LABORATORY SCIENCE PRACTITIONERS, BOARD OF
  Appointments to, SR 19

COAL BED METHANE PRODUCTION OFFSET ACT, Ch. 578

COAL BED METHANE PROTECTION ACT, Ch. 531

COAL-BED NATURAL GAS RESOURCES
  Environmental Quality Council requested to provide oversight for preparation of environmental impact statement regarding proposed development, HJR 27

COAL BOARD
  Appointments to, SR 24

COAL TRUST FUNDS
  Bond fund, reduction of amount deposited in treasure state endowment fund, Ch. 380
  Cultural and aesthetic projects trust fund, income distribution — clarification. Ch. 61

COAL TRUST FUNDS (Continued)
  Economic development programs, funding, Ch. 10, Special Laws, May 2000(Appendix)
  In-state investment, loans for — examination requirements revised, maximum increased, restrictions on sizes for purposes of job credit interest rate reductions eliminated, and commercial lender participation required when, Ch. 487
  Parks acquisition and management trust fund, income distribution — clarification, Ch. 61
  Permanent fund
    income distribution, clarification, Ch. 61
    mineral production rights, loans to fund purchase by department of natural resources and conservation, Ch. 418
    natural resource damage assessment and litigation program in clark fork river basin, appropriation to, Ch. 247
  Treasure state endowment fund
    bond fund, reduction in amount deposited in endowment fund, Ch. 380
    income distribution — clarification, Ch. 61
  Treasure state endowment regional water system fund
    income distribution, clarification, Ch. 61
    retention, Ch. 70

CODE COMMISSIONER BILL, Ch. 7

CODE SECTIONS AFFECTED, See TABLE OF CODE SECTIONS AFFECTED, printed separately in this volume

COMMERCE, DEPARTMENT OF
  Aerospace transportation and technology infrastructure development projects, general obligation bond proceeds appropriated to, Ch. 6, Special Laws, May 2000(Appendix)
  Appropriations, Ch. 435, Ch. 572
  Asbestos regulation in building construction and demolition, duties eliminated, Ch. 128
  Banks, redemption of bank's own capital stock — approval, Ch. 36
  Building codes and regulations, responsibilities, See generally BUILDINGS AND BUILDING REGULATIONS
  Director, appointment, SR 13
  Financial Assistance Center, establishment, Ch. 307
  Functions, reassignment of certain functions to other entities, Ch. 483
  Internal service fund type fees and charges for 2003 biennium, Ch. 572
  Montana Title Loan Act, administration, Ch. 455
  Psychologists, Board of — allocation to department for administrative purposes, Ch. 492
  State building code, term clarified, Ch. 47
  State electrical code, revision of provisions generally, Ch. 47
  Subdivisions, cluster development — development of examples of regulations that promote and providing technical assistance, Ch. 348
  Sugar industry — recognition of importance to economy, urging state agencies to utilize resources and programs to assist, and stating legislature's commitment to helping sugar beet producers maintain strong Montana presence, HJR 33

COMMUNICATIONS EQUIPMENT
  State electrical code, exceptions, Ch. 47

COMMUNITY COLLEGES
  Interim study of laws governing, request for, HJR 15
  Natural resource workers — tuition scholarships for education or retraining in training, certificate, or degree programs, Ch. 586
  School districts, authorizing interlocal agreements to allow 11th and 12th grade students to obtain credits through attending classes available only at, Ch. 377
  Tribally controlled, definition of vocational-technical education revised to include, Ch. 133

COMPUTERS, See generally INFORMATION TECHNOLOGY

CONDEMNATION, See EMINENT DOMAIN

CONDOMINIUMS
  Subdivision exemptions, revision, Ch. 534

CONSERVATION DISTRICTS
  Coal bed methane protection program, administration, Ch. 531
  Lower Yellowstone Conservation District Development Committee, urging federal government to support efforts to obtain promised benefits of pick-sloan missouri river plan and to assist district in drafting and passing federal legislation outlining benefits needed to sustain existing irrigation and develop new irrigation in Montana's yellowstone and missouri river basins, SJR 16

CONSTITUTION OF MONTANA, AMENDMENT
  Initiatives
    constitutional, requiring signatures to be gathered in one-half the counties rather than two-fifths of legislative districts, Ch. 329
    statutory, requiring signatures to be gathered in one-half the counties rather than one-third of legislative districts, Ch. 330
  Local government group self-insurance program assets, providing for investment, Ch. 355
  Public funds, requiring all funds be invested in accordance with prudent expert principles by removing restriction on investment in private corporate capital stock, Ch. 375, Ch. 418
  State compensation insurance fund assets, to allow investment, Constitutional Amendment No.34(Appendix)
  Tobacco settlement trust fund, to establish, Ch. 5, Special Laws, May 2000(Appendix); Constitutional Amendment No.35(Appendix)

CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS, CONTRACTS
  Retainage, limiting amount of retainage that may be withheld and exception for residential project when, Ch. 364

CONSTRUCTION EQUIPMENT DEALERSHIP AGREEMENTS
  Regulation of termination, cancellation, nonrenewal, substantial alteration, or transfer, Ch. 180

CONSUMER AFFAIRS
  Functions of Department of Commerce transferred, Ch. 483

CONSUMER COUNSEL
  Appropriations, Ch. 553, Ch. 572

CONSUMER PROTECTION
- Electricity support program, creation, Ch. 577
- Montana Title Loan Act, Ch. 455
- Rental-purchase agreements, provisions for, Ch. 263

CONTEMPT
- Court procedure clarified, meaning of civil and criminal contempt clarified, and providing for due process in contempt proceedings, Ch. 496
- Family law proceedings, appeal of contempt judgment or order allowed when, Ch. 136

COOPERATIVE ASSOCIATIONS
- Revision of provisions generally, Ch. 109

CORPORATIONS, See also TAXATION, CORPORATIONS
- Business name identifiers, definition and prohibiting use, Ch. 27

CORRECTIONAL FACILITIES
- Forensic unit at Warm Springs as state correctional facility, requirement removed and clarifying purpose for use, Ch. 165
- Illegal article transferred to prisoner in state prison, penalty increased, Ch. 144
- Interstate Compact for Adult Offender Supervision, Ch. 18
- State prison ranch, annual payment to powell county — termination date removed, Ch. 372
- Transportation and extradition of offenders, transfer of responsibilities related to auditing and payment of expenses, Ch. 371
- Xanthopoulos Building in Warm Springs, dictating disposition and preventing transfer to anaconda-deer lodge for use as regional correctional facility, SJR 17
- Youth correctional facility, admission to — medical examination may be performed by physician assistant-certified or advanced practice registered nurse, Ch. 24

CORRECTIONS
- Mental illness and the criminal justice and corrections systems, requesting departmental coordination and collaboration with state and local governments and judiciary regarding training and education programs on issues surrounding persons with illness, SJR 2
- Restorative justice principles, provision for, Ch. 581

CORRECTIONS, DEPARTMENT OF
- Appropriations, Ch. 402, Ch. 414, Ch. 486, Ch. 550, Ch. 572, Ch. 573
- Correctional facilities, responsibilities, See generally CORRECTIONAL FACILITIES
- Director, appointment, SR 11
- Internal service fund type fees and charges for 2003 biennium, Ch. 572
- Intervention in delinquency pilot program made permanent and creation of accounts for judicial districts, Ch. 587
- Mental illness and the criminal justice and corrections systems, requesting departmental coordination and collaboration with state and local governments and judiciary regarding training and education programs on issues surrounding persons with illness, SJR 2
- Probationers, supervision of only those who are felony offenders — clarification. Ch. 493

CORRECTIONS, DEPARTMENT OF (Continued)
  Warm Springs, Forensic Unit
    residential alcohol treatment program, allowing operation at, Ch. 417
    state correctional facility, as — requirement removed and clarifying purpose for use, Ch. 165
  Youth
    admission to correctional facility, medical examination may be performed by physician assistant-certified or advanced practice registered nurse, Ch. 24
    commitment, designation of place within state to receive custody — clarification, Ch. 221

COSMETOLOGISTS, BOARD OF
  Appointments to, SR 19

COUNSELING AND COUNSELORS
  Chemical dependency counselors, changing certification to licensure of addiction counselors, Ch. 23
  Partner or family member assault offenders, provisions for intervention counseling and sentence to require completion of counseling recommendations, Ch. 503

COUNTIES, See also LOCAL GOVERNMENT
  Building code, jurisdictional area may be less than entire county and providing appeal procedure, Ch. 546
  County hospital, rest home, and hospital district employees
    exemption from mandated leave provisions and participation in specified group insurance contracts or plans and requiring compensation or benefits increase to offset any reduction in leave benefits, Ch. 559
    public employees' retirement system, participation optional, Ch. 285
  County officers' salaries, providing authority to establish, Ch. 507
  Curfew ordinance for minors, governing body may create and providing absolute liability for violation, Ch. 131
  Federal mineral royalty income, allocation provisions, Ch. 594
  Planning and zoning districts, authorization to enforce regulations and requirements adopted for, Ch. 288
  State electrical code, exception for electrical signal and communications equipment owned by, Ch. 47
  State prison ranch, annual payment to powell county — termination date removed, Ch. 372

COUNTY ATTORNEY
  District court funding, state assumption — exclusion from provisions, Ch. 585
  Ethics, complaint involving — procedure provided, Ch. 122
  Notary public violations, prosecution required, Ch. 161
  Salary provisions revised, Ch. 507
  Water use laws, independent action for enforcement — authorization to bring, Ch. 457

COUNTY CLERK AND RECORDER
  Information provided from and searches of records, revisions pertaining to, Ch. 156
  Instruments to be recorded, allowing incorporation of information by reference from other recorded instruments. Ch. 412

COUNTY CLERK AND RECORDER (Continued)
  Water right application, notices of completion, and well log forms — availability requirement eliminated, Ch. 78

COUNTY COMMISSIONERS, BOARD OF
  County Compensation Board, establishment and purpose, Ch. 507
  County roads, obstructions — clarification of what constitutes and what commissioners are required to remove, Ch. 245
  Inmate labor through county jail work program for management of noxious weeds and other maintenance projects, authorization for use, Ch. 203
  Migratory personal property, refunds of certain taxes — applications to be filed with, Ch. 59
  Residency requirements for election, revision, Ch. 183
  Rural special improvement districts, sale of variable rate bonds — commissioners to obtain marketability option, Ch. 162
  Weed control tax within special management zones, authority to impose, Ch. 407

COUNTY COMPENSATION BOARD
  Establishment, Ch. 507

COUNTY CORONER
  Health care information, confidential — disclosure without patient's authorization for purpose of determining cause of death, Ch. 101

COUNTY FINANCE
  District court expenses, levy for — delineating uses, Ch. 585
  Family services provider facilities, bond proceeds to fund as industrial development project, Ch. 353
  Forest reserve funds, providing payment options contained in federal law for receipt of, Ch. 334
  Gasoline and vehicle fuel tax allocated to, redistribution, Ch. 158
  General obligation bonds, limited — authorization to finance road construction and maintenance, Ch. 479
  Mill levy
    allowing imposition of less than maximum mills authorized and to carry forward authority to impose maximum number of mills in subsequent tax year, Ch. 361
    election, procedure provided, Ch. 495
  Motor vehicles, local option flat fee — imposition allowed with voter approval, Legislative Referendum No.115(Appendix)
  Public assistance, See generally PUBLIC ASSISTANCE
  Public library districts, tax levy to fund, Ch. 92

COUNTY OFFICERS
  Salaries, counties provided with authority to establish and including justice of the peace as county officer, Ch. 507

COUNTY PRINTING, BOARD OF
  Functions of Department of Commerce transferred, Ch. 483

COUNTY ROADS AND BRIDGES
  County general obligation bonds, limited — authorization to finance road construction and maintenance, Ch. 479
  Obstruction, clarification of what constitutes and what county commissioners are required to remove, Ch. 245

COUNTY SHERIFF
  District court facilities, providing at county expense — provision eliminated, Ch. 585
  Inmate labor through county jail work program for management of noxious weeds and other maintenance projects, agreements for use, Ch. 203
COUNTY SUPERINTENDENT OF SCHOOLS
  County equalization money, apportionment — clarification of duty, Ch. 237
COUNTY TREASURER
  Property tax, names of owners of multiple, undivided interests in parcel of land furnished to, Ch. 444
  State money, remittance to and submission of collections reports to department of revenue, Ch. 257
COUNTY WELFARE
  Local Offices of Public Assistance to replace county welfare offices, Ch. 571
COURT REPORTERS
  State employees or independent contractors, reporters may be and repealing statutory salary amounts for, Ch. 585
COURTS GENERALLY
  Fines, fees, forfeitures, and other state money — remittance to department of revenue, Ch. 257
CREDIT TRANSACTIONS
  Commercial loans, action may not be brought against regulated lender based on promise or commitment when, Ch. 140
  Individual income taxes including penalties, interest, and fees — payment by credit card or other commercial means, Ch. 50
CREDIT UNIONS
  Revision of provisions generally, Ch. 25
CRIME CONTROL, BOARD OF
  Juvenile detention training, study required, Ch. 160
  Restorative justice programs, appropriation for grants to communities, Ch. 581
CRIME CONTROL, DIVISION OF
  Appropriations, Ch. 551, Ch. 572
  Crime victims compensation provisions, administration transferred to office of victims services, Ch. 124
CRIMES
  Dangerous drugs
    criminal possession of and criminal possession with intent to distribute, transferable from youth court to district court and clarifying application of attempt or accountability to transferable crimes, Ch. 243
    industrial hemp production as exemption to criminal possession and criminal production or manufacture, Ch. 360
    unlawful clandestine laboratory for criminal production or manufacture, creating offense of operation of, Ch. 260
  Definitions of "correctional institution" and "inmate" revised, Ch. 312
  DNA evidence, expanding collection to certain adult felony offenses, Ch. 565
  Electronic mail, unlawful interception as violation of privacy in communications, Ch. 77

CRIMES (Continued)
  Embezzlement, theft by — creation of offense, Ch. 427
  Force, legal use of — civil damages immunity for injury caused by, Ch. 445
  Homicide victims, protective orders for a partner or family member of, Ch. 503
  Identity, theft of — offense created, Ch. 378
  Incarceration penalty enhancement — requirements for pleading, proof, and mental state, Ch. 524
  Interim study of criminal offenses, offense sentencing and release, and related issues — request for, HJR 39
  Intoxicating substance
    minor in possession, revision of provisions, Ch. 64
    unlawful attempt to purchase by person under 21 years of age, penalties increased, Ch. 498
  Motor vehicle and driver records, misrepresentation to obtain personal information from — inclusion in offense of tampering with public records or information, Ch. 363
  Negligent vehicular assault, maximum term of incarceration increased and suspension of term when, Ch. 17
  Political criminal libel law, elimination, Ch. 401
  Prisoners in state prison, transfer of illegal article to — penalty increased, Ch. 144
  Prostitution, criminal penalties revised, Ch. 312
  Railroad property — establishing offenses of stowing away on, intentional vandalism to, theft of freight, and receiving stolen freight, Ch. 432
  Sexual intercourse without consent — including deception, coercion, and surprise in definition of "without consent" in context of, Ch. 562
  Sexual offenses
    crime of violence to include certain felony sexual offenses for sentencing purposes, Ch. 509
    increasing time during which person may be charged for certain sexual offense, Ch. 530
  Sexual or violent offenders
    registration requirements, clarification of applicability, Ch. 152
    release, statewide community education curriculum and publication of registration on internet, Ch. 222
    residency restrictions, imposition as condition of sentence, Ch. 390
  Tobacco products, unlawful for person under 18 years of age to attempt to purchase and creating penalties, Ch. 498
  Weapon, dangerous — additional sentence for offenses committed with, clarification, Ch. 16

CRIME VICTIMS AND WITNESSES
  Administration provisions transferred to Office of Victims Services, Ch. 124
  Court charge on convicted criminal to pay for victim advocate programs, increase, Ch. 449
  Criminal proceedings, right of victims and family members to attend — establishment, Ch. 104
  Domestic violence victims, unemployment insurance benefits for, Ch. 520
  Funding for compensation and assistance dependent upon general fund appropriations, clarification, Ch. 118
  Juvenile felony offenses, victims of — notification of offender's release prior to release. Ch. 102

CRIME VICTIMS AND WITNESSES (Continued)
  Partner or family member assault victims, notification provision to include, Ch. 449
  Restitution, offenders owing — sentencing court to specify total amount to be paid and collection methods, Ch. 284

CRIMINAL PROCEDURE
  Collections, clarification of provisions relating to, Ch. 515
  Court charge on convicted criminal, increase for victim advocate programs and clarifying distribution, Ch. 449
  Criminal charge by complaint, signing provisions revised, Ch. 389
  DNA evidence, expanding collection to certain adult felony offenses, Ch. 565
  Mental disease or defect of defendant, advanced practice registered nurse allowed to report and testify regarding fitness to proceed or mental condition when, Ch. 303
  Pretrial services agency, authorization to arrest person for failure to comply with condition of release, Ch. 332

CROP RESEARCH FACILITIES PROTECTION ACT, Ch. 441

D

DAY CARE
  Licensure of certain facilities providing day care on a regular or irregular basis to 13 or more children and exclusion, Ch. 505
  Tax credits for amounts paid or incurred by employer to acquire facilities or to provide information and referral services to assist employees in obtaining dependent care, Ch. 540

DEAF AND BLIND, MONTANA SCHOOL FOR THE
  Appropriations, Ch. 550, Ch. 572

DEATH CERTIFICATES
  Advanced practice registered nurses, allowing medical certification of cause of death on certificate, Ch. 258

DEFERRED COMPENSATION
  Catchup provisions and normal retirement age, clarification, Ch. 99

DEFERRED DEPOSIT LENDERS
  Collection agencies, nonapplicability of provisions, Ch. 81
  Preauthorized loan payments and fees electronically deducted from consumer's account, regulation and license provisions clarified, Ch. 81

DENTAL HYGIENISTS
  Montana State University-Great Falls College of Technology, appropriation for establishment of dental hygiene education program, Ch. 510

DENTISTRY AND DENTISTS
  Dental auxiliary personnel, supervision requirements clarified, Ch. 492
  Discount cards to state that discount is not insurance, Ch. 227

DENTISTRY, BOARD OF
  Appointments to, SR 19, SR 23

DETENTION CENTERS
  Inmate labor through county jail work program for management of noxious weeds and other maintenance projects, authorization for use, Ch. 203

DETENTION CENTERS (Continued)
  Juvenile detention officers, exemption from basic detention officer training extended and requiring basic training or training under the exemption, Ch. 160
  Youth detention facilities, education of students in — payment from school district's tuition fund required for, Ch. 237

DEVELOPMENTAL DISABILITIES PLANNING AND ADVISORY COUNCIL
  Composition revised, Ch. 154

DIABETES
  Insurance coverage required for outpatient self-management training and education for treatment, limited benefit for certain equipment and supplies, and exclusion from certain plans when, Ch. 450

DISABILITIES, PERSONS WITH
  Hunting by, regulations revised, Ch. 248
  Telecommunications access, provisions revised, Ch. 297
  Transportation services, funding, Ch. 337
  Universal newborn hearing screening program, Ch. 250

DISASTERS, See EMERGENCIES OR DISASTERS

DISCRIMINATION
  Marital status, employer employing or offering to employ spouse is not discrimination, Ch. 287

DISEASES
  Breast and cervical cancer health program, medicaid eligibility for individuals who have participated in, Ch. 440
  Chronic disease registry, development — requiring feasibility report by department of public health and human services, Ch. 166
  Diabetes, outpatient self-management training and education for treatment and limited benefit for certain equipment and supplies — insurance coverage required and exclusion from certain plans when, Ch. 450
  Hepatitis B, screening of pregnant women for, Ch. 351
  Tuberculosis control statutes, revision generally, Ch. 190

DISTRICT COURT COUNCIL
  Provision for, Ch. 585

DISTRICT COURTS
  Burial Preservation Board decisions, appeal provisions, Ch. 558
  Court facilities, county sheriff to provide at county expense — provision eliminated, Ch. 585
  Environmental Policy Act
    legal challenges to actions under, time for bringing after final agency action, Ch. 299
    new issues relating to adequacy or content of environmental review document in actions challenging decisions under, remanded by court to agency for consideration when, Ch. 186
  Funding, state assumption — provision for, Ch. 585
  Judges
    additional judges for 8th and 21st judicial districts, election for, Ch. 497
    11th and 22nd judicial districts, appointment, SR 2, Special Laws, May 2000(Appendix); SR 3, Special Laws, May 2000(Appendix)

DISTRICT COURTS (Continued)
  Judges (Continued)
    13th judicial district, appointment of gregory r. todd as district judge, SR 21
  Local government entitlements, deduction of court costs, Ch. 574
  Nonelected employees to be state employees, Ch. 585
  Probation conditions, addition to or modification — clarification, Ch. 493
  Workers' compensation, restoring court jurisdiction in cases involving failure of employer to produce books and records, Ch. 214
  Youth court, crimes of criminal possession of dangerous drugs and criminal possession with intent to distribute transferable to district court and clarifying application of attempt or accountability to transferable crimes, Ch. 243

DOGS
  Destruction of dog when chasing, stalking, or pursuing hooved game animals — authority clarified, Ch. 275

DOMESTIC VIOLENCE
  Revision of provisions generally, Ch. 503
  Unemployment insurance benefits for victims, Ch. 520
  Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, Ch. 223

DRUGS AND CONTROLLED SUBSTANCES AND DEVICES
  Dangerous drugs
    criminal possession of and criminal possession with intent to distribute, transferable from youth court to district court and clarifying application of attempt or accountability to transferable crimes, Ch. 243
    criminal possession, person convicted of first violation presumed to be entitled to deferred imposition of sentence, Ch. 100
    industrial hemp production as exemption to criminal possession and criminal production or manufacture, Ch. 360
    unlawful clandestine laboratory for criminal production or manufacture, creating offense of operation of, Ch. 260
  Driving under the influence, See MOTOR VEHICLES AND TRAFFIC REGULATIONS
  Drug paraphernalia, person convicted of first violation of possession presumed to be entitled to deferred imposition of sentence, Ch. 100
  Prescription drugs donated by long-term care facilities to provisional community pharmacies offering drugs to certain low-income persons, program for, Ch. 362
  Teen use of alcohol and drugs both in general and while teenager is driving or riding in motor vehicle, encouraging department of public health and human services to work with other agencies in examining the problem, HJR 31

DUE PROCESS
  Contempt proceedings, providing for, Ch. 496

E

ECONOMIC DEVELOPMENT
  Agricultural-based biofuels, creating energy market demand for, Ch. 568
  Coal severance tax permanent fund interest income to fund programs, Ch. 10, Special Laws, May 2000(Appendix)
  Commerce, Department of — functions transferred to governor's office, Ch. 483
  Electric generation facilities and transmission lines, allowing financing under economic development bond laws, Ch. 541
  Financial Assistance Center, establishment, Ch. 307
  Milk River basin economic development plan, development, Ch. 256
  State-Tribal Economic Development Commission, duration extended and membership revised, Ch. 69
  Transportation plan update, encouraging department of transportation to work with other entities to incorporate economic development criteria into plan, HJR 30

ECONOMIC DEVELOPMENT FINANCIAL ASSISTANCE ACT, Ch. 307

ECONOMIC DEVELOPMENT, GOVERNOR'S OFFICE OF
  Creation, Ch. 483

EDUCATION, COMPACT FOR, Ch. 273

EDUCATION, STATE BOARD OF
  Appropriation, Ch. 573

EFFECTIVE DATES, SPECIAL, See TABLES OF EFFECTIVE DATES, printed separately in this volume

ELECTION ADMINISTRATOR
  Residential location information, elector to furnish and prohibiting registration for failure to furnish, Ch. 63

ELECTIONS, See also BALLOT ISSUES; SCHOOL ELECTIONS
  Ballots, clarifying how instructions on preparing are provided to voters and requiring elector get new ballot if initial ballot is spoiled, Ch. 134
  Campaign finance, revision of provisions generally, Ch. 401
  District courts, additional judges for 8th and 21st judicial districts — election for, Ch. 497
  Judges, exclusion from unemployment insurance coverage, Ch. 44
  Presidential general elections, urging congress to require standardized polling hours for selecting electors, HJR 4
  Residential location information, elector to furnish and prohibiting registration for failure to furnish, Ch. 63
  Revision of provisions generally, Ch. 401, Ch. 537
  Voter registration, cancellation if elector fails to vote in two consecutive federal general elections, Ch. 96
  Voting systems and procedures, interim study requested, HJR 8

ELECTRICAL BOARD, STATE
  Appointments to, SR 19

ELECTRICITY BUYING COOPERATIVES
  Alternative energy and conservation programs, cooperative as supplier or promoter allowed, Ch. 577, Ch. 591

ELECTRONIC FUNDS TRANSFER
  Checks presented electronically, bad checks or stopping payment — civil penalties provided, Ch. 515
  Deferred deposit lenders, preauthorized loan payments and fees deducted from consumer's accounts — regulation, Ch. 81
  Gasoline and special fuel taxes, due date extended and filing of refund claims allowed, Ch. 110

ELECTRONIC GOVERNMENT SERVICES ACT, Ch. 265

ELECTRONIC INFORMATION OR METHODS, See generally INFORMATION TECHNOLOGY

ELECTRONIC MAIL
  Document laws to include, mail used for transaction of official business as public record, and unlawful interception as violation of privacy in communications, Ch. 77

ELECTRONIC TRANSACTIONS, UNIFORM ACT
  Adoption, Ch. 52

EMERGENCIES OR DISASTERS
  Governor, energy emergency powers revised, Ch. 593
  Maximum expenditure, clarification, Ch. 569
  9-1-1 emergency telephone system accounts, basic and enhanced — funding clarified, Ch. 41
  Noxious weed emergency, expanding conditions that constitute, Ch. 407
  Public safety communications officers, certification requirements, Ch. 88
  Vehicles, stationary emergency — requirements for vehicles approaching, Ch. 157

EMERGENCY MEDICAL SERVICES
  Abandoned newborns, safe haven for, Ch. 277
  Ambulance services, local government — exception to insurance code, Ch. 13
  9-1-1 emergency telephone system accounts, basic and enhanced — funding clarified, Ch. 41

EMINENT DOMAIN
  Damages — statement of appropriate damage reduction measures, inclusion of payment in final condemnation order, and requiring condemnation commissioners to determine appropriate payment after examining property, Ch. 20
  Easement is preferred interest to be taken in proceeding when, Ch. 19
  Liability of property owner limited and indemnification for defense costs, Ch. 113
  Revision of provisions and specific enumeration of public uses, Ch. 125

ENERGY
  Agricultural-based biofuels, creating energy market demand for, Ch. 568
  Alternative energy and other energy systems, revision of provisions and creation of alternative energy revolving loan fund, Ch. 591
  Electrical energy
    customer choice, transition provisions revised, Ch. 584
    pool, implementation, Ch. 582
    revision of laws relating to, Ch. 577
  Electric generation facilities and transmission lines, allowing financing under economic development bond laws, Ch. 541

ENERGY (Continued)
  Electricity prices, requesting federal intervention to stabilize wholesale prices in the west, HJR 44
  Facility Siting Act, certain projects exempt from, Ch. 293
  Governor, energy emergency powers revised, Ch. 593
  Indian reservation lands, modifying credit limitation and carryover provisions for wind-generated electricity and exempting electricity generated from wholesale energy tax for out-of-state distribution, Ch. 541
  Montana Power Authority Act, Ch. 577
  State building energy conservation program, bond issue to fund and approval of projects, Ch. 240

ENGINEERS AND LAND SURVEYORS
  Revision of provisions generally and substituting licensing for registration, Ch. 492

ENVIRONMENTAL PROTECTION
  Actions challenging decisions under Environmental Policy Act, new issues relating to adequacy or content of environmental review document remanded by district court to agency for consideration when, Ch. 186
  Actions subject to Environmental Policy Act may not be conditioned beyond statutory or regulatory requirements, clarification, Ch. 268
  Agency determination of environmental impact significance or recommendation that determination of significance be made for project subject to MEPA, requiring endorsement by agency director and authorizing project sponsor to request review of significance determination or recommendation, Ch. 300
  Environmental impact statement
    coal-bed natural gas resources, requesting environmental quality council to provide oversight for preparation of statement regarding proposed development, HJR 27
    fees assessed for production, prohibiting use of applicant's property or assets in calculation, Ch. 251
    strip and underground mine reclamation, permit applications — completion and publication of statement required when, Ch. 82
  Environmental rehabilitation and response account, deposits to and use, Ch. 338
  Environmental reviews, providing time limits and procedures for conducting and providing definitions, Ch. 299
  Hazardous substances, past-due remedial action costs — authorization for collection of interest and deposit to environmental quality protection fund, Ch. 326
  Legal challenges to actions under Environmental Policy Act, time for bringing and may only be brought in district or federal courts, Ch. 299
  Permitting time limits, providing exception when, Ch. 299
  Project alternatives, providing criteria for and definitions, Ch. 267
  State land environmental review requirements, exempting certain actions of department of natural resources and conservation and board of land commissioners, Ch. 478

ENVIRONMENTAL QUALITY COUNCIL
  Coal-bed natural gas resources, requesting council to provide oversight for preparation of environmental impact statement regarding proposed development, HJR 27

ENVIRONMENTAL QUALITY, DEPARTMENT OF
  Air quality, duties, See generally AIR QUALITY
  Appropriations, Ch. 239, Ch. 240, Ch. 551, Ch. 572
  Asbestos, assay method for measurement to assist in establishment of ambient air standard based on health risks from chronic exposure to — department requested to establish task force to develop, HJR 29
  Capital projects, review, Ch. 573
  Director, appointment, SR 12
  Environmental rehabilitation and response account, appropriation to department and use, Ch. 338
  Hard-rock mining reclamation general obligation bonds, request for issuance and sale, Ch. 460
  Hazardous substances, past-due remedial action costs — authorization for collection of interest and deposit to environmental quality protection fund, Ch. 326
  Internal service fund type fees and charges for 2003 biennium, Ch. 572
  Mining operations
    opencut mining, reclamation hearings — responsibilities transferred, Ch. 79
    strip and underground mine reclamation, permit applications — completion and publication of environmental impact statement required when, Ch. 82
  Postconsumer glass used in recycled material, rules to implement credit against certain permitting fees and precluding increase of fee assessments beyond appropriation levels to offset cost of credit, Ch. 516
  Solid waste management fees, establishment and assessment — authority revised and clarified, Ch. 170
  Water quality, responsibilities, See generally WATER QUALITY
ENVIRONMENTAL REVIEW, BOARD OF
  Air pollution control — prohibiting from approving or adopting rules, ordinances, or local laws more stringent than those imposed by state or federal government, Ch. 536
  Environmental statutes, hearings to be held before board rather than department, Ch. 79
  Postconsumer glass used in recycled material, credit against certain permitting fees — precluding increase of fee assessments beyond appropriation levels to offset cost of credit, Ch. 516
  Solid waste management fees, establishment and assessment — authority revised and clarified, Ch. 170
  Storm water discharge associated with construction activity, general permit provisions, Ch. 413
  Water quality standards, temporary — review of implementation plan, Ch. 384
ESTATES AND PROBATE
  Estate and generation-skipping taxes, applicability clarified, Ch. 9, Special Laws, May 2000(Appendix); Legislative Referendum No.116(Appendix)
  Federal estate tax law, congress urged to significantly revise, HJR 3, Special Laws, May 2000(Appendix)
  Inheritance taxes, repeal, Ch. 9, Special Laws, May 2000(Appendix); Legislative Referendum No.116(Appendix)
    clarifying filing requirements by person with interest in nonprobate real property of decedent as result of, Ch. 37

ETHICS
  Revision of provisions generally, Ch. 122
ETHICS COMMISSION
  Elimination, Ch. 122
EVIDENCE
  Child abuse and neglect proceedings, rules of evidence applicable to, Ch. 311
EXECUTION
  Distraint, warrant for — notice of levy to have same force and effect as writ of execution and providing effective period for levy upon earnings, Ch. 397
  Wages, writ for garnishment to remain in effect for 120 days or until judgment for which writ was issued is paid, Ch. 560
  Writ, issuance — time period extended and content of levy notice amended, Ch. 515
EXTRADITION
  Expenses for transportation and extradition of offenders, transfer of responsibilities relating to auditing and payment, Ch. 371

F

FACILITY FINANCE AUTHORITY
  Formerly Health Facility Authority, Ch. 137
FACILITY SITING
  Revision of provisions generally, Ch. 293
FAMILY LAW GENERALLY
  Contempt judgments or orders, appeal in family law proceedings allowed when, Ch. 136
FAMILY SERVICES PROVIDER FACILITIES
  Industrial development project, city or county bond proceeds to fund facilities as, Ch. 353
FINANCIAL INSTITUTIONS
  Functions of Department of Commerce transferred, Ch. 483
  Private institutions, loans to business enterprises — participation with board of investments to provide, Ch. 4, Special Laws, May 2000(Appendix)
FIRE DEPARTMENT RELIEF ASSOCIATIONS
  Disability and pension fund, tax levy for — substituting assessed value for taxable value, Ch. 29
  Service pension payable monthly, revision, Ch. 51
FIRE DEPARTMENTS AND FIREFIGHTERS
  Workers' compensation coverage for self-employed volunteer firefighters, providing method for establishing rate, Ch. 238
FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM
  Guaranteed annual benefit adjustment
    eligibility waiting period reduced, Ch. 309
    increase required and election between GABA and other adjustments, Ch. 149
    prevention of member from continuing to receive if member becomes active in another public retirement system, provision eliminated, Ch. 62

FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM (Continued)
  National guard firefighters, new — coverage required, Ch. 290
  Revision of provisions generally, Ch. 99

FIRES AND FIRE PROTECTION
  Fire management program of Department of Natural Resources and Conservation, request for interim study of alternatives for funding including costs related to wildfire suppression, HJR 42
  Rural fire districts — allowing trustees to acquire real property along with equipment, housing, and facilities, Ch. 443

FIREWORKS
  Sale, time period revised and extended, Ch. 182

FISH AND WILDLIFE
  Alternative livestock ranches
    licenses, moratorium on issuance, Ch. 1, Special Laws, May 2000(Appendix)
    prohibitions on new ranches, transfer of existing licenses, and fee shooting of animals, Initiative No.143(Appendix)
  Disabilities, persons with — hunting regulations revised, Ch. 248
  Enforcement program for investigation and prosecution of violations, creation, Ch. 246
  Enforcement statutes, general revision, Ch. 275
  Exotic wildlife, certain departments requested to study importation and possession, HJR 16
  Fishing access enhancement program, creation, Ch. 196
  Fishing by youths and persons 62 years of age or older, provisions revised, Ch. 3
  Game warden trainee program, funding for inclusion of students from university of Montana and Montana state university, Ch. 566
  Gray wolf, management provisions if wolf removed from threatened or endangered wildlife lists, Ch. 316
  Grizzly bear in act of attacking or killing livestock, allowing person to kill or attempt to kill bear when, Ch. 316
  Hunter management and hunting access enhancement programs
    funding modified by creating hunting access enhancement fees and increasing incentive amount paid to participating landowners, Ch. 216
    weed control programs, funding from, Ch. 407
  Licenses, licensing, and permits
    either-sex or antlerless elk permits for certain landowners and the public, Ch. 519
    game damage hunting licenses, supplemental, Ch. 590
    migratory game birds, fee increase for nonresidents, Ch. 129
    military personnel having hunting, fishing, or trapping licenses issued in another state or country allowed to have resident hunting, fishing, or trapping license as well, Ch. 60
    nonresident deer licenses, separation from nonresident big game combination licenses — repeal of termination date of law authorizing, Ch. 21
    nonresident hunting and fishing fees increased and wild turkey tag prerequisites revised, Ch. 528
    social security number included on applications, requirement eliminated, Ch. 321

FISH AND WILDLIFE (Continued)
  Licenses, licensing, and permits (Continued)
    youth combination sports license, removal of termination date applicable to and clarification of age requirements, Ch. 49
  Management of certain species, revising statutes applicable to and reclassifying certain species to increase state management authority, Ch. 316
  Nongame wildlife, clarification of laws regulating commercial collection of certain wildlife, Ch. 301
  Nonresident mountain lion hunters in designated hunting districts in Administrative Region 1, rules restricting, Ch. 575
  Prairie dog, clarification of authority to manage as species in need of management, Ch. 521
  Red Rock Lakes-Montana Compact, consumptive use data clarified, Ch. 187
  Upland game bird habitat enhancement program, clarifying scope of and project eligibility criteria and revising funding criteria, Ch. 365

FISH, WILDLIFE, AND PARKS COMMISSION, See also generally FISH AND WILDLIFE
  Appointments to, SR 22

FISH, WILDLIFE, AND PARKS — DEPARTMENT OF, See also generally FISH AND WILDLIFE
  Appropriations, Ch. 426, Ch. 551, Ch. 566, Ch. 572, Ch. 573
  Director, appointment, SR 14
  Exotic wildlife, certain departments requested to study importation and possession, HJR 16
  Internal service fund type fees and charges for 2003 biennium, Ch. 572
  Montana Agricultural Center and Museum of the Northern Great Plains, lease provisions revised, Ch. 97
  Predator control, appropriation from general license fund for USDA-APHIS wildlife services program to assist with, Ch. 426
  Shooting range development grant program, sunset provision eliminated, Ch. 53
  Weed control programs, funding from hunter management and hunting access enhancement programs, Ch. 407

FOOD ESTABLISHMENTS
  Water haulers, regulation and licensing as, Ch. 428

FOREIGN CAPITAL DEPOSITORIES
  Assessment, reduction and clarification of calculation, Ch. 3, Special Laws, May 2000(Reversion)

FORESTS AND FORESTRY
  Counties, forest reserve funds — providing payment options contained in federal law for receipt of, Ch. 334
  Fire management program of Department of Natural Resources and Conservation, request for interim study of alternatives for funding including costs related to wildfire suppression, HJR 42
  Fire suppression costs
    appropriation, Ch. 2
    spring fire costs, allowing retransfer of money transferred for, Ch. 569

FORESTS AND FORESTRY (Continued)
  Forest fuels management, need to balance with air quality concerns resulting from prescribed wildland open burning — interim study to address issues, HJR 21
  Forest fuels, urging reduction of overabundance, HJR 22
  Forest land, tax levied for payment of bonds issued by public body for open space preservation — revision in manner of determination, Ch. 463
  National forests and public lands, supporting multiple use and urging congress and the president to overturn the federal roadless initiative, HJR 19
  Pole trailers, revising requirements for securing logs on, Ch. 373
  Portable sawmills, licensing procedures eliminated, Ch. 94
  Slash hazard, minimum — definition and exemption from fire hazard reduction agreement and bond when, Ch. 234
  State forest lands, interest in for preservation purposes — prohibiting designation, treatment, or disposal prior to obtaining full market value of foregone uses, Ch. 259
  State timber sales, urging reciprocity between idaho and Montana on bidding procedures for, SJR 13
  State university fund, timber proceeds allocated to university system lands, Ch. 420
  Timber harvest funds, deposit provisions and appropriation to schools for technology acquisition, Ch. 554
  Timber salvage and forest restoration program, urging development of, HJR 25

FRATERNAL ORGANIZATIONS
  Beer and table wine sales, special permit provisions revised, Ch. 89

FULL COST ACCOUNTING ACT, Ch. 489

FUNERAL SERVICE, BOARD OF
  Appointments to, SR 19

G

GAMBLING
  Golf course, private — prohibited on premises, Ch. 458
  Taxes, retention at state level, Ch. 574
  Video gambling automated accounting and reporting system data collection units, loan to department for financing, Ch. 394
  Video gambling machine gross income tax credit, eligibility revised by extending deadlines for machine permit and for converting machine to automated accounting and reporting system, Ch. 198

GAME FARMS, See LIVESTOCK, Alternative livestock ranches

GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM
  Guaranteed annual benefit adjustment
    eligibility waiting period reduced, Ch. 309
    increase required and election between GABA and other adjustments, Ch. 149
    prevention of member from continuing to receive if member becomes active in another public retirement system, provision eliminated, Ch. 62

GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM (Continued)
  Peace officers, reopening opportunity for transfer of membership from public employees' retirement system, Ch. 442
  Revision of provisions generally, Ch. 99
  Service retirement benefit formula, increase, Ch. 98

GAS, See OIL AND GAS; TAXATION, GASOLINE AND VEHICLE FUELS

GENERAL APPROPRIATIONS ACT OF 2001, Ch. 572

GOLF COURSES
  Private golf course, beer and wine license authorized and gambling prohibited on premises, Ch. 458

GOVERNMENT ACCOUNTABILITY ACT
  Action may not be taken until statement of government authority has been provided to requestor, Ch. 501

GOVERNMENTAL INTERNET INFORMATION PRIVACY ACT, Ch. 219

GOVERNMENTAL LIABILITY
  Claim against state or political subdivision, compromise or settlement — clarifying that right of individual privacy clearly exceeds merits of public disclosure, Ch. 172
  Self-insurance, bonds issued for — substituting assessed value for taxable value, Ch. 29

GOVERNOR
  Appointments by, SR 3, SR 4, SR 5, SR 6, SR 7, SR 8, SR 9, SR 10, SR 11, SR 12, SR 13, SR 14, SR 15, SR 16, SR 17, SR 19, SR 20, SR 21, SR 22, SR 23, SR 24, SR 25; SR 1, Special Laws, May 2000(Appendix); SR 2, Special Laws, May 2000(Appendix); SR 3, Special Laws, May 2000(Appendix)
  Appropriations, Ch. 550, Ch. 572
  Clark Fork River Basin Task Force, interim report required, Ch. 447
  Commerce, Department of — economic development functions transferred, Ch. 483
  Economic Development, Office of — creation, Ch. 483
  Energy emergency powers, revision, Ch. 593
  Exotic wildlife, certain departments requested to study importation and possession and to report results, HJR 16
  K-12 public school funding and related issues, study required, Ch. 580
  Offenders, expenses for transportation and extradition — transfer of responsibilities relating to auditing and payment, Ch. 371
  Private Lands and Public Wildlife, Review Committee on — fishing access enhancement included within scope of issues for consideration, Ch. 196
  Revenue, Department of — effective tax rates of taxable property in each class of property to be included in biennial report, Ch. 199
  Transportation plan update, encouraging department of transportation to work with other entities to incorporate economic development criteria into plan, HJR 30
  Vehicles, allowing executive order to exempt from size and weight limits under certain circumstances, Ch. 291
  Workforce development programs, consolidation and transfer into department of labor and industry, Ch. 343

GRAZING DISTRICTS
  Revision of provisions generally, Ch. 31
GUARDIANS AND GUARDIANSHIP
  Abandoned children, extended family members to have priority for guardianship, Ch. 194

H

HAIL INSURANCE, BOARD OF
  Appointments to, SR 19, SR 23
HAZARDOUS WASTE MANAGEMENT
  CERCLA, procedural provisions revised, Ch. 79
  Environmental rehabilitation and response account, deposits to and use, Ch. 338
  Remedial action upon release of hazardous substance
    costs, past-due — authorization for collection of interest and deposit to environmental quality protection fund, Ch. 326
    liability of property owner limited and indemnification for defense costs, Ch. 113
    notification of potentially liable persons, standardizing postemergency action notification deadline, and limiting liability defense to costs incurred or encumbered prior to date of notice, Ch. 383
    orphan share account, distribution of oil and natural gas production tax clarified, Ch. 306
HEALTH CARE FACILITIES
  Ambulatory surgical facilities, lien for health care providers extended to, Ch. 86
  Certificate of need for certain facilities, requirement eliminated, Ch. 286
  County hospital, rest home, and hospital district employees
    exemption from mandated leave provisions and participation in specified group insurance contracts or plans and requiring compensation or benefits increase to offset any reduction in leave benefits, Ch. 559
    public employees' retirement system, participation optional, Ch. 285
  Critical access hospitals, licensure requirements, Ch. 192
  Health care review committees, information collected by — revision of provisions generally, Ch. 359
  Motor vehicles of health care professionals, exemption from foreign vehicle registration fees — requiring designation of health care facility as health professional shortage area, Ch. 436
  Recovery care bed in outpatient center for surgical services, prohibiting use for patient for longer than 24 hours or more and providing waiver, Ch. 366
  Universal newborn hearing screening program, education and report requirements, Ch. 250
HEALTH CARE GENERALLY
  Interim study of health care and increasing cost of health insurance, request for, SJR 22
  Tobacco litigation settlement money for, Ch. 5, Special Laws, May 2000(Appendix)
  Voluntary Employees' Beneficiary Association Act, Ch. 272

HEALTH CARE INFORMATION
  Death, disclosure of confidential information without patient's authorization for purpose of determining cause of, Ch. 101
  Health care review committees, information collected by — revision of provisions generally, Ch. 359
  Mental health managed care ombudsman, availability of confidential mental health records, Ch. 544

HEALTH CARE PROVIDERS
  Hepatitis B, prenatal tests for, Ch. 351
  Lien of
    ambulatory surgical facilities, extended to, Ch. 86
    provider not liable for attorney fees and costs incurred in connection with obtaining payments or benefits subject to lien, Ch. 236
  Universal newborn hearing screening program, education and report requirements, Ch. 250

HEALTH FACILITY AUTHORITY
  Appointments to, SR 19, SR 23
  Name changed and provisions revised, Ch. 137

HEALTH INSURANCE, See INSURANCE, DISABILITY

HEALTH, LOCAL BOARDS OF
  Subdivisions, sanitation in — revision of provisions generally, Ch. 280

HEALTH MAINTENANCE ORGANIZATIONS
  Biographical information of officers, commissioner of insurance may request, Ch. 227
  Diabetes, outpatient self-management training and education for treatment and limited benefit for certain equipment and supplies — coverage required and exclusion from certain plans when, Ch. 450
  Disclosure to consumers of health care service cost participation requirements required and disclosure standards for outlines of coverage for individual and group disability policies, Ch. 336
  Examination requirements for those organizations operated by insurers or health service corporations, Ch. 227

HEALTH SERVICE CORPORATIONS
  Articles of amendment to be filed with commissioner of insurance, Ch. 227
  Biographical information of officers, commissioner of insurance may request, Ch. 227
  Health maintenance organizations operated by, examination requirements, Ch. 227
  Physical therapists, coverage of services provided by, Ch. 235

HEARING AID DISPENSERS
  Hearing aids, change of medical evaluation requirements regarding dispensing, Ch. 492

HEARING AID DISPENSERS, BOARD OF
  Appointments to, SR 19

HEMP, INDUSTRIAL
  Production as agricultural crop authorized and providing affirmative defense for possession or cultivation of marijuana, Ch. 360

HERITAGE PRESERVATION AND DEVELOPMENT PROGRAM
  Lodging facility use tax, continued funding from, Ch. 469

HIGHWAY PATROL
  Motor carrier safety, enforcement authority clarified, Ch. 207
HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM
  Guaranteed annual benefit adjustment
    eligibility waiting period reduced, Ch. 309
    increase required and election between GABA and other adjustments, Ch. 149
    prevention of member from continuing to receive if member becomes active in another public retirement system, provision eliminated, Ch. 62
  Pension trust fund, payment of motor vehicle registration fees to — clarification, Ch. 191
  Revision of provisions generally, Ch. 99
  Service retirement, all members eligible for full service retirement after 20 years service, Ch. 193
HIGHWAYS
  Condemnation proceedings, easement preferred interest to be taken — exemption, Ch. 19
  County general obligation bonds, limited — authorization to finance road construction and maintenance, Ch. 479
  Littering — clarification of prohibition against, adding plastic to list of substances that may not be thrown or deposited on highway, adding offense of throwing containers of urine or feces upon highway, and increasing penalties, Ch. 513
  Livestock
    motor vehicle accidents involving, clarification of livestock owner's liability for damages or injury, Ch. 28
    safety hazards presented by, secondary road passing through open range in county park allowed to remain unfenced providing certain criteria met, Ch. 204
  Multistate highway transportation agreement, revision, Ch. 358
  Noxious weed state special revenue account, deposit from highway nonrestricted account, Ch. 407
  Railroads, locomotives to sound horns at public road and highway crossings — requirement clarified, Ch. 477
  State Secondary Highway 279 to Marysville, road from — appropriation for reconstruction and paving plan, Ch. 304
  U.S. Highway 2, construction of four-lane highway generally along present route, Ch. 269
HISTORICAL SOCIETY
  Appropriations, Ch. 434, Ch. 550, Ch. 551, Ch. 572
  Board of trustees, appointments to, SR 19
HORSERACING
  Workers' compensation coverage — exemption for trainers, exercise persons, and pony persons performing services on grounds of licensed race meet, Ch. 14
HORSERACING, BOARD OF
  Appointments to, SR 19, SR 22
  Commerce, Department of — allocation transferred, Ch. 483

HOSPITAL DISTRICTS
  Employees, exemption from mandated leave provisions and participation in specified group insurance contracts or plans and requiring compensation or benefits increase to offset any reduction in leave benefits, Ch. 559

HOUSE BILL TO CHAPTER NUMBER TABLE, See TABLE OF HOUSE BILL TO CHAPTER NUMBER, printed separately in this volume

HOUSING
  Affordable housing revolving loan account
    federal housing assistance money transferred to, Ch. 422
    TANF block grant amount transferred to, Ch. 502
    tax credit for donations to and account as qualified endowment, Ch. 411

HOUSING AUTHORITIES, MUNICIPAL
  Commissioners, appointment process revised, Ch. 197

HOUSING, BOARD OF
  Appointments to, SR 22

HUMAN RIGHTS, COMMISSION FOR
  Appointments to, SR 23

HUMAN SKELETAL REMAINS
  Remains or funerary objects taken from burial sites, mechanism for return, Ch. 558

I

IDENTITY, THEFT OF
  Criminal offense created, Ch. 378

INDIAN AFFAIRS, STATE COORDINATOR OF
  Legislative policy and duties pertaining to, revision, Ch. 178

INDIANS
  Colleges, tribal
    adult education program operated by, distribution of adult education funds for support, Ch. 148
    natural resource workers — tuition scholarships for education or retraining in training, certificate, or degree programs, Ch. 586
    school districts, interlocal agreements to allow 11th and 12th grade students to obtain credits through attending classes available only at, Ch. 377
  Community colleges, tribally controlled — definition of vocational-technical education revised to include, Ch. 133
  Electricity generated on reservation lands for out-of-state distribution, exemption from wholesale energy tax, Ch. 541
  Fort Belknap-Montana Compact, ratification, Ch. 256
  Human skeletal remains or funerary objects taken from burial sites, mechanism for return, Ch. 558
  Legislative State-Tribal Relations Committee, creation and responsibilities, Ch. 210
  Little Shell Tribe of Chippewa Indians, department of the interior urged to grant final recognition to, HJR 11
  State-tribal cooperative agreements, revision of certain provisions, Ch. 54

INDIANS (Continued)
- State-Tribal Economic Development Commission, duration extended and membership revised, Ch. 69
- Unemployment insurance, revising laws to conform with federal requirements related to employment by employer that is indian tribe, Ch. 200
- U.S. Highway 2, construction of four-lane highway generally along present route, Ch. 269
- Wind-generated electricity on reservation lands, modifying credit limitation and carryover provisions for, Ch. 541

INDUSTRIES AND INDUSTRIAL DEVELOPMENT
- Family services provider facilities, city or county bond proceeds to fund as industrial development project, Ch. 353

INFORMATION TECHNOLOGY
- Blindness or low vision, persons with — providing access to, Ch. 429
- Credit union records, electronically generated and stored — admissibility as evidence, Ch. 25
- Electronic Government Services Act, Ch. 265
- Governmental Internet Information Privacy Act, Ch. 219
- Internet services providers, government competition with private providers prohibited and exception, Ch. 547
- Motor vehicle information technology system, loan to department of justice for financing, Ch. 394
- Schools, technology acquisition — funding, Ch. 554
- Sexual and violent offender registration, publication on internet, Ch. 222
- State government broadcasting service, establishment and funding, Ch. 557
- State policies — establishment, providing for chief information officer, and establishing duties and responsibilities, Ch. 313

INSURANCE
- Ambulance services, local government — exception to insurance code for, Ch. 13
- Elevators, escalators, dumbwaiters, moving walks, material lifts, wheelchair lifts, and stairway chairlifts — inspection requirements revised and exemption provided, Ch. 439
- Information and privacy protection, revision of provisions generally, Ch. 341
- Local government group self-insurance program assets, constitutional amendment providing for investment, Ch. 355
- Revision of provisions generally, Ch. 227
- Salespeople paid solely by commission, excluding services performed by from unemployment insurance and workers' compensation provisions, Ch. 339

INSURANCE, CASUALTY
- Insurers seeking utilization review opinions relating to coverage for medical expenses or bodily injury, standards created, Ch. 335
- Mechanical breakdown, prepaid legal, involuntary unemployment, and gap insurances as types of — clarification, Ch. 227
- Small business independent liability funds, termination provisions revised, Ch. 111

INSURANCE, COMMISSIONER OF, See also specific INSURANCE heading
- Biographical information of officers of specific insurers, allowing request for, Ch. 227

INSURANCE, COMMISSIONER OF (Continued)
  Health maintenance organizations operated by insurers or health service corporations, examination requirements, Ch. 227
  Health service organizations to file copy of articles of amendment, Ch. 227
  Information and privacy protection provisions, adoption of rules, Ch. 341
  National centralized producer license registry, authorizing participation in, Ch. 106
  Surplus lines insurance stamping fee, transferring collection to commissioner when, Ch. 184

INSURANCE, DISABILITY
  Children's health insurance program (CHIP) — eligibility criteria revised, limitation of services, and allowing direct payment to health care providers and contract on fee-for-service basis, Ch. 476
  Comprehensive health association
    low-income persons, adoption of sliding scale of premium rates for participation, Ch. 475
    portability plan, funding mechanism — study of, Ch. 481
    revision of provisions generally, Ch. 367
  Diabetes, outpatient self-management training and education for treatment and limited benefit for certain equipment and supplies — coverage required and exclusion from certain plans when, Ch. 450
  Disclosure to consumers of health care service cost participation requirements required and disclosure standards for outlines of coverage for individual and group disability policies, Ch. 336
  Employer's premium contributions for group health insurance, exempting increases in local government's property tax levy from mill levy calculation limitation, Ch. 511
  Interim study of health care and increasing cost of health insurance, request for, SJR 22
  Long-term care facility residents, insurance producer connected with facility prohibited from sale of policies to, Ch. 227
  Physical therapists added to freedom of choice in selection provision, Ch. 235
  Underwriting information, disclosure to entities that have obtained or that administer group health plans — provisions for, Ch. 471

INSURANCE, LIFE
  Long-term care facility residents, insurance producer connected with facility prohibited from sale of policies to, Ch. 227
  Viatical disclosure form required, defining viatical settlement purchase agreement and purchaser, and requiring certain information to be disclosed to purchaser by provider, Ch. 295

INSURANCE PRODUCERS, ADJUSTERS, CONSULTANTS, AND ADMINISTRATORS
  Long-term care facilities, producers connected with — prohibiting sale of life or disability policies to residents, Ch. 227
  Revision of laws relating to producers, Ch. 106

INSURANCE, PROPERTY
  Insurers seeking utilization review opinions relating to coverage for medical expenses or bodily injury, standards created, Ch. 335

INSURANCE, SURPLUS LINES
  Stamping fee, transferring collection to commissioner of insurance when, Ch. 184
INSURERS, FARM MUTUAL
  Biographical information of officers, commissioner of insurance may request, Ch. 227
  County mutual insurer allowed to change status to state mutual insurer, Ch. 228
INSURERS, RECIPROCAL
  Biographical information of officers, commissioner of insurance may request, Ch. 227
INSURERS REGULATION GENERALLY
  Captive insurance companies, provisions for, Ch. 298
  Health maintenance organizations operated by, examination requirements, Ch. 227
  Motor vehicles
    accident reports and supplemental information, prohibiting public access to information identifying any person or insurer named in records, Ch. 296
    glass replacement, glass repair, glass products, and body repair — revising unfair trade practices law, Ch. 345
  Surplus funds, increase in amount, Ch. 227
  Underwriting information, disclosure to entities that have obtained or that administer group health plans — provisions for, Ch. 471
INTELLECTUAL PROPERTY
  University system employee or individual, equity ownership in business entity related to intellectual property created by, Ch. 379
INTERIM STUDIES
  Annexation, to develop guiding policy on, HJR 24
  Assignment, process clarified, Ch. 210
  Bicycle traffic safety issues, HJR 37
  Coal-bed natural gas resources, requesting environmental quality council to provide oversight for preparation of environmental impact statement regarding proposed development, HJR 27
  Community colleges, laws governing, HJR 15
  Criminal offenses, offense sentencing and release, and related issues, HJR 39
  Exotic wildlife, certain departments requested to study importation and possession, HJR 16
  Fire management program of Department of Natural Resources and Conservation, alternatives for funding including costs related to wildfire suppression, HJR 42
  Forest fuels management, need to balance with air quality concerns resulting from prescribed wildland open burning — study to address issues, HJR 21
  Foster care and adoption services, privatization, SJR 8
  Health care and increasing cost of health insurance, SJR 22
  K-12 public school funding and related issues, study by governor and superintendent of public instruction, Ch. 580
  Local government revenue dedication provisions, review by legislative finance committee. Ch. 400

INTERIM STUDIES (Continued)
  Mental health managed care, by mental health services oversight subcommittee, HJR 1
  Property taxation of agricultural and nonagricultural land, SJR 21
  School district boundary transfers, laws governing, HJR 41
  Teacher education programs, request for board of public education study of use of pre-professional skills test as entry test for admission into, HJR 40
  Traffic codes, SJR 6
  Tuition prepayment program within university system, feasibility of establishing, HJR 35
  Vacancy savings, by legislative finance committee, Ch. 572
  Veterans, study requested for specific issues and urging inclusion of veterans' organizations in the study process, SJR 5
  Voting systems and procedures, HJR 8

INTERLOCAL COOPERATION
  Electrical generation facility impact fee, agreement to determine unit authorized to assess, Ch. 592
  School district and Montana job corps program, for educational or vocational services to supplement district's programs, Ch. 462
  School districts allowed to share teachers, specialists, superintendents, or other professional persons licensed under Title 37, Ch. 318
  School districts, authorizing agreements with postsecondary institutions to allow 11th and 12th grade students to obtain credits through attending classes available only at, Ch. 377
  State-tribal cooperative agreements, revision of certain provisions, Ch. 54

INTERNET, See generally INFORMATION TECHNOLOGY

INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION, Ch. 18

INVESTMENTS, BOARD OF
  Appointments to, SR 22
  Electrical generation projects, authorization for investment in new projects that meet certain criteria, Ch. 577
  Employee welfare benefit plan consisting of individual health care expense trust accounts, loan for startup costs, Ch. 272
  Justice, Department of — loan for financing information technology system for motor vehicle division and acquisition of video gambling automated accounting and reporting system data collection units for gambling control division, Ch. 394
  Lewis and Clark Bicentennial Commission, loan to, Ch. 414
  Loans and investments, examination by state bank examiners — requirement removed, Ch. 487
  Loans to business enterprises, participation with private financial institutions to provide, Ch. 4, Special Laws, May 2000(Appendix)
  Loans to businesses creating or retaining 10 to 14 jobs under value-added loan program, rate of interest provisions, Ch. 289
  Public employees' retirement system defined contribution plan, loan for disability benefit startup costs, Ch. 423
  Public school fund, authorization for purchase of mineral production rights held by, Ch. 418
  School districts, investment of money in investments authorized by board, Ch. 205

INVESTMENTS, BOARD OF (Continued)
  Special improvement district and rural special improvement district bonds, review of participation in issuance of variable rate bonds, Ch. 162
  Sugar industry — recognition of importance to economy, urging state agencies to utilize resources and programs to assist, and stating legislature's commitment to helping sugar beet producers maintain strong Montana presence, HJR 33

IRRIGATION DISTRICTS
  Administrative charges, statutory cap eliminated, Ch. 392
  Commissioners, board of — daily compensation rate may be set by, Ch. 387

J

JAILS, See DETENTION CENTERS

JUDGES' RETIREMENT SYSTEM
  Call of retired judges and justices and inactive vested members for duty, provision revised, Ch. 48
  Guaranteed annual benefit adjustment
    eligibility waiting period reduced, Ch. 309
    increase required and election between GABA and other adjustments, Ch. 149
    prevention of member from continuing to receive if member becomes active in another public retirement system, provision eliminated, Ch. 62
  Revision of provisions generally, Ch. 99
  Service retirement, eligibility revised, Ch. 176

JUDGMENTS AND DECREES
  Revision of provisions generally, Ch. 515

JUDICIAL BRANCH
  Appropriations, Ch. 553, Ch. 572
  Mental illness and the criminal justice and corrections systems, requesting departmental coordination and collaboration with state and local governments and judiciary regarding training and education programs on issues surrounding persons with illness, SJR 2
  Personnel plan, adoption by supreme court, Ch. 585

JUDICIAL DISTRICTS
  District courts, election for additional judges for 8th and 21st districts, Ch. 497
  Intervention in delinquency pilot program, creation of accounts for districts and making participation discretionary, Ch. 587

JUSTICE, DEPARTMENT OF
  Alcoholic beverages, responsibilities, See generally ALCOHOLIC BEVERAGES
  Appropriations, Ch. 247, Ch. 394, Ch. 402, Ch. 550, Ch. 551, Ch. 572, Ch. 573
  County attorney salaries, clarification of provisions, Ch. 507
  Gambling, responsibilities, See generally GAMBLING
  Internal service fund type fees and charges for 2003 biennium, Ch. 572
  Motor carrier safety provisions, revision generally, Ch. 207
  Motor vehicles, responsibilities, See generally MOTOR VEHICLES AND TRAFFIC REGULATIONS

JUSTICE, DEPARTMENT OF (Continued)
- Natural resource damage assessment and litigation program in Clark Fork River basin, appropriation, Ch. 247
- Restorative Justice, Office of — creation, Ch. 581
- Sexual or violent offenders, release — statewide community education curriculum, Ch. 222
- Victims Services, Office of — creation, Ch. 124

JUSTICES' COURTS
- Clerk of the court, role clarified, Ch. 6
- Collection of fines, assignment to private persons or entities allowed, Ch. 515
- Justice of the peace, inclusion as county officer, Ch. 507
- Pretrial conferences and hearings, appearance by telephone conference allowed, Ch. 515

JUVENILE DELINQUENCY INTERVENTION ACT, Ch. 587

K

KUMAMOTO, PREFECTURE OF
- Commemoration of 20th anniversary of sister state relationship with, SJR 9

L

LABOR AND EMPLOYMENT
- Child support enforcement provisions, revision, Ch. 352
- Loans to businesses creating or retaining 10 to 14 jobs under value-added loan program, 4% loan rate authorized for first 5 years and providing threshold for determining program eligibility, Ch. 289
- Marital status discrimination, employer employing or offering to employ spouse is not, Ch. 287
- Minimum wage and overtime laws
  - applicability, clarification, Ch. 71
  - outside sales, exemptions — revision of language to conform to federal provisions, Ch. 22
- Montana job corp program and school district, interlocal cooperative agreement for educational or vocational services to supplement district's programs, Ch. 462
- Summer youth employment program, administration through local workforce investment boards, Ch. 525
- Termination of employment during probationary period clarified, creating presumptive probationary period, and clarification that termination of nonprobationary employment must be for cause, Ch. 583
- Wages, writ of execution for garnishment to remain in effect for 120 days or until judgment for which writ was issued is paid, Ch. 560
- Workforce development programs, coordination between departments of labor and industry and public health and human services and consolidation and transfer of other programs into department of labor and industry, Ch. 343
- Workforce investment, educational, and other human resource programs — one-stop delivery system created for administration, Ch. 424

LABOR AND INDUSTRY, DEPARTMENT OF
  Appropriations, Ch. 551, Ch. 572
  Director, appointment, SR 15
  Domestic violence claims, unemployment benefits applied for and granted in relation to — report required, Ch. 520
  Employee travel time compensability, urging department to review state laws and administrative rules and to work with federal department of labor to clarify and simplify state and federal laws regarding, HJR 7
  Internal service fund type fees and charges for 2003 biennium, Ch. 572
  Natural resource workers' education program, acceptance of private donations and grants for, Ch. 586
  Professional and occupational licensing, building code, and weights and measures functions of Department of Commerce transferred to, Ch. 483
  Safety Culture Act, issuance of safety recommendation to employers for noncompliance, Ch. 58
  Summer youth employment program, administration through local workforce investment boards, Ch. 525
  Workers' compensation insurer, reimbursement of worker and exception for reasonable expenses in traveling to medical provider for treatment of injury — rules for, Ch. 138
  Workforce development programs, coordination between department and department of public health and human services and consolidation and transfer of other programs into department, Ch. 343

LABOR APPEALS, BOARD OF
  Appointments to, SR 22

LAKES
  Construction projects, limits on local lakeshore protection fees removed, Ch. 40
  Red Rock Lakes-Montana Compact, consumptive use data clarified, Ch. 187

LAND COMMISSIONERS, BOARD OF
  Civil action against board concerning use or disposition of state lands, written undertaking required, Ch. 504
  Easements for specific uses in state lands, authorization for granting, Ch. 230
  State land environmental review requirements, exempting certain actions of board, Ch. 478
  State forest lands, interest in for preservation purposes — prohibiting designation, treatment, or disposal prior to obtaining full market value of foregone uses, Ch. 259

LANDLORD AND TENANT
  Security deposit of departing tenant, return — eliminating conflicts in law and clarifying rights and duties, Ch. 241
  Self-governing local government, prohibiting exercise of certain powers related to, Ch. 446
  Termination of rental agreement, intended — revision in notice periods for notifying tenants, Ch. 456

LANDSCAPE ARCHITECTS, BOARD OF
  Appointment to, SR 19

LANDSCAPE ARCHITECTURE AND LANDSCAPE ARCHITECTS
  Requirements changed, Ch. 492

LAND USE PLANNING
  Agricultural property and forest land, tax levied for payment of bonds issued by public body for open space preservation — revision in manner of determination, Ch. 463
  Subdivisions, cluster development and preservation of open space — local government adoption of regulations that promote, Ch. 348

LAW
  Montana Code Annotated, revision and clarification generally, Ch. 7

LAW ENFORCEMENT
  DNA evidence, expanding collection to certain adult felony offenses, Ch. 565
  Sexual and violent offender registration, publication on internet, Ch. 222

LEGISLATIVE AUDIT COMMITTEE
  State employees, unfunded leave liability — department of administration directed to conduct analysis and propose methods of funding to be submitted to committee, HJR 34

LEGISLATIVE AUDIT DIVISION
  Child protective services system, requesting performance audit by, HJR 32

LEGISLATIVE BRANCH
  Appropriations, Ch. 553, Ch. 572

LEGISLATIVE FINANCE COMMITTEE
  Mental Health Services Oversight Subcommittee, provision for during 2001-02 interim, HJR 1
  Reviews of dedicated revenue provisions and statutory appropriations, requirements eliminated, Ch. 554

LEGISLATIVE SERVICES DIVISION
  Appropriations, Ch. 1, Ch. 557, Ch. 580; Ch. 2, Special Laws, May 2000(Appendix)

LEGISLATURE
  Appropriation, Ch. 1; Ch. 2, Special Laws, May 2000(Appendix)
  Broadcasting service, establishment and funding, Ch. 557
  Budgets, personal services — legislature's restriction on use of funds appropriated for, Ch. 255
  Chronic disease registry, development — requiring feasibility report by department of public health and human services, Ch. 166
  Clark Fork River Basin Task Force, interim report required, Ch. 447
  Domestic violence claims, unemployment benefits applied for and granted in relation to — report by department of labor and industry required, Ch. 520
  Exotic wildlife, certain departments requested to study importation and possession and to report results to, HJR 16
  Expenses of members, determination revised, Ch. 553
  Governor's appointments, senate concurrence, SR 3, SR 4, SR 5, SR 6, SR 7, SR 8, SR 9, SR 10, SR 11, SR 12, SR 13, SR 14, SR 15, SR 16, SR 17, SR 19, SR 20, SR 21, SR 22, SR 23, SR 24, SR 25; SR 1, Special Laws, May 2000(Appendix); SR 2, Special Laws, May 2000(Appendix); SR 3, Special Laws, May 2000(Appendix)
  Interim committees and interim committee functions and names, revision of provisions, Ch. 210
  Interim studies. See INTERIM STUDIES

LEGISLATURE (Continued)
  K-12 public school funding and related issues, report by governor to education interim committee, Ch. 580
  Montana Heritage Preservation and Development Commission, building preservation or maintenance costs — consent not required when, Ch. 308
  Personal care facilities, department of public health and human services to review administrative rules and report to legislature, Ch. 331
  Presession caucuses and legislative orientation, revision of provisions, Ch. 57
  Public Employees' Retirement System, window of opportunity for participation by legislators, Ch. 357
  Reports to, methods revised, Ch. 210
  Revenue, Department of
    effective tax rates of taxable property in each class of property to be included in biennial report, Ch. 199
    information agents' reports of proceeds from real estate transactions, report to revenue and taxation interim committee, Ch. 461
  Rules to govern proceedings
    house, HR 1
    joint rules, SJR 1
    senate, SR 1
  Senate Bills and Journal Committee, abolishment urged, SR 18
  Special sessions, revision and clarification of provisions governing, Ch. 35
  State-Tribal Relations Committee, creation and responsibilities, Ch. 210
  Transportation plan update, encouraging department of transportation to work with other entities to incorporate economic development criteria into plan, HJR 30
  Workers' compensation state fund, report on alternative personal leave plan, Ch. 314

LEWIS AND CLARK BICENTENNIAL LICENSE PLATE ACT, Ch. 414

LEWIS AND CLARK EXPEDITION
  Recognition of 200th anniversary and urging national recognition and support by congress and the president, HJR 18

LIBRARIES
  Federation provisions, revision, Ch. 80
  Public library districts, creation and funding, Ch. 92

LIENS
  Child support liens, revision of provisions, Ch. 352
  Family services provider facilities, city or county bond proceeds allowed to be used to discharge existing indebtedness secured by lien against, Ch. 353
  Health care provider lien
    ambulatory surgical facilities, extended to, Ch. 86
    provider not liable for attorney fees and costs incurred in connection with obtaining payments or benefits subject to lien, Ch. 236
  Judgment liens, revision of provisions, Ch. 515
  Property tax, establishing lien for owner who redeems lien for other owners of multiple, undivided interest in parcel of land, Ch. 444
  Real property, created on — extending from 6 to 10 years by docketing judgment, Ch. 515

LIMITED LIABILITY COMPANIES
  Business name identifiers, definition and prohibiting use, Ch. 27

LIVESTOCK
  Alternative livestock ranches
    licenses, moratorium on issuance, Ch. 1, Special Laws, May 2000(Appendix)
    prohibitions on new ranches, transfer of existing licenses, and fee shooting of animals, Initiative No.143(Appendix)
  County park, secondary road passing through open range allowed to remain unfenced providing certain criteria are met to mitigate safety hazards presented by livestock, Ch. 204
  Grizzly bear in act of attacking or killing, allowing person to kill or attempt to kill bear when, Ch. 316
  Herd districts and horse herd districts, duty to build and maintain fences and petition requirements for annexation of contiguous land, Ch. 512
  Motor vehicle accidents involving, clarification of livestock owner's liability for damages or injury, Ch. 28
  Theft or transportation of stolen livestock, provision for deposit of proceeds from sale of property used in, Ch. 554
  Water-related projects that improve containment facilities, financing, Ch. 169

LIVESTOCK, BOARD OF
  Appointments to, SR 23

LIVESTOCK, DEPARTMENT OF, See also LIVESTOCK, generally
  Appropriations, Ch. 551, Ch. 572
  Exotic wildlife, certain departments requested to study importation and possession, HJR 16
  Horseracing, Board of — allocation transferred to, Ch. 483
  Predatory animals, extermination authority eliminated, Ch. 316

LOBBYING AND LOBBYISTS
  License fee, increase and use, Ch. 557

LOCAL GOVERNMENT, See also CITIES AND TOWNS; COUNTIES
  Accounting, budgeting, and financial matters — revision generally, Ch. 278
  Ambulance services, exception to insurance code, Ch. 13
  Audit and assistance functions of Department of Commerce transferred, Ch. 483
  Building codes, state-approved — adoption by ordinance authorizing adoption by administrative action, Ch. 150
  Debt limits, substituting assessed value for taxable value in establishing and expanding limitations, Ch. 29
  Electrical generation facility impact fee, assessment, Ch. 592
  Group health insurance, employer's premium contributions for — exempting increases in local government's property tax levy from mill levy calculation limitation, Ch. 511
  Group self-insurance program assets, constitutional amendment providing for investment, Ch. 355
  Landlords and tenants, prohibiting exercise of certain powers related to, Ch. 446
  Legislative State-Tribal Relations Committee, liaison responsibility, Ch. 210
  Mental illness and the criminal justice and corrections systems, requesting departmental coordination and collaboration with state and local governments and judiciary regarding training and education programs on issues surrounding persons with illness, SJR 2

LOCAL GOVERNMENT (Continued)
  Motor vehicles
    fee in lieu of tax reduction on heavy vehicles, reimbursement for loss of revenue, Ch. 500
    taxes, clarification of disposition to certain levies, Ch. 11, Special Laws, May 2000
  Notice provisions, standardization, Ch. 354
  Public records, destruction prohibited prior to offering to certain entities and the general public and expanding membership of local government records committee, Ch. 302
  Referendum on ordinance, petition requesting — extending time period for filing, Ch. 374
  Revenue collection and allocation, revision of provisions generally, Ch. 574
  State land, exchange for local government land, Ch. 139
  State revenue, dedication for — criteria and review provisions, Ch. 400
  Subdivisions, See SUBDIVISIONS

LODGING FACILITY USE TAX
  Heritage preservation and development program, continued funding, Ch. 469
  Nonprofit convention and visitors bureau located in resort area or resort area district, allocation of funds to, Ch. 195

LONG-TERM CARE FACILITIES
  Certification of facilities that provide intermediate and skilled nursing care, requirements clarified, Ch. 346
  Insurance producers connected with, prohibiting sale of life or disability policies to residents, Ch. 227
  Prescription drugs, donation to provisional community pharmacies offering drugs to certain low-income persons — program for, Ch. 362
  Safety devices, provision for use upon request and receipt of written informed consent, Ch. 347

LOTTERY, STATE
  Commerce, Department of — functions transferred, Ch. 483

LOWER INCOME, PERSONS OF
  Comprehensive health association, adoption of sliding scale of premium rates for participation, Ch. 475
  Loans for low-income families, revolving fund created for, Ch. 482
  Prescription drugs, donation by long-term care facilities to provisional community pharmacies offering drugs to certain low-income persons — program for, Ch. 362
  Property tax, payment under low-income property tax assistance without penalty and interest when, Ch. 410

M

MALPRACTICE, CHIROPRACTIC LEGAL PANEL
  Appropriations, Ch. 5, Ch. 572
  Revision of provisions generally, Ch. 5

MALPRACTICE, MEDICAL
  Chemical dependency, claims against licensed facilities subject to medical legal panel act, Ch. 370

MANAGED CARE
  Licensed physician to serve as medical director of managed care organizations, Ch. 107
  Mental health managed care and public mental health system provisions revised and reorganized, Ch. 466
  Mental health managed care ombudsman, revision of provisions for, Ch. 544
MARIJUANA
  Industrial hemp, production as agricultural crop authorized and providing affirmative defense for possession or cultivation of marijuana, Ch. 360
MARRIAGE
  Employer employing or offering to employ spouse is not marital status discrimination, Ch. 287
  License applications, specifying information that may be released to public and providing license and certificate of marriage are public documents, Ch. 91
MEDICAID, See PUBLIC ASSISTANCE
MEDICAL EXAMINERS, BOARD OF
  Appointments to, SR 19, SR 22
  Nursing, Board of — joint action for rule adoption, requirement eliminated, Ch. 492
MEDICAL EXAMINER, STATE
  Health care information, confidential — disclosure without patient's authorization for purpose of determining cause of death, Ch. 101
MEDICARE
  Congress urged to bring equitable funding of health care services and benefits to all recipients, HJR 9
MENTAL DISABILITIES BOARD OF VISITORS
  Revision of provisions generally, Ch. 344
MENTAL HEALTH SERVICES OVERSIGHT SUBCOMMITTEE
  Provision for during 2001-02 interim, HJR 1
MENTAL ILLNESS OR INCAPACITY
  Abuse and neglect in mental health facilities prohibited and providing for reporting and investigating allegations of, Ch. 344
  Advance directive, mental health — authorization, Ch. 533
  Commitment provisions, revision generally and allowing community treatment, Ch. 342
  Comprehensive health association, mandatory coverage for severe mental illness, Ch. 367
  Criminal justice and corrections systems, requesting departmental coordination and collaboration with state and local governments and judiciary regarding training and education programs on issues surrounding persons with mental illness and the systems, SJR 2
  Managed care and public mental health system provisions revised and reorganized, Ch. 466
  Mental health managed care ombudsman, revision of provisions for, Ch. 544
  Mental Health Services Oversight Subcommittee of Legislative Finance Committee, provision for during 2001-02 interim, HJR 1

MENTAL ILLNESS OR INCAPACITY (Continued)
  Nurses, advanced practice registered
    criminal proceedings, allowed to report and testify regarding defendant's fitness to proceed or mental condition when, Ch. 303
    "mental health professional" and "professional person" to include nurse with clinical specialty in psychiatric mental health nursing and rights regarding medication in mental health facilities, Ch. 310
  Proceedings, use of two-way electronic audio-video communication allowed at discretion of court, Ch. 212
  Serious emotional disturbances, multiagency children's services initiative for children with, Ch. 416

MILITARY AFFAIRS
  Federal laws, regulations, forms, precedents, and usages, including federal uniform code of military justice — adoption, Ch. 4
  Hunting, fishing, or trapping licenses issued in another state or country to military personnel — issuance of resident hunting, fishing, or trapping licenses allowed as well, Ch. 60
  License plates for veterans, active member of military allowed to purchase, Ch. 249
  Montana Purple Heart Memorial, supporting erection of, HJR 38
  National guard firefighters, new — coverage by firefighters' unified retirement system required, Ch. 290
  Professional licensing, license fee exemption for persons in military service repealed and licensing requirement exemption for commissioned medical officers eliminated, Ch. 492
  Schools to provide lists of students to armed forces recruiters, Ch. 319
  Selective Service Act, state agency or university system employment — compliance a prerequisite for payment of state student financial aid, and enrollment in postsecondary educational institution of student receiving financial assistance, Ch. 320

MILITARY AFFAIRS, DEPARTMENT OF
  Appropriations, Ch. 486, Ch. 551, Ch. 572, Ch. 573
  Director, appointment, SR 10

MILK CONTROL, BOARD OF
  Appointments to, SR 22

MINES AND MINING, See also TAXATION, MINERALS
  Crown Butte land exchange, encouraging leasing of property for coal mining, Ch. 485
  Environmental rehabilitation and response account, deposits to and use, Ch. 338
  Federal mineral royalty income, allocation to counties — provisions for, Ch. 594
  Hard-rock mining and reclamation account
    elimination, Ch. 338
    interest allocation, Ch. 488
  Hard-rock mining reclamation general obligation bonds, issuance and sale allowed and creating hard-rock mining reclamation debt service fund and hard-rock mining reclamation special revenue account, Ch. 460

MINES AND MINING (Continued)
- Metal mine reclamation
  - procedural provisions revised, Ch. 79
  - revision of definitions, applicable fees, and bonding and appeal procedures, Ch. 488
- Metal mines, open pits and rock faces — reclamation requirements revised, Ch. 7, Special Laws, May 2000(Appendix)
- Opencut mining, reclamation
  - opencut mining and reclamation account
    - elimination, Ch. 338
    - interest allocation, Ch. 488
  - permitting and reclamation plan amendment procedures, revision, Ch. 325
  - procedural provisions revised, Ch. 79
- Public school fund, authorizing board of investments to purchase mineral production rights held by, Ch. 418
- School of Mines and Engineering directed to study process for mining gold and silver not requiring use of cyanide heap leaching and to encourage certain students to participate in internship program at a Montana gold or silver mine operation, SJR 10
- State electrical code, exemption for mines and mine buildings, Ch. 47
- Strip and underground mine reclamation
  - operating permit revocation and permit transfer, Ch. 522
  - permit applications, environmental impact statement — departmental completion and publication required when, Ch. 82
  - procedural provisions revised, Ch. 79
- Strip and underground mine siting, procedural provisions revised, Ch. 79

MINORS, See also CHILD headings
- Abandoned children, protection provisions, Ch. 194
- Abandoned newborns, safe haven for, Ch. 277
- Alcohol and drugs, use both in general and while teenager is driving or riding in motor vehicle — encouraging department of public health and human services to work with other agencies in examining the problem, HJR 31
- Child protective services system, requesting performance audit by legislative audit division, HJR 32
- Curfew ordinance, governing body of county may create and providing absolute liability for violation, Ch. 131
- Fishing, revision of certain provisions and allowing purchase of paddlefish tags when, Ch. 3
- Foster care and adoption services, privatization — interim study requested, SJR 8
- Foster children, revision of provisions generally, Ch. 311
- Foster home license, background check on person seeking, Ch. 311
- Infant screening equipment, telecommunications access program for persons with disabilities to include, Ch. 297
- Intoxicating substance
  - minor in possession, driver's license suspension provisions revised and convictions to be removed from drivers' records, Ch. 64
  - unlawful attempt to purchase, penalties increased, Ch. 498
- Mental health services, requirement provided for system of tracking those who need. Ch. 466

MINORS (Continued)
  Partner or family member assault committed within vision or hearing of minor, enhanced penalties created, Ch. 503
  Serious emotional disturbances, multiagency children's services initiative for children with, Ch. 416
  Summer youth employment program, Ch. 525
  Tobacco products, unlawful for person under age 18 to purchase, creating penalties, and exempting from liability minors assisting in enforcement of youth access to tobacco products control act, Ch. 498

MINT AND MINT OIL PRODUCTION
  Revision of provisions generally, Ch. 46

MONTANA AGRICULTURAL CENTER AND MUSEUM OF THE NORTHERN GREAT PLAINS
  Lease provisions revised, Ch. 97

MONTANA AGRICULTURAL HERITAGE COMMISSION
  Allocation transferred, Ch. 189

MONTANA ARTS COUNCIL
  Appointments to, SR 19
  Appropriations, Ch. 434, Ch. 551, Ch. 572

MONTANA DRIVER PRIVACY PROTECTION ACT, Ch. 363

MONTANA ELECTRONIC GOVERNMENT SERVICES ACT, Ch. 265

MONTANA FARM AND RANCH RISK MANAGEMENT ACT, Ch. 262

MONTANA GENERIC SPECIALTY LICENSE PLATE ACT, Ch. 402

MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION
  Management responsibilities clarified, Ch. 308

MONTANA INFORMATION TECHNOLOGY ACT, Ch. 313

MONTANA POWER AUTHORITY ACT, Ch. 577

MONTANA RENTAL-PURCHASE AGREEMENT ACT, Ch. 263

MONTANA REPATRIATION ACT, Ch. 558

MONTANA SAFE HAVEN NEWBORN PROTECTION ACT, Ch. 277

MONTANA STATE UNIVERSITY
  Game warden trainee program, inclusion of student from, Ch. 566

MONTANA STATE UNIVERSITY-GREAT FALLS COLLEGE OF TECHNOLOGY
  Dental hygiene education program, appropriation for establishment, Ch. 510

MONTANA SUMMER YOUTH EMPLOYMENT PROGRAM, Ch. 525

MONTANA TECH OF THE UNIVERSITY OF MONTANA
  School of Mines and Engineering directed to study process for mining gold and silver not requiring use of cyanide heap leaching and to encourage certain students to participate in internship program at a Montana gold or silver mine operation, SJR 10

MONTANA TITLE LOAN ACT. Ch. 455

MORTGAGES
  Certificate of discharge, increase in time for giving and in penalty for refusal or failure to give on time, Ch. 30

MORTICIANS, FUNERAL DIRECTORS, AND CREMATORY FACILITIES
  Veterans, interment of certain remains — immunity to mortuaries for simple negligence, Ch. 202

MOTOR CARRIERS
  Federal Motor Carrier Safety Administration's proposed hours of service regulations, statement of opposition to, SJR 11
  Safety program, expressing support for development and for submission of grant proposal to united states department of transportation to study program implementation, HJR 23
  Safety provisions, revision generally, Ch. 207

MOTOR VEHICLES AND TRAFFIC REGULATIONS
  Accident reports and supplemental information, public access for purpose of research into history of vehicles and prohibiting access to information identifying any person or insurer named in records, Ch. 296
  Agricultural vehicles
    harvest season, operated on highway during — 40 mph speed limit eliminated and increasing distance vehicles may travel from harvested field, Ch. 369
    overweight farm vehicles traveling from harvested field, increasing distance that may be traveled without incurring penalties and eliminating requirement that vehicle may not exceed 40 mph, Ch. 254
  Airports, courtesy cars at — grants to municipality for, Ch. 452
  Careless driving offense, penalty increased, Ch. 561
  Commercial motor vehicles and operators, revision of provisions generally, Ch. 207
  Curbstoning prohibitions clarified, Ch. 385
  Dealers
    bond requirements increased, Ch. 201
    franchise sale, transfer, or exchange — prohibiting unreasonable withholding of consent for and providing time period for response to request for consent, Ch. 177
    revision of provisions generally, Ch. 385
    taxes or fees in lieu of tax on vehicles sold or traded to new or used car dealer, disclosure whether due or past due by person selling or trading vehicle and payment by seller of vehicle when, Ch. 261
  Diesel-powered, department to stop and inspect for presence of nontaxed, dyed diesel fuel in supply tanks and report required, Ch. 206
  Driver Privacy Protection Act, Ch. 363
  Driver rehabilitation and improvement program, establishment, Ch. 218
  Drivers' licenses
    alcohol or drug test, suspension for refusal to submit to — requiring challenge to be made in county in which arrest occurred, Ch. 147
    bicycles, driver's license for operators of certain kind of bicycle — requirement eliminated, Ch. 415
    commercial motor vehicle operators, revision of provisions generally, Ch. 207
    driver rehabilitation and improvement course requirements, noncompliance — suspension of license, Ch. 218

MOTOR VEHICLES AND TRAFFIC REGULATIONS (Continued)
  Drivers' licenses (Continued)
    minor in possession of intoxicating substance, suspension provisions revised, Ch. 64
    theft of fuel from retail establishment at which vehicles are fueled, suspension of license, Ch. 224
  Driving under the influence
    per se offense to include operating commercial motor vehicle with alcohol concentration of 0.04 or more, Ch. 207
    revision of provisions generally, Ch. 563
  Driving under the influence of alcohol or drugs and driving with excessive alcohol concentration, penalty for fourth or subsequent offense to allow that a person complete a residential alcohol dependency treatment program, Ch. 417
  Emergency vehicles, stationary — requirements for vehicles approaching, Ch. 157
  Fees in lieu of tax
    heavy vehicles, reduction and local government reimbursement for loss of revenue, Ch. 500
    seller of vehicle sold or traded to new or used car dealer, disclosure of whether fees due or past due at time of transfer and fees to be paid by seller when, Ch. 261
  Fees, uniformity provided for certain fees and providing for retention at state level, Ch. 574
  Glass replacement, glass repairs, glass products, and repairs — revising insurance unfair trade practices law, Ch. 345
  Gross vehicle weight
    axles allowed on commercial motor vehicle, replacing limit on number with federal gross weight limits, Ch. 283
    limits, increasing amount by which certain vehicles may exceed without incurring penalties, Ch. 369
    triple trailer truck configurations, revision of fees, Ch. 327
  Hay grinders and their towing units, exemption from certain weight standards, Ch. 518
  Health care professionals, exemption from foreign vehicle registration fees — requiring designation of health care facility as health professional shortage area, Ch. 436
  Information technology system, loan to department for financing, Ch. 394
  Junk vehicle disposal fees, increase, Ch. 317
  License plates
    courtesy license plates for dealers, Ch. 385
    disabled veterans, special and personalized plates — clarification of provisions, Ch. 72
    generic specialty plates, Ch. 402
    lewis and clark bicentennial plates, Ch. 414
    veterans' plates, active member of military allowed to purchase, Ch. 249
    veterans who have been awarded purple heart and have disability, provisions for, Ch. 539
  Lien filing fee increased to fund repayment of information technology loan, Ch. 394

MOTOR VEHICLES AND TRAFFIC REGULATIONS (Continued)
- Light vehicle registration fees
  - current system of taxation, to replace, Legislative Referendum No.115(Appendix)
  - revision and clarification of provisions, Ch. 191
- Livestock, accidents involving — clarification of livestock owner's liability for damages or injury, Ch. 28
- Local option flat fee, imposition by counties allowed with voter approval, Legislative Referendum No.115(Appendix)
- Local option taxes and fees, revision and clarification of provisions, Ch. 191
- Negligent vehicular assault, maximum term of incarceration increased and suspension of term when, Ch. 17
- New motor vehicle sales tax, repeal, Legislative Referendum No. 115(Appendix)
- Overweight vehicle tolerance standards revised, Ch. 254
- Pole trailers, revising requirements for securing logs on, Ch. 373
- Reckless driving, penalty increased, Ch. 561
- Recycling and disposal program, supplemental revenue to offset revenue losses, Ch. 317
- Registration
  - disabled veterans, clarification, Ch. 167
  - senior citizens and persons with disabilities transportation services fees, Ch. 337
  - veterans who have been awarded purple heart and have disability, provisions for, Ch. 539
- Size and weight limits, allowing governor to issue executive order to exempt vehicles under certain circumstances, Ch. 291
- Special mobile equipment used to apply fertilizer to agricultural land and brought into state for demonstration purposes, permit requirement and removing property tax requirement when, Ch. 526
- Speed limit
  - agricultural vehicles operated on highways during harvest season, 40 mph limit eliminated, Ch. 369
  - temporary special reduced or increased limit, request by local authority for setting — when, Ch. 93
- State government surplus vehicles, departmental purchase for recipients of temporary assistance for needy families funds, Ch. 242
- State purchase requisitions, manner of submission to be specified by department of administration, Ch. 181
- Suspense fund, removal of language related to, Ch. 191
- Taxes, clarification of disposition to certain levies, Ch. 11, Special Laws, May 2000(Appendix)
- Teen use of alcohol and drugs both in general and while teenager is driving or riding in motor vehicle, encouraging department of public health and human services to work with other agencies in examining the problem, HJR 31
- Traffic codes, interim committee or sufficient staff resources to study and revise, SJR 6
- Traffic signals and control devices, exception from state electrical code, Ch. 47
- Triple trailer truck configurations, revision of gross vehicle weight fees and length limits, Ch. 327

MOTOR VEHICLES AND TRAFFIC REGULATIONS (Continued)
  Wholesalers, bond requirements increased, Ch. 201
  Wrecking facilities and graveyards, license fee increased, Ch. 317

MULTILEVEL DISTRIBUTION COMPANIES
  Revision of provisions generally, Ch. 322

MUNICIPAL COURTS
  Pretrial conferences and hearings, appearance by telephone conference allowed, Ch. 515

N

NATIONAL GUARD
  Firefighters, new — coverage by firefighters' unified retirement system required, Ch. 290

NATURALIZATION
  Records kept and fees collected by clerk of the district court, abolishing obsolete provisions requiring, Ch. 39

NATURAL RESOURCES
  Clark Fork River basin, appropriation for natural resource damage assessment and litigation program, Ch. 247
  Wildcrafting and wildcrafters — permission or permit requirements and exemptions, requirements for buyers, and restrictions on landowner liability, Ch. 282

NATURAL RESOURCES AND CONSERVATION, DEPARTMENT OF
  Appropriations, Ch. 2, Ch. 232, Ch. 256, Ch. 266, Ch. 418, Ch. 550, Ch. 551, Ch. 552, Ch. 572, Ch. 573
  Clark Fork River basin, water use permits — notice provisions, Ch. 447
  Director, appointment, SR 9
  Fire management program, request for interim study of alternatives for funding including costs related to wildfire suppression, HJR 42
  Grazing district laws, removal of department except for administrative attachment purposes, Ch. 31
  Internal service fund type fees and charges for 2003 biennium, Ch. 572
  Mineral production rights, loans from coal severance tax permanent fund to purchase, Ch. 418
  Montana Agricultural Heritage Commission, allocation transferred to, Ch. 189
  State forest lands, interest in for preservation purposes — prohibiting designation, treatment, or disposal prior to obtaining full market value of foregone uses, Ch. 259
  State lands
    civil action against department concerning use or disposition, written undertaking required, Ch. 504
    environmental review requirements, exempting certain actions of department, Ch. 478
  Water quality, responsibilities, See generally WATER QUALITY
  Water use, responsibilities, See generally WATER USE

NATURAL RESOURCE WORKERS' EDUCATION PROGRAM. Ch. 586

NEGOTIABLE INSTRUMENTS
- Bad checks or stopping payment applicable to check presented electronically and civil penalties provided, Ch. 515
- Lost, destroyed, or stolen cashier's, teller's, or certified checks — procedure for addressing, Ch. 33

9-1-1 EMERGENCY TELEPHONE SYSTEM
- Accounts, basic and enhanced — funding clarified, Ch. 41

NONPROFIT CORPORATIONS
- Business name identifiers, definition and prohibiting use, Ch. 27

NOTARIES PUBLIC
- Revision of provisions generally, Ch. 161

NOXIOUS WEEDS AND NOXIOUS WEED CONTROL
- Federal government urged to continue to enter into agreements to promote control, to continue to provide funding for local control programs, and to provide assistance in accessing federal programs and funds, SJR 4
- Inmate labor through county jail work program for management, authorization for use, Ch. 203
- Revision of provisions generally, Ch. 407

NURSING AND NURSES
- Advanced practice registered nurses
  - criminal proceedings, nurse with clinical specialty in psychiatric mental health nursing allowed to report and testify regarding defendant's fitness to proceed or mental condition, Ch. 303
  - death certificate, allowing medical certification of cause of death on, Ch. 258
  - long-term care facilities, safety devices — providing for procedures and written orders, Ch. 347
  - "mental health professional" and "professional person" to include nurse with clinical specialty in psychiatric mental health nursing and rights regarding medication in mental health facilities, Ch. 310
  - youth to be admitted to correctional facility, medical examination may be performed by, Ch. 24
- Canadian and out-of-state nurses, provisional or temporary practice permits, Ch. 408
- License issuance and renewal periods clarified, Ch. 492
- Nutrition, inclusive of supplements and prescribed medications, through a gastrostomy or jejunostomy tube by certain persons not within scope of practice of nursing, Ch. 454

NURSING, BOARD OF
- Appointments to, SR 19
- Certain requirements eliminated or revised, Ch. 492

NURSING HOME ADMINISTRATORS, BOARD OF
- Appointments to, SR 19

O

OCCUPATIONAL DISEASE
- Proximate causation standard, eliminating provision requiring disease to be incidental to character of the business and not independent of the relation of employer and employee, Ch. 368

OCCUPATIONAL DISEASE (Continued)
  Revision of provisions generally, Ch. 214

OCCUPATIONAL THERAPY PRACTICE, BOARD OF
  Appointments to, SR 19, SR 22

OIL AND GAS, See also TAXATION, MINERALS
  Coal bed methane gas wells, permitting requirements, Ch. 578
  Coal bed methane protection program, Ch. 531
  Coal-bed natural gas resources, requesting environmental quality council to provide oversight for preparation of environmental impact statement regarding proposed development, HJR 27
  Oil overcharge money, appropriations, Ch. 239, Ch. 240

OIL AND GAS CONSERVATION, BOARD OF
  Appointments to, SR 23
  Coal bed methane gas wells, authorization to permit, Ch. 578

OPTOMETRY AND OPTOMETRISTS
  Discount cards to state that discount is not insurance, Ch. 227

OPTOMETRY, BOARD OF
  Appointments to, SR 19, SR 23

OUTFITTERS AND GUIDES
  Net client hunter use, establishment — revising time periods for, Ch. 393

OUTFITTERS, BOARD OF
  Appointments to, SR 19
  Executive director, certain qualifications eliminated, Ch. 492

P

PACIFIC NORTHWEST ECONOMIC REGION
  Establishment of Montana as member, Ch. 349

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL
  Appointments to, SR 3

PARDONS AND PAROLE, BOARD OF
  Appointments to, SR 22
  Initial appearances and hearings before board's designee, authority clarified, Ch. 425

PARKS AND RECREATION
  Headwaters State Park, modifications allowed in anticipation of lewis and clark bicentennial, Ch. 264
  Parks acquisition and management trust fund, income distribution — clarification, Ch. 61
  Snowmobile use in Yellowstone National Park — national park service urged to withdraw decision to implement winter use plan that would eliminate, to substitute a plan that ensures opportunity for future self-directed snowmobile access to park, and congress urged to provide adequate funding to provide adequate personnel to ensure health and safety, HJR 10
  State land recreational use, revenue received from fines and penalties — deposit requirements, Ch. 117

PARKS AND RECREATION (Continued)
  State park visitor services revenue, enterprise fund established for, Ch. 126

PARTNER OR FAMILY MEMBER ASSAULT, See also DOMESTIC VIOLENCE
  Protection orders
    release on bail, modifying conditions to include persons who violate order, Ch. 449
    service, clarification that there is no cost associated with, Ch. 153
  Revision of provisions generally, Ch. 503

PARTNERSHIPS
  Business name identifiers, definition and prohibiting use, Ch. 27

PEACE OFFICERS
  Criminal charge by complaint, officer need not sign under oath, Ch. 389
  Dogs chasing, stalking, or pursuing hooved game animals — authority for destruction clarified, Ch. 275
  Retirement, See GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM

PERSONAL CARE FACILITIES
  Standardized forms and educational materials to be provided to facilities and health care professionals and review of administrative rules pertaining to facilities, Ch. 331

PERSONNEL APPEALS, BOARD OF
  Appointment to, SR 19

PESTICIDES
  NAFTA Technical Working Group on Pesticides, epa and congress urged to increase resources and support efforts to harmonize regulations between canada and united states, HJR 13
  Registration fees, increase and revision, Ch. 141

PHARMACY AND PHARMACISTS
  Comprehensive health association benefit increased, Ch. 367
  Discount cards to state that discount is not insurance, Ch. 227
  Practice of pharmacy, revision generally and providing for registration of telepharmacy and pharmacy technicians and licensure of pharmacy interns, Ch. 388
  Prescription drugs donated by long-term care facilities to provisional community pharmacies offering drugs to certain low-income persons, program for, Ch. 362

PHARMACY, BOARD OF
  Appointments to, SR 19
  Donation of prescription drugs by long-term care facilities to provisional community pharmacies offering drugs to certain low-income persons, creation of program for, Ch. 362
  Revision of provisions generally, Ch. 388

PHYSICAL THERAPY AND PHYSICAL THERAPISTS
  Disability insurance and health service corporations, freedom of choice in selection to be provided and coverage of services provided by, Ch. 235

PHYSICAL THERAPY EXAMINERS, BOARD OF
  Appointments to, SR 19

PHYSICIAN ASSISTANTS-CERTIFIED
  Youth to be admitted to correctional facility, medical examination may be performed by, Ch. 24

PHYSICIANS AND SURGEONS
  Long-term care facilities
    safety devices, providing for procedures and written orders, Ch. 347
    standards for questioning physician's orders for drugs or treatments, Ch. 346
  Managed care organizations, licensed physician to serve as medical director, Ch. 107
  Occupational disease, proximate causation determination — inclusion of determination by percentage of amount of disease that was attributable to work, Ch. 368

PLUMBERS, BOARD OF
  Appointments to, SR 19, SR 22

POLICE OFFICERS' RETIREMENT SYSTEM, STATE PLAN
  Benefit increased for certain recipients not covered by guaranteed annual benefit adjustment, Ch. 391
  Deferred retirement option plan or DROP, establishment, Ch. 514
  Guaranteed annual benefit adjustment
    eligibility waiting period reduced, Ch. 309
    increase required and election between GABA and other adjustments, Ch. 149
    prevention of member from continuing to receive if member becomes active in another public retirement system, provision eliminated, Ch. 62
  Revision of provisions generally, Ch. 99

POLITICAL PRACTICES, COMMISSIONER OF
  Appropriation, Ch. 572
  Duties, revision, Ch. 401
  Enforcement authority clarified, Ch. 122

POULTRY AND EGGS
  Retail egg dealer, license to sell eggs — requirement eliminated, Ch. 225

PREDATORS AND PREDATOR CONTROL
  Definition of "predatory animal" revised and eliminating extermination authority of Department of Livestock, Ch. 316
  USDA-APHIS wildlife services program, appropriation for assistance, Ch. 426

PREGNANCY
  Hepatitis B, screening for, Ch. 351

PRESERVATION REVIEW BOARD
  Appointments to, SR 19

PRISONS AND PRISONERS, See CORRECTIONAL FACILITIES

PRIVACY
  Claim against state or political subdivision, compromise or settlement — clarifying that right of individual privacy clearly exceeds merits of public disclosure, Ch. 172
  Driver Privacy Protection Act, Ch. 363

PRIVACY (Continued)
  Electronic mail, unlawful interception as violation of privacy in communications, Ch. 77
  Governmental Internet Information Privacy Act, Ch. 219
  Insurance information and privacy protection, revision of provisions generally, Ch. 341

PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS, BOARD OF
  Appointments to, SR 19

PROBATION AND PAROLE OFFICERS
  Juvenile probation officers to be state employees and repealing statutory salary amounts for, Ch. 585
  Partner or family member assault offenders, reports concerning, Ch. 503

PROBATION, PAROLE, AND CLEMENCY
  Interstate Compact for Adult Offender Supervision, Ch. 18
  Probation provisions, revision and clarification, Ch. 493

PROFESSIONAL AND OCCUPATIONAL LICENSING AND REGULATION
  Functions of Department of Commerce transferred to Department of Labor and Industry, Ch. 483
  Revision of laws generally, Ch. 492
  School districts, interlocal cooperation provisions expanded to allow sharing of teachers, specialists, superintendents, or other professional persons licensed under Title 37, Ch. 318

PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS, BOARD OF
  Appointments to, SR 19
  Requirements for members clarified, Ch. 492

PROPERTY, GENERALLY
  Embezzlement, theft by — creation of offense, Ch. 427
  Intellectual property created by university system employee or individual, equity ownership in business entity, Ch. 379

PROPERTY, PRIVATE, See generally PROPERTY, REAL

PROPERTY, REAL, See also TAXATION, PROPERTY
  Coordinate system, accuracy requirements for recording coordinates of land boundaries revised, Ch. 494
  County clerk and recorder's records, information provided from and searches of — revisions pertaining to, Ch. 156
  Eminent domain, See EMINENT DOMAIN
  Fishing access enhancement program, landowner incentives, Ch. 196
  Homestead exemption, increase, Ch. 451
  Hunting provisions, See generally FISH AND WILDLIFE
  Lien created by docketing judgment, extension of time period, Ch. 515
  Noxious weeds on property, requiring disclosure by owner when selling property, Ch. 407
  Tax information agents required to report proceeds from real estate transactions when and report required, Ch. 461
  Transportation, Department of — disposition of excess lands, provisions revised. Ch. 279

PROPERTY, REAL (Continued)
  Wildcrafting and wildcrafters — permission or permit requirements and exemptions, requirements for buyers, and restrictions on landowner liability, Ch. 282

PROPRIETARY POSTSECONDARY EDUCATIONAL ADVISORY COUNCIL
  Elimination, Ch. 133, Ch. 483

PROSTITUTION
  Criminal penalties revised, Ch. 312

PSYCHOLOGISTS, BOARD OF
  Allocation revised, Ch. 492
  Appointments to, SR 19

PSYCHOLOGY AND PSYCHOLOGISTS
  License renewals, calculation of late fees revised, Ch. 492

PUBLIC ACCOUNTANTS, BOARD OF
  Appointments to, SR 19

PUBLIC ASSISTANCE
  Children's health insurance program (CHIP) — eligibility criteria revised, limitation of services, and allowing direct payment to health care providers and contract on fee-for-service basis, Ch. 476
  FAIM program, designated components removed, Ch. 465
  Funding method, revision, Ch. 574
  Funding provisions for public assistance, foster care, and protective services — revision generally, Ch. 571
  Loans for low-income families, revolving fund created for, Ch. 482
  Local government entitlements, deduction of public assistance costs, Ch. 574
  Local Offices of Public Assistance to replace county welfare offices, Ch. 571
  Medicaid
    alcoholism and chemical dependency programs, alcoholic beverage taxes to be used for matching funds, Ch. 470
    breast and cervical cancer health program, eligibility and funding for individuals who have participated in, Ch. 440
  Medicaid Fraud Control Unit, authority revised, Ch. 87
  Pathways and community services program, removal of references to, Ch. 465
  Revision of provisions generally, Ch. 465
  State government surplus vehicles, departmental purchase for recipients of temporary assistance for needy families funds, Ch. 242
  Temporary assistance to needy families block grant, See PUBLIC HEALTH AND HUMAN SERVICES, DEPARTMENT OF
  Workforce development programs, coordination between departments of labor and industry and public health and human services, Ch. 343
  Workforce investment, educational, and other human resource programs — one-stop delivery system created for administration, Ch. 424

PUBLIC ASSISTANCE, BOARD OF
  Appointments to, SR 22

PUBLIC CONTRACTS
  Little Davis-Bacon Laws, revision of certain provisions, Ch. 517
  Printing laws, exemption for workers' compensation state fund when, Ch. 314
  Procurement, state — revision of provisions generally, Ch. 181

PUBLIC CONTRACTS (Continued)
  Revision of provisions generally, Ch. 181
  School district bidding requirements increased from $15,000 to $25,000, Ch. 103
  State-owned water projects, increase in limit for construction contracts without formal competitive bids and exemption from specific solicitation and selection procedures for goods or nonconstruction or professional services when, Ch. 382

PUBLIC DEFENDERS
  District court funding, state assumption — exclusion from provisions, Ch. 585

PUBLIC EDUCATION, BOARD OF
  Appointments to, SR 16, SR 23
  Appropriation, Ch. 572
  Teacher education programs, request for study of use of pre-professional skills test as entry test for admission into, HJR 40

PUBLIC EMPLOYEES' RETIREMENT BOARD
  Powers and duties provisions, revision, Ch. 99
  Public employees' retirement system defined contribution plan, loan for disability benefit startup costs and development of long-term disability plan and trust fund through which benefits are paid, Ch. 423

PUBLIC EMPLOYEES' RETIREMENT SYSTEM
  Benefit provisions revised, Ch. 149
  County hospital and rest home employees, participation optional, Ch. 285
  Defined benefit plan, guaranteed annual benefit adjustment — eligibility waiting period reduced, Ch. 309
  Defined contribution plan
    disability benefit, provision for, Ch. 423
    revision of provisions generally, Ch. 490
  Guaranteed annual benefit adjustment
    defined benefit plan, eligibility waiting period reduced, Ch. 309
    increase required and election between GABA and other adjustments, Ch. 149
    prevention of member from continuing to receive if member becomes active in another public retirement system, provision eliminated, Ch. 62
  Legislators, window of opportunity for participation, Ch. 357
  Peace officers, reopening opportunity for transfer of membership to game wardens' and peace officers' retirement system, Ch. 442
  Reemployment of retiree, increase in number of hours allowed, Ch. 66
  Revision of provisions generally, Ch. 99
  Service and disability benefits increased for members who have at least 25 years of membership service, Ch. 217

PUBLIC FUNDS
  Constitutional amendment requiring all funds be invested in accordance with prudent expert principles by removing restriction on investment in private corporate capital stock, Ch. 375, Ch. 418

PUBLIC HEALTH AND HUMAN SERVICES, DEPARTMENT OF
  Abandoned newborns — notification of surrender and assumption of care, custody, and control, Ch. 277
  Appropriations, Ch. 239, Ch. 250, Ch. 440, Ch. 550, Ch. 551, Ch. 572, Ch. 573

PUBLIC HEALTH AND HUMAN SERVICES, DEPARTMENT OF (Continued)
  Child abuse and neglect
    rulemaking authority granted and allowing assessment of abuse or neglect reports to determine action required, Ch. 311
    school districts to disclose certain information, Ch. 281
  Child support enforcement provisions, See generally CHILD SUPPORT ENFORCEMENT
  Chronic disease registry, development — requiring feasibility report on, Ch. 166
  Critical access hospitals, designation and rules required, Ch. 192
  Director, appointment, SR 8
  Exotic wildlife, certain departments requested to study importation and possession, HJR 16
  Hepatitis B surface antigen, reporting to department of positive test results from screening pregnant women, Ch. 351
  Long-term care facilities, rules for
    certification requirements, Ch. 346
    safety devices, Ch. 347
  Mental health managed care entity financial solvency provisions, consolidation under, Ch. 466
  Mental illness and the criminal justice and corrections systems, requesting departmental coordination and collaboration with state and local governments and judiciary regarding training and education programs on issues surrounding persons with illness, SJR 2
  Personal care facilities, standardized forms and educational materials provided to facilities and health care professionals and requiring review of administrative rules, Ch. 331
  Public assistance, responsibilities, See generally PUBLIC ASSISTANCE
  Serious emotional disturbances, multiagency children's services initiative for children with — responsibilities, Ch. 416
  Teen use of alcohol and drugs both in general and while teenager is driving or riding in motor vehicle, encouraging department to work with other agencies in examining the problem, HJR 31
  Temporary assistance to needy families block grant
    affordable housing revolving loan account, amount transferred to, Ch. 502
    loans for low-income families, revolving fund created for, Ch. 482
    maintenance of effort for programs funded with, requirement reduced, Ch. 395
    state government surplus vehicles, departmental purchase for recipients of funds, Ch. 242
  Universal newborn hearing screening program, implementation, Ch. 250
  Workforce development programs, coordination between department and department of labor and industry, Ch. 343

PUBLIC OFFICERS OR EMPLOYEES
  County hospitals, rest homes, and hospital districts — exempting employees from mandated leave provisions and participation in specified group insurance contracts or plans and requiring compensation or benefits increase to offset any reduction in leave benefits, Ch. 559
  District court nonelected employees to be state employees, Ch. 585

PUBLIC OFFICERS OR EMPLOYEES (Continued)
- Employee travel time compensability, urging department of labor and industry to review state laws and administrative rules and to work with federal department of labor to clarify and simplify state and federal laws regarding, HJR 7
- Employee welfare benefit plan consisting of individual health care expense trust accounts, establishment, Ch. 272
- State employees, unfunded leave liability — department of administration directed to conduct analysis and propose methods of funding, HJR 34
- Statewide pay plans and benefits
  - agency program budget reduction plans to apply to base budget for, Ch. 569
  - revisions and appropriation to implement, Ch. 553

PUBLIC RECORDS
- Electronic mail used for transaction of official business as public record, Ch. 77
- Local government records, destruction prohibited prior to offering to certain entities and the general public and expanding membership of local government records committee, Ch. 302
- Mailing lists, public information used for — restriction revised, Ch. 319

PUBLIC SAFETY COMMUNICATIONS OFFICERS
- Certification requirements, Ch. 88

PUBLIC SERVICE COMMISSION, See also generally UTILITIES
- Electrical energy pool, implementation, Ch. 582
- Telecommunications, universal service fund — requiring investigation of need for and authority for establishment, Ch. 430

PUBLIC SERVICE REGULATION, DEPARTMENT OF
- Appropriation, Ch. 572

PYRAMID PROMOTIONAL SCHEMES
- Revision of provisions generally, Ch. 322

R

RADIOLOGIC TECHNOLOGISTS, BOARD OF
- Appointments to, SR 19

RAILROADS
- Amtrak route from Denver to Spokane that passes through southern and western Montana, support urged, HJR 3
- Horns sounded at public road and highway crossings, requirement clarified and eliminating obsolete requirements and requirements that are federally preempted, Ch. 477
- Southern Amtrak route, funding for engineering and operating study, Ch. 208

RAILROAD VANDALISM PREVENTION ACT, Ch. 432

REAL ESTATE APPRAISAL AND APPRAISERS
- Out-of-state appraisers, temporary licensing provision, Ch. 492

REAL ESTATE APPRAISERS, BOARD OF
- Appointments to, SR 19

REAL ESTATE APPRAISERS, BOARD OF (Continued)
  Certain requirements for certain members eliminated and number of members increased, Ch. 492

REAL ESTATE BROKERS AND SALESPERSONS
  Broker associate and broker owner designations eliminated, Ch. 492
  Personal transactions by salespersons, guidelines provided, Ch. 294
  Registered broker's trust account, revision of provision for placement of funds in, Ch. 294

REALTY REGULATION, BOARD OF
  Appointments to, SR 19
  Executive secretary, certain qualifications eliminated, Ch. 492

RECLAMATION AND DEVELOPMENT GRANTS PROGRAM
  Appropriation, Ch. 232
  Oil and natural gas production tax, distribution, Ch. 306

RECREATION, See PARKS AND RECREATION

REGENTS OF HIGHER EDUCATION, BOARD OF
  Appointments to, SR 7, SR 25
  Appropriation, Ch. 10, Special Laws, May 2000(Appendix)
  Carl D. Perkins Act vocational education programs, making permanent the designation of the board as eligible agency for administering, Ch. 130
  Military Selective Service Act — rules for compliance as prerequisite for state agency or university system employment, payment of state student financial aid, and enrollment in postsecondary educational institution of student receiving financial assistance, Ch. 320
  Montana State University-Great Falls College of Technology, appropriation for establishment of dental hygiene education program, Ch. 510
  Research programs, coal severance tax permanent fund interest income to fund, Ch. 10, Special Laws, May 2000(Appendix)
  School of Mines and Engineering directed to study process for mining gold and silver not requiring use of cyanide heap leaching and to encourage certain students to participate in internship program at a Montana gold or silver mine operation, SJR 10
  Student loan program, authority revised to conform to federal law, Ch. 38

RELIGION
  Schools, religious instruction released time program — school district to determine amount of time student may be released from school, Ch. 84

RENEWABLE RESOURCE GRANT AND LOAN PROGRAM
  Appropriations for grants and loans, Ch. 266, Ch. 552
  Water-related projects that improve water quality, financing from, Ch. 169

RENTAL-PURCHASE AGREEMENTS
  Provisions for, Ch. 263

RESEARCH AND COMMERCIALIZATION EXPENDABLE TRUST FUND
  Production agriculture research and commercialization project grants, clarification of use for, Ch. 431

RESEARCH AND COMMERCIALIZATION PROJECTS
  Coal severance tax permanent fund interest income to fund, Ch. 10, Special Laws, May 2000(Appendix)

RESEARCH AND DEVELOPMENT
  Crop Research Facilities Protection Act, Ch. 441

RESOLUTIONS
  Amtrak route from Denver to Spokane that passes through southern and western Montana, support urged, HJR 3
  Annexation, interim study requested to develop guiding policy on and to generate recommendations based on findings, HJR 24
  Asbestos, assay method for measurement to assist in establishment of ambient air standard based on health risks from chronic exposure to — department of environmental quality requested to establish task force to develop, HJR 29
  Bicycle traffic safety issues, interim study requested, HJR 37
  Capitol or Capitol Complex grounds — authorizing permanent placement of certain busts, statues, memorials, monuments, and art displays, SJR 12
  Child protective services system, requesting performance audit by legislative audit division, HJR 32
  Coal-bed natural gas resources, requesting environmental quality council to provide oversight for preparation of environmental impact statement regarding proposed development, HJR 27
  Columbia River Basin, urging state role in managing and calling for public forum to develop consensus-based approach to management, HJR 14.
  Community colleges, request for interim study of laws governing, HJR 15
  Criminal offenses, offense sentencing and release, and related issues — interim study requested, HJR 39
  Electricity prices, requesting federal intervention to stabilize wholesale prices in the west, HJR 44
  Employee travel time compensability, urging department of labor and industry to review state laws and administrative rules and to work with federal department of labor to clarify and simplify state and federal laws regarding, HJR 7
  Exotic wildlife, certain departments requested to study importation and possession, HJR 16
  Federal estate tax law, congress urged to significantly revise, HJR 3, Special Laws, May 2000(Appendix)
  Federal Motor Carrier Safety Administration's proposed hours of service regulations, statement of opposition to, SJR 11
  Fire management program of Department of Natural Resources and Conservation, request for interim study of alternatives for funding including costs related to wildfire suppression, HJR 42
  Forest fuels management, need to balance with air quality concerns resulting from prescribed wildland open burning — interim study to address issues, HJR 21
  Forest fuels, urging reduction of overabundance, HJR 22
  Foster care and adoption services, privatization — interim study requested, SJR 8
  Governor's appointments, senate concurrence, SR 3, SR 4, SR 5, SR 6, SR 7, SR 8, SR 9, SR 10, SR 11, SR 12, SR 13, SR 14, SR 15, SR 16, SR 17, SR 19, SR 20, SR 21, SR 22, SR 23, SR 24, SR 25; SR 1, Special Laws, May 2000(Appendix); SR 2, Special Laws, May 2000(Appendix); SR 3, Special Laws, May 2000(Appendix)
  Health care and increasing cost of health insurance, interim study requested, SJR 22

RESOLUTIONS (Continued)
- Kumamoto, prefecture of — commemorating 20th anniversary of sister state relationship with, SJR 9
- Legislature
  - rules to govern proceedings
    - house, HR 1
    - joint rules, SJR 1
    - senate, SR 1
  - senate bills and journal committee, abolishment urged, SR 18
- Lewis and Clark Expedition, recognition of 200th anniversary and urging national recognition and support by congress and the president, HJR 18
- Little Shell Tribe of Chippewa Indians, department of the interior urged to grant final recognition to, HJR 11
- Lower Yellowstone Conservation District Development Committee, urging federal government to support efforts to obtain promised benefits of pick-sloan missouri river plan and to assist district in drafting and passing federal legislation outlining benefits needed to sustain existing irrigation and develop new irrigation in Montana's yellowstone and missouri river basins, SJR 16
- Medicare, congress urged to bring equitable funding of health care services and benefits to all recipients, HJR 9
- Mental Health Services Oversight Subcommittee of Legislative Finance Committee, provision for during 2001-02 interim, HJR 1
- Mental illness and the criminal justice and corrections systems, requesting departmental coordination and collaboration with state and local governments and judiciary regarding training and education programs on issues surrounding persons with illness, SJR 2
- Missouri River or Missouri River Breaks, opposition to any new designation for, SR 2, HR 2; HJR 2, Special Laws, May 2000(Appendix)
- Montana Purple Heart Memorial, supporting erection of, HJR 38
- Motor carrier safety program, expressing support for development and for submission of grant proposal to united states department of transportation to study program implementation, HJR 23
- National forests and public lands, supporting multiple use and urging congress and the president to overturn the federal roadless initiative, HJR 19
- Noxious weed control — federal government urged to continue to enter into agreements to promote, to continue to provide funding for local control programs, and to provide assistance in accessing federal programs and funds, SJR 4
- Pesticides, NAFTA Technical Working Group on — epa and congress urged to increase resources and support efforts to harmonize regulations between canada and united states, HJR 13
- Presidential general elections, urging congress to require standardized polling hours for selecting electors, HJR 4
- Property taxation of agricultural and nonagricultural land, interim study requested, SJR 21
- Revenue estimates
  - each year of the 2000-01 biennium, for — revision, HJR 1, Special Laws, May 2000(Appendix)
  - fiscal years 2001, 2002, and 2003 — for, HJR 2

RESOLUTIONS (Continued)

- School district boundary transfers, laws governing — interim study requested, HJR 41
- School of Mines and Engineering directed to study process for mining gold and silver not requiring use of cyanide heap leaching and to encourage certain students to participate in internship program at a Montana gold or silver mine operation, SJR 10
- Snowmobile use in Yellowstone National Park — national park service urged to withdraw decision to implement winter use plan that would eliminate, to substitute a plan that ensures opportunity for future self-directed snowmobile access to park, and congress urged to provide adequate funding to provide adequate personnel to ensure health and safety, HJR 10
- State employees, unfunded leave liability — department of administration directed to conduct analysis and propose methods of funding, HJR 34
- State timber sales, urging reciprocity between idaho and Montana on bidding procedures for, SJR 13
- Sugar industry — recognition of importance to economy, urging state agencies to utilize resources and programs to assist, and stating legislature's commitment to helping sugar beet producers maintain strong Montana presence, HJR 33
- Tax relief plan introduced by President Bush, urging Montana's congressional delegation to support and work to pass, SJR 18
- Teacher education programs, request for board of public education study of use of pre-professional skills test as entry test for admission into, HJR 40
- Teen use of alcohol and drugs both in general and while teenager is driving or riding in motor vehicle, encouraging department of public health and human services to work with other agencies in examining the problem, HJR 31
- Timber salvage and forest restoration program, urging development of, HJR 25
- Traffic codes, interim committee or sufficient staff resources to study and revise, SJR 6
- Transportation plan update, encouraging department of transportation to work with other entities to incorporate economic development criteria into plan, HJR 30
- University system, tuition prepayment program — feasibility of establishing, interim study requested, HJR 35
- Veterans, interim study requested for specific issues and urging inclusion of veterans' organizations in the study process, SJR 5
- Voting systems and procedures, interim study requested, HJR 8
- Xanthopoulos Building in Warm Springs, dictating disposition and preventing transfer to anaconda-deer lodge for use as regional correctional facility, SJR 17

RESORT AREAS

- Nonprofit convention and visitors bureau located in, lodging facility use tax funds allocated to, Ch. 195

RESPIRATORY CARE PRACTITIONERS, BOARD OF

- Appointments to, SR 19, SR 22

RESTORATIVE JUSTICE, OFFICE OF

- Creation. Ch. 581

RETAIL ESTABLISHMENTS
  Theft of fuel from establishment at which vehicles are fueled, suspension of driver's license, Ch. 224
REVENUE, DEPARTMENT OF
  Alcoholic beverages, responsibilities, See generally ALCOHOLIC BEVERAGES
  Appropriations, Ch. 550, Ch. 572
  Director, appointment, SR 17
  Financial responsibilities, specific — transferred from department of administration, Ch. 257
  Internal service fund type fees and charges for 2003 biennium, Ch. 572
  Property, taxable — inclusion of effective tax rates for each class of property in biennial report, Ch. 199
  Small business licensing coordination, board of review attached to department for administrative purposes, Ch. 323
  Taxation duties, See generally TAXATION headings
REVENUE ESTIMATES
  Each year of the 2000-01 biennium, for — revision, HJR 1, Special Laws, May 2000(Appendix)
  Fiscal years 2001, 2002, and 2003 — for, HJR 2
RIVERS AND STREAMS
  Clark Fork River basin, appropriation for natural resource damage assessment and litigation program, Ch. 247
  Clark Fork River Basin Task Force, establishment, Ch. 447
  Columbia River Basin, urging state role in managing and calling for public forum to develop consensus-based approach to management, HJR 14.
  Lower Yellowstone Conservation District Development Committee, urging federal government to support efforts to obtain promised benefits of pick-sloan missouri river plan and to assist district in drafting and passing federal legislation outlining benefits needed to sustain existing irrigation and develop new irrigation in Montana's yellowstone and missouri river basins, SJR 16
  Milk River basin economic development plan, development, Ch. 256
  Missouri River or Missouri River Breaks, opposition to any new designation for, SR 2, HR 2; HJR 2, Special Laws, May 2000(Appendix)
RURAL SPECIAL IMPROVEMENT DISTRICTS
  Bonds authorized to bear interest at variable rate, providing adjustments in interest rates on special assessments securing bonds, and providing for sale of variable rate bonds, Ch. 162

S

SALES
  Construction equipment dealership agreements — regulation of termination, cancellation, nonrenewal, substantial alteration, or transfer, Ch. 180
  Dealership contract cancellation, termination, nonrenewal, or refusal — reimbursement or repurchase of signs, special equipment, and special tools, Ch. 177
  Outside sales, minimum wage and overtime exemptions — revision of language to conform to federal provisions, Ch. 22

SANITARIANS, BOARD OF
  Appointments to, SR 19

SCHOOL DISTRICTS AND TRUSTEES, See also SCHOOL FINANCE; SCHOOLS; SCHOOL TRANSPORTATION; TEACHERS
  Bidding requirements increased from $15,000 to $25,000, Ch. 103
  Block grants, provision for, Ch. 574
  Boundary transfers, laws governing — interim study requested, HJR 41
  Breakfast programs, startup costs, Ch. 437
  Budget meeting, final — revision in time for holding and providing notification, Ch. 376
  Child abuse and neglect, disclosure of certain information to specific entities, Ch. 281
  Consolidation, allowing retention of basic entitlement for 6 years, Ch. 252
  Election of trustees, See SCHOOL ELECTIONS
  Endowments, investment according to provisions of uniform management of institutional funds act, Ch. 76
  Interlocal cooperation provisions expanded to allow sharing of teachers, specialists, superintendents, or other professional persons licensed under Title 37, Ch. 318
  Investment accounts — authorization for, deposit requirements, and payment of automated clearinghouse system charges for transfers made, Ch. 205
  Montana job corp program and district, interlocal cooperative agreement for educational or vocational services to supplement district's programs, Ch. 462
  Postsecondary institutions, authorizing interlocal agreements to allow 11th and 12th grade students to obtain credits through attending classes available only at, Ch. 377
  Procurement of supplies and services, cooperative purchasing contracts with one or more districts for, Ch. 75
  Property, exchange with public or private entities allowed when, Ch. 276
  Pupil instruction days, operation for both minimum number of and minimum number of hours — clarification, Ch. 237
  Single-member trustee district, petition for — criteria for submission to board and submission to electors, Ch. 548
  Tuition, out-of-district — provisions revised, Ch. 464

SCHOOL ELECTIONS
  Single-member trustee district, petition for — submission to electors, Ch. 548
  Trustee elections
    second alternative method when more than half of electors of high school district reside outside territory of elementary district, providing, Ch. 151
    write-in candidates for trustee positions, declaration of intent to be filed at least 26 days before election, Ch. 15

SCHOOL FINANCE
  Adult education, property tax mill levy limit increased, Ch. 220
  Average number belonging (ANB), per-ANB entitlement — increase, Ch. 556; Ch. 11, Special Laws, May 2000(Appendix)
  BASE aid and BASE budget, inclusion of percentage of special education allowable cost payment, Ch. 231

SCHOOL FINANCE (Continued)
  Basic entitlement
    consolidation of districts, retention for 6 years, Ch. 252
    increase, Ch. 556; Ch. 11, Special Laws, May 2000(Appendix)
  Block grants, provision for, Ch. 574
  Bond repayments, authorizing use of a percentage of impact aid funds for, Ch. 549
  Budget meeting, final — revision in time for holding and providing notification, Ch. 376
  Countywide transportation and retirement, block grants to counties for distribution, Ch. 574
  Crown Butte land exchange, coal mining leases — proceeds to be used for funding if permitted, Ch. 485
  Debt limit provisions, revision, Ch. 10
  Direct state aid and funding of basic and per-ANB entitlements increased, Ch. 11, Special Laws, May 2000(Appendix)
  Electrical generation facility impact fee, assessment, Ch. 592
  Endowments, investment according to provisions of uniform management of institutional funds act, Ch. 76
  General fund budget limitations, revision, Ch. 146
  Investment accounts — authorization for, deposit requirements, and payment of automated clearinghouse system charges for transfers made, Ch. 205
  K-12 career and vocational/technical education funding formula revised, Ch. 133
  K-12 public school funding and related issues, study by governor and superintendent of public instruction required, Ch. 580
  Levies, exemption from property tax mill levy limitations, Ch. 220
  Light vehicle taxes received during fiscal year 1999, reimbursements from – anticipated revenue received during school fiscal year to include, Ch. 11, Special Laws, May 2000(Appendix)
  Mill levy election, procedure provided, Ch. 495
  Operating expense and purchasing laws, revision to allow transfers between different funds or between final budget and budget amendment and prohibiting transfers from or to general fund, Ch. 480
  Postsecondary institutions, authorizing interlocal agreements with school districts to allow 11th and 12th grade students to obtain credits through attending classes available only at and requiring payment of fees by districts or students, Ch. 377
  Procurement of supplies and services, cooperative purchasing contracts with one or more districts for, Ch. 75
  Public school fund, revising structure and authorizing board of investments to purchase mineral production rights held by, Ch. 418
  Revision of provisions generally, Ch. 237
  Special education
    allowable cost payments — inclusion of percentages in BASE aid, BASE budget, and maximum general fund budget, Ch. 231
    funding formula, revision to establish fixed limits for distribution of total allocation, Ch. 145
  State school fund revenue, deposit provisions revised, Ch. 554

SCHOOL FINANCE (Continued)
  Technology acquisition and depreciation fund, authorizing use of fund for depreciation of equipment and requiring voter approval for levy to increase funds to support technology, Ch. 474
  Timber harvest funds, deposit provisions and appropriation to schools for technology acquisition, Ch. 554
  Tribal college adult education programs, distribution of adult education funds for support, Ch. 148
  Tuition fund, inactive — closure and transfer of balance into miscellaneous programs fund, Ch. 356
  Tuition, out-of-district — provisions revised, Ch. 464

SCHOOL LANDS
  Full fair market value must be obtained for use, Ch. 270

SCHOOLS
  Accreditation, multiyear allowed and providing for accreditation of 7th and 8th grades funded at high school rates, Ch. 73
  Armed forces recruiters, allowing school to provide lists of students to, Ch. 319
  Breakfast programs, startup costs, Ch. 437
  Elementary schools, opening or reopening procedures revised, Ch. 105, Ch. 237
  K-12 career and vocational/technical education substituted for K-12 vocational education provisions, Ch. 133
  Religious instruction released time program, school district to determine amount of time student may be released from school, Ch. 84
  Special education
    allowable cost payments — inclusion of percentages in BASE aid, BASE budget, and maximum general fund budget, Ch. 231
    funding formula, revision to establish fixed limits for distribution of total allocation, Ch. 145
  Technology acquisition, funds for, Ch. 554
  Tuition, out-of-district — provisions revised, Ch. 464

SCHOOL TRANSPORTATION
  Buses, minimum standards clarified, Ch. 237
  Reimbursements
    countywide, block grants to counties for distribution, Ch. 574
    individual transportation contract and/or room and board, base rate and maximum reimbursement increased, Ch. 409
  Tuition, out-of-district — provisions revised, Ch. 464

SECRETARY OF STATE
  Ballot issue responsibilities, revision generally, Ch. 537
  Cooperative associations, establishment of fees commensurate with costs, Ch. 109
  Elections, revision of provisions generally, Ch. 537
  Fees charged by, revising how fees may be set, Ch. 396
  Internal service fund type fees and charges for 2003 biennium, Ch. 572
  Notary public provisions, revision generally, Ch. 161

SECURED TRANSACTIONS
  Adoption of errata and revisions to most recent version of laws. Ch. 179

SECURED TRANSACTIONS (Continued)
  Exemption from attachment for maintained unemployment insurance, workers' compensation, occupational disease, and silicosis benefits, Ch. 214

SENATE BILL TO CHAPTER NUMBER TABLE, See TABLE OF SENATE BILL TO CHAPTER NUMBER, printed separately in this volume

SENTENCING AND SENTENCES
  Crime of violence, definition revised to include certain felony sexual offenses, Ch. 509
  Dangerous drugs, person convicted of first violation of criminal possession presumed to be entitled to deferred imposition of sentence, Ch. 100
  Driving under the influence, chemical dependency treatment — extending period for suspended sentence and judge allowed to retain jurisdiction over person for 1 year when, Ch. 563
  Drug paraphernalia, person convicted of first violation of possession presumed to be entitled to deferred imposition of sentence, Ch. 100
  Enhancement, incarceration penalty — requirements for pleading, proof, and mental state, Ch. 524
  Interim study of criminal offenses, offense sentencing and release, and related issues — request for, HJR 39
  Negligent vehicular assault, maximum term of incarceration increased and suspension of term when, Ch. 17
  Partner or family member assault offenders, revision of provisions, Ch. 503
  Prostitution, aggravated promotion of — life sentence without possibility of parole for third offense, Ch. 312
  Restitution paid by offenders, court to specify total amount to be paid and collection methods, Ch. 284
  Restorative justice principles, provision for, Ch. 581
  Sexual offenders, residency restrictions as condition of sentence, Ch. 390
  Sexual or violent offenders, registration requirements — clarification of applicability, Ch. 152
  Weapon, dangerous — additional sentence for offenses committed with, clarification, Ch. 16
  Written judgment and oral pronouncement, conflicts between — convicted person or prosecutor may request for modification for conformance and providing for correction of factually erroneous judgment at any time, Ch. 74

SESSION LAW TABLES, See TABLE OF SESSION LAWS AFFECTED and TABLE OF SESSION LAW TO CODE, printed separately in this volume

SEWAGE DISPOSAL AND SEWER SYSTEMS
  Revision of provisions generally, Ch. 315
  Subdivisions, sanitation in — revision of provisions, Ch. 280

SHERIFFS' RETIREMENT SYSTEM
  Guaranteed annual benefit adjustment
    eligibility waiting period reduced, Ch. 309
    increase required and election between GABA and other adjustments, Ch. 149
    prevention of member from continuing to receive if member becomes active in another public retirement system, provision eliminated, Ch. 62

SHERIFFS' RETIREMENT SYSTEM (Continued)
  Revision of provisions generally, Ch. 99

SHOOTING RANGES
  Development grant program, sunset provision eliminated, Ch. 53

SILICOSIS BENEFITS
  Revision of certain provisions, Ch. 214

SMALL BUSINESSES
  Affordable housing revolving loan account, allocation of tax credit for donations to, Ch. 411
  Small business investment companies — clarification that incentive is intended to attract private risk capital to technology, technology infrastructure, and power generation companies, Ch. 523
  Small business licensing coordination, board of review — revision of provisions generally, Ch. 323
  Small business licensing coordination center, allocation of costs of processing license applications, Ch. 116

SMALL CLAIMS COURTS
  Pretrial conferences and hearings, appearance by telephone conference allowed, Ch. 515

SMALL TRACT FINANCING
  Maximum size of acreage increased, Ch. 30

SNOWMOBILES
  Use in Yellowstone National Park — national park service urged to withdraw decision to implement winter use plan that would eliminate, to substitute a plan that ensures opportunity for future self-directed snowmobile access to park, and congress urged to provide adequate funding to provide adequate personnel to ensure health and safety, HJR 10

SOCIAL SECURITY
  Hunting, fishing, trapping, or wildlife conservation license applications — eliminating requirement that social security number be included, Ch. 321
  Medicare, congress urged to bring equitable funding of health care services and benefits to all recipients, HJR 9
  Spousal support, garnishment of benefits for — allowing, Ch. 352

SOCIAL WORK EXAMINERS AND PROFESSIONAL COUNSELORS, BOARD OF
  Appointments to, SR 22

SOLID WASTE MANAGEMENT SYSTEMS
  Districts, service charges may be based on combination of waste management factors and eliminating vehicle size as factor, Ch. 453
  Fee provisions revised and moratorium on interstate transport repealed, Ch. 170
  Water pollution control state revolving fund, projects eligible for funding to include, Ch. 506

SPECIAL IMPROVEMENT DISTRICTS
  Bonds authorized to bear interest at variable rate, providing adjustments in interest rates on special assessments securing bonds, and providing for sale of variable rate bonds. Ch. 162

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF
  Appointments to, SR 19
SPORTS AND SPORTING EVENTS
  Amateur athletic event officials, workers' compensation coverage exemption, Ch. 43
STATE AUDITOR
  Appropriation, Ch. 572
STATE BUTTERFLY, OFFICIAL
  Designation, Ch. 155
STATE EMPLOYEES, See generally PUBLIC OFFICERS OR EMPLOYEES
STATE FINANCE
  Dedicated revenue
    local governments, criteria for and review provisions, Ch. 400
    revision of provisions, Ch. 554
  Revenue collection and allocation, revision of provisions generally, Ch. 574
STATE GOVERNMENT
  Broadcasting service, establishment and funding, Ch. 557
  Electronic Government Services Act, Ch. 265
  Electronic mail — document laws to include, mail used for transaction of official business as public record, and unlawful interception as violation of privacy in communications, Ch. 77
  Full cost accounting pilot program — requiring development and implementation by certain divisions, bureaus, units, and programs, Ch. 489
  Internet services providers, government competition with private providers prohibited and exception, Ch. 547
  Mental illness and the criminal justice and corrections systems, requesting departmental coordination and collaboration with state and local governments and judiciary regarding training and education programs on issues surrounding persons with illness, SJR 2
  Military Selective Service Act, compliance a prerequisite for state agency employment, Ch. 320
  Purchasing provisions, revision generally, Ch. 181
  State agency as party to proceeding for which judicial review sought, notice requirements expanded, Ch. 535
  State electrical code, exception for electrical signal and communications equipment owned by, Ch. 47
  State land, exchange for state government land, Ch. 139
  Surplus
    motor vehicles, departmental purchase for recipients of temporary assistance for needy families funds, Ch. 242
    property sales, type of fund for deposit of receipts revised, Ch. 42
STATE LANDS
  Cabin sites, appeal process for challenging value — revision, Ch. 11
  Civil action against Board of Land Commissioners or Department of Natural Resources and Conservation concerning use or disposition, written undertaking required, Ch. 504
  Crown Butte land exchange, encouraging leasing of property for coal mining, Ch. 485

STATE LANDS (Continued)
  Documents and payments to state, uniform method for determining date of delivery, Ch. 67
  Easements, specific uses rather than public uses — for, Ch. 230
  Environmental review requirements, exempting certain actions of department of natural resources and conservation and board of land commissioners, Ch. 478
  Exchange for state government and local government lands, Ch. 139
  Forest lands, interest in for preservation purposes — prohibiting designation, treatment, or disposal prior to obtaining full market value of foregone uses, Ch. 259
  Historic right-of-way deeds and easements, extension of effective period and revision of provisions, Ch. 270
  Payments in lieu of taxes, inclusion in local government entitlements, Ch. 574
  Recreational use, revenue received from fines and penalties — deposit requirements, Ch. 117
  State university system lands, timber proceeds allocated to, Ch. 420
  Wind energy produced on, conditional tax credit, Ch. 591

STATE LIBRARY COMMISSION
  Appointments to, SR 19
  Appropriations, Ch. 551, Ch. 572
  Library federations, annual reports required, Ch. 80

STATE PREVENTION PROGRAMS, INTERAGENCY COORDINATING COUNCIL FOR
  Membership expanded, Ch. 215

STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION
  Duration extended and membership revised, Ch. 69

STREETS AND ALLEYS
  State electrical code, exception for street lighting, Ch. 47

SUBDIVISIONS
  Cluster development and preservation of open space, local government adoption of regulations that promote, Ch. 348
  Condominium exemptions, revision, Ch. 534
  Documents may be recorded for subdivision and transfer of land in areas over which state does not have jurisdiction, clarification, Ch. 340
  Local growth policies, review for conformance to — revision of related provisions, Ch. 527
  Local regulations, contents — provisions revised, Ch. 564
  Sanitation in
    procedural provisions revised, Ch. 79
    revision of provisions generally, Ch. 280

SUPERINTENDENT OF PUBLIC INSTRUCTION
  Appropriations, Ch. 550, Ch. 551, Ch. 572, Ch. 574, Ch. 580; Ch. 11, Special Laws, May 2000(Appendix)
  Budget amendment for enrollment increase, duty clarified, Ch. 237
  Internal service fund type fees and charges for 2003 biennium, Ch. 572
  K-12 public school funding and related issues, study required, Ch. 580
  Tribal college adult education programs, distribution of adult education funds for support, Ch. 148

SUPREME COURT
- Administrator, supplemental appropriation, Ch. 550
- District court expenses, appropriation for, Ch. 574
- Judicial Branch personnel plan, adoption, Ch. 585
- Retired judges and justices may not be called for duty on supreme court. Ch. 48
- Rice, James A. — appointment as new justice, SR 20

T

TABLES
- The following is a list of supplementary tables printed separately in this volume:
- CHAPTER NUMBER TO BILL NUMBER
- CODE SECTIONS AFFECTED
- EFFECTIVE DATES BY CHAPTER NUMBER and BY EFFECTIVE DATE
- HOUSE BILL TO CHAPTER NUMBER
- SENATE BILL TO CHAPTER NUMBER
- SESSION LAWS AFFECTED
- SESSION LAW TO CODE

TAX APPEAL BOARDS
- State land cabin site value, appeal process for challenges — revision, Ch. 11
- State Tax Appeal Board, appointment to, SR 28

TAXATION, CORPORATIONS
- Credits
  - affordable housing revolving loan account, donations to, Ch. 411
  - day-care facilities, for amounts paid or incurred by employer to acquire, Ch. 540
  - dependent care assistance, expanded to include amounts paid or incurred by employer for information and referral services to assist employees, Ch. 540
  - qualified endowment
    - contributions — limitations for certain techniques used for planned gifts, reduction in amount of credit, and termination date extended, Ch. 226
    - passive pass-through entities do not qualify, Ch. 143
  - reclaimable material, soil contaminated by hazardous wastes — removing from definition and deleting restriction on depreciable property that treats, Ch. 398
  - recycling of material, termination date extended, Ch. 398
- Pass-through entity income, reporting revised and clarified, Ch. 143
- Recycled material, deduction for purchase — termination date extended, Ch. 398
- Small business investment companies — clarification that incentive is intended to attract private risk capital to technology, technology infrastructure, and power generation companies, Ch. 523
- Wind-generated electricity on reservation lands, modifying credit limitation and carryover provisions for, Ch. 541

TAXATION, ESTATES
- Estate and generation-skipping taxes, applicability clarified, Ch. 9, Special Laws, May 2000(Appendix); Legislative Referendum No.116(Appendix)

TAXATION, ESTATES (Continued)
  Inheritance taxes, repeal, Ch. 9, Special Laws, May 2000(Appendix); Legislative Referendum No.116(Appendix)
    clarifying filing requirements by person with interest in nonprobate real property of decedent as result of, Ch. 37

TAXATION, GASOLINE AND VEHICLE FUELS
  Aviation fuel tax, 1-cent-a-gallon — reinstatement and use, Ch. 404
  Aviation gasoline license tax increase, extension and clarification of use, Ch. 8, Special Laws, May 2000(Appendix)
  Dyed diesel fuel
    diesel-powered motor vehicles, department to stop and inspect for presence of nontaxed, dyed diesel fuel in supply tanks and report required, Ch. 206
    pumps, penalty for failure to mark with appropriate decal, Ch. 119
  Gasohol and biodiesel, definitions and tax rate, Ch. 568
  Gasoline license tax
    alcohol tax incentive, extension and revising time period for submitting written plan, Ch. 532
    civil penalties, imposition, Ch. 115
    electronic filing, due date extended and filing of refund claims allowed, Ch. 110
    late-filed, penalty and interest provisions revised, Ch. 120
    license for distributors, security required and providing for denial or revocation, Ch. 142
    refund process, termination provision removed, Ch. 127
  Local technical assistance transportation program, increase in amount of proceeds allocated to and redistribution of remaining amount, Ch. 158
  Special fuel license tax
    civil penalty imposed and reduction of maximum fine for criminal violation, Ch. 115
    electronic filing, due date extended and filing of refund claims allowed, Ch. 110
    late-filed, penalty and interest provisions revised, Ch. 120
    license for distributors, security required and providing for denial or revocation, Ch. 142
    refund process, termination provision removed, Ch. 127
  Special fuel use tax
    civil penalty imposed and reduction of maximum fine for criminal violation, Ch. 115
    electronic filing, due date extended and filing of refund claims allowed, Ch. 110

TAXATION, GENERAL PROVISIONS
  Distraint, warrant for
    notice of levy to have same force and effect as writ of execution and providing effective period for levy upon earnings, Ch. 397
    penalties that may be assessed after filing, accrual, Ch. 108
  Electrical generation tax
    indian reservation lands, electricity generated on for out-of-state distribution — exemption, Ch. 541
    wind energy produced on state land, conditional tax credit, Ch. 591
  Family education savings accounts, revision of provisions generally, Ch. 468

TAXATION, GENERAL PROVISIONS (Continued)
  Public contractor's license tax on gross receipts, uniform penalty and interest provisions, Ch. 108
  Tax relief plan introduced by President Bush, urging Montana's congressional delegation to support and work to pass, SJR 18
  Telecommunications excise tax, retail
    revising laws to make it revenue neutral and suspending tax credit, Ch. 484
    uniform penalty and interest provisions, Ch. 108
  Wholesale energy transaction tax, See Electrical generation tax

TAXATION, INDIVIDUAL INCOME
  Credit cards or other commercial means, payment by, Ch. 50
  Credits
    affordable housing revolving loan account, donations to and account as qualified endowment, Ch. 411
    day-care facilities, for amounts paid or incurred by employer to acquire, Ch. 540
    dependent care assistance, expanded to include amounts paid or incurred by employer for information and referral services to assist employees, Ch. 540
    historic property preservation, Ch. 538
    qualified endowment
      affordable housing revolving loan account as, Ch. 411
      contributions — limitations for certain techniques used for planned gifts, reduction in amount of credit, and termination date extended, Ch. 226
      passive pass-through entities do not qualify, Ch. 143
    reclaimable material, soil contaminated by hazardous wastes — removing from definition and deleting restriction on depreciable property that treats, Ch. 398
    recycling of material, termination date extended, Ch. 398
  Family education savings accounts, deduction of contributions clarified, Ch. 468
  Farm and ranch risk management accounts, Ch. 262
  Health care expense trust accounts, principal and income deposited or withdrawn for health care expenses — exemption, Ch. 272
  Information agents required to report proceeds from real estate transactions when and report required, Ch. 461
  Pass-through entity income, reporting revised and clarified, Ch. 143
  Penalty and interest provisions, uniform, Ch. 108
  Recycled material, deduction for purchase — termination date extended, Ch. 398
  Wind-generated electricity on reservation lands, modifying credit limitation and carryover provisions for, Ch. 541

TAXATION, MINERALS
  Coal severance tax, See also COAL TRUST FUNDS
    allocations revised, Ch. 10, Special Laws, May 2000(Appendix)
    coal produced for in-state electrical generating facilities that offer electrical power at specific price for in-state use and are constructed after 12/31/2001, rate of tax for, Ch. 399
  Coal severance tax bonds, issuance for renewable resource projects, Ch. 266

TAXATION, MINERALS (Continued)
  Oil and natural gas production tax
    coal bed methane protection account, allocation to, Ch. 531
    distribution clarified, Ch. 306
    eliminating project development deadlines required to qualify for rate reductions and revising definitions, Ch. 403
    stripper well production exemption, revision, Ch. 421
  Resource indemnity trust and ground water assessment tax
    natural resource workers' tuition scholarship account, allocation to, Ch. 586
    resource indemnity trust fund
      clarification of income distribution and that fund balance excludes unrealized gains and losses, Ch. 61
      noxious weed state special revenue account, deposits to, Ch. 407
      oil and natural gas production tax, distribution, Ch. 306
TAXATION, PROPERTY
  Agricultural Lands Advisory Committee, allowing more discretion in determining basis for recommendations for agricultural productive land values, Ch. 459
  Agricultural property and forest land, tax levied for payment of bonds issued by public body for open space preservation — revision in manner of determination, Ch. 463
  Biennial report, inclusion of effective tax rates of taxable property in each class of property, Ch. 199
  Commercial property — exemption and abatement benefits for increased taxable value resulting from remodeling, reconstruction, or expansion, Ch. 135
  Electrical generation and transmission facility exemption, Ch. 592
  Energy equipment, elimination or abatement, Ch. 591
  Ethanol manufacturing facilities — exemption for all manufacturing machinery, fixtures, equipment, and tools used during course of construction and for 10 years after initial production of ethanol from facility, Ch. 438
  Interim study of taxation of agricultural and nonagricultural land, request for, SJR 21
  Limitation on, revision and providing uniform election procedure to exceed mill levy limit, Ch. 574
  Market value of certain land, exemption for — elimination, Ch. 11, Special Laws, May 2000(Appendix)
  Migratory personal property, refunds of certain taxes — provisions revised, Ch. 59
  Millage rates, certified — elimination of reporting requirements and requirement that local taxing authorities adopt a resolution to increase levies in excess of, Ch. 26, Ch. 419
  Mill levy
    election, procedure provided, Ch. 495
    employer's premium contributions for group health insurance, increase in local government's property tax levy exempt from limitation, Ch. 511
    local government, allowing imposition of less than maximum mills authorized and to carry forward authority to impose maximum number of mills in subsequent tax year, Ch. 361
    school district levies exempt from limitations, Ch. 220

TAXATION, PROPERTY (Continued)
  Mill levy (Continued)
    uniform election procedure to exceed limit, provision for, Ch. 574
  Multiple, undivided interests in parcel of land, revision of provisions relating to, Ch. 444
  Noncommercial electrical generation machinery and equipment, exemption when, Ch. 579
  Payment
    low-income property tax assistance, payment under — without penalty and interest when, Ch. 410
    revision of provisions, Ch. 472
  Reduction by increasing direct state aid to school districts, Ch. 11, Special Laws, May 2000(Appendix)
  Revision of provisions generally, Ch. 419
  Rural electric cooperatives, description of class 9 property clarified, Ch. 406
  Taxable value, certified — reporting requirements revised, Ch. 26, Ch. 419
  Tax sale provisions, revision, Ch. 472

TAXATION, SALES
  Lodging facility use tax
    heritage preservation and development program, continued funding, Ch. 469
    nonprofit convention and visitors bureau located in resort area or resort area district, allocation of funds to, Ch. 195
  Motor vehicles, new car sales tax repealed, Legislative Referendum No.115(Appendix)

TEACHERS
  Certification, compliance in order to receive multiyear accreditation, Ch. 73
  Interlocal cooperation provisions expanded to allow districts to share teachers, specialists, or superintendents, Ch. 318
  Professional stipends for those certified by national board for professional teaching standards, Ch. 555
  Teacher education programs, request for board of public education study of use of pre-professional skills test as entry test for admission into, HJR 40

TEACHERS' RETIREMENT BOARD
  Appointment to, SR 19

TEACHERS' RETIREMENT SYSTEM
  Guaranteed annual benefit adjustment, increase upon certain conditions, Ch. 149
  Minimum monthly benefit allowance, increase, Ch. 149
  Revision of provisions generally, Ch. 45

TELECOMMUNICATIONS SERVICES
  Disabilities, persons with — access provisions revised, Ch. 297
  Universal service fund, revision of provisions generally, Ch. 430

TELEMARKETING AND TELEMARKETERS
  Registered sellers or telemarketers prohibited from blocking access to seller's or telemarketer's phone number, Ch. 350

TELEVISION
  State government broadcasting service, establishment and funding, Ch. 557

TITLE LENDERS, PERSONAL PROPERTY
- Licensing provisions, Ch. 455

TOBACCO SETTLEMENT TRUST FUND
- Breast and cervical cancer victims' treatment, request for income allocation for matching federal medicaid money, Ch. 440
- Constitutional amendment to establish, Ch. 5, Special Laws, May 2000(Appendix); Constitutional Amendment No.35(Appendix)
  - implementation, criteria to govern appropriation, and management provisions, Ch. 467

TRADE REGULATION AND COMPETITION
- Automobile glass replacement, glass repairs, glass products, and repairs — revising insurance unfair trade practices law, Ch. 345
- Multilevel distribution companies and pyramid promotional schemes, revision of provisions generally, Ch. 322

TRANSPORTATION
- Local technical assistance transportation program, increase in amount of gasoline and vehicle fuel tax proceeds allocated to and redistribution of remaining amount, Ch. 158
- Multistate highway transportation agreement, revision, Ch. 358
- Services for senior citizens and persons with disabilities, funding, Ch. 337
- Transportation plan update, encouraging department of transportation to work with other entities to incorporate economic development criteria into plan, HJR 30

TRANSPORTATION COMMISSION
- Appointments to, SR 19, SR 22, SR 23
- Speed limit, temporary special reduced or increased — authorization to set upon request by local authority when, Ch. 93

TRANSPORTATION, DEPARTMENT OF
- Appropriations, Ch. 304, Ch. 551, Ch. 572, Ch. 573
- Diesel-powered motor vehicles, stopping and inspecting for presence of nontaxed, dyed diesel fuel in supply tanks and report required, Ch. 206
- Director, appointment, SR 4
- Gasoline and vehicle fuels, responsibilities, See generally TAXATION, GASOLINE AND VEHICLE FUELS
- Internal service fund type fees and charges for 2003 biennium, Ch. 572
- Lands, excess — disposition provisions revised, Ch. 279
- Motor vehicles, responsibilities, See generally MOTOR VEHICLES AND TRAFFIC REGULATIONS
- Southern Amtrak route account, acceptance of funds for, Ch. 208
- Speed limit changes, review for routes that have an investigation pending for, Ch. 93
- Transportation plan update, encouraging department to work with other entities to incorporate economic development criteria into plan, HJR 30
- Transportation services, grants for, Ch. 337
- U.S. Highway 2, construction of four-lane highway generally along present route, Ch. 269
- Wetland mitigation site conveyed with perpetual conservation easement — allowing when, restriction on who may own easement, and special restrictions for wetland mitigation sites, Ch. 386

TREASURE STATE ENDOWMENT PROGRAM
  Coal severance tax permanent fund interest income to fund program and projects, Ch. 10, Special Laws, May 2000(Appendix)
  Local government infrastructure projects, financial assistance for and emergency grants — appropriation from treasure state endowment special revenue account, Ch. 435
  Treasure state endowment fund
    coal severance tax bond fund, reduction in allocation from, Ch. 380
    income distribution, clarification, Ch. 61
  Treasure state endowment regional water system fund
    income distribution, clarification, Ch. 61
    local matching funds, allowing percentage to be in form of debt that was incurred by local government entities included in system before individual systems connected to regional system, Ch. 233
    retention and continued deposit of interest into state special revenue account, Ch. 70

TREASURY FUNDS AND ACCOUNTS
  Fund type terminology, revising laws to conform to most recent generally accepted accounting principles, Ch. 34

TRUST INDENTURES
  Maximum size of acreage increased, Ch. 30

TUBERCULOSIS CONTROL
  Revision of provisions generally, Ch. 190

U

UNDERGROUND STORAGE TANKS
  Inspection provisions revised, Ch. 244
  Petroleum storage tank owner or operator failing to remain in compliance with operational and cleanup requirements to potentially receive some reimbursement when noncompliance issues are corrected, Ch. 112

UNEMPLOYMENT INSURANCE
  Benefits
    partial payment, provision made permanent, Ch. 12
    weekly, maximum amount — increase, Ch. 333
  Domestic violence victims, benefits for, Ch. 520
  Election judges, exclusion from coverage, Ch. 44
  Indian tribe as employer, revising laws to conform with federal requirements related to employment by, Ch. 200
  Insurance salespeople paid solely by commission, excluding services performed by, Ch. 339
  Involuntary unemployment insurance as type of casualty insurance, clarification, Ch. 227
  Revision of specific provisions, Ch. 214
  Unpaid taxes, lien for payment — notice of levy to have same force and effect as writ of execution and providing effective period for levy upon earnings, Ch. 397
  Workforce Investment Act of 1998 substituted for references to Job Training Partnership Act, Ch. 424

UNIFORM ELECTRONIC TRANSACTIONS ACT. Ch. 52

UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT, Ch. 223

UNIVERSITY OF MONTANA
- Game warden trainee program, inclusion of student from, Ch. 566

UNIVERSITY OF MONTANA-WESTERN
- Formerly Western Montana College of the University of Montana, Ch. 38

UNIVERSITY SYSTEM
- Appropriations, Ch. 486, Ch. 550, Ch. 553, Ch. 572, Ch. 573
- Fitness centers prohibited from selling services to general public when and exception, Ch. 545
- Funds, recording under operating budget — clarification, Ch. 569
- Intellectual property created by university employee or individual, equity ownership in business entity, Ch. 379
- Internal service fund type fees and charges for 2003 biennium, Ch. 572
- Military Selective Service Act — compliance a prerequisite for university system employment, payment of state student financial aid, and enrollment in postsecondary educational institution of student receiving financial assistance, Ch. 320
- Natural resource workers — tuition scholarships for education or retraining in training, certificate, or degree programs, Ch. 586
- Resident enrollment growth, funded — calculation of reversions for, Ch. 253
- School districts, authorizing interlocal agreements to allow 11th and 12th grade students to obtain credits through attending classes available only at, Ch. 377
- State university fund, timber proceeds allocated to university system lands, Ch. 420
- Student loan program, authority of board of regents of higher education revised to conform to federal law, Ch. 38
- Tuition prepayment program, feasibility of establishing — interim study requested, HJR 35

UNIVERSITY SYSTEM OPTIONAL RETIREMENT PROGRAM
- Revision of provisions generally, Ch. 490

UTILITIES
- Consumer electricity support program, creation, Ch. 577
- Electrical energy pool, implementation, Ch. 582
- Electrical generating facilities, in-state — coal produced for those that offer electrical power at specific price for in-state use and are constructed after 12/31/2001, coal severance tax rate, Ch. 399
- Electrical generation and transmission facilities, property tax exemption, Ch. 592
- Electric utility industry restructuring and customer choice
  - customer-generator allowed to designate certain beginning date for a 12-month billing period, Ch. 328
  - default supplier provisions, Ch. 577
  - transition provisions revised, Ch. 175, Ch. 577, Ch. 584
  - universal system benefits charge, extending duration, Ch. 577
  - universal system benefits programs
    - credit for those that include amortized or nonamortized portions of expenditures, Ch. 188
    - irrigated agriculture, inclusion, Ch. 577

UTILITIES (Continued)
  Historic right-of-way easements, use for existing utilities authorized, Ch. 270
  Montana Power Authority Act, Ch. 577
  Subdividers to show utility easements on final plat, Ch. 564

UTILITIES, RURAL COOPERATIVE
  Revision of provisions generally, Ch. 406
  Trustees and officers, duties provided for, Ch. 173

V

VETERANS
  Beer and table wine, special permit provisions revised, Ch. 89
  Disabled veterans, motor vehicle provisions
    license plates, special and personalized — clarification of provisions, Ch. 72
    registration fees, clarification, Ch. 167
  Federal statute that has been repealed that related to benefits, reference deleted, Ch. 4
  Interim study requested for specific issues and urging inclusion of veterans' organizations in the study process, SJR 5
  Interment of certain remains of veterans, immunity to mortuaries and veterans' service organizations for simple negligence, Ch. 202
  License plates, active member of military allowed to purchase, Ch. 249
  Montana Purple Heart Memorial, supporting erection of, HJR 38
  Purple heart, veterans who have been awarded and have disability — vehicle registration fee and license plate provisions, Ch. 539

VETERANS' AFFAIRS, BOARD OF
  Appointments to, SR 19

VETERINARY MEDICINE, BOARD OF
  Appointments to, SR 19

VICTIMS SERVICES, OFFICE OF
  Creation, Ch. 124

VOCATIONAL EDUCATION
  Carl D. Perkins Act programs, making permanent the designation of board of regents of higher education as eligible agency for administering, Ch. 130
  K-12 career and vocational/technical education substituted for K-12 vocational education provisions, Ch. 133
  State plan committee, creation, Ch. 130

VOCATIONAL-TECHNICAL EDUCATION
  K-12 career and vocational/technical education substituted for K-12 vocational education provisions, Ch. 133
  Tribally controlled community college, definition of vocational-technical education revised to include, Ch. 133

VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION ACT, Ch. 272

VOLUNTEER FIREFIGHTERS' COMPENSATION
  Pension and disability benefits, amount increased, Ch. 209
  Retired firefighters allowed to return to active service under certain circumstances without loss of pension benefits, Ch. 164
  Revision of provisions generally, Ch. 99

W

WAGES AND SALARIES, See generally LABOR AND EMPLOYMENT

WAR
  Light vehicle registration fee, exemption for ex-prisoner of war or surviving spouse, Ch. 191

WATER AND WASTEWATER AUTHORITIES, REGIONAL
  Financial assistance, Ch. 435

WATER CONSERVANCY DISTRICTS
  Borrowing, amount — substituting assessed value for taxable value, Ch. 29

WATER HAULERS
  Regulation and licensing as food establishments, Ch. 428

WATER POLLUTION CONTROL ADVISORY COUNCIL
  Appointment to, SR 19

WATER QUALITY
  Storm water discharge associated with construction activity, general permit provisions, Ch. 413
  Temporary standards, goal clarified, Ch. 384
  Water pollution control state revolving fund
    federal funding approved but not appropriated, advance of funds for projects funded by, Ch. 9
    projects eligible for funding, revision and inclusion of solid waste management systems, Ch. 506
  Water-related projects that improve, financing, Ch. 169

WATER SUPPLY, PUBLIC
  Drinking water state revolving fund, federal funding approved but not appropriated — advance of funds for projects funded by, Ch. 9
  Revision of provisions generally, Ch. 315
  Subdivisions, sanitation in — revision of provisions, Ch. 280
  Treasure state endowment regional water system fund
    income distribution, clarification, Ch. 61
    local matching funds, allowing percentage to be in form of debt that was incurred by local government entities included in system before individual systems connected to regional system, Ch. 233
    retention and continued deposit of interest into state special revenue account, Ch. 70
  Water haulers required to obtain water from public water supply systems or approved sources, Ch. 428
  Water treatment plant operators, certification
    procedural provisions revised, Ch. 79
    requirements clarified, Ch. 213

WATER USE
  Appropriation rights
    replacement wells, exempting certain wells from certain change procedures and criteria, Ch. 132
    temporary change for instream flow for up to 30 years under certain conditions, Ch. 433
  Clark Fork River Basin Task Force, establishment, Ch. 447
  Coal bed methane protection program, Ch. 531

WATER USE (Continued)
  Coal bed methane wells that involve production of ground water, requirements, Ch. 578
  Fort Belknap-Montana Compact, ratification, Ch. 256
  Independent action for enforcement of laws, authorizing county attorney to bring and provision for deposit of penalties collected, Ch. 457
  Projects that improve water quality, financing, Ch. 169
  Red Rock Lakes-Montana Compact, consumptive use data clarified, Ch. 187
  Revision of provisions generally, Ch. 78
  Road construction or dust abatement, short-term lease of water right for, Ch. 381
  State-owned water projects, increase in limit for construction contracts without formal competitive bids and exemption from specific solicitation and selection procedures for goods or nonconstruction or professional services when, Ch. 382
  Subdivisions, local regulations — subdivider to reserve water rights or to establish landowner's water use agreement, Ch. 564
  Voluntary compliance, changing allowable time for attempting to obtain, Ch. 457

WEAPONS
  Dangerous weapon, additional sentence for offenses committed with — clarification, Ch. 16

WEEDS AND WEED CONTROL, See NOXIOUS WEEDS AND NOXIOUS WEED CONTROL

WEIGHTS, MEASURES, AND COMMODITY GRADES
  Functions of Department of Commerce transferred, Ch. 483

WESTERN MONTANA COLLEGE OF THE UNIVERSITY OF MONTANA
  Name changed to University of Montana-Western, Ch. 38

WILDCRAFTING AND WILDCRAFTERS
  Permission or permit requirements and exemptions, requirements for buyers, and restrictions on landowner liability, Ch. 282

WORKERS' COMPENSATION
  Amateur athletic event officials, exemption from coverage, Ch. 43
  Assessment fee paid by private insurer, clarification, Ch. 68
  Exclusive remedy provision amended to provide injured employee with cause of action for damages against employer or fellow employee who causes intentional injury, Ch. 229
  Horse trainers, exercise persons, and pony persons performing services on grounds of licensed race meet — exemption from coverage, Ch. 14
  Injured worker with physical restrictions who has not reached maximum healing, provision for return to alternative or modified employment position with different employer when, Ch. 292
  Insurance salespeople paid solely by commission, excluding services performed by, Ch. 339
  Insurers, reimbursement of worker and exception for reasonable expenses in travel to medical provider for treatment of injury and liability of insurer for compensable injuries, Ch. 138
  Revision of provisions generally, Ch. 214
  Safety Culture Act, safety recommendation to employers for noncompliance, Ch. 58

WORKERS' COMPENSATION (Continued)
- State fund
  - board of directors, appointment to, SR 19
  - cancellation notice required to be provided to department 20 days prior to cancellation, Ch. 214
  - investment of assets, constitutional amendment to allow, Constitutional Amendment No.34(Appendix)
  - public corporation bonds issued for self-insurance fund, substituting assessed value for taxable value, Ch. 29
  - revision of provisions generally, Ch. 314
- Temporary partial disability benefits, conversion to permanent partial disability benefits — clarification of criteria required, Ch. 174
- Temporary total disability benefits
  - eligibility revised, Ch. 121
  - permanent partial disability benefits, conversion to — clarification of criteria required, Ch. 174
  - waiting period reduced, Ch. 274
- Volunteer firefighters, self-employed — providing method for establishing coverage rate, Ch. 238

WORKERS' COMPENSATION COURT
- Appeal of department order to pay interim benefits as new proceeding in, clarification, Ch. 214
- Judge Michael Olen McCarter, appointment by governor - senate concurrence, SR 1, Special Laws, May 2000(Appendix)

Y

YOUTH COURT
- Child abuse and neglect, jurisdiction of youth court and district court — correction of inconsistencies between, Ch. 114
- Commitment of youth, clarification that department is to designate place within state to receive custody and county's responsibility for payment of transportation is only within state, Ch. 221
- Correctional facility, admission to — medical examination may be performed by physician assistant-certified or advanced practice registered nurse, Ch. 24
- Dangerous drugs, crimes of criminal possession of and criminal possession with intent to distribute transferable from youth court to district court and clarifying application of attempt or accountability to transferable crimes, Ch. 243
- Detention and placement of youth, revision of provisions, Ch. 576
- Detention facilities, education of students in — payment from school district's tuition fund required for, Ch. 237
- District court expenses, recommendation for enumeration as, Ch. 585
- Intervention in delinquency pilot program made permanent, Ch. 587
- Intervention program for juvenile delinquents, creation, Ch. 587
- Juvenile probation officers to be state employees and repealing statutory salary amounts for, Ch. 585
- Local citizen review board pilot program, revision, Ch. 570
- Probable cause hearing for youth taken into custody for questioning, videoconferencing allowed, Ch. 159

YOUTH COURT (Continued)
  Victims of juvenile felony offenses, notification prior to release of offender, Ch. 102
  Youth in need of care, revision of provisions generally, Ch. 311
  Youth Placement Committees, membership changed, Ch. 587

Z

ZONING
  Planning and zoning commission, composition changed, Ch. 288
  Planning and zoning districts, counties authorized to enforce regulations and requirements adopted for, Ch. 288

TABLE OF

CODE SECTIONS AFFECTED

CODE SECTIONS AFFECTED

This table was compiled before the codification process was completed. It does not reflect certain sections affected by short form amendments. All other substantive changes are reflected. Those sections for which renumbering is not attributed to a particular chapter and bill number were renumbered by the Code Commissioner under the authority of 1-11-204(3)(b).

Title-Ch.-Sec.	Action	Chapter	Bill Number
1-1-514	enacted	Ch. 155	HB 365
1-1-517	amended	Ch. 7	HB 25
1-2-112	amended	Ch. 574	HB 124
1-5-402	amended	Ch. 161	HB 443
1-5-403	amended	Ch. 161	HB 443
1-5-404	amended	Ch. 161	HB 443
1-5-405	amended	Ch. 161	HB 443
1-5-408	amended	Ch. 161	HB 443
	amended	Ch. 396	HB 639
1-5-409	amended	Ch. 161	HB 443
1-5-416	amended	Ch. 161	HB 443
1-5-417	amended	Ch. 161	HB 443
1-5-418	amended	Ch. 161	HB 443
1-5-603	amended	Ch. 161	HB 443
1-5-609	amended	Ch. 161	HB 443
1-5-610	amended	Ch. 161	HB 443
2-2-102	amended	Ch. 122	SB 205
2-2-103	amended	Ch. 122	SB 205
2-2-121	amended	Ch. 122	SB 205
2-2-125	repealed	Ch. 122	SB 205
2-2-136	amended	Ch. 122	SB 205
2-2-137	repealed	Ch. 122	SB 205
2-2-138	repealed	Ch. 122	SB 205
2-2-139	repealed	Ch. 122	SB 205
2-2-142	repealed	Ch. 122	SB 205
2-2-143	repealed	Ch. 122	SB 205
2-2-144	amended	Ch. 122	SB 205
2-2-201	amended	Ch. 181	SB 90
2-3-301	amended	Ch. 77	HB 112
	amended	Ch. 313	SB 131
2-4-110	amended	Ch. 210	SB 10
2-4-302	amended	Ch. 210	SB 10
2-4-305	amended	Ch. 210	SB 10
2-4-306	amended	Ch. 210	SB 10
2-4-309	enacted	Ch. 185	SB 8
2-4-311	amended	Ch. 396	HB 639
2-4-312	amended	Ch. 396	HB 639
2-4-313	amended	Ch. 396	HB 639
2-4-603	amended	Ch. 305	HB 608
2-6-101	amended	Ch. 77	HB 112
2-6-102	amended	Ch. 77	HB 112
2-6-103	amended	Ch. 396	HB 639
2-6-109	amended	Ch. 319	SB 226
	amended	Ch. 363	SB 293
2-6-110	amended	Ch. 77	HB 112
	amended	Ch. 396	HB 639
2-6-202	amended	Ch. 77	HB 112

2-6-214	amended	Ch. 313	SB 131
2-6-301	amended	Ch. 77	HB 112
2-6-401	amended	Ch. 77	HB 112
2-6-402	amended	Ch. 302	SB 443
	amended	Ch. 483	SB 445
2-6-403	amended	Ch. 483	SB 445
2-6-405	enacted	Ch. 302	SB 443
2-7-501	amended	Ch. 7	HB 25
	amended	Ch. 278	SB 138
	amended	Ch. 483	SB 445
2-7-503	amended	Ch. 278	SB 138
2-7-504	amended	Ch. 278	SB 138
2-7-505	amended	Ch. 278	SB 138
2-7-513	amended	Ch. 278	SB 138
2-7-518	amended	Ch. 483	SB 445
2-9-211	amended	Ch. 29	HB 23
2-9-212	amended	Ch. 511	HB 409
2-9-303	amended	Ch. 172	SB 209
2-9-304	amended	Ch. 172	SB 209
2-9-316	amended	Ch. 278	SB 138
	amended	Ch. 574	HB 124
2-9-804	amended	Ch. 278	SB 138
2-11-104	amended	Ch. 501	HB 266
2-15-102	amended	Ch. 313	SB 131
2-15-112	amended	Ch. 255	HB 533
2-15-114	amended	Ch. 313	SB 131
2-15-130	enacted	Ch. 320	SB 256
2-15-150	amended	Ch. 414	SB 393
2-15-151	amended	Ch. 402	SB 191
	enacted	Ch. 414	SB 393
2-15-210	amended	Ch. 544	SB 135
2-15-211	amended	Ch. 344	SB 473
2-15-218	enacted	Ch. 483	SB 445
2-15-219	enacted	Ch. 483	SB 445
2-15-225	amended	Ch. 215	SB 184
2-15-404	amended	Ch. 313	SB 131
2-15-405	enacted	Ch. 396	HB 639
2-15-1010	amended	Ch. 45	HB 97
2-15-1021	enacted	Ch. 313	SB 131
2-15-1025	formerly 2-15-1803	Ch. 483	SB 445
2-15-1026	formerly 2-15-1811	Ch. 483	SB 445
2-15-1514	amended	Ch. 313	SB 131
2-15-1730	formerly 2-15-1840	Ch. 483	SB 445
2-15-1731	formerly 2-15-1841	Ch. 483	SB 445
2-15-1732	formerly 2-15-1842	Ch. 483	SB 445
2-15-1733	formerly 2-15-1843	Ch. 483	SB 445
2-15-1734	formerly 2-15-1844	Ch. 483	SB 445
2-15-1735	formerly 2-15-1845	Ch. 483	SB 445
2-15-1736	formerly 2-15-1846	Ch. 483	SB 445
2-15-1737	formerly 2-15-1847	Ch. 483	SB 445
2-15-1738	formerly 2-15-1848	Ch. 483	SB 445
2-15-1739	formerly 2-15-1849	Ch. 483	SB 445
2-15-1740	formerly 2-15-1850	Ch. 483	SB 445
2-15-1741	formerly 2-15-1851	Ch. 483	SB 445
2-15-1742	formerly 2-15-1852	Ch. 483	SB 445
2-15-1743	formerly 2-15-1853	Ch. 483	SB 445
2-15-1744	formerly 2-15-1854	Ch. 483	SB 445
2-15-1746	formerly 2-15-1856	Ch. 483	SB 445
2-15-1747	formerly 2-15-1857	Ch. 483	SB 445

2-15-1748	formerly 2-15-1858	Ch. 483	SB 445
2-15-1749	formerly 2-15-1859	Ch. 483	SB 445
2-15-1750	formerly 2-15-1860	Ch. 483	SB 445
2-15-1751	formerly 2-15-1861	Ch. 483	SB 445
2-15-1753	formerly 2-15-1863	Ch. 483	SB 445
2-15-1756	formerly 2-15-1866	Ch. 483	SB 445
2-15-1757	formerly 2-15-1867	Ch. 483	SB 445
2-15-1758	formerly 2-15-1868	Ch. 483	SB 445
2-15-1761	formerly 2-15-1871	Ch. 483	SB 445
2-15-1762	formerly 2-15-1872	Ch. 483	SB 445
2-15-1763	formerly 2-15-1873	Ch. 483	SB 445
2-15-1764	formerly 2-15-1874	Ch. 483	SB 445
2-15-1765	formerly 2-15-1875	Ch. 483	SB 445
2-15-1772	formerly 2-15-1882	Ch. 483	SB 445
2-15-1773	formerly 2-15-1883	Ch. 483	SB 445
2-15-1781	formerly 2-15-1891	Ch. 483	SB 445
2-15-1803	amended and renumbered 2-15-1025	Ch. 483	SB 445
2-15-1804	repealed	Ch. 133	HB 134
	repealed	Ch. 483	SB 445
2-15-1811	amended and renumbered 2-15-1026	Ch. 483	SB 445
2-15-1815	amended	Ch. 137	SB 34
2-15-1840	renumbered 2-15-1730	Ch. 483	SB 445
	amended	Ch. 492	HB 120
2-15-1841	renumbered 2-15-1731	Ch. 483	SB 445
2-15-1842	renumbered 2-15-1732	Ch. 483	SB 445
2-15-1843	amended	Ch. 388	HB 279
	renumbered 2-15-1733	Ch. 483	SB 445
2-15-1844	renumbered 2-15-1734	Ch. 483	SB 445
2-15-1845	renumbered 2-15-1735	Ch. 483	SB 445
2-15-1846	renumbered 2-15-1736	Ch. 483	SB 445
2-15-1847	renumbered 2-15-1737	Ch. 483	SB 445
2-15-1848	renumbered 2-15-1738	Ch. 483	SB 445
2-15-1849	renumbered 2-15-1739	Ch. 483	SB 445
2-15-1850	renumbered 2-15-1740	Ch. 483	SB 445
2-15-1851	renumbered 2-15-1741	Ch. 483	SB 445
	amended	Ch. 492	HB 120
2-15-1852	amended and renumbered 2-15-1742	Ch. 483	SB 445
2-15-1853	renumbered 2-15-1743	Ch. 483	SB 445
2-15-1854	renumbered 2-15-1744	Ch. 483	SB 445
2-15-1856	renumbered 2-15-1746	Ch. 483	SB 445
2-15-1857	renumbered 2-15-1747	Ch. 483	SB 445
2-15-1858	renumbered 2-15-1748	Ch. 483	SB 445
2-15-1859	amended and renumbered 2-15-1749	Ch. 483	SB 445
2-15-1860	amended and renumbered 2-15-1750	Ch. 483	SB 445
2-15-1861	renumbered 2-15-1751	Ch. 483	SB 445
2-15-1863	renumbered 2-15-1753	Ch. 483	SB 445
2-15-1866	renumbered 2-15-1756	Ch. 483	SB 445
2-15-1867	renumbered 2-15-1757	Ch. 483	SB 445
2-15-1868	renumbered 2-15-1758	Ch. 483	SB 445
	amended	Ch. 492	HB 120
2-15-1871	renumbered 2-15-1761	Ch. 483	SB 445
2-15-1872	amended and renumbered 2-15-1762	Ch. 483	SB 445
2-15-1873	renumbered 2-15-1763	Ch. 483	SB 445
	amended	Ch. 492	HB 120
2-15-1874	renumbered 2-15-1764	Ch. 483	SB 445
2-15-1875	renumbered 2-15-1765	Ch. 483	SB 445
2-15-1881	renumbered 2-15-3106	Ch. 483	SB 445
2-15-1882	amended and renumbered 2-15-1772	Ch. 483	SB 445
2-15-1883	amended and renumbered 2-15-1773	Ch. 483	SB 445

2-15-1891	renumbered 2-15-1781	Ch. 483	SB 445
2-15-2012	enacted	Ch. 581	HB 637
2-15-2013	enacted	Ch. 581	HB 637
2-15-2014	enacted	Ch. 581	HB 637
2-15-2016	enacted	Ch. 124	SB 254
2-15-2204	amended	Ch. 154	HB 354
2-15-2212	amended	Ch. 313	SB 131
2-15-3106	formerly 2-15-1881	Ch. 483	SB 445
2-15-3313	amended	Ch. 189	SB 81
2-15-3316	amended	Ch. 7	HB 25
2-17-301	amended	Ch. 313	SB 131
2-17-302	repealed	Ch. 313	SB 131
2-17-303	amended and renumbered 2-17-531	Ch. 313	SB 131
2-17-304	repealed	Ch. 313	SB 131
2-17-305	repealed	Ch. 313	SB 131
2-17-306	amended and renumbered 2-17-546	Ch. 313	SB 131
2-17-311	renumbered 2-17-541	Ch. 313	SB 131
2-17-312	renumbered 2-17-542	Ch. 313	SB 131
2-17-313	renumbered 2-17-543	Ch. 313	SB 131
2-17-321	repealed	Ch. 313	SB 131
2-17-322	amended and renumbered 2-17-532	Ch. 313	SB 131
2-17-323	amended and renumbered 2-17-533	Ch. 313	SB 131
2-17-403	amended	Ch. 181	SB 90
2-17-501	repealed	Ch. 313	SB 131
2-17-502	repealed	Ch. 313	SB 131
2-17-503	amended and renumbered 2-17-534	Ch. 313	SB 131
2-17-504	enacted	Ch. 313	SB 131
2-17-505	enacted	Ch. 313	SB 131
2-17-506	enacted	Ch. 313	SB 131
2-17-511	enacted	Ch. 313	SB 131
2-17-512	enacted	Ch. 313	SB 131
2-17-513	enacted	Ch. 313	SB 131
2-17-514	enacted	Ch. 313	SB 131
2-17-515	enacted	Ch. 313	SB 131
2-17-516	enacted	Ch. 313	SB 131
2-17-517	enacted	Ch. 313	SB 131
2-17-518	enacted	Ch. 313	SB 131
2-17-521	enacted	Ch. 313	SB 131
2-17-522	enacted	Ch. 313	SB 131
2-17-523	enacted	Ch. 313	SB 131
2-17-524	enacted	Ch. 313	SB 131
2-17-526	enacted	Ch. 313	SB 131
2-17-527	enacted	Ch. 313	SB 131
2-17-531	formerly 2-17-303	Ch. 313	SB 131
2-17-532	formerly 2-17-322	Ch. 313	SB 131
2-17-533	formerly 2-17-323	Ch. 313	SB 131
2-17-534	formerly 2-17-503	Ch. 313	SB 131
2-17-541	formerly 2-17-311	Ch. 313	SB 131
2-17-542	formerly 2-17-312	Ch. 313	SB 131
2-17-543	formerly 2-17-313	Ch. 313	SB 131
2-17-546	formerly 2-17-306	Ch. 313	SB 131
2-17-550	enacted	Ch. 219	HB 281
2-17-551	enacted	Ch. 219	HB 281
2-17-552	enacted	Ch. 219	HB 281
2-17-553	enacted	Ch. 219	HB 281
2-17-601	enacted	Ch. 547	SB 327
2-17-602	enacted	Ch. 547	SB 327
2-17-603	enacted	Ch. 547	SB 327
2-17-604	enacted	Ch. 547	SB 327

2-17-1101	enacted	Ch. 265	SB 405
2-17-1102	enacted	Ch. 265	SB 405
2-17-1103	enacted	Ch. 265	SB 405
2-17-1104	enacted	Ch. 265	SB 405
2-17-1105	enacted	Ch. 265	SB 405
2-18-103	amended	Ch. 313	SB 131
	amended	Ch. 483	SB 445
2-18-301	amended	Ch. 553	HB 13
2-18-303	amended	Ch. 553	HB 13
2-18-312	amended	Ch. 553	HB 13
2-18-313	amended	Ch. 553	HB 13
2-18-315	amended	Ch. 553	HB 13
2-18-601	amended	Ch. 314	SB 145
2-18-618	amended	Ch. 272	SB 51
2-18-641	enacted	Ch. 559	HB 172
2-18-701	amended	Ch. 314	SB 145
2-18-702	amended	Ch. 559	HB 172
2-18-703	amended	Ch. 314	SB 145
	amended	Ch. 511	HB 409
	amended	Ch. 553	HB 13
2-18-704	amended	Ch. 450	HB 406
2-18-711	amended	Ch. 314	SB 145
2-18-1101	amended	Ch. 99	HB 152
2-18-1301	enacted	Ch. 272	SB 51
2-18-1302	enacted	Ch. 272	SB 51
2-18-1303	enacted	Ch. 272	SB 51
2-18-1304	enacted	Ch. 272	SB 51
2-18-1305	enacted	Ch. 272	SB 51
2-18-1309	enacted	Ch. 272	SB 51
2-18-1310	enacted	Ch. 272	SB 51
2-18-1311	enacted	Ch. 272	SB 51
2-18-1312	enacted	Ch. 272	SB 51
2-18-1313	enacted	Ch. 272	SB 51
3-1-125	enacted	Ch. 585	SB 176
3-1-126	enacted	Ch. 585	SB 176
3-1-130	enacted	Ch. 585	SB 176
3-1-317	amended	Ch. 257	SB 144
3-1-501	amended	Ch. 496	HB 208
3-1-511	amended	Ch. 496	HB 208
3-1-513	amended	Ch. 496	HB 208
3-1-518	amended	Ch. 496	HB 208
3-1-519	repealed	Ch. 496	HB 208
3-1-520	amended	Ch. 496	HB 208
3-1-523	amended	Ch. 136	SB 20
3-1-702	amended	Ch. 585	SB 176
3-1-1601	enacted	Ch. 585	SB 176
3-1-1602	enacted	Ch. 585	SB 176
3-1-1603	enacted	Ch. 585	SB 176
3-1-1604	enacted	Ch. 585	SB 176
3-1-1605	enacted	Ch. 585	SB 176
3-2-501	amended	Ch. 585	SB 176
3-2-714	amended	Ch. 585	SB 176
3-5-102	amended	Ch. 497	HB 214
3-5-113	amended	Ch. 473	SB 282
3-5-115	amended	Ch. 473	SB 282
3-5-404	repealed	Ch. 585	SB 176
3-5-511	amended	Ch. 585	SB 176
3-5-514	repealed	Ch. 39	HB 83

3-5-515	repealed	Ch. 39	HB 83
	amended	Ch. 585	SB 176
3-5-601	amended	Ch. 585	SB 176
3-5-602	amended	Ch. 278	SB 138
	amended	Ch. 585	SB 176
3-5-604	amended	Ch. 585	SB 176
3-5-901	amended	Ch. 278	SB 138
	amended	Ch. 585	SB 176
3-5-902	amended	Ch. 585	SB 176
3-5-903	repealed 7/1/2002	Ch. 585	SB 176
3-10-103	amended	Ch. 6	SB 87
3-10-207	amended	Ch. 507	HB 345
3-10-222	amended	Ch. 515	HB 496
3-10-304	amended	Ch. 515	HB 496
3-10-402	amended	Ch. 496	HB 208
3-10-403	repealed	Ch. 496	HB 208
3-10-404	repealed	Ch. 496	HB 208
3-10-601	amended	Ch. 257	SB 144
	amended	Ch. 449	HB 405
	amended	Ch. 515	HB 496
3-11-206	amended	Ch. 6	SB 87
3-11-303	amended	Ch. 496	HB 208
3-15-104	amended	Ch. 473	SB 282
3-15-204	amended	Ch. 473	SB 282
	amended	Ch. 585	SB 176
3-15-205	amended	Ch. 473	SB 282
	amended	Ch. 585	SB 176
3-20-101	enacted	Ch. 473	SB 282
3-20-102	enacted	Ch. 473	SB 282
3-20-103	enacted	Ch. 473	SB 282
3-20-104	enacted	Ch. 473	SB 282
3-20-105	enacted	Ch. 473	SB 282
5-2-201	amended	Ch. 57	SB 11
5-2-202	amended	Ch. 57	SB 11
5-2-203	amended	Ch. 57	SB 11
5-2-301	amended	Ch. 553	HB 13
5-2-304	amended	Ch. 99	HB 152
5-3-101	amended	Ch. 35	SB 180
5-5-202	amended	Ch. 210	SB 10
5-5-211	amended	Ch. 210	SB 10
5-5-215	amended	Ch. 210	SB 10
5-5-216	amended	Ch. 210	SB 10
5-5-217	amended	Ch. 210	SB 10
5-5-223	amended	Ch. 210	SB 10
	amended	Ch. 483	SB 445
	amended	Ch. 489	HB 73
5-5-224	amended	Ch. 210	SB 10
5-5-225	amended	Ch. 210	SB 10
5-5-226	amended	Ch. 210	SB 10
5-5-227	amended	Ch. 210	SB 10
5-5-228	amended	Ch. 210	SB 10
5-5-229	enacted	Ch. 210	SB 10
5-6-102	amended	Ch. 38	SB 214
5-7-103	amended	Ch. 557	HB 144
5-11-106	amended	Ch. 210	SB 10
5-11-112	amended	Ch. 557	HB 144
5-11-210	amended	Ch. 210	SB 10
5-11-301	amended	Ch. 349	SB 480
5-11-402	amended	Ch. 313	SB 131

5-11-403	amended	Ch. 313	SB 131
5-11-705	enacted	Ch. 349	SB 480
5-11-706	enacted	Ch. 349	SB 480
5-11-707	enacted	Ch. 349	SB 480
5-11-708	enacted	Ch. 349	SB 480
5-11-1101	enacted	Ch. 557	HB 144
5-11-1102	enacted	Ch. 557	HB 144
5-11-1111	enacted	Ch. 557	HB 144
5-11-1112	enacted	Ch. 557	HB 144
5-12-205	amended	Ch. 313	SB 131
7-1-111	amended	Ch. 446	HB 382
7-1-114	amended	Ch. 278	SB 138
7-1-2111	amended	Ch. 7	HB 25
7-1-2121	amended	Ch. 354	SB 187
7-1-4121	amended	Ch. 354	SB 187
7-1-4124	amended	Ch. 125	SB 7
7-1-4127	amended	Ch. 354	SB 187
7-1-4128	repealed	Ch. 354	SB 187
7-1-4145	amended	Ch. 483	SB 445
7-1-4147	amended	Ch. 483	SB 445
7-1-4148	amended	Ch. 483	SB 445
7-1-4149	amended	Ch. 354	SB 187
7-2-2209	amended	Ch. 354	SB 187
7-2-2256	repealed	Ch. 354	SB 187
7-2-2505	amended	Ch. 354	SB 187
7-2-2602	amended	Ch. 354	SB 187
7-2-2730	amended	Ch. 574	HB 124
7-2-2746	amended	Ch. 574	HB 124
7-2-4111	amended	Ch. 574	HB 124
7-2-4312	amended	Ch. 354	SB 187
7-2-4625	enacted	Ch. 324	SB 359
7-2-4708	amended	Ch. 354	SB 187
7-2-4805	amended	Ch. 354	SB 187
7-2-4906	amended	Ch. 483	SB 445
7-2-4911	amended	Ch. 483	SB 445
7-2-4912	amended	Ch. 483	SB 445
7-2-4918	amended	Ch. 574	HB 124
7-3-146	amended	Ch. 483	SB 445
7-3-153	amended	Ch. 483	SB 445
7-3-187	amended	Ch. 483	SB 445
7-3-604	amended	Ch. 354	SB 187
7-3-1310	amended	Ch. 574	HB 124
7-3-1311	amended	Ch. 574	HB 124
7-3-1313	amended	Ch. 574	HB 124
7-3-1321	amended	Ch. 29	HB 23
7-3-4312	amended	Ch. 574	HB 124
7-3-4432	amended	Ch. 278	SB 138
7-4-2104	amended	Ch. 183	HB 440
7-4-2107	amended	Ch. 507	HB 345
7-4-2503	amended	Ch. 7	HB 25
	amended	Ch. 507	HB 345
7-4-2504	amended	Ch. 507	HB 345
7-4-2514	amended	Ch. 278	SB 138
7-4-2613	amended	Ch. 37	SB 192
	amended	Ch. 412	SB 368
7-4-2621	amended	Ch. 156	HB 383
7-4-2623	amended	Ch. 156	HB 383
7-4-2706	amended	Ch. 507	HB 345
7-5-132	amended	Ch. 374	SB 429

7-5-2309	amended	Ch. 181	SB 90
7-5-2502	amended	Ch. 354	SB 187
7-5-4106	amended	Ch. 125	SB 7
7-5-4202	amended	Ch. 354	SB 187
7-5-4302	amended	Ch. 354	SB 187
7-6-204	amended	Ch. 278	SB 138
7-6-502	amended	Ch. 574	HB 124
7-6-601	repealed	Ch. 278	SB 138
7-6-603	repealed	Ch. 278	SB 138
	amended	Ch. 483	SB 445
7-6-604	repealed	Ch. 278	SB 138
	amended	Ch. 483	SB 445
7-6-609	enacted	Ch. 278	SB 138
7-6-610	enacted	Ch. 278	SB 138
7-6-611	enacted	Ch. 278	SB 138
7-6-612	enacted	Ch. 278	SB 138
7-6-613	enacted	Ch. 278	SB 138
7-6-614	enacted	Ch. 278	SB 138
7-6-615	enacted	Ch. 278	SB 138
7-6-616	enacted	Ch. 278	SB 138
7-6-2111	amended	Ch. 278	SB 138
7-6-2112	repealed	Ch. 278	SB 138
7-6-2113	amended	Ch. 278	SB 138
7-6-2114	amended	Ch. 483	SB 445
7-6-2141	amended	Ch. 483	SB 445
7-6-2201	repealed	Ch. 278	SB 138
7-6-2202	amended	Ch. 278	SB 138
7-6-2203	repealed	Ch. 278	SB 138
	amended	Ch. 483	SB 445
7-6-2211	amended	Ch. 29	HB 23
	repealed	Ch. 278	SB 138
7-6-2212	repealed	Ch. 278	SB 138
7-6-2213	repealed	Ch. 278	SB 138
7-6-2214	repealed	Ch. 278	SB 138
7-6-2218	repealed	Ch. 278	SB 138
7-6-2219	repealed	Ch. 278	SB 138
7-6-2220	repealed	Ch. 278	SB 138
7-6-2221	repealed	Ch. 278	SB 138
7-6-2301	repealed	Ch. 278	SB 138
	amended	Ch. 574	HB 124
7-6-2302	repealed	Ch. 278	SB 138
	amended	Ch. 483	SB 445
7-6-2303	repealed	Ch. 278	SB 138
7-6-2311	repealed	Ch. 278	SB 138
	amended	Ch. 483	SB 445
7-6-2312	repealed	Ch. 278	SB 138
7-6-2313	repealed	Ch. 278	SB 138
7-6-2314	repealed	Ch. 278	SB 138
	amended	Ch. 483	SB 445
	amended	Ch. 495	HB 179
	amended	Ch. 574	HB 124
7-6-2315	repealed	Ch. 278	SB 138
7-6-2316	repealed	Ch. 278	SB 138
	amended	Ch. 354	SB 187
7-6-2317	repealed	Ch. 278	SB 138
7-6-2318	repealed	Ch. 278	SB 138
7-6-2319	repealed	Ch. 278	SB 138
	amended	Ch. 574	HB 124

7-6-2320	repealed	Ch. 278	SB 138
	amended	Ch. 354	SB 187
7-6-2321	repealed	Ch. 278	SB 138
7-6-2322	repealed	Ch. 278	SB 138
	amended	Ch. 483	SB 445
7-6-2323	repealed	Ch. 278	SB 138
7-6-2324	repealed	Ch. 278	SB 138
	amended	Ch. 585	SB 176
7-6-2325	repealed	Ch. 278	SB 138
7-6-2326	repealed	Ch. 278	SB 138
7-6-2327	repealed	Ch. 278	SB 138
7-6-2328	repealed	Ch. 278	SB 138
	amended	Ch. 495	HB 179
	amended	Ch. 574	HB 124
7-6-2329	repealed	Ch. 278	SB 138
	amended	Ch. 574	HB 124
7-6-2330	repealed	Ch. 278	SB 138
7-6-2331	repealed	Ch. 278	SB 138
7-6-2335	repealed	Ch. 278	SB 138
7-6-2341	repealed	Ch. 278	SB 138
7-6-2342	repealed	Ch. 278	SB 138
7-6-2343	repealed	Ch. 278	SB 138
7-6-2345	repealed	Ch. 278	SB 138
	amended	Ch. 574	HB 124
7-6-2348	repealed	Ch. 278	SB 138
7-6-2351	repealed	Ch. 278	SB 138
7-6-2352	repealed	Ch. 278	SB 138
	repealed 7/1/2002	Ch. 585	SB 176
7-6-2421	amended	Ch. 257	SB 144
7-6-2426	amended	Ch. 585	SB 176
7-6-2427	repealed 7/1/2002	Ch. 585	SB 176
7-6-2428	repealed 7/1/2002	Ch. 585	SB 176
7-6-2501	amended	Ch. 574	HB 124
7-6-2502	repealed	Ch. 278	SB 138
7-6-2511	amended	Ch. 574	HB 124
	amended	Ch. 585	SB 176
7-6-2512	amended	Ch. 495	HB 179
	amended	Ch. 571	SB 339
	amended	Ch. 574	HB 124
7-6-2521	amended	Ch. 278	SB 138
7-6-2522	amended	Ch. 26	HB 37
	amended	Ch. 419	SB 501
	amended	Ch. 574	HB 124
7-6-2523	amended	Ch. 571	SB 339
	amended	Ch. 574	HB 124
7-6-2524	amended	Ch. 278	SB 138
7-6-2525	repealed	Ch. 278	SB 138
7-6-2531	amended	Ch. 361	SB 265
	amended	Ch. 495	HB 179
	repealed	Ch. 574	HB 124
7-6-2532	repealed	Ch. 495	HB 179
	repealed	Ch. 574	HB 124
7-6-2533	repealed	Ch. 574	HB 124
7-6-2534	amended	Ch. 495	HB 179
	repealed	Ch. 574	HB 124
7-6-2535	repealed	Ch. 574	HB 124
7-6-2536	amended	Ch. 495	HB 179
	repealed	Ch. 574	HB 124

7-6-2537	amended	Ch. 495	HB 179
	repealed	Ch. 574	HB 124
7-6-2541	amended	Ch. 574	HB 124
7-6-2601	amended	Ch. 278	SB 138
7-6-2602	amended	Ch. 278	SB 138
7-6-2607	amended	Ch. 278	SB 138
7-6-2702	repealed	Ch. 278	SB 138
7-6-4001	enacted	Ch. 278	SB 138
7-6-4002	enacted	Ch. 278	SB 138
7-6-4003	enacted	Ch. 278	SB 138
7-6-4004	enacted	Ch. 278	SB 138
7-6-4005	enacted	Ch. 278	SB 138
7-6-4006	enacted	Ch. 278	SB 138
7-6-4011	enacted	Ch. 278	SB 138
7-6-4012	enacted	Ch. 278	SB 138
7-6-4013	enacted	Ch. 278	SB 138
7-6-4014	enacted	Ch. 278	SB 138
7-6-4015	enacted	Ch. 278	SB 138
7-6-4020	enacted	Ch. 278	SB 138
7-6-4021	enacted	Ch. 278	SB 138
7-6-4022	enacted	Ch. 278	SB 138
7-6-4023	enacted	Ch. 278	SB 138
7-6-4024	enacted	Ch. 278	SB 138
7-6-4025	enacted	Ch. 278	SB 138
7-6-4030	enacted	Ch. 278	SB 138
7-6-4031	enacted	Ch. 278	SB 138
7-6-4032	enacted	Ch. 278	SB 138
7-6-4033	enacted	Ch. 278	SB 138
7-6-4034	enacted	Ch. 278	SB 138
7-6-4035	enacted	Ch. 278	SB 138
7-6-4036	enacted	Ch. 278	SB 138
7-6-4101	repealed	Ch. 278	SB 138
7-6-4104	repealed	Ch. 278	SB 138
7-6-4121	amended	Ch. 29	HB 23
	repealed	Ch. 278	SB 138
7-6-4123	repealed	Ch. 278	SB 138
7-6-4124	repealed	Ch. 278	SB 138
7-6-4134	repealed	Ch. 278	SB 138
	amended	Ch. 574	HB 124
7-6-4135	repealed	Ch. 278	SB 138
7-6-4140	repealed	Ch. 278	SB 138
	amended	Ch. 483	SB 445
7-6-4141	repealed	Ch. 278	SB 138
7-6-4201	repealed	Ch. 278	SB 138
7-6-4202	repealed	Ch. 278	SB 138
7-6-4203	repealed	Ch. 278	SB 138
7-6-4205	repealed	Ch. 278	SB 138
	amended	Ch. 483	SB 445
7-6-4206	repealed	Ch. 278	SB 138
7-6-4207	repealed	Ch. 278	SB 138
7-6-4208	repealed	Ch. 278	SB 138
7-6-4209	repealed	Ch. 278	SB 138
7-6-4232	repealed	Ch. 278	SB 138
7-6-4234	repealed	Ch. 278	SB 138
7-6-4237	repealed	Ch. 278	SB 138
7-6-4238	repealed	Ch. 278	SB 138
	amended	Ch. 495	HB 179
	amended	Ch. 574	HB 124
7-6-4240	repealed	Ch. 278	SB 138

7-6-4259	repealed	Ch.	278	SB	138
7-6-4260	repealed	Ch.	278	SB	138
	amended	Ch.	483	SB	445
7-6-4261	repealed	Ch.	278	SB	138
	amended	Ch.	574	HB	124
7-6-4262	repealed	Ch.	278	SB	138
7-6-4263	repealed	Ch.	278	SB	138
7-6-4264	repealed	Ch.	278	SB	138
7-6-4265	repealed	Ch.	278	SB	138
7-6-4266	repealed	Ch.	278	SB	138
7-6-4267	repealed	Ch.	278	SB	138
7-6-4270	repealed	Ch.	278	SB	138
7-6-4271	repealed	Ch.	278	SB	138
7-6-4272	repealed	Ch.	278	SB	138
	amended	Ch.	495	HB	179
	amended	Ch.	574	HB	124
7-6-4302	amended	Ch.	278	SB	138
7-6-4407	repealed	Ch.	278	SB	138
7-6-4408	repealed	Ch.	278	SB	138
7-6-4431	amended	Ch.	361	SB	265
	amended	Ch.	495	HB	179
	amended	Ch.	574	HB	124
7-6-4432	repealed	Ch.	574	HB	124
7-6-4434	repealed	Ch.	574	HB	124
7-6-4436	repealed	Ch.	574	HB	124
7-6-4437	repealed	Ch.	574	HB	124
7-6-4439	repealed	Ch.	574	HB	124
7-6-4451	amended	Ch.	574	HB	124
7-6-4452	repealed	Ch.	574	HB	124
7-6-4453	amended	Ch.	574	HB	124
7-6-4455	amended	Ch.	574	HB	124
7-6-4501	amended	Ch.	278	SB	138
7-7-107	amended	Ch.	29	HB	23
7-7-108	amended	Ch.	29	HB	23
7-7-2101	amended	Ch.	7	HB	25
	amended	Ch.	29	HB	23
7-7-2201	amended	Ch.	571	SB	339
7-7-2202	amended	Ch.	574	HB	124
7-7-2203	amended	Ch.	7	HB	25
	amended	Ch.	29	HB	23
7-7-2206	amended	Ch.	574	HB	124
7-7-2301	amended	Ch.	29	HB	23
7-7-2303	amended	Ch.	574	HB	124
7-7-4201	amended	Ch.	29	HB	23
7-7-4202	amended	Ch.	29	HB	23
7-7-4404	amended	Ch.	125	SB	7
7-8-101	amended	Ch.	354	SB	187
7-8-2217	amended	Ch.	354	SB	187
7-8-2302	amended	Ch.	354	SB	187
7-11-104	amended	Ch.	318	SB	182
7-11-105	amended	Ch.	99	HB	152
	amended	Ch.	318	SB	182
7-12-1112	amended	Ch.	354	SB	187
7-12-2106	repealed	Ch.	354	SB	187
7-12-2132	amended	Ch.	354	SB	187
7-12-2171	amended	Ch.	162	HB	479
7-12-2176	amended	Ch.	162	HB	479
7-12-2183	amended	Ch.	162	HB	479
7-12-2184	amended	Ch.	162	HB	479

7-12-2193	amended	Ch. 162	HB 479
7-12-4102	amended	Ch. 591	SB 506
7-12-4107	repealed	Ch. 354	SB 187
7-12-4141	amended	Ch. 354	SB 187
7-12-4177	amended	Ch. 354	SB 187
7-12-4181	amended	Ch. 278	SB 138
7-12-4183	amended	Ch. 278	SB 138
7-12-4189	amended	Ch. 162	HB 479
7-12-4194	amended	Ch. 162	HB 479
7-12-4203	amended	Ch. 162	HB 479
7-12-4223	amended	Ch. 162	HB 479
7-12-4224	amended	Ch. 162	HB 479
7-12-4254	amended	Ch. 354	SB 187
7-12-4303	amended	Ch. 354	SB 187
7-12-4329	amended	Ch. 354	SB 187
7-12-4406	amended	Ch. 354	SB 187
7-12-4426	amended	Ch. 354	SB 187
7-12-4502	amended	Ch. 354	SB 187
7-12-4603	amended	Ch. 354	SB 187
7-13-107	amended	Ch. 354	SB 187
7-13-114	amended	Ch. 354	SB 187
7-13-126	amended	Ch. 354	SB 187
7-13-127	amended	Ch. 354	SB 187
7-13-145	amended	Ch. 354	SB 187
7-13-208	amended	Ch. 354	SB 187
7-13-231	amended	Ch. 170	SB 161
7-13-232	amended	Ch. 354	SB 187
	amended	Ch. 453	HB 498
7-13-237	amended	Ch. 29	HB 23
7-13-309	amended	Ch. 29	HB 23
7-13-2218	amended	Ch. 125	SB 7
7-13-2509	amended	Ch. 396	HB 639
7-13-3005	amended	Ch. 354	SB 187
7-13-3021	amended	Ch. 354	SB 187
7-13-3023	amended	Ch. 354	SB 187
7-13-3028	amended	Ch. 354	SB 187
7-13-3043	amended	Ch. 354	SB 187
7-13-4103	amended	Ch. 29	HB 23
7-13-4404	amended	Ch. 125	SB 7
7-13-4405	amended	Ch. 125	SB 7
7-13-4406	amended	Ch. 125	SB 7
7-13-4507	amended	Ch. 354	SB 187
7-14-101	amended	Ch. 125	SB 7
7-14-111	amended	Ch. 574	HB 124
7-14-112	enacted	Ch. 337	SB 448
7-14-208	amended	Ch. 354	SB 187
7-14-232	amended	Ch. 574	HB 124
7-14-236	amended	Ch. 29	HB 23
7-14-244	amended	Ch. 354	SB 187
7-14-1102	amended	Ch. 354	SB 187
7-14-1131	amended	Ch. 574	HB 124
7-14-1134	amended	Ch. 495	HB 179
	amended	Ch. 574	HB 124
7-14-1625	amended	Ch. 125	SB 7
7-14-1632	amended	Ch. 574	HB 124
7-14-1633	amended	Ch. 495	HB 179
	amended	Ch. 574	HB 124
7-14-2101	amended	Ch. 125	SB 7
7-14-2108	amended	Ch. 125	SB 7

7-14-2123	amended	Ch. 125	SB 7
7-14-2126	amended	Ch. 507	HB 345
7-14-2133	amended	Ch. 245	HB 408
7-14-2403	amended	Ch. 354	SB 187
7-14-2404	amended	Ch. 181	SB 90
7-14-2406	amended	Ch. 181	SB 90
7-14-2501	amended	Ch. 574	HB 124
7-14-2502	amended	Ch. 574	HB 124
7-14-2503	amended	Ch. 574	HB 124
7-14-2504	amended	Ch. 495	HB 179
	amended	Ch. 574	HB 124
7-14-2520	enacted	Ch. 479	SB 427
7-14-2521	amended	Ch. 479	SB 427
7-14-2522	amended	Ch. 479	SB 427
7-14-2523	amended	Ch. 574	HB 124
7-14-2524	amended	Ch. 7	HB 25
	amended	Ch. 29	HB 23
7-14-2525	amended	Ch. 29	HB 23
7-14-2616	amended	Ch. 354	SB 187
7-14-2621	amended	Ch. 125	SB 7
7-14-2716	amended	Ch. 181	SB 90
7-14-2803	amended	Ch. 125	SB 7
7-14-2807	amended	Ch. 574	HB 124
7-14-2822	amended	Ch. 354	SB 187
7-14-2829	amended	Ch. 125	SB 7
7-14-2902	amended	Ch. 354	SB 187
7-14-4106	amended	Ch. 574	HB 124
7-14-4114	amended	Ch. 354	SB 187
7-14-4402	amended	Ch. 29	HB 23
7-14-4404	amended	Ch. 495	HB 179
	amended	Ch. 574	HB 124
7-14-4501	amended	Ch. 125	SB 7
7-14-4622	amended	Ch. 125	SB 7
7-14-4626	amended	Ch. 125	SB 7
7-14-4644	amended	Ch. 574	HB 124
7-14-4712	amended	Ch. 354	SB 187
7-14-4732	amended	Ch. 354	SB 187
7-14-4734	amended	Ch. 574	HB 124
7-14-4801	amended	Ch. 125	SB 7
7-15-4204	amended	Ch. 125	SB 7
7-15-4215	amended	Ch. 354	SB 187
7-15-4258	amended	Ch. 125	SB 7
7-15-4259	amended	Ch. 125	SB 7
7-15-4263	amended	Ch. 354	SB 187
7-15-4293	amended	Ch. 574	HB 124
7-15-4404	amended	Ch. 354	SB 187
7-15-4431	amended	Ch. 197	HB 439
7-15-4432	amended	Ch. 197	HB 439
7-15-4435	amended	Ch. 197	HB 439
7-15-4460	amended	Ch. 125	SB 7
7-15-4462	amended	Ch. 125	SB 7
7-16-101	amended	Ch. 574	HB 124
7-16-2102	amended	Ch. 495	HB 179
	amended	Ch. 574	HB 124
7-16-2105	amended	Ch. 125	SB 7
7-16-2108	amended	Ch. 574	HB 124
7-16-2109	amended	Ch. 495	HB 179
	amended	Ch. 574	HB 124
7-16-2205	amended	Ch. 574	HB 124

7-16-2327	amended	Ch. 7	HB	25
	amended	Ch. 29	HB	23
7-16-2411	amended	Ch. 495	HB	179
	amended	Ch. 574	HB	124
7-16-2412	amended	Ch. 495	HB	179
	amended	Ch. 574	HB	124
7-16-2431	amended	Ch. 574	HB	124
7-16-2432	amended	Ch. 495	HB	179
	repealed	Ch. 574	HB	124
7-16-2433	amended	Ch. 29	HB	23
7-16-2442	amended	Ch. 354	SB	187
7-16-2443	amended	Ch. 574	HB	124
7-16-4104	amended	Ch. 29	HB	23
7-16-4105	amended	Ch. 574	HB	124
7-16-4106	amended	Ch. 125	SB	7
7-16-4113	amended	Ch. 574	HB	124
7-16-4114	amended	Ch. 574	HB	124
7-21-2303	amended	Ch. 7	HB	25
7-21-3203	amended	Ch. 574	HB	124
7-21-3305	amended	Ch. 354	SB	187
7-21-3433	amended	Ch. 574	HB	124
7-21-3457	amended	Ch. 574	HB	124
7-22-2101	amended	Ch. 407	SB	326
7-22-2109	amended	Ch. 203	SB	199
	amended	Ch. 407	SB	326
7-22-2110	amended	Ch. 407	SB	326
7-22-2111	amended	Ch. 407	SB	326
7-22-2116	amended	Ch. 407	SB	326
7-22-2117	amended	Ch. 407	SB	326
7-22-2120	enacted	Ch. 407	SB	326
7-22-2123	amended	Ch. 407	SB	326
7-22-2124	amended	Ch. 407	SB	326
7-22-2130	amended	Ch. 407	SB	326
7-22-2142	amended	Ch. 407	SB	326
	amended	Ch. 495	HB	179
	amended	Ch. 574	HB	124
7-22-2146	amended	Ch. 407	SB	326
7-22-2150	amended	Ch. 407	SB	326
7-22-2151	amended	Ch. 407	SB	326
7-22-2152	amended	Ch. 407	SB	326
7-22-2153	amended	Ch. 407	SB	326
7-22-2212	amended	Ch. 354	SB	187
7-22-2222	amended	Ch. 574	HB	124
7-22-2232	amended	Ch. 354	SB	187
7-22-2306	amended	Ch. 574	HB	124
7-22-2406	amended	Ch. 354	SB	187
7-22-2408	amended	Ch. 354	SB	187
7-22-2432	amended	Ch. 574	HB	124
7-22-2446	amended	Ch. 354	SB	187
7-22-2512	amended	Ch. 574	HB	124
7-31-106	amended	Ch. 29	HB	23
7-31-107	amended	Ch. 29	HB	23
7-31-203	amended	Ch. 88	SB	41
7-32-235	amended	Ch. 495	HB	179
	amended	Ch. 574	HB	124
7-32-2144	amended	Ch. 371	SB	328
7-32-2226	amended	Ch. 203	SB	199
7-32-2302	amended	Ch. 131	HB	27
7-32-4117	amended	Ch. 574	HB	124

7-33-2102	amended	Ch. 354	SB 187
7-33-2105	amended	Ch. 443	HB 469
7-33-2109	amended	Ch. 29	HB 23
	amended	Ch. 443	HB 469
7-33-2111	amended	Ch. 443	HB 469
7-33-2125	amended	Ch. 354	SB 187
7-33-2209	amended	Ch. 574	HB 124
7-33-2404	amended	Ch. 29	HB 23
7-33-4111	amended	Ch. 574	HB 124
7-33-4130	amended	Ch. 574	HB 124
7-34-102	amended	Ch. 495	HB 179
	amended	Ch. 574	HB 124
7-34-103	amended	Ch. 13	HB 56
7-34-2131	amended	Ch. 29	HB 23
	amended	Ch. 574	HB 124
7-34-2133	amended	Ch. 574	HB 124
7-34-2134	repealed	Ch. 574	HB 124
7-34-2135	amended	Ch. 495	HB 179
	repealed	Ch. 574	HB 124
7-34-2136	repealed	Ch. 574	HB 124
7-34-2162	amended	Ch. 354	SB 187
7-34-2201	amended	Ch. 192	SB 194
7-34-2204	amended	Ch. 571	SB 339
	amended	Ch. 574	HB 124
7-34-2303	amended	Ch. 571	SB 339
	amended	Ch. 574	HB 124
7-34-2417	amended	Ch. 574	HB 124
7-35-2112	amended	Ch. 354	SB 187
7-35-2122	amended	Ch. 574	HB 124
7-35-2201	amended	Ch. 125	SB 7
10-1-104	amended	Ch. 4	HB 52
10-1-605	repealed	Ch. 492	HB 120
10-2-102	amended	Ch. 7	HB 25
10-2-111	enacted	Ch. 202	SB 52
10-2-501	amended	Ch. 257	SB 144
	amended	Ch. 574	HB 124
10-2-603	amended	Ch. 574	HB 124
10-3-106	amended	Ch. 313	SB 131
10-3-312	amended	Ch. 569	SB 179
10-4-301	amended	Ch. 41	SB 112
13-1-101	amended	Ch. 401	SB 185
13-2-115	amended	Ch. 396	HB 639
13-2-208	enacted	Ch. 63	HB 80
13-2-301	amended	Ch. 7	HB 25
13-2-402	amended	Ch. 96	HB 204
13-4-106	amended	Ch. 44	HB 20
13-10-209	amended	Ch. 537	HB 612
13-10-211	amended	Ch. 15	HB 91
13-10-302	amended	Ch. 15	HB 91
13-10-327	amended	Ch. 537	HB 612
13-10-502	amended	Ch. 537	HB 612
13-10-504	amended	Ch. 537	HB 612
13-12-207	amended	Ch. 7	HB 25
13-13-117	amended	Ch. 134	HB 241
13-13-230	amended	Ch. 574	HB 124
13-15-202	amended	Ch. 15	HB 91
13-15-401	amended	Ch. 7	HB 25
13-19-106	amended	Ch. 546	SB 242
13-25-101	amended	Ch. 537	HB 612

13-27-202	amended	Ch. 537	HB 612
13-27-204	amended	Ch. 537	HB 612
13-27-205	amended	Ch. 537	HB 612
13-27-206	amended	Ch. 537	HB 612
13-27-207	amended	Ch. 537	HB 612
13-27-208	amended	Ch. 396	HB 639
	amended	Ch. 537	HB 612
13-27-302	amended	Ch. 537	HB 612
13-27-304	amended	Ch. 537	HB 612
13-27-316	amended	Ch. 537	HB 612
13-35-211	amended	Ch. 401	SB 185
13-35-226	amended	Ch. 401	SB 185
13-35-234	repealed	Ch. 401	SB 185
13-37-111	amended	Ch. 401	SB 185
13-37-112	amended	Ch. 401	SB 185
13-37-113	amended	Ch. 401	SB 185
13-37-114	amended	Ch. 401	SB 185
13-37-117	amended	Ch. 401	SB 185
13-37-118	amended	Ch. 401	SB 185
13-37-121	amended	Ch. 401	SB 185
13-37-124	amended	Ch. 401	SB 185
13-37-125	amended	Ch. 401	SB 185
13-37-126	amended	Ch. 401	SB 185
13-37-127	amended	Ch. 401	SB 185
13-37-128	amended	Ch. 401	SB 185
13-37-218	amended	Ch. 143	HB 143
13-37-226	amended	Ch. 401	SB 185
13-37-228	amended	Ch. 401	SB 185
13-38-103	repealed	Ch. 363	SB 293
15-1-112	amended	Ch. 571	SB 339
15-1-113	enacted	Ch. 500	HB 247
15-1-116	amended	Ch. 257	SB 144
15-1-120	enacted	Ch. 574	HB 124
15-1-121	enacted	Ch. 574	HB 124
15-1-122	enacted	Ch. 574	HB 124
15-1-205	amended	Ch. 199	HB 548
15-1-231	enacted	Ch. 50	HB 192
15-1-402	amended	Ch. 574	HB 124
15-1-501	amended	Ch. 7	HB 25
	amended	Ch. 306	HB 642
	amended	Ch. 448	HB 399
	amended	Ch. 574	HB 124
15-1-504	amended	Ch. 257	SB 144
15-1-701	amended	Ch. 108	SB 44
15-1-704	amended	Ch. 515	HB 496
15-1-706	amended	Ch. 397	SB 46
15-1-708	amended	Ch. 7	HB 25
	amended	Ch. 108	SB 44
15-6-134	amended	Ch. 135	HB 351
15-6-138	amended	Ch. 438	HB 362
15-6-141	amended	Ch. 7	HB 25
	amended	Ch. 406	SB 325
15-6-156	amended	Ch. 591	SB 506
15-6-201	amended	Ch. 438	HB 362
15-6-217	amended	Ch. 436	HB 375
15-6-225	enacted	Ch. 591	SB 506
15-6-226	enacted	Ch. 579	HB 600
15-7-102	amended	Ch. 444	HB 381
15-7-122	repealed	Ch. 574	HB 124

15-7-138	enacted	Ch. 444	HB 381
15-7-201	amended	Ch. 459	HB 609
15-8-711	enacted	Ch. 444	HB 381
15-10-202	amended	Ch. 26	HB 37
	amended	Ch. 419	SB 501
15-10-203	amended	Ch. 354	SB 187
15-10-204	repealed	Ch. 26	HB 37
	repealed	Ch. 419	SB 501
15-10-205	repealed	Ch. 26	HB 37
	repealed	Ch. 419	SB 501
15-10-206	amended	Ch. 26	HB 37
	amended	Ch. 419	SB 501
15-10-207	repealed	Ch. 26	HB 37
	repealed	Ch. 419	SB 501
15-10-208	repealed	Ch. 26	HB 37
	repealed	Ch. 419	SB 501
15-10-420	amended	Ch. 191	SB 175
	amended	Ch. 220	SB 117
	amended	Ch. 361	SB 265
	amended	Ch. 511	HB 409
	amended	Ch. 571	SB 339
	amended	Ch. 574	HB 124
15-10-425	enacted	Ch. 495	HB 179
	enacted	Ch. 574	HB 124
15-15-201	amended	Ch. 191	SB 175
15-16-101	amended	Ch. 472	SB 281
15-16-102	amended	Ch. 410	SB 346
15-16-117	amended	Ch. 571	SB 339
	amended	Ch. 574	HB 124
15-16-202	amended	Ch. 191	SB 175
15-16-613	amended	Ch. 59	SB 45
15-17-212	amended	Ch. 472	SB 281
15-17-323	amended	Ch. 472	SB 281
15-18-112	amended	Ch. 444	HB 381
15-23-101	amended	Ch. 7	HB 25
15-23-703	amended	Ch. 29	HB 23
15-24-303	amended	Ch. 574	HB 124
15-24-902	amended	Ch. 574	HB 124
15-24-904	amended	Ch. 7	HB 25
	amended	Ch. 574	HB 124
15-24-921	amended	Ch. 574	HB 124
15-24-922	amended	Ch. 574	HB 124
15-24-925	amended	Ch. 257	SB 144
	amended	Ch. 574	HB 124
15-24-1401	amended	Ch. 591	SB 506
15-24-1502	enacted	Ch. 135	HB 351
15-24-3001	enacted	Ch. 592	SB 508
15-24-3002	enacted	Ch. 592	SB 508
15-24-3005	enacted	Ch. 592	SB 508
15-24-3006	enacted	Ch. 592	SB 508
15-24-3007	enacted	Ch. 592	SB 508
15-30-101	amended	Ch. 143	HB 143
15-30-105	amended	Ch. 143	HB 143
15-30-107	amended	Ch. 111	HB 300
15-30-111	amended	Ch. 262	SB 245
	amended	Ch. 272	SB 51
	amended	Ch. 468	SB 258
15-30-121	amended	Ch. 574	HB 124
15-30-124	amended	Ch. 143	HB 143

15-30-130	enacted	Ch. 540	HB 623
15-30-133	amended and renumbered 15-30-1102	Ch. 143	HB 143
15-30-165	amended	Ch. 226	HB 377
	amended	Ch. 411	SB 350
15-30-166	amended	Ch. 226	HB 377
15-30-180	amended	Ch. 538	HB 619
15-30-181	enacted	Ch. 411	SB 350
15-30-186	amended	Ch. 540	HB 623
15-30-195	amended	Ch. 34	SB 133
15-30-209	amended	Ch. 108	SB 44
15-30-241	amended	Ch. 143	HB 143
15-30-301	amended	Ch. 461	SB 514
15-30-601	enacted	Ch. 262	SB 245
15-30-602	enacted	Ch. 262	SB 245
15-30-603	enacted	Ch. 262	SB 245
15-30-604	enacted	Ch. 262	SB 245
15-30-605	enacted	Ch. 262	SB 245
15-30-1101	formerly 15-31-201	Ch. 143	HB 143
15-30-1102	formerly 15-30-133	Ch. 143	HB 143
15-30-1111	enacted	Ch. 143	HB 143
15-30-1112	enacted	Ch. 143	HB 143
15-30-1113	enacted	Ch. 143	HB 143
15-30-1114	enacted	Ch. 143	HB 143
15-30-1121	formerly 15-31-203	Ch. 143	HB 143
15-31-101	amended	Ch. 143	HB 143
15-31-114	amended	Ch. 574	HB 124
15-31-118	amended	Ch. 111	HB 300
15-31-124	amended	Ch. 591	SB 506
15-31-131	amended	Ch. 540	HB 623
15-31-132	amended	Ch. 7	HB 25
15-31-133	enacted	Ch. 540	HB 623
15-31-161	amended	Ch. 226	HB 377
15-31-162	amended	Ch. 226	HB 377
15-31-170	enacted	Ch. 411	SB 350
15-31-201	amended and renumbered 15-30-1101	Ch. 143	HB 143
15-31-202	repealed	Ch. 143	HB 143
15-31-203	renumbered 15-30-1121	Ch. 143	HB 143
15-31-209	repealed	Ch. 143	HB 143
15-31-603	amended	Ch. 143	HB 143
15-31-701	repealed	Ch. 574	HB 124
15-31-702	repealed	Ch. 574	HB 124
15-32-102	amended	Ch. 591	SB 506
15-32-109	amended	Ch. 591	SB 506
15-32-115	amended	Ch. 591	SB 506
15-32-201	amended	Ch. 591	SB 506
15-32-401	amended	Ch. 591	SB 506
15-32-402	amended	Ch. 591	SB 506
15-32-403	amended	Ch. 541	HB 643
	amended	Ch. 591	SB 506
15-32-404	amended	Ch. 541	HB 643
15-32-601	amended	Ch. 398	SB 92
15-32-602	amended	Ch. 398	SB 92
15-32-603	amended	Ch. 398	SB 92
15-33-102	amended	Ch. 523	HB 517
15-34-101	repealed	Ch. 7	HB 25
15-34-102	repealed	Ch. 7	HB 25
15-34-103	repealed	Ch. 7	HB 25
15-34-104	repealed	Ch. 7	HB 25
15-34-105	repealed	Ch. 7	HB 25

15-34-110	repealed	Ch. 7	HB 25
15-34-111	repealed	Ch. 7	HB 25
15-34-112	repealed	Ch. 7	HB 25
15-34-115	repealed	Ch. 7	HB 25
	amended	Ch. 34	SB 133
15-34-116	repealed	Ch. 7	HB 25
15-35-101	amended	Ch. 399	SB 134
15-35-102	amended	Ch. 7	HB 25
15-35-103	amended	Ch. 399	SB 134
15-35-108	amended	Ch. 34	SB 133
	amended	Ch. 61	SB 172
	amended	Ch. 483	SB 445
15-36-303	amended	Ch. 403	SB 240
	amended	Ch. 421	SB 519
15-36-304	amended	Ch. 421	SB 519
15-36-324	amended	Ch. 29	HB 23
	amended	Ch. 257	SB 144
	amended	Ch. 306	HB 642
	amended	Ch. 531	HB 572
15-37-117	amended	Ch. 460	SB 484
15-38-106	amended	Ch. 34	SB 133
	amended	Ch. 586	SB 322
15-38-202	amended	Ch. 34	SB 133
	amended	Ch. 61	SB 172
15-50-301	amended	Ch. 108	SB 44
15-53-129	amended	Ch. 484	SB 494
15-53-147	amended	Ch. 108	SB 44
15-53-202	amended	Ch. 484	SB 494
15-62-103	amended	Ch. 468	SB 258
15-62-201	amended	Ch. 468	SB 258
15-62-203	amended	Ch. 468	SB 258
15-62-204	repealed	Ch. 468	SB 258
15-62-207	enacted	Ch. 468	SB 258
15-62-208	enacted	Ch. 468	SB 258
15-62-209	enacted	Ch. 468	SB 258
15-65-101	amended	Ch. 195	SB 268
15-65-121	amended	Ch. 195	SB 268
	amended	Ch. 469	SB 263
15-65-122	amended	Ch. 195	SB 268
15-70-101	amended	Ch. 158	HB 392
15-70-113	amended	Ch. 110	HB 148
15-70-201	amended	Ch. 568	HB 644
15-70-202	amended	Ch. 142	HB 127
	amended	Ch. 568	HB 644
15-70-204	amended	Ch. 404	SB 280
	amended	Ch. 568	HB 644
15-70-205	amended	Ch. 404	SB 280
15-70-210	amended	Ch. 120	SB 153
15-70-221	amended	Ch. 404	SB 280
15-70-225	amended	Ch. 110	HB 148
15-70-242	enacted	Ch. 115	SB 58
15-70-245	enacted	Ch. 568	HB 644
15-70-301	amended	Ch. 125	SB 7
	amended	Ch. 568	HB 644
15-70-304	amended	Ch. 568	HB 644
15-70-321	amended	Ch. 568	HB 644
15-70-326	amended	Ch. 568	HB 644
15-70-330	amended	Ch. 115	SB 58
15-70-336	amended	Ch. 115	SB 58

15-70-341	amended	Ch. 142	HB 127
	amended	Ch. 568	HB 644
15-70-352	amended	Ch. 120	SB 153
15-70-364	amended	Ch. 110	HB 148
15-70-370	enacted	Ch. 568	HB 644
15-70-371	amended	Ch. 119	SB 150
15-70-372	enacted	Ch. 115	SB 58
15-70-522	amended	Ch. 532	HB 578
15-70-701	amended	Ch. 125	SB 7
15-72-104	amended	Ch. 541	HB 643
	amended	Ch. 591	SB 506
16-1-101	amended	Ch. 543	SB 48
16-1-104	amended	Ch. 543	SB 48
16-1-404	amended	Ch. 470	SB 264
	amended	Ch. 574	HB 124
16-1-406	amended	Ch. 405	SB 317
	amended	Ch. 470	SB 264
	amended	Ch. 574	HB 124
16-1-411	amended	Ch. 470	SB 264
	amended	Ch. 574	HB 124
16-2-101	amended	Ch. 508	HB 348
16-2-108	amended	Ch. 448	HB 399
16-2-109	amended	Ch. 7	HB 25
16-3-101	amended	Ch. 543	SB 48
16-3-214	amended	Ch. 543	SB 48
16-3-301	amended	Ch. 498	HB 216
16-3-411	amended	Ch. 163	HB 493
16-3-418	amended	Ch. 163	HB 493
16-4-105	amended	Ch. 7	HB 25
16-4-107	amended	Ch. 163	HB 493
16-4-109	amended	Ch. 456	HB 596
16-4-111	amended	Ch. 7	HB 25
16-4-204	amended	Ch. 7	HB 25
	amended	Ch. 85	HB 308
16-4-207	amended	Ch. 448	HB 399
16-4-301	amended	Ch. 7	HB 25
	amended	Ch. 89	SB 59
16-4-401	amended	Ch. 448	HB 399
16-4-406	amended	Ch. 163	HB 493
16-4-407	amended	Ch. 163	HB 493
16-4-416	enacted	Ch. 90	SB 142
16-4-420	amended	Ch. 7	HB 25
16-4-501	amended	Ch. 163	HB 493
	amended	Ch. 405	SB 317
16-4-901	enacted	Ch. 543	SB 48
16-4-902	enacted	Ch. 543	SB 48
16-4-903	enacted	Ch. 543	SB 48
16-4-906	enacted	Ch. 543	SB 48
16-4-910	enacted	Ch. 543	SB 48
16-6-301	amended	Ch. 543	SB 48
16-6-302	amended	Ch. 543	SB 48
16-11-111	amended	Ch. 56	HB 369
16-11-307	amended	Ch. 56	HB 369
16-11-308	amended	Ch. 56	HB 369
16-11-310	amended	Ch. 498	HB 216
17-1-102	amended	Ch. 569	SB 179
17-1-505	amended	Ch. 554	HB 41
17-1-508	amended	Ch. 554	HB 41
17-1-601	enacted	Ch. 400	SB 162

17-1-602	enacted	Ch. 400	SB 162
17-1-603	enacted	Ch. 400	SB 162
17-2-102.	amended	Ch. 34	SB 133
	amended	Ch. 305	HB 608
17-2-103.	amended	Ch. 34	SB 133
17-2-107.	amended	Ch. 34	SB 133
17-2-121.	amended	Ch. 227	HB 504
17-2-304.	amended	Ch. 483	SB 445
17-2-401	enacted	Ch. 489	HB 73
17-2-402	enacted	Ch. 489	HB 73
17-2-403	enacted	Ch. 489	HB 73
17-2-404	enacted	Ch. 489	HB 73
17-2-405	enacted	Ch. 489	HB 73
17-3-211.	amended	Ch. 334	SB 433
17-3-212.	amended	Ch. 334	SB 433
17-3-213.	amended	Ch. 334	SB 433
17-3-214	repealed	Ch. 574	HB 124
17-3-240	enacted	Ch. 594	HB 226
17-3-241	enacted	Ch. 594	HB 226
17-5-205.	amended	Ch. 8.	HB 34
17-5-703.	amended	Ch. 61	SB 172
	amended	Ch. 380	HB 610
17-5-704.	amended	Ch. 61	SB 172
17-5-709.	amended	Ch. 7.	HB 25
17-5-1302	amended	Ch. 32	SB 61
	amended	Ch. 137	SB 34
17-5-1311	amended	Ch. 32	SB 61
17-5-1312	amended	Ch. 32	SB 61
	amended	Ch. 137	SB 34
17-5-1315	amended	Ch. 32	SB 61
17-5-1316	amended	Ch. 32	SB 61
17-5-1318	amended	Ch. 32	SB 61
17-5-1323	amended	Ch. 32	SB 61
17-5-1529	amended	Ch. 483	SB 445
	amended	Ch. 487	HB 47
17-5-1608	amended	Ch. 394	HB 577
17-5-1651	amended	Ch. 483	SB 445
17-5-2001	amended	Ch. 394	HB 577
17-6-201.	amended	Ch. 418	SB 495
17-6-203.	amended	Ch. 34	SB 133
	amended	Ch. 467	SB 129
17-6-305.	amended	Ch. 307	HB 650
17-6-308.	amended	Ch. 137	SB 34
	amended	Ch. 307	HB 650
17-6-311.	amended	Ch. 487	HB 47
17-6-312.	amended	Ch. 487	HB 47
17-6-317.	amended	Ch. 289	SB 279
17-6-318.	amended	Ch. 487	HB 47
17-6-321.	amended	Ch. 483	SB 445
	amended	Ch. 487	HB 47
17-6-340	enacted	Ch. 418	SB 495
17-6-403.	amended	Ch. 591	SB 506
17-6-501	repealed	Ch. 307	HB 650
17-6-502	repealed	Ch. 307	HB 650
17-6-503	repealed	Ch. 307	HB 650
	amended	Ch. 591	SB 506
17-6-504	repealed	Ch. 307	HB 650
17-6-505	repealed	Ch. 307	HB 650
	amended	Ch. 348	SB 479

17-6-509	repealed	Ch. 307	HB 650
17-6-510	repealed	Ch. 307	HB 650
17-6-511	repealed	Ch. 307	HB 650
17-6-512	repealed	Ch. 307	HB 650
17-6-601	enacted	Ch. 467	SB 129
17-6-602	enacted	Ch. 467	SB 129
17-6-603	enacted	Ch. 467	SB 129
17-6-701	enacted	Ch. 577	HB 474
17-6-702	enacted	Ch. 577	HB 474
17-6-703	enacted	Ch. 577	HB 474
17-6-704	enacted	Ch. 577	HB 474
17-6-705	enacted	Ch. 577	HB 474
17-7-111	amended	Ch. 313	SB 131
	amended	Ch. 569	SB 179
17-7-112	amended	Ch. 313	SB 131
17-7-112(2)(b)	enacted	Ch. 507	HB 345
17-7-123	amended	Ch. 313	SB 131
	amended	Ch. 569	SB 179
17-7-138	amended	Ch. 255	HB 533
	amended	Ch. 569	SB 179
17-7-139	amended	Ch. 255	HB 533
	amended	Ch. 569	SB 179
17-7-142	enacted	Ch. 253	HB 505
17-7-150	amended	Ch. 34	SB 133
17-7-304	amended	Ch. 569	SB 179
17-7-311	amended	Ch. 569	SB 179
17-7-402	amended	Ch. 569	SB 179
17-7-502	amended	Ch. 7	HB 25
	amended	Ch. 414	SB 393
	amended	Ch. 500	HB 247
	amended	Ch. 554	HB 41
	amended	Ch. 567	HB 628
	amended	Ch. 574	HB 124
	amended	Ch. 577	HB 474
	amended	Ch. 585	SB 176
	amended	Ch. 594	HB 226
17-8-101	amended	Ch. 34	SB 133
	amended	Ch. 569	SB 179
17-8-244	amended	Ch. 181	SB 90
17-8-303	amended	Ch. 34	SB 133
17-8-312	enacted	Ch. 569	SB 179
18-1-101	amended	Ch. 181	SB 90
18-1-102	amended	Ch. 181	SB 90
18-1-103	amended	Ch. 181	SB 90
18-1-106	amended	Ch. 483	SB 445
18-1-111	amended	Ch. 181	SB 90
18-1-112	repealed	Ch. 181	SB 90
18-1-404	amended	Ch. 181	SB 90
18-2-306	amended	Ch. 181	SB 90
18-2-401	amended	Ch. 517	HB 500
18-2-406	amended	Ch. 517	HB 500
18-2-422	amended	Ch. 517	HB 500
18-4-123	amended	Ch. 181	SB 90
18-4-132	amended	Ch. 7	HB 25
	amended	Ch. 181	SB 90
18-4-133	amended	Ch. 181	SB 90
18-4-141	amended	Ch. 181	SB 90
18-4-301	amended	Ch. 181	SB 90
18-4-302	amended	Ch. 181	SB 90

18-4-306.	amended	Ch. 181	SB 90
18-4-313.	amended	Ch. 181	SB 90
	amended	Ch. 313	SB 131
18-5-203.	amended	Ch. 42	SB 120
18-5-308.	amended	Ch. 181	SB 90
18-5-601	enacted	Ch. 429	HB 239
18-5-602	enacted	Ch. 429	HB 239
18-5-603	enacted	Ch. 429	HB 239
18-5-604	enacted	Ch. 429	HB 239
18-5-605	enacted	Ch. 429	HB 239
18-7-101.	amended	Ch. 314	SB 145
18-7-107.	amended	Ch. 181	SB 90
18-11-107	amended	Ch. 54	HB 271
18-11-111	repealed	Ch. 54	HB 271
19-2-303.	amended	Ch. 99	HB 152
	amended	Ch. 149	HB 294
	amended	Ch. 423	HB 63
	amended	Ch. 490	HB 116
19-2-401.	amended	Ch. 490	HB 116
19-2-403.	amended	Ch. 99	HB 152
19-2-406.	amended	Ch. 99	HB 152
	amended	Ch. 423	HB 63
19-2-505.	amended	Ch. 99	HB 152
19-2-506.	amended	Ch. 99	HB 152
19-2-511	enacted	Ch. 490	HB 116
19-2-602.	amended	Ch. 99	HB 152
19-2-703.	amended	Ch. 99	HB 152
19-2-704.	amended	Ch. 99	HB 152
19-2-706.	amended	Ch. 66	SB 37
19-2-708.	amended	Ch. 99	HB 152
19-2-801.	amended	Ch. 99	HB 152
19-2-903.	amended	Ch. 99	HB 152
19-2-907.	amended	Ch. 99	HB 152
	amended	Ch. 490	HB 116
19-2-908.	amended	Ch. 99	HB 152
19-2-909.	amended	Ch. 99	HB 152
	amended	Ch. 490	HB 116
19-2-1001	amended	Ch. 7.	HB 25
	amended	Ch. 490	HB 116
19-2-1002	amended	Ch. 490	HB 116
19-2-1003	amended	Ch. 490	HB 116
19-2-1004	amended	Ch. 490	HB 116
19-2-1005	amended	Ch. 490	HB 116
19-2-1006	amended	Ch. 490	HB 116
19-2-1007	amended	Ch. 490	HB 116
19-2-1101	repealed	Ch. 62	SB 235
	repealed	Ch. 99	HB 152
19-2-1102	repealed	Ch. 99	HB 152
19-3-108.	amended	Ch. 99	HB 152
	amended	Ch. 149	HB 294
19-3-403.	amended	Ch. 99	HB 152
19-3-412.	amended	Ch. 99	HB 152
	amended	Ch. 285	SB 210
	amended	Ch. 357	SB 236
19-3-503.	amended	Ch. 7.	HB 25
	amended	Ch. 99	HB 152
19-3-505.	amended	Ch. 99	HB 152
19-3-509.	amended	Ch. 99	HB 152
19-3-510.	amended	Ch. 99	HB 152

19-3-511	amended	Ch. 99	HB 152
19-3-512	amended	Ch. 99	HB 152
19-3-513	amended	Ch. 99	HB 152
19-3-514	enacted	Ch. 99	HB 152
19-3-901	amended	Ch. 99	HB 152
19-3-904	amended	Ch. 99	HB 152
	amended	Ch. 217	SB 306
19-3-908	amended	Ch. 66	SB 37
19-3-1002	amended	Ch. 99	HB 152
	amended	Ch. 217	SB 306
19-3-1005	amended	Ch. 99	HB 152
19-3-1007	amended	Ch. 99	HB 152
19-3-1008	amended	Ch. 99	HB 152
	amended	Ch. 217	SB 306
19-3-1015	amended	Ch. 99	HB 152
19-3-1103	amended	Ch. 99	HB 152
19-3-1105	amended	Ch. 99	HB 152
19-3-1106	amended	Ch. 66	SB 37
	amended	Ch. 99	HB 152
19-3-1203	amended	Ch. 99	HB 152
19-3-1204	amended	Ch. 99	HB 152
19-3-1501	amended	Ch. 99	HB 152
19-3-1605	amended	Ch. 62	SB 235
	amended	Ch. 149	HB 294
	amended	Ch. 309	SB 89
19-3-1606	enacted	Ch. 149	HB 294
19-3-1607	enacted	Ch. 490	HB 116
19-3-2101	amended	Ch. 490	HB 116
19-3-2102	amended	Ch. 490	HB 116
19-3-2106	enacted	Ch. 490	HB 116
19-3-2111	amended	Ch. 490	HB 116
19-3-2112	amended	Ch. 490	HB 116
19-3-2113	amended	Ch. 490	HB 116
19-3-2114	amended	Ch. 490	HB 116
19-3-2115	amended	Ch. 490	HB 116
19-3-2116	amended	Ch. 490	HB 116
19-3-2117	amended	Ch. 423	HB 63
	amended	Ch. 490	HB 116
19-3-2121	amended	Ch. 423	HB 63
	amended	Ch. 490	HB 116
19-3-2122	amended	Ch. 490	HB 116
19-3-2123	amended	Ch. 423	HB 63
	amended	Ch. 490	HB 116
19-3-2124	amended	Ch. 423	HB 63
	amended	Ch. 490	HB 116
19-3-2125	amended	Ch. 490	HB 116
19-3-2126	amended	Ch. 423	HB 63
	amended	Ch. 490	HB 116
19-3-2133	amended	Ch. 490	HB 116
19-3-2141	enacted and amended	Ch. 423	HB 63
19-3-2142	enacted	Ch. 423	HB 63
19-3-2143	enacted	Ch. 423	HB 63
19-5-101	amended	Ch. 99	HB 152
19-5-103	amended	Ch. 48	HB 176
19-5-409	amended	Ch. 99	HB 152
19-5-501	amended	Ch. 99	HB 152
	amended	Ch. 176	SB 370
19-5-502	amended	Ch. 99	HB 152
19-5-503	amended	Ch. 99	HB 152

19-5-601.	amended	Ch. 99	HB 152
19-5-701.	amended	Ch. 99	HB 152
19-5-801.	amended	Ch. 99	HB 152
19-5-802.	amended	Ch. 99	HB 152
19-5-901.	amended	Ch. 62	SB 235
	amended	Ch. 149	HB 294
	amended	Ch. 309	SB 89
19-5-902	enacted	Ch. 149	HB 294
19-6-101.	amended	Ch. 99	HB 152
	amended	Ch. 149	HB 294
19-6-402.	amended	Ch. 99	HB 152
19-6-403.	amended	Ch. 99	HB 152
19-6-501.	amended	Ch. 99	HB 152
	amended	Ch. 193	SB 228
19-6-502.	amended	Ch. 99	HB 152
19-6-505.	amended	Ch. 99	HB 152
19-6-601.	amended	Ch. 99	HB 152
19-6-612.	amended	Ch. 99	HB 152
19-6-709.	amended	Ch. 99	HB 152
	amended	Ch. 191	SB 175
	amended	Ch. 574	HB 124
19-6-710.	amended	Ch. 62	SB 235
	amended	Ch. 149	HB 294
	amended	Ch. 309	SB 89
19-6-711	enacted	Ch. 149	HB 294
19-6-801.	amended	Ch. 99	HB 152
19-6-802.	amended	Ch. 99	HB 152
19-6-803.	amended	Ch. 99	HB 152
19-6-804.	amended	Ch. 99	HB 152
19-6-805	enacted	Ch. 99	HB 152
19-6-810.	amended	Ch. 99	HB 152
19-6-901.	amended	Ch. 99	HB 152
19-6-902.	amended	Ch. 99	HB 152
19-6-903.	amended	Ch. 99	HB 152
19-7-101.	amended	Ch. 99	HB 152
	amended	Ch. 149	HB 294
19-7-301.	amended	Ch. 99	HB 152
19-7-403.	amended	Ch. 99	HB 152
19-7-404.	amended	Ch. 574	HB 124
19-7-501.	amended	Ch. 99	HB 152
19-7-503.	amended	Ch. 99	HB 152
19-7-601.	amended	Ch. 99	HB 152
19-7-711.	amended	Ch. 62	SB 235
	amended	Ch. 149	HB 294
	amended	Ch. 309	SB 89
19-7-801.	amended	Ch. 99	HB 152
19-7-802.	amended	Ch. 99	HB 152
19-7-803.	amended	Ch. 99	HB 152
19-7-804.	amended	Ch. 99	HB 152
19-7-805	enacted	Ch. 99	HB 152
19-7-810.	amended	Ch. 99	HB 152
19-7-901.	amended	Ch. 99	HB 152
19-7-1001	amended	Ch. 99	HB 152
19-7-1101	amended	Ch. 99	HB 152
19-8-101.	amended	Ch. 99	HB 152
	amended	Ch. 149	HB 294
19-8-302.	amended	Ch. 99	HB 152
	amended	Ch. 442	HB 472
19-8-308.	amended	Ch. 99	HB 152

19-8-502	amended	Ch. 98	HB 74
	amended	Ch. 99	HB 152
19-8-601	amended	Ch. 99	HB 152
19-8-603	amended	Ch. 98	HB 74
	amended	Ch. 99	HB 152
19-8-701	amended	Ch. 99	HB 152
19-8-712	amended	Ch. 99	HB 152
19-8-801	amended	Ch. 99	HB 152
19-8-901	amended	Ch. 99	HB 152
19-8-902	amended	Ch. 99	HB 152
19-8-903	amended	Ch. 99	HB 152
19-8-904	amended	Ch. 99	HB 152
19-8-906	enacted	Ch. 99	HB 152
19-8-1001	amended	Ch. 99	HB 152
19-8-1105	amended	Ch. 62	SB 235
	amended	Ch. 149	HB 294
	amended	Ch. 309	SB 89
19-9-104	amended	Ch. 99	HB 152
19-9-209	amended	Ch. 574	HB 124
19-9-301	amended	Ch. 99	HB 152
19-9-403	amended	Ch. 99	HB 152
19-9-405	amended	Ch. 99	HB 152
19-9-406	enacted	Ch. 99	HB 152
19-9-411	amended	Ch. 99	HB 152
19-9-801	amended	Ch. 99	HB 152
19-9-1007	amended	Ch. 7	HB 25
19-9-1009	amended	Ch. 62	SB 235
	amended	Ch. 149	HB 294
	amended	Ch. 309	SB 89
19-9-1010	amended	Ch. 149	HB 294
	amended	Ch. 309	SB 89
19-9-1013	enacted	Ch. 149	HB 294
19-9-1020	enacted and amended	Ch. 391	HB 491
19-9-1101	amended	Ch. 99	HB 152
19-9-1102	amended	Ch. 99	HB 152
19-9-1201	enacted	Ch. 514	HB 452
19-9-1202	enacted	Ch. 514	HB 452
19-9-1203	enacted	Ch. 514	HB 452
19-9-1204	enacted	Ch. 514	HB 452
19-9-1205	enacted	Ch. 514	HB 452
19-9-1206	enacted	Ch. 514	HB 452
19-9-1207	enacted	Ch. 514	HB 452
19-9-1208	enacted	Ch. 514	HB 452
19-13-104	amended	Ch. 290	SB 289
19-13-210	amended	Ch. 290	SB 289
19-13-212	amended	Ch. 290	SB 289
19-13-214	amended	Ch. 574	HB 124
19-13-301	amended	Ch. 99	HB 152
19-13-403	amended	Ch. 99	HB 152
19-13-404	amended	Ch. 99	HB 152
19-13-405	amended	Ch. 99	HB 152
19-13-406	enacted	Ch. 99	HB 152
19-13-604	amended	Ch. 99	HB 152
19-13-605	amended	Ch. 290	SB 289
19-13-701	amended	Ch. 99	HB 152
19-13-805	amended	Ch. 290	SB 289
19-13-902	amended	Ch. 99	HB 152
19-13-903	amended	Ch. 99	HB 152
19-13-1007	amended	Ch. 290	SB 289

19-13-1010	amended	Ch. 62	SB 235
	amended	Ch. 149	HB 294
	amended	Ch. 309	SB 89
19-13-1011	enacted	Ch. 149	HB 294
19-17-102	amended	Ch. 99	HB 152
19-17-104	amended	Ch. 99	HB 152
19-17-106	amended	Ch. 99	HB 152
19-17-202	amended	Ch. 99	HB 152
19-17-401	amended	Ch. 99	HB 152
	amended	Ch. 164	HB 515
19-17-403	amended	Ch. 99	HB 152
19-17-404	amended	Ch. 99	HB 152
	amended	Ch. 209	HB 523
19-17-405	amended	Ch. 99	HB 152
19-17-407	amended	Ch. 99	HB 152
19-17-410	enacted	Ch. 99	HB 152
19-17-411	enacted	Ch. 99	HB 152
19-18-205	amended	Ch. 483	SB 445
19-18-206	amended	Ch. 483	SB 445
19-18-403	amended	Ch. 483	SB 445
19-18-503	amended	Ch. 29	HB 23
	amended	Ch. 574	HB 124
19-18-504	amended	Ch. 29	HB 23
	amended	Ch. 495	HB 179
	amended	Ch. 574	HB 124
19-18-602	amended	Ch. 51	HB 231
19-19-301	amended	Ch. 574	HB 124
19-20-101	amended	Ch. 45	HB 97
19-20-201	amended	Ch. 45	HB 97
19-20-206	amended	Ch. 45	HB 97
19-20-302	amended	Ch. 45	HB 97
19-20-402	amended	Ch. 45	HB 97
19-20-403	amended	Ch. 45	HB 97
19-20-404	amended	Ch. 7.	HB 25
	amended	Ch. 45	HB 97
19-20-408	amended	Ch. 45	HB 97
19-20-409	amended	Ch. 45	HB 97
19-20-410	amended	Ch. 45	HB 97
19-20-411	amended	Ch. 45	HB 97
19-20-414	amended	Ch. 45	HB 97
19-20-415	amended	Ch. 45	HB 97
19-20-417	amended	Ch. 45	HB 97
19-20-501	amended	Ch. 45	HB 97
19-20-502	amended	Ch. 45	HB 97
19-20-603	amended	Ch. 45	HB 97
19-20-622	renumbered 19-20-720	Ch. 7.	HB 25
	amended	Ch. 149	HB 294
19-20-705	amended	Ch. 45	HB 97
19-20-716	amended	Ch. 45	HB 97
19-20-719	amended	Ch. 149	HB 294
19-20-720	formerly 19-20-622	Ch. 7.	HB 25
19-20-721	enacted	Ch. 45	HB 97
19-20-804	amended	Ch. 45	HB 97
19-20-1001	amended	Ch. 45	HB 97
19-21-101	amended	Ch. 490	HB 116
19-21-103	amended	Ch. 490	HB 116
19-21-201	amended	Ch. 490	HB 116
19-21-202	amended	Ch. 490	HB 116
19-21-203	amended	Ch. 490	HB 116

19-21-213	enacted	Ch. 490	HB 116
19-21-214	enacted	Ch. 490	HB 116
19-50-104	enacted	Ch. 99	HB 152
20-1-101	amended	Ch. 133	HB 134
20-1-225	enacted	Ch. 320	SB 256
20-1-301	amended	Ch. 237	SB 390
20-1-308	amended	Ch. 84	HB 272
20-2-501	enacted	Ch. 273	SB 60
20-2-502	enacted	Ch. 273	SB 60
20-2-503	enacted	Ch. 273	SB 60
20-2-504	enacted	Ch. 273	SB 60
20-2-505	enacted	Ch. 273	SB 60
20-3-103	amended	Ch. 133	HB 134
20-3-104	amended	Ch. 133	HB 134
20-3-106	amended	Ch. 133	HB 134
20-3-205	amended	Ch. 220	SB 117
	amended	Ch. 237	SB 390
20-3-313	amended	Ch. 15	HB 91
20-3-324	amended	Ch. 133	HB 134
	amended	Ch. 377	HB 265
20-3-336	amended	Ch. 548	SB 423
20-3-337	amended	Ch. 548	SB 423
20-3-352	amended	Ch. 151	HB 321
20-4-134	enacted	Ch. 555	HB 42
20-4-201	amended	Ch. 318	SB 182
20-4-401	amended	Ch. 318	SB 182
20-5-320	amended	Ch. 464	SB 65
20-5-321	amended	Ch. 464	SB 65
20-5-323	amended	Ch. 409	SB 344
	amended	Ch. 464	SB 65
20-5-324	amended	Ch. 464	SB 65
20-6-202	amended	Ch. 237	SB 390
20-6-314	amended	Ch. 237	SB 390
20-6-502	amended	Ch. 105	HB 358
	amended	Ch. 237	SB 390
20-6-603	amended	Ch. 276	SB 130
20-6-621	amended	Ch. 483	SB 445
20-6-622	amended	Ch. 483	SB 445
20-7-102	amended	Ch. 73	HB 103
20-7-301	amended	Ch. 133	HB 134
20-7-302.1	amended	Ch. 133	HB 134
	renumbered 20-7-308		
20-7-303	amended	Ch. 133	HB 134
20-7-305	amended	Ch. 133	HB 134
20-7-306	amended	Ch. 133	HB 134
20-7-308	formerly 20-7-302.1		
20-7-329	amended	Ch. 133	HB 134
20-7-330	amended	Ch. 130	SB 425
20-7-431	amended	Ch. 145	HB 160
20-7-504	amended	Ch. 237	SB 390
20-7-702	amended	Ch. 133	HB 134
20-7-705	amended	Ch. 220	SB 117
	amended	Ch. 574	HB 124
20-7-712	amended	Ch. 148	HB 267
20-7-714	amended	Ch. 574	HB 124
20-9-104	amended	Ch. 237	SB 390
20-9-115	amended	Ch. 376	HB 249
20-9-130	amended	Ch. 237	SB 390
20-9-131	amended	Ch. 376	HB 249

20-9-133	amended	Ch. 480	SB 436
20-9-141	amended	Ch. 191	SB 175
	amended	Ch. 464	SB 65
	amended	Ch. 574	HB 124
20-9-163	amended	Ch. 237	SB 390
20-9-168	amended	Ch. 237	SB 390
	amended	Ch. 574	HB 124
20-9-201	amended	Ch. 356	SB 218
	amended	Ch. 480	SB 436
20-9-203	amended	Ch. 483	SB 445
20-9-204	amended	Ch. 75	HB 108
	amended	Ch. 103	HB 268
20-9-208	amended	Ch. 480	SB 436
20-9-212	amended	Ch. 257	SB 144
	amended	Ch. 464	SB 65
20-9-213	amended	Ch. 205	SB 260
20-9-235	enacted	Ch. 205	SB 260
20-9-302	amended	Ch. 105	HB 358
20-9-306	amended	Ch. 231	SB 94
	amended	Ch. 556	HB 121
20-9-308	amended	Ch. 146	HB 164
	amended	Ch. 237	SB 390
20-9-311	amended	Ch. 252	HB 488
20-9-314	amended	Ch. 237	SB 390
20-9-321	amended	Ch. 145	HB 160
20-9-331	amended	Ch. 191	SB 175
	amended	Ch. 257	SB 144
	amended	Ch. 574	HB 124
20-9-333	amended	Ch. 191	SB 175
	amended	Ch. 257	SB 144
	amended	Ch. 574	HB 124
20-9-334	amended	Ch. 257	SB 144
	repealed	Ch. 464	SB 65
20-9-335	amended	Ch. 464	SB 65
20-9-342	amended	Ch. 554	HB 41
20-9-343	amended	Ch. 237	SB 390
	amended	Ch. 554	HB 41
20-9-346	amended	Ch. 205	SB 260
20-9-353	amended	Ch. 495	HB 179
20-9-360	amended	Ch. 257	SB 144
20-9-375	amended	Ch. 474	SB 313
20-9-406	amended	Ch. 10	HB 24
20-9-437	amended	Ch. 549	SB 457
20-9-439	amended	Ch. 549	SB 457
20-9-443	amended	Ch. 480	SB 436
	amended	Ch. 549	SB 457
20-9-501	amended	Ch. 574	HB 124
20-9-502	amended	Ch. 237	SB 390
	amended	Ch. 495	HB 179
20-9-507	amended	Ch. 356	SB 218
20-9-533	amended	Ch. 474	SB 313
20-9-534	amended	Ch. 554	HB 41
20-9-541	enacted	Ch. 237	SB 390
20-9-542	enacted	Ch. 237	SB 390
20-9-543	enacted	Ch. 237	SB 390
20-9-544	enacted	Ch. 237	SB 390
20-9-601	amended	Ch. 34	SB 133
20-9-604	amended	Ch. 76	HB 110

20-9-620	enacted	Ch. 418	SB 495
	amended	Ch. 554	HB 41
20-9-621	enacted	Ch. 418	SB 495
20-9-622	enacted	Ch. 418	SB 495
	amended	Ch. 554	HB 41
20-9-706	enacted	Ch. 377	HB 265
20-9-707	enacted	Ch. 462	SB 394
20-10-111	amended	Ch. 237	SB 390
20-10-132	amended	Ch. 464	SB 65
20-10-142	amended	Ch. 409	SB 344
20-10-144	amended	Ch. 574	HB 124
20-10-146	amended	Ch. 574	HB 124
20-10-147	amended	Ch. 220	SB 117
20-10-201	amended	Ch. 237	SB 390
20-10-208	enacted	Ch. 437	HB 353
20-15-241	amended	Ch. 495	HB 179
20-15-305	amended	Ch. 574	HB 124
20-15-311	amended	Ch. 495	HB 179
	amended	Ch. 574	HB 124
20-15-326	amended	Ch. 574	HB 124
20-25-109	enacted	Ch. 379	HB 349
20-25-225	amended	Ch. 34	SB 133
20-25-253	amended	Ch. 38	SB 214
20-25-254	amended	Ch. 38	SB 214
20-25-255	amended	Ch. 38	SB 214
20-25-331	enacted	Ch. 545	SB 151
20-25-332	enacted	Ch. 545	SB 151
20-25-901	amended	Ch. 483	SB 445
20-25-1002	amended	Ch. 574	HB 124
20-25-1006	amended	Ch. 307	HB 650
20-25-1007	amended	Ch. 257	SB 144
	repealed	Ch. 574	HB 124
20-26-103	amended	Ch. 7	HB 25
20-26-1103	amended	Ch. 38	SB 214
22-1-225	amended	Ch. 34	SB 133
22-1-226	amended	Ch. 34	SB 133
22-1-304	amended	Ch. 495	HB 179
	amended	Ch. 574	HB 124
22-1-402	amended	Ch. 80	HB 130
22-1-403	amended	Ch. 80	HB 130
22-1-404	amended	Ch. 80	HB 130
22-1-413	amended	Ch. 80	HB 130
22-1-504	amended	Ch. 585	SB 176
22-1-701	enacted	Ch. 92	SB 149
22-1-702	enacted	Ch. 92	SB 149
22-1-703	enacted	Ch. 92	SB 149
22-1-704	enacted	Ch. 92	SB 149
22-1-705	enacted	Ch. 92	SB 149
22-1-706	enacted	Ch. 92	SB 149
22-1-707	enacted	Ch. 92	SB 149
22-1-708	enacted	Ch. 92	SB 149
22-1-709	enacted	Ch. 92	SB 149
22-1-710	enacted	Ch. 92	SB 149
22-1-711	enacted	Ch. 92	SB 149
22-3-113	amended	Ch. 34	SB 133
22-3-114	amended	Ch. 34	SB 133
22-3-804	amended	Ch. 483	SB 445
22-3-901	enacted	Ch. 558	HB 165
22-3-902	enacted	Ch. 558	HB 165

22-3-903	enacted	Ch. 558	HB 165
22-3-904	enacted	Ch. 558	HB 165
22-3-911	enacted	Ch. 558	HB 165
22-3-912	enacted	Ch. 558	HB 165
22-3-913	enacted	Ch. 558	HB 165
22-3-914	enacted	Ch. 558	HB 165
22-3-915	enacted	Ch. 558	HB 165
22-3-916	enacted	Ch. 558	HB 165
22-3-917	enacted	Ch. 558	HB 165
22-3-918	enacted	Ch. 558	HB 165
22-3-921	enacted	Ch. 558	HB 165
22-3-1001	amended	Ch. 308	SB 80
22-3-1002	amended	Ch. 308	SB 80
22-3-1003	amended	Ch. 308	SB 80
22-3-1004	amended	Ch. 308	SB 80
23-1-102	amended	Ch. 125	SB 7
23-1-105	amended	Ch. 126	SB 105
23-1-109	amended	Ch. 97	HB 221
23-1-117	amended	Ch. 264	SB 286
23-1-303	amended	Ch. 465	SB 77
23-2-502	amended	Ch. 55	HB 325
23-2-507	amended	Ch. 257	SB 144
23-2-508	amended	Ch. 574	HB 124
23-2-510	amended	Ch. 574	HB 124
23-2-512	amended	Ch. 257	SB 144
	amended	Ch. 574	HB 124
23-2-517	amended	Ch. 55	HB 325
23-2-518	amended	Ch. 574	HB 124
23-2-533	amended	Ch. 95	HB 132
	amended	Ch. 574	HB 124
23-2-534	amended	Ch. 95	HB 132
	amended	Ch. 574	HB 124
23-2-611	amended	Ch. 574	HB 124
23-2-612	amended	Ch. 574	HB 124
23-2-615	amended	Ch. 257	SB 144
	amended	Ch. 574	HB 124
23-2-615.1	renumbered 23-2-626		
23-2-616	amended	Ch. 257	SB 144
	amended	Ch. 574	HB 124
23-2-626	formerly 23-2-615.1		
23-2-644	amended	Ch. 257	SB 144
23-2-803	amended	Ch. 574	HB 124
23-2-804	amended	Ch. 257	SB 144
	amended	Ch. 574	HB 124
23-2-807	amended	Ch. 257	SB 144
23-2-811	amended	Ch. 574	HB 124
23-2-812	amended	Ch. 574	HB 124
23-2-814	amended	Ch. 257	SB 144
	amended	Ch. 574	HB 124
23-2-818	amended	Ch. 574	HB 124
23-3-301	amended	Ch. 483	SB 445
23-3-401	amended	Ch. 492	HB 120
23-4-101	amended	Ch. 483	SB 445
23-5-610	amended	Ch. 198	HB 519
	amended	Ch. 574	HB 124
23-7-201	amended	Ch. 483	SB 445
23-7-210	amended	Ch. 483	SB 445
23-7-301	amended	Ch. 483	SB 445
25-1-201	amended	Ch. 585	SB 176

25-1-202	amended	Ch. 585	SB 176
25-1-502	amended	Ch. 535	HB 603
25-1-1103	amended	Ch. 585	SB 176
25-1-1104	amended	Ch. 483	SB 445
25-2-205	repealed 7/1/2002	Ch. 585	SB 176
25-7-105	enacted	Ch. 529	HB 560
25-9-301	amended	Ch. 515	HB 496
25-9-506	amended	Ch. 585	SB 176
25-9-804	amended	Ch. 585	SB 176
25-13-101	amended	Ch. 515	HB 496
25-13-102	repealed	Ch. 515	HB 496
25-13-301	amended	Ch. 515	HB 496
25-13-402	amended	Ch. 515	HB 496
	amended	Ch. 560	HB 254
25-13-404	amended	Ch. 560	HB 254
25-13-608	amended	Ch. 4	HB 52
	amended	Ch. 352	SB 171
25-30-102	amended	Ch. 515	HB 496
25-30-109	enacted	Ch. 515	HB 496
25-31-407	repealed	Ch. 515	HB 496
25-31-710	enacted	Ch. 515	HB 496
25-31-914	amended	Ch. 515	HB 496
25-35-609	enacted	Ch. 515	HB 496
27-1-717	amended	Ch. 515	HB 496
27-1-722	enacted	Ch. 445	HB 390
27-1-724	enacted	Ch. 28	HB 246
27-1-1101	amended	Ch. 310	SB 108
27-2-201	amended	Ch. 515	HB 496
27-6-103	amended	Ch. 370	SB 324
27-9-103	amended	Ch. 585	SB 176
27-12-206	amended	Ch. 5	HB 98
	amended	Ch. 483	SB 445
27-12-306	amended	Ch. 5	HB 98
27-12-308	amended	Ch. 5	HB 98
27-12-502	amended	Ch. 5	HB 98
27-18-411	amended	Ch. 396	HB 639
28-2-2107	amended	Ch. 364	SB 298
28-2-2110	enacted	Ch. 364	SB 298
30-1-105	amended	Ch. 179	SB 23
30-1-201	amended	Ch. 179	SB 23
30-3-312	enacted	Ch. 33	SB 93
30-9-101	renumbered 30-9A-101		
30-9-122	amended	Ch. 179	SB 23
	renumbered 30-9A-102		
30-9-123	renumbered 30-9A-103		
30-9-124	amended	Ch. 179	SB 23
	renumbered 30-9A-104		
30-9-125	renumbered 30-9A-105		
30-9-126	renumbered 30-9A-106		
30-9-127	renumbered 30-9A-107		
30-9-128	renumbered 30-9A-108		
30-9-129	amended	Ch. 179	SB 23
	amended	Ch. 214	SB 164
	renumbered 30-9A-109		
30-9-130	renumbered 30-9A-110		
30-9-211	renumbered 30-9A-201		
30-9-212	renumbered 30-9A-202		
30-9-213	renumbered 30-9A-203		
30-9-214	renumbered 30-9A-204		

30-9-215	renumbered 30-9A-205		
30-9-216	renumbered 30-9A-206		
30-9-217	renumbered 30-9A-207		
30-9-218	renumbered 30-9A-208		
30-9-219	renumbered 30-9A-209		
30-9-220	amended renumbered 30-9A-210	Ch. 179	SB 23
30-9-321	renumbered 30-9A-301		
30-9-322	renumbered 30-9A-302		
30-9-323	renumbered 30-9A-303		
30-9-324	renumbered 30-9A-304		
30-9-325	renumbered 30-9A-305		
30-9-326	renumbered 30-9A-306		
30-9-327	renumbered 30-9A-307		
30-9-328	renumbered 30-9A-308		
30-9-329	renumbered 30-9A-309		
30-9-330	renumbered 30-9A-310		
30-9-331	amended renumbered 30-9A-311	Ch. 179	SB 23
30-9-332	renumbered 30-9A-312		
30-9-333	renumbered 30-9A-313		
30-9-334	renumbered 30-9A-314		
30-9-335	renumbered 30-9A-315		
30-9-336	renumbered 30-9A-316		
30-9-337	amended renumbered 30-9A-317	Ch. 179	SB 23
30-9-338	renumbered 30-9A-318		
30-9-339	renumbered 30-9A-319		
30-9-340	renumbered 30-9A-320		
30-9-341	renumbered 30-9A-321		
30-9-342	renumbered 30-9A-322		
30-9-343	amended renumbered 30-9A-323	Ch. 179	SB 23
30-9-344	renumbered 30-9A-324		
30-9-345	renumbered 30-9A-325		
30-9-346	renumbered 30-9A-326		
30-9-347	renumbered 30-9A-327		
30-9-348	renumbered 30-9A-328		
30-9-349	renumbered 30-9A-329		
30-9-350	renumbered 30-9A-330		
30-9-351	amended renumbered 30-9A-331	Ch. 179	SB 23
30-9-352	renumbered 30-9A-332		
30-9-353	renumbered 30-9A-333		
30-9-354	renumbered 30-9A-334		
30-9-355	renumbered 30-9A-335		
30-9-356	amended renumbered 30-9A-336	Ch. 179	SB 23
30-9-357	renumbered 30-9A-337		
30-9-358	renumbered 30-9A-338		
30-9-359	renumbered 30-9A-339		
30-9-360	renumbered 30-9A-340		
30-9-361	renumbered 30-9A-341		
30-9-362	renumbered 30-9A-342		
30-9-403	amended	Ch. 396	HB 639
30-9-407	amended	Ch. 396	HB 639
30-9-432	renumbered 30-9A-420		
30-9-441	renumbered 30-9A-401		
30-9-442	renumbered 30-9A-402		

30-9-443	renumbered 30-9A-403		
30-9-444	renumbered 30-9A-404		
30-9-445	renumbered 30-9A-405		
30-9-446	amended	Ch. 179	SB 23
	renumbered 30-9A-406		
30-9-447	amended	Ch. 179	SB 23
	renumbered 30-9A-407		
30-9-448	amended	Ch. 179	SB 23
	renumbered 30-9A-408		
30-9-449	amended	Ch. 179	SB 23
	renumbered 30-9A-409		
30-9-521	renumbered 30-9A-501		
30-9-522	renumbered 30-9A-502		
30-9-523	renumbered 30-9A-503		
30-9-524	renumbered 30-9A-504		
30-9-525	renumbered 30-9A-505		
30-9-526	renumbered 30-9A-506		
30-9-527	renumbered 30-9A-507		
30-9-528	renumbered 30-9A-508		
30-9-529	amended	Ch. 179	SB 23
	renumbered 30-9A-509		
30-9-530	renumbered 30-9A-510		
30-9-531	renumbered 30-9A-511		
30-9-532	renumbered 30-9A-512		
30-9-533	amended	Ch. 179	SB 23
	renumbered 30-9A-513		
30-9-534	renumbered 30-9A-514		
30-9-535	renumbered 30-9A-515		
30-9-536	renumbered 30-9A-516		
30-9-537	renumbered 30-9A-517		
30-9-538	renumbered 30-9A-518		
30-9-539	renumbered 30-9A-519		
30-9-540	renumbered 30-9A-520		
30-9-541	renumbered 30-9A-521		
30-9-542	renumbered 30-9A-522		
30-9-543	renumbered 30-9A-523		
30-9-544	renumbered 30-9A-524		
30-9-545	amended	Ch. 179	SB 23
	amended	Ch. 396	HB 639
	renumbered 30-9A-525		
30-9-546	renumbered 30-9A-526		
30-9-547	renumbered 30-9A-527		
30-9-601	renumbered 30-9A-601		
30-9-602	renumbered 30-9A-602		
30-9-603	renumbered 30-9A-603		
30-9-604	renumbered 30-9A-604		
30-9-605	renumbered 30-9A-605		
30-9-606	renumbered 30-9A-606		
30-9-607	renumbered 30-9A-607		
30-9-608	amended	Ch. 179	SB 23
	renumbered 30-9A-608		
30-9-609	renumbered 30-9A-609		
30-9-610	renumbered 30-9A-610		
30-9-611	renumbered 30-9A-611		
30-9-612	renumbered 30-9A-612		
30-9-613	amended	Ch. 179	SB 23
	renumbered 30-9A-613		
30-9-614	renumbered 30-9A-614		

30-9-615	amended	Ch. 179	SB 23
	renumbered 30-9A-615		
30-9-616	renumbered 30-9A-616		
30-9-617	renumbered 30-9A-617		
30-9-618	renumbered 30-9A-618		
30-9-619	renumbered 30-9A-619		
30-9-620	renumbered 30-9A-620		
30-9-621	renumbered 30-9A-621		
30-9-622	renumbered 30-9A-622		
30-9-623	renumbered 30-9A-623		
30-9-624	renumbered 30-9A-624		
30-9-625	amended	Ch. 179	SB 23
	renumbered 30-9A-625		
30-9-626	renumbered 30-9A-626		
30-9-627	renumbered 30-9A-627		
30-9-628	renumbered 30-9A-628		
30-9A-101	formerly 30-9-101		
30-9A-102	formerly 30-9-122		
30-9A-103	formerly 30-9-123		
30-9A-104	formerly 30-9-124		
30-9A-105	formerly 30-9-125		
30-9A-106	formerly 30-9-126		
30-9A-107	formerly 30-9-127		
30-9A-108	formerly 30-9-128		
30-9A-109	formerly 30-9-129		
30-9A-110	formerly 30-9-130		
30-9A-201	formerly 30-9-211		
30-9A-202	formerly 30-9-212		
30-9A-203	formerly 30-9-213		
30-9A-204	formerly 30-9-214		
30-9A-205	formerly 30-9-215		
30-9A-206	formerly 30-9-216		
30-9A-207	formerly 30-9-217		
30-9A-208	formerly 30-9-218		
30-9A-209	formerly 30-9-219		
30-9A-210	formerly 30-9-220		
30-9A-301	formerly 30-9-321		
30-9A-302	formerly 30-9-322		
30-9A-303	formerly 30-9-323		
30-9A-304	formerly 30-9-324		
30-9A-305	formerly 30-9-325		
30-9A-306	formerly 30-9-326		
30-9A-307	formerly 30-9-327		
30-9A-308	formerly 30-9-328		
30-9A-309	formerly 30-9-329		
30-9A-310	formerly 30-9-330		
30-9A-311	formerly 30-9-331		
30-9A-312	formerly 30-9-332		
30-9A-313	formerly 30-9-333		
30-9A-314	formerly 30-9-334		
30-9A-315	formerly 30-9-335		
30-9A-316	formerly 30-9-336		
30-9A-317	formerly 30-9-337		
30-9A-318	formerly 30-9-338		
30-9A-319	formerly 30-9-339		
30-9A-320	formerly 30-9-340		
30-9A-321	formerly 30-9-341		
30-9A-322	formerly 30-9-342		
30-9A-323	formerly 30-9-343		

30-9A-324	formerly 30-9-344
30-9A-325	formerly 30-9-345
30-9A-326	formerly 30-9-346
30-9A-327	formerly 30-9-347
30-9A-328	formerly 30-9-348
30-9A-329	formerly 30-9-349
30-9A-330	formerly 30-9-350
30-9A-331	formerly 30-9-351
30-9A-332	formerly 30-9-352
30-9A-333	formerly 30-9-353
30-9A-334	formerly 30-9-354
30-9A-335	formerly 30-9-355
30-9A-336	formerly 30-9-356
30-9A-337	formerly 30-9-357
30-9A-338	formerly 30-9-358
30-9A-339	formerly 30-9-359
30-9A-340	formerly 30-9-360
30-9A-341	formerly 30-9-361
30-9A-342	formerly 30-9-362
30-9A-401	formerly 30-9-441
30-9A-402	formerly 30-9-442
30-9A-403	formerly 30-9-443
30-9A-404	formerly 30-9-444
30-9A-405	formerly 30-9-445
30-9A-406	formerly 30-9-446
30-9A-407	formerly 30-9-447
30-9A-408	formerly 30-9-448
30-9A-409	formerly 30-9-449
30-9A-420	formerly 30-9-432
30-9A-501	formerly 30-9-521
30-9A-502	formerly 30-9-522
30-9A-503	formerly 30-9-523
30-9A-504	formerly 30-9-524
30-9A-505	formerly 30-9-525
30-9A-506	formerly 30-9-526
30-9A-507	formerly 30-9-527
30-9A-508	formerly 30-9-528
30-9A-509	formerly 30-9-529
30-9A-510	formerly 30-9-530
30-9A-511	formerly 30-9-531
30-9A-512	formerly 30-9-532
30-9A-513	formerly 30-9-533
30-9A-514	formerly 30-9-534
30-9A-515	formerly 30-9-535
30-9A-516	formerly 30-9-536
30-9A-517	formerly 30-9-537
30-9A-518	formerly 30-9-538
30-9A-519	formerly 30-9-539
30-9A-520	formerly 30-9-540
30-9A-521	formerly 30-9-541
30-9A-522	formerly 30-9-542
30-9A-523	formerly 30-9-543
30-9A-524	formerly 30-9-544
30-9A-525	formerly 30-9-545
30-9A-526	formerly 30-9-546
30-9A-527	formerly 30-9-547
30-9A-601	formerly 30-9-601
30-9A-602	formerly 30-9-602
30-9A-603	formerly 30-9-603

30-9A-604	formerly 30-9-604		
30-9A-605	formerly 30-9-605		
30-9A-606	formerly 30-9-606		
30-9A-607	formerly 30-9-607		
30-9A-608	formerly 30-9-608		
30-9A-609	formerly 30-9-609		
30-9A-610	formerly 30-9-610		
30-9A-611	formerly 30-9-611		
30-9A-612	formerly 30-9-612		
30-9A-613	formerly 30-9-613		
30-9A-614	formerly 30-9-614		
30-9A-615	formerly 30-9-615		
30-9A-616	formerly 30-9-616		
30-9A-617	formerly 30-9-617		
30-9A-618	formerly 30-9-618		
30-9A-619	formerly 30-9-619		
30-9A-620	formerly 30-9-620		
30-9A-621	formerly 30-9-621		
30-9A-622	formerly 30-9-622		
30-9A-623	formerly 30-9-623		
30-9A-624	formerly 30-9-624		
30-9A-625	formerly 30-9-625		
30-9A-626	formerly 30-9-626		
30-9A-627	formerly 30-9-627		
30-9A-628	formerly 30-9-628		
30-9A-703	enacted (1999)	Ch. 305 (1999)	SB 153
30-9A-704	enacted (1999)	Ch. 305 (1999)	SB 153
30-9A-705	amended	Ch. 179	SB 23
	enacted (1999)	Ch. 305 (1999)	SB 153
30-9A-706	enacted (1999)	Ch. 305 (1999)	SB 153
30-9A-707	enacted	Ch. 179	SB 23
30-9A-708	enacted (1999)	Ch. 305 (1999)	SB 153
30-9A-709	enacted (1999)	Ch. 305 (1999)	SB 153
30-10-324	amended	Ch. 322	SB 330
30-10-326	amended	Ch. 322	SB 330
30-11-515	amended	Ch. 483	SB 445
30-11-705	enacted	Ch. 177	SB 421
30-11-801	amended	Ch. 483	SB 445
30-11-901	enacted	Ch. 180	SB 74
30-11-902	enacted	Ch. 180	SB 74
30-11-903	enacted	Ch. 180	SB 74
30-11-904	enacted	Ch. 180	SB 74
30-11-905	enacted	Ch. 180	SB 74
30-11-906	enacted	Ch. 180	SB 74
30-11-907	enacted	Ch. 180	SB 74
30-11-908	enacted	Ch. 180	SB 74
30-11-909	enacted	Ch. 180	SB 74
30-12-101	amended	Ch. 483	SB 445
30-12-105	amended	Ch. 483	SB 445
30-13-201	amended	Ch. 27	HB 235
30-13-202	amended	Ch. 27	HB 235
30-13-217	amended	Ch. 396	HB 639
30-13-320	amended	Ch. 396	HB 639
30-14-102	amended	Ch. 483	SB 445
30-14-202	amended	Ch. 483	SB 445
30-14-225	amended	Ch. 345	SB 474
30-14-1403	amended	Ch. 483	SB 445
30-14-1412	amended	Ch. 350	SB 491
30-16-103	amended	Ch. 591	SB 506

30-16-302	amended	Ch. 323	SB 356
	amended	Ch. 483	SB 445
30-16-303	amended	Ch. 116	SB 78
30-18-101	enacted	Ch. 52	HB 234
30-18-102	enacted	Ch. 52	HB 234
30-18-103	enacted	Ch. 52	HB 234
30-18-104	enacted	Ch. 52	HB 234
30-18-105	enacted	Ch. 52	HB 234
30-18-106	enacted	Ch. 52	HB 234
30-18-107	enacted	Ch. 52	HB 234
30-18-108	enacted	Ch. 52	HB 234
30-18-109	enacted	Ch. 52	HB 234
30-18-110	enacted	Ch. 52	HB 234
30-18-111	enacted	Ch. 52	HB 234
30-18-112	enacted	Ch. 52	HB 234
30-18-113	enacted	Ch. 52	HB 234
30-18-114	enacted	Ch. 52	HB 234
30-18-115	enacted	Ch. 52	HB 234
30-18-116	enacted	Ch. 52	HB 234
30-18-117	enacted	Ch. 52	HB 234
30-18-118	enacted	Ch. 52	HB 234
30-19-101	enacted	Ch. 263	SB 253
30-19-102	enacted	Ch. 263	SB 253
30-19-103	enacted	Ch. 263	SB 253
30-19-104	enacted	Ch. 263	SB 253
30-19-109	enacted	Ch. 263	SB 253
30-19-110	enacted	Ch. 263	SB 253
30-19-111	enacted	Ch. 263	SB 253
30-19-112	enacted	Ch. 263	SB 253
30-19-113	enacted	Ch. 263	SB 253
30-19-114	enacted	Ch. 263	SB 253
30-19-115	enacted	Ch. 263	SB 253
30-19-116	enacted	Ch. 263	SB 253
31-1-106	amended	Ch. 455	HB 539
31-1-111	amended	Ch. 140	SB 106
31-1-116	enacted	Ch. 140	SB 106
31-1-202	amended	Ch. 483	SB 445
31-1-703	amended	Ch. 81	HB 138
	amended	Ch. 483	SB 445
31-1-704	amended	Ch. 81	HB 138
31-1-705	amended	Ch. 81	HB 138
31-1-706	enacted	Ch. 81	HB 138
31-1-714	amended	Ch. 81	HB 138
31-1-715	amended	Ch. 81	HB 138
31-1-722	amended	Ch. 81	HB 138
31-1-723	amended	Ch. 81	HB 138
31-1-801	enacted	Ch. 455	HB 539
31-1-802	enacted	Ch. 455	HB 539
31-1-803	enacted	Ch. 455	HB 539
31-1-804	enacted	Ch. 455	HB 539
31-1-805	enacted	Ch. 455	HB 539
31-1-810	enacted	Ch. 455	HB 539
31-1-811	enacted	Ch. 455	HB 539
31-1-812	enacted	Ch. 455	HB 539
31-1-815	enacted	Ch. 455	HB 539
31-1-816	enacted	Ch. 455	HB 539
31-1-817	enacted	Ch. 455	HB 539
31-1-818	enacted	Ch. 455	HB 539
31-1-819	enacted	Ch. 455	HB 539

31-1-820	enacted	Ch. 455	HB 539
31-1-821	enacted	Ch. 455	HB 539
31-1-822	enacted	Ch. 455	HB 539
31-1-825	enacted	Ch. 455	HB 539
31-1-826	enacted	Ch. 455	HB 539
31-1-827	enacted	Ch. 455	HB 539
31-3-125	amended	Ch. 483	SB 445
31-3-152	amended	Ch. 483	SB 445
31-3-203	amended	Ch. 483	SB 445
32-1-109	amended	Ch. 36	SB 189
	amended	Ch. 483	SB 445
32-1-201	amended	Ch. 483	SB 445
32-1-212	amended	Ch. 483	SB 445
32-1-335	amended	Ch. 36	SB 189
32-1-362	amended	Ch. 36	SB 189
32-1-372	amended	Ch. 36	SB 189
32-1-382	amended	Ch. 36	SB 189
	amended	Ch. 483	SB 445
32-1-412	amended	Ch. 36	SB 189
32-1-422	amended	Ch. 36	SB 189
32-1-901	amended	Ch. 483	SB 445
32-1-1005	amended	Ch. 483	SB 445
32-1-1007	amended	Ch. 483	SB 445
32-2-101	amended	Ch. 483	SB 445
32-3-104	amended	Ch. 483	SB 445
32-3-201	amended	Ch. 483	SB 445
32-3-203	amended	Ch. 483	SB 445
32-3-204	amended	Ch. 25	HB 220
32-3-205	amended	Ch. 483	SB 445
32-3-301	amended	Ch. 25	HB 220
	amended	Ch. 483	SB 445
32-3-302	amended	Ch. 483	SB 445
32-3-303	amended	Ch. 483	SB 445
32-3-307	amended	Ch. 483	SB 445
32-3-321	amended	Ch. 483	SB 445
32-3-322	amended	Ch. 483	SB 445
32-3-323	amended	Ch. 483	SB 445
32-3-403	amended	Ch. 25	HB 220
32-3-404	amended	Ch. 483	SB 445
32-3-502	amended	Ch. 25	HB 220
32-3-602	amended	Ch. 25	HB 220
32-3-611	amended	Ch. 483	SB 445
32-3-703	amended	Ch. 483	SB 445
32-3-705	amended	Ch. 483	SB 445
32-4-201	amended	Ch. 483	SB 445
32-4-306	amended	Ch. 483	SB 445
32-5-102	amended	Ch. 483	SB 445
32-5-103	amended	Ch. 455	HB 539
32-6-103	amended	Ch. 483	SB 445
32-7-101	amended	Ch. 483	SB 445
32-7-102	amended	Ch. 483	SB 445
32-8-103	amended	Ch. 483	SB 445
33-1-102	amended	Ch. 13	HB 56
	amended	Ch. 227	HB 504
33-1-107	enacted	Ch. 227	HB 504
33-1-206	amended	Ch. 227	HB 504
33-1-213	repealed	Ch. 227	HB 504
33-1-214	amended	Ch. 227	HB 504
33-1-215	amended	Ch. 227	HB 504

33-1-216	amended	Ch. 227	HB 504
33-1-217	amended	Ch. 227	HB 504
33-1-218	enacted	Ch. 106	HB 417
33-1-219	enacted	Ch. 106	HB 417
33-1-311	amended	Ch. 227	HB 504
33-1-313	amended	Ch. 227	HB 504
33-1-314	amended	Ch. 227	HB 504
33-1-315	amended	Ch. 227	HB 504
33-1-316	amended	Ch. 227	HB 504
33-1-501	amended	Ch. 295	SB 357
	amended	Ch. 336	SB 440
33-1-601	amended	Ch. 227	HB 504
33-1-701	amended	Ch. 227	HB 504
33-1-702	repealed	Ch. 227	HB 504
33-1-703	repealed	Ch. 227	HB 504
33-1-704	repealed	Ch. 227	HB 504
33-1-706	repealed	Ch. 227	HB 504
33-1-707	enacted	Ch. 227	HB 504
33-1-711	amended	Ch. 227	HB 504
33-2-307	amended	Ch. 227	HB 504
33-2-313	amended	Ch. 227	HB 504
33-2-316	amended	Ch. 227	HB 504
33-2-321	amended	Ch. 184	HB 542
33-2-706	repealed	Ch. 227	HB 504
33-2-708	amended	Ch. 227	HB 504
	amended	Ch. 298	SB 373
33-2-1363	amended	Ch. 227	HB 504
33-2-1371	amended	Ch. 227	HB 504
33-2-1388	amended	Ch. 227	HB 504
33-3-105	enacted	Ch. 227	HB 504
33-3-203	amended	Ch. 227	HB 504
33-3-302	amended	Ch. 227	HB 504
33-3-303	amended	Ch. 227	HB 504
33-4-101	amended	Ch. 227	HB 504
33-4-204	amended	Ch. 228	HB 537
33-4-206	amended	Ch. 228	HB 537
33-4-401	amended	Ch. 228	HB 537
33-4-405	repealed	Ch. 227	HB 504
33-4-407	amended	Ch. 227	HB 504
33-4-501	amended	Ch. 228	HB 537
33-5-401	amended	Ch. 227	HB 504
33-10-102	amended	Ch. 227	HB 504
33-11-106	repealed	Ch. 227	HB 504
33-12-103	amended	Ch. 227	HB 504
33-12-202	amended	Ch. 227	HB 504
33-12-203	amended	Ch. 227	HB 504
33-12-212	amended	Ch. 227	HB 504
33-14-202	amended	Ch. 227	HB 504
33-15-414	amended	Ch. 227	HB 504
33-16-102	amended	Ch. 227	HB 504
33-16-403	amended	Ch. 227	HB 504
33-17-101	amended	Ch. 106	HB 417
33-17-102	amended	Ch. 106	HB 417
33-17-210	enacted	Ch. 106	HB 417
33-17-211	amended	Ch. 7	HB 25
33-17-212	amended	Ch. 106	HB 417
33-17-214	amended	Ch. 106	HB 417
33-17-221	repealed	Ch. 227	HB 504
33-17-401	amended	Ch. 106	HB 417

33-17-404	repealed	Ch. 227	HB 504
33-17-408	enacted	Ch. 106	HB 417
33-17-502	amended	Ch. 227	HB 504
33-17-1001	amended	Ch. 227	HB 504
33-17-1103	amended	Ch. 227	HB 504
33-17-1107	repealed	Ch. 227	HB 504
33-17-1111	repealed	Ch. 227	HB 504
33-17-1112	repealed	Ch. 227	HB 504
33-17-1113	repealed	Ch. 227	HB 504
33-17-1114	repealed	Ch. 227	HB 504
33-17-1203	amended	Ch. 7	HB 25
	amended	Ch. 106	HB 417
33-17-1204	amended	Ch. 227	HB 504
33-18-221	amended	Ch. 345	SB 474
33-18-222	amended	Ch. 345	SB 474
33-18-223	amended	Ch. 345	SB 474
33-18-224	amended	Ch. 345	SB 474
33-18-502	enacted	Ch. 227	HB 504
33-18-1006	amended	Ch. 345	SB 474
33-19-102	amended	Ch. 341	SB 465
33-19-104	amended	Ch. 341	SB 465
33-19-105	enacted	Ch. 341	SB 465
33-19-106	enacted	Ch. 341	SB 465
33-19-202	amended	Ch. 341	SB 465
33-19-204	repealed	Ch. 341	SB 465
33-19-206	enacted	Ch. 341	SB 465
33-19-306	amended	Ch. 341	SB 465
33-19-307	enacted	Ch. 341	SB 465
33-19-308	enacted	Ch. 471	SB 274
33-19-402	repealed	Ch. 341	SB 465
33-19-404	repealed	Ch. 341	SB 465
33-19-405	amended	Ch. 341	SB 465
33-19-406	amended	Ch. 227	HB 504
	repealed	Ch. 341	SB 465
33-19-407	amended	Ch. 341	SB 465
33-20-1201	amended	Ch. 227	HB 504
33-20-1209	amended	Ch. 227	HB 504
33-20-1210	amended	Ch. 227	HB 504
33-20-1211	amended	Ch. 227	HB 504
33-20-1212	amended	Ch. 227	HB 504
33-20-1302	amended	Ch. 295	SB 357
33-20-1311	amended	Ch. 295	SB 357
33-20-1316	enacted	Ch. 227	HB 504
33-20-1317	enacted	Ch. 295	SB 357
33-22-111	amended	Ch. 235	SB 321
33-22-129	enacted	Ch. 450	HB 406
33-22-244	amended	Ch. 336	SB 440
33-22-508	amended	Ch. 227	HB 504
33-22-521	amended	Ch. 336	SB 440
33-22-701	amended	Ch. 227	HB 504
33-22-702	amended	Ch. 23	HB 50
	amended	Ch. 227	HB 504
33-22-703	amended	Ch. 227	HB 504
33-22-704	amended	Ch. 227	HB 504
33-22-705	amended	Ch. 23	HB 50
	amended	Ch. 483	SB 445
33-22-706	amended	Ch. 367	SB 310
33-22-1002	amended	Ch. 227	HB 504
33-22-1003	amended	Ch. 227	HB 504

33-22-1502	amended	Ch. 367	SB 310
33-22-1512	amended	Ch. 475	SB 315
33-22-1513	amended	Ch. 367	SB 310
	amended	Ch. 475	SB 315
33-22-1521	amended	Ch. 367	SB 310
33-22-1810	amended	Ch. 227	HB 504
33-23-311	repealed	Ch. 227	HB 504
33-25-301	amended	Ch. 227	HB 504
33-27-119	amended	Ch. 111	HB 300
33-28-101	enacted	Ch. 298	SB 373
33-28-102	enacted	Ch. 298	SB 373
33-28-103	enacted	Ch. 298	SB 373
33-28-104	enacted	Ch. 298	SB 373
33-28-105	enacted	Ch. 298	SB 373
33-28-106	enacted	Ch. 298	SB 373
33-28-107	enacted	Ch. 298	SB 373
33-28-108	enacted	Ch. 298	SB 373
33-28-109	enacted	Ch. 298	SB 373
33-28-201	enacted	Ch. 298	SB 373
33-28-202	enacted	Ch. 298	SB 373
33-28-203	enacted	Ch. 298	SB 373
33-28-204	enacted	Ch. 298	SB 373
33-28-205	enacted	Ch. 298	SB 373
33-28-206	enacted	Ch. 298	SB 373
33-28-207	enacted	Ch. 298	SB 373
33-30-102	amended	Ch. 227	HB 504
33-30-107	amended	Ch. 227	HB 504
33-30-108	amended	Ch. 227	HB 504
33-30-109	enacted	Ch. 227	HB 504
33-30-1018	enacted	Ch. 235	SB 321
33-31-102	amended	Ch. 450	HB 406
33-31-111	amended	Ch. 227	HB 504
	amended	Ch. 336	SB 440
	amended	Ch. 450	HB 406
33-31-115	amended	Ch. 466	SB 82
33-31-211	amended	Ch. 227	HB 504
33-31-311	amended	Ch. 227	HB 504
33-31-401	amended	Ch. 227	HB 504
33-32-102	amended	Ch. 23	HB 50
33-33-101	enacted	Ch. 335	SB 438
33-33-102	enacted	Ch. 335	SB 438
33-33-103	enacted	Ch. 335	SB 438
33-33-201	enacted	Ch. 335	SB 438
33-33-202	enacted	Ch. 335	SB 438
33-36-103	amended	Ch. 192	SB 194
33-37-110	enacted	Ch. 107	HB 458
35-1-308	amended	Ch. 27	HB 235
35-1-1206	amended	Ch. 396	HB 639
35-1-1207	amended	Ch. 396	HB 639
35-1-1312	amended	Ch. 7	HB 25
35-2-305	amended	Ch. 27	HB 235
35-2-1003	amended	Ch. 396	HB 639
35-4-206	amended	Ch. 27	HB 235
35-5-205	amended	Ch. 396	HB 639
35-6-201	amended	Ch. 396	HB 639
35-8-103	amended	Ch. 27	HB 235
35-8-211	amended	Ch. 396	HB 639
35-8-212	amended	Ch. 396	HB 639
35-8-216	amended	Ch. 7	HB 25

35-10-703	amended	Ch. 27	HB 235
35-12-505	amended	Ch. 27	HB 235
35-12-521	amended	Ch. 396	HB 639
35-12-703	amended	Ch. 7	HB 25
35-15-103	amended	Ch. 109	SB 122
35-15-201	amended	Ch. 109	SB 122
	amended	Ch. 396	HB 639
35-15-203	amended	Ch. 109	SB 122
35-15-204	amended	Ch. 109	SB 122
35-15-205	amended	Ch. 109	SB 122
	amended	Ch. 396	HB 639
35-15-210	enacted	Ch. 109	SB 122
35-15-401	amended	Ch. 109	SB 122
35-17-205	amended	Ch. 396	HB 639
35-18-102	amended	Ch. 406	SB 325
35-18-104	amended	Ch. 406	SB 325
35-18-105	amended	Ch. 7	HB 25
35-18-106	amended	Ch. 7	HB 25
	amended	Ch. 125	SB 7
35-18-107	amended	Ch. 7	HB 25
35-18-203	amended	Ch. 406	SB 325
35-18-206	amended	Ch. 7	HB 25
35-18-301	amended	Ch. 7	HB 25
	amended	Ch. 406	SB 325
35-18-302	amended	Ch. 173	SB 234
35-18-313	amended	Ch. 7	HB 25
	amended	Ch. 406	SB 325
35-18-316	amended	Ch. 7	HB 25
35-18-325	enacted	Ch. 173	SB 234
35-18-326	enacted	Ch. 173	SB 234
35-18-327	enacted	Ch. 173	SB 234
35-18-328	enacted	Ch. 173	SB 234
35-18-329	enacted	Ch. 173	SB 234
35-18-330	enacted	Ch. 173	SB 234
35-18-331	enacted	Ch. 173	SB 234
35-18-332	enacted	Ch. 173	SB 234
35-18-333	enacted	Ch. 173	SB 234
35-18-502	amended	Ch. 396	HB 639
35-19-103	repealed	Ch. 577	HB 474
35-19-104	amended	Ch. 577	HB 474
	amended	Ch. 591	SB 506
35-20-104	amended	Ch. 125	SB 7
37-1-101	amended	Ch. 483	SB 445
37-1-121	amended	Ch. 483	SB 445
37-1-130	amended	Ch. 483	SB 445
37-1-131	amended	Ch. 492	HB 120
37-1-137	amended	Ch. 483	SB 445
37-1-302	amended	Ch. 483	SB 445
37-1-307	amended	Ch. 492	HB 120
37-1-308	amended	Ch. 492	HB 120
37-1-309	amended	Ch. 492	HB 120
37-1-320	enacted	Ch. 492	HB 120
37-1-401	amended	Ch. 483	SB 445
37-2-101	amended	Ch. 388	HB 279
37-2-111	repealed	Ch. 492	HB 120
37-3-102	amended	Ch. 483	SB 445
37-3-103	amended	Ch. 492	HB 120
37-3-204	amended	Ch. 492	HB 120
37-3-211	amended	Ch. 492	HB 120

37-4-101	amended	Ch. 483	SB 445
37-4-202	amended	Ch. 492	HB 120
37-4-408	amended	Ch. 492	HB 120
37-5-101	amended	Ch. 483	SB 445
37-6-101	amended	Ch. 483	SB 445
37-7-101	amended	Ch. 388	HB 279
	amended	Ch. 483	SB 445
37-7-201	amended	Ch. 388	HB 279
37-7-301	amended	Ch. 388	HB 279
37-7-303	amended	Ch. 388	HB 279
37-7-321	amended	Ch. 388	HB 279
37-7-322	amended	Ch. 388	HB 279
37-7-323	amended	Ch. 388	HB 279
37-7-401	amended	Ch. 388	HB 279
37-7-406	amended	Ch. 388	HB 279
37-7-502	amended	Ch. 388	HB 279
37-7-505	amended	Ch. 388	HB 279
37-7-602	amended	Ch. 388	HB 279
37-7-1401	enacted	Ch. 362	SB 288
37-7-1402	enacted	Ch. 362	SB 288
37-7-1408	enacted	Ch. 362	SB 288
37-8-102	amended	Ch. 483	SB 445
37-8-103	amended	Ch. 454	HB 510
37-8-202	amended	Ch. 492	HB 120
37-8-204	amended	Ch. 492	HB 120
37-8-420	enacted	Ch. 408	SB 329
37-8-421	enacted	Ch. 408	SB 329
37-8-431	amended	Ch. 492	HB 120
37-9-101	amended	Ch. 483	SB 445
37-10-101	amended	Ch. 483	SB 445
37-11-101	amended	Ch. 483	SB 445
37-12-101	amended	Ch. 483	SB 445
37-12-201	amended	Ch. 492	HB 120
37-14-102	amended	Ch. 483	SB 445
37-14-201	amended	Ch. 492	HB 120
37-14-322	amended	Ch. 483	SB 445
37-15-102	amended	Ch. 483	SB 445
37-15-201	amended	Ch. 492	HB 120
37-16-102	amended	Ch. 483	SB 445
37-16-201	amended	Ch. 492	HB 120
37-16-303	amended	Ch. 492	HB 120
37-17-102	amended	Ch. 483	SB 445
37-17-201	amended	Ch. 492	HB 120
37-17-306	amended	Ch. 492	HB 120
37-18-101	amended	Ch. 483	SB 445
37-18-201	amended	Ch. 492	HB 120
37-19-101	amended	Ch. 483	SB 445
37-19-202	amended	Ch. 492	HB 120
37-22-102	amended	Ch. 483	SB 445
37-23-201	amended	Ch. 23	HB 50
	amended	Ch. 483	SB 445
37-24-103	amended	Ch. 483	SB 445
37-24-201	amended	Ch. 492	HB 120
37-26-103	amended	Ch. 483	SB 445
37-26-202	amended	Ch. 492	HB 120
37-27-205	amended	Ch. 483	SB 445
37-27-312	amended	Ch. 351	SB 169
37-28-103	amended	Ch. 492	HB 120
37-29-102	amended	Ch. 483	SB 445

37-30-101	amended	Ch. 483	SB 445
	amended	Ch. 492	HB 120
37-30-412	amended	Ch. 483	SB 445
37-31-101	amended	Ch. 483	SB 445
37-32-102	amended	Ch. 483	SB 445
37-34-103	amended	Ch. 483	SB 445
37-35-101	amended	Ch. 23	HB 50
37-35-102	amended	Ch. 23	HB 50
	amended	Ch. 483	SB 445
37-35-103	amended	Ch. 23	HB 50
37-35-201	amended	Ch. 23	HB 50
37-35-202	amended	Ch. 23	HB 50
37-35-203	amended	Ch. 23	HB 50
37-35-301	amended	Ch. 23	HB 50
37-35-304	amended	Ch. 23	HB 50
37-40-101	amended	Ch. 483	SB 445
37-42-102	amended	Ch. 79	HB 126
	amended	Ch. 213	SB 146
37-42-103	repealed	Ch. 213	SB 146
37-42-321	amended	Ch. 79	HB 126
37-47-101	amended	Ch. 483	SB 445
37-47-202	amended	Ch. 492	HB 120
37-47-316	amended	Ch. 393	HB 569
37-50-101	amended	Ch. 483	SB 445
37-50-201	amended	Ch. 492	HB 120
37-50-301	amended	Ch. 123	SB 219
37-50-330	enacted	Ch. 123	SB 219
37-50-331	repealed	Ch. 123	SB 219
37-50-332	repealed	Ch. 123	SB 219
37-50-333	repealed	Ch. 123	SB 219
37-50-334	repealed	Ch. 123	SB 219
37-51-102	amended	Ch. 483	SB 445
	amended	Ch. 492	HB 120
37-51-209	amended	Ch. 483	SB 445
	amended	Ch. 492	HB 120
37-51-302	amended	Ch. 492	HB 120
37-51-309	amended	Ch. 294	SB 340
	amended	Ch. 492	HB 120
37-51-315	amended	Ch. 492	HB 120
37-51-321	amended	Ch. 294	SB 340
37-54-102	amended	Ch. 483	SB 445
37-54-212	enacted	Ch. 492	HB 120
37-60-101	amended	Ch. 483	SB 445
37-60-201	amended	Ch. 492	HB 120
37-65-102	amended	Ch. 483	SB 445
37-65-201	amended	Ch. 492	HB 120
37-65-303	amended	Ch. 492	HB 120
37-65-304	amended	Ch. 492	HB 120
37-65-308	amended	Ch. 492	HB 120
37-65-310	enacted	Ch. 492	HB 120
37-66-103	amended	Ch. 483	SB 445
37-66-301	amended	Ch. 492	HB 120
37-66-304	amended	Ch. 492	HB 120
37-66-305	repealed	Ch. 492	HB 120
37-67-101	amended	Ch. 483	SB 445
	amended	Ch. 492	HB 120
37-67-102	amended	Ch. 492	HB 120
37-67-103	amended	Ch. 492	HB 120
37-67-201	amended	Ch. 492	HB 120

37-67-204	amended	Ch. 492	HB 120
37-67-301	amended	Ch. 492	HB 120
37-67-303	amended	Ch. 492	HB 120
37-67-304	amended	Ch. 492	HB 120
37-67-305	amended	Ch. 492	HB 120
37-67-306	amended	Ch. 492	HB 120
37-67-308	amended	Ch. 492	HB 120
37-67-309	amended	Ch. 492	HB 120
37-67-310	amended	Ch. 492	HB 120
37-67-311	amended	Ch. 492	HB 120
37-67-312	amended	Ch. 492	HB 120
37-67-314	amended	Ch. 492	HB 120
37-67-315	amended	Ch. 492	HB 120
37-67-316	amended	Ch. 492	HB 120
37-67-318	amended	Ch. 492	HB 120
37-67-320	amended	Ch. 492	HB 120
37-67-321	amended	Ch. 492	HB 120
37-67-331	amended	Ch. 492	HB 120
37-67-332	amended	Ch. 492	HB 120
37-68-102	amended	Ch. 483	SB 445
37-68-201	amended	Ch. 492	HB 120
37-69-101	amended	Ch. 483	SB 445
37-69-201	amended	Ch. 492	HB 120
37-69-310	amended	Ch. 483	SB 445
37-72-101	amended	Ch. 483	SB 445
39-2-503	repealed	Ch. 583	SB 4
39-2-902	amended	Ch. 583	SB 4
39-2-904	amended	Ch. 583	SB 4
39-2-905	amended	Ch. 583	SB 4
39-3-213	amended	Ch. 7	HB 25
	amended	Ch. 34	SB 133
39-3-405	amended	Ch. 71	HB 71
39-3-406	amended	Ch. 22	HB 194
	amended	Ch. 71	HB 71
39-3-408	amended	Ch. 71	HB 71
39-7-303	amended	Ch. 465	SB 77
39-10-101	enacted	Ch. 586	SB 322
39-10-102	enacted	Ch. 586	SB 322
39-10-103	enacted	Ch. 586	SB 322
39-10-104	enacted	Ch. 586	SB 322
39-10-105	enacted	Ch. 586	SB 322
39-10-106	enacted	Ch. 586	SB 322
39-10-201	enacted	Ch. 525	HB 526
39-10-202	enacted	Ch. 525	HB 526
39-10-203	enacted	Ch. 525	HB 526
39-10-204	enacted	Ch. 525	HB 526
39-10-205	enacted	Ch. 525	HB 526
39-10-206	enacted	Ch. 525	HB 526
39-51-201	amended	Ch. 200	HB 579
39-51-204	amended	Ch. 200	HB 579
	amended	Ch. 339	SB 450
39-51-401	amended	Ch. 34	SB 133
39-51-1103	amended	Ch. 200	HB 579
39-51-1124	amended	Ch. 200	HB 579
39-51-1126	amended	Ch. 200	HB 579
39-51-1132	enacted	Ch. 200	HB 579
39-51-1304	amended	Ch. 397	SB 46
	amended	Ch. 515	HB 496
39-51-1307	amended	Ch. 7	HB 25

39-51-2111	enacted	Ch. 520	HB 463
39-51-2201	amended	Ch. 333	SB 428
39-51-2602	amended	Ch. 424	HB 87
39-51-3207	amended	Ch. 7.	HB 25
39-71-107	amended	Ch. 214	SB 164
39-71-117	amended	Ch. 214	SB 164
39-71-118	amended	Ch. 238	SB 482
	amended	Ch. 465	SB 77
39-71-123	amended	Ch. 238	SB 482
	amended	Ch. 465	SB 77
39-71-201	amended	Ch. 7.	HB 25
	amended	Ch. 214	SB 164
39-71-304	amended	Ch. 214	SB 164
39-71-306	amended	Ch. 214	SB 164
39-71-401	amended	Ch. 14	HB 26
	amended	Ch. 43	HB 19
	amended	Ch. 339	SB 450
39-71-403	amended	Ch. 29	HB 23
	amended	Ch. 574	HB 124
39-71-413	amended	Ch. 229	SB 323
39-71-415	amended	Ch. 214	SB 164
39-71-435	amended	Ch. 214	SB 164
39-71-521	enacted	Ch. 214	SB 164
39-71-609	amended	Ch. 174	SB 252
39-71-610	amended	Ch. 214	SB 164
39-71-701	amended	Ch. 121	SB 157
39-71-704	amended	Ch. 138	SB 97
	amended	Ch. 192	SB 194
39-71-712	amended	Ch. 121	SB 157
	amended	Ch. 292	SB 305
39-71-736	amended	Ch. 274	SB 96
39-71-805	amended	Ch. 214	SB 164
39-71-906	amended	Ch. 214	SB 164
39-71-915	amended	Ch. 214	SB 164
39-71-1504	amended	Ch. 58	SB 32
39-71-2204	amended	Ch. 214	SB 164
39-71-2205	amended	Ch. 214	SB 164
39-71-2311	amended	Ch. 314	SB 145
39-71-2316	amended	Ch. 314	SB 145
39-71-2328	enacted	Ch. 314	SB 145
39-71-2330	amended	Ch. 314	SB 145
39-71-2337	amended	Ch. 214	SB 164
39-71-2339	amended	Ch. 214	SB 164
39-71-2341	repealed 7-1-2002	Ch. 314	SB 145
39-71-2363	amended	Ch. 7.	HB 25
	amended	Ch. 314	SB 145
39-71-2615	amended	Ch. 68	SB 156
39-72-408	amended	Ch. 368	SB 311
39-72-605	repealed	Ch. 214	SB 164
39-72-606	amended	Ch. 214	SB 164
39-72-608	amended	Ch. 214	SB 164
39-72-711	amended	Ch. 7.	HB 25
39-73-103	amended	Ch. 214	SB 164
39-73-107	amended	Ch. 214	SB 164
39-73-109	amended	Ch. 214	SB 164
40-1-107.	amended	Ch. 91	SB 148
40-4-125.	amended	Ch. 223	HB 213
40-4-204.	amended	Ch. 542	SB 28
40-4-211.	amended	Ch. 277	SB 132

40-4-215	amended	Ch. 465	SB 77
	amended	Ch. 585	SB 176
40-4-226	amended	Ch. 585	SB 176
40-5-103	amended	Ch. 352	SB 171
40-5-154	amended	Ch. 352	SB 171
40-5-157	amended	Ch. 352	SB 171
40-5-158	amended	Ch. 352	SB 171
40-5-161	amended	Ch. 352	SB 171
40-5-162	amended	Ch. 352	SB 171
40-5-164	amended	Ch. 352	SB 171
40-5-173	amended	Ch. 352	SB 171
40-5-226	amended	Ch. 542	SB 28
40-5-242	amended	Ch. 465	SB 77
40-5-244	repealed	Ch. 352	SB 171
40-5-247	amended	Ch. 352	SB 171
40-5-248	amended	Ch. 352	SB 171
	amended	Ch. 465	SB 77
40-5-272	amended	Ch. 542	SB 28
40-5-273	amended	Ch. 352	SB 171
	amended	Ch. 542	SB 28
40-5-274	renumbered 40-5-290		
40-5-275	renumbered 40-5-291		
40-5-276	enacted	Ch. 542	SB 28
40-5-277	enacted	Ch. 542	SB 28
40-5-278	enacted	Ch. 542	SB 28
40-5-290	formerly 40-5-274		
40-5-291	formerly 40-5-275		
40-5-403	amended	Ch. 352	SB 171
40-5-415	amended	Ch. 352	SB 171
40-5-804	amended	Ch. 211	SB 38
40-5-806	amended	Ch. 211	SB 38
40-5-810	amended	Ch. 211	SB 38
40-5-909	amended	Ch. 352	SB 171
40-5-910	amended	Ch. 352	SB 171
40-6-116	amended	Ch. 542	SB 28
40-6-215	amended	Ch. 352	SB 171
40-6-216	repealed	Ch. 352	SB 171
40-6-401	enacted	Ch. 277	SB 132
40-6-402	enacted	Ch. 277	SB 132
40-6-403	enacted	Ch. 277	SB 132
40-6-404	enacted	Ch. 277	SB 132
40-6-405	enacted	Ch. 277	SB 132
40-6-406	enacted	Ch. 277	SB 132
40-6-407	enacted	Ch. 277	SB 132
40-6-411	enacted	Ch. 277	SB 132
40-6-412	enacted	Ch. 277	SB 132
40-6-413	enacted	Ch. 277	SB 132
40-6-414	enacted	Ch. 277	SB 132
40-6-415	enacted	Ch. 277	SB 132
40-6-416	enacted	Ch. 277	SB 132
40-6-417	enacted	Ch. 277	SB 132
40-15-102	amended	Ch. 503	HB 313
40-15-204	amended	Ch. 153	HB 336
40-15-303	amended	Ch. 223	HB 213
40-15-401	enacted	Ch. 223	HB 213
40-15-402	enacted	Ch. 223	HB 213
40-15-403	enacted	Ch. 223	HB 213
40-15-404	enacted	Ch. 223	HB 213
40-15-405	enacted	Ch. 223	HB 213

40-15-406	enacted	Ch. 223	HB 213
40-15-407	enacted	Ch. 223	HB 213
40-15-408	enacted	Ch. 223	HB 213
41-1-501	formerly 41-3-408	Ch. 281	SB 170
41-2-109	amended	Ch. 133	HB 134
41-3-101	amended	Ch. 281	SB 170
	amended	Ch. 311	SB 116
41-3-102	amended	Ch. 194	SB 257
	amended	Ch. 277	SB 132
	amended	Ch. 311	SB 116
41-3-103	amended	Ch. 114	SB 29
41-3-106	amended	Ch. 311	SB 116
41-3-112	formerly 41-3-303	Ch. 281	SB 170
41-3-113	formerly 41-3-409	Ch. 281	SB 170
41-3-115	formerly 41-3-1115	Ch. 281	SB 170
41-3-118	formerly 41-3-1160	Ch. 281	SB 170
41-3-119	formerly 41-3-1161	Ch. 281	SB 170
41-3-131	enacted	Ch. 311	SB 116
41-3-201	amended	Ch. 311	SB 116
41-3-202	amended	Ch. 311	SB 116
41-3-205	amended	Ch. 281	SB 170
	amended	Ch. 311	SB 116
	amended	Ch. 570	SB 283
41-3-301	amended	Ch. 281	SB 170
41-3-303	renumbered 41-3-112	Ch. 281	SB 170
41-3-401	amended	Ch. 83	HB 223
	amended	Ch. 194	SB 257
	amended and renumbered 41-3-422	Ch. 281	SB 170
	amended	Ch. 311	SB 116
41-3-402	amended and renumbered 41-3-427	Ch. 281	SB 170
	amended	Ch. 311	SB 116
41-3-403	amended	Ch. 83	HB 223
	amended and renumbered 41-3-423	Ch. 281	SB 170
	amended	Ch. 311	SB 116
41-3-404	amended	Ch. 194	SB 257
	amended and renumbered 41-3-437	Ch. 281	SB 170
	amended	Ch. 311	SB 116
41-3-406	amended	Ch. 194	SB 257
	amended and renumbered 41-3-438	Ch. 281	SB 170
	amended	Ch. 311	SB 116
41-3-408	renumbered 41-1-501	Ch. 281	SB 170
41-3-409	renumbered 41-3-113	Ch. 281	SB 170
41-3-411	renumbered 41-3-446	Ch. 281	SB 170
	amended	Ch. 311	SB 116
41-3-412	amended and renumbered 41-3-445	Ch. 281	SB 170
	amended	Ch. 311	SB 116
41-3-413	repealed	Ch. 281	SB 170
41-3-420	amended and renumbered 41-3-443	Ch. 281	SB 170
	amended	Ch. 311	SB 116
41-3-421	amended	Ch. 194	SB 257
	amended and renumbered 41-3-444	Ch. 281	SB 170
41-3-422	formerly 41-3-401	Ch. 281	SB 170
41-3-423	formerly 41-3-403	Ch. 281	SB 170
41-3-427	formerly 41-3-402	Ch. 281	SB 170
41-3-428	enacted	Ch. 83	HB 223
41-3-429	enacted	Ch. 83	HB 223
41-3-430	enacted	Ch. 83	HB 223
41-3-432	enacted	Ch. 281	SB 170
41-3-433	enacted	Ch. 281	SB 170

41-3-434	enacted	Ch. 281	SB 170
	enacted	Ch. 311	SB 116
41-3-437	formerly 41-3-404	Ch. 281	SB 170
41-3-438	formerly 41-3-406	Ch. 281	SB 170
41-3-439	enacted	Ch. 194	SB 257
41-3-440	enacted	Ch. 311	SB 116
41-3-442	enacted	Ch. 281	SB 170
41-3-443	formerly 41-3-420	Ch. 281	SB 170
41-3-444	formerly 41-3-421	Ch. 281	SB 170
41-3-445	formerly 41-3-412	Ch. 281	SB 170
41-3-446	formerly 41-3-411	Ch. 281	SB 170
41-3-604	amended	Ch. 311	SB 116
41-3-608	amended	Ch. 83	HB 223
41-3-701	renumbered 52-7-101	Ch. 281	SB 170
41-3-702	renumbered 52-7-102	Ch. 281	SB 170
41-3-703	renumbered 52-7-103	Ch. 281	SB 170
41-3-704	renumbered 52-7-104	Ch. 281	SB 170
41-3-705	amended	Ch. 34	SB 133
	renumbered 52-7-105	Ch. 281	SB 170
41-3-1001	amended	Ch. 570	SB 283
41-3-1002	repealed	Ch. 570	SB 283
41-3-1003	amended	Ch. 570	SB 283
41-3-1004	amended	Ch. 570	SB 283
41-3-1005	amended	Ch. 570	SB 283
41-3-1006	amended	Ch. 570	SB 283
41-3-1007	amended	Ch. 570	SB 283
41-3-1008	amended	Ch. 570	SB 283
41-3-1009	repealed	Ch. 570	SB 283
41-3-1010	amended	Ch. 570	SB 283
41-3-1011	amended	Ch. 570	SB 283
41-3-1012	amended	Ch. 570	SB 283
41-3-1013	amended	Ch. 570	SB 283
41-3-1014	repealed	Ch. 281	SB 170
	repealed	Ch. 311	SB 116
	repealed	Ch. 570	SB 283
41-3-1101	renumbered 52-2-601	Ch. 281	SB 170
41-3-1102	renumbered 52-2-602	Ch. 281	SB 170
	amended	Ch. 311	SB 116
41-3-1103	renumbered 52-2-603	Ch. 281	SB 170
	amended	Ch. 311	SB 116
41-3-1104	repealed	Ch. 311	SB 116
41-3-1105	renumbered 52-2-604	Ch. 281	SB 170
41-3-1114	repealed	Ch. 114	SB 29
	repealed	Ch. 311	SB 116
41-3-1115	renumbered 41-5-115	Ch. 281	SB 170
	amended	Ch. 311	SB 116
	amended	Ch. 570	SB 283
41-3-1122	renumbered 52-2-611	Ch. 281	SB 170
	amended	Ch. 571	SB 339
41-3-1126	renumbered 52-2-612	Ch. 281	SB 170
41-3-1131	renumbered 52-2-616	Ch. 281	SB 170
41-3-1132	renumbered 52-2-617	Ch. 281	SB 170
41-3-1141	renumbered 52-2-621	Ch. 281	SB 170
41-3-1142	renumbered 52-2-622	Ch. 281	SB 170
	amended	Ch. 311	SB 116
41-3-1143	renumbered 52-2-623	Ch. 281	SB 170
41-3-1151	renumbered 52-2-627	Ch. 281	SB 170
41-3-1152	renumbered 52-2-628	Ch. 281	SB 170
41-3-1160	renumbered 41-3-118	Ch. 281	SB 170

41-3-1161	renumbered 41-3-119	Ch. 281	SB 170
41-5-103	amended	Ch. 7	HB 25
	amended	Ch. 114	SB 29
	amended	Ch. 576	HB 146
	amended	Ch. 587	SB 386
41-5-121	amended	Ch. 587	SB 386
41-5-122	amended	Ch. 587	SB 386
41-5-123	amended	Ch. 587	SB 386
41-5-124	amended	Ch. 587	SB 386
41-5-130	enacted	Ch. 587	SB 386
41-5-131	enacted	Ch. 587	SB 386
41-5-132	enacted	Ch. 587	SB 386
41-5-203	amended	Ch. 114	SB 29
	amended	Ch. 576	HB 146
41-5-204	amended	Ch. 114	SB 29
41-5-205	amended	Ch. 587	SB 386
41-5-206	amended	Ch. 7	HB 25
	amended	Ch. 243	HB 195
	amended	Ch. 576	HB 146
41-5-321	amended	Ch. 114	SB 29
41-5-332	amended	Ch. 159	HB 393
41-5-344	repealed	Ch. 114	SB 29
41-5-1201	amended	Ch. 114	SB 29
41-5-1416	amended	Ch. 102	HB 238
41-5-1503	amended	Ch. 587	SB 386
41-5-1512	amended	Ch. 587	SB 386
41-5-1513	amended	Ch. 587	SB 386
41-5-1701	amended	Ch. 585	SB 176
41-5-1702	amended	Ch. 585	SB 176
41-5-1704	amended	Ch. 507	HB 345
	repealed 7/1/2002	Ch. 585	SB 176
41-5-1705	amended	Ch. 507	HB 345
	repealed 7/1/2002	Ch. 585	SB 176
41-5-1706	amended	Ch. 585	SB 176
41-5-1707	amended	Ch. 585	SB 176
41-5-1801	amended	Ch. 114	SB 29
41-5-2001	enacted	Ch. 587	SB 386
41-5-2002	enacted	Ch. 587	SB 386
41-5-2003	enacted	Ch. 587	SB 386
41-5-2004	enacted	Ch. 587	SB 386
41-5-2005	enacted	Ch. 587	SB 386
41-5-2006	enacted	Ch. 587	SB 386
42-2-105	amended	Ch. 574	HB 124
42-3-202	amended	Ch. 311	SB 116
42-3-301	amended	Ch. 311	SB 116
42-4-112	amended	Ch. 311	SB 116
42-5-101	amended	Ch 311	SB 116
42-5-103	amended	Ch. 311	SB 116
42-8-101	renumbered 52-8-101	Ch. 281	SB 170
	amended	Ch. 311	SB 116
42-8-102	renumbered 52-8-102	Ch. 281	SB 170
42-8-103	renumbered 52-8-103	Ch. 281	SB 170
	amended	Ch. 311	SB 116
42-8-104	renumbered 52-8-104	Ch. 281	SB 170
	amended	Ch. 311	SB 116
42 8-107	renumbered 52-8-107	Ch. 281	SB 170
	amended	Ch. 311	SB 116
42-8-108	renumbered 52-8-108	Ch. 281	SB 170
44-1-1005	amended	Ch. 207	HB 363

44-4-115	enacted	Ch. 246	HB 419
44-4-303	amended	Ch. 160	HB 402
44-4-304	enacted	Ch. 160	HB 402
44-6-101	amended	Ch. 565	HB 359
44-6-102	amended	Ch. 565	HB 359
44-6-103	amended	Ch. 565	HB 359
44-6-107	amended	Ch. 565	HB 359
44-13-103	amended	Ch. 118	SB 113
45-1-205	amended	Ch. 530	HB 563
45-2-101	amended	Ch. 312	SB 128
45-5-205	amended	Ch. 17	HB 117
	amended	Ch. 563	HB 295
45-5-206	amended	Ch. 503	HB 313
45-5-222	amended	Ch. 524	HB 521
45-5-231	enacted	Ch. 503	HB 313
45-5-232	enacted	Ch. 503	HB 313
45-5-233	enacted	Ch. 503	HB 313
45-5-234	enacted	Ch. 503	HB 313
45-5-501	amended	Ch. 562	HB 290
45-5-601	amended	Ch. 312	SB 128
45-5-602	amended	Ch. 312	SB 128
45-5-603	amended	Ch. 312	SB 128
45-5-624	amended	Ch. 23	HB 50
	amended	Ch. 64	HB 191
	amended	Ch. 498	HB 216
45-5-637	amended	Ch. 498	HB 216
45-6-301	amended	Ch. 227	HB 504
	amended	Ch. 427	HB 201
45-6-332	enacted	Ch. 378	HB 331
45-7-208	amended	Ch. 363	SB 293
45-7-307	amended	Ch. 144	HB 157
45-8-213	amended	Ch. 77	HB 112
45-9-102	amended	Ch. 100	HB 174
45-9-108	amended	Ch. 360	SB 261
45-9-130	amended	Ch. 257	SB 144
45-9-131	enacted	Ch. 260	HB 261
45-9-132	enacted	Ch. 260	HB 261
45-9-208	amended	Ch. 23	HB 50
45-10-103	amended	Ch. 100	HB 174
45-10-108	amended	Ch. 23	HB 50
46-1-202	amended	Ch. 303	SB 459
46-1-401	enacted	Ch. 524	HB 521
46-8-114	amended	Ch. 585	SB 176
46-8-201	amended	Ch. 585	SB 176
46-8-202	amended	Ch. 7	HB 25
	amended	Ch. 585	SB 176
46-9-108	amended	Ch. 449	HB 405
46-9-302	amended	Ch. 449	HB 405
46-9-505	amended	Ch. 332	SB 426
46-11-319	amended	Ch. 585	SB 176
46-11-401	amended	Ch. 389	HB 317
46-14-202	amended	Ch. 303	SB 459
	amended	Ch. 585	SB 176
46-14-204	amended	Ch. 303	SB 459
46-14-205	amended	Ch. 303	SB 459
46-14-213	amended	Ch. 303	SB 459
46-14-221	amended	Ch. 585	SB 176
46-14-302	amended	Ch. 303	SB 459
46-15-116	amended	Ch. 585	SB 176

46-15-323	amended	Ch. 303	SB 459
46-16-130	amended	Ch. 342	SB 466
46-17-303	amended	Ch. 515	HB 496
46-17-402	amended	Ch. 515	HB 496
46-18-101	amended	Ch. 581	HB 637
46-18-104	amended	Ch. 509	HB 360
46-18-111	amended	Ch. 483	SB 445
	amended	Ch. 493	HB 151
46-18-115	amended	Ch. 524	HB 521
46-18-116	amended	Ch. 74	HB 104
46-18-117	repealed	Ch. 74	HB 104
46-18-203	amended	Ch. 493	HB 151
46-18-205	amended	Ch. 312	SB 128
46-18-219	amended	Ch. 312	SB 128
46-18-220	amended	Ch. 524	HB 521
46-18-221	amended	Ch. 16	HB 115
	amended	Ch. 524	HB 521
46-18-224	amended	Ch. 524	HB 521
46-18-235	amended	Ch. 585	SB 176
46-18-236	amended	Ch. 118	SB 113
	amended	Ch. 449	HB 405
46-18-242	amended	Ch. 118	SB 113
46-18-244	amended	Ch. 284	SB 204
46-18-248	amended	Ch. 118	SB 113
46-18-249	amended	Ch. 284	SB 204
46-18-250	amended	Ch. 118	SB 113
46-18-251	amended	Ch. 118	SB 113
46-18-255	amended	Ch. 390	HB 434
46-18-603	amended	Ch. 585	SB 176
46-23-104	amended	Ch. 425	HB 119
46-23-202	amended	Ch. 425	HB 119
46-23-508	amended	Ch. 222	HB 109
46-23-520	enacted	Ch. 222	HB 109
46-23-1004	amended	Ch. 493	HB 151
46-23-1011	amended	Ch. 493	HB 151
46-23-1012	amended	Ch. 493	HB 151
46-23-1013	repealed	Ch. 493	HB 151
46-23-1015	enacted	Ch. 493	HB 151
46-23-1101	repealed	Ch. 18	SB 40
46-23-1102	repealed	Ch. 18	SB 40
46-23-1103	repealed	Ch. 18	SB 40
46-23-1104	repealed	Ch. 18	SB 40
46-23-1105	repealed	Ch. 18	SB 40
46-23-1106	repealed	Ch. 18	SB 40
46-23-1115	enacted	Ch. 18	SB 40
46-24-106	enacted	Ch. 104	HB 286
46-30-411	amended	Ch. 371	SB 328
49-2-303	amended	Ch. 287	SB 229
49-4-302	amended	Ch. 539	HB 620
50-2-111	amended	Ch. 574	HB 124
50-2-114	amended	Ch. 574	HB 124
50-3-103	amended	Ch. 483	SB 445
50-5-101	amended	Ch. 192	SB 194
	amended	Ch. 366	SB 309
50-5-226	amended	Ch. 331	SB 420
50-5-233	enacted	Ch. 192	SB 194
50-5-235	enacted	Ch. 366	SB 309
50-5-301	amended	Ch. 286	SB 221
50-5-1201	enacted	Ch. 347	SB 477

50-5-1202	enacted	Ch. 347	SB 477
50-5-1203	enacted	Ch. 347	SB 477
50-5-1204	enacted	Ch. 347	SB 477
50-5-1205	enacted	Ch. 347	SB 477
50-6-202	amended	Ch. 483	SB 445
50-6-401	amended	Ch. 192	SB 194
50-15-101	amended	Ch. 91	SB 148
	amended	Ch. 258	SB 290
50-15-122	amended	Ch. 91	SB 148
50-15-403	amended	Ch. 258	SB 290
50-15-404	amended	Ch. 258	SB 290
50-15-405	amended	Ch. 258	SB 290
50-16-201	amended	Ch. 359	SB 248
50-16-202	amended	Ch. 359	SB 248
50-16-203	amended	Ch. 359	SB 248
50-16-204	amended	Ch. 359	SB 248
50-16-205	amended	Ch. 359	SB 248
50-16-530	amended	Ch. 101	HB 175
	amended	Ch. 124	SB 254
50-16-542	amended	Ch. 359	SB 248
50-17-102	amended	Ch. 190	SB 166
50-17-105	amended	Ch. 190	SB 166
50-17-107	amended	Ch. 190	SB 166
50-17-108	amended	Ch. 190	SB 166
50-17-109	amended	Ch. 190	SB 166
50-17-110	amended	Ch. 190	SB 166
50-17-111	amended	Ch. 190	SB 166
50-17-113	amended	Ch. 190	SB 166
50-17-114	amended	Ch. 190	SB 166
50-17-115	amended	Ch. 190	SB 166
50-19-101	amended	Ch. 351	SB 169
50-19-102	amended	Ch. 351	SB 169
50-19-103	amended	Ch. 351	SB 169
50-19-104	amended	Ch. 351	SB 169
50-19-105	amended	Ch. 351	SB 169
50-19-107	amended	Ch. 351	SB 169
50-32-101	amended	Ch. 388	HB 279
	amended	Ch. 483	SB 445
50-37-104	amended	Ch. 483	SB 445
50-37-106	amended	Ch. 182	HB 386
50-39-101	amended	Ch. 483	SB 445
50-39-102	amended	Ch. 483	SB 445
50-39-103	amended	Ch. 483	SB 445
50-39-106	amended	Ch. 483	SB 445
50-39-107	amended	Ch. 483	SB 445
50-39-108	amended	Ch. 483	SB 445
50-40-202	amended	Ch. 271	SB 50
50-40-203	amended	Ch. 271	SB 50
50-40-204	repealed	Ch. 271	SB 50
50-40-205	repealed	Ch. 271	SB 50
50-40-206	repealed	Ch. 271	SB 50
50-40-207	enacted	Ch. 271	SB 50
50-50-102	amended	Ch. 428	HB 218
50-50-217	enacted	Ch. 428	HB 218
50-51-103	amended	Ch. 7	HB 25
50-52-105	amended	Ch. 257	SB 144
50-53-103	amended	Ch. 483	SB 445
50-60-101	amended	Ch. 483	SB 445
	amended	Ch. 546	SB 242

50-60-102	amended	Ch. 47	HB 145
50-60-301	amended	Ch. 150	HB 298
50-60-302	amended	Ch. 278	SB 138
50-60-303	amended	Ch. 546	SB 242
50-60-310	enacted	Ch. 546	SB 242
50-60-311	enacted	Ch. 546	SB 242
50-60-312	enacted	Ch. 546	SB 242
50-60-313	enacted	Ch. 546	SB 242
50-60-314	enacted	Ch. 546	SB 242
50-60-504	amended	Ch. 483	SB 445
50-60-505	amended	Ch. 483	SB 445
50-60-507	amended	Ch. 483	SB 445
50-60-508	amended	Ch. 483	SB 445
50-60-509	amended	Ch. 483	SB 445
50-60-510	amended	Ch. 483	SB 445
50-60-511	amended	Ch. 483	SB 445
50-60-512	amended	Ch. 483	SB 445
50-60-513	amended	Ch. 483	SB 445
50-60-514	amended	Ch. 483	SB 445
50-60-602	amended	Ch. 47	HB 145
50-60-603	amended	Ch. 47	HB 145
	amended	Ch. 483	SB 445
50-60-604	amended	Ch. 483	SB 445
50-60-605	amended	Ch. 47	HB 145
	amended	Ch. 483	SB 445
50-60-606	repealed	Ch. 47	HB 145
	amended	Ch. 483	SB 445
50-60-607	amended	Ch. 47	HB 145
	amended	Ch. 483	SB 445
50-60-608	enacted	Ch. 47	HB 145
50-60-701	amended	Ch. 439	HB 437
50-60-702	amended	Ch. 439	HB 437
50-60-703	amended	Ch. 439	HB 437
50-60-803	amended	Ch. 483	SB 445
50-64-101	repealed	Ch. 128	SB 211
50-64-102	repealed	Ch. 128	SB 211
	amended	Ch. 483	SB 445
50-64-103	repealed	Ch. 128	SB 211
50-64-104	repealed	Ch. 128	SB 211
50-64-105	repealed	Ch. 128	SB 211
50-64-106	repealed	Ch. 128	SB 211
50-64-107	repealed	Ch. 128	SB 211
50-74-101	amended	Ch. 483	SB 445
50-74-209	amended	Ch. 499	HB 230
50-74-219	amended	Ch. 499	HB 230
50-74-306	amended	Ch. 65	SB 30
50-74-307	amended	Ch. 65	SB 30
50-74-312	amended	Ch. 483	SB 445
50-76-102	amended	Ch. 483	SB 445
50-76-103	amended	Ch. 65	SB 30
	amended	Ch. 483	SB 445
50-76-104	amended	Ch. 483	SB 445
50-76-105	amended	Ch. 483	SB 445
50-76-110	amended	Ch. 483	SB 445
50-76-111	amended	Ch. 483	SB 445
52-1-103	amended	Ch. 571	SB 339
52-1-110	repealed	Ch. 574	HB 124
52-2-601	formerly 41-3-1101	Ch. 281	SB 170
52-2-602	formerly 41-3-1102	Ch. 281	SB 170

52-2-603	formerly 41-3-1103	Ch. 281	SB 170
52-2-604	formerly 41-3-1105	Ch. 281	SB 170
52-2-611	formerly 41-3-1122	Ch. 281	SB 170
52-2-612	formerly 41-3-1126	Ch. 281	SB 170
52-2-616	formerly 41-3-1131	Ch. 281	SB 170
52-2-617	formerly 41-3-1132	Ch. 281	SB 170
52-2-621	formerly 41-3-1141	Ch. 281	SB 170
52-2-622	formerly 41-3-1142	Ch. 281	SB 170
52-2-623	formerly 41-3-1143	Ch. 281	SB 170
52-2-627	formerly 41-3-1151	Ch. 281	SB 170
52-2-628	formerly 41-3-1152	Ch. 281	SB 170
52-2-703	amended	Ch. 505	HB 324
52-2-704	amended	Ch. 505	HB 324
52-2-721	amended	Ch. 505	HB 324
52-3-813	amended	Ch. 483	SB 445
52-5-108	amended	Ch. 24	HB 180
52-5-109	amended	Ch. 585	SB 176
	amended	Ch. 587	SB 386
52-5-129	amended	Ch. 576	HB 146
52-6-105	amended	Ch. 574	HB 124
	amended	Ch. 585	SB 176
52-7-101	formerly 41-3-701	Ch. 281	SB 170
52-7-102	formerly 41-3-702	Ch. 281	SB 170
52-7-103	formerly 41-3-703	Ch. 281	SB 170
52-7-104	formerly 41-3-704	Ch. 281	SB 170
52-7-105	formerly 41-3-705	Ch. 281	SB 170
52-8-101	formerly 42-8-101	Ch. 281	SB 170
52-8-102	formerly 42-8-102	Ch. 281	SB 170
52-8-103	formerly 42-8-103	Ch. 281	SB 170
52-8-104	formerly 42-8-104	Ch. 281	SB 170
52-8-107	formerly 42-8-107	Ch. 281	SB 170
52-8-108	formerly 42-8-108	Ch. 281	SB 170
53-1-107	amended	Ch. 118	SB 113
53-1-202	amended	Ch. 165	SB 207
53-1-209	enacted	Ch. 165	SB 207
53-2-111	enacted	Ch. 343	SB 469
53-2-201	amended	Ch. 125	SB 7
	amended	Ch. 465	SB 77
	amended	Ch. 571	SB 339
53-2-203	amended	Ch. 571	SB 339
53-2-207	amended	Ch. 571	SB 339
53-2-211	amended	Ch. 465	SB 77
53-2-301	amended	Ch. 571	SB 339
	amended	Ch. 574	HB 124
53-2-302	repealed	Ch. 574	HB 124
53-2-304	amended	Ch. 571	SB 339
53-2-305	amended	Ch. 571	SB 339
53-2-306	repealed	Ch. 574	HB 124
53-2-322	amended	Ch. 278	SB 138
	repealed	Ch. 574	HB 124
53-2-602	amended	Ch. 571	SB 339
53-2-603	amended	Ch. 571	SB 339
53-2-606	amended	Ch. 465	SB 77
	amended	Ch. 571	SB 339
53-2-609	amended	Ch. 571	SB 339
53-2-610	amended	Ch. 465	SB 77
	repealed	Ch. 571	SB 339
	repealed	Ch. 574	HB 124

53-2-612	amended	Ch. 571	SB 339
	amended	Ch. 574	HB 124
53-2-613	amended	Ch. 465	SB 77
53-2-801	amended	Ch. 571	SB 339
	repealed	Ch. 574	HB 124
53-2-802	amended	Ch. 571	SB 339
	repealed	Ch. 574	HB 124
53-2-803	repealed	Ch. 574	HB 124
53-2-811	amended	Ch. 571	SB 339
	repealed	Ch. 574	HB 124
53-2-812	repealed	Ch. 574	HB 124
53-2-813	repealed	Ch. 571	SB 339
	repealed	Ch. 574	HB 124
53-2-901	amended	Ch. 465	SB 77
53-2-902	amended	Ch. 465	SB 77
53-2-903	amended	Ch. 465	SB 77
53-2-904	amended	Ch. 465	SB 77
53-2-1101	repealed	Ch. 424	HB 87
53-2-1102	repealed	Ch. 424	HB 87
53-2-1103	repealed	Ch. 424	HB 87
	amended	Ch. 465	SB 77
53-2-1104	repealed	Ch. 424	HB 87
53-2-1105	repealed	Ch. 424	HB 87
53-2-1106	repealed	Ch. 424	HB 87
53-2-1107	repealed	Ch. 424	HB 87
53-2-1108	repealed	Ch. 424	HB 87
53-2-1109	repealed	Ch. 424	HB 87
53-2-1110	repealed	Ch. 424	HB 87
53-2-1201	enacted	Ch. 424	HB 87
53-2-1202	enacted	Ch. 424	HB 87
53-2-1203	enacted	Ch. 424	HB 87
53-2-1204	enacted	Ch. 424	HB 87
53-2-1205	enacted	Ch. 424	HB 87
53-2-1206	enacted	Ch. 424	HB 87
53-2-1207	enacted	Ch. 424	HB 87
53-3-111	amended	Ch. 571	SB 339
53-3-115	amended	Ch. 571	SB 339
	amended	Ch. 574	HB 124
53-3-116	amended	Ch. 571	SB 339
	amended	Ch. 574	HB 124
53-4-201	amended	Ch. 465	SB 77
53-4-202	amended	Ch. 465	SB 77
53-4-211	amended	Ch. 395	HB 615
53-4-212	amended	Ch. 465	SB 77
53-4-213	amended	Ch. 571	SB 339
53-4-214	amended	Ch. 465	SB 77
	amended	Ch. 571	SB 339
53-4-231	amended	Ch. 465	SB 77
53-4-233	amended	Ch. 465	SB 77
	amended	Ch. 571	SB 339
53-4-241	amended	Ch. 465	SB 77
53-4-244	amended	Ch. 571	SB 339
53-4-246	amended	Ch. 465	SB 77
	repealed	Ch. 571	SB 339
	repealed	Ch. 574	HB 124
53-4-247	repealed	Ch. 465	SB 77
	repealed	Ch. 571	SB 339
	repealed	Ch. 574	HB 124
53-4-250	enacted	Ch. 242	HB 38

53-4-255	enacted	Ch. 482	SB 442
53-4-256	enacted	Ch. 482	SB 442
53-4-257	enacted	Ch. 482	SB 442
53-4-602	amended	Ch. 465	SB 77
53-4-603	repealed	Ch. 465	SB 77
53-4-606	amended	Ch. 465	SB 77
53-4-607	repealed	Ch. 465	SB 77
53-4-608	repealed	Ch. 465	SB 77
53-4-611	amended	Ch. 465	SB 77
53-4-612	amended	Ch. 465	SB 77
53-4-613	amended	Ch. 465	SB 77
53-4-701	repealed	Ch. 465	SB 77
53-4-702	amended	Ch. 465	SB 77
53-4-704	amended	Ch. 465	SB 77
53-4-705	amended	Ch. 465	SB 77
53-4-706	amended	Ch. 465	SB 77
53-4-717	amended	Ch. 465	SB 77
53-4-1002	amended	Ch. 476	SB 338
53-4-1004	amended	Ch. 476	SB 338
53-4-1005	amended	Ch. 476	SB 338
53-4-1007	amended	Ch. 476	SB 338
53-4-1009	amended	Ch. 476	SB 338
53-6-101	amended	Ch. 465	SB 77
53-6-107	amended	Ch. 346	SB 476
53-6-108	amended	Ch. 346	SB 476
53-6-109	enacted	Ch. 346	SB 476
53-6-112	amended	Ch. 571	SB 339
53-6-113	amended	Ch. 465	SB 77
53-6-114	amended	Ch. 571	SB 339
53-6-116	amended	Ch. 466	SB 82
53-6-121	amended	Ch. 571	SB 339
53-6-131	amended	Ch. 440	HB 456
	amended	Ch. 465	SB 77
	amended	Ch. 466	SB 82
53-6-132	amended	Ch. 465	SB 77
	amended	Ch. 571	SB 339
53-6-133	amended	Ch. 571	SB 339
53-6-134	amended	Ch. 465	SB 77
53-6-155	amended	Ch. 571	SB 339
53-6-157	amended	Ch. 87	HB 411
	amended	Ch. 571	SB 339
53-6-701	amended	Ch. 466	SB 82
53-6-702	amended	Ch. 466	SB 82
53-6-703	amended	Ch. 466	SB 82
53-9-103	amended	Ch. 124	SB 254
53-9-104	amended	Ch. 118	SB 113
	amended	Ch. 124	SB 254
	amended	Ch. 585	SB 176
53-9-105	amended	Ch. 124	SB 254
53-9-106	amended	Ch. 124	SB 254
53-9-107	amended	Ch. 124	SB 254
53-9-108	amended	Ch. 124	SB 254
53-9-109	repealed	Ch. 118	SB 113
	amended	Ch. 124	SB 254
53-9-110	amended	Ch. 124	SB 254
53-9-121	amended	Ch. 124	SB 254
53-9-122	amended	Ch. 124	SB 254
53-9-123	amended	Ch. 124	SB 254
53-9-124	amended	Ch. 124	SB 254

53-9-125.	amended	Ch. 124	SB 254
53-9-126.	amended	Ch. 124	SB 254
53-9-127.	amended	Ch. 124	SB 254
53-9-128.	amended	Ch. 124	SB 254
53-9-130.	amended	Ch. 124	SB 254
53-9-131.	amended	Ch. 124	SB 254
53-9-132.	amended	Ch. 124	SB 254
53-9-133.	amended	Ch. 124	SB 254
53-19-302	amended	Ch. 297	SB 360
53-19-306	amended	Ch. 297	SB 360
53-19-307	amended	Ch. 297	SB 360
53-19-310	amended	Ch. 297	SB 360
53-19-401.	enacted	Ch. 250	HB 468
53-19-402.	enacted	Ch. 250	HB 468
53-19-403.	enacted	Ch. 250	HB 468
53-19-404.	enacted	Ch. 250	HB 468
53-20-208	amended	Ch. 574	HB 124
53-21-102	amended	Ch. 310	SB 108
	amended	Ch. 342	SB 466
	amended	Ch. 344	SB 473
53-21-104	amended	Ch. 342	SB 466
	amended	Ch. 344	SB 473
53-21-107.	enacted	Ch. 344	SB 473
53-21-113	amended	Ch. 571	SB 339
53-21-121	amended	Ch. 342	SB 466
53-21-123	amended	Ch. 342	SB 466
53-21-124	amended	Ch. 342	SB 466
53-21-126	amended	Ch. 342	SB 466
53-21-127	amended	Ch. 342	SB 466
53-21-128	amended	Ch. 342	SB 466
53-21-132	amended	Ch. 212	SB 107
53-21-140.	enacted	Ch. 212	SB 107
53-21-145	amended	Ch. 310	SB 108
53-21-149.	enacted	Ch. 342	SB 466
53-21-150.	enacted	Ch. 342	SB 466
53-21-151.	enacted	Ch. 342	SB 466
53-21-152.	enacted	Ch. 342	SB 466
53-21-153.	enacted	Ch. 533	HB 583
53-21-165	amended	Ch. 310	SB 108
53-21-166	amended	Ch. 544	SB 135
53-21-181	amended	Ch. 342	SB 466
53-21-204	amended	Ch. 574	HB 124
53-21-701	amended	Ch. 466	SB 82
53-21-702	amended	Ch. 466	SB 82
53-21-704	repealed	Ch. 466	SB 82
53-24-106	amended	Ch. 465	SB 77
53-24-108	amended	Ch. 470	SB 264
53-24-206	amended	Ch. 470	SB 264
53-24-301	amended	Ch. 23	HB 50
53-30-132	amended	Ch. 118	SB 113
53-30-403	amended	Ch. 7.	HB 25
60-1-103.	amended	Ch. 125	SB 7
60-2-110.	amended	Ch. 269	SB 3
60-2-112.	amended	Ch. 181	SB 90
60-2-133	enacted	Ch. 269	SB 3
60-3-201.	amended	Ch. 7.	HB 25
60-4-102.	amended	Ch. 19	HB 22
60-4-201.	amended	Ch. 279	SB 152
60-4-202.	amended	Ch. 279	SB 152

60-4-203	amended	Ch. 279	SB 152
60-4-207	amended	Ch. 386	HB 166
60-5-104	amended	Ch. 125	SB 7
60-7-102	amended	Ch. 204	SB 259
60-7-103	amended	Ch. 204	SB 259
60-7-202	amended	Ch. 204	SB 259
60-11-202	enacted	Ch. 208	HB 378
60-11-1101	repealed	Ch. 307	HB 650
60-11-1102	repealed	Ch. 307	HB 650
60-11-1103	repealed	Ch. 307	HB 650
60-11-1104	repealed	Ch. 307	HB 650
60-11-1105	repealed	Ch. 307	HB 650
60-11-1106	repealed	Ch. 307	HB 650
60-11-1107	repealed	Ch. 307	HB 650
60-11-1108	repealed	Ch. 307	HB 650
60-11-1109	repealed	Ch. 307	HB 650
60-11-1110	repealed	Ch. 307	HB 650
60-11-1111	repealed	Ch. 307	HB 650
60-11-1112	repealed	Ch. 307	HB 650
60-11-1113	repealed	Ch. 307	HB 650
60-11-1201	repealed	Ch. 307	HB 650
60-11-1202	repealed	Ch. 307	HB 650
60-11-1203	repealed	Ch. 307	HB 650
60-11-1204	repealed	Ch. 307	HB 650
60-11-1205	repealed	Ch. 307	HB 650
60-11-1206	repealed	Ch. 307	HB 650
60-11-1207	repealed	Ch. 307	HB 650
60-11-1208	repealed	Ch. 307	HB 650
60-11-1209	repealed	Ch. 307	HB 650
60-11-1210	repealed	Ch. 307	HB 650
60-11-1211	repealed	Ch. 307	HB 650
60-11-1212	repealed	Ch. 307	HB 650
60-11-1213	repealed	Ch. 307	HB 650
61-1-102	amended	Ch. 574	HB 124
61-1-103	amended	Ch. 563	HB 295
61-1-134	amended	Ch. 207	HB 363
61-1-314	amended	Ch. 385	HB 156
61-2-208	amended	Ch. 483	SB 445
61-2-302	amended	Ch. 64	HB 191
	amended	Ch. 207	HB 363
	amended	Ch. 218	SB 334
61-3-101	amended	Ch. 363	SB 293
61-3-103	amended	Ch. 394	HB 577
61-3-203	amended	Ch. 574	HB 124
61-3-321	amended	Ch. 257	SB 144
	amended	Ch. 574	HB 124
61-3-325	amended	Ch. 574	HB 124
61-3-332	amended	Ch. 72	HB 78
	amended	Ch. 167	SB 53
	amended	Ch. 191	SB 175
	amended	Ch. 249	HB 461
	amended	Ch. 337	SB 448
	amended	Ch. 402	SB 191
	amended	Ch. 539	HB 620
	amended	Ch. 574	HB 124
61-3-345	amended	Ch. 313	SB 131
61-3-346	amended	Ch. 313	SB 131
61-3-406	amended	Ch. 574	HB 124
61-3-407	amended	Ch. 402	SB 191

61-3-411.	amended	Ch. 574	HB 124
61-3-412.	amended	Ch. 574	HB 124
61-3-426.	amended	Ch. 337	SB 448
	amended	Ch. 574	HB 124
61-3-431.	amended	Ch. 526	HB 531
	amended	Ch. 574	HB 124
61-3-446.	amended	Ch. 402	SB 191
61-3-452.	amended	Ch. 539	HB 620
61-3-453.	amended	Ch. 72	HB 78
	amended	Ch. 167	SB 53
	amended	Ch. 539	HB 620
61-3-454.	amended	Ch. 539	HB 620
61-3-457.	amended	Ch. 191	SB 175
	amended	Ch. 337	SB 448
	amended	Ch. 574	HB 124
61-3-463.	amended	Ch. 191	SB 175
61-3-465.	amended	Ch. 257	SB 144
	amended	Ch. 574	HB 124
61-3-467.	amended	Ch. 257	SB 144
61-3-472	enacted	Ch. 402	SB 191
61-3-473	enacted	Ch. 402	SB 191
61-3-474	enacted	Ch. 402	SB 191
61-3-475	enacted	Ch. 402	SB 191
61-3-476	enacted	Ch. 402	SB 191
61-3-477	enacted	Ch. 402	SB 191
61-3-478	enacted	Ch. 402	SB 191
61-3-479	enacted	Ch. 402	SB 191
61-3-480	enacted	Ch. 402	SB 191
61-3-481	enacted	Ch. 402	SB 191
61-3-501.	amended	Ch. 191	SB 175
	amended	Ch. 261	HB 319
61-3-507.	amended	Ch. 191	SB 175
61-3-508.	amended	Ch. 317	SB 168
	repealed	Ch. 574	HB 124
61-3-509.	amended	Ch. 257	SB 144
	amended	Ch. 574	HB 124
61-3-510.	amended	Ch. 337	SB 448
	repealed	Ch. 574	HB 124
61-3-511.	amended	Ch. 257	SB 144
	repealed	Ch. 574	HB 124
61-3-512.	amended	Ch. 126	SB 105
	repealed	Ch. 574	HB 124
61-3-524.	amended	Ch. 574	HB 124
61-3-527.	amended	Ch. 574	HB 124
61-3-529.	amended	Ch. 500	HB 247
61-3-537.	amended	Ch. 191	SB 175
61-3-550	enacted	Ch. 394	HB 577
61-3-560.	amended	Ch. 191	SB 175
	amended	Ch. 539	HB 620
61-3-562.	amended	Ch. 191	SB 175
	amended	Ch. 337	SB 448
61-3-707.	amended	Ch. 436	HB 375
	amended	Ch. 574	HB 124
61-3-736.	amended	Ch. 191	SB 175
	amended	Ch. 500	HB 247
61-3-737.	amended	Ch. 191	SB 175
61-3-738.	amended	Ch. 191	SB 175
	amended	Ch. 574	HB 124

61-4-101	amended	Ch. 201	HB 551
	amended	Ch. 385	HB 156
61-4-105	amended	Ch. 385	HB 156
61-4-120	amended	Ch. 201	HB 551
61-4-123	amended	Ch. 385	HB 156
61-4-124	amended	Ch. 385	HB 156
61-4-125	amended	Ch. 201	HB 551
	amended	Ch. 385	HB 156
61-4-130	enacted	Ch. 385	HB 156
61-4-143	enacted	Ch. 385	HB 156
61-4-150	enacted	Ch. 177	SB 421
61-4-507	amended	Ch. 483	SB 445
61-4-511	amended	Ch. 483	SB 445
61-4-512	amended	Ch. 483	SB 445
61-4-515	amended	Ch. 483	SB 445
61-4-516	amended	Ch. 483	SB 445
61-4-517	amended	Ch. 483	SB 445
61-4-518	amended	Ch. 483	SB 445
61-4-519	amended	Ch. 483	SB 445
61-4-520	amended	Ch. 483	SB 445
61-4-526	amended	Ch. 483	SB 445
61-4-532	amended	Ch. 483	SB 445
61-5-102	amended	Ch. 415	SB 451
61-5-104	amended	Ch. 207	HB 363
61-5-105	amended	Ch. 207	HB 363
61-5-110	amended	Ch. 207	HB 363
61-5-111	amended	Ch. 207	HB 363
61-5-121	amended	Ch. 257	SB 144
61-5-205	amended	Ch. 224	HB 219
	amended	Ch. 563	HB 295
61-5-206	amended	Ch. 218	SB 334
61-5-208	amended	Ch. 207	HB 363
61-6-123	amended	Ch. 515	HB 496
61-7-114	amended	Ch. 296	SB 358
61-8-301	amended	Ch. 561	HB 256
61-8-302	amended	Ch. 561	HB 256
61-8-309	amended	Ch. 93	HB 18
61-8-346	amended	Ch. 157	HB 391
61-8-365	amended	Ch. 513	HB 442
61-8-372	amended	Ch. 513	HB 442
61-8-401	amended	Ch. 563	HB 295
61-8-403	amended	Ch. 147	HB 263
61-8-406	amended	Ch. 207	HB 363
61-8-714	amended	Ch. 563	HB 295
61-8-715	amended	Ch. 561	HB 256
61-8-716	amended	Ch. 561	HB 256
61-8-731	amended	Ch. 417	SB 489
61-8-732	amended	Ch. 23	HB 50
	amended	Ch. 417	SB 489
	amended	Ch. 563	HB 295
61-8-734	amended	Ch. 224	HB 219
61-8-801	amended	Ch. 207	HB 363
61-8-802	amended	Ch. 207	HB 363
61-8-803	amended	Ch. 207	HB 363
61-8-805	amended	Ch. 207	HB 363
61-8-811	amended	Ch. 207	HB 363
61-9-312	amended	Ch. 574	HB 124
61-9-414	amended	Ch. 373	SB 355
61-10-107	amended	Ch. 283	SB 203

61-10-111	enacted	Ch. 291	SB 300
61-10-124	amended	Ch. 327	SB 380
61-10-126	amended	Ch. 257	SB 144
61-10-128	amended	Ch. 518	HB 502
61-10-130	amended	Ch. 369	SB 318
	amended	Ch. 574	HB 124
61-10-141	amended	Ch. 206	HB 131
61-10-144	amended	Ch. 254	HB 529
	amended	Ch. 369	SB 318
61-10-148	amended	Ch. 257	SB 144
	amended	Ch. 574	HB 124
61-10-201	amended	Ch. 327	SB 380
61-10-203	repealed	Ch. 327	SB 380
61-10-225	amended	Ch. 257	SB 144
	amended	Ch. 574	HB 124
61-10-1101	amended	Ch. 358	SB 237
61-11-101	amended	Ch. 207	HB 363
61-11-105	amended	Ch. 363	SB 293
61-11-203	amended	Ch. 218	SB 334
61-11-204	amended	Ch. 218	SB 334
61-11-501	enacted	Ch. 363	SB 293
61-11-502	enacted	Ch. 363	SB 293
61-11-503	enacted	Ch. 363	SB 293
61-11-506	enacted	Ch. 363	SB 293
61-11-507	enacted	Ch. 363	SB 293
61-11-508	enacted	Ch. 363	SB 293
61-11-509	enacted	Ch. 363	SB 293
61-11-510	enacted	Ch. 363	SB 293
61-11-515	enacted	Ch. 363	SB 293
61-11-516	enacted	Ch. 363	SB 293
61-12-310	amended	Ch. 227	HB 504
61-12-315	amended	Ch. 227	HB 504
61-12-701	amended	Ch. 257	SB 144
61-13-104	amended	Ch. 218	SB 334
67-1-301	amended	Ch. 404	SB 280
67-1-303	amended	Ch. 257	SB 144
	amended	Ch. 404	SB 280
67-1-305	repealed	Ch. 404	SB 280
67-2-301	amended	Ch. 125	SB 7
67-3-205	amended	Ch. 574	HB 124
67-5-202	amended	Ch. 125	SB 7
67-6-301	amended	Ch. 125	SB 7
67-10-102	amended	Ch. 125	SB 7
67-10-103	amended	Ch. 125	SB 7
67-10-201	amended	Ch. 125	SB 7
67-10-205	amended	Ch. 125	SB 7
67-10-221	amended	Ch. 125	SB 7
67-10-402	amended	Ch. 574	HB 124
67-10-901	enacted	Ch. 452	HB 430
67-10-902	enacted	Ch. 452	HB 430
67-10-903	enacted	Ch. 452	HB 430
67-10-904	enacted	Ch. 452	HB 430
67-11-201	amended	Ch. 125	SB 7
67-11-204	amended	Ch. 125	SB 7
67-11-231	amended	Ch. 125	SB 7
67-11-301	amended	Ch. 574	HB 124
67-11-303	amended	Ch. 574	HB 124
67-11-401	amended	Ch. 125	SB 7
69-3-842	amended	Ch. 430	HB 564

69-3-843	amended	Ch. 430	HB 564
69-3-844	amended	Ch. 430	HB 564
69-3-845	amended	Ch. 430	HB 564
69-4-304	amended	Ch. 7	HB 25
69-4-501	amended	Ch. 7	HB 25
69-8-103	amended	Ch. 7	HB 25
	amended	Ch. 577	HB 474
	amended	Ch. 584	SB 19
69-8-104	amended	Ch. 577	HB 474
	amended	Ch. 584	SB 19
69-8-110	enacted	Ch. 582	HB 645
69-8-201	amended	Ch. 175	SB 269
	amended	Ch. 577	HB 474
	amended	Ch. 584	SB 19
69-8-203	amended	Ch. 577	HB 474
69-8-210	amended	Ch. 577	HB 474
69-8-211	amended	Ch. 577	HB 474
	amended	Ch. 584	SB 19
69-8-301	amended	Ch. 584	SB 19
69-8-402	amended	Ch. 188	SB 56
	amended	Ch. 577	HB 474
69-8-403	amended	Ch. 577	HB 474
69-8-412	amended	Ch. 577	HB 474
69-8-414	amended	Ch. 577	HB 474
69-8-416	repealed	Ch. 577	HB 474
69-8-417	repealed	Ch. 577	HB 474
69-8-501	amended	Ch. 584	SB 19
69-8-502	amended	Ch. 7	HB 25
69-8-603	amended	Ch. 328	SB 387
69-8-605	enacted (1999)	Ch. 323 (1999)	SB 409
69-8-701	enacted	Ch. 577	HB 474
69-8-702	enacted	Ch. 577	HB 474
69-9-101	enacted	Ch. 577	HB 474
69-9-102	enacted	Ch. 577	HB 474
69-9-103	enacted	Ch. 577	HB 474
69-9-107	enacted	Ch. 577	HB 474
69-9-108	enacted	Ch. 577	HB 474
69-9-111	enacted	Ch. 577	HB 474
69-9-112	enacted	Ch. 577	HB 474
69-9-113	enacted	Ch. 577	HB 474
69-9-114	enacted	Ch. 577	HB 474
69-9-115	enacted	Ch. 577	HB 474
69-13-104	amended	Ch. 125	SB 7
69-14-513	amended	Ch. 125	SB 7
69-14-536	amended	Ch. 125	SB 7
69-14-552	amended	Ch. 125	SB 7
69-14-562	amended	Ch. 477	SB 348
69-14-1201	enacted	Ch. 432	HB 401
69-14-1202	enacted	Ch. 432	HB 401
69-14-1203	enacted	Ch. 432	HB 401
69-14-1204	enacted	Ch. 432	HB 401
69-14-1205	enacted	Ch. 432	HB 401
69-14-1206	enacted	Ch. 432	HB 401
70-22-103	amended	Ch. 492	HB 120
70-22-206	amended	Ch. 494	HB 154
70-24-422	amended	Ch. 456	HB 559
70-24-436	amended	Ch. 456	HB 559
70-24-441	amended	Ch. 456	HB 559
70-25-202	amended	Ch. 241	HB 29

70-25-205	amended	Ch. 241	HB 29
70-30-102	amended	Ch. 125	SB 7
70-30-103	amended	Ch. 125	SB 7
70-30-104	amended	Ch. 19	HB 22
	amended	Ch. 125	SB 7
70-30-105	amended	Ch. 125	SB 7
70-30-106	amended	Ch. 125	SB 7
70-30-107	amended	Ch. 125	SB 7
70-30-108	amended	Ch. 125	SB 7
70-30-109	amended	Ch. 125	SB 7
70-30-110	amended	Ch. 20	HB 93
	amended	Ch. 125	SB 7
70-30-111	amended	Ch. 125	SB 7
70-30-202	amended	Ch. 125	SB 7
70-30-203	amended	Ch. 20	HB 93
	amended	Ch. 125	SB 7
70-30-206	amended	Ch. 19	HB 22
	amended	Ch. 125	SB 7
70-30-207	amended	Ch. 125	SB 7
70-30-301	amended	Ch. 20	HB 93
	amended	Ch. 125	SB 7
70-30-302	amended	Ch. 125	SB 7
70-30-303	amended	Ch. 125	SB 7
70-30-304	amended	Ch. 125	SB 7
70-30-305	amended	Ch. 125	SB 7
70-30-306	amended	Ch. 125	SB 7
70-30-307	amended	Ch. 125	SB 7
70-30-308	amended	Ch. 125	SB 7
70-30-309	amended	Ch. 20	HB 93
	amended	Ch. 125	SB 7
70-30-310	amended	Ch. 125	SB 7
70-30-311	amended	Ch. 125	SB 7
70-30-312	amended	Ch. 125	SB 7
70-30-314	amended	Ch. 125	SB 7
70-30-315	amended	Ch. 125	SB 7
70-30-321	amended	Ch. 125	SB 7
70-30-322	amended	Ch. 125	SB 7
70-30-323	enacted	Ch. 113	SB 6
70-31-102	amended	Ch. 125	SB 7
70-31-104	amended	Ch. 125	SB 7
70-31-105	amended	Ch. 125	SB 7
70-31-301	amended	Ch. 125	SB 7
70-31-311	amended	Ch. 125	SB 7
70-32-104	amended	Ch. 451	HB 412
70-32-216	amended	Ch. 125	SB 7
70-32-221	repealed	Ch. 30	HB 155
71-1-212	amended	Ch. 30	HB 155
71-1-302	amended	Ch. 30	HB 155
71-1-303	amended	Ch. 30	HB 155
71-1-304	amended	Ch. 30	HB 155
71-3-1111	amended	Ch. 86	HB 309
71-3-1112	amended	Ch. 86	HB 309
71-3-1113	amended	Ch. 86	HB 309
71-3-1114	amended	Ch. 86	HB 309
	amended	Ch. 236	SB 361
71-3-1115	amended	Ch. 86	HB 309
71-3-1117	amended	Ch. 86	HB 309
71-3-1118	amended	Ch. 86	HB 309
72-3-917	amended	Ch. 7	HB 25

72-14-204	amended	Ch. 34	SB 133
72-14-205	amended	Ch. 34	SB 133
72-14-206	amended	Ch. 34	SB 133
72-14-207	amended	Ch. 34	SB 133
72-14-209	amended	Ch. 34	SB 133
72-14-210	amended	Ch. 34	SB 133
72-14-403	amended	Ch. 34	SB 133
72-16-503	amended	Ch. 37	SB 192
	amended	Ch. 412	SB 368
72-16-909	amended	Ch. 574	HB 124
72-16-912	amended	Ch. 574	HB 124
72-16-920	amended	Ch. 257	SB 144
75-1-110	enacted	Ch. 338	SB 449
75-1-201	amended	Ch. 186	SB 33
	amended	Ch. 267	HB 459
	amended	Ch. 268	HB 473
	amended	Ch. 299	SB 377
	amended	Ch. 300	SB 408
75-1-203	amended	Ch. 251	HB 477
75-1-208	enacted	Ch. 299	SB 377
75-1-220	enacted	Ch. 267	HB 459
	enacted	Ch. 268	HB 473
	enacted and amended	Ch. 299	SB 377
	enacted	Ch. 300	SB 408
75-1-324	amended	Ch. 210	SB 10
75-2-109	amended	Ch. 491	HB 118
75-2-207	amended	Ch. 536	HB 605
75-2-211	amended	Ch. 299	SB 377
	amended	Ch. 588	SB 398
75-2-215	amended	Ch. 354	SB 187
75-2-218	amended	Ch. 299	SB 377
	amended	Ch. 491	HB 118
75-2-220	amended	Ch. 516	HB 499
75-2-224	enacted	Ch. 516	HB 499
75-2-225	enacted	Ch. 516	HB 499
75-2-226	enacted	Ch. 516	HB 499
75-2-227	enacted	Ch. 516	HB 499
75-2-301	amended	Ch. 536	HB 605
75-2-401	amended	Ch. 591	SB 506
75-2-413	amended	Ch. 591	SB 506
75-5-312	amended	Ch. 384	HB 125
75-5-401	amended	Ch. 413	SB 379
75-5-1102	amended	Ch. 506	HB 334
75-5-1126	enacted	Ch. 9	HB 45
75-6-102	amended	Ch. 315	SB 147
75-6-112	amended	Ch. 315	SB 147
75-6-126	enacted	Ch. 315	SB 147
75-6-236	enacted	Ch. 9	HB 45
75-7-210	amended	Ch. 40	HB 111
75-10-103	amended	Ch. 7	HB 25
75-10-104	amended	Ch. 170	SB 161
75-10-105	amended	Ch. 170	SB 161
75-10-106	amended	Ch. 170	SB 161
75-10-115	amended	Ch. 170	SB 161
75-10-116	amended	Ch. 170	SB 161
75-10-117	amended	Ch. 170	SB 161
75-10-118	repealed	Ch. 170	SB 161
75-10-204	amended	Ch. 170	SB 161
75-10-206	amended	Ch. 170	SB 161

75-10-209	repealed	Ch. 170	SB 161
75-10-221	amended	Ch. 170	SB 161
75-10-511	amended	Ch. 317	SB 168
75-10-532	amended	Ch. 257	SB 144
	amended	Ch. 317	SB 168
75-10-533	amended	Ch. 574	HB 124
75-10-704	amended	Ch. 326	SB 378
75-10-711	amended	Ch. 383	HB 94
75-10-712	amended	Ch. 383	HB 94
75-10-714	amended	Ch. 79	HB 126
75-10-715	amended	Ch. 113	SB 6
	amended	Ch. 125	SB 7
	amended	Ch. 383	HB 94
75-10-720	amended	Ch. 125	SB 7
75-10-722	amended	Ch. 326	SB 378
75-10-732	amended	Ch. 7	HB 25
75-10-743	amended	Ch. 460	SB 484
75-10-745	amended	Ch. 383	HB 94
75-10-913	amended	Ch. 483	SB 445
75-10-918	amended	Ch. 483	SB 445
75-10-922	amended	Ch. 299	SB 377
75-10-1223	amended	Ch. 338	SB 449
75-11-308	amended	Ch. 112	HB 462
75-11-318	amended	Ch. 112	HB 462
75-11-509	amended	Ch. 244	HB 332
75-15-123	amended	Ch. 125	SB 7
75-15-223	amended	Ch. 125	SB 7
75-20-102	amended	Ch. 293	SB 319
75-20-104	amended	Ch. 293	SB 319
75-20-207	amended	Ch. 293	SB 319
75-20-208	amended	Ch. 293	SB 319
75-20-211	amended	Ch. 293	SB 319
	amended	Ch. 483	SB 445
75-20-216	amended	Ch. 293	SB 319
	amended	Ch. 299	SB 377
	amended	Ch. 483	SB 445
75-20-219	amended	Ch. 293	SB 319
75-20-223	amended	Ch. 293	SB 319
75-20-225	repealed	Ch. 293	SB 319
75-20-226	repealed	Ch. 293	SB 319
	amended	Ch. 483	SB 445
75-20-231	amended	Ch. 293	SB 319
	amended	Ch. 299	SB 377
75-20-301	amended	Ch. 293	SB 319
75-20-303	amended	Ch. 293	SB 319
75-20-304	amended	Ch. 293	SB 319
75-20-406	amended	Ch. 293	SB 319
75-25-101	enacted	Ch. 591	SB 506
75-25-102	enacted	Ch. 591	SB 506
75-25-103	enacted	Ch. 591	SB 506
76-1-111	amended	Ch. 574	HB 124
76-1-403	amended	Ch. 574	HB 124
76-1-404	amended	Ch. 574	HB 124
76-1-405	repealed	Ch. 574	HB 124
76-1-406	amended	Ch. 574	HB 124
76-1-407	repealed	Ch. 574	HB 124
76-1-605	amended	Ch. 527	HB 543
76-1-606	amended	Ch. 527	HB 543
76-2-101	amended	Ch. 288	SB 241

76-2-102	amended	Ch. 288	SB 241
	amended	Ch. 574	HB 124
76-2-113	enacted	Ch. 288	SB 241
76-3-102	amended	Ch. 348	SB 479
76-3-103	amended	Ch. 348	SB 479
76-3-201	amended	Ch. 340	SB 455
76-3-203	amended	Ch. 534	HB 589
76-3-301	amended	Ch. 340	SB 455
76-3-302	amended	Ch. 340	SB 455
76-3-403	amended	Ch. 483	SB 445
76-3-503	amended	Ch. 348	SB 479
76-3-504	amended	Ch. 348	SB 479
	amended	Ch. 527	HB 543
	amended	Ch. 564	HB 340
76-3-509	enacted	Ch. 348	SB 479
76-3-601	amended	Ch. 7	HB 25
76-3-604	amended	Ch. 527	HB 543
76-3-608	amended	Ch. 348	SB 479
76-3-621	amended	Ch. 348	SB 479
76-4-102	amended	Ch. 280	SB 167
76-4-104	amended	Ch. 280	SB 167
76-4-105	amended	Ch. 280	SB 167
76-4-108	amended	Ch. 79	HB 126
76-4-111	amended	Ch. 280	SB 167
76-4-112	enacted	Ch. 280	SB 167
76-4-113	enacted	Ch. 280	SB 167
76-4-121	amended	Ch. 280	SB 167
76-4-122	amended	Ch. 280	SB 167
76-4-123	repealed	Ch. 280	SB 167
76-4-124	repealed	Ch. 280	SB 167
76-4-125	amended	Ch. 280	SB 167
	amended	Ch. 299	SB 377
76-4-126	amended	Ch. 79	HB 126
76-4-127	amended	Ch. 280	SB 167
76-4-128	repealed	Ch. 280	SB 167
76-4-130	amended	Ch. 280	SB 167
76-4-131	amended	Ch. 280	SB 167
76-4-132	amended	Ch. 280	SB 167
76-4-133	enacted	Ch. 280	SB 167
76-5-401	amended	Ch. 7	HB 25
76-5-1108	amended	Ch. 125	SB 7
76-5-1111	amended	Ch. 125	SB 7
76-6-105	amended	Ch. 125	SB 7
76-6-109	amended	Ch. 463	SB 303
	amended	Ch. 574	HB 124
76-10-101	enacted	Ch. 282	SB 197
76-10-102	enacted	Ch. 282	SB 197
76-10-103	enacted	Ch. 282	SB 197
76-10-104	enacted	Ch. 282	SB 197
76-10-105	enacted	Ch. 282	SB 197
76-10-106	enacted	Ch. 282	SB 197
76-10-107	enacted	Ch. 282	SB 197
76-12-108	amended	Ch. 125	SB 7
76-12-110	amended	Ch. 125	SB 7
76-13-114	amended	Ch. 257	SB 144
76-13-201	amended	Ch. 574	HB 124
76-13-401	amended	Ch. 234	HB 599
76-13-408	amended	Ch. 234	HB 599
76-13-410	amended	Ch. 234	HB 599

76-13-501	repealed	Ch. 94	HB 44
76-13-502	repealed	Ch. 94	HB 44
76-13-503	repealed	Ch. 94	HB 44
76-13-504	repealed	Ch. 94	HB 44
76-13-505	repealed	Ch. 94	HB 44
76-13-506	repealed	Ch. 94	HB 44
76-13-507	repealed	Ch. 94	HB 44
76-15-505	amended	Ch. 574	HB 124
76-15-516	amended	Ch. 574	HB 124
76-15-531	amended	Ch. 495	HB 179
	amended	Ch. 574	HB 124
76-15-623	amended	Ch. 574	HB 124
76-15-901	enacted	Ch. 531	HB 572
76-15-902	enacted	Ch. 531	HB 572
76-15-903	enacted	Ch. 531	HB 572
76-15-904	enacted	Ch. 531	HB 572
76-15-905	enacted	Ch. 531	HB 572
76-16-102	amended	Ch. 31	HB 113
76-16-103	amended	Ch. 31	HB 113
76-16-104	amended	Ch. 31	HB 113
76-16-105	repealed	Ch. 31	HB 113
76-16-106	amended	Ch. 31	HB 113
76-16-107	amended	Ch. 31	HB 113
76-16-108	amended	Ch. 31	HB 113
76-16-109	amended	Ch. 31	HB 113
76-16-111	amended	Ch. 31	HB 113
76-16-112	amended	Ch. 31	HB 113
76-16-113	amended	Ch. 31	HB 113
76-16-201	amended	Ch. 31	HB 113
76-16-202	amended	Ch. 31	HB 113
76-16-203	amended	Ch. 31	HB 113
76-16-206	amended	Ch. 31	HB 113
76-16-208	amended	Ch. 31	HB 113
76-16-209	amended	Ch. 31	HB 113
76-16-211	amended	Ch. 31	HB 113
76-16-212	amended	Ch. 31	HB 113
76-16-213	amended	Ch. 31	HB 113
76-16-301	amended	Ch. 31	HB 113
76-16-302	amended	Ch. 31	HB 113
76-16-303	amended	Ch. 31	HB 113
76-16-307	amended	Ch. 31	HB 113
76-16-309	amended	Ch. 31	HB 113
76-16-310	amended	Ch. 31	HB 113
76-16-316	amended	Ch. 31	HB 113
76-16-317	amended	Ch. 31	HB 113
76-16-318	amended	Ch. 31	HB 113
76-16-320	amended	Ch. 31	HB 113
76-16-323	amended	Ch. 31	HB 113
76-16-325	amended	Ch. 31	HB 113
76-16-401	amended	Ch. 31	HB 113
76-16-402	amended	Ch. 31	HB 113
76-16-403	amended	Ch. 31	HB 113
76-16-404	amended	Ch. 31	HB 113
76-16-406	amended	Ch. 31	HB 113
76-16-407	amended	Ch. 31	HB 113
76-16-408	amended	Ch. 31	HB 113
76-16-409	amended	Ch. 31	HB 113
76-16-410	amended	Ch. 31	HB 113
76-16-411	amended	Ch. 31	HB 113

76-16-412	amended	Ch. 31	HB 113
76-16-413	amended	Ch. 31	HB 113
76-16-414	amended	Ch. 31	HB 113
77-1-108	amended	Ch. 34	SB 133
77-1-109	amended	Ch. 34	SB 133
	amended	Ch. 420	SB 511
77-1-110	amended	Ch. 504	HB 320
77-1-117	amended	Ch. 257	SB 144
77-1-121	amended	Ch. 478	SB 376
77-1-130	amended	Ch. 270	SB 31
77-1-141	enacted	Ch. 67	SB 75
77-1-208	amended	Ch. 11	HB 36
	amended	Ch. 270	SB 31
77-1-502	amended	Ch. 574	HB 124
77-1-503	amended	Ch. 574	HB 124
77-1-504	amended	Ch. 574	HB 124
77-1-505	repealed	Ch. 574	HB 124
77-1-506	repealed	Ch. 574	HB 124
77-1-507	repealed	Ch. 574	HB 124
77-1-602	amended	Ch. 34	SB 133
77-1-808	amended	Ch. 117	SB 103
77-2-101	amended	Ch. 230	SB 159
77-2-102	amended	Ch. 7	HB 25
77-2-202	repealed	Ch. 139	SB 102
77-2-203	amended	Ch. 139	SB 102
77-2-205	amended	Ch. 139	SB 102
77-2-206	amended	Ch. 270	SB 31
77-2-303	amended	Ch. 418	SB 495
77-2-304	amended	Ch. 418	SB 495
77-2-325	amended	Ch. 270	SB 31
77-3-303	amended	Ch. 485	SB 510
77-4-201	amended	Ch. 7	HB 25
77-4-210	amended	Ch. 7	HB 25
77-5-116	enacted	Ch. 259	SB 354
77-5-211	repealed	Ch. 270	SB 31
77-6-302	amended	Ch. 270	SB 31
77-6-304	repealed	Ch. 270	SB 31
77-6-305	repealed	Ch. 270	SB 31
80-2-103	amended	Ch. 34	SB 133
80-2-201	amended	Ch. 574	HB 124
80-2-203	amended	Ch. 574	HB 124
80-2-204	amended	Ch. 574	HB 124
80-2-205	amended	Ch. 574	HB 124
80-2-206	amended	Ch. 574	HB 124
80-2-207	amended	Ch. 574	HB 124
80-2-209	amended	Ch. 574	HB 124
80-2-221	amended	Ch. 574	HB 124
80-2-222	amended	Ch. 574	HB 124
80-2-223	repealed	Ch. 574	HB 124
80-2-224	amended	Ch. 574	HB 124
80-2-225	amended	Ch. 574	HB 124
80-2-226	amended	Ch. 574	HB 124
80-2-228	amended	Ch. 574	HB 124
80-2-229	amended	Ch. 574	HB 124
80-2-230	amended	Ch. 257	SB 144
	amended	Ch. 574	HB 124
80-2-231	amended	Ch. 574	HB 124
80-2-232	amended	Ch. 574	HB 124
80-2-244	amended	Ch. 574	HB 124

80-4-402	amended	Ch. 168	SB 55
80-4-429	amended	Ch. 168	SB 55
80-4-526	amended	Ch. 168	SB 55
80-5-120	amended	Ch. 407	SB 326
80-5-123	amended	Ch. 567	HB 628
80-5-501	enacted	Ch. 567	HB 628
80-5-502	enacted	Ch. 567	HB 628
80-5-503	enacted	Ch. 567	HB 628
80-5-504	enacted	Ch. 567	HB 628
80-5-505	enacted	Ch. 567	HB 628
80-5-506	enacted	Ch. 567	HB 628
80-5-507	enacted	Ch. 567	HB 628
80-5-508	enacted	Ch. 567	HB 628
80-5-509	enacted	Ch. 567	HB 628
80-5-510	enacted	Ch. 567	HB 628
80-6-101	amended	Ch. 7	HB 25
80-7-105	amended	Ch. 407	SB 326
80-7-133	amended	Ch. 407	SB 326
80-7-704	amended	Ch. 257	SB 144
80-7-705	enacted	Ch. 407	SB 326
80-7-801	amended	Ch. 407	SB 326
80-7-810	repealed	Ch. 574	HB 124
80-7-814	amended	Ch. 574	HB 124
80-7-815	amended	Ch. 407	SB 326
	amended	Ch. 574	HB 124
80-7-816	amended	Ch. 7	HB 25
	amended	Ch. 407	SB 326
	amended	Ch. 574	HB 124
80-7-822	amended	Ch. 574	HB 124
80-7-823	enacted	Ch. 407	SB 326
80-7-903	amended	Ch. 407	SB 326
80-8-201	amended	Ch. 141	SB 143
80-8-204	amended	Ch. 483	SB 445
80-11-402	amended	Ch. 46	HB 141
80-11-412	amended	Ch. 46	HB 141
80-11-413	amended	Ch. 46	HB 141
80-11-414	amended	Ch. 46	HB 141
80-11-417	amended	Ch. 46	HB 141
80-12-201	amended	Ch. 591	SB 506
80-15-302	amended	Ch. 141	SB 143
80-18-101	enacted	Ch. 360	SB 261
80-18-102	enacted	Ch. 360	SB 261
80-18-103	enacted	Ch. 360	SB 261
80-18-106	enacted	Ch. 360	SB 261
80-18-107	enacted	Ch. 360	SB 261
80-18-110	enacted	Ch. 360	SB 261
80-18-111	enacted	Ch. 360	SB 261
80-20-101	enacted	Ch. 441	HB 387
80-20-102	enacted	Ch. 441	HB 387
80-20-103	enacted	Ch. 441	HB 387
80-20-104	enacted	Ch. 441	HB 387
81-4-310	amended	Ch. 512	HB 418
81-4-311	enacted	Ch. 512	HB 418
81-5-110	amended	Ch. 554	HB 41
81-5-111	amended	Ch. 554	HB 41
81-6-101	amended	Ch. 574	HB 124
81-6-104	amended	Ch. 574	HB 124
81-6-106	amended	Ch. 574	HB 124
81-6-204	amended	Ch. 574	HB 124

81-6-205.	amended	Ch. 574	HB 124
81-6-209.	amended	Ch. 574	HB 124
81-6-210.	amended	Ch. 574	HB 124
81-7-101.	amended	Ch. 316	SB 163
81-7-102.	amended	Ch. 316	SB 163
81-7-103.	amended	Ch. 316	SB 163
81-7-104.	amended	Ch. 316	SB 163
	amended	Ch. 574	HB 124
81-7-113.	amended	Ch. 574	HB 124
81-7-114.	amended	Ch. 574	HB 124
81-7-118.	amended	Ch. 257	SB 144
	amended	Ch. 574	HB 124
81-7-201.	amended	Ch. 574	HB 124
81-7-202.	amended	Ch. 574	HB 124
81-8-503.	amended	Ch. 574	HB 124
81-8-504.	amended	Ch. 574	HB 124
81-9-232.	amended	Ch. 7	HB 25
81-20-201	amended	Ch. 225	HB 346
81-23-303	amended	Ch. 7	HB 25
82-2-221.	amended	Ch. 125	SB 7
82-2-222.	amended	Ch. 125	SB 7
82-2-224.	amended	Ch. 125	SB 7
82-4-112.	amended	Ch. 79	HB 126
82-4-122.	amended	Ch. 299	SB 377
82-4-130.	amended	Ch. 79	HB 126
82-4-205.	amended	Ch. 79	HB 126
82-4-206.	amended	Ch. 79	HB 126
82-4-231.	amended	Ch. 82	HB 147
	amended	Ch. 299	SB 377
82-4-241.	amended	Ch. 338	SB 449
82-4-250	enacted	Ch. 522	HB 495
82-4-254.	amended	Ch. 79	HB 126
82-4-303.	amended	Ch. 488	HB 69
82-4-311.	amended	Ch. 338	SB 449
82-4-312	enacted	Ch. 460	SB 484
82-4-313	enacted	Ch. 460	SB 484
82-4-314	enacted	Ch. 460	SB 484
82-4-315	enacted	Ch. 460	SB 484
82-4-331.	amended	Ch. 488	HB 69
82-4-332.	amended	Ch. 488	HB 69
82-4-335.	amended	Ch. 488	HB 69
82-4-337.	amended	Ch. 299	SB 377
82-4-338.	amended	Ch. 79	HB 126
	amended	Ch. 488	HB 69
82-4-339.	amended	Ch. 488	HB 69
82-4-341.	amended	Ch. 488	HB 69
82-4-353.	amended	Ch. 79	HB 126
82-4-360.	amended	Ch. 488	HB 69
82-4-361.	amended	Ch. 79	HB 126
82-4-362.	amended	Ch. 79	HB 126
82-4-402.	amended	Ch. 325	SB 375
82-4-422.	amended	Ch. 79	HB 126
	amended	Ch. 325	SB 375
82-4-424.	amended	Ch. 338	SB 449
82-4-426.	amended	Ch. 338	SB 449
82-4-427.	amended	Ch. 79	HB 126
82-4-432.	amended	Ch. 299	SB 377
	amended	Ch. 325	SB 375
82-4-434.	amended	Ch. 325	SB 375

82-4-436	enacted	Ch. 325	SB 375
82-4-441	amended	Ch. 79	HB 126
	amended	Ch. 325	SB 375
82-10-303	amended	Ch. 125	SB 7
82-10-304	amended	Ch. 125	SB 7
82-10-305	amended	Ch. 125	SB 7
82-11-135	amended	Ch. 306	HB 642
82-11-172	enacted	Ch. 578	HB 573
82-11-173	enacted	Ch. 578	HB 573
82-11-174	enacted	Ch. 578	HB 573
82-15-101	amended	Ch. 483	SB 445
85-1-204	amended	Ch. 125	SB 7
85-1-209	amended	Ch. 125	SB 7
85-1-219	amended	Ch. 382	HB 46
85-1-602	amended	Ch. 169	SB 91
85-1-615	amended	Ch. 7	HB 25
85-2-102	amended	Ch. 78	HB 114
85-2-114	amended	Ch. 457	HB 570
85-2-122	amended	Ch. 381	HB 33
	amended	Ch. 457	HB 570
85-2-123	amended	Ch. 457	HB 570
85-2-302	amended	Ch. 78	HB 114
85-2-306	amended	Ch. 78	HB 114
85-2-350	enacted	Ch. 447	HB 397
85-2-351	enacted	Ch. 447	HB 397
85-2-402	amended	Ch. 132	HB 129
	amended	Ch. 381	HB 33
85-2-407	amended	Ch. 381	HB 33
	amended	Ch. 433	HB 455
85-2-410	enacted	Ch. 381	HB 33
85-2-419	amended	Ch. 381	HB 33
85-2-505	amended	Ch. 578	HB 573
85-2-516	amended	Ch. 78	HB 114
85-2-521	enacted	Ch. 578	HB 573
85-3-412	amended	Ch. 574	HB 124
85-3-422	amended	Ch. 574	HB 124
85-3-423	amended	Ch. 278	SB 138
	amended	Ch. 574	HB 124
85-7-1411	amended	Ch. 125	SB 7
85-7-1505	amended	Ch. 387	HB 210
85-7-1616	amended	Ch. 483	SB 445
85-7-1904	amended	Ch. 125	SB 7
85-7-1913	amended	Ch. 483	SB 445
85-7-1932	amended	Ch. 125	SB 7
85-7-2103	amended	Ch. 392	HB 552
85-9-104	amended	Ch. 7	HB 25
85-9-406	amended	Ch. 29	HB 23
85-9-410	amended	Ch. 125	SB 7
85-20-801	amended	Ch. 187	SB 42
85-20-1001	enacted	Ch. 256	HB 626
85-20-1002	enacted	Ch. 256	HB 626
85-20-1003	enacted	Ch. 256	HB 626
85-20-1004	enacted	Ch. 256	HB 626
85-20-1005	enacted	Ch. 256	HB 626
85-20-1006	enacted	Ch. 256	HB 626
85-20-1007	enacted	Ch. 256	HB 626
85-20-1008	enacted	Ch. 256	HB 626
87-1-114	amended	Ch. 257	SB 144

87-1-209	amended	Ch. 7	HB 25
	amended	Ch. 125	SB 7
87-1-221	amended	Ch. 7	HB 25
87-1-242	amended	Ch. 7	HB 25
87-1-246	amended	Ch. 7	HB 25
87-1-247	amended	Ch. 365	SB 304
87-1-248	amended	Ch. 365	SB 304
87-1-249	amended	Ch. 365	SB 304
87-1-264	enacted	Ch. 407	SB 326
87-1-265	amended	Ch. 216	SB 285
87-1-267	amended	Ch. 216	SB 285
87-1-269	amended	Ch. 196	HB 292
87-1-270	amended	Ch. 216	SB 285
87-1-285	enacted	Ch. 196	HB 292
87-1-286	enacted	Ch. 196	HB 292
87-1-301	amended	Ch. 575	HB 142
87-1-304	amended	Ch. 3	HB 39
87-1-601	amended	Ch. 34	SB 133
	amended	Ch. 257	SB 144
87-2-102	amended	Ch. 60	SB 54
87-2-106	amended	Ch. 321	SB 262
87-2-202	amended	Ch. 216	SB 285
	amended	Ch. 321	SB 262
	amended	Ch. 528	HB 554
87-2-302	amended	Ch. 528	HB 554
87-2-304	amended	Ch. 528	HB 554
87-2-306	amended	Ch. 3	HB 39
87-2-403	amended	Ch. 528	HB 554
87-2-411	amended	Ch. 129	SB 238
87-2-504	amended	Ch. 528	HB 554
87-2-505	amended	Ch. 216	SB 285
	amended	Ch. 528	HB 554
87-2-510	amended	Ch. 216	SB 285
	amended	Ch. 528	HB 554
87-2-513	enacted	Ch. 519	HB 454
87-2-520	enacted	Ch. 590	SB 437
87-2-701	amended	Ch. 528	HB 554
87-2-711	amended	Ch. 216	SB 285
87-2-803	amended	Ch. 248	HB 451
87-2-805	amended	Ch. 49	HB 185
87-3-102	amended	Ch. 275	SB 104
87-3-124	amended	Ch. 275	SB 104
87-3-127	amended	Ch. 316	SB 163
87-3-130	amended	Ch. 275	SB 104
	amended	Ch. 316	SB 163
87-3-504	amended	Ch. 275	SB 104
87-4-808	amended	Ch. 257	SB 144
87-5-102	amended	Ch. 301	SB 431
	amended	Ch. 521	HB 492
87-5-105	amended	Ch. 316	SB 163
87-5-116	enacted	Ch. 301	SB 431
87-5-131	enacted	Ch. 316	SB 163
90-1-103	amended	Ch. 348	SB 479
90-1-112	enacted	Ch. 483	SB 445
90-1-113	enacted	Ch. 483	SB 445
90-1-114	enacted	Ch. 483	SB 445
90-1-131	amended	Ch. 69	HB 21
90-1-135	amended	Ch. 69	HB 21
90-1-141	enacted	Ch. 307	HB 650

90-1-142	enacted	Ch. 307	HB 650
90-1-143	enacted	Ch. 307	HB 650
90-1-144	enacted	Ch. 307	HB 650
90-1-145	enacted	Ch. 307	HB 650
90-1-146	enacted	Ch. 307	HB 650
90-1-147	enacted	Ch. 307	HB 650
90-3-1001	amended	Ch. 34	SB 133
	amended	Ch. 483	SB 445
90-3-1002	amended	Ch. 34	SB 133
	amended	Ch. 431	HB 368
90-3-1003	amended	Ch. 34	SB 133
	amended	Ch. 431	HB 368
90-3-1004	repealed	Ch. 7	HB 25
90-4-102	amended	Ch. 591	SB 506
90-4-302	amended	Ch. 593	SB 521
90-4-310	amended	Ch. 593	SB 521
90-4-313	amended	Ch. 593	SB 521
90-4-605	amended	Ch. 240	HB 12
90-4-606	amended	Ch. 240	HB 12
90-5-101	amended	Ch. 353	SB 181
	amended	Ch. 541	HB 643
	amended	Ch. 591	SB 506
90-5-108	amended	Ch. 353	SB 181
90-5-112	amended	Ch. 495	HB 179
	amended	Ch. 574	HB 124
90-6-107	amended	Ch. 34	SB 133
90-6-133	amended	Ch. 502	HB 273
90-6-302	amended	Ch. 7	HB 25
90-6-305	amended	Ch. 307	HB 650
90-6-306	repealed	Ch. 307	HB 650
90-6-715	amended	Ch. 233	HB 190
	amended	Ch. 435	HB 11
90-7-101	amended	Ch. 137	SB 34
90-7-102	amended	Ch. 137	SB 34
90-7-103	amended	Ch. 137	SB 34
90-7-104	amended	Ch. 137	SB 34
90-7-202	amended	Ch. 137	SB 34
90-7-211	amended	Ch. 137	SB 34
90-7-213	amended	Ch. 137	SB 34
90-7-214	amended	Ch. 137	SB 34
90-7-220	amended	Ch. 137	SB 34
90-7-301	amended	Ch. 137	SB 34
90-7-302	amended	Ch. 137	SB 34
90-7-303	amended	Ch. 137	SB 34
90-7-304	amended	Ch. 137	SB 34
90-8-104	amended	Ch. 591	SB 506
90-9-103	amended	Ch. 171	SB 165
90-9-201	amended	Ch. 171	SB 165
90-9-202	amended	Ch. 171	SB 165
90-9-203	amended	Ch. 171	SB 165
90-9-301	amended	Ch. 171	SB 165
90-9-303	amended	Ch. 171	SB 165
90-9-306	amended	Ch. 171	SB 165
90-9-311	amended	Ch. 171	SB 165
90-9-312	amended	Ch. 171	SB 165
90-9-313	amended	Ch. 171	SB 165
90-9-316	amended	Ch. 171	SB 165
90-9-318	repealed	Ch. 171	SB 165
90-11-101	amended	Ch. 178	HB 374

90-11-102	amended	Ch. 69	HB 21
	amended	Ch. 178	HB 374

TABLE OF
SESSION LAWS AFFECTED

TABLE OF SESSION LAWS AFFECTED

Laws Affected	Action	Chapter	Bill Number
Laws of 1991			
Ch. 712, sec. 9	amended	398	SB 92
Laws of 1993			
Ch. 511, sec. 6	amended	95	HB 132
Laws of 1995			
Ch. 64, sec. 2	repealed	7	HB 25
Ch. 244, sec. 7	repealed	316	SB 103
Ch. 476, sec. 9, 10	amended	95	HB 132
Ch. 542, sec. 4, 5	amended	398	SB 92
Laws of 1997			
Ch. 349, sec. 41	repealed	430	HB 564
Ch. 355, sec. 6	repealed	21	HB 99
Ch. 375, sec. 18	amended	152	HB 329
Ch. 411, sec. 1	amended	398	SB 92
Ch. 461, sec. 5	amended	270	SB 31
Ch. 469, sec. 4	amended	573	HB 5
Ch. 537, sec. 9	amended	226	HB 377
Laws of 1999			
Ch. 49, sec. 4	amended	239	HB 10
Ch. 187, sec. 6	repealed	430	HB 564
Ch. 269, sec. 5	amended	589	SB 432
Ch. 305, sec. 164	amended	179	SB 23
Ch. 400, sec. 4	repealed	12	HB 51
Ch. 419, sec. 2	amended	232	HB 7
Ch. 460, sec. 6	repealed	130	SB 425
Ch. 461, sec. 7	repealed	127	SB 115
Ch. 469, sec. 5	amended	160	HB 402
Ch. 471, sec. 79, 81	amended	490	HB 116
Ch. 475, sec. 9	repealed	53	HB 258
Ch. 495, sec. 6	amended	70	HB 40
Ch. 512, sec. 19	amended	69	HB 21
Ch. 518, sec. 2	amended	486	HB 14
Ch. 550, sec. 6	repealed	372	SB 333
Ch. 557, sec. 2	amended	573	HB 5
Ch. 568, sec. 4	repealed	49	HB 185
Special Laws of May 2000			
Ch. 6, sec. 1	amended	589	SB 432
Laws of 2001			
Ch. 95, sec. 5	amended	574	HB 124

TABLE OF
SENATE BILL TO
CHAPTER NUMBER

SENATE BILL TO CHAPTER NUMBER

Bill Number	Chapter Number
SB 3	269
SB 4	583
SB 6	113
SB 7	125
SB 8	185
SB 10	210
SB 11	57
SB 19	584
SB 20	136
SB 23	179
SB 28	542
SB 29	114
SB 30	65
SB 31	270
SB 32	58
SB 33	186
SB 34	137
SB 37	66
SB 38	211
SB 40	18
SB 41	88
SB 42	187
SB 44	108
SB 45	59
SB 46	397
SB 48	543
SB 50	271
SB 51	272
SB 52	202
SB 53	167
SB 54	60
SB 55	168
SB 56	188
SB 58	115
SB 59	89
SB 60	273
SB 61	32
SB 65	464
SB 74	180
SB 75	67
SB 77	465
SB 78	116
SB 80	308
SB 81	189
SB 82	466
SB 87	6
SB 89	309
SB 90	181
SB 91	169
SB 92	398
SB 93	33
SB 94	231
SB 96	274
SB 97	138
SB 102	139
SB 103	117
SB 104	275
SB 105	126
SB 106	140
SB 107	212
SB 108	310
SB 112	41
SB 113	118
SB 115	127
SB 116	311
SB 117	220
SB 120	42
SB 122	109
SB 128	312
SB 129	467
SB 130	276
SB 131	313
SB 132	277
SB 133	34
SB 134	399
SB 135	544
SB 138	278
SB 142	90
SB 143	141
SB 144	257
SB 145	314
SB 146	213
SB 147	315
SB 148	91
SB 149	92
SB 150	119
SB 151	545
SB 152	279
SB 153	120
SB 156	68
SB 157	121
SB 159	230
SB 161	170
SB 162	400
SB 163	316
SB 164	214
SB 165	171
SB 166	190
SB 167	280
SB 168	317
SB 169	351
SB 170	281
SB 171	352
SB 172	61
SB 175	191
SB 176	585

SB 179	569
SB 180	35
SB 181	353
SB 182	318
SB 184	215
SB 185	401
SB 187	354
SB 189	36
SB 190	355
SB 191	402
SB 192	37
SB 194	192
SB 197	282
SB 199	203
SB 203	283
SB 204	284
SB 205	122
SB 207	165
SB 209	172
SB 210	285
SB 211	128
SB 214	38
SB 218	356
SB 219	123
SB 221	286
SB 226	319
SB 228	193
SB 229	287
SB 234	173
SB 235	62
SB 236	357
SB 237	358
SB 238	129
SB 240	403
SB 241	288
SB 242	546
SB 245	262
SB 248	359
SB 252	174
SB 253	263
SB 254	124
SB 256	320
SB 257	194
SB 258	468
SB 259	204
SB 260	205
SB 261	360
SB 262	321
SB 263	469
SB 264	470
SB 265	361
SB 268	195
SB 269	175
SB 274	471
SB 279	289
SB 280	404
SB 281	472
SB 282	473
SB 283	570
SB 285	216
SB 286	264
SB 288	362
SB 289	290
SB 290	258
SB 293	363
SB 298	364
SB 300	291
SB 303	463
SB 304	365
SB 305	292
SB 306	217
SB 309	366
SB 310	367
SB 311	368
SB 313	474
SB 315	475
SB 317	405
SB 318	369
SB 319	293
SB 321	235
SB 322	586
SB 323	229
SB 324	370
SB 325	406
SB 326	407
SB 327	547
SB 328	371
SB 329	408
SB 330	322
SB 333	372
SB 334	218
SB 338	476
SB 339	571
SB 340	294
SB 344	409
SB 346	410
SB 348	477
SB 350	411
SB 354	259
SB 355	373
SB 356	323
SB 357	295
SB 358	296
SB 359	324
SB 360	297
SB 361	236
SB 368	412
SB 370	176
SB 373	298
SB 375	325
SB 376	478
SB 377	299
SB 378	326
SB 379	413
SB 380	327
SB 386	587
SB 387	328
SB 390	237

SB 393	414
SB 394	462
SB 396	329
SB 397	330
SB 398	588
SB 405	265
SB 408	300
SB 420	331
SB 421	177
SB 423	548
SB 425	130
SB 426	332
SB 427	479
SB 428	333
SB 429	374
SB 431	301
SB 432	589
SB 433	334
SB 436	480
SB 437	590
SB 438	335
SB 440	336
SB 441	481
SB 442	482
SB 443	302
SB 445	483
SB 448	337
SB 449	338
SB 450	339
SB 451	415
SB 454	416
SB 455	340
SB 457	549
SB 459	303
SB 465	341
SB 466	342
SB 469	343
SB 473	344
SB 474	345
SB 476	346
SB 477	347
SB 479	348
SB 480	349
SB 482	238
SB 484	460
SB 489	417
SB 491	350
SB 493	375
SB 494	484
SB 495	418
SB 501	419
SB 506	591
SB 508	592
SB 510	485
SB 511	420
SB 514	461
SB 519	421
SB 521	593

TABLE OF

HOUSE BILL TO

CHAPTER NUMBER

HOUSE BILL TO CHAPTER NUMBER

Bill Number	Chapter Number
HB 1	1
HB 2	572
HB 3	550
HB 4	551
HB 5	573
HB 6	552
HB 7	232
HB 8	266
HB 9	434
HB 10	239
HB 11	435
HB 12	240
HB 13	553
HB 14	486
HB 17	2
HB 18	93
HB 19	43
HB 20	44
HB 21	69
HB 22	19
HB 23	29
HB 24	10
HB 25	7
HB 26	14
HB 27	131
HB 29	241
HB 30	221
HB 33	381
HB 34	8
HB 36	11
HB 37	26
HB 38	242
HB 39	3
HB 40	70
HB 41	554
HB 42	555
HB 44	94
HB 45	9
HB 46	382
HB 47	487
HB 50	23
HB 51	12
HB 52	4
HB 56	13
HB 57	422
HB 63	423
HB 69	488
HB 71	71
HB 73	489
HB 74	98
HB 78	72
HB 80	63
HB 83	39
HB 87	424
HB 91	15
HB 93	20
HB 94	383
HB 97	45
HB 98	5
HB 99	21
HB 103	73
HB 104	74
HB 108	75
HB 109	222
HB 110	76
HB 111	40
HB 112	77
HB 113	31
HB 114	78
HB 115	16
HB 116	490
HB 117	17
HB 118	491
HB 119	425
HB 120	492
HB 121	556
HB 124	574
HB 125	384
HB 126	79
HB 127	142
HB 129	132
HB 130	80
HB 131	206
HB 132	95
HB 134	133
HB 138	81
HB 141	46
HB 142	575
HB 143	143
HB 144	557
HB 145	47
HB 146	576
HB 147	82
HB 148	110
HB 151	493
HB 152	99
HB 154	494
HB 155	30
HB 156	385
HB 157	144
HB 160	145
HB 164	146
HB 165	558
HB 166	386
HB 172	559
HB 174	100

HB 175	101
HB 176	48
HB 179	495
HB 180	24
HB 185	49
HB 186	426
HB 190	233
HB 191	64
HB 192	50
HB 194	22
HB 195	243
HB 201	427
HB 204	96
HB 208	496
HB 210	387
HB 213	223
HB 214	497
HB 216	498
HB 218	428
HB 219	224
HB 220	25
HB 221	97
HB 223	83
HB 226	594
HB 230	499
HB 231	51
HB 234	52
HB 235	27
HB 238	102
HB 239	429
HB 241	134
HB 246	28
HB 247	500
HB 249	376
HB 254	560
HB 256	561
HB 258	53
HB 261	260
HB 263	147
HB 265	377
HB 266	501
HB 267	148
HB 268	103
HB 271	54
HB 272	84
HB 273	502
HB 279	388
HB 281	219
HB 286	104
HB 290	562
HB 292	196
HB 294	149
HB 295	563
HB 298	150
HB 300	111
HB 308	85
HB 309	86
HB 313	503
HB 317	389
HB 319	261
HB 320	504
HB 321	151
HB 324	505
HB 325	55
HB 329	152
HB 331	378
HB 332	244
HB 334	506
HB 336	153
HB 340	564
HB 345	507
HB 346	225
HB 348	508
HB 349	379
HB 351	135
HB 353	437
HB 354	154
HB 358	105
HB 359	565
HB 360	509
HB 362	438
HB 363	207
HB 365	155
HB 368	431
HB 369	56
HB 374	178
HB 375	436
HB 377	226
HB 378	208
HB 381	444
HB 382	446
HB 383	156
HB 386	182
HB 387	441
HB 390	445
HB 391	157
HB 392	158
HB 393	159
HB 395	510
HB 397	447
HB 399	448
HB 401	432
HB 402	160
HB 405	449
HB 406	450
HB 408	245
HB 409	511
HB 411	87
HB 412	451
HB 417	106
HB 418	512
HB 419	246
HB 430	452
HB 434	390
HB 437	439
HB 439	197
HB 440	183
HB 442	513

HB 443	161
HB 444	247
HB 447	304
HB 451	248
HB 452	514
HB 454	519
HB 455	433
HB 456	440
HB 458	107
HB 459	267
HB 461	249
HB 462	112
HB 463	520
HB 468	250
HB 469	443
HB 472	442
HB 473	268
HB 474	577
HB 477	251
HB 479	162
HB 488	252
HB 491	391
HB 492	521
HB 493	163
HB 495	522
HB 496	515
HB 498	453
HB 499	516
HB 500	517
HB 502	518
HB 504	227
HB 505	253
HB 510	454
HB 515	164
HB 516	566
HB 517	523
HB 519	198
HB 521	524
HB 523	209
HB 526	525
HB 529	254
HB 531	526
HB 533	255
HB 537	228
HB 539	455
HB 542	184
HB 543	527
HB 548	199
HB 551	201
HB 552	392
HB 554	528
HB 559	456
HB 560	529
HB 563	530
HB 564	430
HB 569	393
HB 570	457
HB 572	531
HB 573	578
HB 577	394
HB 578	532
HB 579	200
HB 582	166
HB 583	533
HB 589	534
HB 596	458
HB 599	234
HB 600	579
HB 603	535
HB 605	536
HB 608	305
HB 609	459
HB 610	380
HB 612	537
HB 615	395
HB 619	538
HB 620	539
HB 623	540
HB 625	580
HB 626	256
HB 628	567
HB 637	581
HB 639	396
HB 642	306
HB 643	541
HB 644	568
HB 645	582
HB 650	307

TABLE OF
CHAPTER NUMBER TO
BILL NUMBER

CHAPTER NUMBER TO BILL NUMBER

Chapter Number	Bill Number
Ch. 1	HB 1
Ch. 2	HB 17
Ch. 3	HB 39
Ch. 4	HB 52
Ch. 5	HB 98
Ch. 6	SB 87
Ch. 7	HB 25
Ch. 8	HB 34
Ch. 9	HB 45
Ch. 10	HB 24
Ch. 11	HB 36
Ch. 12	HB 51
Ch. 13	HB 56
Ch. 14	HB 26
Ch. 15	HB 91
Ch. 16	HB 115
Ch. 17	HB 117
Ch. 18	SB 40
Ch. 19	HB 22
Ch. 20	HB 93
Ch. 21	HB 99
Ch. 22	HB 194
Ch. 23	HB 50
Ch. 24	HB 180
Ch. 25	HB 220
Ch. 26	HB 37
Ch. 27	HB 235
Ch. 28	HB 246
Ch. 29	HB 23
Ch. 30	HB 155
Ch. 31	HB 113
Ch. 32	SB 61
Ch. 33	SB 93
Ch. 34	SB 133
Ch. 35	SB 180
Ch. 36	SB 189
Ch. 37	SB 192
Ch. 38	SB 214
Ch. 39	HB 83
Ch. 40	HB 111
Ch. 41	SB 112
Ch. 42	SB 120
Ch. 43	HB 19
Ch. 44	HB 20
Ch. 45	HB 97
Ch. 46	HB 141
Ch. 47	HB 145
Ch. 48	HB 176
Ch. 49	HB 185
Ch. 50	HB 192
Ch. 51	HB 231
Ch. 52	HB 234
Ch. 53	HB 258
Ch. 54	HB 271
Ch. 55	HB 325
Ch. 56	HB 369
Ch. 57	SB 11
Ch. 58	SB 32
Ch. 59	SB 45
Ch. 60	SB 54
Ch. 61	SB 172
Ch. 62	SB 235
Ch. 63	HB 80
Ch. 64	HB 191
Ch. 65	SB 30
Ch. 66	SB 37
Ch. 67	SB 75
Ch. 68	SB 156
Ch. 69	HB 21
Ch. 70	HB 40
Ch. 71	HB 71
Ch. 72	HB 78
Ch. 73	HB 103
Ch. 74	HB 104
Ch. 75	HB 108
Ch. 76	HB 110
Ch. 77	HB 112
Ch. 78	HB 114
Ch. 79	HB 126
Ch. 80	HB 130
Ch. 81	HB 138
Ch. 82	HB 147
Ch. 83	HB 223
Ch. 84	HB 272
Ch. 85	HB 308
Ch. 86	HB 309
Ch. 87	HB 411
Ch. 88	SB 41
Ch. 89	SB 59
Ch. 90	SB 142
Ch. 91	SB 148
Ch. 92	SB 149
Ch. 93	HB 18
Ch. 94	HB 44
Ch. 95	HB 132
Ch. 96	HB 204
Ch. 97	HB 221
Ch. 98	HB 74
Ch. 99	HB 152
Ch. 100	HB 174
Ch. 101	HB 175
Ch. 102	HB 238
Ch. 103	HB 268
Ch. 104	HB 286
Ch. 105	HB 358
Ch. 106	HB 417

Ch. 107	HB 458
Ch. 108	SB 44
Ch. 109	SB 122
Ch. 110	HB 148
Ch. 111	HB 300
Ch. 112	HB 462
Ch. 113	SB 6
Ch. 114	SB 29
Ch. 115	SB 58
Ch. 116	SB 78
Ch. 117	SB 103
Ch. 118	SB 113
Ch. 119	SB 150
Ch. 120	SB 153
Ch. 121	SB 157
Ch. 122	SB 205
Ch. 123	SB 219
Ch. 124	SB 254
Ch. 125	SB 7
Ch. 126	SB 105
Ch. 127	SB 115
Ch. 128	SB 211
Ch. 129	SB 238
Ch. 130	SB 425
Ch. 131	HB 27
Ch. 132	HB 129
Ch. 133	HB 134
Ch. 134	HB 241
Ch. 135	HB 351
Ch. 136	SB 20
Ch. 137	SB 34
Ch. 138	SB 97
Ch. 139	SB 102
Ch. 140	SB 106
Ch. 141	SB 143
Ch. 142	HB 127
Ch. 143	HB 143
Ch. 144	HB 157
Ch. 145	HB 160
Ch. 146	HB 164
Ch. 147	HB 263
Ch. 148	HB 267
Ch. 149	HB 294
Ch. 150	HB 298
Ch. 151	HB 321
Ch. 152	HB 329
Ch. 153	HB 336
Ch. 154	HB 354
Ch. 155	HB 365
Ch. 156	HB 383
Ch. 157	HB 391
Ch. 158	HB 392
Ch. 159	HB 393
Ch. 160	HB 402
Ch. 161	HB 443
Ch. 162	HB 479
Ch. 163	HB 493
Ch. 164	HB 515
Ch. 165	SB 207
Ch. 166	HB 582
Ch. 167	SB 53
Ch. 168	SB 55
Ch. 169	SB 91
Ch. 170	SB 161
Ch. 171	SB 165
Ch. 172	SB 209
Ch. 173	SB 234
Ch. 174	SB 252
Ch. 175	SB 269
Ch. 176	SB 370
Ch. 177	SB 421
Ch. 178	HB 374
Ch. 179	SB 23
Ch. 180	SB 74
Ch. 181	SB 90
Ch. 182	HB 386
Ch. 183	HB 440
Ch. 184	HB 542
Ch. 185	SB 8
Ch. 186	SB 33
Ch. 187	SB 42
Ch. 188	SB 56
Ch. 189	SB 81
Ch. 190	SB 166
Ch. 191	SB 175
Ch. 192	SB 194
Ch. 193	SB 228
Ch. 194	SB 257
Ch. 195	SB 268
Ch. 196	HB 292
Ch. 197	HB 439
Ch. 198	HB 519
Ch. 199	HB 548
Ch. 200	HB 579
Ch. 201	HB 551
Ch. 202	SB 52
Ch. 203	SB 199
Ch. 204	SB 259
Ch. 205	SB 260
Ch. 206	HB 131
Ch. 207	HB 363
Ch. 208	HB 378
Ch. 209	HB 523
Ch. 210	SB 10
Ch. 211	SB 38
Ch. 212	SB 107
Ch. 213	SB 146
Ch. 214	SB 164
Ch. 215	SB 184
Ch. 216	SB 285
Ch. 217	SB 306
Ch. 218	SB 334
Ch. 219	HB 281
Ch. 220	SB 117
Ch. 221	HB 30
Ch. 222	HB 109
Ch. 223	HB 213
Ch. 224	HB 219

Ch. 225	HB 346
Ch. 226	HB 377
Ch. 227	HB 504
Ch. 228	HB 537
Ch. 229	SB 323
Ch. 230	SB 159
Ch. 231	SB 94
Ch. 232	HB 7
Ch. 233	HB 190
Ch. 234	HB 599
Ch. 235	SB 321
Ch. 236	SB 361
Ch. 237	SB 390
Ch. 238	SB 482
Ch. 239	HB 10
Ch. 240	HB 12
Ch. 241	HB 29
Ch. 242	HB 38
Ch. 243	HB 195
Ch. 244	HB 332
Ch. 245	HB 408
Ch. 246	HB 419
Ch. 247	HB 444
Ch. 248	HB 451
Ch. 249	HB 461
Ch. 250	HB 468
Ch. 251	HB 477
Ch. 252	HB 488
Ch. 253	HB 505
Ch. 254	HB 529
Ch. 255	HB 533
Ch. 256	HB 626
Ch. 257	SB 144
Ch. 258	SB 290
Ch. 259	SB 354
Ch. 260	HB 261
Ch. 261	HB 319
Ch. 262	SB 245
Ch. 263	SB 253
Ch. 264	SB 286
Ch. 265	SB 405
Ch. 266	HB 8
Ch. 267	HB 459
Ch. 268	HB 473
Ch. 269	SB 3
Ch. 270	SB 31
Ch. 271	SB 50
Ch. 272	SB 51
Ch. 273	SB 60
Ch. 274	SB 96
Ch. 275	SB 104
Ch. 276	SB 130
Ch. 277	SB 132
Ch. 278	SB 138
Ch. 279	SB 152
Ch. 280	SB 167
Ch. 281	SB 170
Ch. 282	SB 197
Ch. 283	SB 203
Ch. 284	SB 204
Ch. 285	SB 210
Ch. 286	SB 221
Ch. 287	SB 229
Ch. 288	SB 241
Ch. 289	SB 279
Ch. 290	SB 289
Ch. 291	SB 300
Ch. 292	SB 305
Ch. 293	SB 319
Ch. 294	SB 340
Ch. 295	SB 357
Ch. 296	SB 358
Ch. 297	SB 360
Ch. 298	SB 373
Ch. 299	SB 377
Ch. 300	SB 408
Ch. 301	SB 431
Ch. 302	SB 443
Ch. 303	SB 459
Ch. 304	HB 447
Ch. 305	HB 608
Ch. 306	HB 642
Ch. 307	HB 650
Ch. 308	SB 80
Ch. 309	SB 89
Ch. 310	SB 108
Ch. 311	SB 116
Ch. 312	SB 128
Ch. 313	SB 131
Ch. 314	SB 145
Ch. 315	SB 147
Ch. 316	SB 163
Ch. 317	SB 168
Ch. 318	SB 182
Ch. 319	SB 226
Ch. 320	SB 256
Ch. 321	SB 262
Ch. 322	SB 330
Ch. 323	SB 356
Ch. 324	SB 359
Ch. 325	SB 375
Ch. 326	SB 378
Ch. 327	SB 380
Ch. 328	SB 387
Ch. 329	SB 396
Ch. 330	SB 397
Ch. 331	SB 420
Ch. 332	SB 426
Ch. 333	SB 428
Ch. 334	SB 433
Ch. 335	SB 438
Ch. 336	SB 440
Ch. 337	SB 448
Ch. 338	SB 449
Ch. 339	SB 450
Ch. 340	SB 455
Ch. 341	SB 465
Ch. 342	SB 466

Ch. 343	SB 469
Ch. 344	SB 473
Ch. 345	SB 474
Ch. 346	SB 476
Ch. 347	SB 477
Ch. 348	SB 479
Ch. 349	SB 480
Ch. 350	SB 491
Ch. 351	SB 169
Ch. 352	SB 171
Ch. 353	SB 181
Ch. 354	SB 187
Ch. 355	SB 190
Ch. 356	SB 218
Ch. 357	SB 236
Ch. 358	SB 237
Ch. 359	SB 248
Ch. 360	SB 261
Ch. 361	SB 265
Ch. 362	SB 288
Ch. 363	SB 293
Ch. 364	SB 298
Ch. 365	SB 304
Ch. 366	SB 309
Ch. 367	SB 310
Ch. 368	SB 311
Ch. 369	SB 318
Ch. 370	SB 324
Ch. 371	SB 328
Ch. 372	SB 333
Ch. 373	SB 355
Ch. 374	SB 429
Ch. 375	SB 493
Ch. 376	HB 249
Ch. 377	HB 265
Ch. 378	HB 331
Ch. 379	HB 349
Ch. 380	HB 610
Ch. 381	HB 33
Ch. 382	HB 46
Ch. 383	HB 94
Ch. 384	HB 125
Ch. 385	HB 156
Ch. 386	HB 166
Ch. 387	HB 210
Ch. 388	HB 279
Ch. 389	HB 317
Ch. 390	HB 434
Ch. 391	HB 491
Ch. 392	HB 552
Ch. 393	HB 569
Ch. 394	HB 577
Ch. 395	HB 615
Ch. 396	HB 639
Ch. 397	SB 46
Ch. 398	SB 92
Ch. 399	SB 134
Ch. 400	SB 162
Ch. 401	SB 185
Ch. 402	SB 191
Ch. 403	SB 240
Ch. 404	SB 280
Ch. 405	SB 317
Ch. 406	SB 325
Ch. 407	SB 326
Ch. 408	SB 329
Ch. 409	SB 344
Ch. 410	SB 346
Ch. 411	SB 350
Ch. 412	SB 368
Ch. 413	SB 379
Ch. 414	SB 393
Ch. 415	SB 451
Ch. 416	SB 454
Ch. 417	SB 489
Ch. 418	SB 495
Ch. 419	SB 501
Ch. 420	SB 511
Ch. 421	SB 519
Ch. 422	HB 57
Ch. 423	HB 63
Ch. 424	HB 87
Ch. 425	HB 119
Ch. 426	HB 186
Ch. 427	HB 201
Ch. 428	HB 218
Ch. 429	HB 239
Ch. 430	HB 564
Ch. 431	HB 368
Ch. 432	HB 401
Ch. 433	HB 455
Ch. 434	HB 9
Ch. 435	HB 11
Ch. 436	HB 375
Ch. 437	HB 353
Ch. 438	HB 362
Ch. 439	HB 437
Ch. 440	HB 456
Ch. 441	HB 387
Ch. 442	HB 472
Ch. 443	HB 469
Ch. 444	HB 381
Ch. 445	HB 390
Ch. 446	HB 382
Ch. 447	HB 397
Ch. 448	HB 399
Ch. 449	HB 405
Ch. 450	HB 406
Ch. 451	HB 412
Ch. 452	HB 430
Ch. 453	HB 498
Ch. 454	HB 510
Ch. 455	HB 539
Ch. 456	HB 559
Ch. 457	HB 570
Ch. 458	HB 596
Ch. 459	HB 609
Ch. 460	SB 484

Ch. 461	SB 514
Ch. 462	SB 394
Ch. 463	SB 303
Ch. 464	SB 65
Ch. 465	SB 77
Ch. 466	SB 82
Ch. 467	SB 129
Ch. 468	SB 258
Ch. 469	SB 263
Ch. 470	SB 264
Ch. 471	SB 274
Ch. 472	SB 281
Ch. 473	SB 282
Ch. 474	SB 313
Ch. 475	SB 315
Ch. 476	SB 338
Ch. 477	SB 348
Ch. 478	SB 376
Ch. 479	SB 427
Ch. 480	SB 436
Ch. 481	SB 441
Ch. 482	SB 442
Ch. 483	SB 445
Ch. 484	SB 494
Ch. 485	SB 510
Ch. 486	HB 14
Ch. 487	HB 47
Ch. 488	HB 69
Ch. 489	HB 73
Ch. 490	HB 116
Ch. 491	HB 118
Ch. 492	HB 120
Ch. 493	HB 151
Ch. 494	HB 154
Ch. 495	HB 179
Ch. 496	HB 208
Ch. 497	HB 214
Ch. 498	HB 216
Ch. 499	HB 230
Ch. 500	HB 247
Ch. 501	HB 266
Ch. 502	HB 273
Ch. 503	HB 313
Ch. 504	HB 320
Ch. 505	HB 324
Ch. 506	HB 334
Ch. 507	HB 345
Ch. 508	HB 348
Ch. 509	HB 360
Ch. 510	HB 395
Ch. 511	HB 409
Ch. 512	HB 418
Ch. 513	HB 442
Ch. 514	HB 452
Ch. 515	HB 496
Ch. 516	HB 499
Ch. 517	HB 500
Ch. 518	HB 502
Ch. 519	HB 454
Ch. 520	HB 463
Ch. 521	HB 492
Ch. 522	HB 495
Ch. 523	HB 517
Ch. 524	HB 521
Ch. 525	HB 526
Ch. 526	HB 531
Ch. 527	HB 543
Ch. 528	HB 554
Ch. 529	HB 560
Ch. 530	HB 563
Ch. 531	HB 572
Ch. 532	HB 578
Ch. 533	HB 583
Ch. 534	HB 589
Ch. 535	HB 603
Ch. 536	HB 605
Ch. 537	HB 612
Ch. 538	HB 619
Ch. 539	HB 620
Ch. 540	HB 623
Ch. 541	HB 643
Ch. 542	SB 28
Ch. 543	SB 48
Ch. 544	SB 135
Ch. 545	SB 151
Ch. 546	SB 242
Ch. 547	SB 327
Ch. 548	SB 423
Ch. 549	SB 457
Ch. 550	HB 3
Ch. 551	HB 4
Ch. 552	HB 6
Ch. 553	HB 13
Ch. 554	HB 41
Ch. 555	HB 42
Ch. 556	HB 121
Ch. 557	HB 144
Ch. 558	HB 165
Ch. 559	HB 172
Ch. 560	HB 254
Ch. 561	HB 256
Ch. 562	HB 290
Ch. 563	HB 295
Ch. 564	HB 340
Ch. 565	HB 359
Ch. 566	HB 516
Ch. 567	HB 628
Ch. 568	HB 644
Ch. 569	SB 179
Ch. 570	SB 283
Ch. 571	SB 339
Ch. 572	HB 2
Ch. 573	HB 5
Ch. 574	HB 124
Ch. 575	HB 142
Ch. 576	HB 146
Ch. 577	HB 474
Ch. 578	HB 573

Ch. 579	HB 600
Ch. 580	HB 625
Ch. 581	HB 637
Ch. 582	HB 645
Ch. 583	SB 4
Ch. 584	SB 19
Ch. 585	SB 176
Ch. 586	SB 322
Ch. 587	SB 386
Ch. 588	SB 398
Ch. 589	SB 432
Ch. 590	SB 437
Ch. 591	SB 506
Ch. 592	SB 508
Ch. 593	SB 521
Ch. 594	HB 226

TABLES OF
EFFECTIVE DATES
BY CHAPTER NUMBER
and
BY DATE

EFFECTIVE DATES
BY CHAPTER NUMBER

Chapter No.		Bill No.	Effective Date
Ch. 1		HB 1	01/18/2001
Ch. 2		HB 17	01/30/2001
Ch. 3		HB 39	02/07/2001
Ch. 4		HB 52	10/01/2001
Ch. 5		HB 98	07/01/2001
Ch. 6		SB 87	10/01/2001
Ch. 7		HB 25	10/01/2001
Ch. 8		HB 34	02/09/2001
Ch. 9		HB 45	02/09/2001
Ch. 10		HB 24	07/01/2001
Ch. 11		HB 36	02/14/2001
Ch. 12		HB 51	02/14/2001
Ch. 13		HB 56	02/14/2001
Ch. 14		HB 26	02/14/2001
Ch. 15		HB 91	02/14/2001
Ch. 16		HB 115	10/01/2001
Ch. 17		HB 117	10/01/2001
Ch. 18		SB 40	10/01/2001
Ch. 19		HB 22	02/19/2001
Ch. 20		HB 93	10/01/2001
Ch. 21		HB 99	02/19/2001
Ch. 22		HB 194	02/19/2001
Ch. 23	§§ 1-9 and 11-19	HB 50	01/01/2002
	§ 10		01/01/2004
Ch. 24		HB 180	10/01/2001
Ch. 25		HB 220	02/22/2001
Ch. 26		HB 37	07/01/2001
Ch. 27		HB 235	10/01/2001
Ch. 28		HB 246	03/01/2001
Ch. 29		HB 23	07/01/2001
Ch. 30		HB 155	10/01/2001
Ch. 31		HB 113	03/13/2001
Ch. 32	§§ 2(2) and 8	SB 61	03/13/2001
	§§ 1, 2(1), and 3-7		10/01/2001
Ch. 33		SB 93	03/13/2001
Ch. 34		SB 133	07/01/2001
Ch. 35		SB 180	03/13/2001
Ch. 36		SB 189	03/13/2001
Ch. 37		SB 192	03/13/2001
Ch. 38		SB 214	03/13/2001
Ch. 39		HB 83	10/01/2001
Ch. 40		HB 111	07/01/2001
Ch. 41		SB 112	03/14/2001
Ch. 42		SB 120	07/01/2001
Ch. 43		HB 19	03/16/2001
Ch. 44		HB 20	10/01/2001
Ch. 45		HB 97	03/16/2001
Ch. 46		HB 141	03/16/2001
Ch. 47		HB 145	03/16/2001
Ch. 48		HB 176	03/16/2001
Ch. 49		HB 185	03/16/2001

Ch.	50		HB	192.	10/01/2001
Ch.	51		HB	231.	10/01/2001
Ch.	52		HB	234.	07/01/2001
Ch.	53		HB	258.	07/01/2001
Ch.	54		HB	271.	03/16/2001
Ch.	55		HB	325.	10/01/2001
Ch.	56		HB	369.	10/01/2001
Ch.	57		SB	11.	03/16/2001
Ch.	58		SB	32.	07/01/2001
Ch.	59		SB	45.	03/16/2001
Ch.	60		SB	54.	03/16/2001
Ch.	61		SB	172.	03/16/2001
Ch.	62		SB	235.	03/16/2001
Ch.	63		HB	80.	10/01/2001
Ch.	64		HB	191.	03/16/2001
Ch.	65		SB	30.	10/01/2001
Ch.	66		SB	37.	03/16/2001
Ch.	67		SB	75.	03/16/2001
Ch.	68		SB	156.	03/16/2001
Ch.	69		HB	21.	03/19/2001
Ch.	70		HB	40.	06/30/2013
Ch.	71		HB	71.	03/20/2001
Ch.	72		HB	78.	10/01/2001
Ch.	73		HB	103.	10/01/2001
Ch.	74		HB	104.	03/20/2001
Ch.	75		HB	108.	03/19/2001
Ch.	76		HB	110.	07/01/2001
Ch.	77		HB	112.	07/01/2001
Ch.	78		HB	114.	03/20/2001
Ch.	79		HB	126.	03/20/2001
Ch.	80		HB	130.	10/01/2001
Ch.	81		HB	138.	10/01/2001
Ch.	82		HB	147.	03/20/2001
Ch.	83		HB	223.	03/20/2001
Ch.	84		HB	272.	10/01/2001
Ch.	85		HB	308.	03/19/2001
Ch.	86		HB	309.	03/20/2001
Ch.	87		HB	411.	03/20/2001
Ch.	88		SB	41.	07/01/2001
Ch.	89		SB	59.	03/20/2001
Ch.	90		SB	142.	10/01/2001
Ch.	91		SB	148.	10/01/2001
Ch.	92		SB	149.	10/01/2001
Ch.	93		HB	18.	03/21/2001
Ch.	94		HB	44.	03/21/2001
Ch.	95		HB	132.	07/01/2001
Ch.	96		HB	204.	10/01/2001
Ch.	97		HB	221.	03/21/2001
Ch.	98		HB	74.	10/01/2001
Ch.	99	§§ 1-28 and 30-133	HB	152.	03/21/2001
		§ 29			06/30/2001
Ch.	100		HB	174.	10/01/2001
Ch.	101		HB	175.	10/01/2001
Ch.	102		HB	238.	10/01/2001
Ch.	103		HB	268.	10/01/2001
Ch.	104		HB	286.	03/22/2001
Ch.	105		HB	358.	07/01/2001

Ch.	106	§§ 1-5, 6(1), 6(2), 6(4), and 7-12	HB	417	10/01/2001
		§ 6(3)			11/01/2002
Ch.	107		HB	458	10/01/2001
Ch.	108		SB	44	07/01/2001
Ch.	109		SB	122	10/01/2001
Ch.	110		HB	148	07/01/2001
Ch.	111		HB	300	10/01/2001
Ch.	112	§§ 2 and 5	HB	462	03/23/2001
		§§ 1, 3, and 4			10/01/2001
Ch.	113		SB	6	03/22/2001
Ch.	114		SB	29	10/01/2001
Ch.	115		SB	58	07/01/2001
Ch.	116		SB	78	03/23/2001
Ch.	117		SB	103	03/23/2001
Ch.	118		SB	113	03/23/2001
Ch.	119		SB	150	10/01/2001
Ch.	120		SB	153	07/01/2001
Ch.	121		SB	157	03/22/2001
Ch.	122		SB	205	10/01/2001
Ch.	123		SB	219	10/01/2001
Ch.	124		SB	254	07/01/2001
Ch.	125		SB	7	10/01/2001
Ch.	126		SB	105	03/26/2001
Ch.	127		SB	115	03/26/2001
Ch.	128		SB	211	03/26/2001
Ch.	129		SB	238	03/01/2002
Ch.	130		SB	425	03/26/2001
Ch.	131		HB	27	10/01/2001
Ch.	132		HB	129	03/27/2001
Ch.	133		HB	134	07/01/2001
Ch.	134		HB	241	10/01/2001
Ch.	135		HB	351	03/27/2001
Ch.	136		SB	20	10/01/2001
Ch.	137		SB	34	07/01/2001
Ch.	138		SB	97	07/01/2001
Ch.	139		SB	102	03/28/2001
Ch.	140		SB	106	10/01/2001
Ch.	141		SB	143	10/01/2001
Ch.	142		HB	127	07/01/2001
Ch.	143	§§ 8 and 18	HB	143	03/29/2001
		§§ 1-5, 7, 9-17, 19, and 20			10/01/2001
		§ 6			01/01/2003
Ch.	144		HB	157	07/01/2001
Ch.	145		HB	160	07/01/2001
Ch.	146		HB	164	07/01/2001
Ch.	147		HB	263	10/01/2001
Ch.	148		HB	267	07/01/2001
Ch.	149		HB	294	03/29/2001
Ch.	150		HB	298	03/28/2001
Ch.	151		HB	321	10/01/2001
Ch.	152		HB	329	03/29/2001
Ch.	153		HB	336	10/01/2001
Ch.	154		HB	354	03/29/2001
Ch.	155		HB	365	10/01/2001
Ch.	156		HB	383	10/01/2001
Ch.	157		HB	391	10/01/2001
Ch.	158		HB	392	07/01/2001
Ch.	159		HB	393	10/01/2001

Ch.	160		HB	402	03/29/2001
Ch.	161		HB	443	10/01/2001
Ch.	162		HB	479	03/28/2001
Ch.	163		HB	493	03/28/2001
Ch.	164		HB	515	03/29/2001
Ch.	165		SB	207	03/29/2001
Ch.	166		HB	582	10/01/2001
Ch.	167		SB	53	03/30/2001
Ch.	168		SB	55	03/30/2001
Ch.	169		SB	91	07/01/2001
Ch.	170		SB	161	03/30/2001
Ch.	171		SB	165	03/30/2001
Ch.	172		SB	209	03/30/2001
Ch.	173		SB	234	03/30/2001
Ch.	174		SB	252	03/30/2001
Ch.	175		SB	269	03/30/2001
Ch.	176		SB	370	03/30/2001
Ch.	177		SB	421	03/30/2001
Ch.	178		HB	374	04/02/2001
Ch.	179		SB	23	07/01/2001
Ch.	180		SB	74	10/01/2001
Ch.	181	§§ 1-17 and 19-29	SB	90	10/01/2001
		§ 18			07/01/2005
Ch.	182		HB	386	04/03/2001
Ch.	183		HB	440	04/03/2001
Ch.	184		HB	542	10/01/2001
Ch.	185		SB	8	10/01/2001
Ch.	186		SB	33	10/01/2001
Ch.	187		SB	42	04/03/2001
Ch.	188		SB	56	04/03/2001
Ch.	189		SB	81	07/01/2001
Ch.	190		SB	166	04/03/2001
Ch.	191		SB	175	04/03/2001
Ch.	192	§§ 5(2), 7, and 8	SB	194	04/03/2001
		§§ 1-4, 5(1), and 6			07/01/2001
Ch.	193		SB	228	04/03/2001
Ch.	194		SB	257	10/01/2001
Ch.	195		SB	268	07/01/2001
Ch.	196		HB	292	03/01/2002
Ch.	197		HB	439	10/01/2001
Ch.	198		HB	519	04/05/2001
Ch.	199		HB	548	10/01/2001
Ch.	200		HB	579	07/01/2001
Ch.	201		HB	551	10/01/2001
Ch.	202		SB	52	10/01/2001
Ch.	203		SB	199	10/01/2001
Ch.	204		SB	259	10/01/2001
Ch.	205		SB	260	04/05/2001
Ch.	206		HB	131	10/01/2001
Ch.	207		HB	363	10/01/2001
Ch.	208		HB	378	07/01/2001
Ch.	209		HB	523	07/01/2001
Ch.	210		SB	10	04/06/2001
Ch.	211		SB	38	10/01/2001
Ch.	212		SB	107	10/01/2001
Ch.	213		SB	146	04/06/2001
Ch.	214		SB	164	07/01/2001
Ch.	215		SB	184	10/01/2001
Ch.	216		SB	285	03/01/2002

Ch.	217		SB	306	07/01/2001
Ch.	218		SB	334	04/06/2001
Ch.	219		HB	281	10/01/2001
Ch.	220		SB	117	04/11/2001
Ch.	221		HB	30	10/01/2001
Ch.	222		HB	109	07/01/2001
Ch.	223		HB	213	04/12/2001
Ch.	224		HB	219	10/01/2001
Ch.	225		HB	346	04/12/2001
Ch.	226	§§ 1(4) and 7	HB	377	04/12/2001
		§§ 1(1)-1(3), 2-6, and 8			10/01/2001
Ch.	227		HB	504	10/01/2001
Ch.	228		HB	537	04/12/2001
Ch.	229		SB	323	04/12/2001
Ch.	230		SB	159	04/12/2001
Ch.	231	§§ 1, 3, and 4	SB	94	07/01/2001
		§ 2			07/01/2002
Ch.	232		HB	7	07/01/2001
Ch.	233		HB	190	04/13/2001
Ch.	234		HB	599	10/01/2001
Ch.	235		SB	321	01/01/2002
Ch.	236		SB	361	10/01/2001
Ch.	237	§§ 22-24	SB	390	04/13/2001
		§§ 1-21			07/01/2001
Ch.	238		SB	482	04/13/2001
Ch.	239	§§ 13 and 15	HB	10	04/16/2001
		§§ 1-12 and 14			07/01/2001
Ch.	240		HB	12	07/01/2001
Ch.	241		HB	29	10/01/2001
Ch.	242		HB	38	07/01/2001
Ch.	243		HB	195	10/01/2001
Ch.	244		HB	332	04/16/2001
Ch.	245		HB	408	04/16/2001
Ch.	246		HB	419	10/01/2001
Ch.	247	§§ 2-4	HB	444	04/16/2001
		§ 1			07/01/2001
Ch.	248		HB	451	04/16/2001
Ch.	249		HB	461	01/01/2002
Ch.	250		HB	468	07/01/2001
Ch.	251		HB	477	04/16/2001
Ch.	252		HB	488	07/01/2001
Ch.	253		HB	505	10/01/2001
Ch.	254		HB	529	10/01/2001
Ch.	255		HB	533	04/16/2001
Ch.	256		HB	626	10/01/2001
Ch.	257		SB	144	07/01/2001
Ch.	258		SB	290	10/01/2001
Ch.	259		SB	354	04/16/2001
Ch.	260		HB	261	07/01/2001
Ch.	261		HB	319	10/01/2001
Ch.	262		SB	245	10/01/2001
Ch.	263		SB	253	04/19/2001
Ch.	264		SB	286	04/19/2001
Ch.	265		SB	405	04/19/2001
Ch.	266		HB	8	07/01/2001
Ch.	267		HB	459	10/01/2001
Ch.	268		HB	473	04/20/2001
Ch.	269		SB	3	07/01/2001
Ch.	270		SB	31	04/20/2001

Ch.	271		SB	50	04/20/2001
Ch.	272	§§ 1-6 and 13-19	SB	51	04/20/2001
		§§ 7-12			Effective on the date that the secretary of state receives certification from the department of administration pursuant to (section 13) that the commissioner of internal revenue has determined that the plan established pursuant to (sections 1 through 10) is qualified for a tax exemption pursuant to section 501(c)(9) of the Internal Revenue Code.
Ch.	273		SB	60	07/01/2001
Ch.	274		SB	96	07/01/2001
Ch.	275		SB	104	04/20/2001
Ch.	276		SB	130	04/20/2001
Ch.	277		SB	132	07/01/2001
Ch.	278		SB	138	07/01/2001
Ch.	279		SB	152	10/01/2001
Ch.	280		SB	167	04/20/2001
Ch.	281		SB	170	10/01/2001
Ch.	282		SB	197	04/20/2001
Ch.	283		SB	203	10/01/2001
Ch.	284		SB	204	10/01/2001
Ch.	285		SB	210	10/01/2001
Ch.	286		SB	221	04/20/2001
Ch.	287		SB	229	10/01/2001
Ch.	288		SB	241	10/01/2001
Ch.	289		SB	279	04/20/2001
Ch.	290		SB	289	[This act] is effective contingent on the execution of an agreement between the department of military affairs and the public employees' retirement board establishing that employer contributions for all firefighters hired by the Montana air national guard pursuant to (section 2) will be paid with federal funds passed through the department of military affairs and remitted to the firefighters' unified retirement system in a manner prescribed by the public employees' retirement board. The board shall notify the secretary of state and the code commissioner when this contingency is met.
Ch.	291		SB	300	10/01/2001
Ch.	292		SB	305	07/01/2001
Ch.	293		SB	319	04/20/2001
Ch.	294		SB	340	04/20/2001
Ch.	295		SB	357	01/01/2002
Ch.	296		SB	358	10/01/2001
Ch.	297		SB	360	04/20/2001
Ch.	298		SB	373	07/01/2001
Ch.	299		SB	377	10/01/2001
Ch.	300		SB	408	04/20/2001
Ch.	301		SB	431	10/01/2001

Ch. 302		SB 443	10/01/2001
Ch. 303		SB 459	04/20/2001
Ch. 304		HB 447	07/01/2001
Ch. 305		HB 608	04/21/2001
Ch. 306	§§ 1, 2, and 4-6	HB 642	04/21/2001
	§ 3		[Section 3] is effective July 1 of the first year following the date that the governor by executive order certifies to the secretary of state that the resource indemnity trust fund balance has reached $100 million. The secretary of state shall notify the department of revenue, the department of administration, the code commissioner, and the legislative fiscal division of this certification.
Ch. 307		HB 650	07/01/2001
Ch. 308		SB 80	10/01/2001
Ch. 309		SB 89	04/21/2001
Ch. 310		SB 108	10/01/2001
Ch. 311		SB 116	10/01/2001
Ch. 312		SB 128	10/01/2001
Ch. 313		SB 131	07/01/2001
Ch. 314	§§ 6, 10, and 12-14	SB 145	04/21/2001
	§§ 1-5 and 8		07/01/2001
	§§ 7, 9, and 11		07/01/2002
Ch. 315		SB 147	04/21/2001
Ch. 316		SB 163	04/21/2001
Ch. 317		SB 168	01/01/2002
Ch. 318		SB 182	04/21/2001
Ch. 319		SB 226	10/01/2001
Ch. 320	§§ 1(2), 2(2), and 3-7	SB 256	04/21/2001
	§§ 1(1), 2(1), and 2(3)		07/01/2001
Ch. 321	§§ 1, 2, and 4-7	SB 262	04/21/2001
	§ 3		If one or more of the contingencies in (section 3) occur, the applicable contingency is effective upon certification of that contingency to the governor and the secretary of state and notification to the Montana code commissioner.
Ch. 322		SB 330	10/01/2001
Ch. 323		SB 356	04/21/2001
Ch. 324		SB 359	10/01/2001
Ch. 325		SB 375	10/01/2001
Ch. 326		SB 378	04/21/2001
Ch. 327		SB 380	10/01/2001
Ch. 328		SB 387	04/21/2001
Ch. 329		SB 396	07/01/2003 On approval by electorate
Ch. 330		SB 397	07/01/2003 On approval by electorate
Ch. 331		SB 420	10/01/2001
Ch. 332		SB 426	04/21/2001
Ch. 333		SB 428	07/01/2001
Ch. 334		SB 433	07/01/2001
Ch. 335		SB 438	10/01/2001
Ch. 336		SB 440	01/01/2002

Ch.	337		SB	448	04/21/2001
Ch.	338		SB	449	07/01/2001
Ch.	339		SB	450	04/21/2001
Ch.	340		SB	455	04/21/2001
Ch.	341	§§ 4, 7(22), 11(1), and 12-14	SB	465	04/21/2001
		§§ 1-3, 5, 6, 7(1)-7(21), 8-10, 11(2), and 15			07/01/2001
Ch.	342		SB	466	10/01/2001
Ch.	343		SB	469	04/21/2001
Ch.	344		SB	473	10/01/2001
Ch.	345		SB	474	04/21/2001
Ch.	346		SB	476	10/01/2001
Ch.	347		SB	477	10/01/2001
Ch.	348	§§ 9 and 11	SB	479	04/21/2001
		§§ 1-8 and 10			10/01/2001
Ch.	349		SB	480	04/21/2001
Ch.	350		SB	491	07/01/2001
Ch.	351		SB	169	10/01/2001
Ch.	352		SB	171	04/23/2001
Ch.	353		SB	181	10/01/2001
Ch.	354		SB	187	10/01/2001
Ch.	355		SB	190	01/01/2003
				On approval by electorate	
Ch.	356		SB	218	04/23/2001
Ch.	357		SB	236	04/23/2001
Ch.	358		SB	237	10/01/2001
Ch.	359		SB	248	04/23/2001
Ch.	360		SB	261	10/01/2001
Ch.	361		SB	265	10/01/2001
Ch.	362	§§ 1(4), 4, and 5	SB	288	04/23/2001
		§§ 1(1)-1(3), 1(5), 2, and 3			10/01/2001
Ch.	363		SB	293	04/23/2001
Ch.	364		SB	298	10/01/2001
Ch.	365		SB	304	07/01/2001
Ch.	366		SB	309	04/23/2001
Ch.	367		SB	310	04/23/2001
Ch.	368		SB	311	04/23/2001
Ch.	369		SB	318	07/01/2001
Ch.	370		SB	324	10/01/2001
Ch.	371		SB	328	10/01/2001
Ch.	372		SB	333	04/23/2001
Ch.	373		SB	355	10/01/2001
Ch.	374		SB	429	04/23/2001
Ch.	375		SB	493	01/01/2003
				On approval by electorate	
Ch.	376		HB	249	04/26/2001
Ch.	377		HB	265	07/01/2001
Ch.	378		HB	331	10/01/2001
Ch.	379		HB	349	04/26/2001
Ch.	380		HB	610	07/01/2003
Ch.	381		HB	33	04/27/2001
Ch.	382		HB	46	04/28/2001
Ch.	383		HB	94	04/28/2001
Ch.	384		HB	125	10/01/2001
Ch.	385		HB	156	04/28/2001
Ch.	386		HB	166	10/01/2001
Ch.	387		HB	210	10/01/2001
Ch.	388		HB	279	10/01/2001
Ch.	389		HB	317	04/28/2001

Ch.	390		HB	434.	04/28/2001
Ch.	391		HB	491.	04/28/2001
Ch.	392		HB	552.	07/01/2001
Ch.	393		HB	569.	04/28/2001
Ch.	394	§§ 1, 2, and 4-9	HB	577.	07/01/2001
		§ 3			01/01/2002
Ch.	395		HB	615.	07/01/2001
Ch.	396		HB	639.	07/01/2001
Ch.	397		SB	46.	07/01/2001
Ch.	398		SB	92.	10/01/2001
Ch.	399		SB	134.	01/01/2002
Ch.	400		SB	162.	04/28/2001
Ch.	401		SB	185.	10/01/2001
Ch.	402		SB	191.	04/28/2001
Ch.	403		SB	240.	04/28/2001
Ch.	404		SB	280.	07/01/2001
Ch.	405		SB	317.	07/01/2001
Ch.	406		SB	325.	04/28/2001
Ch.	407		SB	326.	07/01/2001
Ch.	408		SB	329.	07/01/2001
Ch.	409		SB	344.	07/01/2001
Ch.	410		SB	346.	04/28/2001
Ch.	411		SB	350.	04/28/2001
Ch.	412		SB	368.	10/01/2001
Ch.	413		SB	379.	04/28/2001
Ch.	414		SB	393.	04/28/2001
Ch.	415		SB	451.	10/01/2001
Ch.	416		SB	454.	04/28/2001
Ch.	417		SB	489.	07/01/2001
Ch.	418	§§ 1-4 and 6-13	SB	495.	07/01/2001
		§ 5			01/01/2003 If SB 493 is approved by electorate
Ch.	419		SB	501.	04/28/2001
Ch.	420		SB	511.	07/01/2001
Ch.	421		SB	519.	04/28/2001
Ch.	422		HB	57.	07/01/2001
Ch.	423	§§ 1(6), 1(7), and 10-17	HB	63.	04/30/2001
		§§ 1(1)-1(5) and 2-9			07/01/2002 Effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier.
Ch.	424		HB	87.	07/01/2001
Ch.	425		HB	119.	04/30/2001
Ch.	426		HB	186.	07/01/2001
Ch.	427		HB	201.	10/01/2001
Ch.	428		HB	218.	04/30/2001
Ch.	429		HB	239.	07/01/2001
Ch.	430		HB	564.	04/30/2001
Ch.	431		HB	368.	04/30/2001
Ch.	432		HB	401.	10/01/2001
Ch.	433		HB	455.	07/01/2001
Ch.	434		HB	9.	07/01/2001
Ch.	435	§§ 2, 3, 5-7, 10, and 11	HB	11.	04/30/2001
		§§ 1, 4, 8, and 9			07/01/2001
Ch.	436		HB	375.	10/01/2001
Ch.	437		HB	353.	07/01/2001

Ch. 438		HB	362	10/01/2001
Ch. 439		HB	437	04/30/2001
Ch. 440		HB	456	07/01/2001
Ch. 441		HB	387	04/30/2001
Ch. 442		HB	472	10/01/2001
Ch. 443		HB	469	04/30/2001
Ch. 444		HB	381	04/30/2001
Ch. 445		HB	390	10/01/2001
Ch. 446		HB	382	10/01/2001
Ch. 447		HB	397	04/30/2001
Ch. 448		HB	399	04/30/2001
Ch. 449		HB	405	07/01/2001
Ch. 450		HB	406	01/01/2002
Ch. 451		HB	412	04/30/2001
Ch. 452		HB	430	07/01/2001
Ch. 453		HB	498	04/30/2001
Ch. 454		HB	510	04/30/2001
Ch. 455		HB	539	10/01/2001
Ch. 456		HB	559	10/01/2001
Ch. 457		HB	570	04/30/2001
Ch. 458		HB	596	04/30/2001
Ch. 459		HB	609	10/01/2001
Ch. 460		SB	484	07/01/2002
Ch. 461		SB	514	07/01/2001
Ch. 462		SB	394	07/01/2002
Ch. 463		SB	303	04/30/2001
Ch. 464	§§ 1-4 and 6-11	SB	65	07/01/2001
	§ 5			07/01/2002
Ch. 465		SB	77	07/01/2001
Ch. 466		SB	82	10/01/2001
Ch. 467		SB	129	04/30/2001
Ch. 468		SB	258	04/30/2001
Ch. 469		SB	263	04/30/2001
Ch. 470		SB	264	04/30/2001
Ch. 471		SB	274	10/01/2001
Ch. 472		SB	281	10/01/2001
Ch. 473		SB	282	[This act] is effective contingent on a determination by the Montana supreme court that, based on decisions reached in the federal bankruptcy proceedings involving W. R. Grace and other circumstances contingency is met.
Ch. 474		SB	313	04/30/2001
Ch. 475		SB	315	04/30/2001
Ch. 476		SB	338	07/01/2001
Ch. 477		SB	348	10/01/2001
Ch. 478		SB	376	04/30/2001
Ch. 479		SB	427	04/30/2001
Ch. 480		SB	436	07/01/2001
Ch. 481		SB	441	10/01/2001
Ch. 482		SB	442	10/01/2001
Ch. 483		SB	445	07/01/2001
Ch. 484		SB	494	04/30/2001

Ch. 485		SB 510	[This act] is effective on the date that the governor certifies by executive order that the federal government has transferred the title to federal property interests to the state as part of the Crown Butte land exchange and certifies that the property is not restricted from being used as provided in (this act). The governor shall provide a copy of the executive order to the secretary of state and the code commissioner.
Ch. 486		HB 14	05/01/2001
Ch. 487		HB 47	05/01/2001
Ch. 488		HB 69	05/01/2001
Ch. 489		HB 73	05/01/2001
Ch. 490	§§ 1-33, 35, 36, and 38-43	HB 116	07/01/2001
	§§ 34 and 37		Effective contingent upon certification by the public employees' retirement board pursuant to section 65, Chapter 471, Laws of 1999, that the defined contribution plan is ready to become operational or on July 1, 2002, whichever is earlier.
Ch. 491		HB 118	05/01/2001
Ch. 492	§§ 11 and 75-77	HB 120	05/01/2001
	§§ 1-10, 12-47, 49-74, and 78		10/01/2001
	§ 48		10/01/2005
Ch. 493		HB 151	05/01/2001
Ch. 494		HB 154	10/01/2001
Ch. 495		HB 179	10/01/2001
Ch. 496		HB 208	10/01/2001
Ch. 497		HB 214	01/01/2002
Ch. 498		HB 216	10/01/2001
Ch. 499		HB 230	10/01/2001
Ch. 500	§§ 1 and 5-9	HB 247	01/01/2002
	§ 2		01/01/2003
	§ 3		01/01/2004
	§ 4		01/01/2005
Ch. 501		HB 266	07/01/2001
Ch. 502		HB 273	07/01/2001
Ch. 503		HB 313	10/01/2001
Ch. 504		HB 320	05/01/2001
Ch. 505		HB 324	07/01/2002
Ch. 506		HB 334	05/01/2001
Ch. 507		HB 345	05/01/2001
Ch. 508		HB 348	05/01/2001
Ch. 509		HB 360	10/01/2001
Ch. 510		HB 395	07/01/2001
Ch. 511		HB 409	07/01/2001
Ch. 512		HB 418	05/01/2001
Ch. 513		HB 442	10/01/2001
Ch. 514	§§ 1-3 and 9-11	HB 452	05/01/2001
	§§ 4-8		Effective contingent on the notification to the secretary of state that the commissioner of internal revenue has made a favorable determination pursuant to [section 9].

Ch. 515		HB 496	10/01/2001
Ch. 516		HB 499	05/01/2001
Ch. 517		HB 500	07/01/2001
Ch. 518		HB 502	10/01/2001
Ch. 519		HB 454	05/01/2001
Ch. 520		HB 463	07/01/2001
Ch. 521		HB 492	05/01/2001
Ch. 522		HB 495	05/01/2001
Ch. 523		HB 517	10/01/2001
Ch. 524		HB 521	05/01/2001
Ch. 525		HB 526	05/01/2001
Ch. 526		HB 531	05/01/2001
Ch. 527		HB 543	10/01/2001
Ch. 528		HB 554	03/01/2002
Ch. 529		HB 560	10/01/2001
Ch. 530		HB 563	10/01/2001
Ch. 531		HB 572	Effective on July 1 immediately following the date the governor by executive order certifies to the secretary of state that the resource indemnity trust fund balance has reached $100 million. The secretary of state shall notify the department of revenue, the department of administration, the code commissioner, and the legislative fiscal division of this certification.
Ch. 532		HB 578	10/01/2001
Ch. 533		HB 583	10/01/2001
Ch. 534		HB 589	10/01/2001
Ch. 535		HB 603	05/01/2001
Ch. 536		HB 605	05/01/2001
Ch. 537		HB 612	10/01/2001
Ch. 538		HB 619	01/01/2002
Ch. 539		HB 620	01/01/2002
Ch. 540		HB 623	05/01/2001
Ch. 541	§§ 4-6	HB 643	05/01/2001
	§§ 1-3		01/01/2002
Ch. 542		SB 28	07/01/2001
Ch. 543	§§ 1-6, 12, and 13	SB 48	05/01/2001
	§§ 7-11		10/01/2001
Ch. 544		SB 135	10/01/2001
Ch. 545		SB 151	05/01/2001
Ch. 546		SB 242	05/01/2001
Ch. 547		SB 327	07/01/2001
Ch. 548		SB 423	05/01/2001
Ch. 549		SB 457	05/01/2001
Ch. 550		HB 3	05/02/2001
Ch. 551		HB 4	05/02/2001
Ch. 552	§§ 2-7	HB 6	05/02/2001
	§ 1		07/01/2001
Ch. 553		HB 13	07/01/2001
Ch. 554		HB 41	07/01/2001
Ch. 555		HB 42	07/01/2001
Ch. 556		HB 121	05/02/2001
Ch. 557		HB 144	07/01/2001
Ch. 558		HB 165	05/02/2001
Ch. 559		HB 172	10/01/2001

Ch. 560		HB 254	07/01/2001
Ch. 561		HB 256	10/01/2001
Ch. 562		HB 290	10/01/2001
Ch. 563		HB 295	10/01/2001
Ch. 564		HB 340	10/01/2001
Ch. 565		HB 359	10/01/2001
Ch. 566		HB 516	07/01/2001
Ch. 567		HB 628	10/01/2001
Ch. 568		HB 644	[This act] is effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that (1) an ethanol plant is operational and producing fuel in Montana; and (2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least $20 million on June 30 following the date on which the condition in subsection (1) is complied with.
Ch. 569		SB 179	07/01/2001
Ch. 570		SB 283	07/01/2001
Ch. 571		SB 339	07/01/2001
Ch. 572		HB 2	07/01/2001
Ch. 573		HB 5	05/05/2001
Ch. 574	§ 253(2)	HB 124	05/05/2001
	§§ 1-5, 8-143, 145-252, 253(1), and 254-257		07/01/2001
	§§ 6, 7, and 144		07/01/2002
Ch. 575		HB 142	05/05/2001
Ch. 576		HB 146	07/01/2001
Ch. 577	§§ 29, 31, and 32	HB 474	05/05/2001
	§§ 1-28 and 30		07/01/2001
Ch. 578	§§ 1, 2, and 4-9	HB 573	05/05/2001
	§ 3		Effective when the director of the department of environmental quality and the administrator or the presiding officer of the board of oil and gas conservation certify to the governor that a final environmental impact statement on coal bed methane development has been prepared and a record of decision has been signed. The director of the department of environmental quality and the administrator or the presiding officer of the board of oil and gas conservation shall provide a copy of the certification to the Montana code commissioner.
Ch. 579		HB 600	05/05/2001
Ch. 580		HB 625	05/05/2001
Ch. 581		HB 637	07/01/2001
Ch. 582		HB 645	05/05/2001
Ch. 583		SB 4	10/01/2001

Ch.	584		SB	19	05/05/2001
Ch.	585	§§ 21, 52(2), 53-55, and 63-65	SB	176	05/05/2001
		§§ 1, 4-8, and 62			07/01/2001
		§§ 2, 3, 9-20, 22-51, 52(1), and 56-61			07/01/2002
Ch.	586	§ 4(1) and 9	SB	322	05/05/2001
		§§ 1-3, 4(2)-4(7), 5, 6, 8, and 10			07/01/2001
		§ 7			Effective on July 1 immediately following the date that the governor by executive order certifies to the secretary of state that the resource indemnity trust fund balance has reached $100 million and applies to the then-current academic year. The secretary of state shall forward a copy of the executive order to the code commissioner.
Ch.	587		SB	386	07/01/2001
Ch.	588		SB	398	05/05/2001
Ch.	589		SB	432	05/05/2001
Ch.	590		SB	437	05/05/2001
Ch.	591	§§ 1-3, 21, 22, 27, and 29	SB	506	05/05/2001
		§§ 4-20, 23-26, 28, and 30			07/01/2001
Ch.	592		SB	508	05/05/2001
Ch.	593		SB	521	05/05/2001
Ch.	594	§§ 4 and 5	HB	226	05/03/2001
		§§ 1-3			01/01/2002

TABLE OF EFFECTIVE DATES
BY DATE

Effective Date	Chapter No.	Bill No.
01/18/2001	Ch. 1	HB 1
01/30/2001	Ch. 2	HB 17
02/07/2001	Ch. 3	HB 39
02/09/2001	Ch. 8	HB 34
02/09/2001	Ch. 9	HB 45
02/14/2001	Ch. 11	HB 36
02/14/2001	Ch. 12	HB 51
02/14/2001	Ch. 13	HB 56
02/14/2001	Ch. 14	HB 26
02/14/2001	Ch. 15	HB 91
02/19/2001	Ch. 19	HB 22
02/19/2001	Ch. 21	HB 99
02/19/2001	Ch. 22	HB 194
02/22/2001	Ch. 25	HB 220
03/01/2001	Ch. 28	HB 246
03/13/2001	Ch. 31	HB 113
03/13/2001	Ch. 32 §§ 2(2) and 8	SB 61
03/13/2001	Ch. 33	SB 93
03/13/2001	Ch. 35	SB 180
03/13/2001	Ch. 36	SB 189
03/13/2001	Ch. 37	SB 192
03/13/2001	Ch. 38	SB 214
03/14/2001	Ch. 41	SB 112
03/16/2001	Ch. 43	HB 19
03/16/2001	Ch. 45	HB 97
03/16/2001	Ch. 46	HB 141
03/16/2001	Ch. 47	HB 145
03/16/2001	Ch. 48	HB 176
03/16/2001	Ch. 49	HB 185
03/16/2001	Ch. 54	HB 271
03/16/2001	Ch. 57	SB 11
03/16/2001	Ch. 59	SB 45
03/16/2001	Ch. 60	SB 54
03/16/2001	Ch. 61	SB 172
03/16/2001	Ch. 62	SB 235
03/16/2001	Ch. 64	HB 191
03/16/2001	Ch. 66	SB 37
03/16/2001	Ch. 67	SB 75
03/16/2001	Ch. 68	SB 156
03/19/2001	Ch. 69	HB 21
03/19/2001	Ch. 75	HB 108
03/19/2001	Ch. 85	HB 308
03/20/2001	Ch. 71	HB 71
03/20/2001	Ch. 74	HB 104
03/20/2001	Ch. 78	HB 114
03/20/2001	Ch. 79	HB 126
03/20/2001	Ch. 82	HB 147
03/20/2001	Ch. 83	HB 223
03/20/2001	Ch. 86	HB 309
03/20/2001	Ch. 87	HB 411

03/20/2001	Ch.	89	SB	59
03/21/2001	Ch.	93	HB	18
03/21/2001	Ch.	94	HB	44
03/21/2001	Ch.	97	HB	221
03/21/2001	Ch.	99	HB	152
		§§ 1-28 and 30-133		
03/22/2001	Ch.	104	HB	286
03/22/2001	Ch.	113	SB	6
03/22/2001	Ch.	121	SB	157
03/23/2001	Ch.	112	HB	462
		§§ 2 and 5		
03/23/2001	Ch.	116	SB	78
03/23/2001	Ch.	117	SB	103
03/23/2001	Ch.	118	SB	113
03/26/2001	Ch.	126	SB	105
03/26/2001	Ch.	127	SB	115
03/26/2001	Ch.	128	SB	211
03/26/2001	Ch.	130	SB	425
03/27/2001	Ch.	132	HB	129
03/27/2001	Ch.	135	HB	351
03/28/2001	Ch.	139	SB	102
03/28/2001	Ch.	150	HB	298
03/28/2001	Ch.	162	HB	479
03/28/2001	Ch.	163	HB	493
03/29/2001	Ch.	143	HB	143
		§§ 8 and 18		
03/29/2001	Ch.	149	HB	294
03/29/2001	Ch.	152	HB	329
03/29/2001	Ch.	154	HB	354
03/29/2001	Ch.	160	HB	402
03/29/2001	Ch.	164	HB	515
03/29/2001	Ch.	165	SB	207
03/30/2001	Ch.	167	SB	53
03/30/2001	Ch.	168	SB	55
03/30/2001	Ch.	170	SB	161
03/30/2001	Ch.	171	SB	165
03/30/2001	Ch.	172	SB	209
03/30/2001	Ch.	173	SB	234
03/30/2001	Ch.	174	SB	252
03/30/2001	Ch.	175	SB	269
03/30/2001	Ch.	176	SB	370
03/30/2001	Ch.	177	SB	421
04/02/2001	Ch.	178	HB	374
04/03/2001	Ch.	182	HB	386
04/03/2001	Ch.	183	HB	440
04/03/2001	Ch.	187	SB	42
04/03/2001	Ch.	188	SB	56
04/03/2001	Ch.	190	SB	166
04/03/2001	Ch.	191	SB	175
04/03/2001	Ch.	192	SB	194
		§§ 5(2), 7, and 8		
04/03/2001	Ch.	193	SB	228
04/05/2001	Ch.	198	HB	519
04/05/2001	Ch.	205	SB	260
04/06/2001	Ch.	210	SB	10
04/06/2001	Ch.	213	SB	146
04/06/2001	Ch.	218	SB	334
04/11/2001	Ch.	220	SB	117
04/12/2001	Ch.	223	HB	213

04/12/2001	Ch.	225	HB	346
04/12/2001	Ch.	226 §§ 1(4) and 7	HB	377
04/12/2001	Ch.	228	HB	537
04/12/2001	Ch.	229	SB	323
04/12/2001	Ch.	230	SB	159
04/13/2001	Ch.	233	HB	190
04/13/2001	Ch.	237 §§ 22-24	SB	390
04/13/2001	Ch.	238	SB	482
04/16/2001	Ch.	239 §§ 13 and 15	HB	10
04/16/2001	Ch.	244	HB	332
04/16/2001	Ch.	245	HB	408
04/16/2001	Ch.	247 §§ 2-4	HB	444
04/16/2001	Ch.	248	HB	451
04/16/2001	Ch.	251	HB	477
04/16/2001	Ch.	255	HB	533
04/16/2001	Ch.	259	SB	354
04/19/2001	Ch.	263	SB	253
04/19/2001	Ch.	264	SB	286
04/19/2001	Ch.	265	SB	405
04/20/2001	Ch.	268	HB	473
04/20/2001	Ch.	270	SB	31
04/20/2001	Ch.	271	SB	50
04/20/2001	Ch.	272 §§ 1-6 and 13-19	SB	51
04/20/2001	Ch.	275	SB	104
04/20/2001	Ch.	276	SB	130
04/20/2001	Ch.	280	SB	167
04/20/2001	Ch.	282	SB	197
04/20/2001	Ch.	286	SB	221
04/20/2001	Ch.	289	SB	279
04/20/2001	Ch.	293	SB	319
04/20/2001	Ch.	294	SB	340
04/20/2001	Ch.	297	SB	360
04/20/2001	Ch.	300	SB	408
04/20/2001	Ch.	303	SB	459
04/21/2001	Ch.	305	HB	608
04/21/2001	Ch.	306 §§ 1, 2, and 4-6	HB	642
04/21/2001	Ch.	309	SB	89
04/21/2001	Ch.	314 §§ 6, 10, and 12-14	SB	145
04/21/2001	Ch.	315	SB	147
04/21/2001	Ch.	316	SB	163
04/21/2001	Ch.	318	SB	182
04/21/2001	Ch.	320 §§ 1(2), 2(2), and 3-7	SB	256
04/21/2001	Ch.	321 §§ 1, 2, and 4-7	SB	262
04/21/2001	Ch.	323	SB	356
04/21/2001	Ch.	326	SB	378
04/21/2001	Ch.	328	SB	387
04/21/2001	Ch.	332	SB	426
04/21/2001	Ch.	337	SB	448
04/21/2001	Ch.	339	SB	450
04/21/2001	Ch.	340	SB	455

04/21/2001	Ch.	341 §§ 4, 7(22), 11(1), and 12-14	SB	465
04/21/2001	Ch.	343	SB	469
04/21/2001	Ch.	345	SB	474
04/21/2001	Ch.	348 §§ 9 and 11	SB	479
04/21/2001	Ch.	349	SB	480
04/23/2001	Ch.	352	SB	171
04/23/2001	Ch.	356	SB	218
04/23/2001	Ch.	357	SB	236
04/23/2001	Ch.	359	SB	248
04/23/2001	Ch.	362 §§ 1(4), 4, and 5	SB	288
04/23/2001	Ch.	363	SB	293
04/23/2001	Ch.	366	SB	309
04/23/2001	Ch.	367	SB	310
04/23/2001	Ch.	368	SB	311
04/23/2001	Ch.	372	SB	333
04/23/2001	Ch.	374	SB	429
04/26/2001	Ch.	376	HB	249
04/26/2001	Ch.	379	HB	349
04/27/2001	Ch.	381	HB	33
04/28/2001	Ch.	382	HB	46
04/28/2001	Ch.	383	HB	94
04/28/2001	Ch.	385	HB	156
04/28/2001	Ch.	389	HB	317
04/28/2001	Ch.	390	HB	434
04/28/2001	Ch.	391	HB	491
04/28/2001	Ch.	393	HB	569
04/28/2001	Ch.	400	SB	162
04/28/2001	Ch.	402	SB	191
04/28/2001	Ch.	403	SB	240
04/28/2001	Ch.	406	SB	325
04/28/2001	Ch.	410	SB	346
04/28/2001	Ch.	411	SB	350
04/28/2001	Ch.	413	SB	379
04/28/2001	Ch.	414	SB	393
04/28/2001	Ch.	416	SB	454
04/28/2001	Ch.	419	SB	501
04/28/2001	Ch.	421	SB	519
04/30/2001	Ch.	423 §§ 1(6), 1(7), and 10-17	HB	63
04/30/2001	Ch.	425	HB	119
04/30/2001	Ch.	428	HB	218
04/30/2001	Ch.	430	HB	564
04/30/2001	Ch.	431	HB	368
04/30/2001	Ch.	435 §§ 2, 3, 5-7, 10, and 11	HB	11
04/30/2001	Ch.	439	HB	437
04/30/2001	Ch.	441	HB	387
04/30/2001	Ch.	443	HB	469
04/30/2001	Ch.	444	HB	381
04/30/2001	Ch.	447	HB	397
04/30/2001	Ch.	448	HB	399
04/30/2001	Ch.	451	HB	412
04/30/2001	Ch.	453	HB	498
04/30/2001	Ch.	454	HB	510
04/30/2001	Ch.	457	HB	570
04/30/2001	Ch.	458	HB	596

04/30/2001	Ch.	463	SB	303
04/30/2001	Ch.	467	SB	129
04/30/2001	Ch.	468	SB	258
04/30/2001	Ch.	469	SB	263
04/30/2001	Ch.	470	SB	264
04/30/2001	Ch.	474	SB	313
04/30/2001	Ch.	475	SB	315
04/30/2001	Ch.	478	SB	376
04/30/2001	Ch.	479	SB	427
04/30/2001	Ch.	484	SB	494
05/01/2001	Ch.	486	HB	14
05/01/2001	Ch.	487	HB	47
05/01/2001	Ch.	488	HB	69
05/01/2001	Ch.	489	HB	73
05/01/2001	Ch.	491	HB	118
05/01/2001	Ch.	492 §§ 11 and 75-77	HB	120
05/01/2001	Ch.	493	HB	151
05/01/2001	Ch.	504	HB	320
05/01/2001	Ch.	506	HB	334
05/01/2001	Ch.	507	HB	345
05/01/2001	Ch.	508	HB	348
05/01/2001	Ch.	512	HB	418
05/01/2001	Ch.	514 §§ 1-3 and 9-11	HB	452
05/01/2001	Ch.	516	HB	499
05/01/2001	Ch.	519	HB	454
05/01/2001	Ch.	521	HB	492
05/01/2001	Ch.	522	HB	495
05/01/2001	Ch.	524	HB	521
05/01/2001	Ch.	525	HB	526
05/01/2001	Ch.	526	HB	531
05/01/2001	Ch.	535	HB	603
05/01/2001	Ch.	536	HB	605
05/01/2001	Ch.	540	HB	623
05/01/2001	Ch.	541 §§ 4-6	HB	643
05/01/2001	Ch.	543 §§ 1-6, 12, and 13	SB	48
05/01/2001	Ch.	545	SB	151
05/01/2001	Ch.	546	SB	242
05/01/2001	Ch.	548	SB	423
05/01/2001	Ch.	549	SB	457
05/02/2001	Ch.	550	HB	3
05/02/2001	Ch.	551	HB	4
05/02/2001	Ch.	552 §§ 2-7	HB	6
05/02/2001	Ch.	556	HB	121
05/02/2001	Ch.	558	HB	165
05/03/2001	Ch.	594 §§ 4 and 5	HB	226
05/05/2001	Ch.	573	HB	5
05/05/2001	Ch.	574 § 253(2)	HB	124
05/05/2001	Ch.	575	HB	142
05/05/2001	Ch.	577 §§ 29, 31, and 32	HB	474

05/05/2001	Ch.	578 §§ 1, 2, and 4-9	HB	573
05/05/2001	Ch.	579	HB	600
05/05/2001	Ch.	580	HB	625
05/05/2001	Ch.	582	HB	645
05/05/2001	Ch.	584	SB	19
05/05/2001	Ch.	585 §§ 21, 52(2), 53-55, and 63-65	SB	176
05/05/2001	Ch.	586 § 4(1) and 9	SB	322
05/05/2001	Ch.	588	SB	398
05/05/2001	Ch.	589	SB	432
05/05/2001	Ch.	590	SB	437
05/05/2001	Ch.	591 §§ 1-3, 21, 22, 27, and 29	SB	506
05/05/2001	Ch.	592	SB	508
05/05/2001	Ch.	593	SB	521
06/30/2001	Ch.	99 § 29	HB	152
07/01/2001	Ch.	5	HB	98
07/01/2001	Ch.	10	HB	24
07/01/2001	Ch.	26	HB	37
07/01/2001	Ch.	29	HB	23
07/01/2001	Ch.	34	SB	133
07/01/2001	Ch.	40	HB	111
07/01/2001	Ch.	42	SB	120
07/01/2001	Ch.	52	HB	234
07/01/2001	Ch.	53	HB	258
07/01/2001	Ch.	58	SB	32
07/01/2001	Ch.	76	HB	110
07/01/2001	Ch.	77	HB	112
07/01/2001	Ch.	88	SB	41
07/01/2001	Ch.	95	HB	132
07/01/2001	Ch.	105	HB	358
07/01/2001	Ch.	108	SB	44
07/01/2001	Ch.	110	HB	148
07/01/2001	Ch.	115	SB	58
07/01/2001	Ch.	120	SB	153
07/01/2001	Ch.	124	SB	254
07/01/2001	Ch.	133	HB	134
07/01/2001	Ch.	137	SB	34
07/01/2001	Ch.	138	SB	97
07/01/2001	Ch.	142	HB	127
07/01/2001	Ch.	144	HB	157
07/01/2001	Ch.	145	HB	160
07/01/2001	Ch.	146	HB	164
07/01/2001	Ch.	148	HB	267
07/01/2001	Ch.	158	HB	392
07/01/2001	Ch.	169	SB	91
07/01/2001	Ch.	179	SB	23
07/01/2001	Ch.	189	SB	81
07/01/2001	Ch.	192 §§ 1-4, 5(1), and 6	SB	194
07/01/2001	Ch.	195	SB	268
07/01/2001	Ch.	200	HB	579
07/01/2001	Ch.	208	HB	378
07/01/2001	Ch.	209	HB	523
07/01/2001	Ch.	214	SB	164
07/01/2001	Ch.	217	SB	306

07/01/2001	Ch.	222	HB	109
07/01/2001	Ch.	231 §§ 1, 3, and 4	SB	94
07/01/2001	Ch.	232	HB	7
07/01/2001	Ch.	237 §§ 1-21	SB	390
07/01/2001	Ch.	239 §§ 1-12 and 14	HB	10
07/01/2001	Ch.	240	HB	12
07/01/2001	Ch.	242	HB	38
07/01/2001	Ch.	247 § 1	HB	444
07/01/2001	Ch.	250	HB	468
07/01/2001	Ch.	252	HB	488
07/01/2001	Ch.	257	SB	144
07/01/2001	Ch.	260	HB	261
07/01/2001	Ch.	266	HB	8
07/01/2001	Ch.	269	SB	3
07/01/2001	Ch.	273	SB	60
07/01/2001	Ch.	274	SB	96
07/01/2001	Ch.	277	SB	132
07/01/2001	Ch.	278	SB	138
07/01/2001	Ch.	292	SB	305
07/01/2001	Ch.	298	SB	373
07/01/2001	Ch.	304	HB	447
07/01/2001	Ch.	307	HB	650
07/01/2001	Ch.	313	SB	131
07/01/2001	Ch.	314 §§ 1-5 and 8	SB	145
07/01/2001	Ch.	320 §§ 1(1), 2(1), and 2(3)	SB	256
07/01/2001	Ch.	333	SB	428
07/01/2001	Ch.	334	SB	433
07/01/2001	Ch.	338	SB	449
07/01/2001	Ch.	341 §§ 1-3, 5, 6, 7(1)-7(21), 8-10, 11(2), and 15	SB	465
07/01/2001	Ch.	350	SB	491
07/01/2001	Ch.	365	SB	304
07/01/2001	Ch.	369	SB	318
07/01/2001	Ch.	377	HB	265
07/01/2001	Ch.	392	HB	552
07/01/2001	Ch.	394 §§ 1, 2, and 4-9	HB	577
07/01/2001	Ch.	395	HB	615
07/01/2001	Ch.	396	HB	639
07/01/2001	Ch.	397	SB	46
07/01/2001	Ch.	404	SB	280
07/01/2001	Ch.	405	SB	317
07/01/2001	Ch.	407	SB	326
07/01/2001	Ch.	408	SB	329
07/01/2001	Ch.	409	SB	344
07/01/2001	Ch.	417	SB	489
07/01/2001	Ch.	418 §§ 1-4 and 6-13	SB	495
07/01/2001	Ch.	420	SB	511
07/01/2001	Ch.	422	HB	57
07/01/2001	Ch.	424	HB	87
07/01/2001	Ch.	426	HB	186

07/01/2001	Ch. 429	HB 239
07/01/2001	Ch. 433	HB 455
07/01/2001	Ch. 434	HB 9
07/01/2001	Ch. 435	HB 11
	§§ 1, 4, 8, and 9	
07/01/2001	Ch. 437	HB 353
07/01/2001	Ch. 440	HB 456
07/01/2001	Ch. 449	HB 405
07/01/2001	Ch. 452	HB 430
07/01/2001	Ch. 461	SB 514
07/01/2001	Ch. 464	SB 65
	§§ 1-4 and 6-11	
07/01/2001	Ch. 465	SB 77
07/01/2001	Ch. 476	SB 338
07/01/2001	Ch. 480	SB 436
07/01/2001	Ch. 483	SB 445
07/01/2001	Ch. 490	HB 116
	§§ 1-33, 35, 36, and 38-43	
07/01/2001	Ch. 501	HB 266
07/01/2001	Ch. 502	HB 273
07/01/2001	Ch. 510	HB 395
07/01/2001	Ch. 511	HB 409
07/01/2001	Ch. 517	HB 500
07/01/2001	Ch. 520	HB 463
07/01/2001	Ch. 542	SB 28
07/01/2001	Ch. 547	SB 327
07/01/2001	Ch. 552	HB 6
	§ 1	
07/01/2001	Ch. 553	HB 13
07/01/2001	Ch. 554	HB 41
07/01/2001	Ch. 555	HB 42
07/01/2001	Ch. 557	HB 144
07/01/2001	Ch. 560	HB 254
07/01/2001	Ch. 566	HB 516
07/01/2001	Ch. 569	SB 179
07/01/2001	Ch. 570	SB 283
07/01/2001	Ch. 571	SB 339
07/01/2001	Ch. 572	HB 2
07/01/2001	Ch. 574	HB 124
	§§ 1-5, 8-143, 145-252, 253(1), and 254-257	
07/01/2001	Ch. 576	HB 146
07/01/2001	Ch. 577	HB 474
	§§ 1-28 and 30	
07/01/2001	Ch. 581	HB 637
07/01/2001	Ch. 585	SB 176
	§§ 1, 4-8, and 62	
07/01/2001	Ch. 586	SB 322
	§§ 1-3, 4(2)-4(7), 5, 6, 8, and 10	
07/01/2001	Ch. 587	SB 386
07/01/2001	Ch. 591	SB 506
	§§ 4-20, 23-26, 28, and 30	
10/01/2001	Ch. 4	HB 52
10/01/2001	Ch. 6	SB 87
10/01/2001	Ch. 7	HB 25
10/01/2001	Ch. 16	HB 115
10/01/2001	Ch. 17	HB 117
10/01/2001	Ch. 18	SB 40
10/01/2001	Ch. 20	HB 93

10/01/2001	Ch. 24	HB	180
10/01/2001	Ch. 27	HB	235
10/01/2001	Ch. 30	HB	155
10/01/2001	Ch. 32 §§ 1, 2(1), and 3-7	SB	61
10/01/2001	Ch. 39	HB	83
10/01/2001	Ch. 44	HB	20
10/01/2001	Ch. 50	HB	192
10/01/2001	Ch. 51	HB	231
10/01/2001	Ch. 55	HB	325
10/01/2001	Ch. 56	HB	369
10/01/2001	Ch. 63	HB	80
10/01/2001	Ch. 65	SB	30
10/01/2001	Ch. 72	HB	78
10/01/2001	Ch. 73	HB	103
10/01/2001	Ch. 80	HB	130
10/01/2001	Ch. 81	HB	138
10/01/2001	Ch. 84	HB	272
10/01/2001	Ch. 90	SB	142
10/01/2001	Ch. 91	SB	148
10/01/2001	Ch. 92	SB	149
10/01/2001	Ch. 96	HB	204
10/01/2001	Ch. 98	HB	74
10/01/2001	Ch. 100	HB	174
10/01/2001	Ch. 101	HB	175
10/01/2001	Ch. 102	HB	238
10/01/2001	Ch. 103	HB	268
10/01/2001	Ch. 106 §§ 1-5, 6(1), 6(2), 6(4), and 7-12	HB	417
10/01/2001	Ch. 107	HB	458
10/01/2001	Ch. 109	SB	122
10/01/2001	Ch. 111	HB	300
10/01/2001	Ch. 112 §§ 1, 3, and 4	HB	462
10/01/2001	Ch. 114	SB	29
10/01/2001	Ch. 119	SB	150
10/01/2001	Ch. 122	SB	205
10/01/2001	Ch. 123	SB	219
10/01/2001	Ch. 125	SB	7
10/01/2001	Ch. 131	HB	27
10/01/2001	Ch. 134	HB	241
10/01/2001	Ch. 136	SB	20
10/01/2001	Ch. 140	SB	106
10/01/2001	Ch. 141	SB	143
10/01/2001	Ch. 143 §§ 1-5, 7, 9-17, 19, and 20	HB	143
10/01/2001	Ch. 147	HB	263
10/01/2001	Ch. 151	HB	321
10/01/2001	Ch. 153	HB	336
10/01/2001	Ch. 155	HB	365
10/01/2001	Ch. 156	HB	383
10/01/2001	Ch. 157	HB	391
10/01/2001	Ch. 159	HB	393
10/01/2001	Ch. 161	HB	443
10/01/2001	Ch. 166	HB	582
10/01/2001	Ch. 180	SB	74
10/01/2001	Ch. 181 §§ 1-17 and 19-29	SB	90
10/01/2001	Ch. 184	HB	542

10/01/2001	Ch. 185	SB 8
10/01/2001	Ch. 186	SB 33
10/01/2001	Ch. 194	SB 257
10/01/2001	Ch. 197	HB 439
10/01/2001	Ch. 199	HB 548
10/01/2001	Ch. 201	HB 551
10/01/2001	Ch. 202	SB 52
10/01/2001	Ch. 203	SB 199
10/01/2001	Ch. 204	SB 259
10/01/2001	Ch. 206	HB 131
10/01/2001	Ch. 207	HB 363
10/01/2001	Ch. 211	SB 38
10/01/2001	Ch. 212	SB 107
10/01/2001	Ch. 215	SB 184
10/01/2001	Ch. 219	HB 281
10/01/2001	Ch. 221	HB 30
10/01/2001	Ch. 224	HB 219
10/01/2001	Ch. 226 §§ 1(1)-1(3), 2-6, and 8	HB 377
10/01/2001	Ch. 227	HB 504
10/01/2001	Ch. 234	HB 599
10/01/2001	Ch. 236	SB 361
10/01/2001	Ch. 241	HB 29
10/01/2001	Ch. 243	HB 195
10/01/2001	Ch. 246	HB 419
10/01/2001	Ch. 253	HB 505
10/01/2001	Ch. 254	HB 529
10/01/2001	Ch. 256	HB 626
10/01/2001	Ch. 258	SB 290
10/01/2001	Ch. 261	HB 319
10/01/2001	Ch. 262	SB 245
10/01/2001	Ch. 267	HB 459
10/01/2001	Ch. 279	SB 152
10/01/2001	Ch. 281	SB 170
10/01/2001	Ch. 283	SB 203
10/01/2001	Ch. 284	SB 204
10/01/2001	Ch. 285	SB 210
10/01/2001	Ch. 287	SB 229
10/01/2001	Ch. 288	SB 241
10/01/2001	Ch. 291	SB 300
10/01/2001	Ch. 296	SB 358
10/01/2001	Ch. 299	SB 377
10/01/2001	Ch. 301	SB 431
10/01/2001	Ch. 302	SB 443
10/01/2001	Ch. 308	SB 80
10/01/2001	Ch. 310	SB 108
10/01/2001	Ch. 311	SB 116
10/01/2001	Ch. 312	SB 128
10/01/2001	Ch. 319	SB 226
10/01/2001	Ch. 322	SB 330
10/01/2001	Ch. 324	SB 359
10/01/2001	Ch. 325	SB 375
10/01/2001	Ch. 327	SB 380
10/01/2001	Ch. 331	SB 420
10/01/2001	Ch. 335	SB 438
10/01/2001	Ch. 342	SB 466
10/01/2001	Ch. 344	SB 473
10/01/2001	Ch. 346	SB 476
10/01/2001	Ch. 347	SB 477

10/01/2001	Ch.	348 §§ 1-8 and 10	SB	479
10/01/2001	Ch.	351	SB	169
10/01/2001	Ch.	353	SB	181
10/01/2001	Ch.	354	SB	187
10/01/2001	Ch.	358	SB	237
10/01/2001	Ch.	360	SB	261
10/01/2001	Ch.	361	SB	265
10/01/2001	Ch.	362 §§ 1(1)-1(3), 1(5), 2, and 3	SB	288
10/01/2001	Ch.	364	SB	298
10/01/2001	Ch.	370	SB	324
10/01/2001	Ch.	371	SB	328
10/01/2001	Ch.	373	SB	355
10/01/2001	Ch.	378	HB	331
10/01/2001	Ch.	384	HB	125
10/01/2001	Ch.	386	HB	166
10/01/2001	Ch.	387	HB	210
10/01/2001	Ch.	388	HB	279
10/01/2001	Ch.	398	SB	92
10/01/2001	Ch.	401	SB	185
10/01/2001	Ch.	412	SB	368
10/01/2001	Ch.	415	SB	451
10/01/2001	Ch.	427	HB	201
10/01/2001	Ch.	432	HB	401
10/01/2001	Ch.	436	HB	375
10/01/2001	Ch.	438	HB	362
10/01/2001	Ch.	442	HB	472
10/01/2001	Ch.	445	HB	390
10/01/2001	Ch.	446	HB	382
10/01/2001	Ch.	455	HB	539
10/01/2001	Ch.	456	HB	559
10/01/2001	Ch.	459	HB	609
10/01/2001	Ch.	466	SB	82
10/01/2001	Ch.	471	SB	274
10/01/2001	Ch.	472	SB	281
10/01/2001	Ch.	477	SB	348
10/01/2001	Ch.	481	SB	441
10/01/2001	Ch.	482	SB	442
10/01/2001	Ch.	492 §§ 1-10, 12-47, 49-74, and 78	HB	120
10/01/2001	Ch.	494	HB	154
10/01/2001	Ch.	495	HB	179
10/01/2001	Ch.	496	HB	208
10/01/2001	Ch.	498	HB	216
10/01/2001	Ch.	499	HB	230
10/01/2001	Ch.	503	HB	313
10/01/2001	Ch.	509	HB	360
10/01/2001	Ch.	513	HB	442
10/01/2001	Ch.	515	HB	496
10/01/2001	Ch.	518	HB	502
10/01/2001	Ch.	523	HB	517
10/01/2001	Ch.	527	HB	543
10/01/2001	Ch.	529	HB	560
10/01/2001	Ch.	530	HB	563
10/01/2001	Ch.	532	HB	578
10/01/2001	Ch.	533	HB	583
10/01/2001	Ch.	534	HB	589
10/01/2001	Ch.	537	HB	612

10/01/2001	Ch. 543 §§ 7-11	SB	48
10/01/2001	Ch. 544	SB	135
10/01/2001	Ch. 559	HB	172
10/01/2001	Ch. 561	HB	256
10/01/2001	Ch. 562	HB	290
10/01/2001	Ch. 563	HB	295
10/01/2001	Ch. 564	HB	340
10/01/2001	Ch. 565	HB	359
10/01/2001	Ch. 567	HB	628
10/01/2001	Ch. 583	SB	4
01/01/2002	Ch. 23 §§ 1-9 and 11-19	HB	50
01/01/2002	Ch. 235	SB	321
01/01/2002	Ch. 249	HB	461
01/01/2002	Ch. 295	SB	357
01/01/2002	Ch. 317	SB	168
01/01/2002	Ch. 336	SB	440
01/01/2002	Ch. 394 § 3	HB	577
01/01/2002	Ch. 399	SB	134
01/01/2002	Ch. 450	HB	406
01/01/2002	Ch. 497	HB	214
01/01/2002	Ch. 500 §§ 1 and 5-9	HB	247
01/01/2002	Ch. 538	HB	619
01/01/2002	Ch. 539	HB	620
01/01/2002	Ch. 541 §§ 1-3	HB	643
01/01/2002	Ch. 594 §§ 1-3	HB	226
03/01/2002	Ch. 129	SB	238
03/01/2002	Ch. 196	HB	292
03/01/2002	Ch. 216	SB	285
03/01/2002	Ch. 528	HB	554
07/01/2002	Ch. 231 § 2	SB	94
07/01/2002	Ch. 314 §§ 7, 9, and 11	SB	145
07/01/2002	Ch. 423 §§ 1(1)-1(5) and 2-9, Effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier.	HB	63
07/01/2002	Ch. 460	SB	484
07/01/2002	Ch. 462	SB	394
07/01/2002	Ch. 464 § 5	SB	65
07/01/2002	Ch. 505	HB	324
07/01/2002	Ch. 574 §§ 6, 7, and 144	HB	124
07/01/2002	Ch. 585 §§ 2, 3, 9-20, 22-51, 52(1), and 56-61	SB	176
11/01/2002	Ch. 106 § 6(3)	HB	417

01/01/2003	Ch. 143	HB 143	§ 6
01/01/2003	Ch. 355	SB 190	On approval by electorate
01/01/2003	Ch. 375	SB 493	On approval by electorate
01/01/2003	Ch. 418	SB 495	§ 5, If SB 493 is approved by electorate
01/01/2003	Ch. 500	HB 247	§ 2
07/01/2003	Ch. 329	SB 396	On approval by electorate
07/01/2003	Ch. 330	SB 397	On approval by electorate
07/01/2003	Ch. 380	HB 610	
01/01/2004	Ch. 23	HB 50	§ 10
01/01/2004	Ch. 500	HB 247	§ 3
01/01/2005	Ch. 500	HB 247	§ 4
07/01/2005	Ch. 181	SB 90	§ 18
10/01/2005	Ch. 492	HB 120	§ 48
06/30/2013	Ch. 70	HB 40	
?	Ch. 272	SB 51	(§§ 7-12, Effective on the date that the secretary of state receives certification from the department of administration pursuant to (section 13) that the commissioner of internal revenue has determined that the plan established pursuant to (sections 1 through 10) is qualified for a tax exemption pursuant to section 501(c)(9) of the Internal Revenue Code.)
?	Ch. 290	SB 289	([This act] is effective contingent on the execution of an agreement between the department of military affairs and the public employees' retirement board establishing that employer contributions for all firefighters hired by the Montana national guard pursuant to (section 20 will be paid with federal funds passed through the department of military affairs and remitted to the firefighters' uniified retirement system in a manner prescribed by the public employees' retirement board. The board shall notify the secretary of state and the code commissioner when this contingency is met.)

? . . . . Ch. 306 . . . . HB 642
(§ 3, [Section 3] is effective July 1 of the first year following the date that the governor by executive order certifies to the secretary of state that the resource indemnity trust fund balance has reached $100 million. The secretary of state shall notify the department of revenue, the department of administration, the code commissioner, and the legislative fiscal division of this certification.)

? . . . . Ch. 321 . . . . SB 262
(§ 3, If one or more of the contingencies in (section 3) occur, the applicable contingency is effective upon certification of that contingency to the governor and the secretary of state and notification to the Montana code commissioner.)

? . . . . Ch. 473 . . . . SB 282
([This act] is effective contingent on a determination by the Montana supreme court that, based on decisions reached in the federal bankruptcy proceedings involving W. R. Grace and other circumstances that the court deems advisable to consider, there exists sufficient need to implement the provisions of (this act). The court shall notify the secretary of state and the code commissioner when this contingency is met.

? . . . . Ch. 485 . . . . SB 510
([This act] is effective on the date that the governor certifies by executive order that the federal government has transferred the title to federal property interests to the state as part of the Crown Butte land exchange and certifies that the property is not restricted from being used as provided in (this act). The governor shall provide a copy of the executive order to the secretary of state and the code commissioner.)

? . . . . Ch. 490 . . . . HB 116
(§§ 34 and 37, Effective contingent upon certification by the public employees' retirement board pursuant to section 65, Chapter 471, Laws of 1999, that the defined contribution plan is ready to become operational or on July 1, 2002, whichever is earlier.)

? . . . . Ch. 514 . . . . HB 452
(§§ 4-8, Effective contingent on the notification to the secretary of state that the commissioner of internal revenue has made a favorable determination pursuant to [section 9].)

? . . . . Ch. 531 . . . . HB 572
(Effective on July 1 immediately following the date the governor by executive order certifies to the secretary of state that the resource indemnity trust fund balance has reached $100 million. The secretary of state shall notify the department of revenue, the department of administration, the code commissioner, and the legislative fiscal division of this certification.)

? . . . . Ch. 568 . . . . HB 644
([This act] is effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that (1) an ethanol plant is operational and producing fuel in Montana; and (2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least $20 million on June 30 following the date on which the condition in subsection (1) is complied with.)

? . . . . Ch. 578 . . . . HB 573
(§ 3, Effective when the director of the department of environmental quality and the administrator or the presiding officer of the board of oil and gas conservation certify to the governor that a final environmental impact statement on coal bed methane development has been prepared and a record of decision has been signed. The director of the department of environmental quality and the administrator or the presiding officer of the board of oil and gas conservation shall provide a copy of the certification to the Montana code commissioner.)

? . . . . Ch. 586 . . . . SB 322
(§ 7, Effective on July 1 immediately following the date that the governor by executive order certifies to the secretary of state that the resource indemnity trust fund balance has reached $100 million and applies to the then-current academic year. The secretary of state shall forward a copy of the executive order to the code commissioner.)

TABLE OF
SESSION LAW TO CODE

SESSION LAW TO CODE

Ch.	Sec.	MCA
1	1	Appropriations
	2	Effective date
2	1	Appropriation — time limits
	2	Effective date
3	1	87-1-304
	2	87-2-306
	3	Effective date
4	1	10-1-104
	2	25-13-608
5	1	27-12-206
	2	27-12-306
	3	27-12-308
	4	27-12-502
	5	Appropriation
	6	Effective date
6	1	3-10-103
	2	3-11-206
7	1	1-1-517
	2	2-7-501
	3	2-15-3316
	4	7-1-2111
	5	7-4-2503
	6	7-7-2101
	7	7-7-2203
	8	7-14-2524
	9	7-16-2327
	10	7-21-2303
	11	10-2-102
	12	13-2-301
	13	13-12-207
	14	13-15-401
	15	15-1-501
	16	15-1-708
	17	15-6-141
	18	15-23-101
	19	15-24-904
	20	15-31-132
	21	15-35-102
	22	16-2-109
	23	16-4-105
	24	16-4-111
	25	16-4-204
	26	16-4-301
	27	16-4-420
	28	17-5-709
	29	17-7-502
	30	18-4-132
	31	19-2-1001
	32	19-3-503
	33	19-9-1007
	34	19-20-404
	35	20-26-103
	36	33-17-211
	37	33-17-1203
	38	35-1-1312
	39	35-8-216
	40	35-12-703
	41	35-18-105
	42	35-18-106
	43	35-18-107
	44	35-18-206
	45	35-18-301
	46	35-18-313
	47	35-18-316
	48	39-3-213
	49	39-51-1307
	50	39-51-3207
	51	39-71-201
	52	39-71-2363
	53	39-72-711
	54	41-5-103
	55	41-5-206
	56	46-8-202
	57	50-51-103
	58	53-30-403
	59	60-3-201
	60	69-4-304
	61	69-4-501
	62	69-8-103
	63	69-8-502
	64	72-3-917
	65	75-10-103
	66	75-10-732
	67	76-3-601
	68	76-5-401
	69	77-2-102
	70	77-4-201
	71	77-4-210
	72	80-6-101
	73	80-7-816
	74	81-9-232
	75	81-23-303
	76	85-1-615
	77	85-9-104
	78	87-1-209
	79	87-1-221
	80	87-1-242
	81	87-1-246
	82	90-6-302
	83	Code commissioner instruction
	84	Repealer
8	1	17-5-205

	2	Effective date
9	1	75-5-1126
	2	75-6-236
	3	Codification instruction
	4	Effective date
10	1	20-9-406
	2	Effective date
	3	Applicability
11	1	77-1-208
	2	Effective date
12	1	Repealer
	2	Effective date
13	1	7-34-103
	2	33-1-102
	3	Effective date
14	1	39-71-401
	2	Effective date
15	1	13-10-211
	2	13-10-302
	3	13-15-202
	4	20-3-313
	5	Effective date
16	1	46-18-221
17	1	45-5-205
18	1	46-23-1115
	2	Repealer
	3	Codification instruction
	4	Two-thirds vote required
19	1	60-4-102
	2	70-30-104
	3	70-30-206
	4	Saving clause
	5	Effective date
20	1	70-30-110
	2	70-30-203
	3	70-30-301
	4	70-30-309
21	1	Repealer
	2	Effective date
22	1	39-3-406
	2	Effective date
23	1	33-22-702
	2	33-22-705
	3	33-32-102
	4	37-23-201
	5	37-35-101
	6	37-35-102
	7	37-35-103
	8	37-35-201
	9	37-35-202
	10	37-35-202
	11	37-35-203
	12	37-35-301
	13	37-35-304
	14	45-5-624
	15	45-9-208
	16	45-10-108
	17	53-24-301
	18	61-8-732
	19	Effective dates
24	1	52-5-108
25	1	32-3-204
	2	32-3-301
	3	32-3-403
	4	32-3-502
	5	32-3-602
	6	Effective date
26	1	7-6-2522
	2	15-10-202
	3	15-10-206
	4	Repealer
	5	Effective date
27	1	30-13-201
	2	30-13-202
	3	35-1-308
	4	35-2-305
	5	35-4-206
	6	35-8-103
	7	35-10-703
	8	35-12-505
28	1	27-1-724
	2	Codification instruction
	3	Effective date
	4	Applicability
29	1	2-9-211
	2	7-3-1321
	3	7-6-2211
	4	7-6-4121
	5	7-7-107
	6	7-7-108
	7	7-7-2101
	8	7-7-2203
	9	7-7-2301
	10	7-7-4201
	11	7-7-4202
	12	7-13-237
	13	7-13-309
	14	7-13-4103
	15	7-14-236
	16	7-14-2524
	17	7-14-2525
	18	7-14-4402
	19	7-16-2327
	20	7-16-2433
	21	7-16-4104
	22	7-31-106
	23	7-31-107
	24	7-33-2109
	25	7-33-2404
	26	7-34-2131
	27	15-23-703
	28	15-36-324

	29	19-18-503
	30	19-18-504
	31	39-71-403
	32	85-9-406
	33	Saving clause
	34	Effective date
	35	Applicability
30	1	71-1-212
	2	71-1-302
	3	71-1-303
	4	71-1-304
	5	Repealer
31	1	76-16-102
	2	76-16-103
	3	76-16-104
	4	76-16-106
	5	76-16-107
	6	76-16-108
	7	76-16-109
	8	76-16-111
	9	76-16-112
	10	76-16-113
	11	76-16-201
	12	76-16-202
	13	76-16-203
	14	76-16-206
	15	76-16-208
	16	76-16-209
	17	76-16-211
	18	76-16-212
	19	76-16-213
	20	76-16-301
	21	76-16-302
	22	76-16-303
	23	76-16-307
	24	76-16-309
	25	76-16-310
	26	76-16-316
	27	76-16-317
	28	76-16-318
	29	76-16-320
	30	76-16-323
	31	76-16-325
	32	76-16-401
	33	76-16-402
	34	76-16-403
	35	76-16-404
	36	76-16-406
	37	76-16-407
	38	76-16-408
	39	76-16-409
	40	76-16-410
	41	76-16-411
	42	76-16-412
	43	76-16-413
	44	76-16-414
	45	Repealer
	46	Effective date
32	1	17-5-1302
	2	17-5-1311
	3	17-5-1312
	4	17-5-1315
	5	17-5-1316
	6	17-5-1318
	7	17-5-1323
	8	Effective dates
33	1	30-3-312
	2	Codification instruction
	3	Saving clause
	4	Effective date
34	1	15-30-195
	2	15-34-115
	3	15-35-108
	4	15-38-106
	5	15-38-202
	6	17-2-102
	7	17-2-103
	8	17-2-107
	9	17-6-203
	10	17-7-150
	11	17-8-101
	12	17-8-303
	13	20-9-601
	14	20-25-225
	15	22-1-225
	16	22-1-226
	17	22-3-113
	18	22-3-114
	19	39-3-213
	20	39-51-401
	21	41-3-705
	22	72-14-204
	23	72-14-205
	24	72-14-206
	25	72-14-207
	26	72-14-209
	27	72-14-210
	28	72-14-403
	29	77-1-108
	30	77-1-109
	31	77-1-602
	32	80-2-103
	33	87-1-601
	34	90-3-1001
	35	90-3-1002
	36	90-3-1003
	37	90-6-107
	38	Code commissioner instruction
	39	Effective date
35	1	5-3-101
	2	Effective date
36	1	32-1-109

	2	32-1-335
	3	32-1-362
	4	32-1-372
	5	32-1-382
	6	32-1-412
	7	32-1-422
	8	Effective date
37	1	7-4-2613
	2	72-16-503
	3	Effective date
	4	Retroactive applicability
38	1	5-6-102
	2	20-25-253
	3	20-25-254
	4	20-25-255
	5	20-26-1103
	6	Effective date
39	1	Repealer
40	1	75-7-210
	2	Effective date
41	1	10-4-301
	2	Effective date
	3	Retroactive applicability
42	1	18-5-203
	2	Effective date
43	1	39-71-401
	2	Effective date
44	1	13-4-106
45	1	2-15-1010
	2	19-20-101
	3	19-20-201
	4	19-20-206
	5	19-20-302
	6	19-20-402
	7	19-20-403
	8	19-20-404
	9	19-20-408
	10	19-20-409
	11	19-20-410
	12	19-20-411
	13	19-20-414
	14	19-20-415
	15	19-20-417
	16	19-20-501
	17	19-20-502
	18	19-20-603
	19	19-20-705
	20	19-20-716
	21	19-20-721
	22	19-20-804
	23	19-20-1001
	24	Codification instruction
	25	Saving clause
	26	Effective date
	27	Applicability
46	1	80-11-402
	2	80-11-412
	3	80-11-413
	4	80-11-414
	5	80-11-417
	6	Severability
	7	Saving clause
	8	Effective date
47	1	50-60-102
	2	50-60-602
	3	50-60-603
	4	50-60-605
	5	50-60-607
	6	50-60-608
	7	Repealer
	8	Codification instruction
	9	Effective date
48	1	19-5-103
	2	Effective date
49	1	87-2-805
	2	Repealer
	3	Effective date
50	1	15-1-231
	2	Codification instruction
51	1	19-18-602
52	1	30-18-101
	2	30-18-102
	3	30-18-103
	4	30-18-104
	5	30-18-105
	6	30-18-106
	7	30-18-107
	8	30-18-108
	9	30-18-109
	10	30-18-110
	11	30-18-111
	12	30-18-112
	13	30-18-113
	14	30-18-114
	15	30-18-115
	16	30-18-116
	17	30-18-117
	18	30-18-118
	19	Codification instruction
	20	Severability
	21	Effective date
	22	Applicability
53	1	Repealer
	2	Effective date
54	1	18-11-107
	2	Repealer
	3	Notification to tribal governments
	4	Effective date — applicability
55	1	23-2-502
	2	23-2-517
56	1	16-11-111

	2	16-11-307
	3	16-11-308
	4	Notification to tribal governments
57	1	5-2-201
	2	5-2-202
	3	5-2-203
	4	Effective date
	5	Retroactive applicability
58	1	39-71-1504
	2	Effective date
59	1	15-16-613
	2	Effective date
	3	Retroactive applicability
60	1	87-2-102
	2	Effective date
61	1	15-35-108
	2	15-38-202
	3	17-5-703
	4	17-5-704
	5	Effective date
62	1	19-3-1605
	2	19-5-901
	3	19-6-710
	4	19-7-711
	5	19-8-1105
	6	19-9-1009
	7	19-13-1010
	8	Repealer
	9	Effective date
63	1	13-2-208
	2	Notification to tribal governments
	3	Codification instruction
64	1	45-5-624
	2	61-2-302
	3	Removal from drivers' records of references to convictions of persons under 21 years of age for possession of intoxicating substance
	4	Effective date
	5	Applicability
65	1	50-74-306
	2	50-74-307
	3	50-76-103
66	1	19-2-706
	2	19-3-908
	3	19-3-1106
	4	Effective date
67	1	77-1-141
	2	Codification instruction
	3	Effective date
68	1	39-71-2615
	2	Effective date
69	1	90-1-131
	2	90-1-135
	3	90-11-102
	4	Notification to tribal governments
	5	Sec. 19, Ch. 512, L. 1999
	6	Effective date
70	1	Sec. 6, Ch. 495, L. 1999
	2	Effective date
71	1	39-3-405
	2	39-3-406
	3	39-3-408
	4	Effective date
72	1	61-3-332
	2	61-3-453
73	1	20-7-102
74	1	46-18-116
	2	Repealer
	3	Effective date
	4	Applicability
75	1	20-9-204
	2	Effective date — applicability
76	1	20-9-604
	2	Effective date — applicability
77	1	2-3-301
	2	2-6-101
	3	2-6-102
	4	2-6-110
	5	2-6-202
	6	2-6-301
	7	2-6-401
	8	45-8-213
	9	Effective date
78	1	85-2-102
	2	85-2-302
	3	85-2-306
	4	85-2-516
	5	Notification to tribal governments
	6	Effective date
79	1	37-42-102
	2	37-42-321
	3	75-10-714
	4	76-4-108
	5	76-4-126
	6	82-4-112
	7	82-4-130
	8	82-4-205
	9	82-4-206
	10	82-4-254
	11	82-4-338
	12	82-4-353
	13	82-4-361
	14	82-4-362
	15	82-4-422
	16	82-4-427
	17	82-4-441

	18	Saving clause
	19	Effective date
80	1	22-1-402
	2	22-1-403
	3	22-1-404
	4	22-1-413
81	1	31-1-703
	2	31-1-704
	3	31-1-705
	4	31-1-706
	5	31-1-714
	6	31-1-715
	7	31-1-722
	8	31-1-723
	9	Codification instruction
82	1	82-4-231
	2	Effective date
83	1	41-3-428
	2	41-3-429
	3	41-3-430
	4	41-3-401
	5	41-3-403
	6	41-3-608
	7	Codification instruction
	8	Saving clause
	9	Effective date
84	1	20-1-308
85	1	16-4-204
	2	Effective date
86	1	71-3-1111
	2	71-3-1112
	3	71-3-1113
	4	71-3-1114
	5	71-3-1115
	6	71-3-1117
	7	71-3-1118
	8	Effective date
87	1	53-6-157
	2	Effective date
88	1	7-31-203
	2	Effective date
89	1	16-4-301
	2	Effective date
90	1	16-4-416
	2	Codification instruction
91	1	40-1-107
	2	50-15-101
	3	50-15-122
	4	Severability
92	1	22-1-701
	2	22-1-702
	3	22-1-703
	4	22-1-704
	5	22-1-705
	6	22-1-706
	7	22-1-707
	8	22-1-708
	9	22-1-709
	10	22-1-710
	11	22-1-711
	12	Codification instruction
93	1	61-8-309
	2	Effective date
94	1	Repealer
	2	Effective date
95	1	23-2-533 Voided by sec. 5, Ch. 95 (coordination section)
	2	Sec. 6, Ch. 511, L. 1993
	3	Sec. 9, Ch. 476, L. 1995
	4	Sec. 10, Ch. 476, L. 1995
	5	Coordination instruction 23-2-534
	6	Effective date
96	1	13-2-402
97	1	23-1-109
	2	Saving clause
	3	Effective date
98	1	19-8-603
	2	Coordination instruction 19-8-502
99	1	2-18-1101
	2	5-2-304
	3	7-11-105
	4	19-2-303
	5	19-2-403
	6	19-2-406
	7	19-2-505
	8	19-2-506
	9	19-2-602
	10	19-2-703
	11	19-2-704
	12	19-2-708
	13	19-2-801
	14	19-2-903
	15	19-2-907
	16	19-2-908
	17	19-2-909
	18	19-3-108
	19	19-3-403
	20	19-3-412
	21	19-3-503
	22	19-3-505
	23	19-3-509
	24	19-3-510
	25	19-3-511
	26	19-3-512
	27	19-3-513
	28	Service purchase limit — exception
	29	19-3-514
	30	19-3-901
	31	19-3-904

	32	19-3-1002
	33	19-3-1005
	34	19-3-1007
	35	19-3-1008
	36	19-3-1015
	37	19-3-1103
	38	19-3-1105
	39	19-3-1106
	40	19-3-1203
	41	19-3-1204
	42	19-3-1501
	43	19-5-101
	44	19-5-409
	45	19-5-501
	46	19-5-502
	47	19-5-503
	48	19-5-601
	49	19-5-701
	50	19-5-801
	51	19-5-802
	52	19-6-101
	53	19-6-402
	54	19-6-403
	55	19-6-501
	56	19-6-502
	57	19-6-505
	58	19-6-601
	59	19-6-612
	60	19-6-709
	61	19-6-801
	62	19-6-802
	63	19-6-803
	64	19-6-804
	65	19-6-805
	66	19-6-810
	67	19-6-901
	68	19-6-902
	69	19-6-903
	70	19-7-101
	71	19-7-301
	72	19-7-403
	73	19-7-501
	74	19-7-503
	75	19-7-601
	76	19-7-801
	77	19-7-802
	78	19-7-803
	79	19-7-804
	80	19-7-805
	81	19-7-810
	82	19-7-901
	83	19-7-1001
	84	19-7-1101
	85	19-8-101
	86	19-8-302
	87	19-8-308
	88	19-8-502
	89	19-8-601
	90	19-8-603
	91	19-8-701
	92	19-8-712
	93	19-8-801
	94	19-8-901
	95	19-8-902
	96	19-8-903
	97	19-8-904
	98	19-8-906
	99	19-8-1001
	100	19-9-104
	101	19-9-301
	102	19-9-403
	103	19-9-405
	104	19-9-411
	105	19-9-406
	106	19-9-801
	107	19-9-1101
	108	19-9-1102
	109	19-13-301
	110	19-13-403
	111	19-13-404
	112	19-13-405
	113	19-13-406
	114	19-13-604
	115	19-13-701
	116	19-13-902
	117	19-13-903
	118	19-17-102
	119	19-17-104
	120	19-17-106
	121	19-17-202
	122	19-17-401
	123	19-17-403
	124	19-17-404
	125	19-17-405
	126	19-17-407
	127	19-17-410
	128	19-17-411
	129	19-50-104
	130	Repealer
	131	Codification instruction
	132	Effective dates
	133	Termination
100	1	45-9-102
	2	45-10-103
101	1	50-16-530
102	1	41-5-1416
103	1	20-9-204
104	1	46-24-106
	2	Codification instruction
	3	Saving clause
	4	Effective date

105	1	20-6-502 Voided by sec. 21, Ch. 237 (coordination section)
	2	20-9-302
	3	Effective date
106	1	33-17-210
	2	33-17-101
	3	33-17-102
	4	33-17-212
	5	33-17-214
	6	33-17-401
	7	33-17-1203
	8	33-17-408
	9	33-1-218
	10	33-1-219
	11	Codification instruction
	12	Effective dates
107	1	33-37-110
	2	Codification instruction
108	1	15-1-701
	2	15-1-708
	3	15-30-209
	4	15-50-301
	5	15-53-147
	6	Effective date
109	1	35-15-103
	2	35-15-201
	3	35-15-203
	4	35-15-210
	5	35-15-204
	6	35-15-205
	7	35-15-401
	8	Codification instruction
	9	Saving clause
110	1	15-70-113
	2	15-70-225
	3	15-70-364
	4	Effective date
111	1	15-30-107
	2	15-31-118
	3	33-27-119
112	1	75-11-308
	2	75-11-318
	3	Saving clause
	4	Severability
	5	Effective dates
113	1	70-30-323
	2	75-10-715
	3	Codification instruction
	4	Effective date
114	1	41-3-103
	2	41-5-103
	3	41-5-203
	4	41-5-204
	5	41-5-321
	6	41-5-1201
	7	41-5-1801
	8	Repealer
115	1	15-70-242
	2	15-70-372
	3	15-70-330
	4	15-70-336
	5	Codification instruction
	6	Effective date
116	1	30-16-303
	2	Effective date
117	1	77-1-808
	2	Effective date
118	1	44-13-103
	2	46-18-236
	3	46-18-242
	4	46-18-248
	5	46-18-250
	6	46-18-251
	7	53-1-107
	8	53-9-104
	9	53-30-132
	10	Repealer
	11	Effective date
119	1	15-70-371
120	1	15-70-210
	2	15-70-352
	3	Effective date
	4	Applicability
121	1	39-71-701
	2	39-71-712
	3	Effective date
122	1	2-2-102
	2	2-2-103
	3	2-2-121
	4	2-2-136
	5	2-2-144
	6	Repealer
123	1	37-50-330
	2	37-50-301
	3	Repealer
	4	Codification instruction
124	1	2-15-2016
	2	50-16-530
	3	53-9-103
	4	53-9-104
	5	53-9-105
	6	53-9-106
	7	53-9-107
	8	53-9-108
	9	53-9-109
	10	53-9-110
	11	53-9-121
	12	53-9-122
	13	53-9-123
	14	53-9-124
	15	53-9-125
	16	53-9-126

	17	53-9-127
	18	53-9-128
	19	53-9-130
	20	53-9-131
	21	53-9-132
	22	53-9-133
	23	Codification instruction
	24	Effective date
125	1	7-1-4124
	2	7-5-4106
	3	7-7-4404
	4	7-13-2218
	5	7-13-4404
	6	7-13-4405
	7	7-13-4406
	8	7-14-101
	9	7-14-1625
	10	7-14-2101
	11	7-14-2108
	12	7-14-2123
	13	7-14-2621
	14	7-14-2803
	15	7-14-2829
	16	7-14-4501
	17	7-14-4622
	18	7-14-4626
	19	7-14-4801
	20	7-15-4204
	21	7-15-4258
	22	7-15-4259
	23	7-15-4460
	24	7-15-4462
	25	7-16-2105
	26	7-16-4106
	27	7-35-2201
	28	15-70-301
	29	15-70-701
	30	23-1-102
	31	35-18-106
	32	35-20-104
	33	53-2-201
	34	60-1-103
	35	60-5-104
	36	67-2-301
	37	67-5-202
	38	67-6-301
	39	67-10-102
	40	67-10-103
	41	67-10-201
	42	67-10-205
	43	67-10-221
	44	67-11-201
	45	67-11-204
	46	67-11-231
	47	67-11-401
	48	69-13-104
	49	69-14-513
	50	69-14-536
	51	69-14-552
	52	70-30-102
	53	70-30-103
	54	70-30-104
	55	70-30-105
	56	70-30-106
	57	70-30-107
	58	70-30-108
	59	70-30-109
	60	70-30-110
	61	70-30-111
	62	70-30-202
	63	70-30-203
	64	70-30-206
	65	70-30-207
	66	70-30-301
	67	70-30-302
	68	70-30-303
	69	70-30-304
	70	70-30-305
	71	70-30-306
	72	70-30-307
	73	70-30-308
	74	70-30-309
	75	70-30-310
	76	70-30-311
	77	70-30-312
	78	70-30-314
	79	70-30-315
	80	70-30-321
	81	70-30-322
	82	70-31-102
	83	70-31-104
	84	70-31-105
	85	70-31-301
	86	70-31-311
	87	70-32-216
	88	75-10-715
	89	75-10-720
	90	75-15-123
	91	75-15-223
	92	76-5-1108
	93	76-5-1111
	94	76-6-105
	95	76-12-108
	96	76-12-110
	97	82-2-221
	98	82-2-222
	99	82-2-224
	100	82-10-303
	101	82-10-304
	102	82-10-305
	103	85-1-204
	104	85-1-209

	105	85-7-1411
	106	85-7-1904
	107	85-7-1932
	108	85-9-410
	109	87-1-209
126	1	23-1-105
	2	61-3-512
	3	Effective date
127	1	Repealer
	2	Effective date
128	1	Repealer
	2	Effective date
129	1	87-2-411
	2	Effective date
130	1	20-7-330
	2	Repealer
	3	Effective date
131	1	7-32-2302
132	1	85-2-402
	2	Effective date
133	1	20-1-101
	2	20-3-103
	3	20-3-104
	4	20-3-106
	5	20-3-324
	6	20-7-301
	7	20-7-302.1
	8	20-7-303
	9	20-7-305
	10	20-7-306
	11	20-7-329
	12	20-7-702
	13	41-2-109
	14	Repealer
	15	Effective date — applicability
134	1	13-13-117
135	1	15-24-1502
	2	15-6-134
	3	Codification instruction
	4	Effective date
	5	Retroactive applicability
136	1	3-1-523
137	1	2-15-1815
	2	17-5-1302
	3	17-5-1312
	4	17-6-308
	5	90-7-101
	6	90-7-102
	7	90-7-103
	8	90-7-104
	9	90-7-202
	10	90-7-211
	11	90-7-213
	12	90-7-214
	13	90-7-220
	14	90-7-301
	15	90-7-302
	16	90-7-303
	17	90-7-304
	18	Saving clause
	19	Effective date
138	1	39-71-704
	2	Effective date — applicability
139	1	77-2-203
	2	77-2-205
	3	Repealer
	4	Effective date
140	1	31-1-116
	2	31-1-111
	3	Codification instruction
141	1	80-8-201
	2	80-15-302
	3	Saving clause
142	1	15-70-202
	2	15-70-341
	3	Effective date
143	1	13-37-218
	2	15-30-101
	3	15-30-1111
	4	15-30-1112
	5	15-30-1113
	6	15-30-1113
	7	15-30-105
	8	15-30-124
	9	15-30-133 (renum. 15-30-1102)
	10	15-30-241
	11	15-31-101
	12	15-31-162 Voided by sec. 6, Ch. 226 (coordination section)
	13	15-31-201 (renum. 15-30-1101)
	14	15-31-603
	15	15-30-1114
	16	Codification instruction — code commissioner instruction
	17	Repealer
	18	Effective dates
	19	Applicability
	20	Termination
144	1	45-7-307
	2	Effective date
145	1	20-7-431
	2	20-9-321
	3	Effective date — applicability
146	1	20-9-308
	2	Effective date — applicability
147	1	61-8-403
	2	Applicability
148	1	20-7-712
	2	Notification to tribal governments and tribal colleges
	3	Effective date

149	1	19-2-303
	2	19-3-108
	3	19-3-1605
	4	19-3-1606
	5	19-5-901
	6	19-5-902
	7	19-6-101
	8	19-6-710
	9	19-6-711
	10	19-7-101
	11	19-7-711
	12	19-8-101
	13	19-8-1105
	14	19-9-1009
	15	19-9-1010
	16	19-9-1013
	17	19-13-1010
	18	19-13-1011
	19	19-20-622
	20	19-20-719
	21	Codification instruction
	22	Effective date
150	1	50-60-301
	2	Effective date
151	1	20-3-352
152	1	Sec. 18, Ch. 375, L. 1997
	2	Effective date
153	1	40-15-204
154	1	2-15-2204
	2	Notification to tribal governments
	3	Effective date
155	1	1-1-514
	2	Codification instruction
156	1	7-4-2621
	2	7-4-2623
157	1	61-8-346
158	1	15-70-101
	2	Effective date
159	1	41-5-332
160	1	44-4-303
	2	44-4-304
	3	Sec. 5, Ch. 469, L. 1999
	4	Saving clause
	5	Effective date
	6	Termination
161	1	1-5-402
	2	1-5-403
	3	1-5-404
	4	1-5-405
	5	1-5-408
	6	1-5-409
	7	1-5-416
	8	1-5-417
	9	1-5-418
	10	1-5-603
	11	1-5-609
	12	1-5-610
	13	Saving clause
162	1	7-12-2171
	2	7-12-2176
	3	7-12-2183
	4	7-12-2184
	5	7-12-2193
	6	7-12-4189
	7	7-12-4194
	8	7-12-4203
	9	7-12-4223
	10	7-12-4224
	11	Board of investment participation in bonding — review
	12	Effective date
163	1	16-3-411
	2	16-3-418
	3	16-4-107
	4	16-4-406
	5	16-4-407
	6	16-4-501
	7	Effective date
164	1	19-17-401
	2	Effective date
165	1	53-1-202
	2	53-1-209
	3	Codification instruction
	4	Effective date
166	1	Department study of chronic disease registry
167	1	61-3-332
	2	61-3-453
	3	Effective date
	4	Applicability
168	1	80-4-402
	2	80-4-429
	3	80-4-526
	4	Saving clause
	5	Effective date
169	1	85-1-602
	2	Effective date
170	1	7-13-231
	2	75-10-104
	3	75-10-105
	4	75-10-106
	5	75-10-115
	6	75-10-116
	7	75-10-117
	8	75-10-204
	9	75-10-206
	10	75-10-221
	11	Repealer
	12	Effective date
171	1	90-9-103

	2	90-9-201
	3	90-9-202
	4	90-9-203
	5	90-9-301
	6	90-9-303
	7	90-9-306
	8	90-9-311
	9	90-9-312
	10	90-9-313
	11	90-9-316
	12	Repealer
	13	Severability
	14	Saving clause
	15	Effective date
172	1	2-9-303
	2	2-9-304
	3	Effective date
	4	Retroactive applicability
173	1	35-18-325
	2	35-18-326
	3	35-18-327
	4	35-18-328
	5	35-18-329
	6	35-18-330
	7	35-18-331
	8	35-18-332
	9	35-18-333
	10	35-18-302
	11	Codification instruction
	12	Effective date
174	1	39-71-609
	2	Effective date
175	1	69-8-201
	2	Effective date
176	1	19-5-501
	2	Effective date
177	1	30-11-705
	2	61-4-150
	3	Codification instruction
	4	Saving clause
	5	Effective date
178	1	90-11-101
	2	90-11-102
	3	Notification to tribal governments
	4	Effective date
179	1	30-1-105
	2	30-1-201
	3	30-9-122 (renum. 30-9A-102)
	4	30-9-124 (renum. 30-9A-104)
	5	30-9-129 (renum. 30-9A-109)
	6	30-9-220 (renum. 30-9A-210)
	7	30-9-331 (renum. 30-9A-311)
	8	30-9-337 (renum. 30-9A-317)
	9	30-9-343 (renum. 30-9A-323)
	10	30-9-351 (renum. 30-9A-331)
	11	30-9-356 (renum. 30-9A-336)
	12	30-9-446 (renum. 30-9A-406)
	13	30-9-447 (renum. 30-9A-407)
	14	30-9-448 (renum. 30-9A-408)
	15	30-9-449 (renum. 30-9A-409)
	16	30-9-529 (renum. 30-9A-509)
	17	30-9-533 (renum. 30-9A-513)
	18	30-9-545 (renum. 30-9A-525)
	19	30-9-608 (renum. 30-9A-608)
	20	30-9-613 (renum. 30-9A-613)
	21	30-9-615 (renum. 30-9A-615)
	22	30-9-625 (renum. 30-9A-625)
	23	Sec. 164, Ch. 305, L. 1999 30-9A-705
	24	30-9A-707
	25	Codification instruction
	26	Effective date
180	1	30-11-901
	2	30-11-902
	3	30-11-903
	4	30-11-904
	5	30-11-905
	6	30-11-906
	7	30-11-907
	8	30-11-908
	9	30-11-909
	10	Codification instruction
181	1	2-2-201
	2	2-17-403
	3	7-5-2309
	4	7-14-2404
	5	7-14-2406
	6	7-14-2716
	7	17-8-244
	8	18-1-101
	9	18-1-102
	10	18-1-103
	11	18-1-111
	12	18-1-404
	13	18-2-306
	14	18-4-123
	15	18-4-132
	16	18-4-133
	17	18-4-141
	18	18-4-301
	19	18-4-301
	20	18-4-302
	21	18-4-306
	22	18-4-313
	23	18-5-308
	24	18-7-107
	25	60-2-112
	26	Repealer
	27	Effective dates
	28	Applicability
	29	Termination

182	1	50-37-106
	2	Effective date
183	1	7-4-2104
	2	Effective date
184	1	33-2-321
185	1	2-4-309
	2	Codification instruction
186	1	75-1-201
187	1	85-20-801
	2	Effective date
188	1	69-8-402
	2	Effective date
	3	Retroactive applicability
189	1	2-15-3313
	2	Effective date
190	1	50-17-102
	2	50-17-105
	3	50-17-107
	4	50-17-108
	5	50-17-109
	6	50-17-110
	7	50-17-111
	8	50-17-113
	9	50-17-114
	10	50-17-115
	11	Saving clause
	12	Effective date
191	1	15-10-420
	2	15-15-201
	3	15-16-202
	4	19-6-709
	5	20-9-141
	6	20-9-331
	7	20-9-333
	8	23-2-616 Voided by sec. 255(6), Ch. 574 (coordination section)
	9	61-3-321 Voided by sec. 255(6), Ch. 574 (coordination section)
	10	61-3-332
	11	61-3-457
	12	61-3-463
	13	61-3-501
	14	61-3-507
	15	61-3-509 Voided by sec. 255(6), Ch. 574 (coordination section)
	16	61-3-537
	17	61-3-560
	18	61-3-562
	19	61-3-736
	20	61-3-737
	21	61-3-738
	22	Effective date
	23	Retroactive applicability
	24	Termination
192	1	7-34-2201
	2	33-36-103
	3	39-71-704
	4	50-5-101
	5	50-5-233
	6	50-6-401
	7	Codification instruction
	8	Effective dates
193	1	19-6-501
	2	Effective date
194	1	41-3-102
	2	41-3-401
	3	41-3-404
	4	41-3-406
	5	41-3-421
	6	41-3-439
	7	Codification instruction
	8	Applicability
195	1	15-65-101
	2	15-65-121
	3	15-65-122
	4	Effective date
196	1	87-1-285
	2	87-1-286
	3	87-1-269
	4	Codification instruction
	5	Effective date
	6	Termination
197	1	7-15-4431
	2	7-15-4432
	3	7-15-4435
198	1	23-5-610
	2	Effective date
	3	Retroactive applicability
199	1	15-1-205
200	1	39-51-1132
	2	39-51-201
	3	39-51-204
	4	39-51-1103
	5	39-51-1124
	6	39-51-1126
	7	Codification instruction
	8	Notification to tribal governments
	9	Effective date — retroactive applicability
201	1	61-4-101
	2	61-4-120
	3	61-4-125
202	1	10-2-111
	2	Codification instruction
203	1	7-22-2106
	2	7-32-2226
204	1	60-7-102
	2	60-7-103
	3	60-7-202
205	1	20-9-235
	2	20-9-213

	3	20-9-346
	4	Codification instruction
	5	Effective date — applicability
206	1	61-10-141
	2	Termination
207	1	44-1-1005
	2	61-1-134
	3	61-2-302
	4	61-5-104
	5	61-5-105
	6	61-5-110
	7	61-5-111
	8	61-5-208
	9	61-8-406
	10	61-8-801
	11	61-8-802
	12	61-8-803
	13	61-8-805
	14	61-8-811
	15	61-11-101
	16	Applicability
208	1	60-11-202
	2	Codification instruction
	3	Effective date
209	1	19-17-404
	2	Effective date
210	1	2-4-110
	2	2-4-302
	3	2-4-305
	4	2-4-306
	5	5-5-202
	6	5-5-211
	7	5-5-215
	8	5-5-216
	9	5-5-217
	10	5-5-223
	11	5-5-224
	12	5-5-225
	13	5-5-226
	14	5-5-227
	15	5-5-228
	16	5-5-229
	17	5-11-106
	18	5-11-210
	19	75-1-324
	20	Codification instruction
	21	Coordination instruction
	22	Effective date
211	1	40-5-804
	2	40-5-806
	3	40-5-810
212	1	53-21-140
	2	53-21-132
	3	Codification instruction
213	1	37-42-102
	2	Repealer
	3	Saving clause
	4	Effective date
214	1	39-71-521
	2	30-9-129
	3	39-71-107
	4	39-71-117
	5	39-71-201
	6	39-71-304
	7	39-71-306
	8	39-71-415
	9	39-71-435
	10	39-71-610
	11	39-71-805
	12	39-71-906
	13	39-71-915
	14	39-71-2204
	15	39-71-2205
	16	39-71-2337
	17	39-71-2339
	18	39-72-606
	19	39-72-608
	20	39-73-103
	21	39-73-107
	22	39-73-109
	23	Repealer
	24	Codification instruction
	25	Severability
	26	Effective date — retroactive applicability
215	1	2-15-225
216	1	87-1-265
	2	87-1-267
	3	87-1-270
	4	87-2-202
	5	87-2-505
	6	87-2-510
	7	87-2-711
	8	Effective date
	9	Termination
217	1	19-3-904
	2	19-3-1002
	3	19-3-1008
	4	Effective date
218	1	61-2-302
	2	61-5-206
	3	61-11-203
	4	61-11-204
	5	61-13-104
	6	Effective date
219	1	2-17-550
	2	2-17-551
	3	2-17-552
	4	2-17-553
	5	Codification instruction
220	1	15-10-420
	2	20-3-205

	3	20-7-705
	4	20-10-147
	5	Effective date
	6	Applicability
221	1	52-5-109 Voided by sec. 23, Ch. 587 (coordination section)
222	1	46-23-520
	2	46-23-508
	3	Codification instruction
	4	Effective date
223	1	40-15-401
	2	40-15-402
	3	40-15-403
	4	40-15-404
	5	40-15-405
	6	40-15-406
	7	40-15-407
	8	40-15-408
	9	40-4-125
	10	40-15-303
	11	Transitional provisions
	12	Two-thirds vote required — contingent voidness
	13	Codification instruction
	14	Severability
	15	Notification to tribal governments
	16	Effective date
224	1	61-5-205
	2	61-8-734
225	1	81-20-201
	2	Effective date
226	1	15-30-165
	2	15-30-166
	3	15-31-161
	4	15-31-162
	5	Sec. 9, Ch. 537, L. 1997
	6	Coordination instruction
	7	Effective dates
	8	Applicability
227	1	33-1-107
	2	33-3-105
	3	33-30-109
	4	33-1-707
	5	33-18-502
	6	33-20-1316
	7	17-2-121
	8	33-1-102
	9	33-1-206
	10	33-1-214
	11	33-1-215
	12	33-1-216
	13	33-1-217
	14	33-1-311
	15	33-1-313
	16	33-1-314
	17	33-1-315
	18	33-1-316
	19	33-1-601
	20	33-1-701
	21	33-1-711
	22	33-2-307
	23	33-2-313
	24	33-2-316
	25	33-2-708
	26	33-2-1363
	27	33-2-1371
	28	33-2-1388
	29	33-3-203
	30	33-3-302
	31	33-3-303
	32	33-4-101
	33	33-4-407
	34	33-5-401
	35	33-10-102
	36	33-12-103
	37	33-12-202
	38	33-12-203
	39	33-12-212
	40	33-14-202
	41	33-15-414
	42	33-16-102
	43	33-16-403
	44	33-17-502
	45	33-17-1001
	46	33-17-1103
	47	33-17-1204
	48	33-19-406
	49	33-20-1201
	50	33-20-1209
	51	33-20-1210
	52	33-20-1211
	53	33-20-1212
	54	33-22-508
	55	33-22-701
	56	33-22-702
	57	33-22-703
	58	33-22-704
	59	33-22-1002
	60	33-22-1003
	61	33-22-1810
	62	33-25-301
	63	33-30-102
	64	33-30-107
	65	33-30-108
	66	33-31-111
	67	33-31-211
	68	33-31-311
	69	33-31-401
	70	45-6-301
	71	61-12-310
	72	61-12-315

	73	Repealer
	74	Codification instruction
228	1	33-4-204
	2	33-4-206
	3	33-4-401
	4	33-4-501
	5	Effective date
229	1	39-71-413
	2	Effective date — applicability
230	1	77-2-101
	2	Effective date
231	1	20-9-306
	2	20-9-306
	3	Effective dates — applicability
	4	Termination
232	1	Appropriations for reclamation and development grants
	2	Approved grant projects
	3	Coordination of fund sources for grants program projects
	4	Condition of grants
	5	Other appropriations
	6	Sec. 2(2), Ch. 419, L. 1999
	7	Severability
	8	Effective date
233	1	90-6-715
	2	Effective date
234	1	76-13-401
	2	76-13-408
	3	76-13-410
235	1	33-22-111
	2	33-30-1018
	3	Codification instruction
	4	Effective date
236	1	71-3-1114
	2	Coordination instruction
237	1	20-9-541
	2	20-9-542
	3	20-9-543
	4	20-9-544
	5	20-1-301
	6	20-3-205
	7	20-6-202
	8	20-6-314
	9	20-6-502 Voided by sec. 21, Ch. 237 (coordination section)
	10	20-7-504
	11	20-9-104
	12	20-9-130
	13	20-9-163
	14	20-9-168
	15	20-9-308
	16	20-9-314
	17	20-9-343
	18	20-9-502
	19	20-10-111
	20	20-10-201
	21	Coordination instruction
	22	Extension of 2001 deadlines relating to school elections
	23	Effective dates
	24	Retroactive applicability
238	1	39-71-118
	2	39-71-123
	3	Effective date
239	1	Policy
	2	Definitions
	3	Deposit of oil overcharge revenue
	4	Food bank network transportation — appropriation
	5	Efficient energy — appropriation
	6	Transportation to nutrition sites — appropriation
	7	Promoting use of energy and water savings technologies on Montana farms and ranches — appropriation
	8	Low-income weatherization — appropriation
	9	Low-income weatherization and energy assistance — appropriation
	10	Carryover — reappropriation
	11	Conditions applied to appropriations
	12	Appropriations prioritized
	13	Sec. 4, Ch. 49, L. 1999
	14	Coordination instruction
	15	Effective dates
240	1	90-4-605
	2	90-4-606
	3	Stripper-well payments — reappropriation — definition — priority
	4	Appropriation of bond proceeds
	5	Approval of energy conservation projects — definition
	6	Bond authorization — appropriation of bond proceeds
	7	Requirement for approval of state debt
	8	Effective date
241	1	70-25-202
	2	70-25-205
242	1	53-4-250
	2	Codification instruction
	3	Effective date
243	1	41-5-206

244	1	75-11-509
	2	Effective date
245	1	7-14-2133
	2	Effective date
246	1	44-4-115
247	1	Natural resource damage program appropriation
	2	Loan agreement
	3	Three-fourths vote
	4	Effective dates
248	1	87-2-803
	2	Effective date
249	1	61-3-332
	2	Effective date — applicability
250	1	53-19-401
	2	53-19-402
	3	53-19-403
	4	53-19-404
	5	Appropriation
	6	Codification instruction
	7	Effective date
251	1	75-1-203
	2	Effective date
252	1	20-9-311
	2	Effective date
253	1	17-7-142
	2	Codification instruction
254	1	61-10-144
255	1	2-15-112
	2	17-7-138
	3	17-7-139
	4	Effective date
256	1	85-20-1001
	2	85-20-1002
	3	85-20-1003
	4	85-20-1004
	5	85-20-1005
	6	85-20-1006
	7	85-20-1007
	8	85-20-1008
	9	Appropriation of funds for economic development plan
	10	Codification instruction
257	1	3-1-317
	2	3-10-601
	3	7-6-2421
	4	10-2-501
	5	15-1-116
	6	15-1-504
	7	15-24-925
	8	15-36-324
	9	20-9-212
	10	20-9-331
	11	20-9-333
	12	20-9-334
	13	20-9-360
	14	20-25-1007
	15	23-2-507
	16	23-2-512
	17	23-2-615
	18	23-2-616
	19	23-2-644
	20	23-2-804
	21	23-2-807
	22	23-2-814
	23	45-9-130
	24	50-52-105
	25	61-3-321
	26	61-3-465
	27	61-3-467
	28	61-3-509
	29	61-3-511
	30	61-5-121
	31	61-10-126
	32	61-10-148
	33	61-10-225
	34	61-12-701
	35	67-1-303
	36	72-16-912 Voided by sec. 255(5), Ch. 574 (coordination section)
	37	72-16-920
	38	75-10-532
	39	76-13-114
	40	77-1-117
	41	80-2-230
	42	80-7-704
	43	81-7-118
	44	87-1-114
	45	87-1-601
	46	87-4-808
	47	Code commissioner instruction
	48	Effective date
	49	Applicability
258	1	50-15-101
	2	50-15-403
	3	50-15-404
	4	50-15-405
259	1	77-5-116
	2	Codification instruction
	3	Effective date
260	1	45-9-131
	2	45-9-132
	3	Codification instruction
	4	Coordination instruction
	5	Effective date
261	1	61-3-501
	2	Applicability
262	1	15-30-601
	2	15-30-602
	3	15-30-603
	4	15-30-604

	5	15-30-605
	6	15-30-111
	7	Codification instruction
	8	Applicability
	9	Contingent termination
263	1	30-19-101
	2	30-19-102
	3	30-19-103
	4	30-19-104
	5	30-19-109
	6	30-19-110
	7	30-19-111
	8	30-19-112
	9	30-19-113
	10	30-19-114
	11	30-19-115
	12	30-19-116
	13	Codification instruction
	14	Severability
	15	Effective date
	16	Applicability
264	1	23-1-117
	2	Effective date
	3	Termination
265	1	2-17-1101
	2	2-17-1102
	3	2-17-1103
	4	2-17-1104
	5	2-17-1105
	6	Codification instruction
	7	Effective date
266	1	Approval of renewable resource projects and authorization to provide loans
	2	Projects not completing requirements — projects reauthorized
	3	Coal severance tax bonds authorized
	4	Conditions of loans
	5	Private and discount purchase of loans
	6	Appropriations established
	7	Creation of state debt — appropriation of coal severance tax — bonding provisions
	8	Severability
	9	Effective date
267	1	75-1-201
	2	75-1-220
	3	Codification instruction
	4	Coordination instruction
268	1	75-1-201
	2	75-1-220
	3	Codification instruction
	4	Effective date
269	1	60-2-133
	2	60-2-110
	3	Notification to tribal governments
	4	Codification instruction
	5	Effective date
270	1	77-1-130
	2	77-1-208
	3	77-2-206
	4	77-2-325
	5	77-6-302
	6	Sec. 5, Ch. 461, L. 1997
	7	Repealer
	8	Effective date
271	1	50-40-202
	2	50-40-203
	3	50-40-207
	4	Repealer
	5	Effective date
272	1	2-18-1301
	2	2-18-1302
	3	2-18-1303
	4	2-18-1304
	5	2-18-1305
	6	2-18-1309
	7	2-18-1310
	8	2-18-1311
	9	2-18-1312
	10	2-18-1313
	11	2-18-618
	12	15-30-111
	13	Department to seek commissioner's determination — certification to secretary of state
	14	Loan from board of investments
	15	Implementation
	16	Codification instruction
	17	Saving clause
	18	Two-thirds vote required
	19	Effective dates
273	1	20-2-501
	2	20-2-502
	3	20-2-503
	4	20-2-504
	5	20-2-505
	6	Codification instruction
	7	Effective date
274	1	39-71-736
	2	Effective date — applicability
275	1	87-3-102
	2	87-3-124
	3	87-3-130
	4	87-3-504
	5	Effective date

276	1	20-6-603
	2	Effective date
277	1	40-6-401
	2	40-6-402
	3	40-6-403
	4	40-6-404
	5	40-6-405
	6	40-6-406
	7	40-6-407
	8	40-6-411
	9	40-6-412
	10	40-6-413
	11	40-6-414
	12	40-6-415
	13	40-6-416
	14	40-6-417
	15	40-4-211
	16	41-3-102
	17	Notification to tribal governments
	18	Codification instruction
	19	Two-thirds vote required — contingent voidness
	20	Effective date
	21	Termination
278	1	7-6-609
	2	7-6-610
	3	7-6-611
	4	7-6-612
	5	7-6-613
	6	7-6-614
	7	7-6-615
	8	7-6-616
	9	7-6-4001
	10	7-6-4002
	11	7-6-4003
	12	7-6-4004
	13	7-6-4005
	14	7-6-4006
	15	7-6-4011
	16	7-6-4012
	17	7-6-4013
	18	7-6-4014
	19	7-6-4015
	20	7-6-4020
	21	7-6-4021
	22	7-6-4022
	23	7-6-4023
	24	7-6-4024
	25	7-6-4025
	26	7-6-4030
	27	7-6-4031
	28	7-6-4032
	29	7-6-4033
	30	7-6-4034
	31	7-6-4035
	32	7-6-4036
	33	2-7-501
	34	2-7-503
	35	2-7-504
	36	2-7-505
	37	2-7-513
	38	2-9-316
	39	2-9-804
	40	3-5-602
	41	3-5-901
	42	7-1-114
	43	7-3-4432
	44	7-6-204
	45	7-6-2111
	46	7-4-2514
	47	7-6-2113
	48	7-6-2202
	49	7-6-2521
	50	7-6-2524
	51	7-6-2601
	52	7-6-2602
	53	7-6-2607
	54	7-6-4302
	55	7-6-4501
	56	7-12-4181
	57	7-12-4183
	58	50-60-302
	59	53-2-322
	60	85-3-423
	61	Repealer
	62	Codification instruction
	63	Effective date
	64	Applicability
279	1	60-4-201
	2	60-4-202
	3	60-4-203
280	1	76-4-112
	2	76-4-113
	3	76-4-133
	4	76-4-102
	5	76-4-104
	6	76-4-105
	7	76-4-111
	8	76-4-121
	9	76-4-122
	10	76-4-125
	11	76-4-127
	12	76-4-130
	13	76-4-131
	14	76-4-132
	15	Repealer
	16	Codification instruction
	17	Effective date
	18	Applicability
281	1	41-3-101
	2	41-3-205

	3	41-3-301
	4	41-3-401 (renum. 41-3-422)
	5	41-3-402 (renum. 41-3-427)
	6	41-3-432
	7	41-3-433
	8	41-3-403 (renum. 41-3-423)
	9	41-3-404 (renum. 41-3-437)
	10	41-3-406 (renum. 41-3-438)
	11	41-3-442
	12	41-3-412 (renum. 41-3-445)
	13	41-3-420 (renum. 41-3-443)
	14	41-3-434
	15	41-3-421 (renum. 41-3-444)
	16	Repealer
	17	Codification instruction — code commissioner instruction
	18	Coordination instruction
	19	Saving clause
282	1	76-10-101
	2	76-10-102
	3	76-10-103
	4	76-10-104
	5	76-10-105
	6	76-10-106
	7	76-10-107
	8	State-tribal cooperative agreements
	9	Two-thirds vote required — contingent voidness
	10	Codification instruction
	11	Effective date
	12	Notification to tribal governments
283	1	61-10-107
284	1	46-18-244
	2	46-18-249
	3	Retroactive applicability
285	1	19-3-412
286	1	50-5-301
	2	Effective date
287	1	49-2-303
288	1	76-2-101
	2	76-2-102
	3	76-2-113
	4	Codification instruction
	5	Transition
289	1	17-6-317
	2	Effective date
290	1	19-13-104
	2	19-13-210
	3	19-13-212
	4	19-13-605
	5	19-13-805
	6	19-13-1007
	7	Contingent effective date
291	1	61-10-111
	2	Codification instruction
292	1	39-71-712
	2	Effective date — applicability
293	1	75-20-102
	2	75-20-104
	3	75-20-207
	4	75-20-208
	5	75-20-211
	6	75-20-216
	7	75-20-219
	8	75-20-223
	9	75-20-231
	10	75-20-301
	11	75-20-303
	12	75-20-304
	13	75-20-406
	14	Repealer
	15	Saving clause
	16	Effective date
	17	Applicability
294	1	37-51-309
	2	37-51-321
	3	Effective date
295	1	33-1-501
	2	33-20-1302
	3	33-20-1311
	4	33-20-1317
	5	Codification instruction
	6	Effective date
296	1	61-7-114
297	1	53-19-302
	2	53-19-306
	3	53-19-307
	4	53-19-310
	5	Effective date
298	1	33-28-101
	2	33-28-102
	3	33-28-103
	4	33-28-104
	5	33-28-105
	6	33-28-106
	7	33-28-107
	8	33-28-108
	9	33-28-109
	10	33-28-201
	11	33-28-202
	12	33-28-203
	13	33-28-204
	14	33-28-205
	15	33-28-206
	16	33-22-207
	17	33-2-708
	18	Codification instruction
	19	Effective date
299	1	75-1-208
	2	75-1-220

	3	75-1-201
	4	75-2-211
	5	75-2-218
	6	75-10-922
	7	75-20-216
	8	75-20-231
	9	76-4-125
	10	82-4-122
	11	82-4-231
	12	82-4-337
	13	82-4-432
	14	Codification instruction
	15	Coordination instruction
	16	Applicability
300	1	75-1-201
	2	75-1-220
	3	Codification instruction
	4	Coordination instruction
	5	Effective date
301	1	87-5-102
	2	87-5-116
	3	Codification instruction
302	1	2-6-405
	2	2-6-402
	3	Codification instruction
303	1	46-1-202
	2	46-14-202
	3	46-14-204
	4	46-14-205
	5	46-14-213
	6	46-14-302
	7	46-15-323
	8	Effective date
304	1	Appropriation
	2	Effective date
305	1	2-4-603
	2	17-2-102
	3	Effective date
306	1	15-1-501
	2	15-36-324
	3	15-36-324 Voided by sec. 8, Ch. 531 (coordination section)
	4	82-11-135
	5	Effective dates — contingency
	6	Retroactive applicability
307	1	90-1-141
	2	90-1-142
	3	90-1-143
	4	90-1-144
	5	90-1-145
	6	90-1-146
	7	90-1-147
	8	17-6-305
	9	17-6-308
	10	20-25-1006
	11	90-6-305
	12	Repealer
	13	Department of commerce program review
	14	Codification instruction
	15	Effective date
308	1	22-3-1001
	2	22-3-1002
	3	22-3-1003
	4	22-3-1004
309	1	19-3-1605
	2	19-5-901
	3	19-6-710
	4	19-7-711
	5	19-8-1105
	6	19-9-1009
	7	19-9-1010
	8	19-13-1010
	9	Effective date
310	1	27-1-1101
	2	53-21-102
	3	53-21-145
	4	53-21-165
311	1	41-3-101
	2	41-3-102
	3	41-3-106
	4	41-3-201
	5	41-3-202
	6	41-3-205
	7	41-3-401
	8	41-3-402
	9	41-3-403
	10	41-3-404
	11	41-3-406
	12	41-3-411
	13	41-3-412
	14	41-3-413 Voided by sec. 18(3), Ch. 281 (coordination section)
	15	41-3-420
	16	41-3-604
	17	41-3-1102
	18	41-3-1103
	19	41-3-1115
	20	41-3-1142
	21	42-3-202
	22	42-3-301
	23	42-4-112
	24	42-5-101
	25	42-5-103
	26	42-8-101
	27	42-8-103
	28	42-8-104
	29	42-8-107
	30	41-3-440
	31	41-3-131
	32	41-3-434
	33	Repealer

	34	Codification instruction
312	1	45-2-101
	2	45-5-601
	3	45-5-602
	4	45-5-603
	5	46-18-205
	6	46-18-219
313	1	2-15-1021
	2	2-17-504
	3	2-17-505
	4	2-17-506
	5	2-17-511
	6	2-17-512
	7	2-17-513
	8	2-17-514
	9	2-17-515
	10	2-17-516
	11	2-17-517
	12	2-17-518
	13	2-17-521
	14	2-17-522
	15	2-17-523
	16	2-17-524
	17	2-17-527
	18	2-17-526
	19	2-3-301
	20	2-6-214
	21	2-15-102
	22	2-15-114
	23	2-15-404
	24	2-15-1514
	25	2-15-2212
	26	2-17-301
	27	2-17-303 (renum. 2-17-531)
	28	2-17-306 (renum. 2-17-546)
	29	2-17-322 (renum. 2-17-532)
	30	2-17-323 (renum. 2-17-533)
	31	2-17-503 (renum. 2-17-534)
	32	2-18-103
	33	5-11-402
	34	5-11-403
	35	5-12-205
	36	10-3-106
	37	17-7-111
	38	17-7-112
	39	17-7-123
	40	18-4-313 Voided by sec. 46, Ch. 313 (coordination section)
	41	61-3-345
	42	61-3-346
	43	Repealer
	44	Codification instructions — instructions to code commissioner
	45	No appropriation
	46	Coordination instruction
	47	Effective date
314	1	39-71-2328
	2	2-18-601
	3	2-18-701
	4	2-18-703
	5	2-18-711
	6	18-7-101
	7	39-71-2311
	8	39-71-2316
	9	39-71-2330
	10	39-71-2363
	11	Repealer
	12	Report to legislative committee
	13	Codification instruction
	14	Effective dates
315	1	75-6-102
	2	75-6-112
	3	75-6-126
	4	Codification instruction
	5	Saving clause
	6	Severability
	7	Effective date
316	1	81-7-101
	2	81-7-102
	3	81-7-103
	4	81-7-104
	5	87-3-127
	6	87-3-130
	7	87-5-105
	8	87-5-131
	9	Repealer
	10	Codification instruction
	11	Effective date
317	1	61-3-508
	2	75-10-511
	3	75-10-532
	4	Effective date
318	1	7-11-104
	2	7-11-105
	3	20-4-201
	4	20-4-401
	5	Effective date
319	1	2-6-109
320	1	2-15-130
	2	20-1-225
	3	Notification to tribal governments
	4	Codification instruction
	5	Saving clause
	6	Severability
	7	Effective dates
321	1	87-2-106
	2	87-2-202
	3	Contingent termination

	4	Occurrence of multiple contingencies — directions to code commissioner
	5	Coordination instruction
	6	Effective dates
	7	Applicability
322	1	30-10-324
	2	30-10-326
323	1	30-16-302 Voided by sec. 2, Ch. 323 (coordination section)
	2	Coordination instruction
	3	Effective date
324	1	7-2-4625
	2	Codification instruction
325	1	82-4-402
	2	82-4-422
	3	82-4-432
	4	82-4-434
	5	82-4-436
	6	82-4-441
	7	Codification instruction
326	1	75-10-704
	2	75-10-722
	3	Saving clause
	4	Effective date
	5	Applicability
327	1	61-10-124
	2	61-10-201
	3	Repealer
328	1	69-8-603
	2	Effective date
329	1	Art. III, sec. 7, Mont. Const.
	2	Art. XIV, sec. 9, Mont. Const.
	3	Submission to electorate
330	1	Art. III, sec. 4, Mont. Const.
	2	Art. III, sec. 7, Mont. Const.
	3	Submission to electorate
331	1	50-5-226
	2	Department review
	3	Termination
332	1	46-9-505
	2	Effective date
333	1	39-51-2201
	2	Effective date — applicability
334	1	17-3-211
	2	17-3-212
	3	17-3-213
	4	Effective date
335	1	33-33-101
	2	33-33-102
	3	33-33-103
	4	33-33-201
	5	33-33-202
	6	Codification instruction
336	1	33-1-501
	2	33-22-244
	3	33-22-521
	4	33-31-111
	5	Saving clause
	6	Effective date — applicability
337	1	7-14-112
	2	61-3-321 Voided by sec. 255(10)(a), Ch. 574 (coordination section)
	3	61-3-332
	4	61-3-426
	5	61-3-457
	6	61-3-510
	7	61-3-562
	8	Notification to tribal governments
	9	Codification instruction
	10	Effective date
	11	Applicability
338	1	75-1-110
	2	75-10-1223
	3	82-4-241
	4	82-4-311
	5	82-4-424
	6	82-4-426
	7	Codification instruction
	8	Severability
	9	Effective date
339	1	39-51-204
	2	39-71-401
	3	Effective date
340	1	76-3-201
	2	76-3-301
	3	76-3-302
	4	76-4-122 Voided by sec. 6, Ch. 340 (coordination section)
	5	Notification to tribal governments
	6	Coordination instruction
	7	Effective date
341	1	33-19-102
	2	33-19-104
	3	33-19-105
	4	33-19-106
	5	33-19-202
	6	33-19-206
	7	33-19-306
	8	33-19-307
	9	33-19-405
	10	33-19-407
	11	Repealer
	12	Codification instruction
	13	Severability
	14	Effective dates
	15	Retroactive applicability
342	1	53-21-149
	2	53-21-150

	3	53-21-151
	4	53-21-152
	5	46-16-130
	6	53-21-102
	7	53-21-104
	8	53-21-121
	9	53-21-123
	10	53-21-124
	11	53-21-126
	12	53-21-127
	13	53-21-128
	14	53-21-181
	15	Codification instruction
343	1	53-2-111
	2	Transfer of workforce development programs — notice to legislature
	3	Codification instruction
	4	Effective date
344	1	2-15-211
	2	53-21-102
	3	53-21-104
	4	53-21-107
	5	Codification instruction
345	1	30-14-225
	2	33-18-221
	3	33-18-222
	4	33-18-223
	5	33-18-224
	6	33-18-1006
	7	Severability
	8	Effective date
	9	Retroactive applicability
346	1	53-6-107
	2	53-6-108
	3	53-6-109
	4	Codification instruction
347	1	50-5-1201
	2	50-5-1202
	3	50-5-1203
	4	50-5-1204
	5	50-5-1205
	6	Codification instruction
348	1	17-6-505
	2	76-3-102
	3	76-3-103
	4	76-3-503
	5	76-3-504
	6	76-3-509
	7	76-3-608
	8	76-3-621
	9	90-1-103
	10	Codification instruction
	11	Effective dates
349	1	5-11-705
	2	5-11-706
	3	5-11-707
	4	5-11-708
	5	5-11-301
	6	Codification instruction
	7	Effective date
350	1	30-14-1412
	2	Effective date
351	1	37-27-312
	2	50-19-101
	3	50-19-102
	4	50-19-103
	5	50-19-104
	6	50-19-105
	7	50-19-107
352	1	25-13-608
	2	40-5-103
	3	40-5-154
	4	40-5-157
	5	40-5-158
	6	40-5-161
	7	40-5-162
	8	40-5-164
	9	40-5-173
	10	40-5-247
	11	40-5-248
	12	40-5-273
	13	40-5-403
	14	40-5-415
	15	40-5-909
	16	40-5-910
	17	40-6-215
	18	Repealer
	19	Effective date
353	1	90-5-101
	2	90-5-108
354	1	7-1-2121
	2	7-1-4121
	3	7-1-4127
	4	7-1-4149
	5	7-2-2209
	6	7-2-2505
	7	7-2-2602
	8	7-2-4312
	9	7-2-4708
	10	7-2-4805
	11	7-3-604
	12	7-5-2502
	13	7-5-4202
	14	7-5-4302
	15	7-6-2316
	16	7-6-2320
	17	7-8-101
	18	7-8-2217
	19	7-8-2302
	20	7-12-1112
	21	7-12-2132

	22	7-12-4141
	23	7-12-4177
	24	7-12-4254
	25	7-12-4303
	26	7-12-4329
	27	7-12-4406
	28	7-12-4426
	29	7-12-4502
	30	7-12-4603
	31	7-13-107
	32	7-13-114
	33	7-13-126
	34	7-13-127
	35	7-13-145
	36	7-13-208
	37	7-13-232
	38	7-13-3005
	39	7-13-3021
	40	7-13-3023
	41	7-13-3028
	42	7-13-3043
	43	7-13-4507
	44	7-14-208
	45	7-14-244
	46	7-14-1102
	47	7-14-2403
	48	7-14-2616
	49	7-14-2822
	50	7-14-2902
	51	7-14-4114
	52	7-14-4712
	53	7-14-4732
	54	7-15-4215
	55	7-15-4263
	56	7-15-4404
	57	7-16-2442
	58	7-21-3305
	59	7-22-2212
	60	7-22-2232
	61	7-22-2406
	62	7-22-2408
	63	7-22-2446
	64	7-33-2102
	65	7-33-2125
	66	7-34-2162
	67	7-35-2112
	68	15-10-203
	69	75-2-215
	70	Repealer
355	1	Art. VIII, sec. 13, Mont. Const.
	2	Effective date
	3	Submission to electorate
356	1	20-9-201
	2	20-9-507
	3	Effective date
357	1	19-3-412
	2	Effective date
	3	Retroactive applicability
358	1	61-10-1101
359	1	50-16-201
	2	50-16-202
	3	50-16-203
	4	50-16-204
	5	50-16-205
	6	50-16-542
	7	Effective date
360	1	80-18-101
	2	80-18-102
	3	80-18-103
	4	80-18-106
	5	80-18-107
	6	80-18-110
	7	80-18-111
	8	45-9-108
	9	Request for federal change or waiver
	10	Codification instruction
361	1	7-6-2531
	2	7-6-4431
	3	15-10-420
362	1	37-7-1401
	2	37-7-1402
	3	37-7-1408
	4	Codification instruction
	5	Effective dates
363	1	61-11-501
	2	61-11-502
	3	61-11-503
	4	61-11-506
	5	61-11-507
	6	61-11-508
	7	61-11-509
	8	61-11-510
	9	61-11-515
	10	61-11-516
	11	2-6-109
	12	45-7-208
	13	61-3-101
	14	61-11-105
	15	Repealer
	16	Codification instruction
	17	Effective date
364	1	28-2-2110
	2	28-2-2107
	3	Codification instruction
	4	Applicability
365	1	87-1-247
	2	87-1-248
	3	87-1-249
	4	Effective date
366	1	50-5-101
	2	50-5-235

	3	Codification instruction
	4	Effective date
	5	Applicability
367	1	33-22-[illegible]
	2	33-22-1502
	3	33-22-1513
	4	33-22-1521
	5	Effective date
368	1	39-72-408
	2	Effective date
369	1	61-10-130
	2	61-10-144
	3	Effective date
370	1	27-6-103
371	1	7-32-2144
	2	46-30-411
372	1	53-1-208 (purportedly amended)
	2	Repealer
	3	Effective date
373	1	61-9-414
374	1	7-5-132
	2	Effective date
375	1	Art. VIII, sec. 13, Mont. Const.
	2	Effective date
	3	Submission to electorate
376	1	20-9-115
	2	20-9-131
	3	Effective date
377	1	20-9-706
	2	20-3-324
	3	Notification to tribal governments
	4	Codification instruction
	5	Effective date — applicability
378	1	45-6-332
	2	Codification instruction
379	1	20-25-109
	2	Codification instruction
	3	Effective date
380	1	17-5-703
	2	Effective date
381	1	85-2-410
	2	85-2-122
	3	85-2-402
	4	85-2-407
	5	85-2-419
	6	Codification instruction
	7	Effective date
382	1	85-1-219
	2	Effective date
383	1	75-10-711
	2	75-10-712
	3	75-10-715
	4	75-10-745
	5	Effective date
384	1	75-5-312
385	1	61-4-143
	2	61-4-130
	3	61-1-314
	4	61-4-101
	5	61-4-105
	6	61-4-123
	7	61-4-124
	8	61-4-125
	9	Codification instruction
	10	Effective date
386	1	60-4-207
387	1	85-7-1505
388	1	2-15-1843
	2	37-2-101
	3	37-7-101
	4	37-7-201
	5	37-7-301
	6	37-7-303
	7	37-7-321
	8	37-7-322
	9	37-7-323
	10	37-7-401
	11	37-7-406
	12	37-7-502
	13	37-7-505
	14	37-7-602
	15	50-32-101
389	1	46-11-401
	2	Effective date
390	1	46-18-255
	2	Effective date
	3	Applicability
391	1	19-9-1020
	2	Codification instruction
	3	Coordination instruction
	4	Effective date
392	1	85-7-2103
	2	Effective date
393	1	37-47-316
	2	Effective date
394	1	17-5-1608
	2	17-5-2001
	3	61-3-103
	4	61-3-550
	5	Deposit of loan proceeds — capital projects appropriation
	6	Deposit of loan proceeds — appropriation — contractual restrictions
	7	Codification instruction
	8	Effective dates
	9	Termination
395	1	53-4-211
	2	Effective date
	3	Retroactive applicability

396	1	2-15-405
	2	1-5-408
	3	2-4-311
	4	2-4-312
	5	2-4-313
	6	2-6-103
	7	2-6-110
	8	7-13-2509
	9	13-2-115
	10	13-27-208
	11	27-18-411
	12	30-9-403
	13	30-9-407
	14	30-9-545 Voided by sec. 29(1), Ch. 396 (coordination section)
	15	30-13-217
	16	30-13-320
	17	35-1-1206
	18	35-1-1207
	19	35-2-1003
	20	35-5-205
	21	35-6-201
	22	35-8-211
	23	35-8-212
	24	35-12-521
	25	35-15-201 Voided by sec. 29(2)(a), Ch. 396 (coordination section)
	26	35-15-205 Voided by sec. 29(2)(b), Ch. 396 (coordination section)
	27	35-17-205
	28	35-18-502
	29	Coordination instruction
	30	Effective date
397	1	15-1-706
	2	39-51-1304
	3	Coordination instruction
	4	Effective date
398	1	15-32-601
	2	15-32-602
	3	15-32-603
	4	Sec. 9, Ch. 712, L. 1991
	5	Sec. 4, Ch. 542, L. 1995
	6	Sec. 5, Ch. 542, L. 1995
	7	Sec. 1, Ch. 411, L. 1997
	8	Applicability
399	1	15-35-101
	2	15-35-103
	3	Effective date
	4	Applicability
400	1	17-1-601
	2	17-1-602
	3	17-1-603
	4	Codification instruction
	5	Effective date
	6	Retroactive applicability
401	1	13-1-101
	2	13-35-211
	3	13-35-226
	4	13-37-111
	5	13-37-112
	6	13-37-113
	7	13-37-114
	8	13-37-117
	9	13-37-118
	10	13-37-121
	11	13-37-124
	12	13-37-125
	13	13-37-126
	14	13-37-127
	15	13-37-128
	16	13-37-226
	17	13-37-228
	18	Repealer
402	1	61-3-472
	2	61-3-473
	3	61-3-474
	4	61-3-475
	5	61-3-476
	6	61-3-477
	7	61-3-478
	8	61-3-479
	9	61-3-480
	10	61-3-481
	11	61-3-332
	12	61-3-407
	13	61-3-446
	14	Appropriation
	15	Notification to tribal governments
	16	Coordination instruction
	17	Coordination instruction
	18	Codification instruction
	19	Effective date
	20	Applicability
	21	Termination
403	1	15-36-303
	2	Effective date
404	1	15-70-204
	2	15-70-205
	3	15-70-221
	4	67-1-301
	5	67-1-303
	6	Repealer
	7	Effective date
405	1	16-1-406
	2	16-4-501
	3	Effective date
	4	Applicability
406	1	15-6-141
	2	35-18-102

	3	35-18-104
	4	35-18-203
	5	35-18-301
	6	35-18-313
	7	Saving clause
	8	Effective date
407	1	7-22-2120
	2	80-7-823
	3	80-7-705
	4	7-22-2101
	5	7-22-2109
	6	7-22-2110
	7	7-22-2111
	8	7-22-2116
	9	7-22-2117
	10	7-22-2123
	11	7-22-2124
	12	7-22-2130
	13	7-22-2142
	14	7-22-2146
	15	7-22-2150
	16	7-22-2151
	17	7-22-2152
	18	7-22-2153
	19	80-5-120
	20	80-7-105
	21	80-7-133
	22	80-7-801
	23	80-7-815
	24	80-7-816
	25	80-7-903
	26	87-1-264
	27	Codification instruction
	28	Effective date
	29	Termination
408	1	37-8-420
	2	37-8-421
	3	Codification instruction
	4	Effective date
	5	Termination
409	1	20-5-323
	2	20-10-142
	3	Effective date — applicability
410	1	15-16-102
	2	Effective date
	3	Applicability
411	1	15-30-181
	2	15-31-170
	3	15-30-165
	4	Codification instruction
	5	Effective date
	6	Retroactive applicability
	7	Termination
412	1	7-4-2613
	2	72-16-503
413	1	75-5-401
	2	Effective date
414	1	Voided by sec. 17(1), Ch. 402 (coordination section)
	2	Voided by sec. 17(1), Ch. 402 (coordination section)
	3	Voided by sec. 17(1), Ch. 402 (coordination section)
	4	Voided by sec. 17(1), Ch. 402 (coordination section)
	5	Voided by sec. 17(1), Ch. 402 (coordination section)
	6	Voided by sec. 17(1), Ch. 402 (coordination section)
	7	Voided by sec. 17(1), Ch. 402 (coordination section)
	8	2-15-150
	9	17-7-502
	10	61-3-332 Voided by sec. 17(1), Ch. 402 (coordination section)
	11	61-3-403 Voided by sec. 17(1), Ch. 402 (coordination section)
	12	Appropriation
	13	Notification to tribal governments
	14	Voided by sec. 17(1), Ch. 402 (coordination section)
	15	Effective date
	16	Applicability
	17	Termination
415	1	61-5-102
416	1	Purpose
	2	Coordination of integrated multiagency services for children with serious emotional disturbances
	3	Provider networks
	4	Long-term transition to regional mental health system
	5	Effective date
	6	Termination
417	1	53-1-202 Voided by sec. 4, Ch. 417 (coordination section)
	2	61-8-731
	3	61-8-732
	4	Coordination instruction
	5	Effective date
	6	Applicability
418	1	20-9-620
	2	20-9-621
	3	20-9-622
	4	17-6-340
	5	17-6-201
	6	77-2-303
	7	77-2-304
	8	Coal severance tax loan — rate of interest — appropriation

	9	Loan agreement
	10	Codification instruction
	11	Three-fourths vote
	12	Coordination
	13	Effective dates
419	1	7-6-2522
	2	15-10-202
	3	15-10-206
	4	15-10-420 Voided by sec. 255(11), Ch. 574 (coordination section)
	5	Certain governmental entities to recalculate mill levy
	6	Repealer
	7	Effective date
	8	Retroactive applicability
	9	Termination
420	1	77-1-109
	2	Effective date
421	1	15-36-303
	2	15-36-304
	3	Effective date
	4	Retroactive applicability
422	1	Transfer of housing assistance money
	2	Effective date
423	1	19-3-2141
	2	19-3-2142
	3	19-2-303
	4	19-2-406
	5	19-3-2117 Voided by sec. 14(2)(a), Ch. 423 (coordination section)
	6	19-3-2121
	7	19-3-2123
	8	19-3-2124
	9	19-3-2126 Voided by sec. 14(2)(b), Ch. 423 (coordination section)
	10	19-3-2143
	11	Loan for startup — repayment
	12	Two-thirds vote required
	13	Codification instruction
	14	Coordination instruction
	15	Saving clause
	16	Contingent voidness
	17	Effective dates
424	1	53-2-1201
	2	53-2-1202
	3	53-2-1203
	4	53-2-1204
	5	53-2-1205
	6	53-2-1206
	7	53-2-1207
	8	39-51-2602
	9	Repealer
	10	Notification to tribal governments
	11	Codification instruction
	12	Severability
	13	Effective date
425	1	46-23-104
	2	46-23-202
	3	Effective date
426	1	Appropriation
	2	Effective date
427	1	45-6-301
428	1	50-50-102
	2	50-50-217
	3	Codification instruction
	4	Effective date
429	1	18-5-601
	2	18-5-602
	3	18-5-603
	4	18-5-604
	5	18-5-605
	6	Codification instruction
	7	Effective date
430	1	69-3-842
	2	69-3-843
	3	69-3-844
	4	69-3-845
	5	Repealer
	6	Effective date
431	1	90-3-1002
	2	90-3-1003
	3	Saving clause
	4	Effective date
432	1	69-14-1201
	2	69-14-1202
	3	69-14-1203
	4	69-14-1204
	5	69-14-1205
	6	69-14-1206
	7	Codification instruction
	8	Termination
433	1	85-2-407
	2	Effective date
	3	Termination
434	1	Appropriation of cultural and aesthetic grant funds — priority of disbursement
	2	Appropriation of general fund and cultural and aesthetic grant funds
	3	Reversion of granted money
	4	Reduction of grants
	5	Effective date
435	1	Appropriations from treasure state endowment special revenue account

	2	Approval of grants — completion of appropriation
	3	Conditions and manner of disbursement of grant funds
	4	Appropriations from treasure state endowment regional water system special revenue account
	5	Approval of funds — completion of appropriation
	6	Conditions and manner of disbursement of funds
	7	Review of previously authorized project grants
	8	Emergency grants
	9	Conrad emergency drinking water grant
	10	90-6-715
	11	Effective dates
436	1	15-6-217
	2	61-3-707
437	1	20-10-208
	2	Codification instruction
	3	Effective date
	4	Termination
438	1	15-6-138
	2	15-6-201
	3	Applicability
439	1	50-60-701
	2	50-60-702
	3	50-60-703
	4	Effective date
440	1	53-6-131
	2	Appropriation — funding request
	3	Effective date
441	1	80-20-101
	2	80-20-102
	3	80-20-103
	4	80-20-104
	5	Codification instruction
	6	Effective date
442	1	19-8-302
443	1	7-33-2105
	2	7-33-2109
	3	7-33-2111
	4	Effective date
444	1	15-7-138
	2	15-8-711
	3	15-7-102
	4	15-18-112
	5	Codification instruction
	6	Effective date
	7	Retroactive applicability
445	1	27-1-722
446	1	7-1-111
447	1	85-2-350
	2	85-2-351
	3	Codification instruction
	4	Notification to tribal government
	5	Effective date
	6	Termination
448	1	15-1-501
	2	16-2-108
	3	16-4-207
	4	16-4-401
	5	Effective date
	6	Applicability
449	1	3-10-601
	2	46-9-108
	3	46-9-302
	4	46-18-236
	5	Effective date
450	1	33-22-129
	2	2-18-704
	3	33-31-102
	4	33-31-111
	5	Application to types of insurance
	6	Codification instruction
	7	Effective date — applicability
451	1	70-32-104
	2	Effective date — applicability
452	1	67-10-901
	2	67-10-902
	3	67-10-903
	4	67-10-904
	5	Codification instruction
	6	Effective date
453	1	7-13-232
	2	Effective date
454	1	37-8-103
	2	Effective date
455	1	31-1-801
	2	31-1-802
	3	31-1-803
	4	31-1-804
	5	31-1-805
	6	31-1-810
	7	31-1-811
	8	31-1-812
	9	31-1-815
	10	31-1-816
	11	31-1-817
	12	31-1-818
	13	31-1-819
	14	31-1-820
	15	31-1-821
	16	31-1-822
	17	31-1-825
	18	31-1-826

	19	31-1-327
	20	31 1-106
	21	32-5-103
	22	Codification instruction
	23	Applicability
456	1	70-24-422
	2	70-24-436
	3	70-24-441
	4	Applicability
457	1	85-2-114
	2	85-2-122
	3	85-2-123
	4	Effective date
458	1	16-4-109
	2	Effective date
459	1	15-7-201
460	1	82-4-312
	2	82-4-313
	3	82-4-314
	4	82-4-315
	5	15-37-117
	6	75-10-743
	7	Two-thirds vote required
	8	Codification instruction
	9	Effective date
461	1	15-30-301
	2	Report to revenue and taxation interim committee
	3	Effective date
	4	Termination
462	1	20-9-707
	2	Codification instruction
	3	Effective date — applicability
463	1	76-6-109
	2	Effective date
	3	Applicability
464	1	20-5-320
	2	20-5-321
	3	20-5-323
	4	20-5-324
	5	20-9-141
	6	20-9-212
	7	20-9-335
	8	20-10-132
	9	Repealer
	10	Effective dates
	11	Applicability
465	1	23-1-303
	2	39-7-303
	3	39-71-118
	4	39-71-123
	5	40-4-215
	6	40-5-242
	7	40-5-248
	8	53-2-201
	9	53-2-211
	10	53-2-606
	11	53-2-610
	12	53-2-613
	13	53-2-901
	14	53-2-902
	15	53-2-903
	16	53-2-904
	17	53-2-1103
	18	53-4-201
	19	53-4-202
	20	53-4-212
	21	53-4-214
	22	53-4-231
	23	53-4-233
	24	53-4-241
	25	53-4-246
	26	53-4-602
	27	53-4-606
	28	53-4-611
	29	53-4-612
	30	53-4-613
	31	53-4-702
	32	53-4-704
	33	53-4-705
	34	53-4-706
	35	53-4-717
	36	53-6-101
	37	53-6-113
	38	53-6-131
	39	53-6-132
	40	53-6-134
	41	53-24-106
	42	Coordination instruction
	43	Repealer
	44	Effective date
	45	Retroactive applicability
466	1	33-31-115
	2	53-6-116
	3	53-6-131
	4	53-6-701
	5	53-6-702
	6	53-6-703
	7	53-21-701
	8	53-21-702
	9	Repealer
467	1	17-6-601
	2	17-6-602
	3	17-6-603
	4	17-6-203
	5	Codification instruction
	6	Effective date
	7	Retroactive applicability
468	1	15-62-207
	2	15-62-208
	3	15-62-209
	4	15-30-111

	5	15-62-103
	6	15-62-201
	7	15-62-203
	8	Repealer
	9	Codification instruction
	10	Effective date
	11	Retroactive applicability
469	1	15-65-121
	2	Effective date
	3	Termination
470	1	16-1-404
	2	16-1-406
	3	16-1-411
	4	53-24-108
	5	53-24-206
	6	Termination
	7	Effective date
471	1	33-19-308
	2	Codification instruction
472	1	15-16-101
	2	15-17-212
	3	15-17-323
473	1	3-20-101
	2	3-20-102
	3	3-20-103
	4	3-20-104
	5	3-20-105
	6	3-5-113
	7	3-5-115
	8	3-15-104
	9	3-15-204
	10	3-15-205
	11	Codification instruction
	12	Contingent effective date
474	1	20-9-375
	2	20-9-533
	3	Coordination instruction
	4	Effective date — applicability
475	1	33-22-1512
	2	33-22-1513
	3	Effective date
476	1	53-4-1002
	2	53-4-1004
	3	53-4-1005
	4	53-4-1007
	5	53-4-1009
	6	Effective date
477	1	69-14-562
478	1	77-1-121
	2	Effective date
	3	Retroactive applicability
479	1	7-14-2520
	2	7-14-2521
	3	7-14-2522
	4	Codification instruction
	5	Effective date
480	1	20-9-133
	2	20-9-201
	3	20-9-208
	4	20-9-443
	5	Effective date — applicability
481	1	Study of funding mechanism
482	1	53-4-255
	2	53-4-256
	3	53-4-257
	4	Codification instruction
483	1	90-1-112
	2	2-15-218
	3	2-15-219
	4	90-1-113
	5	90-1-114
	6	2-6-402
	7	2-6-403
	8	2-7-501
	9	2-7-518
	10	2-15-1803 (renum. 2-15-1025)
	11	2-15-1811 (renum. 2-15-1026)
	12	2-15-1852 (renum. 2-15-1742)
	13	2-15-1859 (renum. 2-15-1749)
	14	2-15-1860 (renum. 2-15-1750)
	15	2-15-1872 (renum. 2-15-1762)
	16	2-15-1882 (renum. 2-15-1772)
	17	2-15-1883 (renum. 2-15-1773)
	18	2-18-103
	19	5-5-223
	20	7-1-4145
	21	7-1-4147
	22	7-1-4148
	23	7-2-4906
	24	7-2-4911
	25	7-2-4912
	26	7-3-146
	27	7-3-153
	28	7-3-187
	29	7-6-603
	30	7-6-604
	31	7-6-2114
	32	7-6-2141
	33	7-6-2203
	34	7-6-2302
	35	7-6-2311
	36	7-6-2314
	37	7-6-2322
	38	7-6-4140
	39	7-6-4205
	40	7-6-4260
	41	15-35-108
	42	17-2-304
	43	17-5-1529
	44	17-5-1651
	45	17-6-321
	46	18-1-106

47	19-18-205
48	19-18-206
49	19-18-403
50	20-6-621
51	20-6-622
52	20-9-203
53	20-25-901
54	22-3-804
55	23-3-301
56	23-4-101
57	23-7-201
58	23-7-210
59	23-7-301
60	25-1-1104
61	27-12-206
62	30-11-515
63	30-11-801
64	30-12-101
65	30-12-105
66	30-14-102
67	30-14-202
68	30-14-1403
69	30-16-302 Voided by sec. 2, Ch. 323 (coordination section)
70	31-1-202
71	31-1-703
72	31-3-125
73	31-3-152
74	31-3-203
75	32-1-109
76	32-1-201
77	32-1-212
78	32-1-382
79	32-1-901
80	32-1-1005
81	32-1-1007
82	32-2-101
83	32-3-104
84	32-3-201
85	32-3-203
86	32-3-205
87	32-3-301
88	32-3-302
89	32-3-303
90	32-3-307
91	32-3-321
92	32-3-322
93	32-3-323
94	32-3-404
95	32-3-611
96	32-3-703
97	32-3-705
98	32-4-201
99	32-4-306
100	32-5-102
101	32-6-103
102	32-7-101
103	32-7-102
104	32-8-103
105	33-22-705
106	37-1-101
107	37-1-121
108	37-1-130
109	37-1-137
110	37-1-302
111	37-1-401
112	37-3-102
113	37-4-101
114	37-5-101
115	37-6-101
116	37-7-101
117	37-8-102
118	37-9-101
119	37-10-101
120	37-11-101
121	37-12-101
122	37-14-102
123	37-14-322
124	37-15-102
125	37-16-102
126	37-17-102
127	37-18-101
128	37-19-101
129	37-22-102
130	37-23-201
131	37-24-103
132	37-26-103
133	37-27-205
134	37-29-102
135	37-30-101
136	37-30-412
137	37-31-101
138	37-32-102
139	37-34-103
140	37-35-102
141	37-40-101
142	37-47-101
143	37-50-101
144	37-51-102
145	37-51-209
146	37-54-102
147	37-60-101
148	37-65-102
149	37-66-103
150	37-67-101
151	37-68-102
152	37-69-101
153	37-69-310
154	37-72-101
155	46-18-111
156	50-3-103
157	50-6-202

	158	50-32-101
	159	50-37-104
	160	50-39-101
	161	50-39-102
	162	50-39-103
	163	50-39-106
	164	50-39-107
	165	50-39-108
	166	50-53-103
	167	50-60-101
	168	50-60-504
	169	50-60-505
	170	50-60-507
	171	50-60-508
	172	50-60-509
	173	50-60-510
	174	50-60-511
	175	50-60-512
	176	50-60-513
	177	50-60-514
	178	50-60-603
	179	50-60-604
	180	50-60-605
	181	50-60-606
	182	50-60-607
	183	50-60-803
	184	50-64-102
	185	50-74-101
	186	50-74-312
	187	50-76-102
	188	50-76-103
	189	50-76-104
	190	50-76-105
	191	50-76-110
	192	50-76-111
	193	52-3-813
	194	61-2-208
	195	61-4-507
	196	61-4-511
	197	61-4-512
	198	61-4-515
	199	61-4-516
	200	61-4-517
	201	61-4-518
	202	61-4-519
	203	61-4-520
	204	61-4-526
	205	61-4-532
	206	75-10-913
	207	75-10-918
	208	75-20-211
	209	75-20-216
	210	75-20-226
	211	76-3-403
	212	80-8-204
	213	82-15-101
	214	85-7-1616
	215	85-7-1913
	216	90-3-1001
	217	Repealer
	218	Transition
	219	Notification to tribal governments
	220	Codification instruction
	221	Code commissioner instructions
	222	Effective date
484	1	15-53-129
	2	15-53-202
	3	Effective date
	4	Applicability
	5	Termination
485	1	77-3-303
	2	Contingent effective date
486	1	Definitions
	2	Appropriation of bond proceeds and other funds
	3	Authorization of bonds
	4	Agreement with department of environmental quality
	5	Agreement with Montana university system
	6	Agreement with department of corrections
	7	Agreement with Montana state university agricultural experiment station
	8	Planning and design
	9	Capital projects — contingent funds
	10	Legislative consent
	11	Legislative intent to increase maintenance funding
	12	Sec. 2(1), Ch. 518, L. 1999
	13	Requirement for approval of state debt
	14	Severability
	15	Effective date
487	1	17-5-1529
	2	17-6-311
	3	17-6-312
	4	17-6-318
	5	17-6-321
	6	Effective date
488	1	82-4-303
	2	82-4-311 Voided by sec. 11, Ch. 488 (coordination section)
	3	82-4-331
	4	82-4-332
	5	82-4-335
	6	82-4-338
	7	82-4-339

	8	82-4-341
	9	82-4-360
	10	82-4-424 Voided by sec. 11, Ch. 488 (coordination section)
	11	Coordination instruction
	12	Saving clause
	13	Severability
	14	Effective date
	15	Applicability
489	1	17-2-401
	2	17-2-402
	3	17-2-403
	4	17-2-404
	5	17-2-405
	6	5-5-223
	7	Saving clause
	8	Severability
	9	Effective date
	10	Termination
490	1	19-2-303
	2	19-2-401
	3	19-2-511
	4	19-2-907
	5	19-2-909
	6	19-2-1001
	7	19-2-1002
	8	19-2-1003
	9	19-2-1004
	10	19-2-1005
	11	19-2-1006
	12	19-2-1007
	13	19-3-1607
	14	19-3-2101
	15	19-3-2102
	16	19-3-2106
	17	19-3-2111
	18	19-3-2112
	19	19-3-2113
	20	19-3-2114
	21	19-3-2115
	22	19-3-2116
	23	19-3-2117
	24	19-3-2121
	25	19-3-2122
	26	19-3-2123
	27	19-3-2124
	28	19-3-2125
	29	19-3-2126
	30	19-3-2133
	31	19-21-101
	32	19-21-103
	33	19-21-201
	34	19-21-213
	35	19-21-202
	36	19-21-203
	37	19-21-214
	38	Sec. 79, Ch. 471, L. 1999
	39	Sec. 81, Ch. 471, L. 1999
	40	Codification instruction
	41	Saving clause
	42	Severability
	43	Effective dates
491	1	75-2-109
	2	75-2-218
	3	Effective date
492	1	2-15-1840
	2	2-15-1851
	3	2-15-1868
	4	2-15-1873
	5	23-3-401
	6	37-1-131
	7	37-1-320
	8	37-1-307
	9	37-1-308
	10	37-1-309
	11	37-3-103
	12	37-3-204
	13	37-3-211
	14	37-4-202
	15	37-4-408
	16	37-8-202
	17	37-8-204
	18	37-8-431
	19	37-12-201
	20	37-14-201
	21	37-15-201
	22	37-16-201
	23	37-16-303
	24	37-17-201
	25	37-17-306
	26	37-18-201
	27	37-19-202
	28	37-24-201
	29	37-26-202
	30	37-28-103
	31	37-30-101
	32	37-47-202
	33	37-50-201
	34	37-51-102
	35	37-51-209
	36	37-51-302
	37	37-51-309
	38	37-51-315
	39	37-54-212
	40	37-60-201
	41	37-65-201
	42	37-65-303
	43	37-65-304
	44	37-65-308
	45	37-65-310
	46	37-66-301
	47	37-66-304

	48	37-66-304
	49	37-67-101
	50	37-67-102
	51	37-67-103
	52	37-67-201
	53	37-67-204
	54	37-67-301
	55	37-67-303
	56	37-67-304
	57	37-67-305
	58	37-67-306
	59	37-67-308
	60	37-67-309
	61	37-67-310
	62	37-67-311
	63	37-67-312
	64	37-67-314
	65	37-67-315
	66	37-67-316
	67	37-67-318
	68	37-67-320
	69	37-67-321
	70	37-67-331
	71	37-67-332
	72	37-68-201
	73	37-69-201
	74	70-22-103
	75	Repealer
	76	Codification instruction
	77	Effective dates
	78	Termination
493	1	46-18-111
	2	46-18-203
	3	46-23-1004
	4	46-23-1011
	5	46-23-1012
	6	46-23-1015
	7	Repealer
	8	Codification instruction
	9	Effective date
	10	Retroactive applicability
494	1	70-22-206
495	1	15-10-425
	2	7-6-2314
	3	7-6-2328
	4	7-6-2512
	5	7-6-2531
	6	7-6-2534
	7	7-6-2536
	8	7-6-2537
	9	7-6-2541 Voided by sec. 255(1)(b), Ch. 574 (coordination section)
	10	7-6-4238
	11	7-6-4272
	12	7-6-4431
	13	7-14-1134
	14	7-14-1633
	15	7-14-2504
	16	7-14-4404
	17	7-16-2102
	18	7-16-2109
	19	7-16-2411
	20	7-16-2412
	21	7-16-2432
	22	7-22-2142
	23	7-32-235
	24	7-34-102
	25	7-34-2135
	26	19-18-504
	27	20-9-353
	28	20-9-502
	29	20-15-241
	30	20-15-311
	31	22-1-304
	32	76-15-531
	33	90-5-112
	34	Repealer
	35	Codification instruction
496	1	3-1-501
	2	3-1-511
	3	3-1-513
	4	3-1-518
	5	3-1-520
	6	3-10-402
	7	3-11-303
	8	Repealer
497	1	3-5-102
	2	Effective date
	3	Election of judges
498	1	16-3-301
	2	16-11-310
	3	45-5-624
	4	45-5-637
	5	Coordination instruction
499	1	50-74-209
	2	50-74-219
500	1	17-7-502
	2	61-3-529
	3	61-3-529
	4	61-3-529
	5	15-1-113
	6	61-3-736(2) (second sentence)
	7	Codification instruction
	8	Effective dates
	9	Termination
501	1	2-11-104
	2	Effective date
502	1	90-6-133
	2	Fund transfer
	3	Effective date
503	1	45-5-231

	2	45-5-232
	3	45-5-233
	4	45-5-234
	5	40-15-102
	6	45-5-206
	7	Codification instruction
504	1	77-1-110
	2	Effective date
505	1	52-2-703
	2	52-2-704
	3	52-2-721
	4	Effective date
	5	Applicability
506	1	75-5-1102
	2	Coordination instruction
	3	Effective date
507	1	3-10-207
	2	7-4-2107
	3	7-4-2503
	4	7-4-2504
	5	7-4-2706
	6	7-14-2126
	7	41-5-1704
	8	41-5-1705
	9	17-7-112(2)(b)
	10	Effective date
508	1	16-2-101
	2	Effective date
	3	Applicability
509	1	46-18-104
510	1	Appropriation — purpose
	2	Effective date
511	1	2-9-212
	2	2-18-703
	3	15-10-420
	4	Effective date
512	1	81-4-311
	2	81-4-310
	3	Codification instruction
	4	Effective date
	5	Applicability
513	1	61-8-365
	2	61-8-372
514	1	19-9-1201
	2	19-9-1202
	3	19-9-1203
	4	19-9-1204
	5	19-9-1205
	6	19-9-1206
	7	19-9-1207
	8	19-9-1208
	9	Board to seek commissioner's ruling
	10	Codification instruction
	11	Effective dates
515	1	25-30-109
		25-31-710
		25-35-609
	2	3-10-222
	3	3-10-304
	4	3-10-601
	5	15-1-704
	6	25-9-301
	7	25-13-101
	8	25-13-301
	9	25-13-402
	10	25-30-102
	11	25-31-914
	12	27-1-717
	13	27-2-201
	14	39-51-1304
	15	46-17-303
	16	46-17-402
	17	61-6-123
	18	Repealer
	19	Codification instruction
516	1	75-2-224
	2	75-2-225
	3	75-2-226
	4	75-2-227
	5	75-2-220
	6	Codification instruction
	7	Effective date
	8	Termination
517	1	18-2-401
	2	18-2-406
	3	18-2-422
	4	Effective date — applicability
518	1	61-10-128
519	1	87-2-513
	2	Codification instruction
	3	Effective date
	4	Termination
520	1	39-51-2111
	2	Codification instruction
	3	Effective date — applicability
	4	Termination
521	1	87-5-102
	2	Effective date
	3	Termination
522	1	82-4-250
	2	Codification instruction
	3	Effective date
	4	Applicability
	5	Termination — contingent termination
523	1	15-33-102
524	1	46-1-401
	2	45-5-222
	3	46-18-115
	4	46-18-220
	5	46-18-221

	6	46-18-224
	7	Codification instruction
	8	Effective date
525	1	39-10-201
	2	39-10-202
	3	39-10-203
	4	39-10-204
	5	39-10-205
	6	39-10-206
	7	Codification instruction
	8	Effective date
	9	Termination
526	1	61-3-431
	2	Effective date
	3	Retroactive applicability
527	1	76-1-605
	2	76-1-606
	3	76-3-504
	4	76-3-604
	5	Transition — applicability
528	1	87-2-202
	2	87-2-302
	3	87-2-304
	4	87-2-403
	5	87-2-504
	6	87-2-505
	7	87-2-510
	8	87-2-701
	9	Effective date
529	1	25-7-105
	2	Codification instruction
530	1	45-1-205
531	1	76-15-901
	2	76-15-902
	3	76-15-903
	4	76-15-904
	5	76-15-905
	6	15-36-324
	7	Codification instruction
	8	Coordination instruction
	9	Contingent effective date
	10	Termination
532	1	15-70-522
	2	Saving clause
533	1	53-21-153
	2	Codification instruction
	3	Applicability
534	1	76-3-203
535	1	25-1-502
	2	Effective date
	3	Applicability
536	1	75-2-207
	2	75-2-301
	3	Applicability
	4	Effective date
537	1	13-10-209
	2	13-10-327
	3	13-10-502
	4	13-10-504
	5	13-25-101
	6	13-27-202
	7	13-27-204
	8	13-27-205
	9	13-27-206
	10	13-27-207
	11	13-27-208
	12	13-27-302
538	1	15-30-180
	2	Effective date
	3	Termination
539	1	49-4-302
	2	61-3-332
	3	61-3-452
	4	61-3-453
	5	61-3-454
	6	61-3-560
	7	Effective date
540	1	15-31-133
	2	15-30-130
	3	15-30-186
	4	15-31-131
	5	Codification instruction
	6	Effective date
	7	Retroactive applicability
541	1	15-32-403
	2	15-32-404
	3	15-72-104
	4	90-5-101
	5	Notification to tribal governments
	6	Effective dates
542	1	40-4-204
	2	40-5-226
	3	40-5-272
	4	40-5-273
	5	40-5-276
	6	40-5-277
	7	40-5-278
	8	40-6-116
	9	Codification instruction
	10	Effective date
543	1	16-1-101
	2	16-1-104
	3	16-3-101
	4	16-3-214
	5	16-6-301
	6	16-6-302
	7	16-4-901
	8	16-4-902
	9	16-4-903
	10	16-4-906
	11	16-4-910

	12	Codification instruction
	13	Effective dates
544	1	2-15-210
	2	53-21-166
545	1	20-25-331
	2	20-25-332
	3	Codification instruction
	4	Effective date
546	1	13-19-106
	2	50-60-101
	3	50-60-303
	4	50-60-310
	5	50-60-311
	6	50-60-312
	7	50-60-313
	8	50-60-314
	9	Unfunded mandate laws superseded
	10	Codification instruction
	11	Effective date
	12	Retroactive applicability
547	1	2-17-601
	2	2-17-602
	3	2-17-603
	4	2-17-604
	5	Codification instruction
	6	Effective date
548	1	20-3-336
	2	20-3-337
	3	Effective date
549	1	20-9-437
	2	20-9-439
	3	20-9-443
	4	Notification to tribal governments
	5	Effective date
550	1	Time limit
	2	Appropriations
	3	Effective date
551	1	Time limits
	2	Appropriations
	3	Effective date
552	1	Appropriations from renewable resource grant and loan state special revenue account
	2	Conditions of grants
	3	Conditions for grants
	4	Appropriations established
	5	Review of previously authorized grants
	6	Severability
	7	Effective dates
553	1	2-18-301
	2	2-18-303
	3	2-18-312
	4	2-18-313
	5	2-18-315
	6	2-18-703
	7	5-2-301
	8	Appropriations
	9	Coordination instruction
	10	Effective date
554	1	17-1-505
	2	17-1-508
	3	17-7-502
	4	20-9-342
	5	20-9-343
	6	20-9-534
	7	81-5-110
	8	81-5-111
	9	Coordination instruction
	10	Effective date
555	1	20-4-134
	2	Codification instruction
	3	Effective date
556	1	20-9-306
	2	Coordination instruction
	3	Effective date — applicability
557	1	5-11-1101
	2	5-11-1102
	3	5-11-1111
	4	5-11-1112
	5	5-7-103
	6	5-11-112
	7	General fund loan
	8	Appropriation
	9	Codification instruction
	10	Effective date
558	1	22-3-901
	2	22-3-902
	3	22-3-903
	4	22-3-911
	5	22-3-912
	6	22-3-913
	7	22-3-915
	8	22-3-916
	9	22-3-917
	10	22-3-918
	11	22-3-914
	12	22-3-904
	13	22-3-921
	14	Codification instruction
	15	Effective date
559	1	2-18-641
	2	2-18-702
	3	Codification instruction
560	1	25-13-402
	2	25-13-404
	3	Effective date
561	1	61-8-301
	2	61-8-302
	3	61-8-715

	4	61-8-716
562	1	45-5-501
563	1	45-5-205
	2	61-1-103
	3	61-5-205
	4	61-8-401
	5	61-8-714
	6	61-8-732
564	1	76-3-504
565	1	44-6-101
	2	44-6-102
	3	44-6-103
	4	44-6-107
566	1	Appropriation
	2	Effective date
567	1	80-5-501
	2	80-5-502
	3	80-5-503
	4	80-5-504
	5	80-5-505
	6	80-5-506
	7	80-5-507
	8	80-5-508
	9	80-5-509
	10	80-5-510
	11	17-7-502
	12	80-5-123
	13	Codification instruction
	14	Saving clause
568	1	15-70-201
	2	15-70-202
	3	15-70-204
	4	15-70-245
	5	15-70-301
	6	15-70-304
	7	15-70-321
	8	15-70-370
	9	15-70-326
	10	15-70-341
	11	Codification instruction
	12	Contingent effective date
	13	Contingent termination
569	1	10-3-312
	2	17-1-102
	3	17-7-111
	4	17-7-123
	5	17-7-138
	6	17-7-139
	7	17-7-304
	8	17-7-311
	9	17-7-402
	10	17-8-101
	11	17-8-312
	12	Codification instruction
	13	Coordination instruction
	14	Effective date
	15	Applicability
570	1	41-3-205
	2	41-3-1001
	3	41-3-1003
	4	41-3-1004
	5	41-3-1005
	6	41-3-1006
	7	41-3-1007
	8	41-3-1008
	9	41-3-1010
	10	41-3-1011
	11	41-3-1012
	12	41-3-1013
	13	41-3-1115
	14	Repealer
	15	Notification to tribal governments
	16	Effective date
571	1	7-6-2512
	2	7-6-2523
	3	7-7-2201
	4	7-34-2204
	5	7-34-2303
	6	15-1-112
	7	15-10-420
	8	15-16-117
	9	41-3-1122
	10	52-1-103
	11	52-1-110 Voided by sec. 46, Ch. 571 (coordination section)
	12	53-2-201
	13	53-2-203
	14	53-2-207
	15	53-2-301
	16	53-2-304
	17	53-2-305
	18	53-2-322 Voided by sec. 46, Ch. 571 (coordination section)
	19	53-2-602
	20	53-2-603
	21	53-2-606
	22	53-2-609
	23	53-2-612
	24	53-2-613 Voided by sec. 46, Ch. 571 (coordination section)
	25	53-2-801
	26	53-2-802
	27	53-2-811
	28	53-3-111
	29	53-3-115
	30	53-3-116
	31	53-4-213
	32	53-4-214
	33	53-4-233
	34	53-4-244
	35	53-6-112

	36	53-6-114
	37	53-6-121
	38	53-6-132
	39	53-6-133
	40	53-6-155
	41	53-6-157
	42	53-21-113
	43	Repealer
	44	Notification to tribal governments
	45	Name change — directions to code commissioner
	46	Coordination instruction
	47	Effective date
572	1	Short title
	2	First level expenditures
	3	Severability
	4	Appropriation control
	5	Program definition
	6	Personal services funding — 2005 biennium
	7	Personal services line item
	8	Vacancy savings analysis
	9	FTE reduction
	10	Goals, benchmarks, and objectives
	11	Report from governor's office on energy management efforts
	12	Accruals analysis — 2005 biennium
	13	Energy costs reserve
	14	Totals not appropriations
	15	Effective date
	16	Appropriations
	17	Rates
573	1	Definitions
	2	Capital projects appropriations
	3	Land acquisition appropriations
	4	Dam
	5	Capital improvements
	6	Transfer of funds
	7	Capital land grant revenue
	8	Planning and design
	9	Capital projects — contingent funds
	10	Review by department of environmental quality
	11	Legislative consent
	12	Sec. 4(3), Ch. 469, L. 1997
	13	Sec. 2(1), Ch. 557, L. 1999
	14	Severability
	15	Coordination instruction
	16	Effective date
574	1	15-1-121
	2	15-10-425
	3	15-1-122
	4	1-2-112
	5	2-9-316
	6	3-2-714 Voided by sec. 255(3), Ch. 574 (coordination section)
	7	3-5-901 Voided by sec. 255(3), Ch. 574 (coordination section)
	8	7-2-2730
	9	7-2-2746
	10	7-2-4111
	11	7-2-4918
	12	7-3-1310
	13	7-3-1311
	14	7-3-1313
	15	7-3-4312
	16	7-6-502
	17	7-6-2301
	18	7-6-2314
	19	7-6-2319
	20	7-6-2328
	21	7-6-2329
	22	7-6-2345
	23	7-6-2501
	24	7-6-2511
	25	7-6-2512
	26	7-6-2522
	27	7-6-2523
	28	7-6-2541
	29	7-6-4134
	30	7-6-4238
	31	7-6-4261
	32	7-6-4272
	33	7-6-4431
	34	7-6-4451
	35	7-6-4453
	36	7-6-4455
	37	7-7-2202
	38	7-7-2206
	39	7-7-2303
	40	7-14-111
	41	7-14-232
	42	7-14-1131
	43	7-14-1134
	44	7-14-1632
	45	7-14-1633
	46	7-14-2501
	47	7-14-2502
	48	7-14-2503
	49	7-14-2504
	50	7-14-2523
	51	7-14-2807
	52	7-14-4106
	53	7-14-4404
	54	7-14-4644
	55	7-14-4734
	56	7-15-4293

57	7-16-101
58	7-16-2102
59	7-16-2108
60	7-16-2109
61	7-16-2205
62	7-16-2411
63	7-16-2412
64	7-16-2431
65	7-16-2443
66	7-16-4105
67	7-16-4113
68	7-16-4114
69	7-21-3203
70	7-21-3433
71	7-21-3457
72	7-22-2142
73	7-22-2222
74	7-22-2306
75	7-22-2432
76	7-22-2512
77	7-32-235
78	7-32-4117
79	7-33-2209
80	7-33-4111
81	7-33-4130
82	7-34-102
83	7-34-2131
84	7-34-2133
85	7-34-2204
86	7-34-2303
87	7-34-2417
88	7-35-2122
89	10-2-501
90	10-2-603
91	13-13-230
92	15-1-402
93	15-1-501
94	15-10-420
95	15-16-117
96	15-24-303
97	15-24-902
98	15-24-904
99	15-24-921
100	15-24-922
101	15-24-925
102	15-30-121
103	15-31-114
104	16-1-404
105	16-1-406 Voided by sec. 255(7), Ch. 574 (coordination section)
106	16-1-411
107	17-7-502
108	19-6-709
109	19-7-404
110	19-9-209
111	19-13-214
112	19-18-503
113	19-18-504
114	19-19-301
115	20-7-705
116	20-7-714
117	20-9-141
118	20-9-168
119	20-9-331
120	20-9-333
121	20-9-501
122	20-10-144
123	20-10-146
124	20-15-305
125	20-15-311
126	20-15-326
127	20-25-1002
128	22-1-304
129	23-2-508
130	23-2-510
131	23-2-512
132	23-2-518
133	23-2-611
134	23-2-612
135	23-2-615
136	23-2-616
137	23-2-803
138	23-2-804
139	23-2-811
140	23-2-812
141	23-2-814
142	23-2-818
143	23-5-610
144	25-1-201 Voided by sec. 255(3), Ch. 574 (coordination section)
145	39-71-403
146	40-4-215 Voided by sec. 255(3), Ch. 574 (coordination section)
147	40-4-226 Voided by sec. 255(3), Ch. 574 (coordination section)
148	41-3-1122 Voided by sec. 255(8), Ch. 574 (coordination section)
149	42-2-105
150	50-2-111
151	50-2-114
152	52-6-105
153	53-2-207 Voided by sec. 255(8), Ch. 574 (coordination section)
154	53-2-301
155	53-2-304 Voided by sec. 255(8), Ch. 574 (coordination section)
156	53-2-612
157	53-3-115
158	53-3-116
159	53-20-208
160	53-21-204

	161	61-1-102
	162	61-3-203
	163	61-3-321
	164	61-3-325
	165	61-3-332
	166	61-3-406
	167	61-3-411
	168	61-3-412
	169	61-3-426
	170	61-3-431
	171	61-3-457
	172	61-3-465
	173	61-3-509
	174	61-3-524
	175	61-3-527
	176	61-3-707
	177	61-3-738
	178	61-9-312
	179	61-10-130
	180	61-10-148
	181	61-10-225
	182	67-3-205
	183	67-10-402
	184	67-11-301
	185	67-11-303
	186	72-16-909
	187	72-16-912
	188	75-10-533
	189	76-1-111
	190	76-1-403
	191	76-1-404
	192	76-1-406
	193	76-2-102
	194	76-6-109
	195	76-13-201
	196	76-15-505
	197	76-15-516
	198	76-15-531
	199	76-15-623
	200	77-1-502
	201	77-1-503
	202	77-1-504
	203	80-2-201
	204	80-2-203
	205	80-2-204
	206	80-2-205
	207	80-2-206
	208	80-2-207
	209	80-2-209
	210	80-2-221
	211	80-2-222
	212	80-2-224
	213	80-2-225
	214	80-2-226
	215	80-2-228
	216	80-2-229
	217	80-2-230
	218	80-2-231
	219	80-2-232
	220	80-2-244
	221	80-7-814
	222	80-7-815
	223	80-7-816
	224	80-7-822
	225	81-6-101
	226	81-6-104
	227	81-6-106
	228	81-6-204
	229	81-6-205
	230	81-6-209
	231	81-6-210
	232	81-7-104
	233	81-7-113
	234	81-7-114
	235	81-7-118
	236	81-7-201
	237	81-7-202
	238	81-8-503
	239	81-8-504
	240	85-3-412
	241	85-3-422
	242	85-3-423
	243	90-5-112
	244	School district block grants
	245	Countywide school retirement block grants
	246	Countywide school transportation block grants
	247	Sec. 5, Ch. 95, L. 2001
	248	Appropriations
	249	Inclusion of appropriations in budget
	250	Reservation of funds
	251	15-1-120
	252	Coordination with school funding study
	253	Repealer
	254	Codification instruction
	255	Coordination instructions
	256	Effective dates
	257	Retroactive applicability
575	1	87-1-301
	2	Effective date
	3	Termination
576	1	41-5-103
	2	41-5-203
	3	41-5-206
	4	52-5-129
	5	Severability
	6	Effective date
577	1	17-6-701
	2	17-6-702

	3	17-6-703
	4	17-6-704
	5	17-6-705
	6	17-7-502
	7	35-19-104
	8	69-8-103
	9	69-8-104
	10	69-8-201
	11	69-8-203
	12	69-8-210
	13	69-8-211
	14	69-8-402
	15	69-8-403
	16	69-8-412
	17	69-8-414
	18	69-8-701
	19	69-8-702
	20	69-9-101
	21	69-9-102
	22	69-9-103
	23	69-9-107
	24	69-9-108
	25	69-9-111
	26	69-9-112
	27	69-9-113
	28	69-9-114
	29	69-9-115
	30	Repealer
	31	Codification instruction
	32	Effective dates
578	1	82-11-172
	2	82-11-173
	3	82-11-174
	4	85-2-521
	5	85-2-505
	6	Notification to federal and tribal governments
	7	Codification instruction
	8	Severability
	9	Effective dates — contingency
579	1	15-6-226
	2	Codification instruction
	3	Effective date
	4	Retroactive applicability
	5	Termination
580	1	K-12 public school funding study — duties — hearings
	2	Appropriations
	3	Effective date
581	1	2-15-2012
	2	2-15-2013
	3	2-15-2014
	4	46-18-101
	5	Appropriation
	6	Codification instruction
	7	Effective date
582	1	69-8-110
	2	Codification instruction
	3	Severability
	4	Effective date
	5	Termination
583	1	39-2-902
	2	39-2-904
	3	39-2-905
	4	Repealer
584	1	69-8-103
	2	69-8-104
	3	69-8-201
	4	69-8-211
	5	69-8-301
	6	69-8-501
	7	Effective date
585	1	3-1-130
	2	3-1-125
	3	3-1-126
	4	3-1-1601
	5	3-1-1602
	6	3-1-1603
	7	3-1-1604
	8	3-1-1605
	9	3-1-702
	10	3-2-501
	11	3-2-714
	12	3-5-511
	13	3-5-515
	14	3-5-601
	15	3-5-602
	16	3-5-604
	17	3-5-901
	18	3-5-902
	19	3-15-204
	20	3-15-205
	21	7-6-2324
	22	7-6-2426
	23	7-6-2511
	24	17-7-502
	25	22-1-504
	26	25-1-201
	27	25-1-202
	28	25-1-1103
	29	25-9-506
	30	25-9-804
	31	27-9-103
	32	40-4-215
	33	40-4-226
	34	41-5-1701
	35	41-5-1702
	36	41-5-1706
	37	41-5-1707
	38	42-2-105 Voided by sec. 255(3), Ch. 574 (coordination section)
	39	46-8-114

	40	46-8-201
	41	46-8-202
	42	46-11-319
	43	46-14-202
	44	46-14-221
	45	46-15-116
	46	46-18-235
	47	46-18-603
	48	52-6-105
	49	53-9-104
	50	61-3-509 Voided by sec. 255(3), Ch. 574 (coordination section)
	51	Transition
	52	Repealer
	53	Codification instruction
	54	Coordination instruction
	55	Saving clause
	56	District court council — implementation of staggered terms
	57	Transition — transfer of county employees to state employment — preservation of rights
	58	Rights to property
	59	Transition — delayed application of judicial branch personnel plan — salaries for FY 2003
	60	Transition — purchase of court reporters' equipment
	61	Guarantee share
	62	Direction to district court council
	63	Effective dates
	64	Applicability
	65	Termination
586	1	39-10-101
	2	39-10-102
	3	39-10-103
	4	39-10-104
	5	39-10-105
	6	39-10-106
	7	15-38-106
	8	Codification instruction
	9	Effective dates — contingency
	10	Termination
587	1	41-5-103
	2	41-5-121
	3	41-5-122
	4	41-5-123
	5	41-5-124
	6	41-5-205
	7	41-5-1503
	8	41-5-1512
	9	41-5-1513
	10	52-5-109
	11	41-5-130
	12	41-5-2001
	13	41-5-2002
	14	41-5-2003
	15	41-5-2004
	16	41-5-2005
	17	41-5-131
	18	41-5-2006
	19	Allocation of first-year funding
	20	41-5-132
	21	Program progress and report
	22	Codification instruction
	23	Coordination instruction
	24	Severability
	25	Effective date
588	1	75-2-211
	2	Effective date
	3	Retroactive applicability
	4	Termination
589	1	Sec. 1, Ch. 6, Sp. L. May 2000
	2	Effective date
590	1	87-2-520
	2	Codification instruction
	3	Effective date
	4	Termination
591	1	75-25-101
	2	75-25-102
	3	75-25-103
	4	7-12-4102
	5	15-6-156
	6	15-6-225
	7	15-24-1401
	8	15-31-124
	9	15-32-102
	10	15-32-109
	11	15-32-115
	12	15-32-201
	13	15-32-401
	14	15-32-402
	15	15-32-403
	16	15-72-104
	17	17-6-403
	18	17-6-503
	19	30-16-103
	20	35-19-104
	21	75-2-401
	22	75-2-413
	23	80-12-201
	24	90-4-102
	25	90-5-101
	26	90-8-104
	27	Codification instruction
	28	Severability
	29	Effective dates
	30	Applicability

592	1	15-24-3001
	2	15-24-3002
	3	15-24-3005
	4	15-24-3006
	5	15-24-3007
	6	Codification instruction
	7	Effective date
593	1	90-4-302
	2	90-4-310
	3	90-4-313
	4	Effective date
594	1	17-3-240
	2	17-3-241
	3	17-7-502
	4	Codification instruction
	5	Effective dates — applicability

2000 BALLOT ISSUES

Constitutional Amendments

C.A.	Sec.	MCA
34	1	Art. VII, sec. 13, Mont. Const.
	2	Effective date
	3	Submission to electorate
35	1	Art. XII, sec. 4, Mont. Const.
	2	Effective date
	3	Submission to electorate

Legislative Referendums

L.R.	Sec.	MCA
115	1	61-3-560
	2	61-3-561
	3	61-3-562
	4	7-1-2111
	5	15-6-201
	6	15-6-215
	7	15-8-202
	8	15-24-301
	9	15-24-302
	10	15-30-121
	11	15-50-207
	12	15-70-101
	13	15-70-125
	14	20-9-141
	15	20-9-331
	16	20-9-333
	17	20-9-360
	18	20-9-501
	19	20-10-144
	20	20-10-146
	21	27-1-306
	22	61-3-101
	23	63-3-301
	24	61-3-303
	25	61-3-314
	26	61-3-315
	27	61-3-316
	28	61-3-317
	29	61-3-332
	30	61-3-431
	31	61-3-456
	32	61-3-503
	33	51-3-506
	34	61-3-509
	35	61-3-520
	36	61-3-527
	37	61-3-537
	38	61-3-570
	39	61-3-701
	40	61-3-707
	41	61-3-736
	42	61-3-737
	43	61-3-738
	44	61-4-112
	45	61-10-231
	46	Repealer
	47	Submission to electorate
	48	Codification instruction
	49	Coordination instruction
	50	Saving clause
	51	Severability
	52	Effective dates — applicability
116	1	7-4-2613
	2	7-7-4607
	3	7-14-4654
	4	15-1-211
	5	15-1-406
	6	15-1-501
	7	15-1-503
	8	15-30-136
	9	17-5-718
	10	17-5-930
	11	17-5-1518
	12	17-5-1629
	13	35-21-827
	14	60-11-1110
	15	60-11-1210
	16	72-1-103
	17	72-3-607
	18	72-3-618
	19	72-3-631
	20	72-3-807
	21	72-3-1004
	22	72-3-1006
	23	72-3-1104
	24	72-16-215
	25	72-16-502
	26	72-16-503
	27	72-16-903
	28	72-16-904
	29	72-16-905
	30	72-16-907
	31	72-16-909
	32	72-16-1007
	33	80-12-305
	34	90-6-125
	35	Code commissioner instruction
	36	Repealer

	37	Effective date
	38	Applicability
	39	Submission to electorate

Initiative

Init.	Sec.	MCA
143	1	87-4-407
	2	87-4-408
	3	87-4-411
	4	87-4-412
	5	87-4-413
	6	87-4-414
	7	87-4-428
	8	87-4-433
	9	Repealer
	10	Severability
	11	Effective date

SESSION LAWS

Enacted by the

FIFTY-SIXTH LEGISLATURE
IN SPECIAL SESSION

Held at Helena, the Seat of Government
May 8, 2000, through May 11, 2000

Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

TITLE CONTENTS

SENATE AND HOUSE BILLS

Chapter Page

1 *(Senate Bill No. 7; Hertel)* AN ACT IMPOSING A MORATORIUM ON NEW APPLICATIONS FOR INITIAL ALTERNATIVE LIVESTOCK RANCH LICENSES UNTIL A LIVE TEST FOR CHRONIC WASTING DISEASE IS DEVELOPED AND IS APPROVED BY THE DEPARTMENT OF LIVESTOCK; AMENDING SECTIONS 87-4-407 AND 87-4-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 3653

2 *(House Bill No. 2; Zook)* AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE SECOND SPECIAL SESSION OF THE 56TH LEGISLATURE CONVENING MAY 8, 2000, AND FOR OTHER RELATED LEGISLATIVE PURPOSES; PROVIDING EXPLICITLY FOR REVERSION OF EXCESS FUNDING; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 3654

3 *(Senate Bill No. 2; Sprague)* AN ACT REDUCING THE ANNUAL ASSESSMENT CHARGED AGAINST THE VALUE OF ASSETS HELD FOR SAFEKEEPING BY A FOREIGN CAPITAL DEPOSITORY FROM 1.5 PERCENT TO 0.75 PERCENT; CLARIFYING THE CALCULATION OF THE ASSESSMENT; AMENDING SECTION 15-31-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 3654

4 *(Senate Bill No. 6; McNutt)* AN ACT ALLOWING PARTICIPATION BY PRIVATE FINANCIAL INSTITUTIONS WITH THE BOARD OF INVESTMENTS IN PROVIDING LOANS TO BUSINESS ENTERPRISES; AMENDING SECTIONS 17-6-311, 17-6-312, 17-6-314, AND 17-6-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 3655

5 *(Senate Bill No. 13; Keenan)* AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE XII OF THE MONTANA CONSTITUTION REQUIRING THE DEDICATION OF PART OF THE TOBACCO LITIGATION SETTLEMENT MONEY TO A TRUST FUND; ALLOWING THE APPROPRIATION OF PART OF THE INCOME FROM THE TRUST FUND FOR PURPOSES OF TOBACCO DISEASE PREVENTION PROGRAMS AND PROGRAMS RELATED TO HEALTH CARE NEEDS; PROHIBITING THE APPROPRIATION OF THE INCOME FOR THE PURPOSES OF REPLACING MONEY USED FOR TOBACCO DISEASE PREVENTION PROGRAMS AND PROGRAMS THAT EXISTED ON DECEMBER 31, 1999, PROVIDING BENEFITS FOR HEALTH CARE NEEDS OF MONTANANS; AND PROVIDING AN EFFECTIVE DATE. 3658

6 *(Senate Bill No. 4; M. Taylor)* AN ACT CLARIFYING THAT THE GENERAL OBLIGATION BONDS FOR AEROSPACE TRANSPORTATION AND TECHNOLOGY INFRASTRUCTURE DEVELOPMENT PROJECTS AUTHORIZED IN CHAPTER 269, LAWS OF 1999, MAY BE USED FOR ANY AEROSPACE TRANSPORTATION

AND TECHNOLOGY INFRASTRUCTURE DEVELOPMENT PROJECT; PROVIDING THAT BOND PROCEEDS ARE APPROPRIATED TO THE DEPARTMENT OF COMMERCE; CLARIFYING THAT THE PORTIONS OF AEROSPACE TRANSPORTATION AND TECHNOLOGY INFRASTRUCTURE DEVELOPMENT PROJECTS THAT ARE FINANCED WITH BOND PROCEEDS ARE OWNED BY THE STATE AND MAY BE LEASED TO THE LOCAL GOVERNMENT CREATING THE TAX INCREMENT FINANCING DISTRICT OR TO THE ENTITY FOR WHOM THE PROJECT IS CREATED; AMENDING SECTION 5, CHAPTER 269, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 3659

7 *(Senate Bill No. 9; Swysgood)* AN ACT REVISING RECLAMATION REQUIREMENTS TO PROVIDE STANDARDS FOR RECLAMATION OF OPEN PITS AND ROCK FACES; PROVIDING THAT BACKFILLING OF OPEN PITS IS NOT ALWAYS REQUIRED; AMENDING SECTIONS 82-4-302 AND 82-4-336, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 3660

8 *(Senate Bill No. 11; McNutt)* AN ACT EXTENDING THE 1 CENT AVIATION FUEL TAX INCREASE IMPOSED BY CHAPTER 585, LAWS OF 1999; PROVIDING THAT 50 PERCENT OF THE INCREASE COLLECTED FROM PASSENGER AIR CARRIERS BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND TO THE CREDIT OF THE DEPARTMENT OF TRANSPORTATION FOR AIRPORT PAVEMENT PRESERVATION PROJECTS; EXCLUDING FUEL SOLD TO THE FEDERAL DEFENSE FUEL SUPPLY CENTER; AMENDING SECTIONS 15-70-204, 15-70-205, AND 67-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 3663

9 *(House Bill No. 7; Younkin)* AN ACT REPEALING STATE INHERITANCE TAXES; PROVIDING THAT STATE ESTATE AND GENERATION-SKIPPING TAXES APPLY TO THE EXTENT OF THE APPLICABLE FEDERAL CREDIT FOR EACH TAX; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 7-4-2613, 7-7-4607, 7-14-4654, 15-1-211, 15-1-406, 15-1-501, 15-1-503, 15-30-136, 17-5-718, 17-5-930, 17-5-1518, 17-5-1629, 35-21-827, 60-11-1110, 60-11-1210, 72-1-103, 72-3-607, 72-3-618, 72-3-631, 72-3-807, 72-3-1004, 72-3-1006, 72-3-1104, 72-16-215, 72-16-502, 72-16-503, 72-16-903, 72-16-904, 72-16-905, 72-16-907, 72-16-909, 72-16-1007, 80-12-305, AND 90-6-125, MCA; REPEALING SECTIONS 72-4-304, 72-14-303, 72-16-101, 72-16-102, 72-16-201, 72-16-203, 72-16-204, 72-16-205, 72-16-206, 72-16-207, 72-16-208, 72-16-209, 72-16-210, 72-16-211, 72-16-212, 72-16-213, 72-16-214, 72-16-216, 72-16-218, 72-16-301, 72-16-302, 72-16-303, 72-16-304, 72-16-305, 72-16-306, 72-16-307, 72-16-308, 72-16-311, 72-16-312, 72-16-313, 72-16-314, 72-16-315, 72-16-316, 72-16-317, 72-16-318, 72-16-319, 72-16-321, 72-16-322, 72-16-323, 72-16-331, 72-16-332, 72-16-333, 72-16-334, 72-16-335, 72-16-336, 72-16-337, 72-16-338, 72-16-339, 72-16-340, 72-16-341, 72-16-342, 72-16-343, 72-16-344, 72-16-345, 72-16-346, 72-16-347, 72-16-348, 72-16-349, 72-16-401, 72-16-402, 72-16-403, 72-16-411, 72-16-412, 72-16-413, 72-16-414, 72-16-415, 72-16-416, 72-16-417, 72-16-418, 72-16-419, 72-16-420, 72-16-421, 72-16-422, 72-16-423, 72-16-424, 72-16-425, 72-16-431, 72-16-432, 72-16-433, 72-16-434, 72-16-435, 72-16-436, 72-16-437, 72-16-438, 72-16-439, 72-16-440, 72-16-441, 72-16-442, 72-16-443, 72-16-445, 72-16-446, 72-16-447, 72-16-448, 72-16-449, 72-16-450, 72-16-451, 72-16-452, 72-16-453, 72-16-454, 72-16-455, 72-16-456, 72-16-457, 72-16-458, 72-16-459,

72-16-460, 72-16-461, 72-16-462, 72-16-463, 72-16-464, 72-16-465, 72-16-471, 72-16-472, 72-16-473, 72-16-474, 72-16-475, 72-16-476, 72-16-477, 72-16-478, 72-16-479, 72-16-480, 72-16-481, 72-16-482, 72-16-491, 72-16-492, 72-16-493, 72-16-504, 72-16-505, 72-16-701, 72-16-702, 72-16-703, 72-16-704, 72-16-705, 72-16-706, 72-16-801, 72-16-802, 72-16-803, 72-16-804, 72-16-805, AND 72-16-902, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 3668

10 *(House Bill No. 1; Ohs)* AN ACT IMPLEMENTING THE PROGRAMS THAT WERE NOT FUNDED BECAUSE OF THE INVALIDITY OF THE COAL PRODUCER'S LICENSE TAX BY STATUTORILY APPROPRIATING, FOR THE FISCAL YEARS BEGINNING JULY 1, 2001, AND ENDING JUNE 30, 2005, THE INTEREST INCOME FROM $140 MILLION OF THE COAL SEVERANCE TAX PERMANENT FUND THAT IS DEPOSITED IN THE GENERAL FUND FOR THE COOPERATIVE DEVELOPMENT CENTER, FOR REIMBURSING TAX INCREMENT FINANCING INDUSTRIAL DISTRICTS, FOR THE GROWTH THROUGH AGRICULTURE PROGRAM, FOR BUSINESS RECRUITMENT, EXPORT TRADE ENHANCEMENT, A SMALL BUSINESS INNOVATIVE RESEARCH PROGRAM, A SMALL BUSINESS DEVELOPMENT CENTER, AND THE CERTIFIED COMMUNITIES PROGRAM, AND FOR RESEARCH AND COMMERCIALIZATION PROJECTS; STATUTORILY APPROPRIATING MONEY FOR COMMUNITY WATER AND SEWER PROJECT ENGINEERING WORK FOR EACH BIENNIUM FOR THE PERIOD BEGINNING JULY 1, 2001, AND ENDING JUNE 30, 2005; PROVIDING TEMPORARY APPROPRIATIONS TO THE BOARD OF REGENTS AND THE TREASURE STATE ENDOWMENT PROGRAM AND FOR ADMINISTRATIVE EXPENSES OF THE BOARD OF RESEARCH AND COMMERCIALIZATION TECHNOLOGY; PROVIDING A FUND TRANSFER FOR THE CURRENT BIENNIUM FOR RESEARCH AND COMMERCIALIZATION PROJECTS; CLARIFYING THE ALLOCATIONS FOR THE TREASURE STATE ENDOWMENT PROGRAM PROJECTS AUTHORIZED IN CHAPTER 517, LAWS OF 1999; AMENDING SECTIONS 15-35-108, 17-7-502, AND 90-6-710, MCA, AND SECTIONS 2 AND 5, CHAPTER 517, LAWS OF 1999; AND PROVIDING EFFECTIVE DATES, A RETROACTIVE APPLICABILITY DATE, AND TERMINATION DATES. 3687

11 *(House Bill No. 4; Story)* AN ACT PROVIDING FOR A REDUCTION IN PROPERTY TAXES BY INCREASING DIRECT STATE AID TO SCHOOL DISTRICTS FROM 41.8 PERCENT TO 44.7 PERCENT; PROVIDING INCREASED STATE FUNDING OF BASIC AND PER-ANB ENTITLEMENTS; ELIMINATING THE PROPERTY TAX EXEMPTION FROM MARKET VALUE FOR CERTAIN LAND BEGINNING TAX YEAR 2002; CLARIFYING THAT THE AMOUNT OF MOTOR VEHICLE DISPOSITION ATTRIBUTABLE TO CERTAIN LEVIES IS A LOCAL GOVERNMENT REIMBURSEMENT; CLARIFYING THAT ANTICIPATED REVENUE RECEIVED DURING THE SCHOOL FISCAL YEAR INCLUDES REIMBURSEMENTS FROM LIGHT VEHICLE TAXES RECEIVED DURING FISCAL YEAR 1999; AUTHORIZING DISTRIBUTION OF REVENUE RECEIVED ACCORDING TO THE PRIOR YEAR'S MILL LEVIES; PROVIDING AN APPROPRIATION; RESERVING $37 MILLION OF GENERAL FUND MONEY TO BE USED DURING THE BIENNIUM BEGINNING JULY 1, 2001, TO FULFILL THE LEGISLATURE'S OBLIGATION TO PROVIDE ALTERNATIVE FUNDING FOR LOCAL GOVERNMENTS AS CONTEMPLATED IN SECTIONS 167 AND 168, CHAPTER 584, LAWS OF 1999; AMENDING SECTIONS 15-6-136, 15-6-138, 15-6-201, 15-7-111, 15-8-111, 15-10-420, 20-9-141, 20-9-306, 20-9-367, 20-9-368,

AND 61-3-509, MCA, AND SECTIONS 167 AND 169, CHAPTER 584, LAWS OF 1999; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES. 3695

SENATE RESOLUTIONS

SR Page

1 *(Halligan)* A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE OF HONORABLE MICHAEL OLEN MCCARTER AS WORKERS' COMPENSATION JUDGE. 3729

2 *(Keenan)* A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE OF HONORABLE STEWART EVANS STADLER AS DISTRICT JUDGE, ELEVENTH JUDICIAL DISTRICT, FLATHEAD COUNTY, MONTANA. 3729

3 *(Jabs)* A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE OF HONORABLE WILLIS BLAIR JONES AS DISTRICT JUDGE, TWENTY-SECOND JUDICIAL DISTRICT, STILLWATER, CARBON, AND BIG HORN COUNTIES, MONTANA. 3730

HOUSE JOINT RESOLUTIONS

HJR Page

1 *(Story)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REVISING THE OFFICIAL ESTIMATE, CONTAINED IN HOUSE JOINT RESOLUTION NO. 2, LAWS OF 1999, OF THE STATE'S ANTICIPATED REVENUE FOR EACH YEAR OF THE 2000-01 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED BUDGET AS MANDATED BY ARTICLE VIII, SECTION 9, OF THE MONTANA CONSTITUTION; ACCEPTING THE JUNE 30, 1999, GENERAL FUND BALANCE THAT WAS ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; AND REQUESTING THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING TO USE THE REVENUE ESTIMATES CONTAINED IN THIS RESOLUTION AS OFFICIAL REVISED REVENUE ESTIMATES FOR FISCAL YEAR 2000 AND FOR FISCAL YEAR 2001. 3731

2 *(Witt)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA OPPOSING ANY NEW DESIGNATION FOR THE MISSOURI RIVER. 3734

3 *(Hibbard)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO REVISE SIGNIFICANTLY FEDERAL ESTATE TAX LAW TO REDUCE THE ONEROUS TAX BURDEN RELATED TO THE TRANSFER OF PROPERTY. 3734

CHAPTER NO. 1

[SB 7]

AN ACT IMPOSING A MORATORIUM ON NEW APPLICATIONS FOR INITIAL ALTERNATIVE LIVESTOCK RANCH LICENSES UNTIL A LIVE TEST FOR CHRONIC WASTING DISEASE IS DEVELOPED AND IS APPROVED BY THE DEPARTMENT OF LIVESTOCK; AMENDING SECTIONS 87-4-407 AND 87-4-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-4-407, MCA, is amended to read:

"**87-4-407. License required — *moratorium* — penalty — seizure of illegally possessed animals.** (1) A person may not operate an alternative livestock ranch in this state without first obtaining an alternative livestock ranch license from the department. *The department may not accept any new applications for an initial alternative livestock ranch license until a live test for chronic wasting disease is developed and is approved by the department of livestock.*

(2) A person who operates an alternative livestock ranch without a license or possesses, transports, buys, or sells animals whose importation into the state is restricted pursuant to 87-4-424 is guilty of a misdemeanor and is subject to the penalties provided in 87-4-427(4).

(3) Any animal held in violation of subsection (2) or otherwise illegally possessed may be immediately seized by the department and is subject to disposal by the department. Costs of seizure may be charged to the person in possession of the animal."

Section 2. Section 87-4-411, MCA, is amended to read:

"**87-4-411. License and renewal fees — deposit of fees.** (1) ~~The~~ *Except as provided in 87-4-407(1), the* department shall charge an initial alternative livestock ranch license fee and an annual renewal fee based on the following scale:

(a) an alternative livestock ranch with 1 to 20 alternative livestock, an initial license fee of $200 and an annual renewal fee of $100;

(b) an alternative livestock ranch with 21 to 60 alternative livestock, an initial license fee of $300 and an annual renewal fee of $200; and

(c) an alternative livestock ranch with more than 60 alternative livestock, an initial license fee of $400 and an annual renewal fee of $400.

(2) In addition to the fees assessed under subsection (1), the department shall charge applicants a fee of $4 an acre based on the total number of acres indicated in the application for a license. In cases of an application for a license modification, the fee applies only if an acreage expansion is proposed.

(3) The department of livestock shall assess a fee, not to exceed $50, for each alternative livestock imported into the state.

(4) (a) One-half of the fees collected pursuant to subsection (1) and all of the fees collected pursuant to subsection (2) must be deposited in the state special revenue fund for the use of the department for purposes of this part.

(b) One-half of the fees collected pursuant to subsection (1) and all import fees collected pursuant to subsection (3) must be deposited in the state special revenue fund for the use of the department of livestock for purposes of this part."

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or applications that were submitted before [the effective date of this act].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved May 11, 2000

CHAPTER NO. 2

[HB 2]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE SECOND SPECIAL SESSION OF THE 56TH LEGISLATURE CONVENING MAY 8, 2000, AND FOR OTHER RELATED LEGISLATIVE PURPOSES; PROVIDING EXPLICITLY FOR REVERSION OF EXCESS FUNDING; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation for special session. The following amounts are appropriated from the general fund to the legislative branch (agency 1104) for the fiscal year ending June 30, 2000, for costs of the special legislative session of May 2000:

1. Senate (25)	$158,200
2. House of Representatives (26)	232,100
3. Legislative Services Division (22)	36,600

Section 2. Reversion. Money appropriated in [section 1] that is not expended or obligated at the end of the fiscal year ending June 30, 2000, reverts to the general fund.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 11, 2000

CHAPTER NO. 3

[SB 2]

AN ACT REDUCING THE ANNUAL ASSESSMENT CHARGED AGAINST THE VALUE OF ASSETS HELD FOR SAFEKEEPING BY A FOREIGN CAPITAL DEPOSITORY FROM 1.5 PERCENT TO 0.75 PERCENT; CLARIFYING THE CALCULATION OF THE ASSESSMENT; AMENDING

SECTION 15-31-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-803, MCA, is amended to read:

"15-31-803. (Temporary) State revenue — assessment — collection — distribution. (1) A foreign capital depository shall pay to the department on June 15 and December 15 of each year a fee that is equal to ~~0.75%~~ *0.375%* of the ~~total~~ *average* value of assets on deposit or in a safe deposit box. The total annual rate of assessment is ~~1.5%~~ *0.75%. Each semiannual assessment must be based on the average balance, at the close of the last business day of the month in each of the 6-month periods prior to June 15 and December 15, of the total value of the assets on deposit or in safe deposit boxes.*

(2) The basis of the value ascribed to each asset is:

(a) the U.S. dollar exchange value of the currency on deposit on the date of assessment;

(b) the spot market price of the platinum, palladium, gold, or silver held in precious metals accounts, as defined in 32-8-402, as published in The Wall Street Journal on the date of assessment; or

(c) the market value of other tangible personal property held in safe deposit boxes or other accounts at the time of the assessment, as determined by the depository using a method approved by the department. The depository shall submit to the department within 60 days of the appraisal a report that documents the method and calculations of the appraisal.

(3) The semiannual assessment fee must be deposited into the general fund. (Terminates September 30, 2012—sec. 90, Ch. 382, L. 1997.)"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 11, 2000

CHAPTER NO. 4

[SB 6]

AN ACT ALLOWING PARTICIPATION BY PRIVATE FINANCIAL INSTITUTIONS WITH THE BOARD OF INVESTMENTS IN PROVIDING LOANS TO BUSINESS ENTERPRISES; AMENDING SECTIONS 17-6-311, 17-6-312, 17-6-314, AND 17-6-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Participation by private financial institutions — rulemaking. (1) (a) The board may jointly participate with private financial institutions in making loans to a business enterprise if the loan will:

(i) result in the creation of a business estimated to employ at least 15 people in Montana on a permanent, full-time basis; or

(ii) result in the expansion of a business estimated to employ at least an additional 15 people in Montana on a permanent, full-time basis.

(b) Loans under this section may be made only to business enterprises that are producing or will produce value-added products or commodities.

(c) a loan made pursuant to this section does not qualify for a job credit interest rate reduction under 17-6-318.

(2) A loan made pursuant to this section may not exceed 1% of the coal severance tax permanent fund and must comply with each of the following requirements:

(a) (i) The business enterprise seeking a loan must have a cash equity position equal to at least 25% of the total loan amount.

(ii) A participating private financial institution may not require:

(A) the business enterprise to have an equity position greater than 25% of the total loan amount; or

(B) additional security or guarantees to cover its exposure, but this does not preclude federal guarantees.

(b) The board shall provide 75% of the total loan amount.

(c) The term of the loan may not exceed 15 years.

(d) The board shall charge interest at the following rate:

(i) 2% a year for the first 5 years;

(ii) 6% a year for the second 5 years; and

(iii) for the third 5 years, an amount equal to the national prime interest rate, adjusted annually on January 1 of each year, but not to exceed 10% a year.

(e) (i) A participating private financial institution may charge interest in an amount equal to the national prime interest rate, adjusted on January 1 of each year, but the interest rate may not be less than 6% or greater than 12%.

(ii) A participating private financial institution, or lead private financial institution if more than one is participating, may charge a 0.5% annual service fee.

(f) The business enterprise may not be charged a loan prepayment penalty.

(g) The loan agreement must contain provisions providing for pro rata lien priority and pro rata liquidation provisions based upon the loan percentage of the board and each participating private lender.

(3) If a portion of a loan made pursuant to this section is for construction, disbursement of that portion of the loan must be made based upon the percentage of completion to ensure that the construction portion of the loan is advanced prior to completion of the project.

(4) A private financial institution shall participate in a loan made pursuant to this section to the extent of 85% of its lending limit or 25% of the loan, whichever is less. However, the board's participation in the loan must be 75% of the loan amount.

(5) A business enterprise receiving a loan under the provisions of this section may not pay bonuses or dividends to investors until the loan has been paid off, except that incentives may be paid to employees for achieving performance standards or goals.

(6) The board may adopt rules that it considers necessary to implement this section.

Section 2. Section 17-6-311, MCA, is amended to read:

"**17-6-311. Limitation on size of investments.** (1) Except as provided in subsections (2) through (4), an investment may not be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of which exceeds 1% of the permanent coal tax trust fund. *This subsection does not apply to a loan made pursuant to [section 1].*

(2) Subsection (1) does not limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2).

(3) Subsection (1) does not apply to the purchase of debentures issued by a capital company~~;~~. ~~however~~ *However,* the total amount of ~~such~~ debentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time of purchase.

(4) The total amount of loans made pursuant to 17-6-309(2) *or [section 1]* may not exceed $50 million, and a single loan may not be less than $250,000. ~~A~~ *Except for a loan made pursuant to [section 1], a* loan may not exceed $16,666 ~~per~~ *for each* job that is estimated to be created. In determining the size of a loan made pursuant to 17-6-309(2), the board shall consider:

(a) the estimated number of jobs to be created by the project within a 4-year period from the time that the loan is made and the impact of the jobs on the state and the community where the project will be located;

(b) the long-term effect of corporate and personal income taxes estimated to be paid by the business and its employees;

(c) the current and projected ability of the community to provide necessary infrastructure for economic and community development purposes;

(d) the amount of increased salaries, wages, and business incomes of existing jobholders and businesses; and

(e) other matters that the board considers necessary."

Section 3. Section 17-6-312, MCA, is amended to read:

"**17-6-312. State participation in loans.** (1) Subject to 17-6-311(4), state participation in any loan to a business enterprise, except for a loan *made pursuant to [section 1] or* guaranteed by a federal agency, must be limited to 80% of the outstanding loan. The state shall participate in the security for a loan in the same proportion as the loan participation amount.

(2) The purchase of debentures issued by a capital company is not a loan participation and is not subject to subsection (1).

(3) State participation in loans to nonprofit corporations may qualify for the job credit interest rate reductions under 17-6-318 if the interest rate reduction passes through to a for-profit business creating the jobs."

Section 4. Section 17-6-314, MCA, is amended to read:

"**17-6-314. Rate of return.** ~~In~~ *Except as provided in [section 1], in* calculating the rate of return for any Montana investment to be made from the permanent coal tax trust fund, the board shall consider the long-term benefit to the Montana economy and the additional service fee discount provided for in 17-6-319."

Section 5. Section 17-6-324, MCA, is amended to read:

"**17-6-324. Rulemaking authority.** *(1)* The board may adopt rules to implement the provisions of this part and 17-6-211(2). Rules adopted by the board may include*:*

(a) definitions of small- and medium-sized businesses~~,~~*;*

(b) a method of committing funds to financial institutions, *including guidelines for lead private financial institutions if a consortium of private financial institutions is participating in a loan made pursuant to [section 1];*

(c) guidelines for graduation clauses for refinancing and early payment of loans made pursuant to [section 1]~~,~~*;*

(d) types of service fees~~,~~*;* and

(e) types of investments to be made.

(2) The board may also adopt procedural rules to govern its proceedings."

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 17, chapter 6, part 3, and the provisions of Title 17, chapter 6, part 3, apply to [section 1].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved May 11, 2000

CHAPTER NO. 5

[SB 13]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE XII OF THE MONTANA CONSTITUTION REQUIRING THE DEDICATION OF PART OF THE TOBACCO LITIGATION SETTLEMENT MONEY TO A TRUST FUND; ALLOWING THE APPROPRIATION OF PART OF THE INCOME FROM THE TRUST FUND FOR PURPOSES OF TOBACCO DISEASE PREVENTION PROGRAMS AND PROGRAMS RELATED TO HEALTH CARE NEEDS; PROHIBITING THE APPROPRIATION OF THE INCOME FOR THE PURPOSES OF REPLACING MONEY USED FOR TOBACCO DISEASE PREVENTION PROGRAMS AND PROGRAMS THAT EXISTED ON DECEMBER 31, 1999, PROVIDING BENEFITS FOR HEALTH CARE NEEDS OF MONTANANS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article XII of The Constitution of the State of Montana is amended by adding a new section 4 that reads:

Section 4. Montana tobacco settlement trust fund. (1) The legislature shall dedicate not less than two-fifths of any tobacco settlement proceeds received on or after January 1, 2001, to a trust fund, nine-tenths of the interest and income of which may be appropriated. One-tenth of the interest and income derived from the trust fund on or after January 1, 2001, shall be deposited in the trust fund. The principal of the trust fund and one-tenth of the interest and income deposited in the trust fund shall remain forever inviolate unless appropriated by a vote of two-thirds of the members of each house of the legislature.

(2) Appropriations of the interest, income, or principal from the trust fund shall be used only for tobacco disease prevention programs and state programs providing benefits, services, or coverage that are related to the health care needs of the people of Montana and may not be used for other purposes.

(3) Appropriations of the interest, income, or principal from the trust fund shall not be used to replace state or federal money used to fund tobacco disease prevention programs and state programs that existed on December 31, 1999, providing benefits, services, or coverage of the health care needs of the people of Montana.

Section 2. Effective date. This act is effective upon approval by the electorate.

Section 3. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 2000 by printing on the ballot the full title of this act and the following:

☐ FOR dedicating not less than 40% of the tobacco settlement to a trust fund for health care benefits, services, or coverage and tobacco disease prevention.

☐ AGAINST dedicating not less than 40% of the tobacco settlement to a trust fund for health care benefits, services, or coverage and tobacco disease prevention.

CHAPTER NO. 6

[SB 4]

AN ACT CLARIFYING THAT THE GENERAL OBLIGATION BONDS FOR AEROSPACE TRANSPORTATION AND TECHNOLOGY INFRASTRUCTURE DEVELOPMENT PROJECTS AUTHORIZED IN CHAPTER 269, LAWS OF 1999, MAY BE USED FOR ANY AEROSPACE TRANSPORTATION AND TECHNOLOGY INFRASTRUCTURE DEVELOPMENT PROJECT; PROVIDING THAT BOND PROCEEDS ARE APPROPRIATED TO THE DEPARTMENT OF COMMERCE; CLARIFYING THAT THE PORTIONS OF AEROSPACE TRANSPORTATION AND TECHNOLOGY INFRASTRUCTURE DEVELOPMENT PROJECTS THAT ARE FINANCED WITH BOND PROCEEDS ARE OWNED BY THE STATE AND MAY BE LEASED TO THE LOCAL GOVERNMENT CREATING THE TAX INCREMENT FINANCING DISTRICT OR TO THE ENTITY FOR WHOM THE PROJECT IS CREATED; AMENDING SECTION 5, CHAPTER 269, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5, Chapter 269, Laws of 1999, is amended to read:

"**Section 5. Authorization of bonds.** (1) The board of examiners is authorized to issue and sell general obligation bonds in an amount not exceeding $20 million for aerospace transportation and technology infrastructure development projects, as defined in 7-15-4283, except as provided in subsection (2) of this section, in accordance with the terms and in the manner required by

Title 17, chapter 5, part 8, and upon the authority granted to the board by this section. The bonds are in addition to any other authorization to the board to issue and sell general obligation bonds and subject to the conditions set forth in this section.

(2) For purposes of the general obligation bonds authorized in this section, 7-15-4288(5) and (7) ~~is~~ *are* excluded from the definition of aerospace transportation and technology infrastructure development projects. *Bond proceeds are appropriated to the department of commerce for assisting in funding authorized aerospace transportation and technology infrastructure development projects. The department may request the board of examiners to issue the bonds for specified projects for a single or multiple entities, but the total amount of bonds issued may not exceed $20 million. The portions of aerospace transportation and technology infrastructure development projects that are financed with bond proceeds are owned by the state and may be leased to the local government creating the tax increment financing district or to the entity for whom the project is created at a fair value, taking into consideration job creation and overall tax revenue generated by the project. For purposes of this section, state and local governments may not provide telecommunications or other services in competition with private providers unless private providers cannot provide the services.*

(3) It is the intent of the legislature that debt service payments for the bonds authorized by this section will be covered by the ~~increased taxes paid to the state~~ *totality of the taxes generated* by the ~~venture star~~ *aerospace transportation and technology infrastructure development* ~~project~~ *projects to be calculated by an economic impact analysis of the projects on state tax revenue.* When requesting the board of examiners to issue the bonds, the department of commerce shall present to the department of administration for presentation to the board of examiners the following:

(a) evidence satisfactory to the board that ~~venture star~~ *each aerospace transportation and technology infrastructure development project* has committed itself to locate its project in Montana and has acquired a site for the project; and

(b) a certificate signed by the director of the office of budget and program planning that the tax revenue to be received by the state from ~~the venture star~~ *each aerospace transportation and technology infrastructure development* project will be sufficient to pay the principal of and interest on the bonds."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 18, 2000

CHAPTER NO. 7

[SB 9]

AN ACT REVISING RECLAMATION REQUIREMENTS TO PROVIDE STANDARDS FOR RECLAMATION OF OPEN PITS AND ROCK FACES; PROVIDING THAT BACKFILLING OF OPEN PITS IS NOT ALWAYS REQUIRED; AMENDING SECTIONS 82-4-302 AND 82-4-336, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-302, MCA, is amended to read:

"**82-4-302. Purpose.** (1) The purposes of this part are to ~~provide~~:

~~(a) that the usefulness, productivity, and scenic values of all lands and surface waters involved in mining and mining exploration within the boundaries and lawful jurisdiction of the state will receive the greatest reasonable degree of protection and reclamation to beneficial use;~~

~~(b) authority for cooperation between private and governmental entities in carrying this part into effect;~~

~~(c) for the recognition of the recreational and aesthetic values of land as a benefit to the state of Montana; and~~

~~(d) priorities and values to the aesthetics of our landscape, waters, and ground cover~~

(a) fulfill the responsibilities and exercise the powers delegated by Article IX, section 1(3) and 2(1) of the Montana constitution;

(b) allow mining as an activity beneficial to the economy of Montana;

(c) allow the production of minerals to meet the needs of society and the economic demands of the marketplace;

(d) provide for reclamation that mitigates postreclamation visual contrasts between reclamation lands and adjacent lands;

(e) provide for reclamation that affords some utility to humans or the environment;

(f) prevent foreclosure of future access to mineral resources not fully developed by current mining operations;

(g) mitigate or prevent undesirable offsite environmental impacts; and

(h) provide authority for cooperation between private and governmental entities in carrying this part into effect.

(2) Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to establish, on a continuing basis, the vegetative cover, soil stability, water condition, and safety condition appropriate to any proposed subsequent use of the area."

Section 2. Section 82-4-336, MCA, is amended to read:

"**82-4-336. Reclamation plan and specific reclamation requirements.** *(1) Taking into account the site-specific conditions and circumstances, disturbed lands must be reclaimed consistent with the requirements and standards set forth in this section.*

~~(1)~~*(2)* The reclamation plan must provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, must be conducted simultaneously with the operation and in any case must be initiated promptly after completion or abandonment of the operation on those portions of the complex that will not be subject to further disturbance.

(3) In the absence of an order by the department providing a longer period, the plan must provide that reclamation activities must be completed not more

than 2 years after completion or abandonment of the operation on that portion of the complex.

~~(2)~~*(4)* In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously obtaining from the department written approval for the proposed change.

~~(3)~~*(5)* Provision must be made to avoid accumulation of stagnant water in the ~~mined~~ *development* area *to the extent that it serves as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life*.

~~(4)~~*(6)* All final grading must be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the department for a supervised sanitary fill.

~~(5)~~*(7)* When mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions ("objectionable effluents") on exposure to moisture, the reclamation plan must include provisions that adequately provide for:

(a) insulation of all faces from moisture or water contact by covering ~~to a depth of 2 feet or more~~ *the faces* with material or fill not susceptible itself to generation of objectionable effluents *in order to mitigate the generation of objectionable effluents*; *or*

(b) processing of any objectionable effluents in the pit before they are allowed to flow or be pumped out of the pit to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the department; *or*

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the department before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and other devices that may reasonably be required by the department.

~~(6)~~*(8)* Provisions for vegetative cover must be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. The reestablished vegetative cover must meet county standards for noxious weed control.

~~(7)~~*(9) (a)* ~~The~~ *With regard to disturbed land other than open pits and rock faces, the* reclamation plan must provide for the reclamation of all disturbed land~~.~~ ~~Proposed reclamation must provide for the reclamation of disturbed land~~ to comparable utility and stability as that of adjacent areas~~, except for open pits and rock faces that may not be feasible to reclaim in the same fashion as other disturbed lands~~.

(b) ~~In the case of~~ *With regard to* open pits and rock faces, the reclamation plan must provide for reclamation to a condition:

~~(a)~~*(i)* of stability structurally competent to withstand geologic and climatic conditions without significant failure that would be a threat to public safety and the environment;

~~(b)~~*(ii)* that affords *some* utility to humans ~~and~~ *or* the ~~surrounding natural system to the extent feasible~~ *environment*; and

~~(c)~~*(iii)* that ~~blends with the appearance of the surrounding area to the extent feasible~~ *mitigates postreclamation visual contrasts between reclamation lands and adjacent lands.*

(c) The reclamation of open pits and rock faces does not require backfilling, in whole or in part, except and only to the extent necessary to meet the requirements of the applicable provisions of Title 75, chapters 2 and 5.

~~(8)~~*(10)* The reclamation plan must provide sufficient measures to ensure public safety and to prevent the pollution of air or water and the degradation of adjacent lands.

~~(9)~~*(11)* A reclamation plan must be approved by the department if it adequately provides for the accomplishment of the ~~activities specified in this section~~ *requirements and standards set forth in this section.*

~~(10)~~*(12)* The reclamation plan must provide for permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas, including but not limited to tailings impoundments and waste rock dumps. The plan must also provide measures to prevent objectionable postmining ground water discharges."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. (1) Except as provided in subsections (2) and (3), [this act] applies retroactively, within the meaning of 1-2-109, to permits and permit amendments approved by the department after September 30, 1995.

(2) Section 82-4-336(9)(b)(ii) and (9)(b)(iii) do not apply to any reclamation plan approved by the department for a mine at which mining operations have permanently ceased on [the effective date of this act].

(3) Section 82-4-336(9)(c) does not alter or abrogate any backfilling requirement imposed or approved by the department prior to [the effective date of this act].

Approved May 18, 2000

CHAPTER NO. 8

[SB 11]

AN ACT EXTENDING THE 1 CENT AVIATION FUEL TAX INCREASE IMPOSED BY CHAPTER 585, LAWS OF 1999; PROVIDING THAT 50 PERCENT OF THE INCREASE COLLECTED FROM PASSENGER AIR CARRIERS BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND TO THE CREDIT OF THE DEPARTMENT OF TRANSPORTATION FOR AIRPORT PAVEMENT PRESERVATION PROJECTS; EXCLUDING FUEL SOLD TO THE FEDERAL DEFENSE FUEL SUPPLY CENTER; AMENDING SECTIONS 15-70-204, 15-70-205, AND 67-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-204, MCA, is amended to read:

"**15-70-204. (Temporary) Gasoline license tax — rate.** (1) Every distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents, beginning July 1, 1994, for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1). (Terminates on occurrence of contingency—sec. 17, Ch. 642, L. 1993.)

15-70-204. (Effective on occurrence of contingency) Gasoline license tax — rate. (1) Every distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) ~~2~~ *3* cents for each gallon of aviation fuel, *other than fuel sold to the federal defense fuel supply center,* which is allocated to the department as provided by 67-1-301; and

(b) 27 cents~~, beginning July 1, 1994,~~ for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1)."

Section 2. Section 15-70-205, MCA, is amended to read:

"**15-70-205. (Temporary) Distributor's statement and payment — confidentiality.** (1) Each distributor shall, not later than the 25th day of each calendar month, except as provided in 15-70-113(3), render a true signed statement to the department of all gasoline distributed and received by the distributor in this state during the preceding calendar month and containing any other information that the department may reasonably require in order to administer the gasoline license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under 15-70-226 and less 1% of the total tax that may be deducted by the distributor as an allowance for collecting the tax. An allowance may not be deducted from the 4-cent tax on aviation fuel.

(2) A distributor engaged in or carrying on a business at more than one place or location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. This section does not prohibit:

(a) the delivery to a distributor or the distributor's authorized representative of a certified copy of any return or report filed in connection with the tax;

(b) the inspection by the attorney general or other legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer or any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or the officer's representative if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or must be in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction. (Terminates on occurrence of contingency—sec. 17, Ch. 642, L. 1993.)

15-70-205. (Effective on occurrence of contingency) Distributor's statement and payment — confidentiality. (1) Each distributor shall, not later than the 25th day of each calendar month, except as provided in 15-70-113(3), render a true signed statement to the department of all gasoline distributed and received by the distributor in this state during the preceding calendar month and containing any other information that the department may reasonably require in order to administer the gasoline license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under 15-70-226 and less 1% of the total tax that may be deducted by the distributor as an allowance for collecting the tax. An allowance may not be deducted from the ~~2-cent~~ *3-cent* tax on aviation fuel.

(2) A distributor engaged in or carrying on a business at more than one place or location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. This section does not prohibit:

(a) the delivery to a distributor or the distributor's authorized representative of a certified copy of any return or report filed in connection with the tax;

(b) the inspection by the attorney general or other legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer or any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or the officer's representative if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or must be in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction."

Section 3. Section 67-1-301, MCA, is amended to read:

"67-1-301. (Temporary) Money — receipt and disbursement. (1) All costs and expenses of administering this title, including the salaries of employees of the department engaged in functions pertaining to aeronautics, the expenses of members of the board, and all other disbursements necessary to carry out the purposes of this title, must be paid out of the following revenue:

(a) all gifts and all legislative appropriations to the department for aeronautics;

(b) all money received from any branch or department of the federal government or from other sources for the purposes mentioned in this title or for the furtherance of aeronautics generally in this state.

(2) All money collected under subsection (1) must be deposited in the state treasury to the credit of the department.

(3) When the airport loan program is terminated, any balance of the bond proceeds that is not loaned must remain in the state special revenue fund to be invested, and the income must be used to retire the outstanding debt on the remaining bond proceeds.

(4) (a) The following amounts must be deposited from the proceeds of the 4-cent-a-gallon tax imposed on aviation fuel by 15-70-204(1):

(i) in the state special revenue fund to the credit of the department, an amount equal to the proceeds of 2 cents a gallon collected under 15-70-204(1) for the sole purpose of carrying out its functions pertaining to aeronautics;

(ii) in the aeronautical loan account created in 67-1-305 to the credit of the department, an amount equal to the proceeds of 1 cent a gallon for loans to local governments and state agencies; and

(iii) in a separate account in the state special revenue fund to the credit of the department:

(A) an amount equal to the proceeds of 1 cent a gallon to provide grants to municipalities for airport development or improvement programs and to provide navigational aids, safety improvements, weather reporting services, and other aeronautical services for airports and landing fields and for the state's airways; and

(B) 25% of the amount collected from scheduled passenger air carriers certified under 14 CFR, part 121 or 135.

(b) Money deposited in the account created in 67-1-305 may, with the approval of the board, be used only to provide loans to local governments and state agencies for aeronautical purposes, including airport improvement. The board shall establish procedures, including the interest rate charged, for providing loans. Proceeds of all repayments of loans, including interest, made under this subsection (4)(b) must be deposited in the account created in 67-1-305.

(c) Money deposited in the separate account established in subsection (4)(a)(iii) may, with the approval of the board, be used only to provide grants to municipalities for airport development or improvement programs and to provide navigational aids, safety improvements, weather reporting services, and other aeronautical services for airports and landing fields and for the state's airways. The board shall establish procedures for the awarding of grants.

(5) Except as provided in 15-70-221, the gasoline license tax imposed by the laws of this state on aviation fuel purchased and used for the operation of airplanes or aircraft may not be refunded.

(6) Of the amount of aviation fuel tax collected from the scheduled passenger air carriers certified under 14 CFR, part 121 or 135, 25% must be deposited in the separate account provided for in 67-1-305 to be used only for pavement preservation on airports served by these air carriers. (Terminates on occurrence of contingency—sec. 17, Ch. 642, L. 1993.)

67-1-301. (Effective on occurrence of contingency) Money — receipt and disbursement. (1) All costs and expenses of administering this title, including the salaries of employees of the department engaged in functions pertaining to aeronautics, the expenses of members of the board, and all other disbursements necessary to carry out the purposes of this title, must be paid out of the following revenue:

(a) all gifts and all legislative appropriations to the department for aeronautics;

(b) all money received from any branch or department of the federal government or from other sources for the purposes mentioned in this title or for the furtherance of aeronautics generally in this state.

(2) All money collected under subsection (1) must be deposited in the state treasury to the credit of the department.

(3) When the airport loan program is terminated, any balance of the bond proceeds that is not loaned must remain in the state special revenue fund to be invested, and the income must be used to retire the outstanding debt on the remaining bond proceeds.

(4) (a) The following amounts must be deposited from the proceeds of the ~~2-cent-per-gallon~~ *3-cent-a-gallon* tax imposed on aviation fuel by 15-70-204(1):

(i) in the state special revenue fund to the credit of the department, an amount equal to the proceeds of ~~1-cent~~ *2 cents* a gallon collected under 15-70-204(1) for the sole purpose of carrying out its functions pertaining to aeronautics; and

(ii) in a separate account in the state special revenue fund to the credit of the department~~,~~*:*

(A) an amount equal to the proceeds of 1 cent a gallon for grants to municipalities and for other aeronautical purposes as provided in subsection (4)(b)*; and*

(B) 25% of the amount collected from scheduled passenger air carriers certified under 14 CFR, part 121 or 135.

(b) Money deposited in the separate account established in subsection (4)(a)(ii) may, with the approval of the board, be used only to provide grants to municipalities for airport development or improvement programs and to provide navigational aids, safety improvements, weather reporting services, and other aeronautical services for airports and landing fields and for the state's airways. The board shall establish procedures for the awarding of grants.

(5) Except as provided in 15-70-221, the gasoline license tax imposed by the laws of this state on aviation fuel purchased and used for the operation of airplanes or aircraft may not be refunded.

(6) Of the amount of aviation fuel tax collected from the scheduled passenger air carriers certified under 14 CFR, part 121 or 135, 25% must be deposited in the separate account provided for in 67-1-305 to be used only for pavement preservation on airports served by these air carriers."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved May 18, 2000

CHAPTER NO. 9

[HB 7]

AN ACT REPEALING STATE INHERITANCE TAXES; PROVIDING THAT STATE ESTATE AND GENERATION-SKIPPING TAXES APPLY TO THE EXTENT OF THE APPLICABLE FEDERAL CREDIT FOR EACH TAX; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 7-4-2613, 7-7-4607, 7-14-4654, 15-1-211, 15-1-406, 15-1-501, 15-1-503, 15-30-136, 17-5-718, 17-5-930, 17-5-1518, 17-5-1629, 35-21-827, 60-11-1110, 60-11-1210, 72-1-103, 72-3-607, 72-3-618, 72-3-631, 72-3-807, 72-3-1004, 72-3-1006, 72-3-1104, 72-16-215, 72-16-502, 72-16-503, 72-16-903, 72-16-904, 72-16-905, 72-16-907, 72-16-909, 72-16-1007, 80-12-305, AND 90-6-125, MCA; REPEALING SECTIONS 72-4-304, 72-14-303, 72-16-101, 72-16-102, 72-16-201, 72-16-203, 72-16-204, 72-16-205, 72-16-206, 72-16-207, 72-16-208, 72-16-209, 72-16-210, 72-16-211, 72-16-212, 72-16-213, 72-16-214, 72-16-216, 72-16-218, 72-16-301, 72-16-302, 72-16-303, 72-16-304, 72-16-305, 72-16-306, 72-16-307, 72-16-308, 72-16-311, 72-16-312, 72-16-313, 72-16-314, 72-16-315, 72-16-316, 72-16-317, 72-16-318, 72-16-319, 72-16-321, 72-16-322, 72-16-323, 72-16-331, 72-16-332, 72-16-333, 72-16-334, 72-16-335, 72-16-336, 72-16-337, 72-16-338, 72-16-339, 72-16-340, 72-16-341, 72-16-342, 72-16-343, 72-16-344, 72-16-345, 72-16-346, 72-16-347, 72-16-348, 72-16-349, 72-16-401, 72-16-402, 72-16-403, 72-16-411, 72-16-412, 72-16-413, 72-16-414, 72-16-415, 72-16-416, 72-16-417, 72-16-418, 72-16-419, 72-16-420, 72-16-421, 72-16-422, 72-16-423, 72-16-424, 72-16-425, 72-16-431, 72-16-432, 72-16-433, 72-16-434, 72-16-435, 72-16-436, 72-16-437, 72-16-438, 72-16-439, 72-16-440, 72-16-441, 72-16-442, 72-16-443, 72-16-445, 72-16-446, 72-16-447, 72-16-448, 72-16-449, 72-16-450, 72-16-451, 72-16-452, 72-16-453, 72-16-454, 72-16-455, 72-16-456, 72-16-457, 72-16-458, 72-16-459, 72-16-460, 72-16-461, 72-16-462, 72-16-463, 72-16-464, 72-16-465, 72-16-471, 72-16-472, 72-16-473, 72-16-474, 72-16-475, 72-16-476, 72-16-477, 72-16-478, 72-16-479, 72-16-480, 72-16-481, 72-16-482, 72-16-491, 72-16-492, 72-16-493, 72-16-504, 72-16-505, 72-16-701, 72-16-702, 72-16-703, 72-16-704, 72-16-705, 72-16-706, 72-16-801, 72-16-802, 72-16-803, 72-16-804, 72-16-805, AND 72-16-902, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2613, MCA, is amended to read:

"**7-4-2613. Documents subject to recording.** The county clerk shall, upon the payment of the appropriate fees, record by printing, typewriting, or photographic, micrographic, or electronic process or by the use of prepared blank forms:

(1) (a) subject to subsection (1)(b), deeds, grants, transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property any part of which is situated in the county, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, leases that have been acknowledged or proved, and abstracts of the instruments that have been acknowledged or proved;

(b) an instrument or deed evidencing either a division of real property or a merger of real property only if the instrument or deed is accompanied by a certification from the county treasurer that taxes and special assessments that have been assessed and levied have been paid;

(2) notices of buyer's interest in real property, notwithstanding any other requirement of law or rule relating to eligibility for recording of the deed, contract for deed, or other document relating to the notice of buyer's interest. However, if the instrument of conveyance underlying a notice of buyer's interest would be unrecordable, the clerk and recorder shall notify the buyer by certified mail that the underlying instrument is unrecordable and may be void;

(3) except as provided in 72-16-503, a document on a form provided by the department of revenue certifying that the holder of a nonprobate interest in real property is deceased and that the deceased's interest is terminated. A nonprobate interest in real property is a joint tenancy interest, a life estate interest, or any other interest not requiring probate. The document may be on the form used by the department of revenue for responding to the application for determination of ~~inheritance or~~ estate tax. It must contain:

(a) a statement that the holder of the nonprobate interest has died and that the holder's interest in the property is terminated;

(b) a certification by the county treasurer that the ~~inheritance or~~ estate tax, if any tax was due, has been paid or that ~~inheritance or~~ estate tax was not due;

(c) a description of the property;

(4) certificates of births and deaths;

(5) wills devising real estate admitted to probate;

(6) official bonds;

(7) transcripts of judgments that by law are made liens upon real estate;

(8) instruments describing or relating to the individual property of married persons;

(9) all orders and decrees made by the district court in probate matters affecting real estate and that are required to be recorded;

(10) notice of preemption claims;

(11) notice and declaration of water rights;

(12) assignments for the benefit of creditors;

(13) affidavits of annual work done on mining claims;

(14) notices of mining locations and declaratory statements;

(15) estrays and lost property;

(16) a book containing appraisement of state lands; and

(17) other writings that are required or permitted by law to be recorded."

Section 2. Section 7-7-4607, MCA, is amended to read:

"**7-7-4607. Exemption from certain taxes for refunding revenue bonds.** ~~The refunding~~ *Refunding* bonds *issued pursuant to this part* and the income ~~therefrom shall be~~ *from those bonds are* exempt from taxation, except ~~inheritance,~~ estate~~, and transfer~~ taxes."

Section 3. Section 7-14-4654, MCA, is amended to read:

"**7-14-4654. Exemption from certain state taxes.** ~~All such revenue~~ *Revenue* bonds *issued pursuant to this part* and the interest or income ~~therefrom~~ *from those bonds* are exempt from all taxation in this state, other than ~~gift, inheritance, and~~ estate taxes."

Section 4. Section 15-1-211, MCA, is amended to read:

"**15-1-211. Uniform dispute review procedure — notice — appeal.** (1) The department ~~of revenue~~ shall provide a uniform review procedure for all persons or other entities, except as provided in subsection (1)(a).

(a) The department's dispute review procedure must be adopted by administrative rule and applies to all matters administered by the department and to all issues arising from the administration of the department, except ~~inheritance taxes,~~ estate taxes, property taxes, and the issue of whether an employer-employee relationship existed between the person or other entity and individuals subjecting the person or other entity to the requirements of chapter 30, part 2, or whether the employment relationship was that of an independent contractor. The procedure applies to assessments of centrally assessed property taxed pursuant to chapter 23.

(b) (i) The term "other entity", as used in this section, includes all businesses, corporations, and similar enterprises.

(ii) The term "person" as used in this section includes all individuals.

(2) (a) Persons or other entities having a dispute with the department have the right to have the dispute resolved by appropriate means, including consideration of alternative dispute resolution procedures such as mediation.

(b) The department shall establish a dispute resolution office to resolve disputes between the department and persons or other entities.

(c) Disputes must be resolved by a final department decision within 180 days of the referral to the dispute resolution office, unless extended by mutual consent of the parties. If a final department decision is not issued within the required time period, the remedy is an appeal to the appropriate forum as provided by law.

(3) (a) The department shall provide written notice to a person or other entity advising them of a dispute over matters administered by the department.

(b) The person or other entity shall have the opportunity to resolve the dispute with the department employee who is responsible for the notice, as indicated on the notice.

(c) If the dispute cannot be resolved, either the department or the other party may refer the dispute to the dispute resolution office.

(d) The notice must advise the person or other entity of their opportunity to resolve the dispute with the person responsible for the notice and their right to refer the dispute to the dispute resolution office.

(4) Written notice must be sent to the persons or other entities involved in a dispute with the department indicating that the matter has been referred to the dispute resolution office. The written notice must include:

(a) a summary of the department's position regarding the dispute;

(b) an explanation of the right to the resolution of the dispute with a clear description of all procedures and options available;

(c) the right to obtain a final department decision within 180 days of the date that the dispute was referred to the dispute resolution office;

(d) the right to appeal should the department fail to meet the required deadline for issuing a final department decision; and

(e) the right to have the department consider alternative dispute resolution methods, including mediation.

(5) The department shall:

(a) develop guidelines that must be followed by employees of the department in dispute resolution matters;

(b) develop policies concerning the authority of an employee to resolve disputes; and

(c) establish procedures for reviewing and approving disputes resolved by an employee or the dispute resolution office.

(6) (a) (i) The director of revenue or the director's designee is authorized to enter into an agreement with a person or other entity relating to a matter administered by the department.

(ii) The director or the director's designee has no authority to bind a future legislature through the terms of an agreement.

(b) Subject to subsection (6)(a)(ii), an agreement under the provisions of subsection (6)(a)(i) is final and conclusive, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(i) the agreement may not be reopened as to matters agreed upon or be modified by any officer, employee, or agent of this state; and

(ii) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded."

Section 5. Section 15-1-406, MCA, is amended to read:

"**15-1-406. Declaratory judgment.** (1) An aggrieved taxpayer may bring a declaratory judgment action in the district court seeking a declaration that:

(a) an administrative rule or method or procedure of assessment or imposition of tax adopted or used by the department ~~of revenue~~ is illegal or improper; or

(b) a tax authorized by the state or one of its subdivisions was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax.

(2) The action must be brought within 90 days of the date the notice of the tax due was sent to the taxpayer or, in the case of an assessment covered by the uniform dispute review procedure set forth in 15-1-211, within 90 days of the date of the department director's final decision. The court shall consolidate all actions brought under subsection (1) that challenge the same tax. The decision of the court applies to all similarly situated taxpayers, except those taxpayers who are excluded under 15-1-407.

(3) The taxes that are being challenged under this section must be paid under protest when due as a condition of continuing the action. Property taxes are paid under protest as provided in 15-1-402. All other taxes administered by the department, except ~~inheritance and~~ estate taxes, are paid under protest by filing timely claims for refund and by following the uniform dispute review procedures of 15-1-211. ~~Inheritance and estate taxes are paid under protest by following the procedures set forth in Title 72.~~ *Estate taxes are paid under protest by following the procedures set forth in Title 72.*

(4) The remedy authorized by this section may not be used to challenge the:

(a) market value of property under a property tax unless the challenge is to the legality of a particular methodology that is being applied to similarly situated taxpayers; or

(b) legality of a tax other than a property tax~~, inheritance tax,~~ or estate tax unless the review pursuant to 15-1-211 has been completed.

(5) The remedy authorized by this section is the exclusive method of obtaining a declaratory judgment concerning a tax authorized by the state or one of its subdivisions. The remedy authorized by this section supersedes the Uniform Declaratory Judgments Act established in Title 27, chapter 8. This section does not affect actions for declaratory judgments under 2-4-506."

Section 6. Section 15-1-501, MCA, is amended to read:

"**15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

(a) income taxes, interest, and penalties collected under chapter 30;

(b) except as provided in 15-31-702, all taxes, interest, and penalties collected under chapter 31;

(c) oil and natural gas production taxes allocated under 15-36-324(8)(a) and (10)(a);

(d) electrical energy producer's license taxes under chapter 51;

(e) [an amount equal to 25% of] the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;

(f) liquor license taxes under Title 16;

(g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(h) ~~inheritance and~~ estate taxes under Title 72, chapter 16; and

(i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.

(2) The department ~~of revenue~~ shall also deposit to the credit of the state general fund all money received from the collection of license taxes and fees and all net revenue and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded."

Section 7. Section 15-1-503, MCA, is amended to read:

"**15-1-503. Refund of overpayment — procedure.** (1) When there has been an overpayment of the ~~inheritance~~ *estate* tax collected by county treasurers or any other tax collected by the department ~~of revenue~~ and there is no law providing for a refund, the department shall refund the amount of the overpayment to the taxpayer, plus any interest and penalty due the taxpayer, as provided in subsection (2) ~~of this section~~.

(2) ~~No~~ *A* refund or payment ~~shall be~~ *is not* allowed unless a claim is filed by the taxpayer before the expiration of 5 years from the time *that* the tax was paid. Within 6 months after the claim is filed, the department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund ~~shall~~ *must* be made to the taxpayer within 60 days after the claim is approved~~;~~. ~~if~~ *If* the claim is disallowed, the department shall ~~so~~ notify the taxpayer and shall grant a hearing on the claim. If the department disapproves a claim after holding a hearing, the determination of the department may be reviewed as provided by 15-30-148."

Section 8. Section 15-30-136, MCA, is amended to read:

"**15-30-136. Computation of income of estates or trusts — exemption.** (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the ~~taxable~~ *tax* year, including but not limited to the following items:

(a) dividends;

(b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision of the state, but excluding interest income from obligations of:

(i) the United States government or the state of Montana;

(ii) a school district; or

(iii) a county, municipality, district, or other political subdivision of the state;

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

(e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954, as amended;

(f) gross profit from trade or business; and

(g) refunds recovered on federal income tax, to the extent *that* the deduction of the tax resulted in a reduction of Montana income tax liability.

(2) In computing net income, there are allowed as deductions:

(a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code of 1954, as amended;

(b) taxes paid or accrued within the ~~taxable~~ *tax* year, including but not limited to federal income tax, but excluding Montana income tax;

(c) that fiduciary's portion of depreciation or depletion ~~which~~ *that* is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code of 1954, as amended;

(d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of the Internal Revenue Code of 1954, as amended;

(e) administrative expenses claimed for federal income tax purposes, according to sections 212 and 642(g) of the Internal Revenue Code of 1954, as amended~~, if the expenses were not claimed as a deduction in the determination of Montana inheritance tax~~;

(f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal Revenue Code of 1954, as amended;

(g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal Revenue Code of 1954, as amended, except estates may not claim losses that are deductible on the decedent's final return;

(h) Montana income tax refunds or tax refund credits.

(3) The following additional deductions are allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the ~~taxable~~ *tax* year currently required to be distributed to beneficiaries for the year;

(b) any other amounts properly paid or credited or required to be distributed for the ~~taxable~~ *tax* year.

(4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and (6)."

Section 9. Section 17-5-718, MCA, is amended to read:

"**17-5-718. Tax exemption of bonds — legal investments.** (1) All bonds or notes issued under this part, their transfer, and their income, including any profits made on their sale, are exempt from taxation by the state or any political ~~subdivisions~~ *subdivision* or other instrumentality of the state, ~~excepting inheritance,~~ *except for* estate~~, and gift~~ taxes.

(2) Bonds or notes issued under this part are legal investments for any person or board charged with investment of public funds and are acceptable as security for any deposit of public money."

Section 10. Section 17-5-930, MCA, is amended to read:

"**17-5-930. Tax exemption of bonds — legal investments.** (1) All bonds issued under this part, their transfer, and their income, including any profits made on their sale, are exempt from taxation by the state or any political subdivision or other instrumentality of the state, ~~excepting inheritance,~~ *except for* estate~~, and gift~~ taxes.

(2) Bonds issued under this part are legal investments for any person or board charged with investment of public funds and are acceptable as security for any deposit of public money."

Section 11. Section 17-5-1518, MCA, is amended to read:

"**17-5-1518. Tax exemption of bonds.** Bonds, notes, or other obligations issued by the board under this part and their transfer and income (including any profits made on their sale) are free from taxation by the state or any political subdivision or other instrumentality of the state, except for ~~inheritance,~~ estate~~, and gift~~ taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it."

Section 12. Section 17-5-1629, MCA, is amended to read:

"**17-5-1629. Tax exemption of bonds.** Bonds, notes, or other obligations issued by the board under this part, their transfer, and their income (including any profits made on their sale) are free from taxation by the state or any political subdivision or other instrumentality of the state, ~~excepting inheritance,~~ *except for* estate~~, and gift~~ taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it."

Section 13. Section 35-21-827, MCA, is amended to read:

"**35-21-827. Property interests in plot — ~~inheritance~~ *estate* tax.** (1) All plots conveyed to individuals are presumed to be the sole and separate property of the owner named in the instrument of conveyance.

(2) The spouse of an owner of a plot containing more than one interment space has a vested right to be interred in the plot, and a person becoming the spouse of the plot owner has a vested right to be interred in the plot if an interment space not subject to the vested right of interment for previous spouses is unoccupied at the time that the person becomes the spouse of the owner.

(3) A conveyance or other action of the owner without the written consent or joinder of the spouse of the owner may not divest the spouse of a vested right of interment, except that a final decree of dissolution of marriage between the owner and the spouse terminates the vested right of interment unless otherwise provided in the decree.

(4) If an interment is not made in a plot that has been transferred by deed or certificate of ownership to an individual owner or if all remains previously interred in the plot are lawfully removed, the plot descends upon the death of the owner to the owner's heirs-at-law, subject to the rights of interment of the decedent and the owner's surviving spouse unless the owner has disposed of the plot either in a will by a specific devise or by a written declaration filed and recorded in the office of the mausoleum-columbarium authority.

(5) Mausoleum or columbarium property passing to an individual by reason of the death of the owner is exempt from all ~~inheritance~~ *estate* taxes."

Section 14. Section 60-11-1110, MCA, is amended to read:

"**60-11-1110. Tax exemption.** Bonds and refunding bonds, their transfer, and their income (including any profits made on their sale) are free from taxation by the state or any political subdivision or instrumentality of the state, except for ~~inheritance and~~ estate taxes."

Section 15. Section 60-11-1210, MCA, is amended to read:

"**60-11-1210. Tax exemption.** Bonds and refunding bonds, their transfer, and their income (including any profits made on their sale) are free from taxation by the state or any political subdivision or instrumentality of the state, except for ~~inheritance and~~ estate taxes."

Section 16. Section 72-1-103, MCA, is amended to read:

"**72-1-103. General definitions.** Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise requires, in chapters 1 through 5, the following definitions apply:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

(2) "Application" means a written request to the clerk for an order of informal probate or appointment under chapter 3, part 2.

(3) "Beneficiary", as it relates to:

(a) a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer;

(b) a charitable trust, includes any person entitled to enforce the trust;

(c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

(i) an account with POD designation or a security registered in beneficiary form (TOD); or

(ii) any other nonprobate transfer at death; and

(d) a beneficiary designated in a governing instrument, includes a grantee of a deed; a devisee; a trust beneficiary; a beneficiary of a beneficiary designation; a donee; and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:

(a) an account with POD designation or a security registered in beneficiary form (TOD); or

(b) any other nonprobate transfer at death.

(5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) (a) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration.

(10) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this section.

(11) "Devise" when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.

(12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3, in the case of a devise to an existing trust or trustee or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(13) "Disability" means cause for a protective order as described by 72-5-409.

(14) "Distributee" means any person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment ~~thereto~~ *to distributed assets* remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

(16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

(17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

(18) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

(19) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

(20) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type.

(21) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

(22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

(23) "Incapacitated person" has the meaning provided in 72-5-101.

(24) "Informal proceedings" means proceedings conducted without notice to interested persons by the clerk of court for probate of a will or appointment of a personal representative.

(25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The term also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

(26) "Issue" of a person means a descendant ~~as defined in subsection (10)~~.

(27) "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

(28) "Lease" includes an oil, gas, coal, or other mineral lease.

(29) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(30) "Minor" means a person who is under 18 years of age.

(31) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

(32) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

(33) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

(34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under chapters 1 through 5 by

intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(36) "Person" means an individual, a corporation, an organization, or other legal entity.

(37) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(38) "Petition" means a written request to the court for an order after notice.

(39) "Proceeding" includes action at law and suit in equity.

(40) "Property" includes both real and personal property or any interest in that property and means anything that may be the subject of ownership.

(41) "Protected person" has the meaning provided in 72-5-101.

(42) "Protective proceeding" has the meaning provided in 72-5-101.

(43) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; transferable share; voting trust certificate; in general, any interest or instrument commonly known as a security; any certificate of interest or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing.

(44) "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(45) "Special administrator" means a personal representative as described by chapter 3, part 7.

(46) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(47) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(48) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or chapters 1 through 5.

(49) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

(50) "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under 72-2-114 or 72-2-712. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

(51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(52) "Testator" includes an individual of either sex.

(53) "Trust" includes an express trust, private or charitable, with additions ~~thereto~~ *to the trust*, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined in 72-6-111 and Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26 ~~of this title~~; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

(54) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(55) "Ward" means an individual described in 72-5-101.

(56) "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession."

Section 17. Section 72-3-607, MCA, is amended to read:

"72-3-607. Inventory — appraisal — copy to department of revenue. (1) ~~Within~~ *If the estate must file a United States estate tax return, within* the time required for the filing of ~~a~~ *the* United States estate tax return plus any extensions granted by the internal revenue service, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory~~,~~. ~~which~~ *The* inventory ~~shall~~ *must* include *a* listing of all property ~~which~~ *that*:

(a) the decedent owned, had an interest in or control over, individually, in common, or jointly, or otherwise had at the time of ~~his~~ *the decedent's* death;

(b) the decedent had possessory or dispository rights over at the time of ~~his~~ death or had disposed of for less than its fair market value within 3 years of ~~his~~ *the decedent's* death; or

(c) was affected by the decedent's death for the purpose of ~~inheritance or~~ estate taxes.

(2) The inventory ~~shall~~ *must* include a statement of the full and true value of the decedent's interest in every item listed in ~~such~~ *the* inventory. In this connection, the personal representative shall appoint one or more qualified and disinterested persons to assist ~~him~~ *the personal representative* in ascertaining the fair market value as of the date of the decedent's death of all assets included in the estate. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser ~~shall~~ *must* be indicated on the inventory with the item or items ~~he~~ appraised.

(3) The personal representative shall send a copy of the inventory to interested persons who request it, or ~~he~~ *the personal representative* may file the original of the inventory with the court. In any event, a copy of the inventory and statement of value ~~shall~~ *must* be mailed to the department of revenue."

Section 18. Section 72-3-618, MCA, is amended to read:

"**72-3-618. Persons dealing with personal representative — protection.** (1) A person who in good faith and without notice either assists a personal representative or deals with ~~him~~ *a personal representative* for value is protected as if the personal representative properly exercised ~~his~~ *the personal representative's* power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives ~~which~~ *that* are endorsed on letters as provided in 72-3-404(3), ~~no~~ *a* provision in any will or order of court purporting to limit the power of a personal representative is *not* effective except as to persons with actual knowledge ~~thereof~~ *of the provision.*

(2) A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative.

(3) The protection ~~here~~ expressed *in this section* extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection ~~here~~ expressed *in this section* is not ~~by~~ *a* substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries~~, nor does it in any way limit the provisions of 72-16-432 and 72-16-433~~."

Section 19. Section 72-3-631, MCA, is amended to read:

"**72-3-631. Compensation of personal representative.** (1) A personal representative is entitled to reasonable compensation for ~~his~~ services. ~~Such~~ *The* compensation ~~shall~~ *may* not exceed 3% of the first $40,000 of the value of the estate as reported for federal estate tax ~~or state inheritance tax~~ purposes~~, whichever is larger,~~ and 2% of the value of the estate in excess of $40,000 as reported for federal estate tax ~~or state inheritance tax~~ purposes~~, whichever is larger~~. However, a personal representative is entitled to a minimum compensation of the lesser of $100 or the value of the gross estate.

(2) In proceedings conducted for the termination of joint tenancies, the compensation of the personal representative ~~shall~~ *may* not exceed 2% of the interest passing.

(3) In proceedings conducted for the termination of a life estate, the compensation allowed the personal representative ~~shall~~ *may* not exceed 2% of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the personal representative's compensation ~~shall~~ *may* not exceed 2% of the value of the estate, except that it ~~shall~~ *may* not be less than $100.

(4) If there is more than one personal representative, only one compensation is allowed.

(5) The court may allow additional compensation for extraordinary services. ~~Such~~ *The* additional compensation ~~shall~~ *may* not be greater than the amount ~~which~~ *that* is allowed for the original compensation.

(6) If the will provides for the compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to

compensation under the terms of this section. A personal representative also may renounce ~~his~~ *the* right to all or any part of the compensation. A written renunciation of fee may be filed with the court."

Section 20. Section 72-3-807, MCA, is amended to read:

"**72-3-807. Classification of claims as to priority of payment.** (1) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(a) costs and expenses of administration;

(b) reasonable funeral expenses and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent;

(c) federal estate and Montana state estate ~~and inheritance~~ taxes;

(d) debt for a current support obligation and past-due support for *the* decedent's children pursuant to a support order as defined in 40-5-201;

(e) debts with preference under federal and Montana law;

(f) other federal and Montana state taxes;

(g) all other claims.

(2) A preference may not be given in the payment of any claim over any other claim of the same class, and a claim due and payable may not be entitled to a preference over claims not due."

Section 21. Section 72-3-1004, MCA, is amended to read:

"**72-3-1004. Closing estate by sworn statement of personal representative.** (1) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than 6 months after the date of original appointment of a general personal representative for the estate~~,~~ a verified statement stating that ~~he~~ *the personal representative*, or a prior personal representative ~~whom he has succeeded~~, has:

(a) determined that the time limitation for presentation of creditors' claims has expired;

(b) fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims ~~which~~ *that* were presented, expenses of administration, and estate~~, inheritance,~~ and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled; if any claims remain undischarged, the statement ~~shall~~ *must* state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees~~,~~ or it ~~shall~~ *must* state in detail other arrangements ~~which~~ *that* have been made to accommodate outstanding liabilities; *and*

(c) sent a copy ~~thereof~~ *of the statement* to all distributees of the estate and to all creditors or other claimants of whom ~~he~~ *the personal representative* is aware whose claims are neither paid nor barred and has furnished a full account in writing of ~~his~~ *the* administration to the distributees whose interests are affected ~~thereby; and~~

~~(d) complied with the provisions of 72-3-1006~~ *by the accounting.*

(2) If ~~no~~ proceedings involving the personal representative are *not* pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates."

Section 22. Section 72-3-1006, MCA, is amended to read:

"**72-3-1006. Certificate or receipt showing taxes paid required to close estate.** (1) In all probate proceedings under this code, before final distribution to successors is made and before any petition is granted under 72-3-1001, 72-3-1002, 72-3-1003, or 72-3-1004, there ~~shall~~ *must* have been filed with the clerk:

(a) a certificate from the department of revenue stating that any ~~inheritance~~ *estate* tax due on the assets of the estate has been paid; ~~or~~

(b) an agreement with the department of revenue for extension of time for payment of ~~inheritance~~ *estate* taxes; or

(c) a receipt from the county treasurer stating that any ~~inheritance~~ *estate* tax due on the assets of the estate has been paid.

(2) This section ~~shall~~ *does* not prohibit ~~such~~ *a* partial distribution ~~as~~ *that* may become necessary in the course of administration."

Section 23. Section 72-3-1104, MCA, is amended to read:

"**72-3-1104. Small estates — closing by sworn statement of personal representative.** (1) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of 72-3-1103 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(a) to the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;

(b) the personal representative has fully administered the estate by payment of ~~inheritance~~ *estate* taxes and by disbursing and distributing it to the persons entitled ~~thereto~~ *to it*; and

(c) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom ~~he~~ *the personal representative* is aware whose claims are neither paid nor barred and has furnished a full account in writing of ~~his~~ *the* administration to the distributees whose interests are affected.

(2) If ~~no~~ actions or proceedings involving the personal representative are *not* pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates.

(3) A closing statement filed under this section has the same effect as one filed under 72-3-1004."

Section 24. Section 72-16-215, MCA, is amended to read:

"**72-16-215. County treasurer — monthly report — payment of collections to state treasurer — interest on unpaid amounts.** Between the 1st and 20th days of each month, each county treasurer shall make a report under oath to the department of revenue listing all payments received ~~by him~~ under the ~~inheritance~~ *estate* tax laws during the preceding month and stating for what estate, by whom, and when paid. The form of ~~such~~ *the* report ~~shall~~ *must* be prescribed by the department. ~~He~~ *The county treasurer* shall at the same time pay the state treasurer all the payments received ~~by him~~ under the ~~inheritance~~ *estate* tax laws and not previously paid to the state treasurer.~~, and for all such~~ *For* payments collected ~~by him and~~ *but* not paid to the state treasurer within 5 days from the time ~~herein~~ required, ~~he~~ *the county treasurer* shall pay interest at the rate of 10% ~~per annum~~ *a year*."

Section 25. Section 72-16-502, MCA, is amended to read:

"**72-16-502.** ~~**Determination and payment of tax when no personal representative — procedure — exception**~~ ***Definition of decedent.*** ~~(1)~~ For the purposes of this ~~section~~ *part*, a decedent is one who dies leaving no property that requires the appointment of a personal representative and who:

~~(a)~~*(1)* was the owner of a life estate that terminated at death; *or*

~~(b)~~*(2)* was the owner of property with another or others as a joint tenant with right of survivorship and not as a tenant in common~~; or~~

~~(c) was the owner of any other interest in property requiring the determination of inheritance tax because of death~~.

~~(2) Except as provided in subsection (6), a remainderman, surviving joint tenant, or other interested party shall, upon the death of a decedent, file with the department of revenue:~~

~~(a) a copy of the death certificate;~~

~~(b) a verified application, in a form prescribed by the department, containing information that the department considers necessary; and~~

~~(c) evidence of the instruments that created the life estate, joint tenancy, or other interest requiring determination of inheritance tax, if required by the department.~~

~~(3) Upon receipt of the application, the department shall:~~

~~(a) stamp the filing date upon the application;~~

~~(b) issue a certificate showing the inheritance tax due, if any;~~

~~(c) affix the certificate to a certified copy of the application and return the certificate and copy to the applicant or the applicant's attorney; and~~

~~(d) affix a copy of the certificate to the original application and keep it on file with the department.~~

~~(4) The applicant shall pay the inheritance tax determined to the county treasurer for transmittal to the state treasurer. The county treasurer shall issue a receipt for the payment of the tax.~~

~~(5) If disputes arise as to tax computation, they must be resolved as provided under the laws applicable to the determination of inheritance taxes in estates.~~

~~(6) A surviving joint tenant described in 72-16-313(1) or (2) of a decedent whose aggregate value of the interest in the joint property is less than the federal estate tax filing requirement is not required to file under subsection (2).~~"

Section 26. Section 72-16-503, MCA, is amended to read:

"**72-16-503. Additional filings required when real property involved and no representative ~~—release of lien~~.** (1) If an interest in real property is involved under 72-16-502, the applicant shall record with the clerk and recorder of each county in which the real property or any part of the property is located a document containing those matters required by 7-4-2613(3). A surviving joint tenant described in 72-16-313(1) or (2) is not subject to the recording requirements under 7-4-2613(3).

(2) A surviving joint tenant described in 72-16-313(1) or (2) with an interest in real property under 72-16-502 shall record with the clerk and recorder of each county in which the real property is located an acknowledged statement that the holder of the nonprobate interest has died and that the holder's interest in the property is terminated. The acknowledged statement must include a legal description of the real property.

~~(3) The recording of the documents under subsection (1) or (2) constitutes release of any lien for inheritance taxes.~~"

Section 27. Section 72-16-903, MCA, is amended to read:

"**72-16-903. Taxable situs of property.** For the purpose of ~~this~~ *the estate* tax, the *following have* taxable situs ~~of property shall be the same as the taxable situs for inheritance tax purposes~~ *in this state:*

(1) real property located in this state;

(2) tangible personal property located in this state; and

(3) intangible personal property owned by a resident regardless of where it is located."

Section 28. Section 72-16-904, MCA, is amended to read:

"**72-16-904. Estate tax imposed.** ~~In addition to the inheritance taxes hereinabove imposed, an~~ *An* estate tax is ~~hereby~~ imposed upon the transfer of the estate of every decedent leaving an estate ~~which~~ *that* is subject to the federal estate tax imposed by the United States of America under the applicable provisions of the Internal Revenue Code and ~~which~~ *that* has, in whole or in part, a taxable situs in this state."

Section 29. Section 72-16-905, MCA, is amended to read:

"**72-16-905. Estate tax — how computed.** The tax ~~hereby~~ imposed upon the transfer of each ~~such~~ estate ~~shall be~~ *is* equal to the maximum tax credit allowable for state death taxes against the federal estate tax imposed with respect to the portion of the decedent's estate having a taxable situs in this state~~, less the inheritance taxes, if any, due this state, it being~~. *It is* the purpose and intent of this part to impose only ~~such~~ *those* additional taxes ~~hereunder as~~ *that* may be necessary to give this state the full benefit of the maximum tax credit allowable against the federal estate tax imposed with respect to a decedent's estate ~~which~~ *that* has a taxable situs in this state. If only a portion of a decedent's estate has a taxable situs in this state, ~~such~~ *the* maximum tax credit ~~shall~~ *must* be determined by multiplying the entire amount of the credit allowable against the federal estate tax for state death taxes by the percentage ~~which~~ *that* the value of the portion of the decedent's estate ~~which~~ *that* has a taxable situs in this state bears to the value of the entire estate."

Section 30. Section 72-16-907, MCA, is amended to read:

"72-16-907. Department to determine tax — rehearing and appeal — *rulemaking*. (1) *(a)* The department of revenue shall enter an order determining ~~such~~ *the* state estate tax and the amount ~~thereof so~~ due and payable.

~~(2)~~*(b)* Any person ~~in~~ *with an* interest aggrieved by ~~such~~ *the department's* determination ~~shall have the same right to apply for~~ *may appeal the determination to* district court ~~determination and of rehearing and appeal as is now provided for in the determination of inheritance taxes~~.

(2) The department shall adopt rules necessary for the administration and enforcement of this part."

Section 31. Section 72-16-909, MCA, is amended to read:

"72-16-909. When and where tax payable — interest. *(1)* The estate tax ~~shall be~~ *is* payable to the county treasurer of the county in which ~~such~~ *the* estate is being probated ~~in the same manner provided for the payment of inheritance taxes in 72-16-441~~.

(2) If the tax is not paid within 18 months of the death of the decedent, interest must be charged and collected at the rate of 10% a year from the time that the tax accrued, unless because of claims made upon the estate, necessary litigation, or other unavoidable cause of delay, the tax is not determined and paid on time. Interest at the rate of 6% must be charged upon the amount of tax due from the time of accrual until the cause of the delay is removed, and after that time, interest at the rate of 10% must be charged.

(3) Litigation to defeat the payment of the tax is not necessary litigation.

(4) When permission has been granted to defer payment of tax under 72-16-910, interest must be charged at the rate of 6% after 1 year from the date of death until the date of payment."

Section 32. Section 72-16-1007, MCA, is amended to read:

"72-16-1007. ~~Applicability of other taxes — rulemaking~~ *Rulemaking*. ~~The provisions of Title 72, chapter 16, parts 1 through 8, relating to the tax on inheritances and transfers, apply to 72-16-1001 through 72-16-1006 unless they are in conflict with this part.~~ The department shall adopt rules necessary for the administration and enforcement of this part."

Section 33. Section 80-12-305, MCA, is amended to read:

"80-12-305. Tax exemption of bonds. Bonds issued by the authority under this chapter and their transfer and income, including any profits made on their sale, are exempt from taxation by the state or any political subdivision or other instrumentality of the state, except for ~~inheritance,~~ estate~~, and gift~~ taxes. The authority is not required to pay recording or transfer fees or taxes on instruments recorded by it."

Section 34. Section 90-6-125, MCA, is amended to read:

"90-6-125. Tax exemption of bonds. Bonds, notes, or other obligations issued by the board under this part or by local housing authorities under Title 7, chapter 15, parts 21, 44, and 45, their transfer, and their income (including any profits made on their sale) ~~shall be~~ *are* free from taxation by the state or any political subdivision or other instrumentality of the state, ~~excepting inheritance,~~ *except for* estate~~, and gift~~ taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it."

Section 35. Code commissioner instruction. The code commissioner shall renumber 72-16-217 as an integral part of Title 50, chapter 15.

Section 36. Repealer. Sections 72-4-304, 72-14-303, 72-16-101, 72-16-102, 72-16-201, 72-16-203, 72-16-204, 72-16-205, 72-16-206, 72-16-207, 72-16-208, 72-16-209, 72-16-210, 72-16-211, 72-16-212, 72-16-213, 72-16-214, 72-16-216, 72-16-218, 72-16-301, 72-16-302, 72-16-303, 72-16-304, 72-16-305, 72-16-306, 72-16-307, 72-16-308, 72-16-311, 72-16-312, 72-16-313, 72-16-314, 72-16-315, 72-16-316, 72-16-317, 72-16-318, 72-16-319, 72-16-321, 72-16-322, 72-16-323, 72-16-331, 72-16-332, 72-16-333, 72-16-334, 72-16-335, 72-16-336, 72-16-337, 72-16-338, 72-16-339, 72-16-340, 72-16-341, 72-16-342, 72-16-343, 72-16-344, 72-16-345, 72-16-346, 72-16-347, 72-16-348, 72-16-349, 72-16-401, 72-16-402, 72-16-403, 72-16-411, 72-16-412, 72-16-413, 72-16-414, 72-16-415, 72-16-416, 72-16-417, 72-16-418, 72-16-419, 72-16-420, 72-16-421, 72-16-422, 72-16-423, 72-16-424, 72-16-425, 72-16-431, 72-16-432, 72-16-433, 72-16-434, 72-16-435, 72-16-436, 72-16-437, 72-16-438, 72-16-439, 72-16-440, 72-16-441, 72-16-442, 72-16-443, 72-16-445, 72-16-446, 72-16-447, 72-16-448, 72-16-449, 72-16-450, 72-16-451, 72-16-452, 72-16-453, 72-16-454, 72-16-455, 72-16-456, 72-16-457, 72-16-458, 72-16-459, 72-16-460, 72-16-461, 72-16-462, 72-16-463, 72-16-464, 72-16-465, 72-16-471, 72-16-472, 72-16-473, 72-16-474, 72-16-475, 72-16-476, 72-16-477, 72-16-478, 72-16-479, 72-16-480, 72-16-481, 72-16-482, 72-16-491, 72-16-492, 72-16-493, 72-16-504, 72-16-505, 72-16-701, 72-16-702, 72-16-703, 72-16-704, 72-16-705, 72-16-706, 72-16-801, 72-16-802, 72-16-803, 72-16-804, 72-16-805, and 72-16-902, MCA, are repealed.

Section 37. Effective date. This act is effective upon approval by the electorate.

Section 38. Applicability. This act applies to deaths occurring after December 31, 2000.

Section 39. Submission to electorate. This act shall be submitted to the qualified electors of Montana at the general election to be held in November 2000 by printing on the ballot the full title of this act and the following:

☐ FOR repealing state inheritance taxes.

☐ AGAINST repealing state inheritance taxes.

CHAPTER NO. 10

[HB 1]

AN ACT IMPLEMENTING THE PROGRAMS THAT WERE NOT FUNDED BECAUSE OF THE INVALIDITY OF THE COAL PRODUCER'S LICENSE TAX BY STATUTORILY APPROPRIATING, FOR THE FISCAL YEARS BEGINNING JULY 1, 2001, AND ENDING JUNE 30, 2005, THE INTEREST INCOME FROM $140 MILLION OF THE COAL SEVERANCE TAX PERMANENT FUND THAT IS DEPOSITED IN THE GENERAL FUND FOR THE COOPERATIVE DEVELOPMENT CENTER, FOR REIMBURSING TAX INCREMENT FINANCING INDUSTRIAL DISTRICTS, FOR THE GROWTH THROUGH AGRICULTURE PROGRAM, FOR BUSINESS RECRUITMENT, EXPORT TRADE ENHANCEMENT, A SMALL BUSINESS INNOVATIVE RESEARCH PROGRAM, A SMALL BUSINESS DEVELOPMENT CENTER, AND THE CERTIFIED COMMUNITIES PROGRAM, AND FOR RESEARCH

AND COMMERCIALIZATION PROJECTS; STATUTORILY APPROPRIATING MONEY FOR COMMUNITY WATER AND SEWER PROJECT ENGINEERING WORK FOR EACH BIENNIUM FOR THE PERIOD BEGINNING JULY 1, 2001, AND ENDING JUNE 30, 2005; PROVIDING TEMPORARY APPROPRIATIONS TO THE BOARD OF REGENTS AND THE TREASURE STATE ENDOWMENT PROGRAM AND FOR ADMINISTRATIVE EXPENSES OF THE BOARD OF RESEARCH AND COMMERCIALIZATION TECHNOLOGY; PROVIDING A FUND TRANSFER FOR THE CURRENT BIENNIUM FOR RESEARCH AND COMMERCIALIZATION PROJECTS; CLARIFYING THE ALLOCATIONS FOR THE TREASURE STATE ENDOWMENT PROGRAM PROJECTS AUTHORIZED IN CHAPTER 517, LAWS OF 1999; AMENDING SECTIONS 15-35-108, 17-7-502, AND 90-6-710, MCA, AND SECTIONS 2 AND 5, CHAPTER 517, LAWS OF 1999; AND PROVIDING EFFECTIVE DATES, A RETROACTIVE APPLICABILITY DATE, AND TERMINATION DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

"**15-35-108. Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) ~~Beginning July 1, 1997, and ending June 30, 1999, the amount of 0.87% must be allocated to an account in the state special revenue fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Beginning July 1, 1999, the~~ *The* amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund must be

appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) *(a)* ~~All~~ *Subject to subsection (7)(b), all* other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, for the biennium ending June 30, 2001, as follows:

(i) $65,000 to the cooperative development center;

(ii) $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) to the department of commerce:

(A) $350,000 for business recruitment;

(B) $125,000 for a small business development center;

(C) $50,000 for a small business innovative research program;

(D) $425,000 for certified communities;

(E) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(F) $300,000 for export trade enhancement; and

(iv) $600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in 7-15-4299. Reimbursement must be made to qualified districts on a proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district."

Section 2. Section 15-35-108, MCA, is amended to read:

"**15-35-108. Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to

another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) ~~Beginning July 1, 1997, and ending June 30, 1999, the amount of 0.87% must be allocated to an account in the state special revenue fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Beginning July 1, 1999, the~~ *The* amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) *(a)* ~~All~~ *Subject to subsections (7)(b) and (7)(c), all* other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) to the department of commerce:

(A) $350,000 for business recruitment;

(B) $125,000 for a small business development center;

(C) $50,000 for a small business innovative research program;

(D) $425,000 for certified communities;

(E) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(F) $300,000 for export trade enhancement; and

(iv) $600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in 7-15-4299. Reimbursement must be made to qualified districts on a proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district.

(c) Beginning July 1, 2001, there is transferred annually from the interest income referred to in subsection (7)(b) $4.85 million to the research and commercialization expendable trust fund created in 90-3-1002."

Section 3. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-31-702; 15-34-115; *15-35-108;* 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-222; 80-4-416; 80-11-518; 81-5-111; 82-11-161; 87-1-513; 90-3-1003; *90-6-710;* and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; and pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014.)*"

Section 4. Section 90-6-710, MCA, is amended to read:

"**90-6-710. Priorities for projects — procedure — rulemaking.** *(1) The amount of $425,000 is statutorily appropriated, as provided in 17-7-502, to the department of commerce for each biennium for the period beginning July 1, 2001, and ending June 30, 2005, from the treasure state endowment special revenue account for the purpose of providing communities with grants for engineering work for projects provided for in subsection (3).*

~~(1)~~*(2)* The department of commerce must receive proposals for projects from local governments as defined in 90-6-701(3)(b). The department shall work with a local government in preparing cost estimates for a project. In reviewing project proposals, the department may consult with other state agencies with expertise pertinent to the proposal. The department shall prepare and submit a list containing the recommended projects and the recommended form and amount of financial assistance for each project to the governor, prioritized pursuant to subsection ~~(2)~~ *(3)*. The governor shall review the projects recommended by the department and shall submit a list of recommended projects and the recommended financial assistance to the legislature.

~~(2)~~*(3)* In preparing recommendations under subsection ~~(1)~~ *(2)*, preference must be given to infrastructure projects based on the following order of priority:

(a) projects that solve urgent and serious public health or safety problems or that enable local governments to meet state or federal health or safety standards;

(b) projects that reflect greater need for financial assistance than other projects;

(c) projects that incorporate appropriate, cost-effective technical design and that provide thorough, long-term solutions to community public facility needs;

(d) projects that reflect substantial past efforts to ensure sound, effective, long-term planning and management of public facilities and that attempt to resolve the infrastructure problem with local resources;

(e) projects that enable local governments to obtain funds from sources other than the funds provided under this part;

(f) projects that provide long-term, full-time job opportunities for Montanans, that provide public facilities necessary for the expansion of a business that has a high potential for financial success, or that maintain the tax base or that encourage expansion of the tax base; and

(g) projects that are high local priorities and have strong community support.

~~(3)~~*(4)* After the review required by subsection ~~(1)~~ *(2)*, the projects must be approved by the legislature.

~~(4)~~*(5)* The department shall adopt rules necessary to implement the treasure state endowment program."

Section 5. Section 2, Chapter 517, Laws of 1999, is amended to read:

"**Section 2. Appropriations from treasure state endowment special revenue account.** (1) There is appropriated to the department of commerce the interest earnings of the treasure state endowment fund and the money ~~allocated by House Bill No. 260 to be deposited in the treasure state endowment special revenue account~~ *appropriated in [section 7 of this act]* to finance grants authorized by this section.

(2) The funds appropriated in this section must be used by the department to make grants to the local government entities listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The appropriations are subject to the conditions set forth in [sections 3 and 4] and this section and described in the treasure state endowment program January 1999 report to the 56th legislature. The legislature, pursuant to 90-6-710, approves the grants listed in subsection (3), in the order indicated in the list of projects. The department shall award funds up to the amounts approved in this section based on the manner of disbursement set forth in [section 4] until available funds are expended. The department shall provide funds not accepted or used by local governments to other local governments whose projects have

been authorized for grants as listed in subsection (3). When additional funds become available for the grants listed in subsection (3), they must be awarded to projects as set forth in [section 4]. It is the intent of the legislature that projects numbered 29 through 32 listed in subsection (3) may not receive grant funds until sufficient funds have been deposited in the treasure state endowment special revenue account and are available for that purpose.

(3) The following are the authorized projects for grants in the order of their priority:

Applicant/Project	Matching Grant
1. Harrison Water and Sewer District, Madison County (wastewater)	$500,000
2. Arlee Water and Sewer District, Lake County (wastewater)	500,000
3. Highwood Water and Sewer District, Chouteau County (water)	400,000
4. City of Missoula (wastewater)	500,000
5. City of Thompson Falls (water)	500,000
6. Town of Philipsburg (water)	121,900
7. Town of Ekalaka (wastewater)	87,200
8. Rae Water and Sewer District, Gallatin County (wastewater)	485,850
9. City of Big Timber (wastewater)	500,000
10. City of Glasgow (wastewater, storm drainage)	500,000
11. Corvallis Sewer District, Ravalli County (wastewater)	410,760
12. Town of Boulder (water)	500,000
13. Town of Denton (wastewater)	415,000
14. City of Cut Bank (water)	500,000
15. Richland County (bridge)	181,155
16. Town of Geraldine (wastewater)	300,000
17. Augusta Water and Sewer District, Lewis and Clark County (wastewater)	500,000
18. City of Havre (water)	303,747
19. Sweet Grass Water and Sewer District, Toole County (wastewater)	213,000
20. Lewis and Clark County (bridge)	500,000
21. Town of Drummond (wastewater)	292,850
22. South Hills Water and Sewer District, Yellowstone County (water)	500,000
23. City of Helena (water)	500,000
24. City of Red Lodge (wastewater)	500,000
25. Town of Chester (water)	220,150
26. Willow Creek Sewer District, Gallatin County (wastewater)	500,000
27. City of Columbia Falls (wastewater)	500.000

28. Lacasa Grande Water and Sewer District, Lewis and Clark County (water)	500,000
29. Elk Meadows Water and Sewer District, Missoula County (water)	210,000
30. City of Harlem (water)	179,311
31. Midvale Water and Sewer District, Lincoln County (water)	374,720
32. City of Shelby (water)	400,000

(4) If sufficient funds are available, this section constitutes a valid obligation of funds to the entities listed in subsection (3) for purposes of encumbering the treasure state endowment special revenue account funds received during the 2001 biennium under 17-7-302 *and the funds appropriated in [section 7 of this act]*. However, a local government's entitlement to receive funds is dependent on the local government's compliance with the conditions described in [section 4] and on the availability of funds.

(5) If funds deposited in the treasure state endowment special revenue account *and appropriated in [section 7 of this act]* during the biennium ending June 30, 2001, are insufficient to fully fund the projects numbered 1 through 28 in subsection (3) that have satisfied the conditions described in [section 4], these projects will be fully funded from deposits in the treasure state endowment special revenue account made during the biennium ending June 30, 2003, before projects authorized by the 57th legislature in 2001 receive funding from the account."

Section 6. Section 5, Chapter 517, Laws of 1999, is amended to read:

"**Section 5. Contingent voidness.** If House Bill No. 260 is enacted, [section 1] of [this act] is void and references to that section must be stricken. ~~If House Bill No. 260 is not enacted or is invalidated by a final judicial decision, [section 2] of [this act] is void and references to that section must be stricken.~~"

Section 7. Appropriation — fund transfer. (1) There is appropriated from the general fund for the biennium ending June 30, 2001:

(a) $4.4 million to the board of regents to be used for matching funds for EPSCor grants;

(b) $3 million to the treasure state endowment program provided for in Title 90, chapter 6, part 7; and

(c) $150,000 to the board of research and commercialization technology for administrative expenses.

(2) There is transferred $2.35 million from the general fund to the research and commercialization expendable trust fund created in 90-3-1002.

Section 8. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 2 and 4] are effective July 1, 2001.

Section 9. Retroactive applicability. [Section 6] applies retroactively, within the meaning of 1-2-109, to July 1, 1999.

Section 10. Termination. (1) [Section 1] terminates June 30, 2001.

(2) [Sections 2 through 4] terminate June 30, 2005.

Approved May 22, 2000

CHAPTER NO. 11

[HB 4]

AN ACT PROVIDING FOR A REDUCTION IN PROPERTY TAXES BY INCREASING DIRECT STATE AID TO SCHOOL DISTRICTS FROM 41.8 PERCENT TO 44.7 PERCENT; PROVIDING INCREASED STATE FUNDING OF BASIC AND PER-ANB ENTITLEMENTS; ELIMINATING THE PROPERTY TAX EXEMPTION FROM MARKET VALUE FOR CERTAIN LAND BEGINNING TAX YEAR 2002; CLARIFYING THAT THE AMOUNT OF MOTOR VEHICLE DISPOSITION ATTRIBUTABLE TO CERTAIN LEVIES IS A LOCAL GOVERNMENT REIMBURSEMENT; CLARIFYING THAT ANTICIPATED REVENUE RECEIVED DURING THE SCHOOL FISCAL YEAR INCLUDES REIMBURSEMENTS FROM LIGHT VEHICLE TAXES RECEIVED DURING FISCAL YEAR 1999; AUTHORIZING DISTRIBUTION OF REVENUE RECEIVED ACCORDING TO THE PRIOR YEAR'S MILL LEVIES; PROVIDING AN APPROPRIATION; RESERVING $37 MILLION OF GENERAL FUND MONEY TO BE USED DURING THE BIENNIUM BEGINNING JULY 1, 2001, TO FULFILL THE LEGISLATURE'S OBLIGATION TO PROVIDE ALTERNATIVE FUNDING FOR LOCAL GOVERNMENTS AS CONTEMPLATED IN SECTIONS 167 AND 168, CHAPTER 584, LAWS OF 1999; AMENDING SECTIONS 15-6-136, 15-6-138, 15-6-201, 15-7-111, 15-8-111, 15-10-420, 20-9-141, 20-9-306, 20-9-367, 20-9-368, AND 61-3-509, MCA, AND SECTIONS 167 AND 169, CHAPTER 584, LAWS OF 1999; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-136, MCA, is amended to read:

"**15-6-136. (Temporary) Class six property — description — taxable percentage.** (1) Class six property includes:

(a) livestock that are not exempt under 15-6-201~~(1)(ee)~~*(1)(bb)* and other species of domestic animals and wildlife raised in domestication or a captive environment, except for cats, dogs, and other household pets not raised for profit;

(b) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than $15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals when no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year;

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis; and

(c) machinery and equipment used in canola seed oil processing facilities if:

(i) the operators of those facilities employ a minimum of 15 full-time employees; and

(ii) a canola seed oil processing facility locates in the state of Montana after July 25, 1989; and

(d) machinery and equipment used in a malting barley facility.

(2) "Canola seed oil processing facility" means a facility that:

(a) extracts oil from canola seeds, refines the crude oil to produce edible oil, formulates and packages the edible oil into food products, or engages in any one or more of those processes; and

(b) employs at least 15 employees in a full-time capacity.

(3) "Malting barley facility" means a facility and integral machinery and equipment used principally to malt malting barley and includes machinery and equipment to mix, blend, transport, transfer, or process the barley and malt at the facility.

(4) Class six property is taxed at:

(a) 4% of its market value for tax years ending on or before December 31, 1999;

(b) 3% of its market value for tax year 2000;

(c) 2% of its market value for tax year 2001; and

(d) 1% of its market value for tax year 2002. (Repealed effective January 1, 2003—secs. 27, 31, Ch. 285, L. 1999.)"

Section 2. Section 15-6-138, MCA, is amended to read:

"**15-6-138. (Temporary) Class eight property — description — taxable percentage.** (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-201~~(1)(ee)~~*(1)(bb)*;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r) or ~~(1)(ee)~~ *(1)(bb)*, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(f) special mobile equipment as defined in 61-1-104;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at:

(a) 6% of its market value for tax years beginning after December 31, 1997; and

(b) 3% of its market value for tax years beginning after December 31, 1999.

(5) (a) If, in any year beginning with tax year 2004, the percentage growth in inflation-adjusted Montana wage and salary income, in the last full year for which data is available, is at least 2.85% from the prior year, then the tax rate for class eight property will be reduced by 1% each year until the tax rate reaches zero.

(b) The department shall calculate the percentage growth in subsection (5)(a) by using the formula (W/CPI) - 1, where:

(i) W is the Montana wage and salary income for the most current available year divided by the Montana wage and salary income for the year prior to the most current available year; and

(ii) CPI is the consumer price index for the most current available year used in subsection (5)(b)(i) divided by the consumer price index for the year prior to the most current available year as used in subsection (5)(b)(i).

(c) For purposes of determining the percentage growth in subsection (5)(a), the department shall use the wage and salary data series referred to as the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements. Inflation must be measured by the consumer price index, U.S. city average, all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(6) Beginning with tax year 2000, the class eight property of a person or business entity that owns an aggregate of $5,000 or less in market value of class eight property is exempt from taxation. (Repealed on occurrence of contingency—secs. 27(2), 31(4), Ch. 285, L. 1999.)"

Section 3. Section 15-6-201, MCA, is amended to read:

"**15-6-201. (Temporary) Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) (i) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) the following percentage of the market value of residential property as described in 15-6-134(1)(e) and (1)(f):

(i) 16% for tax year 1999;

(ii) 23% for tax year 2000;

(iii) 27.5% for tax year 2001; and

(iv) 31% for tax year 2002 and succeeding tax years;

(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g);

(i) 6.5% for tax year 1999;

(ii) 9% for tax year 2000;

(iii) 11% for tax year 2001; and

(iv) 13% for tax year 2002 and succeeding tax years; *and*

~~(bb) the percentage of valuation of land calculated pursuant to 15-7-111(4); and~~

~~(cc)~~*(bb)* personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy.

(2) (a) For the purposes of subsection (1)(e):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) For the purposes of subsection ~~(1)(ee)~~ *(1)(bb)*:

(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure.

15-6-201. (Effective January 1, 2003) Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) (i) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) the following percentage of the market value of residential property as described in 15-6-134(1)(e) and (1)(f):

(i) 16% for tax year 1999;

(ii) 23% for tax year 2000;

(iii) 27.5% for tax year 2001; and

(iv) 31% for tax year 2002 and succeeding tax years;

(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g);

(i) 6.5% for tax year 1999;

(ii) 9% for tax year 2000;

(iii) 11% for tax year 2001; and

(iv) 13% for tax year 2002 and succeeding tax years;

~~(bb) the percentage of valuation of land calculated pursuant to 15-7-111(4);~~

~~(cc)~~*(bb)* personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy; and

~~(dd)~~*(cc)* items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than $15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis.

(2) (a) For the purposes of subsection (1)(e):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) For the purposes of subsection ~~(1)(cc)~~ *(1)(bb)*:

(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure.

15-6-201. (Effective on occurrence of contingency) Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) (i) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) the following percentage of the market value of residential property as described in 15-6-134(1)(e) and (1)(f):

(i) 16% for tax year 1999;

(ii) 23% for tax year 2000;

(iii) 27.5% for tax year 2001; and

(iv) 31% for tax year 2002 and succeeding tax years;

(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g);

(i) 6.5% for tax year 1999;

(ii) 9% for tax year 2000;

(iii) 11% for tax year 2001; and

(iv) 13% for tax year 2002 and succeeding tax years;

~~(bb) the percentage of valuation of land calculated pursuant to 15-7-111(4);~~

~~(cc)~~*(bb)* personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

~~(dd)~~*(cc)* items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than $15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;

~~(ee)~~*(dd)* all agricultural implements and equipment;

~~(ff)~~*(ee)* all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

~~(gg)~~*(ff)* all manufacturing machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

~~(hh)~~*(gg)* all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

~~(ii)~~*(hh)* special mobile equipment as defined in 61-1-104;

~~(jj)~~*(ii)* furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

~~(kk)~~*(jj)* x-ray and medical and dental equipment;

~~(ll)~~*(kk)* citizens' band radios and mobile telephones;

~~(mm)~~*(ll)* radio and television broadcasting and transmitting equipment;

~~(nn)~~*(mm)* cable television systems;

~~(oo)~~*(nn)* coal and ore haulers; and

~~(pp)~~*(oo)* theater projectors and sound equipment.

(2) (a) For the purposes of subsection (1)(e):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) For the purposes of subsection ~~(1)(ee)~~ *(1)(bb)*:

(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 4. Section 15-7-111, MCA, is amended to read:

"**15-7-111. Periodic revaluation of certain taxable property.** (1) The department ~~of revenue~~ shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. All other property must be revalued annually. The revaluation of class three, four, and ten property is complete on December 31, 1996. The amount of the change in valuation from the 1996 base year for each property in classes three, four, and ten must be phased in each year at the rate of 25% of the change in valuation from December 31, 1998, to the appropriate percentage of taxable market value for each class.

(2) The department shall value and phase in the value of newly constructed, remodeled, or reclassified property in a manner consistent with the valuation within the same class and the values established pursuant to subsection (1). The department shall adopt rules for determining the assessed valuation and phased-in value of new, remodeled, or reclassified property within the same class.

(3) Beginning January 1, 2001, the department of revenue shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. A comprehensive written reappraisal plan must be promulgated by the department. The reappraisal plan adopted must provide that all class three, four, and ten property in each county is revalued by January 1, 2003, and each succeeding 6 years. The resulting valuation changes must be phased in for each year until the next reappraisal. If a percentage of change for each year is not established, then the percentage of phasein for each year is

16.66%. The department shall furnish a copy of the plan and all amendments to the plan to the board of county commissioners of each county.

~~(4) (a) If the value of an individual property is equal to or less than 75% of the appraised value of the improvements situated on the land, then the assessed value of the land is the land's appraised value as phased in under subsection (1) and the other provisions of subsection (1) do not apply.~~

~~(b) Subject to subsection (4)(c), if the value of an individual property is greater than 75% of the appraised value of the improvements situated on the land, then the value of the land must be determined as follows:~~

~~(i) the department shall calculate the average value of improvements in the state;~~

~~(ii) if the value of the improvements on an individual property is greater than the state average value of improvements, then the land is valued at 75% of the appraised value of the improvements situated on the land and the remainder of the land value is exempt from taxation; and~~

~~(iii) if the value of the improvements on an individual property is less than or equal to the state average value of improvements, then the land is valued at 75% of the appraised value of the improvements situated on the land and the remainder of the land value is exempt from taxation.~~

~~(c) The value of land upon which improvements are situated may not exceed the phased-in value of the land.~~

~~(5) For purposes of subsection (4), the following definitions apply:~~

~~(a) "average value of improvements" means the statewide arithmetic mean of the appraised value of all improvements that have a market value in excess of $7,500;~~

~~(b) "improvements" means residential dwellings and includes housetrailers, mobile homes, and manufactured homes;~~

~~(c) "land" includes contiguous parcels or lots under single ownership up to 5 acres.~~"

Section 5. Section 15-8-111, MCA, is amended to read:

"**15-8-111. Assessment — market value standard — exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) If the department uses the capitalization of net income method as one approximation of market value and sufficient, relevant information on comparable sales and construction cost exists, the department shall rely upon the two methods that provide a similar market value as the better indicators of market value.

(d) Except as provided in subsection (3), the market value of special mobile equipment and agricultural tools, implements, and machinery is the average wholesale value shown in national appraisal guides and manuals or the value before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the average wholesale value category as shown in Guides 2000, Northwest Region Official Guide, published by the North American equipment dealers association, St. Louis, Missouri. If the guide or the average wholesale value category is unavailable, the department shall use a comparable publication or wholesale value category.

(b) for agricultural implements and machinery not listed in an official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in Titles 15 and 61.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(6) The assessed value of properties in 15-6-131 through 15-6-134, 15-6-143, and 15-6-145 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, 15-23-517, or 15-23-518.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-134, under class four, are assessed at the applicable percentage of market value minus any portion of market value that is exempt from taxation under 15-6-201(1)(z)~~,~~ *and* (1)(aa)~~, and (1)(bb)~~.

(e) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(f) Railroad transportation properties in 15-6-145 are assessed based on the valuation formula described in 15-23-205.

(7) Land and the improvements on the land are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town."

Section 6. Section 15-10-420, MCA, is amended to read:

"**15-10-420. Procedure for calculating levy.** (1) A governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year, even if that levy is greater than the levy established by law. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the value of newly taxable property.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1) plus any additional levies authorized by the voters to all property in the governmental unit, including newly taxable property.

(3) For purposes of this section, newly taxable property includes:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) transfer of property from tax-exempt to taxable status; and

(g) revaluations caused by expansion, addition, replacement, or remodeling of improvements.

(4) Subsection (1) does not apply to school district general fund levies and the school district levy for tuition obligations established in 20-5-324(5).

(5) For purposes of subsection (1), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(6) In determining the maximum number of mills in subsection (1), the governmental entity shall take into account any change from the prior year in the amount of statutory reimbursements for changes in the property tax laws. *The amount of motor vehicle disposition under 61-3-509(2) is an increased statutory reimbursement.* It may increase the number of mills to account for a decrease in reimbursements and shall decrease the number of mills to fully account for any increase in reimbursements.

(7) The department shall calculate the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, 20-25-439, and 53-2-813. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections.

(8) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Section 7. Section 20-9-141, MCA, is amended to read:

"**20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353, including any additional funding for a general fund budget that exceeds the maximum general fund budget.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) 98% of actual amounts received in fiscal year 1999 for light vehicle taxes under 61-3-504;

~~(ii)~~*(iii)* amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) revenue from taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, and 67-3-204;

(B) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); *and*

(C) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid; ~~and~~

~~(D) reimbursements for unrealized motor vehicle tax revenue, as provided in 61-3-509(1);~~

~~(iii)~~*(iv)* anticipated tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2);

~~(iv) anticipated revenue from taxes and fees imposed under 61-3-504 and 61-3-537, which for the fiscal year beginning July 1, 2000, may not be less than 75% of the previous year's revenue from these sources;~~

(v) anticipated oil and natural gas production taxes;

(vi) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703 and property tax reimbursements under 15-1-111, 15-1-112, and section 167, Chapter 584, Laws of 1999; and

(vii) anticipated revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703 and property tax reimbursements under 15-1-111, 15-1-112, and section 167, Chapter 584, Laws of 1999."

Section 8. Section 20-9-306, MCA, is amended to read:

"20-9-306. (Temporary) Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 41.1% of the basic entitlement and 41.1% of the total per-ANB entitlement for the general fund budget of a district; and

(b) guaranteed tax base aid for an eligible district for any amount up to 38.9% of the basic entitlement, up to 38.9% of the total per-ANB entitlement budgeted in the general fund budget of a district, and up to 40% of the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and up to 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) $200,000 for each high school district;

(b) $18,000 for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:

(i) $18,000 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) $200,000 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Direct state aid" means 41.1% of the basic entitlement and 41.1% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(8) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and up to 153% of special education allowable cost payments.

(9) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(10) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations:

(a) for a high school district or a K-12 district high school program, a maximum rate of $4,821 for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of $3,529 for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of $3,529 for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of $4,821 for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB. (Terminates June 30, 2000—sec. 10, Ch. 211, L. 1999.)

20-9-306. (Effective July 1, 2000) Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for ~~41.8%~~ *44.7%* of the basic entitlement and ~~41.8%~~ *44.7%* of the total per-ANB entitlement for the general fund budget of a district; and

(b) guaranteed tax base aid for an eligible district for any amount up to ~~38.2%~~ *35.3%* of the basic entitlement, up to ~~38.2%~~ *35.3%* of the total per-ANB entitlement budgeted in the general fund budget of a district, and up to 40% of the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and up to 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) ~~$200,000~~ *$206,000* for each high school district;

(b) ~~$18,000~~ *$18,540* for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:

(i) ~~$18,000~~ *$18,540* times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) ~~$200,000~~ *$206,000* times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Direct state aid" means ~~41.8%~~ *44.7%* of the basic entitlement and ~~41.8%~~ *44.7%* of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(8) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and up to 153% of special education allowable cost payments.

(9) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(10) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~$4,869~~ *$5,015* for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of ~~$3,653~~ *$3,763* for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of ~~$3,653~~ *$3,763* for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~$4,869~~ *$5,015* for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB."

Section 9. Section 20-9-367, MCA, is amended to read:

"**20-9-367. (Temporary) Eligibility to receive guaranteed tax base aid or state advance or reimbursement for school facilities.** (1) If the district guaranteed tax base ratio of any elementary or high school district is less than the corresponding statewide elementary or high school guaranteed tax base ratio, the district may receive guaranteed tax base aid based on the number of mills levied in the district in support of up to 38.9% of the basic entitlement, up to 38.9% of the total per-ANB entitlement, and up to 40% of the special education allowable cost payment budgeted within the general fund budget.

(2) If the county retirement mill value per elementary ANB or the county retirement mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or high school ANB, the county may receive guaranteed tax base aid based on the number of mills levied in the county in support of the retirement fund budgets of the respective elementary or high school districts in the county.

(3) For the purposes of 20-9-370 and 20-9-371, if the district mill value per elementary ANB or the district mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or statewide mill value per high school ANB, the district may receive a state advance or reimbursement for school facilities in support of the debt service fund. (Terminates June 30, 2000—sec. 10, Ch. 211, L. 1999.)

20-9-367. (Effective July 1, 2000) Eligibility to receive guaranteed tax base aid or state advance or reimbursement for school facilities. (1) If the district guaranteed tax base ratio of any elementary or high school district is less than the corresponding statewide elementary or high school guaranteed tax base ratio, the district may receive guaranteed tax base aid based on the number of mills levied in the district in support of up to ~~38.2%~~ *35.3%* of the basic entitlement, up to ~~38.2%~~ *35.3%* of the total per-ANB entitlement, and up to 40%

of the special education allowable cost payment budgeted within the general fund budget.

(2) If the county retirement mill value per elementary ANB or the county retirement mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or high school ANB, the county may receive guaranteed tax base aid based on the number of mills levied in the county in support of the retirement fund budgets of the respective elementary or high school districts in the county.

(3) For the purposes of 20-9-370 and 20-9-371, if the district mill value per elementary ANB or the district mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or statewide mill value per high school ANB, the district may receive a state advance or reimbursement for school facilities in support of the debt service fund."

Section 10. Section 20-9-368, MCA, is amended to read:

"20-9-368. (Temporary) Amount of guaranteed tax base aid. (1) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the elementary school districts in the county is the difference between the county mill value per elementary ANB and the statewide mill value per elementary ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the elementary districts in the county.

(2) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the high school districts in the county is the difference between the county mill value per high school ANB and the statewide mill value per high school ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the high school districts in the county.

(3) The amount of guaranteed tax base aid that a district may receive in support of up to 38.9% of the basic entitlement, up to 38.9% of the total per-ANB entitlement budgeted within the general fund budget, and up to 40% of the special education payment is calculated in the following manner:

(a) multiply the sum of the district's direct state aid and 40% of the special education allowable cost payment by the corresponding statewide guaranteed tax base ratio;

(b) subtract the taxable valuation of the district from the product obtained in subsection (3)(a); and

(c) divide the remainder by 1,000 to determine the equivalent to the dollar amount of guaranteed tax base aid for each mill levied.

(4) Guaranteed tax base aid provided to any county or district under this section is earmarked to finance the fund or portion of the fund for which it is provided. If a county or district receives more guaranteed tax base aid than it is entitled to, the excess must be returned to the state as required by 20-9-344. (Terminates June 30, 2000—sec. 10, Ch. 211, L. 1999.)

20-9-368. (Effective July 1, 2000) Amount of guaranteed tax base aid. (1) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the elementary school districts in the county is the difference between the county mill value per elementary ANB and the statewide mill value per elementary ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the elementary districts in the county.

(2) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the high school districts in the county is the difference between the county mill value per high school ANB and the statewide mill value per high school ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the high school districts in the county.

(3) The amount of guaranteed tax base aid that a district may receive in support of up to ~~38.2%~~ *35.3%* of the basic entitlement, up to ~~38.2%~~ *35.3%* of the total per-ANB entitlement budgeted within the general fund budget, and up to 40% of the special education payment is calculated in the following manner:

(a) multiply the sum of the district's BASE budget amount less direct state aid by the corresponding statewide guaranteed tax base ratio;

(b) subtract the taxable valuation of the district from the product obtained in subsection (3)(a); and

(c) divide the remainder by 1,000 to determine the equivalent to the dollar amount of guaranteed tax base aid for each mill levied.

(4) Guaranteed tax base aid provided to any county or district under this section is earmarked to finance the fund or portion of the fund for which it is provided. If a county or district receives more guaranteed tax base aid than it is entitled to, the excess must be returned to the state as required by 20-9-344."

Section 11. Section 61-3-509, MCA, is amended to read:

"**61-3-509. Disposition of taxes.** (1) Except as provided in subsection ~~(2)~~ *(3)*, the county treasurer shall, after deducting the district court fee, credit all taxes on motor vehicles and fees in lieu of tax on motorcycles, quadricycles, motor homes, travel trailers, campers, trailers, pole trailers, semitrailers, buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors collected under 61-3-504, 61-3-521, 61-3-527, 61-3-529, and 61-3-537, to a motor vehicle suspense fund. At some time between March 1 and March 10 of each year and every 60 days after that date, the county treasurer shall distribute the money in the motor vehicle suspense fund. Except for taxes collected under 61-3-504, the county treasurer shall distribute the money in the fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(2) ~~For~~ *Except as provided in subsection (3), for* money in the fund collected under 61-3-504, the county treasurer shall disregard the statewide mills levied for the university system and the mills levied for ~~state~~ equalization aid under *20-9-331, 20-9-333, and* 20-9-360 in determining distribution proportions of the money and may not distribute money from 61-3-504 to the state for ~~either levy~~ *those levies. Money collected under 61-3-504 that previously was distributed pursuant to levies imposed by 20-9-331 and 20-9-333 is a local government reimbursement for the purposes of 15-10-420.* ~~If the distribution of money collected under 61-3-504 to a school district general fund results in a lower revenue than the district received in fiscal year 1999 and the district has, for all years after fiscal year 1999, received less revenue than in fiscal year 1999, then the district general fund is entitled to state reimbursement for the amount of the difference between the fiscal year 1999 revenue and the prior school fiscal year~~

~~revenue under 61-3-504. Prior to January 31, the office of public instruction shall distribute to each school district an amount equal to the state reimbursement for the prior school year.~~

~~(2)~~*(3)* The county treasurer shall deduct as a district court fee 10% of the amount of the tax collected on light vehicles under 61-3-504(1). The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward the amount in the account to the state treasurer at the time that the county treasurer distributes money from the motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to the state special revenue fund to be used for purposes of state funding of district court expenses as provided in 3-5-901."

Section 12. Section 167, Chapter 584, Laws of 1999, is amended to read:

"**Section 167. Reimbursement to counties, cities, towns, and consolidated city-county governments for losses in revenue.** (1) (a) The department of revenue shall determine the amount of tax and other revenue lost by each local government unit as a result of the enactment of House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 for fiscal year 2000 and for fiscal year 2001. The determination must be made by August 15, 1999, for fiscal year 2000, and by March 15, 2000, for fiscal year 2001. The department shall use fiscal year 1998 as its base year for each determination.

(b) As used in this section, "local government unit" means a county, city, or town capable of levying mills, consolidated city-county government, school district, miscellaneous district, or other local district that levies mills. The term does not include the state.

(c) The department shall determine the amount of tax and other revenue due each local government unit for fiscal year 1998 from the following sources:

(i) property taxes levied by each local government unit within each county or consolidated city-county government for fiscal year 1998, but excluding any mills levied by the state pursuant to ~~[section 1 of Senate Bill No. 79]~~ *15-10-107*, 20-9-331, 20-9-333, 20-9-360, 20-25-439, and 53-2-813; and

(ii) oil and gas production taxes levied and distributed as provided for in Title 15, chapter 36.

(2) The department shall calculate for each local government unit for fiscal year 1998 the amount of tax and other revenue that would have been due each local government unit from the sources listed in subsection (1) if House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 had been in effect for fiscal year 1998.

(3) In making the calculation provided for in subsection (2), the department shall take into account any benefit to a local government unit that levied mills against electrical generation property in fiscal year 1998 from any increase in the assessed value of electrical generation property stemming from the sale of electrical generation assets subsequent to tax year 1997.

(4) (a) Each county, city, town, and consolidated city-county government that in aggregate lost tax revenue in a particular year, based on the difference between the calculation in subsections (1)(c) and (2), must receive the same percentage of the appropriation for local government reimbursements as the appropriation bears to the total amount of loss for all local government units in this state.

Payments must be made in two similar installments for each fiscal year on or about December 15 and June 15. Each county, city, town, and consolidated city-county government is authorized to distribute the revenue received among its funds and districts according to ~~current~~ *the prior* ~~year~~ *year's* mill levies. Except as provided in ~~subsections~~ *subsection* (4)(b), each tax increment financing district must receive the benefit of the reimbursement based on the loss to the incremental taxable value of the district.

(b) A tax increment financing district that consists of an industrial district created under 7-15-4299 may not receive any reimbursement under subsection (4)(a).

(5) The amount of loss calculated in subsection (2), converted to taxable value by multiplying by the applicable mill levy, ~~shall~~ *must* be added to the taxable value of taxing units to determine their bonding limits.

(6) (a) A charter form of local government that has a charter provision that prohibits an increase in the number of mills that may be levied to compensate for the loss of taxable value, as authorized in ~~[section 1]~~ *15-10-420*, is entitled to further reimbursement in addition to that computed under subsections (1) through (5) of this section.

(b) The amount of reimbursement is equal to the difference between the amount of the reimbursement calculated under subsections (1) through (5) and the amount of property tax imposed in tax year 1998. If the amount appropriated for the reimbursement under this subsection (6) is insufficient to fully fund all the jurisdictions entitled to reimbursement, the payments must be prorated to the jurisdictions. The payments must be made with the payments made under subsections (1) through (5)."

Section 13. Section 169, Chapter 584, Laws of 1999, is amended to read:

"**Section 169. Funding — appropriations.** (1) The committees established in [section 168] may receive gifts, grants, and donations. The money received must be used for fulfilling the duties of the committees, for reimbursing the expenses of committee members, or for providing staff for the committees. The money received must be placed in a special revenue fund account to the credit of the department of administration.

(2) In addition to any funds received pursuant to subsection (1), there is appropriated $55,000 from the general fund to the committees created pursuant to the provisions of [section 168] for the biennium for the operating expenses and personnel expenses of the committees.

(3) There is appropriated to the office of public instruction from the general fund $1,980,000 for BASE aid for the biennium ending June 30, 2001.

~~(4) There is appropriated to the office of public instruction from the general fund $2,229,934 for state reimbursements for motor vehicle fee reductions under 61-3-509.~~

~~(5)~~*(4)* There is transferred from the general fund $691,246 for the fiscal year ending June 30, 2000, and $1,774,042 for the fiscal year ending June 30, 2001, to the state special revenue fund referenced in ~~[section 1 of Senate Bill No. 79]~~ *15-10-107*.

~~(6)~~*(5)* There is appropriated from the general fund $12,900,000 for the fiscal year ending June 30, 2000, and $54,934,392 for the fiscal year ending June 30, 2001, to the department of revenue for the reimbursements calculated in [section 167(1) through (5)].

~~(7)~~*(6)* There is appropriated from the general fund $1.5 million for the biennium ending June 30, 2001, to the department of revenue for the costs of administration.

~~(8)~~*(7)* There is appropriated from the general fund $2.15 million for the biennium ending June 30, 2001, to the department of revenue for the reimbursements calculated in [section 167(6)].

~~(9)~~*(8)* There is appropriated from the general fund $600,000 to the department of revenue for the biennium ending June 30, 2001, for reimbursement to tax increment financing districts created pursuant to 7-15-4299.

~~(10)~~*(9)* The governor shall include the sum of the reimbursements in this section in the present law base budget prepared for the 57th legislative session."

Section 14. Appropriation. There is appropriated $20 million from the general fund to the office of public instruction for K-12 BASE aid for the school fiscal year beginning July 1, 2000.

Section 15. General fund reserve. The amount of $37 million of general fund money is set aside as a reserve to be used by the 57th legislature for purposes of fulfilling the legislature's obligation to provide alternative funding for local governments as contemplated in sections 167 and 168, Chapter 584, Laws of 1999.

Section 16. Coordination instruction. (1) If [this act] is passed and approved and if Chapter 515, Laws of 1999, is approved by the electorate, then [section 1 of this act] is void and 15-10-420 must read as follows:

"15-10-420. Procedure for calculating levy. (1) A governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year, even if that levy is greater than the levy established by law. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the value of newly taxable property.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1) plus any additional levies authorized by the voters to all property in the governmental unit, including newly taxable property.

(3) For purposes of this section, newly taxable property includes:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) transfer of property from tax-exempt to taxable status; and

(g) revaluations caused by expansion, addition, replacement, or remodeling of improvements.

(4) Subsection (1) does not apply to school district general fund levies and the school district levy for tuition obligations established in 20-5-324(5).

(5) For purposes of subsection (1), taxes imposed:

(a) include registration fees imposed on light vehicles under [section 2, Chapter 515, Laws of 1999] and distributed under 61-3-509(2); and

(b) do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(6) In determining the maximum number of mills in subsection (1), the governmental entity shall take into account any change from the prior year in the amount of statutory reimbursements for changes in the property tax laws. *The amount of motor vehicle disposition under 61-3-509(2), as that section read on December 31, 2000, is an increased statutory reimbursement.* It may increase the number of mills to account for a decrease in reimbursements and shall decrease the number of mills to fully account for any increase in reimbursements.

(7) The department shall calculate the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, 20-25-439, and 53-2-813. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections.

(8) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

(2) If [this act] is passed and approved and if Chapter 515, Laws of 1999, is approved by the electorate, then [section 11 of this act] is void and [section 34], Chapter 515, Laws of 1999, amending 61-3-509, must read as follows:

"61-3-509. Disposition of taxes. *(1) All registration fees imposed by [section 2, Chapter 515, Laws of 1999] from light vehicles, all registration fees imposed by 61-3-522 from motor homes, all fees in lieu of tax imposed by 61-3-527 from motorcycles and quadricycles, and all fees imposed by 61-3-529 from buses, motor vehicles having a manufacturer's rated capacity of more than 1 ton, and truck tractors, for which a license is sought and an original application for title that includes a manufacturer's statement of origin is made, must be remitted to the state treasurer every 30 days. The state treasurer shall credit the payments to the highway restricted state special revenue account.*

~~(1)~~*(2)* Except as provided in ~~subsection (2)~~ *subsections (1) and (3)*, the county treasurer shall, after deducting the district court fee, credit all taxes on motor vehicles, ~~and~~ *registration* fees ~~in lieu of tax~~ on *light vehicles, and fees in lieu of tax on* motorcycles, quadricycles, motor homes, travel trailers, campers, trailers, pole trailers, semitrailers, buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors collected under *[sections 1 through 3, Chapter 515, Laws of 1999],* ~~61-3-504,~~ 61-3-521, 61-3-527, 61-3-529, and 61-3-537~~,~~ to a motor vehicle suspense fund. At some time between March 1 and March 10 of each year and every 60 days after that date, the county treasurer shall distribute the money in the motor vehicle suspense fund. Except for ~~taxes~~ *registration fees* collected under ~~61-3-504~~ *[sections 1 through 3, Chapter 515, Laws of 1999]*, the county treasurer shall distribute the money in the fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed. For money in the fund collected under ~~61-3-504~~ *[sections 1 through 3, Chapter 515, Laws of 1999] and 61-3-527*, the county treasurer shall disregard the statewide mills levied for the university system, *county elementary and high school equalization under 20-9-331 and 20-9-333,* ~~and~~ the mills levied for state equalization aid under 20-9-360, *and the mills levied for state assumption of public assistance under 53-2-813* in determining distribution proportions of the money and may not distribute money ~~from 61-3-504~~ *collected under [sections 1 through 3, Chapter 515, Laws of 1999] and 61-3-527* to the state for ~~either levy~~ *those levies*. ~~If the distribution of money collected under 61-3-504 to a school district general fund results in a lower revenue than the district received in fiscal year 1999 and the district has, for all years after fiscal year 1999, received less revenue than in fiscal year 1999, then the district general fund is entitled to state reimbursement for the amount of the difference between the fiscal year 1999 revenue and the prior school fiscal year revenue under 61-3-504. Prior to January 31, the office of public instruction shall distribute to each school district an amount equal to the state reimbursement for the prior school year.~~

~~(2)~~*(3)* The county treasurer shall deduct as a district court fee 10% of the amount of the ~~tax~~ *registration fee* collected on light vehicles under ~~61-3-504(1)~~ *[sections 1 through 3, Chapter 515, Laws of 1999]*. The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward the amount in the account to the state treasurer at the time that the county treasurer distributes money from the motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to the state special revenue fund to be used for purposes of state funding of district court expenses as provided in 3-5-901."

(3) If [this act] is passed and approved and if Chapter 515, Laws of 1999, is approved by the electorate, then 61-3-537 must read as follows:

"61-3-537. (Temporary) Local option vehicle tax. (1) A county may impose a local vehicle tax on vehicles subject to ~~a tax~~ *the registration fee imposed* under ~~61-3-504~~ *[sections 1 through 3, Chapter 515, Laws of 1999]* at a rate of up to 0.7% of the value determined under 61-3-503 *or a local flat fee*, in addition to the ~~tax~~ *fee* imposed under ~~61-3-504~~ *[sections 1 through 3, Chapter 515, Laws of 1999]*.

(2) A local vehicle tax *or flat fee* is payable at the same time and in the same manner as the ~~tax~~ *fee* imposed under ~~61-3-504~~ *[sections 1 through 3, Chapter 515, Laws of 1999*. The first priority of the local vehicle tax *or flat fee* is for district court funding, and the tax *or fee* is distributed as follows:

(a) 50% to the county; and

(b) the remaining 50% to the county and the incorporated cities and towns within the county, apportioned on the basis of population. The distribution to a city or town is determined by multiplying the amount of money available by the ratio of the population of the city or town to the total county population. The distribution to the county is determined by multiplying the amount of money available by the ratio of the population of unincorporated areas within the county to the total county population.

(3) The governing body of a county may impose, revise, or revoke a local vehicle tax *or flat fee* if the imposition, revision, or revocation of the tax *or fee* is approved by the electorate of the county. The imposition, revision, or revocation of the tax *or fee* is effective on January 1 following its approval by the electorate. The county governing body by resolution may provide for the distribution of the

local vehicle tax *or flat fee*. (Terminates June 30, 2005—sec. 2, 3, Ch. 217, L. 1995.)

61-3-537. (Effective July 1, 2005) Local option vehicle tax. (1) A county may impose a local vehicle tax on vehicles subject to ~~a tax~~ *the registration fee imposed* under ~~61-3-504~~ *[sections 1 through 3, Chapter 515, Laws of 1999]* at a rate of up to 0.7% of the value determined under 61-3-503, in addition to the ~~tax~~ *fee* imposed under ~~61-3-504~~ *[sections 1 through 3, Chapter 515, Laws of 1999].*

(2) A local vehicle tax *or flat fee* is payable at the same time and in the same manner as the ~~tax~~ *fee* imposed under ~~61-3-504~~ *[sections 1 through 3, Chapter 515, Laws of 1999]* and is distributed in the same manner, based on the registration address of the owner of the motor vehicle.

(3) The governing body of a county may impose, revise, or revoke a local vehicle tax if the imposition, revision, or revocation of the tax is approved by the electorate of the county. The imposition, revision, or revocation of the tax is effective on January 1 following its approval by the electorate."

Section 17. Contingent voidness. If [this act] is passed and approved, then [LC 1] is void.

Section 18. Effective dates — applicability. (1) Except as provided in subsection (2), [this act] is effective on passage and approval, and [sections 6 through 13] apply to fiscal years beginning on or after July 1, 2000, and to school budgets for school fiscal years beginning on or after July 1, 2000.

(2) [Section 16] is effective January 1, 2001.

(3) [Sections 1 through 5] apply to tax years beginning after December 31, 2001.

Approved May 25, 2000

RESOLUTIONS

Passed by the

FIFTY-SIXTH LEGISLATURE IN SPECIAL SESSION

Held at Helena, the Seat of Government
May 8, 2000, through May 11, 2000

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

Senate Resolutions

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE OF HONORABLE MICHAEL OLEN MCCARTER AS WORKERS' COMPENSATION JUDGE.

WHEREAS, the Governor of the State of Montana has made the nomination, below designated, of an appointment that has been submitted to the Senate by the Governor, to wit:

Michael Olen McCarter as Workers' Compensation Judge for the State of Montana, for a 6-year term of office commencing September 7, 1999, and ending September 6, 2005.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the May 2000 Special Session of the 56th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and Secretary of the Senate, to the Secretary of State and a copy, certified by the Secretary of the Senate, to the Governor pursuant to section 5-5-303, MCA.

Adopted May 8, 2000

SENATE RESOLUTION NO. 2

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE OF HONORABLE STEWART EVANS STADLER AS DISTRICT JUDGE, ELEVENTH JUDICIAL DISTRICT, FLATHEAD COUNTY, MONTANA.

WHEREAS, the Governor of the State of Montana has made the nomination, below designated, of an appointment that has been submitted to the Senate by the Governor, to wit:

Stewart Evans Stadler, as District Judge, Eleventh Judicial District, Flathead County, Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the May 2000 Special Session of the 56th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and Secretary of the Senate, to the Secretary of State and a copy, certified by the Secretary of the Senate, to the Governor pursuant to section 5-5-303, MCA.

Adopted May 8, 2000

SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE OF HONORABLE WILLIS BLAIR JONES AS DISTRICT JUDGE, TWENTY-SECOND JUDICIAL DISTRICT, STILLWATER, CARBON, AND BIG HORN COUNTIES, MONTANA.

WHEREAS, the Governor of the State of Montana has made the nomination, below designated, of an appointment that has been submitted to the Senate by the Governor, to wit:

Willis Blair Jones as District Judge, Twenty-second Judicial District, Stillwater, Carbon, and Big Horn Counties, Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the May 2000 Special Session of the 56th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and Secretary of the Senate, to the Secretary of State and a copy, certified by the Secretary of the Senate, to the Governor pursuant to section 5-5-303, MCA.

Adopted May 8, 2000

House Joint Resolutions

HOUSE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REVISING THE OFFICIAL ESTIMATE, CONTAINED IN HOUSE JOINT RESOLUTION NO. 2, LAWS OF 1999, OF THE STATE'S ANTICIPATED REVENUE FOR EACH YEAR OF THE 2000-01 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED BUDGET AS MANDATED BY ARTICLE VIII, SECTION 9, OF THE MONTANA CONSTITUTION; ACCEPTING THE JUNE 30, 1999, GENERAL FUND BALANCE THAT WAS ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; AND REQUESTING THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING TO USE THE REVENUE ESTIMATES CONTAINED IN THIS RESOLUTION AS OFFICIAL REVISED REVENUE ESTIMATES FOR FISCAL YEAR 2000 AND FOR FISCAL YEAR 2001.

WHEREAS, House Bill No. 260 (Chapter 563, Laws of 1999) created a coal producer's license tax; and

WHEREAS, revenue from the coal producer's license tax was intended to be used, in part, for investing in research and commercialization projects and economic development programs in Montana; and

WHEREAS, the Montana Supreme Court declared the coal producer's license tax an unconstitutional diversion of the coal severance tax; and

WHEREAS, the research and commercialization projects and economic development programs contained in Chapter 563, Laws of 1999, are unfunded because of the Supreme Court decision; and

WHEREAS, the Governor issued a call for a special session to begin May 8, 2000, for the purpose of appropriating from the general fund amounts necessary to fund research and commercialization projects and certain economic development programs; and

WHEREAS, at the end of the 1999 Legislative Session, the ending general fund balance for the 2000-01 biennium budget was projected to be $51.5 million; and

WHEREAS, fiscal year 1999 general fund revenue collections have exceeded the amount estimated by the Legislature in House Joint Resolution No. 2, Laws of 1999; and

WHEREAS, general fund revenue collections for the 2000-01 biennium are expected to exceed the revenue estimates contained in House Joint Resolution No. 2; and

WHEREAS, the revised ending fund balance for the 2000-01 biennium is estimated to be $137.7 million; and

WHEREAS, the Governor is proposing to use general fund money to provide resources for research and commercialization projects and for certain economic development programs; and

WHEREAS, the amount of estimated revenue affects policy decisions of the Executive Branch and the Legislative Branch; and

WHEREAS, the revenue estimates contained in this resolution and the underlying assumptions provide the basis for a comprehensive analysis of the state's financial condition; and

WHEREAS, given the magnitude of the anticipated 2000-01 biennium surplus and given the Legislature's responsibility to balance the budget under Article VIII, section 9, of the Montana Constitution, it is in the best interest of the state that the official revenue estimates for the 2000-01 biennium be revised.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the state general fund revenue for fiscal years 2000 and 2001 be estimated to be $1,156,942,000 and $1,140,613,000, respectively.

BE IT FURTHER RESOLVED, that the Legislature accept for budget purposes the unreserved fund balance of $109,674,000 for the general fund, prepared according to generally accepted accounting principles as published in the audited state financial statements as of June 30, 1999.

BE IT FURTHER RESOLVED, that the Governor's Office of Budget and Program Planning use, as contemplated in 5-18-107(2), the revenue estimates contained in this resolution as the official revenue estimates for fiscal year 2000 and for fiscal year 2001.

GENERAL FUND REVENUE

The revised estimates for total general fund revenue for the 2000-01 biennium are based on an assumption of a continuation of Montana law as it existed on May 1, 2000. The general fund revenue estimates contained in the following table are also based on assumptions adopted by the Legislature in House Joint Resolution No. 2 during the 1999 Legislative Session, statutory changes affecting general fund revenue that were enacted during the 1999 Legislative Session, and revisions to certain assumptions, including those related to wage and salary income and capital gains income and to oil prices.

Current Law

General Fund Revenue Estimates

(In Millions of Dollars)

Source of Revenue	Actual FY 1999	Estimated FY 2000	Estimated FY 2001	Estimated FY 2000 and FY 2001
Individual Income Tax	$483.032	$511.099	$531.786	$1,042.885
Property Tax	201.759	191.893	173.193	365.086
Corporation Income Tax	80.142	91.939	72.730	164.669
Common School Interest & Income	41.433	42.506	42,215	84.721
Permanent Trust Interest Earnings	16.698	41.115	41,453	82.568
Insurance Premiums Tax	38.137	38.629	36.646	75.275
Tobacco Settlement	0.000	34.805	25.325	60.130

All Other Revenue	35.115	19.264	18.098	37.362
U.S. Federal Royalty	17.650	19.827	19.735	39.562
TCA Interest Earnings	17.920	14.478	14.490	28.968
Inheritance Tax	18.302	16.733	17.587	34.320
Video Gaming Tax	12.559	13.389	14.124	27.513
Motor Vehicle License Fee	11.053	12.391	12.606	24.997
Institution Reimbursements	11.136	9.697	10.041	19.738
Cigarette Tax	8.823	9.810	9.946	19.756
Coal Severance Tax	9.284	8.309	7.787	16.096
Oil Severance Tax	6.481	9.373	10.305	19.678
Lottery Profit	6.780	6.537	6.464	13.001
Liquor Excise Tax	6.666	6.628	6.744	13.372
Nursing Facilities Fee	5.713	5.981	5.874	11.855
Telephone License Tax	6.037	3.167	0.000	3.167
Telecommunications Excise Tax	0.000	12.372	23.936	36.308
Liquor Profits	6.000	5.667	5.754	11.421
Electric Energy License Tax	4.618	4.567	4.606	9.173
Wholesale Energy Tax	0.000	1.701	3.425	5.126
Investment Licenses	4.413	4.691	4.978	9.669
Highway Patrol Fines	3.755	4.657	5.009	9.666
Driver's License Fee	3.234	2.242	1.925	4.167
Metalliferous Mines Tax	3.306	3.388	3.225	6.613
Contractor's Gross Receipts Tax	3.320	3.176	3.520	6.696
Railroad Car Tax	2.074	2.130	2.153	4.283
Tobacco Tax	1.791	1.995	2.116	4.111
Long-Range Bond Excess	0.386	0.261	0.243	0.504
Natural Gas Severance Tax	1.024	1.124	1.109	2.233
Wine Tax	0.965	1.039	1.099	2.138
Beer Tax	0.374	0.362	0.366	0.728
Total General Fund	$1,069.980	$1,156.942	$1,140.613	$2,297.555

Adopted May 10, 2000

HOUSE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA OPPOSING ANY NEW DESIGNATION FOR THE MISSOURI RIVER.

WHEREAS, a majority of Montanans oppose a new designation for the Missouri River: and

WHEREAS, the Missouri River is protected by the federal Wild and Scenic Rivers Act, Montana subdivision law, and county development regulations; and

WHEREAS, expanding the designation will incorporate more private and state land holdings under federal management plans; and

WHEREAS, Article IV, section 3, of the Constitution of the United States gives authority over public lands to Congress; and

WHEREAS, House Resolution No. 1487 requires the President of the United States of America to seek public input and to consult with elected officials of the affected state at least 60 days before taking any action.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana respectfully request the Secretary of the Interior, Mr. Bruce Babbitt, to set aside any new proposed designation and support the proven management practices that have maintained the pristine conditions of the Missouri River since first traversed by the Corp of Discovery in 1804.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Secretary of the Interior and the Montana Congressional Delegation.

Adopted May 11, 2000

HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO REVISE SIGNIFICANTLY FEDERAL ESTATE TAX LAW TO REDUCE THE ONEROUS TAX BURDEN RELATED TO THE TRANSFER OF PROPERTY.

WHEREAS, Montana values and way of life are threatened by the federal estate tax that makes the passing down of family businesses difficult if not impossible; and

WHEREAS, Montana farmers and ranchers have been good citizens and stewards of the land and have provided hunting, fishing, and other recreational opportunities for Montana citizens; and

WHEREAS, open space is one of the values most cherished by Montana citizens; and

WHEREAS, the enjoyment of that open space is threatened by changing ownership patterns and by the subdivision of historic Montana property; and

WHEREAS, the asset value of Montana property is determined by external economic forces unrelated to the property's ability to produce a commensurate rate of return; and

WHEREAS, it is virtually impossible to generate sufficient capital to pay federal estate taxes without selling the underlying asset.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Congress be encouraged to revise significantly federal estate taxes to reduce the onerous tax burden related to the transfer of family businesses, including farms and ranches, in order to sustain the social fabric of the state.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation, the President of the United States Senate, and the Speaker of the United States House of Representatives.

Adopted May 11, 2000

INDEX

Index entries for the May 2000 Special Session are included in the 2001 regular session's Index to Appropriations (p. 3367) and General Index (p. 3373).

TABLES

Code Sections Affected

Session Laws Affected

Senate Bill to Chapter Number

House Bill to Chapter Number

Chapter Number to Bill Number

Effective Dates by Chapter Number

Effective Dates by Date

Session Law to Code

CODE SECTIONS AFFECTED

Title-Ch.-Sec.	Action	Chapter	Bill #
15-6-136	amended	Ch. 11	HB 4
15-6-138	amended	Ch. 11	HB 4
15-6-201	amended	Ch. 11	HB 4
15-7-111	amended	Ch. 11	HB 4
15-8-111	amended	Ch. 11	HB 4
15-10-420	amended	Ch. 11	HB 4
15-31-803	amended	Ch. 3	SB 2
15-35-108	amended	Ch. 10	HB 1
15-70-204	amended	Ch. 8	SB 11
15-70-205	amended	Ch. 8	SB 11
17-6-311	amended	Ch. 4	SB 6
17-6-312	amended	Ch. 4	SB 6
17-6-314	amended	Ch. 4	SB 6
17-6-317	enacted	Ch. 4	SB 6
17-6-324	amended	Ch. 4	SB 6
17-7-502	amended	Ch. 10	HB 1
20-9-141	amended	Ch. 11	HB 4
20-9-306	amended	Ch. 11	HB 4
20-9-367	amended	Ch. 11	HB 4
20-9-368	amended	Ch. 11	HB 4
61-3-509	amended	Ch. 11	HB 4
67-1-301	amended	Ch. 8	SB 11
82-4-302	amended	Ch. 7	SB 9
82-4-336	amended	Ch. 7	SB 9
87-4-407	amended	Ch. 1	SB 7
87-4-411	amended	Ch. 1	SB 7
90-6-710	amended	Ch. 10	HB 1

SESSION LAWS AFFECTED

Laws Affected	Action	Chapter	Bill #
Laws of 1999			
Ch. 269, sec. 5	amended	Ch. 6	SB 4
Ch. 517, sec. 2, 5	amended	Ch. 10	HB 1
Ch. 584, sec. 167, 169	amended	Ch. 11	HB 4

SENATE BILL NUMBER TO CHAPTER NUMBER

Bill No.	Chapter No.
SB 2	3
SB 4	6
SB 6	4
SB 7	1
SB 9	7
SB 11	8
SB 13	5

HOUSE BILL NUMBER TO CHAPTER NUMBER

Bill No.	Chapter No.
HB 1	10
HB 2	2
HB 4	11
HB 7	9

CHAPTER NUMBER TO BILL NUMBER

Chapter No.	Bill No.
1	SB 7
2	HB 2
3	SB 2
4	SB 6
5	SB 13
6	SB 4
7	SB 9
8	SB 11
9	HB 7
10	HB 1
11	HB 4

EFFECTIVE DATES BY CHAPTER NUMBER

Chapter No.	Bill No.	Effective Date
Ch. 1	SB 7	05/11/2000
Ch. 2	HB 2	05/11/2000
Ch. 3	SB 2	05/11/2000
Ch. 4	SB 6	05/11/2000
Ch. 5	SB 13	11/07/2000 Upon approval by the Electorate
Ch. 6	SB 4	05/18/2000
Ch. 7	SB 9	05/18/2000
Ch. 8	SB 11	05/18/2000
Ch. 9 All Sections	HB 7	11/07/2000 Upon approval by the Electorate
Ch. 10 §§ 1, 3, and 5-10	HB 1	05/22/2000
§§ 2 and 4		07/01/2001
Ch. 11 §§ 1-15, 17, and 18	HB 4	05/25/2000
§ 16		01/01/2001

EFFECTIVE DATES BY DATE

Effective Date	Chapter No.	Bill No.
05/11/2000	Ch. 1	SB 7
05/11/2000	Ch. 2	HB 2
05/11/2000	Ch. 3	SB 2
05/11/2000	Ch. 4	SB 6
05/18/2000	Ch. 6	SB 4
05/18/2000	Ch. 7	SB 9
05/18/2000	Ch. 8	SB 11
05/22/2000	Ch. 10 §§ 1, 3, and 5-10	HB 1
05/25/2000	Ch. 11 §§ 1-15, 17, and 18	HB 4
11/07/2000 Upon approval by the Electorate	Ch. 5	SB 13
11/07/2000 All Sections, Upon approval by the Electorate	Ch. 9	HB 7
01/01/2001	Ch. 11 § 16	HB 4
07/01/2001	Ch. 10 §§ 2 and 4	HB 1

SESSION LAW TO CODE

Ch.	Sec.	MCA
1	1	87-4-407
	2	87-4-411
	3	Saving clause
	4	Effective date
2	1	Appropriation for special session
	2	Reversion
	3	Effective date
3	1	15-31-803
	2	Effective date
4	1	17-6-317
	2	17-6-311
	3	17-6-312
	4	17-6-314
	5	17-6-324
	6	Codification instruction
	7	Effective date
5	1	Art. XII, Mont. Const.
	2	Effective date
	3	Submission to electorate
6	1	Sec. 5, Ch. 269, L. 1999
	2	Effective date
7	1	82-4-302
	2	82-4-336
	3	Effective date
	4	Applicability
8	1	15-70-204
	2	15-70-205
	3	67-1-301
	4	Effective date
9	1-39	Referendum to repeal state inheritance taxes
10	1	15-35-108
	2	15-35-108
	3	17-7-502
	4	90-6-710
	5	Sec. 2, Ch. 517, L. 1999
	6	Sec. 5, Ch. 517, L. 1999
	7	Appropriation — fund transfer
	8	Effective dates
	9	Retroactive applicability
	10	Termination
11	1	15-6-136
	2	15-6-138
	3	15-6-201
	4	15-7-111
	5	15-8-111
	6	15-10-420
	7	20-9-141
	8	20-9-306
	9	20-9-367
	10	20-9-368
	11	61-3-509
	12	Sec. 167, Ch. 584, L. 1999
	13	Sec. 169, Ch. 584, L. 1999
	14	Appropriation
	15	General fund reserve
	16	Coordination instruction
	17	Contingent voidness
	18	Effective dates — applicability